

## FUNDING AGREEMENT

**BETWEEN:**

**SOUTHAMPTON TENNIS CLUB**

(hereinafter “**RECIPIENT**”)

- and -

**THE CORPORATION OF THE TOWN OF SAUGEEN SHORES**

(hereinafter “**TOWN**”)

**WHEREAS** the TOWN is a municipal corporation incorporated pursuant to the *Municipal Act* and the registered owner of the lands described in Schedule “A” attached hereto;

**AND WHEREAS** the RECIPIENT is a non-for-profit corporation which operates recreational tennis facilities, operating 15 hard courts, a practice wall and two fully functioning clubhouses, across three locations in Southampton, Ontario;

**AND WHEREAS** the RECIPIENT leases the Town’s lands in accordance with a 10-year lease dated July 25, 2016, for the purpose of operating and managing 7 tennis courts / tennis facilities thereon;

**AND WHEREAS** the RECIPIENT has requested permission from the TOWN to undertake repairs, alterations and improvements to the Town’s lands, the scope of the work is more particularly described in Schedule B attached hereto (the “**Improvements**”);

**AND WHEREAS** the RECIPIENT proposes completing the Improvements in the fall of 2025 / spring of 2026 when it undertakes rehabilitation of its own tennis courts and facilities located on its own property;

**AND WHEREAS** the RECIPIENT has requested a financial contribution from the TOWN towards the costs of the Improvements;

**AND WHEREAS** the TOWN is prepared to financially contribute to the cost of the Improvements being performed to the Town’s lands, subject to the terms and conditions contained herein;

**NOW THEREFORE** in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration the receipt and sufficiency of which is hereby irrevocably acknowledged, RECIPIENT and TOWN agree as follows:

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## **SECTION 1 - RECITALS**

- 1.1 The Recitals contained in this Agreement are true and correct and are legally binding and form part of this Agreement.

## **SECTION 2 - INTERPRETATION**

- 2.1 In this Agreement, definitions are as set out below or within the recitals or applicable provisions, as indicated:
- a) **“Agreement”** means this agreement entered between the TOWN and RECIPIENT, including any recitals to this Agreement, as amended, supplemented or restated from time to time.
  - b) **“Applicable Law”** means all federal, provincial or municipal laws, regulations, licenses, permits, common law, orders, rules or by-laws that are applicable to RECIPIENT, the Services, this Agreement and the Parties’ obligations under this Agreement during the term of this Agreement.
  - c) **“Business Day”** means a day on which banks are open for business in the Province of Ontario, but does not include a Saturday, Sunday and any other day which is a legal holiday in the Province of Ontario.
  - d) **“Construction Act”** means the *Construction Act*, R.S.O. 1990, c.C.30;
  - e) **“Deliverables”** means the RECIPIENT’s obligations and commitments outlined in Schedule “C” and Schedule “C-1”.
  - f) **“Director”** means Director of Community Services or their designate.
  - g) **“Effective Date”** means as defined in Section 3.1.
  - h) **“Funding”** means the sum of money to be provided by the TOWN to the RECIPIENT and more particularly set out in Section 5 of this Agreement.
  - i) **“Funding Year”** means starting January 1<sup>st</sup> and ending on December 31<sup>st</sup> in the same calendar year.
  - j) **“Improvements”** has the meaning set out in the Recitals and is more particularly described in Schedule B. For greater certainty, “Improvements” shall refer only to the work to be performed on the Town’s lands as identified in Schedule A, and shall expressly exclude any work performed on lands owned by the RECIPIENT.
  - k) **“Lease”** means the 10-year lease executed by the TOWN and RECIPIENT dated July 25, 2016, as authorized by By-law 88-2016;
  - l) **“MFIPPA”** means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and the regulations made under it as it and they may be amended from time to time.
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- m) **“Municipal Act”** means the *Municipal Act, 2001*, S.O. 2001, c.25, and its regulations, including any amendments and successor legislation.
  - n) **“Notice”** means any notice or other communication required to be provided pursuant to this Agreement.
  - o) **“Parties”** means both RECIPIENT and the TOWN and **“Party”** means only one of RECIPIENT or the TOWN, as applicable.
  - p) **“Premises”** means the municipally owned property identified in Schedule A.
  - q) **“Reporting”** means as defined in Section 4.2.
  - r) **“Services”** means those services identified in the Recitals and includes those activities outlined in Schedule “C” and “C-1”.
  - s) **“Term”** means as defined in Section 3.2.
  - t) **“Work”** means the scope of work identified in “Schedule B”.
- 2.2 The division of this Agreement into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “herein”, “hereunder” and similar expressions refer to this Agreement and not to any particular section, subsection or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to “Sections” are to sections, subsections and further subdivisions of sections of this Agreement.
- 2.3 Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. The term “including” means “including without limitation”.
- 2.4 All references to currency or dollar amount in this Agreement are to lawful currency of Canada.
- 2.5 All obligations herein contained, although not expressed to be covenants, will be deemed to be covenants.

