

**THIS AGREEMENT** made as of the 12 day of October, 2021.

B E T W E E N:

**THE CORPORATION OF THE TOWN OF TECUMSEH,**

hereinafter called the "Town"

OF THE FIRST PART;

- and -

**TECUMSEH PICKLEBALL ASSOCIATION,**

hereinafter called the "TPA"

OF THE SECOND PART.

**WHEREAS** The Corporation of the Town of Tecumseh (Town) is the owner of the recreation facility known as and hereafter referred to as the "Lacasse Park Pickleball Courts" (LPPC) located at 590 Lacasse Boulevard, Tecumseh, Ontario;

**AND WHEREAS** the Tecumseh Pickleball Association (TPA) organizes and operates recreation and competitive pickleball games, to help promote the sport of pickleball and the development of players' skills;

**AND WHEREAS** for the aforesaid purpose, the Town has agreed to allow the TPA to use the LPPC on the terms contained herein.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the rents, covenants and agreements contained herein, the Town does demise and grant access to the premises described herein to the TPA upon the following terms and conditions.

### **PICKLEBALL COURTS**

1.1 The Town of Tecumseh has two (2) locations that offer outdoor pickleball courts: Lacasse Park and Shawanoe Park.

1.1.1 The LPPC is a seasonal outdoor 10-court pickleball court, located within Lacasse Park, is available for approved scheduled TPA Club Court time as well as for individuals that purchase a seasonal access membership through the Community & Recreation Services Department for scheduled Public Court time.

1.1.2 Shawanoe Park includes a seasonal outdoor 4-court pickleball court available to individuals that purchase a seasonal access membership through the Community & Recreation Services Department. The Shawanoe Park pickleball court is available for TPA approved tournaments and events.

### **TERM OF AGREEMENT**

2.1 This Agreement shall be in effect for a period of five (5) years, commencing on the 1<sup>st</sup> day of January, 2022 and terminating on the 31<sup>st</sup> day of December, 2026.

2.2 Notwithstanding paragraph (2.1), either party may terminate this Agreement at any time upon sixty (60) days written notice to the other party.

- 2.3 This Agreement is in keeping with Policy # 91, Outdoor Tennis and Pickleball Club Operations and the uses granted by the Town to TPA are subject to this policy and TPS agrees to adhere to same.
- 2.4 The Town may from time to time provide naming rights to any third party respecting either of the two parks. In such event, upon being notified of same, TPA agrees to abide by the terms of any such third party agreement in so far as it may require that the park be identified in accordance with the designation or identify of the facility as required in the naming agreement and TPA share thereafter ensure advertising promotional material or other material used on the park or facility referencing its identity refer to the park or facility in the manner required under such third party agreement.

### **USE OF COURTS**

- 3.1 The pickleball season is defined as April to November, weather permitting.
- 3.2 The Town agrees to allow the TPA exclusive use of the LPPC during mutually agreed upon hours throughout the season for the members of the TPA for recreational and competitive use.
- 3.3 The TPA agrees that the LPPC will be available for Community & Recreation Services Department seasonal court membership users during scheduled Public Court hours, as set out in Policy # 91.
- 3.4 The TPA will be required to submit a request to the Town outlining the requested exclusive times for use of the premises, including dates and times required for monthly "in-house" tournaments, tournaments and other events. The request must be made in writing to the Town no later than January 31 of each year for the upcoming court season.
- 3.5 The Town will review the request, taking into consideration the TPA's membership and the number of Community & Recreation Services Department seasonal memberships sold, to determine equitable programming for all parties.
- 3.6 The hours of use for the LPPC for the 2022 pickleball season for the TPA are reflected in Schedule 1 and will be updated annually to reflect the current year's request.

