

THIS AGREEMENT made as of the 9th day of May 2023

BETWEEN:

THE CORPORATION OF THE TOWN OF TECUMSEH,
hereinafter called the "Town"

OF THE FIRST PART;

-and-

TECUMSEH GOLDEN AGE CLUB (GAC),
an unincorporated association by its individual members
hereinafter called the "GAC"

OF THE SECOND PART;

WHEREAS the Town is the owner of the lands and premises known as the St. Clair Beach Community Centre (hereinafter "SCBCC"); located at 13675 St. Gregory's Road, in the Town of Tecumseh;

AND WHEREAS due to the Town's need to provide temporary accommodations for the Cada Library during the renovation of its location at 13675 St. Gregory's Road, Administration obtained approval from its Council to relocate the Cada Library to the Town facility at 12420 Lanoue Street for the renovation period;

AND WHEREAS due to the need to accommodate the relocation of the Cada Library, Town Administration approached the members of the Tecumseh Golden Age Club (the "GAC") to inform and provide notice of the Town's need to re-locate the Club's location and activities to have complete access as of May 1, 2023, to the Town facility at 12420 Lanoue Street being the current location of the Tecumseh Golden Age Club's activities;

AND WHEREAS the Council of the Town of Tecumseh at its April 25, 2023 regular meeting received Administrative Report CRS-2023-07 entitled and pursuant to that Report approved the May 1, 2023 relocation and accommodation of the GAC inclusive of its activities, existing user groups and rental clients from its current location at the Town Facility located at 12420 Lanoue Street to the Town Facility located at 13675 St. Gregory's Road and known as the St Clair Beach Community Centre (the "Relocation");

AND WHEREAS the Town and the GAC together have determined that it is in the best interests of the parties hereto that the terms and conditions of the Relocation to and at the St Clair Beach Community Centre together with the obligations of each of the parties hereto with respect to the operations of the GAC via-a-vis the Town both as a user group of a Town facility and as a recipient of grant funds relating to the Seniors Active Living Centers Program (SALC) be hereby reflected by way of agreement the terms and conditions of which are specified below.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the rents, covenants and agreements contained herein, the Town does demise and grant access and use to Town resources inclusive of the St Clair Beach Community Centre land and premises described herein to the GAC upon the following terms and conditions.

1. THE TOWN COVENANTS AND AGREES:

- 1.1. That subject to the provisions of this Agreement, the Town grants permission to the GAC to operate as of May 1, 2023 during the Initial Term of this Agreement at the St Clair Beach Community Centre facility and to carry on from Room B of that facility and the storage area provided, its activities, including the activities and operations of its existing user groups and rental clients and including the operations relating to seniors programming and specifically the activities relating to grant funding under the Seniors Active Living Centres Program (SALC) and to provide such other social, athletic, and recreational activities ancillary thereto (the "GAC activities"). Such permission to operate at the St Clair Beach Community Centre shall be on a non-exclusive basis meaning any areas provided for use

including any storage areas provided by the Town are provided on a temporary basis pursuant to this agreement together with non-exclusive access to common areas of the St Clair Beach Community Centre as and when available and further subject to Town requirements for the facility including the coordination and the scheduling of its other user groups/rentals at the facility.

