

FIRST AMENDMENT TO AMENDED AND RESTATED LICENSE AGREEMENT

BETWEEN

SPORTIME CLUBS, LLC d/b/a SPORTIMESM FKA ISLAND TENNIS, L.P.

AND

**RANDALL'S ISLAND PARK ALLIANCE, INC FKA RANDALL'S ISLAND SPORTS
FOUNDATION, INC.**

AND

**CITY OF NEW YORK
PARKS & RECREATION**

for

**CONSTRUCTION, EXPANSION, RENOVATION, OPERATION, MAINTENANCE AND
MANAGEMENT
OF A YEAR-ROUND TENNIS FACILITY
AT RANDALL'S ISLAND PARK**

MANHATTAN, NEW YORK

M104-IT

DATED: _____, 2021

FIRST AMENDMENT TO AMENDED AND RESTATED LICENSE AGREEMENT

("Amendment") made this day of _____, 2021 among the City of New York (the "City") acting by and through the Department of Parks & Recreation ("Parks"), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10021, the Randall's Island Park Alliance, Inc. FKA Randall's Island Sports Foundation, Inc. ("RIPA"), a not-for profit corporation, organized under the laws of the State of New York, whose address is 24 West 61st Street, 4th Floor, New York, New York 10023, and Sportime Clubs, LLC d/b/a SportimeSM FKA Island Tennis, L.P., ("Licensee" or "Sportime"), a limited liability company organized under the laws of the State of New York whose address is P.O. Box 778, Abrahams Path, Amagansett, New York 11930.

WHEREAS, the parties to this Amendment are parties to that certain Amended and Restated License Agreement dated December 18, 2019 (the "License Agreement");

WHEREAS, on March 16th, 2020 at 1:49 PM, Parks informed Licensee, via e-mail, that it should cease all operations at the Tennis Facility as of 8:00 PM that evening until further notice due to Covid-19 concerns and Licensee complied with such directive;

WHEREAS, by letter dated March 25th, 2020, Licensee provided formal notice to Parks and to RIPA of the occurrence of a "Delay Event", pursuant to Article 41 of the License Agreement, due to closure of the Licensed Premises by Parks and to the ongoing Covid-19 Pandemic, which prevented and continues to prevent Licensee from performing its obligations related to the Phase II Capital Improvements (the "Delay Event");

WHEREAS, by letter dated December 8th, 2020, Licensee provided formal notice to Parks and to RIPA of the occurrence of a "Renegotiation Event", pursuant to Article 41 of the License Agreement, as Licensee's expenditures on the Phase II Capital Improvements, including any and all related project approval fees and architectural and design fees, is estimated to exceed Twenty-Seven Million Five Hundred Thousand Dollars (\$27,500,000), as determined by duly qualified professionals engaged by Licensee, which professionals have been approved in writing by Parks (the "Renegotiation Event");

WHEREAS, in accordance with Article 41 of the License Agreement, in response to the Delay Event and the Renegotiation Event, Parks, RIPA and Licensee cooperated, in good faith, to agree to an equitable solution to address the impact of such Delay Event and Renegotiation Event on Licensee and its obligations under the License Agreement;

WHEREAS, it was determined by Parks and RIPA, in the context of such aforementioned good faith cooperative agreement that, due to the nature of the Phase II Capital Improvements and their relationship to the existing Tennis Facility, including but not limited to the complicated, phased construction schedule designed to ensure that periods during which fewer than twenty (20) courts are available to the general public for play, and other interruptions to the operation of the Tennis Facility, are substantially limited, the Delay Event has caused and will cause delays to the

commencement of the Phase II Capital Improvements substantially longer than the closure of the facility itself, and:

WHEREAS, it was further determined by Parks and RIPA, in the context of such aforementioned good faith cooperative agreement, that, due to the estimated cost of the Phase II Capital Improvements, more than Fifty Percent (50%) in excess of the current minimum capital expenditure requirement of Twenty Million Dollars (\$20,000,000), in spite of Licensee's good faith efforts to reduce same, and anticipated further cost increases due to the Delay Event, and the potential for further Delay Events due to the ongoing pandemic, the time-line for the construction of the Phase II Capital Improvements and the commencement of the Phase II Operating Period, as currently set forth in the License Agreement, would place an unreasonable and undue burden on Licensee, as would any reduction of the Phase II Operating Period during which Licensee will need to amortize its substantially increased capital investment;

