

THIS LEASE made effective the ____ day of December, 2021.

BETWEEN:

THE CITY OF FREDERICTON, a municipal corporation by virtue of the *Local Governance Act*, S.N.B. 2017, C. 18, and amendments thereto, having its head office at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5,

(hereinafter called the "**Landlord**"),

of the first part;

AND:

FREDERICTON HOMELESS SHELTERS INC., a corporation duly incorporated under and by virtue of the laws of the Province of New Brunswick, having its registered office at 44 Chipman Hill, Suite 1000, Saint John, New Brunswick, E2L 2A9,

(hereinafter called the "**Tenant**"),

of the second part.

BE IT RECITED AND AGREED AS FOLLOWS:

- A. The Landlord is the owner of the lands and premises, located at civic address 63 Brunswick Street, in the City of Fredericton, County of York and Province of New Brunswick, consisting 0.82 acres, more or less, more particularly identified as PID 75025445 (the "Property").
- B. There is located upon the Property a two (2) level building (the "Building").
- C. The Landlord has agreed to lease to the Tenant the upper level portion of the Building, consisting of an open space, an office, and two washrooms (the "Premises") subject to the terms and conditions contained herein.
- D. The Tenant intends to operate a temporary "Out of the Cold" Facility (consisting of 10 beds/spaces maximum) for the winter months (hereinafter called the "Facility") from the Premises in the Building located on the Property.
- E. The location of the Building and Property, and the layout of the Premises are more particularly shown in the annexed sketches "A", "B" respectively.

NOW THEREFORE THIS INDENTURE WITNESSETH that for and in consideration of the rents, covenants and agreements reserved and contained herein, and intending to be legally bound hereby, the Landlord and the Tenant hereby agree with each other as follows:

1. **PREMISES**

The Landlord hereby leases and lets to the Tenant, and the Tenant hereby accepts and rents from the Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, the Premises, together with any and all improvements, rights and appurtenances belonging or pertaining thereto.

2. **TERM AND TERMINATION**

(a) The term of this Lease shall be for a fixed period commencing on the ___ day of December 2021 and terminating on the 30th day of April, 2022, (the “**Term**”).

(b) Subject to the termination and default provisions herein, this Lease may be terminated by either the Landlord or the Tenant at any time during the Extension upon seven (7) days prior written notice to the other Party.

3. **RENT**

Recognizing the public safety benefits of the Tenant operation the Facility on the Premises, the Tenant shall pay the nominal amount of \$1.00 to the Landlord for the Term.

4. **TENANT'S COVENANTS**

(a) The Tenant covenants to operate the Facility from 8 p.m. to 7:30 a.m. daily.

(b) The Tenant covenants and agrees that the Tenant is responsible for the operation and monitoring of the security system for the Facility to be installed by the Landlord pursuant to s. 5(c) and shall ensure that the system and any data collected therefrom is used and stored in compliance with any applicable privacy legislation.

(c) The Tenant covenants to ensure that risk management protocols are in place and complied with at all times during the Term, such protocols including but not limited to a COVID-19 operational plan that meets any required public health and safety directives and is to the satisfaction of the Fire Marshall.

(d) The Tenant shall be solely responsible for the day-to-day operation of the Facility and shall ensure that the operations are adequately staffed and supervised at all times consistent with industry standard and in compliance of legal requirements. As part of its operations, Tenant agrees

to perform daily exterior inspections of the Premises (immediately around the Building and near entrances) to ensure that no refuse or waste is left outside the Facility.

(e) The Tenant covenants at its own expense to maintain and keep the Premises, including the fixtures thereto and the exterior of the Premises in good order and condition and to make promptly all needed repairs and replacements (structural defects and repairs, furnace repairs, reasonable wear and tear and damage by fire, lightning and tempest only excepted), returning the Premises in reasonable condition to the Landlord at the expiration of the Lease, reasonable wear and tear excepted.

(f) The Tenant covenants to permit the Landlord or its agent at all reasonable times to enter the Premises to inspect the condition thereof and where such inspection reveals that repairs are necessary, to make such repairs in a good and workmanlike manner within a reasonable period of time from the date of delivery of notice from the Landlord requiring such repair. If the Tenant refuses or neglects to repair the property as required hereunder and to the reasonable satisfaction of the Landlord after written demand by the Landlord, the Landlord may make such repairs without liability to the Tenant for any loss or damage that may accrue to the Tenant's equipment, fixtures, or other property or to the Tenant's Business by reason thereof, and upon completion thereof, the Tenant shall pay the Landlord's costs for making such repairs, as additional rent.

