

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

This **THIRD AMENDMENT TO PROFESSIONAL FULL TENNIS SERVICES MANAGEMENT AGREEMENT** (the "Third Amendment"), is made and entered into effective as of the ____ day of _____, 2022 (the "Effective Date"), by and between the **CITY OF MCKINNEY**, a Texas home rule municipal corporation (hereinafter, the "City") and **LIFETIME TENNIS, INC. d/b/a IMPACT ACTIVITIES**, a Texas corporation (hereinafter "Manager").

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

B. The City and Manager subsequently entered into that certain First Amendment to Professional Full Tennis Services Management Agreement (hereinafter, the "First Amendment") dated as of July 21, 2015, and that certain Second Amendment to Professional Full Tennis Services Management Agreement (hereinafter, the "Second Amendment") dated as of February 1, 2017.

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

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

1. Subsection A of Section 2.03, entitled "Term", shall be amended to read as follows:

"The initial term of this Agreement shall commence on February 3, 2012 and shall terminate on February 2, 2037 (the "Initial Term"), unless mutually extended by written agreement of the parties or unless sooner terminated as provided herein. The City and Manager shall have the right, but not the obligation, upon their mutual agreement to extend the term of this Agreement for one (1) additional period of five (5) years, 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 extended term would commence on February 3, 2037, and terminate on February 2, 2042. The preceding sentence shall not obligate either party to extend the term of this 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 this 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 this Agreement. No less than six (6) months prior to the expiration of the existing term of this Agreement, the parties shall enter into an extension of this Agreement or provide notice that this Agreement will not be extended.”

2. Subsection A of Section 2.10, entitled “Operating Payments”, shall be amended to read as follows:

“Prior to October 1, 2022, the Manager shall remit to the City a lump sum payment of Five Hundred Thousand Dollars (\$500,000).

Thereafter, beginning October 1, 2022 and on a quarterly basis during each year thereafter, Manager shall pay to the City a quarterly payment with set increases every five (5) years as follows:

Lease Year	Annual Amount	Percentage Payment	Quarterly Amount
1-5	\$160,000.00	n/a	\$40,000.00
6-10	\$180,000.00	n/a	\$45,000.00
11-15	\$180,000.00	2%	\$45,000.00

In addition to a quarterly payment, commencing on October 1, 2032 and during Lease Years 11-15, Manager shall pay to City two percent (2%) of every dollar of its Gross Receipts exceeding \$750,000 for any fiscal year (October 1 – September 30) during Lease Years 11-15 (“Percentage Payment”).

Quarterly payments are due no later than the 15th of the month following the applicable quarter of operation throughout the term of this Agreement. The Percentage Payment due during Lease Years 11-15 shall be made by November 1 of each calendar year, with the Percentage Payment based upon a statement showing the total Gross Receipts for the preceding fiscal year ending September 30. Sums paid hereunder are subject to reconciliation and adjustment as provided in Section 2.14 hereto.

Upon mutual agreement to extend the term of this Agreement for one (1) additional period of five (5) years, commencing on the expiration of the Initial Term, subject to such additional or other terms and provisions as the parties may agree in writing, the Operating Payments shall be \$200,000.00 (\$50,000.00/quarter) plus two percent (2%) of Gross Receipts as described in this Section.

Manager shall submit all such payments at the Office of the Director. Any payment made by check shall be payable to the order of the City of McKinney.”

3. Subsection A of Section 2.11, entitled "Improvement Fund", shall be amended to read as follows:

"Within thirty (30) days after execution of the Third Amendment, Manager shall pay to City the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00), to be used by City for the purchase of capital equipment for the Tennis Complex. The capital equipment purchased with the money paid to City under this section shall be the property of the City and shall not be considered real or personal property of Manager's."

4. Except to the extent the Original Agreement or the First or Second Amendments are modified by this Third Amendment, the remaining terms and conditions of the Original Agreement and First and Second Amendments shall remain unmodified and in full force and effect. In the event of any conflict between the terms and conditions of the Original Agreement or the First and Second Amendments and the terms and conditions of this Third Amendment, the terms and conditions of this Third Amendment shall prevail and control.

5. The Original Agreement, together with the First and Second Amendments and this Third 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 Original Agreement.

6. This Third 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 instrument.

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

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

CITY OF MCKINNEY,
a Texas home rule municipal corporation

By: _____
PAUL G. GRIMES
City Manager

Date: _____

LIFETIME TENNIS, INC.
d/b/a IMPACT ACTIVITIES,
a Texas corporation

By: _____
MATTHEW HANLIN
President

Date: _____

ATTEST:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney