



THE CORPORATION OF THE TOWN OF GODERICH

BY-LAW NO. 89 OF 2018

BEING A BY-LAW TO AUTHORIZE A LEASE AGREEMENT BETWEEN THE CORPORATION OF THE TOWN OF GODERICH (TENANT) AND THE GODERICH KINSMEN CLUB (LANDLORD)

WHEREAS the County of Huron will provide funding in the amount of \$350,000 towards renovations of classrooms at the Goderich Municipal Child Care Centre;

AND WHEREAS the Town of Goderich allocated \$50,000 towards this project in their 2018 budget;

AND WHEREAS temporary accommodation for at least two classrooms will be required for the period October 1st, 2018 to March 1st, 2019;

AND WHEREAS staff have met with representatives of the Goderich Kinsmen Club at their facility on 185 Keays Street;

AND WHEREAS the second floor of the Kinsmen Centre is available for the purpose of temporary accommodation for child care purposes;

AND WHEREAS the attached lease reflects the conditions of the use of this facility for the purpose of child care classrooms;

NOW, THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF GODERICH ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and are hereby authorized to execute and affix the Corporate Seal to a Lease Agreement between the Corporation of the Town of Goderich and the Kinsmen Club of Goderich.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 10th DAY OF SEPTEMBER, 2018.

MAYOR, Kevin Morrison

CLERK, Janice Hallahan

3. TERM AND POSSESSION

- (1) The Tenant shall have possession of the Premises for a period of 5 months commencing on the 1st day of October, 2018 and ending on the 28th day of February, 2019, (the "Term").
- (2) Subject to the Landlord's rights under this Lease, and as long as the Lease is in good standing the Landlord covenants that the Tenant shall have quiet enjoyment of the Premises during the Term of this Lease without any interruption or disturbance from the Landlord or any other person or persons lawfully claiming through the Landlord.
- (3) If for reasons beyond the Landlord's control, vacant possession of the Premises cannot be given to the Tenant on the commencement date of the Term of the Lease, the Lease shall remain in effect but the Tenant shall not be required to pay Rent until the date when possession is actually given to the Tenant;
 - (a) but if possession is not given within ninety (90) clear days from the commencement date of this Lease either party may terminate this Lease by written notice to the other;
 - (b) and any delay in the actual occupation by the Tenant of the Premises shall not extend the Term of the Lease.

4. ASSIGNMENT

- (1) The Tenant shall not assign this Lease or sublet the whole or any part of the Premises unless he first obtains the consent of the Landlord in writing, which consent shall not unreasonably be withheld:
 - (a) and the Tenant hereby waives his right to the benefit of any present or future Act of the Legislature of Ontario which would allow the Tenant to assign this Lease or sublet the Premises without the Landlord's consent.
- (2) The consent of the Landlord to any assignment or subletting shall not operate as a waiver of the necessity for consent to any subsequent assignment or subletting.
- (3) Any consent granted by the Landlord shall be conditional upon the assignee, sub lessee or occupant executing a written agreement directly with the Landlord agreeing to be bound by all the terms of this Lease as if the assignee, sub lessee or occupant had originally executed this Lease as Tenant.
- (4) Any consent given by the Landlord to any assignment or other disposition of the Tenant's interest in this Lease or in the Premises shall not relieve the Tenant from his obligations under this Lease, including the obligation to pay Rent and Additional Rent as provided for herein.
- (5) If the party originally entering into this Lease as Tenant, or any party who subsequently becomes the Tenant by way of assignment or sublease or otherwise as provided for in this Lease, is a corporation then:
 - (a) the Tenant shall not be entitled to deal with its authorized or issued capital or that of an affiliated company in any way that results in a change in the effective voting control of the Tenant unless the Landlord first consents in writing to the proposed change;
 - (b) if any change is made in the control of the Tenant corporation without the written consent of the Landlord then the Landlord shall be entitled to treat the Tenant as being in default and to exercise the remedies stipulated in paragraph 10 (2) of this Lease and any other remedies available in law;

5. USE

(1) During the Term of this Lease the Premises shall not be used for any purpose other than:

a Child Care Centre

without the express consent of the Landlord given in writing.

