

CONCESSION BOOTHS LEASE AGREEMENT

This Lease Agreement made this 9th day of August, 2023. (the “Effective Date”)

BETWEEN:

THE MUNICIPALITY OF THE MUNICIPALITY OF KINCARDINE

(the “Municipality”)

- AND -

SABA UMAR

(the “Lessee” or “Lessee”)

Whereas the Corporation of the Municipality of Kincardine is the owner of the Davidson Centre and the Tiverton & District Sports Complex; and

Whereas the Municipality is desirous of entering into an agreement with the Lessee for the use and operation of the concession booths at the Tiverton & District Sports Complex and the Davidson Centre; and

Whereas the Lessee desires to provide the services as prescribed within this Agreement;

Now Therefore in consideration of the mutual covenants set out herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. Term of Agreement

- 1.1. The Lessee is entitled to perform the services as prescribed within this Agreement for the term of one (1) year commencing on September 1, 2023 and ending on August 31, 2024. (the “Term”)
- 1.2. Either party shall have the right to terminate this Agreement, without penalty, upon giving the other party not less than 60 days’ notice in writing.

2. Renewal

- 2.1. In the event that the Lessee is not in breach of this Agreement, the Lessee shall have the right to renew the term hereof for an additional five (5) years (the “new term”) upon giving the Municipality 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, as adjusted.

3. Premises

- 3.1. The Municipality hereby grants the Lessee the right to use and occupy the concession booth spaces (the “Premises”) at the Davidson Centre located at 601 Durham Street, Kincardine ON and at the Tiverton & District Sports Complex located at 20 McLaren Street, Tiverton ON for the sole purpose of a concession operation.
- 3.2. The Lessee recognizes the Municipality requires access through the premises in order to service building systems, including, but not limited to,

electrical and exhaust hood fire systems. The Municipality shall make every effort to notify the Lessee in advance when access is necessary, situations deemed emergency in nature excepted.

- 3.3. The premises shall be used and occupied by the Lessee for the sole purpose of operating the premises as a snack and refreshment operation.
- 3.4. The Lessee is responsible for maintaining the premises in a clean and sanitary manner in compliance with all food safety and public health legislation and regulations. In the event the Lessee receives notice from the Grey Bruce Health Unit or other governmental or quasi-governmental entity that the premises is in violation of any legislation or regulations concerning food safety and/or public health (the "Health Notice"), the Lessee shall provide the Municipality with a copy of the Health Notice within forty-eight (48) hours of receipt of same. Any infraction set out in a Health Notice shall be rectified immediately. Failure to comply with this section by the Lessee shall be a fundamental breach of this agreement and shall allow the Municipality to terminate this agreement pursuant to section 1.2.
- 3.5. The Lessee shall, at the termination of the term unless otherwise arranged with the Municipality, surrender the Premises unto the Municipality in good and substantial repair and condition, reasonable wear and tear excepted.
- 3.6. The Municipality is responsible for providing the following services to the Lessee:
- Heat, hydro and water services;
 - Garbage and recycling pickup from the provided authorized Municipal containers;
 - Clean and workable equipment;
 - Clean and annually inspected hood systems.
- 3.7. The following equipment will be available for use at the outlined facilities:

Davidson Centre (Concession 5):

- Two (2) basket deep fryers
- One (1) microwave oven
- One (1) propane grill
- One (1) four burner range
- Two (2) stand up refrigerators
- One (1) condiment refrigerator station
- One (1) electric heating pot
- One (1) hot dog warmer

Tiverton Sports Centre:

- One (1) Refrigerator
- One (1) Microwave

4. Rent/Fees

- 4.1. The Lessee will pay the total annual sum of \$4500 plus HST for the use and rental of the concession booth spaces at the Tiverton & District Sports Complex and the Davidson Centre.
- 4.2. The Lessee will pay \$2,250 plus HST to the Municipality by September 15, 2023. The remainder amount of \$2,250 plus HST of the contract fees will be due by January 15, 2024.
- 4.3. The Tenant and the Landlord agree that rent shall incrementally increase per annum, as specified in Section 4.1, in relation to Consumer Price Index (CPI) (Province of Ontario) and such increase shall occur at the end of each calendar year. The CPI annual increase is applicable to the First and Second Renewal Terms and to any subsequent renewals.

5. General Scope of Services

- 5.1. The Lessee will operate the concession booths in such a manner that is deemed appropriate by the Manager of Community Programs. Such manner includes but is not limited to:
 - Responsible for maintaining the existing equipment in a clean, safe, and workable condition;
 - Ensure the concession is open during all public functions including but not limited to:
 - o Kincardine Minor Hockey (KMHA) games;
 - o Silver Stick and other tournaments;
 - o Kincardine Bulldogs games;
 - o Skating Galas;
 - o Track and Field events;
 - o Kincardine Bulldogs Volleyball Tournament;
 - Responsible for the purchase of all supplies required to operate the concession booths (including the oil to be used in the deep fryer);
 - Responsible for the upkeep and maintenance of the deep fryer including the changing of oil and cleaning of grease trap of back sink;
 - Responsible for the removal of garbage and recycling to the designated bins provided by the Municipality and located at the Davidson Centre and the Tiverton Sports Centre;
 - Ensure the concession booths are available for inspection at any time.
- 5.2. The Lessee is responsible for the management of the premises including, but not limited to, supplying food, inventory control, providing training and paying staff.
- 5.3. The Lessee shall comply with required legislation or by-laws, including, but not limited to, Occupational Health and Safety Act, Federal, Provincial and Municipality of Kincardine legislation and regulations.

