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SHAREHOLDER DECLARATION

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THE CORPORATION OF THE TOWN OF WASAGA BEACH

- and -

WASAGA BEACH SPORTS AND ENTERTAINMENT INC.

Dated as of \_\_\_\_\_, 2024

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# WASAGA BEACH SPORTS AND ENTERTAINMENT INC.

## SHAREHOLDER DECLARATION

\_\_\_\_\_, 2024

### RECITALS:

1. WASAGA BEACH SPORTS AND ENTERTAINMENT INC., a corporation existing under the laws of the Province of Ontario (the “**Corporation**”) is wholly-owned by The Corporation of the Town of Wasaga Beach (the “**Town**”) and incorporated by the Town, as a municipal services corporation in accordance with Municipal Act (as hereinafter defined) and Ontario Regulation 599/06.
2. This Shareholder Declaration sets out the requirements of the Town relating to the governance and other fundamental principles and policies of the Corporation.

### 1. Definitions and Interpretation

- 1.1 Wherever used in this Shareholder Declaration, the following terms shall have the following respective meanings:

“**Board**” means the board of directors of the Corporation.

“**Business Day**” mean any day other than a Saturday, Sunday or a statutory holiday in the Province of Ontario;

“**Chair**” means the Chair of the Board of the Corporation from time to time.

“**Council**” means the council of the Town of Wasaga Beach and, where appropriate, in its capacity as the governing body of the Town, as shareholder of the Corporation.

“**Governmental Authority**” means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule making entity, having jurisdiction in the relevant circumstances, including the Ontario Municipal Board and any Person acting under the authority of any Governmental Authority.

“**Corporation**” has the meaning ascribed thereto in the Recitals.

“**Laws**” means:

- (a) applicable Canadian federal, provincial or municipal laws, orders-in council, by-laws, codes, rules, policies, regulations and statutes;
- (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;

- (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority; and
- (d) any requirements under or prescribed by applicable common law.

“**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), R.S.O. 1990, c. M-56, as may be amended or replaced from time to time.

“**Municipal Act**” means the *Municipal Act, 2001*, S.O. 2001, c.25 as may be amended or replaced from time to time.

“**Municipal Board Member**” has the meaning ascribed thereto in Section 5.3.

“**Municipal Member**” means a current member of Council.

“**OBCA**” means the *Business Corporations Act* (Ontario).

“**Person**” means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, governmental or regulatory authority or other entity of any kind.

“**Shareholder Declaration**” means this shareholder declaration.

“**Shareholder Representative**” has the meaning ascribed thereto in Section 6.1.

“**Subsidiary**” means any subsidiary body corporate (as defined in the OBCA) of a Person, which includes any subsidiary body corporate that is permitted under the Ontario Regulation 599/06.

“**Town**” has the meaning ascribed thereto in the Recitals.

- 1.2 Headings and Table of Contents - The inclusion of headings and a table of contents in this Shareholder Declaration are for convenience of reference only and shall not affect the construction or interpretation of this Shareholder Declaration.
- 1.3 Number and Gender - In this Shareholder Declaration, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- 1.4 Laws - All references to statutes or Laws contained in this Shareholder Declaration means those statutes or Laws in effect from time to time, and all amendments thereto or any re-enactment thereof or replacement statutes.

## **2. Purpose and Governing Principles**

### **2.1 Purposes**

- (a) This Shareholder Declaration sets out the requirements of the Town relating to governance and other fundamental and necessary matters relating to the ownership

of the Corporation and the powers necessary to acquire, hold, dispose of and otherwise deal with the shares thereof and to perform other activities as permitted by applicable Laws. Except as provided in Section 8.1 hereof, this Shareholder Declaration is not intended to constitute an unanimous shareholder declaration under the OBCA or to formally restrict the exercise of the powers of the Corporation Board.

2.2 Overarching Principles - The following principles shall apply to this Shareholder Declaration:

- (a) A shareholder declaration for municipal entities should foster and reinforce a collaborative relationship and shared values among all parties and recognize that the interface between the Town, which is governed by the Municipal Act, public sector and the private sector which is governed by the OBCA and requires mutual respect, understanding and flexibility and regular communication between the Corporation and the Town. Such communication should take place whether or not such activities would require the approval of the Corporation or the Town pursuant to Section 8.1.
- (b) Subject to the provisions hereof, decision-making authority for the Corporation shall be the responsibility of the Board.
- (c) The authority of the Board as described pursuant to this Shareholder Declaration will be accompanied by clearly articulated reporting and approval requirements as set out in this Shareholder Declaration to ensure transparency and accountability.
- (d) The provisions of this Shareholder Declaration should be interpreted so as to maximize transparency and facilitate communication between the Town and the Corporation.
- (e) Shareholder return and benefits will be measured by several metrics, including but not limited to, dividends and the provision of services by the Corporation to the Town. In general, a long term, strategic view will be applied to the measure of shareholder return.
- (f) It is recognized that the Corporation is operated on a “for-profit” basis and operates in a competitive environment.
- (g) The Corporation shall work towards contributing to the building of community capacity, community pride and overall community well-being are key drivers to this Shareholder Declaration.

