

**FIRST AMENDMENT TO PROFESSIONAL
FULL TENNIS SERVICES MANAGEMENT AGREEMENT**

This **FIRST AMENDMENT TO PROFESSIONAL FULL TENNIS SERVICES MANAGEMENT AGREEMENT** (this "First Amendment"), is made and entered into effective as of July 21, 2015 (the "Effective Date"), by and between **the CITY OF MCKINNEY**, a Texas Municipal corporation (hereinafter "City") and **LIFETIME TENNIS INC.**, a Texas corporation (hereinafter "Manager").

A. City and Manager entered into that certain Professional Full Tennis Services Management Agreement (hereinafter "Management Agreement") dated as of February 3, 2012.

B. City and Manager desire to amend the Management Agreement as further set forth herein. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Management Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, City and Manager hereby agree to amend, modify and supplement the Management Agreement as follows:

1. Section 2.03.A. **Term** shall be amended to read as follows:

"A. The initial term of this of this Agreement shall commence on February 3, 2012 and shall terminate on February 2, 2017 (the "Initial Term"), unless mutually extended by written agreement of the parties or unless sooner terminated as provided herein. City and Manager shall have the right, but not the obligation, upon their mutual agreement to extend the term of this Agreement for two (2) additional periods of five (5) years each, commencing on the expiration of the Initial Term, subject to such additional or other terms and provisions as the parties may agree in writing. Upon mutual agreement the first extension term would commence on February 3, 2017 and terminate on February 2, 2022; and the second extension term, if agreed, would commence on February 3, 2022 and terminate on February 2, 2027. The preceding sentences shall not obligate either party to extend the term of the Agreement, and the City may take into consideration Manager's prior performance and compliance with this Agreement in its decision to extend, if at all. The failure of either party to agree to an extension of the term of this Agreement shall not be deemed a breach by such party of the covenant of good faith and fair dealing. If a party is interested in pursuing negotiations to extend the term of the Agreement, the party shall provide notice to the other party not later than twelve (12) months prior to the expiration of the then-current term of the Agreement. No less than six (6) months prior to the expiration of the existing term of the Agreement, the parties shall enter into an extension of the Agreement or provide notice that the Agreement will not be extended."

2. Section 2.04.A.5(b) **Fees** shall be amended to read as follows:

“(b) Fees

Unless otherwise specifically contained in the City’s Fee Ordinance, Manager shall charge and collect tennis complex fees according to an agreed, written fee schedule to be formulated between the City Manager, or his designee, and Manager in January of each year of this Agreement, including each year of any extension term. Market rates shall be considered during the evaluation and formulation of new fees. The fee schedule attached as Exhibit B shall govern fees and charges until otherwise modified pursuant to this paragraph. The City Manager shall set fees and charges for any period in a manner that is consistent with the annual Park budget. Upon any modification to the fees and charges, the parties shall execute an acknowledgement of such fees. Save and except instances where Manager has obtained the prior written consent of the Director, Manager’s failure to properly assess fees to any Tennis Complex user shall constitute non-compliance under Section 2.21.”

3. Section 2.05.B. **Maintenance and Repair** shall be amended to delete the following paragraph:

“The Manager or his representative shall meet with the Director or his representative once every four (4) weeks and at such other times as may be required by City to Manager's performance under this Agreement and to discuss any problems or other matters as determined by City.” [Deleted]

4. Section 2.09 **Operating Budget** shall be amended to read as follows:

“Manager is solely responsible for the formulation and implementation of operating programs, business plans, and Operating Budgets for the Tennis Complex. It is the Manager’s responsibility to monitor its adherence to the Operating budget on an ongoing basis. Any expenditure included in the Operating Budget shall be considered an Operating Expense for which Manager assumes sole and full responsibility. In January of each year, Manager shall meet with the Director to review the Agreement terms, discuss conditions of the Facilities, and establish a list of priorities for enhancement of the Facilities as part of the City’s annual budget process. Manager is not required to attend all Park and Recreation Board meetings; however Manager may be required to meet with such board, upon request. Manager shall make an annual report to the Park and Recreation Board in January of each year. The Director will prescribe the contents of the annual report to the Manager prior to each annual report.”

5. Exhibit B **McKinney Tennis Complex Fees** shall be amended to read in accordance with the attached Exhibit A.

6. Except to the extent the Agreement is modified by this First Amendment, the remaining terms and conditions of the Management Agreement shall remain unmodified

and in full force and effect. In the event of any conflict between the terms and conditions of the Management Agreement and the terms and conditions of this First Amendment, the terms and conditions of this First Amendment shall prevail and control.

7. The Management Agreement, together with this First Amendment, embodies the entire understanding between the parties hereto with respect to its subject matter and can be changed only as set forth in the Management Agreement.

8. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same First Amendment.

IN WITNESS WHEREOF, the undersigned have duly executed this Amendment to be effective as of the day and year first above written.

***[the remainder of this page is intentionally left blank;
signature pages to follow]***

CITY:

CITY OF MCKINNEY,
a Texas municipal corporation

By: _____
Tom Muehlenbeck
Interim City Manager

Date: _____

LIFETIME TENNIS, INC.,
a Texas corporation

By: _____
Name: _____
Title: _____
Date: _____

(Seal)

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

Exhibit A

McKinney Tennis Complex Fees

2015 – 2016 COURT USAGE & LESSON FEES*

ANNUAL COURT USE FEES*

- Resident Family (2-4 people) \$325 per year
- Resident Adult \$180 per year
- Resident Senior (Military) \$155 per year
- Resident Youth \$115 per year
- Non-Resident Family \$435 per year
- Non-Resident Adult \$225 per year
- Non-Resident Youth \$140 per year
- Add'l Family Members \$100 per year

SINGLE USE FEES

1.5 HOUR COURT USE FEES (per player):

- Resident Youth \$3.00
- Resident Adult \$3.50
- Non-Resident Youth \$4.00
- Non-Resident Adult \$4.50
- Adv. Group Reservations \$20.00
(for outside group rentals)

BALL MACHINE SERVICE

(Prices include applicable court use fee)

1 HOUR USE:

- Resident \$13.00
- Non-Resident \$15.00

3-month "any day" pass:

- Resident \$105.00
- Non-Resident \$115.00

6-month "any day" pass:

- Resident \$165.00
- Non-Resident \$180.00

LESSONS

Hourly Rates:

- Private types (private, semi, group) \$75.00 + \$5.00 per extra person
- P&R classes and camps \$13.00 (8:1 student to teacher ratio)
- Competition programs \$20.00 (6:1 student to teacher ratio)

**Listed fees and student ratios will serve as maximums. Fees and ratios may be offered at lower amounts.*