

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “Agreement”) made this _____ day of _____, 2023.
(the “Effective Date”)

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

(the “Landlord”)

- AND -

THE KINCARDINE FARMERS MARKET ASSOCIATION

(the “Tenant”)

(each a “Party”, and together, the “Parties”)

WHEREAS the Landlord is the owner of Connaught Park, which is municipally known as 133 Broadway Street (the “Property”), and wishes to lease the space marked in red as more particularly described in Schedule A (the “Premises”) and subject to the terms of this Agreement;

AND WHEREAS the Tenant operates a farmer’s market (the “Farmer’s Market”) and is desirous of entering into this Agreement with the Landlord for the use of the Premises;

NOW THEREFORE in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree, and covenant as follows:

1. TERMS OF LEASE

Premises

1.1. The Tenant agrees to rent and the Landlord agrees to lease the Premises.

Term

1.2. The Tenant shall have the exclusive right to possess and use the Premises for five (5) years commencing on May 20, 2023, and ending on October 14, 2028 (the “Term”).

1.3. The Parties agree that the Tenant can operate a Farmer’s Market (the “Permitted Use”) from the Saturday of the weekend of the Victoria Day Statutory Holiday in May to the second Saturday in October, inclusive (the “Operating Months”).

Renewal

- 1.4. Provided that the Tenant is not in breach of any of provisions of this Agreement, the Tenant shall have the option to renew the Term for an additional five (5) years ("Renewal Term") upon giving written notice to the Landlord not less than three (3) months' prior to the expiration of the Term. The Renewal Term shall be on the same terms and conditions as set forth herein, unless otherwise mutually agreed upon by the parties in writing.

Right of Termination

- 1.5. Either Party shall have the right to terminate this Agreement, without penalty, upon giving written notice to the other Party not less than sixty (60) days prior.

2. COVENANTS OF THE TENANT

The Tenant hereby agrees to comply with all of the covenants set out below:

Pay Rent

- 2.1. The Tenant shall use the Premises at no cost.

Use of Premises

- 2.2. The Landlord hereby grants and sets over to the Tenant the use of the Premises on and subject to the terms and conditions of this Agreement solely for the Permitted Use.
- 2.3. The Tenant agrees that booths for vendors can only be set up on the Premises. The vendors' access to the Premises will be granted at 8:00AM for such vendors to set up.
- 2.4. The sound or noise from or created by any radio or phonograph or any musical or sound producing instrument of whatsoever kind will not be permitted before 9:00AM. All vendors are required to have their booths cleared from the Premises no later than 1:00PM.
- 2.5. The Tenant agrees that no booths for vendors can be established in other areas within the Municipality of Kincardine without prior approval from the Landlord.
- 2.6. The Tenant shall be allowed to rent spaces for up to fifteen (15) vendors.
- 2.7. The Tenant agrees that if it should come to their knowledge that any vendor participating in the Tenant's activities is selling any illegal goods or is otherwise carrying on any illegal activities, they will immediately report such offences to the legal authorities and the vendor shall no longer be permitted to occupy the Premises indefinitely.

- 2.8. Except as expressly authorized in this Agreement, the Tenant shall not do or permit to be done at the Premises anything, which may:
- (a) Constitute a nuisance;
 - (b) Cause damage to the Premises;
 - (c) Cause injury or annoyance to occupants of neighbouring premises;
 - (d) Make void or voidable any insurance upon the Premises;
 - (e) Constitute a breach of any by-law, statute, order or regulation of any municipal, provincial, federal and/or other authority relating to the Premises;
 - (f) Obstruct the general public's use of Connaught Park adjoining the Premises hereby leased.

Maintenance

- 2.9. The Tenant is responsible for maintaining the Premises in a neat, clean and orderly condition at all times. Any debris cardboard, recyclables or garbage in the Premises must be promptly removed by the Tenant on a daily basis, unless alternative arrangements have been expressly agreed upon by the Landlord. It is the Tenant's responsibility to ensure that the Premises remain free of clutter, and that all waste and recyclables are disposed of in an appropriate manner. Failure to comply with this clause may result in additional cleaning or disposal fees, which shall be borne by the Tenant.

