

**By-Law 2417**

**The Corporation of the Town of Essex**

**By-Law Number 2417**

**Being a By-Law to authorize the execution of a Lease Agreement between the Corporation of the Town of Essex and Never Rest Farms Ltd. for leasing vacant land for the purposes of farming, located at Lots 31 to 33 North Malden Road, Essex, Ontario**

**WHEREAS** the Corporation of the Town of Essex ("**Town**") is the owner of the property located at Lots 31 to 33 North Malden Road, Essex, Ontario (the "**Property**"), which vacant land is available for lease for the purpose of farming.

**AND WHEREAS** Never Rest Farms Ltd. is desirous of leasing space on the Property for the purpose of farming (the "**Premises**").

**AND WHEREAS** the Town is desirous of entering into a Lease Agreement with Never Rest Farms Ltd. for the Premises.

**NOW THEREFORE** the Council of the Town hereby enacts as follows:

- **That** the Mayor and Clerk are hereby authorized to execute a Lease Agreement between the Town and Never Rest Farms Ltd. in the form attached hereto as Schedule "A" for the use of the Premises as designated in Appendix "A" to such Lease Agreement; and
- **That** this By-Law shall come into force and take effect upon the final passing hereof.

Read a first, a second, and a third time and finally passed on February 3, 2025.

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Mayor

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Clerk

## Schedule "A" to By-Law Number 2417

**THIS LEASE AGREEMENT** made this 3<sup>rd</sup> day of February, 2025

**BETWEEN:**

**NEVER REST FARMS LTD.**

(the "Lessee")

**AND**

**THE CORPORATION OF THE TOWN OF ESSEX**

(the "Lessor")

**WITNESSETH:**

**WHEREAS** the *Municipal Act, 2001* (the "**Act**"), provides that the Lessor may, for its own purposes, exercise its powers under the culture, park, recreation, and heritage sphere of jurisdiction in the municipality of the Lessor;

**AND WHEREAS**, Section 11 of the Act provides that the Lessor may pass By-Laws respecting matters relating to culture, parks, recreation, and heritage;

**AND WHEREAS** the Lessor is the owner and operator of the land located at Lots 31 to 33 North Malden Road, Essex, Ontario, (the "**Property**");

**AND WHEREAS**, that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the said Lessee to be paid observed and performed, the said Lessor by these presents doth demise and lease unto the said Lessee all that messuage and tenement located on the Property and consisting of approximately 40 acres, and being composed of the area outlined on Appendix "A" attached hereto (hereinafter called the "**Premises**"), upon the following terms and conditions:

**TO HAVE AND TO HOLD** the Premises for a three hundred and thirty one (331) day term (the "**initial term**") subject to options for a further four terms of one (1) year each as herein described below, to be computed from the 3<sup>rd</sup> day of February, 2025, and ending on the 31<sup>st</sup> day of December, 2025. The initial term and any extension thereof shall be referred to in this Lease Agreement as the "**Term**".

**YIELDING AND PAYING THEREFORE RENTAL AS FOLLOWS:**

- Rent for the first three hundred and thirty-one (331) days of the Term shall be the sum of three thousand and two-hundred (\$3,200.00) dollars plus applicable HST, or such tax as may be substituted therefor or imposed on rents.
- Rent for each additional year of the Term (as applicable) shall be the sum of three thousand and two-hundred (\$3,200.00) dollars plus applicable HST, or such tax as may be substituted therefor or imposed on rents
- Rent shall be paid annually by way of one (1) annual cheque, or via an alternate method approved in writing by the Lessor, made payable to the Lessor and remitted prior to January 1 of each year of the Term, with rent for the initial term being paid prior to entering into this Lease Agreement.
- During the Term, prior to planting any crop the Lessee must receive permission in writing from the Director, Community Services, confirming that planting is able to proceed in the desired area of the Premises.
- During the Term, the Lessor shall at its sole discretion and at any time be entitled through an amendment to this Lease Agreement provided in writing by the Lessor to the Lessee to

## Schedule "A" to By-Law Number 2417

vary the size of the Premises or terminate the Lease entirely (each a "**Landlord Lease Amendment**").

