

**AMENDMENT NO. 2 TO THE DELRAY BEACH MUNICIPAL
TENNIS CENTER AND DELRAY SWIM AND TENNIS CLUB
MANAGEMENT AGREEMENT DATED OCTOBER 1, 2004**

THIS AMENDMENT NO. 2 to the Delray Beach Municipal Tennis Center and Delray Swim and Tennis Club Management Agreement is made this 15th day of August, 2011, by and between the CITY OF DELRAY BEACH, a Florida municipal corporation (the "City"), and DUBIN & ASSOCIATES, INC., ("Dubin").

W I T N E S S E T H :

WHEREAS, the City and Dubin currently have an Agreement for Management Services at the Delray Beach Municipal Tennis Center and the Delray Swim and Tennis Club that will expire on September 30, 2012; and,

WHEREAS, the parties desire to amend the Agreement to provide for a revised expiration date and contract amount.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The parties hereby represent that the above recitals are hereby incorporated as if fully set forth herein.
2. **Term.** Paragraph 4 of the Agreement is amended to reflect that this Agreement shall terminate on September 30, 2016.
3. **Payment.** Paragraph 6 of the Agreement is amended to reflect that the City shall pay Dubin for the performance of work at a base monthly rate of \$3,525.00, payable at the first of the month.
4. **Effective Date of Amendment No. 2 to the Agreement.** This Amendment shall not be effective until it is approved by the City Commission and signed by both of the parties with the effective date being October 1, 2011.

IN WITNESS WHEREOF, the parties hereto have cause this Amendment No. 2 to be
duly executed this 1st day of August, 2011.

ATTEST:

Oranella D. Nelson
City Clerk

CITY OF DELRAY BEACH, FLORIDA

By: Nelson S. McDuffie
Nelson S. McDuffie, Mayor

Approved as to form:

Terrell Pyle
Att. City Attorney 7/22/11

WITNESSES:

Donna Belding
DONNA BERDOWICZ

Frances D. Rangel
FRANCES D. RANGEL

DUBIN AND ASSOCIATES, INC., a
Florida corporation

By: Sharon Painter
Name Printed SHARON PAINTER
Title: CEO
Date Signed: July 21, 2011

**AMENDMENT NO. 1 TO THE DELRAY BEACH MUNICIPAL
TENNIS CENTER AND DELRAY SWIM AND TENNIS CLUB
MANAGEMENT AGREEMENT DATED OCTOBER 1, 2004**

THIS AMENDMENT NO. 1 to the Delray Beach Municipal Tennis Center and Delray Swim and Tennis Club Management Agreement is made this 15th day of August, 2008, by and between the CITY OF DELRAY BEACH, a Florida municipal corporation (the "City"), and DUBIN & ASSOCIATES, INC., ("Dubin").

WITNESSETH:

WHEREAS, the City and Dubin currently have an Agreement for Management Services at the Delray Beach Municipal Tennis Center and the Delray Swim and Tennis Club that will expire on September 30, 2008, but allows for one 4 year renewal term; and,

WHEREAS, the parties desire to amend the Agreement to provide for a revised expiration date and contract amount.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The parties hereby represent that the above recitals are hereby incorporated as if fully set forth herein.
2. **Term.** Paragraph 4 of the Agreement is amended to reflect that this Agreement shall terminate on September 30, 2012.
3. **Payment.** Paragraph 6 of the Agreement is amended to reflect that the City shall pay Dubin for the performance of work at a base monthly rate of \$3,916.67, payable at the first of the month.
4. **Designated Representative.** Paragraph 11 of the Agreement is amended to reflect that Sharon Painter shall be Dubin's representative for this Agreement.

5. Effective Date of Amendment No. 1 to the Agreement. This Amendment shall not be effective until it is approved by the City Commission and signed by both of the parties with the effective date being October 1, 2008.

IN WITNESS WHEREOF, the parties hereto have cause this Amendment No. 1 to be duly executed this 15th day of August, 2008.