### **SECTION 3 – TERM**

- 3.1 This Agreement shall be effective as the date on which it is signed by the last of the Parties to do so (the **“Effective Date”**). Each Party agrees that its respective signature is binding as of the date indicated below its signature, and the Agreement shall be deemed to have full force and effect as of the Effective Date.
- 3.2 This Agreement shall commence on the Effective Date and will remain in full force and effect until it is terminated in accordance with Section 7 (the **“Term”**).
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## **SECTION 4 – RECIPIENT’S OBLIGATIONS**

- 4.1 During the Term of this Agreement, the RECIPIENT will assume sole responsibility, financial and otherwise, for the Improvements, completing the Work outlined in Schedule B, performing the Deliverables, and any other obligations required by the TOWN, as outlined in this Agreement and Schedules and as a condition of the Funding.
- 4.2 The RECIPIENT will submit reports (“**Reporting**”) to the Director, in a form, and on dates specified by the Director, and will:
- a) Include a summary of the Deliverables performed by the RECIPIENT for the Funding Year;
  - b) Comply with the reporting requirements set out in Schedule C; and
  - c) Contain any other relevant information the Director may request from time to time.
- 4.3 The RECIPIENT represents, warrants and covenants that:
- a) It is and will continue for the term of this Agreement to be, a validly existing legal entity with full power to fulfill its obligations under this Agreement.
  - b) It has the experience and expertise necessary to complete its obligations contained herein, including the Improvements and the Deliverables.
  - c) It holds all permits, licenses, consents, intellectual property rights and authorities necessary to perform its obligations under this Agreement.
  - d) All information (including information relating to any eligibility requirements for Funding) that the RECIPIENT provided to the TOWN in support of its request for Funding was true and complete at the time RECIPIENT provided it, and will, subject to the provision of Notice otherwise, continue to be true and complete for the term of this Agreement.
  - e) It does and will continue for the Term of this Agreement to operate in compliance with all Applicable Law.
- 4.4 The TOWN’S authorization to the RECIPIENT to complete the Improvements and the TOWN’S approval for the Funding, is subject to the following:
- a) All Work and Improvements, and all associated costs, shall be the responsibility of the RECIPIENT and at the RECIPIENT’S sole expense, subject to the terms of this Agreement.
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- b) All Improvements shall be:
    - a. consistent with Applicable Law;
    - b. shall be performed in a good and workmanlike manner; and
    - c. shall be subject to prior written approval by the Director, which shall not be unreasonably withheld or delayed.
  - c) The RECIPIENT shall ensure that all Improvements are performed by qualified, competent and insured contractors and if requested, the RECIPIENT will provide the Director with proof of insurance and WSIB clearance certificates.
  - d) The TOWN shall have no obligation to contribute any amount beyond the Funding, and the RECIPIENT shall be solely responsible for all costs in excess thereof. For clarify, the RECIPIENT acknowledges that the Funding, which is to be applied exclusively to the Improvements, will not cover the full cost of the Improvements. The RECIPIENT covenants and agrees to fund any shortfall.
  - e) The RECIPIENT shall be solely responsible for the engagement and payment of all contractors, subcontractors and suppliers involved in the Improvements. The RECIPIENT shall ensure that all such parties are paid promptly and in accordance with their respective agreements and Applicable Law. The RECIPIENT shall take all necessary steps to prevent the registration of any lien pursuant to the Construction Act or other encumbrance against the Town's lands. If any such lien is registered, the RECIPIENT shall, at its sole cost and without delay, cause the lien to be discharged or vacated. If the RECIPIENT fails to do so within a reasonable time, the TOWN may discharge or vacate the lien, and any costs or expenses incurred by the TOWN in doing so shall be reimbursed by the RECIPIENT forthwith on demand.
  - f) Unless otherwise agreed in writing, all Improvements shall become the property of the TOWN upon completion, without compensation to the RECIPIENT, except as provided in Section 5.
  - g) The RECIPIENT shall indemnify and hold harmless the TOWN from any claims, damages, or liabilities arising out of or related to the Improvements. The RECIPIENT shall maintain appropriate insurance coverage during the course of the completion of the work.
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## **SECTION 5 – FUNDING**

