

THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 5433-22

A BY-LAW TO AUTHORIZE THE LORD MAYOR AND TOWN CLERK TO
ENTER INTO A LEASE AGREEMENT BETWEEN THE CORPORATION
OF THE TOWN OF NIAGARA-ON-THE-LAKE AND JULIAN TRACHSEL
(COMMUNITY GARDEN LEASE)

**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 20th day of June 2022 between The Corporation of The Town of Niagara-on-the-Lake and Julian Trachsel, 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 20TH DAY
OF JUNE 2022**

LORD MAYOR BETTY DISERO

TOWN CLERK RALPH WALTON

Community Garden License Agreement dated this 1st day of June, 2022, as authorized by The Corporation of the Town of Niagara-on-the-Lake.

BETWEEN:

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

A municipal corporation (hereinafter the “**Town**”) and

JULIAN TRACHSEL

(hereinafter the “**Garden Coordinator**”)

WHEREAS the Town owns the lands and premises known as **Newark Park** municipally located at 1585 Lakeshore Road, in the Town of Niagara-on-the- Lake (the “**Park**”);

AND WHEREAS the Town supports community gardens;

AND WHEREAS the Town and the Garden Coordinator wish to establish and support a community garden in the Park on the lands outlined in bold on the site plan identified on Schedule “A” attached hereto and forming part of this agreement (hereinafter the “**Premises**”);

NOW THEREFORE in consideration of the payments, covenants, terms, warranties, conditions and provisos contained in this Agreement, the receipt and sufficient is which is hereby acknowledged, the parties agree as follows:

PART 1 Term and Grant of Licence

1.1 The Town grants to the Garden Coordinator the non-exclusive, personal license to use the Premises for the purposes of actively establishing and maintaining a Community Garden in accordance with the requirements as set out in this Agreement and for no other purpose whatsoever, for a term of one (1) year, commencing on June 1, 2022 and ending on May 31, 2023, unless this Agreement is terminated early in accordance with the terms of this Agreement.

1.2 Use of the Premises by Garden Coordinator is restricted to between dawn and dusk, year-round, with use of the Premises prohibited when the park is closed (between the hours of 10:00 pm and 7:00 am) as described in Parks By-Law No. 5306-21;

1.3 The Garden Coordinator acknowledges that it is an occupier pursuant to the *Occupiers Liability Act*, (Ontario) as amended from time to time.

1.4 The Garden Coordinator may apply to the Town sixty (60) days prior to the end of the term for a renewal of this Agreement, on such terms and condition as are satisfactory to the Town but the Town shall not be obligated to renew this Agreement.

PART 2 License Fees

2.1 The Garden Coordinator shall pay a license fee of One Dollar (\$1.00) for the terms of this Agreement.

2.2 The Garden Coordinator shall be liable for the payment of all costs, rates and charges for utilities used in connection with the Premises.

2.3 The Garden Coordinator shall be responsible to pay any taxes that may be levied by the federal or provincial government, or any other applicable taxation authority in respect

of this Agreement or for any other reason and shall be responsible for the payment of any taxes that become payable in relation to the Premises as a result of either a change in status of the Park or change in laws.

PART 3 Legal Principles

3.1 The legal principles governing this Agreement are as set out in Schedule “B” attached hereto and forming part of this Agreement.

PART 4 Obligations of the Garden Coordinator

4.1 The Garden Coordinator shall:

- (a) Develop the Community Garden in accordance with all the obligations as set out in Schedule “C” attached hereto and forming part of this Agreement, to the satisfaction of the Town.
- (b) Operate the Community Garden in accordance with all the obligations as set out in Schedule “D” attached hereto and forming part of this Agreement, to the satisfaction of the Town.
- (c) Protect the Town in accordance with all the obligations set out in Schedule “E” attached hereto and forming part of this Agreement, to the satisfaction of the Town.

PART 5 Obligations of the Town

5.1 The Town shall:

- (a) Comply with the obligations of the Town as set out in Schedule “F” attached hereto and forming part of this Agreement.

PART 6 Entry by the Town

6.1 The Town shall be entitled to enter onto the Premise at any time to inspect the Premises.

6.2 In the event of an emergency, the Town shall have the right to undertake any necessary work without notice to the Garden Coordinator and all reasonable costs shall be the responsibility of the Garden Coordinator, and the Town shall have no liability to, or obligation to compensate the Garden Coordinator for any loss or damage arising from such action by the Town.