2.3 Further Assurances – Each of the Town and the Corporation will at all times carry out and cause any corporation in respect of which it is the sole or controlling shareholder to carry out the provisions of this Shareholder Declaration.

### **3. Permitted Business Activities**

- 3.1 As Permitted by Laws - Subject to the restrictions in Section 8.1 hereof, the Corporation may engage in the business activities which are permitted by applicable Laws, and as the Board may determine consistent with Section 3.2 hereof.
- 3.2 Specific Activities - As at the date hereof, the Corporation may engage in any business activities as may be permitted by applicable Laws, including without limitation, the operation and management of certain sports and entertainment facilities within the Town.

### **4. Corporate Governance**

- 4.1 The Corporation's Directors' Duties - As required by the OBCA, the Board shall supervise the management of the business and affairs of the Corporation, and, in so doing, shall act honestly and in good faith with a view to the best interests of the Corporation and shall exercise the same degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.
- 4.2 Standards of Governance – In addition to the foregoing in Section 4.1 hereof, the Board shall observe substantially the same standards of corporate governance as may be established from time to time by the Canadian Securities Administrators or any other applicable regulatory or governmental authority in Canada for publicly traded corporations with such modifications as may be necessary to reflect that the Corporation is a private corporation, not public corporations, and shall include but not be limited to the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50, as may be amended or replaced from time to time.

### **5. Board of Directors and Officers of The Corporation**

- 5.1 Number of Directors - The Board of the Corporation shall consist of seven (7) directors to be appointed and elected by the Town.
- 5.2 Qualification and Composition of the Board – Unless otherwise determined by the Town in its sole and absolute discretion, the Board shall consist of seven (7) directors, with each director being a Municipal Member. Town shall be solely entitled to appoint all of the directors to the Board
- 5.3 Term of Municipal Members - The term for each member of the Board of the Corporation who is a Municipal Member (each a “**Municipal Board Member**”) shall be concurrent with the municipal term of each Council, and each such Municipal Board Member shall be appointed to the Board of the Corporation for such term, provided that:
- (a) following the expiry of such term of Council, such Municipal Board Member shall continue to serve until replaced by the Town as at the effective date of the appointment of a replacement director;

- (b) notwithstanding this Section 5.3, the Town may, in its sole discretion, remove such Municipal Board Member prior to the end of the municipal term of Council and appoint a replacement director for such Municipal Board Member; and
- (c) where a director of the Board of the Corporation resigns or his or her term is terminated for any reason prior to the end of the municipal term of Council then in effect, the term of the replacement director shall be concurrent with the balance of the municipal term of Council then in effect.

5.4 Meetings of the Board - Unless all of the directors waive notice of a meeting, notice of the time and place for the holding of every directors' meeting shall be given to each director by sending a written notice of the meeting, which may be sent by fax or e-mail, no less than 48 hours before the time of the meeting. A quorum for meetings of the Board shall be a majority of the directors. Any director may participate in any meeting of the Board by telephone or e-conference.

5.5 Chair of The Corporation – The Chair of the Board shall be the Mayor of the Town.

5.6 The Board Committees - The Board may establish committees of the Board. Such committees may include, but are not limited to, the following:

- (a) Audit and Finance Committee to review financial results of the Corporation; and
- (b) Governance Committee to address governance matters for the Corporation.

5.7 Director Compensation - No member of the Board shall receive any remuneration or other compensation of any kind for serving as a member of the Board.

## **6. Decisions of the Town & Shareholder Representative**

6.1 Shareholder Representative - The Town hereby designates the Chief Administrative Officer of the Town or such other individual as may be designated by the Chief Administrative Officer of the Town from time to time as the Town's representative for purposes of communicating to the Board any consent or approval required by this Shareholder Declaration or by the OBCA (the "**Shareholder Representative**").

6.2 Town Approval – Approvals or decisions of the Town required pursuant to this Shareholder Declaration or the OBCA shall be communicated in writing to the Board and signed by the Shareholder Representative.

6.3 The Corporation Approvals - Approvals or decisions of the Corporation required pursuant to this Shareholder Declaration shall require a resolution of the Board and, where expressly required pursuant to this Shareholder Declaration, the approval of the Town.

