

Tennis/Basketball Court Improvement and Use Agreement

Loch Alpine Improvement Association (LAIA), a nonprofit corporation, and The Ann Arbor Country Club (AACC), a nonprofit corporation, make this agreement on _____ December 6 _____, 2007.

RECITALS

- A. LAIA is a neighborhood association whose members are lot owners in the Loch Alpine subdivision located in Washtenaw County, Michigan.
- B. AACC is a private country club located in the Loch Alpine subdivision.
- C. AACC owns 4 tennis courts for exclusive use by AACC and its members.
- D. AACC's tennis courts are in need of repair and refurbishing and are not fully utilized by AACC as tennis courts because of their poor physical condition, and are instead used by AACC as a storage area for golf course materials and debris.
- E. LAIA desires to obtain for the residents of Loch Alpine access to a basketball court and tennis courts.

AGREEMENT

1. Improvement, Repair and Maintenance of the AACC Tennis Courts

1.1 Conversion of 1 tennis court to a basketball court. LAIA will pay the entire cost to convert the existing tennis court that is orientated East and West into a full basketball court according to the plans and specifications attached to this agreement.

1.2 Repair of the tennis court surfaces. LAIA will pay the entire cost to repair and refurbish the surfaces of the 3 tennis courts that are orientated North and South (all tennis courts other than the tennis court being converted to a basketball court) according to the plans and specifications attached to this agreement.

1.3 Maintenance of the basketball court. LAIA is solely responsible for all costs and work necessary for ongoing maintenance of the basketball court surface and all basketball equipment (including the basketball rim, net, backboard and pole). LAIA will keep and maintain the basketball court surface and the basketball equipment in good repair.

1.4 Maintenance of the tennis courts. LAIA and AACC will share equally in the cost for ongoing maintenance of the tennis court surfaces and nets.

1.5 Maintenance of the grounds around the courts. AACC is solely responsible for maintenance of the grounds around the tennis and basketball courts including, but not limited to, lawn mowing, clearing of vegetation and other debris and general landscaping.

2. Use of the Tennis and Basketball Courts

2.1 AACC use of tennis and basketball courts. Members of AACC retain full rights to use the tennis and basketball courts. Except for the use rights that AACC grants to Loch Alpine residents under this agreement, AACC and LAIA do not intend this agreement to restrict the rights of AACC members from use of the tennis and basketball courts.

2.2 Loch Alpine residents' use of tennis and basketball courts. AACC grants to the members of Loch Alpine the right to use the tennis and basketball courts. It is the intent of AACC and LAIA that AACC members and Loch Alpine residents have equal use of the tennis and basketball courts.

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3. LAIA / AACC Courts Committee

LAIA and AACC will each appoint 1 or more persons to serve on a joint "Courts Committee." LAIA and AACC will each have an equal voice on the Courts Committee regardless of the number of persons they appoint to the Courts Committee. LAIA and AACC must both agree to any action taken by the Courts Committee. The respective Board of Directors of LAIA and AACC must approve or ratify any action taken by the Courts Committee.

The Courts Committee will:

- (a) Draft rules for access and use of the tennis and basketball courts by Loch Alpine residents and AACC members (including, but not limited to, limitations of use, hours of use, priority of use, scheduling, dress codes, age restrictions, rotation of use, league play, guest policies and codes of behavior). It is the intent of AACC and LAIA that AACC members and Loch Alpine residents have equal use of the tennis and basketball courts. For example, but not by way of limitation, AACC members and Loch Alpine residents will be eligible to participate in league and open play equally. The respective Board of Directors of LAIA and AACC must approve these rules and any changes to these rules.
- (b) Post the rules on or near the tennis and basketball courts.
- (c) Enforce the rules and mediate complaints made under the rules.
- (d) Monitor the physical condition of the tennis and basketball courts and propose necessary or desirable maintenance and repair of the tennis and basketball courts and grounds to LAIA and AACC consistent with this agreement.

If the Courts Committee or any member of the Courts Committee fail to perform any of the above, the respective Board of Directors of LAIA and AACC have the authority to take any appropriate action.

