

THIS AGREEMENT MADE THIS            DAY OF            , 2022

**BETWEEN:**

**THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE**

(hereinafter called the "Municipality")

-and-

**THE KINCARDINE TENNIS CLUB**

(hereinafter called the "Club")

The Municipality is the registered owner of the lands described in schedule A, attached hereto, and municipally known as the Kincardine Tennis Courts - 847 Saugeen Street, Municipality of Kincardine.

**IN CONSIDERATION** of the rents, covenants and obligations stipulated herein the Municipality and the Club have agreed to enter into a User Agreement of the lands more particularly described as 847 Saugeen Street, Municipality of Kincardine.

**AND WHEREAS** the said lands and premises hereinafter described are utilized from and are under the control of the Municipality;

**AND WHEREAS** the said lands and premises are not required by the Municipality for any other purpose other than public courts, and the Municipality has agreed to a User Agreement the same for use by the Club subject to the terms and conditions hereinafter set out;

**AND WHEREAS** the parties wish to enter into a mutually beneficial User Agreement for the use of municipally owned lands for the provision of tennis excluding any other recreational activities;

**NOW THEREFORE** this User Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter set out, the parties hereto agree to as follows;

**1. Term**

The Club and Municipality agree that the term of this User Agreement will be for five (5) years and shall commence on the 20<sup>th</sup> day of June, 2022 and shall terminate on the 30<sup>th</sup> day of April 2027, at which time it may be renewed at the discretion of the Municipality.

**2. Responsibilities**

The Club:

- a. Shall operate a seasonal tennis club, at 847 Saugeen Street, which will provide members and non-members with tennis opportunities,
- b. Shall be responsible for the collection of season memberships
- c. Club members shall have priority usage for regular play over non-members.
- d. Ensure that Club members are aware that the lights will go off at 11:00 p.m. nightly, however, if players are done playing for the evening prior to 11:00 pm they are responsible for turning the lights off.
- e. Maintain the premises in useable order and operate the lands and premises in the best interests of the Municipality.
- f. Shall notify the Municipality of deficiencies at the courts.
- g. Responsible for all signage pertaining to the operations of the courts including rules, regulations and hours of operation upon approval from the Municipality and utilizing the Municipal signage strategy.
- h. Will communicate with the Municipality of any pending tournaments or special events that will be held on the courts.
- i. Provide an annual financial statement to the municipality at the end of the tennis season.

The Municipality:

- a. Shall be responsible for utility and port-a-potty costs.
- b. Shall ensure that the courts are maintained in a state that is safe and playable for all users.
- c. Shall be responsible for the upgrading, maintenance and repair of areas outside of the fencing surrounding the tennis courts which includes the access road, parking lot, practice court and practice wall with the exception of the Club's storage building.
- d. Shall ensure that the surrounding grass is kept regularly mowed and trimmed, and that the court lights are in working condition with the timer set to go off at 11:00pm.
- e. Shall ensure that waste is removed from the garbage cans surrounding the tennis courts.
- f. Shall have the right to request the courts for programming purposes for other activities and will provide insurance coverage for those activities.
- g. Shall have the right to close the courts for maintenance purposes upon notification to the Club.

### **3. Capital**

Requests for capital improvements and major repairs to the courts or premises shall be submitted by the Club in writing to the Municipality for consideration during the annual budget process. The Club will be asked to contribute to capital via a cost sharing arrangement. Any additional modifications to the facilities shall be mutually agreed upon.

#### **4. Noise**

The Club shall at all times ensure that its members and participants are in compliance with the Municipalities Noise Control By-law, and that noise from its activities are not interfering with the enjoyment of other users or residents in or adjacent to the Permitted Lands.

#### **5. Fences, Structures, Signage & Obstructions**

##### Fence or Structures

- a) The Club shall not erect any fences or structures in the Permitted Lands, with the exception of fences or structures required for safety purposes and approved by the Municipality.