ATTEST:

Chenelle D. Dubin
City Clerk

CITY OF DELRAY BEACH, FLORIDA

By: Rita Ellis
Rita Ellis, Mayor

Approved as to form:

[Signature]
Asst. City Attorney

WITNESSES:

Robert A. Barcinski
Robert A. BARCINSKI

Dianna Badolico
DIANNA BADOLICO

DUBIN AND ASSOCIATES, INC., a
Florida corporation

By: Sharon Painter
Name Printed Sharon Painter
Title: CEO
Date Signed: July 28, 2008

**DELRAY BEACH MUNICIPAL TENNIS CENTER AND DELRAY SWIM
AND TENNIS CLUB MANAGEMENT AGREEMENT**

OCTOBER 1, 2004

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**DELRAY BEACH MUNICIPAL TENNIS CENTER AND DELRAY SWIM
AND TENNIS CLUB MANAGEMENT AGREEMENT**

THIS AGREEMENT ("The Agreement") is made this 20th day of September, 2004 by and between the **CITY OF DELRAY BEACH**, a Florida Municipal Corporation (the "City"), and **DUBIN & ASSOCIATES, INC.** (hereinafter called "Company").

WITNESSETH:

WHEREAS, the Company responded to a Request for Proposals (RFP) for the management of the Delray Beach Municipal Tennis Center ("Original Site") and the Delray Swim and Tennis Club ("Additional Site"), together referred to as "Sites"; and

WHEREAS, the terms of the RFP shall be incorporated into this management agreement; and

WHEREAS, the City has determined it is in the public interest to enter into this management agreement with Company.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The parties hereby represent and warrant that the above recitals are accurate and correct and the recitals are hereby incorporated as if fully set forth in this Agreement.
2. **Agreement to Perform Work.** City agrees to retain Company to render certain professional services (hereinafter the "Services") and to pay for the performance of such work on and under the conditions which are set forth in this Agreement, and Company agrees to perform such Services to the reasonable satisfaction of the City and to accept full payment as is set forth in this Agreement.
3. **Services.** The services shall generally consist of those services more particularly set forth in exhibit "A" which is attached hereto and incorporated as if fully set forth herein.
4. **Term of Agreement.** This agreement will commence on October 1, 2004 and terminate on September 30, 2008. This agreement may be renewed for another 4 year term, upon the sole discretion of the City.
5. **Termination.** This agreement may be terminated by Company with or without cause by giving the City ninety (90) days written notice in advance of the date of

termination. Upon termination of this Agreement, the City shall remit, after review and approval of all receipts and itemizations, any outstanding reimburseables incurred by Company prior to termination of the agreement.

This Agreement may be terminated by the City with or without cause by giving the Company ninety (90) days written notice in advance of the date of termination.

6. **Payment.** The City shall pay Company for the performance of work at a base monthly rate payable at the first of the month in the following amounts:

October 1, 2004 to September 30, 2005 - \$3,666.67 per month
October 1, 2005 to September 30, 2006 - \$3,750.00 per month
October 1, 2006 to September 30, 2007 - \$3,833.33 per month
October 1, 2007 to September 30, 2008 - \$3,916.67 per month

7. **Reimburseables.** The City shall accept and pay the actual cost of reimburseables as follows:

- (a) Payroll costs for Company's employees who are working full-time or part-time at the Original and Additional Sites. The payment of such payroll costs is subject to the City Manager's, or his designee's prior approval, and only such approved costs shall be paid;
- (b) All insurance premiums as required under paragraph 14 of this agreement;
- (c) Pre-approved travel expenses;
- (d) Mileage at the current City rate per mile;
- (e) Telephone, mail, facsimile and pre-approved miscellaneous out-of-pocket expenses.

Company shall itemize all expenses and submit receipts to show proof thereof. Such expenses shall be billed by Company at cost on a monthly basis.

8. **Availability of Company and Employees.** During the term of this Agreement, Company and its employees, and/or its representative shall be available to perform the services as may be required to accomplish the services in the manner required by this Agreement. Company and its employees, and/or its representative shall be available for consultation during the hours normally worked by City's employees unless otherwise agreed between City and Company, and in special circumstances. Company and its employees, and/or its representative shall also be available to City during evening meeting hours and other reasonable times when

required by City. Company and its employees shall also be available to fully staff the sites at the times requested by the City, which the City determines in its sole and absolute discretion is advantageous to the City due to emergencies, disasters or any other reason required by the City in order to assist the officers, agents, employees, residents and others as determined by the City. Such assistance could include, but is not limited to, providing food and shelter to City employees and others as the City determines in its sole and absolute discretion is appropriate at the dates and times specified by the City, in its sole discretion.

