

AGREEMENT

AGREEMENT made this ____ day of Feb 2017 between the THE INCORPORATED VILLAGE OF PORT JEFFERSON, with offices at 121 West Broadway, Port Jefferson, New York 11777 (hereinafter "Village" and SETAUKET COUNTRY CLUB, LTD., DBA WORLD GYM SETAUKET. (hereinafter referred to as SCC) 384 Mark Tree Road, East Setauket, New York 11733.

WITNESSETH:

WHEREAS, the VILLAGE owns and operates the Port Jefferson Country Club at Harbor Hills which includes, among other things, tennis courts and a tennis pro shop (hereinafter "facilities" and/or "facilities"); and

WHEREAS, it has been determined that it is in the best interests of the VILLAGE to have a tennis professional supervise and manage the facilities; and

WHEREAS, SCC is an experienced tennis professional and desires to work on behalf of the VILLAGE (in a non-employee capacity) for purposes of managing the facilities and supervising the facility staff, among other things; and

WHEREAS, SCC in response to the VILLAGE'S Request for Qualifications, submitted to the VILLAGE proposed objectives, solutions, proposed teaching activities, member activities, member events and tennis services, a copy of which response is annexed as EXHIBIT "A" and all of its terms expressly incorporated herein; and

WHEREAS, the VILLAGE is desirous of retaining the services of SCC as a tennis professional in reliance upon and in expectation that SCC will provide and achieve all that is set forth on his response; and

WHEREAS, SCC reaffirms to the Village that he is willing and competent to accomplish that which was set forth in his response.

NOW THEREFORE, the VILLAGE and SCC agrees as follows:

1. The VILLAGE, subject to the terms herein, agrees to hire SCC as an independent contractor to perform the services of a tennis professional.
2. SCC agrees to provide services as the VILLAGE'S tennis professional subject to the terms set forth herein.
3. The relationship of the SCC established by this contract is that of an independent contractor and nothing contained herein shall be construed to constitute the parties as employer/employee, partners, joint venturers, co-owners or participants in a

joint understanding. Accordingly, SCC shall be responsible for the payment of all taxes arising out of his activities in accordance with this contract including, by way of illustration but not limitation, federal, state and regional and local income tax, social security tax, unemployment insurance taxes, sales, use and any other taxes or business license fees as may be required. SCC represents and warrants that no payment is due or shall become due to any third party in connection with his performance of services pursuant to this contract. SCC shall be responsible for, and shall indemnify and hold the VILLAGE free and harmless from, any and all claims, damages or causes of action (including VILLAGE'S reasonable attorney fees) arising out of his acts and the acts of his employees and/or agents.

4. SCC shall have no power to sign the VILLAGE'S name to any agreement or otherwise to bind the VILLAGE. SCC shall identify himself as an independent contractor of the VILLAGE when making contact with any persons using or otherwise contacting SCC in connection with the tennis facilities.
5. SCC is to serve as an independent contractor of the VILLAGE and not an employee of the VILLAGE. Accordingly, SCC expressly agrees that he is not entitled to receive any rights, privileges, or benefits from the VILLAGE except as provided herein.
6. SCC shall not accept for his own benefit or for any of his agents or employees any trade commission, discount or similar payment in connection with activities pursuant to this contract or the discharge of SCC duties hereunder. SCC shall not engage in any business or professional activities, directly or indirectly, that would conflict with the activities assigned under this contract.
7. SCC will provide director of tennis, assistant director of tennis, 10 and under coach and high performance instructors. SCC shall appoint one instructor to act as the Head Pro at the Country Club overseeing the onsite professionals of SCC and he and Tito Perez shall be responsible for fulfilling all membership responsibilities as well as coordinating the lessons and court time use by SCC pursuant to the Agreement. The remaining Professionals are to be available for Members to instruct on evenings and weekends and to run the children's camps and adult programs and clinics programs SCC is obligated to provide to the Membership. A Member shall have access to a tennis professional for instructional purposes at all times Court one is available. Court One shall be given preferential bookings to Members for lessons and when not in use by SCC be made available for Member open play.
8. The services to be provided by SCC pursuant to this contract are as follows:

- a. Ensure that members have adequate availability to a tennis coach at the PJCC for an average of 72 hours per week from Memorial Day to Labor Day and an average of 48 hours per week for all other periods throughout each tennis season. (The above hour requirement is subject to the existent weather conditions).
- b. Enforce all the club rules, regulations and tennis by-laws governing the use of the tennis facilities and all policies instituted by the Port Jefferson Board of Trustees and Country Club Management Advisory Council.
- c. Ensure that members, non-members and guests adhere to club policies, regulations and tennis club by-laws.
- d. Supervise and maintain daily tennis activities, retail tennis pro shop operations, tennis assistants, tennis maintenance people and ensure they are performing their duties and obligations in a competent manner; supervise the starting of play.
- e. Maintain of all court maintenance and repairs 6 am and 12 noon maintenance.