4. Termination of this Agreement

4.1 Termination by AACC

4.11 Termination if AACC sells property. AACC may terminate this agreement if AACC sells the real property or any part of the real property on which the tennis or basketball courts (or any part of them) are located. Termination of this agreement under this Section 4.11 is effective on the closing date of the sale of the real property. This agreement does not limit or restrict AACC's right to sell its real property at any time for any reason and without notice to LAIA or the Loch Alpine residents. This agreement does not give LAIA or any Loch Alpine resident any right or interest in the real property of AACC. If AACC terminates this agreement under this Section 4.11, AACC will reimburse LAIA for its improvements costs under Section 4.3, if applicable.

4.12 Termination if LAIA is in default under this agreement. AACC may terminate this agreement if LAIA is in default under this agreement. Before AACC can terminate this agreement under this section of the agreement, AACC must give written notice to LAIA of the default. The notice must identify the specific default and cure. LAIA will have 60 days to cure the default. If LAIA does not cure the default within 60 days of the written notice AACC may terminate this agreement. AACC must give LAIA notice of its decision to terminate in writing.

4.13 Termination at the sole discretion of AACC. AACC may terminate this agreement in its sole discretion for any reason whatsoever. AACC must give LAIA not less than 1 year written notice of its intent to terminate this agreement under this Section 4.13. Termination under this Section 4.13 is effective at the end of the 1-year notice period. If AACC terminates this agreement under this Section 4.12, AACC will reimburse LAIA for its improvements costs under Section 4.3, if applicable.

4.2 Termination by LAIA

4.21 Termination if AACC is in default under this agreement. LAIA may terminate this agreement if AACC is in default under this agreement. LAIA must give AACC not less than 60 days

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written notice of default. The notice from LAIA must identify the default by AACC, the actions that AACC must take to remedy the default and the date on which AACC must remedy the default (that date can not be sooner than 60 days from the date the written notice is delivered to AACC). Termination under this Section 4.21 is effective at the end of the 60-day notice period if AACC has not fully cured its default under this agreement. If LAIA terminates this agreement under this Section 4.21, AACC will reimburse LAIA for its improvements costs under Section 4.3, if applicable.

4.22 Termination at the sole discretion of LAIA. LAIA may terminate this agreement in its sole discretion. LAIA must give AACC not less than 1 year written notice of its intent to terminate this agreement under this Section 4.22. Termination under this Section 4.22 is effective at the end of the 1-year notice period. If LAIA terminates this agreement under this Section 4.22, AACC **IS NOT** obligated to reimburse LAIA for its improvements costs under Section 4.3.

4.23 Partial termination at the sole discretion of LAIA. LAIA may make a partial termination of this agreement under this Section 4.23 for any reason whatsoever. For example, LAIA may terminate this agreement under this Section 4.23 with respect to use of the tennis courts and retain its rights to use the basketball court. Likewise, LAIA may terminate this agreement under this Section 4.23 with respect to use of the basketball court and retain its rights to use the tennis courts. If LAIA terminates this agreement in part under this Section 4.23, AACC **IS NOT** obligated to reimburse LAIA for its improvements costs under Section 4.3. However, if LAIA terminates this agreement in part under this Section 4.23, LAIA will no longer have any obligation for maintenance of the court(s) affected by the termination. Partial termination under this section must be by written notice to AACC and will be effective 45 days after the notice is given.

4.3 Reimbursement of LAIA costs upon termination. This Section 4.3 applies if AACC terminates this agreement under Sections 4.11 or 4.13 or if LAIA terminates this agreement under Section 4.21 and the effective date of the termination occurs before the 10th anniversary date of this agreement. If this Section 4.3 applies, AACC will reimburse LAIA for its costs under Sections 1.1 and 1.2 under the following schedule:

Reimbursement Schedule for Certain Terminations

Sections 1.1 and 1.2 that Termination	Percent of Costs under <u>Effective Date of</u> AACC will reimburse to LAIA
Before the 1 st anniversary of this agreement	100%
On or after the 1 st but before the 2 nd anniversary of this agreement	90%
On or after the 2 nd but before the 3 rd anniversary of this agreement	80%
On or after the 3 rd but before the 4 th anniversary of this agreement	60%
On or after the 4 th but before the 5 th anniversary of this agreement	40%
On or after the 5 th but before the 10 th anniversary of this agreement	20%
After the 10 th anniversary of this agreement	0%

Regardless of the reason this agreement terminates, AACC has no obligation to reimburse LAIA for any costs LAIA incurred under this agreement if the termination occurs after the 10th anniversary of this agreement.

