

HAWTHORNE COMMUNITY CLINIC

THIS LEASE made as of the _____ day of _____, 2021.

B E T W E E N:

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

(hereinafter called the "Landlord")

- and –

KINCARDINE FAMILY HEALTH ORGANIZATION

(hereinafter called the "Tenant")

WHEREAS the Landlord has constructed the Hawthorne Community Clinic (the "HCC") located at 1201 Queen Street, Kincardine, Ontario, for the purposes of attracting qualified medical practitioners to its community and to provide such practitioners with a modern facility from which to operate their medical practices;

AND WHEREAS the Tenant is a Family Health Organization ("FHO") consisting of a group of family physicians working together to provide primary medical care to the local community who wish to rent part of the HCC;

NOW THEREFORE for Two Dollars (\$2.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and the Tenant agree as follows:

TERMS OF LEASE

Premises

- 1.1 In consideration of the rents, covenants and agreements of the Tenant to be paid, observed and performed, the Landlord hereby leases to the Tenant certain office space and examination rooms located in the HCC as more particularly set out in the Exhibit "A" attached hereto (the "Premises"). The intent being that each physician will have access to one office and two examination rooms for patient care. In addition to the Premises, the Tenant has a right in common with other tenants to utilize the walkways, stairs, corridors, lobbies, washrooms and other common areas forming part of the HCC (the "Common Areas") for purposes associated with and ancillary to the Tenant's occupancy of the Premises.

Nature of Right

- 1.2 The Tenant is hereby granted exclusive use and enjoyment of the Premises for the term herein. In addition, the Tenant is hereby granted a non-exclusive use and enjoyment of the Common Areas for the term herein in conjunction with such other persons as the Landlord may now or hereinafter determine in its sole discretion may enjoy the right to use the Common Areas, all subject to reasonable limits as established by the Landlord.
- 1.3 If approved in writing by the Landlord, the Tenant may sublease the Premises to physicians not part of the FHO.

Term

- 1.4 The Tenant is entitled hereby to have and to hold the Premises for and during the term of five (5) years commencing on <insert date>, and ending on or about the <insert date> (“the term”).

Overholding Tenant

- 1.5 If the Tenant continues to occupy the Premises after the termination of this Agreement, with the consent of the Landlord and without any further written agreement, the Tenant shall be a yearly tenant.

Renewal

- 1.6 In the event that the Tenant is not in breach of this Agreement, the Tenant shall have the right to renew the term hereof for an additional five (5) years (“new term”) upon giving the Landlord not less than three (3) months’ prior notice thereof. The new term will be on the same terms and conditions set out herein and rent shall commence based on the amount paid in year 5, as adjusted by Ontario CPI as per section 1.9.

Right of Termination

- 1.7 Either party herein shall have the right to terminate this Agreement, without penalty, upon giving the other party not less than 60 days’ notice in writing.

Rent

- 1.8 The Tenant shall pay unto the Landlord the sum of seven hundred and ten dollars and ninety-two cents (\$710.92) plus HST per month for each physician within the Kincardine FHO during the term of this Agreement. In all cases, the rental payments shall be made on or in advance of the first day of the respective

month. The Tenant agrees to update the Landlord within five (5) days if there has been a change to the number of physicians in the Kincardine FHO.

- 1.9 The above noted rent shall increase by the Ontario CPI to be calculated at the end of each calendar year.
- 1.10 Notwithstanding anything contained herein, the terms of this Lease may be modified or adjusted for a particular physician tenant should that physician enter into a separate Physician Incentive Agreement with the Municipality of Kincardine.

COVENANTS OF THE TENANT

The Tenant hereby agrees to fully and faithfully comply with all of the covenants of the Tenant as set out below:

Pay rent

- 2.1 To pay rent in a timely manner in accordance with the provisions of this Agreement.
- 2.2 If the Tenant fails to pay any Rent when the same is due and payable, such unpaid amount shall bear interest at the same rate as is charged on overdue taxes by the Municipality, with such interest to be calculated from the time such Rent becomes due until paid by the Tenant.

