

THIS LEASE dated this _____ day of _____, 2023 and made in pursuance of the *Short Forms of Leases Act*, R.S.O. 1990, c. S.11 (“the Lease”)

B E T W E E N:

THE CORPORATION OF THE TOWN OF PELHAM

(“the Town”)

- and -

FONTHILL PLATFORM TENNIS CLUB

(“the Club”)

WHEREAS the Town is the owner of a property in the Town of Pelham municipally known as 1120 Haist Street and as illustrated in Schedule “A”, including all buildings and structures located thereon (“the Premises”); and

WHEREAS the Club desires to lease the Premises for the purpose of operating a platform tennis facility; and

WHEREAS the Town desires to lease the Premises to the Club for the said purpose, subject to the terms and conditions contained herein; and

WHEREAS the Club is a corporation, duly incorporated pursuant to the laws of Ontario, and has properly authorized the entering into of this Lease; and

WHEREAS By-law No. **XX-2023** was passed by the Council of the Town on **[date]**, authorizing the Town to enter into this Lease;

NOW THEREFORE, IN CONSIDERATION of the covenants and agreements contained herein, the Town demises and leases unto the Club, and the Club leases from the Town, the Premises on the following terms:

1. TERM

- 1.1. The Town demises and leases the Premises to the Club for a term of seven (7) years commencing on the first (1st) day of January 2023 and ending on the thirty-first (31st) day of December 2029 (“the Term”), unless terminated earlier pursuant to the provisions of this Lease.

- 1.2. The Town and the Club shall consider a renewal of this Lease for a further term of three (3) years, on the same or different terms as contained herein, and subject to the following conditions:
 - (a) not less than six (6) months and not more than eighteen (18) months prior to the end of the Term, the Club shall provide written notice to the Town of its desire to renew this Lease;
 - (b) within thirty (30) days of receiving such notice, the Town shall advise the Club as to whether it is prepared to enter into discussions to renew the Lease;
 - (c) the terms and conditions of the Lease renewal shall be mutually agreeable to the Town and the Club; and
 - (d) the renewal of the Lease shall be approved by the Council of the Town.
- 1.3. If the Club remains in possession of the Premises after the end of the Term or an earlier termination as provided for in this Lease, there shall be no tacit renewal of this Lease notwithstanding any statutory provision to the contrary.
- 1.4. If the Town consented in writing to the overholding described in subsection 1.3, then the Club shall be deemed to be occupying the Premises as a monthly tenant and such tenancy may be terminated by either the Town or the Club on thirty (30) days' notice and otherwise on the same terms as contained herein. Any acceptance by the Town of the Lease Fee or other consideration shall not imply consent to any overholding by the Club.
- 1.5. Nothing in this Lease shall limit the liability of the Club in damages or otherwise for any overholding and the Club shall forthwith indemnify and hold the Town harmless from and against any and all claims incurred by the Town as a result of the Club overholding after the expiry of the Term or after earlier termination as provided for in this Lease.

2. LEASED PREMISES

- 2.1. The Premises are illustrated in Schedule "A", which is appended hereto and forms part of this Lease.
- 2.2. During the Term of this Lease, the Club shall be entitled to the use and enjoyment of the Premises as follows:
 - (a) the Club shall have exclusive use of the building and the two (2) enclosed platform tennis court structures on the Premises as shown in Schedule "A"; and
 - (b) the Club shall have non-exclusive use of the remainder of the Premises as shown in Schedule "A", including but not limited to the lands surrounding the building and the enclosed platform tennis court structures, and the parking area at the Premises.

3. AMOUNTS PAYABLE BY THE CLUB

- 3.1. The Club shall pay to the Town annual rent in the amount of one dollar (\$1.00) plus any applicable taxes, payable in advance and in full on or before the first (1st) day of January in each year of the Term ("the Lease Fee").
- 3.2. The Club shall pay all utility charges, including any penalties or interest that may accrue, for electricity, water, gas and any other services or utilities supplied to the Premises at any time during the Term.

- 3.3. The Club shall pay all taxes assessed to the Premises and/or the business or operations of the Club, including but not limited to municipal property taxes.
- 3.4. All sums payable by the Club to the Town under this Lease for rent, municipal taxes or otherwise, that remain unpaid over ninety (90) days from the date on which the payment is due, shall bear interest in accordance with the Fees and Charges By-law of the Town.

