

By-Law 2321

The Corporation of the Town of Essex

By-Law Number 2321

Being a by-law to authorize the execution of a Lease Agreement between the Corporation of the Town of Essex and Heritage Essex Incorporated for the Operation of a historical tourist information and event rental centre located in the Essex Train Station, 87 Station Street, Essex, Ontario

**WHEREAS** the Corporation of the Town of Essex ("**Town**") is the owner of property and the building located at the Essex Train Station at 87 Station Street, Essex, Ontario (the "**Premises**"), which building space is available for lease for the operation of a historical tourist information and event rental centre.

**AND WHEREAS** Heritage Essex Incorporated ("**Heritage**") is desirous of leasing the space in the Premises for a historical tourist information and event rental centre.

**AND WHEREAS** the Town is desirous of entering into a Lease Agreement with Heritage 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 Heritage in the form attached hereto as Schedule "A" for the use of the Premises owned by the Town of Essex, located at 87 Station Street, Essex, Ontario, pursuant to such Lease Agreement; and
- **That** this by-law shall come into force and take effect upon the final passing thereof.

Read a first, a second, and a third time and finally passed on April 15, 2024.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

**Schedule "A" to By-Law Number 2321**

**THIS LEASE AGREEMENT** made this 15<sup>th</sup> day of April, 2024.

**BETWEEN:**

**HERITAGE ESSEX INCORPORATED**

(the "**Lessee**")

**AND**

**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 building located at 87 Station Street, Essex, Ontario (the "**Building**").

**AND WHEREAS** the Building is situate on land owned by the Lessor and land owned by the Essex Region Conservation Authority ("**ERCA**").

**AND WHEREAS** the Lessor plans to enter into a lease agreement with ERCA regarding the ERCA owned land on which the Building is situate (the "**ERCA Land Lease**").

**AND WHEREAS** the Lessor has caused the Building to be restored with the intention that it be operated as a cultural facility for the benefit of the residents of the Town of Essex (the "**Purpose**").

**AND WHEREAS** the Lessee has agreed to operate said building as a cultural facility tourist information and event rental centre on behalf of the Lessor.

**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 in the Building and consisting of approximately 1294 sq. ft. (hereinafter called the "**premises**"), upon the following terms and conditions:

**TO HAVE AND TO HOLD** the premises for a five (5) year term (the "**initial term**") subject *to an option for a further term of five (5) years as herein described below*, to be computed from the first day of 15<sup>th</sup> day of April, 2024, and ending on the 14<sup>th</sup> day of April, 2029, and will include an annual Consumer Price Index as published by The Bank of Canada adjustment to be made to the previous year's rent throughout the *initial term and any extension thereof*. The initial term *and any extension thereof* shall be referred to in this Lease Agreement as the "**Term**".

**NOW THEREFORE, the parties agree as follows:**

**The Lessee** covenants with the Lessor:

## **Schedule "A" to By-Law Number 2321**

- Other than those operating costs specifically assumed in this Lease Agreement by the Lessor, the Lessee will pay at its sole cost and expense all operating costs including but not limited to staffing, advertising, supplies and janitorial services.
- The Lessee, through the Manager, Parks and Facilities, will submit a request for annual budgetary consideration of Council for any capital repairs or preventative maintenance to the Building deemed necessary or desirable.
- The Lessee hereby agrees that the general nature of events intended to take place at the premises will be:
  - a. Displays and sales of art, crafts, musical or theatrical shows, or public events open to the general public;
  - b. Events or displays to educate the public on the heritage of the Essex area;
  - c. Provisions of information to tourists and residents;
  - d. Rental of premises to non-profit and for-profit organizations; and
  - e. Any other event, activity or display which is in keeping with the Purpose and deemed to be in the public interest.

The Lessee shall be solely responsible for all decisions regarding the scheduling of events, charging of fees and general operating policies.

The Lessee will make a reasonable effort to recover as large a portion of operating costs as possible through the charging of user fees, scheduling of events, and the sale of appropriate goods.

Within twenty four (24) hours of a request therefor, the Lessee will provide to the Lessor a copy of its annual audited financial statements during each year of the term of this agreement.

The Lessee will maintain separate accounts in such a manner that a separate income statement can be produced annually for the Lessee's operations at the premises.

