

## **LIGHTHOUSE LEASE AGREEMENT**

This AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BETWEEN:

### **THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE**

hereinafter called the "Municipality"  
of the First Part,

-and-

### **KINCARDINE YACHT CLUB**

Hereinafter called the "tenant"  
Of the Second Part.

## **THE BASIS OF THIS AGREEMENT**

It is understood that:

1. We, as landlord, own the land and building;
2. You, as tenant, wish to rent the building and we are willing to rent it to you on the terms in this agreement.

## **DEFINITIONS**

### **Meaning of Certain Terms**

1. In this agreement, unless the context implies otherwise, the following words have these meanings:
  - (a) "additional costs" are the items referred to in paragraph 6;
  - (b) "building" is the building located on the land and every addition made to it as set out in paragraph 3;
  - (c) "land" is the land shown in Schedule "A";
  - (d) "agreement" means this document as originally executed, or as later amended;
  - (e) "rented premises" are described in paragraph 3;
  - (f) "rent" is the money payable by the tenant, referred to in paragraph 5;
  - (g) "term" is the length of this agreement described in paragraph 4, and any renewal or extension of it;
  - (h) "you" and "your" is each person or corporation that has signed this agreement as the tenant;
  - (i) "we", "our" and "us" is the landlord and/or its delegate;
  - (j) "tenant plans" are your outlines of the plans, drawings, specifications and other information for the rented premises or any revisions to these, all as approved in writing by the landlord's Chief Administrative Officer or his/her designate.

## **LENGTH OF AGREEMENT**

### **What this Agreement does**

2. In return for your payment of rent, and your acceptance of the terms of this agreement, we rent the rented premises to you for the term and you rent the rented premises from us for the term.

### **What We Are Renting To You**

3. The rented premises are that part of the land and building, described as Instrument 4703, Plan 77, Part Lot 10, Registered Plan 3R-7165, Part 5 in the Municipality of Kincardine (formerly the Town of Kincardine), in the County of Bruce and Province of Ontario, outlined in red on the sketch attached as Schedule "A" and consists of;
  - (a) The Kincardine Lighthouse;
  - (b) All grounds associated with the facility.

### **How Long This Agreement Is To Run**

4. You may occupy the rented premises for a term of 5 (five) years, to begin June 1st, 2020 and to end March 31<sup>st</sup>, 2025 (the "term").

## **WHAT AMOUNTS YOU MUST PAY**

### **Your Obligation to Pay Annual Rent**

5. You will pay to us each year of the term \$2.00 before the first day of May, 2020 and ending March 31, 2025.

### **Other Amounts You Are Required to Pay: Operating Costs**

6. You will pay all of the operating costs for the land and building, including all interior maintenance of the lighthouse. Note: Exterior maintenance shall be assumed by the landlord.

In addition the following shall be the responsibility of the tenant:

- (a) You will also pay all rates and other charges for water, electricity and other utilities used in the land, building, and rented premises.
- (b) Except as otherwise provided by this agreement, you will also pay the cost of maintaining the land and building (interior only). This includes, without limitation, the cost of heating, air conditioning, lighting, snow removal, garbage disposal, sewage and waste disposal, all utilities, insurance, and usual maintenance and minor repair that does not take the form of a major capital expenditure or improvement. A major capital expenditure or improvement made necessary because of our obligation to maintain and repair will be paid by us. You will only be required to maintain the rented premises in accordance with paragraphs 16, 17 and 18.

### **The Intention of This Agreement To Be A Net Agreement**

7. You agree with us that this agreement shall be a completely net agreement for us, so that this agreement shall yield, net, to us, the rent without deductions. You must pay your expenses and obligations relating to the rented premises and you save us harmless from them. We are responsible only for those items set out in this agreement.

### **Interest Charged If You Fail To Make A Payment When Due**

8. If you fail to make any payment due under this agreement, we will charge you interest on any overdue portion of the amount payable until it is paid to us. The rate of interest will be the rate of interest at the time you fail to make the payment that is equal to the prime lending rate charged by a Canadian chartered bank selected by us to its most creditworthy customers, plus 6% per annum.

### **Acceptance of Rented Premises**

9. You must notify us of any defects in the rented premises that detrimentally affect the rented premises, within 30 days after the date you are given occupancy by us. If no such notice is given, you will be deemed to have accepted the rented premises in their existing condition and we will not have further obligation to you for any defects other than defects in structural elements of the rented premises.

