



Hitters Tennis Club at Hitters SportsPlex Membership Agreement

THIS AGREEMENT (the "Agreement"), by and between Hitters Sports Corp. ("Hitters Tennis Club") and the person(s) executing this Agreement as "Member" on the last page of this Agreement, each an adult ("Member"), is made and entered into as of the date this Agreement is executed by the parties hereto.

NOW, THEREFORE, Hitters Tennis Club and Member do hereby agree as follows:

I. *Membership*

- 1.1. Types of Membership. Hitters Tennis Club shall be authorized to create, from time to time, different categories or types of membership having different requirements, qualifications, obligations, rights, and privileges, as Hitters Tennis Club may deem advisable. Membership shall entitle the Member to use the Facilities in accordance with this Agreement, such rules and regulations as may be adopted from time to time by Hitters Tennis Club (the "Rules and Regulations"), and the Application (defined below). Hitters Tennis Club intends to offer the following types of membership:
- a. *Family*, which shall consist of a husband and wife (or two adults residing in the same household who meet the requirements of a domestic partnership, as defined in Section 3.23(2)(o) of the Madison General Ordinances), and their "Dependent Children." As used herein, Dependent Children shall mean the Member's children under the age of 23 who reside with such Member.
 - b. *Couple*, which shall consist of husband/wife (or two adults residing in the same household who meet the requirements of a domestic partnership, as defined in Section 3.23(2)(o) of the Madison General Ordinances. Both individuals comprising the couple membership must live in the same household.
 - c. *Single*, which shall consist of any one person, age 26 through 59.
 - d. *Senior Single*, which shall consist of any one person, age 60 or older.
 - e. *Junior Single*, which shall consist of any one person, age 11 through 25.
 - f. *10 & Under Junior Single*, which shall consist of any one person, age 3 through 10.

The ages set forth in this Section 1.1 shall be determined as of September 1st (not the birthday month) for each membership year. Each Member's liability under any group membership

(Family and Couple) shall be joint and several. Qualification for a particular membership category shall be determined in Hitters Tennis Club's sole discretion.

Acceptance of Members. Hitters Tennis Club shall establish parameters for the acceptance of members, which may include, but not necessarily be limited to, the following:

- g. Completion of a written membership application (the "Application") and this Agreement in such form as may be prescribed by Hitters Tennis Club. By completion of the Application, each Member agrees to be bound by the terms of this Agreement.
 - h. The Member shall be required to pay an initial, non-refundable membership fee and an annual membership fee. Such fees shall be payable in the amounts and at such times as are set forth in the Application accepted by Hitters Tennis Club.
 - i. Acceptance by Hitters Tennis Club of the applicant for membership.
 - j. Hitters Tennis Club reserves the right to limit the number of members to a level it deems appropriate.
 - k. In the event Hitters Tennis Club receives membership applications in excess of Hitters Tennis Club's established maximum, a waiting list shall be established. As additional memberships become available, the applicants on the waiting list will be considered for membership by Hitters Tennis Club.
- 1.2. Nature of Membership. The Member acknowledges that membership does not give the Member an equity or ownership interest in Hitters Tennis Club or the Facilities, nor does it give the Member a vested or prescriptive right or easement to use the Facilities. Member acknowledges that the interest acquired pursuant to this Agreement is only that of a revocable license to use the Facilities pursuant to the terms, covenants and conditions contained in this Agreement, the Rules and Regulations, and the Application. Members shall not be entitled to any revenues or profits relating to the ownership or operation of Hitters Tennis Club or the Facilities.
- 1.3. Membership Fees. The Member shall pay to Hitters Tennis Club the initial membership fee and the annual membership fees. As used herein, a "membership year" shall be September 1 to August 31, unless otherwise established from time to time by Hitters Tennis Club. The Hitters Tennis Club shall establish the annual membership fees for each membership year. The Hitters Tennis Club reserves the right to change the annual membership fees each year at its sole discretion.
- 1.4. Failure to Pay. No Member may use the Facilities if their membership fees has not been timely paid. Failure to pay such fees when due, including any late fees or similar charges, shall be grounds for revocation of all membership privileges.