Return of Premises on Termination

- 2.10. At the end of the Term, unless otherwise agreed upon in writing by the Landlord, the Tenant shall peacefully surrender the Premises to the Landlord in a good and substantial condition, except for reasonable wear and tear. The Tenant shall be responsible for any repairs or restorations required due to damage caused by the Tenant, their vendors, invitees, or anyone else on the Premises with the Tenant's permission. The Tenant shall return all keys and other access devices to the Premises to the Landlord on or before the expiration of the Term.

Comply with all Laws

- 2.11. 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.

Indemnity

- 2.12. The Tenant shall defend, indemnify and save harmless the Landlord, 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 and other professional fees), 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 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 the expiration or earlier termination of this Agreement.
- 2.13. The Tenant agrees to defend, indemnify and save harmless the Landlord from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs and other professional fees), interest or damages of every nature and kind whatsoever arising out of or related to the Tenant'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 Tenant in accordance with this Agreement, and shall survive the expiration or earlier termination of this Agreement.

Insurance

- 2.14. The Tenant 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 Landlord, including:
1. 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 Premises, including, without limitation, anything in the nature of a leasehold improvement.
 2. Commercial General Liability Insurance: The Tenant shall, at their expense obtain and keep in force during the term of the Agreement, 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 \$2,000,000/occurrence with an aggregate of not less than \$2,000,000
- (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 \$2,000,000 and shall include contractual non-owned coverage (SEF 96)
- (e) Products and completed operations coverage
- (f) Contractual Liability
- (g) Hostile fire
- (h) The policy shall provide thirty (30) days' prior notice of cancellation.

3. Tenant's Legal Liability Insurance: Tenant's legal liability insurance for the actual cash value of the building and structures on the Premises, including loss of use thereof.
4. 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.
5. 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 Landlord.
6. Certificate of Insurance: The Tenant shall provide a Certificate of Insurance evidencing coverage in force at least ten (10) days' prior to the commencement of the Term and at any other time as reasonably requested by the Landlord.
7. The Landlord at its sole discretion may in writing change the insurance required under this Agreement including, but not limited to, the limit of insurance. The revised insurance requirements will come into effect upon the next renewal date of the Tenant's existing policy.

Increase of Landlord Premiums

- 2.15. If the occupancy of the Premises, the conduct of business in the Premises, or any acts or omissions of the Tenant in the Premises or any part thereof, causes or results in any increase in premiums for the insurance carried from time to time by the Landlord with respect to the Premises, the Tenant will pay such increase in premiums.

Damages

- 2.16. 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.
- 2.17. Idling of Vehicles is prohibited to prevent unnecessary pollution and disturbance caused to neighbouring residents. The Tenant will inform its vendors and invitees that idling of Vehicles is prohibited.

Insolvency or Abandonment

- 2.18. 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

- 2.19. 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.

3. COVENANTS OF THE LANDLORD

The Landlord hereby agrees to the covenants as 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 provide and maintain insurance on the Premises against loss, damage or destruction caused by fire and extended perils under a standard extended form of fire insurance policy in such amounts and on such terms and conditions as would be carried by a prudent owner of a similar building, having regard to the size, age and location of the Premises. The amount of insurance to be obtained shall be determined at the sole discretion of the Landlord. The Landlord may maintain such other insurance in respect of the Premises and its operation and management as the Landlord determines, acting reasonably. The Tenant shall not be an insured under the policies with respect to the Landlord's insurance, nor shall it be deemed to have any insurable interest in the property covered by such policies, or any other right or interest in such policies or their proceeds.

Damage or Destruction

- 3.3. If the Premises or any portion thereof are damaged or destroyed by fire or by other casualty, the rent shall abate in proportion to the area of that portion of the Premises which, in the opinion of the Landlord's architect or professional engineer, is thereby rendered unfit for the purposes of the Tenant until the Premises are repaired or rebuilt to the Landlord's satisfaction, and the Landlord shall repair or rebuild the Premises. Rent shall recommence to be payable one (1) day after the Landlord notifies the Tenant that the Premises are repaired or rebuilt; provided, however, that the Landlord and tenant's right of termination in section 1.6 continues to apply and either party may terminate this Agreement, without penalty, upon giving the other party not less than sixty (60) days' notice in writing.