PART 7 Contact Information

7.1 Any notice required by this Agreement shall be provided:

To the Town at:

The Corporation of the Town of Niagara-on-the-Lake
1593 Four Mile Creek Road
P.O. Box 100
Virgil, ON L0S 1T0
Attention: Director of Operations

To the Garden Coordinator at:

Julian Trachsel
215 Gage Street
P. O. Box 1848
Niagara-on-the-Lake, ON
L0S 1J0

PART 8 No Legal Interest

8.1 No legal title or interest in the Premises is created or vested in the Garden Coordinator by virtue of this Agreement.

8.2 The Garden Coordinator shall not create any lien, mortgage, charge or other encumbrance in respect of the Premises.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their respective corporate seals under the hands of their proper signing officers duly authorized in that behalf on the date first written above.

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

PER: _____
LORD MAYOR BETTY DISERO

PER: _____
TOWN CLERK RALPH WALTON

I/we have authority to bind the corporation.

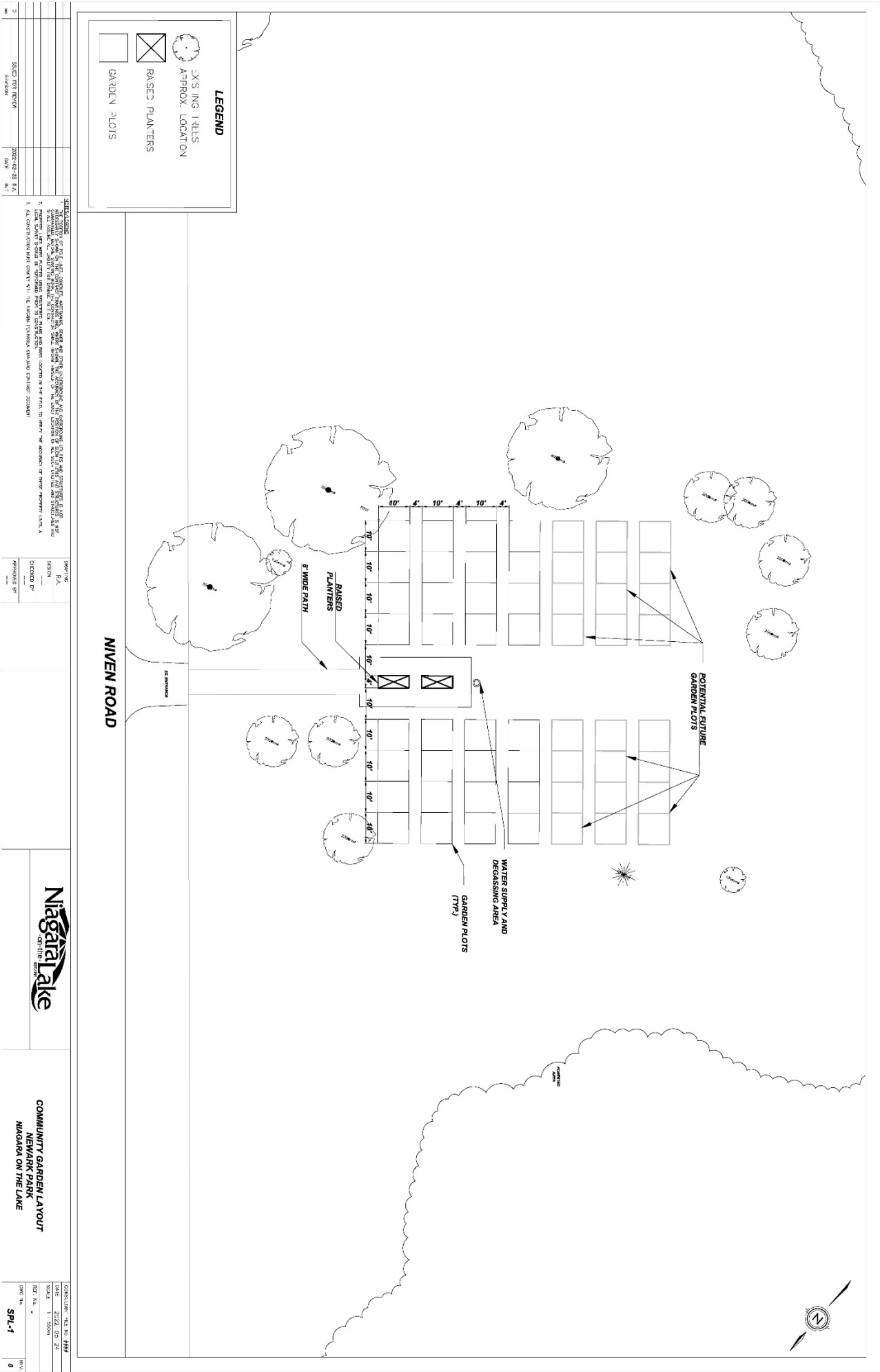
JULIAN TRACHSEL

Witness Name:

Name:
Title:

Schedule "A"

PREMISES - Community Garden



Schedule "B"
Legal Principles

PART 1 Notices

1.1 A party giving notice under this Agreement, shall give it in writing and shall deliver it by personal delivery, or prepaid regular mail to an address of the other party provided for herein.