II. *Renewal, Resignation, Transfers and Suspension of Membership*

- 2.1. Renewal and Resignation. Membership shall be automatically renewed effective September 1 of each year, unless, prior to such date, the Member has resigned in writing mailed or delivered to Hitters Tennis Club. Any such resignation shall be effective the first day of September following receipt of the resignation and shall not

relieve the Member of any dues, fees or charges of any other nature accruing prior to such effective date, unless Hitters Tennis Club, in its discretion, allows a refund. Hitters Tennis Club shall not be required to return or refund the initial membership fee paid by Member upon the resignation of a Member. Membership may be resigned due to injury or illness in which a member is unable to participate when approved by General Manager. In instances in which an out of the area move is required, membership may be resigned with at least 30 days notice, if the move is over 40 miles from Hitters SportsPlex.

- 2.2. Transfers of Membership Strictly Prohibited. Member shall not have the right to transfer the Member's membership or rights under this Agreement.
- 2.3. Upgrading Category of Membership. The Member may change membership categories to a more expensive category of membership, provided that: (a) the Member pays to the Hitters Tennis Club the difference between the then-applicable initial membership fee for such desired category and the initial membership fee paid by the Member, and (b) memberships are available in such desired category. The annual membership fees payable shall be adjusted as of the date the Member changes membership categories pursuant to this Section 2.3.
- 2.4. Downgrading Category of Membership. The Member may change membership categories to a less expensive category of membership, provided that memberships are available in such desired category. Hitters Tennis Club shall not be required to return or refund any portion of the initial membership fee paid by the Member. The annual membership fees payable shall be adjusted as of September 1 following the date the Member changes membership categories pursuant to this Section 2.4.
- 2.5. Death of a Member. The following options shall be available upon the death of a Member:
 - a. If the Member who died was part of a group membership (such as family or couple), the surviving Member(s) may choose to retain their current membership category or downgrade their membership to a more appropriate category as provided in Section 2.4, above (except that there shall be no "subject to availability" restriction).
 - b. If the Member who died was part of a group membership (such as family or couple), the surviving Member(s) may choose to terminate their membership, in which case the annual membership fees shall cease being payable as of the date Hitters Tennis Club receives notice of such termination. Such a termination of Membership shall not relieve the Member of any dues, fees or charges of any other nature accruing prior to the effective date of the membership termination. Hitters Tennis Club shall not be required to return or refund the initial membership fee paid by the Member upon the termination.
 - c. If the Member who died was in the single category of membership, such Member's membership shall cease upon death, and the annual membership fees shall cease being payable upon the date of death. Member's estate shall not be relieved of any dues or charges of any other nature accruing prior to such date of death. Hitters Tennis Club shall not be required to return or refund the initial membership fees paid by the Member.

