

# TOWN OF FORT FRANCES

## Planning & Development Executive Committee

### AGENDA - September 5, 2017 at 8:00 AM

#### MEETING - Civic Centre - Committee Room

	Page
1. <b><u>Call to Order</u></b> Session #32	
2. <b><u>Disclosure of pecuniary interest and the general nature thereof</u></b>	
3. <b><u>Approval of Previous Committee Minutes</u></b> 3.1 Approval of August 8th, 2017 meeting minutes.	2 - 3
4. <b><u>Non-agenda items identified to be considered later in this meeting, both in-camera and in open meeting.</u></b>	
5. <b><u>In-Camera</u></b> 5.1 Request by NWCDSD for Acquisition of Property	
6. <b><u>Items Referred from Council</u></b> 6.1 Letters from Residents in regards to Zoning By-Law Restrictions.	4 - 12
7. <b><u>New Business</u></b>	
8. <b><u>Outstanding Items</u></b> 8.1 Official Plan Amendment and Zoning By-Law Amendment for 605 McIrvine Road. 8.2 Site Plan Control Agreement- Great Canadian Oil Change. 8.3 Site Plan Control Agreement - RRDSSAB. 8.4 Draft Animal Control By-Law.	13 - 16 17 - 35 36 - 53 54 - 71
9. <b><u>Information</u></b>	
10. <b><u>Non-agenda Items</u></b>	
11. <b><u>Adjourn / Next Meeting Date</u></b> Monday September 18th, 2017.	

## TOWN OF FORT FRANCES

### MINUTES

SESSION NO. #31

August 8, 2017

The meeting of Planning & Development Executive Committee of the Town of Fort Frances was held in the Civic Centre on August 8, 2017 from 8:00 p.m. to 10:14 a.m.

PRESENT: D. Kitowski, Chair, J. Caul, J. Albanese, R. Avis

ALSO PRESENT: D. Brown, CAO, T. Dennis, CBO/Planner, E. Slomke, Clerk/Acting Committee Secretary, J. Kabel, Manager of Community Services

**1. Call to Order**  
Session #31

**2. Disclosure of pecuniary interest and the general nature thereof - None.**

**3. Approval of Previous Committee Minutes**

- 3.1 Approval of July 4th, 2017 meeting minutes.  
- Approved as presented.

**4. Non-agenda items identified to be considered later in this meeting, both in-camera and in open meeting - None.**

**5. In-Camera**

- 5.1 Request to Purchase Town Property - Industrial Park (Lots 1 to 5 and 10)  
- A lengthy discussion took place. The Planning & Development Executive Committee recommends that the report be approved as presented and proceed to Committee of the Whole agenda.

Albanese-Caul: THAT Planning & Development Executive Committee now meet in-camera in order to address a matter pertaining to:

- a proposed or pending acquisition of land for municipal or local board purposes or disposal of land no longer needed for municipal purposes, more specifically Item 5.1 Industrial Park Lots

CARRIED

**6. Items Referred from Council**

- 6.1 Fort Frances Lakers Request Letter.  
- A lengthy discussion took place with additional input provided by J. Kabel, Manager of Community Services. The Planning & Development Executive Committee provided direction to J. Kabel to take forward to the Community Services Executive Committee for consideration.

**7. New Business**

- 7.1 Sister Kennedy Centre Request to Suspend Calendar Parking in the 400 & 500 Blocks of Nelson Street.  
- A brief discussion took place. The Planning & Development Executive Committee recommends the report be approved as presented and proceed to the Committee of the Whole agenda.
- 7.2 Deeming of Properties at 740 Sixth Street West / 730 Sixth Street West (Plan 48M353 Lots 34 & 33)  
- A brief discussion took place. The Planning & Development Executive Committee

recommends the report be approved as presented and proceed to the Committee of the Whole agenda.

- 7.3 Official Plan Amendment and Zoning By-law Amendment for 605 McIrvine Road  
- A verbal presentation was made by C. Rogoza and N. Dasanti on behalf of the Evangelical Fellowship Church. Members of the Committee were provided the opportunity to ask additional questions and obtain clarification. The Planning & Development Executive Committee recommends the report be approved as presented and proceed to the Committee of the Whole agenda.

**8. Outstanding Items**

- 8.1 Request for Water Well Installation - Church of the Holy Spirit  
- A lengthy discussion took place. The Planning & Development Executive Committee recommends the report be approved as presented and proceed to the Committee of the Whole agenda.
- 8.2 Residential Property Review and Future Residential Development Planning  
- A lengthy discussion took place. The Planning & Development Executive Committee recommends Administration proceed with tendering the project and further that an amended report proceed to the Committee of the Whole agenda.

**9. Information**

- 9.1 By-Law Activities 2nd Quarter Report.  
Received.

**10. Non-agenda Items - None.**

**11. Adjourn / Next Meeting Date - 10:14 a.m.**  
Tuesday September 5th, 2017.

\_\_\_\_\_  
Executive Committee Chair

\_\_\_\_\_  
Secretary, Planning & Development Executive Committee



Date: August 30, 2017

Report To: Planning and Development Executive Committee

From: Tyson Dennis, Chief Building Official/Municipal Planner

**Re: Citizen letters with concern to Section 3.31 in the Zoning By-Law 03-14**

Concerned citizens have written into Council with regards to Section 3.31 of the Zoning By-Law 03-14 which reads:

**3.31 SETBACKS FROM NAVIGABLE AND NON-NAVIGABLE WATERCOURSES, HAZARD LAND AND MUNICIPAL SURFACE DRAINS**

Notwithstanding any other provisions of this By-law, a **building** in any zone is required to be no closer than 15 meters from the top of the bank of any **watercourse**, or municipal drainage ditch permanent or intermittent, which may or may not be navigable. In the case of **hazard lands**, no part of any **building** shall be constructed closer than 15 meters to the nearest point of the area to which the hazardous condition is deemed to exist.

In 2014, Fort Frances adopted a new Zoning By-Law 03-14. The previous Zoning By-Law was adopted in 1997 and was current until January of 2014. The previous Zoning By-Law regulated watercourse set-backs with the following definition which read:

**3.27.3 Watercourses**

No building or structure shall be located within 10 meters of the normal or controlled high water mark of any watercourse or lake.

Since the adoption of the new Zoning By-Law 03-14 in 2014, there has been no recorded Community complaints of set-backs from watercourse, hazard land and municipal surface drains until recent letters came from concerned citizens. The previous wording of the set back, "within 10 m of the normal or controlled high water mark..." allowed for structures in areas such as River Road, River View, Olde Shambles, Colonization Road West, Kerr Place and Armstrong Place, to have the necessary set-backs from high water to allow for building permits

to be issued. Numerous existing structures in these areas are legal non-conforming since the change in watercourse setback in 2014. Non-Conforming uses is defined in the Zoning By-Law under Section 3.16:

### **3.16 NON-CONFORMING USES**

The provisions of this By-law shall not apply to prevent the **use** of any **existing lot, building or structure** for any purpose prohibited by this By-law if such **existing lot, building or structure** was lawfully used for such purposes, prior to the effective date of this By-law and provided that the **lot, building or structure** continues to be used for that purpose. Where the **use** ceases to exist for a period of one year, the **use** will be deemed to have been discontinued. A **non-conforming use** shall be considered abandoned:

- a) when the **use** has been discontinued for one year; or
- b) when the characteristic equipment and furnishings of the nonconforming **use** have been removed and have not been replaced within one year; or
- c) when it has been replaced by a conforming **use**; or
- d) when re-establishment has not been commenced within two (2) years of the date of destruction or damage caused by fire or natural disaster.

The exterior of any **building or structure** which was lawfully used prior to the effective date of this By-law for a purpose not permissible within the **zone** in which it is located, prior to the effective date of this By-law, shall not be enlarged, extended more than 0.2 meters, reconstructed or otherwise structurally altered, unless such **building or structure** is thereafter to be used for a purpose permitted within such **zone**.

The interior of any **building or structure** which was lawfully used for a purpose not permissible within the **zone** in which it is located prior to the effective date of this By-law, may be reconstructed or structurally altered, in order to render the same more convenient for the **existing** purpose for which such **building or structure** was lawfully used.

Nothing in this By-law shall prevent the strengthening or restoration to a safe condition of any **existing, legal non-conforming building or structure** or part thereof, provided that the strengthening or restoration does not increase the **building** height, size or volume or change the **existing, lawful use** of such **existing building or structure** unless these changes are necessary to provide for floodproofing of the **building**.

The provisions of this By-law shall not apply to prevent the **erection or use**, for a purpose prohibited by this By-law, of any **building or structure**, the plans for which have, prior to the date of passing of this By-law, been approved by the **Municipality**, so long as the **building or**

**structure, when erected, is used and continues to be used for the purpose for which it was erected.**

The Planning and Development Department has researched other Municipalities in North Western Ontario to compare the set-backs which are required and enforced near watercourses. Listed are four Municipalities of similar land development:

*City of Thunder Bay*-Minimum setback from water's edge of Lake Superior/waterways 20.0m

*Township of Sioux Lookout*-Setbacks of structures are measured from highwater mark, dwellings are 20m, gazebos are 4m, and boathouses are 0m from highwater mark.

*City of Kenora*-20m to the normal highwater mark of any watercourse or water body; or 15m to the top of the bank of any watercourse or water body, whichever is greater

*City of Dryden*-30m between structures and the highwater mark with exception made for septic systems if they are approved by the North-Western Health Unit.

The Ministry of Natural Resources regulates unorganized lands in Ontario. Setbacks for all structures are to be no closer than the highwater mark from all watercourses. The highwater mark is determined by vegetation damage, water markings, and any other visual markings left from previous high water seasons.

The present Zoning By-Law 03-14, conflicts with developed properties in some areas of Fort Frances. The regulation restricts owners to utilize their property for future expansion. We have received letters from concerned citizens the regulation in the Town's Zoning By-Law impedes their ability to add structures to their properties which would not otherwise contravene with Zoning regulations.

The Planning and Development department is recommending to the Planning and Development Executive Committee to consider the information given in this report of other Municipalities watercourse setbacks, the Town of Fort Frances's previous Zoning By-Law Section 3.27.3, and setbacks enforced by the Ministry of Natural Recourses on unorganized lands, to amend the existing Zoning By-Law 03-14, Section 3.31 Setback from Navigable and Non-navigable Watercourses, Hazard Land and Municipal Surface Drains, to allow existing and future structures to be developed using the highwater mark as references point, instead of the top of embankment, on lands within the Town Fort Frances.

Originally Signed

Tyson Dennis  
Chief Building Official and Municipal Planner

From: Christopher Kaun <[CWKaun@uniongas.com](mailto:CWKaun@uniongas.com)>

Date: 2017-08-15 9:44 AM (GMT-06:00)

To: Tyson Dennis <[tdennis@fortfrances.ca](mailto:tdennis@fortfrances.ca)>

Subject: FW: Letter

Attn: Mayor and council.

I'm writing this letter to address the issues with the bylaw pertaining to hazardous lands in fort frances . This bylaw was introduced in 2013 without notifying the homeowners that it directly affects... I built my home 10 years ago at 1222 olde shambles road. I purchased the property when I was in high school with hopes I could build a home to raise my family in... A forever home... I had my entire house drawn up, with an attached garage.

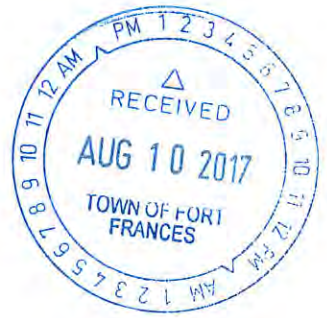
In 2007 I had my lot surveyed for my 1500 square-foot home with attach garage to make sure that everything would fit nicely and be appropriate for the lot, I worked with rick helm to identify any code or bylaw issues and the only thing brought forward at that time was the EPA agreement for 1080 ft above sea level and that I was not to disturb anything below that. Due to the high cost of building I chose to build only a section of my dream home. I have lived and raised my family there since. My family has now outgrown my house, this fall I had hoped to complete the addition and garage to accommodate my large family but this bylaw has stopped me from being able to do so. With no other options of being able to add square footage to my house or any updates I am being forced to consider relocating out of fort frances. I am currently trying to sell my home, two people have withdrawn their offer so far once they found out the home is "as is" and can never be any more, with no chance of building a deck the garage or steps to the front door. This bylaw has diminished value of my home and property which I worked so hard to complete over the last 10 years. This bylaw has shattered the dreams of my family home in a nice quiet area of Fort Frances. I understand this was put in place because of issues pertaining to the Pearson subdivision... My my property is not part and parcel of that subdivision it is separate. I built my home according to the Ontario building code, with building permits and it was inspected properly. My home has not moved because ot was built on native soil and is locked into the side of the hill just as the building code states it must be. This bylaw has taken away my prosperity and has deteriorated my ability to sell. I would like to see this bylaw fully withdrawn, or I will need to be compensated for my losses. Not able to expand, not able to change anything this bylaw makes not only my house but leaves every house along a hill in Fort Frances severely impacted. ... I am currently being charged and absorbent amount of taxes for a property that because of this by law is not worth anything. I have called other townships in Ontario they do not have this rule... The building code section 9 was created for a reason, this should be the only stipulation to building. People build on the tops of hills on the sides of mountains every day around the world, these houses outlast the owners when built to code and inspected properly. The area that this bylaw affects is prime real estate in Fort Frances, why not encourage people to build nice newer buildings? the town would intern see higher tax margins. I do not believe that homeowners would have to hire an engineer to draw a design and stamp simple additions or buildings on hills, that would a very hi cost imposed by the town of Fort Frances when we as tax payers hire a local building official for this reason. We need to encourage young family's such as myself to stay here, not impose restrictions because of the mistakes of others. the town of Fort Frances has a building inspector to make sure people are following the building code there should be no reason that people have to hire engineers for any residential design if that design is acceptable by the building code. With an inspector to enforce the building code, and complete their inspections. This bylaw is costing me every day that it is in place. I hold the town of Fort Frances responsible for the diminished value of my property. And this bylaw the sole reason that I have to relocate my family.

Thank you for your time.

Regrets,

Chris Kaun

To: Fort Frances Council  
320 Portage Avenue  
Fort Frances Ont. P9A3P9  
From: Robert and Tess Coish



Re: 1212 Olde Shambles Roade Construction

To whom it may concern,

We, Robert and Tess Coish are writing this letter in regards to

The zoning restriction 3.31 SETBACKS FROM NAVIGABLE AND NON-NAVIGABLE WATERCOURSES, HAZARD LAND AND MUNICIPAL SURFACE DRAINS .

We had demolished the deck in front of our house due to safety precautions.

Now that we are planning to rebuild but due to the set back, we are unable to do so.

Our Front entry was attached to the deck and can't access anymore because of circumstances.

We had submitted a drawing to Mr. Tyson Dennis that was requested by Mr. Rick Hallam drawn by Mr. George Glowalsky back when we originally started construction of the house in 2011 (to be a part of the original construction), we assumed that it is still part of our old building permit.

We are never going to be able to finish the house the way it should have been finish without proper access to the front of the house.

Due to this circumstances, we are requesting permission to let us finish the



building of our home.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Robert and Tess Coish', written in a cursive style.

Robert and Tess Coish

1212 Olde Shambles Roade

Fort Frances On P9A3S7

Attn: Mayor and Council

I am writing this letter to address the zoning bylaw, section 3.31 Setbacks from navigable and non-navigable water courses. The bylaw states "a building in any zone is required to be no closer than 15 meters from the top of the bank of any watercourse." This statement is unclear and leaves too many questions, who decides where the top of the bank is? My property 1057 River Road west is right on the Rainy River. My property line at the river is on top of a bank, I have another bank behind my house, yet the highest elevation is out at the curb. This house and property has been in my family since 1960. I bought it off my grandmother in December 2016 knowing the major work the house needed but seen the potential it has. I have three projects that I'd like to complete which all possible fall under this bylaw. The first and most important one is to remove the pillars which holds up one third of my house and replace with a proper foundation. If this issues is left undealt with the house will certainly fall off the pillars in the coming years. That project won't make my footprint any bigger it will ensure my house is locked into the hill forever. The second project is to build a new garage which id want to get the cement work done same time as doing the basement foundation. This will make the footprint of my house larger since it will be an attached garage. Third is a deck off the main floor which will need pillars to support it. All these projects are well within 15 meters of a bank, whether it is the bank that the bylaw is referring to I don't know. As a tax paying land owner we should have the right to improve our property and homes whether it's on a hill or not. If I would have known about this bylaw I would have thought twice about buying this house. Unable to fix the existing issues or my new plans makes the property useless and worthless. In conclusion I think this bylaw needs to be revised and/or removed to allow us to fix and improve our homes in these areas.

