

## Attachment A

### OPERATING AGREEMENT

This Operating Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between CITY OF LINCOLN, NEBRASKA, a municipal corporation, hereinafter referred to as "City", and WOODS PARK TENNIS CORPORATION, 401 So. 33rd Street, Lincoln, Nebraska, 68510, hereinafter referred to as "Operator".

WITNESSETH:

WHEREAS, City is the owner of Woods Park, located generally west of 33rd Street, south of "O" Street and north of "J" Street, in Lincoln, Lancaster County, Nebraska; and

WHEREAS, Operator desires to operate a covered tennis facility and clubhouse year-round; and

WHEREAS, both City and Operator desire that such operation exist.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein, the parties hereto agree as follows:

1. All prior agreements between the City and Operator are declared null and void.
2. City grants to Operator the exclusive privilege of operating business concessions and rendering professional tennis services at Woods tennis facilities for the period of time commencing August 1, 2005, up to and including March 31, 2015, in accordance with the terms and conditions hereinafter set forth.
3. Operator has provided and constructed two air structures with appropriate footings covering six of the existing tennis courts. No extensions or major modification of the existing facilities shall be made without the prior written consent of the City. Existing air structures may be replaced, when needed, with either another air structure, or a permanent structure as approved in the Woods Park Master Plan revised in 2005. After community meetings, the design and materials of any permanent structure must be approved by the Mayor.
4. Operator shall be responsible for all operations of the covered tennis facility and clubhouse year-round. The City shall not be responsible for any expense needed for daily operation of the facility. The facilities shall be kept and maintained in accordance with the City and the Parks and Recreation Department maintenance standards. Normal hours of operation of the facilities are encouraged to be seven (7) days per week - 7:00 a.m. until 11:00 p.m.
5. The City will make available, at no cost to the Operator, the nine outdoor tennis courts at Woods Park so that operator can provide court reservation services. Additionally, the

City will make available other tennis courts citywide where group or private lessons or clinics may be scheduled at no cost to the Operator.

6. Operator will honor shared use agreements between City and Lincoln Public Schools by providing outdoor court time free of charge for Lincoln Public School practices and events.
7. Rate and price increases shall be subject to the prior written approval of the Parks and Recreation Director, anticipating that reasonable increases will be necessary periodically to maintain the quality of the facility and programs made available. The Operator may propose adjustments to the schedule of rates based on unusual circumstances, such as fluctuating utility costs. A schedule of all rates and prices shall be kept posted at all times in a conspicuous place at the clubhouse.
8. Operator shall place a person or persons duly qualified to operate the facility, in charge of the facility at all times it is open for public use.
9. Operator shall, at its own expense, furnish all materials, supplies and assistance required in the operation of said facility with Operator responsible for the routine maintenance and repairs within the clubhouse and for the payment of all utilities associated with the facility. City will be responsible for maintenance of utility services from outside meter.
10. The Operator shall provide a listing of the categories of items to be sold as concessions (e.g., soft drinks, candy, coffee, bottled fruit juices, nutrition bars, etc.) except tennis related items, to be sold or dispensed from the clubhouse for approval by the Parks and Recreation Director prior to April 1. Operator will be responsible for all food vending and agrees to meet all applicable City-County health and safety related standards.
11. Operator shall conduct and operate said facility strictly in compliance with laws, ordinances, rules and regulations of the City and the State of Nebraska, now and hereafter in effect during the term of this Agreement, in a manner wholly acceptable to the City. Operator shall give assistance to City in seeing that users of the premises and adjacent grounds do so in compliance with the laws, ordinances, rules and regulations of the City and the State of Nebraska now and hereafter in effect during the term of this Agreement.
12. Operator shall pay to the City rental equal to 5% of Operator's gross revenues from the operations at Woods Tennis Complex and other City managed courts, including concessions, payable in quarterly payments for periods ending June 30, September 30, December 31 and March 31. Said payments are due forty-five days after the end of each period and are to be accompanied by the "Total Sales from City Operations" statement of Operator's quarterly "Statement of Income and Retained Earnings," a report completed

by Operator's accountants. Operator shall issue an annual financial report for the purpose of showing gross receipts, taxes, percent and total owed the City, and Operator's recoupment of cost on permanent structure, if any. Such financial report shall be issued on or before March 31 to be reviewed by the Finance Director. In addition, the City shall at all reasonable times be permitted to inspect the financial records of Operator as they pertain to this operation.

The City agrees to place all revenue derived from this project in the Tennis Capital Improvement Fund for future major renovation of Capital Improvements to the clubhouse and tennis center in Woods Park.