- 5.1 The TOWN agrees to pay the RECIPIENT the total sum of One Hundred Thousand Dollars (\$100,000.00) (“Funding”).
- 5.2 The Funding will be disbursed in accordance with the following schedule (“**Funding Schedule**”):
- a) Payment Amount(s): Two (2) equal payments of \$50,000.00
  - b) Payment Frequency: One (1) lump payment per Funding Year
  - c) Payment Dates: to be agreed upon by the RECIPIENT and the Director in writing
- 5.3 The method of payment made by the TOWN to the RECIPIENT will be as follows: cheque  
*[insert either EFT or cheque]*
- 5.4 Prior to all, or part of the Funding being advanced, the RECIPIENT shall complete any documentation requested by the TOWN in order to facilitate the funds transfer and shall produce valid legal documentation confirming the identity and authority of the person receiving the Funding. The RECIPIENT acknowledges that Funding may be delayed if the requisite forms are not completed by the RECIPIENT within the time requested.
- 5.5 Any payments required by this Agreement from the TOWN to the RECIPIENT will be made payable to: Southampton Tennis Club
- 5.6 Prior to all, or part of the Funding being advanced, the RECIPIENT shall provide the Director with the following:
- a) The name of the Contractor performing the Improvement (“**CONTRACTOR**”);
  - b) A copy of any Contract entered into between the RECIPIENT and the CONTRACTOR, which clearly identifies the Improvements being completed to the Town’s land and the related cost;
  - c) Copies of any Change Orders issued related to the Improvements;
  - d) Copies of any Invoices issued by the CONTRACTOR for payment;
  - e) Proof of Payment of all Invoices associated with the Improvements; and
  - f) Any other documentation or information requested by the Director, acting reasonably.
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- 5.7 The Parties acknowledge and agree that the Funding Schedule, as outlined herein save and except that the amount of Funding advanced per Funding Year shall remain \$50,000.00, is subject to change at the sole discretion of the Director.
- 5.8 Payment of the Funding is subject to and conditional on the RECIPIENT's compliance with the terms of this Agreement, including but not limited to, submission of required documentation, performance of Deliverables and Reporting, using the Funding for the purpose for which it was approved for, and complying with Applicable Law. The TOWN reserves the right to withhold or suspend all or part of the payment of the Funding if the RECIPIENT fails to meet agreed-upon milestones, Deliverables or Reporting requirements or if there is evidence of mismanagement or misuse of the Funding.