- If a Landlord Lease Amendment is made:
  - At the beginning of a year of the Term and leads to a reduction in the size of the Premises, the annual lease rate will be reduced by eighty (\$80.00) dollars per acre (all or the part, as applicable) of land subtracted from the size of the Premises immediately prior to such Landlord Lease Amendment; or
  - During a year of the Term and leads to a reduction in the size of the Premises, the annual lease rate will be reduced by a pro-rated amount of eighty (\$80.00) dollars per acre (all or the part, as applicable) of land subtracted from the size of the Premises immediately prior to such Landlord Lease Amendment (each, a "**Lease Reduction Amount**").
- If a Lease Reduction Amount is determined at least ninety (90) days prior to any renewal of this Lease Agreement, such Lease Reduction Amount may be reflected in a reduction to rent payable, otherwise such Lease Reduction Amount shall be paid to the Lessee within fifteen (15) business days of the Landlord Lease Amendment to which the Lease Reduction Amount applies.
- It is possible that a Landlord Lease Amendment or other amendment to or termination of this Lease Agreement is made prior to harvesting of a permitted planting, which will result in lost crop (the "**Crop Loss**").
- In the event that a Landlord Lease Amendment leads to a Crop Loss, in addition to the Lease Reduction Amount, the Lessor shall compensate the Lessee for the value of the Crop Loss the sum of four hundred (\$400.00) dollars per acre (all or the part, as applicable) of the reduction in the size of the Premises as liquidated damages (the "**Liquidated Damages Amount**") and not as a penalty, but in no event shall the total of all Lease Reduction Amounts and Liquidated Damages Amounts payable under this Lease Agreement be more than sixteen thousand (\$16,000) dollars. The parties to this Lease Agreement acknowledge that the precise amount of actual damages would be extremely difficult to ascertain and that the foregoing sum represents a reasonable estimate of such actual damages.
- The Lessee will comply with all applicable Federal, Provincial, Municipal, and local health unit (Windsor-Essex Health Unit) rules, laws, regulations, and provisions.
- The Lessee will immediately notify in writing to the Director, Community Services of the Lessor of any problems, issues, concerns, repairs, or damage to the Premises, including but not limited to Lessor equipment, Lessor leased equipment or Lessor mechanical fixtures, Lessor utility services or Lessor structures requiring immediate attention.
- If any payments required to be made by the Lessee hereunder are not paid when due, then interest at the rate of one and a quarter (1.25%) percent per month from the date when such overdue amounts were due to the date when such overdue amounts are paid shall accrue and be due and payable as additional rent.

### **The Lessee** covenants with the Lessor:

- To pay the rent.
- To pay the cost and expenses incurred in the operating, maintaining and repairing of the premises including, but not limited to any insurance costs required by the Lessee and assigned to the premises during the Term.
- To use the Premises for the purpose only of conducting crop farming (the "**Business**").

