



The Municipal Corporation of the Town of Fort Erie

By-law No. 48-2022

Being a By-law to Authorize the Entry into a Lease and Municipal Capital Facility Agreement with the Crystal Beach Hill Cottagers' Organization (0 Erie Road)

Whereas the Crystal Beach Hill Cottagers' Organization ("CBHCO") is the registered owner of the parking lot lands located at 0-15651 and 0-15652 Erie Road; and

Whereas at the Regular Council meeting held on November 22, 2021, the Municipal Council of the Town of Fort Erie considered and approved Report No. PDS-100-2021 authorizing the entry into a Lease and Municipal Capital Facility Agreement with CBHCO for the lands located at 0-15651 and 0-15652 Erie Road (the "premises"); and

Whereas the premises will be used as a municipal capital facility for the purpose of the municipality and for public use pursuant to subsection 110(6) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended (the "Act"); and

Whereas subsection 110(1) of the Act permits the municipality to enter into agreements for the provision of municipal capital facilities; and

Whereas it is deemed desirable to enter into a Lease and Municipal Capital Facility Agreement with CBHCO and to declare the premises a municipal capital facility for the purpose of the municipality and for public use;

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

1. **That** entry into a Lease and Municipal Capital Facility Agreement with the Crystal Beach Hill Cottagers' Organization for the lands municipally described as 0-15651 and 0-15652 Erie Road, in the form of Schedule "A" attached to and forming part of this by-law, is approved and authorized.
2. **That** the Mayor and Clerk are authorized to execute the Lease and Municipal Capital Facility Agreement and to affix the corporate seal thereto.

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 9th day of May, 2022.

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. 48-2022 of the said Town. Given under my hand and the seal of the said Corporation, this day of , 20

THIS LEASE AND MUNICIPAL CAPITAL FACILITY AGREEMENT dated this day
of , 2022 and made in pursuance of the *Short Forms of Leases Act*, R.S.O.
1990, c. S.11 (“the Lease”)

BETWEEN:

CRYSTAL BEACH HILL COTTAGERS' ORGANIZATION
hereinafter called the "CBHCO"

- and -

THE CORPORATION OF THE TOWN OF FORT ERIE
hereinafter called the "Town"

WHEREAS:

1. The CBHCO is the registered owner of certain lands municipally known as 0 Erie Road as illustrated on Schedule "A" ("the Parking Lot"); and
2. The Town desires to lease the Parking Lot from CBHCO for the Town's exclusive use as a municipal parking lot in order to provide public parking in the Crystal Beach area; and
3. The CBHCO desires to lease the Parking Lot to the Town for this purpose subject to the terms and conditions contained herein; and
4. The CBHCO is an active non-share corporation, duly incorporated pursuant to the laws of the Province of Ontario, and has properly authorized the entering into of this Agreement; and
5. By-law No. XX-2022 was passed by the Municipal Council of the Corporation of the Town of Fort Erie on DATE, 2022 authorizing the entering into of this Lease;

NOW THEREFORE, IN CONSIDERATION of the covenants and agreements contained herein, the CBHCO demises and leases unto the Town, and the Town leases from the CBHCO, the Parking Lot on the following terms:

1 TERM

- 1.1. The CBHCO demises and leases the Parking Lot to the Town for a term of twenty (20) years commencing on the first (1st) day of January 2022 and fully ended on the thirty-first (31st) day of December 2042, unless terminated earlier pursuant to the provisions of this Lease.
- 1.2. Should the Town be delayed in taking possession of the Parking Lot by any fault of the CBHCO or any other reason other than the fault of the Town, the Term of this Lease shall not be extended but the Annual Lease Fee payable by the Town as set out in section 2.2 shall be reduced on a prorated basis.
- 1.3. In the event that the Town remains in possession of the Parking Lot after the end of the Term or after an earlier termination as provided for in this Lease, there shall be no tacit renewal of this Lease notwithstanding any statutory provision to the contrary.
- 1.4. If the CBHCO consented in writing to the overholding described in section 1.3, then the Town shall be deemed to be occupying the Parking Lot as a monthly tenant and such tenancy may be terminated by either the CBHCO or the Town on thirty (30) days' notice and otherwise on the same terms as contained herein. Any acceptance by the CBHCO of the Annual Lease Fee or other consideration shall not imply consent to any overholding by the Town.