- 1.2. That subject to the provisions of this agreement, the Town grants permission to the GAC to operate on a non-exclusive basis during the Initial Term and any subsequent terms of this Agreement at the St Clair Beach Community Centre or such other Town facility as may be specified and mutually agreed to and to carry on the GAC activities at such facility in continuing compliance with the terms and conditions of this Agreement as may be amended from time to time.
- 1.3. That the Initial Term of this Agreement shall be the earlier of: (a) one year starting the 1st day of May 2023 and ending the 30th day of April 2024 or (b) the end of the Cada Library renovation period with the Town to provide 60 days' notice of the end of the Cada Library renovation period (hereinafter "the Initial Term"). The Initial Term shall be automatically further extended, subject to the terms of this Agreement (but as may be amended from time to time by the parties hereto), for subsequent terms of One (1) year each unless and until such time as either party gives the other written notice of termination, which party may give such notice at any time and for any reason upon at least sixty (60) days' notice.
- 1.4. Prior to the expiry of the Initial Term (as same may be extended upon mutual agreement) the Town will discuss with the GAC a mutually agreeable Town Facility to host the GAC operations and activities during any subsequent terms of this Agreement if any. In the event the parties fail to reach such mutual agreement by the expiry date of the Initial term then the Initial Term shall not be automatically extended and the GAC as of the initial term expiry date shall be deemed as being in receipt of the written notice of termination referred to in Section 1.3 of this Agreement (unless such Notice has already been provided).
- 1.5. To provide property and liability insurance for all buildings and assets owned by the Town within the SCBCC land and premises or such other Town Facilities at which the GAC may operate pursuant to this Agreement. The GAC shall have no recourse to the Town's insurance and shall execute such further assurances as may be required in that regard.
- 1.6. To provide property maintenance (lawn cutting, shrub trimming, weed control) regular cleaning, maintenance, repair, winterizing and spring commissioning of the outdoor premises, and winter snow removal for the parking lot as per Town's standards for its recreational facilities.
- 1.7. To provide at its expense, and be responsible for the continued maintenance and repair, of any and all aspects of the exterior of the buildings, including grounds, parking areas, sidewalks and building access areas located on the property, all appurtenances to the Buildings, including replacement if necessary, including any and all heating equipment and central air conditioning equipment located in or on the building now or in the future.
- 1.8. That provided the GAC remains otherwise in compliance with the terms and conditions of this Agreement and agrees to otherwise abide by the terms, conditions, and requirements applicable to any user/rental of a Town Facility then the GAC during the Initial Term will have access to use the St Clair Beach Community Centre free of charge or payment of fees. While the Town will for the initial Term honour the stated rates/fees for the GAC's user groups/rental clients ("sub-rentals") such rental fees/revenue shall be paid directly to the Town. The Town shall be provided access to the GAC's current sub-rental information including application/permits, fees, and process by which rentals are determined and/or approved. The current user groups/rental clients of the GAC shall also agree to otherwise abide by the terms, conditions, and requirements applicable to any user/rental of a town facility. The Town expressly reserves the right to refuse or deny any current GAC user group/rental clients who do not comply or agree to comply with the Town's terms, conditions, and requirements applicable

to any user/rental of a town facility. During the Initial Term no new sub-rentals of the GAG will be accepted and all such proposed users will be required to contract directly with the Town at the applicable fees, terms, conditions, and requirements applicable to any user/rental of a town facility.

- 1.9. Upon any subsequent renewals of this Agreement the GAC shall be subject to the user/rental fees and the terms, conditions, and requirements applicable to any user/rental of a town facility. Upon any subsequent renewals of this Agreement no new sub-rentals of the GAG will be accepted and all such proposed users will be required to contract directly with the Town at the applicable fees, terms, conditions, and requirements applicable to any user/rental of a town facility.
- 1.10. That the GAC will have the right to book the SCBCC as needed for its events/activities (or such other Town facilities that may further host the GAC activities in subsequent terms of this Agreement). Such right to book shall be contingent on the facility being available as reasonably determined by the Town. The Town shall meet with the GAC at least annually in the early spring to evaluate, plan and coordinate anticipated GAC activities over the upcoming year including anticipated bookings of its user groups if applicable. While the Town will make all reasonable efforts to accommodate the use of the facility by the GAC and the GAC activities, the Town does not make any warranties as to availability of the Town Facility on any particular dates or the ability to accommodate all desired GAC activities at the Town Facility. The GAC specifically acknowledges and agrees that it has no exclusive rights to the use of the SCBCC facility (or any such other town facilities as may be applicable).
- 1.11. The Town will notify or provide the GAC with access to a calendar of booking dates at the SCBCC (or other Town facility as may be applicable) that are for Town use and/or such other groups booked by the Town who are not affiliated with the GAC. The Town will receive the revenue from these bookings (if any) and be responsible for set up, tear down, and clean up, and snow removal similar to other groups who use the building.