## Schedule "A" to By-Law Number 2417

- To maintain all appropriate licences and registration and if either is revoked or not properly renewed, the Lessor shall be entitled to terminate immediately this Lease Agreement and not be subject to any liabilities nor shall the Lessee be entitled to any payment, penalty, compensation of diminution or abatement of rent.
- Not to carry on upon the Premises any activities that may be deemed a nuisance or unlawful or by which the insurance on the premises will be increased, and further not to carry on any other business or activities other than the normal operations of the Lessee without the consent of the Lessor, such consent not to be arbitrarily or unreasonably withheld.
- To receive permission in writing from Director, Community Services prior to any planting of crops to ensure planting can take place in the specified area(s), and identify which areas of the Premises are permitted for planting during that crop season.
- To receive permission in writing from the Director, Community Services, prior to spraying any chemicals, pesticides or herbicides on the Premises.
- To use diligence to prevent noxious weeds from going to seed on the Premises.
- To not access the Premises outside of the agreed upon hours, such agreed upon hours to be determined by the Lessor in its sole discretion and provided in writing by the Lessor to the Lessee from time to time. The conduct of Business by the Lessee on the Premises is not permitted if children are playing on the fields and shall be done so when recreational activities are inactive.
- The Lessee shall be responsible for providing its own equipment and shall be responsible for any and all fees or charges associated with the same.
- To control soil erosion as completely as practicable, keep in good repair all terraces, open ditches, inlets and outlets of tile drains, preserve all established water courses or ditches, including grassed waterways, and refrain from any operation or practice that will injure such structures.
- To maintain the Premises in good condition and free from litter.
- That the Lessee has inspected the premises and conducted such examinations and tests as it deems desirable. The Lessee acknowledges that the Lessor does not warrant or represent the condition of the Premises to the Lessee, and the Lessee accepts the Premises in its present condition.
- That, except as herein otherwise specifically provided, the Lessee assumes the entire responsibility for the condition, operation, maintenance, and management of the Premises and Lessor shall have no responsibility whatsoever for such or for damage to the Lessee's property in and upon the Premises under any circumstances whatsoever.
- That if, after reasonable notice given by the Lessor to the Lessee, the Lessee refuses or neglects to repair properly and promptly as required hereunder and to the reasonable satisfaction of the Lessor, the Lessor may make such repairs without liability to the Lessee for any loss or damage that may accrue to the Lessee's property or to the Lessee's business by reason thereof, and upon completion thereof the Lessee shall pay as additional rent the Lessor's costs for making such repairs upon presentation of a bill therefore.
- That the Lessee shall throughout the Term, at its own expense, keep in force for the benefit of the Lessor and Lessee, comprehensive general liability insurance in respect of injury to or death of one or more persons or property damage with limits of not less than two million (\$2,000,000) dollars per occurrence covering the Premises described herein. The Corporation of the Town of Essex (33 Talbot Street South, Essex, ON N8M 1A8) **shall be named as an additional insured in the policy of insurance and the policy shall contain**

## Schedule "A" to By-Law Number 2417

**a cross liability and separation clause.** Such policy of insurance shall not be changed, cancelled, or allowed to lapse without providing the Lessor with thirty (30) days' notice in writing. As a condition of the Lessor entering into this Lease Agreement, Lessee will provide a Certificate of Insurance for such comprehensive liability insurance to the Lessor upon entering into this Lease Agreement and at the beginning of each year during the Term.

- That the Lessee shall throughout the Term, at its own expense, keep in force insurance against loss or damage by fire on any equipment, inventory and supplies owned by Lessee.
- To notify immediately the Lessor in case of fire or accidents, or other events on the Premises for which the Lessor or Lessee may incur liability.
- That the Lessee will indemnify Lessor and save Lessor harmless from and against any and all claims, actions, damages, liability and expense (including legal fees on a full indemnity basis) in connection with or arising from or out of any occurrence with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon or at the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, or Lessee's agents, contractors, employees, servants, licensees or invitees. In the event that the Lessee breaches these covenants in any manner, the Lessor shall have immediate right to terminate this Agreement and to recover from the Lessee all damages incurred.
- That it shall not make any alterations, additions, or improvements to the premises without first submitting the plans and specifications (including materials to be used) thereof to the Lessor and without first obtaining approval in writing of the Lessor, such approval may not be unreasonably withheld. Lessee shall further covenant to be responsible for any applicable costs, expenses, fees and all applicable inspections and the costs thereof, including but not limited to, those of the Lessor.
- To not assign or sublet without the consent of the Lessor in its sole discretion. The Lessee shall pay the Lessor's reasonable expenses incurred thereby.

To use the Premises to conduct the Business and for no other purpose whatsoever including but not limited to carrying out any other business or activities which may be illegal or in violation of any zoning or licensing By-Law or breach any restrictive covenant applicable to the Property. **The Lessor** covenants with the Lessee:

- To provide Lessee with quiet enjoyment of the Premises.
- To use reasonable efforts not to unduly disturb the Lessee in the conduct of their Business.

