

# LEASE AGREEMENT

**THIS AGREEMENT** made on this 1st day of January, 2024.

**BETWEEN:**

**THE CORPORATION OF THE TOWNSHIP OF CHAMPLAIN**

(Hereinafter called the “**Municipality**” )

OF THE FIRST PART;

- and -

**THE HIGGINSON TOWER COMMITTEE**

(Hereinafter called the “**Committee**”)

OF THE SECOND PART;

**WHEREAS** the Municipality is the owner of certain lands and premises known as 5843 Church Street, Vankleek Hill and designated as Part 1 of Reference Plan 46R-6750, being part of Lot 65, on Plan 35, Township of Champlain, Prescott County, thereafter the entire property is called the “**Site**”;

**AND WHEREAS** the Municipality has purchased the Site so as to portray it as a historic property and to allow its use for community purposes;

**AND WHEREAS** the Municipality wishes to lease the Site to the Committee;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the parties hereto agree as follows:

## **1. Definitions in and for the purposes of this Agreement**

1.1. “Costs of Capital Nature” means costs involving:

- a) structural repairs to the fabric of the building or buildings and without limiting the generality of the foregoing includes major repairs to the roof, floors, eavestroughs, walls, doors, windows, electric wiring, plumbing, furnace and water pipes, fence, exterior painting, interior redecorating;
- b) major landscaping and
- c) site services such as water, sanitary, storm water management or electrical cables;

1.2. “Costs of Non-capital Nature” means all regular maintenance costs and minor repairs.

## **2. Grant of Lease**

2.1. The Municipality agrees to allow the Committee to occupy the Site for a term of five (5) years beginning January 1st, 2024 and ending December 31st, 2028.

2.2. The Committee shall pay the Municipality a rental fee of \$2.50 per annum on the 1st day of January, 2024.

2.3. By September 30th, 2028, the parties will decide whether to renew this Agreement. The terms and conditions of any new agreement will be negotiated at that time and will reflect the purposes of historical integrity and use for community purposes and be set out in a written agreement signed by both parties.

## **3. Operation and Use of Site**

3.1. The Committee shall occupy the Site for the purpose of providing public interpretation in accordance with the objectives of The Higginson Tower Committee as stated in its Constitution, promoting public awareness as to the history of the Higginson Tower and of the region and

promoting tourism and other complementary activities as allowed by the Fire Marshall and Municipal Building Inspector.

3.2. The Committee may, during the term of this Agreement, make the Site available for use by community, school and other groups for individual events related to programs set out by the Committee.

3.3. The Committee shall, at its own expense,

- a) be responsible for maintaining and operating the Site for the purposes set out above;
- b) within sixty (60) days of execution of this Agreement and thereafter on a yearly basis submit to the Municipality, in writing, the Committee's proposed program and activity plans for the records of the Municipality, including planned non-capital maintenance and repairs;

#### **4. Funding**

4.1. The Committee shall bear all Costs of Non-Capital Nature and all other related costs associated with the operation of the Site including sections 7.2 to 7.9 and 10.1 b).

4.2. The Municipality shall bear all Costs of Capital Nature of the Site. Should the Committee want to undertake major Capital repairs, the Committee shall obtain the Municipality's approval prior to undertaking any such repairs.

#### **5. Research and Publicity**

5.1. The Municipality shall make all research reports and background material available to the Committee for use in the preparation of brochures, the interpretation and capital improvements of the Site. The Committee shall have the right to approve any material printed by the Municipality for distribution to the public which describes the Site or any aspect of the Site and its history.

5.2. All publicity and promotional material produced for widespread distribution regarding the Site (i.e. fund-raising materials, news releases, postcards, flyers, mugs, etc.) and communicated in any verbal publicity and promotional efforts (i.e. radio, television) will acknowledge the Municipality's role in the ownership of the Site and will include the Municipality's logo.

5.3. All promotional merchandise and materials bearing the name or images associated with the Site must be approved in advance, in writing by the Committee and feature the Committee's logo.

#### **6. Repairs and Maintenance**

6.1. The Committee shall be responsible for all repairs to the Site which involves costs of a non-capital or maintenance nature.

#### **7. Insurance**

7.1. The Municipality shall maintain the types and limits of insurance that it deems appropriate and the Committee shall not be entitled to receive any benefit from the Municipality's insurance.