SCC will manage the PJCC tennis pro shop (see dates below and times). Tennis Pro Shop staff will also maintain the tennis courts each day 6 a.m. maintenance (sweep/line and water the tennis courts for 7 am play. Mid day sweeping/line and water at 12 noon. Prior to April 15th, PJCC will provide the opening maintenance of PJCC, put up all tennis nets and windscreens, place all benches, cup holders on each court. PJCC will also provide a mid-season maintenance. PJCC will provide staff to coordinate any sprinkler issues and maintenance. PJCC will also provide parks staff to coordinate and oversee any maintenance cleaning.

Start Date: April 15, 2017

End Date: October 30, 2017

Fee Paid to SCC - \$38,500 to be paid bi-weekly

April 15 – September 5th from 6 a.m. – 9 p.m.

September 6 – October 30th from 6 a.m. – 12 noon and 4:00 p.m. – 9:00 p.m.

- f. Ensure that tennis courts are in proper condition to guarantee safe playing conditions, including proper treatment additions to the courts (i.e. all materials provided by PJCC).
- g. Ensure that courts are properly swept, cleaned and maintained daily.
- h. Supervise the start of day and end of day maintenance, watering and lighting schedules.
- i. Inspect court maintenance at the beginning and end of each day to ensure proper court condition. When not on-site, ensure that competent personnel are available to perform inspections.

- j. Ensure that the stopping and starting of play due to weather conditions and court conditions are in compliance with the USPTR specifications and guidelines.
- k. Notify the Village Administration of any maintenance related concerns that do not meet or satisfy the standards adopted and/or applied by the United States Tennis Association and/or USPTR.
- l. Offer competent tennis instruction for all groups and levels of players at a reasonable fee in the form of clinics/camps/workshops and provide their own marketing materials to promote programs, social events and instructional opportunities – all materials must be approved by the VILLAGE prior to circulation.
- m. Submit to the Village, within one week of the ratification of this contract, a fee schedule for all lessons, programs, and other tennis related services. Any changes to the fee schedule must be submitted to the Country Club Administrator for review prior to being implemented.
- n. Submit a “clinic schedule” on or before May 1, 2017 of each year of this contract.
- o. Submit requests for fund raiser events to Board of Trustees for prior approval on a per event basis.
- p. Ensure that SCC lessons, clinics, events, etc. do not interfere with the play of the members or hinder a member’s ability to obtain court time.
- q. Ensure that Court #1 will be used in accordance with the tennis club By-Laws.
- r. Ensure that no one other than SCC shall provide tennis lessons for a fee unless SCC uses his own pro teaching staff.
- s. Organize, promote and run junior clinics for members to promote the game of tennis and club membership for a reasonable fee.
- t. Attend CCMAC meetings during the months of April through and including October. At such meetings, SCC will present a Tennis Report at the conclusion of which he need no longer remain at such meeting.
- u. Assist members in matching similarly skilled members to facilitate play.
- v. Organize, manage, and run with coordination from the Tournament Chairperson and Officers of the tennis club:
 - i. Membership’s end of year tournaments;
 - ii. The operation of a ladder system as directed by the CCMAC and/or tennis club.
 - iii. The organization, promotion, supervision and running of inter-club and intra-club play, round robins, member tournaments and clinics.

- iv. The planning of tennis “events” to promote the fellowship and improve the enjoyment of tennis by the membership. Such events may include but shall not be limited to socials, clinics, films, rule clinics and tennis educational programs.
 - v. Organize, promote and conduct local and United States Tennis Association (USTA) sanctioned events, assist the Village/CCMAC in organizing these related events, USTA league teams events and offer PJCC USTA teams coaches and training clinics at affordable pricing;
- w. SCC shall maintain a positive interaction with all tennis members regardless of playing ability and dress in a professional, clean and appropriate manner becoming of a tennis professional.
 - x. Rate handicap members as directed by the tennis club.
 - y. Attend social events (at least six per season) including the “First Friday Socials”, Member-Guest events, new member events, round robin events, tennis committee charity events, home tennis matches, and meet informally and socialize with members. In addition, SCC shall actively participate in all “home” inter-clubs and USTA matches.
 - z. Welcome other club’s members to matches, assign courts, introduce players, explain club rules and orientate them regarding locker rooms, refreshments, etc.
 - aa. Provide website and email services and materials.
 - bb. Act as a consultant to members for tennis information.
 - cc. Register participant in every tennis program and obtain from each registrant a liability waiver (in form acceptable to the VILLAGE), inclusive of address, phone number and other contact information for each registrant.
 - dd. SCC has agreed to partner with the VILLAGE and provide USTA and PTR certified instruction throughout the VILLAGES schools, and recreational facilities for both juniors and adults including but not limited to cardio tennis, adult tennis academy programs and instructional camps and clinics. These will be provided under separate addendum to this Agreement.
 - ee. SCC shall collect all fees and establish and collect all fees from participants in each tennis program and keep books and records of all revenue and expenses arising from operation of the facilities in form acceptable to the VILLAGE and SCC which books and records shall be made available to either party upon request. All such fees must be reasonable and subject to prior approval of the VILLAGE. A share of gross revenue in the amount of 18% will be retained by the Village and SCC will be paid by the VILLAGE on a bi-weekly basis for the instructional service rendered.