2. THE GAC COVENANTS AND AGREES:

- 2.1. To operate and coordinate with the Town for the use and/or delivery of its social, athletic, and recreational activities at the St Clair Beach Community Centre or such other town facility during the Initial Term and any successor terms and to otherwise be in compliance with the Town's terms, conditions, and requirements applicable to all users/rentals of a Town Facility.
- 2.2. To be responsible for all cleaning and maintenance related to the GAC's use of any areas of the St Clair Beach Community Centre (or other town facilities as may be applicable) and including the use by any of its user groups which cleaning, and maintenance obligations shall extend to and include without limiting the following:
 - (a) Room B and all other provided or used and shared spaces including any storage areas and any equipment, chattels or fixtures provided by the Town together with any common areas (kitchen, foyer, and washrooms areas) must be kept clean and clear of any obstacles, accoutrements and/or adornments that have not been approved by the Town of Tecumseh;
 - (b) All food must be stored in proper containers and its handling preparation or clean up must otherwise be in compliance with applicable public health standards;
 - (c) No hoarding or excess clutter in storage spaces, no trip and fall hazards, no fire hazards;
 - (d) All garbage and recycling must be placed in appropriate containers at the end of each use session.

- 2.3. To be responsible for and assume all legal and supervisory responsibility for its careful and proper use of the rental facility, grounds, equipment, and furnishings.
- 2.4. To be responsible for and assume all liability for all damages incurred during the GAC's use of the facility however caused.
- 2.5. To be responsible for setting up and returning the facility to the condition it was in before any of its events. All facilities shall be clean, tidy and the facility will be properly secured upon vacating.
- 2.6. To observe and cause all its users and attendees to observe as applicable the terms of this Agreement, Town policies and by-laws, facility rules and any other applicable laws or government regulations.
- 2.7. To be responsible for all utilities and all other operational costs of the GAC not otherwise expressly assumed by the Town under this Agreement.
- 2.8. To ensure that the sale of alcohol will be undertaken solely through the GAC's Alcohol and Gaming Commission Ontario (AGCO) license, and the GAC shall strictly comply with their current AGCO license and any requirements of the Town's or GAC's insurer. Where alcohol is served during a rental event the GAC will ensure the person signing the rental agreement acquires and complies with the special occasion permit.
- 2.9. To secure any and all licenses, permits, and approvals required for GAC activities and pay HST, and other business taxes attributed to the operation that may be applicable.
- 2.10. Beyond those related items provided and owned by the Town, to supply, install and provide all appliances and preparation tables/counters, coolers, freezers, and any other equipment required for the operation of the which shall remain the property of the GAC provided that the Town is not responsible for any damage or loss occurring to such property.
- 2.11. That no re-modeling or structural changes will be made to the SCBCC or any other facility or property of the Town without the prior written consent of the Town's Director of Community and Recreation Services in such person's sole discretion.
- 2.12. That except as expressly provided for herein, to be responsible for the cleaning and maintenance of any areas of the SCBCC (or such other Town facility) used by the GAC and its rental and other users and all related buildings, courts, parking lot, and equipment including annual maintenance and repair to the GAC, which results from normal use. Any damage to the areas resulting due to negligent supervision or operation of the GAC shall be repaired by the Town at the expense for the GAC. Payment shall be made within 15 days following delivery of invoice.
- 2.13. That with respect to the Seniors Active Living Centers Program (SALC) and any grant monies received by the Town from the Ministry for Seniors and Accessibility (or any of its predecessors thereof) for the funding of GAC activities and inclusive of funding received or to be received by the Town for the 2023-2024 SALC grant program the GAC represents, warrants and covenants as follows:
 - (a) To provide monthly financial statement reports for the 2023-2024 SALC grant program and or any other previous monthly financial statement reports for previous grant years upon request of the Town.
 - (b) To provide annual audited Financial Statements for the 2023-2024 SALC grant program and/or any other annual audited financial statements for previous SALC grant years upon request of the Town.
 - (c) To consult with the Town prior to any items to be purchased through the 2023-2024 SALC special grant program and to provide necessary

invoices/receipts upon request for any items purchased via the 2023-2024 SALC operating fund and/or 2023-2024 SALC special grant fund or any previous invoices/receipts relating to any previous SALC grant years upon the request of the Town.