### **All Risks Property Insurance - Committee**

7.2. The Committee shall maintain an all risks (including sewer damage) property insurance in an amount equal to the full replacement cost of property of every description and kind owned by the Committee or for which the Committee is legally responsible, and which is located on or about the Demised Premises, including, without limitation, anything in the nature of a leasehold improvement;

### **7.3. Commercial General Liability Insurance**

The Committee shall obtain and keep in force during the term of the Lease, Commercial General Liability Insurance satisfactory to the Municipality and underwritten by an insurer licensed to conduct business in the Province of Ontario. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- a) A limit of liability of not less than \$5,000,000 / occurrence with an aggregate of not less than \$10,000,000
- b) Add the Municipality as an additional insured with respect to the operations of the Named Insured
- c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- d) Non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage (SEF 96)
- e) Products and completed operations coverage
- f) Broad Form Property Damage
- g) Contractual Liability
- h) Owners and Contractors Protective
- i) Hostile fire
- j) The policy shall provide 30 days prior notice of cancellation

### **7.4. Tenant's Legal Liability Insurance**

The Committee shall maintain a tenant's legal liability insurance for the actual cash value of the building and structures on the demised premises, including loss of use thereof.

### **7.5. Boiler and Machinery Insurance**

The Committee shall maintain a comprehensive Boiler and Machinery insurance on mechanical equipment in the premises controlled by the Committee. The Municipality is to be named as an additional insured if the objects insured qualify as tenant's improvements.

7.6. Each policy will provide that the Committee's insurer will not have any right of subrogation against the Municipality on account of any loss or damage covered by such insurance or on account of payments made to discharge claims against or liabilities of the Committee covered by such insurance. The cost or premium for each and every such policy will be paid by the Committee.

### **7.7. Primary Coverage**

The Committee's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the Municipality.

### **7.8. Certificate of Insurance**

7.9. The Committee shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **8. Indemnification**

8.1. The Committee shall defend, indemnify and save harmless the Municipality, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Supplier, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or

in any way related to the delivery or performance of this Agreement. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Committee in accordance with this Agreement and shall survive this Agreement.

- 8.2. The Committee agrees to defend, indemnify and save harmless the Municipality from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to the Committee's status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the Supplier in accordance with this Agreement and shall survive this Agreement.

#### **9. Realty Taxes [Municipal or Other Related Taxes]**

Although the Site is exempt from current realty taxes while owned by the Municipality, the Committee acknowledges that circumstances may change whereby realty taxes or grants in lieu of realty taxes may be levied against the Site. Should this occur, the Municipality shall continue its full responsibility for any such realty taxes or grants in lieu of realty taxes which relate to its ownership of the Site.

#### **10. Committee's Covenants**

10.1. The Committee hereby covenants with the Municipality as follows:

- a) That in keeping with the historical and architectural character of the Site, the Committee shall respect the Site and do nothing which in the opinion of the Municipality would endanger, damage or destroy the fabric, fixtures, architectural design and historical features of the Site;
- b) To pay as and when same become due and payable, all charges for electricity, gas, heating, telephone and other rates for utilities and services in connection with the use and occupancy of the Site, with the exception of Water and Sewer which shall be paid by the Municipality;
- c) At the termination of this Agreement, all alterations, additions and improvements which were put in at the expense of the Committee shall be and become the property of the Municipality and shall remain upon the Site and be surrendered with the Site as part thereof;
- d) To allow the Municipality, its servants, workmen and agents to enter into and upon the Site or any part thereof at any reasonable time and upon 24 hours notice to view the state of repair of the Site;
- e) Not to do or permit to be done anything which may void or render voidable the policy or policies of insurance covering the Site and/or the Site, or which may cause the premiums in respect of such policy or policies to be increased as a result of a breach of this covenant;
- f) At its own expense, to keep the Site in a clean and sanitary condition, in accordance with the laws, directions, rules and regulations of any municipal, provincial or federal governmental authority or other agencies having jurisdiction over same;
- g) Not to use or permit any part of the Site to be used in such a manner as to cause or be deemed a nuisance or be in conflict with the stated historical goals of the Committee;
- h) To promptly advise the Municipality in writing of any damage to the Site or any accident or other defect in the water pipes, gas pipes, steam pipes, drainage pipes, plumbing works, heating apparatus, water heater, electric lights or other wires, upon same becoming known to the Committee;
- i) To promptly advise the Municipality in writing of anything on the Site of a capital nature which in the opinion of the Committee requires repair;
- j) Not to keep or permit to be kept in the Site any inflammable oils or other dangerous or explosive materials which are not normally kept in such a Site;
- k) To deliver and yield up to the Municipality at the termination of this Agreement the Site, fixtures and fittings and the Committee may remove its furniture and belongings;
- l) That because of the special nature of the Site, the Committee shall not part with the possession of the Site whatsoever;
- m) All artifacts found within or on the Site shall become the property of the Municipality. No archaeological deposits shall be excavated without the approval of the provincial authority.

