

## **LAND LEASE AGREEMENT**

**THIS LAND LEASE AGREEMENT** made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2024.

BETWEEN:

**BELLA PROPERTIES INC.** a body corporate having its registered office at 105-343 Argyle Street, Fredericton, New Brunswick, E3B 1V1, hereinafter called the “**Lessor**”,

AND:

**THE CITY OF FREDERICTON**, a municipal corporation by virtue of the *Local Governance Act*, S.N.B. 2017, C. 18, and amendments thereto, having its head office at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5, hereinafter called the “**Lessee**”

**Collectively referred to as the “Parties”**

**WHEREAS**, the Lessor is the owner of certain real property situated in at 376 Westmorland Street, Fredericton, NB and further described as PID 75340034 and 01447911 (the “Property”);

**AND WHEREAS** the Lessee manages and operates an “Active Transportation” Trail network, which allows for public use of the trails running throughout the municipality of Fredericton;

**AND WHEREAS** in order to complete the network throughout the downtown core, the Lessee wishes to lease a 7 m wide portion of the Property (PID 75340034) to provide for a 3.5 m trail connecting from the existing Rabbit Town Trail section ending at Westmorland Street, to Aberdeen Street (the “Trail”);

**AND WHEREAS** the Trail and such portion of the Property to be leased pursuant to this agreement are shown in Schedule A attached hereto (the “Leased Premises”);

**NOW THEREFORE THIS INDENTURE WITNESSETH** that for and in consideration of the rents, covenants and agreements reserved and contained herein, and intending to be legally bound hereby, the parties hereby agree with each other as follows:

### **1. PREMISES**

The Lessor hereby leases and lets to the Lessee, and the Lessee hereby accepts and rents from the Lessor, upon and subject to the terms, conditions, covenants and provisions hereof; the Leased Premises.

## **2. TERM**

- a. The term of this Lease shall be for a fixed period of ten years less a day commencing on the \_\_\_\_ day of \_\_\_\_\_, 2024, and terminating on the \_\_\_\_ day of \_\_\_\_\_, 2034.
- b. The Lessee shall have the option to renew this Lease for two (2) additional terms of five (5) years each under the same terms and conditions as this Lease, except for the rent which may be renegotiated by the Lessor and Lessee, acting reasonably and in good faith, failing which the rent may be settled by a third party arbitrator. Lessee shall provide Lessor with written notice of its intent to renew at least ninety (90) days prior to the expiration of the then-current term.
- c. In the event of redevelopment of adjacent properties that facilitates a realignment of the Trail which Lessee determines to be in the best interest of the municipality, the Lessee may terminate this Lease at its option upon six (6) months' written notice to Lessor.

## **3. RENT**

The Lessor covenants and agrees that the rent due to the Lessee for the Leased Premises during the Term, shall be set at the monthly rate of \$2,500 plus HST if applicable, payable in monthly instalments. Rent for following years shall be adjusted annually for CPI as determined by Statistics Canada on the anniversary date each year, starting on the beginning on the first day of the 6<sup>th</sup> year of this lease.

## **4. INDEMNITY**

- a. The Lessee hereby covenants to indemnify and save harmless the Lessor, its directors, officers and employees from and against any and all claims, demands, suits, proceedings, liabilities, losses, damages, assessments, re-assessments, costs and expenses (collectively, the "Claims") of any nature or kind whatsoever arising from or in any way related to the occupation of the Leased Premises during the Term of this Lease.
- b. Notwithstanding the preceding, the Lessee shall not be liable for any Claims with respect to the Leased Premises, arising from the operations, conduct or actions of the Lessor or other third parties for whom the Lessor is responsible at law.

## **5. THE LESSEE'S COVENANTS**

- a. The Lessee shall use the Leased Premises for the sole purpose of constructing and operating a public access trail as part of the municipal Active Transportation Network, such to permit the following activities: walking (including dog walking), jogging, running, bicycling and like activities, as well as use by non-emission mobility assisted devices (i.e., motorized wheelchairs) or other vehicles/forms of transportation authorized by the Grantee for use on the Active Transportation network located in the City of Fredericton ("the Trail").
- b. The Lessee shall comply with all laws, by-laws, ordinances, regulations and directives of any public authority having jurisdiction affecting the Leased Premises or the use or occupation thereof.

