

THIS MEMORANDUM OF UNDERSTANDING made in duplicate this 21st day of September 2022

BETWEEN:

THE MUNICIPALITY OF MIDDLESEX CENTRE
(hereinafter referred to as the "**Landlord**" or "**Municipality**")

OF THE FIRST PART

- and -

Optimist Club of Komoka-Kilworth (collectively referred to as the "**Tenant**" or "**Optimist's**")

OF THE SECOND PART

WHEREAS the Municipality is the owner and operator of the Middlesex Centre Wellness and Recreation Complex located at 1 Tunks Lane, Town of Komoka, Municipality of Middlesex Centre, Province of Ontario (the "**Complex**");

AND WHEREAS Optimist's is a local volunteer-based service club and has agreed to provide Concession & Vending Services at the Complex subject to the terms and conditions set out in this MOU ("Concession & Vending Services");

AND WHEREAS Optimist's will be utilizing a portion of the Complex identified on Schedule "A" attached for the purposes of providing Concession & Vending Services ("**Demised Lands**") and known to the general public as the "Concession" located in the main foyer of the Complex;

AND WHEREAS the Optimist's represents that it is knowledgeable and skilled in the operation of Concession & Vending Services;

AND WHEREAS the Optimist's agrees and understands that this Memorandum of Understanding (the "**MOU**") of the Demised Lands by the Municipality for the operation of the concession, represents a short-term agreement for the provision of Concession & Vending Services on behalf of the Municipality;

AND WHEREAS as part of this agreement the Municipality agrees to allow Optimist's to use the Demised Lands subject to the terms and conditions set out in this MOU;

AND WHEREAS the Parties agree and understand that the Demised Lands will be used to provide Concession & Vending Services and the sale of food and non-alcoholic beverages only and nothing else shall be permitted for sale as part of the Concession & Vending Services without the prior written permission of the Municipality;

AND WHEREAS the Municipality has agreed to lease the Demised Lands to the Tenant on the terms

and subject to the covenants and conditions set out in this MOU;

AND WHEREAS the Tenant has all the necessary and appropriate permits, licenses, authorizations, and any other approvals required by any governmental authority federal, provincial, or municipal and the Tenant acknowledges and agrees that at all times it shall comply with all laws, policies, guidelines, directives of any federal, provincial or municipal governmental authority or body ("**Applicable Laws**");

NOW THEREFORE THIS INDENTURE WITNESSETH that, in consideration of the mutual agreements of the parties and in consideration of Ten (\$10.00) dollars now paid by each of the parties to the other, the receipt and sufficiency of which consideration is hereby acknowledged, the parties agree with each other as follows:

RECITALS

1. The above recitals are true in substance and in fact and are hereby incorporated into this Agreement by reference.

DEMISE

2. The Landlord hereby demises and leases unto the Tenant the Demised Lands. The Tenant acknowledges that it has accepted the Demised Lands in their existing condition.

SERVICES

3. The Tenant shall offer Concession & Vending Services at the times agreed upon in this agreement as may be amended in the sole discretion of the Municipality, acting reasonably, along with the sale of Food & Beverage Items.

TERM

4. This MOU shall be in force from September 22, 2022, and continuing until May 31st, 2023, with an option to renew for an additional one (1) year.
5. Either Party may terminate this MOU upon providing the other party with a minimum of fourteen (14) days written notice of its intention to terminate the MOU.

TENANT COVENANTS

6. The Tenant hereby covenants and agrees as follows:
 - a. To establish a weekly concession schedule to the satisfaction of the Municipality, acting reasonably, clearly identifying and setting out the times and dates during the month that Optimist's will operate the Concession;
 - b. To provide the monthly concession schedules required in 6(a) above to the Municipality a minimum of thirty (30) days prior to the schedule start date;
 - c. To post the schedule in a conspicuous public place at the Complex that is easily visible to the public a minimum of one (1) week prior to the schedule start date;

- d. The monthly schedule shall ensure that the Concession is open and accessible to the public every Saturday from 5:00 pm to 9:30 pm or end of second period of the Komoka Kings game;
- e. Utilizing existing vending machines, to provide food and beverage vending and be responsible for all inventory and cash handling as required;
- f. To keep the Demised Lands in a tidy and clean state which shall be at the sole cost of the Tenant and in a kept in a condition acceptable to the Landlord acting reasonably;
- g. To maintain the Demised Lands and concession equipment in good working order and to report any deficiencies to the Landlord;
- h. Notify the Landlord in writing of any changes to the monthly schedule and such changes shall be approved by the Municipality in writing, acting reasonably; and
- i. To provide the insurance in the amount and manner set out in this MOU.
- j. Adhere to the minimum standards set out in the Ontario Food Premises Regulation (O.Reg. 493/17) and comply with all other Applicable Laws;
- k. Ensure all volunteers have completed the Middlesex London Health Unit's Food Handler Certification Program or equivalent, proof of which shall be made immediately available to the Municipality upon request;
- l. Follow the core values identified in Middlesex Centre's Strategic Plan 2021-2026 by adopting its core values such as Respect, Cooperation, Innovation, and Integrity; and,
- m. Adhere to the COVID-19 Vaccination Policy adopted October 13, 2021, and any other policies of the Municipality.

