

SPORTIME DRAFT, May 9, 2023



LEASE AGREEMENT PURSUANT to  
TOWN LAW §§64, 122  
- between -  
the TOWN OF GREENBURGH  
- and -  
SPORTIME CLUBS, LLC.  
d/b/a Sportime

**AGREEMENT** this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the Town of Greenburgh, a municipal corporation (hereinafter “the Town”) with offices at Olympic Lane, Ardsley, New York 10501 and Sportime Clubs, LLC dba Sportime (hereinafter “Lessee”) a New York limited liability company with offices at 275 Old Indian Head Road, P.O. Box 326, Kings Park, New York 11754 (the “Lease”).

**WHEREAS**, the Town owns a certain parcel of land known as Anthony F. Veteran Park; and

**WHEREAS**, the Town wishes to lease a portion of Anthony F. Veteran Park for indoor racket and paddle sports and related facilities to serve residents of the unincorporated area of the Town of Greenburgh and others; and

**WHEREAS**, Sportime Clubs, LLC has responded to the Town’s request for proposal to operate such indoor racket and paddle sports and related facilities at Anthony F. Veteran Park, which the Town Board finds to be the proposal that will best serve the needs of the Town;

**NOW, THEREFORE**, it is **AGREED** that in consideration of the covenants and agreements contained herein which the parties acknowledge to be good and sufficient consideration, as follows:

1. **TERM:**

(A) This Lease shall become effective upon full execution by the parties hereto (the “Effective Date”). The foregoing notwithstanding, the Town must make best and expedited efforts to amend State of New York Home Rule 7651, enacted on June 11, 2012, which addresses recreational facilities in Anthony F. Veteran Park (attached hereto as Exhibit A), to explicitly authorize the operation of other racket and paddle sports. In the event that the Town does not do so by [TBD] (the “Option Date”), then Lessee may, at its sole discretion:

- (i) Extend the Option Date for up to an additional [TBD] months if Lessee reasonably believes that such extension will lead to the execution of the

- contemplated amendment; or
- (ii) Proceed under this Lease, however, eliminate the construction and operation of all Pickleball facilities and products; or
- (iii) Terminate this Lease with no further obligation, with the Town to return Lessee's full security referenced in Section 18 hereof, within thirty (30) days of such termination.

(B) The Lease shall commence as of the September 9<sup>th</sup> immediately following the issuance of a certificate of completion for the Improvements contemplated in Section 5 and the first day Lessee opens for business (the "Commencement Date"), and shall terminate on May 11<sup>th</sup> of the year fifteen (15) years from the Commencement Date ("Initial Term Termination Date") (the period between the Commencement Date and the Initial Term Termination Date hereinafter referred to as the "Initial Term"), unless sooner terminated by either party pursuant to the terms of this Lease. Hereinafter, the Initial Term Termination Date, together with the termination date of any Extension Terms as hereinafter defined, shall be referred to as the "Termination Date", and the period between the Commencement Date and the Termination Date shall be referred to as the "Term".

(C) Lessee acknowledges that there will be a separate lease executed for the operation of the courts and programs at the Premises (as hereinafter defined), for the period May 12<sup>th</sup> through September 8<sup>th</sup> (the "Outdoor Season") (the lease the "Outdoor Lease") each year. In the event that Lessee is not also the lessee under the Outdoor Lease, Lessee shall make reasonable commercial efforts to make arrangements with the Outdoor Lease lessee for use of the other facilities at the Premises, as needed, e.g. bathrooms, locker rooms, pro shop, café if applicable, office space.

(D) This Lease shall automatically extend for up to three (3) additional five (5) year lease terms, (each an "Extension Term", together the Extension Terms) upon the same terms herein, except as otherwise set forth in this Lease, provided that: (i) Lessee does not, within one-hundred twenty (180) days prior to the expiration of the Initial Term or any Extension Term, give written notice to the Town of its intent to cease operating the Facilities, as hereinafter defined, upon expiration of such Initial Term or an Extension Term; and (ii) no Event of Default, as hereinafter defined, exists under this Lease as of the commencement of such Extension Term. For the avoidance of doubt, any Extension Term pursuant to this paragraph shall be automatic, unless Lessee provides the notice contemplated in subparagraph (i), and shall not be subject to further review or approval by the Town.

2. **LEASED PREMISES:** The Town hereby grants an exclusive Lease to Lessee to use, subject to the terms and conditions of this Lease, the premises, which consist of that portion of Anthony F. Veteran Park described in Schedule "A" annexed hereto ("the Premises"), to operate indoor racket and paddle sports and related facilities (the "Facilities"). In connection with such use, Lessee may operate programs and services for

tennis, pickleball and other sports and related activities, school-break camps, a pro-shop offering retail sale of sports apparel and equipment, and food and beverage service, and to maintain ancillary executive/administrative offices.

3. **LEASE FEES:**

(A) Lessee shall be required to pay a guaranteed annual fee for each “Lease Year”, defined as September 9<sup>th</sup> through May 11<sup>th</sup> of the following year (the “Minimum Annual Lease Fee”). The Minimum Annual Lease Fee for the Initial Term, and the Extension Terms, if applicable, shall be as follows:

Initial Term

Year 1	\$200,000
Year 2	\$225,000
Year 3	\$250,000
Year 4	\$262,500
Year 5	\$275,625
Year 6	\$289,406
Year 7	\$303,877
Year 8	\$319,070
Year 9	\$335,024
Year 10	\$351,775
Year 11	\$369,364
Year 12	\$387,832
Year 13	\$407,224
Year 14	\$427,585
Year 15	\$448,964

First Extension Term

Year 16	\$471,412
Year 17	\$494,983
Year 18	\$519,732
Year 19	\$545,719
Year 20	\$573,005

Second Extension Term

Year 21	\$601,655
Year 22	\$631,738
Year 23	\$663,324
Year 24	\$696,491
Year 25	\$731,315

Third Extension Term

Year 26	\$767,881
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Year 27	\$806,275
Year 28	\$846,589
Year 29	\$888,918
Year 30	\$933,364

(B) Lessee shall pay the Minimum Annual Lease Fee in Twelve (12) equal monthly installments, payable on the first day of each month, September through August.