NOW THEREFORE, in consideration of the premises and covenants contained herein, the parties hereby do agree as follows:

DRAFT

AMENDMENT

- 1.1 Unless otherwise noted, all capitalized terms referenced herein shall have the meaning ascribed to them in the License Agreement.
- 1.2 Section 2.1(r) of the License Agreement shall be deleted and replaced in its entirety with the following: “Phase II Commencement Date” shall mean the first to occur of: (i) the first day Licensee opens for business after the Final Completion of the Phase II Capital Improvements, and; (ii) December 31, 2023 (the “Construction Period Deadline”), subject to Article 41 of this License Agreement. The foregoing notwithstanding, in the event that this First Amendment to the License Agreement is not registered with the Comptroller of the City of New York, on or before October 31, 2021, then the Construction Period Deadline shall be extended to December 31, 2024, unless such failure to register, timely, is the result of Licensee’s actions, inactions, or bad faith.”
- 1.3 A new Section 3.1(a) shall be inserted into the License Agreement as follows: “If the First Amendment to the License Agreement is registered with the Comptroller of the City of New York, on or before October 31, 2021, in which case the Construction Period Deadline will be December 31, 2023, but Licensee nonetheless determines, in its discretion, that it wishes to extend the Construction Period Deadline to December 31, 2024, it may elect to do so, upon written notice to Parks, delivered no later than March 1, 2022. In the event of such election, the Termination Date shall be twenty-four (24) years from the Phase II Commencement Date, or upon the sooner termination of this License Agreement pursuant to the terms of this License Agreement, and, in such case, the fees due and payable to RIPA shall be pursuant to **Exhibit B1**, rather than Article 4.1, and with respect to any and all other obligations of Licensee, the Phase II Operating Period shall commence in Operating Year 2 of such period as set forth in Article 4.1.”
- 1.4 Section 6.1(b) of the License Agreement shall be deleted and replaced in its entirety with the following: “Licensee shall expend or cause to be expended, prior to the Phase II Commencement Date, a minimum of Thirty Million Dollars (\$30,000,000) for the Phase II Capital Improvements, as defined below and as set forth in **Exhibit D2**, and approximately Seven Hundred Fifty Thousand Dollars (\$750,000) for the field lighting set forth in **Exhibit D2**, including any and all related project approval fees and architectural and design fees. In the event that Licensee completes, prior to the Phase II Commencement Date, the Phase II Capital Improvements set forth in **Exhibit D2** for less than Thirty Million Dollars (\$30,000,000), as determined by the Commissioner in accordance with Section 6.4 below, Licensee shall expend the difference in supplemental Capital Improvements, as approved by Parks and RIPA, during the Phase II Operating Period. If Licensee does not expend any such difference by the Termination Date of this License Agreement, any excess monies shall be remitted to RIPA as additional License fees within thirty (30) days following the Termination Date.”

