

EMPLOYMENT AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the Trustees of the Norman Municipal Authority, a Public Trust, hereinafter referred to as "Authority," and Marc Claude', Westwood Tennis Professional, hereinafter referred to as "Professional."

WITNESSETH:

WHEREAS, the Authority owns and possesses a Municipal Tennis Center known as "Westwood Tennis Center" situated in Norman, Oklahoma, including the grounds and courts thereon and all other improvements appurtenant thereto, and,

WHEREAS, the Professional is desirous of managing and operating said Westwood Tennis Center and facilities (excluding the grounds thereof) (hereinafter called "WTC") for the Authority, and the Authority wants to employ the Professional for those purposes.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements hereinafter set forth, the Authority and Professional agree as follows:

1. Authority hereby employs Professional and Professional accepts employment for a period of five (5) years from date hereof to manage and operate said WTC, and the Professional shall assume responsibility for the general management and operation of said WTC, and provide to the general public services for tennis lessons, subject to the overall direction of the Director of Parks and Recreation for the City of Norman, Oklahoma (hereinafter referred to as the "Director") and the Authority. The Director shall have supervision over the performance of the acts and things herein contained and covenanted.
2. Professional shall keep accurate records of all receipts and collections of the WTC income in a manner approved and reasonably established in writing by the Authority and/or its designated agent or auditor, the cost thereto to be assumed and paid for by the Authority. Professional shall make such records available for inspection by the Authority or the Director at any time during the Director's customary business hours upon the Director's demand and shall submit such records or a copy thereof to whomever the Authority or Director may designate hereafter for the purpose of auditing such records on or before the tenth day of each month for the preceding month.
3. A schedule of fees and prices applying to use of the tennis courts at WTC shall be established by the Authority.
4. The WTC shall be open for full operation daily subject to necessary repairs and maintenance approved by the Director or the Authority. The specific hours of such operations shall be established by the Director. Professional shall abide by such established hours of operation and use his reasonable efforts to assure that services and employees will be available to the patrons during all the hours of operation.

5. (A) Income and disbursements will be administered in the following manner: Professional will receive all income from (a) the sales and rental of tennis or tennis related merchandise, equipment, supplies, food and drink, all of which shall be purchased at his own cost and expense, and consisting of such items and priced as Professional deems appropriate in his sole discretion; (b) the charges and fees for repairs to tennis players' equipment and supplies at a Repair Shop at the WTC, which Repair Shop the Professional shall equip and maintain at his own cost and expense, excluding the facility and building at which the Repair Service is located; and (c) from tennis lessons given by the Professional to patrons of WTC.  
  
(B) Authority shall receive income from the following: court fees and memberships. The income of the Authority shall be deposited daily on all days in which banking services are reasonably available in such bank as is hereafter designated in writing by the Director and the Authority to Professional.
6. Yearly audits of all activities of the WTC under the Professional's supervision and control shall be performed in order to determine profit and loss, which audit shall be supplied by the Authority at the Authority's sole expense.
7. As consideration for the Professional's supervision and management of WTC and other activities appurtenant to the WTC, the Professional shall receive, as remuneration, the following:
  - Professional will receive a salary of \$1,250 per month.
  - Professional will receive 100% of all instruction fees charged for junior and adult clinics, junior and adult leagues, private and group lessons and fees from all tournaments put on by the Professional;
  - Professional will receive 100% of all pro shop retail sales and racquet service.
8. Neither the Professional, nor the Professional's staff shall have any sole exclusive right to provide tennis lessons at the WTC.
9. All buildings, landscaping, tennis courts, nets, fencing, benches, bulletin boards, sidewalks, *lighting, parking lot, items of equipment for maintenance of and improvement to the WTC*, shall be owned and reasonably maintained by the Authority and the expenses for the ownership, maintenance, repair and operation of said Authority property shall be paid for by and the sole responsibility of the Authority. Adequate labor and supplies to properly maintain, repair and operate the WTC shall be provided by, and at the sole expense of, the Authority. The Authority shall maintain WTC in a manner similar to other first class municipal tennis centers in Oklahoma (e.g., the Oklahoma City Tennis Center and Kickingbird Tennis Center, Edmond, Oklahoma). Authority shall be solely responsible for the cost to repair and maintain the structural integrity of the tennis courts, buildings, fencing, exterior lighting, parking lot and appurtenances directly associated thereto.
10. Professional agrees that such management and operation of the WTC including said tennis lessons and said tennis sales and rentals shall be conducted in a manner similar to other municipal tennis centers in Oklahoma.