- c. The City shall, at its cost and risk and at all times, be responsible for constructing, maintaining, repairing, and/or replacing the Trail on the Leased Premises and any related works or improvements.
- d. Lessee shall, at its own expense, maintain the Leased Premises in compliance with generally accepted safety standards and in good condition and repair, reasonable wear and tear excepted.
- e. The Lessee covenants not to assign or sublet this Lease or the whole or any part of the Leased Premises without the consent of the Lessor, which consent may not be unreasonably withheld.
- f. The Lessee covenants not to do or knowingly permit to be done anything upon or in respect of the Leased Premises, the doing of which shall be or result in a nuisance.
- g. In order to facilitate the construction of the trail on the Leased Premises and mitigate against any negative impacts associated with its use and construction, Lessee agrees to undertake, at its cost and risk, the following site work on the Leased Premises and/or Property, as appropriate, and as generally shown on Schedule A:
  - i. *Parking* – realignment of existing parking lot by reconfiguring it, repainting parking lines to ensure an equivalent parking spaces/stalls, and then treating impacted areas with sealer; as well as removal of the Lessor's existing light posts and replacing them with lights along the Trail on the Leased Premises;
  - ii. *Access* – relocation of the existing entrance to the Lessor's Property by removing the existing separate one way entrances off Westmorland and replacing it with a new single curbed two way entrance on the Property;
  - iii. *Snow storage* – by realigning the Lessor's existing parking area on the Property, creating two snow storage areas; and
  - iv. *Curbing* – delineating the trail on the Leased Premises from the adjacent parking lot by curbing the boundary between the two areas.
- h. Lessee shall reimburse Lessor for snow removal costs incurred by Lessor for the Leased Premises, up to a maximum of Ten Thousand Dollars (\$10,000) per year. Reimbursement shall be contingent upon Lessor providing Lessee with receipts for such costs by May 1 of each year. For clarity, such costs shall be associated with the removal of snow for the Lessor's property at 376 Westmorland Street only.

## **6. THE LESSOR'S COVENANTS**

- a. Upon the observance and performance of all the covenants, terms and conditions on the Lessee's part to be observed and performed, the Lessee shall peaceably and quietly hold and enjoy the Property for the term hereby demised without hindrance or interruption by the Lessor or any other person or persons lawfully or equitably claiming by, through or under the Lessor, subject nevertheless, to the terms and conditions of this Lease.
- b. Upon execution of this Lease, the Lessor covenants to allow the Lessee and its agents, contractors, suppliers and invitees of the Lessee to have access to the Leased Premises for the purposes of commencing construction of the Active Transportation trail.

- c. The Lessor covenants to pay all taxes, levies, charges and assessments with respect to the Leased Premises as they become due.

## **7 PROVISOS.**

Provided always, and it is hereby agreed between the parties as follows:

- (a) **Non-Liability of the Lessor** - The Lessor shall not in any event whatsoever be liable or responsible in any way for any personal injury or death that may be suffered or sustained by the Lessee or any agent, employee, customer or guest of the Lessee or any other person who may be upon the Property or for any loss or damage or injury to any property belonging to the Lessee or any agent, employee, customer or guest of the Lessee or to any other person incurred while such property is on the Leased Premises; provided however, that this clause shall not apply to injuries, damages or death caused directly by the negligent, reckless or willful conduct of the Lessor, its employees, agents or representatives.
- (b) **Damage to Leased Premises** - If and whenever during the Term of this Lease the materials or equipment located on the Leased Premises shall be destroyed or damaged by fire, lightning or tempest, or by other casualty, then and in every such event the Lessor shall not be liable for any loss or damage occasioned by such fire or other casualty except for such loss or damage caused directly by the negligent, reckless or willful conduct of the Lessor, its agents or representatives, but in no event shall the Lessor be liable for any indirect or consequential damages.
- (c) **Successors and Assigns** - The Lease extends and binds the respective heirs, executors, administrators, successors and assigns of the parties hereto as the case may be.
- (d) **Overholding** - If the Tenant remains in possession of the Leased Premises after the expiration of the Term of this Lease and without the execution and delivery of a new lease, the Tenant shall be deemed to be occupying the Leased Premises as a tenant from year to year, subject to the same covenants, conditions, and provisions contained in this Lease, except as to the Term and Rent.
- (e) **Termination** - On termination of this Agreement, the Lessor shall remove any improvements to the Leased Premises made by the Lessor.
- (f) **Warranty of Title** - The Lessor hereby warrants that to the best of its knowledge and belief it has good and lawful title to the Leased Premises and full right and authority to Lease the same according to the terms hereof.
- (g) **Notices** - Any notices, request or demand herein provided for shall be sufficiently given or made if mailed by registered mail, postage prepaid, addressed or delivered by hand, if to the Lessor, at The City of Fredericton, Attention: Real Estate Manager, 397 Queen Street, Fredericton, New Brunswick, E3B 1B5, and if to the Lessee, Bella Properties Inc. at 105-343 Argyle Street, Fredericton, New Brunswick, E3B 1V1. Every such notice shall be deemed to be given upon the day it was so mailed or delivered. The Parties shall give notice in writing to the other of any change of address and thereafter all notices shall be mailed to the new address so notified.
- (h) **Entirety** - This Lease constitutes the entire agreement between the parties and it is hereby declared and understood that no prior stipulation, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the

provisions of this Lease. This Lease may not be modified or amended except in writing and signed by the Lessor and the Lessee.