- 1.5** Section 41.1(a) of the License Agreement shall be deleted and replaced in its entirety with the following: “A “Delay Event” means a delay beyond the reasonable control of the party claiming that a Delay Event has occurred, including, without limitation, delays due to: (i) strikes, slowdowns, walkouts, lockouts, work stoppages, material default by a contractor or subcontractor, unforeseen circumstances that could not have been reasonably anticipated affecting construction conditions, judicial injunction, acts of God, terrorism, severe weather conditions, enemy action, civil commotion, fire, casualty or other similar causes; or (ii) the delay of any governmental authority to grant any discretionary permits or approvals required for the License Agreement, the Concession, or the prosecution of any Capital Improvement, provided that in each case the party applying for any such permit or approval has submitted a complete application for, and has made diligent and good faith efforts to comply with all conditions of the governmental authority granting such, permits or approvals, or (iii), governmental shutdown(s) of the construction industry creating an inability for construction under this License Agreement to proceed, or of indoor tennis facilities in New York City, due to the COVID-19 pandemic or subsequent variant strains or mutations of the SARS-CoV-2 virus, only for delays from the date of the execution of this Amendment until July 1, 2022.”
- 1.6** Section 41.1(b) of the License Agreement shall be deleted and replaced in its entirety with the following: “A “Renegotiation Event” means: (i) the situation where Licensee’s expenditures on the Phase II Capital Improvements, including any and all related project approval fees and architectural and design fees and including removal or remediation of Hazardous Substances as hereinafter defined, if applicable, is estimated to exceed Thirty-Seven Million Five Hundred Thousand Dollars (\$37,500,000), as determined by duly qualified professionals engaged by Licensee, which professionals have been approved in writing by Parks, such approval not to be unreasonably withheld, delayed or conditioned; or (ii) the denial by a governmental authority to grant a permit or approval required for the prosecution of the Phase II Capital Improvements beyond any right of appeal, regardless of Licensee’s compliance with such governmental authority’s conditions.”
- 1.7** Section 41.1(d) of the License Agreement shall be deleted and replaced in its entirety with the following: “In the event a Delay Event has occurred and has delayed or prevented performance of one or more obligation of Licensee under this License Agreement, the time for performance of such obligation or obligations, and any related time periods defined in this License Agreement, e.g. the Phase II Interim Period, shall be extended commensurate with the nature of the Delay Event.”

- 1.8** A new Section 41.1(e) shall be inserted into the License Agreement as follows: “Upon the occurrence of a Delay Event or a Renegotiation Event, Licensee and Parks shall meet as soon as possible after notice from Licensee to Parks requesting a meeting (and in any event no later than within five (5) business days after such notice from Licensee to Parks) and cooperate in good faith to agree to an equitable solution to address the impact of the Delay Event or Renegotiation Event on the Concession and/or this License Agreement. Without limiting the scope of potential equitable solutions, the parties recognize that an equitable solution may take into account Licensee’s Capital Improvements expenditures during the Original Interim Period and Original Operating Period, Licensee’s Capital Improvements expenditures for the Phase II Capital Improvements, whether Licensee has complied with the terms of this License Agreement, and any other relevant considerations, and such equitable solution may, depending on the circumstances and subject to compliance with applicable legal requirements--including without limitation ,any necessary approval by the FCRC--include, among other things, an amendment to this License Agreement to renegotiate the license fees, Licensee’s operations, and/or the Term.”
- 1.9** Exhibit D2 of the License Agreement is hereby amended by deleting it in its entirety and replacing it with a new Exhibit D2, attached hereto.
- 1.10** A new exhibit, Exhibit B1, attached hereto, is hereby inserted into the License Agreement.
- 1.11** In the case of any inconsistency between the terms and provisions of this Amendment and the terms and provisions of the License Agreement, the terms and provisions of this Amendment shall control. Except as modified by this Amendment, the License Agreement shall remain unmodified and in full force and effect.
- 1.12** This Amendment may be executed in counterparts and by facsimile signature, each of which counterparts and facsimile signatures shall be deemed an original, and all of which taken together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be signed and sealed on the day and year first above written.

CITY OF NEW YORK
PARKS & RECREATION

RANDALL'S ISLAND PARK
ALLIANCE, Inc.

By: _____

By: _____

Name:
Title:

Deborah Maher
President

Dated: _____

Dated: _____

SPORTIME CLUBS, LLC

By: Sportime Holdings, LLC its Managing Member

By: _____

Claude Okin, President of Island Tennis, Inc., the
Managing Member of Sportime Holdings, LLC

Dated: _____

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this day of _____, 2021 before me personally came _____ to me known, and known to be the Assistant Commissioner for Revenue of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this day of _____, 2021 before me personally came Deborah Maher to me known, and known to be the President of the Randall’s Island Parks Alliance, Inc. and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein

Notary Public

STATE OF NEW YORK

ss:

COUNTY OF _____

On this day of _____, 2021 before me personally Claude Okin, who, being duly sworn by me did depose and say that he is the President of Island Tennis, Inc., the Managing Member of Sportime Holdings, LLC, and that he executed the foregoing instrument and acknowledged that he executed the same for the purposes mentioned therein.

