

**MANAGEMENT AGREEMENT
BETWEEN THE CITY OF SANTA CLARA
AND LIFETIME TENNIS INC. DBA LIFETIME ACTIVITIES**

PREAMBLE

This agreement ("Agreement") is entered into by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City"), and Lifetime Tennis, Inc., dba Lifetime Activities, a California Corporation with its principal place of business located at 1901 South Bascom Avenue, Suite #1225, Campbell, CA 95008, ("Lifetime"). City and Lifetime Activities may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

BACKGROUND

- A. City owns real estate located at 2625 Hayward Dr. Santa Clara, CA 95051, known as the Santa Clara Tennis Center. The Santa Clara Tennis Center (SCTC) in Central Park consists of 8-lit tennis courts, a practice wall, a pro shop with restrooms, and 2 satellite courts adjacent to the Community Recreation Center. The City also owns real estate at 555 Los Padres Blvd., Santa Clara, CA, known as Henry Schmidt Park (HSP) that has 4-lit tennis courts, as well as other unlit tennis courts available for public use at City parks (SCTC, HSP and all tennis courts located at City parks and available for public use are singularly the "Property", or collectively "Properties").
- B. Lifetime has managed and operated the SCTC for five (5) years since 2013, and provides management/operation of the tennis center and year-round recreational tennis activities for the residents of the City of Santa Clara.
- C. The City wishes to enter into a new agreement with Lifetime for management of the Properties, to include responding to resident complaints about non-permitted tennis uses and private instruction on the Properties.

WHEREAS, IT IS AGREED

AGREEMENT TERMS AND CONDITIONS

1. DESCRIPTION OF PROPERTY

In order to provide tennis-related competitive and recreational activities to Santa Clara residents, and in consideration of the faithful performance by Lifetime of the terms and conditions of this Agreement, City hereby agrees to grant Lifetime the right to manage and operate the Santa Clara Tennis Club, located at 2625 Hayward Dr., in Santa Clara, CA 95051, and two (2) of the four (4) courts located at Henry Schmidt Park, 555 Los Padres Blvd., Santa Clara, CA, and any City-

owned properties that have over 4 tennis courts, including those developed over the term of this Agreement.

2. INTENT

- A. This Agreement supersedes all prior Agreements, if any, between the Parties and their predecessors in interest regarding the use of the Properties.
- B. The City Manager serves as Contract Administrator for this Agreement on behalf of the City Council.
- C. This Agreement is for the non-exclusive use of the Properties for tennis-related recreational activities that are more fully defined in Section 4 of this Agreement. Lifetime represents that they are qualified to manage the Properties. The fulfillment of this Agreement is in the best interest of the City and the health, safety, and welfare of its residents, and is in accordance with the public purpose provisions of applicable federal, state, and local laws and requirements. This Agreement does not convey any interest in real property possessory or otherwise.
- D. Notwithstanding the foregoing or any provisions to the contrary herein, this Agreement is expressly conditioned upon approval by the appropriate agencies for the appropriate licenses required for the operation and management of the Properties.

3. RESPONSIBILITIES OF CITY

- A. Inspection of the Properties. City staff shall inspect the Properties on an annual and/or more frequent basis to assure Lifetime's use of the Properties is in conformance with the terms of the agreement.
- B. Financial. Provide billing invoices for materials, supplies, and utilities used by Lifetime.
- C. Improvements. City shall review, subject to limitations; any proposed building plans and issue permits related to necessary preventative maintenance, repair, or improvement of the Property.
- D. Utilities. City shall pay all utilities and services supplied to the Properties, which may include without limitation, electricity, gas, telephone, light, heating and water.
- E. Recreation Swim for Tennis Camp: Provide free recreation swim for Lifetime's camp participants at the International Swim Center during the summer months for no more than 20 campers per day.
- F. Park Use: Allow Lifetime to bring small groups of campers into Central Park during the school break camps and summer months to facilitate group games on the ball fields, basketball courts or in picnic areas. These uses will be reserved in advance through the Community Recreation Center, and will be for non-exclusive use. Campers will be supervised by Lifetime staff at all times.