- 1.5. Nothing herein shall limit the liability of the Town in damages or otherwise for any overholding and the Town shall forthwith indemnify and hold harmless the CBHCO from and against any and all claims incurred by the CBHCO as a result of the Town overholding after the expiry of the Term or after earlier termination as provided for in this Lease.
- 1.6. At or following the end of the Term, the CBHCO and the Town shall consider a renewal of this Lease for a further term, subject to the following conditions:
- a) the Town shall provide written notice to the CBHCO of its desire to enter into a further lease agreement within six (6) months following the end of the Term;
 - b) within thirty (30) days of receiving such written notice, the CBHCO shall advise the Town as to whether it is prepared to enter into discussions in relation to a further lease agreement;
 - c) the terms and conditions of the further lease agreement are mutually agreeable to the Town and the CBHCO; and
 - d) the further lease agreement is approved by the Municipal Council of the Corporation of the Town of Fort Erie.

2 ANNUAL LEASE FEE

- 2.1 The Town shall pay annual rent to the CBHCO for each year of the Term in the amounts set out in section 2.2, inclusive of any and all fees, expenses and/or taxes, and payable in advance and in full on or before the first day of January in each year of the Term ("the Annual Lease Fee").
- 2.2 The Annual Lease Fee shall be as follows:
- a) Years 1 to 5 of the Term (inclusive): \$20,000.00 CDN
 - b) Years 6 to 10 of the Term (inclusive): \$22,000.00 CDN
 - c) Years 11 to 15 of the Term (inclusive): \$24,000.00 CDN
 - d) Years 16 to 20 of the Term (inclusive): \$26,000.00 CDN
- 2.3 Should the Town fail to pay the Annual Lease Fee in full on or before the first day of January in any year of the Term, any outstanding amount shall bear interest at the rate of 1.25% commencing on the first day of January in that year.

3 USE AND CONDITION OF THE PARKING LOT

- 3.1 Subject to section 3.2, the Town covenants and agrees that the Parking Lot shall be used solely as a municipal parking lot for the purpose of providing public parking in the Crystal Beach area and for no other purpose.
- 3.2 Notwithstanding section 3.1, the Parking Lot may, in the sole discretion of the Town, be used as a location or venue for community events or special events that are organized or approved by the Town and may be temporarily altered as necessary to accommodate such events. The consent and/or approval of the CBHCO is not required for any such use or alteration of the Parking Lot.
- 3.3 Where an event described in section 3.2 is hosted by a person, organization or entity other than the Town, it shall be a condition of the Town's approval of the event that said person, organization or entity obtain and maintain in full force and effect general liability insurance and property damage insurance with limits of not less than two million dollars (\$2,000,000) and naming the CBHCO as an additional insured with respect to the event.

- 3.4** Subject to the terms and conditions of this Lease, including but not limited to section 5.1, the Town accepts the Parking Lot in the condition existing on the first day of the Term. For greater certainty, and notwithstanding sections 2.1, 2.2 and 2.3, the Town shall not pay the Annual Lease Fee for the first year of the Term unless and until the requirements of paragraph 5.1 a) have been met.
- 3.5** Upon termination of this Lease by expiry or otherwise, the Town shall not be entitled to reimbursement by the CBHCO of any costs incurred by the Town relating to any alterations, improvements or works it may undertake either by virtue of its obligations under of the terms of this Lease or of its own initiative.

4 MUNICIPAL CAPITAL FACILITY

- 4.1** For the purposes of section 110 of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*"), this Lease is deemed to be a municipal capital facility agreement and the Parking Lot a municipal capital facility to be used for the purposes of the Town and for public use.
- 4.2** Notwithstanding any other term or provision of this Lease, the Town and the CBHCO acknowledge and agree that the Parking Lot constitutes a municipal capital facility as defined in section 110 of the *Municipal Act, 2001*. In the event that the Town enacts a by-law exempting the Parking Lot from taxation for municipal and school purposes in accordance with section 110 of the *Municipal Act, 2001*, and the Parking Lot is thus exempt from taxation in accordance with said by-law, then the CBHCO shall not be liable for the payment of any municipal taxes whatsoever in respect of the Parking Lot for the duration of the Term and any lease renewal.

