

SCHEDULE “B” - MUNICIPAL CAPITAL FACILITY AGREEMENT

THIS AGREEMENT dated the ____ day of _____, 2024.

BETWEEN:

THE CORPORATION OF THE CITY OF THUNDER BAY

(hereinafter referred to as the “**City**”)

-and-

THUNDER BAY COMMUNITY TENNIS CENTRE

(hereinafter referred to as the “**Tennis Centre**”)

WHEREAS:

- A. The City owns the lands known municipally as 440 Chapples Drive in the City of Thunder Bay, which lands are more particularly described in Schedule “A” attached hereto (the “**Indoor Facility Lands**”).
- B. The City has determined that it is in the public interest of the City that the Indoor Facility Lands be used for a recreational purpose, namely as an indoor racquet sport facility.
- C. The City has agreed to lease the Indoor Facility Lands to the Tennis Centre pursuant to the terms of a lease dated the date of this Agreement (the “**Ground Lease**”).
- D. Under the Ground Lease, the Tennis Centre is responsible for arranging for the development and construction of an indoor racquet sport facility on the Indoor Facility Lands (the “**Indoor Facility**”).
- E. The City will at all times own the Indoor Facility Lands and the Tennis Centre will own the Indoor Facility until the expiry or earlier termination of the Ground Lease, at which time the City will own the Indoor Facility.
- F. Under the Ground Lease, the Tennis Centre is responsible for arranging for operation, maintenance and repair of the Indoor Facility after completion of the construction of the Indoor Facility and during the time period that the Tennis Centre owns the Indoor Facility.
- G. The City intends to provide financial and other assistance to the Tennis Centre in the operation of the Indoor Facility.
- H. It is the intention of the City and the Tennis Centre that the financial and other assistance to be provided by the City to the Tennis Centre under the Ground Lease be for the purpose

of the provision of municipal capital facilities under Section 110 of the *Municipal Act* (Ontario) (the “**Act**”) and the Regulations thereunder.

- I. The City and the Tennis Centre are entering in this agreement (hereinafter referred to as the “**Indoor Facility MCF Agreement**”) pursuant to Section 110 of the Act.

THEREFORE, in consideration of the making of this Indoor Facility MCF Agreement and the mutual covenants contained herein, the parties undertake, covenant and agree as follows:

1. The Tennis Centre and the City acknowledge and agree that the agreement relating to the construction, development, use and operation of the Indoor Facility is the Ground Lease.
2. The Tennis Centre and the City acknowledge and agree that, among other things, the Ground Lease provides as follows:
 - (a) the Tennis Centre will lease the Lands from the City upon which the Indoor Facility is to be developed and constructed;
 - (b) the Tennis Centre will operate the Indoor Facility and will be responsible for the maintenance and repair of the facilities at the Indoor Facility;
 - (c) at the expiry of the Term of the Ground Lease, or such earlier time as the Ground Lease is terminated, the Tennis Centre will no longer have a leasehold interest in the Lands and will no longer own the Indoor Facility, and the City will continue to own the Lands and will also then own the Indoor Facility, all free and clear of any leasehold or other interest of the Tennis Centre; and
 - (d) the City is providing financial and other assistance to the Tennis Centre in accordance with Section 110 of the Act and the Regulations thereunder, in order to assist in the operation of the Indoor Facility.
3. The Tennis Centre and the City acknowledge and agree that it is their common intention that the financial and other assistance being provided by the City to the Tennis Centre, pursuant to the Ground Lease, for the operation of the Tennis Centre, as set out in the Ground Lease, is being provided by the City pursuant to Section 110 of the Act and the Regulations thereunder, and that such financial and other assistance is being provided by the City to the Tennis Centre for the operation of municipal capital facilities that meet the requirements of Section 110 of the Act and the Regulations thereunder. So long as the provisions of Section 110 of the Act, and the provisions of the Regulations thereunder, are complied with, the City is obligated to provide the financial and other assistance to the Tennis Centre that is set out in the Ground Lease, in order that the municipal capital facilities can be operated.

4. The Tennis Centre and the City shall not, while the Ground Lease is in force, do any act or thing, or omit to do any act or thing, if doing so or omitting to do so, as the case may be, would result in the Indoor Facility ceasing to satisfy the requirements applicable to municipal capital facilities pursuant to the Act and the Regulations thereunder as they exist at the date of this Indoor Facility MCF Agreement, or would result in the Indoor Facility, or any portion of it, or the lands upon which the Indoor Facility is situated, ceasing to qualify for an exemption from taxation for municipal and school purposes under Section 110 of the Act and the Regulations thereunder.
5. Subject to Section 4 of this Indoor Facility MCF Agreement, so long as:
 - (a) the Tennis Centre operates the Indoor Facility in accordance with the provisions of the Ground Lease and this Indoor Facility MCF Agreement;
 - (b) the principles and guidelines set out in Section 8 of this Indoor Facility MCF Agreement are adhered to; and
 - (c) the Ground Lease is in full force and effect,

the Tennis Centre shall not be responsible to pay any taxes for municipal or school purposes which can be lawfully exempted by the City for the Indoor Facility and the lands upon which the Indoor Facility is situated, as a municipal capital facility under Section 110 of the Act and the Regulations thereunder as they exist at the date of this Indoor Facility MCF Agreement, and the City shall continue to provide the financial assistance it has agreed to provide under the Ground Lease.