- G. Activity Guide: Lifetime City shall provide Lifetime 2-4 pages per Activity Guide production cycle of free advertising program content for Lifetime's programs and activities, and ½ page of free advertising on the back cover of the Activity Guide 1 time per year.
- H. Additional Tennis Court Permits: Authorize use and ability to program tennis activities for up to two (2) tennis courts and basketball courts at Henry Schmidt Park and any other properties with over 4 tennis courts that developed during the term of this Agreement.
- I. Keys: Lifetime shall be issued keys by City upon appropriate written request and documentation. City shall update records on key assignments on an annual basis with Lifetime. Keys may be revoked at any time.
- J. Court Lights: City will replace tennis court light bulbs within ten (10) calendar days of written request to City. City will provide labor and necessary equipment at a mutually agreed upon time, to complete the replacement of inoperable bulbs.

4. RESPONSIBILITIES OF LIFETIME

- A. Management Fee. Lifetime shall pay to City an annual management fee as set forth in Exhibit A "Management Fee Schedule," attached hereto and incorporated by reference.
- B. Use of Property. Lifetime shall provide only the following at the Properties:
 - 1. Planning, development and implementation of community-oriented and recreational programs;
 - 2. Supervision of courts, Pro-shop , and restrooms at SCTC;
 - 3. Management of court reservations and program registration services;
 - 4. Individual and group tennis instruction;
 - 5. Permit Professional Tennis Instruction only at City courts with four (4) or more courts;
 - 6. Management and enforcement of Tennis Court rules for non-permitted instruction at City tennis courts;
 - 7. After-school and school break programs;
 - 8. Badminton, Pickle ball, Chess and Table Tennis Programs;
 - 9. Therapeutic-accessible tennis program;
 - 10. Tournament and community events;
 - 11. Advertising, community outreach, and marketing; and,
 - 12. Lifetime shall close courts for City-wide special events during agreed upon times.
 - 13. All other matters necessary or expedient for the efficient performance of the operations in connection with the Properties.
- C. Lifetime shall not use or permit the Properties, or any part thereof, to be used in whole or in part for any purpose other than as set forth in this Agreement except with the prior written consent of the City by resolution of the City, nor for any use in violation of any present or future laws, ordinances, rules or

regulations at any time applicable thereto of any public or governmental entity, including the City of Santa Clara.

- D. Annual Meeting: Lifetime shall meet with City a minimum of once per year to review and discuss Lifetime's past and upcoming programs and activities, maintenance and condition of the Properties, and any other pertinent issue/subject relating to this Agreement. City shall review and approve plans to address any issues and adjustments to the program to respond to facility conditions, including community and patron concerns. During this meeting, Lifetime shall propose to City for approval, at City's sole discretion, a calendar of competitive events. Lifetime activities will provide the City with their current annual financial reports.
- E. Site Management: Lifetime shall provide the following in a manner as set forth herein:
 - 1. Staffing: Provide a Tennis Director, General Manager and a Head Teaching professional at the SCTC. The General Manager must be trained in all facets of tennis facility management.
 - 2. Livescan/Background Checks: Have all of its representatives, sub-Lifetime(s), employees, and volunteers that teach classes or are placed in the supervision of youth, seniors and/or vulnerable populations pre-screened for suitability and have a LiveScan record on file with the City of Santa Clara prior to the start of class or supervision assignment. Lifetime is required to supply an updated list of representatives, sub-Lifetimes, employees, and volunteers to the City each change in session of new classes, activities, or change in Lifetime personnel (staff, board, or volunteers) in order to monitor compliance.
 - 3. Resident Discount: Provide City residents with a 15% discount on any fees charged for tennis related programs provided by Lifetime at the Properties.
 - 4. Maintenance: Provide regular maintenance of courts, Pro-shop, and restroom facilities, office space, and any other facility or equipment necessary for the operation of the Properties.
 - 5. Parking: Maintain the shared onsite parking at each site in a clean and respectful manner, and work with neighbors, and City to ensure impacts to the surrounding neighborhood from on-street parking, increased traffic, or noise are reasonably mitigated.
 - 6. Pro-Shop: Provide Pro-shop services, including but not limited to equipment, accessories, balls, and stringing service.
 - 7. Keys: Lifetime shall be responsible for all costs incurred to re-key facilities if keys are lost, stolen, or if a person is found to have keys that were not issued to him/her by the City. Lifetime may not duplicate keys.
 - 8. Lifetime will keep the SCTC facilities open to the public seven (7) days a week, a minimum from sunrise to sunset, and at such hours as to be in compliance with all contractual commitments of City. Lifetime will operate and keep SCTC open to user groups no less

than the number of hours and days generally comparable to those of similarly developed tennis courts in California.

