

LICENSE AGREEMENT

LICENSE AGREEMENT (this "Agreement") is made and executed as of the _____ day of _____ 2010, by and between the CITY OF PORTLAND, by and through its PARKS and RECREATION BUREAU (hereinafter "Licensor", "City" or "PPR"), and Portland After-School Tennis & Education (hereinafter "Licensee" or "PAST&E"), collectively referred to as the Parties.

RECITALS

WHEREAS, PPR owns and operates the St. Johns Racquet Center at 7519 N. Burlington Ave, Portland, Oregon.

WHEREAS, PPR has a history of providing after-school youth tennis and education, nutrition and life skills activities for underserved children in the City of Portland;

WHEREAS, PAST&E has a history of providing fitness and education services to children at St. John's Racquet Center;

WHEREAS, the purpose of this Agreement is to define the relationship between PPR and PAST&E in regard to their purposes, responsibilities, and accountability;

NOW, THEREFORE, in consideration of the mutual covenants and benefits stated herein, and in further consideration of the obligations, terms and considerations hereinafter set forth and recited, PPR and PAST&E agree as follows:

AGREEMENT

1. **License.** PAST&E is hereby granted a non-exclusive license to use certain portions of the St. Johns Racquet Center (SJRC) for the purpose of operating a PAST&E's program. License rights granted herein are contractual only, with no property rights being conveyed hereunder. PAST&E will be authorized to provide youth tennis and academic programs at SJRC at no cost to its participants. PAST&E may charge a nominal entrance fee for tournament play; however the aim will be to provide as many tournaments as possible without a charge to the youth players. PAST&E's "After-School Program" will target SUN Community Schools within the Portland Public School System where over 80% of their students are enrolled and receive USDA Free & Reduced Lunch Program. PAST&E will provide a tennis academy environment for players who show promise and the desire to rise to intermediate and advanced levels of play. PAST&E will provide its own USTA trained teachers and trainers for its tennis programs and lessons.
2. **Premises.** The areas to be used by PAST&E under this Agreement are depicted on Exhibit A hereto ("Premises"). The PAST&E area (labeled "A" on Exhibit A) shall be used as the primary service area. PAST&E shall have the exclusive rights to utilize its primary service area and PPR acknowledges that the Premises shall be secured by PAST&E when not in use. PAST&E services will be allowed to expand into the lobby and bathrooms as shared common area while other users are in the

facility. All tennis court and SJRC building use will be coordinated with the Portland Tennis Center's Recreation Supervisor.

A. In addition to the Premises labeled A on Exhibit A, two racquetball courts converted to classrooms, PAST&E will have control of the entire SJRC facility from 2:15 PM – 4:45 PM Monday through Friday during the public school year for the term of this agreement.

B. PAST&E will have access to all three (3) tennis courts for weekly Academy team practices from 4:45 – 6:00 pm on Monday and Wednesdays during the public school year for the term of the agreement, except during the public school tennis season.

C. PAST&E Tennis Academy will have use of 3 tennis courts for USTA Junior Team Tennis matches on Sundays from 2:15-4:45 PM during the public school year.

D. PAST&E will have use and control of the facility for 13 weekends (Saturday & Sunday) during the summer season to provide tennis tournaments, and Monday – Friday 8:00 AM – 11:45 AM, and 2:00 PM -4:45 PM during the summer season.

E. PAST&E will pay court rental rates similar to the general public for any additional court time beyond what is approved in this agreement.

3. **Hours of Operation.** PAST&E is authorized to use the Premises for times indicated in this agreement and upon the approval of the Portland Tennis Center Recreation Supervisor at his/her own sole discretion. PAST&E employees will have access to the Premises for the purpose of preparing for program delivery on days when the SJRC is officially closed.
4. **Effective Date.** This agreement shall be effective and binding from the date on which both Parties have executed this Agreement (Effective Date).
5. **Term.** The initial term (Initial Term) of this Agreement will be three (3) years, commencing on the Effective Date, with an additional two-year renewal term with the approval of PAST&E and the Director of PP&R.
6. **Acceptance of Premises.** PAST&E has examined the Premises and accepts them in "as is" condition. No representations or warranties as to the condition or suitability of the said Premises have been made by City or its officers, agents or employees. PAST&E accepts the Premises subject to any and all valid, existing interests of record, including, but not limited to permits, licenses, leases, easements, franchise agreements, railroad facilities, pipelines, telephone, telegraph, communication, power and signal lines or any other similar facilities, together with any future installations permitted under existing agreements
7. **License Fee.** When renting property, it is the goal of PPR to charge fair market rents, when reasonable given the nature of the use, or, if not, to cover, at a minimum, the costs associated with the licensee's use of the Premise. To help support PAST&E's program at SJRC the rent will be reduced to an amount expected to cover utilities and maintenance costs only, and not include capital replacement costs. The annual rent will be as follows, which includes annual adjustments of 3.5%:

Year 1	\$18,000
Year 2	\$18,630
Year 3	\$19,282

During the second term, Year 4 and 5, PP&R will base the rent on an updated calculation of utility and maintenance costs by PP&R.