(f) The Tenant covenants to keep active insurance policy with the following coverages at all times:

- (i) all risk insurance with extended coverage endorsement covering all leasehold improvements made to or installed in the Premises by or on behalf of the Tenant in an amount equal to the full replacement value;
- (i) all risk insurance with extended coverage endorsement covering all the contents of the Premises whether owned by the Tenant or for which the Tenant is responsible in an amount at least equal to the actual cash value;
- (ii) comprehensive general liability insurance in an amount of at least five million dollars (\$5,000,000.00) or at such higher limits as the Landlord may reasonably require from time to time, with Tenant's Legal Liability coverage with a limit of no less than \$500,000; and
- (iii) abuse & molestation liability coverage.

The liability policy shall include the Landlord as an additional named insured with a cross-liability clause. The Tenant shall cause any policy obtained by it pursuant to this Lease to contain a waiver of subrogation clause in favour of the Landlord. The Tenant shall furnish to the Landlord, if requested by the Landlord, copies of all policies, or insurance certificates in lieu thereof, and will provided written notice of the continuation of such policies not less than thirty (30) days prior to their respective expiry dates. If the Tenant fails to purchase or keep in force such insurance the

Landlord may but shall not be obligated to effect such insurance, the cost thereof being recoverable from the Tenant forthwith on demand. The parties agree that this insurance information is confidential and shall not be disclosed by a party to any third party unless agreed to by the other party in writing or if a party is required by law or applicable regulatory rules to disclose such information, in which case the party required to disclose shall notify the other party in writing. The confidentiality provisions herein shall survive the termination of this Lease.

(g) The Tenant covenants at its own cost and expense to comply with all applicable federal, provincial, municipal and police by-laws and regulations affecting the condition, equipment, maintenance, use or occupation of the Premises, including any health directives related to COVID-19.

(h) The Tenant covenants not to assign this Lease or the whole or any part of the Premises without the prior written consent of the Landlord, in its sole and absolute discretion.

(i) The Tenant covenants that the Premises will be used solely for the purposes of a Facility and for no other purpose and that no change in the use of the Premises will occur without the prior written consent of the Landlord first having been obtained, which consent may be unreasonably withheld.

(j) The Tenant covenants with the Landlord to pay rent in the manner and amount as aforesaid and the Tenant further covenants with the Landlord to pay when due all sums owed or owing from the Tenant to the Landlord. All rents and other sums payable under the provisions of this Lease shall be payable by cheque delivered personally to the Landlord or mailed to the Landlord at 397 Queen Street, Fredericton, New Brunswick E3B 1B5, or by such other method approved by the Landlord in its discretion.

(k) The Tenant covenants not to do or omit to do or permit to be done or omitted anything upon or in respect of the Premises, the doing or omission of which (as the case may be) shall be or result in a nuisance.

(l) The Tenant covenants to indemnify and save harmless the Landlord in respect of all losses, damages, liabilities, fines, suits, claims, demands and actions of any kind for which the Landlord may become liable, or suffer by reason of any breach, violation or non-performance by the Tenant of any covenant, term or provisions hereof, or by reason of any injury occasioned to or suffered by any person or persons or any property, by reason of any act, omission or default by the Tenant, its agents, employees, invitees or licensees, and this indemnity shall, where such breach, non-performance, damage to property, personal injury or death occurs during the term of this Lease, survive the termination of this Lease.

(m) The Tenant covenants not to do or permit to be done anything which would increase the risk of fire or which might in any way increase the premium payable on the Premises without the prior written consent of the Landlord and if there is any increase in premiums arising from anything

done or permitted to be done by the Tenant, to pay to the Landlord on demand any increase in such premiums.

(n) The Tenant covenants not to bring or permit to be brought on the Leases Premises anything that by reason of its weight, size or use might damage the floors of the Premises and not to overload the floors of the Premises, and if any damage is caused by the bringing on the Premises of anything or by overloading, the Tenant shall pay to the Landlord the cost of making good any such damage.

(o) The Tenant covenants to ensure that the Premises are kept in a reasonable state of cleanliness and shall be responsible for any janitorial costs associated therewith.

