

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2011-86

By-law Authorizing the renewal of a Lease Agreement between the Corporation of the Town of Amherstburg and The Fort Malden Guild of Arts and Crafts

WHEREAS The Town of Amherstburg considers it desirable to lease the municipally owned premises known as 140 Richmond Street, Amherstburg, Ontario being described as Part of Lot 33, Registered Plan 240, designated as Part 1 on Reference Plan 12R-13426;

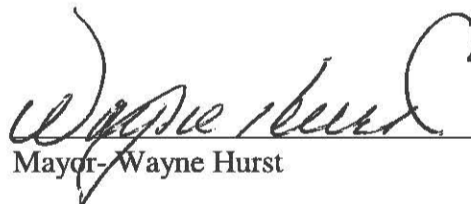
AND WHEREAS the Town and The Fort Malden Guild of Arts and Crafts wish to enter into an Agreement for a period of Twenty One (21) YEARS to set out the terms and conditions upon which the premises may be rented;

AND WHEREAS the specifics of such Lease Agreement have been negotiated and are set out in the Lease Agreement attached to and forming part of this bylaw;

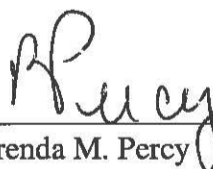
**NOW THEREFORE THE CORPORATION OF THE TOWN
OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

1. That the Mayor and Clerk are hereby authorized to execute the original and copies of an agreement to defer development charges in the form annexed hereto and affix the Corporate Seal thereto.
2. This By-law shall come into force and effect on the date of final passage hereof.

Read a first, second and third time and finally passed this 11th day of October, 2011.



Mayor - Wayne Hurst



Clerk - Brenda M. Percy

THIS INDENTURE of Lease made this 11th day of October, 2011
IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT

BETWEEN:

**THE CORPORATION OF THE
TOWN OF AMHERSTBURG**
271 Sandwich St. South
Amherstburg, Ontario N9V 2A5

hereinafter called the **LESSOR**

OF THE FIRST PART;

-and-

FORT MALDEN GUILD OF ARTS AND CRAFTS
140 Richmond Street
Amherstburg, Ontario N9V 1G4

hereinafter called the **LESSEE**

OF THE SECOND PART;

WHEREAS the Lessor is the registered owner of certain lands and premises situate, lying and being in the Town of Amherstburg, in the County of Essex and more particularly described as Part of Lot 33, Registered Plan 240, designated as Part 1 on Reference Plan 12R-13426 and municipally known as 140 Richmond Street, Amherstburg, Ontario.

AND WHEREAS the Lessee is also the Lessee of a prior lease with respect to these premises dated November 13, 1995 and amended July 5, 2001 and has further entered into an Agreement dated August 14, 2003 with respect to access to a portion of the Demised Premises by the abutting property owner, all of which have been registered on title to the Demised Premises on November 1, 2001 as Instrument Number LT324281.

AND WHEREAS the Lessee hereby surrenders all of its rights under the Lease dated November 13, 1995 as amended July 5, 2001.

NOW THIS INDENTURE WITNESSETH that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be observed and performed, the Lessor doth hereby demise and lease unto the Lessee, its successors and assigns, a portion of those certain premises situate at 140 Richmond Street, Amherstburg, Ontario, herein referred to as Part of Lot 33, Registered Plan 240, designated as Part 1 on Reference Plan 12R-13426, in the Town of Amherstburg, County of Essex, which premises are hereinafter called the "Demised Premises under the following terms and provisions;

A. TERM

TO HAVE AND TO HOLD the demised premises together with all such benefit for and during the term of twenty-one (21) years less one day to be computed from the date of this Lease being October 11, 2011 (Date of Commencement). Provided the Lessee is not at any time in default of any of the provisions of this Lease, this Lease shall automatically

renew for an additional term of twenty-one (21) years less one day; provided that in the event the Lessor wishes to terminate this Lease at the termination of the initial Term herein the Lessor shall give the Lessee notice thereof in writing not less than three (3) months before the date of expiry of the initial term thus terminating the automatic renewal set out herein. Any renewal shall be under and subject to the terms, conditions, covenants, provisos and agreements contained herein except this option to renew.

B. BASIC RENT

The Lessee shall pay the following sums as Basic Rent in lawful money of Canada:

- (i) Basic Rent for each year of the Term shall be the sum of One Dollar (\$1.00) per annum, payable on the date of commencement of the within Lease, and thereafter payable on the anniversary date of the date of commencement of the within Lease in each year of the Term.