### **TOWN RESPONSIBILITY**

- 4.1 The Town agrees to provide:
- Colour-coated asphalt court surface
  - Nets and poles
  - Painted pickleball lines
  - Fencing
  - Windscreens
  - Seating
  - Capital lifecycle replacement
  - Access to court during approved Club time
  - Refuse containers and pick up and regular maintenance
- 4.2 The Town agrees to operate and maintain all outdoor courts and assume full responsibility for the following:

- All electricity, water, gas and other utility rates and charges affecting the premises
  - Maintenance and repair obligations involved with the proper up-keep of the LPPC, including asphalt surface repairs save and except any obligation arising from the damage caused by the wilful acts or gross negligence of TPA or any person attending on site on behalf of or at the invitation of TPA, including without limitation, its membership, and other persons organizing, administering, running or otherwise participating in TPA events (normal wear and tear excluded) which damage shall be the responsibility of TPA.
- 4.3 The Town will provide required standard signage to be posted in a prominent location. The signage will include the Park name, address, hours, rules and regulations.

### **TPA RESPONSIBILITY**

- 5.1 The TPA agrees to be a member in good standing of Pickleball Ontario; maintain its incorporated status; and maintain a minimum membership of 100 individuals
- 5.2 The TPA will provide to the Town on an annual basis a list of executive members, including names and phone numbers, that will act as a liaison representative on behalf of the TPA.
- 5.3 The TPA will provide to the Town on an annual basis a list of members. The list will include member's names.
- 5.4 Submit an annual request as outlined in 3.4.
- 5.5 On an annual basis, the TPA will promote and offer a minimum of 3 open houses to allow public participation to promote the sport of pickleball and to encourage club and/or seasonal membership.
- 5.6 The TPA agrees to pay an annual fee, plus HST as applicable, to the "Town", to be paid not later than June 1st of each and every year of the term as reflected in Schedule 2 and to the extent that this amount is yet to be determined, it shall be confirmed in writing (with appropriate changes noted in replacement schedules to this agreement) by the parties prior to the commencement of the year in question failing which either party may terminate the agreement as of the end of the preceding year. The 2022 annual fee is based on a 35-hour per week court schedule and provides use of the courts during approved Club Court Time as well as two (2) tournament events outside of approved Club Court Time. Any additional tournament events will be subject to a rental fee to be negotiated. Should TPA request additional seasonal Court Time hours, the assessed fee will require review with appropriate changes noted in replacement schedules to this agreement.
- 5.7 Should members of the TPA wish to purchase seasonal access membership for scheduled Public Court time, they shall do so through the Community & Recreation Services Department in accordance with the Town's Fees and Charges Bylaw.
- 5.8 The TPA agrees that all garbage and refuse generated on the premises from the TPA's operations shall be contained and placed in the approved containers on the premises, and will be removed or disposed therefrom at the expense of the Town.

- 5.9 The TPA may provide additional signage, which must be approved by the Town, before being posted.

### **CAPITAL CAMPAIGNS AND IMPROVEMENTS**

- 6.1 The TPA shall not make any alterations of any kind to the premises without prior approval by the Director of Community & Recreation Services or designate.
- 6.2 Any major capital improvements proposed by TPA to the LPPC shall be submitted by a written request to the Director of Community & Recreation Services or designate for consideration. TPA must provide documentation that they have the funds to complete the major improvements to the facility.
- 6.3 Any capital improvements become the property of the Town.
- 6.4 TPA shall be permitted to sell banner sponsorship / naming rights for the individual courts; and ensure that any and all sponsorship / naming rights commitments will not exceed the timeframe of this Agreement. TPA agrees that any fundraising initiatives including the naming rights to the individual courts (10), will require the approval of the Town and all funds raised will be maintained by the Town in the Pickleball Capital Reserve Account for agreed upon future facility improvements. The Town will be responsible to issue official tax receipts for all eligible funds raised, and will provide a statement of all transactions to TPA on an annual basis.

### **ASSIGNMENT**

- 7.1 The TPA shall not assign or sublet or part with the possession of all or part of the premises or transfer this Agreement in any warrant without the written consent of the Town.

### **INDEMNIFICATION OF TOWN**

- 8.1 The TPA shall defend, indemnify and save harmless the Town 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 TPA, 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 Agreement. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the TPA in accordance with this Agreement and shall survive this Agreement.