- ff. On or before the execution of this contract, SCC shall provide to the VILLAGE Certificates of Insurance, copies of General Liability Declaration Page and Additional Insured Endorsement, reflecting general liability coverage in the sum of \$3,000,000.00. All such Certificates of Insurance shall name the VILLAGE as an additional insured. The Village will provide SCC Certificate of Insurance listing SCC insured.
 - gg. SCC agrees that the type of merchandise to be sold in the tennis pro shop shall be as follows: Including but not limited to, tennis rackets, balls, accessories and apparel and will create a tennis line for PJCC exclusive use.
 - hh. All pro shop revenue shall be retained by SCC.
 - ii. SCC shall hire and compensate pro shop staff. Notwithstanding, SCC shall hire and compensate assistant instructors, and any staff stringing and re-gripping rackets and providing other specialized services.
9. SCC agrees to provide tennis lessons to members of the tennis club according to the rate scheduled attached hereto as Exhibit "B".
10. SCC agrees to provide tennis lessons to non-members of the tennis club at not less than the member rates in Paragraph 8 above.
11. This contract shall be for a term ending October 31, 2017, the first year to consist of the tennis season of April 15, 2017 through October 31, 2017 and considered as an interim contract for the 2017 season. In return, for the satisfactory performance by SCC of all obligations called for by this Agreement for the 2017 season, the VILLAGE will pay and SCC will accept FIFTEEN THOUSAND FIVE HUNDRED AND 00/100 dollars payable in six (6) equal monthly installments of TWO THOUSAND TWO HUNDRED FOURTEEN AND 00/100 (\$2,214.00) AND (1) monthly installment of TWO THOUSAND TWO HUNDRED AND SIXTEEN AND 00/100 (\$2,216.00) with the first payment due in May of each year and the last payment due in November of each year, each payment being for the just-concluded month. SCC reserves the right to renew this contract for a second year commencing April 15, 2018 – October 31, 2018 under the same terms and conditions by giving written notice to the Village prior to December 1, 2017.
12. This contract may be terminated by the VILLAGE at any time upon written notice to SCC for cause. For purposes of this paragraph, cause shall mean SCC intentional misconduct, failure to provide contracted services, commission of any unlawful act, or other breach of material conditions within the control of SCC.

13. This contract may neither be assigned nor subcontracted by SCC without the prior written consent of the VILLAGE.
14. If any of the provisions of this contract shall be invalid or unenforceable such invalidity or unenforceability shall not invalidate or render unenforceable the entire contract, but rather the entire contract shall be construed as if not containing the particular invalid or unenforceable provision or provisions and the rights and obligations of the VILLAGE and SCC shall be construed and enforced accordingly.
15. Any notices required to be given hereunder shall be delivered by (a) certified mail, postage prepaid, return receipt requested or (b) a commercial overnight courier that guarantees next day delivery and provides a receipt. Notice will be effective only upon delivery. All notices required to be given to SCC shall be addressed to : Tito Perez, 384 Mark Tree Road, East Setauket, New York 11733. All notices required to be given to the VILLAGE must be addressed to the Mayor, Incorporated Village of Port Jefferson, 121 West Broadway, Port Jefferson, New York 11777 with a copy to Egan & Golden, LLP, Attn: Brian Egan, Esq. 96 South Ocean Avenue, Patchogue, New York 11772.
16. Neither this Agreement nor any term, condition, or provision hereof, may be altered, changed or modified in any manner whatsoever except upon the mutual agreement of both parties evidenced by a modification to this Agreement that is signed by both parties. This Agreement, constitutes, the entire Agreement of the parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements, understandings, negotiations and discussions whether written or oral, of the parties hereto relating to the matters set forth in this Agreement.
17. This Agreement shall be construed according to the laws of the State of New York. It is further agreed that any legal action between the VILLAGE and SCC arising out of this Agreement shall be brought in a court of competent jurisdiction in the County of Suffolk.
18. SCC is to provide such services to the VILLAGE at the tennis facility or other VILLAGE recreation facility for an average of 72 hours per week from Memorial Day to Labor Day and an average of 48 hours per week for all other periods throughout each tennis season. The above hour requirements are subject to existent weather conditions.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto:

**INCORPORATED VILLAGE OF
PORT JEFFERSON**

By: _____
Margot Garant, Mayor

By: _____
**Tom Jaklitsch, Setauket Country Club Ltd
DBA World Gym - Setauket**

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On the ____ day of _____ in the year 2017, before me, the undersigned personally appeared **MARGOT GARANT** personally known to be or proved to me on the basis of satisfactory evidence to be the indicial whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On the ____ day of _____ in the year 2017, before me, the undersigned personally appeared **Tom Jaklitsch** personally known to be or proved to me on the basis of satisfactory evidence to be the indicial whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