C. LANDSCAPING AND PROPERTY TAXES

The Lessee shall be responsible for providing landscaping in accordance with a mutually agreed site plan and for the on-going care and maintenance of the landscaping for the entire property known as 140 Richmond Street. The Lessor shall pay a sum annually to the Lessee in consideration of the said care and maintenance.

The Lessee shall be responsible for the payment of property taxes assessed against the Demised Premises. The Lessor and the Lessee agree that the sum payable by the Lessor to the Lessee in consideration of the care and maintenance of the landscaping shall equal the sum of the property taxes assessed against the Demised Premises and payable by the Lessee to the Lessor. The Lessor and the Lessee further agree that the payments made by the Lessor to the Lessee under this provision shall be payable on such dates as correspond to the payment due dates of the property taxes of the Demised Premises and that the Lessor shall apply such payments directly to the payment of the property taxes owed by the Lessee to the Lessor. Proof of payment of the property taxes for the Demised Premises shall constitute proof of payment of the landscaping costs set out in this provision.

The Lessor and Lessee further agree that the Lessor shall be responsible for the care and maintenance of the landscaping around the perimeter of the parking lot and the flower beds fronting on Richmond Street and more particularly described as that part of the Demised Premises being to the South of the East-West curb at the North part of the parking lot.

D. PARKING LOT

The use of the parking spaces by the Lessee and the Lessor shall be by mutual agreement. The Lessee acknowledges that it has in the past consented to the granting of an easement over a portion of the property at 140 Richmond Street to an abutting property owner for free and unobstructed entry and access to such abutting property. This easement has been registered on title to the property on August 27, 2003 as instrument number CE27139 and the property and the use and enjoyment of the Demised Premises is subject to that easement. Due to the higher volumes of traffic over the easement lands the Lessor acknowledges that the Lessee shall not be responsible for the repair, maintenance or replacement of any portion of the parking lot that is associated with the easement and its use thereunder and not related to the use of the property by the Lessee.

E. USE OF DEMISED PREMISES

The Demised Premises are leased to the Lessee for the purpose of operating, conducting and carrying on in and from the whole of the Demised Premises, an art gallery, a railroad museum, a historical train station and/or a cultural centre. The Lessee shall maintain the historical and architectural designation for the building on the Demised Premises.

F. TERMINATION OF LEASE

(a) In the event that the Lessee "Fort Malden Guild of Arts and Crafts" surrenders or has its charter revoked, the within Lease shall be terminated.

(b) In the event that the building on the Demised Premised is destroyed, reconstruction thereof will only be permitted provided that the historical and architectural designation thereof can be maintained. Otherwise the within Lease shall be terminated.

G. PARAGRAPH HEADING

The paragraph headings in this Lease form no part of the said Lease and shall be deemed to have been inserted for convenience or reference only.

H. SCHEDULES

All schedules referred to in this Lease and annexed hereto shall be deemed as forming a part of the Lease as if the same were embodied herein.

The parties hereto hereby further mutually covenant and agree each with the other as follows:

1. PAYMENT OF RENT

The Lessee shall pay rent in the amounts, at the times and in the manner herein provided.

2. QUIET ENJOYMENT

The Lessor covenants with the Lessee for quiet enjoyment.

3. OBSERVANCE OF LAWS

The Lessee will observe and fulfill the lawful provisions and requirements of all Statutes, Orders-in-Council, By-laws, rules and regulations, municipal or parliamentary, relating to the use of the Demised Premises. The Lessor warrants that the premises shall comply at the commencement of the term with the requirements of all statutes, orders-in-council, By-laws, rules and regulations, municipal or parliamentary relating to the use of the Demised Premises and if they do not so comply then any changes or alterations will be for the account of the Lessor.

4. LESSEE'S LIABILITY INSURANCE

The Lessee will, during the whole of the Term hereof indemnify, insure and keep insured the parties hereto in respect of possible damages and expenses that may be incurred as a result of accident or other event happening within the Demised Premises and that the Lessee will maintain such policy or policies of public liability insurance, the limits

whereof shall not be less than \$2,000,000.00 for injury to one person and not less than \$2,000,000.00 for injury in one accident. The Lessee shall provide a certificate of insurance to the Lessor.