Scott Howarth



Thursday, August-10-17

Changing the rules along these slopes as a result of an improperly built home or a badly designed sub division should not constitute these restrictions that you have imposed on me or other tax payers who own properties along these sloped lands. People that are willing to develop lands properly and build sound homes or additions properly, should not be penalized due to other mistakes made by, developers, builders, lack of design or inspection. We learn what the problem is and correct it. Not ban the use of said lands so as not to deal with it. Are we to abandon existing homes now located on these lands having no means to repair improve or fix them. This surely makes them worthless. The Ontario building code is there for a reason and I have been following it for 39 years. I have never had any issues with additions or new homes that I have built in this community along these ravines, rivers and lake that surrounds it when following the building code and the existing bylaws that were in place prior to this change. When building on these sloped lands you need to do the following good building practises. Footings should always be placed on native soil and the lower foundation wall for walk out basement should be below the basement floor so the building is locked into the hill side. It need to be at a depth that is low enough to be protected by frost and large enough for the lateral force from the buried side during winter months and frost pressures. The existing homes in this community and around the district that I have built or added onto, where designed using this simple construction method which comes for our Ontario code. These projects have stood the test of time and after 39 years have never had any customer's contact me concerning any issues with the addition or home that our firm had constructed. It is time that we put aside the poor workmanship and design that some homes have along these ravines, river banks and lake shores that the "town" has allowed to be built in this community. I do know that through proper design, inspection and enforcement there is no reason to deem these lands HAZADOUS. A review of the foundation design prior to issuing a permit should be done but keep in mind that we have a building code and a building inspector the tools required to deal with these issues let's not make new rules that become unaffordable or deem property unusable, for people who own or live on these sloped lands.

In closing I feel there is no reason why we are not like other communities in northwest Ontario and this bylaw should be removed. We are a progress community not one that passes laws to avoid the issues from the past.

A concerned taxpaying land owner



Wayne Kaun

Thursday, August-10-17

To: The Mayor and Council for the town of Fort Frances

It has come to my attention recently that the town has adopted a new bylaw that has directly affected me and the land to which I own, located directly north of Old Shambles road along the Biddison creek. This new bylaw concerning building along the edge of this ravine will restrict any future development of this property because of the new requirement to build 15 meters back of the crest of the hill beside this ravine, and who determines the crest? I was disappointed to learn that the town had changed the rules concerning river banks and ravines without directly consulting local land and home owners with property that is on sloped lands. This bylaw as a result has lowered the value of my land and lands owned by other property owners, along banks within the town of Fort Frances. This law restrict us from adding on to or change existing residence and limits the area that one can develop because of the restriction that this bylaw states. "Deming all banks hazardous" This by law has reduced my usable land by 30 to 50% this is unacceptable.

My son and I have been asking other communities in northwest Ontario if they have such a bylaw and they wondered why a community like ours would adopt such a rule to restrict land use like this. Like most communities in Ontario with sloping terrain, as long as residential buildings are built correctly and according to the Ontario building code, there should be no cause for concern.

As a result of this new bylaw which was passed people who now own lands adjacent to ravine, rivers or lakes, have had their values reduced because you have eliminated any future improvements to my property and or other people's homes along these sloped lands. This loss of value and freedom to build on these slopes as we had in the past, forces me to contest this bylaw and if not remove, also forces me contest the amount of taxes I should have to pay annually because of its now limited use of this land that the town has elected to place upon me. This bylaw in my opinion has reduced the values of all river, ravine and waterfront properties due to its limitations. It is unfair that the town should charge me or others tax on land that we can now no longer use or improve. This new bylaw has also reduced the value of my land, should I want to re sell and feel that the town should be held liable for this change in the value of these properties and homes located on hills within the Town of Fort Frances. I also feel that this change in the by-law, that that has been imposed on land holder like myself where passed without direct notification to the people that it would affect. This was unfair and unjustified and needs to be contested.



Date: August 30, 2017

Report To: Planning and Development Executive Committee

From: Tyson Dennis, Chief Building Official/Municipal Planner

**Re: Official Plan Amendment and Zoning By-Law Amendment for 605 McIrvine Road**

The Planning and Development Executive Committee will recall at the August 21, 2017 Council meeting, a resolution was passed to amend the Official Plan as well as the Zoning By-Law 03-14. The amendments would allow adoption from Council for a Site-Specific Policy to be added to Section 4.2.2 of the Official Plan to allow a place of worship as a permitted use on the site, in addition to other employment-generating uses; and to allow a zoning change from Enterprise to Institutional at 605 McIrvine Road.

The draft By-Law Amendments are attached for review by the Planning and Development Executive Committee.

If the By-Law amendments are satisfactory to the Committee, please approve as submitted and recommend the By-Laws be brought to the next Council meeting for final reading and approval.

Originally Signed

Tyson Dennis  
Chief Building Official and Municipal Planner

**THE CORPORATION OF TOWN OF FORT FRANCES**  
(the "Municipality")  
**BY-LAW NO. \*\*\*\*\***

(Being a By-Law to amend the Official Plan-2011, as amended – Section 4.2.2)

**WHEREAS** an application has been received from The Evangelical Fellowship Church, on behalf of 1921495 Ontario Limited, to have a policy added to the Official Plan in Section 4.2.2. site-specific to 605 McIrvine Road ("the site") to permit the proposed use of, A Place of Worship.

**AND WHEREAS** August 21, 2017 Council received a report from Tyson Dennis, Town Building Official and Municipal Planner, to allow the application for a site-specific Official Plan Amendment to be added to Section 4.2.2 of the OP. The report was accepted and final approval of a OP Amendment By-Law is to be brought to Council for final reading.

**NOW THEREFORE** the Council of the Municipality **HEREBY ENACTS** as follows:

1.

That Town of Fort Frances Official Plan 2011, as amended, be further amended by:

Adding a site-specific policy in the Official Plan in Section 4.2.2 of the OP as a new paragraph after the second paragraph to state:

"In keeping with the Employment Area objectives in this Official Plan, the lands municipally known as 605 McIrvine Road, legally described as Parcel 26018, Part Lot 41, River Range, being Part 2, 48 R 3747, Fort Frances shall be zoned as Institutional which permits A Place of Worship, in addition to other employment-generating uses."

2.

The effect of this new policy would allow the 605 McIrvine property to be used as a Place of Worship. The proposed site-specific amendment is in keeping with the intention of the Employment Area objectives and policies that support employment-generating uses on the site and implemented through Institutional zones.

3.

That this By-Law shall come into force and take effect upon the final passing thereof as provided in The Planning Act c. 13, R.S.O. 1990, as amended, and thereupon shall be effective from the date of its passing.

READ THREE TIMES AND FINALLY PASSED in open Council this 11th day of September 2017.

*Original signed by R. Avis*  
R. Avis, Mayor

*Original signed by E. Slomke*  
E. Slomke

**THE CORPORATION OF TOWN OF FORT FRANCES**  
(the "Municipality")  
**BY-LAW NO. \*\*\*\*\***

(Being a By-Law to amend Zoning By-Law #03/14, as amended – 605 McIrvine Road)

**WHEREAS** an application has been received from The Evangelical Fellowship Church, on behalf of 1921495 Ontario Limited, to have the zoning designation changed at 605 McIrvine Road ("the site") to permit the proposed use of, A Place of Worship.

**AND WHEREAS** the zoning designation at 605 McIrvine Road to change from Enterprise to Institutional.

**AND WHEREAS** August 21, 2017 Council received a report from Tyson Dennis, Town Building official and Municipal Planner, to allow the application for allowing a site-specific zoning change from Enterprise to Institutional at the site, to be accepted and final approval of a zoning amendment By-Law be brought to Council for final reading.

**NOW THEREFORE** the Council of the Municipality **HEREBY ENACTS** as follows:

- 1 The site-specific Zoning By-Law Amendment changing the zoning designation from Enterprise to Institution for the purpose of A Place of Worship to be an allowed use at 605 McIrvine Road.
- 2 That this By-Law shall come into force and take effect upon the final passing thereof as provided in The Planning Act c. 13, R.S.O. 1990, as amended, and thereupon shall be effective from the date of its passing.
- 3 That this By-Law shall come into force and take effect upon the final passing thereof as provided in The Planning Act c. 13, R.S.O. 1990, as amended, and thereupon shall be effective from the date of its passing.

READ THREE TIMES AND FINALLY PASSED in open Council this 11th day of September 2017.

*Original signed by R. Avis*  
R. Avis, Mayor

*Original signed by E. Slomke*

E. Slomke,





Date: June 29, 2017

Report To: Planning and Development Executive Committee

From: Tyson Dennis, Chief Building Official/Municipal Planner

**Re: Sovereign Asset Management 850 Kings HWY Great Canadian Oil Change Site Plan Control Agreement**

The application for Site Plan Control was submitted to the Planning and Development department November 16, 2016. The applicant and the Planning department have been working with Antech Design and Engineering Group (ADEG) to propose and complete a Site Plan Control Agreement.

I have attached the application, site plan of the proposed building and the report from ADEG to this report. The report from ADEG describes the action that will be taken regarding storm water management. The Operations and Facility manager, Travis Rob, has signed off on the report for storm water. The installation of new water and sewer services will be completed at the owners cost. The fire department has gone over the plan and is satisfied with the proposed development. The Zoning By-Law states regulations on parking lot completion, proper buffer from adjacent properties as well as site triangle distances. As a condition for Site Plan Control, the Town may collect a proponent, to satisfy conditions of this Site Plan Control Agreement. All legal costs will be covered by Sovereign Asset Management as a part of the agreement.

It is the recommendation of the Planning and Development department to enter into a Site Plan Control Agreement with the above stated conditions. These conditions will be entered into an agreement to be registered on title, once approved at the next Council Meeting.

Originally Signed

Tyson Dennis  
Chief Building Official and Municipal Planner

## SITE PLAN AGREEMENT

**THIS AGREEMENT** made this 11th day of September 2017.

B E T W E E N:

**4 High Street Inc. -Ont. Corp. # 002309510**  
(the "Owner")

- and -

The Corporation of the Town of Fort Frances  
(the "Municipality")

### WHEREAS:

- A. The Owner has represented to the Municipality that the Owner is the registered and beneficial owner of the lands and premises (the "Lands") legally described in **Schedule 1** hereto;
- B. The Owner wishes to construct and develop, in and on the Lands or a portion thereof, a motor vehicle service station (herein sometimes referred to as the "Development" or "Proposed Development");
- C. By an application dated November 16, 2016, the Owner applied to the Municipality for site plan approval in respect of the Proposed Development;
- D. The Municipality provided approval of the Application in respect of the Proposed Development subject to certain conditions;
- E. The Owner has submitted to the Municipality the Plans and Drawings (as "Plans and Drawings" are defined in paragraph 3 of this Agreement) in respect of such Proposed Development by the Owner of the Lands; and
- F. s. 41(10) of the Planning Act (as "Planning Act" is defined in paragraph 3 of this Agreement) (the "Planning Act") permits the registration of this Agreement against the Lands.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, the Owner and the Municipality (collectively the "Parties", individually a "Party") hereto agree one with the other as follows:

### The Lands

- 1. The Lands affected by this Agreement are as follows: 850 King's Highway, more particularly described in **Schedule 1** attached hereto.

### Schedules

- 2. The following Schedules are attached hereto and form part of this Agreement:
  - (a) **Schedule 1** being a description of the Lands affected by this Agreement;
  - (b) **Schedule 2** being a Solicitor's Certificate of ownership of the Lands, which certificate shall be provided to the Municipality within 10 days of the request by the Municipality therefor;
  - (c) **Schedule 3** being a schedule of financial obligations of the Owner payable upon execution of this Agreement or as otherwise provided;
  - (d) **Schedule 4** being a list of the Plans and Drawings (as "Plans and Drawings" are defined in paragraph 3 of this Agreement) as filed by the Owner with the Municipality as may be, with the approval of the Municipality, revised at any time and from time to time;
  - (e) **Schedule 5** being a schedule of letters of credit (which shall be in form and substance satisfactory to the Municipality) to be obtained and filed with the Municipality by the Owner on or before execution of this Agreement; and
  - (f) **Schedule 6** being a schedule for the release/reduction of letters of credit by the Municipality to the Owner.

## Definitions

### 3. In this Agreement:

- (a) "Agreement" means this Agreement and any Schedules referred to in it or attached to it, as may be amended from time to time. The recitals to, and the Schedules attached to this Agreement shall be considered integral parts of it.
- (b) "Construction Lien Act" means the Construction Lien Act, R.S.O. 1990, c. C.30, as amended, including successor legislation.
- (c) "Municipal Act" means the Municipal Act, 2001, S.O. 2001, c.25, as amended, including successor legislation.
- (d) "Person" means an individual, association, partnership, syndicate, firm, organization, foundation, trust, estate, governmental authority, corporation, trustee, agent, or any other entity, and the heirs, administrators, executors, assigns and other legal representatives of any such person to whom the context may apply according to law.
- (e) "Planning Act" means the Planning Act, R.S.O. 1990, c. P.13, as amended, including successor legislation.
- (f) "Plans and Drawings" means the plans and drawings (and any accompanying materials) referred to in **Schedule 4** of this Agreement. The Parties acknowledge that, from time to time, the Plans and Drawings may, with the prior written acceptance of the Municipality, be revised, and if the Municipality provides its acceptance for any revision wherever there is, in this Agreement, any reference to Plans and Drawings, such reference shall be and be deemed to be to the Plans and Drawings so revised with the prior acceptance of the Municipality, and any and all obligations, responsibilities, and otherwise of the Owner to construct or otherwise under or pursuant to this Agreement shall be deemed to reference, apply, and have regard to (and the Owner shall follow and adhere to), the Plans and Drawings so revised.

The Owner shall, further:

- (i) obtain, from any and all authorities having jurisdiction, any and all approvals required for any proposed revision to Plans and Drawings or to any changes to design, construction, and otherwise as may be shown or contemplated therein and thereby; and
- (ii) when submitting and making application to the Municipality in respect of revisions to any and all Plans and Drawings, include with such application any and all approvals applicable or required to be obtained from any and all authorities having jurisdiction.
- (g) "Security" means any and all letters of credit, cash, and other security provided or to be provided the Municipality under or pursuant to the provisions of this Agreement in order to guarantee compliance with all conditions and things to be done or performed or caused to be done and performed by the Owner under or pursuant to this Agreement.
- (h) "Works" means any and all buildings, structures, works, services, facilities and matters and otherwise (and whether internal or external to the Lands) referred to or required by or under this Agreement.

## Terms and Conditions - General

### 4. The Owner:

- (a) covenants and agrees to develop the Lands and do, construct, and build all Works, whether internal or external to the Lands in strict compliance with the Plans and Drawings;
- (b) covenants, warrants, and represents, that the Plans and Drawings submitted to the Municipality have been prepared in a good and workmanlike manner, are accurate in all respects and comply with the requirements of all authorities having jurisdiction;
- (c) acknowledges that the Owner's application is on the basis of a proposal for the Proposed Development, namely the construction, development, and completion, in accordance with the terms and conditions contained in this Agreement. The Owner represents and warrants to the Municipality that no deviations or changes shall be made to the Plans and Drawings and no construction shall take place contrary to such Plans and Drawings, without the prior written approval of the Municipality, except such changes as may be required by the Municipality in order that said Plans and Drawings shall comply with all relevant provisions of the building or zoning or other by-laws or laws of the Municipality, and all regulations or laws of any other authority having jurisdiction;

- (d) covenants and agrees that no work shall be undertaken or performed on, or external to, the Lands except in accordance with the terms of this Agreement;
- (e) acknowledges and agrees that compliance with all applicable laws and regulations applicable, including, without limitation, the Ontario Building Code and the regulations thereunder, and all other applicable laws and requirements of all authorities having jurisdiction, is mandatory;
- (f) covenants and agrees not to convey a part or to further divide the Lands, except in pursuance of the Planning Act or any other similar legislation;
- (g) covenants and agrees that, unless otherwise determined by the Municipality in its sole and unfettered discretion, neither the Owner nor any entity under the authority of the Owner shall be entitled to the issuance of one or more permits to construct or otherwise proceed with any Works or otherwise contemplated under this Agreement until this Agreement has been fully executed and registered on title to the Lands;
- (h) covenants and agrees that it will hold back in its payments to any contractor who may construct services, facilities, or Works or any part thereof, such amounts as may be required under the provisions of the Construction Lien Act. The Owner shall indemnify and save completely harmless the Municipality from and against all claims, demands, actions, causes of action and costs resulting from any construction being performed, by the Owner, its agents and assigns, and any entity acting under the authority of the Owner, and, on demand by the Municipality, the Owner shall take such steps as may be necessary to immediately discharge all liens registered upon or against the Lands, the Works, or otherwise;
- (i) covenants and agrees to retain a professional engineer (the "Engineer") who holds a Certificate of Authorization for municipal engineering applications from the Association of Professional Engineers of Ontario to prepare such design of grading, site and external servicing plans, municipal service connection designs, storm water management, and other reports as may be required by the Municipality to be submitted to the Municipality.

The Engineer shall, prior to the reduction or release of any Security, be required to inspect and certify to the Municipality that all Works have been constructed in accordance with the Plans and Drawings. The certificate, or certificates, shall be in a format acceptable to the Municipality in its sole and unfettered discretion;

- (j) covenants and agrees not to permit occupancy of any building or part thereof for which building permits have been issued until:
  - (i) all Works required under this Agreement are completed in accordance with the requirements of the Ontario Building Code, the applicable zoning by-law and any other municipal by-laws and all other applicable law and requirements of all authorities having jurisdiction;
  - (ii) all water and sanitary sewer infrastructure has been properly tested, approved by all authorities having jurisdiction, and are operating in accordance with the conditions established by the Municipality; and
  - (iii) occupancy permit has been issued.