- (d) To preserve and provide upon request of the Town any and all other books and records relating to the SALC program.
 - (e) That the GAC at all relevant times has been and will continue to be in compliance with all SALC grant funding program requirements for the 2023-2024 SALC grant program and all previous year SALC grant programs for which the Town made application on behalf of the GAC.
 - (f) To release, indemnify and hold harmless the Town from any liability or continuing requirements or obligations associated with the SALC program inclusive of the 2023-2024 SALC grant program and all previous year SALC grant programs for which the Town made application on behalf of the GAC.
- 2.14. The GAC acknowledges and agrees that the 2023-2024 SALC Grant year will be the last Grant Year applied for by the Town on behalf of the GAC. The GAC acknowledges and agrees that any future funding through the SALC program will be applied for, administered, and received independently and directly by the GAC and completely independent from the Town. The GAC further acknowledges and agrees that the Town has not been and will not be under any obligation to pursue funding for or on behalf of the GAC.
- 2.15. To provide and continue to provide during the Initial Term and such further terms or extensions thereof of this Agreement as may be applicable the following additional documentation to be provided as and when requested below so as to review current compliance with the SALC program and funding requirements and to support the GAC's continuing occupancy at any town facilities:

Monthly: (15 days after end of each month)

- Financial Statement Reports;
- Receipts and/or invoices for Expenses;
- Payroll Report (staff person Name, Position, Hours and Amount of Compensation Per Employee).

Quarterly: (15 days after end of every 3 months)

- Data related to Club activities such as: number and type of programs, number of participants, membership numbers.

Annually: January 15

- Updated Proof of Insurance;

Updated Inventory of equipment and supplies in storage at SCBCC or such other Town facility as may be applicable.

3. INDEMNITY, INSURANCE, COMPLIANCE AND REPORTING

- 3.1. The GAC and its individual members shall defend, indemnify and save harmless on a joint and several basis 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 any disruption of service, or arising out of or attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the GAC or any club or third party operating under the permission of the GAC, their 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 GAC in accordance with this Agreement and shall survive the termination of this Agreement.

3.2. The GAC shall during the Initial term and such further Terms hereof, at its sole cost and expense, take out and keep in force and effect the following:

- (a) Public liability insurance applying to all operations of the GAC and which shall include insurance against personal injury, death, property damage, products liability, non-owned automobile liability and GAC legal liability with respect to the occupancy by the GAC 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. Such policy shall include coverage for sale of alcohol under their AGCO.
- (b) Insurance for theft, loss, or damage of all property of the GAC;
- (c) The GAC agrees that:
 - i. all insurance policies shall be taken out with insurers reasonably acceptable to the Town; shall name the Town as an additional insured;
 - ii. shall contain a severability of interest clause or a cross liability clause;
 - iii. shall be in a form and contain terms satisfactory to the Town and Town's insurer.
- (d) The GAC further agrees to submit to the Town certified copies of each such insurance policy if requested and otherwise a Certificate of Insurance before taking occupancy and thereafter from time to time in advance of any expiry date shown on any previously provided certificate or otherwise upon reasonable request from the Town. 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.

3.3. The GAC and any of its user/rental clients shall (as a condition of its rental or grant of use by GAC), agree to comply with the Town's Policy on Health & Safety and any other applicable policies and legislation and further shall ensure that its employees, volunteers, or guests/users are advised and have a sound knowledge of this policy. In particular the GAC shall:

- (a) Provide and maintain the necessary items and equipment as called under the First Aid Regulations of the Workplace Safety and Insurance Act and the Occupational Health and Safety Act
- (b) Comply with requirements of Workplace Hazardous Materials Information System (WHMIS) regarding use, handling, storage, and disposal of hazardous materials; and regarding labeling and provision of material safety data sheets acceptable to Labour Canada and Health and Welfare Canada. Deliver copies of WHMIS data sheets to the Town on delivery of materials

3.4. The GAC shall be familiar with and comply with all requirements of "Applicable Law" respecting the operation and use of the SCBCC or any other Town facilities as may be applicable. Applicable Law means, all applicable federal, provincial, state, regional, or territorial, laws, statutes, treaties, codes, or ordinances, whether domestic or foreign, or municipal by-laws or policies of any Governmental Authority of competent jurisdiction, including applicable regulations, Orders. Applicable Law shall, without limiting the generality of the foregoing, include the Workplace Safety & Insurance Act, the Occupational Health and Safety Act, Environmental Protection Act, Liquor Licence and Control