Use of Premises and Special Uses with Landlord Permission

- 2.3 The Premises shall be used only for the purposes of the Tenant conducting their practice of medicine and shall not be utilized for any other purpose or purposes without the express consent of the Landlord in writing. The Landlord shall own all chattels located in the HCC premises except where a letter identifies those owned by an individual physician or by the Family Health Organization. The Tenant agrees to not remove any of the HCC chattels in order to facilitate a medical turnkey environment for all physicians, now and in the future.
- 2.4 The Tenant agrees to adhere to the Municipality of Kincardine's policies and procedures as it relates to tangible capital assets and the purchase of goods and services procured by the Municipality of Kincardine.

Landlord's Access

- 2.5 To permit the Landlord and its agents at all reasonable times to enter the Premises

for the purpose of showing the Premises or to inspect the condition thereof.

Return of Premises on termination

- 2.6 The Tenant shall, at the termination of the term unless otherwise arranged with the Landlord, peacefully surrender the Premises unto the Landlord in good and substantial repair and condition, reasonable wear and tear excepted.

Comply with all Laws

- 2.7 The Tenant shall comply with the requirements of all applicable laws, by-laws, regulations and orders at any time in force during the term hereof and affecting the condition, equipment, maintenance, use or occupation of the Premises.

Insurance and Indemnity

- 2.8 The Tenant shall, at their expense obtain and keep in force during the term of the Lease:
- i. Commercial General Liability Insurance satisfactory to the Landlord 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:
 1. A limit of liability of not less than \$ 5 Million/occurrence with an aggregate of not less than \$ 5 Million
 2. Add the Corporation of the Municipality of Kincardine as an additional insured with respect to the operations of the Named Insured
 3. The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
 4. Non-owned automobile coverage with a limit not less than (usually \$2,000,000) and shall include contractual non-owned coverage (SEF 96)
 5. Products and completed operations coverage
 6. Broad Form Property Damage
 7. Contractual Liability
 8. Hostile fire
 9. The policy shall provide the Landlord with thirty (30) days prior notice of cancellation
 - ii. Tenant's Legal Liability Insurance:
Tenant's legal liability insurance for the actual cash value of the building and structures on the demised premises, including loss of use thereof;

Each policy will provide that the insurer will not have any right of subrogation against

the Landlord 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 Landlord or Tenant covered by such insurance. The cost or premium for each and every such policy will be paid by the Tenant.

Primary Coverage:

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

Certificate of Insurance:

The Tenant shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement and upon request from the Landlord throughout the term of this Lease and any renewal or overholding.

Telecommunications

2.9 The Tenant shall be responsible for all telecommunications (including phone, internet, broadband and cable) operating charges.

Indemnification

2.10 The Tenant shall defend, indemnify and save harmless the Corporation of the Municipality of Kincardine, 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 Tenant, its physicians, 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 Tenant in accordance with this Agreement and shall survive this Agreement.

Damages

2.11 The Tenant shall not do or permit any waste, damage, or injury to the Premises or the fixtures and equipment thereof and shall take every reasonable precaution to protect the Premises from danger of fire, vandalism, water damage or the elements.

Right of re-entry

2.12 The Tenant hereby agrees that the Landlord may re-enter the Premises upon non- payment of rent or non-performance of covenants, subject to the provisions of this Agreement.

Insolvency or Abandonment

2.13 If the Tenant makes assignment for the benefit of creditors or takes the benefit of any Act for bankrupt or insolvent debtors, or if a receiving order is made against the Tenant, or an order is made for the winding up of the Tenant, or any insurance policy is cancelled or not renewed by reason of the use or occupation of the Premises or by reason of non-payment of premiums, or if the Premises shall become vacant for a period of thirty (30) consecutive days, or be used by any other persons than such as are entitled to use them under the terms of this Agreement, then the Landlord may re-enter and take possession of the Premises and, upon immediate notice, terminate this Agreement.