4. USE AND CONDITION OF THE LEASED PREMISES

- 4.1. The Club covenants and agrees that it shall use the Premises solely to operate a platform tennis facility and for no other purpose.
- 4.2. The Club shall be permitted to provide food and refreshments to club members and other persons using its facilities but shall not be permitted at any time to operate a concession at the Premises, provided that all applicable public health and fire safety requirements are met.
- 4.3. Subject to the terms and conditions of this Lease, the Club accepts the Premises in the condition existing on the first day of the Term.
- 4.4. Other than as expressly set out in this Lease, the Town shall have no responsibility for any repair, renovation or maintenance of the Premises or of any equipment or fixtures contained therein.
- 4.5. Other than as expressly set out in this Lease, the Club shall undertake no improvements, alterations or works at the Premises without first obtaining written consent from the Town, which shall not be unreasonably withheld.
- 4.6. In addition to the obtaining the consent of the Town as required by subsection 4.5, the Club shall obtain all permits, consents, approvals and inspections required by law for any repairs, renovations, maintenance, improvements, alterations or works undertaken at the Premises.
- 4.7. Upon termination of this Lease by expiry or otherwise, the Club shall not be entitled to reimbursement by the Town for any costs incurred by the Club relating to any alterations, improvements or works it may undertake at the Premises either by virtue of its obligations under this Lease or of its own initiative.
- 4.8. The Town shall have no responsibility for damage to the chattels, fixtures, improvements, alterations or works of the Club at the Premises during the Term except to the extent that it is caused by the conduct of the Town or any person for whom it is in law responsible.

5. OBLIGATIONS OF THE TOWN

- 5.1. The Town covenants and agrees:
 - (a) to promptly review and consider requests for consent to improvements, alterations or works submitted by the Club under subsection 4.5;
 - (b) to complete periodic snow removal at the parking lot of the Premises in accordance with Town policies and procedures for snow removal in municipal parks;

- (c) to complete periodic grass cutting on lands surrounding the building and enclosed platform tennis court structures in accordance with Town policies and procedures for grass cutting in municipal parks; and
- (d) subject to subsection 2.2, to provide the Club with exclusive use and quiet enjoyment of the Premises during the Term.

6. OBLIGATIONS OF THE CLUB

6.1. The Club covenants and agrees:

- (a) to pay the Lease Fee, utility charges and taxes in accordance with section 3;
- (b) to operate and manage the platform tennis facility at the Premises;
- (c) to operate its programs and activities at the Premises in such a manner that they are available to any resident of the Town who satisfies the ordinary requirements of the Club for membership and use of its facilities;
- (d) to ensure that all outside activities at the Premises cease no later than 11:00 p.m. and that all indoor activities at the Premises cease no later than 1:00 a.m.;
- (e) to comply with all Town by-laws applicable to its operations including but not limited to the Noise Control By-law;
- (f) to undertake reasonable and necessary routine maintenance and minor repairs of the Premises during the Term, which shall not require the consent of the Town under subsection 4.5 provided that no permits are required for same;
- (g) at the end of the Term, to remove from the Premises any fixtures, goods or chattels belonging to the Club unless the Town and the Club agree that certain fixtures, goods and/or chattels may remain;
- (h) to repair any damage caused by the removal of its fixtures, goods and/or chattels and to leave the Premises in a neat and clean condition, all to the satisfaction of the Town;
- (i) to maintain insurance coverage in accordance with section 7; and
- (j) not to assign this Lease or any part of it without the Town's prior written approval.

7. INSURANCE AND INDEMNITY

7.1. During the Term, the Club shall maintain in full force and effect one or more policies of commercial general liability insurance with aggregate limits of not less than five million dollars (\$5,000,000.00) per occurrence. The policy or policies shall include coverage for bodily injury, death and property damage and shall contain cross-liability and severability of interest clauses. The policy or policies shall name the Town as an additional insured with respect to this Lease and shall contain an undertaking by the insurer(s) to give thirty (30) days prior written notice to the Town of any material change to the coverages and/or the cancellation or expiry of the said policy or policies. The Club shall provide the Town with proof of such insurance upon request.

7.2. The Town and the Club shall each indemnify and save harmless the other and its officers, employees, volunteers and agents from and against all losses, claims, actions, demands and liabilities for personal injury or property damage arising as a direct or indirect result of this Lease, where such claims are caused wholly or in part by the negligence of the Town or the Club, as the case may be, or by anyone for whom it is in law responsible.