LANDLORD COVENANTS

7. The Landlord covenants and agrees as follows:

- a. To, in a timely and reasonable manner, make any repairs to the Demised Lands and upon giving written notice to the Tenant to make good any defect or repair to the Demised Lands;
- b. To pay for all electrical power used by the Tenant in the operation of the Demised Lands;

- c. To provide heat and air conditioning and to repair and to keep and maintain all HVAC equipment in good working order;
- d. To maintain adequate insurance on the Property in accordance with the Landlord's general standards as they apply to similar buildings located throughout the Municipality of Middlesex Centre.

COMMERCIAL GENERAL LIABILITY INSURANCE

- 8. 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 \$3,000,000/occurrence with an aggregate of not less than \$6,000,000
 - 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 \$3,000,000 and shall include contractual non-owned coverage (SEF 96)
 - e. Products and completed operations coverage
 - f. Broad Form Property Damage
 - g. Contractual Liability
 - h. Hostile fire
 - i. The policy shall provide 30 days prior notice of cancellation

TENANTS LEGAL LIABILITY INSURANCE

- 9. Tenant's legal liability insurance for the actual cash value of the building and structures on the demised premises, including loss of use thereof;

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.

PRIMARY COVERAGE

10. The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

CERTIFICATE OF INSURANCE

11. The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement and such Certificate shall be to the satisfaction of the Municipality.

INDEMNIFICATION

12. The Tenant shall defend, indemnify and save harmless the Municipality its elected officials, officers, employees, contractors, sub-contractors 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 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 MOU and use of the Demised Lands. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Tenant in accordance with this MOU and shall survive the termination of this MOU.

NOTICE

13. Any notice to be given pursuant to this MOU shall be sufficiently given if served personally upon the party or an officer of the party for whom it is intended, or mailed, or sent by e-mail in the case of:

The Landlord: Municipality of Middlesex Centre
Scott Mairs
Director, Community Services
10227 Ilderton Road
Ilderton, ON N0M 2A0
E-mail: mairs@middlesexcentre.on.ca

The Tenant: Optimist Club of Komoka-Kilworth
Garvin Burt
President
133 Queen Street

or at another address that the party has specified by notice in writing to the other party. Where notice is given by mail, it is deemed to have been received by the person to whom it is addressed, on the fifth (5) business day following the next business day after which the notice, sent by prepaid first-class mail, was deposited in a post office or letter box in Ontario. Where notice is personally delivered, it shall be deemed to have been received by the person to whom it is addressed on the next business day immediately following the date of delivery. In the event of postal disruption, the parties agree that service shall be made by personal delivery only.

ARBITRATION

14. Any and all disputes arising between the Parties hereunder shall be referred to the arbitration of three arbitrators, one to be nominated by the Tenant, one to be nominated by the Landlord, and the third to be appointed by the two so nominated before the reference is proceeded with and the decision of any two of the arbitrators shall be binding. A submission made under this paragraph shall be deemed to be a submission to arbitration within the provisions of the *Arbitration Act, 1991* (Ontario). The arbitrator(s) shall be instructed that time is of the essence in proceeding with the determination of any dispute and, in any event, the arbitration award must be rendered with sixty (60) days of the submission of such dispute to arbitration, or such other period as the Parties may agree.

GENERAL PROVISIONS

15. It is hereby mutually agreed between the Landlord and the Tenant that:
- a. Any general repairs necessary to the Demised Lands that are agreed by the Landlord and Tenant in writing to be undertaken at the expense of the Tenant must have the prior written approval of the Landlord;
 - b. No waiver of any of the provisions contained in this MOU, whether by conduct or otherwise, in any one or more instances, shall be deemed to be construed as further or continuing waiver of any such provision or as a waiver of any provision contained in this MOU;
 - c. This MOU constitutes the entire agreement between the parties hereto with respect to the subject matter of this MOU and supersedes all prior agreements, representations, warranties, negotiations, discussions, and understandings, whether oral or written,

express or implied, with respect to the subject matter of this Agreement. Time is and shall continue to be of the essence;