Remedies of the Landlord

2.14 If the Tenant fails to perform or observe any covenants herein, which failure continues for fifteen (15) days after the Tenant's receipt of written notice thereof, the Landlord shall have the following remedies, which are cumulative and not in the alternative and which are without prejudice to any other rights or remedies it may have:

- (a) The Landlord may enter the Premises and perform the Tenant's obligation on behalf of the Tenant, without liability for any loss or damage to the Tenant's goods, chattels or business caused in so doing. Any reasonable expenses incurred by the Landlord thereby shall be paid by the Tenant forthwith and shall be recoverable in the same manner as rent; and
- (b) The Landlord may by written notice terminate this Agreement, in which case rent and any other payments for which the Tenant is liable shall be apportioned and paid in full to the date of termination, together with the expenses of the Landlord attributable to the termination, and the Tenant shall immediately deliver up possession of the Premises.

COVENANTS OF THE LANDLORD

The Landlord hereby agrees to fully and faithfully comply with all of the covenants of the Landlord which are set out below:

Quiet enjoyment

- 3.1 Provided the Tenant performs all its covenants in this Agreement, the Tenant shall have quiet enjoyment of the Premises.

Insurance

- 3.2 The Landlord shall insure the Premises against such perils and in such amount is necessary, in the opinion of the Landlord, to protect the Landlord's interests in the Premises.

Damage or destruction

- 3.3 If the Premises are damaged by fire or other casualty, the rent shall abate until the Premises are repaired to the Landlord's satisfaction; provided, however, that the Landlord may determine in its sole discretion not to repair the Premises and may terminate this Agreement on written notice given within forty-five (45) days after the occurrence of such damage.

Electrical Facilities

- 3.4 The Landlord shall be responsible for the cost of supplying the Premises with electric power.

Supply of Water/Sewer Services

- 3.5 The Landlord shall be responsible for the cost of water and sewer charges supplied to the Premises.

Supply of Heating/Air Conditioning

- 3.6 The Landlord shall at its sole expense supply adequate heat and air conditioning to the Premises.

Elevator

- 3.7 The Landlord shall install and maintain an elevator in the HCC.

Repairs and Maintenance

- 3.8 The Landlord shall at all times and at its own cost and expense maintain, repair and replace the following capital aspects of the Premises to standards acceptable to the Landlord, including;

- all building repairs and capital improvements greater than \$500
- repairing and replacing the roof,
- repairing and maintaining the exterior facade of the building,
- replacing its plumbing, heating, lighting, water and ventilation systems and major repairs thereto,
- replacement of broken windows,
- cleaning the exterior windows,
- replacement of light fixtures (ballasts, etc.),
- pest control,
- flooring and carpeting,
- fire extinguishers,
- elevator maintenance,
- disposal of non-hazardous garbage and refuse on a regular basis, including the provision of bag tags
- repainting the walls should this be requested by the Tenant and approved by the Landlord

3.9 The Tenant shall at all times and at its own cost and expense maintain and repair the interior of the Premises and the Common Areas to standards acceptable to the Landlord for all minor building repairs less than \$500.

Janitorial Services

3.10 The Tenant shall be responsible for the cost of janitorial services, cleaning and other supplies incurred in order to clean and maintain the Premises and the Common Areas within the HCC. This includes cleaning of the interior floors, walls and windows.

Furniture, Fixtures and Other Equipment

4.1 In an effort to provide a turn-key solution to attract and retain physicians to Kincardine, the Landlord agrees to fund the following equipment, subject to the annual budgeting process:

- telecommunications capital costs (telephone system, computers, printers, servers)
- medical equipment including examination tables, diagnostic equipment, medical instruments, etc.
- Office furniture, filing cabinets, patient seating
- Kitchen appliances

For greater clarity, the following consumable items are specifically excluded from the above listing and are the full and complete responsibility of the Tenant and/or practicing physicians:

- Consumable medical supplies including first aid supplies, surgical masks, bandages, gauze, antiseptic wipes, or any other disposable supplies.
- Protective equipment including gloves, face masks, scrubs, etc.
- Office supplies and stationery, including printer cartridges

All equipment, furniture, fixtures, and other capital assets purchased by the Landlord will remain the property of the Landlord and will be added to the Municipality of Kincardine's tangible capital asset registry. The Tenant shall not dispose of any assets without the prior approval of the Landlord and must complete the required documentation for capital asset disposal and tracking.