- n) The Committee shall not assign, mortgage or encumber this Lease or sublet or otherwise part with or share possession of the Site or any part thereof without the prior written consent of the Municipality.

## **11. Termination**

- 11.1. If the Committee should become insolvent or be adjudicated bankrupt, or, wound-up or dissolved, or should either party be in default in the observance or performance of any covenant on its part herein contained and it fails to remedy the default within thirty (30) days of receiving notice in writing specifying the nature of the default, either party may terminate this Agreement by delivering to the other notice in writing to that effect and, upon such delivery, this Agreement shall terminate, but without prejudice to any rights of either party which had accrued hereunder prior to such termination.
- 11.2. Should the Site be catastrophically damaged or destroyed by fire, flood, lightning, tempest, riot, civil commotion, insurrection, acts of God or the King's enemies, the Municipality may, at its sole discretion and within sixty (60) days from the happening of such damage, terminate this Agreement by delivering to the Committee notice in writing to that effect.
- 11.3. Notwithstanding the above, either party can give a written sixty (60) days' notice of their intent to terminate the lease.

## **12. Non-Agent**

- 12.1. Nothing contained herein or done hereunder shall be construed as constituting either party the agent of the other party in any sense of the work whatsoever. The Committee, however, may refer to itself as the Site's licensed operator.

## **13. Notices and Approvals**

- 13.1. Notices (including requests for approvals) under this Agreement shall be in writing and sent by personal delivery, electronic mail ("e-mail") or by ordinary prepaid mail;
- 13.2. Notices by mail shall be deemed to have been received on the fourth business day after the date of mailing;
- 13.3. Notices by personal delivery or by e-mail shall be deemed to have been received at the time of delivery or transmission;
- 13.4. In the event of interruption in postal service, notice shall be given by personal delivery or by e-mail;
- 13.5. The address of the parties for notice are as follows:

Champlain Township  
Attention: Alison Collard, Clerk  
948 Pleasant Corner Road East  
Vankleek Hill, ON K0B 1R0  
E-mail: alison.collard@champlain.ca  
Higginson Tower Committee  
Attention: Louise Sproule, Co-Chair  
102 Higginson St.,  
P.O. Box  
Vankleek Hill, ON K0B 1R0  
E-mail: louise@thereview.ca

The parties may by notice in writing designate a different address or e-mail address at any time.

## **14. Waiver**

- 14.1. The waiver of strict compliance or performance of any term or condition of this Agreement or any breach on the part of either party shall not occur unless the waiver is in writing and signed by the aggrieved party. No such waiver shall be held to be or be deemed to be a waiver of any subsequent failure to comply with or perform the same or any breach hereof.

## **15. Interpretation**

- 15.1. The validity and interpretation of this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

**16. Amendments, Alterations and Additions**

16.1.If, at any time during the continuance of this Agreement, the parties deem it necessary or expedient to make any amendment, alteration or addition to this Agreement, they may do so by means of a written agreement between them which shall, upon execution, be supplemental hereto and form a part hereof.

**17. Entirety**

17.1.This written instrument embodies the entire agreement of the parties with regard to the matters dealt with herein and no understanding or agreements, collateral, verbal or otherwise, exists between the parties except as herein expressly set out.

**18. Enurement**

18.1.This Agreement shall enure to the benefit of and be binding upon the parties hereto and upon their respective successors and permitted assigns. The Committee will not assign this Agreement without the express written consent of the Municipality.

**IN WITNESS WHEREOFF** the parties hereto have hereunto set their hands and seals.

**SIGNED, SEALED AND DELIVERED**

**THE CORPORATION OF THE TOWNSHIP OF CHAMPLAIN**

In the presence of

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\_\_\_\_\_  
NORMAND RIOPEL, MAYOR

\_\_\_\_\_  
ALISON COLLARD, CLERK

**THE HIGGINGSON TOWER COMMITTEE**

In the presence of

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\_\_\_\_\_  
LOUISE SPROULE, CO-CHAIR

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ANDRÉ MARTEL, CO-CHAIR