(C) When 10% of Gross Sales during any Lease Year is greater than the Minimum Annual Lease Fee for such Lease Year, Lessee shall pay the Town the balance; i.e., the amount by which 10% of annual Gross Sales exceeds the Minimum Annual Lease Fees already paid for that Lease Year. The balance in each Lease Year, if any, shall be paid by January 15<sup>th</sup> following the final day of each Lease Year, accompanied by Lessee’s audited financial statement, as required by Section 12 (D) below.

(D) For the purposes of this Lease, “Gross Sales” shall mean all revenue of whatever nature or kind derived from the operation of the Facilities in the ordinary course of business, including, but not limited to, fees for use of any portion of the Premises whether such fees are charged hourly, daily, weekly, monthly, annually or otherwise, and sales of all merchandise, sporting goods, food, beverages or any other items, including, inter alia, income from vending machines. For the purpose of this Lease, Gross Sales shall be limited to Lessee’s operation of the Facilities only, including sales generated over the internet, telephone and/or pursuant to other off-site technology only to the extent that they relate to the operation of the Facilities and shall not be construed to include (i) any sales generated by Lessee at Lessee’s other sites or by Lessee’s off-site subsidiaries, (ii) sales or excise taxes received, (iii) proceeds from the sale, assignment or transfer of equipment or fixtures (iv) proceeds from the sale, assignment or transfer of all or substantially all of the assets of Lessee or from the merger or other restructure or consolidation of Lessee, (v) proceeds from condemnation proceedings or insurance claims, (vi) any kind of tax refund and (vii) proceeds from the settlement or other disposition of any claim or suit unless such proceeds are being paid for programs, services or merchandise sold. For the avoidance of doubt, Gross Sales shall include those generated by Lessee pursuant to the operation of the Facilities from September through August of each year, not only the related Lease Year, however Gross Sales shall not include the same generated by the lessee under the Outdoor Lease.

(E) The foregoing notwithstanding, in the event that Lessee is the lessee under the Outdoor lease, the Minimum Annual Lease Fees and the Gross Sales under this Lease and the Outdoor Lease shall be aggregated for purposes of the calculation required under paragraph (C) of this Section 3.

(F) If Lessee opens for business subsequent to September 9<sup>th</sup>, then Lessee shall pay 10% of Gross Sales, but no Minimum Annual Fee from the date Lessee opens for business through May 7<sup>th</sup> of the following year, and the first Lease Year, and the Year 1 Minimum Annual License Fee, will commence on September 9<sup>th</sup> of the following year. The foregoing notwithstanding, in no event shall the total duration of the Term of this Lease be greater than thirty (30) years.

(G) The Town acknowledges and agrees that all lease fees it receives pursuant to this Lease shall be used to maintain and/or improve Anthony F. Veteran Park.

(H) All payments to be made herein shall be made in the then legal currency of the United States.

4. **PROHIBITED ITEMS:** In no event shall Lessee sell, offer for sale, distribute or allow the consumption of any alcoholic beverages, cannabis or tobacco items/products, including vaping of any kind, at the Facilities.

5. **IMPROVEMENTS:** Lessee shall provide and maintain, at its sole cost and expense, the following improvements (hereinafter “the Improvements”) to the Premises. Lessee agrees to expend no less than six million five hundred thousand and 00/100 dollars (\$6,500,000) on the initial construction of the Improvements. Subject to paragraph (M) of this Section 5, the following improvements shall be the minimum improvements provided by Lessee at the Leased Premises:

(A) Construct an 8,103 square foot clubhouse on two levels, providing viewing into two air-structures from an elevated, main level viewing lounge/lobby. Also included on the main level will be an entry vestibule, a large, open, reception desk, with integrated work spaces, two private, unisex, ADA accessible bathrooms, a small 184 square foot retail area “pro-shop”, a small cafe/vending area adjacent to the lounge area, with a service counter, a 370 square foot classroom/meeting room, locker rooms, and two enclosed office areas featuring multiple workstations. The lower level of the clubhouse will feature revolving door, airlock, access to the courts/air-structures, a 971 square foot, clear-span, functional training/fitness room, men’s and women’s locker rooms with showers, and mechanical and storage spaces, including a maintenance airlock that will allow vehicular and supply access into the court areas when they are pressurized.

(B) Construct a 7,940 square foot seasonal air-structure or fabric frame structure with removable sides connected to the clubhouse, featuring four (4) indoor/outdoor pickleball courts, and convertible to other sports and sports training uses.

(C) Construct a bank of hard surface courts on the south side of the building envelope, featuring four (4) hard-surface tennis courts and six (6) hard-surface pickleball courts, all separated by divider fencing/curtains and all contained within a single 39,933 square foot

air-structure during the Indoor Season, as hereinafter defined, and lighted for the Outdoor Season.

(D) Construct a bank of six (6) soft-surface tennis courts, utilizing subsurface irrigation technology if feasible, designed to maintain optimal hydration indoors and out, all with divider fencing/curtains and all contained within a single 38,797 square foot air-structure during the Indoor Season, and lighted for the Outdoor Season.

(E) Construct a concrete sidewalk from the parking area to the clubhouse, with connecting paths to tennis courts.

(F) Construct landscaping per the site plan to be approved.

(G) The above court improvements will include all necessary infrastructure, foundations, utilities, drainage, irrigation, fencing, and indoor and outdoor lighting.

(H) All air handlers, heaters and other related mechanical equipment needed to service the air-structures will be fenced or landscaped to the reasonable satisfaction of the Commissioner of Town Parks and Recreation.

(I) There shall be two or three air-structures erected during the Indoor Season, hereinafter defined, which shall be stored and secured either off-site, or in a designated area of the clubhouse, during the Outdoor Season.