9. Program Fees: Lifetime shall provide to City in January of each year of this Agreement all fees, rates, and charges for tennis court use, which will need to be approved by City Council as part of the Municipal Fee action. Rates will not be recommended for change more than once per year.

F. Compliance with Laws

1. Lifetime shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Lifetime's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Lifetime has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).
2. Lifetime, at its sole expense and cost, shall be responsible for procuring the necessary City of Santa Clara licenses and other appropriate licenses from the County or State. Lifetime shall observe and comply with the requirements of all applicable federal, state and local statutes, ordinances and regulations regarding the Properties. Lifetime shall, at its sole expense and cost, procure and keep in force, during the entire term of this Agreement and any extension thereof, all permits and licenses required by such statutes, ordinances or regulations.
3. Lifetime shall, at all times, be duly authorized to conduct business in the state of California. Lifetime shall provide City notice within three (3) days of any suspension or revocation of its entity status with the California Secretary of State.

5. TERM OF THE AGREEMENT

Unless sooner revoked or extended by City in writing, City grants this Agreement for management and operation of the Properties to Lifetime for a time period commencing on January 1, 2019 and ending on December 31, 2023. Upon prior written approval by the City Manager or designee, two five (5) year extensions of the term of this Agreement may be granted after Lifetime submits a written request to City prior to expiration of the term, and City grants such extension, in its sole discretion, in writing.

6. DELINQUENCY CHARGE

Any payment of fees due pursuant to this Agreement that remains due and unpaid under the terms of this Agreement after it becomes due and payable shall be subject to a delinquency charge for violation of this Agreement and for damages, of a sum equal to one-tenth of one percent (0.1%) of such required payment amount per day for each day from the date such required payment amount became due and payable until payment of said required payment amount has been received by the City. Unpaid delinquency charges shall accrue retroactively from the first day of the month in which such required payment amounts were first due and payable and shall be compounded monthly. The City shall apply any monies received from Lifetime first to any accrued delinquency charges and then to any other rental or other sums then due hereunder. The delinquency charges provided by this Section 6 are in addition to all other remedies the City may have that are provided by this Agreement or otherwise by law to enforce payment of any rental or other sum that has become due and has not been paid.

7. RETURN PROPERTY TO EXISTING CONDITION

Immediately upon termination as set forth in Section 13 or expiration of the Agreement as set forth in Section 5, Lifetime shall restore Properties to the same or better condition as it existed prior to Lifetime's operation, as determined by City representatives. At that time, Lifetime shall remove any and all equipment or materials used in conducting the permitted activities. Lifetime expressly acknowledges its financial obligation to fulfill this condition promptly.

8. HAZARDOUS MATERIALS ON THE PROPERTY

- A. Lifetime shall not use or store Hazardous Materials of any kind on or near the Properties which could contaminate the Properties, without prior written permission from City. In the event that any Hazardous Material is spilled or leaked or otherwise released on the Properties or any area in the vicinity of the Properties as a result of Lifetime use of the Properties, Lifetime shall promptly take all steps necessary to remove any contamination resulting from such activities. Lifetime accepts full responsibility for all activities and costs incurred related to cleaning up the Properties from the effects of such spill or leak. Lifetime shall be responsible for meeting, and possessing the means to satisfy the requirements of all federal, state and local controlling agencies, such as the Bay Area Water Quality Management District and/or the Environmental Protection Agency, which may have jurisdiction over the region in which the Properties is located or over the substance being used by Lifetime on the Properties.
- B. **Hazardous Materials Defined.** The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not

limited to, those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA, 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

- C. **Hazardous Materials Indemnity.** Lifetime shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold City harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses (including, without limitation, diminution in value of the Properties, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Properties, damages arising from any adverse impact or marketing of the Properties and sums paid in

settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the Agreement Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the Properties by Lifetime, Lifetime agents, employees, licensees or invitees or at Lifetime direction of Hazardous Material, or by Lifetime failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Lifetime indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Properties, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Agreement Term. For purposes of the indemnity provided herein, any acts or omissions of Lifetime, or its employees, agents, customers, sublessees, assignees, Lifetimes or subLifetimes of Lifetime (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lifetime.

- D. At the City's request, Lifetime shall provide a report within thirty (30) days following the expiration or termination of this Agreement indicating that Lifetime programs on the Properties have not resulted in any spill, leakage, or release of any Hazardous Materials on the Properties or any area in the vicinity of the Properties. Such report shall be provided at Lifetime cost and be performed by an environmental consultant approved by City.