(2) 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 or other competent authority relating to the Premises.

6. REPAIR AND MAINTENANCE

(1) The Tenant covenants that during the term of this Lease and any renewal thereof the Tenant shall keep in good condition the Premises including all alterations and additions made thereto, and shall, with or without notice, promptly make all needed repairs and all necessary replacements as would a prudent owner:

- (a) but the Tenant shall not be liable to effect repairs attributable to reasonable wear and tear, or to damage caused by fire, lightning or storm or for capital, structural, roof or exterior repairs.

(2) The Tenant shall permit the Landlord or a person authorized by the Landlord to enter the Premises to examine the condition thereof and view the state of repair at reasonable times.

- (a) and if upon such examination repairs are found to be necessary, written notice of the repairs required shall be given to the Tenant by or on behalf of the Landlord and the Tenant shall make the necessary repairs within the time specified in the notice;
- (b) and if the Tenant refuses or neglects to keep the Premises in good repair the Landlord may, but shall not be obliged to, make any necessary repairs, and shall be permitted to enter the Premises, by himself or his servants or agents, for the purpose of effecting the repairs without being liable to the Tenant for any loss, damage or inconvenience to the Tenant in connection with the Landlord's entry and repairs;
 - (i) and if the Landlord makes repairs the Tenant shall pay the cost of them immediately as Addition Rent.

(3) Upon the expiry of the Term or other determination of this Lease the Tenant agrees peaceably to surrender the Premises, including any alterations or additions made thereto, to the Landlord in a state of good repair, reasonable wear and tear and damage by fire, lightning and storm only excepted.

(4) The Tenant shall immediately give written notice to the Landlord of any substantial damage that occurs to the Premises from any cause.

(5) During the Term of the Lease, the Tenant will supply custodial staff to clean the space rented by the Tenant pursuant to this Lease.

7. ALTERATIONS AND ADDITIONS

- (1) If the Tenant, during the Term of this Lease or any renewal of it, desires to make any alterations or additions to the Premises, including but not limited to: erecting partitions, attaching equipment, and installing necessary furnishings or additional equipment of the Tenant's business, the Tenant may do so at its own expense, at any time and from time to time, the following conditions are met:
 - (a) before undertaking any alteration or addition the Tenant shall submit to the Landlord a plan showing the proposed alterations or additions and the Tenant shall not proceed to make any alteration or addition unless the Landlord has approved the plan, and the Landlord shall not unreasonably or arbitrarily withhold his approval.
 - (i) and items included in the plan which are regarded by the Tenant as "Trade Fixtures" shall be designated as such on the plan;
 - (b) any and all alterations or additions to the Premises made by the Tenant must comply with all applicable building code standards and by-laws of the municipality in which the Premises are located.
- (2) The Landlord shall be responsible for and pay the cost of any alterations, additions, installations or improvements that any governing authority, municipal, provincial or otherwise, may require to be made in, on or to the Premises.
- (3) No sign, advertisement or notice shall be inscribed, painted or affixed by the Tenant, or any other person on the Tenant's behalf, on any part of the inside or outside of the building in which the Premises are located unless the sign, advertisement or notice has been approved in every respect by the Landlord.
- (4) All alterations and additions to the Premises made by or on behalf of the Tenant, other than the Tenant's Trade Fixtures, shall immediately become the property of the Landlord without compensation to the Tenant.
- (5) The Tenant agrees, at its own expense and by whatever means may be necessary, immediately to obtain the release or discharge of any encumbrance that may be registered against the Landlord's property in connection with any additions or alterations to the Premises made by the Tenant or in connection with any other activity of the Tenant.
- (6) If the Tenant has complied with its obligations according to the provisions of this Lease, the Tenant may remove its Trade Fixtures at the end of the Term or other termination of this Lease and the Tenant covenants that it will make good and repair or replace as necessary any damage caused to the Premises by the removal of the Tenant's Trade Fixtures.
- (7) Other than as provided in paragraph 7 (6) above, the Tenant shall not, during the Term of this Lease or anytime thereafter remove from the Premises any Trade Fixtures or other goods and chattels of the Tenant except in the following circumstances:
 - (a) the removal is in the ordinary course of business;
 - (b) the Trade Fixture has become unnecessary for the Tenant's business or is being replaced by a new or similar Trade Fixture; or
 - (c) the Landlord has consented in writing to the removal;

but in any case the Tenant shall make good any damage caused to the Premises by the installation or removal of any Trade Fixtures, equipment, partitions, furnishings and any other objects whatsoever brought onto the Premises by the Tenant.