The Tenant shall meet annually with the Municipality of Kincardine to review the facility and develop a capital program for consideration in the annual budget process. All requests are subject to approval in the capital and operating budget as determined by Council.

Groundskeeping

- 4.2 The Landlord shall maintain and repair the grounds forming part of the HCC to standards acceptable to the Landlord, including;
- pruning and removal of trees and shrubs, except that no live tree or shrub shall be removed by the Tenant without the prior approval of the Landlord,
 - cutting the grass, watering the landscaping, and
 - pickup and disposal of leaves, waste and other debris

Snow Removal

- 4.3 The Landlord shall provide snow removal including roadways and sidewalks forming part of the HCC to standards acceptable to the Landlord.

Tenant's Obligation to Advise Landlord

- 4.4 The Tenant shall report all damage and all conditions which might create a hazard to users of the Premises as soon as possible to the Landlord.

Waiver of Responsibility for Loss

- 4.5 The Landlord shall not be responsible for loss or damages arising from its

obligations in this Agreement respecting repair, maintenance or replacement in relation to the Premises.

Access for Repairs, Maintenance and Replacement Required of the Landlord

- 4.6 Where maintenance or replacement is required to be performed by the Landlord, the Landlord may enter at all reasonable times, with notice, to perform the repairs or maintenance. The Landlord shall take such measures in this regard as are reasonable in its opinion to minimize disruption to the Tenant's activities but shall not be responsible for loss or harm occasioned thereby.

PARKING AND ACCESS

Parking

- 5.1 The Tenant acknowledges that the Landlord leases the HCC through a long-term lease from the South Bruce Grey Health Centre, which includes use of the surrounding land for parking. The Tenant specifically acknowledges that the parking lot is owned and regulated by the South Bruce Grey Health Centre.

Access

- 5.2 In addition to the rights granted in this Agreement, the Tenant and its invitees shall have a right in the nature of a licence, together with other persons from time to time entitled thereto, to use the Common Areas and to use such driveways and laneways as may be required to access the HCC and the Premises in conjunction with the permitted uses of the Premises by the Tenant.

SIGNS AND IMPROVEMENTS

Signs, Flags and Fixtures

- 6.1 The Tenant shall not erect on, fix or fasten to the Premises any sign, antenna or fixture of any kind whatsoever without advance written permission from the Landlord. The Landlord acknowledges that the Tenant shall be permitted to erect a sign notifying the public of the Tenant's presence at the HCC, in accordance with any applicable laws or municipal by-laws and with the prior written approval of the Landlord.

Alterations by the Tenant

- 6.2 The Tenant shall not make any installation, alteration, addition or improvement to the Premises without first obtaining the Landlord's approval in writing, which approval shall be in the Landlord's sole discretion. Any such works shall be subject to all provisions of this Agreement.

Dealing with Improvements on Termination

- 6.3 Upon termination of this Agreement, the Tenant shall surrender the Premises together with all installations, alterations, additions, fixtures or anything in the nature of a leasehold improvement made thereon. Notwithstanding the forgoing, upon termination, the Landlord may require the Tenant to remove its installations, alterations, additions, fixtures, or anything in the nature of a leasehold improvement and to make good any damage caused to the demised Premises by such installation or removal.

No Landlord Obligation to Repair

- 6.4 The Landlord shall be under no obligation to repair or maintain any installations, alterations, additions, fixtures of the Tenant or anything in the nature of a leasehold improvement.

Landlord Right to Reconstruct

- 6.5 Should the Landlord determine in its sole discretion to renovate or reconstruct the HCC, the Common Areas or the Premises, the Tenant agrees to provide the Landlord and its agents with access to the Premises (with reasonable notice) for the purpose of such work and for all purposes necessary or incidental thereto. The Landlord shall take such steps as it deems necessary to minimize disruption to the activities of the Tenant during the renovation or reconstruction. The Landlord shall not be responsible for claims for loss or damages arising from such renovation or reconstruction.