(i) **Right of First Option** - During the term of this Lease, if the Lessor decides to sell the Leased Property, or any portion thereof, the Lessee shall have the first option to purchase the Property on terms and conditions mutually agreed upon between the Lessor and the Lessee, acting reasonably and in good faith, and based on an independent appraisal to be retained at the Purchaser's expense. The Lessor shall notify the Lessee in writing of its intention to sell the Property (the "Sale Notice"). Upon receipt of the Sale Notice, the parties shall enter into good faith negotiations for a period of ninety (90) days to agree on the terms and conditions of the sale. If the parties are unable to agree on the terms and conditions of the sale within the ninety (90) day period, the Lessor shall be free to offer the property for sale to third parties, provided that the terms and conditions of any sale to a third party are not more favorable than those offered to the Lessee. If the Lessor offers the property for sale to a third party on terms more favorable than those offered to the Lessee, or if the property is not sold to a third party within one hundred twenty (120) days after the end of the sixty (60) day negotiation period, the right of first option shall again apply to any future intention to sell the property.

(j) **Right of First Refusal** - During the term of this Lease, if the Lessor receives a bona fide offer from a third party to purchase the Leased Property, or any portion thereof, or the Property, that it desires to accept, the Lessor shall first offer the Leased Premises to the Lessee. The Lessor shall notify the Lessee in writing of the terms and conditions of the offer, including the identity of the third party, the purchase price, and all other relevant terms (the "Offer Notice"). The Lessee shall have thirty (30) days from the date of receipt of the Offer Notice to notify the Lessor in writing of its election to purchase the Leased Premises. If the Lessee does not notify the Lessor within the thirty (30) day period, the Lessor may sell the property to the third party on the terms and conditions specified in the Offer Notice. Any sale to the third party must be completed within one hundred twenty (120) days of the expiration of the Lessee's right to purchase. If the sale is not completed within this period, the right of first refusal shall again apply to any future offers.

(k) **Registration** - The parties agree a Notice of this Lease will be registered on title to the Property, along with any documents required to confirm the Right of First Option and Right of First Refusal described herein. The total amount credited from the Rent payments will be calculated up to the date of termination and will be applied towards the Purchase Price.

## 9. **INTERPRETATION**

a) This Lease shall be construed and governed by the Laws of the Province of New Brunswick and shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the parties hereto, subject to the granting of consent by the Lessor to any assignment or sublease, and every reference herein to any party hereto shall include the heirs, executors, administrators, successors, assigns and other legal representatives of such party and all covenants shall be deemed joint and several. Any reference in this Lease to "Lessee" shall further include, where the text allows, the servants, employees, agents, invitees and Lessees of the Lessee and all others over whom the Lessee might reasonably be expected to exercise control.

b) Should any provision or provisions of this Lease and/or its conditions be illegal or not enforceable, it or they shall be considered separate and severable from the remaining provisions

of this Lease which shall remain in force and be binding upon the parties hereto as though the said illegal or unenforceable provisions had never been included.

c) The headings in this Lease have been inserted as a matter of convenience and for reference only and in no way defines, limits or enlarges the scope or meaning of this Lease, nor of any provision thereof.

d) Counterparts. This Lease may be executed electronically and in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Lease.

**IN WHEREOF** the parties hereto have caused these presents to be duly executed as of the day and year first above written.