9. **Performance Bonus.** In addition to the base payment provided for in this Agreement, Company shall be eligible to receive a yearly fixed bonus payment on or before December 1st of each year. The performance bonus payment shall be contingent upon accomplishing specific yearly goals and objectives as agreed to by Company and the City Manager in writing and approved by the City Commission. The proposed performance measure must be submitted by the Company to the City Manager for review on a yearly basis by July 1st of the year preceding the year in which the bonus is to be paid. In any event, the standard aggregate bonus paid to Company in any one year shall not exceed 15% of the base fee provided for managing the Courses. In no event will the yearly fixed bonus be based on net profits or a combination of gross revenue and expense targets.

Company shall also submit a marketing business plan on a yearly basis, by July 1st of the year preceding the year in which the plan pertains to, to the City Manager for his review and approval by the City Commission.

10. **Licensed or Registered Personnel.** All services to be rendered by Company under this Agreement, which are required by law to be performed by or under the direction of a duly licensed or registered professional, shall be rendered in compliance with such requirements.

11. **Designated Representative.** All of Company's recommendations, reports and certifications are to be routed through the City Manager or his designee. Company shall designate Brahm Dubin as its representative for this Agreement.

12. **Performance.** During the term of this Agreement, Company shall, to the best of its ability, design, inform, suggest, advise and render all services that might be requested by City or which may be appropriate in respect to the Services on a timely

basis, as required by City to meet project timetable needs. City shall have the right to make use of same in its business at any time as it may desire without further payment to Company, other than that specifically stated herein. All reports and other documents furnished by Company in the course of or as a result of performing the Services shall be the property of City and may be used by City for any purpose whatsoever.

13. **Public Records Law.** Company shall be required to comply with the Florida public records law to the extent that it may be required to comply with such law.

14. **Insurance.** Company shall provide the City with insurance certificates which coverage shall be maintained throughout the term of this Agreement showing the following minimum insurance coverage:

Crime and Employee Dishonesty Insurance: Minimum limits of \$500,000 per occurrence.

Workers Compensation: Coverage with Statutory Limits for coverage "A" and limits of a minimum of \$1,000,000 for Employers Liability.

General Liability Insurance: Minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually, providing coverage for Premises and Operations, Products and Completed Operations, Fire Legal Liability, and Personal and Advertising Injury Liability.

Automobile Liability: For any owned or non-owned vehicles, with minimum limits of \$1,000,000 per occurrence.

Pollution Liability: Minimum limit of \$1,000,000 must be maintained.

All insurance policies must be obtained through insurance companies that are authorized to transact business in the State of Florida by the Department of Financial Services, and they must carry a minimum rating of A.M. Best of A- as to management and VII as to financial size.

15. **Tax Exempt Status.** It is recognized by Company that the City's Municipal Tennis Center has been financed with proceeds of tax exempt debt and may be re-financed from time to time in the future and that the Internal Revenue Code of 1986, as amended, limits the private use of governmentally owned facilities constructed with tax exempt debt, such as a tennis stadium, in order to maintain the tax exempt status of the debt issued to finance the same. This Agreement shall automatically

terminate, without any required notice by the **City**, if any payment required to be made under the provisions of the Agreement with the **City** would, together with any other private use payments made or required to be made by any other entity(ies) or person(s) for the use of the tennis center or related facilities, adversely affect the exclusion from gross income for federal income tax purposes on any interest obligation (herein "negative tax consequences") of the **City** issued to finance or refinance the tennis center or any part thereof. Such a termination shall not constitute a default on the part of either party to this Agreement. Upon such termination, it is the intent of the parties hereto to enter into a new agreement which would contain different or modified payment terms and/or amounts acceptable to both of the parties hereto, and which, in the opinion of the **City's** bond counsel, would not have negative tax consequences.

16. **Purchase.** All purchases of equipment or supplies for the operation of the Original and Additional Sites shall be made by the **City's** Purchasing Department.

17. **Alcoholic Beverage License.** The parties agree that **City** will pay all costs, fees and expenses associated with maintaining the alcoholic beverage licenses. At the time of the termination of the Management Agreement, **Company** shall transfer the alcoholic beverage license to the **City**. The cost for the transfer of the alcoholic beverage license shall be paid for by **City**.

City will be responsible for the remittance of sales taxes on a monthly basis to the State of Florida, including all late fees and penalties, which the State of Florida may assess with respect to the alcoholic beverage license.

Company shall ensure that all federal, state and local laws relating to the use of the alcoholic beverage license are complied with.