9. AUDIT OF RECORDS AND INCIDENT REPORTING

- A. Lifetime shall provide City with a complete, board approved, auditable financial report of all revenues and expenditures on an annual basis in February of each year for the prior fiscal year. Lifetime shall submit at the annual meeting a current list of its Board of Directors, its Articles of Incorporation, By-laws, Federal Determination Letter, City business license, inventory of items that Lifetime stores at the Property, including but not limited to computers, telephones, and training equipment.
- B. Right to Audit: Lifetime shall maintain all records, including records of financial transactions pertaining to the performance of this Agreement. These records shall be retained for a period of no less than seven (7) years from the expiration or termination of this Agreement. The records will be subject to examination and audit by the City Auditor's Office or City representatives at any time. In the event of such audit, the City agrees to

provide Lifetime advanced notice, and an opportunity to discuss and respond to any findings before a final audit report is filed. Any subcontract entered into by Lifetime for work to be performed under this Agreement must include an identical provision.

- C. In the event of an accident or incident involving damage or harm to person(s) or property, Lifetime shall immediately report all such accident(s) and/or incident(s) occurring during any use to City's Director of Parks & Recreation and Recreation Coordinator for Aquatics Programs in writing.

10. HOLD HARMLESS/INDEMNIFICATION.

- A. To the extent permitted by law, Lifetime agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Lifetime pursuant to this Agreement – including claims of any kind by Lifetime's employees or persons contracting with Lifetime to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Lifetime's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Lifetime, against City (either alone, or jointly with Lifetime), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Lifetime is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Lifetime warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Lifetime's responsibilities under the Act.

11. CITY'S RIGHTS

- A. City reserves the right to use the Properties in any manner, provided such use does not unreasonably interfere with the rights granted to Lifetime in this Agreement.

- B. The City or its duly authorized representatives or agents and other persons for it, may enter into or upon the Properties at any and all reasonable times during the term of this Agreement for the purpose of determining whether or not Lifetime is complying with the terms and conditions hereof or for any other purpose incidental to rights of the City.

12. ASSIGNMENT - EXCLUSIVE TO LIFETIME

The rights granted in this Agreement are personal and limited solely to Lifetime and its employees for the stated purpose set forth in this Agreement. Lifetime agrees not to commit waste or to construct, allow or maintain any use, construction or operate any equipment which constitutes a nuisance on the Properties or which may in any way interfere with the use, enjoyment, or possession of the Properties by City, or the City's lessee(s) or licensee(s) on the Properties, if any. The Properties shall not be used by any person or entity, including Lifetime or its employees, for any purpose other than stated in this Agreement. Neither this Agreement, nor the rights granted to Lifetime within it, shall be assignable or otherwise transferable without the prior written consent of City. Unless specifically stated to the contrary in any written consent to an assignment, no assignment or other transfer will release or discharge the Lifetime from any duty, responsibility or liability under this Agreement.

Lifetime shall be fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Lifetime is for the acts and omissions of persons directly employed by it.

13. TERMINATING THE AGREEMENT

A. City's Right to Terminate.

The City may declare this Agreement terminated in its entirety in the manner provided in Section 13.C and may exercise all rights of entry and re-entry with or without process of law, into the Properties upon the occurrence of any one or more of the following events:

1. If the Management Fee or other money payments which Lifetime agrees to pay, or any part thereof, are unpaid after the date specified for such payments as set forth in Exhibit B;
2. If Lifetime fails in the performance of any covenant or condition of this Agreement;
3. Upon the occurrence of any act or omission which results in the suspension or revocation of any act, power, license, permit or authority that terminates the conduct and operation of the Properties by Lifetime, including but not limited to suspension or

- revocation of its entity status with the state of California;
4. If the levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which does, or as a direct consequence of such process, will interfere with Lifetime occupancy of the Properties and will interfere with its operations under the Agreement, and which attachment, execution, receivership or other process of court is not enjoined, vacated, dismissed or set aside within a period of forty-five (45) days;
 5. If a petition under any part of the federal bankruptcy laws or an action under present or future insolvency law or statute is filed against Lifetime operations of the Properties or Lifetime is adjudicated as bankrupt unless Lifetime confirms this Agreement in any bankruptcy proceeding;
 6. If Lifetime shall voluntarily abandon, desert, vacate, or discontinue all or part of its operation of the Properties or any other action that results in a failure by the Lifetime to provide the public and others with the service contemplated; and/or,
 7. If the time period from the Agreement Date of the Agreement to the initial date of operation and management of the Properties exceeds twenty-four (24) calendar months.

