

LEASE AGREEMENT

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

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

(the "Landlord" or "Municipality")

AND

BRIGHT BEGINNINGS CHILD CARE

(the "Tenant" or "Lessee")

Whereas the Municipality is the owner of the Tiverton & District Sports Centre (the "Building"), which is municipally known as 20 McLaren Drive, Tiverton, Ontario (the "Property"); and

Whereas the said lands and premises hereinafter described are leased from and are under the control of the Landlord; and

Whereas the parties wish to enter into a mutually beneficial contract for the use of a portion of the Tiverton & District Sports Centre for the provision of day care programming for children;

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. In the consideration of the rents, covenants, and agreements of the Tenant to be paid, observed and performed, the Landlord hereby leases to the Tenant certain space located in the Tiverton & District Sports Centre (the "Property"). As described, Bright Beginnings will rent the following areas on the Premise:
 - Meeting Room; and
 - Lobby
- 1.2. The Tenant shall have use of the Tiverton Sports Centre and associated amenities within the Property.
- 1.3. Storage: The Landlord shall provide the Tenant with storage located within the Meeting Room.

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 September 1, 2023, and ending on August 31, 2028 (the "Term").

Renewal

- 1.5. 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 in accordance with section 1.7.

Right of Termination

- 1.6. 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

- 1.7. The Tenant shall pay unto the Landlord rent as follows:

September 1, 2023 to August 31, 2024:

Before & After School Program Booking - \$48.23 plus HST/per day (meeting room)

Full Day Booking (7am- 5pm) - \$80.00 plus HST/per day (meeting room)

Full Day Booking (7am – 5pm) - \$40.00 plus HST/per day (lobby)

September 1, 2024 to August 31, 2025:

Before & After School Program Booking - \$50.64 plus HST/per day (meeting room)

Full Day Booking (7am- 5pm) - \$84.00 plus HST/ per day (meeting room)

Full Day Booking (7am – 5pm) - \$44.00 plus HST/per day (lobby)

For the years following remaining in the Term, the rate shall increase annually by CPI.

- 1.8. The Tenants covenants and agrees to pay the Rent in equal monthly installments in advance on the first day of each and every month during the Term. The Tenant and the Landlord agree that rent shall incrementally increase per annum, as specified in Section 1.7, 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.

2. 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

- 2.3. The Municipality hereby grants and sets over to the Tenant the use of the rented areas on and subject to the terms and conditions of this agreement.
- 2.4. The Tenant will not have access to the facilities on statutory holidays, emergency facility closures, and scheduled maintenance operations.
- 2.5. 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.
- 2.6. The Landlord reserves the sole right to pre-empt the Tenant from the facility for other outside uses, and further the Landlord agrees to provide the Tenant with thirty (30) days notice of any dates where the Tenant is pre-empted for other community uses. The Department of Community Services (or designate) will offer an alternate municipal site and/or date, if available, to replace pre-empted dates.

Landlord's Access

- 2.7. To permit the Landlord and its agents at all reasonable times and upon advanced notice to enter the Premises for the purpose of showing the Premises or to inspect the condition thereof.

Return of Premises on Termination

- 2.8. 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

- 2.9. 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

- 2.10. 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 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 Corporation 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.

Insurance

2.11. 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:

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.
2. 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 \$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 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 demised 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 Municipality.
6. Certificate of Insurance: The Tenant shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to the contract commencement.
7. 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.

Tenant Obligations

- 2.12. The Tenant shall comply promptly with all requirements and recommendations of the Insurer's Advisory Organization of Canada (or any successor thereof), or of any insurer now or hereafter in effect, pertaining to or affecting the Premises.

The Tenant covenants to keep the Premises in good and reasonable state of repair consistent with the general standards applicable to buildings of a similar nature. The Tenant shall not be responsible for any items that are within the Landlord's obligations pursuant to this Lease.

Tenant Indemnity

- 2.13. The Tenant will indemnify the Landlord and save it harmless from any and all losses or claims, actions, demands, liabilities and expenses in connection with loss of life, personal injury and/or damage to or loss of property: (a) arising out of any occurrence in or about the Premises; (b) occasioned or caused wholly or in part by any act or omission of the Tenant or anyone for whom it is in law responsible; or (c) arising from any breach by the Tenant of any provisions of this Lease.

Increase of Landlord Premiums

- 2.14. 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 should pay such increase in premiums.

Damages

- 2.15. 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

- 2.16. The Tenant hereby agrees that the Landlord may re-enter the Premises after fifteen (15) business days' written notice to the Tenant of non-payment of rent or non-performance of covenants, subject to the provisions of this Agreement.

Insolvency or Abandonment

- 2.17. 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

- 2.18. 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 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 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 60 days' notice in writing.

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.