18. **Successors and Assigns.** **Company** shall not assign or transfer its interest in this Agreement without the prior written consent of **City**, which may be withheld for no reason or any reason the **City**, in its sole discretion, believes is in its

best interests. The foregoing notwithstanding, this Agreement shall be binding upon and inure to the benefit of each party's successors and assigns.

19. **Destruction of Facilities; Force Majeure.**

In the event the facilities, located at the sites, or major part thereof, shall be destroyed or substantially damaged by fire or any other cause, or if any other casualty or any unforeseen occurrence, as determined by the City, then this Agreement may be terminated immediately by the City, in its sole discretion. The City in its sole discretion may determine that it will not rebuild or repair the facilities. In the event that a weather related emergency or natural disaster or other emergency occurs, that does not destroy the facilities, but either effects the use of the facility by the public or the City or effects other areas of the City to such an extent that the City does not desire that the sites be operated for tennis related activities, the City may immediately terminate this Agreement or continue with the Agreement thereafter at its sole discretion. The use of the facilities for other purposes will not be a breach of this Agreement. If the City decides to terminate this Agreement, Company shall submit any outstanding invoices to the City within 30 days of such termination. The City shall provide notice to Company of such termination as provided by Paragraph 20.

20. **Notices.** All notices required or desired to be given under this Agreement shall be in writing and delivered in person or transmitted certified mail, return receipt requested, postage prepaid addressed to the party to be noticed, and shall be deemed to have been delivered three (3) days after deposit in a post office or letter box in the above manner.

To City: City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, FL 33444

To Company: Dubin & Associates, Inc.
1300 Park of Commerce, Suite 272
Delray Beach, FL 33445

21. **Independent contractor.** Company, its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of the

Agreement. This Agreement shall in no way be construed as creating a partnership, association or any other kind of joint venture or undertaking between the parties hereto.

22. **Indemnification.** Company agrees to indemnify, defend and hold the City, its officers, agents, employees and assigns, harmless from any loss, damage, liability, negligence, cause of action, or claim, excluding any damage occurring to the City's real or personal property, arising from the negligent, reckless, intentional or malicious acts or omissions of his employees, agents, volunteers and assigns and from the operations of the Original and Additional Sites.

23. **Binding Effect.** All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective heirs, successors, legal representatives, and permitted assigns.

24. **Amendments.** This Agreement may not be amended, modified, altered, or changed in any respect, except by a further agreement in writing duly executed by each of the parties hereto.

25. **Third Parties.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement upon any person other than the parties hereto and their respective heirs, successors, legal representatives, and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision thereof give any third person any right of subrogation or action over or against any party to this Agreement.

26. **Venue.** Any action brought to enforce the provisions of this Agreement shall be brought in a court of competent jurisdiction in Palm Beach County, Florida.

27. **Entire Agreement.** This Agreement shall constitute the entire agreement of the parties with respect to the subject matter of it. All prior understandings and agreements between the parties with respect to such matters are merged into this Agreement, which alone fully and completely expresses their understanding.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly

executed on their behalf this 28th day of September, 2004.

ATTEST:

THE CITY OF DELRAY BEACH,

Chanelle D. Nubin
Acting City Clerk

By: *Jeff Feriman*
Jeff Feriman, Mayor

Approved as to form:

R.M. [Signature]
Asst City Attorney

DUBIN & ASSOCIATES, INC.

By: *Brahm Dubin* PRESIDENT
Brahm Dubin, President

(SEAL)

STATE OF FLORIDA)
) ss:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2004 by _____ (name of officer or agent, title of officer or agent) of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification and did (did not) take an oath.

(OFFICIAL NOTARIAL SEAL)

Notary Public
State and County Aforesaid
My Commission Expires:

EXHIBIT "A"

The scope of the work will include but will not be limited to the following:

Administration:

Provide administrative oversight for all key operations such as pro-shop services, court maintenance, lessons, site and building maintenance. Ensure that the facilities are operated at a first class level for municipal tennis facilities.

Supervise and direct the administration of all tennis operations, including, but not limited to the following:

- The collection, deposit and reporting of revenue;
- The procurement of and payment authorization for materials and services;
- Tennis merchandise sales, rentals and repair, tournament management, both amateur and professional, junior tennis programming, tennis lessons and clinics programming;
- Court management and maintenance, general supervision of the tennis facilities and the preparation of courts for daily play; and
- Any incidental services in as may be directed.