### **Changes by Tenant**

10. You must not change the exterior of the rented premises and must not make any change to structural elements of the rented premises without first obtaining the written approval of the landlord's Chief Administrative Officer or his/her designate. Any such change will immediately become our property and will remain upon the rented premises until the end of the term. Lastly, please refer to Section No. 30 (f) regarding the heritage designation of the Kincardine Lighthouse.

## **WHAT USES YOU CAN MAKE OF THE RENTED PREMISES**

### **Your General Obligation**

11. You will only use the rented premises for those purposes permitted by the relevant zoning by-laws and any other laws of application and only in accordance with such laws. You will keep the rented premises in a clean, tidy and safe condition.
12. The tenant will operate the Kincardine Lighthouse as a key tourism destination by means of a public museum. The lighthouse museum shall be open to the public in July and August.

Note: The actual hours of the museum shall be notified each Spring, as determined by Tourism demands.

The public may be charged a modest fee for touring the lighthouse museum.

Special tours/delegations may be arranged through the Kincardine Yacht Club.

13. The tenant shall be fully responsible for the operation and minor maintenance of the Kincardine Rear Range Light as a private aid. All major maintenance (over \$150.00) will be the responsibility of the Municipality.

Other obligations of the tenant:

- a) The tenant will be obligated to heat the Lighthouse in the winter months. The temperature will be kept at 5°C to help maintain the interior condition of the structure.
- b) As tenant of the Lighthouse you shall not incur the walking path located adjacent (south of the Lighthouse) to the property. As operators of the Municipal Marina in conjunction with the Lighthouse you will be allocated space at the Ward #1 Landfill site to store boat cradles. This right will ensure that the property is clutter free and available for public use.

**Certain Things You Cannot Do**

14. You will not do anything, omit to do something, or let anyone else do anything that may;
- (a) cause waste or injury to the rented premises,
  - (b) overload the floors of the building,
  - (c) cause a nuisance or annoyance to anyone occupying property adjoining the rented premises on the land,
  - (d) cause the premiums for insurance on the building to be increased or coverage to be cancelled, or violate any requirements of any insurance policy upon the building or of any fire, health, municipal or other authority, or
  - (e) lessen the value of or adversely affect the building.

**You Must Comply With Laws**

15. You will comply at your own expense with all governmental, sanitary, fire and safety laws relating to the rented premises.

**You Must Not Put Up Signs**

16. You will not permit any sign or notice to be inscribed, painted or affixed to be part of the building or put on the land without obtaining our written consent in advance. We will not unreasonably withhold our consent. (The intent of this clause is to protect the historic character of the exterior of the lighthouse and grounds.)

**REPAIR AND MAINTENANCE OF RENTED PREMISES AND BUILDING****Your General Obligation To Repair and Maintain the Rented Premises**

17. You assume sole responsibility for the condition, operation, minor maintenance and management of the land, building, and rented premises, including all leasehold improvements, trade fixtures and doors or interior of the rented premises. Excluded from this obligation are structural elements of the rented premises and other damage which we have covenanted to repair in paragraph 20. In particular, you will keep the rented premises in the state of repair in which you find them at the beginning of the term. You will comply with all insurance requirements. We may inspect the rented premises at any reasonable time to determine whether you have complied with this agreement. If, in our opinion, you have not so complied, we may give written notice to you to comply. You shall comply within the reasonable time provided for in such written notice. If you fail to do so, we can take any steps to ensure compliance.

**You Must Leave the Rented Premises in Good Repair**

18. You will also, at the end of the term, leave the rented premises in a good and reasonable state of repair in accordance with your obligations under this agreement.

**You Must Give Us Notice of Defects or Damages**

19. You will notify us as soon as you become aware of any defects in, malfunction of, or damage to, the rented premises or any equipment, service or utility in them.