- (1) The Tenant shall, at its own expense, if requested by the Landlord, remove any or all additions or improvements made by the Tenant to the Premises during the Term and shall repair all damage caused by the installation or the removal or both.

- (2) The Tenant shall not bring onto the Premises or any part of the Premises any machinery, equipment of any other thing that might in the opinion of the Landlord, by reason of its weight, size or use, damage the Premises or overload the floors of the Premises;
 - (a) and if the Premises are damaged or overloaded the Tenant shall restore the Premises immediately or pay to the Landlord the cost of restoring the Premises.

8. INSURANCE

- (1) During the Term of this Lease and any renewal thereof the Landlord shall maintain with respect to the Premises, insurance coverage insuring against:
 - (a) loss or damage by fire, lightning, storm and other perils that may cause damage to the Premises or the property of the Landlord in which the Premises are located as are commonly provided for as extended perils coverage or as may be reasonably required and obtained by the Landlord.
 - (i) and the insurance policy shall provide coverage on a replacement cost basis in an amount sufficient to cover the cost of all signs and leasehold improvements;
 - (b) liability for bodily injury or death or property damage sustained by third parties up to such limits as the Landlord in its sole discretion deems advisable;
 - (c) rental income protection insurance with respect to fire and other perils to the extent of one year's Rent payable under this Lease;
 - (i) but such insurance and any payment of the proceeds thereof to the Landlord shall not relieve the Tenant of its obligations to continue to pay rent during any period of rebuilding, replacement, repairing or restoration of the Premises except as provided in Section 9.
- (2) The Tenant covenants to keep the Landlord indemnified against all claims and demands whatsoever by any person, whether in respect of damage to person or property, arising out of or occasioned by the maintenance, use or occupancy of the Premises or the subletting or assignment of same or any part thereof. And the Tenant further covenants to indemnify the Landlord with respect to any encumbrance on or damage to the Premises occasioned by or arising from the act, default, or negligence of the Tenant, its officers, agents, servants, employees, contractors, customers, invitees or licensees:
 - (a) and the Tenant agrees that the foregoing indemnity shall survive the termination of this Lease notwithstanding any provisions of this Lease to the contrary.
- (3) The Tenant shall carry insurance in its own name insuring against the risk of damage to the Tenant's property within the Premises caused by fire or other perils and the policy shall provide for coverage on a replacement cost basis to protect the Tenant's stock-in-trade, equipment, Trade Fixtures, decorations and improvements.
- (4) The Tenant shall carry public liability and property damage insurance in which policy the Landlord shall be a named insured and the policy shall include a cross-liability endorsement;
 - (a) and the Tenant shall provide the Landlord with a copy of the policy.

9. DAMAGE TO THE PREMISES

- (1) If the Premises or the building in which the Premises are located, are damaged or destroyed, in whole or in part, by fire or other peril, then the following provisions shall apply:
 - (a) if the damage or destruction renders the Premises unfit for occupancy and impossible to repair or rebuild using reasonable diligence within 120 clear days from the happening of such damage or destruction, then the Term hereby granted shall cease from the date the damage or destruction occurred, and the Tenant shall immediately

surrender the remainder of the Term and give possession of the Premises to the Landlord, and the Rent from the time of the surrender shall abate;