5. **LANDLORD'S COVENANTS**

(a) Upon payment by the Tenant of the Rent herein provided, the Tenant shall have exclusive possession and shall peaceably and quietly hold and enjoy the Premises for the Term.

(b) The Landlord covenants to pay the following expenses as they become due:

- (i) all costs relating to structural maintenance and repairs and life safety systems;
- (ii) all real property taxes, levies, charges and assessments which may be levied, assessed or imposed by any taxing authority upon or against or in respect of the Premises, and subject to any increase in property tax as set out below in this Lease;
- (iii) any utility charges or assessments related to the Premises during the Term; and
- (iv) snow removal of parking lot (however and notwithstanding, Tenant covenants that it shall be responsible for shoveling entranceways).

(c) The Landlord shall, at its cost (unless funding for the project is available from another level of government or the Tenant), be responsible for ensuring that the following improvements are made prior to the commencement of operation of the Facility:

- (i) installation of 5 fire-resistant doors that are satisfactory to the Office of the Fire Marshall;
- (ii) installation of a security window (plexi-glass or equivalent) on the door of the office in the Premises (or replacing the existing door with a new door with such security window);
- (iii) installation of security cameras, the number and location of which shall be agreed upon by the parties;
- (iv) installation of smoke alarms to the satisfaction of the Fire Marshall;
- (v) installation of lighting on main exterior door at the back of the Building;
- (vi) installation of panic buttons at appropriate location;
- (vii) installation of a new "buzzer" to allow for entry to the Premises from the stairwell at the rear of the Building and an alarm on the front door facing the river.

For certainty, the improvements listed above shall be the Property and responsibility of the Landlord upon termination of this Lease, unless otherwise agreed to by the parties.

6. **PROVISOS**

Provided always, and it is hereby agreed between the parties as follows:

(a) **Approval required** – The Tenant acknowledges that the lease of the Premises is conditional on the Tenant receiving the appropriate planning/land use approval (temporary use variance) as well as any public health or safety approvals for the operation of a Facility on the Premises prior to the commencement of operations.

(b) **Forfeiture of Lease** - If, without the written consent of the Landlord, the Premises shall become and remain vacant or not used for a period of ten (10) days while they are suitable for use by the Tenant or to be used by any other person, other than the Tenant, or if the term hereby granted or any of the goods and 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 the Tenant shall make any assignment for the benefit of creditors or if the Tenant becomes bankrupt or insolvent debtors, or if any order shall be made for the dissolution of the Tenant, or if the Tenant breaches the covenants herein contained, or if public health directives related to COVID 19 require a closing of the Facility, then and in every such case, then rent and any additional charges owed to the Landlord herein shall immediately become due and payable, and, at the option of the Landlord, this Lease shall cease and terminate and the term shall immediately become forfeited and void, in which event the Landlord may re-enter and take possession of the Premises as though the Tenant or any occupant or occupants of the Premises was or were holding over after the expiration of the term without any right whatever.

(c) **Exemption re Distress** - The Tenant waives and renounces the benefit of any present or future statute taking away or limiting the Landlord's right of distress, and covenants and agrees that notwithstanding any such statute, none of the goods and chattels of the Tenant on the Premises at any time during the term shall be exempt from levy by distress for rent in arrears.

(d) **Non-Liability of Landlord** - The Landlord shall not in any event whatsoever be liable or responsible in any way for any personal injury or death that may be suffered or sustained by the Tenant or any agent, employee, customer or guest of the Tenant or any other person who may be upon the Premises or for any loss or damage or injury to any property belonging to the Tenant or any agent, employee, customer or guest of the Tenant or to any other person incurred while such property is on the Premises and, in particular, the Landlord shall not be liable for damage to any such property caused by steam, water, rain or snow which may leak into, issue or flow from any part of the building or adjoining premises or from the water, steam or drainage pipes or plumbing works of the building or from any other place or quarter or for any damage caused by or attributable to the condition or arrangement of any electrical or other wiring; provided however, that this clause

shall not apply to injuries, damages or death caused directly by the negligent, reckless or wilful conduct of the Landlord, its employees, agents or representatives.

(e) **Holding Over** - If the Tenant shall hold over after the Term, such holding over shall be construed to be a tenancy from month to month only and shall have no greater effect, any custom, statute, law or ordinance to the contrary notwithstanding. Such month to month tenancy shall be governed by the terms and conditions hereof, notwithstanding any statutory provision or rule of law to the contrary; provided however, that during any such period of holding over the Tenant shall be required to pay only the monthly rent payable during the month immediately preceding the expiration or termination of this Lease.

