

The Corporation of the Town of Tecumseh

By-Law Number 2022-055

Being a by-law to authorize the execution of an Agreement between The Corporation of the Town of Tecumseh and AAA Profile Sharpening

Whereas The Corporation of the Town of Tecumseh (Town) is the owner of the lands and premises known as the Tecumseh Arena, located at 12021 McNorton Street, in the Town of Tecumseh (hereinafter "Tecumseh Arena");

And Whereas AAA Profile Sharpening (Concessionaire) has applied to the Town for permission to operate a skate shop including ice skate sharpening and sporting goods concession in the Tecumseh Arena;

And Whereas under Section 5 of *the Municipal Act* 2001, S.O. 2001 c.25, the powers of a municipality shall be exercised by its Council by by-law.

Now Therefore the Council of The Corporation of The Town of Tecumseh enacts as follows:

1. **THAT** the Mayor and the Clerk be and they are hereby authorized and empowered on behalf of The Corporation of the Town of Tecumseh, to execute an Agreement between The Corporation of the Town of Tecumseh and AAA Profile Sharpening dated the 1st day of August 2022, a copy of which Agreement is attached hereto and forms part of this by-law and to do such further and other acts which may be necessary to implement the said Agreement.
2. **THAT** this by-law shall come into force and take effect upon on the date of the third and final reading thereof.

Read a first, second, third time and finally passed this 26th day of July, 2022.

Gary McNamara, Mayor

Jennifer Alexander, Acting Clerk

This Agreement made this _____ day of _____, 2022.

Between:

The Corporation of The Town Of Tecumseh
hereinafter called the "Corporation" or "Owner"

Of The First Part

-and-

AAA Profile Sharpening
hereinafter called the "Concessionaire" or "Lessee" or "Tenant"

Of The Second Part

Whereas the Corporation is the owner of the lands and premises known as the Tecumseh Arena, located at 12021 McNorton Street, in the Town of Tecumseh (hereinafter "Tecumseh Arena");

And Whereas the Concessionaire has applied to the Corporation for permission to operate a skate shop including ice skate sharpening and sporting goods concession in the Tecumseh Arena;

Witnesseth that in consideration of the mutual covenants, terms and agreements hereinafter expressed, the parties hereto agree as follows:

A. The Owner Covenants and Agrees:

1. The Corporation hereby grants permission to the Concessionaire to operate a skate shop, skate sharpening and sporting goods concession in the Tecumseh Arena, located in the lobby and in the area adjacent to the player's hallway, with an area of 210 square feet (the "Premises" or "Area"), for the period from the 1st day of August, 2022, to the 31st day of July, 2023.
2. The Corporation shall furnish reasonable amounts of electric current to the Premises as required for normal and usual purposes ("Electricity") and pay for the same.

B. The Tenant Covenants and Agrees:

The Concessionaire further covenants and agrees as follows:

1. To pay to the Corporation, rent as follows:
 - a) The Concessionaire shall pay in advance on the first day of each month during the term commencing the 1st day of August, 2022 through to and including July 31, 2023, the sum of \$350.00 plus HST.
2. To pay to the Owner all monies owed by the first (1st) day of the month. Interest at the rate of ten percent (10%) per annum shall be charged on all accounts that are thirty (30) days overdue.
3. To supply, install and provide the following, at its expense, at the Premises:
 - a) Ice skate sharpening machines;
 - b) A blower system for skate sharpening machines in order to keep the skate shop free of grindings, filings and dust; and
 - c) Any and all machinery, chattels, fixtures, goods of any kind required to carry on its business at the Premises
4. That all shelving and cupboards contained in the room are the property of the Concessionaire.
5. That no re-modeling or structural changes will be made to the room without the prior written consent of the Corporation's Director Community & Recreation Services or any other person or department designated by the Corporation in writing.
6. To be responsible for the maintenance of the room and all related equipment at the Concessionaire's sole and exclusive expense.
7. To keep the Premises in a clean and sanitary condition at all times and to pick up and remove all wastepaper or other materials including, without limitation, those resulting from the operation of the skate shop, all at the Concessionaire's sole and exclusive expense. The Concessionaire covenants to notify the Corporation of any state of disrepair or damage done to the Premises.
8. To indemnify and save harmless the Corporation, absolutely from all liabilities, fines, suits, claims, demands and actions of any kind or nature for which the Corporation shall or may become liable or suffer however arising, caused or having to do in any way with Concessionaire's rental of the Premises or the Corporation's facilities or by reason of any breach, violation or non-performance by the Concessionaire of any covenant, or proviso hereof, or by reason of any

loss, injury, and/or death occasioned to or suffered by any person or persons or any property through any act, omission, negligence or default by the Concessionaire or any of its agents, invitees, spectators, employees, assigns, or anyone for whom the Tenant is at law responsible. Such indemnification in respect of any such breach, violation or non-performance, damage to property, injury or death occurring during the term of this agreement shall survive any termination of this agreement, anything in this agreement to the contrary notwithstanding.