Act and all public welfare, health and safety laws, regulations, licensing terms, and by-laws. The GAC shall provide evidence of compliance as requested from time to time including any certificate from the applicable Governmental Authority. "Governmental Authority" means:

- (a) any court, judicial body, or arbitral body,
 - (b) any government whether multinational, national, federal, provincial, territorial, municipal, or local and any governmental agency, governmental authority, governmental tribunal, or governmental commission of any kind whatever,
 - (c) any subdivision or authority of any of the foregoing,
 - (d) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.
- 3.5. The GAC shall provide to the Town a copy of the Club's annual Social Gaming License and to provide upon request such other evidence that may be requested to demonstrate that said gaming license is in good standing so as to permit social gaming activities on any Town facility.
- 3.6. That this Agreement and the rights contained therein may not be transferred or assigned by the GAC without written approval from the Town. Any such approval shall be at the Town's sole discretion.

4. TERMINATION

- 4.1. **Termination for Default** - The Town may terminate this Agreement at any time if the GAC fails to perform any of its covenants and obligations (herein an event of default") provided that the Town provides at least fifteen (15) days' notice in writing of the default. If within the fifteen (15) day period the GAC cures the default and complies with all covenants and obligations contained in this Agreement then the notice of termination will become null and void failing which this agreement shall be determined and the GAC shall vacate the SCBCC and/or any other town facility they may be operating from pursuant to this Agreement all without prejudice to the Town's rights to recover any damages sustained as a result of the default. In such event, the GAC's obligations to indemnify and hold harmless the Town as stipulated above shall remain in full force and effect notwithstanding the determination of this Agreement.
- 4.2. **Termination for Convenience** - In addition to the Town's right to terminate in accordance with other provisions of this Agreement, either party may terminate this Agreement on sixty (60) days' notice to the other.
- 4.3. Upon any termination of this Agreement, the GAC shall at its own expense remove all its chattels from the premises and leave the GAC in a clean and well-maintained state of repair. The GAC shall not be entitled to be compensated for any of the affixed improvements which the GAC may have made to the SCBCC or such other facility all of which shall become property of the Town.

5. ADDITIONAL PROVISIONS

- 5.1. 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 or delivered by the Town to the GAC or by the GAC to the Town under the provisions of this Agreement, shall be in writing and may be mailed or personally delivered, and shall be addressed:

In the case of the GAC, to:

or in the case of the Town, to: Town of Tecumseh

917 Lesperance Road
Tecumseh, ON N8N 1W9
Attention: Director of Community and
Recreation Services

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

Any communication so personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Communications so sent by registered and receipted mail shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is received, as evidenced by the postal receipt. Communications so sent by facsimile transmission or other means of recorded telecommunication shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is sent. Any party may from time to time change his or its address for service on written notice to the others.

“Business Day” means any day, other than a Saturday, Sunday, or any other day on which the principal chartered banks located in the Town are not open for business during normal banking hours.

- 5.2. This Agreement and all other agreements, security, and documents to be delivered in connection with this agreement shall be governed by and construed in accordance with the applicable laws of the Province of Ontario and of Canada.

- 5.3. No Adverse Inference against the Town as Drafting Party

It is agreed and acknowledged that both parties, directly or through their agents, principals, representatives and/or solicitors, have participated in the preparation and/or negotiation of the provisions of this agreement.

Should any provision of this agreement require judicial interpretation, mediation, or arbitration, it is agreed that the court, mediator, or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party or so as to disadvantage any party on the basis that such party and/or its solicitor or agent:

- (a) *Prepared this agreement or any part of it; or*
- (b) *Seeks to rely on this agreement or any part of it.”*

- 5.4. **Independent Legal Advice**

It is strongly recommended that all other parties to this agreement obtain independent legal advice prior to signing this agreement. Each such party acknowledges:

- (a) having obtained independent legal advice from his, her, or its' own solicitor with respect to the terms of this Agreement prior to its execution or having otherwise been given a reasonable opportunity to obtain such advice and declined to do so;
 - (b) that he or she or it understands the terms, and his or her rights and obligations, under this Agreement.
- 5.5. 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.

[Remainder of page deliberately blank, signatures on following page]

I/We confirm that we have authority to bind the members of the association.