**Provided** that, where the Premises become vacant and so remain for a period of thirty (30) days, it shall be presumed that Lessee has abandoned the premises, and the Lessor may re-enter and take immediate possession of the Premises.

**Proviso** for re-entry by the Lessor on non-payment of rent or non-performance of covenants, provided that such re-entry shall, at all times, be in accordance with the provisions of the *Commercial Tenancies Act*.

**Provided** Lessee shall have and is hereby granted, four (4) options to extend the term of this Lease for an additional one (1) year upon providing such notice in writing to the Lessor at least ninety (90) days prior to the end of each term, with such renewal to begin upon the expiration of the previous term of this Lease, conditional on Lessee not being in default under this Lease Agreement and mutual agreement between the Lessor and Lessee at the time of each renewal.

**Provided** that, if at the end of the Term, whether by effluxion of time or any other reason, the Lessor permits Lessee to remain in possession of the premises and accepts rent in respect

## Schedule "A" to By-Law Number 2417

thereto, a tenancy from year to year shall not be created by implication of law but the Lessee shall be deemed to be a monthly Lessee only subject in all respects to the provisions of this Lease Agreement.

**Provided** that the Lessor shall have the right to cancel this Lease Agreement at any time during the Term without liability to any payment, penalty, compensation of diminution or abatement of rent for reason of any default by Lessee under this lease such default being a failure to pay rent when due or a failure to perform its covenants or any other of its obligations under this Lease Agreement and such default has not been remedied within five (5) days written notice of such default.

**Provided** further that the Lessor shall have the right to cancel this Lease Agreement at any time during the term of the Agreement as a result of declaring the premises surplus or determining another use for the premises, upon providing notice in writing to Lessee of at least ninety (90) days and paying any applicable Liquidated Damages Amount.

**It is hereby** declared and agreed that the expressions "Lessor" and "Lessee" wherever used in this Lease Agreement, shall, when the context allows, include, be binding on and enure to the benefit of not only the parties hereto, but also their respective heirs, executors, administrators, and assigns.

**And** it is further agreed between the parties hereto that wherever the singular and masculine are used throughout this Lease they shall be construed as if the plural or feminine had been used, where the context or the party or parties hereto so require, and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered had been made.

**Lessor and Lessee** acknowledge and agree that each has joined in and contributed to the drafting of this Lease Agreement and as a result there shall be no presumption in construing the provisions of this Lease Agreement favoring or burdening either Lessor or Lessee based upon draftsmanship or similar rule of construction. Lessor and Lessee further acknowledge and agree that each have had the opportunity to consult and obtain independent legal and professional advice in conjunction with this lease and its obligations thereto and have either done so or waived their right to such.

**And** it is further agreed that this Lease is to be governed by and construed according to the law of the Province of Ontario and the parties hereto attorn to the jurisdiction of the Courts of Ontario.

**This Lease Agreement** may be executed in any number of separate counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same document. Delivery of an executed counterpart of this Lease Agreement with a facsimile signature shall have the same binding effect as delivery of an executed original.

**And** the following addresses are provided for the Lessor and Lessee for purposes of providing notice:

**Lessor:** The Corporation of the Town of Essex  
33 Talbot Street South, Essex, Ontario, N8M 1A8  
Telephone: 519-776-7336

**Lessee:** Never Rest Farms Ltd.  
1989 Lakeshore Road 219, RR2, Woodslee, Ontario N0R 1V0  
Telephone: 519-791-4772  
Email: [lea.farms@hotmail.com](mailto:lea.farms@hotmail.com)

**Schedule "A" to By-Law Number 2417**

**IN WITNESS WHEREOF** the parties hereto have duly executed this Lease Agreement on the date first set out above.

**Never Rest Farms LTD.**

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John Joseph Sauve, President

I have the power to bind the Corporation

**THE CORPORATION OF THE TOWN OF ESSEX**

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Sherry Bondy, Mayor

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Joseph Malandrucolo, Clerk

We have authority to bind the Corporation

Appendix 'A' – Leased Land