## **SECTION 6 – EVENT OF DEFAULT**

- 6.1 The RECIPIENT shall be deemed to be in default of this Agreement if one of the following occurs (“**Event of Default**”):
- a) The RECIPIENT ceases to maintain the level of Services in the TOWN of Saugeen Shores as represented to the TOWN, which existed at the time of execution of this Agreement;
  - b) The RECIPIENT ceases to function as a legal entity, a receiver is appointed for its assets, or any proceedings under any bankruptcy or insolvency law are brought by or against the RECIPIENT; or
  - c) Any execution or other enforcement process becomes enforceable against any material property of either Party; or
  - d) A lien or encumbrance is registered against the Premises; or
  - e) The RECIPIENT breaches a material term or condition of this Agreement and fails to remedy such breach within ten (10) business days from receipt of Notice thereof.
- 6.2 If an Event of Default occurs or this Agreement is terminated relying upon Section 7.1 a) or b), the RECIPIENT shall be responsible for repaying to the TOWN the whole, or any part of, the Funding as demanded in writing by the TOWN and any other amounts that may be owed to the TOWN or due to third parties as a result of the Improvements, this Agreement or the termination. Interest shall accrue on any amounts outstanding at a rate of 1.25 % per month until paid in full.
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## **SECTION 7 - TERMINATION**

- 7.1 This Agreement may be terminated by the TOWN effective immediately on the occurrence of any of the following:
- a) There has been an Event of Default; or
  - b) If the TOWN is deemed prohibited by law from paying any amounts payable under this Agreement; or
  - c) A date agreed to by the Director on behalf of the TOWN, and the RECIPIENT, when all terms and conditions of this Agreement have been satisfied.

## **SECTION 8 - DISPUTE RESOLUTION**

- 8.1 In the event of any dispute, controversy or claim arising out of or relating to this Agreement, the Parties agree to first attempt to resolve the matter through good faith negotiations. Either Party may initiate this process by providing written notice to the other Party, outlining the nature of the dispute.
- 8.2 If the dispute is not resolved through negotiation within thirty (30) days of the initial notice, the Parties agree to submit the dispute to non-binding mediation. The mediation shall be conducted by a mutually agreed-upon mediator, and the costs shall be shared equally by the Parties.
- 8.3 If the dispute remains unresolved after mediation, the Parties may agree to utilize the arbitration procedure as set out and established in the legislation and regulation for the jurisdiction on the general conduct of arbitration. The arbitration shall be conducted in Bruce County. Any matter in dispute that is submitted for arbitration shall be heard by a single arbitrator chosen unanimously by the Parties. If the Parties are unable to agree on a person to act as a single arbitrator, such single arbitrator shall be appointed by reference to the court. The decision of the arbitrator(s) shall be final and binding on the Parties.
- 8.4 Nothing in this clause shall prevent either Party from seeking interim or injunctive relief from a court of competent jurisdiction where necessary to protect its rights or property.

## **SECTION 9 - NOTICE**

- 9.1 All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another will be given in writing by personal delivery or electronic or email transmission, or by registered mail, postage prepaid, addressed to the other party or delivered to the other party as follows:
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a) **To the RECIPIENT:**

Full legal name of Entity: Southampton Tennis Club

Name of Representative: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Tel: \_\_\_\_\_

b) **To the TOWN:**

The Corporation of the Town of Saugeen Shores

600 Tomlinson Drive, Box 820

Port Elgin, ON N0H 2C0

Attention: Clerk

Email: [clerk@saugeenshores.ca](mailto:clerk@saugeenshores.ca)

Tel: 519-832-2008

or at such other address as may be given by any/either of them to the other in writing from time to time, and such notices, requests, demands, acceptances and other communications will be deemed to have been received when delivered, or sent by electronic transmission, when received with confirmation, or if mailed, on the fifth (5<sup>th</sup>) business day after the mailing thereof.