11. Authority reserves the right to host certain special events upon reasonable notice and such terms as can be agreed upon by Professional and Authority. Professional may, as often as desired by Professional, hold and conduct tournaments and other events at the WTC. Rates relating to such special events or tournaments are deemed approved by the City unless the City sets a different rate within thirty (30) days after receipt of notice of the rates proposed by Professional as per discussions with the sponsor.
12. Professional shall assure that the premises and grounds are maintained in good and substantial repair and in a clean and orderly condition. All employees of Westwood Tennis Center will dress in a manner similar to their respective counterparts at other municipal tennis centers in Oklahoma.
13. In the operation and management of the WTC and properties, Professional shall have the right during the term hereof to select and employ on behalf of the Authority or the City of Norman, Oklahoma, as directed by the Director all necessary assistants and personnel at rates of pay within the limitation of funds provided for that purpose in a budget approved by the Director and by the Authority, and said employees shall be employees of the City of Norman, Oklahoma and paid from funds of the City Of Norman, and the Professional shall establish employment conditions and regulations for all employees delineating duties and responsibilities which shall be approved by the Director.
  - (A) Professional shall provide loss and damage insurance necessary to protect Professional's tennis merchandise and Professional's equipment in the Repair Shop and property and equipment of patrons in the possession of Professional. Professional assumes all risks incident to or in connection with Professional's sale of tennis merchandise, and repairs referred to above, and shall indemnify, defend and save the authority and the City of Norman harmless from damages or injuries of whatever nature or kind to persons or property arising directly or indirectly out of the above-specified activities, except with respect to any damage or injury resulting from any negligent act or omission or wrongful misconduct by the City of Norman, Oklahoma, the Director and/or the Authority, or any agent or employee thereof (other than Professional), or any infirmity or defect in any structure, court, equipment, or material owned by the City of Norman or the Authority. In this connection, the Professional shall carry Comprehensive General Public Liability Insurance in the minimum amount provided by the Oklahoma Governmental Tort Claims Act. Professional further agrees to save the Authority and the City of Norman harmless from any and all damages arising out of any act or omission by him outside the scope of his employment.
  - (B) Authority shall provide insurance for Property Damage for the WTC, its equipment, buildings, fixtures, fencing, landscaping and grounds equipment, in such amounts as are customary for facilities of this type and to protect the Authority, its agents and employees including the Professional from any and all accidents in the general operation of the WTC and facilities, except those stated in Paragraph 12 (A) above. The Authority shall provide insurance against damage to the WTC, its equipment, courts, fencing, landscaping and grounds equipment including, without limitation, hail, lightning, wind, rain, vandalism, fire and theft.

- (C) Professional shall qualify for a Corporate Surety Bond in the amount as specified in Section 8-109(2)C of the Code of the City of Norman to be procured by the Authority at the Authority's sole cost and expense. Conditions of said bond shall be the faithful performance of all the covenants and obligations imposed on the Professional by this Agreement.
- (D) Professional shall comply in all material respects with all applicable federal, state, county and municipal laws and ordinances regarding nondiscrimination, and specifically agrees not to discriminate against any employee, applicant for employment, any patron or other person because of race, color, religion, sex, age or national origin. Professional further agrees not to refuse to hire, discharge, promote, demote or to otherwise discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, sex, national origin, ancestry or disability. Professional shall not be liable, responsible or accountable for damages or otherwise to the Authority or the City of Norman, Oklahoma for any act taken or performed or for any omission to act, if such act or omission does not constitute willful misconduct, negligence or recklessness. In any threatened, pending or completed action, suit or investigation in which Professional was or is a party by virtue of his employment under the term of this Agreement, the Authority shall, solely indemnify Professional against claims, judgments, settlements, penalties, fines or expenses, including attorneys' fees, asserted against or incurred by Professional in connection therewith, so long as his action or failure to act does not constitute willful misconduct, recklessness, a breach of loyalty, lack of good faith, intentional misconduct, knowing violation of law, or negligence. The indemnification rights herein contained shall be cumulative of, and in addition to, any and all other rights and remedies to which Professional shall be entitled, whether pursuant to some other provision of this Agreement, at law or in equity.
14. All expenditures of Authority funds for supplies and equipment shall be approved by the Director, and any expenditure exceeding \$25,000 shall be approved by the governing body of the City Of Norman.
15. Authority agrees to furnish at the above-named WTC to the Professional: office space, office equipment, storage area and suitable area in which to sell and work upon tennis equipment and supplies, and food and tennis-related merchandise, free of rent or other remuneration of any kind.
16. Professional agrees to abide in all material respects by the Ordinances of the City Of Norman and the Statutes of the State of Oklahoma and reasonable rules and regulations established by the Director and the Authority applicable to the performance of his duties and responsibilities under this contract.
17. Provided further that this contract is subject to the annual appropriation by the City Council of the City of Norman, Oklahoma of the funds allocated herein. Should the City Council fail to appropriate funds sufficient to fulfill the uses and purposes of this Agreement, then this contract shall terminate.

