

## FACILITY USE AGREEMENT

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2023. (the “Effective Date”)

**BETWEEN:**

**THE MUNICIPALITY OF THE MUNICIPALITY OF KINCARDINE**

(the “Municipality”)

**AND**

**THE KINCARDINE BULLDOGS HOCKEY CLUB**

(the “Club”)

**WHEREAS** the Municipality is the owner of the Davidson Centre (the “Building”), which is municipally known as 601 Durham Street, Kincardine, Ontario (the “Property”);

**AND WHEREAS** the parties wish to enter into a mutually beneficial contract for the use of areas within the Davidson Centre;

**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. Agreement Term**

- (a) The Club is entitled hereby to have and to hold the Premises for and during the term of five (5) year commencing on August 1, 2023, and ending on July 31, 2028 (the “Term”).
- (b) The Municipality reserves the right, at its sole discretion, to shorten the Term of this Agreement, alter hours of access to the Permitted Areas or change the location of the office space or change room as may be necessary from time to time. The Municipality may cancel all or any portion of this Permit on short notice due to mechanical failures, weather conditions or emergencies.
- (c) 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.

### **2. Permitted Areas**

- (a) As shown within Schedule A to this Agreement, the Club shall have access to the following areas within the Building:
  - i. Dressing Room #7 and #8 (#7 shall be the dedicated Club dressing room);
  - ii. Media/Sound Room and
  - iii. Visiting teams Dressing Rooms #2 and #3
  - iv. Referee usage rooms #9 and #6

### **3. Pay Rent**

- (a) Annual Rate shall be approved by the Fees and Charges By-law.

### **4. Ice Rental and Facility Use Terms**

- (a) Hours scheduled will be strictly adhered to in an effort to maintain a consistent and efficient ice-time operation; thus, the Club will be expected to vacate the ice surface at the scheduled time, regardless of encountered time delays. Should extenuating circumstances occur to cause a delayed ice schedule, the resulting rental completion time will be at the discretion of the Municipality.
- (b) The Municipality, through personnel, reserves the right to stipulate to the Club the amount of ice time required for the game lengths stipulated by the O.H.A. (as per Clause 25).
- (c) Rental cancellations by the Club shall be administered in the following manner during regular season:
  - i. When notice of intent to cancel is received by the Facilities Scheduler with 30 days or more notice, no financial responsibilities shall exist.
  - ii. When notice of intent to cancel is received by the Facilities Scheduler with 15 to 29 days' notice, 50% financial responsibility shall exist for the Club; unless the canceled ice is rented to another user by or through the Manager.
  - iii. When notice of intent to cancel is received by the Facilities Scheduler with 14 days or less notice, 100% financial responsibility shall exist for the Club, unless the canceled ice is rented to another user by or through the Manager.
  - iv. Notwithstanding the above schedule, no financial responsibility shall exist should the cancellation be due to inclement weather, at the discretion of the Municipality through personnel.
  - v. The Municipality shall not apply a financial penalty for ice time cancelled once it is confirmed the team has exited the playoff round.
- (d) Club events resulting in additional staffing costs for the Municipality without increasing facility revenues, shall be subject to the said additional staff costs.
- (e) Current season and special event ice requests shall be administered in the following manner:
  - i. Club requests must be submitted to the Municipality by the date indicated in the ice booking request correspondence.
  - ii. All available facility use dates shall be confirmed by the Municipality to the Club prior to August each year; the Club's ice rental permit shall be signed and returned to the Municipality by the Club prior to September each year, to ensure the Club, of the ice-time indicated.