- A. Payment Schedule. Rent will be paid in advance on or before the 1st of each month, without monthly invoice from City and without offsets by PAST&E. Payments will be sent to the SJRC Recreation Supervisor, 324 NE 12th Ave, Portland, OR, 97232., or at such other address as PPR may notify PAST&E of in writing from time to time.
- B. Late Fee. PAST&E shall be charged a late fee of \$50.00 in any month in which any license fee payment, or portion thereof, has not been received within ten (10) days of the due date.
- C. Interest. Any payment due under this Agreement, including late fees or repair reimbursements, or portion thereof, that has not been made within ten (10) days of the due date shall bear interest at the lesser of one and one quarter percent (1.25%) per month, compounded monthly, or the maximum rate permitted by law, from the due date until the date that payment is made.

8. Responsibilities, Restrictions and Limitations

- A. Janitorial, Maintenance, and Repair
 - 1) PAST&E shall provide all repairs, maintenance and janitorial services for the Premises label A on Exhibit A in a clean and organized condition, PAST&E shall provide all special janitorial services that may be required to meet State of Oregon, Multnomah County Health Department, or any other agencies regulations and standards applicable to its program.
 - 2) PAST&E will provide janitorial service for all common areas that it uses at SJRC during its time of use, and leave the building in as good or better condition than the condition before its use.
 - 3) PAST&E shall remove all garbage and recyclables to designated spaces on a daily basis. PAST&E will recycle as much of its waste as practicable, using standard recycling practices.
 - 4) In the event that PPR discovers that the Premises or SJRC is damaged, or if PAST&E notifies PPR that the Premises or SJRC is damaged, then PPR will promptly repair the damage. In the event that such damage was caused by the willful misconduct or gross negligence of PAST&E, its agents or invitees, then PAST&E shall be responsible to reimburse PPR for all related repair costs. PAST&E shall promptly report to PPR any damage it causes or is aware of on the Premises.
- B. Program Management. PAST&E shall be solely responsible for the operation and management of it program. PAST&E shall provide necessary and appropriately trained staff with background checks of all staff. All PAST&E staff are

employees of PAST&E and not of PPR. PAST&E is responsible for all its volunteers.

- C. Furnishings and Equipment. PAST&E shall fully furnish and equip the Premises as necessary to support its program. PAST&E shall provide the furnishings and equipment necessary for its program. PAST&E shall maintain all its furnishings and equipment in clean, good and safe working condition and replace equipment as needed.
- D. Improvements Prohibited. PAST&E will not make temporary or permanent improvements to the Premises without the prior written approval of PPR's Property Manager, which may be withheld for any reason. In the event that improvements are permitted, the work will be performed in accordance with Section 13 of this License.
- E. Nuisance, Waste, Hazardous Substances. PAST&E shall refrain from any use which is offensive or annoying or interferes or obstructs the rights of City or others, including other authorized users of SJRC. PAST&E shall not create or permit to be created any condition which would: constitute a fire hazard; permit any objectionable noise or odor to be emitted or escape from the Premises; in any manner result in defacement or injury of the Premises; impair the strength or durability of structural components of the Premises; or be dangerous to persons or property
- F. Pay Others. PAST&E will timely pay all employees, suppliers, contractors and subcontractors providing it services, material or equipment in association with this Agreement.
- G. Safety. PAST&E will promptly, after becoming aware of such conditions or practices, correct any unsafe condition of the Premises for which PAST&E is responsible, as well as any unsafe practices by persons reasonably under PAST&E's control thereon. Promptly after becoming aware of the occurrence of injury or damage to persons or property occurring on the Premises, PAST&E shall submit a written report of the incident to PPR within 24 hours. PAST&E shall cooperate fully with City in the investigation of any damage to persons or property occurring on or about the Premises.
- H. Compliance with Law.
- 1) PAST&E, at its cost, shall comply at all times with all applicable federal, state and local laws, rules, regulations, ordinances, policies, statutes and decisions, as said provisions of law may change over time, unless specifically excepted herein. Without limiting the generality of this requirement, PAST&E will adhere to all operating policies and procedures as established by or for SJRC, PPR, and the City of Portland.
 - 2) PAST&E, at its cost, shall be solely responsible for obtaining all licenses and permits necessary to comply with applicable provisions of law.
- I. Records. Keep, for at least three years, accurate and sufficient records of all business transactions relating to PAST&E's operations as they relate to any and all PPR property used in connection with this agreement, and make available

these records to PPR on thirty (30) days written notice for the purpose of inspection, copying, and audit by the City or its agents.