8. DEFAULT AND TERMINATION

- 8.1. This Lease is conditional upon the Club obtaining all permits, consents, approvals and funding necessary to undertake any improvements, alterations or works at the Premises and to operate at the Premises. If the Club is unable to obtain any such permit, consent, approval or funding, the Town shall be entitled, in its sole discretion, to terminate this Lease without further liability.
- 8.2. Failure to comply with any of the terms and conditions of this Lease shall be just cause for its termination. If either of the Town or the Club defaults in the performance of any of its obligations under this Lease, the non-defaulting party shall give written notice of the default and shall provide thirty (30) days to remedy it, failing which the non-defaulting party may terminate this Lease by written notice.
- 8.3. The Town and the Club shall each have the option to terminate this Lease at any time by giving eighteen (18) months' written notice to the other party. Upon such termination, the Club shall promptly remove any fixtures, equipment, goods or chattels it may have installed or placed in or upon the Premises and shall repair any damage to the Premises resulting from such removal.
- 8.4. This Lease may be revised, amended or terminated at any time during the Term by mutual agreement of the Town and the Club. Any such agreement shall be made in writing, signed by the parties, and appended to this Lease.
- 8.5. The termination of this Lease by expiry or otherwise shall not affect the liability of either of the Town or the Club to the other with respect to any obligation under this Lease which has accrued up to the date of such termination but has not been properly satisfied or discharged.

9. DISPUTE RESOLUTION

- 9.1. In case of any dispute between the parties during the Term as to any matter arising under this Lease, the party that disputes the other's position or conduct shall immediately provide written notice to the other party.
- 9.2. Where a notice of dispute is received in accordance with section 9.1, the Town and the Club shall attempt to resolve the dispute through negotiation. If a dispute cannot be resolved through negotiation, it shall be arbitrated in accordance with the *Arbitration Act, 1991*, S.O. 1991, c. 17. The arbitrator's decision shall be final and binding on the parties.
- 9.3. The Town and the Club shall each bear their own costs associated with the determination of disputes arising under this Lease, including but not limited to legal costs and arbitration costs.

10. GENERAL

- 10.1. This Lease constitutes the entire agreement between the Town and the Club in relation to the matters set out herein. There are no other representations, warranties, covenants, agreements or terms relating to the subject matter of this Lease. This Lease supersedes any prior discussions, understandings or agreements between the Town and the Club in relation to its subject matter.

- 10.2. The invalidity or unenforceability of any particular term of this Lease shall not limit the validity or enforceability of the remaining terms, each of which is distinct and severable from all other terms of this Lease.
- 10.3. Waiver by a party of any provision of this Lease shall not constitute a waiver in any other instance and any such waiver must be made in writing. Moreover, any delay or failure on the part of either party to exercise or enforce any right, power or remedy conferred by this Lease shall not constitute a waiver of same and shall not operate as a bar to that party exercising or enforcing such right, power or remedy at any subsequent time.
- 10.4. This Lease shall be binding upon and enure to the benefit of the Town and the Club and to their respective successors and permitted assigns.
- 10.5. This Lease shall be governed by and construed in accordance with the laws of the Province of Ontario and laws of Canada applicable therein.
- 10.6. The Town and the Club both represent and warrant that:
- (a) they are corporations validly subsisting under the laws of the Province of Ontario and have full corporate power and capacity to enter into this Lease and any documents arising from this Lease; and
 - (b) all necessary corporate action has been taken to authorize the entry into, execution and delivery of this Lease.
- 10.7. All communications or notices required under or contemplated by this Lease shall be considered to have been sufficiently given if delivered by hand, sent by registered mail or sent by email to the party to which such notice is directed as set forth below:

If to the Town: The Corporation of the Town of Pelham
P.O. Box 400
20 Pelham Town Square
Fonthill ON L0S 1E0
Attention: Town Clerk

If to the Club: Fonthill Platform Tennis Club
1120 Haist Street
Fonthill ON L0S 1E2
Attention: Terry Molkoski, President
tmolkoski@gmail.com

or such other address of which either party has notified the other, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of the Lease.

- 10.8. Notices delivered or sent by prepaid registered mail are deemed to be effective on the date of receipt. Notices sent by email are deemed to be effective on the day the email is sent or, if sent after 4:00 p.m., on the following day.

10.9. This Lease may be signed in counterpart, each of which is an original, and all of which taken together constitute one single document. Counterparts may be executed on different dates and in original or electronic form and may be exchanged by way of mail or PDF file delivered by email.

IN WITNESS WHEREOF the parties have executed this Lease by their authorized representatives and agree to be bound thereby as of the first day of the Term.

THE CORPORATION OF THE TOWN OF PELHAM

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

Date: _____

FONTHILL PLATFORM TENNIS CLUB

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

Date: _____

SCHEDULE "A"