**Our Obligation to Repair and Maintain**

20. We will keep, in a good and reasonable state of repair the exterior structural elements of the rented premises.

## INSURANCE

21. The Kincardine Yacht Club shall put in effect and maintain in its name, at its expense, all the necessary insurance that would be considered appropriate for a prudent tenant undertaking this type of operation for the period during which the Agreement is in effect with insurers acceptable to the Municipality, including:
1. Commercial General Liability Insurance, for third party bodily injury, personal injury and property damage to an inclusive limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence. The policy shall include:
    - a) The Corporation of the Municipality of Kincardine as an additional insured;
    - b) Cross liability
    - c) Contractual liability;
    - d) Tenant's Legal Liability
    - e) Contents coverage on a replacement cost basis for all property owned by the Kincardine Yacht Club and located at the Lighthouse; and
    - f) A thirty (30) day written notice of cancellation.
  2. The Kincardine Yacht Club shall provide the Municipality with a valid Certificate of Insurance as evidence of the above coverages upon signing the agreement.
  3. The Kincardine Yacht Club shall provide the Municipality with additional Certificates of Insurance within 15 calendar days of either an annual renewal for insurance coverage as set out in 1 above or the date of the written insurance requirement as set out in 3 above. Certificates shall be provided for the entire period during which this Agreement is in effect.
  4. In addition to the tenant's aforementioned insurance requirements the Municipality of Kincardine shall include the Lighthouse in its building insurance requirements.
  5. The Municipality reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## INDEMNITY

### **What You Must Reimburse Us For**

22. The Kincardine Yacht Club agrees to fully indemnify and hold harmless the Municipality from and against all suits, judgments, claims, demands, expenses, actions, causes of action and losses of any kind and for any and all liability for damages to property and injury to persons (including death) which the Municipality may incur, sustain or suffer as a result of, arising out of or in any way related to the matters addressed in this Agreement, unless such losses are caused solely by the Municipality's own gross negligence or willful misconduct.

### **What We Are and Are Not Responsible For**

23. We are not responsible for any loss or damage caused to any person or property
- (a) except for matters arising directly from structural defects or exterior maintenance issues in the building,
  - (b) resulting from the condition, arrangement, interruption in, or breakdown of any mechanical or electrical equipment or any water, gas, sewage, electrical power or any other utility in the building,
  - (c) resulting from anything done or not done by other occupants of the building, by persons in the rented premises, by occupants of adjacent property or by the public

(d) resulting from any peril which you are required to insure pursuant to paragraphs 21 and 22.

24. We are responsible for matters arising from our acts, omissions or negligence, and those of our officers, agents, employees or contractors.
25. Except as specifically set out in this agreement, you will not be entitled to any abatement of rent for any loss, damage, injury, condition, failure or interruption of services set out in paragraph 25, nor shall any of those events be considered an eviction.

#### **WHAT HAPPENS IF THE RENTED PREMISES ARE DAMAGED**

26. If the rented premises are partially or wholly destroyed or damaged, should demolition of the rented premises be made necessary by such destruction or damage or should the rented premises become unfit for occupancy by you,
- (a) subject to our right to terminate pursuant to paragraph 35, we will repair the rented premises as set out in this agreement. Once we have substantially completed our work, we will notify you and you will immediately resume your obligations in accordance with your obligations in this agreement,
- (b) rent will not be reduced unless, through no fault of yours, the rented premises are rendered wholly or partially unfit for occupancy. In this case, rent will be reduced, from the date of such occurrence, proportionately as to the portion of the rented premises rendered unfit for occupancy. Rent will be reduced until, in our reasonable opinion, repairs have been completed, and
- (c) if 50% or more of the rented premises are destroyed or damaged or by demolition made necessary by such destruction or damage, we may elect to terminate this agreement. Rent will be adjusted as of the date of the occurrence and you will within seven days after notification by us vacate the rented premises and surrender them to us.

#### **OUR RIGHT TO ENTER THE RENTED PREMISES**

27. We may enter the rented premises at any reasonable time to inspect, view the state of repair, sweep, clean, dust and do maintenance work (whether or not we are obligated to perform any of this under this agreement), make repairs, alterations, or improvements to the rented premises or the building or any building services, and for any other lawful purpose. You will provide free access for these purposes.

Furthermore, we may enter the rented premises during the last 6 months of the term to exhibit them to prospective occupants and we may place upon the rented premises notices advertising them as being available for lease.