9. The Concessionaire shall during the entire term of this Agreement, at its sole cost and expense, take out and keep in full force and effect (and to provide the Corporation with proof thereof satisfactory to the Corporation) in the names of the Concessionaire and the Corporation commercial general liability insurance from the Concessionaire's insurance carrier of not less than two million (\$2,000,000.00) applying to all operations of the Concessionaire and which shall include, but not be limited to, bodily injury liability, personal injury liability, products liability, contractual liability, contingent liability and tenants' legal liability with respect to the occupancy by the Concessionaire of the Premises. Such policies shall be written on a comprehensive basis with limits of not less than \$2,000,000.00 per occurrence (or such higher limits as the Corporation or its mortgagees, or the trustee for the bondholders may require from time to time) and with cross liability clause.
10. The Concessionaire shall comply with all requirements of the Workplace Safety & Insurance Act, the Occupational Health and Safety Act, Environmental Protection Act and all other applicable law, regulations and by-laws. The Concessionaire shall provide proof from time to time and upon request from the Corporation and forthwith upon execution of this document a valid clearance certificate issued by the Workplace Safety and Insurance Board. The Contractor represents to the Corporation and shall ensure that all its employees, agents, volunteers, or others for whom the Concessionaire is legally responsible receive training regarding the provisions of the goods and services contemplated herein to persons with disabilities in accordance with Section 6 of Ontario Regulation 429/07 (the "Regulation") made under the *Accessibility for Ontarians with Disabilities Act, 2005* as amended (the "Act").

C. Additional Terms

1. This agreement may not be transferred or assigned by the Concessionaire. The Concessionaire shall not sublet any portion of the sports/skate shop areas without the prior written approval from the Corporation in its sole discretion.
2. Upon termination of this agreement the Concessionaire shall at its own expense remove all of its chattels from the Premises and leave the skate shop Area in a clean and well-maintained state of repair. The Concessionaire shall remain liable for any damage or state of disrepair to the Premises, the Tecumseh Arena, and the Corporation's property including, but not limited to,

any losses, fines or charges incurred by the Corporation as a result of the acts of the Concessionaire, its agents, invitees, employees, customers, assigns and anyone for whom it is at law responsible. The Concessionaire shall not be entitled to be compensated for any of the improvements which the Concessionaire may have made to the skate shop area.

3. It is further understood and agreed that at the commencement of each season, the parties hereto shall meet to review and agree upon (in writing) the hours of operation of the Concessionaire's business to ensure such business is open during peak hours of operation.
4. It is further understood and agreed that upon the failure of the Concessionaire to carry out any of the provisions of this agreement or upon the failure of the parties to agree on minimum hours of operation as provided in paragraph C.3. of this Agreement, this Agreement may be cancelled by either party upon ninety (90) days' advance written notice.
5. Notwithstanding paragraph A.1., and in addition to any other remedies available to the Corporation, the Corporation may terminate this agreement at any time if the Concessionaire fails to perform any of its covenants and obligations set forth herein, provided that the Corporation provides at least thirty (30) days' notice in writing of termination. If within the thirty (30) day period the Concessionaire complies with all covenants and obligations contained in this agreement then the notice of termination will become null and void without limiting the right of the Corporation to raise any further issue of performance of the terms of this agreement on the part of the Concessionaire.
6. It is further understood and agreed by and between the parties hereto that all notices, demands and requests which may be or are required to be given by the Corporation to the Concessionaire or by the Concessionaire to the Corporation under the provisions of this agreement, shall be in writing and may be mailed or delivered, and shall be addressed:

in the case of the Concessionaire, to: Stadder Contracting & Excavating Inc.
o/a AAA Profile Sharpening
3499 Glenwood Avenue
Windsor, ON N9E 2Y4
Attention: Doug Stadder

or in the case of the Corporation, to: Town of Tecumseh
917 Lesperance Road
Tecumseh, ON N8N 1W9
Attention: Clerk

or to such other address as either party may from time to time designate by written notice to the other.

7. The Concessionaire has the option to negotiate a renewal term for an additional five (5) year term, upon providing notice in writing to the Corporation of its intention to negotiate a renewal of the term no later than 120 days prior to the expiration of the then current Term of this Agreement. If the parties are unable to agree to terms of renewal by July 1, 2023, then this agreement will terminate on July 31, 2023 and the option shall be of no force and effect notwithstanding any other dispute arising under this agreement may be determined by arbitration.
8. The parties agree that any disputes under this agreement will be determined by arbitration and said arbitration shall be conducted in all respects in accordance with the *Arbitrations Act*, R.S.O. 1991, S.O. 1991, c. 17. The existence of a dispute shall not entitle the Concessionaire to extend the then current Term of the Agreement or affect the right of the Corporation to terminate the Agreement in accordance with the terms of this Agreement.
9. Notwithstanding anything to the contrary in this Agreement contained, if either party hereto shall be bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes, labour troubles; inability to procure materials or services; epidemic, pandemic, failure of power; restrictive governmental laws or regulations; riots, insurrection; sabotage; rebellion; war; act of God; or other reason whether of a like nature or not, not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such term, covenant or act shall be excused for the period of the delay and period for the performance of any such term, covenant or act shall be extended for a period equivalent to the period of such delay. The provisions of this section shall not operate to excuse the Tenant from the prompt payment of rent or any other payments required by the terms of this Lease.
10. This Agreement expresses the final agreement among the parties hereto with respect to all matters herein and no representations, inducements, promises or agreements or otherwise among the parties not embodied herein shall be of any force and effect. This Agreement shall not be altered, amended or qualified except by a memorandum in writing, signed by all the parties hereto, and any alteration, amendment or qualification thereof shall be null and void and shall not be binding upon any such party unless made and recorded as aforesaid. **The parties acknowledge that the doctrine of “contra proferentem” shall not apply to any of the terms of this Agreement.**

In Witness Whereof the parties hereunto affixed their signatures and corporate seals,
attested to by the hands of their proper officers duly authorized in that behalf.

Signed, Sealed & Delivered
In The Presence of:

) **The Corporation of The**
) **Town of Tecumseh**
)
)
)

Date

) Mayor Gary McNamara
)
)
)

Date

) Jennifer Alexander, Acting Clerk
) We have authority to bind the
) Corporation
)
) **Stadder Contracting & Excavating Inc.**
) **o/a AAA Profile Sharpening**
)

Date

) Douglas Stadder
) I have authority to bind the Corporation