- iii. Should the Club wish to cancel ice-time previously confirmed it must do so prior to October 1<sup>st</sup>, or be responsible for the said time(s) up to the end of the season, including full rental payment.
  - iv. Special event requests shall be governed by the Municipality's Special Events Policy.
- (f) The Municipality reserves the right to alter the Club's ice schedule throughout the season due to considerations such as play-off dates, major attractions, or special events.
- (g) The Club is responsible for spectators attending their events; including admission, conduct and control. The level of security required shall be determined by the Municipal Alcohol Policy, following communication with the Club. All security costs incurred shall be the responsibility of the Club.
- (h) All requests for auxiliary facility services must be arranged well in advance of the event with the Facilities Supervisor or designate, (i.e., tables, chairs, music, P.A. system, boardroom, on ice ceremonies that require carpet for ice, etc.).
- (i) All Community Services office areas are restricted from access and all lobby/foyer arrangements will be mutually approved by the Club and Municipality, (including admissions, souvenir sales, food/beverage services, draw tickets/lottery sales, sponsor recognition, etc.).
- (j) The Club is advised that only facility liability insurance is provided under the municipal policy.
- (k) In consideration of the safety regulations during operation of the ice-resurfacer, the Club agrees to remain off the ice until the entire re-surfacing has been completed and Olympia access doors are closed. This includes games and practice bookings.
- (l) All ice re-surfacing (floods) will be at the discretion of the Municipality through personnel, not the Club. This policy will be in effect for both practice times and games.
- (m) The Club shall rent facilities from the Municipality in accordance with the following schedule:
- i. Exhibition and Regular Season Games
    - a. Ice time at the prime time per hour ice rate for games and practices. Less applicable Council approved discounts.
    - b. Rates are exclusive of applicable taxes.
    - c. Hall and Meeting Room use for all other events will be subject to regular rates as of the date of the event.
    - d. The Municipality reserves the rights to all food and beverage sales, excluding items restricted to the Blueline Club, at the discretion of the

Municipality.

- ii. Playoffs
  - a. All Playoffs will be required to be completed no later than the third Friday of April.

### **5. Dressing Room Terms**

The Municipality provides dressing room space at the Davidson Centre that has been designated for use by the Kincardine Bulldogs Jr. C Hockey Club. The following outlines the responsibilities of both parties:

#### Kincardine Bulldogs Junior C Hockey Club

- (a) Any development plans to further augment or alter this dressing room space is to be presented and approved by the Manager of Parks & Facilities prior to commencing room alterations.
- (b) Should the Club cease to exist, any fixed accessories that can be removed without causing damage to the room's original interior may be removed.
- (c) The Club will:
  - i. Be responsible for repairs resulting from abuse or vandalism.
  - ii. Perform regular custodial and maintenance.
  - iii. Pay for any insurance policy deductible fees if claims are a result of the Club's use.
  - iv. Ensure room access by players is during facility open hours.
  - v. Ensure after hours room access by players is for the purposes of returning equipment is supervised by Club executive members or team personnel will be the last to leave the area when accessed after hours and ensure the area is secured.
  - vi. Agree to permit the use of the dressing room for major tournaments or facility functions following advance consultation with both the Club and the Municipality; and further that there shall be no expense to the group utilizing the dressing room.
  - vii. Designate a representative to conduct a room inspection with Municipality staff prior to and after events when the dressing room is utilized by another group; and further that any room concerns be addressed with the group that utilized the dressing room.
- (d) The Municipality will:
  - i. Maintain total value replacement fire and liability insurance.
  - ii. Pay all utilities (hydro, water, gas).
  - iii. Provide room security from unauthorized persons.

- iv. Facilitate communication between the Club and the third-party group requesting use of the dressing room before and if necessary, after room use.
  - v. Provide off season dressing room maintenance. This will include deep cleaning, painting, and general repairs.
  - vi. Shall be provided unobstructed access to the Dressing Room #7 for the purposes for facility maintenance when required.
- (e) The Permitted Areas shall be returned to the Municipality at the conclusion of this Agreement in the same condition. The Municipality reserves the right to complete an inspection report in respect of the Permitted Areas at the commencement and termination of this Agreement. The Club agrees to leave the facility in a clean and tidy condition acceptable to the Municipality and the failure of the Club to do so shall result in the Club paying to the Municipality any costs which may be incurred in restoring the Permitted Areas.