## **7. The Corporation Reports to Town**

7.1 Annual Report to Council - Within six (6) months after the end of each financial year of the Corporation, the Corporation shall report to Council and provide the following information with respect to the Corporation:

- (a) audited consolidated financial; and
- (b) projected dividend payments to the Town for then current fiscal year;
- (c) such additional information as the Town may request from time to time.

7.2 Confirmation of Compliance - The Board shall, in a confidential report to Council, annually confirm within thirty (30) days following the end of each financial year that the Corporation has complied with the requirements of this Shareholder Declaration and is in compliance with applicable Laws.

7.3 Confidentiality

- (a) Except as required by applicable law or any Governmental Authority and except for the annual report to Council pursuant to Section 7.1, the Town shall treat as confidential all other information provided to it in confidence pursuant to this Section 7, subject to the provisions of the *Municipal Act, 2001* and applicable Laws. The parties acknowledge that information that is in the custody or under the control of the Town or the Corporation may be subject to the access provisions of the MFIPPA.
- (b) The Town acknowledges that the Corporation shall, from time to time, supply the Town in confidence with confidential information, the disclosure of which could reasonably be expected to significantly prejudice the competitive position of or interfere with contractual or other negotiations of the Corporation or result in undue loss to the Corporation's business or the value of the Corporation, and the Town shall protect such information in accordance with the exemption for third party information and any other applicable exemptions as set out in the MFIPPA.
- (c) The Town shall inform the Corporation of any request made for access to information supplied to the Town by the Corporation, and provide the Corporation an opportunity to make representations on the disclosure of such information, and consider any such representations prior to disclosing or permitting access to the information and shall provide the Corporation with notice of its decision concerning any such request for access to information.

## **8. Matters Requiring Town Approval**

8.1 Approvals in Respect of the Corporation - The Town hereby directs the Corporation at all times to seek the prior written approval of the Town in respect of each of the following matters prior to the Corporation implementing, undertaking or causing to be implemented or undertaken any of the following matters with respect to the Corporation:



- (a) liquidate, dissolve or wind-up the affairs of the Corporation, any assignment of property for the benefit of creditors in general, any filing of a notice of intention to make a proposal and any filing of a proposal within the meaning of the *Bankruptcy and Insolvency Act* (Canada);
- (b) amend, alter or repeal any provision of the Articles, by-laws and charter documents of the Corporation;
- (c) alter or change the rights, preferences or privileges of the shares of the Corporation or decrease the authorized number of shares of the Corporation;
- (d) declare or pay any dividends or make any distribution, whether in cash, in stock or in specie, on or in respect of any of the Corporation's shares, unless such declaration is contemplated by this Shareholder Declaration;
- (e) increase the number of directors on the Board;
- (f) issue or sell any shares or any securities exchangeable or convertible into shares of the Corporation;
- (g) reserve or allot any shares of the Corporation;
- (h) create any employee stock option plan or other option plan for the benefit of employees of the Corporation;
- (i) declare any bonuses to any member of management of the Corporation, including without limitation any bonus declared to the President or Chief Executive Officer of the Corporation;
- (j) create, amend, or issue any shares or options to acquire securities of the Corporation under an employee stock option plan or other option plan;
- (k) delegate any power, right or duty of the directors of the Corporation other than to a duly appointed committee of the Board;
- (l) increase or decrease the remuneration of any officer of the Corporation;
- (m) borrow more than One Million Dollars (\$1,000,000);
- (n) act as a guarantor or surety for any third party or provide financial assistance, whether by guarantee or otherwise, to any third party;
- (o) enter into any merger, amalgamation, arrangement, or other corporate reorganization or recapitalization, including without limitation any financing;
- (p) institute any material legal action or application in any provincial, federal or other court or before any administrative tribunal, save and except for any action instituted for the payment of goods sold and delivered or for payment of services;

