



The Municipal Corporation of the Town of Fort Erie

By-law No. 130-2021

Being a By-law to Authorize the Entry into an Agreement to Supplement the Right to Re-Conveyance Agreement with Harber Realty Holdings Inc. (Andrew Harber) 1481 Commerce Parkway

Whereas By-law No. 112-2019 authorized the acceptance of an Agreement of Purchase and Sale with Harber Realty Holdings Inc. (the "Owner") for the purchase of the lands legally described as Part of Lot 6, Concession 5, Niagara River, Bertie, Parts 1, 3 and 4, 59R-16513; Fort Erie, being part of PIN 64238-0102 (LT) (the "Property"), subject to the Town of Fort Erie (the "Town") reserving a right to re-purchase the Property; and

Whereas the Owner of the Property and the Town entered into a Right to Re-Conveyance Agreement to secure the Town's right to a re-conveyance of the Property (the "Agreement"); and

Whereas pursuant to section 3(a)(i) of the Agreement, the Town has an irrevocable right to a re-conveyance of the entire Property in the event that the Owner fails to construct and occupy the first phase of an industrial building of at least 10,000 square feet on the Property within two (2) years of registration of the transfer of the Property from the Town to the Owner; and

Whereas the transfer of the Property was registered on November 5, 2019, which renders November 5, 2021 the effective date of the Town's right to a re-conveyance of the Property pursuant to section 3(a)(i) of the Agreement (the "Effective Date"); and

Whereas the Owner has not constructed and occupied an industrial building of at least 10,000 square feet on the Property and has requested an extension of the Effective Date; and

Whereas section 3 of the Agreement permits the Effective Date to be extended to a mutually agreed upon date at the reasonable discretion of the Town; and

Whereas Report No. CAO-22/LC-14-2021 was considered and approved at the Council-in-Committee Meeting of October 18, 2021, approving an eighteen (18) months extension for the Town's right to re-conveyance of the Property and authorizing the entry into an agreement to amend the time limits set out in section 3(a)(i) of the Right to Re-Conveyance Agreement to reflect the eighteen (18) months extension; and

Whereas it is deemed desirable to enter into a Supplemental Agreement to effect the extension of the Effective Date by eighteen (18) months;

Now therefore the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** the entry into a Supplemental Agreement with Harber Realty Holdings Inc. to extend the Effective Date from November 5, 2021 to May 5, 2023, being a period of eighteen (18) months from the Effective Date determined pursuant to, and in accordance with, section 3(a)(i) of the Agreement, in the form attached hereto as Schedule "A" and forming part of this by-law, is authorized and approved.
2. **That** the Mayor and Clerk are authorized and directed to execute the Supplemental Agreement and to affix the corporate seal thereto, and all other documentation necessary to effect the terms and conditions of same.
3. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

Read a first, second and third time and finally passed this 25th day of October, 2021.

Mayor

Clerk

I, Carol Schofield, Clerk of The Corporation of the Town of Fort Erie, certify the foregoing to be a true copy of By-law No. 130-2021 of the said Town. Given under my hand and the seal of the said Corporation, this day of , 20 .

Schedule "A" to By-law No. 130-2021

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT made as of the day of, 2021.

B E T W E E N:

HARBER REALTY HOLDINGS INC.

("the Owner")

– and –

THE CORPORATION OF THE TOWN OF FORT ERIE

("the Town")

Whereas on or about July 9, 2019, the Owner and the Town entered into an Agreement of Purchase and Sale pursuant to which the Owner purchased from the Town certain lands in the Town of Fort Erie described as Part of Lot 6, Concession 5, Niagara River, Bertie, Parts 1, 3 and 4, 59R-16513; Fort Erie, being part of PIN 64238-0102 (LT) subject to an Easement in favour of The Bell Telephone Company of Canada registered as Instrument Number BE43910 ("the Property"), subject to the Town reserving a right to re-purchase the Property; and

Whereas on or about November 5, 2019, the Owner and the Town entered into a Right to Re-Conveyance Agreement to secure the Town's right to a re-conveyance of the Property ("the Agreement"); and

Whereas section 3(a)(i) of the Agreement states that the Town has an irrevocable right to a re-conveyance of the entire Property in the event that the Owner fails to construct and occupy the first phase of an industrial building of at least 10,000 square feet on the Property within two (2) years of registration of the transfer of the Property from the Town to the Owner; and

Whereas the transfer of the Property was registered on November 5, 2019, which renders November 5, 2021 the effective date of the Town's right to a re-conveyance of the Property pursuant to section 3(a)(i) of the Agreement ("the Effective Date"); and

Whereas the Owner has not constructed and occupied an industrial building of at least 10,000 square feet on the Property and has requested an extension of the Effective Date; and

Whereas section 3 of the Agreement permits the Effective Date to be extended to a mutually agreed upon date at the reasonable discretion of the Town; and

Whereas the Owner and the Town have agreed to extend the Effective Date for a period of eighteen (18) months and to enter into this Supplemental Agreement for that purpose;

Now therefore in consideration of the promises and mutual covenants contained in the Agreement, the further promises and mutual covenants contained in this Supplemental Agreement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner and the Town (collectively “the parties”) agree as follows:

- 1.1. The Effective Date is hereby extended from November 5, 2021 to May 5, 2023, being a period of eighteen (18) months from the Effective Date determined pursuant to, and in accordance with, section 3(a)(i) of the Agreement.
- 1.2. This Supplemental Agreement supplements certain information contained within the Agreement and should be read in its entirety in conjunction with, and not in lieu of, the Agreement.
- 1.3. Other than as expressly set out herein, this Supplemental Agreement does not and shall not be understood to amend, revise, alter or otherwise change any provisions of the Agreement. For greater certainty, all terms of the Agreement remain in full force and effect and are binding upon the parties and their successors and assigns.
- 1.4. This Supplemental Agreement may be amended, revised or altered only by mutual agreement of the parties. Any amendment, revision or alteration shall be made in writing, signed by the parties and appended to this Supplemental Agreement.
- 1.5. The invalidity or unenforceability of any term of this Supplemental Agreement shall not limit the validity or enforceability of the remaining terms, each of which is distinct and severable from all other terms of this Supplementary Agreement.
- 1.6. This Supplemental Agreement shall be governed by and construed in accordance with the law of the Province of Ontario and the laws of Canada applicable herein.
- 1.7. This Supplemental Agreement shall be registered on title to the Property by the Town and the cost of such registration shall be borne by the Owner.
- 1.8. This Supplemental Agreement may be signed in counterpart, each of which is an original and all of which together constitute a single document. Counterparts may be executed in original or electronic form and may be exchanged by way of mail or PDF file delivered by email or facsimile transmission.

In witness whereof the parties have executed this Supplementary Agreement by their duly authorized representatives this day of, 2021.

HARBER REALTY HOLDINGS INC.

By: _____

Name:

Title:

I have authority to bind the Corporation.

**THE CORPORATION OF THE TOWN OF
FORT ERIE**

By: _____

Name: Wayne H. Redekop

Title: Mayor

By: _____

Name: Carol Schofield

Title: Clerk

We have authority to bind the Corporation.