5 OBLIGATIONS OF CBHCO

- 5.1** The CBHCO covenants and agrees:
- a) to ensure that at the commencement of the Term, the Parking Lot is in a condition suitable for its intended use as set out in section 3.1, including but not limited to being free of dead trees and/or limbs, having suitable grading and drainage and having undamaged gates and fences;
 - b) to undertake any necessary capital repairs or capital improvements required at the Parking Lot during the Term as a result of damage caused by vandalism in excess of one thousand dollars (\$1,000.00) CDN;
 - c) to undertake any necessary capital repairs or capital improvements required at the Parking Lot during the Term, including but not limited to asphalt surface repairs, site grading and/or drainage repairs, repairs to fences, repairs to gates into the Parking Lot, repairs to CBHCO signage in place at the commencement of the Term or installed by CBHCO thereafter, and tree and branch cutting, maintenance and removal, provided that the need for any such repairs or improvements is not due to vandalism causing damage of less than one thousand dollars (\$1,000.00) CDN and/or to an accident at the Parking Lot;
 - d) to provide the Town with quiet enjoyment of the Parking Lot, subject to (i) the right of the CBHCO to inspect the Parking Lot at any time during the Term; and (ii) the provisions of paragraphs 5.1 b) and 5.1 c).
- 5.2** In this Lease, "capital repairs" and "capital improvements" mean any repair, restoration, replacement, upgrade or improvement that improves the Parking Lot beyond its condition at the time of undertaking the said repair, restoration, upgrade or improvement and provides a lasting benefit.

- 5.3** Notwithstanding section 5.1, the CBHCO shall have no responsibility for any damage to the goods, chattels, fixtures and improvements of the Town except to the extent that such damage is caused by the negligence of the CBHCO or any person(s) for whom it is in law responsible.
- 5.4** Should the CBHCO fail to comply with any covenant(s) incumbent upon it under this Lease within thirty (30) days after written notice requiring such compliance is given by the Town to the CBHCO, the Town may fulfill such covenant(s) at the expense of the CBHCO.

6 OBLIGATIONS OF THE TOWN

- 6.1** The Town covenants and agrees:
- a) subject to section 3.4, to pay the Annual Lease Fee in accordance with sections 2.1 and 2.2;
 - b) to operate and manage the Parking Lot;
 - c) to undertake an annual spring cleanup of the Parking Lot in each year of the Term;
 - d) to undertake any necessary cleanup of the Parking Lot following storms that occur during the Term;
 - e) to undertake periodic snow removal at the Parking Lot during the Term in accordance with the Town's event-based snow removal practices for parks;
 - f) to undertake any necessary repairs required at the Parking Lot during the Term as a result of damage caused by vandalism of less than one thousand dollars (\$1,000.00) CDN;
 - g) on a seasonal basis, which means during the annual beach season that extends from May 1 to September 30 and/or during any event(s) described in section 3.2 of this Lease:
 - i. to supply and install temporary signage identifying the Parking Lot as a municipal parking lot at each entrance to the Parking Lot and to maintain such signage for the duration of the Term;
 - ii. to supply and install ticket machines at the Parking Lot;
 - iii. to supply and maintain a maximum of two (2) portable toilets on the Parking Lot site;
 - iv. to undertake weekly grass cutting at the Parking Lot site;
 - v. to pick up and remove fallen branches from the ground;
 - vi. to undertake periodic garbage removal at the Parking Lot site, which will be completed daily when the Parking Lot is open; and
 - vii. to be responsible for the safeguarding and security of the Parking Lot;
 - h) to pay all charges, including penalties and interest that may accrue, for electricity, gas, water, sewer and all other services and utilities that may be supplied to the Parking Lot;
 - i) to give the CBHCO prompt written notice of any accident or incident at the Parking Lot;
 - j) to ensure that the gates providing emergency access to the Parking Lot are kept clear and accessible for emergency purposes;

- k) within thirty (30) days after the termination of this Lease by expiry or otherwise, to remove from the Parking Lot any fixtures and chattels belonging to the Town unless the Town and the CBHCO agree that certain fixtures and/or chattels may remain;
- l) to repair any damage caused by the removal of its fixtures or chattels and to leave the Parking Lot neat, clean, level and free of all waste material, debris and rubbish, all to the CBHCO's satisfaction;
- m) to maintain insurance coverage in accordance with section 8;
- n) not to sublease the Parking Lot, in whole or in part, without the prior approval of the CBHCO; and
- o) not to assign this Lease, in whole or in part, without the prior approval of the CBHCO.