#### **WHEN YOU ARE IN DEFAULT UNDER THIS AGREEMENT**

28. You will be in default under this agreement if
- (a) you default in paying any annual rent, any interest that may be due and payable, or any other payment that you are obliged to pay us, and such default continues for a period of 15 consecutive days,
- (b) you do not comply with any of your obligations under this agreement and such default continues for a period of 15 consecutive days or you fail to diligently attempt to cure such default,
- (c) any of your property on the rented premises is sold under a writ of execution, or you become bankrupt or insolvent,

- (d) any insurance policy is cancelled or not renewed by an insurer because of your use or occupation of the rented premises and you fail to take the necessary action to have the policy reinstated within 2 days after receiving notice of cancellation or non-renewal,
- (e) any lien arises which affects the rented premises or we receive written notice of any such lien,
- (f) the insurance policy on the building would be cancelled because the rented premises are abandoned, or
- (g) you abandon the rented premises.

### **ENFORCING OUR RIGHTS**

#### **Delay In Enforcing Our Rights**

29. Any delay or extension of time granted by us to you or any other person in exercising the enforcement of any of our rights under this agreement does not affect our right to
- (a) receive all payments you are obliged to make to us, when they are due,
  - (b) have you comply with all your obligations under this agreement, or
  - (c) exercise all of our remedies as set out in paragraph 37.

### **IF YOU WANT TO ALTER THE RENTED PREMISES**

30. You will not erect or affix any fixture (including leasehold improvements, any trade fixture, partitions or counters) or remove or change the location or style of any fixture without the prior written consent of the landlord or designate, such reasonable request not to be withheld, subject to the following provisions:
- (a) you will not interfere with any windows or doors of the rented premises, or any building services in them, and no fixtures will be attached to the rented premises which require any change or cause any damage which is not readily repairable upon the removal of such fixture;
  - (b) you will repair any damage caused to the rented premises by such alterations, work and improvements;
  - (c) all such alterations, work and improvements shall be at your expense;
  - (d) all such alterations, work and improvements shall be performed in the manner and by those approved by us and shall cause no personal danger or damage while being performed or at any other time during the term; and
  - (e) alterations, work and improvements must comply with paragraph 14.
  - (f) lastly, since the Kincardine Lighthouse is a historic designated structure, all renovations shall be consistent with appropriate historic renovations standards. As such all renovations contemplated for this historically designated building shall be approved in advance by the Municipality or designate. The Municipality or designate reserves the right to consult with Heritage Kincardine for advice as required.
31. You will not create or permit to arise any lien which affects the rented premises. If any such lien does arise, you will promptly discharge it. If you do not, we may discharge it at your expense.

**IF YOU WANT TO ASSIGN THE AGREEMENT OR SUBLET**

32. You will not
- (a) assign or dispose of this agreement or any interest in it, or
  - (b) sublet all or any part of the rented premises.
33. If you request or consent to any assignment or sublease, we have the option of
- (a) refusing to consent to the assignment or sublease, provided such consent is not unreasonably withheld, or
  - (b) consenting to the assignment or sublease.

We will deliver notice of our decision to you within 15 days after we receive your request for consent. If we fail to deliver notice of our decision within that period, we will be deemed to have refused to have consented to the assignment or sublease.

34. No assignment or other disposition by you of this agreement or any interest in it will relieve you from the performance of your obligations under this agreement.

**GENERAL PROVISIONS**

**We May Terminate the Agreement**

35. Either party may terminate this agreement upon 180 days written notice.

**How Notice Should Be Given**

36. Any notice required or contemplated by any term of this agreement will be in writing and will be deemed to have been validly given if delivered at, or mailed by pre-paid registered mail to the landlord at 1475 Concession 5, R.R. 5, Kincardine, Ontario, N2Z 2X6, or such other place as we may designate, and to you at the rented premises or to such other address as you have given us in writing. Any notice will be deemed to have been received at the time it was delivered or in the case of those given by registered mail, on the third business day following the date of mailing, whether the party received it or not. If there is postal disruption due to strike, lockout, or other labour dispute any notice must be delivered by personal service.

**If Something Unexpected Happens**

37. If either of us is unable to fulfil, or will be delayed in fulfilling, any obligation (other than the payment of monies) under any term of this agreement because of strikes or work stoppages, or because of other unavoidable occurrence not caused by the default, act or omission by such party and not avoidable by the exercise of reasonable effort and foresight by him, then, so long as any such impediment exists, that party will be relieved from the fulfillment of such obligation and the other party will not be entitled to compensation for any damage, inconvenience, nuisance or discomfort caused by such impediment.

**Amendments**

38. No amendment to this agreement is binding unless it is written and signed by both of us.

**Severability**

39. If any part of this agreement is invalid or unenforceable, the remainder of the agreement will not be affected by it.