(g) **Landlord's Right to Pay Tenant's Obligations** - If the Tenant fails to pay any taxes, rates, insurance premiums or charges which it has herein covenanted to pay and which shall constitute a lien or charge upon the Premises or the contents, the Landlord may pay them and charge the sums paid to the Tenant who shall pay them forthwith on demand; and the Landlord, in addition to any other rights, shall have the same remedies and may take the same steps for the recovery of all such sums as if they were rent in arrears.

(h) **Damage to Premises** - If and whenever during the term of this Lease the Premises shall be destroyed or damaged by fire, lightning or tempest, or by other casualty, then and in every such event:

- (i) if the damage or destruction is such that the Premises are rendered wholly unfit or unsafe for occupancy, as determined by the Landlord, this Lease shall terminate immediately;
- (ii) the Landlord shall not be liable for any loss or damage occasioned by such fire or other casualty except for such loss or damage caused directly by the negligent, reckless or wilful conduct of the Landlord, its agents or representatives, but in no event shall the Landlord be liable for any indirect or consequential damages.

(j) **Re-entry by Landlord** - In the event of any failure of the Tenant to perform any other of the terms, conditions or covenants of this Lease to be observed or performed by the Tenant, then the Landlord, besides other rights or remedies it may have, shall have the immediate right of re-entry. All rights and powers reserved to the Landlord under the provisions of this Lease may be exercised by either the Landlord or its agents or representatives.

(k) **Alterations** - The Tenant may not make any alterations to the Premises without the prior approval and consent of the Landlord for such alterations, which approval may be unreasonably withheld.

(l) **Waiver of Breaches** - The failure of the Landlord to insist upon a strict performance of any of the covenants and provisos hereof shall not be deemed a waiver of any rights of remedies that the Landlord may have or a waiver of any subsequent breach or default.

(m) **Notices** - Any notices, request or demand herein provided for shall be sufficiently given or made if mailed by registered mail, postage prepaid, addressed or delivered by hand, if to the Landlord, at: 397 Queen Street, Fredericton, New Brunswick E3B 1B5, Attention: Real Estate Manager, and if to the Tenant, at the Premises, being 65 Brunswick Street, Fredericton, New Brunswick E3B 1G5 and every such notice shall be deemed to be given upon the day it was so mailed or delivered. Any of the parties hereto may, at any time, give notice in writing to any other party of any change of address and thereafter all notices shall be mailed to the new address so notified.

(n) **Entirety** - This Lease contains the entire agreement among the parties and it is hereby declared and understood that no prior stipulation, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the provisions of this Lease. This Lease may not be modified or amended except in writing and signed by the Landlord, the Tenant, and the Guarantors.

7. **INTERPRETATION**

(a) This Lease shall be construed and governed by the Laws of the Province of New Brunswick and shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the parties hereto, subject to the granting of consent by the Landlord to any assignment or sublease, and every reference herein to any party hereto shall include the heirs, executors, administrators, successors, assigns and other legal representatives of such party and all covenants shall be deemed joint and several. Any reference in this Lease to "Tenant" shall further include, where the text allows, the servants, employees, agents, invitees and licensees of the Tenant and all others over whom the Tenant might reasonably be expected to exercise control.

(b) Should any provision or provisions of this Lease and/or its conditions be illegal or not enforceable, it or they shall be considered separate and severable from the remaining provisions of this Lease which shall remain in force and be binding upon the parties hereto as though the said illegal or unenforceable provisions had never been included.

(c) The headings in this Lease have been inserted as a matter of convenience and for reference only and in no way defines, limits or enlarges the scope or meaning of this Lease, nor of any provision thereof.

IN WITNESS WHEREOF the parties hereto have caused these presents to be duly executed as of the day and year first above written.