(J) All construction shall be in accordance with applicable building, fire, health and safety codes. Lessee shall, at its own expense, apply for and obtain all required permits, approvals, certificates and inspections prior to constructing or opening any portion of the Improvements for use and shall, during the Term of this Lease, continue to maintain all permits, certificates and approvals required by any law, ordinance, rule or regulation of any level of government.

(K) Prior to commencement of any demolition or work on the Improvements, Lessee, its general contractor, or its subcontractors shall provide surety bonds, or subcontractor default insurance, securing performance and completion of the work and payment of all subcontractors and material suppliers, written to the benefit of the Town, by a surety company reasonably acceptable to the Town and licensed to do business in New York State. Such surety company must have a rating by A.M. Best and Company of A or better. In addition, Lessee shall have in place, during the Term of this Lease, insurance in accordance with the minimum schedule annexed as Exhibit "B" and shall name the Town as an additional insured and certificate holder with provision for at least thirty (30) days advance notice of cancellation of any policy required by this Lease.

(L) Lessee shall not be required to spend more than Twelve Million Dollars (\$12,000,000) to provide the Improvements. If it is determined by duly qualified professionals engaged by Lessee that Lessee's expenditures for the Improvements, including any related work, will exceed \$12 Million, Lessee may, at its option, upon thirty (30) days written notice to the Town, terminate this Lease without penalty and without claim for loss, damages, refund of investment or any other payment whatsoever against the Town. In the event of such termination, the security (set forth in Section 18) shall be returned to Lessee as soon as is practicable following the surrender of the Premises by the Lessee in compliance with the provisions of this Lease and neither party shall have any claims against the other.

(M) The foregoing notwithstanding, the Town and Lessee understand and agree that modifications to the nature and scope of the Improvements enumerated above may be necessary in the context of fully designing and constructing the same, which modifications shall be subject to the approval of the Town, such approval not to be unreasonably withheld, conditioned or delayed. However, any such modification shall not decrease the total number of tennis courts, ten (10), contemplated.

6. **CONSTRUCTION:**

(A) All construction shall be subject to prior consultation with, and approval by, the Town Board and shall require the issuance of building permits by the Town Building Inspector. However, nothing contained in this Lease shall be construed to relieve Lessee of complete and total responsibility and liability for ensuring that all construction is performed in accordance with all applicable codes, laws, ordinances, rules and regulations. Subject to meeting the requirements of all applicable codes, laws, ordinances, rules and regulations, the Town shall promptly cooperate with Lessee in order to facilitate the contemplated construction and other requirements of this Lease. Similarly, subject to Section 31, paragraph (G), Lessee shall use its best efforts to obtain all necessary approvals and complete the construction and opening of the facility as promptly as possible, but in no event later than eighteen (18) months from the issuance of the building permits for the Improvements.

(B) Prior to applying for a building permit, Lessee shall submit a site plan, conforming to the requirements and conditions of the approved site plan. In addition to all other required items Lessee shall include such additional information or studies as the Town shall reasonably request or is necessary to ensure compliance with all codes, laws, ordinances, rules and regulations, including the New York State Environmental Quality Review Act (SEQRA).

(C) The entire construction project shall be completely contained within the boundaries of the existing site as the same will be depicted on the site-plan submission. Maximum effort will be made to mitigate any noise and/or nuisance to the community.

Construction operations shall not interfere with the Town's use of any other portion of Anthony F. Veteran Park. No access shall be permitted to Lessee or its agents to any other portions of Anthony F. Veteran Park without the express permission of the Town. A principal of Lessee, or a regional manager, shall be "on-site" at all times during the construction phase.

(D) At the completion of construction, all construction materials and debris shall be removed and disposed of in accordance with all applicable laws. Any areas of the Premises that have been disturbed, which are not part of the new construction, shall be restored to a condition equal to or better than existed prior to commencement of construction.

7. **INDEMNIFICATION:** To the maximum extent permitted by law, as between Lessee and Lessor only, Lessee hereby assumes the entire responsibility and liability for any and all damage (direct or consequential) and injury (including death), disease or sickness of any kind or nature whatsoever (including death), not caused by a Town Indemnitee (the Town and/or its agents, officials, officers, volunteers performing authorized tasks, and employees, and/or the Town's Consulting Engineers, their officers, agents, partners and/or employees, and/or any of their assigns, each an "Indemnitee" and collectively the "Indemnities") to all persons, whether or not employees of the Lessee, and to all property and business or businesses, caused by, resulting from, arising out of, or occurring in connection with (i) the construction (ii) the performance or intended performance of the construction (iii) the performance or failure to perform in violation of this Lease (iv) the operation of the facilities at the Premises, or (v) any occurrence which happens in or about the Premises and was caused by Lessee, its agents, invitees, suppliers, officers or employees either directly or through a Subcontractor, or while any of Lessee's property, equipment or personnel is in or about such area. Except to the extent, if any, expressly prohibited by law, should any such damage or injury be sustained, suffered, or incurred by the Indemnities or should any claim for such damage or injury be made or asserted against any Indemnitee, whether or not such claim is based upon any Indemnitee's alleged active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of the Indemnities, Lessee shall indemnify, defend and save Indemnities harmless of, from and against any and all loss, cost, expense, and liability, including without limitation, legal fees and disbursements, that Indemnities may directly or indirectly sustain, suffer or incur as a result of such damages, injuries and claims provided same has not been caused by Indemnities; and Lessee agrees to assume, on behalf of any and all Indemnities the defense (with counsel reasonably satisfactory to the parties indemnified) of any action at law or in equity, or other legal proceeding, which may be brought against any Indemnitee upon or by reason of such damage, injury or claim and to pay on behalf of every Indemnitee, the amount of any judgment, decree award, or order that may be entered against each said Indemnitee in any such action or proceeding.



8. **NON-DISCRIMINATION:**

(A) Lessee shall, and shall make reasonable commercial efforts to cause all subcontractors to, comply with all requirements of the Town and of the law governing equal employment opportunity, affirmative action, and the subcontracting of work to minority-owned and women-owned business enterprises. Lessee shall incorporate the requirements of such agreement in every subcontract.

