

**THE CORPORATION  
OF THE  
TOWN OF NIAGARA-ON-THE-LAKE  
BY-LAW NO. 5371-21**

A BY-LAW TO AUTHORIZE THE LORD MAYOR AND TOWN CLERK TO EXECUTE AN AGREEMENT FOR A LICENCE TO OCCUPAY LAND OWNED BY THE TOWN OF NIAGARA-ON-THE-LAKE BETWEEN THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE AND THE NIAGARA-ON-THE-LAKE MUSEUM (Community Centre)

**BE IT ENACTED AS A BY-LAW OF THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE as follows:**

1. THAT the agreement dated the 22nd day of November, 2021 between The Corporation of The Town of Niagara-on-the-Lake and The Niagara-on-the-Lake Museum for a Licence to Occupy Land Agreement, be and the same is hereby approved; and
2. THAT the Lord Mayor and Clerk be authorized to affix their hands and the Corporate Seal; and
3. THAT this by-law shall come into force and take effect immediately upon the passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 22ND DAY OF NOVEMBER 2021**

\_\_\_\_\_  
LORD MAYOR BETTY DISERO

\_\_\_\_\_  
ACTING TOWN CLERK COLLEEN HUTT

**LICENCE TO OCCUPY LAND OWNED  
BY THE CORPORATION OF  
THE TOWN OF NIAGARA-ON-THE-LAKE**

THIS AGREEMENT made this 22nd day of November, 2021.

BETWEEN

**THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE**  
(hereinafter called the "Licensor")

- and -

**THE NIAGARA-ON-THE-LAKE MUSEUM**  
(hereinafter called the "Licensee")

**WHEREAS:**

1. The Licensor is the registered owner of the lands municipally known as 1593 Four Mile Creek Road, Virgil, Ontario which are legally described as set out in Schedule "A" attached hereto on which the Niagara-on-the-Lake Community Centre is located (the "Community Centre Lands");
2. The Licensor has agreed to grant a licence to the Licensee over that portion of the parking lot on the Community Centre Lands as designated by the Manager of Parks and Recreation for the Town of Niagara-on-the-Lake from time to time (the "Lands") for the purposes of permitting the Licensee to use the Lands for the purposes set out in this Licence Agreement;

**IN CONSIDERATION** of the premises and other good and valuable consideration the parties agree as follows:

**TERM**

- 1.01 The Licensor grants to the Licensee the use of the Lands for the purposes hereinafter set forth, for the period of One ( 1) year, commencing November 15, 2021 and expiring on the 14<sup>th</sup> day of November, 2022.
- 1.02 The Licence shall be renewed automatically on its expiration for additional one year terms until such time as the Licence is terminated pursuant to the terms hereof.
- 1.03 The Licensee hereby accepts the Lands in their condition as of the date hereof and will not call upon the Licensor to do or pay for any work or supply any equipment to make the Lands more suitable for the proposed use by the Licensee hereunder.
- 1.03 The Licensee shall make no alterations to the Lands without first obtaining the written permission of the Licensor.

**CONSIDERATION**

- 2.01 There shall be no licence fee payable by the Licensee with respect to the Licence.

**PURPOSES**

- 3.01 The Licensor hereby grants permission to the Licensee to have the **exclusive use** of the Lands for the following primary purposes and associated activities only:
  - (a) Storage of the "Tiny Museum"; and
  - (b) Operation of the "Tiny Museum".

- 3.02 In this Agreement "Tiny Museum" means the 7-by-16-foot miniature replica of the Licensee's link-building of the museum mounted on wheels.

#### **TERMS OF OPERATION OF**

- 4.01 The Licensee covenants and agrees with the Licensor that the Tiny Museum shall not operate outside of the ordinary operating hours of the Community Centre without the approval of the Manager of Parks and Recreation of the Town of Niagara-on-the-Lake.

#### **INSURANCE AND INDEMNITY**

- 5.01 Prior to November 15<sup>th</sup> in each year of the Licence Agreement, the Licensee shall provide the Licensor with an insurance certificate satisfactory to the Licensor which identifies the Licensor as a co-insured for storage and operation of the Tiny Museum on the Lands by the Licensee with a Public Liability policy limit against claims for personal injuries, death, loss of or damages to property, occurring on, in or about the Lands arising or resulting from or attributable to the use and occupation of the Lands by the Licensee, of at least Two Million Dollars (\$2,000,000.00) in respect of any personal injury or death to a single person or in respect to any one occurrence. Without limiting the generality of the foregoing, such public liability insurance shall contain provisions for cross-liability, severability of interests, and no cancellations or alterations without the consent of the Licensor.
- 5.02 The Licensee acknowledges and agrees that the failure of the Licensee to maintain this insurance coverage in force shall entitle the Licensor to immediately suspend all of the Licensee's operations at the Lands. Further, the Licensor shall be entitled to terminate this Licence Agreement if insurance coverage is not obtained within 7 days of delivery of written notice by the Licensor to the Licensee requiring proof of reinstatement of insurance coverage.
- 5.03 The Licensee shall at all times indemnify and save harmless the Licensor from and against any and all claims, demands, losses, costs, charges, expenses, actions and other proceedings made, brought against, suffered by or imposed on the Licensor or its property in respect of any failure by the Licensee to fulfill any of its obligations under this agreement or for any reason whatsoever or in respect of any loss, damage or injury (including injury resulting in death):
- (a) to any person or property (including, without restricting the generality of the foregoing, employees, contractors, agents and property of the Licensor) directly or indirectly arising out of, resulting from or sustained by reason of the occupation or use of the Lands, or any operation in connection therewith or any fixtures or chattels thereon, or
  - (b) to any person while on adjoining lands of the Licensor in the course of that person's entry onto or exit from the Lands.
- 5.04 The Licensor shall not be responsible for any damage to the Tiny Museum which may occur while it is stored or operated on the Lands, however caused.
- 5.05 The Licensor shall not be liable, directly or indirectly, for any personal injuries that may be suffered or sustained by any person who may be on the Lands or for any loss of or damage or injury to property belonging to the Licensee or any other person.
- 5.06 The Licensee hereby releases the Licensor from liability arising from any perils against which the Licensee is insured, or pursuant to the Licence Agreement, is obliged to ensure, whether or not such loss or damage may have arisen out of the negligence of the Licensor or its agents or employees.