1.2 Either party may from time to time change its address by notice given in accordance with this Agreement.

1.3 A notice sent by personal delivery is deemed to be delivered on the date it is personally delivered. A notice sent by prepaid regular mail is deemed to be delivered three days after the date it is sent, provided that if a postal interruption occurs, the notice is deemed to be delivered three days after the resumption of postal service.

PART 2 Force Majeure

2.1 Whenever and to the extent a party is unable to fulfil, or is delayed or restricted in fulfilling, any of the obligations under this Agreement by reason of any cause beyond the party's reasonable control, then the time for fulfilling such obligation is to be extended for such reasonable time as may be required by the party to fulfil such obligation provided that the party seeking such extension submits promptly to the other party a notice of extension of time and the specific reason and expected duration of such extension, and such party shall be responsible for paying for any incurred costs as a result of such extension.

PART 3 Waiver

3.1 The failure of either party to exercise any of that party's rights, powers or remedies hereunder or that party's delay in doing so, does not constitute a waiver of any rights, powers or remedies. A single or partial exercise of a right, power or remedy does not prevent its subsequent exercise or the subsequent exercise of any other right, power or remedy.

PART 4 Termination

4.1 The Town may, with or without cause, terminate this Agreement upon at least five (5) days' written notice.

4.2 The Garden Coordinator may, with or without cause, terminate this agreement upon at least ninety (90) days' written notice.

PART 5 Relationship of the Parties

5.1 The parties hereby expressly declare that it is neither their intention nor their agreement that any arrangements between them shall constitute or be deemed to constitute the parties as partners, joint venturers or agents of each other.

5.2 The parties hereby expressly declare that it is neither their intention nor their agreement that any arrangements between them shall constitute or be deemed to constitute the parties as an employment relationship for any purpose and no employee, volunteer, agent or contractor of the Garden Coordinator shall constitute an employee of the Town.

5.3 The parties hereby expressly declare that it is neither their intention nor their agreement that any arrangements between them shall constitute or be deemed to constitute the Garden Coordinator as a volunteer of the Town and no employee, volunteer, agent or contractor of the Garden Coordinator shall constitute a volunteer of the Town.

5.4 The Garden Coordinator is not authorized to bind the Town.

PART 6 Assignment

6.1 The Garden Coordinator may not assign, sublet or part with possession of the Premises or any part of the Premise unless it first obtains the written consent of the Town.

PART 7 Signing

7.1 The parties may sign this Agreement in counterparts with the same effect as if the parties had executed the same document. Any counterparts are to be construed together and will constitute one and the same original document. This agreement will be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart. This Agreement may be executed and delivered by facsimile signatures or other electronic delivery and will be binding on all parties as if executed by original signature and delivered personally.

7.2 The effective date of this Agreement is June 1, 2022.

PART 8 Interpretation

8.1 This Agreement is to be construed with all changes in number and gender as may be required by the context.

8.2 The division of this Agreement into sections, subsections and clauses is for convenience of reference only and does not affect the interpretation. All referenced schedules form part of this Agreement.

8.3 The obligations of the parties contained herein have, where applicable, the status of representations, warranties and covenants by the respective obligated party.

8.4 This Agreement is to be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. All references in this Agreement to laws, by-laws, policies and rules, are to such laws, by-laws, policies and rules as amended, re-enacted or replaced.

8.5 Time is to be of the essence of this Agreement, including if any extension is permitted.

PART 9 Miscellaneous

9.1 All provisions of this Agreement are severable, and if any provision is declared invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement remain in full force and effect.

9.2 This Agreement is to ensure to the benefit of and bind the parties and their respective heirs, executors, administrators, successors and permitted assigns.