6.2 For greater certainty, the Town shall have no responsibility for the capital repairs and/or capital improvements of the Parking Lot described in section 5.1 and section 5.2 of this Lease.

6.3 Should the Town fail to comply with any covenant(s) incumbent upon it under this Lease within thirty (30) days after written notice requiring such compliance is given by the CBHCO to the Town, the CBHCO may enter the Parking Lot and fulfill such covenant(s) at the sole expense of the Town.

7 ALTERATIONS

7.1 Except as specifically set forth in this Lease, including but not limited to section 3.2, the Town shall not alter the Parking Lot without the prior written approval of the CBHCO and subject to the following:

- a) that before undertaking any such alterations, the Town shall submit to the CBHCO a plan showing the proposed alterations; and
- b) that all such alterations shall conform to the CBHCO's and the Town's policies and by-laws, if any, then in force affecting the Parking Lot.

8 INSURANCE AND INDEMNITY

8.1 The Town shall, at all times during the Term, maintain in full force and effect general liability insurance and property damage insurance with limits of not less than five million dollars (\$5,000,000). The Town shall add the CBHCO as an additional insured but only with respect to this Lease.

8.2 The Town shall provide a Certificate of Insurance to the CBHCO as evidence that it has been added as an additional insured as required herein.

8.3 The Town shall make best efforts to obtain a waiver of subrogation from its insurer in relation to any claim(s) that the Town may have against the CBHCO in relation to the Parking Lot and/or the provisions of this Lease.

8.4 The CBHCO and the Town shall each indemnify and save harmless the other and its officers, servants and agents, from any and all losses, claims, actions, demands and liabilities for personal injury and/or property damage arising as a direct or indirect result of the use of the Parking Lot, where such claims are caused wholly or in part by any negligent act or omission of the CBHCO or the Town, as the case may be, or anyone for whom it is in law responsible.

9 RIGHT OF FIRST REFUSAL

- 9.1** Provided that the Town is not in default of its covenants or obligations under this Lease, it shall have a continuous right of first refusal ("the Right of First Refusal") to purchase the Parking Lot in accordance with sections 9.2 to 9.6.
- 9.2** In the event that, at any time during the Term, the CBHCO receives a *bona fide* offer to purchase the Parking Lot, which is acceptable to the CBHCO in all respects ("the Acceptable Offer"), the CBHCO shall notify the Town of the Acceptable Offer and shall provide it with a complete copy of the Acceptable Offer, subject to redaction of the name of the proposed purchaser at the discretion of the CBHCO.
- 9.3** An Acceptable Offer shall provide that the offeror acknowledges and agrees to be bound by this Lease for the balance of the Term. An Acceptable Offer shall also provide that the purchase price for the Parking Lot shall be payable in cash or a combination of cash and mortgage. An offer that is conditional on the Town not exercising this Right of First Refusal shall be deemed to be an Acceptable Offer.
- 9.4** The CBHCO covenants and agrees that the Town shall have the prior right to elect to purchase the Parking Lot on the terms and conditions and for the price contained in the Acceptable Offer, which right may be exercised at any time within fifteen (15) business days following receipt of the offer by the Town in accordance with section 9.2.
- 9.5** If the Town does not so elect, the CBHCO shall be free to sell the Parking Lot on the terms and conditions set forth in the Acceptable Offer and subject to this Lease, but this Right of First Refusal shall thereafter remain in full force and effect during the balance of the Term. If such Acceptable Offer is not completed, this Right of First Refusal shall remain in force for any further Acceptable Offer(s) received by the CBHCO.
- 9.6** The CBHCO covenants and agrees not to sell the Parking Lot unless it has first complied with the terms of this Lease.