- The Lessee will perform and observe the covenants on its part contained in the ERCA Land Lease with respect to the premises, so far as they are not required by this Lease Agreement to be performed and observed by the Lessee.
- The Lessee assumes and agrees to be bound by and to keep and perform each and every one of the covenants, agreements and obligations with respect to the premises to be performed by the Lessor in the ERCA Land Lease, and covenants to save harmless and keep the Lessor indemnified from and against all proceedings, damages, costs, claims and expenses arising from or incurred by reason of the Lessee's failure to perform promptly any of such covenants, agreements and obligations.
- The Lessee will comply with all applicable Federal, Provincial, Municipal, and local health unit (Windsor-Essex Health Unit) safety and licensing rules, laws, regulations, and provisions, including the maintenance and implementation of a Fire Safety Plan to the satisfaction of the applicable authority.
- The Lessee will immediately notify in writing to the Manager, Parks and Facilities 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.
- The Lessee will follow the Town of Essex Municipal Alcohol Policy for any event at the premises having alcohol.

### **Schedule "A" to By-Law Number 2321**

- The Lessee will ensure that absolutely no tobacco or cannabis products of any nature, brand, or type will be sold, provided, or used on the premises or any municipal facility of the Lessor at any time throughout the term of this Lease Agreement.
- The Lessee to provide all cleaning supplies to maintain cleanliness and sanitary conditions of the premises to the satisfaction of the Lessor, in its sole discretion, including but not limited to removal of garbage/recycling.
- To pay the cost and expenses incurred in the operating, replacing, maintaining and repairing of the premises, and the equipment located therein, save and except structural repair, which shall be the responsibility of the Lessor, including, but not limited to any individually assessed utilities, telephone, cable, wi-fi, gas, landscaping, garbage removal, and insurance required by the Lessee and assigned to the premises during the Term and further, the Lessee acknowledges that Lessor shall not be liable for any interruption or failure in the supply of any such utilities or services to the premises.
- 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 maintain the premises including the exterior areas of the Building, including all public areas, in good condition and free from litter. If any garbage/materials are left on site that do not belong to the Lessee, Lessee shall contact the Manager, Parks and Facilities of the Lessor, to report that cleanup may be necessary.
- That it 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, 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 merchandise, fixtures or other 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 it 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 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.
- That it shall throughout the Term, at its own expense, keep in force insurance against loss or damage by fire on any equipment, furniture, fixtures, artifacts, artwork either owned, on

## Schedule "A" to By-Law Number 2321

loan or on consignment, all inventory of goods for resale and supplies owned by Lessee and maintained on site.

- That it 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 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.
- 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 permit the Lessor and its agents access to the premises and other areas of the Building that can only be accessed through the premises, upon providing reasonable notice to Lessee.
- That Lessee is a duly incorporated not-for profit corporation whose not-for profit and corporate status is and shall remain in good standing for the duration of the Term.

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

- To provide Lessee with quiet enjoyment of the premises.
- In recognition by the Lessor and Lessee that it will not be possible for the Lessee to recover the full cost of operating the Building through fees and sales, the Lessor will pay annually to the Lessee the amount of Twenty Five Thousand (\$25,000.00) Dollars to be used solely to offset such cost of operating the Building, to be paid in two equal installments of Twelve Thousand and Five Hundred (\$12,500.00) Dollars on the fifteenth (15<sup>th</sup>) day of January and the fifteenth (15<sup>th</sup>) day June each year during the Term. Heritage Essex may request additional funding by applying through the Community Partnership Grant, which will be reviewed by the Finance Committee and, if approved by the Finance Committee, it will be passed to all of Council for consideration.
- During the Term, to make any required structural repairs to the roof, exterior walls, foundations, drains and sewers of the premises caused by structural defect or weakness unless caused by the act or neglect of Lessee, its agents, servants, invitees, or those for whom Lessee is at law responsible in which event such repair shall be made by the Lessor but at the sole expense and cost of Lessee.

**Provided** that Lessee is not in breach of the terms of this Lease Agreement, Lessee may remove its fixtures, if such removal may be, and is done without injury to the premises.

**Provided** that in the event of damage to the premises by fire, lightning or tempest, rent shall cease until the premises are rebuilt.

**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** 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 2321**

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 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.

**Lessor and Lessee** acknowledge and agree that nothing in this Agreement shall be understood to create a business relationship between the Lessor and the Lessee. As such, the Lessee is responsible for any deficit resulting from their operations, including those at the Building.

**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.

**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:** Heritage Essex Incorporated  
87 Station Street  
Essex, ON N8M 2S6  
Telephone: 519-776-9800  
Email: heritageessex@gmail.com

**Schedule “A” to By-Law Number 2321**

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

**HERITAGE ESSEX INCORPORATED**

\_\_\_\_\_  
Tony Malkowski, President

\_\_\_\_\_  
Morley Bowman, Vice President

We have authority to bind the Corporation

**THE CORPORATION OF THE TOWN OF ESSEX**

\_\_\_\_\_  
Sherry Bondy, Mayor

\_\_\_\_\_  
Joseph Malandruccolo, Clerk

We have authority to bind the Corporation

Appendix ‘A’ – The Essex Train Station