## **6. Rink Board Advertising Terms**

The Club shall:

- (a) Be responsible for all rink board advertising sales;
- (b) Be responsible for the cost of manufacturing and yearly editing of the signs;
- (c) At their discretion, set rates, fees and terms for rink board advertising;
- (d) Pay the following fees to the Municipality of Kincardine for the purposes of leasing rink board space;
  - i. Year 1- \$5,000 with half due 1st of August, balance due 1st of December.
  - ii. Year 2- \$7,500 with half due 1st of August, balance due 1st of December.
  - iii. Year 3- \$10,200 with half due 1st of August, balance due 1st of December.
  - iv. Year 4 - \$10,404 with half due 1st of August, balance due 1st of December.
  - v. Year 5 -\$10,612 with half due 1st of August, balance due 1st of December.
- (e) Comply with the Municipality of Kincardine's REC.03 Advertising and Sponsorship Program and FAC.01 Advertising Revenue Generation Policy.

The Municipality shall:

- (a) Be responsible for rink board installation;
- (b) Only install rink board advertisements during the month of July in preparation for the winter ice season, anything installation request outside of this time shall be subject to a fee;

- (c) Agree to allow existing application of Lexan coverage of signs until existing agreements are renewed, at which time all advertising will be a vinyl application to the existing rink boards. This shall be fully transitioned by 2025.

## **7. Insurance Requirements**

The Club shall obtain, at their own expense the following insurance coverage:

- (a) 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.
- (b) 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:
- i. A limit of liability of not less than \$2,000,000/occurrence with an aggregate of not less than \$2,000,000
  - ii. Add the Landlord as an additional insured with respect to the operations of the Named Insured
  - iii. The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
  - iv. Non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage (SEF 96)
  - v. Products and completed operations coverage
  - vi. Contractual Liability
  - vii. Hostile fire
  - viii. The policy shall provide 30 days prior notice of cancellation
- (c) 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.
- (d) 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.

(e) 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.

2. The Club shall provide a Certificate of Insurance evidencing coverage in force at least ten (10) days prior to the contract commencement.
3. 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.

#### **8. Liquor Liability**

- (a) If the Club will be supplying alcoholic beverages, the Club's liability insurance shall include host liquor liability coverage.
- (b) If the Club intends to sell alcohol, the Club must have and comply with a valid liquor license and maintain alcohol liability insurance covering the sale of alcohol/
- (c) The Club must abide by the Municipal Alcohol Risk Management Policy and all that it outlines and entails as requirements.

#### **9. Indemnity to the Municipality**

- (a) The Club 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.
- (b) The Club 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 Club'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.

#### **10. Code of Conduct**

- (a) The Club is responsible for the discipline of its club, group members, invitees' guests, volunteers, employees, and players. The Club will not permit any activity which will or may cause a nuisance, annoyance, inconvenience or damage to the Davidson Centre or the Municipality's reputation.
- (b) The Club and its respective members shall abide by the R-Zone Policy adopted by the Municipality.

#### **11. General Terms**

- (a) The Municipality shall communicate with the Club regarding playoff date arrangements and the Club shall have first refusal privileges for Friday nights, from February 1<sup>st</sup> to end of season. Should the Club wish to hold a specific date for a potential playoff game, the Club shall be deemed to have booked the said date and be subject to all rental fees whether utilized or not.
- (b) Regular season game time minimums shall be 2.50 hours, including warm up time. Actual time used for all playoff games shall be invoiced.
- (c) The Municipality shall provide one rent-free hour of ice time per season to the Club for purposes of a team member photograph.
- (d) The Club shall provide 1 full page in the team program for the Municipality at no cost, rink mentions for the Municipality at each home and sponsor a minimum of 1 public skate each ice season at the established skate sponsorship rates.
- (e) The Club's failure to abide by the agreed stipulations included within this Agreement, as verified by the following signees may result in forfeiting current and/or future rentals at the Davidson Centre.

#### **12. Notices**

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 Municipality 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](mailto:jjagelewski@kincardine.ca)

and to the Tenant at:

Kincardine Bulldogs  
ATTN: Warren Beisel  
P.O. Box 1  
Kincardine, ON N2Z 2Y6  
[wbeisel@jrctbulldogs.ca](mailto:wbeisel@jrctbulldogs.ca)

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.

**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 MUNICIPALITY OF THE MUNICIPALITY OF KINCARDINE**

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Kenneth Craig, Mayor

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Jillene Bellchamber-Glazier, CAO  
We have the authority to bind the Municipality.

**THE KINCARDINE BULLDOGS JR. C HOCKEY CLUB**

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Warren Beisel, General Manager  
I have the authority to bind the Club.