

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SOUTH BEND
AND THE TRUSTEES OF HOLY CROSS UNIVERSITY**

THIS AGREEMENT is made and executed between the City of South Bend, Indiana, and its Venues Parks and Arts Department (hereinafter, “the City”), acting through its Board of Park Commissioners, and The Trustees of Holy Cross University, on behalf of its Holy Cross College at Notre Dame, Indiana (hereinafter, “Holy Cross”), (each a “Party” and collectively referred to as the “Parties”).

WHEREAS, the City is the owner of the property located at 837 N. Lafayette Blvd, South Bend, IN 46616, commonly known as Leeper Park Tennis Center (“Facility”) as depicted in Exhibit A attached hereto;

WHEREAS, Holy Cross desires to lease tennis courts at the Facility for use by its Holy Cross University Notre Dame campus; and

WHEREAS, the City and Holy Cross wish to negotiate and come to agreement as to the terms and conditions of Holy Cross’ lease of tennis courts at the Facility.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree to establish the terms and conditions under which to enter into a lease arrangement for the Facility subject to the following terms and conditions:

I. TERM

This term of this Agreement shall commence on August 30, 2019 and continue until August, 30, 2020. This Agreement may be extended for successive one (1) year terms by mutual written agreement of the Parties.

If the Parties cannot agree by October 30, 2019 (or such extended deadline as may be agreed to by the Parties) on the terms and conditions of lease of the Facility, either Party may terminate this Agreement by providing written notice to the other Party. The termination shall be effective ten (10) days from the date of the notice of termination.

If either Party fails to keep, observe or perform any material term or provision of this Agreement, and such default shall continue for a period of thirty (30) days after written notice of breach is given, the non-breaching Party may, in addition to any other remedy available to it in law or equity, terminate this Agreement by providing written notice to the non-breaching Party. The termination shall be effective ten (10) days from the date of notice of termination.

II. GENERAL TERMS

- a) Selection of Block of Tennis Court: Holy Cross shall select to lease either the north (8) courts or the south (6) courts at the Facility (See, Exhibit A). Whichever block of courts that are not leased by Holy Cross shall remain open to use by the public.
- b) Consideration: Holy Cross agrees to pay to the City fourty (\$40) dollars per practice, per scheduled hour of use, plus thirteen (\$13) dollars per hour for a City staff person to open and close the Facility and to be present during scheduled hours of Holy Cross use. The

City will invoice Holy Cross upon commencement of the This Agreement for the entire Agreement term.

- c) Schedule of Use: The City and Holy Cross will work together to develop a schedule of the dates and times of use of the Facility by Holy Cross (hereinafter, the Schedule), attached hereto as Exhibit B. The Schedule shall be developed based upon Facility operating hours of 8 am to 8 pm, Monday through Friday. In case of inclement weather, Holy Cross will have the option to schedule make-up dates and times. The
- d) Right to Shared Use of Parking Lot: Holy Cross shall have use of the parking lot at the Facility during times of its scheduled use of the Facility. During times of Holy Cross scheduled use, the Facility parking lot shall remain open and available for parking by the City and the public.
- e) Insurance: Holy Cross shall have in place, at all times during the term of this Agreement, insurance coverage, including commercial general liability coverage in the minimum amount of \$1,000,000 per occurrence or \$2,000,000 in the aggregate; workers compensation coverage for employees of Holy Cross engaged in activities at the Facility during Holy Cross use; auto liability insurance coverage; and fire, casualty and property damage insurance coverage. Coverage under all such policies shall name the City of South Bend, Indiana as an additional insured party and a certificate evidencing such coverage shall be provided to the City, upon request.

III. RESPONSIBILITIES OF HOLY CROSS

- a) Holy Cross understands and agrees that the Facility is to be used only for the purpose of conducting Holy Cross tennis matches, tournaments, and practices and for no other purpose, without the prior written consent of the City.
- b) Holy Cross shall be responsible for any Holy Cross desired special preparation of the Facility prior to scheduled Holy Cross use and shall restore the Facility following each use; and repair any damaged caused by Holy Cross during its use, normal wear and tear excepted.
- c) Participating Holy Cross students shall be supervised by Holy Cross employees at all times during use of the Facility.
- d) Holy Cross shall remove all trash and debris after each use and place all trash and debris in Facility trash receptacles or dumpsters.
- e) Holy Cross agrees to obey all rules and regulations of the Facility and all applicable local, state and federal laws and regulations.

IV. RESPONSIBILITIES OF THE CITY

- a) The City shall be responsible for the removal of trash and debris located in the trash receptacles and dumpster located at the Facility as customary and necessary.
- b) The City shall be responsible for the cost of electricity usage at the Facility, including lighting of the Facility parking lot.
- c) The City shall be responsible for and promptly repair and damage that is not caused by Holy Cross's use of the Facility.

V. ASSIGNMENT

Holy Cross or its individual members may not assign the rights granted in the Agreement without first obtaining written consent from the City.

VI. ILLEGALITY

If any provision of this Agreement is found by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision that is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

VII. INDEMNIFICATION

Holy Cross agrees and undertakes to indemnify and hold the City and its respective agents, employees, successors, and assigns, harmless from any liability, loss, costs, damages or expenses, including attorneys' fees, which the City may suffer or incur as a result of any claims or actions related to the activities performed or supervised by Holy Cross under this Agreement. If any such action is brought against the City or its respective agents, employees, successors, or assigns, in connection with this Agreement, Holy Cross agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein. The City, however, shall indemnify and hold harmless Holy Cross, its respective agents, employees, successors, and assigns from any liability, loss, costs, damages or expenses, including attorneys' fees, arising out of or resulting from the negligent acts or misconduct of the City, its employees, elected or appointed officials, contractors or other lawful representatives and agents, in connection with this Agreement.

VIII. ENTIRE AGREEMENT

This document contains all of the agreements between the parties regarding Holy Cross's use of the Facilities and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

IX. LAW GOVERNING AGREEMENT

This Agreement shall be governed by the laws of the State of Indiana and venue shall be in St. Joseph County, Indiana.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have caused this Agreement to be executed as of the day and year first written above. The parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures hereby agree to its terms.

(Remainder of page intentionally left blank)

HOLY CROSS COLLEGE AT NOTRE DAME, INDIANA

Signature

Printed Name and Title

Street Address

P.O. Box

City, State Zip

**CITY OF SOUTH BEND, INDIANA
BOARD OF PARKS COMMISSIONERS**

Mark Neal, President

Aimee Buccellato, Member

Consuella Hopkins, Member

Dan Farrell, Member

ATTEST:

Eva Ennis, Clerk

EXHIBIT A
Leeper Park Tennis Center

EXHIBIT B
Calendar of Holy Cross Scheduled Use