(B) As relates to the Lessee's performance under this Lease, Lessee shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity, age, disability, religion or marital status, and shall undertake or continue existing programs of affirmative action to ensure that members of minority groups and women are afforded equal opportunity without discrimination.

9. **OPERATION AND MANAGEMENT:**

(A) Lessee will make the Improvements and operate the Premises, and offer individual, couples and family memberships, along with a wide variety of instructional, competitive, social and camp programs for adults and children. An indoor season shall be conducted from September 15<sup>th</sup> to May 7<sup>th</sup> of the following year, inclusive of the time needed to inflate and remove the air-structures annually (approximately one week in each case) (the "Indoor Season").

(B) The Facilities' hours of operation will be from 7:00 am until 11:00 pm, Mondays through Fridays, and 7:00 am until 10:00 pm, Saturdays and Sundays, with the right to stay open until 1:00 am for special events or tournaments, with the prior written approval of the Town, not to be unreasonably withheld. Lessee shall provide notice to the Town not less than two weeks prior to any special events or tournaments requiring the Facilities to remain open past 11:00 p.m.

(C) Lessee shall adhere to the fee schedule and resident discounts set forth in Exhibit "C" annexed hereto and made a part of this Lease. Lessee may only increase fees for programs, court-time and services by greater than ten (10%) percent per Lease Year if Lessee has submitted documentation and/or information to the Town reasonably demonstrating to the Town the economic need for a greater than 10% increase in rates and if the Town approves such increase in rates not to be unreasonably withheld. Lessee may increase junior and adult individual membership fees by up to \$5 in each Lease Year, couple membership fees by up to \$10 in each Lease Year and family membership fees by up to \$15 in each Lease Year without the prior approval of the Town. Any permitted membership fee increase not taken in a given year may be accrued and added to the permitted increase in any future year. Lessee shall provide written notice to the Town of pricing increases, for which Town approval is not required, prior to their taking effect. At no time shall any fee increases to Town residents be at a percentage greater than any fee increases to non-residents.

(D) Lessee shall adequately staff the Facilities during all business hours with personnel appropriate in number and experience to provide professional services to those who use the Facilities, including professional instructors on site to meet customer demand.

(E) Lessee shall provide the Town with the contact information for on-site management and principals/executives of Lessee who can be contacted for emergencies twenty-four hours per day, seven days per week.

(F) A pro-shop shall be open during the Facilities' hours of operation, as set forth in Paragraph (B) of this Section. Lessee reserves the right to modify pro-shop hours of operation.

(G) All lights at the Premises, except for security, emergency and work lights, shall be extinguished within one hour after the Premises are closed for business each night and shall be installed in a way to reasonably minimize light spray to any residential home, to the extent feasible.

(H) Lessee will make best efforts provide no less than the following at the Facilities in each Lease Year, inclusive of that provided by Lessee during the Outdoor Season immediately following each Lease Year if Lessee is the lessee under the Outdoor Lease:

(i) 500 community programming court hours for Town residents;

(ii) Full and partial needs-based scholarships, valued at \$250,000, for youth residents of the Town who lack the financial resources to participate in programs at the Facilities otherwise.

Lessee will work cooperatively with the Town Parks & Recreation Department to determine the nature of the community programming hours and the targeted participants, e.g. youth, individuals with disabilities and senior citizens, and to identify eligible youth scholarship recipients. The foregoing notwithstanding, the days and times of any community programming hours, and program days and hours for which partial or full scholarships are awarded, shall be at Lessee's sole discretion.

10. **MAINTENANCE:**

(A) Lessee agrees to keep the Premises, and any immediately adjacent area around the Premises, clean and free of debris and refuse, and shall, on a regular basis, clean all restrooms and locker rooms and inspect the entire Premises for debris and trash and collect same for proper disposal.

(B) Lessee shall maintain the Premises, and all structures, playing surfaces and equipment thereon, in a condition that is clean, safe and usable for their intended purposes, so as to make them available for use by and appealing to Town residents and visitors to the Town, during the entire Term of this Lease, In addition, Lessee shall provide and maintain safe and unimpeded access to the Facilities, which shall require the removal of all obstacles to access, including snow and ice, along all walkways to, from and within the Facilities. The Town will be responsible for the removal of such obstacles, including snow and ice, from the roads and parking lots serving Anthony F. Veteran Park.

(C) The hard-surface tennis and pickleball courts shall be resurfaced no less than once every three (3) years, including patching of all cracks, filling of all birdbaths and application of a minimum of two coats of color. The soft tennis courts shall be resurfaced when necessary to maintain high-quality playing conditions, including removing and replacing “dead” material.

11. **CONTROL OF CONDUCT:** Lessee shall refrain from conducting any business or activity on the Premises that is not legal, and any illegal use of the Premises is hereby prohibited. Lessee agrees to take all appropriate measures to remove individuals from the Premises who conduct themselves in a manner that is dangerous or unduly disturbing to others.

12. **BOOKS AND RECORDS:**

(A) Lessee shall keep the following books and records for purposes of inspection by the Town at reasonable times and upon notice in writing of said request to inspect. The Town shall make best efforts to keep all information confidential and shall not disclose same to third parties, other than as required by law. Any information which is computerized may be supplied in electronic format:

- a) accounting books;
- b) gross receipt statements;
- c) quarterly and annual tax returns;
- d) sales tax returns;
- e) contracts for court time and other programming;
- f) daily sheets for court utilization;
- g) invoices for purchase and sales, by Lessee, of items sold on Premises;
- h) internet and/or other off-site technology relating to the operation of the Facilities.

(B) Lessee shall furnish the Town with a statement of Gross Sales within ninety (90) days after the close of each month reflecting Gross Sales for that month.

(C) At its own cost and expense Lessee shall provide the Town with complete audited financial statements, certified by a public accountant (licensed in the State of New York),

for the Lessee, which shall include the supplement schedule Consolidating Schedule of Operations by Location, showing the Lessee's Gross Sales for the Premises during the preceding September 1st through August 31st, by January 15<sup>th</sup> of the year following each Lease Year.