- (q) enter into any contract or commitment, or series of contracts or commitments in excess of One Million Dollars (\$1,000,000), including, without limitation, credit arrangements for the benefit of the Corporation;
- (r) grant any mortgage, hypothec, charge or other security interest of any personal property and real property of the Corporation, except for any purchase-money security interest within the meaning of the *Personal Property Security Act* (Ontario) or statutes anywhere of similar import, over any assets of the Corporation;
- (s) give any financial assistance to third parties;
- (t) establish, or make any material change in its accounting policies;
- (u) make any change in the accountants or auditors of the Corporation or in the nature of the audit engagement, e.g., from audited to non-audited;
- (v) carry out the sale, lease or other disposition by the Corporation of all or substantially all its assets in any one transaction or series of related transactions, or the granting of any option or other right in respect of any such sale, lease or disposition;
- (w) acquire all or substantially all the assets of any other municipal services corporation or business entity, or amalgamate or merge with or into any other municipal services corporation or business entity or carry out any reorganization or arrangement or apply to be continued as a municipal services corporation under the laws of any jurisdiction outside Ontario;
- (x) enter into any material contract, agreement or commitment out of the usual everyday normal practices of the business of the Corporation, expand the scope of the business beyond the geographic confines of the Town of Wasaga Beach, acquire or establish any additional business or make any material change in, or terminate or suspend any material part of the Corporation's business;
- (y) redeem or purchase securities of the Corporation;
- (z) create or hold capital stock in any Subsidiary or dispose of any Subsidiary stock or all or substantially all of any Subsidiary's assets sell all or substantially all the assets of the Corporation;
- (aa) enter into any agreement or transaction with any party not acting at arm's length with the Corporation;
- (bb) enter into any material contract, agreement or commitment out of the usual everyday normal practices of the business of the Corporation, expanding the scope of the business beyond the geographic confines of the Town, acquiring or establishing any additional business or making any material change in, or terminating or suspending any material part of its existing business, making loans

to, investments in, or giving guarantees on behalf of any Person out of the usual everyday normal practices of the business of the Corporation;

- (cc) grant exclusive and/or perpetual rights in the technology and/or intellectual property, owned or used by the Corporation;
- (dd) enter into any lease or licence of real estate or movables involving rental payments of more than One Million Dollars (\$1,000,000);
- (ee) grant any licence in respect of any part of the Corporation's material property;
- (ff) franchise any third party to use any of the property of the Corporation;
- (gg) enter into any strategic alliance, partnership, joint venture or other transaction outside the ordinary course of business of the Corporation;
- (hh) acquire any real property;
- (ii) outsource any activities of the Corporation except such activities as are non-core functions of its business and are non-material;
- (jj) effect any substantial change in the business of the Corporation; or
- (kk) allow any Subsidiary to do any of the foregoing.

## **9. Revisions to this Shareholder Declaration**

This Shareholder Declaration may be revised or amended from time to time. The Town will promptly provide the Board with copies of any and all revisions or amendments to this Shareholder Declaration.

## **10. The Corporation Activities**

A considerable amount of activities and business of the Corporation shall be carried out pursuant to one or more services agreement among the Corporation the Town or as otherwise agreed to by the Corporation and the Town in writing.

## **11. Notices**

- (a) Any notice, designation, communication, request, demand or other document, required or permitted to be given or sent or delivered to or from the Town or the Corporation shall be in writing and shall be sufficiently given or sent or delivered if it is:
  - (i) delivered personally,
  - (ii) sent to the party entitled to receive it by registered mail, postage prepaid, mailed in Canada,

- (iii) e-mail, subject to the requirements of the OBCA, or
  - (iv) sent by facsimile.
- (b) Notices shall be sent to the Corporation and Town as follows:

To: Town

30 Lewis Street  
Wasaga Beach  
Ontario L9Z 1A1  
Attention: Nicole Rubli, Clerk of Wasaga Beach  
E-mail: [Nicole.rubli@wasagabeach.com](mailto:Nicole.rubli@wasagabeach.com)

To: the Corporation

30 Lewis Street  
Wasaga Beach  
Ontario L9Z 1A1  
Attention: Josh Pallas, Director Sports and Entertainment  
E-mail: [josh.pallas@wasagabeach.com](mailto:josh.pallas@wasagabeach.com)

or to such other address, electronic mail address or facsimile number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this Section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.

- (c) Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall:
- (i) if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery;
  - (ii) if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received (but not actually received) on the fifth (5th) Business Day following the date of mailing, unless at any time between the date of mailing and the fifth Business Day thereafter there is a discontinuance or interruption of regular postal service, whether due to strike or lockout or work slowdown, affecting postal service at the point of dispatch or delivery or any intermediate point, in which case the same shall be deemed to have been given, sent, delivered and received in the ordinary course of the mails, allowing for such discontinuance or interruption of regular postal service;
  - (iii) if sent by facsimile machine, be deemed to have been given, sent, delivered and received on the date the sender receives a response in writing confirming receipt by the recipient; and

- (iv) if delivered by electronic mail, be deemed to have been given sent, delivered and received on the date of delivery.

## **12. Replacement of Previous Declarations**

Any prior shareholder declarations relating to the Corporation are hereby terminated and of no further force or effect as of the effective date of this Shareholder Declaration.

*[Signature Page Follows]*

**DATED** at Wasaga Beach as of the first date written above.

**THE CORPORATION OF THE TOWN OF  
WASAGA BEACH**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title: