

**AGREEMENT FOR MANAGEMENT AND OPERATION OF THE MINT  
VALLEY RACQUET AND FITNESS COMPLEX**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_,  
2013, by and between the CITY OF LONGVIEW, a municipal corporation, hereinafter  
referred to as "City" and DON HARLAN, hereinafter referred to as "Professional",

**WITNESSETH:**

WHEREAS, the City is the owner of the Mint Valley Racquet and Fitness  
Complex located at 4004 Pennsylvania Street, Longview, Washington (hereinafter  
referred to as the "Complex") for the use and benefit of the public; and

WHEREAS, City desires to provide professional racquet sport services for the  
convenience and enjoyment of the public; and

WHEREAS, the Professional is a certified Level 1 Professional with the United  
States Professional Tennis Association or a certified Professional with the United States  
Professional Tennis Registry, and is desirous of obtaining the concession for the  
operation of the Complex; and

WHEREAS, the Professional represents that he is qualified in all respects for the  
operation of a racquet sports complex;

NOW, THEREFORE, in consideration of the mutual promises and agreements of  
the parties herein contained, it is hereby agreed as follows:

**GENERAL PROVISIONS**

1.01 The City hereby grants to the Professional the concession of Complex for a period of three (3) years, commencing the 1st day of January, 2013, and terminating on the 31st day of December, 2015.

1.02 It is hereby understood, agreed and declared that the Professional (including Professional's employees) is an independent contractor and not an agent or employee of the City, and that no liability shall attach to the City by reason of entering into this Agreement, except as may expressly be provided herein. The Professional's performance of duties and responsibilities shall be evaluated by the Director of Parks and Recreation hereafter referred to as the Director, or his designated representative. If, in the performance of this Agreement, any third persons are employed by Professional, such person shall be entirely and exclusively under the direction, supervision, and control of Professional. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Professional.

1.03 The Professional shall, during the term of this Agreement, devote his time, skill and attention to promote the total operation of the Complex, including the activities of junior tennis, complete lesson program, men's and women's leagues and activities, tournaments, clinics and exhibitions, fitness programs, as well as any other matters of public recreation, which the Professional and the Director mutually agree will be beneficial in promoting racquet sports and fitness activities. Professional shall conduct no operations or activities at the Complex other than as are set forth herein.

## **OBLIGATIONS OF PROFESSIONAL**

2.01 Professional shall operate such concession every day, including Sundays and holidays, with the exception of Christmas day, and during such hours as are approved by the Director. Closure is permitted only with the approval of the Director or his or her designees. The Professional shall not be absent from the premises for a period of more than eight (8) consecutive days without first notifying the Director of said absence. Failure to notify the Director of such absence shall not constitute grounds for terminating this Agreement unless failures occur more than twice in any calendar year. During such time of absence, suitable personnel shall be placed in charge of the Professional's duties.

2.02 The Professional shall provide, at his own expense, such other employees as he may deem necessary, to aid and assist him in the performance of his duties. The Professional shall provide adequate supervision over all personnel employed by him and the services of such employees shall be available to the public at all times while the Complex is open. Any complaint by the public about employees shall be subject to review by the Director.

2.03 Professional's personnel shall at all times while on duty be clean and neatly groomed, courteous, efficient, and attired appropriately for the Complex.

2.04 Professional shall at all times maintain a high standard of services to the public, to the satisfaction of the Director. Upon written notice by the Director that the conduct of any of Professional's personnel is detrimental to the best interests of the public, or to City, Professional shall, within five (5) business days thereafter, furnish evidence satisfactory to the Director of correction of such deficiency.

2.05 Professional shall staff the Complex with personnel to conduct the operations authorized hereunder, in sufficient number to meet public demand for prompt, courteous, and efficient service. Professional shall adjust the number of his assigned personnel, or hours of operation, as mutually agreed upon with the Director. Professional shall, in

writing, inform the Director of the full names of each of his personnel assigned to the Professional's staff in January and July each year.

2.06 Professional shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, age, disability, marital status or national origin, in violation of the law. Professional shall take affirmative action, as necessary, to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, age, national origin, disability, or marital status, in violation of the law. Such action shall include but not be limited to employment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Professional shall comply with all applicable federal, state, and City statutes, ordinances, regulations, directives, and laws.