(D) All books and records shall be provided within five (5) business days of any reasonable written request by the Town and shall be in such detail as to furnish and identify the financial information necessary to inspect and verify the activities and operations conducted by the Lessee at the Premises.

13. **EXCLUSIVE LICENSE:** The Outdoor Lease notwithstanding, this Lease is exclusive to Lessee, and Lessee specifically agrees not to let or grant any other party the use of the Premises for the same or any other business. Furthermore, the Town shall not grant to any third party a lease or license to provide facilities, programs or services the same as, or similar to, those to be provided by Lessee pursuant to this Lease, at or near. Anthony F. Veteran Park.
14. **NO ASSIGNMENT:** This Lease is personal to Lessee and Lessee may not assign this Lease to any other person, firm, partnership or corporation, including a corporate entity in which Lessee holds an interest. The foregoing notwithstanding, Lessee may, upon forty-five (45) days' notice to the Town assign this Lease in connection with (i) the restructuring or recapitalization of Lessee equity structure, provided the managing control of Lessee after the transaction remains the same, (ii) the merger or consolidation of Lessee with or into another corporation or entity, or (iii) transactions involving the transfer of all or substantially all of Lessee's assets or ownership interests to another corporation or entity, but only if in any such events the successor to Lessee has a net worth, computed in accordance with generally accepted accounting principles, equal to or greater than the net worth of Lessee immediately prior to such merger, consolidation, transfer or recapitalization.
15. **LIMITATIONS ON ALTERATIONS:** After the initial Improvements provided for herein, additions to and alterations of the Premises are hereby prohibited without prior consent of the Town. Consent of the Town for such additions and alterations shall not be unreasonably withheld, conditioned or delayed, provided, however, any such alteration or addition must be consistent with the purpose and intent of the Facilities and this Lease.
16. **DEFAULT:**
  - (A) If there is an Event of Default by Lessee, the Town may serve Lessee with a notice of default. Lessee shall have ten (10) days in which to cure a monetary default and twenty (20) days to cure a non-monetary default, which is not an emergency, in which case the Town shall give such notice as it deems reasonably appropriate. In the event a non-monetary default is not susceptible to cure within such twenty (20) day cure period, Lessee must so notify the Town in writing and diligently commence to cure such default

within such twenty (20) day notice period and to diligently complete such cure within no more than forty (40) additional days.

(B) In the event Lessee believes that, in the case of a notice of a non-monetary default that does not involve what the Town reasonably believes to be an emergency, that Lessee is not actually in default, then in that event Lessee shall have ten (10) days from the date of such notice of default to inform the Town, in writing, of its objection to such notice of default and the grounds for such objection. In such case the parties shall, during the fifteen (15) days following notice of objection from Lessee, attempt to informally resolve their dispute (hereinafter “the Informal Dispute Resolution Period”). By the end of the Informal Dispute Resolution Period one of the following shall occur:

(i) the Town shall withdraw the notice of default if the Town agrees with Lessee’s objection, or;

(ii) Lessee shall immediately commence to cure the default and complete such cure within twenty (20) days or if such cure is not susceptible to cure within twenty (20) days Lessee shall so notify the Town and diligently commence to cure such default within such twenty (20) day period and diligently complete such cure within no more than forty (40) additional days, or;

(iii) the parties shall have such other remedies as are provided for herein.

(C) If the Town has not withdrawn its notice of default as provided for in subparagraph 16 (B) (i), at the end of the applicable notice and cure periods set forth in subparagraphs 16 (A) and (B), and, if Lessee has failed to cure such default, the Town at its option may without further notice:

(i) terminate this Lease and take possession of the Premises, including all of the Improvements and operate the Premises or lease the Premises to another operator; and/or

(ii) apply the Security provided for in Section 18, herein to offset any loss or expense (including reasonable attorneys’ fees) incurred as a result of the default of Lessee, provided that if the security provided is sufficient to satisfy the loss incurred by the Town on account of such Event of Default then the Town shall not exercise its right to terminated the Lease pursuant to Section “16(C)(i); and

(iii) commence an action to collect any loss or expense, including reasonable attorneys’ fees, in excess of the amount of the security along with all costs and expenses, including reasonable attorneys’ fees, incurred in collecting such sums.

(D) In the event this Lease is terminated by the Town pursuant to paragraph (C)(i) above, or in the event of a default under the terms of the Lease by the Town, as contemplated in paragraph (E) immediately below, and Lessee is the lessee under the Outdoor Lease, Lessee may, at its sole discretion, terminate the Outdoor Lease with no further obligation.

(E) In the event of a default under the terms of this Lease by the Town, Lessee's sole remedy shall be to seek specific performance and if successful obtain costs and reasonable attorneys' fees in accordance with Section 28 of this Lease.

17. **EVENTS OF DEFAULT:** Each of the following shall constitute an "Event of Default" under this Lease:

(A) if default be made by Lessee in the performance or compliance with any of the material covenants, agreements, terms or conditions of this Lease and such default shall continue beyond the applicable notice period provided for in Section 16 of this Lease; or

(B) if at any time during the Term hereof there shall be filed by Lessee in any court pursuant to any statute, either in the United States or any State, a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee of all or a portion of Lessee's property, or if Lessee makes an assignment for the benefit of creditors; or

(C) if at any time during the Term of this Lease there shall be filed against Lessee in any court pursuant to any statute, either in the United States or any State, a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee of all or a portion of Lessee's property, and if Lessee shall fail to immediately seek dismissal of such proceeding, or if within sixty (60) days after the commencement of any such proceeding against Lessee the same shall not have been dismissed.