#### **TERMINATION OF LICENCE AGREEMENT**

- 6.01 The Licensor shall be entitled to terminate this Licence Agreement prior to its expiry in accordance with the provisions of Section 5, and in addition the Licensor may terminate the Licence Agreement as follows:
- (a) If the Licensee defaults in performing any of its obligations under this agreement, or breaches any of its covenants hereunder, the Licensor shall give written notice to the Licensee of such default giving the Licensee Thirty (30) days to remedy such default, failing which the Licensor may terminate this Licence and the Licensee shall then forthwith remove its chattels from the Lands.
  - (b) Upon giving the Licensee written notice of termination of the Licence Agreement not less than Six (6) months in advance of the termination date.
- 6.02 No acceptance by the Licensor of any recent or subsequent breach or default nor any condoning, excusing or overlooking by the Licensor on previous occasions of breaches or defaults similar to that for which re-entry is made shall be taken to operate as a waiver of this term or condition nor in any way alter or defect the rights of the Licensor hereunder.
- 6.03 Unless by waiver given in writing by the Licensor, the Licensor shall not be deemed to have waived any breach by the Licensee of any of the terms or conditions of this Licence Agreement and a waiver relates only to the specific breach to which it refers and in no way affects or limits the right of the Licensor with respect to any breach to which it does refer.

## **ARBITRATION**

- 7.01 Any and all disputes, claims or controversies arising out of or in any way connected with this Licence, its performance, or breach shall be referred to and finally resolved by binding arbitration by a sole arbitrator from which there shall be no appeal.
- 7.02 The place of arbitration shall be Niagara-on-the-Lake. The language of the arbitration proceedings shall be English. The arbitration shall be conducted under the *Arbitrations Act*, S.O. 1991, C. 17, as amended.
- 7.03 If any provision of this Agreement is held by competent authority to be invalid, illegal or unenforceable resulting in the intent of either party not being preserved, this Agreement shall either be renegotiated or terminated by either party.

## **COVENANTS**

- 8.01 The Licensee covenants with the Licensor:
- (a) To use the land only for the purposes set out in Section 3;
  - (b) To maintain the appearance of the Lands and the equipment thereon in a neat, clean and well-kept manner appropriate to the condition of land in the area;
  - (c) To ensure that no refuse, litter, garbage or loose or objectionable material accumulates in or about the Lands;
  - (d) Not to assign this agreement without the prior written consent of the Licensor, which consent may be unreasonably withheld;
  - (e) To leave the Lands in substantially the same condition at the expiry of this agreement as they were at the commencement of this agreement;
  - (f) To comply with all federal, provincial and municipal laws, rules, regulations and by-laws and to hold the Licensor harmless from the consequences of its failure to do so; and

- (g) To comply with all of the terms, conditions and obligations imposed by this Licence Agreement

**NOTICE**

9.01 Any notice required to be given to the Licensor under the terms of this agreement is deemed to be sufficiently given:

- (a) If served personally on the Town Clerk for the Corporation of The Town of Niagara-on-the-Lake; or
- (b) If mailed by prepaid registered mail addressed to the Licensor at

Town Clerk  
Town of Niagara-on-the-Lake  
1593 Creek Road, P.O. Box 100  
Virgil, ON L0S 1T0

9.02 Any notice required to be given to the Licensee under the terms of this agreement is deemed to be sufficiently given

- (a) if served personally on any officer or executive of the Licensor; or
- (b) mailed by prepaid registered mail addressed to the Licensee at

The Niagara-on-the-Lake Museum.  
43 Castlereagh Street, PO Box 208  
Niagara-on-the-Lake, ON L0S 1J0

In either case, such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, Five (5) business days after it is delivered to the post office.

**(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK)**

**BINDING EFFECT**

10.01 This agreement shall enure to the benefit of, and be binding upon the parties and their respective successors and (where permitted) assigns.

IN WITNESS THEREOF the parties have affixed their respective corporate seals attested by the hands of their respective officers duly authorized in that behalf.

THE CORPORATION OF THE TOWN  
OF NIAGARA-ON-THE-LAKE

\_\_\_\_\_  
Betty Disero – Lord Mayor

\_\_\_\_\_  
Colleen Hutt – Acting Town Clerk

THE NIAGARA-ON-THE-LAKE MUSEUM

\_\_\_\_\_  
– President  
I have authority to bind the Museum.

**SCHEDULE "A"**  
**LEGAL DESCRIPTION**

LT 217 PL M11 EXCEPT PTS 2, 3 & 4, 30R14087 AS CONFIRMED BY 30BA179; T/W  
LT 214 PL M11 AS IN NTP4974; T/W PT LT 218 PL M11 PT 2 30R6105 AS IN LT99185;

S/T EASEMENT OVER PT 1 30R11122 AS IN NR32473; PL M11 IS NOT A PLAN OF  
SUBDIVISION WITHIN THE MEANING OF THE PLANNING ACT; TOWN OF NIAGARA-  
ON-THE-LAKE