This Section 4.3 applies only to costs that LAIA incurred under Section 1.1 and 1.2. Upon completion of the work under Sections 1.1 and 1.2, LAIA will provide AACC with an accounting of the costs LAIA incurred under Section 1.1 and 1.2.

5. Insurance

LAIA and AACC will each obtain and maintain general liability insurance coverage that is applicable to the tennis and basketball courts. The amount of the general liability insurance coverage that is applicable to the tennis and basketball courts will not be less than the general liability insurance coverage that LAIA and AACC normally maintain on their other property in Loch Alpine. LAIA and AACC will each name the other as an “insured” or “additional insured” under their liability insurance policies with respect to the tennis and basketball courts. LAIA and AACC will provide each other with proof of this insurance upon request.

6. Notice

Any notice under this agreement must be in writing. A notice is delivered when actually received or when deposited in the US Mail postage prepaid addressed to LAIA or AACC.

7. General Provisions

7.1 Acknowledgments and advice of counsel. AACC and LAIA each acknowledge and represent that it has read this agreement in its entirety and fully understand all of the terms and conditions of this agreement and its ramifications and consequences. AACC and LAIA each unconditionally consent to the terms of the Agreement. AACC and LAIA each acknowledge that it has had the advice of counsel and that it is not relying on any other representations, either written or oral, express or implied, made by any person. AACC and LAIA further acknowledge and agree that the consideration received by it and described in this Agreement is adequate.

7.2 Binding effect. This Agreement is binding on and inures to the benefit of the heirs, successors, administrators, legal representatives, and assigns of AACC and LAIA.

7.3 Governing law. This Agreement is made under and is governed by the laws of the State of Michigan. Every right and remedy under this agreement of any party hereto is cumulative and non-exclusive of any other right or remedy under this Agreement, applicable law, or in equity.

7.4 Severability. If any court holds that any provision of this agreement is invalid, void or unenforceable the remaining provisions of this agreement will continue in full force and effect. In addition, if any court modifies any provision of this agreement so that the provision is enforceable, then AACC and LAIA may enforce the provision as so modified.

7.5 Entire agreement. This agreement contains the entire understanding of AACC and LAIA, and supersedes and forever terminates all prior and contemporaneous representations, promises, agreements, understandings and negotiations, whether oral or written regarding the subject matter of this agreement. AACC and LAIA have no other agreements or understandings not expressed in this agreement. AACC and LAIA may only amend, modify or supplement this agreement in writing signed by both AACC and LAIA.

7.6 Waiver and forbearance. The failure of AACC or LAIA to complain of any act or omission on the part of the other (no matter how long the same may continue) is not a waiver by AACC or LAIA of any of its rights under this agreement. No consent or waiver by AACC or LAIA at any time of any provision of this agreement is a consent to any other action or waiver of any breach of any other provision of this agreement or a consent to any future action or later breach of the same or any other provision of this Agreement.

7.7 Ambiguity. AACC and LAIA acknowledge that each of them and its attorney or counsel have reviewed this agreement and have suggested changes to its language. Consequently, any rule of construction that construes any ambiguity against the drafter of this agreement does not apply to the interpretation of this agreement.

7.8 Signatures. AACC and LAIA each freely and voluntarily sign this agreement. AACC and LAIA represent that the persons signing below on its behalf have the authority to bind AACC and LAIA, respectively.

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LAIA

Loch Alpine Improvement Association

AACC

The Ann Arbor Country Club

Tom Holland, President & Lucy Cohen, Secretary
Signature

Nicholas Janosi, President _____
Signature

Print name and title

Print name and title

Date signed December 6, _____, 2007

Date signed December 6, _____, 2007