(D) Notwithstanding anything to the contrary in this Lease, in the event of an Event of Default, Town shall notice Lessee's lending institution of record (the name and address of which shall be forwarded to the Town upon execution of this Lease) ("Lending Institution") of the same. The Lending Institution shall, if it so elects, within ten (10) days of such notice of an Event of Default and pending termination, cure the default and/or assign the Lease to a new operator, subject to the reasonable approval of the Town. While the Town's approval of the new operator is pending, the Lease will not be deemed to be terminated. The Lending Institution shall continue to pay the Lease Fees to the Town on a monthly basis until a new operator is approved by the Town and has commenced operations at the Premises. If Town does not approve of the new operator, the Lending Institution shall have two additional opportunities to propose a different operator, subject to the approval of the Town as aforesaid. Notwithstanding the foregoing, an Event of Default shall occur upon the Town's disapproval of Lending Institution's third (3rd)

proposed new operator.

18. **SECURITY:** Upon execution of this Lease Lessee shall deposit with the Town the sum of One Hundred Twelve Thousand Two Hundred Forty-One (\$112,241.00) Dollars as security to ensure the faithful performance of the terms and conditions of this Lease, which sum shall be held in an interest bearing account Dollars. Upon commencement of the First Extension Term, if applicable, the security shall be increase to One Hundred Forty Three Thousand Two Hundred Fifty-Two Dollars (\$143,252.00); upon commencement of the Second Extension Term, if applicable, the security shall increase to One Hundred Eighty Two Thousand Eight Hundred Twenty-Eight Dollars (\$182,829.00), and upon commencement of the Third Extension Term, if applicable, Two Hundred Thirty Three Thousand Three Hundred Forty-One Dollars (\$233,341.00). In the event of a default by Lessee in any condition of this Lease the Town may, in its sole discretion, use the security to remedy such default, and/or pay its expenses in remedying such default, including reasonable attorneys' fees (all after the expiration of any applicable notice and cure periods provided for herein) without relieving Lessee of its obligations herein. In the event the Town uses the security as provide for herein and has not also terminated this Lease, Lessee shall, upon five (5) days written notice, deposit with the Town the full amount of the security utilized by the Town. In addition to the above security, should it become necessary, the Town may also in its sole discretion use any or all of the amount of interest that has or will be accrued to remedy any default, and/or pay its expenses in remedying any default, including reasonable attorneys' fees (after the expiration of any applicable notice and cure periods provided for herein) without relieving Lessee of its obligations herein.
19. **RETURN OF SECURITY:** Upon expiration of the Term of this Lease and the submission by Lessee of the documentation and payments required by Sections 3 and 12, as of the date of termination, any portion of the security or interest not used by the Town to remedy a default or pay the expense of remedying a default by Lessee shall be returned to Lessee with such interest as may have accrued.
20. **NO JOINT VENTURE:** It is specifically understood by and between the parties hereto that this Lease does not constitute a joint venture and that Lessee shall remain solely liable for any damages arising out of its or its agents or employees' conduct with respect to the operations at the Premises.
21. **UTILITIES:** Lessee shall be solely responsible for the cost of all utilities at the Premises and shall maintain temperatures in the Facilities conducive to use for its intended purpose.
22. **NOTICES:** Notices pursuant to this Lease shall be sent in writing by certified mail, return receipt requested, at the addresses first above written with copies to the Town Attorney at Greenburgh Town Hall, 177 Hillside Avenue, Greenburgh, NY 10607 and to the attorneys for Lessee, Bond, Schoeneck & King, 225 Old Country Road, Melville, New York 11747, attention Ralph A. Rosella; and Sportime Central Office, 275 Old Indian

Head Road, Kings Park, New York 11754 attention Bennett I Schlansky, Esq., or such other address as any of the parties may designate in writing.

23. **TAXES:** Lessee shall be responsible for paying all sales, income and other taxes due and owing as a result of the operations at the Premises.
24. **NO LIENS:** Lessee shall not mortgage or pledge this Lease nor let or underlet the whole or any part of the Premises. Lessee shall not grant or permit any lien to be placed upon the Premises. In the event a lien is placed upon the Premises, Lessee shall, within five (5) days of the placement of such lien, satisfy or bond the lien in an amount equal to one and one half times the amount claimed in such lien. Notwithstanding the foregoing, Lessee may, solely for the purpose of constructing the Improvements, pledge this Lease as security for a loan from a financial Institution (which shall, for the purpose of this paragraph, be a banking institution licensed to do business in the State of New York) (“Financial Institution”). It is expressly understood that any such financing shall be solely to fund the original construction of the Improvements or to refinance any sum remaining unpaid under such original financing and for no other purpose. In the event Lessee pledges this Lease, the interests of such Financial Institution shall be subordinate to any rights or interests of the Town, except to the extent the Financial Institution seeks a security interest in personal property and fixtures of Lessee in which case such security interest shall be superior to the Town’s security interest in the personal property and fixtures of Lessee. The Town shall provide the Financial Institution with notice of an Event of Default, within ten (10) days of such notice of an Event of Default and pending termination, provided the Town has been given prior written notice of the name and address of such Financial Institution. The Town agrees to cooperate with reasonable requests of the Financial Institution, in providing for financing as set forth herein, as long as such cooperation shall not in any way diminish the Town’s rights under this Lease or in the Premises.
25. **SIGNS:** All exterior signs and all interior signs visible from the exterior of the Premises shall be consistent with existing signage and shall be approved by the Town before being installed, which approval shall not be unreasonably withheld, conditioned or delayed.
26. **PARKING:** Parking for the Premises shall be permitted in the lots serving Anthony F. Veteran Park. However, the Town does not guarantee either the number or availability of parking spaces at any time.
27. **SPECIAL EVENTS:** Should the Town hold events at Anthony F. Veteran Park during the Indoor Season that have the potential to bring large numbers of individuals to the Park, the Town shall notify Lessee at least one (1) month in advance of the scheduled date of any such event. Upon receipt of such notice, Lessee shall refrain from scheduling any event on the same date that would bring larger numbers of individuals to the Premises than would ordinarily be present, without the consent of the Town, such consent not to be



unreasonably withheld, conditioned or delayed.

28. **ARBITRATION:** In the event of a dispute between the parties over any terms or conditions of this Lease, where there is not otherwise a provision for resolution of such dispute contained herein, such dispute shall be resolved by a single arbitrator of the American Arbitration Association (“AAA”) at its White Plains office, in accordance with the AAA rules then in effect. Such arbitration shall be requested within ninety (90) days of written notice of any dispute and upon the making of a request for arbitration by either party all actions or proceedings over the subject matter to be arbitrated shall be stayed. In the event of an arbitration the parties shall share equally the arbitrator’s fees. The decision of the arbitrator shall be final and binding upon the parties and may be entered in any court of competent jurisdiction.
29. **NO REPRESENTATIONS:** Lessee acknowledges that it has made its own investigation of the condition and suitability of the Premises for the proposed Improvements and operations and that it has not relied upon any representations of the Town as to the fitness thereof and that by taking possession of the Premises and fixtures Lessee accepts them “as is.” The foregoing notwithstanding, Lessee shall not be responsible for any violations existing as of the Effective Date, unless same was caused by Lessee, and the Town shall bear the financial responsibility with respect to any penalties and fines for any pre-existing violations. The Town represents and warrants that as of the Effective Date, the Premises is and shall be free of any liens or encumbrances.
30. **REPRESENTATIONS:**
- (A) Lessee’s Representations: As a material inducement to the grant by the Town of the lease contemplated hereby, Lessee hereby represents and warrants to the Town as follows:
- (i) Lessee is duly organized and validly existing under the laws of the State of New York.
  - (ii) Attached hereto as Exhibit “D” is a true, correct and complete copy of Lessee’s audited financial statements for the years ended August 2019, 2020 and 2021.
- (B) Representations by the Town:
- (i) Representatives of the Town have visited and inspected various of Lessee’s currently operating facilities and have determined in its sole discretion that such facilities meet the Town’s expectations for cleanliness, safety and appearance.
  - (ii) The Town has duly authorized entry into this Lease and performance by the Town of its obligations hereunder.
31. **MISCELLANEOUS:**

(A) Lessee shall not occupy or use the Premises, nor permit the same to be occupied or used for any business deemed extra hazardous on account of fire or otherwise.

(B) At the end of Term or sooner expiration of this Lease, Lessee will quit and surrender the Premises hereby leased, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted and may remove only inventory and personal property. At that time, all structures, Improvements, playing surfaces and fixtures shall remain and become the property of the Town, excluding the air-structures and related equipment, which shall remain property of Lessee.

(C) Lessee shall give the Town prompt notice of any material fire, accident, damage or dangerous or defective condition.

(D) Lessee hereby assumes the risk of all damage to the Premises during the Term of this Lease. In the event of the total or partial destruction of the building, structures, or facilities on the Premises or subsequently constructed at the Premises by the Lessee, the Lessee shall have the obligation to reconstruct such facilities to the condition in which they existed at the inception of the Lease within twenty-four (24) months after their destruction, provided that such obligation shall be limited to the extent the costs of such reconstruction are covered by the insurance proceeds available to Lessee or with the insurance proceeds that would have been available to Lessee had Lessee maintained the insurance required hereunder.

(E) The Town, upon reasonable notice to Lessee, shall have the right to enter in and upon the Premises at all reasonable hours of the day during the Term of this Lease to ascertain if the Premises are being kept in proper repair and condition.

(F) Lessee waives all rights to redeem under any law of the State of New York, if it is found such rights exist by a court of competent jurisdiction.

(G) Lessee shall not be liable for and shall be excused from performance, including but not limited to payment of Minimum Annual Lease Fees, for any delay in any of its obligations hereunder where such failure or delay is occasioned by actions of a government or public agency, failure or interruption of power, transportation or other utilities, labor dispute, strike, war, nuclear disaster, epidemic or pandemic, road closures, states of emergency, quarantine, communicable and/or virulent disease outbreak, riot, public health emergency, insurrection, terrorist attack, fire, flood, accident, storm, acts of nature or any other cause beyond Lessee's reasonable control.

(H) The failure of either party to insist upon strict performance of any of the terms, conditions and covenants herein, shall not be deemed a waiver of any rights or remedies of such party, and shall not be deemed a waiver of any subsequent breach or default in terms, conditions and covenants herein contained.

(I) This Lease constitutes the entire understanding between the parties hereto and may only be changed by a writing signed between the parties hereto after authorization for such change is given by a resolution duly adopted by the Town Board.

(J) This Lease may be signed in one or more counterparts (or with counterpart signature pages) which, taken together, shall constitute a fully executed Lease and shall be considered a single document.

(K) If any date on which a time period scheduled to expire herein is a Saturday, Sunday or holiday, the subject date shall be extended to the next business day.

(L) This Lease has been drafted by counsel for both parties, and accordingly, any ambiguities contained herein shall not be interpreted in favor of or against either party based upon a claim as to the party who drafted the language.

(M) Lessee shall deliver to the Town copies of all plans, reports, permits, violation notices and approvals obtained by Lessee in connection with the Premises. In the event of termination of this Lease for any reason, Lessee hereby unconditionally assigns to the Town all of Lessee's right, title and interest in such items.

(N) The parties hereto acknowledge and agree that Lessee operates tennis, fitness and sports facilities throughout the State of New York, including in the County of Westchester; the parties further acknowledge that such facilities may, in a fair and open manner, compete with Lessee's operation of the Facilities, or with other private and public tennis, fitness or sports facilities. The Town further acknowledges and agrees that Lessee's operation of such facilities, whether such facilities are currently owned and/or operated by Lessee, or if such facilities are acquired by Lessee during the Term of this Lease, shall not be considered a conflict of interest with respect to Lessee's obligations under this Lease.

(O) Notwithstanding anything to the contrary in this Lease, in no event shall Lessee be liable hereunder for consequential or punitive damages.

**IN WITNESS WHEREOF**, the parties hereto have signed their names on the date first written above.

TOWN OF GREENBURGH

By: \_\_\_\_\_  
Authorized Signatory

SPORTIME CLUBS, LLC

By: \_\_\_\_\_  
Authorized Signatory

**LIST OF ATTACHMENTS TO LICENSE AGREEMENT**

<b>SCHEDULE "A"</b>	<b>THE PREMISES</b>
<b>EXHIBIT "A"</b>	<b>INSURANCE REQUIREMENTS</b>
<b>EXHIBIT "B"</b>	<b>FEE SCHEDULE</b>
<b>EXHIBIT "C"</b>	<b>AUDITED FINANCIALS</b>
<b>EXHIBIT "D"</b>	<b>DEPRECIATION OF IMPROVEMENTS</b>



**SCHEDULE A**

**EXHIBIT A**

**STATE OF NEW YORK HOME RULE 7651**

## **EXHIBIT B**

### **INSURANCE REQUIREMENTS**

- A. All required insurance must be issued by companies which have an A.M. Best rating of at least A-7 or a Standards & Poor rating of at least AA and are duly licensed to do business in the State of New York and must be in effect and continue so during the Term of the Lease.
  
- B. The Lessee will carry \$1,000,000 in property damage liability insurance coverage, and fire and extended coverage insurance in an amount, at all times, equal to the full insurable value of all improvements, structures and buildings located on the Premises. The policy shall include the Town as an insured for its interest in the Facilities. A certificate of insurance must be provided to the Town. The Town will not carry insurance on Lessee's property.
  
- C. Lessee will carry comprehensive general liability insurance for any one occurrence not less than \$5,000,000.00. The Town will be named as an additional insured on such policy.
  
- D. Lessee shall carry Worker's Compensation Insurance as required by statute.



**EXHIBIT C**

**FEE SCHEDULE**

(Some rates will likely be adjusted based upon market conditions at the time of the completion of the Facilities). **Sportime at Anthony F. Veteran Park (“SAFVP”) members who are residents of the unincorporated area of Greenburgh will receive 10% off open court time and seasonal court time rates as well as all program fees.**

**INDOOR TENNIS**

Proposed Seasonal Court-Time Rates at SAFVP 32-week season:

Monday –Friday	Member	Associate
7am – 9am	\$1,265	\$2,705
9am – 12pm	\$2,380	\$3,610
12pm – 4pm	\$1,990	\$3,290
8pm – 9pm	\$3,425	\$4,495
9pm – 11pm	\$1,995	\$2,470

Saturday/Sunday	Member	Associate
7am – 8am	\$2,155	\$3,675
8am – 9am	\$2,635	\$3,830
9am – 12pm	\$3,240	\$4,255
12pm – 5pm	\$2,385	\$3,830
5pm – 10pm	\$2,000	\$3,700

Proposed Per-Diem Court-Time Rates at SAFVP (per hour):

Monday –Friday	Member	Associate
7am – 9am	\$40	\$80
9am – 4pm	\$45	\$90
4pm – 11pm	\$50	\$100
10pm – 11pm	\$40	\$80

Saturday/Sunday	Member	Associate
7am – 5pm	\$45	\$90
5pm – 10pm	\$50	\$100

Educational, Instructional and Competitive Tennis Program Rates:

	15 weeks	30 weeks
Junior Group Lessons:		
Sportime U10/Mac Red I (1 hour)	\$825	\$1570

Sportime U10/Mac Orange (1 ½ hour)		\$2025
Sportime JMTA Green and Yellow Ball (1 ½ hours)		\$3615
Sportime JMTA Green and Yellow Ball (2 Hours)		\$4850
Adult Group Lessons:	15 weeks	Per Diem
1 Hour Clinic	\$850	\$60
1 ½ Hour Clinic	\$1375	\$85
Private Lessons (Staff Pro – Director Pro)		1 Hr.
1 Hour	\$2100 - \$3225	\$140 - \$205

### **INDOOR PICKLEBALL**

Proposed Seasonal Court-Time Rates at SAFVP – 32-week season:

Monday –Friday	Member	Associate
7am – 9am	\$1190	\$1700
9am – 4pm	\$1360	\$1870
4pm – 8pm	\$1530	\$2040
8pm – 11pm	\$1360	\$1870
Saturday/Sunday		
7am – 9am	\$1360	\$1870
9am – 8pm	\$1530	\$2040
8pm – 11pm	\$1360	\$1870

Proposed Per-Diem Court-Time Rates at SAFVP (per hour):

Monday –Friday	Member	Associate
7am – 9am	\$35	\$50
9am – 4pm	\$40	\$55
4pm – 8pm	\$45	\$60
8pm – 11pm	\$40	\$55
Saturday/Sunday		
7am – 9am	\$40	\$55
9am – 8pm	\$45	\$60
8pm – 11pm	\$40	\$55

Educational, Instructional and Competitive Pickleball Program Rates:

Adult/Junior Group Lessons:	15 weeks	30 weeks	Per Diem
1 Hour Clinic	\$675	\$1300	\$50
1 ½ Hour Clinic	\$995	\$1950	\$65
Private Lessons (Staff Pro – Director Pro)			1 Hr.
1 Hour	\$1620-\$2400	\$3250-\$4700	\$110 - \$160
Open Play			Per Diem
1 Hour			\$25- \$40

### **SPORTIME MEMBERSHIP**

Estimated rates are as follows:

	Non-Resident	Resident of the uninc. area of Greenburgh
<b>Junior:</b>	<b>\$33 per month</b>	<b>\$29.70 per month</b>
<b>Adult Individual:</b>	<b>\$37 per month</b>	<b>\$33.30 per month</b>
<b>Adult Couple:</b>	<b>\$63 per month</b>	<b>\$56.70 per month</b>
<b>Family:</b>	<b>\$87 per month</b>	<b>\$78.30 per month</b>

(includes two adults and all minor children)

Sportime also offers upgraded tennis, fitness and seasonal, outdoor club membership options. Such upgrade options will be available to customers of SAFVP should they be interested in utilizing our 30-court Sportime at Randall's Island facility in Manhattan, any of our four fitness facilities or our outdoor, seasonal clubs in Quogue and Amagansett in the Hamptons.