GENERAL PROVISIONS

Priority of Head Lease

- 7.1. The Tenant acknowledges that the Landlord leases the HCC through a long-term lease from the South Bruce Grey Health Centre (the "Head Lease"). The Tenant further acknowledges that the Head Lease was approved by Municipality of Kincardine By-law No. 2003-18 and runs for a 100-year term, commencing in February 2003. In the event that the Head Lease is terminated for any reason, the Tenant's rights under this Agreement shall also be terminated and in such an event the Tenant shall indemnify and hold the Landlord harmless in accordance with section 2.8 of this Agreement. The terms and conditions of the Head Lease shall have priority over the terms of this Lease. In the event that the Head Lease is changed the Tenant shall agree to be bound by the new terms of the Agreement.

Notices

7.2 The Landlord’s representative for administration of this Agreement and all decisions related thereto is set forth herein. All notice given or required to be given under this Agreement shall be in writing, signed by the party giving notice and personally delivered or transmitted by facsimile transmission or by electronic transmission to the Landlord at:

Municipal Administration Centre
1475 Concession 5, R.R. #5, Kincardine, Ontario,
Attention: CAO,
Fax No.: (519) 396-8288;
Email: cao@kincardine.ca

and to the Tenant at:

1201 Queen Street, Kincardine, Ontario;
Fax No.: (519) 396-8434.
Attention: _____
Email: _____

Any notice or document so given shall be deemed to have been received on the date of personal delivery or electronic transmission or on the next business day if transmitted by facsimile transmission. Any party may from time to time by notice given as provided above change its address for the purposes of this clause.

Assignment or Subletting

7.3 The Tenant shall not be entitled to assign or sublet the whole or any part of the Premises to another party without the prior written consent of the Landlord and without the assignee and/or subletter agreeing in writing to be bound by the terms of this Agreement. The Tenant hereby waives and renounces the benefit of any present or future act of the Legislature of Ontario which would allow the Tenant to assign or sublet this Lease without the written consent of the Landlord.

No waiver of default

7.4 No condoning or delay by the Landlord in respect of any default, breach or non-observance by the Tenant of any covenant in this Agreement operates as a waiver of the Landlord's rights under this Agreement.

Entire agreement

- 7.5 There are no covenants, representations, warranties, agreements or conditions, express or implied, collateral or otherwise, forming part of or in any way affecting this Agreement.

Registration

- 7.6 The Tenant shall not register this Agreement.

Severability

- 7.7 If any clause or parts thereof in this Agreement are determined to be unenforceable, they shall be considered separate and severable from the Agreement and the remaining provisions of the Agreement shall remain in full force and effect.

Successors

- 7.8 This Agreement shall be binding upon and enure to the benefit of the parties hereto and their heirs, successors and permitted assigns (as limited by the provisions of this Agreement).

Attornment

- 7.9 This Agreement is governed by the laws in force in the Province of Ontario and Dominion of Canada, as applicable, and the parties hereto attorn to the jurisdiction of the court of Ontario.

Headings

- 7.10 Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement.

Statutory Powers

- 7.11 It is acknowledged that nothing in this Lease derogates from, interferes with, or fetters the exercise by the Landlord of all of its rights and obligations as a municipality (whether discretionary or mandatory), or imposes any obligations on the Landlord in its role as a municipality, and the Landlord shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including its planning rights and responsibilities. Nothing in this Lease derogates from, interferes with, or fetters the exercise by the Landlord's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the Landlord's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Lease.

Counterpart

7.12 This Agreement may be executed in counterparts, no one copy of which need to be executed by both the Tenant and the Landlord. A valid and binding contract shall arise if and when counterpart execution pages are executed and delivered by both the Tenant and the Landlord.

[remainder of the page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF the parties hereto have executed this indenture by their personal hands or by the hands of their proper signing officers duly authorized in that regard as at the date first set above.

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

Gerry Glover, Mayor

We have authority to bind the Corporation

KINCARDINE FAMILY HEALTH ORGANIZATION

Per: _____

Name:

Title:

I have authority to bind the Corporation

Schedule A – Diagram of “Premises”

INSERT DIAGRAM