**THE CITY OF FREDERICTON**

\_\_\_\_\_  
Kate Rogers, Mayor

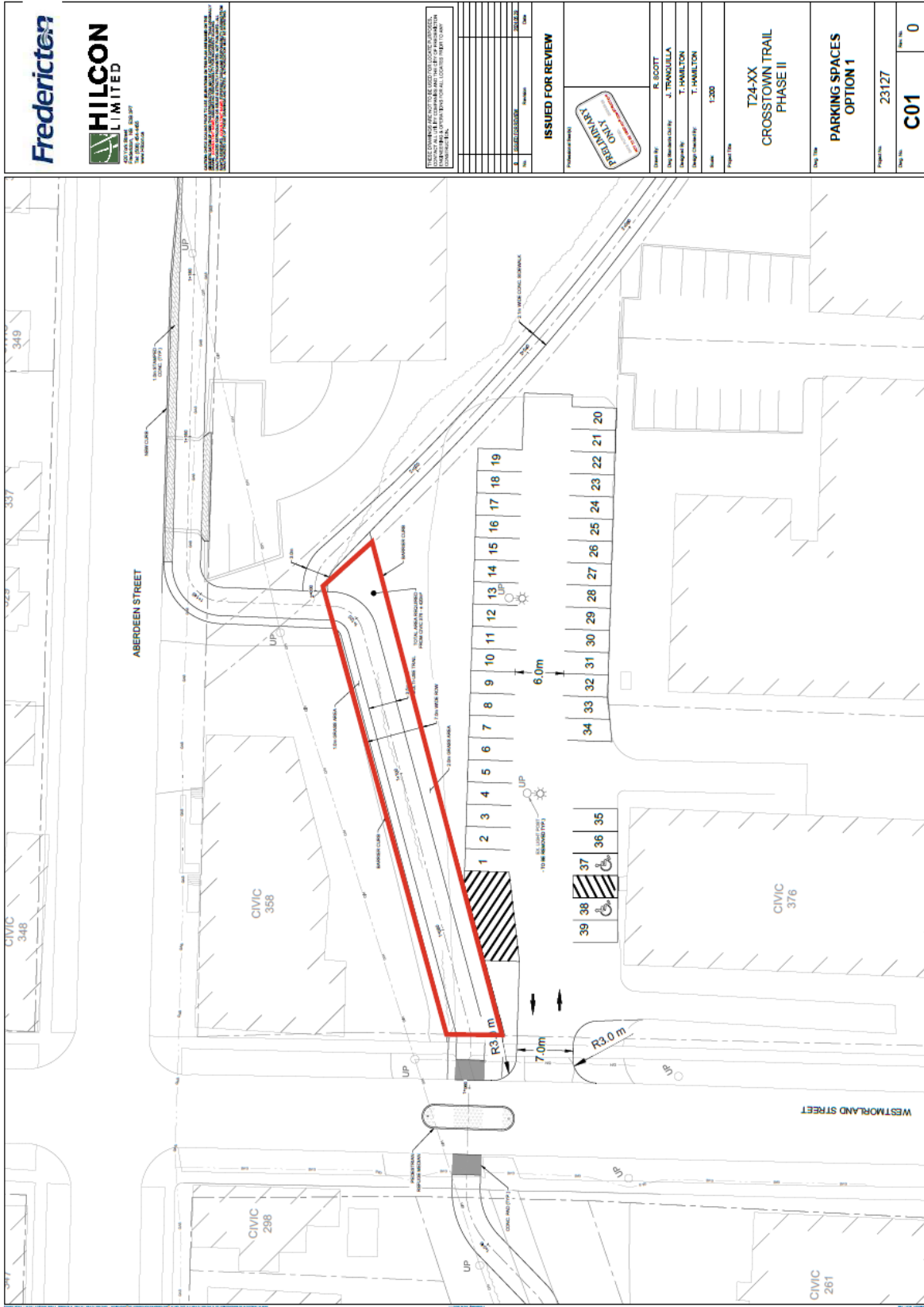
\_\_\_\_\_  
Jennifer Lawson, City Clerk

**BELLAPROPERTIES INC.**

\_\_\_\_\_  
Per:

\_\_\_\_\_  
Per:

# Schedule "A"



**Fredericton**

**HILCON LIMITED**

1000 Highway 100, Suite 100  
Fredericton, NB A1B 1X6  
Tel: 506-845-1111  
Fax: 506-845-1112  
www.hilcon.ca

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No.	Description	Area	Notes
1	PROPOSED TRAIL	1.00	
2	PROPOSED TRAIL	1.00	
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39	PROPOSED TRAIL	1.00	

ISSUED FOR REVIEW



Drawn By:	R. SCOTT
Check By:	J. TRANQUILLA
Designed By:	T. HAMILTON
Project Number:	T. HAMILTON
Scale:	1:200

T24-XX  
CROSSTOWN TRAIL  
PHASE II

PARKING SPACES  
OPTION 1

Project No.	23127
Sheet No.	C01
Rev.	0

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

**AFFIDAVIT OF CORPORATE EXECUTION**

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS THAT:**

1. I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. The seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. The signature “Kate Rogers” subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature “Jennifer Lawson” subscribed thereto is my signature.
4. The Mayor and City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.

**SWORN TO BEFORE ME** at the )  
City of Fredericton, in the County )  
of York and Province of New )  
Brunswick, this \_\_\_\_ day of )  
\_\_\_\_\_, 2024. )

\_\_\_\_\_  
Alexa Donovan )  
A Commissioner of Oaths )  
My Commission Expires )  
December 31, 2026 )

\_\_\_\_\_  
Jennifer Lawson