Notary Public

Exhibit B1

PHASE II OPERATING PERIOD OPERATING YEAR	MINIMUM ANNUAL FEE	Vs. % OF GROSS RECEIPTS
1	\$1,050,000	20% of all Permitted Sponsorship Activity + 10% of all other Gross Receipts
2	\$1,102,500	Same As Above
3	\$1,157,625	Same As Above
4	\$1,215,506	Same As Above
5	\$1,276,282	20% of all Permitted Sponsorship Activity + 10.5% of all other Gross Receipts
6	\$1,340,096	Same As Above
7	\$1,407,100	Same As Above
8	\$1,477,455	Same As Above
9	\$1,551,328	Same As Above
10	\$1,628,895	20% of all Permitted Sponsorship Activity + 11% of all other Gross Receipts
11	\$1,710,339	Same As Above
12	\$1,795,856	Same As Above
13	\$1,885,649	Same As Above
14	\$1,979,932	Same As Above
15	\$2,078,928	20% of all Permitted Sponsorship Activity + 12% of all other Gross Receipts
16	\$2,182,875	Same As Above
17	\$2,292,018	Same As Above
18	\$2,406,619	Same As Above
19	\$2,526,950	Same As Above
20	\$2,653,298	20% of all Permitted Sponsorship Activity + 13.5% of all other Gross Receipts
21	\$2,785,963	Same As Above
22	\$2,925,261	Same As Above
23	\$3,071,524	Same As Above
24	\$3,225,100	Same As Above

Exhibit D2

Capital Improvements

1. Phase II Capital Improvements

Licensee shall complete the following Capital Improvements prior to the Phase II Commencement Date, with a minimum capital investment of Thirty Million Dollars (\$30,000,000.00):

On the Existing Licensed Premises:

- Renovate the existing clubhouse. On its second floor, the existing outdoor bleachers will be removed and converted into an indoor space that will be connected to the existing clubhouse by a walkway. The new second floor space will include a new lounge/viewing area looking out to the exhibition court with an adjoining pantry, bathrooms, and a conference room.
- Install new bleachers to accommodate approximately 473 people on the north side of the exhibition courts, on an existing asphalt pad, to replace the existing bleachers that are being dismantled.
- Construct a new basketball court to replace an existing court to be removed.

On the Expanded Licensed Premises:

- The construction of 10 additional full-size tennis courts. Six shall be Deco-Turf hard courts or a Parks-approved equal and four shall be Har-Tru clay courts.
- Construction of a new pre-fabricated permanent indoor metal building to house the six new Deco-Turf courts.
- Construct new grade beams and install air handling equipment as needed to seasonally enclose four new Har-Tru clay courts.
- Construct a new support building. The support building will house bathrooms and lounge areas with views of new courts and may include new offices and storage areas.
- Construct four new U10 Learning (smaller sized) courts.
- Install new landscaping including new trees and a viewing slope, which will abut the new indoor building.
- Increase parking along the southern end of the site, adding 19 new spaces.

Other:

- Construct a connector structure to connect the existing clubhouse to the new support building for enclosed pedestrian circulation.
- Any and all related project approval fees and architectural and design fees.
- Procure and install capially-eligible furniture, fixtures, and equipment, including but not limited to inflatable structures for covering tennis courts. Up

to Two Million Dollars (\$2,000,000.00) of such capitably-eligible furniture, fixtures, and equipment may be applied to Licensee's minimum capital expenditure for the Phase II Capital Improvements.

Upon completion of the Phase II Capital Improvements above, there will be a total of thirty (30) full-sized tennis courts (not including the U-10 courts) at the Licensed Premises, eleven (11) of which will be indoor-only courts, and nineteen (19) of which will be indoor-outdoor courts.

2. Other Capital Improvements:

In addition to and separate from the above Capital Improvements, and prior to the Phase II Commencement Date, Licensee shall:

- Install field lighting at Ballfields #20 and #21, prior to Ballfield #30 being taken off-line for construction (approximately \$750,000).