- 2.6. Legal Separation or Divorce. In the event of a divorce or legal separation of spouses having either a family or couples membership, the membership shall vest in the spouse awarded the membership by an agreement of separation or a decree of divorce. Until Hitters Tennis Club is notified in writing of the disposition of the membership pursuant to an agreement of separation or a decree of divorce, both spouses shall be jointly and severally liable for all dues and charges payable hereunder and both may continue to enjoy membership privileges so long as such amounts are timely paid.
- 2.7. Transfers within Group Memberships. For Family and Couple one of the two Members may be replaced with a new Member on the following September 1, provided: (a) such new Member resides with remaining Member and the Members meet the criteria for their particular category of membership; (b) such new Member signs a Membership Agreement and an Application; and (c) such new Member pays a fee of \$250.00
- 2.8. Suspension of Membership. The Member's membership may be suspended by Hitters Tennis Club in its sole discretion for a period of up to one full membership year for just cause. Just cause for suspension shall include, but is not limited to, conduct unbecoming of a member, violation of this Agreement, or violation of the Rules and Regulations, as the same may be in effect from time to time. Dues, and other obligations shall continue to be due and payable during the suspension and must be paid in full when due.
- 2.9. Inactive Membership. Any Member may apply to Hitters Tennis Club for inactive status for one (and only one) membership year. Application for inactive status must be made prior to August 1 for the following membership year. The Member shall be granted inactive status and have no member privileges for such membership year; provided that: (a) such Member pays a \$250.00 fee for the inactive membership year; and (b) the Member shall only be entitled to be an inactive Member one time. Hitters Tennis Club shall not be obligated to accept more than 15 inactive memberships for any one membership year. No annual membership fees shall be payable during the inactive year. An inactive Member may reactivate such Member's membership at any time during the inactive year by paying all annual membership dues and fees which would have accrued had the Member remained active, less the \$250.00 paid by Member as provided above.
- 2.10. Purchase by Hitters Tennis Club. Hitters Tennis Club shall be entitled to purchase, at any time, the Member's membership, at a price equal to the initial membership fee paid by the Member. The Member's membership shall be deemed terminated upon Hitters Tennis Club's payment to the Member of the initial membership fee paid by the Member, and all annual membership fees shall cease being payable at the time of termination. Such a termination of Membership shall not relieve the Member of any dues, fees or charges of any other nature accruing prior to the effective date of the membership termination.
- 2.11. Termination of Membership. The Member's membership may be terminated and revoked by Hitters Tennis Club for: (a) failure to pay membership due or any other fees, when due, including any late fees or similar charges; or (b) failure by Member or the Member's guests to comply with the terms of this Agreement, the Rules and Regulations, or the Application. Upon such termination, Hitters Tennis Club need not honor reservations, discounts or other privileges arranged for prior to termination, and the Member shall promptly remove the Member's belongings from the lockers and storage (if applicable). Hitters Tennis Club may enter lockers so as to physically remove property not so removed by the Member. Hitters Tennis Club shall have no liability for

any Member's personal property remaining in the clubhouse after termination, or for damages due to the cancellation of special privileges upon termination.

III. *Member Benefits*

- 3.1. Member Privileges. The Member, subject to the provisions of this Agreement and the Rules and Regulations shall have the following privileges:
 - a. Free Court Time
 - b. Lessons
 - c. League Programs
 - d. Tournaments
- 3.2. Tournaments. Hitters Tennis Club shall, subject to adequate participation as determined by Hitters Tennis Club, schedule tournaments for the benefit of its members.
- 3.3. Member Accounting. Each Member may have Member's charges deferred and added to an account which will be billed monthly, along with Member's annual membership fee payable on a monthly basis, and each Member shall pay such charges within 10 days of billing. A Member who has not paid his or her bill timely may be required to have a credit card on file, denied the privilege of deferring future charges, any other privilege described herein, and the right to play tennis at Hitters Tennis Club, as deemed appropriate by the Tennis Club and without prior notice to the Member. In the discretion of Hitters Tennis Club, a dollar limitation in the exercise of this privilege may be imposed on certain Members from time to time without prior notice.

IV. *Tennis Club Operations*

- 4.1. Level of Service.
 - a. Decisions By Hitters Tennis Club. Hitters Tennis Club is a private, for profit entity and is not owned or controlled by the Members. Accordingly, Hitters Tennis Club alone shall have the right to make any decision regarding the make-up and operation of the Facilities, consistent with providing the Member privileges granted herein. By way of example thereof, without limitation, Hitters Tennis Club alone shall decide the specific job descriptions of all personnel and the identity thereof; the level of maintenance of the Facilities; and the hours of operation.
 - b. Special Events. Hitters Tennis Club may from time to time agree to host special events such as championship tournaments for other organizations. The Tennis Club will give reasonable advance notice to the Members of its needs and the periods of time involved.