In the event that a building or part thereof is occupied otherwise than in accordance with the provisions of this paragraph 4(j) of this Agreement, the Owner covenants and agrees that the Municipality shall be entitled to obtain an order from a court of competent jurisdiction prohibiting the occupancy of any building or part thereof until such time as the terms of this Agreement have been fully complied with, and the Owner shall be stopped from opposing such application on the part of the Municipality;

- (k) that the Municipality shall be entitled, in its sole and unfettered discretion and at the sole cost and expense of the Owner, to retain the services of an independent qualified engineer to review all documentation submitted to the Municipality by the Owner and to conduct necessary inspections and otherwise of and in respect of the Works; and
- (l) that once all Works required to be provided, constructed, or installed by it that are internal to the Lands under the terms of this Agreement have been completed to the satisfaction of the Municipality, and in accordance with all Municipal specifications, the laws and requirements of all authorities having jurisdiction, and in a good and workmanlike manner, the Owner shall maintain such Works in accordance with the requirements of all authorities having jurisdiction until this Agreement is amended to provide otherwise or is otherwise released from title to the Lands. In the event that any of the internal Works are not being maintained in accordance with all applicable laws and requirements of all authorities having jurisdiction, or if the Owner is otherwise in default of this Agreement, the Municipality may, on written notice to the Owner, require the Owner to comply with the terms of this Agreement.

5. The Municipality may, by its agents, officers, employees, assigns, contractors, subcontractors, and other representatives and other Persons howsoever engaged by it, from time to time enter in and on the Lands or any part thereof as well as any building(s) erected thereon to ensure that any Works required to be provided, constructed, or installed by the Owner comply with this Agreement.
6. The Owner covenants and agrees as follows:
  - (a) Not to foul the highways leading to the Lands and to provide on all construction accesses leading to the Lands, an interim granular surface to prevent mud or dust from fouling any roads.
  - (b) Not to permit any approach ramps and driveways across the untraveled portion of any road allowance owned by the Municipality unless such approach ramps and driveways are constructed and installed to the Municipality's specifications.
  - (c) To install curbing to the Municipality's specifications along the approach ramps between the property line and the street, and at all locations shown on the Plans and Drawings.
  - (d) To provide fire access route signs, to locate such number of fire hydrants and size of watermains as approved by the Municipality and to satisfy any and all requirements of the Municipality's Fire Chief or the Fire Chief's designate at the Owner's sole cost and expense.
  - (e) To ensure, provide, and maintain, a proper plan with regard to ambulance and other emergency response and related measures and services.
  - (f) To ensure, provide, and maintain a proper access route for fire, ambulance, and other emergency response and related measures and services.
  - (g) To pave with asphalt or concrete all parking, loading, and walkway areas on the Lands to the Municipality's requirements and specifications. No parking or loading zone shall be permitted on any of the Lands unless all areas for which parking and loading are permitted are paved. All handicapped parking spaces shall be so identified with appropriate signage to the satisfaction of the Municipality. All parking and loading areas shall be constructed and maintained to the Municipality's satisfaction.
  - (h) To design, install, and maintain, in accordance with the Plans and Drawings, light standards, fixtures and illumination devices to adequately illuminate the Lands but to also prevent the spread of light onto other properties or onto public highways.
  - (i) To complete and maintain landscaping and planting on the Lands in accordance with the Plans and Drawings.
  - (j) Not to permit any refuse, junk, debris or other material to be deposited on any lands, school lands, or park lands in the area, and that any such refuse, junk, debris, or other material will be removed from the Lands at the expense of the Owner. If the Owner fails to remove the aforesaid material within a period of 48 hours from the time of delivery of written notice to the Owner, the Municipality may enter the Lands and remove the said material and the Owner shall pay for all costs and expenses incurred by the Municipality and the Owner further agrees that the Municipality shall be entitled to charge same against, and take any such costs and expenses from, any Security.
  - (k) To design, prior to construction, a waste management system for the collection, storage, and disposal of waste and recyclable materials, to implement such system and to maintain same following occupancy of the Proposed Development to the satisfaction of the Municipality.
  - (l) To provide internal recycling and garbage areas sufficient to contain the required number of containers and materials.
  - (m) To convey to the Municipality any easements or land (if any) required by the Municipality for the construction, maintenance and improvement of watercourses, ditches, and land drainage works, sewage facilities, and other public utilities.
  - (n) To obtain written confirmation from the appropriate Persons that all utility requirements for the Lands (including but not limited to telephone, telecommunications, hydro-electric power, gas, and postal services), have been satisfactorily arranged and installed, that servicing for same will be provided without any expense, cost, or obligation on the part of the Municipality, and that all requisite documents and otherwise have been or will be provided to such Persons.
  - (o) To design, obtain approval in respect of, construct, install, and maintain, in accordance with all design and approval requirements of all authorities having jurisdiction and the Plans and Drawings, proper water, sewer, and drainage, systems and facilities, and to indemnify and save harmless the Municipality from

actions, claims and suits whatsoever, which may arise out of the implementation or lack of maintenance thereof.

- (p) To implement and monitor on-site sediment and erosion control measures during construction of the Proposed Development, to the satisfaction of the Municipality and to allow the Municipality and its employees and agents, in perpetuity, access to the Lands to inspect roof drains, inlet control devices, and water and sewer management facilities.
  - (q) To provide regular removal of snow from the site and that the parking spaces and landscaping areas will not be used for the stockpiling of snow.
  - (r) To provide an environmental clearance certificate certified by a professional engineer or equivalent to the Municipality that all lands to be conveyed to the Municipality under this Agreement are environmentally suitable for their proposed use in accordance with any laws or guidelines from the Ministry of Environment or successor branch or agency (herein, "MOE").
  - (s) to file with and provide to the Municipality, forthwith upon:
    - (i) completion of any buildings in or on the Lands, 2 complete hard copy sets of as built drawings for the buildings;
    - (ii) completion of any services, works, or facilities (including, without limitation, any utility infrastructure), 2 complete hard copy sets, and one complete electronic set, complete with UTM coordinates, of as built drawings for all such services, works, and facilities installed or constructed pursuant to and in accordance with this Agreement, and whether internal or external to the Lands; and
    - (iii) completion of the Proposed Development, 2 copies of survey and survey/real property reports prepared by and Ontario Land Surveyor complete with UTM coordinates;
  - (t) To provide, during all hours of construction, competent on-site supervision of all Works required to be done on all public and private lands and building or other construction to be undertaken in or on the Lands.
  - (u) To erect proper gates, signs, and protections surrounding or in respect of the Works and any construction on the Lands and to maintain same until final completion of construction.
  - (v) That no antennae or associated equipment will be permitted on the roof and that all roof-top equipment shall be adequately screened from view to the satisfaction of the Municipality.
  - (w) To ensure to get locates, and to verify the location of all existing and proposed utility infrastructure (including, without limitation, infrastructure relating to sewer, water, natural gas, hydro, cable, and other utilities), and whether such utility infrastructure is internal or external to the Lands, before commencing any digging or construction. The Owner shall be solely responsible for and pay all costs and expenses associated with any damage to any utility infrastructure and the relocation of any and all utilities as may be required. In the event of damage to any utility infrastructure by the Owner or its agents, assigns, employees, contractors, subcontractors, or other representatives or Persons howsoever engaged, or relocation of any utility infrastructure is, in the Municipality's sole discretion, required, the Municipality shall, in addition, without limitation and without prejudice to any and all other remedies that may be available to the Municipality in law or equity, be entitled, on written notice to the Owner (except in cases of emergency, in which case no notice shall be required), to require the Owner to comply with the terms of this Agreement and draw on, and utilize, the Security as the Municipality deems fit to pay for any and all costs, expenses, and damage, and costs of relocation, from the proceeds so drawn.
  - (x) To make all necessary arrangements and to be solely responsible for the costs and expenses of removing and relocating any existing municipal or public services requiring relocation in the course of, or in connection with, the construction, installation or provision of the Works or otherwise required under this Agreement.
  - (y) To comply with all provisions of the Municipality's noise by-law.
  - (z) To provide the opportunity for ongoing and final site/Works inspection, monitoring, and testing (including, without limitation, prior to and during construction and material delivery, testing, or compaction) as required by the Municipality.
7. The Owner covenants and agrees to provide, arrange for, construct, install, and pay for all Works required to be provided, constructed, or installed by it that are internal to the Lands under the terms of this Agreement to the satisfaction of all authorities having jurisdiction, and in accordance with all municipal requirements and specifications, and in a good and workmanlike manner.

In the event of any of such internal Works not being or having been so constructed, installed, repaired, or if the Owner is otherwise in default of this Agreement, the Municipality shall, without limitation and without prejudice to any and all other remedies that may be available to it, be entitled, on written notice to the Owner (except in cases of emergency, in which case no notice shall be required), to:

- (a) require the Owner to comply with the terms of this Agreement; and
- (b) do or cause to be done whatever the Municipality deems necessary for or to ensure compliance with this Agreement (including, without limitation, the right to install, construct, and maintain any and all such Works)

all at the Owner's sole cost and expense, and to recover any and all costs and expenses (including, without limitation, all legal and related costs) expended or incurred by the Municipality in doing so, and draw on, and utilize, the Security as the Municipality deems fit to ensure, require, and complete, compliance, and pay all costs and expenses incurred thereby from the proceeds so drawn.

8. Notwithstanding any review (if any) or otherwise by the Municipality of the Plans and Drawings, and anything contained in this Agreement or otherwise, it is and shall throughout be and at all times remain the responsibility and liability of the Owner to ensure that all Plans and Drawings and any other documents provided by the Owner to the Municipality are accurate in all respects and comply with all provisions of the building or zoning or other by-laws of the Municipality and laws, regulations, and requirements of all authorities having jurisdiction, and the Municipality shall not, whether by or as a result of any review done by the Municipality of the Plans and Drawings, or any other action or non-action taken by the Municipality have any responsibility or liability to the Owner in respect thereof nor be deemed to have approved or confirmed that the Plans and Drawings are accurate in any respect or at all or comply with the provisions of the building or zoning or other by-laws of the Municipality or regulations, laws, or requirements of any other authority having jurisdiction.

The Owner is aware that, given the Municipality's staffing, budgeting, and other limitations, and considerations and the obligations of the Owner to ensure the provision of information and Plans and Drawings, which is complete and in compliance with the requirements of all authorities having jurisdiction, the Municipality may undertake a limited or cursory review of the Plans and Drawings, relying, as the Municipality does, on the Owner to ensure completeness and compliance.

#### Terms and Conditions - Other

9. The Owner acknowledges and confirms that, to the best of their knowledge and belief, there are no conditions known to them or any of them of or relating to the Lands (whether or not objected to by any authority with jurisdiction with respect to the same) which would adversely interfere with or derogate from, the uses to which Lands are presently put or the uses to which the Owner proposes to put the Lands, including, without limitation, the existence of any environmental hazard or other substance, material or contaminant of the soil or groundwater or any constituent element thereof causing or which would cause environmental contamination or concern.
10. (a) The Owner covenants and agrees to provide, arrange for, construct, install, and pay for the following Works external to the Lands, namely:
- (i) to repair and restore to the satisfaction of the Municipality any grounds, fences, and any other works, services, facilities, and otherwise, dug up or damaged during or as a result of the construction or execution of the Proposed Development;
  - (ii) any and all Works shown on or spoken to in the Plans and Drawings as being external to the Lands, including, without limitation:
    - (A) the water, storm sewer, and sanitary sewer infrastructure to the property line of the Lands;
    - (B) concrete driveway approaches as shown on the Plans and Drawings;
    - (C) hydro-electric power, gas, telephone, and other public utility requirements for the Proposed Development; and
- (b) The Owner acknowledges that notwithstanding that the above-noted Works may be external to the Lands, it derives a direct benefit from the provision, construction, and installation of such Works and that the Proposed Development proposed hereunder could not be accommodated without the existence of such Works.
- (c) The Owner covenants and agrees to construct or install all Works required to be provided, constructed or installed by it that are external to the Lands under the terms of this Agreement to the satisfaction of the Municipality and any other authority having jurisdiction, and in accordance with all municipal specifications, and in a good and workmanlike manner. The Owner guarantees the workmanship and materials for the construction and installation of the external

Works and to maintain same free of defects for a period (in this Agreement sometimes referred to as the "Guarantee and Maintenance Period") of one (1) year from the date of certification by the Municipality of completion thereof. The Owner covenants and agrees that it shall promptly and properly repair all defects in any and all such external Works to the complete satisfaction of the Municipality.

In the event of any of such external Works not being or having been provided, constructed, installed, repaired, or maintained to the satisfaction of the Municipality, or if the Owner is otherwise in default of this Agreement, the Municipality shall, without limitation and without prejudice to any and all other remedies that may be available to it, be entitled, on written notice to the Owner (except in cases of emergency, in which case no notice shall be required), to:

- (i) require the Owner to comply with the terms of this Agreement; and
- (ii) do or cause to be done whatever the Municipality deems necessary for or to ensure compliance with this Agreement (including, without limitation, the right to install, construct, and maintain any and all such Works)

all at the Owner's sole cost and expense, and to recover any and all costs and expenses (including, without limitation, all legal and related costs) expended or incurred by the Municipality in doing so, and draw on, and utilize, the Security as the Municipality deems fit to ensure, require, and complete, compliance, and pay all costs and expenses incurred thereby from the proceeds so drawn.

The Owner acknowledges that any action or non-action taken by the Municipality or by anyone on its behalf, including, without limitation, relating to the removal of snow and ice, or sanding, or cleaning of any roads, or permitting the connection of additional services to any of the external Works herein required to be constructed or installed, during the Guarantee and Maintenance Period or otherwise, is without prejudice to the Municipality's right to enforce any and all provisions of this Agreement.

- 11. The Owner covenants and agrees that there will be no blasting conducted in or on the Lands by the Owner.

#### Financial Conditions, Security, and Insurance

- 12. The Owner covenants and agrees to:

- (a) pay to the Municipality, forthwith upon request by the Municipality, for any and all costs and expenses whatsoever of and incurred by the Municipality with regard to the application, the preparation of this Agreement, any other matter or thing relating to the Agreement, and the registration of this Agreement against title to the Lands, and including, without limitation, all legal/lawyers fees and disbursements, engineers/engineering fees and disbursements, planning/planners fees and disbursements, Municipal staff time, notice, application, advertising, postage, court, land titles, mileage, material, HST as applicable, and any other costs and charges in any way related to the application or this Agreement;
- (b) pay any outstanding taxes (including arrears, interest and penalties) and local improvement charges; and
- (c) pay to the Municipality the Municipality's building permit fee and any other fees and otherwise payable pursuant to the Municipality's User Fees By-law.

- 13.
  - (a) In order to guarantee compliance with all conditions contained herein, the Owner covenants and agrees to file and maintain with and for the benefit of the Municipality, on the execution of this Agreement, (a) letter(s) of credit (collectively, the "Letter of Credit") in the amount set out in **Schedule 5** attached hereto. The Letter of Credit shall be in a form satisfactory to and approved by the Municipality, and the Owner covenants and agrees that the Letter of Credit shall be kept in full force and effect and that it will pay all premiums as the said Letter of Credit become due or until such time as set out in **Schedule 6** attached hereto.
  - (b) The Owner hereby acknowledges and agrees that should there be a deficiency in or failure to carry out any Works, matter, or thing required under or by this Agreement, and the Owner fails to comply, within 30 days written notice (except in an emergency situation or other exigent circumstances requiring immediate response, in which case verbal notice less than 30 days shall be deemed sufficient) with a direction to carry out such work, matter, or thing, the Municipality shall be entitled to (in addition and without limitation and without prejudice to any and all other remedies that may be available to the Municipality in law or equity), without limitation, draw on the Letter of Credit or any of it to the extent necessary and complete all outstanding work, matters, and things, enter onto the Lands as necessary for any and all such purposes, and pay all costs and expenses incurred thereby from the proceeds so drawn.