9.3 This Agreement contains the entire agreement between the parties hereto with respect to the subject matters herein.

9.4 No change or modification of this Agreement is valid unless it is in writing and signed by both parties.

Schedule "D"

Operating the Community Garden

The Garden Coordinator shall:

1. Administer and manage all aspects of the community garden.
2. Be responsible for all aspects of community garden maintenance and operation at no cost to the Town.
3. Operate and maintain the community garden in accordance with the provisions of this Agreement and all Provincial and Federal laws and regulations and all Municipal by-laws, policies and procedures.
4. Accept the premises from the Town "as is" and acknowledge that the Town makes no representations or warranties, express or implied, respecting the condition of the Premises, the existence or non-existence of contamination of the soil or other materials in or on the Premises, or the existence or non-existence of anything that could be detrimental to the environment or use of the Premises as a community garden.
5. Accept that the Premises do not have public washroom facilities.
6. Obtain written approval from the Town (which approval may include conditions) prior to installing any fencing, compost bins, rain barrels, or other structures.
7. Refrain from installing any signage whatsoever except with the prior written permission of the Town.
8. Ensure all communication for the media related to the community garden is reviewed by the Town's Communications Division prior to distribution.
9. Maintain in good condition any fencing, compost bins, raised and in ground garden plots, walkways and other structures approved by the Town, and keep the community garden reasonably clean and free from waste.
10. Be responsible for the physical security of the Premises and any other property belonging to the Garden Coordinator.
11. Ensure that:
 - (a) No chemical pesticides are used at the Premises;
 - (b) No fertilizer is to be stored at the Premises;
 - (c) No contaminants of any nature are discharged onto or into the Premises;
 - (d) No powered machinery is used, unless approved in advance in writing by the Town;
 - (e) No actions occur that cause a nuisance to the users of the park;
 - (f) No prohibited plants (such as illegal, noxious or aggressive plants) are grown or permitted at the Premises;
 - (g) No produce is sold, but rather is used personally or donated by the gardeners;
 - (h) No vehicles are to be operated or parked at the Premises, or within the property to access the Premises, with the exception of lands designated for the operation of a vehicle which is limited to the adjacent road, or unless approved in advance in writing by the Town;
 - (i) All Provincial and Federal laws and regulations and all Municipal by-laws, policies and procedures are complied with, including the *Accessibility for Ontarians with Disabilities Act, 2005*;

- (j) All digging or tilling is in accordance with the current utility locates;
 - (k) The current utility locates are available at the Community Garden;
 - (l) All loading and unloading of supplies and equipment is made through the points of access designated by the City; and
 - (m) All health and safety requirements are met at all times, including compliance with all applicable health and safety requirements, law and regulations.
12. Pay all utilities associated with the community garden, including water services.
 13. Pay for annual activation and winterization of water services, with work to be performed by Town Staff.
 14. Pay for an annual collection and disposal of compostable material generated by an end of season clean-up, with work to be performed by Town Staff.
 15. Respond to Town inquiries and/or concerns within 48 hours.
 16. Report to the Town as soon as possible after every accident/incident.
 17. Upon expiration or termination of this Agreement, return the land to its original condition, including the removal of any and all installations, unless otherwise agreed upon in writing with the Town; and deliver up possession of the Premises to the Town.

Schedule "E"
Protecting the Town

The Garden Coordinator shall:

1. Accept and assume responsibility for all risk in respect of loss, damage, injury, destruction or accident from whatsoever cause arising, related to the Premises, and, without restricting the generality of the foregoing, the Garden Coordinator acknowledges that it is not a volunteer of the Town and is not protected by any *Workplace Safety and Insurance Act* protection or any other insurance protection or coverage of the Town.
2. Not make any claim or institute any suit or action at law or in equity against the Town because of, or in any way related to, the condition of the Premises, including the presence of any contaminant or the occurrence of any activities there.
3. Indemnify and save harmless the Town, its members of council, officers, employees, volunteers, agents and contractors from and against all losses, liabilities, damages, expenses, costs, claims, suits or actions arising out of any breach, violations or non-performance on the part of the Garden Coordinator or any person for whom the Garden Coordinator is in law responsible, of any covenant or proviso of this Agreement. The Garden Coordinator shall, at the Town's election, either assume the Town's defence of any proceeding brought in respect of such loss or liability, or cooperate with the Town in the defence, including providing the Town with prompt notice of any possible loss or liability and providing the Town with all information and material relevant to the possible loss or liability. This section will survive the termination of this Agreement.
4. Acknowledge that the Town shall not be liable for costs or damages arising from errors or omissions in any of the information which is supplied to the Garden Coordinator by the Town.

Schedule "F"
Town's Obligations

The Town shall:

1. Arrange for annual collection and disposal of compostable material generated by an end of season clean-up.
2. Consistent with regular turf maintenance schedules, mow around and within the Premises where standard machinery can access the grass.
3. Seasonally turn on and shut off water supply at cost to the Garden Coordinator.
4. Permit quiet and primary, but not exclusive enjoyment of the Premises during the term of this Agreement.
5. Pay for Event Liability Insurance coverage, taken out with an insurer licensed to transact insurance business in Ontario.