B. Lifetime Right to Terminate.

1. Lifetime may declare this Agreement terminated in its entirety, in the manner provided in subsection 13.C herein if City fails in the performance of any material condition of this Agreement.

C. Procedure for Termination or Repossession.

1. No termination declared by either Party shall be effective and, except as provided in this Agreement, the City shall not take possession of the Properties unless and until not less than forty-five (45) days have elapsed after issuance of a written Notice of Termination by either Party to the other specifying the date upon which such termination shall take effect and the cause for which the Agreement is being terminated or for which the Properties is being repossessed to provide for the cure of any such default, and, no such termination shall be effective nor shall the City retake possession of the Properties:
 - a. if such default is cured within the forty-five (45) day period; or,
 - b. in the event that such default by its nature cannot be cured within such forty-five (45) day period if the Party in default promptly commences to correct such default within said forty-five (45) days and corrects same as promptly as is reasonably

practical.

2. Failure by the City to take any authorized action upon default by Lifetime of any of the terms, covenants, or conditions required to be performed, kept and observed by the Lifetime, shall not be construed to be or act as a waiver of default or of any subsequent default of any of the terms, covenants and conditions to be performed, kept and observed by Lifetime.
3. The acceptance of payments by the City from Lifetime for any period or periods after a default and conditions required to be performed, kept and observed by the Lifetime shall not be deemed a waiver or stopping of any right on the part of the City to terminate the Agreement for failure by the Lifetime to so perform, keep or observe any of said terms, covenants or conditions.

D. Miscellaneous Rights.

1. On the date set forth in a Notice of Termination issued to Lifetime by the City, all right, title, and interest of Lifetime shall terminate at the discretion of the City except as otherwise provided in Section 13.C above.
2. It is to be understood that the rights and remedies of the City and Lifetime specified in this Agreement are not intended to be, and shall not be, exclusive of one another or exclusive of any common law or statutory right of either of the parties hereto.

14. IMPROVEMENTS

- A. City shall conduct an annual facility condition assessment of the Properties and will provide Lifetime with an itemized list of necessary capital repairs and improvements to be completed at the Lifetime's own expense. Any such capital repairs and improvements constitute a "public work" as defined in California Labor Code section 1720 et seq and any agreements entered into pursuant to this section shall be subject to prevailing wage requirements. Prior to having any work done pursuant to this section, Lifetime shall coordinate with the City to ensure compliance with all applicable provisions of Labor Code sections 1720 through 1784 and California Code of Regulations title 8, section 16000 et seq.
- B. No improvements shall be constructed on the Properties, unless the City specifically and in writing, consents to such construction, which consent shall not be unreasonably withheld. All federal, state, and local laws and regulations, including but not limited to land use and permitting laws, must be adhered to in the event of such construction. Additions to, or alterations of the Property, except movable furniture and trade fixtures shall become at once part of the Property and shall belong to City.

- C. All improvements constructed, erected or installed upon the Properties shall become the Properties of the City upon termination of this Agreement.
- D. Title to all equipment, furniture and furnishings placed by Lifetime in or upon the Project shall remain with Lifetime, and replacements, substitutions and modifications thereof may be made by Lifetime throughout the term of this Agreement and Lifetime may remove same upon termination of this Agreement if Lifetime is not then in default under this Agreement; provided, that Lifetime shall repair to the satisfaction of City any damage to the Properties and improvements caused by such removal; and provided further that usual and customary lighting, electrical, plumbing and heating fixtures shall remain upon the Properties and shall be surrendered therewith upon termination of this Agreement.
- E. Lifetime may make alterations, additions or betterments to the SCTC only after complete plans and specifications have been submitted to and approved by the City and after securing the necessary building, electrical or plumbing permits from the City of Santa Clara.
- F. The capital contribution expenditures for repairs and improvements to Properties shall not exceed fifty thousand dollars (\$50,000), over the life of the Agreement.