- (c) The Owner hereby acknowledges and agrees that the Municipality reserves the right to draw on and use the proceeds from the Letter of Credit to complete any Works, matter, or thing required to be done, observed, or performed by the Owner pursuant to this Agreement. The Owner further acknowledges and agrees that, notwithstanding anything contained in this Agreement, in the event that the Municipality determines that any reduction in the Letter of Credit will create a shortfall with respect to securing the completion of any Works, matter, or thing remaining to be carried out, observed, or performed by the Owner pursuant to this Agreement, the Municipality:
    - (i) shall not be obligated to reduce the Letter of Credit until such time as such Work, matter, or thing is satisfactorily completed or the Municipality has sufficient Letter of Credit to ensure that such work, matter, and thing will be completed; and
    - (ii) may request additional letters of credit for such additional amounts as the Municipality determines is necessary to fully secure the completion of any Works, matter, or thing to be or remaining to be carried out, observed, or performed by the Owner pursuant to this Agreement, and the Owner shall and does hereby agree to provide same within 30 days of demand by the Municipality therefor.
  - (d) Wherever in this Agreement a letter of credit is required to be filed with the Municipality, the Owner may deposit with the Treasurer of the Municipality cash or certified cheque in an amount equal to the Letter of Credit and such deposit shall be held by the Municipality as security to be utilized in a like manner as the letters of credit referred to above and otherwise as required or permitted by this Agreement, provided that no interest shall be payable on any such deposit.
  - (e) Notwithstanding anything contained in this Agreement, it is understood and agreed by the Parties that, except as may be otherwise permitted by the Chief Building Official of the Municipality in writing, the Owner shall not commence, undertake, engage in, or continue the Works nor any part of them without first having provided to the Municipality security satisfactory to the Municipality.
  - (f) The Owner acknowledges that upon the transfer of ownership of the Lands, the Municipality will not return any Letter of Credit until the new owner files with the Municipality a substitute Letter of Credit or such other Security as may be permitted in the required amounts.
14. The Owner shall provide or cause to be provided to the Municipality, on or prior to the execution of this Agreement:
- (a) a general comprehensive liability insurance policy in the amount of \$5,000,000.00 per occurrence in a form satisfactory to the Municipality, indemnifying the Municipality from any loss arising from claims or damages, injury or otherwise in connection with any and all Works, things, and matters done by or on behalf of the Owner. The policy shall include but not be limited to bodily injury, property damage, and contractual liability and contain a cross-liability clause and name the Municipality as additional insured. The policy shall be maintained in full force and effect from and after the execution of this Agreement until all Works external to the Lands have been assumed by the Municipality and in any event until the expiry of the Guarantee and Maintenance Period. The policy shall be endorsed to provide 30 days written notice of cancellation to the Municipality. The Owner shall, upon request therefor by the Municipality at any time and from time to time, promptly provide the Municipality with a certificate of insurance in accordance with the above and if requested a certified true copy(s) of the policy(s) certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to this Agreement. In the event that any renewal premium is not paid, the Municipality, in order to prevent the lapse of such liability insurance policy, may pay the renewal premium or premiums and the Owner agrees to pay the cost of such renewal or renewals within 30 days of the account therefor being rendered by the Municipality. The issuance of such policy of insurance shall not be construed as relieving the Owner from any liability or responsibility for any claims in excess of the aforementioned policy limits. Further, the Owner shall ensure that any contractor and subcontractor engaged to complete the Works or any matters to be done by and/or on behalf of the Owner or otherwise shall maintain the same as or equal insurance as required to be provided and maintained by the Owner hereunder; and
  - (b) Professional Liability insurance in the amount of \$5,000,000.00 per claim in a form satisfactory to the Municipality. Such insurance shall provide coverage for all errors and omissions made by the Owner's Engineer and other professionals in the rendering of, or failure to render, professional services in connection with this Agreement, and remain in full force and effect for 12 months after completion of all things and matters to be done by or to be done by or on behalf of the Owner hereunder. Until the completion of all things and matters done by or to be done by or on behalf of the Owner, upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Owner shall promptly provide the Municipality with a certificate of insurance and if requested a certified true copy(s) of the policy(s) certified by an authorized representative of the insurer.

together with copies of any amending endorsements applicable to this Agreement.

#### Administration

15. (a) If any notice is required to be given by the Municipality to the Owner with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission to:

*4 High Street Inc. – Ont. Corp. #002309510*

XXXX

Facsimile: 647-436-3637

or such other address of which the Owner has notified the Municipality in writing.

- (b) If any notice is required to be given by the Owner to the Municipality with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission to:

The Corporation of the Town of Fort Frances  
320 Portage Avenue  
Fort Frances, Ontario  
P9A 3P9

Attention: Clerk

Facsimile: 807.274.8479

or such other address of which the Municipality has notified the Owner in writing.

- (c) Any notice so given shall be deemed conclusively to have been given and received when so delivered personally or via facsimile, or on the third day following the sending thereof by mail. Any party hereto may change any particulars of its address for notice by notice to other party in the manner aforesaid.
16. The Owner hereby agrees that this Agreement, together with any schedules thereto, shall be registered upon title to the Lands at the sole cost and expense of the Owner. The covenants, agreements, conditions and undertakings herein contained on the part of the Owner shall run with the Lands and shall be binding upon it, its successors and assigns as owners and occupiers from time to time and this covenant shall be to the benefit of the Municipality and its lands and highways appurtenant and adjacent to the Lands. The Owner further covenants and agrees to pay to the Municipality the cost of registration of this Agreement, as well as any further costs incurred by the Municipality as a result of the registration of any other documents pertaining to the application and this Agreement.
17. The Owner covenants and agrees, at its own expense, to obtain and register such documentation (collectively, the "Subordination and Postponement Documentation") from its mortgagees, lessees, and encumbrancers and other Persons interested therein or with respect thereto as may be deemed necessary by the Municipality to postpone and subordinate their interest in the Lands to the interest of the Municipality in order to ensure that this Agreement shall take effect and have priority as if it had been executed and registered prior to the execution and registration of the document or documents giving to the mortgagee, lessees, and encumbrancers and other Persons interested therein their interest in the Lands. The Subordination and Postponement Documentation shall be registered on title to the lands immediately after the registration of this Agreement.
18. The Owner acknowledges that the Municipality, in addition to any other remedies it may have at law or equity, shall also be entitled to enforce this Agreement in accordance with s. 446 and any other applicable provisions of the Municipal Act.
19. Nothing in this Agreement shall relieve the Owner from compliance with all applicable municipal by-laws, laws, regulations, notices, or other policies or laws and regulations established by any other authority having jurisdiction.
20. If the Proposed Development governed by this Agreement is not commenced within 1 year from the date of the execution of this Agreement, the Municipality may, at its sole option and on 60 days notice to the Owner, declare this Agreement null and void and of no further force and effect. Under no circumstances shall the Municipality be obligated to refund any fees, levies, or other charges paid by the Owner pursuant to this Agreement.
21. (a) The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) This Agreement shall be construed with all changes in number and gender as

may be required by the context.

- (c) Every provision of this Agreement by which the Owner is obligated in any way shall be, unless otherwise specifically stated, deemed to include the words "at the sole cost and expense of the Owner" including the payment of any applicable taxes (including, without limitation, HST).
  - (d) References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted or consolidated from time to time and any successor legislation thereto.
  - (e) All obligations herein contained to be performed and observed on the part of the Owner shall, although not expressed to be covenants, be deemed to be covenants.
  - (f) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.
  - (g) The Owner and the Municipality agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
  - (h) Any rule of construction that a document is to be construed more strictly against the Party who itself, or through its agent, drafted such document, shall not apply to this Agreement as it is agreed that the Parties, directly or through their agents, have participated in the preparation of this Agreement.
  - (i) The Owner shall execute any further and other documents and do such further and other things as may be required or desirable to give effect to this Agreement.
22. Neither this Agreement nor any interest therein nor any rights under it shall be assigned or otherwise transferred by the Owner in whole or in part without the prior consent in writing of the Municipality.
23. If the Owner is constituted by or of more than one Person, their obligations hereunder shall be joint and several.
24. The Owner shall indemnify and save harmless the Municipality for and against all actions, causes of action, claims, suits, and demands whatsoever which may or do arise directly or indirectly by reason of, this Agreement, the construction and otherwise of the Proposed Development, or the Owner undertaking the Proposed Development.
25. The Owner agrees to do such further and other things and sign any further documents necessary or desirable to give effect to this Agreement.
26. The failure of the Municipality at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect the Municipality's right thereafter to enforce such obligation, nor shall the waiver by the Municipality of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Municipality shall specifically retain its rights to enforce this Agreement in such manner as it deems fit.
27. Time shall always be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of the Parties, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.
28. The Parties covenant and agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the Party's right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the Parties are entitled to any and all remedies arising from it, notwithstanding any provision in s.41 of the Act interpreted to the contrary. The Parties agree that adequate consideration has flowed from each party to the other and that they are not severable. This provision may be pleaded by either party in any action or proceeding as an estoppel of any denial of such right.
29. The Owner understands and agrees that this Agreement and any materials or information provided to the Municipality may be subject to disclosure under the *Municipal Freedom of Information and Protection of Privacy Act* or as otherwise required by law.
30. This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario.
31. This Agreement may be executed in any number of counterparts and all of these counterparts shall for all purposes constitute one agreement, binding on the Parties, notwithstanding that all Parties are not signatory to the same counterpart.

32. This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the Parties hereto and their successors and assigns.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

**4 High Street Inc. – Ont. Corp. #002309510**

per \_\_\_\_\_  
Name:  
Title:

per \_\_\_\_\_  
Name:  
Title:

We have authority to bind the corporation

**The Corporation of the Town of Fort Frances**

per \_\_\_\_\_  
Name: R. Avis,  
Title: Mayor

per \_\_\_\_\_  
Name: E. Slomke,  
Title: Town Clerk

We have authority to bind the Municipality

**Schedule 1**

Legal Description of Lands

Lot 39 Riv Rge Mclrvine Twp; Plan 48R2376 Part 4 PCL 18234

**Schedule 2**

Solicitor's Certificate of Ownership

TO: The Corporation of the Town of Fort Frances (the "Municipality")

I, **[\*\*REQUIRED\*\*]**, a Solicitor of Ontario, do hereby certify that **4 High Street Inc. – Ont. Corp. #002309510** are the sole registered and beneficial owners in fee simple of the lands and premises legally described as 850 King's Highway (Lot 39 Riv Rge Mclrvine Twp; Plan 48R2376 Park 4 PCL 18234), being all of the said parcel [PIN **[\*\*REQUIRED\*\*]**].

I further certify that there are no mortgages or other encumbrances upon the said lands or any part thereof save and except the following:

**[\*\*REQUIRED\*\*]**

All easements, licenses, and or rights-of-way to be conveyed to the Municipality, if any, will be so conveyed with the consent of all chargees and other encumbrancers.

This certificate is given by me to the Municipality for the purpose of having the said Municipality act in reliance on it in entering into this Agreement.

DATED at **[\*\*REQUIRED\*\*]** Ontario, this **[\*\*REQUIRED\*\*]** day of **[\*\*REQUIRED\*\*]**, 2017.

**[\*\*REQUIRED\*\*]**, Solicitor for the Owner

**Schedule 3**

Schedule of Financial Obligations of the Owner

1. Any and all costs and expenses whatsoever incurred by the Municipality with regard to:
  - a. Application for site plan
  - b. Preparation of this agreement
  - c. Registration of this Agreement on title
  - d. All legal / lawyer fees and disbursements
  - e. Engineer / engineering fees and disbursements
  - f. Planning / planner fees and disbursements
  - g. Municipal staff time
  - h. Land title fees
  - i. Any other costs or charges in anyway related to the application or this agreement
  - j. HST as applicable on any of the above



Schedule 4

List of Plans and Drawings  
(Appendix 'A')

A1.1 Site Plan, General Notes & Site Rec. A2.1 Main Floor & Mezz. Floor Plan A2.2 Pit Floor & Pre-Cast Floor Panel Layout & Roof Plan A3.1 Elevations A4.1 Mezz. Floor & Wall Framing & Cross Sections A5.1 Details, Finish Schedules, Hardware A5.2 Sections & Details A5.3 Construction Details	Mechanical M-101 and M-102  Electrical E-101, E-102 and E-103  Plumbing P-101, P-102 and P-103  S-101 Foundation Plan S-102 Slab On-Grade Plan / Details
Sovereign Asset Management Site Details (9 pages)	

**Schedule 6**

Letters of Credit

Letter of Credit to be provided by the Owner to ensure provision, fulfillment, and completion of the Works and to ensure the Owner's obligations, responsibilities, and otherwise as set out in this Agreement	5% of the project value obtained from the building permit
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## **Schedule 6**

### **Reduction or Release of Security**

#### Application for Reduction of Securities

Prior to the reduction or release of any portion of the Letter of Credit security held by the Municipality for the Works, facilities and matters set out in this Agreement, the Owner shall supply the Municipality with the following documentation:

- (a) letter of application for reduction/release;
- (b) the consultant's certificate confirming that services completed;
- (c) as-constructed drawings;
- (d) satisfactory evidence of no construction liens filed;
- (e) workplace safety certificate;
- (f) statutory declaration as to accounts;
- (g) surveyor's certificate and real property report(s); and
- (h) composite utility plan.

#### Reduction/Release of Securities

Upon certification by the Municipality that all conditions imposed by this Agreement have been satisfied and for which the security was submitted, and provided the Owner is not in default with respect to any other provision of this Agreement, the Municipality shall reduce the said security by ninety percent (90%).

To ensure compliance with all conditions contained herein, the remaining ten (10%) shall be held by the Municipality for a period of one (1) year after the date of final completion (Guarantee and Maintenance Period) and therewith release or return the Security to the Owner or to the issuing financial institution.

The Municipality shall not be required to refund or account for any Security utilized by the Municipality as a result of any default by the Owner under the provisions of this Agreement. The Municipality covenants and agrees to return or release the Security for the aforementioned matters under the conditions specified.



Date: August 30, 2017

Report To: Planning and Development Executive Committee

From: Tyson Dennis, Chief Building Official/Municipal Planner

**Re: Rainy River District Social Services Administrative Board, Site Plan Control Agreement**

The Planning and Development Executive Committee will recall at the July 10, 2017 Council meeting, a resolution was passed to complete a Site Plan Control Agreement with Rainy River District Social Services Administrative Board for an 8-Plex development. The report was accepted and a *draft* Site Plan Agreement has been created.

The agreement is attached to this report setting out the conditions, site plan, and drawings of the new building.

It is the recommendation of the Planning and Development department to complete the Site Plan Control Agreement. If the agreement is satisfactory to the Committee, please approve as submitted and recommend the Site Plan Control Agreement, as well as a By-Law, be brought to the next Council meeting for final approval.

Originally Signed

Tyson Dennis  
Chief Building Official and Municipal Planner

## SITE PLAN AGREEMENT

**THIS AGREEMENT** made this 11th day of September 2017.

B E T W E E N:

***Rainy River District Social Services  
Administration Board***  
(the "Owner")

- and -

The Corporation of the Town of Fort Frances  
(the "Municipality")

### WHEREAS:

- A. The Owner has represented to the Municipality that the Owner is the registered and beneficial owner of the lands and premises (the "Lands") legally described in **Schedule 1** hereto;
- B. The Owner wishes to construct and develop, in and on the Lands or a portion thereof, a multi-residential 8-plex apartment building (herein sometimes referred to as the "Development" or "Proposed Development");
- C. By an application dated April 27, 2017, the Owner applied to the Municipality for site plan approval in respect of the Proposed Development;
- D. The Municipality provided approval of the Application in respect of the Proposed Development subject to certain conditions;
- E. The Owner has submitted to the Municipality the Plans and Drawings (as "Plans and Drawings" are defined in paragraph 3 of this Agreement) in respect of such Proposed Development by the Owner of the Lands; and
- F. s. 41(10) of the Planning Act (as "Planning Act" is defined in paragraph 3 of this Agreement) (the "Planning Act") permits the registration of this Agreement against the Lands.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, the Owner and the Municipality (collectively the "Parties", individually a "Party") hereto agree one with the other as follows:

### The Lands

- 1. The Lands affected by this Agreement are as follows: 1301 Elizabeth Street / 1300 Fifth Street East, more particularly described in **Schedule 1** attached hereto.

### Schedules

- 2. The following Schedules are attached hereto and form part of this Agreement:
  - (a) **Schedule 1** being a description of the Lands affected by this Agreement;
  - (b) **Schedule 2** being a Solicitor's Certificate of ownership of the Lands, which certificate shall be provided to the Municipality within 10 days of the request by the Municipality therefor;
  - (c) **Schedule 3** being a schedule of financial obligations of the Owner payable upon execution of this Agreement or as otherwise provided;
  - (d) **Schedule 4** being a list of the Plans and Drawings (as "Plans and Drawings" are defined in paragraph 3 of this Agreement) as filed by the Owner with the Municipality as may be, with the approval of the Municipality, revised at any time and from time to time;
  - (e) **Schedule 5** being a schedule of letters of credit (which shall be in form and substance satisfactory to the Municipality) to be obtained and filed with the Municipality by the Owner on or before execution of this Agreement; and
  - (f) **Schedule 6** being a schedule for the release/reduction of letters of credit by the Municipality to the Owner.

## Definitions

### 3. In this Agreement:

- (a) "Agreement" means this Agreement and any Schedules referred to in it or attached to it, as may be amended from time to time. The recitals to, and the Schedules attached to this Agreement shall be considered integral parts of it.
- (b) "Construction Lien Act" means the Construction Lien Act, R.S.O. 1990, c. C.30, as amended, including successor legislation.
- (c) "Municipal Act" means the Municipal Act, 2001, S.O. 2001, c.25, as amended, including successor legislation.
- (d) "Person" means an individual, association, partnership, syndicate, firm, organization, foundation, trust, estate, governmental authority, corporation, trustee, agent, or any other entity, and the heirs, administrators, executors, assigns and other legal representatives of any such person to whom the context may apply according to law.
- (e) "Planning Act" means the Planning Act, R.S.O. 1990, c. P.13, as amended, including successor legislation.
- (f) "Plans and Drawings" means the plans and drawings (and any accompanying materials) referred to in **Schedule 4** of this Agreement. The Parties acknowledge that, from time to time, the Plans and Drawings may, with the prior written acceptance of the Municipality, be revised, and if the Municipality provides its acceptance for any revision wherever there is, in this Agreement, any reference to Plans and Drawings, such reference shall be and be deemed to be to the Plans and Drawings so revised with the prior acceptance of the Municipality, and any and all obligations, responsibilities, and otherwise of the Owner to construct or otherwise under or pursuant to this Agreement shall be deemed to reference, apply, and have regard to (and the Owner shall follow and adhere to), the Plans and Drawings so revised.