18. In the event the Authority or Professional shall fail in any material respect to perform, keep and observe any of the terms, covenants and conditions herein contained, which apply to that party, Authority or Professional may give the other written notice to correct such condition or cure such default, and reasonable action to correct any such condition or default shall be taken and reasonably prosecuted within thirty (30) days after receipt of such notice by Authority or Professional, as applicable. Thereafter, if it is determined by the Authority, or by the Professional, as the case may be, that no action has been taken or that the action to correct such condition or default is not appropriate, not being reasonably prosecuted or is insufficient, then the other may terminate this contract by the giving of written notice to that effect addressed to the other party by registered mail in which event the contract shall terminate after the expiration of ninety (90) days from the date of notification. If the Professional shall at any time be incapacitated by illness or otherwise from performing his duties for a reasonable period of time, or if he shall, in the reasonable opinions of the Director and Authority, exercised with the utmost good faith and fair dealings, acts to the material detriment of the Authority or improperly performs his duties in any material respect, the Authority may, after three calendar months prior written notice, terminate this contract, notwithstanding anything herein contained to the contrary.
19. In the event the Authority initiates termination of this agreement the Authority shall purchase from the Professional the merchandise, equipment, supplies and clothing owned by him in the operation of the tennis pro shop at the WTC as follows:
  - A. All new merchandise, delivered or undelivered at the date of notice of termination, which has been paid for by the Professional, including, but not limited to, clothing, shoes, tennis balls, and other items for sale in the tennis pro shop shall be purchased at actual invoice price plus actual freight costs. Professional shall supply documentation to the Authority indicating said actual cost.
  - B. Any payments due to the Professional from the Authority shall be paid within thirty (30) days of the date of termination of this Agreement.
20. It is contemplated between the parties hereto that during the term of this contract that various improvements may be made to the Tennis Center and its facilities. In the event that improvements shall be made of such a substantial nature as to disrupt the normal operation of the Tennis Center, the parties may, by mutual agreement, revise during the period of such disruption the monthly salary being paid to Professional to a monthly salary that more properly represents the conditions existing at that time.
21. It is agreed that this contract shall not be assigned in whole or in part by any party hereto without written consent of the other party, which consent shall not be unreasonably withheld or delayed.
22. During the continuance of this Agreement, Professional shall devote at least 40 hours each calendar week (on an annualized basis) to his duties set forth herein during the operating hours of the Tennis Center except during periods of illness, vacation or approved absence by the Director and shall use his reasonable efforts to promote the interest and welfare of the



Authority. During periods of inclement weather (e.g., heavy rains, snow, ice, etc.), the Professional may close, and need not be present at the WTC. Professional shall be allowed to participate in tennis tournaments and other professional tennis activities after obtaining permission from the Director, which permission shall not be unreasonably withheld or delayed.

23. If any casualty or unforeseen occurrence shall render the fulfillment of this contract by Authority impossible, including without limitation thereto, the requisitioning of the premises by the United States Government or the State of Oklahoma or the City Of Norman or any arm or instrumentality thereof for a major portion of the term, then this contract shall terminate and Professional waives any claim for damages or compensation, should this contract be so terminated, except for amounts theretofore earned. If the Authority reasonably determines (exercising the utmost good faith) that it is in the best interest of the Authority and the City of Norman, Oklahoma, to discontinue the operation of said WTC, it may, at its discretion, terminate this contract on three (3) months written notice to Professional and Professional waives any claim for damages or compensation in case of such termination, except for amounts theretofore earned and as otherwise provided in the Agreement.
24. It is understood and agreed by and between the parties that the terms and conditions of this contract contain all matters which constitute the employment relationship herein created and any duties, responsibility, benefit, privilege or condition not expressly contained herein is deemed to have been considered and rejected as part of this Agreement and is not subject to further negotiation unless mutually agreed to by the parties.
25. The prevailing party in any action to construe, enforce or for breach of this Agreement shall be entitled to that party's reasonable attorneys' fees and court costs.

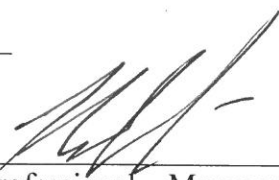
WITNESS, our hands the day and year first above written.

NORMAN MUNICIPAL AUTHORITY  
A Public Trust

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

  
\_\_\_\_\_  
Professional - Manager

STATE OF OKLAHOMA )  
 ) ss.  
COUNTY OF CLEVELAND )

On this 9 day of April, 2018, before me personally appeared Marc Claude' to me known to be the identical person who subscribed the above and foregoing instrument and acknowledged to me that he executed the same as his free voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and official seal the day and year last above written.



[Signature]  
Notary Public

My Commission Expires:  
December 7, 2020

APPROVED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2018 \_\_\_\_.

\_\_\_\_\_  
City Attorney