5. ASSIGNMENT, SUBLETTING

The Lessee will not assign the lease or sublet the whole or any part of the Demised Premises.

6. REPAIRS

The Lessee shall maintain the building on the Demised Premises in good order and condition, and effect, at its own expense.

7. DEFAULT

The Lessor at its option, upon default of any of the terms and provisions of this Lease, may, in addition to any other remedies available pursuant to this Lease or at law, at its sole option forthwith:

- a) take possession of the Demised Premises as the agent of the Lessee either by force or otherwise, without being liable therefor, to re-let the Demised Premises as the agent of the Lessee, to receive the rent therefor and as the agent of the Lessee, to take possession of equipment, furniture or other property on the Demised Premises and to sell such property at public or private sale without notice and apply the proceeds of sale and any rent derived from re-letting the Demised Premises upon account of the rent under this Lease, and the Lessee is liable to the Lessor for any deficiency; and/or
- b) perform or cause to be performed, from time to time, at its discretion, any of the Lessee's covenants or obligations as set out herein, or any part thereof and for such purpose may do such things upon or in respect of the Demised Premises or any part thereof as the Lessor may consider requisite or necessary. The Lessee shall reimburse the Lessor forthwith for any and all expenditures made and incurred by the Lessor under this section and in the event the Lessee fails to pay the same, the Lessor may recover the same by all remedies available to the Lessor for the recovery of rent in arrears; and/or
- c) Terminate this Lease.

8. ASHES, REFUSE, ETC.

The Lessee shall not allow any ashes, refuse, garbage, or other loose or objectionable material to accumulate on or about the said Demised Premises, and will at all times keep the said premises in clean and wholesome condition, and shall be responsible for the removal of all garbage or loose or objectionable materials.

9. NON-PERFORMANCE OF COVENANTS AND CONDITIONS

The Lessor shall not exercise any right or remedy under this Lease resulting from non-payment of money by the Lessee until the Lessor shall have given the Lessee notice of non-payment and the Lessee shall have failed to make such payment within the period of fifteen (15) days after the giving of such notice. The Lessor shall not exercise any right or remedy under this Lease resulting from non-performance of any covenant or agreement of the Lessee until the Lessor shall have given the Lessee notice of such non-performance and the Lessee shall not have performed such covenant or agreement within such period as would be necessary to enable the Lessee to perform such covenant or agreement with the exercise of due diligence.

10. TENANCY AFTER EXPIRATION OF TERM

If the Lessee remains in possession of the Demised Premises after the expiration of the Term hereby granted or any renewal thereof without any agreement in writing in respect thereof, such continued possession shall create a monthly tenancy subject, so far as they are applicable to a monthly tenancy, to the covenants, provisos and conditions of this Lease and to payment of the rental set forth herein, and said tenancy may be terminated at any time by either Party by thirty (30) days' notice to the other party.

11. ARBITRATION

In the event of any dispute between the parties hereto arising out of the interpretation, observance or performance of any covenant, condition or other provisions of this Lease, such dispute shall be submitted to a board of three arbitrators, one of whom shall be nominated by the Lessor, one by the Lessee, and the third by the first two nominees if they can agree and otherwise by a Judge of the Ontario Superior Court of Justice and the constitution and proceedings of such board shall be governed by the Arbitration Act of Ontario.

12. CONDONING

Any condoning, excusing or overlooking by either party hereto of any default, or non-observance by the other party at any time or times in respect of any covenant, proviso or condition herein contained shall not operate as a waiver of any rights hereunder in respect of any subsequent default, breach or non-observance.

13. NOTICES, ETC.

Every notice, demand, request, approval and consent which may be or is required to be given by either party hereto to the other of them shall be in writing and delivered or sent by prepaid registered mail to the party for whom it is intended at the address of such party. Unless notice of a change of address shall be given by either the Lessor or the Lessee, their respective addresses shall be:

- (a) If to Lessor at: 271 Sandwich Street South
Amherstburg, Ontario N9V 2A5
- (b) If to the Lessee at: 140 Richmond Street
Amherstburg, Ontario N9V 1G4

and if any such notice is sent by prepaid registered mail, it shall be deemed to have been received on the second business day following the mailing thereof.

14. NO PARTNERSHIP CREATED

Neither the provisions of this Lease, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties other than the relationship of Lessor and Lessee.

15. VALIDITY

If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