V. *Rules and Enforcement of Membership Agreement*

- 5.1. Hitters Tennis Club Rules. In order to provide a quality level of service, and operate as a private, for profit entity, Hitters Tennis Club may from time to time establish and amend rules (the "Rules and Regulations") regarding the use of the Facilities. The Rules and Regulations shall be in writing and available at Hitters Tennis Club. All Members must

use the Facilities in accordance with the Hitters Tennis Club Rules. The Rules and Regulations shall be exclusively administered and enforced by Hitters Tennis Club. Members shall have no authority to enforce such Rules and Regulations; only the Hitters Tennis Club may do so. Hitters Tennis Club shall take reasonable action to enforce Hitters Tennis Club Rules but shall not be liable for a failure to do so.

- 5.2. Effective Date. The date on which Member shall be entitled to the privileges described in this Agreement shall be the date this Agreement is executed by Member and Hitters Tennis Club.
- 5.3. Enforcement. This Agreement may be enforced only by the Member and Hitters Tennis Club.
- 5.4. Damage by Members or Guests. If a Member, or the guest of a Member, damages the Facilities, or causes personal injury while on or near the Facilities, such Member shall be liable for all claims, damages and costs arising therefrom, whether compensatory, consequential, punitive or incidental, including attorneys' fees, and the Member so responsible, or the Member whose guest was responsible, shall indemnify and hold Hitters Tennis Club harmless therefrom, to the greatest extent allowable by law.
- 5.5. Temporary Suspension. The Tennis Club shall have no liability for the temporary suspension of any privilege due to: maintenance, repair or construction (although Hitters Tennis Club shall act to reasonably minimize the disruption of service to the Members); physical damage to an improvement or the repair, replacement or reconstruction of such improvement; acts of God; inclement weather; utility disruptions; labor disturbances; material shortages; or other matters not within the control of Hitters Tennis Club.
- 5.6. General Limitations. To the greatest extent allowable by law, Hitters Tennis Club shall have no liability for physical damage, theft, loss or personal injury to Members or their guests in any way arising from the use of the Facilities, the Agreement, the Rules and Regulations, or the Application.

VI. General Terms

- 6.1. Assignment. Hitters Tennis Club may assign its interest in this Agreement, and the liability of the assignor shall be terminated as to events occurring after assignment. The Member may not assign the Member's interest in this Agreement.
- 6.2. Management. Without assigning this Agreement, Hitters Tennis Club may engage one or more managers or operators of the Facilities or various portions thereof, whether on a contract, franchise, lease or other basis.
- 6.3. Acceptance. Availability of the Member's privileges hereunder shall be deemed acceptance, to the greatest extent allowable by law, by each Member of the limitations on Hitters Tennis Club's liability hereunder.
- 6.4. Binding Effect. This Agreement is binding upon and inures to the benefit of the respective successors and permitted assigns of the parties. This Agreement may be signed in counterparts and by facsimile signatures.
- 6.5. General. Waivers must be express and in writing. A waiver of any one matter shall not be deemed a waiver of any other matter, whether or not existing or subsequent,

or different or similar. If any provision hereof is unenforceable, the remainder of this Agreement shall be enforced. This Agreement shall be governed by Wisconsin law. This Agreement may be amended only in a writing signed by the parties.

- 6.6. Effect on Prior Membership Agreement. This Agreement, when executed by Member(s) and Hitters Tennis Club, shall supersede and replace any prior membership agreement between such parties.
- 6.7. Mode of Communication. The Member(s) understand the primary mode of communication will be via email and are required to keep their email address up-to-date with Hitters Tennis Club.
- 6.8. Photo Release. The Member(S) gives full permission to use photos as needed.

VII. *Emergency Information*

- 7.1. Medical Release. In case of emergency Hitters Sports Corp's staff has my permission to allow medical treatment to be administered to me, my domestic partner or my child.