- 5.4. In accordance with the Ontario Regulation 429/07, Accessibility Standards for Customer Service and Ontario Regulation 191/11, the Integrated Accessibility Standards Regulation, the Lessee must meet the requirements of the above-noted Regulation and provide training to all staff.
- 5.5. The Lessee is responsible for providing adequate training to all staff regarding the concession operations, including, but not limited to, safe food handling and concession equipment operation.
- 5.6. The Lessee will be required to submit a criminal records check as they will be involved with a vulnerable population. The criminal records check searches for such records or criminal convictions for which a pardon has not been granted, records of outstanding/pending criminal charges of which the respective police force is aware or can disclose, probations, prohibitions, or other judicial orders in effect. The Municipality has the right to terminate this Agreement in the event any such records exist in relation to the Lessee.
- 5.7. The Lessee shall remit applicable payments for the persons engaged by the Lessee to work at the premises, including, but not limited to, income tax, Canada Pension Plan, Employment Insurance, and Workplace Safety Insurance, and further agrees to indemnify the Municipality for payments of any such monies if the Lessee fails to do so.
- 5.8. The Lessee and the Municipality mutually agree that ongoing communication will be maintained. The parties will meet every three (3) months of this agreement to ensure both parties are satisfied with the execution of the agreement.

6. Operation Rights

- 6.1. The Municipality will not compete with the Lessee at the premises. However, the parties agree that the Lessee does not have exclusive rights in respect to events held at the Davidson Centre or the Tiverton & District Sports Complex which may include banquets, receptions, meetings, programs, recreational and or social events, whether or not such events are licensed under regulation of the AGCO. The Municipality reserves the right to allow vendors to be in operation for designated events (for example: trade shows where multiple vendors are required in order to serve attendees; hall rentals where renter has choice of food caterer). Special events held on the outdoor properties of the Davidson Centre or the Tiverton & District Sports Complex are not subject to the exclusive operating rights of the Lessee.

7. Products for Sale

- 7.1. The Lessee must provide to the Municipality a list of products to be sold prior to selling. It is understood that the Lessee will test new products and offer specials from time to time. These items will be added to the list of products if they become regular menu items.
- 7.2. The sale of products containing nuts, including peanuts, is prohibited. The Lessee must be able to provide the public with a list of ingredients for all products sold upon request.

- 7.3. The sale of tobacco, cannabis and alcohol products in any manner is strictly prohibited. Failure to adhere to this condition may lead to the immediate termination of the agreement.
- 7.4. The Lessee shall provide healthy food options including requiring bottled water be sold for less than sugar-sweetened beverages.
- 7.5. The Lessee shall remit all applicable taxes relative to product and merchandise sales and any other license/fees applicable to the concession operations and further agrees to indemnify the Municipality for all such monies if the Lessee fails to do so.
- 7.6. It is the responsibility of the Lessee to be on site for delivery of supplies and equipment. All supplies and equipment associated with this contract are to be received without the assistance of Municipality staff or equipment.
- 7.7. Should the Lessee wish to sell items that are not food, they must obtain prior approval from the Municipality before doing so.

8. Advertising and Signage

- 8.1. The Municipality must approve any Lessee physical signage or advertising within the Davidson Centre and the Tiverton & District Sports Complex relative to the concession operations.
- 8.2. The Lessee shall be responsible for any costs relative to the signage such as production, installation, repair, removal at end of term, and repairing any damage caused by such removal.

9. Insurance

- 9.1. 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 Municipality, including:
- 9.1.1. 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 Demised Premises, including, without limitation, anything in the nature of a leasehold improvement.
- 9.1.2. 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 Municipality of Kincardine 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 \$5,000,000/occurrence with an aggregate of not less than \$5,000,000

- (b) Add the Municipality of Kincardine 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); Coverage to include damage caused by operating or moving vehicles
- (e) Products and Completed operations coverage
- (f) Contractual Liability
- (g) The policy shall provide 30 days prior notice of cancellation
- (h) Failure to Perform exclusion removed
- (i) Lock-and-Key Replacement

- 9.1.3. Automobile Insurance – Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$2,000,000 per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Proponent.
- 9.1.4. 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.
- 9.1.5. 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.
- 9.1.6. 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.
- 9.1.7. Certificate of Insurance: The Tenant shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to the contract commencement.
- 9.1.8. The Municipality 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.

10. Indemnity

10.1. The Tenant shall defend, indemnify and save harmless The Municipality 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 Supplier, 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 Contract. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Tenant in accordance with this Contract and shall survive this Contract.

The Tenant agrees to defend, indemnify and save harmless The Municipality of the Municipality of Kincardine 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 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 Contract and shall survive this Contract.

11. Designated Representative(s)

Upon entering into this Lease Agreement, the parties hereto agree to each designate a representative for the purposes of this Agreement and also agree that the designated representatives may deal with each other in respect to all matters arising under this Agreement. For the purpose of this Agreement, the designated representatives are as follows:

The Municipality of the Municipality of Kincardine
ATTN: Manager of Community Programs
1475 Concession 5, RR#5
Kincardine, Ontario N2Z 2X6

Saba Umar
637 Kennard Crescent,
Kincardine, Ontario N2Z 1T4
(647) 642-3610 | saba.akram3@gmail.com

12. Assignment

12.1. The Lessee shall not assign this Agreement without the expressed written consent of the Municipality, which consent will not be unreasonably withheld.

13. Severability

13.1. 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.

14. Headings

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

15. Entire Agreement

15.1. 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.

In Witness Whereof the parties have duly signed and/or affixed their corporate seals attested by the hands of their respective officers duly authorized in that behalf.

Sign, Seal and Delivered this 9th day of August, 2023.

Saba Umar

**The Corporation of the
Municipality of Kincardine**

Kenneth Craig, Mayor

Jennifer Lawrie, Clerk