- d. The invalidity of any provision of this Agreement or any covenant herein contained on the part of any party shall not affect the validity of any other provisions or covenant hereof or herein contained;
- e. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated, in all respects, as an Ontario contract. The Parties hereto irrevocably attorn to the exclusive jurisdiction of courts located in London, Ontario, Canada;
- f. Notwithstanding anything contained in this Agreement, neither party shall be liable to any other party for any lost profits, lost revenues or, failure to realize expected savings even if informed of the possibility thereof in advance;
- g. The Tenant shall return to the Landlord the Demised Lands at the termination of this Agreement, to the Landlord in good repair subject to reasonable wear and tear;
- h. All improvements, equipment, chattels, or fixtures placed on the Demised Lands existing as of the date of this MOU shall become and remain the property of the Landlord save and except for those more particularly described in this MOU;
- i. All major unattached furnishings and major appliances purchased at the expense of the Tenant, subsequent to the date of this Agreement, shall remain the property of the Tenant and shall be immediately removed from the Demised Lands upon termination of this MOU;
- j. If, without the prior written consent of the Landlord, the Demised Lands shall be used by any other person than the Tenant, or for any other purpose than that for which they were leased, or upon the Landlord's becoming entitled to re-enter upon the Demised Lands under any of the provisions of this Lease, or if the term of any of the goods or chattels of the Tenant shall be at any time seized or taken in execution or in attachment by any creditor of the Tenant, or if a writ of execution shall be issued against the goods or chattels of the Tenant and remain unsatisfied for ten days, or if the Tenant shall execute any chattel mortgage or bill of sale of any of its goods and chattels, or if the Tenant shall make any assignment for the benefit of creditors or any bulk sale or shall be adjudged bankrupt or insolvent by any court of competent jurisdiction under any legislation then in force or shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors or shall attempt to abandon the Demised Lands or to sell

or dispose of its goods and chattels so that there would not remain after such sale or disposal a sufficient distress on the Demised Lands in the opinion of the Landlord;

- k. The Landlord has a right for re-entry of the Demised Lands immediately upon any non-performance of covenants, subject to the provisions of this MOU;
- l. In the event that the Tenant defaults in the performance of any covenants in this Lease and if such default shall continue for ten (10) days, (after receiving written notice) the Landlord may perform that covenant on the Tenant's behalf and may enter the Demised Lands for the purpose of rectifying the default and shall not be liable to the Tenant for any loss or damage so caused. If the Landlord at any time is compelled or elects to incur any expense including legal fees in instituting, prosecuting or defending any action or proceeding based upon any default of the Tenant under this MOU (including any action or proceeding against the Tenant) any reasonable sum including any legal fees paid by the Landlord, together with all interest and damages, shall be payable by the Tenant on demand;
- m. No waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant;
- n. The Landlord at all reasonable times, may enter upon and view the state of repair of the Demised Lands and the Tenant agrees to comply with all reasonable requirements of the Landlord with regard to the care, maintenance, and repair thereof, to the extent that the Tenant is responsible under this MOU for such care, maintenance, and repair;
- o. At all times during its use of the Demised Lands the Tenant shall comply with all of the Municipality's applicable by-laws, rules, policies and guidelines in addition to any applicable Provincial or Federal laws, regulations, policies, guidelines and directives that in any manner relate to or affect the Demised Lands and the use of the Demised Lands by the Tenant for the purposes set out in this MOU;
- p. The Tenant shall not assign this MOU or sublet the Demised Lands without obtaining the prior written consent of the Landlord and such consent may be arbitrarily withheld by the Landlord;
- q. The Landlord covenants with the Tenant for quiet enjoyment; and
- r. All of the provisions of this Lease are to be construed as covenants and agreements as though words importing such covenants and agreements were used in each separate

paragraph hereof, and all such provisions shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

FURTHER ASSURANCES

16. Each of the Parties hereto shall from time-to-time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances, and things as may be required or necessary to implement and carry out the true intent and meaning of this MOU.

COUNTERPARTS

17. This MOU may be executed in counterparts and delivered by facsimile transmission or e-mail, and when each party has executed and delivered a counterpart, each such counterpart shall be deemed to be an original and all such counterparts when take together shall constitute one and the same MOU.

Signature page on following page.

IN WITNESS WHEREOF the proper officers of the parties hereto have executed this MOU.

OPTIMIST CLUB OF KOMOKA-KILWORTH

Per: _____

Name: Garvin Burt

Title: President

I have the authority to bind the Club.

THE MUNICIPALITY OF MIDDLESEX CENTRE

Per: _____

Name: Aina DeViet

Title: CAO

Per: _____

Name: James Hutson

Title: Clerk

I/We have the authority to bind The Municipality of Middlesex Centre.

Schedule "A"