THE CITY OF FREDERICTON

Kate Rogers, Mayor

Jennifer Lawson, City Clerk

**FREDERICTON
SHELTERS INC.**

HOMELESS

Warren Maddox, Executive Director

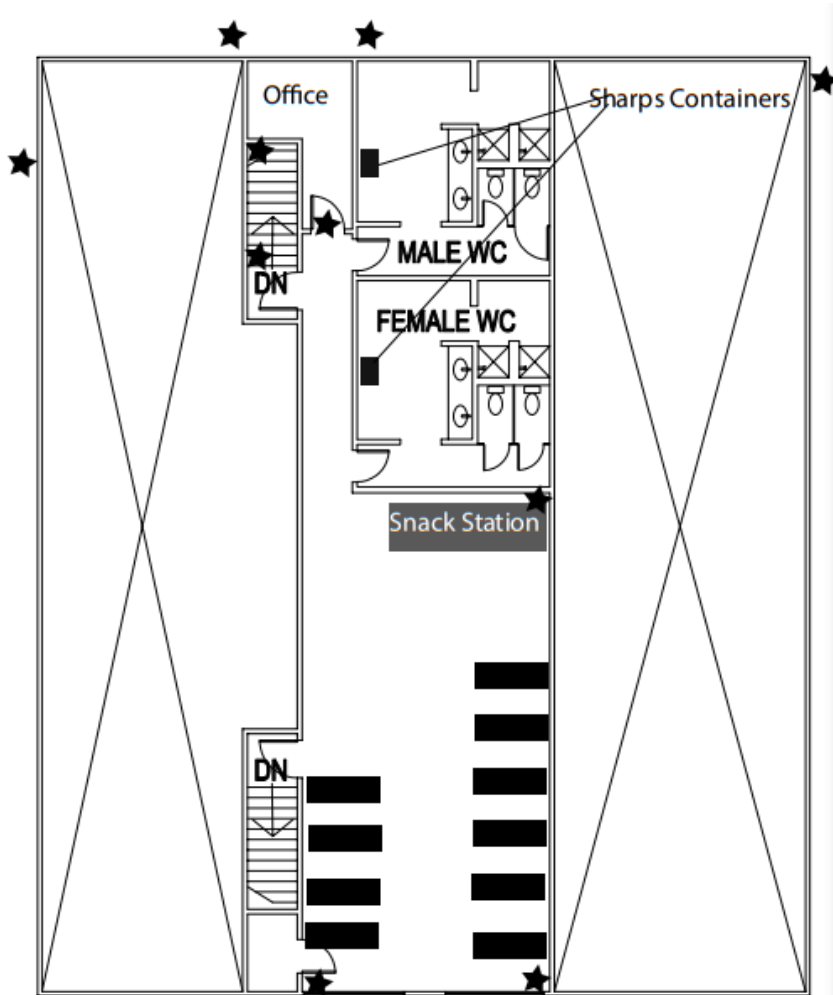
Schedule "A"

The Property and the Building



Schedule "B"

The Premises



★ Star represents Camera Locations 10 in total including exterior
**SMALL CRAFT AQUATIC CENTRE
2ND FLOOR**

(note: location of cameras to be agreed upon by the Landlord and Tenant)

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, **JENNIFER LAWSON**, of the City of Fredericton, in the County of York and Province of New Brunswick, City Clerk, MAKE OATH AND SAY AS FOLLOWS:

1. THAT I am the City Clerk of The City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.

2. THAT the seal affixed to the foregoing instrument purporting to be the seal of The City of Fredericton is the Corporate Seal of The City of Fredericton and was so affixed by order of the City Council.

3. THAT the signature “Kate Rogers” subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of The City of Fredericton and the signature “Jennifer Lawson” subscribed thereto is my signature.

4. THAT the Mayor and City Clerk are the officers of The City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ____ day of)
_____, 2021.)
)
)
_____)
Donna Legacy)
A Commissioner of Oaths)

Jennifer Lawson

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, _____, of the City of Fredericton in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. That I am the _____ of Fredericton Homeless Facility's Inc. a duly incorporated company under the laws of the Province of New Brunswick ("Corporation") and as such have personal knowledge of the matters and things herein deposed to and have authority to make this affidavit on behalf of the Corporation.
2. That the President of the Corporation is the authorized signing officer to execute the annexed instrument (the "instrument") in the name and on behalf of the Corporation.
3. That the signature " _____ " subscribed to the foregoing instrument is the signature of " _____ ", the deponent, as the President of the Corporation.
4. That the seal affixed to the foregoing instrument is the corporate seal of the Corporation and was so affixed by order of the Board of Directors of the Corporation for the purpose of execution of the instrument. OR That the Corporation has no corporate seal.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ____ day of)
November, 2021.)
)
)
)
_____)
Donna Legacy)
A Commissioner of Oaths)