6. The Tennis Centre shall operate the Indoor Facility so that the Indoor Facility satisfies the terms and provisions of this Indoor Facility MCF Agreement and the requirements applicable to municipal capital facilities pursuant to Section 110 of the Act, and the Regulations thereunder, as they exist on the date of this Indoor Facility MCF Agreement and, subject to the balance of this Section 6, as they may be amended after the date of this Indoor Facility MCF Agreement. If the Act or the Regulations thereunder change in any way that would impact on the eligibility of the Indoor Facility for designation as a municipal capital facility, or would impact on the eligibility of the Indoor Facility and the lands upon which the Indoor Facility is situated to qualify for an exemption from taxation for municipal and school purposes and for the other financial assistance contemplated by the Ground Lease, the City and the Tennis Centre will use their reasonable best efforts to cause the Indoor Facility, and its use, management and operation, to qualify for designation as a municipal capital facility under any such amendments to the Act or the Regulations thereunder, provided that such changes are reasonably possible to implement and would not have a materially adverse negative financial impact on the City or the Tennis Centre, or otherwise materially prejudice the City or the Tennis Centre. If such changes would not

be reasonably possible or would have a materially negative financial impact on the City or the Tennis Centre and if without such changes the Indoor Facility would not qualify as a municipal capital facility under such amendments to the Act and the Regulations thereunder, or if there would not then be an exemption from taxation for municipal and school purposes for the Indoor Facility, or if the other financial assistance contemplated by the Ground Lease could not be provided, then the City and the Tennis Centre covenant and agree to proceed in good faith and revise their business arrangements, including making any changes to the Ground Lease that may be required, in a fair and equitable way, so that the financial arrangements will not be materially less favourable to the Tennis Centre than those financial arrangements in effect prior to the amendments to the Act or the Regulations thereunder that necessitated such changes.

7. With respect to the exemption of the Indoor Facility and the lands upon which the Indoor Facility is situated from taxation for municipal and school purposes, the City will, subject to the provisions of the Ground Lease, the provisions of this Indoor Facility MCF Agreement, and the provisions under Section 110 of the Act and the Regulations thereunder as they exist at the date of this Indoor Facility MCF Agreement, exempt the Indoor Facility and the lands upon which the Indoor Facility is situated from taxation for municipal and school purposes, so long as:
 - (a) the Indoor Facility MCF Agreement is in full force under Section 110 of the Act and the Regulations thereunder;
 - (b) the Lands are leased by the City to the Tennis Centre pursuant to the Ground Lease; and
 - (c) the Indoor Facility is occupied and used for a service or function that may be provided by a municipality.

8. The Tennis Centre and the City acknowledge and agree that the following principles and guidelines govern the designation of the Indoor Facility as municipal capital facilities under Section 110 of the Act and the Regulations thereunder as they exist at the date of this Indoor Facility MCF Agreement, and that these principles and guidelines shall be followed and adhered to so long as the Ground Lease is in force, in order that the Indoor Facility can be occupied and used for recreational purposes and to comply with Section 110 of the Act and the Regulations thereunder as they exist at the date of this Indoor Facility MCF Agreement, and this Indoor Facility MCF Agreement, and so that the City can provide financial and other assistance to the Tennis Centre pursuant to the Ground Lease and in compliance with the Act and the Regulations as they exist at the date of this Indoor Facility MCF Agreement:
 - (a) the Indoor Facility will be used for “recreational purposes”, namely an indoor racquet sport facility;

- (b) the Tennis Centre will only have a leasehold interest in the Lands, under the Ground Lease, and will own the Indoor Facility, and the City will continue to own the Lands and will own the Indoor Facility on the expiry or earlier termination of the Ground Lease; and
 - (c) pursuant to Section 6(i)(b) of Ontario Regulation 603/06, the City has declared by Resolution, enacted June 24, 2024, that the municipal capital facilities contemplated by this Agreement, being the Indoor Facility, are for the purposes of the City and are for public use.
9. Pursuant to Section 110 of the Act, the City acknowledges that by By-law No. 198-2024, enacted by City Council on the date of this Indoor Facility MCF Agreement, a copy of which is attached hereto as Schedule “B”, the City has exempted the Indoor Facility and the lands upon which the Indoor Facility is situated from taxation for municipal and school purposes and has authorized the provision of the other financial assistance contemplated by the Ground Lease, during the term of the Ground Lease, effective as of the date of this Indoor Facility MCF Agreement.
 10. The Tennis Centre acknowledges that the City, as an Ontario municipality, has only those powers granted to it by the Province of Ontario under the Act, the Regulations, or other statutes, or as it may have at common law.
 11. Each obligation expressed in this Indoor Facility MCF Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes.
 12. This Indoor Facility MCF Agreement contains all the covenants, agreements and understandings between the parties concerning its subject matter.
 13. This Indoor Facility MCF Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Indoor Facility MCF Agreement may not be assigned by the Tennis Centre without the prior written consent of the City, which consent may be unreasonably withheld.
 14. If any provision of this Indoor Facility MCF Agreement or the application of it to any person or circumstances is held to any extent invalid or unenforceable, the remainder of this Indoor Facility MCF Agreement or the application of the provision to persons or circumstances other than those as to which it is held invalid or unenforceable is not affected.
 15. The parties shall do and execute all such further acts, deeds, instruments or things as may be necessary or desirable for the purpose of carrying out the intent of this Indoor Facility MCF Agreement.

16. This Indoor Facility MCF Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument dated as of the date shown on the first page of this Indoor Facility MCF Agreement.

[remainder of this page left intentionally blank, signature page to follow]

IN WITNESS WHEREOF the parties hereto have duly executed this Indoor Facility MCF Agreement.

THE CORPORATION OF THE CITY OF THUNDER BAY

Per: _____
Title:

Per: _____
Title

I/We have the authority to bind the Corporation

THUNDER BAY COMMUNITY TENNIS CENTRE

Per: _____
Title:

Per: _____
Title

I/We have the authority to bind the Corporation