

This agreement made this 20th day of June, 2022.

**BETWEEN:**

**THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE**

(Hereinafter referred to as the 'Municipality')

-AND-

**TIVERTON & DISTRICT LIONS CLUB**

(Hereinafter referred to as 'The Lions Club')

**WHEREAS** the Municipality is the owner of the lands and premises located at 6 MacKay Street, Tiverton, Ontario and known as the Whitney Crawford Community Centre/Annex and which is referred to throughout this agreement as the "Centre";

**AND WHEREAS** the Lions Club is a service club incorporated pursuant to the laws of the Province of Ontario for the purpose of promoting charitable service to the public in and about the Village of Tiverton and surrounding area, and has an interest in operating and managing the Whitney Crawford Community Centre/Annex for the benefit of the citizens of the Municipality;

**AND WHEREAS** the Municipal Act, R.S.O. 2001, c.25 authorizes Council to enter into certain agreements;

**AND WHEREAS** it has been deemed desirable by the Council of The Corporation of the Municipality of Kincardine to allow the Lions Club to operate and manage the Whitney Crawford Community Centre;

**NOW THEREFORE**, in consideration of the sum of \$1.00 and other good and valuable consideration, the parties hereby agree as follows:

**1. Use of Premises**

- (a) The Municipality hereby grants and sets over to the Lions Club the use of the Centre on and subject to the terms and conditions of this agreement.
- (b) Such use shall include exclusive possession of the premises and its fixtures and chattels provided the Lions Club remains in existence and continues to actively pursue its program of operation the Centre to the benefit of the public.

**2. Term**

- (a) This agreement shall be for five years, to be in effect from June 20, 2022 to March 31, 2027.

- (b) The parties shall review the terms of this agreement and the Lions Club may renew this agreement for a further five years subject to the Municipality's approval.

### **3. Terms of Operations**

- (a) The operation of the Centre must at all times be under the direction, supervision and control of the executive or designated members of the Lions Club. They shall appoint a representative as a designated liaison person to meet with the Director of Community Services or their designate regarding the term of this Agreement. At no time may the Agreement or any rights hereunder be assigned to any other person by the Lions Club.
- (b) The Lions Club shall take no action which would result in the premises or any of the attached fixtures of chattels associated with it, being sold transferred or in any way encumbered.
- (c) The Lions Club shall make the building available for use by individuals, businesses and community groups for activities deemed suitable and at rental rates established by the Lions Club from time to time. These rates shall be reviewed by the Director of Community Services or their designate prior to being put into effect and at a minimum on a yearly basis.
- (d) It is acknowledged by the Lions Club that the Centre may be used by the Tiverton Agricultural Society for the Fall Fair and the Municipality of Kincardine for any functions they may require it for; the dates of these events are to be given priority over all other requests for use of the Centre.

### **4. Insurance**

The Lions Club shall put into effect and maintain in its name, at its expense, all the necessary insurance that would be considered appropriate for a prudent tenant undertaking your type of operation with insurers acceptable to the Municipality, including:

The Lions Club may be required to include non-owned automobile liability insurance and if the Lions Club owns vehicles that will be used to provide the services, proof of automobile liability insurance is also required.

In cases where the Lions Club members serves the alcohol, the Lions Club is required to carry liquor liability insurance.

#### *All Risks Property Insurance-*

All risks (including sewer damage, flood and earthquake) property insurance in an amount equal to the full replacement cost of property of every description and kind owned by the Tenant or for which the Tenant is legally responsible, and which is

located on or about the Demised Premises, including, without limitation, anything In the nature of a leasehold improvement.

*Commercial General Liability Insurance-*

The Tenant shall, at their expense obtain and keep in force during the term of the Lease, 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:

- (a) A limit of liability of not less than \$5 million occurrence with an aggregate of not less than \$3 million.
- (b) Add the Landlord 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 \$5 million and shall include contractual non-owned coverage.
- (e) Products and completed operations coverage.
- (f) Broad Form Property Damage
- (g) Contractual Liability
- (h) Hostile Fire
- (i) The policy shall provide 30 days prior notice of cancellation.

*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

The Municipality will not be held liable for any damage to items stored within the Annex.

*Boiler and Machinery Insurance-*

Comprehensive boiler and machinery insurance on mechanical equipment in the premises controlled by the Tenant. Landlord is to be named as an additional insured if the objects insured qualify as tenant's improvements.

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 proponent'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 proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **5. Services**

Both parties agree that the cost of operating the Centre shall be based on the following terms and conditions:

- (a) The Municipality agrees to supply water and sewage services to the Centre free of charge.
- (b) The Municipality agrees to provide grounds maintenance including snow removal and lawn care.
- (c) The Municipality agrees to provide and pay for property insurance for the Centre.
- (d) The costs of operating the Centre including regular maintenance of the facility shall be administered by the Club from the proceeds received from renting the facility.
- (e) The Club shall provide at its cost all other services required to operate the Centre including but not limited to electricity, telephone, heat, regular garbage removal, etc.
- (f) The Municipality agrees to fund capital repairs and/or replacement costs for the HVAC units.