13. Operator shall pay for all utilities and phone service, one-third of garbage service, and necessary permits. Operator shall be responsible for maintenance of the tennis structure and clubhouse area and surrounding yard so as to keep the premises in a clean, safe condition compatible with the remainder of Woods Park. Operator shall be responsible for seeing that all papers, rubbish, empty containers, garbage and other trash accumulated are to be picked up and placed in suitable trash and garbage containers, which containers shall be kept in a clean and sanitary condition. The City will be responsible for maintaining the landscape plantings and park amenities associated with the plaza area linking Woods Memorial Pool/Sprayground and the clubhouse and tennis center. City shall be responsible for removal of snow from parking lot. Operator shall be responsible for clearing snow from walks providing access from the parking lot to clubhouse. The City will install windscreens on outdoor courts each spring and remove windscreens each fall and place into storage. Operator will be responsible for maintenance of windscreens, including replacement of breakaway ties. City and Operator will share equally in the cost of replacing nets and windscreens for outdoor courts at the facility.
14. City assumes no responsibility for the property of Operator including no responsibility for loss from fire, theft, pilferage or malicious mischief.
15. Neither Operator nor anyone acting under or by virtue of the terms of this Agreement shall discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to such person's hire, tenure, terms and conditions or privileges of employment because of such person's race, color, religion, sex, disability, national origin, age, marital status or political opinions or affiliations, pursuant to the requirements of Section 48-1122 Neb. Rev. Stat. (Reissue 1998), and

Title 11 of the Lincoln Municipal Code; nor shall Operator or anyone else, in conducting the business covered by this Agreement, discriminate against any patrons of said business or against anyone else, because of such person's race, color, religion, sex, national origin, ancestry, disability or creed.

16. Operator further agrees to hold City harmless with respect to any and all suits or claims for bodily injury, death or property damage arising out of its operations, including those of its agents and employees, under or by virtue of the terms of this Agreement, and to secure and maintain in full force and effect during the entire period of this Agreement, at its own expense, a policy of public liability insurance written by an insurance company authorized to do business in the State of Nebraska, with both City and operator as insureds thereunder, and providing them with bodily injury, personal injury and property damage liability insurance coverage, including products liability, for all operations of Operator, its agents and employees, conducted under or by virtue of the terms of this Agreement. Such insurance coverage shall, at a minimum, comply with the "Insurance Clause for All City Contracts", as may be amended throughout the length of this Agreement. Currently, such insurance coverage shall be in the minimum amounts of One Million Dollars (\$1,000,000) for the injury or death and for personal injury liability of any number of persons in any one accident or occurrence, and One Hundred Thousand Dollars (\$100,000) property damage arising out of any one accident or occurrence. Such policy of insurance shall provide that City does not waive any defense of governmental immunity and shall further provide that the Director of Parks and Recreation of the City shall receive thirty (30) days advance written notice in the event of cancellation or expiration without renewal of any such insurance during the period of this Agreement. In addition, such insurance shall provide protection for replacement from all risks covering all improvements constructed or installed by Operator. Further, Operator shall, if it employs any other person in the carrying out of the terms of this Agreement, carry, during the period of this Agreement, a policy of workers' compensation, including employer's liability, covering all employees. Such insurance protection shall also be at its expense. Certificates of insurance evidencing the foregoing policies of insurance shall be subject to the approval of the City Attorney of Lincoln.
17. City has the right to terminate this Agreement, without cost, if Operator shall at any time be in default in the payment of the amounts due hereunder or be in default in the performance of any of the other covenants, terms, conditions or provisions of this Agreement and Operator shall fail to cure such default within thirty (30) days after

written notice from City (or if such default cannot within reasonable diligence be cured within 30 days, then such longer period of time as may be reasonably necessary provided that Operator shall use reasonable diligence in attempting to cure such default). Upon such termination, it shall be lawful for City to enter upon said premises, and again have, repossess and enjoy the same as though this Agreement had not been made. Operator shall in such case remove its property within sixty (60) days from the date by which it was to cure the default.

18. It is hereby stipulated and agreed by and between Operator and City that neither this Agreement nor Operator's rights, privileges and authorities hereunder may be assigned or sublet, in whole or in part, without such assignment or subletting first receiving prior written approval of the City, which said prior written approval shall not be unreasonably withheld.
19. Neither Operator nor its agents or employees shall be considered to be employees of the City.
20. Operator hereby further covenants and agrees with City that City shall be permitted to enter upon said premises at all reasonable times to examine the condition of the same.
21. Operator shall not be responsible for the resurfacing or repairing of any of the tennis courts nor shall it be responsible for the repairing or replacing of any fencing or lighting, except minor, currently located on the property. Funding for the aforementioned shall be provided through City funding from tennis contributions to CIP. However, if through the actions of Operator, or its agents, damage to or destruction of the surfaces, fencing or lighting occurs, then Operator shall be responsible for any necessary repairs or resurfacing.
22. Upon the expiration of this Agreement or its termination as herein provided, Operator agrees that all tennis structures and other improvements installed or built by Operator shall become the property of the City and Operator shall return possession of the premises in the same condition as received by it, reasonable wear and tear alone excepted.
23. In the event Operator erects a permanent structure during the term of this lease and this lease has not been terminated as hereinbefore set out and Operator has not recouped the cost of the permanent structure, Operator is hereby granted an option to renew said lease for an additional ten (10) years under the same terms and conditions set forth. Said option to renew shall be requested by an instrument in writing submitted to the City Parks and Recreation Director and Mayor at least sixty (60) days prior to March 31, 2015. If at



STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2005, by \_\_\_\_\_, of Woods Park Tennis Corporation, a Nebraska  
Corporation.

\_\_\_\_\_  
Notary Public

**WOODS PARK TENNIS CORPORATION**  
A Nebraska Corporation

*Jane A. Lippelman*  
Operator

*Janet R. Ball*  
Witness

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 13 day of May, 2005, by *Jane A. Lippelman*, of Woods Park Tennis Corporation, a Nebraska Corporation.

*Jeanne Bowling*  
Notary Public