Repairs and Maintenance

- 3.7. 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).
- 3.8. 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.
- 3.9. The Tenant shall give Landlord prompt notice of any defects in the Building or the Premises.
- a) The Landlord shall proceed with due diligence, and in accordance with the restriction in s. 3.9, to make repairs to any defects in the Building or the Premises that in the opinion of the Landlord acting reasonably are significant in nature and relate either to the health and safety of the Tenant, its staff, employees, agents or invitees and or that materially interfere with the ability of the Tenant to operate its business at the Premises or due to an emergency, within fifteen (15) business days after receiving notice of same. If Landlord fails after fifteen (15) business days' notice to proceed with due diligence to make repairs that in the opinion of the Landlord acting reasonably are significant and relate either to the health and safety of the Tenant, its staff, employees, agents or invitees and or that materially interfere with the ability of the Tenant to operate its business at the Premises or due to an emergency, and only if the failure to perform such repairs actually increases the risk to the health and safety of the Tenant, its staff, employees, agents or invitees or materially interferes with the ability of the Tenant to operate its business in the Premises or to respond to an emergency, then the Tenant acting reasonably may make such repair or repairs at the expense of the Landlord, and the expenses actually incurred by Tenant in making said repairs, shall be paid to Tenant by the Landlord within thirty (30) days after a copy of a bill or statement is provided to the Landlord. In the event the Landlord does not reimburse Tenant for any amounts payable to Tenant hereunder within thirty (30) days after Tenant's demand therefor, which demand shall be accompanied by actual documents or invoices supporting the expenses incurred by the Tenant, the Tenant shall have the right (in addition to any rights and remedies to which it may be entitled under this Lease, at law, or in equity) to set-off such amounts against Rent.

- 3.10. The Landlord shall proceed with due diligence, and in accordance with the restriction in s. 3.9, to make repairs of all defects that in the opinion of the Landlord acting reasonably are non-significant and that do not relate to the health and safety of the Tenant, its staff, employees, agents or invitees and or that do not materially interfere with the ability of the Tenant to operate its business at the Premises or are not an emergency, within forty-five (45) business days notice of same being delivered to the Landlord. If the Landlord fails after forty-five (45) business days' notice to proceed with due diligence to make repairs of the defects that in the opinion of the Landlord acting reasonably are non-significant, then the Tenant acting reasonably may make such repair or repairs at the expense of the Landlord, and the expenses actually incurred by Tenant in making said repairs, shall be paid to Tenant by the Landlord within thirty (30) days after a copy of a bill or statement therefor is provided to the Landlord. In the event the Landlord does not reimburse Tenant for any amounts payable to Tenant hereunder within thirty (30) days after Tenant's demand therefor, which demand shall be accompanied by actual documents or invoices supporting the expenses incurred by the Tenant, the Tenant shall have the right (in addition to any rights and remedies to which it may be entitled under this Lease, at law, or in equity) to set-off such amounts against Rent.
- 3.11. 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 if the Tenant refuses to provide the Landlord with reasonable access for repairs and maintenance as per section 3.9.
- 3.12. The Tenant at its own cost and expense shall maintain and repair the interior of the Premises to the quality of the original work for all minor building repairs with the permission of the Landlord.

Janitorial Services

- 3.13. The Landlord will be responsible for janitorial services, cleaning and other supplies incurred in order to clean and maintain the Common Areas within the Building.

Furniture, Fixtures and Other Equipment

- 3.16. 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.
- 3.17. 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.

Snow Removal

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

Tenant's Obligation to Advise Landlord

3.15. 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.

4. IMPROVEMENTS

Signs, Flags and Fixtures

4.1. 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's presence at the Tiverton & District Sports Complex, in accordance with any applicable laws or municipal by-laws and with the prior written approval of the Landlord.

Alterations by the Tenant

4.2. Except as provided for in Sections 3.10 through 3.12 above, 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

4.3. 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

4.4. 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

4.5. Should the Landlord determine in its sole discretion to renovate or reconstruct the Tiverton & District Sports Centre, 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. If, in the Tenant's reasonable judgment, the Landlord's renovations or reconstruction 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.

5. GENERAL PROVISIONS

Notices

- 5.1. 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

and to the Tenant at:

Bright Beginnings Child Care
ATTN: Sandra Parry
29 Mill Street
Tiverton, ON N0G 2T0

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

- 5.2. 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

- 5.3. 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

- 5.4. 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

- 5.5. The Tenant shall not register this Agreement.

Severability

5.6. 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

5.7. 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

5.8. 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

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

Statutory Powers

5.10. 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

5.11. 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.

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

Kenneth Craig, Mayor

Jennifer Lawrie, Clerk

We have the authority to bind the Corporation.

BRIGHT BEGINNINGS CHILD CARE

Sandra Parry, Owner

I have the authority to bind the Organization.