Repairs/Maintenance

- 3.4. The Landlord agrees to prepare the Premises for the Tenant prior to the start of each Operating Months to ensure that the grounds are maintained to a safe standard acceptable to and agreed upon by both the Tenant and the Landlord.

- 3.5. The Landlord shall at all times and at its own cost and expense maintain and repair the Premises to ensure that they are kept in a condition similar to when they were first built or renovated.
- 3.6. The Landlord shall give the Tenant at least five (5) business days' prior notice of any repairs or replacements to, or which would otherwise affect the normal conduct of any business operations in, the Premises (except in the case of an emergency posing imminent risk of material harm to persons or property, in which event the Landlord shall only be required to give such notice as is reasonable under the circumstances).
- 3.7. If, in the Tenant's reasonable judgment, the Landlord's repairs would materially interfere with or disrupt the normal conduct of any business operations in the Premises, the Landlord shall perform such repairs only after the regular hours of operation of Tenant. 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.

4. GENERAL PROVISIONS

Notices

- 4.1. 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:

The Corporation of the Municipality of Kincardine
ATTN: Director of Community Services (or designate)
1475 Concession 5, RR#5
Kincardine, ON N2Z 2X6
(519) 396-3468
jjagelewski@kincardine.ca

and to the Tenant at:

Kincardine Farmers Market Association
ATTN: Manager of KFSM
985 Concession 9,
Kincardine, ON N2Z 2X6
susie.stoeckli@gmail.com

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

- 4.2. The Tenant shall not be entitled to assign this Agreement 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 Agreement without the written consent of the Landlord.

Severability

- 4.3. 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

- 4.4. 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).

Remedies Cumulative

- 4.5. Notwithstanding any other provision of this Agreement, the Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Agreement, by statute, or common law, all of which rights and remedies are intended to be cumulative and not alternative. The express provisions contained in this Agreement as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord by statute or common law.

Effect of Waiver or Forbearance

- 4.6. No waiver by any party of any breach by any other party of any of its covenants, agreements or obligations contained in this Agreement shall be or be deemed to be a waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations, nor shall any forbearance by any party to seek a remedy for any breach by any other party be a waiver by the party so forbearing of its rights and remedies with respect to such breach or any subsequent breach. The subsequent acceptance of Rent by the Landlord shall not be deemed a waiver of any preceding breach by the Tenant of any term, covenant or condition regardless of the Landlord's knowledge of such preceding breach at the time of the acceptance of such Rent. All Rent and other charges payable by the Tenant to the Landlord hereunder shall be paid without any deduction, set-off or abatement whatsoever, and the Tenant waives the

benefit of any statutory or other right in respect of abatement or set-off in its favour at the time hereof or at any future time.

Entire Agreement

- 4.7. There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Agreement, save as expressly set out or incorporated by reference herein, and this Agreement constitutes the entire agreement duly executed by the parties, and no amendment, variation or change to this Agreement shall be binding unless the same shall be in writing and signed by the parties.

Governing Law

- 4.8. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties agree that any disputes arising under or in connection with this Agreement shall be resolved by the courts of the Province of Ontario, and the parties hereby submit to the exclusive jurisdiction of those courts.

Amendment

- 4.9. This Agreement may only be amended by written instrument executed by both parties.

Counterparts

- 4.10. The parties may execute this Agreement in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

Electronic Signature

- 4.11. The parties agree that electronic signatures may be used to execute this Agreement and any amendments to this Agreement, and that such electronic signatures shall have the same legal effect as original signatures.

[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 Effective Date.

**KINCARDINE FARMERS
MARKET ASSOCIATION**

Susie Stoeckli, Manager

I have the authority to bind the Tenant.

**THE CORPORATION OF THE
MUNICIPALITY OF KINCARDINE**

Kenneth Craig, Mayor

Jillene Bellchamber-Glazier, CAO

We have the authority to bind the Landlord.

"SCHEDULE A" CONNAUGHT PARK