The Management Company shall hire, train, evaluate and fire all personnel necessary to operate and maintain the tennis facilities. The Management Company will have full authority over all personnel decisions and they shall be employees of the Management Company.

The Management Company shall respond to customer inquiries and complaints received directly or through the City Manager's office in writing within seven (7) days of receipt. Acknowledgement of receipt of the customer inquiry or complaint is required within 48 hours.

The Management Company shall make recommendations annually for maximum fees and rates for tennis fees, equipment rental, racquet repair, and memberships. It is not the City's objective to maximize court times.

Complete annual fee and rate market analysis.

Make recommendations related to operational policy.

Financial:

- Prepare an annual business plan which shall include an operating and capital budget as well as a marketing plan for review by the City Manager in accordance with City budget submittal requirements.
- Prepare a five (5) year Capital Improvement budget annually for review by the City Manager in accordance with City budget submittal requirements.
- Prepare and process requisitions for procurement of supplies, materials, equipment, services and capital items in accordance with the City policies and procedure.
- Prepare bid specifications for supplies, materials, equipment, services and capital items as may be required.
- Maintain a petty cash fund in accordance with City policies and procedures.
- Manage and maintain a computerized point of sale computer system and cash register system for tennis operations.
- On a daily basis deposit all gross revenues in account of and to the credit of the City without regard to any adjustments that may be made.
- Perform monthly inventory counts, as may be required to ensure proper accountability.
- Ensure that adequate internal control systems are in place in all areas of the operation.
- Perform monthly audits of cash.

Operations and Maintenance:

- Provide routine janitorial (daily) and building maintenance services as required and provide all necessary supplies for restrooms and locker rooms.
- Provide routine preventive maintenance services as requested.
- Ensure other structures, equipment and irrigation systems are maintained and repaired as needed.
- Maintain tennis courts and other common areas at a first class level of maintenance.

- Operate and maintain the tennis facilities in accordance with all federal, state, and local government laws, regulations, including health department regulations and state liquor board regulations.
- Maintain pro-shop inventory to ensure customer needs are met.
- Keep a perpetual inventory of merchandise for resale.
- Coordinate site landscape maintenance services with the City's Parks Maintenance Division.
- Provide racquet repair service on-site.
- Prepare a quarterly newsletter for members and other customers.
- Provide tennis lessons to the public, meeting their skill level needs; both individual and group lessons.
- Staff pro-shops at all times during hours of operation.
- Balance court utilization between daily walk-on play, league play, and lessons.
- Maintain the pro-shop area as a tennis shop in which racquets, balls and merchandise are kept for resale.
- Replace tennis nets and wind screens as required.
- Maintain courts daily in accordance with standard maintenance practices.
- Be responsible for maintenance and repair of tennis court lighting and irrigation systems.
- Provide assistance and services, as required, for amateur and professional tennis tournaments, as well as other events contracted by the City to be held on site and/or at the stadium.

Services include, but are not limited to:

- Attendance at meetings, as may be required by the City.
- Install and remove seat kills.
- Recruit and manage ball person program for ATP Tournament.
- Install and remove protective floor covering.
- Pressure clean stadium area, including seats and walkways.

- Assist in court setup for tournaments.
- Assist in court scheduling for tournaments.
- Assist tournament promoters with special clinics.
- Have a representative on site during special events and tournaments.
- Open and close facilities as may be required.
- Provide supplies and keep stocked restroom facilities.
- Assist with issues involving stadium use during events and tournaments.
- Make available practice courts, as may be required for tournaments.

Marketing and Promotions:

- Develop and conduct youth programs and clinics which meet the needs of the tennis customer.
- Develop and implement tennis teaching programs.
- Prepare and submit an annual marketing plan for City approval as part of the annual business plan.
- Promote and develop a wide variety of events and programs, including junior tennis, charity events, and programs for underprivileged youth.
- Develop advertising and promotional materials for tennis operations.
- Offer demonstrations of aspects of the game of tennis in promotion of the tennis facilities, free of charge.

Other:

- Provide monthly reports to include, but not limited to, financial information, utilization rate, maintenance highlights, program data, and marketing/promotional initiatives in a format as may be prescribed by the City.
- Ensure security and protection of all assets, including City funds.
- Provide response and backup response to answer alarms during all hours of the day.
- Make recommendations and assist the City in planning and implementing capital improvements.

- **Conduct all operations and activities to comply with safety regulations and standards.**
- **Ensure compliance with all environmental and natural resources laws, regulations and permits.**