15. SIGNS

Lifetime shall not install, paint, inscribe, or place any signs or placards upon the exterior of the Properties or upon the interior of the Properties if intended to be viewed from the exterior thereof, without the prior written consent of the City. Lifetime agrees, at its own expense, to remove or paint over to the satisfaction of City promptly upon termination of this Agreement, any and all signs or placards installed, painted, inscribed, or placed by it in or upon the interior or exterior of the Properties and to restore the surface thereof; and should Lifetime fail to so remove or paint over such signs or placards, and restore the surface, the City may do so at the expense of Lifetime and Lifetime shall reimburse the City for the full cost thereof upon demand.

16. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit B, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit B.

17. WAIVER

Lifetime agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or

of any cause of action arising out of the performance of this Agreement.

18. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at manager@santaclaraca.gov

And to Lifetime addressed as follows:

Dana Gill
Executive Director – Lifetime Tennis, Inc., dba Lifetime Activities
1901 S. Bascom Ave., Suite 1225
Campbell, CA 95008
and by e-mail at danag@lifetimeactivities.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

19. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

20. NO THIRD PARTY BENEFICIARY

This agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

21. INDEPENDENT CONTRACTOR

It is agreed that Lifetime shall act and be an independent contractor and not an agent nor employee of City. Except as herein expressly provided, neither Party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other or to bind the other in any manner or thing whatsoever.

22. CONFLICTS OF INTEREST

Lifetime certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Lifetime and that no person associated with Lifetime has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Lifetime is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Lifetime will advise City if a conflict arises.

23. FAIR EMPLOYMENT

Lifetime shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

24. NO USE OF CITY NAME OR EMBLEM

Lifetime shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

25. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

26. AUTHORITY TO GRANT RIGHTS

City warrants that it is the owner of the Properties and that it has the full rights and authority to grant the rights to the Lifetime which are contained in this Agreement.

27. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

28. COUNTERPARTS

This Agreement may be executed in two counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

LIFETIME TENNIS, INC., DBA LIFETIME ACTIVITIES
a California Corporation

Dated: _____

By: _____
(Signature of Person executing the Agreement)

Name: Dana Gill

Address: 1901 S. Bascom Ave. Suite 1225
Campbell, CA 95008

Email: danag@lifetimetennis.com

Telephone 408-626-9282

Fax: 408-626-9292

“LIFETIME TENNIS”

**MANAGEMENT AGREEMENT
BETWEEN THE CITY OF SANTA CLARA
AND LIFETIME TENNIS, INC., DBA LIFETIME ACTIVITIES**

EXHIBIT A

MANAGEMENT FEE SCHEDULE

Management Fee to be paid by the Lifetime to the City by July 30 shall be as follows:

<u>Fiscal Year(s)</u>	<u>Annual Management Fee Amount</u>
2018-2019	\$30,000
2019-2020	\$30,000 plus San Francisco-Oakland-San Jose Consumer Price Index (CPI) plus 1%
2020-2021	2019-2020 Fiscal Year's Total Fee plus San Francisco-Oakland-San Jose CPI plus 1%
2021-2022	2020-2021 Fiscal Year's Total Fee plus San Francisco-Oakland-San Jose CPI plus 1%
2022-2023	2021-2022 Fiscal Year's Total Fee plus San Francisco-Oakland-San Jose CPI plus 1%

**MANAGEMENT AGREEMENT
BETWEEN THE CITY OF SANTA CLARA
AND LIFETIME TENNIS, INC., DBA LIFETIME ACTIVITIES**

EXHIBIT B

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Lifetime's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Lifetime shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Lifetime; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Lifetime to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at

least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Lifetime and/or its subLifetimes involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Lifetime included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Lifetime or any subLifetime under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Lifetime's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Lifetime shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any

other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Lifetime's insurance.

3. General Aggregate. The general aggregate limits shall apply separately to Lifetime's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit D, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Lifetime and City agree as follows:

1. Lifetime agrees to ensure that subLifetimes, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Lifetime, provide the same minimum insurance coverage required of Lifetime, except as with respect to limits. Lifetime agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Lifetime agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subLifetimes and others engaged in the project will be submitted to City for review.

2. Lifetime agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Lifetime for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Lifetime in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Lifetime, and each and every subLifetime (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Lifetime shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Lifetime or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Lifetime shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.
City of Santa Clara [Parks & Recreation Department]
P.O. Box 100085 – S2 or 1 Ebix Way
Duluth, GA 30096 John's Creek, GA 30097

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Lifetime shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.