- (b) If the Premises can with reasonable diligence be repaired and rendered fit for occupancy within 120 days from the happening of the damage or destruction, but the damage renders the Premises wholly unfit for occupancy, then the rent hereby reserved shall not accrue after the day that such damage occurred, or while the process of repair is going on, and the Landlord shall repair the Premises with all reasonable speed, and the Tenant's obligation to pay Rent shall resume immediately after the necessary repairs have been completed;
 - (c) If the leased Premises can be repaired within 120 days as aforesaid, but the damage is such that the leased Premises are capable of being partially used, then until such damage has been repaired, the Tenant shall continue in possession and the Rent shall abate proportionately.
- (2) Any question as to the degree of damage or destruction or the period of time required to repair or rebuild shall be determined by an architect retained by the Landlord.
 - (3) Apart from the provisions of Section 9 (1) there shall be no abatement from or reduction of the rent payable by the Tenant, nor shall the Tenant be entitled to claim against the Landlord for any damages, general or special, caused by fire, water, sprinkler systems, partial or temporary failure or stoppage of services or utilities which the Landlord is obliged to provide according to this Lease, from any cause whatsoever.

10. ACTS OF DEFAULT AND LANDLORDS REMEDIES

- (1) An Act of Default has occurred when:
 - (a) the Tenant has failed to pay rent for a period of 15 consecutive days, regardless of whether demand for payment has been made or not;
 - (b) The Tenant has breached its covenants or failed to perform any of its obligations under this Lease; and
 - (i) the Landlord has given notice specifying the nature of the default and the steps required to correct it; and
 - (ii) the Tenant has failed to correct the default as required by the notice;
 - (c) the Tenant has;
 - (i) become bankrupt or insolvent or made an assignment for the benefit of Creditors;
 - (ii) has its property seized or attached in satisfaction of a judgement;
 - (iii) had a receiver appointed
 - (iv) committed any act or neglected to do anything with the result that a Construction Lien or other encumbrance is registered against the Landlord's property;
 - (v) Taken action if the Tenant is a corporation, with a view to winding up, dissolution or liquidation;
 - (d) 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;
 - (e) the Premises;
 - (i) Become vacant or remain unoccupied for a period of 30 consecutive days; or
 - (ii) Are not open for business on more than thirty (30) business days;

- (iii) Are used by any other person or persons, or for any other purpose that as provided for in this Lease without the written consent of the Landlord.
- (2) When an Act of Default on the part of the Tenant has occurred:
 - (a) the current month's rent together with the next three months' rent shall become due and payable immediately; and
 - (b) the Landlord shall have the right to terminate this Lease and to re-enter the Premises and the deal with them as it may choose
- (3) If, because an Act of Default has occurred, the Landlord exercises its right to terminate this Lease and re-enter the Premises prior to the end of the Term, the tenant shall nevertheless be liable for payment of Rent and all other amounts payable by the Tenant in accordance with the provisions of this Lease until the Landlord has re-let the Premises or otherwise dealt with the Premises in such manner that the cessation of payments by the Tenant will not result in loss to the Landlord:
 - (a) and the Tenant agrees to be liable to the Landlord, until the end of the Term of this Lease for payment of any difference between the amount of Rent hereby agreed to be paid for the Term hereby granted and the Rent any new tenant pays to the Landlord.
- (4) The Tenant covenants that notwithstanding any present or future Act of the Legislature of the Province of Ontario, the personal property of the Tenant during the term of this Lease shall not be exempt from levy by distress for Rent in arrears:
 - (a) And the Tenant acknowledges that it is upon the express understanding that there should be no such exemption that this Lease is enter into, and by executing this Lease:
 - (i) the Tenant waives the benefit of any such legislative provisions which might otherwise be available to the Tenant in the absence of this agreement; and
 - (ii) the Tenant agrees that the Landlord may plead this covenant as an estoppel against the Tenant if an action is brought to test the Landlord's right to levy distress against the Tenant's property.
- (5) If, when an Act of Default has occurred, the Landlord chooses not to terminate the lease and re-enter the Premises, the Landlord shall have the right to take any and all necessary steps to rectify and or all Acts of Default of the Tenant and to charge the costs of such a rectification to the Tenant and to recover the costs as Rent.
- (6) If, when an Act of Default has occurred, the Landlord chooses to waive his rights to exercise the remedies available to him under this Lease or at law the wavier shall not constitute condonation of the Act of Default, nor shall the wavier be pleaded as an estoppel against the Landlord to prevent his exercising his remedies with respect to a subsequent Act of Default.
 - (a) No covenant, term or condition of this Lease shall be deemed to have been waived by the Landlord unless the waiver is in writing and signed by the Landlord.

11. TERMINATION UPON NOTICE AND AT END OF TERM

- (1) The Tenant agrees to permit the Landlord during the last three months of the Term of this Lease to display a "For Rent" or "For Sale" sign or both at the Premises and to show the Premises to prospective new tenants or purchasers and to permit anyone having written authority of the Landlord to view the Premises at reasonable hours.
- (2) If the Tenant remains in possession of the Premises after termination of this Lease as aforesaid and if the Landlord then accepts rent for the Premises from the Tenant, it is agreed that such over holding by the Tenant and acceptance of Rent by the Landlord shall create a

monthly tenancy only but the tenancy shall remain subject to all the terms and conditions of this Lease except those regarding the Term.

12. ACKNOWLEDGEMENT BY TENANT

The Tenant agrees that he will at any time or times during the Term, upon being given at least forty-eight (48) hours prior written notice, execute and deliver to the Landlord a statement in writing certifying:

- a) that this Lease is unmodified and is in full force and effect (or if modified stating the modifications and confirming that the lease is in full force and effect as modified)
- b) the amount of Rent being paid;
- c) the dates to which Rent has been paid;
- d) other charges payable under this Lease which have been paid;
- e) particulars of any prepayment of Rent or security deposits; and
- f) particulars of any subtenancies

13. SUBORDINATION AND POSTPONEMENT

- (1) This Lease and all the rights of the Tenant under this Lease are subject and subordinate to any and all charges against the land, building, or improvements of which the Premises form part, whether the charge is in the nature of a mortgage, trust deed, lien or any other form of charge arising from the financing or re-financing, including extension or renewals, of the Landlord's interest in the property.
- (2) Upon the request of the Landlord the Tenant will execute any form required to subordinate this Lease and the Tenant's rights to any such charge, and will, if required, attorn to the holder of the charge.
- (3) No subordination by Tenant shall have the effect of permitting the holder of any charge to disturb the occupation and possession of the Premises by the Tenant as long as the Tenant performs his obligations under this Lease.

14. RULES AND REGULATIONS

The Tenant agrees on behalf of itself and all persons entering the Premises with the Tenant's authority or permission to abide by such reasonable rules and regulations that form part of this Lease and as the Landlord may make from time to time.

15. NOTICE

- (1) Any notice required or permitted to be given by one party to the other pursuant to the terms of this lease may be given

To the Landlord at:

**P.O. Box 23
Goderich, Ontario
N7A 3Y5**

To the Tenant at the Premises or at:

**57 West Street
Goderich, Ontario
N7A 2K5**

- (2) The above addresses may be changed at any time by giving ten (10) days written notice.
- (3) Any notice given by one party to the other in accordance with the provisions of this Lease shall be deemed conclusively to have been received on the date delivered if the notice is served personally or seventy-two (72) hours after mailing if the notice is mailed.

16. REGISTRATION

The Tenant shall not at any time register notice of or a copy of this Lease on title to the property of which the premises form part without notice to the Landlord.

17. INTERPRETATION

- (1) The words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations and vice versa.
- (2) Unless the context otherwise requires, the word "Landlord" and the word "Tenant" wherever used herein shall be constructed to include the executors, administrators, successors and assigns of the Landlord and Tenant, respectively.
- (3) When there are two or more Tenants bound by the same covenants herein contained, their obligations shall be joint and several.

In Witness of the foregoing covenants the Landlord and the Tenant have executed this Lease.

THE GODERICH KINSMEN CLUB

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Corporation.

THE CORPORATION OF THE TOWN OF GODERICH

Per: _____

Kevin Morrison, Mayor

Per: _____

Janice Hallahan, Clerk

We have authority to bind the Municipal Corporation.

SCHEDULE A

to Lease made between

THE GODERICH KINSMEN CLUB

(the "Landlord")

-and-

THE CORPORATION OF THE TOWN OF GODERICH

(the "Tenant")

An area of the building comprising approximately 1500 square feet together with free use of playground space, refrigerator and washrooms.