2.07 Professional shall not discriminate in the provision of services because of color, race, creed, national origin, religion, sex, sexual orientation, age, or physical or mental handicap in accordance with Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and all other applicable laws and regulations requiring no discrimination. Professional shall also comply with Federal, State, and City Equal Employment Opportunity requirements.

2.08 Professional shall comply with the Americans with Disabilities Act as it relates to all operations under his jurisdiction including but not limited to court usage, instructional lessons, tournament play, and retail sales. It is the responsibility of Professional to make reasonable accommodations for qualified individuals with disabilities. Reasonable accommodations may include but not be limited to modifications to rules and equipment, pairing or grouping of individuals for reservations, co-participation between facility users and/or staff and patrons, instructional techniques, and consideration of any other means of allowing for full participation of an individual.

2.09 The parties hereto mutually pledge to work together in a spirit of cooperation and to negotiate in all areas and among all parties involved in order to develop the Complex to its full potential and to give the best service to the patrons of this facility. The City and Professional shall jointly negotiate, prepare and participate in a joint marketing and promotion program. Examples of this joint marketing and promotion include lessons offered under the auspices of City's recreation program, placing City's and Professional's program materials in the Complex and City offices, and using City's recreation programs guides to publicize racquet and fitness opportunities at the Complex. Professional shall, as a part of this Agreement, work with the Director and City officials, in promoting racquet sports and the Complex. Professional shall use his best efforts to develop and maintain cooperative working relationships with the aforesaid persons and other interested organizations in order to provide the best programs and services possible for the public. Professional and City staff will discuss opportunities to use the Complex as a location for City recreation classes and activities at mutually beneficial times.

2.10 The Professional shall provide, and be responsible for, the following duties:

(a) The Professional shall be responsible for the enforcement of all existing rules and regulations governing the use of the Complex, a copy of which is attached hereto.

(b) The Professional shall be under the direct responsibility of and accountable to the Director who shall together with the Professional review and establish hours of operation, and pricing of fees, membership dues, and lessons so as to remain competitive with the racquet sports and fitness facilities market.

(c) The Professional shall retain and be fully responsible for the collection of all revenues associated with the operation of the Complex. Professional shall keep complete records of accounts with regard to all moneys collected hereunder and make said reports available to the Director in an annual report and audit.

(d) The Professional will procure, at his expense, all janitorial supplies including paper products, cleansers, light bulbs, etc., and will be responsible for all janitorial functions within the Complex and maintain the same in a safe, neat, sanitary,

and orderly condition in compliance with City's direction, any and all applicable present and future laws, and general rules and regulations of any governmental authority in force now or at any time during the term of this Agreement relating to sanitation, public health, safety, or welfare. Professional shall remedy without delay any defective, dangerous, or unsanitary conditions. Professional shall correct such situation within a reasonable time, or City may, at its option, do so at Professional's sole cost and expense, payable upon demand, provided that City shall have first provided reasonable notice of such condition to Professional, and Professional shall have failed or refused to correct such situation within a reasonable period of time. Professional is not responsible for the replacement of plumbing, the heating and air-conditioning plant, exterior painting of the Complex, floor coverings, and other capital repairs related to the Complex.

(e) The Director may, at any time, without notice, enter the Complex to determine if repairs, housekeeping and maintenance satisfactory to City are being performed. If it is determined that said housekeeping or maintenance is not satisfactory, City shall so notify Professional in writing. If said housekeeping or maintenance is not performed by Professional within thirty (30) day after receipt of written notice, City, or its agents, shall have the right to enter the Complex and perform the maintenance therefor. However, maintenance required to avoid substantial harm to the building, its contents or other persons, or health and safety items shall be performed immediately. The reasonable cost thereof shall be borne by Professional payable on demand. The City shall also be held accountable for responding to facility operations needs within thirty (30) days written notice so as not to detract from the public's enjoyment of the complex nor hamper the Professional's ability to provide services.

(f) Professional shall conduct his operations in a first-class, businesslike, efficient, courteous, and accommodating manner. The Director shall have the right to make reasonable objections to the quality and character of articles sold and services offered to the public and the appearance and condition of the premises utilized by the Professional for its operations. The Director also reserves the right to prohibit the sale or rental of any items of merchandise which are deemed objectionable or completely unrelated to a racquet sports and fitness complex. Professional shall promptly meet and

confer with the Director regarding any such objectionable items or practice upon written notification by the Director.