## **SECTION 10 - GENERAL PROVISIONS**

- 10.1 The Parties acknowledge and agree that the Improvements, and the Funding related thereto, are governed exclusively by this Agreement. This Agreement is intended to supplement, and not amend, modify, or replace the terms of the Lease. In the event of any conflict or inconsistency between the terms of the Lease and this Agreement with respect to the Improvements or the Funding, the terms of this Agreement shall prevail and supersede the conflicting provisions of the Lease, but only to the extent of such conflict and only with respect to the Improvements.
- 10.2 If any term of this Agreement is found to be invalid, illegal, or unenforceable by a court with proper authority, that term is to be considered to have been severed from the Agreement and the rest of the Agreement remains fully in effect.
- 10.3 This Agreement will be governed by the laws of the Province of Ontario and the applicable laws of Canada. Any legal proceedings related to this Agreement must take place in Ontario.
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- 10.4 Any representations, warranties, covenants, responsibilities, or obligations contained in this Agreement or in any related documents delivered hereunder shall survive an expiration or termination of this Agreement.
- 10.5 The Parties are, and will at all times, remain independent of each other. Nothing in this Agreement creates a partnership, joint venture, agency, or employee-employer relationship. Neither Party may act on behalf of or bind the other in any way.
- 10.6 The RECIPIENT shall not assign or transfer this Agreement or the Funding in whole or in part, directly or indirectly, without the prior written consent of the TOWN. Any approved assignment does not release the RECIPIENT from its responsibilities and obligations under this Agreement, and the TOWN will not be liable to any assignee or subcontractor.
- 10.7 The Agreement is binding on and enures to the benefit of both Parties, their legal successors, trustees, executors, and administrators.
- 10.8 Both Parties agree to take any further actions needed to fully carry out the terms and intent of this Agreement.
- 10.9 No amendment, supplement or restatement of any term of this Agreement is binding unless it is in writing and signed by each party.
- 10.10 The RECIPIENT acknowledges that the TOWN is a municipal corporation governed by the laws of the Province of Ontario and is subject to MFIPPA. Accordingly, the TOWN may be required to disclose information provided by the RECIPIENT under this Agreement in response to a request for access under MFIPPA, unless the information qualifies for an exemption under the Act. The RECIPIENT agrees to clearly identify any information it considers to be confidential or proprietary at the time it is provided to the TOWN.
- 10.11 This Agreement may be executed and delivered in any number of counterparts and by electronic means. All signed copies together will be considered one original, legally binding document.

***The remainder of this page is intentionally left blank.***

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The Parties have executed this Agreement on the dates set out below.

**SIGNED, SEALED AND DELIVERED**

Date: \_\_\_\_\_

**SOUTHAMPTON TENNIS CLUB**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/WE have authority to bind the  
RECIPIENT.

Date: \_\_\_\_\_

**THE CORPORATION OF THE TOWN  
OF SAUGEEN SHORES**

Per: \_\_\_\_\_  
Name: Luke Charbonneau  
Title: Mayor

Per: \_\_\_\_\_  
Name: Dawn Mittelholtz  
Title: Clerk

We have authority to bind the corporation.

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## SCHEDULE A

### **Premises (Town owned lands):**

165 Lake Street, Southampton and 34 Victoria St. N., Southampton

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**SCHEDULE B**

**SCOPE OF WORK (including IMPROVEMENTS)**



**SCHEDULE C**  
**THE DELIVERABLES**

The Funding being advanced by the TOWN to the RECIPIENT pursuant to this Agreement is subject to, and conditional on, the RECIPIENT doing the following during the 2025 and 2026 Funding Years:

1. The RECIPIENT shall:
    - a) Continue to provide at minimum its current level of Service.
    - b) Remain in good standing under the Lease.
    - c) Provide access to members of the public, without the necessity of a membership, in accordance with Schedule C-1 attached.
    - d) Reporting obligations of the RECIPIENT in Schedule 4.2 of the Agreement shall include the following as it relates to these Deliverables and the Improvements:
      - i. **PROGRESS REPORTS:** Once the work for the Improvements commence, the RECIPIENT will provide progress reports to the Director.
      - ii. **ANNUAL REPORTING:** The RECIPIENT will issue a report to the TOWN at the end of each Funding Year to provide a report on the progress of the Improvements and the Deliverables.
    - e) THE RECIPIENT will actively seek other sources of revenue including, but not limited to, seeking memberships, donations, sponsorships, grants and other sources of funding – and will account for these activities and results in the Annual Report and Progress Reports referred to above to cover the remaining cost of the Improvements that are not covered by the Funding.
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**SCHEDULE C-1**