##### Signage

- b) The Club will be responsible for all costs associated with signage pertaining to the operations of the courts including rules, regulations and hours of operation upon approval from the Municipality and utilizing the Municipal signage strategy

#### **6. Damages to Municipal Property**

The Club shall be responsible for any damage or excess maintenance required for the Permitted Lands inside the fence as well as the shed caused by the Club's use and equipment and shall pay the Municipality any excess maintenance or repair costs incurred by the Municipality.

#### **7. Club's Equipment**

The Club shall ensure that at all times its equipment meets the minimal level of standard to ensure safe play for all.

#### **8. Insurance**

The Club shall, at their expense obtain and keep in force during the term of the Lease, Commercial General Liability Insurance satisfactory to the Municipality 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 \$2 Million per occurrence with an aggregate of not less than \$2 Million.
- b. Add the Municipality of Kincardine 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 to the Named Insured.

- d. Non-owned automobile coverage with a limit of not less than \$2 Million and shall include contractual non-owned coverage
- 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.
- j. All copies of policies must be submitted to the Municipality prior to the beginning of each season.

The Kincardine Tennis Club's insurance is excluding any programs offered by the Municipality or other agencies operating on the tennis courts.

### **Primary Coverage**

The Club'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**

The Club shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to User Agreement commencement.

## **9. Indemnity**

The Club agrees to defend, indemnify and save harmless in full the Municipality, its elects, appointees, officials and employees from all liabilities, fines, damages, suits, claims, demands, actions, including reasonable legal fees, in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of any occurrence in, upon or at the Permitted Lands or the occupancy or use by the Club, or occasioned wholly or in part by any act or omission of the Club or by anyone permitted to be on the Permitted Lands or Lands by the Club.

## **10. Termination**

Termination by Municipality

- a. If the Club defaults in performing any of its obligations pursuant to this User Agreement in such a way that the Municipality perceives to be a threat to public safety, the Municipality may demand that the Club immediately cease its operations.

In all other instances of the Club's default in performing its obligation pursuant to this User Agreement, the Municipality shall provide written notice to the Club of such default and shall give the Club until its next operating day

or as determined by the Director of Community Services and/or their designate to remedy the default. If the Club fails to remedy the default by its next operating day, the Municipality may terminate this Agreement. In the event of termination by the Municipality for any reason, the Club shall not be entitled to reimbursement of any portion of any fees paid to the Municipality.

#### Termination by Club

- b. The Club may terminate this User Agreement by providing thirty (30) days written notice of termination to the Municipality.

### **11. Designated Representative(s)**

- a. Upon entering into this User Agreement, the parties hereto agree to each designate a representative for the purposes of this Agreement and also agree that the designated representatives may deal with each other in respect to all matters arising under this Agreement. For the purpose of this agreement, the designated representatives are as follows:

Municipality: Municipality of Kincardine  
RR#5, Concession 5  
Kincardine, Ontario N2Z 2X6  
Attention: Jayne Jagelewski,  
Director of Community Services

Club: Kincardine Tennis Club  
926 Greg's Trail  
Kincardine, Ontario N2Z 0C3  
Attention: Dean Finlay  
Club President

### **12. No assignment without consent**

The Club shall not assign this User Agreement without the prior written consent of the Municipality, which consent will not be unreasonably withheld.

### **13. BINDING EFFECT:**

- a. This Agreement binds and benefits the parties and their respective heirs, executors, administrators, representatives, successors, and assigns.

**IN WITNESS WHEREOF** the parties have duly signed and/or affixed their corporate seals attested by the hands of their respective officers duly authorized in that behalf.

**SIGNED, SEALS AND DELIVERED** this 20<sup>th</sup> day of June, 2022.

**KINCARDINE TENNIS CLUB**

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President – Dean Finlay

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Treasurer – Eva Pyszczyńska

We have the authority to bind the Corporation.

**CORPORATION OF THE  
MUNICIPALITY OF KINCARDINE**

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Gerry Glover, Mayor

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Roxana Baumann, Acting CAO

We have the authority to bind the Corporation.

**Schedule A**

MacPherson Park

Civic Address: 847 SAUGEEN ST

Roll Number: 410822000515200

Legal Description: PLAN 77 LOTS 10 TO 12 PT; LOTS 3 AND 13 SAUGEEN ST E/S