(g) The Professional shall provide to the City a full financial disclosure according to generally accepted accounting principles of his entire operation at the Complex by June 30<sup>th</sup> of each year, and shall make available his books and records for audit at a mutually convenient time and place. If at any time the Director or the City's Finance Director deems Professional accounting practices or procedures inadequate or not in accordance with general accepted accounting principles, Professional shall make requested adjustments to its practices and procedures. Any other internally prepared financial or statistical reports reasonably requested by the Director from time to time during the term hereof shall be provided by Professional, without cost to City, within a reasonable period of time. To the extent permitted by law, City shall keep the financial reports and records referred to above confidential. Professional shall retain all its books and records of account for the term hereof for not less than two (2) calendar years following the last day of such term. Such books and records of account shall show all Professional's gross receipts, commissions, and other income derived from his operations, pursuant to this Agreement, all deductions therefrom, supporting documents, and all other information required by this Agreement. At any time within two (2) calendar years following the last day of the term hereof, upon written notification to Professional, City may, at its sole cost and expense, inspect, audit, and copy Professional's books, records of account, and supporting documentation relating to Professional's operations at the Complex.

(h) Professional shall, at his sole cost and expense, obtain and maintain in full force and effect throughout the term of this Agreement any and all applicable permits and business licenses which may be required by any law, including administrative regulations and local ordinances, for the conduct of Professional's operations hereunder.

**(i) Indemnification / Hold Harmless**

Professional shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Professional's use of Premises, or from the conduct of Professional's business, or from

any activity, work or thing done, permitted, or suffered by Professional in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

**(j) Insurance**

The Professional shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Professional's operation and use of the Premises.

**1. Minimum Scope of Insurance**

Professional shall obtain insurance of the types described below:

- a. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on Professional's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.
- b. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- c. Property insurance shall be written on an all risk basis.
- d. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington

**2. Minimum Amounts of Insurance**

Professional shall maintain the following insurance limits:

- a. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- b. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- c. Property insurance shall be written covering the full value of Professional's property and improvements with no coinsurance provisions.

**3. Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

- a. The Professional's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Professional's insurance and shall not contribute with it.
- b. The Professional's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

#### **4. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

#### **5. Certification of Coverage**

Professional shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Professional.

#### **6. Waiver of Subrogation**

Professional and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

#### **7. City's Property Insurance**

City shall purchase and maintain during the term of the lease all-risk property insurance covering the Building for their full replacement value without any coinsurance provisions.

**8. City and Professional shall each give the other prompt and timely written notice of any personal injury or accident claim for in excess of one thousand dollars (\$1,000), and of any lawsuit coming to its knowledge, when either such claim or lawsuit arises out of or is in any way connected with the operations of Professional hereunder or the operation of the Complex by City which in any way, directly or indirectly, contingently or otherwise, might reasonably affect the parties' relationship under this Agreement. Such notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of such claim by an officer, agent,**

or employee of either party, and, if given within ten (10) calendar days following the date of service of process upon either party with respect to any such lawsuit.

City shall not be liable for, and Professional hereby releases City from, any and all liability to Professional, Professional's insurance carrier, or to any person claiming under or through Professional for any loss or damage whatsoever to the buildings, structures, areas and contents thereof constituting the Complex resulting from fire, the discharge of water or other substance, from pipes, sprinklers, conduits, containers, appurtenances thereof or fixtures thereto, or from any damage resulting from the discharge or failure of electric current, regardless of cause or origin, save and except for that which is caused by the intentional wrongful act and/or active negligence of City, its officers, agents or employees. Further, Professional shall be solely responsible for the safety and security of its property, equipment, supplies, merchandise, and commodities used or offered for sale by Professional at the Complex. City shall have no liability or responsibility whatsoever to Professional, Professional's insurance carrier, or to any person claiming under or through Professional, and Professional shall make no claim against City, with respect to such matters. The Professional shall have the right to obtain insurance against such losses and any proceeds would be paid to the Professional.