10 DEFAULT AND TERMINATION

- 10.1** Failure to comply with any of the terms and conditions of this Lease shall be just cause for the termination of this Lease. If either of the CBHCO or the Town defaults in performing any of its obligations under this Lease, the non-defaulting party shall give written notice of the default and giving thirty (30) days to remedy the default, failing which the non-defaulting party may terminate this Lease by written notice.
- 10.2** This Lease may be terminated by either of the CBHCO or the Town at any time on giving the other party one hundred and twenty (120) days written notice of termination. Upon such termination, the Town shall promptly remove any fixtures and chattels it may have installed or placed in or upon the Parking Lot and shall repair any damage to the Parking Lot resulting from such removal.
- 10.3** The termination of this Lease by expiry or otherwise shall not affect the liability of either of the CBHCO or the Town to the other with respect to any obligation under this Lease which has accrued up to the date of such termination but has not been properly satisfied or discharged.

11 DISPUTE RESOLUTION

- 11.1** In case of any dispute between the CBHCO and Town during the Term as to any matter arising under this Lease, either of them may give the other written notice of the nature of the dispute and demand arbitration thereof and, after giving such notice, the CBHCO and the Town shall agree upon an arbitrator within seven (7) days, failing which each of them shall within the seven (7) days appoint an arbitrator and the arbitrators so appointed shall jointly appoint

a third arbitrator immediately. The dispute shall be arbitrated without delay and the decision of the sole arbitrator or, in the case of three arbitrators, of any two of the arbitrators, shall be final and binding.

12 GENERAL

- 12.1** This Lease constitutes the entire agreement between the CBHCO and the Town relating to matters set out herein. There are no representations, warranties, covenants, agreements or other terms relating to the subject matter of this Lease. This Lease supersedes any and all prior discussions, understandings or agreements between the CBHCO and the Town and may not be modified, changed or amended other than by an agreement in writing and signed by the CBHCO and the Town.
- 12.2** No waiver by either of the CBHCO or the Town of any breach by the other or of any default, breach or non-observance of its obligations under this Lease shall be deemed to be a waiver of any subsequent default or affect any rights or remedies available to the non-defaulting party with respect to such breach or any other subsequent or continuing breach.
- 12.3** If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent or for any reason be held invalid or unenforceable, the remainder of this Lease and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.
- 12.4** This Lease shall be governed by and construed in accordance with the laws of the Province of Ontario and laws of Canada applicable therein.
- 12.5** The provisions of this Lease shall be binding upon, and enure to the benefit of, the parties and their respective successors and (where applicable), permitted assigns.
- 12.6** The CBHCO and the Town both represent and warrant that:
- a) they are corporations validly subsisting under the laws of the Province of Ontario and have full corporate power and capacity to enter into this Lease and any documents arising from this Lease; and
 - b) all necessary corporate action has been taken to authorize the execution and delivery of this Lease.
- 12.7** All communications and notices required or contemplated by this Lease shall be in writing and shall be considered to have been validly given when delivered by hand, or deposited for mailing by Canada Post, Registered Mail service, to the address of the party to whom such notice is directed (as set forth below), or sent by facsimile transmission or e-mail or other means of written communication that effectively conveys the message to the party to whom such notice is directed, as follows:

If to the CBHCO: Crystal Beach Hill Cottagers Organization
c/o 529 Berryman Drive, Amherst, New York
14226-4650
Attention: Ronald Adimey, President
Facsimile: 716-885-8604
E-mail: rsadimey@verizon.net

If to the Town: Town of Fort Erie
1 Municipal Centre Drive, Fort Erie, ON, L2A 2S6
Attention: Sean Hutton, Manager, Parks & Facilities
Facsimile: 905-871-6100
E-mail: shutton@forterie.ca

or such other address of which either party has notified the other, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of the Lease.

12.8 This Lease may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. Counterparts may be executed either in original or electronic form and may be delivered in accordance with section 12.7 and the CBHCO and the Town adopt any signatures received by facsimile transmission or e-mail as original signatures.

IN WITNESS WHEREOF the parties have signed and affixed their corporate seals under the hands of their proper officers duly authorized in that behalf.

**CRYSTAL BEACH HILL COTTAGERS
ORGANIZATION**

Name:
Title:
I have authority to bind the Corporation.

Date: _____

Name:
Title:
I have authority to bind the Corporation.

Date: _____

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

Mayor

Clerk

Date: _____

SCHEDULE "A"
"PARKING LOT"