### **INSURANCE**

- 9.1 The TPA shall during the entire term hereof, at its sole cost and expense, take out and keep in full force and effect the following:

- a) Public liability insurance applying to all operations of the TPA and which shall include, to the extent available for such an organization conducting such operations, insurance against personal injury, death, property damage, products liability, non-owned automobile liability and TPA legal liability with respect to the occupancy by the TPA of the premises. Such policies shall be written on a comprehensive basis with limits of no less than five million (\$5,000,000.00) dollars per occurrence.
- 9.2 The TPA agrees that:
- a) all insurance policies shall be taken out with insurers reasonably acceptable to the Town,
  - b) shall name the Town as an additional insured;
  - c) shall contain a severability of interest clause or a cross liability clause;
  - d) shall be in a form satisfactory to the Town.
- 9.3 The TPA further agrees to submit to the Town a certificate evidencing this insurance shall be provided prior to the commencement of the term with replacement certificates issued from time to time showing the validity of the policy during the currency of this agreement. All policies shall contain an undertaking by the insurers to notify the Town in writing not less than thirty (30) days prior to any material change, cancellation or other termination thereof.

#### **RIGHT TO RE-ENTER AND TERMINATE**

- 10.1 Notwithstanding paragraph one, the Town may terminate this Agreement at any time if the TPA fails to perform any of its covenants and obligations provided that the Town provides at least sixty (60) days notice in writing of termination. If within the sixty (60) day period the TPA complies with all covenants and obligations contained in this Agreement to the satisfaction of the Town, then the notice of termination will become null and void.
- 10.2 Notwithstanding paragraph 10.1, in the event that the TPA ceases to operate, this agreement may be terminated by the TPA upon giving three (3) months notice in writing to the Town.

#### **RIGHT OF RENEWAL**

- 11.1 Provided the TPA shall not be in default of performance of any of the provisions hereunder, it shall have the right to renew, to be exercised at least six (6) months before the expiration of the term hereby granted, for two (2) further periods of five (5) years, on the same terms as herein provided, save and except for the rental fee which shall be negotiated prior to any renewal. There shall be no further rights to renew, after December 31, 2036.

#### **NOTICE PROVISIONS**

- 12.1 Any notice, request or demand given under the Agreement shall be sufficiently given if delivered personally or mailed by prepaid registered mail to the parties at their

designated addresses hereinafter set out or to such other respective addresses designated by notice given hereunder:

TOWN:

to each of the Clerk and  
Director of Community & Recreation Services  
The Corporation of the Town of Tecumseh  
917 Lesperance Road  
Tecumseh, Ontario  
N8N 1W9

TPA:

Tecumseh Pickleball Association  
463 Michael Drive  
Tecumseh, Ontario  
N8N 4M6

TIME OF THE ESSENCE

13.1 Time is of the essence in this agreement.

APPLICABLE LAW

14.1 The laws of the Province of Ontario shall apply and bind the parties in any and all questions pertaining to this agreement.

ENUREMENT

15.1 This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the parties and their administrators and their organizational successors.

SIGNED, SEALED & DELIVERED  
In the presence of

“Seal”

\_\_\_\_\_  
Witness:

THE CORPORATION OF THE  
TOWN OF TECUMSEH

By:

\_\_\_\_\_  
Name: Gary McNamara  
Title: Mayor

\_\_\_\_\_  
Name: Laura Moy  
Title: Clerk

TECUMSEH PICKLEBALL  
ASSOCIATION

By:

\_\_\_\_\_  
Name:  
I/We have authority to bind the Corporation.

Schedule 1 – Hours of Use:

Year	Day(s) of the Week	Times
2022	Monday to Saturday Monday, Tuesday and Thursday	8:30 AM to 12:30 PM 6:30 PM to 8:30 PM
2023	To be determined	To be determined
2024	To be determined	To be determined
2025	To be determined	To be determined
2026	To be determined	To be determined

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Schedule 2 – Annual Lease Payment:

Year	Amount before taxes
2022	\$4000
2023	To be determined
2024	To be determined
2025	To be determined
2026	To be determined

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