2.11 Professional accepts the Complex in the condition existing immediately prior to this agreement. City shall repair or replace any part of the Complex damaged or destroyed by casualty. Professional shall, at his sole cost and expense, equip and maintain such facilities with all such appliances and equipment as may be necessary or convenient to Professional's operations hereunder. City shall have no obligation to equip or improve such facilities. However, all equipment proposed to be installed or otherwise provided by Professional shall be subject to the inspection and approval of the Director. City shall permit Professional to use whatever City owned equipment, if any, that City may subsequently place at such facility being in proper working order. Any such equipment used by Professional shall be taken "as is", inventoried, repaired or renovated, if necessary, at the sole expense of Professional and returned to City at the end of the term

hereof. Professional shall at his sole cost and expense, perform proper and timely maintenance. Professional shall make no refurbishment or alterations to the Complex, whether in whole or in part, nor construct additional improvements upon the said premises without the prior written approval of the Director. Any such work shall be at Professional's sole cost and expense. Any such improvements shall be the property of the Professional during the term of this Agreement. Upon termination of this Agreement, City may, at its option, require removal by Professional, at Professional's sole cost, of any or all Professional-made improvements, including, but not limited to, trade fixtures, furniture, furnishings and equipment installed by Professional. Professional may have thirty (30) days to remove such furniture, furnishing, and equipment. Professional shall not encumber, mortgage or transfer any property of City, and shall not permit any condition to exist which would presently, or upon the passage of time, create any lien or encumbrance on any City property, by or through Professional. Professional shall be permitted to remove, upon expiration or earlier termination of this Agreement, all personal property owned by Professional. All injury or damage to City property caused by such removal shall be repaired at Professional's sole cost and expense. Professional shall remove all such personal property within three (3) calendar weeks from such date. Should Professional fail to remove or dispose of such property, City may, at its election, consider such property abandoned and may dispose of same at Professional's expense or after sixty (60) days declare the personal property of Professional's to be City property.

2.12 On or before the 1st day of April , 2013, the City and Professional shall jointly make an inventory list of all city owned property situated in the complex, and Professional shall agree thereto and accept the possession thereof. Said inventory list shall be preserved and maintained. Upon the termination of this Agreement, Professional shall surrender the premises, equipment, goods and merchandise not the personal property of the Professional, in good order and repair (except for reasonable wear and tear), together with funds representing the value of all unearned membership payments and/or prepaid tennis or racquetball court use fees. The inventory prepared pursuant to this section shall be consulted and compared with the surrender of items to the City as

provided. Any deficiency in value of merchandise held for resale shall be resolved by payment as outlined in Section 3.08.

## **PROVISIONS FOR EXTENSION, AMENDMENT, TERMINATION**

3.01 One hundred twenty (120) days or more prior to the expiration of this Agreement, the City may, in its sole discretion, offer to the Professional an extension of this Agreement of two (2) years commencing on the anniversary date of this Agreement. No more than two extensions may be offered under this Agreement.

The Professional acknowledges that such extension of this Agreement is solely within the discretion of the City and that the Professional has no right to such an extension unless offered by the City. Any such extension shall be evidenced by a written Agreement between the parties subject to such terms and conditions as may then be agreeable to the City and the Professional.

Upon the expiration of this Agreement at the end of the term set forth above, and provided that the City consents, Professional may continue to provide services on a month-to-month basis (not to exceed ninety (90) days).

3.02 If the Professional should fail or neglect for a period of thirty (30) consecutive days or more to perform the obligations of the Professional as set forth in this Agreement or any significant portion of such obligations (as reasonably determined by the City) and after having been notified in writing by the City of the failure or neglect in performance with reasonable time to cure after the notice, this Agreement may be terminated by the City on sixty (60) days written notice to the Professional. The Director shall be authorized to terminate this Agreement, without serving such notice of default to Professional, upon the occurrence of any of the following events:

- (1) The failure of Professional to maintain in full force and effect all forms of insurance required hereunder.
- (2) A major breach of service after notice of continued violation.
- (3) Significant health or safety violations which cause or may cause facility closure unless such violation is out of Professional's control.
- (4) Conviction of a felony criminal offense, or a misdemeanor offense involving theft, sex, or illegal drugs.
- (5) Disability which incapacitates the Professional for an aggregate of six months.
- (6) Abandonment of or absence from the premises by the Professional without the approval of the City beyond that which is allowed in Section 2.01.

3.03 If, in the event Professional breaches this Agreement, and the Director terminates this Agreement pursuant to this Section, the Director may take immediate possession of the facility and operate the Complex in any manner deemed appropriate by the Director for City's benefit and the public's best interest, without any liability therefore to Professional.

3.04 If the City should fail or neglect for a period of thirty (30) consecutive days or more to perform the obligations of the City as set forth in this Agreement or any significant portion of such obligations (as reasonably determined by the Professional) and after having been notified in writing by the Professional of the failure or neglect in performance with reasonable time to cure after the notice, this Agreement may be terminated by the Professional on sixty (60) days written notice to the City.

3.05 Upon the death of the Professional or upon the filing of a voluntary or involuntary petition in bankruptcy, and thereafter the Professional's adjudication of bankruptcy, or if the Court shall take jurisdiction of the Professional and his assets pursuant to proceedings under any Federal Reorganization Act, or any receiver of the Professional's assets shall be appointed or if the Professional shall be divested of his interest in the Agreement by other operation of law, or the making of any general assignment for the benefit of creditors, or

upon the occurrence of any act which operates to deprive the Professional permanently of the rights, powers and privileges necessary for the proper conduct and operation of the concession granted herein, or upon the abandonment and discontinuance of the operation of the business described herein, the City may, at its election, cancel this Agreement and remove the Professional and all of his employees from the premises and the Professional hereby waives any notice of such election, or demand for payment of the amounts agreed upon as the same become due, or the performance of any covenants herein; provided, however, that the failure of the City to declare this Agreement and concession terminated upon the default of the Professional or any of the reasons set out above shall not bar the right of the City to declare this Agreement null and void and at an end upon any subsequent violation of the terms of this Agreement by the Professional.

3.06 Upon expiration of the term hereof, whether at the end of the original term of this Agreement, an extension hereof, or prior thereto by reason of default on the part of the Professional, the Professional may remove all of his personal property and furniture and equipment installed by him, except for items affixed to the premises, and shall deliver the premises to the City in as good condition as at the beginning of the term except for reasonable wear and tear. Upon expiration or termination hereof, however, the Professional shall be allowed a period of up to three (3) additional calendar weeks to remove all of his merchandise and equipment from the Complex, and to conduct sales thereof during said period of time. The Professional during said period, however, shall cooperate with the City and with any new Professional employed by the City to effect a smooth transition in connection with operation of the concession of the Complex.

3.07 Either City or Professional may terminate this Agreement at no cost at any time upon 180 days or more written notice to the other. City may terminate Agreement upon less than 180 days written notice, but in such case must compensate Professional for the balance of time up to 180 days based upon recent average annual net income derived by Professional under Agreement. (For example, if the Agreement is terminated by City upon 30 days written notice, City shall compensate Professional for 150 days of average annual net income.) Professional may terminate Agreement upon less than 180 days

written notice, but in such case much compensate City for its reasonable costs of soliciting and recruiting a new racquet sports and fitness services provider at Complex.

This Section 3.07 shall expire one (1) year after entering into this Agreement.

3.08 Upon the termination of this Agreement, the City shall purchase, and the Professional may elect to sell to the City some or all of the pro shop inventory of stock-in-trade and merchandise, and equipment of the Professional's at prices to be determined as follows:

(1) General pro shop inventory: The lesser of Professional's cost or fair market valued computed on the basis of wholesale prices. Any disagreements shall be settled by a third party, whose service is mutually agreeable to both parties.

(2) Equipment owned by Professional: The fair market value is to be determined by independent appraisal.

Payment of the purchase price established thereunder shall be made in cash within forty-five (45) days following the effective date of termination.

## **FORCE MAJEURE**

4.01 Neither City nor Professional shall be deemed in violation of this Agreement if they are prevented from performing any of their obligations hereunder by reason of strike, boycott, labor dispute, embargo, or shortage of energy or materials. Neither City nor Professional shall be deemed in violation of this Agreement if either is prevented from performing any of its obligations hereunder by reason of acts of God, acts of a public enemy, acts of superior governmental authority, weather conditions, riot, rebellion, sabotage, or any other circumstances for which it is not responsible or which are not reasonably within its control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

ATTEST:

THE CITY OF LONGVIEW

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City Clerk

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City Manager

APPROVED AS TO FORM:

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City Attorney

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Professional