The Owner shall, further:

- (i) obtain, from any and all authorities having jurisdiction, any and all approvals required for any proposed revision to Plans and Drawings or to any changes to design, construction, and otherwise as may be shown or contemplated therein and thereby; and
- (ii) when submitting and making application to the Municipality in respect of revisions to any and all Plans and Drawings, include with such application any and all approvals applicable or required to be obtained from any and all authorities having jurisdiction.
- (g) "Security" means any and all letters of credit, cash, and other security provided or to be provided the Municipality under or pursuant to the provisions of this Agreement in order to guarantee compliance with all conditions and things to be done or performed or caused to be done and performed by the Owner under or pursuant to this Agreement.
- (h) "Works" means any and all buildings, structures, works, services, facilities and matters and otherwise (and whether internal or external to the Lands) referred to or required by or under this Agreement.

## Terms and Conditions - General

### 4. The Owner:

- (a) covenants and agrees to develop the Lands and do, construct, and build all Works, whether internal or external to the Lands in strict compliance with the Plans and Drawings;
- (b) covenants, warrants, and represents, that the Plans and Drawings submitted to the Municipality have been prepared in a good and workmanlike manner, are accurate in all respects and comply with the requirements of all authorities having jurisdiction;
- (c) acknowledges that the Owner's application is on the basis of a proposal for the Proposed Development, namely the construction, development, and completion, in accordance with the terms and conditions contained in this Agreement. The Owner represents and warrants to the Municipality that no deviations or changes shall be made to the Plans and Drawings and no construction shall take place contrary to such Plans and Drawings, without the prior written approval of the Municipality, except such changes as may be required by the Municipality in order that said Plans and Drawings shall comply with all relevant provisions of the building or zoning or other by-laws or laws of the Municipality, and all regulations or laws of any other authority having jurisdiction;

- (d) covenants and agrees that no work shall be undertaken or performed on, or external to, the Lands except in accordance with the terms of this Agreement;
- (e) acknowledges and agrees that compliance with all applicable laws and regulations applicable, including, without limitation, the Ontario Building Code and the regulations thereunder, and all other applicable laws and requirements of all authorities having jurisdiction, is mandatory;
- (f) covenants and agrees not to convey a part or to further divide the Lands, except in pursuance of the Planning Act or any other similar legislation;
- (g) covenants and agrees that, unless otherwise determined by the Municipality in its sole and unfettered discretion, neither the Owner nor any entity under the authority of the Owner shall be entitled to the issuance of one or more permits to construct or otherwise proceed with any Works or otherwise contemplated under this Agreement until this Agreement has been fully executed and registered on title to the Lands;
- (h) covenants and agrees that it will hold back in its payments to any contractor who may construct services, facilities, or Works or any part thereof, such amounts as may be required under the provisions of the Construction Lien Act. The Owner shall indemnify and save completely harmless the Municipality from and against all claims, demands, actions, causes of action and costs resulting from any construction being performed, by the Owner, its agents and assigns, and any entity acting under the authority of the Owner, and, on demand by the Municipality, the Owner shall take such steps as may be necessary to immediately discharge all liens registered upon or against the Lands, the Works, or otherwise;
- (i) covenants and agrees to retain a professional engineer (the "Engineer") who holds a Certificate of Authorization for municipal engineering applications from the Association of Professional Engineers of Ontario to prepare such design of grading, site and external servicing plans, municipal service connection designs, storm water management, and other reports as may be required by the Municipality to be submitted to the Municipality.

The Engineer shall, prior to the reduction or release of any Security, be required to inspect and certify to the Municipality that all Works have been constructed in accordance with the Plans and Drawings. The certificate, or certificates, shall be in a format acceptable to the Municipality in its sole and unfettered discretion;

- (j) covenants and agrees not to permit occupancy of any building or part thereof for which building permits have been issued until:
  - (i) all Works required under this Agreement are completed in accordance with the requirements of the Ontario Building Code, the applicable zoning by-law and any other municipal by-laws and all other applicable law and requirements of all authorities having jurisdiction;
  - (ii) all water and sanitary sewer infrastructure has been properly tested, approved by all authorities having jurisdiction, and are operating in accordance with the conditions established by the Municipality; and
  - (iii) occupancy permit has been issued.

In the event that a building or part thereof is occupied otherwise than in accordance with the provisions of this paragraph 4(j) of this Agreement, the Owner covenants and agrees that the Municipality shall be entitled to obtain an order from a court of competent jurisdiction prohibiting the occupancy of any building or part thereof until such time as the terms of this Agreement have been fully complied with, and the Owner shall be stopped from opposing such application on the part of the Municipality;

- (k) that the Municipality shall be entitled, in its sole and unfettered discretion and at the sole cost and expense of the Owner, to retain the services of an independent qualified engineer to review all documentation submitted to the Municipality by the Owner and to conduct necessary inspections and otherwise of and in respect of the Works; and
- (l) that once all Works required to be provided, constructed, or installed by it that are internal to the Lands under the terms of this Agreement have been completed to the satisfaction of the Municipality, and in accordance with all Municipal specifications, the laws and requirements of all authorities having jurisdiction, and in a good and workmanlike manner, the Owner shall maintain such Works in accordance with the requirements of all authorities having jurisdiction until this Agreement is amended to provide otherwise or is otherwise released from title to the Lands. In the event that any of the internal Works are not being maintained in accordance with all applicable laws and requirements of all authorities having jurisdiction, or if the Owner is otherwise in default of this Agreement, the Municipality may, on written notice to the Owner, require the Owner to comply with the terms of this Agreement.

5. The Municipality may, by its agents, officers, employees, assigns, contractors, subcontractors, and other representatives and other Persons howsoever engaged by it, from time to time enter in and on the Lands or any part thereof as well as any building(s) erected thereon to ensure that any Works required to be provided, constructed, or installed by the Owner comply with this Agreement.
6. The Owner covenants and agrees as follows:
  - (a) Not to foul the highways leading to the Lands and to provide on all construction accesses leading to the Lands, an interim granular surface to prevent mud or dust from fouling any roads.
  - (b) Not to permit any approach ramps and driveways across the untraveled portion of any road allowance owned by the Municipality unless such approach ramps and driveways are constructed and installed to the Municipality's specifications.
  - (c) To install curbing to the Municipality's specifications along the approach ramps between the property line and the street, and at all locations shown on the Plans and Drawings.
  - (d) To provide fire access route signs, to locate such number of fire hydrants and size of watermain as approved by the Municipality and to satisfy any and all requirements of the Municipality's Fire Chief or the Fire Chief's designate at the Owner's sole cost and expense.
  - (e) To ensure, provide, and maintain, a proper plan with regard to ambulance and other emergency response and related measures and services.
  - (f) To ensure, provide, and maintain a proper access route for fire, ambulance, and other emergency response and related measures and services.
  - (g) To pave with asphalt or concrete all parking, loading, and walkway areas on the Lands to the Municipality's requirements and specifications. No parking or loading zone shall be permitted on any of the Lands unless all areas for which parking and loading are permitted are paved. All handicapped parking spaces shall be so identified with appropriate signage to the satisfaction of the Municipality. All parking and loading areas shall be constructed and maintained to the Municipality's satisfaction.
  - (h) To design, install, and maintain, in accordance with the Plans and Drawings, light standards, fixtures and illumination devices to adequately illuminate the Lands but to also prevent the spread of light onto other properties or onto public highways.
  - (i) To complete and maintain landscaping and planting on the Lands in accordance with the Plans and Drawings.
  - (j) Not to permit any refuse, junk, debris or other material to be deposited on any lands, school lands, or park lands in the area, and that any such refuse, junk, debris, or other material will be removed from the Lands at the expense of the Owner. If the Owner fails to remove the aforesaid material within a period of 48 hours from the time of delivery of written notice to the Owner, the Municipality may enter the Lands and remove the said material and the Owner shall pay for all costs and expenses incurred by the Municipality and the Owner further agrees that the Municipality shall be entitled to charge same against, and take any such costs and expenses from, any Security.
  - (k) To design, prior to construction, a waste management system for the collection, storage, and disposal of waste and recyclable materials, to implement such system and to maintain same following occupancy of the Proposed Development to the satisfaction of the Municipality.
  - (l) To provide internal recycling and garbage areas sufficient to contain the required number of containers and materials.
  - (m) To convey to the Municipality any easements or land (if any) required by the Municipality for the construction, maintenance and improvement of watercourses, ditches, and land drainage works, sewage facilities, and other public utilities.
  - (n) To obtain written confirmation from the appropriate Persons that all utility requirements for the Lands (including but not limited to telephone, telecommunications, hydro-electric power, gas, and postal services), have been satisfactorily arranged and installed, that servicing for same will be provided without any expense, cost, or obligation on the part of the Municipality, and that all requisite documents and otherwise have been or will be provided to such Persons.
  - (o) To design, obtain approval in respect of, construct, install, and maintain, in accordance with all design and approval requirements of all authorities having jurisdiction and the Plans and Drawings, proper water, sewer, and drainage, systems and facilities, and to indemnify and save harmless the Municipality from actions, claims and suits whatsoever, which may arise out of the implementation or lack of maintenance thereof.



- (p) To implement and monitor on-site sediment and erosion control measures during construction of the Proposed Development, to the satisfaction of the Municipality and to allow the Municipality and its employees and agents, in perpetuity, access to the Lands to inspect roof drains, inlet control devices, and water and sewer management facilities.
  - (q) To provide regular removal of snow from the site and that the parking spaces and landscaping areas will not be used for the stockpiling of snow.
  - (r) To provide an environmental clearance certificate certified by a professional engineer or equivalent to the Municipality that all lands to be conveyed to the Municipality under this Agreement are environmentally suitable for their proposed use in accordance with any laws or guidelines from the Ministry of Environment or successor branch or agency (herein, "MOE").
  - (s) to file with and provide to the Municipality, forthwith upon:
    - (i) completion of any buildings in or on the Lands, 2 complete hard copy sets of as built drawings for the buildings;
    - (ii) completion of any services, works, or facilities (including, without limitation, any utility infrastructure), 2 complete hard copy sets, and one complete electronic set, complete with UTM coordinates, of as built drawings for all such services, works, and facilities installed or constructed pursuant to and in accordance with this Agreement, and whether internal or external to the Lands; and
    - (iii) completion of the Proposed Development, 2 copies of survey and survey/real property reports prepared by and Ontario Land Surveyor complete with UTM coordinates;
  - (t) To provide, during all hours of construction, competent on-site supervision of all Works required to be done on all public and private lands and building or other construction to be undertaken in or on the Lands.
  - (u) To erect proper gates, signs, and protections surrounding or in respect of the Works and any construction on the Lands and to maintain same until final completion of construction.
  - (v) That no antennae or associated equipment will be permitted on the roof and that all roof-top equipment shall be adequately screened from view to the satisfaction of the Municipality.
  - (w) To ensure to get locates, and to verify the location of all existing and proposed utility infrastructure (including, without limitation, infrastructure relating to sewer, water, natural gas, hydro, cable, and other utilities), and whether such utility infrastructure is internal or external to the Lands, before commencing any digging or construction. The Owner shall be solely responsible for and pay all costs and expenses associated with any damage to any utility infrastructure and the relocation of any and all utilities as may be required. In the event of damage to any utility infrastructure by the Owner or its agents, assigns, employees, contractors, subcontractors, or other representatives or Persons howsoever engaged, or relocation of any utility infrastructure is, in the Municipality's sole discretion, required, the Municipality shall, in addition, without limitation and without prejudice to any and all other remedies that may be available to the Municipality in law or equity, be entitled, on written notice to the Owner (except in cases of emergency, in which case no notice shall be required), to require the Owner to comply with the terms of this Agreement and draw on, and utilize, the Security as the Municipality deems fit to pay for any and all costs, expenses, and damage, and costs of relocation, from the proceeds so drawn.
  - (x) To make all necessary arrangements and to be solely responsible for the costs and expenses of removing and relocating any existing municipal or public services requiring relocation in the course of, or in connection with, the construction, installation or provision of the Works or otherwise required under this Agreement.
  - (y) To comply with all provisions of the Municipality's noise by-law.
  - (z) To provide the opportunity for ongoing and final site/Works inspection, monitoring, and testing (including, without limitation, prior to and during construction and material delivery, testing, or compaction) as required by the Municipality.
7. The Owner covenants and agrees to provide, arrange for, construct, install, and pay for all Works required to be provided, constructed, or installed by it that are internal to the Lands under the terms of this Agreement to the satisfaction of all authorities having jurisdiction, and in accordance with all municipal requirements and specifications, and in a good and workmanlike manner.

In the event of any of such internal Works not being or having been so constructed, installed, repaired, or if the Owner is otherwise in default of this Agreement, the Municipality shall, without limitation and without prejudice to any and all other remedies that may be available to it, be entitled, on written notice to the Owner (except in cases of emergency, in which case no notice shall be required), to:

- (a) require the Owner to comply with the terms of this Agreement; and
- (b) do or cause to be done whatever the Municipality deems necessary for or to ensure compliance with this Agreement (including, without limitation, the right to install, construct, and maintain any and all such Works)

all at the Owner's sole cost and expense, and to recover any and all costs and expenses (including, without limitation, all legal and related costs) expended or incurred by the Municipality in doing so, and draw on, and utilize, the Security as the Municipality deems fit to ensure, require, and complete, compliance, and pay all costs and expenses incurred thereby from the proceeds so drawn.

8. Notwithstanding any review (if any) or otherwise by the Municipality of the Plans and Drawings, and anything contained in this Agreement or otherwise, it is and shall throughout be and at all times remain the responsibility and liability of the Owner to ensure that all Plans and Drawings and any other documents provided by the Owner to the Municipality are accurate in all respects and comply with all provisions of the building or zoning or other by-laws of the Municipality and laws, regulations, and requirements of all authorities having jurisdiction, and the Municipality shall not, whether by or as a result of any review done by the Municipality of the Plans and Drawings, or any other action or non-action taken by the Municipality have any responsibility or liability to the Owner in respect thereof nor be deemed to have approved or confirmed that the Plans and Drawings are accurate in any respect or at all or comply with the provisions of the building or zoning or other by-laws of the Municipality or regulations, laws, or requirements of any other authority having jurisdiction.

The Owner is aware that, given the Municipality's staffing, budgeting, and other limitations, and considerations and the obligations of the Owner to ensure the provision of information and Plans and Drawings, which is complete and in compliance with the requirements of all authorities having jurisdiction, the Municipality may undertake a limited or cursory review of the Plans and Drawings, relying, as the Municipality does, on the Owner to ensure completeness and compliance.

#### Terms and Conditions - Other

9. The Owner acknowledges and confirms that, to the best of their knowledge and belief, there are no conditions known to them or any of them of or relating to the Lands (whether or not objected to by any authority with jurisdiction with respect to the same) which would adversely interfere with or derogate from, the uses to which Lands are presently put or the uses to which the Owner proposes to put the Lands, including, without limitation, the existence of any environmental hazard or other substance, material or contaminant of the soil or groundwater or any constituent element thereof causing or which would cause environmental contamination or concern.
10. (a) The Owner covenants and agrees to provide, arrange for, construct, install, and pay for the following Works external to the Lands, namely:
- (i) to repair and restore to the satisfaction of the Municipality any grounds, fences, and any other works, services, facilities, and otherwise, dug up or damaged during or as a result of the construction or execution of the Proposed Development;
  - (ii) any and all Works shown on or spoken to in the Plans and Drawings as being external to the Lands, including, without limitation:
    - (A) the water, storm sewer, and sanitary sewer infrastructure to the property line of the Lands;
    - (B) concrete driveway approaches as shown on the Plans and Drawings;
    - (C) hydro-electric power, gas, telephone, and other public utility requirements for the Proposed Development; and
- (b) The Owner acknowledges that notwithstanding that the above-noted Works may be external to the Lands, it derives a direct benefit from the provision, construction, and installation of such Works and that the Proposed Development proposed hereunder could not be accommodated without the existence of such Works.
- (c) The Owner covenants and agrees to construct or install all Works required to be provided, constructed or installed by it that are external to the Lands under the terms of this Agreement to the satisfaction of the Municipality and any other authority having jurisdiction, and in accordance with all municipal specifications, and in a good and workmanlike manner. The Owner guarantees the workmanship and materials for the construction and installation of the external Works and to maintain same free of defects for a period (in this Agreement sometimes referred to as the "Guarantee and Maintenance Period") of one (1) year from the date of certification by the Municipality of completion thereof. The Owner covenants and agrees that it shall promptly and properly repair all defects in any and all such external Works to the complete satisfaction of the Municipality.

constructed, installed, repaired, or maintained to the satisfaction of the Municipality, or if the Owner is otherwise in default of this Agreement, the Municipality shall, without limitation and without prejudice to any and all other remedies that may be available to it, be entitled, on written notice to the Owner (except in cases of emergency, in which case no notice shall be required), to:

- (i) require the Owner to comply with the terms of this Agreement; and
- (ii) do or cause to be done whatever the Municipality deems necessary for or to ensure compliance with this Agreement (including, without limitation, the right to install, construct, and maintain any and all such Works)

all at the Owner's sole cost and expense, and to recover any and all costs and expenses (including, without limitation, all legal and related costs) expended or incurred by the Municipality in doing so, and draw on, and utilize, the Security as the Municipality deems fit to ensure, require, and complete, compliance, and pay all costs and expenses incurred thereby from the proceeds so drawn.

The Owner acknowledges that any action or non-action taken by the Municipality or by anyone on its behalf, including, without limitation, relating to the removal of snow and ice, or sanding, or cleaning of any roads, or permitting the connection of additional services to any of the external Works herein required to be constructed or installed, during the Guarantee and Maintenance Period or otherwise, is without prejudice to the Municipality's right to enforce any and all provisions of this Agreement.

- 11. The Owner covenants and agrees that there will be no blasting conducted in or on the Lands by the Owner.

#### Financial Conditions, Security, and Insurance

- 12. The Owner covenants and agrees to:

- (a) pay to the Municipality, forthwith upon request by the Municipality, for any and all costs and expenses whatsoever of and incurred by the Municipality with regard to the application, the preparation of this Agreement, any other matter or thing relating to the Agreement, and the registration of this Agreement against title to the Lands, and including, without limitation, all legal/lawyers fees and disbursements, engineers/engineering fees and disbursements, planning/planners fees and disbursements, Municipal staff time, notice, application, advertising, postage, court, land titles, mileage, material, HST as applicable, and any other costs and charges in any way related to the application or this Agreement;
- (b) pay any outstanding taxes (including arrears, interest and penalties) and local improvement charges; and
- (c) pay to the Municipality the Municipality's building permit fee and any other fees and otherwise payable pursuant to the Municipality's User Fees By-law.

- 13.
  - (a) In order to guarantee compliance with all conditions contained herein, the Owner covenants and agrees to file and maintain with and for the benefit of the Municipality, on the execution of this Agreement, (a) letter(s) of credit (collectively, the "Letter of Credit") in the amount set out in **Schedule 5** attached hereto. The Letter of Credit shall be in a form satisfactory to and approved by the Municipality, and the Owner covenants and agrees that the Letter of Credit shall be kept in full force and effect and that it will pay all premiums as the said Letter of Credit become due or until such time as set out in **Schedule 6** attached hereto.
  - (b) The Owner hereby acknowledges and agrees that should there be a deficiency in or failure to carry out any Works, matter, or thing required under or by this Agreement, and the Owner fails to comply, within 30 days written notice (except in an emergency situation or other exigent circumstances requiring immediate response, in which case verbal notice less than 30 days shall be deemed sufficient) with a direction to carry out such work, matter, or thing, the Municipality shall be entitled to (in addition and without limitation and without prejudice to any and all other remedies that may be available to the Municipality in law or equity), without limitation, draw on the Letter of Credit or any of it to the extent necessary and complete all outstanding work, matters, and things, enter onto the Lands as necessary for any and all such purposes, and pay all costs and expenses incurred thereby from the proceeds so drawn.
  - (c) The Owner hereby acknowledges and agrees that the Municipality reserves the right to draw on and use the proceeds from the Letter of Credit to complete any Works, matter, or thing required to be done, observed, or performed by the Owner pursuant to this Agreement. The Owner further acknowledges and agrees that, notwithstanding anything contained in this Agreement, in the event that the Municipality determines that any reduction in the Letter of Credit will create a shortfall with respect to securing the completion of any Works, matter, or thing remaining to be carried out, observed, or performed by the Owner pursuant to this Agreement, the Municipality:

- (i) shall not be obligated to reduce the Letter of Credit until such time as such Work, matter, or thing is satisfactorily completed or the Municipality has sufficient Letter of Credit to ensure that such work, matter, and thing will be completed; and
    - (ii) may request additional letters of credit for such additional amounts as the Municipality determines is necessary to fully secure the completion of any Works, matter, or thing to be or remaining to be carried out, observed, or performed by the Owner pursuant to this Agreement, and the Owner shall and does hereby agree to provide same within 30 days of demand by the Municipality therefor.
  - (d) Wherever in this Agreement a letter of credit is required to be filed with the Municipality, the Owner may deposit with the Treasurer of the Municipality cash or certified cheque in an amount equal to the Letter of Credit and such deposit shall be held by the Municipality as security to be utilized in a like manner as the letters of credit referred to above and otherwise as required or permitted by this Agreement, provided that no interest shall be payable on any such deposit.
  - (e) Notwithstanding anything contained in this Agreement, it is understood and agreed by the Parties that, except as may be otherwise permitted by the Chief Building Official of the Municipality in writing, the Owner shall not commence, undertake, engage in, or continue the Works nor any part of them without first having provided to the Municipality security satisfactory to the Municipality.
  - (f) The Owner acknowledges that upon the transfer of ownership of the Lands, the Municipality will not return any Letter of Credit until the new owner files with the Municipality a substitute Letter of Credit or such other Security as may be permitted in the required amounts.
14. The Owner shall provide or cause to be provided to the Municipality, on or prior to the execution of this Agreement:
- (a) a general comprehensive liability insurance policy in the amount of \$5,000,000.00 per occurrence in a form satisfactory to the Municipality, indemnifying the Municipality from any loss arising from claims or damages, injury or otherwise in connection with any and all Works, things, and matters done by or on behalf of the Owner. The policy shall include but not be limited to bodily injury, property damage, and contractual liability and contain a cross-liability clause and name the Municipality as additional insured. The policy shall be maintained in full force and effect from and after the execution of this Agreement until all Works external to the Lands have been assumed by the Municipality and in any event until the expiry of the Guarantee and Maintenance Period. The policy shall be endorsed to provide 30 days written notice of cancellation to the Municipality. The Owner shall, upon request therefor by the Municipality at any time and from time to time, promptly provide the Municipality with a certificate of insurance in accordance with the above and if requested a certified true copy(s) of the policy(s) certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to this Agreement. In the event that any renewal premium is not paid, the Municipality, in order to prevent the lapse of such liability insurance policy, may pay the renewal premium or premiums and the Owner agrees to pay the cost of such renewal or renewals within 30 days of the account therefor being rendered by the Municipality. The issuance of such policy of insurance shall not be construed as relieving the Owner from any liability or responsibility for any claims in excess of the aforementioned policy limits. Further, the Owner shall ensure that any contractor and subcontractor engaged to complete the Works or any matters to be done by and/or on behalf of the Owner or otherwise shall maintain the same as or equal insurance as required to be provided and maintained by the Owner hereunder; and
  - (b) Professional Liability insurance in the amount of \$5,000,000.00 per claim in a form satisfactory to the Municipality. Such insurance shall provide coverage for all errors and omissions made by the Owner's Engineer and other professionals in the rendering of, or failure to render, professional services in connection with this Agreement, and remain in full force and effect for 12 months after completion of all things and matters to be done by or to be done by or on behalf of the Owner hereunder. Until the completion of all things and matters done by or to be done by or on behalf of the Owner, upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Owner shall promptly provide the Municipality with a certificate of insurance and if requested a certified true copy(s) of the policy(s) certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to this Agreement.

#### Administration

15. (a) If any notice is required to be given by the Municipality to the Owner with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission to:

450 Scott Street  
Fort Frances, ON P9A 1H2  
Attn: Michelle Shute

Facsimile: 807.274.0678

or such other address of which the Owner has notified the Municipality in writing.

- (b) If any notice is required to be given by the Owner to the Municipality with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission to:

The Corporation of the Town of Fort Frances  
320 Portage Avenue  
Fort Frances, Ontario  
P9A 3P9

Attention: Clerk

Facsimile: 807.274.8479

or such other address of which the Municipality has notified the Owner in writing.

- (c) Any notice so given shall be deemed conclusively to have been given and received when so delivered personally or via facsimile, or on the third day following the sending thereof by mail. Any party hereto may change any particulars of its address for notice by notice to other party in the manner aforesaid.
16. The Owner hereby agrees that this Agreement, together with any schedules thereto, shall be registered upon title to the Lands at the sole cost and expense of the Owner. The covenants, agreements, conditions and undertakings herein contained on the part of the Owner shall run with the Lands and shall be binding upon it, its successors and assigns as owners and occupiers from time to time and this covenant shall be to the benefit of the Municipality and its lands and highways appurtenant and adjacent to the Lands. The Owner further covenants and agrees to pay to the Municipality the cost of registration of this Agreement, as well as any further costs incurred by the Municipality as a result of the registration of any other documents pertaining to the application and this Agreement.
17. The Owner covenants and agrees, at its own expense, to obtain and register such documentation (collectively, the "Subordination and Postponement Documentation") from its mortgagees, lessees, and encumbrancers and other Persons interested therein or with respect thereto as may be deemed necessary by the Municipality to postpone and subordinate their interest in the Lands to the interest of the Municipality in order to ensure that this Agreement shall take effect and have priority as if it had been executed and registered prior to the execution and registration of the document or documents giving to the mortgagee, lessees, and encumbrancers and other Persons interested therein their interest in the Lands. The Subordination and Postponement Documentation shall be registered on title to the lands immediately after the registration of this Agreement.
18. The Owner acknowledges that the Municipality, in addition to any other remedies it may have at law or equity, shall also be entitled to enforce this Agreement in accordance with s. 446 and any other applicable provisions of the Municipal Act.
19. Nothing in this Agreement shall relieve the Owner from compliance with all applicable municipal by-laws, laws, regulations, notices, or other policies or laws and regulations established by any other authority having jurisdiction.
20. If the Proposed Development governed by this Agreement is not commenced within 1 year from the date of the execution of this Agreement, the Municipality may, at its sole option and on 60 days notice to the Owner, declare this Agreement null and void and of no further force and effect. Under no circumstances shall the Municipality be obligated to refund any fees, levies, or other charges paid by the Owner pursuant to this Agreement.
21. (a) The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) This Agreement shall be construed with all changes in number and gender as may be required by the context.
- (c) Every provision of this Agreement by which the Owner is obligated in any way shall be, unless otherwise specifically stated, deemed to include the words "at the sole cost and expense of the Owner" including the payment of any applicable taxes (including, without limitation, HST).
- (d) References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted or consolidated from time to time and any successor legislation thereto.
- (e) All obligations herein contained to be performed and observed on the part of the Owner shall, although not expressed to be covenants, be deemed to be covenants.

- (f) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as “without limiting the generality of the foregoing” do not precede such list or reference.
  - (g) The Owner and the Municipality agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
  - (h) Any rule of construction that a document is to be construed more strictly against the Party who itself, or through its agent, drafted such document, shall not apply to this Agreement as it is agreed that the Parties, directly or through their agents, have participated in the preparation of this Agreement.
  - (i) The Owner shall execute any further and other documents and do such further and other things as may be required or desirable to give effect to this Agreement.
- 22. Neither this Agreement nor any interest therein nor any rights under it shall be assigned or otherwise transferred by the Owner in whole or in part without the prior consent in writing of the Municipality.
  - 23. If the Owner is constituted by or of more than one Person, their obligations hereunder shall be joint and several.
  - 24. The Owner shall indemnify and save harmless the Municipality for and against all actions, causes of action, claims, suits, and demands whatsoever which may or do arise directly or indirectly by reason of, this Agreement, the construction and otherwise of the Proposed Development, or the Owner undertaking the Proposed Development.
  - 25. The Owner agrees to do such further and other things and sign any further documents necessary or desirable to give effect to this Agreement.
  - 26. The failure of the Municipality at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect the Municipality’s right thereafter to enforce such obligation, nor shall the waiver by the Municipality of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Municipality shall specifically retain its rights to enforce this Agreement in such manner as it deems fit.
  - 27. Time shall always be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of the Parties, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.
  - 28. The Parties covenant and agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the Party’s right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the Parties are entitled to any and all remedies arising from it, notwithstanding any provision in s.41 of the Act interpreted to the contrary. The Parties agree that adequate consideration has flowed from each party to the other and that they are not severable. This provision may be pleaded by either party in any action or proceeding as an estoppel of any denial of such right.
  - 29. The Owner understands and agrees that this Agreement and any materials or information provided to the Municipality may be subject to disclosure under the *Municipal Freedom of Information and Protection of Privacy Act* or as otherwise required by law.
  - 30. This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario.
  - 31. This Agreement may be executed in any number of counterparts and all of these counterparts shall for all purposes constitute one agreement, binding on the Parties, notwithstanding that all Parties are not signatory to the same counterpart.
  - 32. This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the Parties hereto and their successors and assigns.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

***Rainy River District Social Services  
Administration Board***

per \_\_\_\_\_  
Name:  
Title:

per \_\_\_\_\_  
Name:  
Title:

We have authority to bind the corporation

**The Corporation of the Town of Fort Frances**

per \_\_\_\_\_  
Name: R. Avis,  
Title: Mayor

per \_\_\_\_\_  
Name: E. Slomke,  
Title: Town Clerk

We have authority to bind the Municipality

**Schedule 1**

Legal Description of Lands

RP RR38 PT PART 1 RR138 PT PART 16 PT PCL 19829 (1300 Fifth Street East)

RP RR38 PT PARTS 1 & 2 RR 138 PT PART 16 PCL 19829 (1301 Elizabeth Street East)



**Schedule 2**

Solicitor's Certificate of Ownership

TO: The Corporation of the Town of Fort Frances (the "Municipality")

I, **[\*\*REQUIRED\*\*]**, a Solicitor of Ontario, do hereby certify that ***Rainy River District Social Services Administration Board*** are the sole registered and beneficial owners in fee simple of the lands and premises legally described as 1301 Elizabeth Street, being all of the said parcel [PIN **[\*\*REQUIRED\*\*]**].

I further certify that there are no mortgages or other encumbrances upon the said lands or any part thereof save and except the following:

**[\*\*REQUIRED\*\*]**

All easements, licenses, and or rights-of-way to be conveyed to the Municipality, if any, will be so conveyed with the consent of all chargees and other encumbrancers.

This certificate is given by me to the Municipality for the purpose of having the said Municipality act in reliance on it in entering into this Agreement.

DATED at **[\*\*REQUIRED\*\*]** Ontario, this **[\*\*REQUIRED\*\*]** day of **[\*\*REQUIRED\*\*]**, 2017.

**[\*\*REQUIRED\*\*]**, Solicitor for the Owner

**Schedule 3**

Schedule of Financial Obligations of the Owner

1. Any and all costs and expenses whatsoever incurred by the Municipality with regard to:
  - a. Application for site plan
  - b. Preparation of this agreement
  - c. Registration of this Agreement on title
  - d. All legal / lawyer fees and disbursements
  - e. Engineer / engineering fees and disbursements
  - f. Planning / planner fees and disbursements
  - g. Municipal staff time
  - h. Land title fees
  - i. Any other costs or charges in anyway related to the application or this agreement
  - j. HST as applicable on any of the above

**Schedule 4**

List of Plans and Drawings

<u>Architectural Drawings</u>	<u>Mechanical Drawings</u>
A0.0 Cover Sheet	MP-1 Plumbing Layout – Notes & Details
A0.1 Specifications – 1 of 2	MP-2 Partial Water Piping Layouts, Plumbing Isometrics
A0.2 Specifications – 2 of 2	MV-1 Ventilation Layouts – Notes & Details
A0.3 Construction Assemblies, Schedules, Legends & General Notes	MH-1 Heating Layouts – Notes & Details
A0.4 OBC Matrix and Fire Separation Diagrams	MFP-1 Fire Protection Layouts – Notes & Details
A1.1 Site Plan	MS-1 Mechanical Specifications
A1.2 Enlarged Site Plan	
A1.3 Reference Drawing	<u>Electrical Drawings</u>
A2.1 Foundation Plan and Details	E1 – Electrical Layout
A2.2 Floor Plans – Level 1 and Level 2	
A2.3 Reflected Ceiling Plans – Level 1 and Level 2	<u>Civic Drawings</u>
A2.4 Roof Plan and Truss Elevations	01 – Existing Conditions
A2.5 Elevations	02 – Removals and Excavation Plan
A2.6 Building Sections	03 – New Construction
A3.1 Wall Sections	04 – Proposed Grading and Stormwater Management Plan
A3.2 Plan Details	
A3.3 Section Details	
A3.4 Roof Details	
A3.5 Window and Door Details	
A4.1 Stairs – 3D View	
A4.2 Stair Details	
A5.1 Enlarged Plans & Interior Elevations	

**Schedule 6**

Letters of Credit

Letter of Credit to be provided by the Owner to ensure provision, fulfillment, and completion of the Works and to ensure the Owner's obligations, responsibilities, and otherwise as set out in this Agreement	5% of the project value obtained from the building permit
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## **Schedule 6**

### **Reduction or Release of Security**

#### **Application for Reduction of Securities**

Prior to the reduction or release of any portion of the Letter of Credit security held by the Municipality for the Works, facilities and matters set out in this Agreement, the Owner shall supply the Municipality with the following documentation:

- (a) letter of application for reduction/release;
- (b) the consultant's certificate confirming that services completed;
- (c) as-constructed drawings;
- (d) satisfactory evidence of no construction liens filed;
- (e) workplace safety certificate;
- (f) statutory declaration as to accounts;
- (g) surveyor's certificate and real property report(s); and
- (h) composite utility plan.

#### **Reduction/Release of Securities**

Upon certification by the Municipality that all conditions imposed by this Agreement have been satisfied and for which the security was submitted, and provided the Owner is not in default with respect to any other provision of this Agreement, the Municipality shall reduce the said security by ninety percent (90%).

To ensure compliance with all conditions contained herein, the remaining ten (10%) shall be held by the Municipality for a period of one (1) year after the date of final completion (Guarantee and Maintenance Period) and therewith release or return the Security to the Owner or to the issuing financial institution.

The Municipality shall not be required to refund or account for any Security utilized by the Municipality as a result of any default by the Owner under the provisions of this Agreement. The Municipality covenants and agrees to return or release the Security for the aforementioned matters under the conditions specified.

Date: September 30<sup>th</sup>, 2017

Report To: Planning & Development Executive Committee.

From: Patrick Briere, By-Law Enforcement Officer

Re: Draft Animal Control By-Law.

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As you are aware this office has been tasked with reviewing our current pet licensing program and preparing a Draft Animal Control By-Law for consideration by the Planning & Development Executive Committee.

After a lengthy review, please find the attached Draft Animal Control By-Law for your review. This Draft By-Law is consolidating all of our current By-Laws that are stand alone and deal with animals within the Municipality. This will help to provide the public with a one-stop shop approach to regulations pertaining to animals. Also, this By-Law if approved will allow the Municipality to begin providing the option of lifetime licenses, should a pet owner have their pet microchipped by a licensed veterinarian.

We are asking that the Planning & Development Executive Committee recommend that Council approve the authorization to prepare an appropriate by-law for signing by Mayor and Clerk.

Respectfully submitted,

Original Signed by

Patrick Briere  
By-Law Enforcement Officer

# **TOWN OF FORT FRANCES**

## **DRAFT BY-LAW**

### **A BY-LAW OF THE CORPORATION OF THE TOWN OF FORT FRANCES TO LICENCE AND REGULATE THE KEEPING OF ANIMALS AND THE REGISTRATION OF DOGS AND CATS WITHIN THE MUNICIPALITY.**

**WHEREAS** The Council of the Corporation of the Town of Fort Frances deems it necessary and expedient to pass a by-law to license and regulate the keeping of animals and the registration of dogs and cats within the Municipality.

**AND WHEREAS** The *Municipal Act, 2001*, as amended provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purposes of exercising the authority under the Act;

**AND WHEREAS** The *Municipal Act, 2001*, as amended provides that a single tier municipality may pass by-laws respecting animals;

**AND WHEREAS** The *Municipal Act, 2001*, as amended provides that a local municipality may licence, regulate and govern any business wholly or partly carried on within the municipality even if the business is being carried on from a location outside the municipality;

**AND WHEREAS** The *Municipal Act, 2001*, as amended provides that a municipality may pass by-laws with respect to matters of health, safety and well-being of persons;

**AND WHEREAS** The *Municipal Act, 2001*, as amended, provides that if a municipality passes a by-law regulating or prohibiting with respect to the being at large or trespassing of animals, it may provide for,

- (a) the seizure and impounding of animals being at large or trespassing contrary to the by-law; and
- (b) the sale of impounded animals,
  - (i) if they are not claimed within a reasonable time,
  - (ii) if the expenses of the municipality respecting the impounding of animals are not paid, or
  - (iii) at such time and in such manner as provided in the by-law.

**AND WHEREAS** The *Municipal Act, 2001*, as amended, provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under the Act is guilty of an offence;

**AND WHEREAS** The *Municipal Act, 2001*, as amended, provides that a municipality may establish a system of fines for offences, subject to section 429 under by-law of the municipality passed under the Act;

**AND WHEREAS** on January 16, 2017, Council approved a recommendation from the Planning & Development Executive Committee to review and rewrite the By-Laws pertaining to animal control within the Municipality.

**NOW THEREFORE**, the Council of The Corporation of the Town of Fort Frances enacts as follows:

## **SECTION 1- Definitions**

Definitions of words, phrases and terms used in this By-law that are not included in the list of definitions in this section shall have the meanings which are commonly assigned to them in the context in which they are used in this By-law.

The words, phrases and terms defined in this section have the following meaning for the purpose of this By-law.

“animal” – means a member of the animal kingdom, other than a human, not covered by the Wildlife Act;

“animal for research act” – means the Animal for Research Act, R.S.O. 1990, c. A.22, as amended;

“at large” – means a dog, cat or animal being in a place other than a property owned or occupied by its owner and not under the effective control of a responsible person acting on behalf of the owner and, in the case of a hen means being outside a coop or hen run;

“building code act” – means the Building Code Act, S.O. 1992, C25, as amended;

“by-law enforcement officer” – means the person or persons duly appointed by Council as Municipal Law Enforcement Officers and/or Animal Control Officers for the purpose of enforcing all regulatory by-laws and the Town’s Animal Control By-Law;

“cat” – means a male or female feline of any breed of domesticated cat or crossbreed of domesticated cat;

“cat tag” – means a cat tag issued pursuant to this By-law;

“control” – includes care and custody;

“coop” – means a fully enclosed weatherproof building where hens are kept and which the interior of includes perches for hens not roosters to sleep on, food and water containers and nest boxes for egg laying;

“council” – means the Municipal Council of the Town of Fort Frances;

“dog” – means a male or female of the domesticated canine species;

“dog owners liability act” – means the Dog Owners Liability Act, R.S.O. 1990, c. D.16, as amended;

“dog tag” – means a dog tag issued pursuant to this By-law;

“dwelling unit” – means a suite operated as a housekeeping unit, used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities;

“effective control” – means to be in the care and custody of a responsible person;

“feed(s)/feeding” – means the regular or intermittent supply of food or allowing the placing or maintenance of a supply of food on a regular or intermittent basis, which food is accessible to or accessed by a dog, cat or animal;

“fire chief” – means the head of the Fort Frances Fire/Rescue Service as designated by Council;

“harbour” – means living with, having care and control of, feeding, leaving food in a manner that is likely to attract a dog, cat or animal to a property, and shall also specifically include a situation in which any person provides food to any dog, cat or animal whether domesticated or feral;

“hen” – means a domesticated female chicken that is at least sixteen weeks old;

“hen run” – means a covered secure enclosure that allows hens not roosters access to the outdoors;



“herding dog” – means a dog that has been trained and is actively being used in a bona fide farming operation for the purposed controlling of livestock on the farm;

“keeps/keeping” – means to own, keep, harbour, maintain or feed a cat, dog, or animal;

“leash” – means a restraining device, by which a dog, cat or other animal is held in check;

“leashed” – means restrained by a leash securely attached to the dog or cat and a person or object;

“livestock guardian dog” – means a dog that works and/or lives with domestic farm animals to protect them while repelling predators and is used exclusively for that purpose;

“livestock, poultry and honey bee protection act” – means the Livestock, Poultry and Honey Bee Protection Act R.S.O. 1990, c. L24, as amended;

“lot line” – means the boundary line between adjoining properties and or the boundary line between a property and a highway, laneway, municipal sidewalk or municipal road allowance;

“maintain” – means to carry out repairs to any part of parts of a fence or structure retention equipment, muzzling device, or other such equipment necessary so it can properly perform its intended function:

“medical officer of health” – means the Medical Officer of Health of the Northwestern Health Unit;

“microchip” – means an approved “Canadian Standard” encoded identification device implanted into a dog or cat which contains a unique code that permits or facilitates access to owner information, including the name and address of the owner, which is stored in a central database;

“municipality” – means the land within the geographic limit of the Town of Fort Frances;

“muzzle” – means a humane fastening or covering device over the mouth of a dog and of sufficient strength to prevent the dog from biting;

“noise(s)” – means unwanted sound;

“owner” – when used in relation to a dog or cat, or animal, includes a person who possesses or harbours the dog, cat or animal where the owner is a minor, the person responsible for the custody of the minor and “owns” has a corresponding meaning;

“paramedic” – means a person employed by the Rainy River District Social Administration Board to provide emergency medical services;

“person” – means an individual, firm or corporation;

“police dog” – means a dog trained to aid law enforcement officers and used by such officers in the execution of their duties;

“police officer” means a member of the Ontario Provincial Police;

“pound” – means premises that are used for the detention, maintenance or disposal of dogs or cats that have ben impounded pursuant to the by-law or the Dog Owners Liability Act;

“pound act” – means the Pound Act. R.S.O. 1990, c. P.17, as amended;

“private property” – means property which is privately owned and is not property owned by the Town;

“premises” – means the entire lot on which a single dwelling unit building or multi-dwelling unit building is situated;

“provincial offences act” – means the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended;

“public property” – includes all lands owned by the Town, any local boards, any corporations owned or controlled by the Town and includes all Crown lands;

“registrar” – means the By-Law Enforcement Officer for the Town, pursuant to this by-law;

“reasonable amount of time” – means no less than minimum detention period seventy-two (72) hours as prescribed by the Legislation or Regulations;

“responsible person” – means a person having the strength and capacity to securely control a dog so as not to permit or allow the unwanted contact with another person ,dog, cat or animal;

“run/running at large” – means to be found in any place other than the premises of the owner of the dog, cat or animal and not under the control of a person in such a manner as to prevent escape;

“service animal” – means any animal used by a person with a disability for reasons relating to the disability where it is readily apparent that the animal is used by the person for reasons relating to his or her disability; or where the person provides a letter from a health professional confirming that he or she requires the animal for reasons relating to his or her disability’ or a valid identification card signed by the Attorney general of Canada or a certificate of training from a recognized guide dog or service training school;

“suite” – means a single room or series of rooms of complementary use, operated under a single tenancy, and includes dwelling units, individual guest rooms in motels, hotels, boarding houses, rooming houses and dormitories;

“tag” – in reference to a dog means a dog tag, and in reference to a cat means a cat tag;

“tattoo” – means a permanent ink marking identification purposes;

“town” – means the Corporation of the Town of Fort Frances;

“veterinarian” – means a person registered or licensed under the Veterinarian Act;

“veterinarian act” – means the Veterinarian Act, R.S.O. 1990, c. V.3, as amended;

“vicious cat” – means a cat that has attacked or bitten a person, dog, cat or animal as determined by the By-Law Enforcement Officer in accordance with Section 5.1 herein;

“vicious dog” – means a dog that has attacked or bitten a person, dog, cat or animal as determined by the By-Law Enforcement Officer in accordance with Section 5.1 herein;

“zoning by-law” – means all current by-laws and amendments thereto and any subsequent by-laws which may be enacted in substitution thereto under the Planning Act with respect to land use within the Town.

## **SECTION 2 - GENERAL PROVISIONS**

### **2.1 SHORT TITLE**

This By-law shall be cited as the Animal Control By-Law.

### **2.2 SCOPE**

Except where otherwise provided, the provisions of this By-law shall apply to all persons and property within the geographic limits of the Town of Fort Frances.

### **2.3 ENFORCEMENT**

This By-law shall be enforced by a By-Law Enforcement Officer for the Town of Fort Frances, or any member of the Ontario Provincial Police.

## **2.4 CONFLICTS WITH OTHER BY-LAWS**

Where a provision of this By-law conflicts with a provision of another by-law in force in the Town, the provision that establishes the higher standard in terms of protecting the health, safety and welfare of the general public and the environmental wellbeing of the municipality, shall prevail to the extent of the conflict.

## **2.5 SEVERABILITY**

Should any section of this by-law be declared by a Court of competent jurisdiction to be ultra vires or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part had been struck out.

## **SECTION 3 – REGISTRATION OF CATS AND DOGS**

### **3.1 REGISTRAR**

The registrar is responsible for the issuance of tags and may, from time to time appoint in writing agents for the issuance of tags as he or she may consider necessary. The Registrar may revoke any such appointment in writing for such reason as the Registrar in his or her sole discretion may determine.

### **3.2 REQUIREMENT TO REGISTER**

3.2.1 Except as provided to the contrary in this By-law, every owner of a dog or cat shall register the dog or cat with the Registrar on or before January 1<sup>st</sup> in each year that he or she is the owner of that dog or cat.

3.2.2 Every person who becomes the owner of a dog or cat after January 1<sup>st</sup> in any year; shall register the dog or cat with the Registrar within 14 days of becoming the owner of the dog or cat and on or before January 1<sup>st</sup> in each year thereafter.

3.2.3 Notwithstanding Sections 3.2.1 and 3.2.2, no person need register a dog or cat before the dog or cat reaches the age of six (6) months. The onus of proof of age of the dog or cat shall rest with the owner.

3.2.4 Notwithstanding Section 3.2.1 the owner of a cat(s) who resides in a dwelling unit in an area which is zoned resource development pursuant to the Zoning By-Law shall not be required to register his or her cat(s), provided the property on which the dwelling unit is located is used for agricultural uses, as defined by the Zoning By-Law.

3.2.5 The registration of a dog or cat shall expire upon the earliest of:

- (a) the transfer of ownership of the dog or cat for which it was issued;
- (b) the death of the dog or cat for which it was issued; and
- (c) December 31<sup>st</sup> of the year in which it was issued.

### **3.3 REGISTRATION PROCESS**

3.3.1 Every person who applies to the Registrar to register a dog or cat, shall:

- (a) provide the name, physical and mailing address and telephone number of the owner of the dog or cat;
- (b) provide the name of the dog or cat;
- (c) provide a description of the dog or cat;
- (d) disclose whether the dog or cat has a microchip implant or has been tattooed;
- (e) disclose if the animal is a Service Animal;
- (f) disclose if the dog is a Livestock Guardian Dog, or Herding Dog;
- (g) proof of spay or neuter; and
- (h) pay the required registration fee as outlined in the Schedule of Fees By-Law, as amended.

### **3.4 ISSUANCE OF DOG TAG**

3.4.1 Upon the applicant providing all information and documentation required by the Registrar, and paying the appropriate fee(s), the Registrar shall register the dog or cat and shall issue to the applicant a dog tag or a cat tag as the case may be, which bears a unique number, shows the year of issue and such other information as may be determined by the Registrar.

3.4.2 Every owner of a registered dog or cat shall advise the Registrar in writing within 14 days thereafter, of:

- (a) change of address or phone number of the owner of the dog or cat;
- (b) sale or other transfer of ownership of the dog or cat;
- (c) the death of the dog or cat.

3.4.3 The Registrar shall have the right to cancel the registration of a dog or cat in the event that the registration fee is not paid in full, through error, as a result of a cheque being returned marked 'Not Sufficient Funds', a debit or credit card being refused or for any other reason.

### **3.5 REPLACEMENT TAGS**

3.5.1 The Registrar shall issue a replacement dog tag or cat tag to the owner of a registered dog or cat upon;

- (a) application of the owner;
- (b) evidence satisfactory to the Registrar that the tag was lost or damaged; and
- (c) payment of the prescribed replacement tag fee.

### **3.6 REGISTRAR'S RECORDS**

3.6.1 The Registrar shall maintain records of all dog tags, cat tags and replacement tags issued by the Registrar in each calendar year and shall update such records as additional information is received pursuant to Section 3.4.2.

3.6.2 The records under Section 3.6.1 shall include:

- (a) the name, physical and mailing address and phone number of the owner of the dog or cat;
- (b) name of the animal;
- (c) a description of the dog or cat;
- (d) the particulars of any tattoo or microchip implanted in the dog or cat;
- (e) the number of the dog tag or cat tag issued for that dog or cat;
- (f) the fee paid;
- (g) if the animal is a Service Animal;
- (h) if the dog is a Livestock Guardian Dog, or a herding Dog;
- (i) if the dog or cat is spayed or neutered;
- (j) the particulars of any evidence provided in support of a fee reduction; and
- (k) other information as the Registrar in his or her sole discretion determines to be necessary.

#### **SECTION 4 – REGULATION – DOG, CAT AND ANIMAL**

##### **4.1 DOG AND CAT TO WEAR TAG**

4.1.1 Every owner of a dog and every owner of a cat shall keep the tag securely fixed on the dog or cat while the tag was issued, at all times during the year of issue.

4.1.2 Notwithstanding Section 4.1.1, an owner need not keep the tag on his or her dog or cat:

- (a) while the dog or cat is within the dwelling unit of its owner;
- (b) in the case of a dog or cat, while the dog or cat is being lawfully used for hunting in the bush, and the tag is produced upon request of a By-Law Enforcement Officer or member of the Ontario Provincial Police; or,
- (c) where a veterinarian has determined it is necessary to remove the tag for medical treatment of that dog or cat; or,
- (d) if the dog is a Livestock Guardian Dog or a Herding Dog and the dog is being actively used in farming practices, and has been tattooed or implanted with a microchip; and
- (e) if the dog or cat has been tattooed or implanted with a microchip and the dog or cat has been registered with the Town.

4.1.3 No person shall remove a tag from a dog or cat without the consent of the owner thereof.

4.1.4 No person shall attach a tag to a dog or cat other than the dog or cat for which it was issued.

##### **4.2 NUMBER OF DOGS AND CATS**

There is no limit to the number of dogs and cats that a resident of the Town of Fort Frances can own; as long as all of the dogs and cats have current tags and the owner is in compliance with any other By-Law or other Legislation as deemed appropriate.

#### **4.3 AT LARGE**

4.3.1 No owner of a dog or cat shall cause, allow or permit a dog or cat he or she owns to be at large within the limits of the Town of Fort Frances.

4.3.2 No owner shall permit a dog or cat to run at large that is not within the dwelling unit or on the premises of its owner or on private property without the consent of the owner of that private property.

4.3.3 No owner shall permit a dog or cat to be at large that is not under the effective control of a responsible person.

4.3.4 When not within the dwelling unit or on the premises of its owner or on private property with the consent of the owner of that private property all dogs and cats shall be under the effective control of a responsible person.