## **6. Financial Terms**

- (a) Any surplus greater than \$1,000 remaining from the annual operating budget of the Centre shall be shared, with 50% of the net profit to The Lions Club, and 50% of the net profit to the Municipality. The 50% share of Municipal profit will be transferred to the Whitney Crawford Community Centre Reserve Fund for the future replacement of capital assets.
- (b) Any operating deficits less than \$5,000 shall be paid by the Municipality with the funds coming from the Whitney Crawford Community Centre Reserve Fund. In the event of insufficient funds in the Whitney Crawford Community Centre Reserve Fund, the deficit shall be funded through the Municipality's Contingency/Capital Reserve.
- (c) If the annual operating deficit exceeds \$5,000 in any given year, a representative from The Lions Club will be required to appear as a delegation at an upcoming Council meeting to provide justification for the deficit. Council shall then determine as to how the deficit shall be funded and what actions shall be taken to manage the Centre's operations going forward.

## **7. Financial Reporting**

- (a) It is agreed that the financial year end of the Centre shall be December 31 in each year throughout the term of this agreement.
- (b) The Lions Club shall prepare or cause to have prepared, annual financial statements which accurately reflect the financial state of affairs of the operation of the Centre. These statements shall be delivered to the Director of Community

Services or their designate prior to the end of January following each year end throughout the term of this agreement.

- (c) The Lions Club must present a proposed budget by the end of January each year for the operation of the Centre for the following year.

## **8. Repairs and Improvements**

- (a) It is acknowledged by the Lions Club that the Centre will be used by the public and must be maintained at all times in a safe condition for those using it.
- (b) The Lions Club acknowledges and agrees to maintain the Centre in such a manner to meet the standards of the Ontario Occupier's Liability Act.
- (c) Plans for all capital improvements and proposed major repairs shall be submitted for approval to the Municipality by the Club together with estimates of the cost of such work and no such work shall be authorized until the approval of the Municipality has been given.
  - a. The Municipality shall be responsible for capital improvements to the shell of the building (including windows, roof, brickwork, doors and exterior lighting)
  - b. The Lions Club shall be responsible for cleaning supplies, furniture, PA system, and anything that benefits the programs held within.
  - c. Both parties agree to split the costs for the purchasing of appliances deemed necessary for the operations of the facility.
- (d) The Lions Club undertakes to maintain in good and operating condition the Centre, including making repair investments from revenues.
- (e) All approved capital projects and improvements shall be paid from the "Whitney Crawford Community Centre Reserve Fund" maintained by the Municipality if such exists and has the required amount on deposit.
- (f) All capital improvements to the Centre shall accrue to the benefit of the Municipality and shall remain with the Municipality upon the termination of this agreement.
- (g) The Municipality shall have the right to retain a key to the Centre and the right to enter the premises upon reasonable notice to the Lions Club for the purpose for conducting inspections of the condition and state of repair to the Centre.
- (h) The Lions Club agrees that upon termination of this agreement that they will surrender the possession of the Centre to the Municipality and shall leave it in as good a condition as when this agreement commenced. Prior to such termination, there shall be a complete inspection of the premises and inventory taken of all contents which are the property of the Municipality.

## **9. General**

- (a) The Lions Club shall indemnify and save harmless the Municipality from all claims, demands and other damages whatsoever arising from the operation of the Centre by the Lions Club as a result of this agreement.

- (b) This agreement shall not be assigned or transferred by the Club without the expressed written consent of the Municipality having been first obtained.
- (c) This agreement shall become in force and effect only upon its authorizations by a by-law of the Council of the Municipality of Kincardine and submission of proof of liability insurance.
- (d) Any changes or other amendments to this agreement may only be made by further agreement in writing and duly authorized and signed by the parties.
- (e) This agreement may be terminated by either party giving one year's notice of termination to the other.
- (f) This agreement may be terminated without notice at the discretion of either party upon any act of default of the terms of this agreement, by either party or upon the Club ceasing to exist.

#### **10. Assignment**

This agreement shall not be assigned by the Club without the expressed written consent of the Municipality having been first obtained as authorization by by-law.

#### **11. Notification**

Notification is deemed to be given to each of the respective parties if delivered to:

Tiverton & District Lions Club  
61 Ross Street  
Tiverton, ON  
N0G 2T0  
(519) 368-7660

The Corporation of the Municipality of Kincardine  
1475 Concession 5  
RR5 Kincardine, ON  
N2Z 2X6  
(519) 396-3468

Any change in notification address by one party shall be provided to the other within 10 calendar days of the change.

**TIVERTON & DISTRICT LIONS CLUB**

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Ron Simmons, President

I have the authority to bind the corporation.

**THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE**

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Gerry Glover, Mayor

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Roxana Baumann, Acting CAO

We have the authority to bind the corporation.