4.3.5 Notwithstanding Section 4.3.4 this requirement shall not apply to an owner exercising/walking his or her dog(s), in any area that requires dog(s) to be leashed at all times, as set out in Schedule A of this By-Law.

4.3.6 Notwithstanding Section 4.3.1 this requirement shall not apply to an owner of Livestock Guardian Dogs and Herding Dogs while such dogs are being used in accordance with their defined function on property owned or leased by the owner.

#### **4.4 OWNER NOT TO PERMIT TRESPASS**

4.4.1 No owner shall allow or permit his or her dog or cat to trespass on private property whether on a leash or not.

#### **4.5 REQUIRED TO STOOP AND SCOOP**

4.5.1 Every owner or person who keeps a dog or cat or animal shall forthwith remove and dispose of excrement left by the dog, cat or animal on any public property or private property without the consent of the owner of the property.

4.5.2 Notwithstanding Section 4.5.1 this requirement shall not apply to a Service Animal.

#### **4.6 OWNER NOT TO PERMIT NOISE**

4.6.1 No person or owner shall permit any noise made by any dog, cat, bird or any other animal kept or used for any purpose, which is likely to disturb the peace or comfort of any individual in any location.

4.6.2 Notwithstanding Section 4.6.1 Livestock Guardian Dogs, Herding Dogs and Police Dogs shall be exempt from the foregoing provision while actively engaged in their duties.

#### **4.7 NO PERSON TO HARBOUR**

No person shall keep or harbour any dog, cat or animal in a manner that adversely impacts neighbouring properties or residents whether through offensive odours, noise likely to disturb inhabitants, running at large of dog(s), cat(s) or animal(s), accumulation of feces or otherwise.

#### **SECTION 5 – VICIOUS**

5.1 No owner shall permit his or her dog, cat, or animal to attack, bite or show aggressiveness towards a person, or other dog, cat or animal.

5.2 Where a By-Law Enforcement Officer or Police Officer is informed upon receipt of complaint, and is satisfied that a dog, cat or animal has attacked, bitten a person or animal or has been threatening or aggressive towards a person or animal without being provoked, and has further been provided with satisfactory evidence as to the name and address of the owner of the dog, cat or animal that the By-Law Enforcement Officer or Police Officer shall serve notice on the owner of the dog, cat or animal that the dog, cat or animal is deemed to be a vicious dog, cat or animal and requiring the owner to comply with any or all of the requirements set out in Section 5.1.4 and 5.1.5.

5.3 Service of notice that a dog, cat or animal has been deemed a vicious dog, cat or animal may be effected on the person who shows in the Town's records as the owner of the dog, cat or animal, or where the dog, cat or animal does not appear to be registered pursuant to this By-law, on such other person who appears to be the owner of the dog, cat or animal. Service may be effected by personal service, by registered mail, or by posting up in a conspicuous place at the address shown in the records of the Town as the address of the owner of the dog, cat or animal, or there the dog, cat or animal is not registered under this By-law, at such address as appears to be the address of the owner of the dog, cat or animal. Service of the notice shall be effective upon the date that a personal service is effected or where served by registered mail or by posting, shall be deemed effective on the third day after mailing or posting as the case may be.

5.4 Every owner of a vicious dog, cat or animal shall at all times when the vicious dog, cat or animal is not in the owner's dwelling unit, but otherwise within the boundaries of the owner's premises, ensure that:

- (a) the vicious dog, cat or animal is muzzled so to prevent it from biting a person or animal;
- (b) the vicious dog, cat or animal is securely leashed on a leash which does not allow it to go beyond the Lot Line of the owner's lands; or
- (c) the vicious dog, cat or animal is confined within a secure structure in a good state of repair so as to prevent escape; and
- (d) a warning sign stating 'beware of dog' is posted in a conspicuous place so as to be visible from the road.

5.5 Every owner of a vicious dog, cat or animal shall at all times when the vicious dog, cat or animal is not within the boundaries of the owner's premises;

- (a) keep the vicious dog, cat or animal under effective control of a responsible person on a leash held by the person; and
- (b) keep the vicious dog, cat or animal muzzled.

5.6 Every owner of a vicious dog, cat or animal shall notify the Registrar within two (2) working days of any change in ownership or residence of the vicious dog, cat or animal and provide the Registrar with the new address and telephone number of the owner.

5.7 Where the owner of a vicious dog, cat or animal is informed that his dog, cat or animal has been deemed to be a vicious dog, cat or animal, the owner may, within fourteen (14) days of such notice request in writing a hearing by the Council or Committee established for that purpose and Council may exempt the owner from the muzzling or leashing requirements, or both such requirements or may modify the conditions for muzzling or leashing.

5.8 The notification that a dog, cat or animal is a vicious dog, cat or animal is effective the sate it is served, even if a hearing being Council is requested by the owner of the dog, cat or animal affected.

## **SECTION 6 – SEIZE AND IMPOUND**

### **6.1 OFFICERS MAY SEIZE**

A By-Law Enforcement Officer or Police Officer may seize and impound any dog, cat or animal found at large.

6.1.2 A By-Law Enforcement Officer or Police Officer may enter onto any private property without the consent of the owner of the property, for the purpose of discharging the duties imposed by this By-law and to enforce its provisions, without a search warrant, provided he or she is in active pursuit of a dog, cat or animal.

6.1.3 In no instance shall a By-Law Enforcement Officer or Police Officer enter into any dwelling unit or other building situated on private property without a search warrant authorizing such entry.

6.1.4 Any dog, cat or animal seized by a By-Law Enforcement Officer or Police Officer under this by-law shall be impounded for three (3) days from the time of its impoundment, exclusive of the day on which the dog, cat or animal was impounded, and days on which the pound facility is closed.

6.1.5 Any dog, cat or animal at large contrary to the provisions of this By-law which in the opinion of a By-Law Enforcement Officer or Police Officer appears to be vicious or rabid and to be a threat to the safety of the community, and which cannot be captured by a By-Law Enforcement Officer or Police Officer, may be killed by a Police Officer or other duly appointed officer. The owner of the dog, cat or animal shall not be entitled to damages or compensation on account of its killing.

6.1.6 Notwithstanding Section 6.1.4, where in the opinion of a By-Law Enforcement Officer or Police Officer, a dog, cat or animal seized under Section 6.1.1 is injured or should be destroyed without delay for humane reasons or for reasons of safety to persons, dogs, cats, or animals, the By-Law Enforcement Officer or Police Officer may have the dog, cat or animal euthanized in a humane manner as soon as after seizure as he or she thinks fit without permitting any person to



reclaim the dog, cat or animal without offering it for sale and no person shall be entitled to damages or compensation on account of the euthanasia.

6.1.7 Any person may capture any dog, cat or animal at large and trespassing on his or her property and, upon doing so, shall report capture of the dog, cat or animal to the By-Law Enforcement Officer who may impound the dog, cat or animal

6.1.8 During the impound period referred to in Section 6.1.4, the owner of the dog, cat or animal shall be entitled to redeem the dog, cat or animal upon:

(a) payment of the impound fees and board fees in the amount as set out in the Schedule of Fees By-law, as amended.

(b) payment of any veterinarian fees incurred for the well-being of the dog, cat or animal;

(c) registering the dog, cat or animal in accordance with this By-law if there is no evidence the dog, cat or animal is already registered. When registration is completed as per this requirement, the registration fee is in accordance with the Schedule of Fees By-law, as amended.

6.1.9 If a dog, cat or animal is not redeemed within the time frame specified in subsection 6.1.4, the By-Law Enforcement Officer may dispose of the dog, cat or animal as he or she sees fit without liability to any person for the disposition of the dog, cat or animal or the manner thereof.

## **6.2 PROTECTIVE CARE**

6.2.1 The By-Law Enforcement Officer is authorized should they choose, upon a request of a Police Officer, Fire Chief or his or her designate, or paramedic to impound a dog, cat or animal for protective care purposes, pursuant to an incarceration, fire, medical emergency, or for any other situation that the By-Law Enforcement Officer deems appropriate and to keep such dog(s), cat(s) or animal(s) for a maximum of five (5) days.

6.2.2 In the event that the owner of a dog, cat or animal impounded for protective care does not claim the dog, cat or animal and pay the impound fees, protective care fees, as set out in the Schedule of Fees By-law, as amended within five (5) days, then on the sixth day, the dog, cat or animal shall be deemed to have been impounded as running at large in accordance with Section 6.1 and impound timelines as set out in Section 6.1.4 shall begin.

## **6.3 IMPOUND FEES**

6.3.1 Where a dog, cat or animal is seized, or impounded for protective care, the owner, if known, shall be liable for the impound fees and protective care fees as set out in the Schedule of Fees By-law, as amended, before the dog, cat or animal is released to the owner.

6.3.2 Notwithstanding Section 6.3.1, in appropriate humanitarian circumstances, as determined by the By-Law Enforcement Officer, the By-Law Enforcement Officer, may, in his or her discretion, waive all or part of the impound fees and protective care fees, or provide for delayed or installment payments of same.

## **6.4 TRAP REGULATIONS**

6.4.1 Any dog, cat or animal seized in accordance with Section 6.1.7 shall be:

- (a) trapped in a humane manner;
- (b) not kept in a trap for more than 24 hours;
- (c) protected from the elements while in a trap.

6.4.2 In no circumstance shall a person use any trap that causes or may cause injury, pain or suffering to an animal. Without limiting the generality of the foregoing, no person shall set a trap within the Town:

- (a) without permission being granted by the By-Law Enforcement Department;
- (b) no person shall use a killer trap, leg-hold trap, body gripping trap or snare.

6.4.3 Notwithstanding Sections 6.4.1 and 6.4.2 shall not apply to the trapping of an animal where the animal is trapped by a person who is licensed by Ministry of Natural Resources or is otherwise authorized by law to trap an animal, and the trapping is conducted in accordance with any applicable legislation.

## **SECTION 7 – REGULATIONS - PRESCRIBED BIRDS**

### **7.1 PRESCRIBED BIRDS**

7.1.1 A person may keep in a dwelling unit or on a premises with the Town, any combination of domestic cardinals, finches, budgies, bulbuls, canaries, tanagers, amazons, cockatoos, onures, macaws, parakeets, cockatiels, lorikeets, touracos, toucans, orioles, mynahs, magpies, barbets, ascaries, pied hornbills or cock-of-the-rocks, provided same are housed and kept in an escape proof enclosure.

### **7.2 HENS (FEMALE CHICKENS)**

7.2.1 Any person keeping hens on their property are only permitted to do so within the Town of Fort Frances if the following requirements have been met by the property owner:

- (a) the hens are confined in either a hen coop or hen run; and the hens are kept in the hen coop between 9:00pm and 6:00am
- (b) the owner of the hens resides on the property where the hens are kept;
- (c) each hen is provided with food, water, shelter, light, ventilation, veterinary care and opportunities for essential behaviours such as scratching, dust-bathing and roosting, all sufficient to maintain the hen in good health;
- (d) establish a maximum area of .1 cubic metre for manure storage in an enclosed container;
- (e) the external storage of feed must be kept in a rodent-proof container within the coop area
- (f) must comply with all other applicable legislation.

### **7.3 HEN COOP CONSTRUCTION**

7.3.1 Any hen coop which is erected, used or maintained for the housing of hens must:

- (a) be constructed in such a manner as to prevent the escape of the hens;
- (b) be constructed in such a way as to be rodent proof;
- (c) be equipped with perches and nest boxes to appropriately accommodate each hen;
- (d) no hen coop or hen run may be located in any front, side or flank yard as described in the Zoning By-Law;
- (e) must be located within the rear yard and must be a minimum of 3.0m from any rear lot line or side lot line;
- (f) at a distance of no less than 15m from any school, church or business.

## **7.2 HEN COOP MAINTAINENCE**

7.2.1 Every owner of any building which is erected, used or maintained as a hen coop for the housing of hens shall be maintained as follows:

- (a) in a clean condition and free of obnoxious odours, substances and vermin;
- (b) all refuse and waste matter from the hen coop must be disposed of in a proper and sanitary manner and no such refuse or waste matter shall be burned or stored on the property.

## **7.3 GENERAL PROHIBITIONS**

7.3.1 Home slaughter of hens is prohibited and any deceased hens shall be disposed of at a livestock disposal facility or through the services of a veterinarian.

7.3.2 The sale of eggs, meat, manure or other products derived from the hens is not permitted;

7.3.3 No owner shall cause or permit his or her hen to become a public nuisance by persistently clucking. No owner shall cause or permit his or her hen to violate the Noise By-law.

7.3.4 No owner shall cause or permit his or her hen to be at large.

7.3.5 No person shall keep a rooster.

## **SECTION 8 – PROHIBITED ANIMALS**

### **8.1 GENERAL PROHIBITIONS**

8.1.1 No person shall keep any animal other than a dog, cat, prescribed bird or prescribed animal within the Town of Fort Frances.

8.1.2 Nothing herein shall give any person any right to keep animals where such animal is prohibited by this By-law.

8.1.3 In the event that any setback requirements set out herein are inconsistent with the requirements set out in the Zoning By-Law, the requirements of the by-law which are more restrictive shall prevail.

### **8.2 PROHIBITED ANIMALS LISTING**

8.2.1 The following list of animals are prohibited to be owned within the Town of Fort Frances. The list of prohibited animals may not include all animals prohibited in Town.

- All Marsupials (such as Kangaroos and Opossums)
- All Non-Human Primates (such as Gorillas and Monkeys)
- All Felids, (Except the Domestic Cat)
- All Canids (Except the Domestic Dog)
- All Viverrids (Such as Mongooses, Civets and Genets)
- All Mustelids (Such as Skunks, Weasels, Otters, Badgers) (Exception is domestic Ferret)

- All Ursids (Bears)
- All Artiodactylus Ungulates. (Such as Goats, Sheep, Pigs, and Cattle)
- All Procyonids (Such as Racoons, Coatis, Cacomistles, etc.)
- All Hyaenas
- All Perissodactylus Ungulates (Such as Horses and Asses)
- All Elephants
- All Pinnipeds (Such as Seals, Fur Seals, Walruses, etc.)
- All Snakes of the families Pythonidae and Boidae
- All Venomous Reptiles
- All Ratite Birds (Such as Ostriches, Rheas, Cassowaries, etc.)
- All Diurnal and Nocturnal Raptors (Such as Eagles, Hawks, Owls, etc.)
- All Edentates (Such as Anteaters, Sloths, Armadillos, etc.)
- All Bats
- All Crocodilians (Such as Alligators, Crocodiles, etc.)
- All Anatidae and Genus Cygnus (Ducks, Geese, Swans, etc.)

## **SECTION 9 – INTERFERE**

### **9.1 INTERFERE**

9.1.1 No person shall interfere with, hinder or molest a By-Law Enforcement Officer or Police Officer in the performance of their duties, or to seek to release any dog, cat or animal in the custody of the Town, except as herein provided.

9.1.2 No person shall tamper, remove or interfere with traps or equipment.

9.1.3 No person shall refuse to produce any documents or things required by a By-Law Enforcement Officer or Police Officer in the exercise of a power or performance of a duty under this by-law, and every person shall assist in entry, inspection, examination or inquiry by an agent.

9.1.4 No person shall knowingly furnish false information to a By-Law Enforcement Officer or Police Officer.

## **SECTION 10 – EXEMPTIONS**

### **10.1 POLICE DOG EXEMPT**

No part of this By-Law shall apply to a Police Dog or other working dog performing their legal duties.

**SECTION 11 – PENALTIES**

**11.1 GENERAL PENALTIES**

Any person who contravenes, suffers or permits any act or thing to be done in contravention of, or neglects to do or refrains from doing anything required to be done pursuant to any provisions of this By-Law or any permit or order issued pursuant thereto, commits an offence and except where specifically set out in Schedule “B” attached to and forming part of this By-Law, shall be liable of a fine of not more than \$5,000 pursuant to the Provincial Offences Act, R.S.O., 1990, c. P.33, As amended. Where an offence is a continuing offence, each day that the offence is continued shall constitute a separate and distinct offence.

**SECTION 12 - REPEAL**

12.1 By-Law 17/90, By-Law 12/79, By-Law 45/87 and By-Law 16/90 and all amendments are hereby repealed.

This By-Law shall come into force and take effect on the final passing thereof.

READ THREE TIMES and finally passed in open Council this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
R. Avis, Mayor

\_\_\_\_\_  
E. Slomke, Clerk

**TOWN OF FORT FRANCES**  
**AREA LEASHING REQUIRED ALL TIMES**

**BY-LAW NO.**  
**SCHEDULE “A”**

<u>NO.</u>	<u>AREA LEASHING REQUIRED ALL TIMES</u>
1.	Point Park.
2.	Front Street (waterfront area) From Victoria Ave. To Col Rd. E.
3.	Seven Oaks Area.

DRAFT

**Animal Control Fees**  
**Schedule of Fees By-Law**

2.12 Animal Control Fees

2.12.1 Licensing	2.12.1.1 Dog/Cat License – Spayed/Neutered	\$24.35
	2.12.1.2 Dog/Cat License – Unspayed/Non-Neutered	\$35.80
	2.12.1.3 Dog/Cat Lifetime License – Spayed/Neutered/Microchip/Tattoo	\$20.00
2.12.2 Impound Fee		\$80.00
2.12.3 Protective Care Fee		\$20.00/day