- J. **Branding.** PAST&E will obtain the prior written approval of PPR before using any PPR names, logos, or slogans, which include, but are not limited to, "Portland Parks and Recreation," and "Healthy Parks, Healthy Portland." In the event approval is granted, all published materials shall comply with PPR design standards.

9. PPR Rights and Responsibilities

A. Maintenance and Repair.

- 1) PPR will maintain and repair the SJRC building with the exception of PAST&E's responsibilities stated in Section 8.A. In the event that PAST&E requires, or desires, a higher level of maintenance or repair due to its use of the Premises for its program, then PAST&E will be responsible for those costs of maintenance and repair.
- 2) PPR or its agents and employees shall have the right to enter into and upon the Premises for the purpose of inspecting and maintaining the Premises as may become necessary or advisable at reasonable times following not less than two (2) business days prior written notice (except in the case of an emergency), without any interference from or claim for damages by Licensee. Notwithstanding any provisions herein, Licensor shall not be required to make any repair which it deems to be uneconomic. In the event Licensor determines that a repair shall not be made, it shall promptly notify Licensee whose sole remedy for failure to make such repair shall be its right to terminate this License on thirty (30) days written notice to Licensor.

- B. Rental of SJRC to Third Parties. PPR reserves the right to use or rent the SJRC to other community groups for meetings, parties, weddings, or other functions, at times outside of PAST&E's normal hours of operations. PPR will give PAST&E at least 7 days notice before such use occurs.

- C. PPR Access. City shall have access to the Premise at all times, including without limitation during the periods when PAST&E is performing any work with City's prior approval, to inspect the Premises to determine if PAST&E is in compliance with its obligations under this Agreement, to inspect PAST&E's work, or to determine if any damage has been caused. It is expressly understood by the parties that City, whether or not it conducts visits or inspections, assumes no responsibility for the quality, adequacy or safety of any maintenance or other work that is done by or for PAST&E.

10. **Annual Meetings.** PPR and PAST&E staff will meet yearly to coordinate programming and address any other issues that may arise.
11. **Ownership.** The Premises and all City Real Property, fixtures, removable items and other improvements shall be and remain the property of City, and PAST&E shall have no right, title or interest therein or any component thereof, other than the right to use the same in accordance with the provisions of this Agreement. All PAST&E operating equipment and furniture shall remain the personal property of PAST&E and

may be removed by it at any time. A list of PAST&E equipment is attached as Exhibit B.

12. **Hazardous Materials.** PAST&E shall not dispose at, on, or about the PPR Premises any Hazardous Substance (as defined in ORS 465.200, or as it may hereafter be amended, and any implementing regulations) and shall handle all Hazardous Substances in a manner that protects the PPR Premises and the environment from accidental spills and releases. PAST&E or any of its officers, employees, agents, contractors, subcontractors, servants, successors, assigns, or invitees shall not cause or authorize to occur any unauthorized release of a Hazardous Substance or any condition of pollution or nuisance at, on or about the PPR Premises, whether affecting surface water or groundwater, air, the land or the subsurface environment. In the event that there is a spill or release of Hazardous Substances on the Premises caused by PAST&E, its officers, employees, agents, contractors, or invitees, PAST&E will report the spill or release to PPR within 24 hours. Reporting to PPR will not substitute for any required reporting to regulatory agencies. PAST&E will be responsible for any and all costs associated with corrective actions needed to remedy any Hazardous Substance release that occurs as a result of PAST&E's use or occupancy of the Premises.

13. **Licensee Improvements.**

- (a) Licensee shall not make any alterations or improvements to or of the Premises or its contents, other than those owned by Licensee, without first obtaining the written consent of PPR's Property Manager. All alterations or improvements to the Premises, including, but not limited to, wall covering, paneling, built-in cabinet work, but excepting movable furniture and trade fixtures shall at once become a part of the realty and belong to Licensor and shall be surrendered with the Premises. Any authorized alterations, additions or improvements to the Premises by Licensee shall be made by Licensee at Licensee's own expense in an expeditious and good workmanlike manner. Upon expiration or termination of this License, and at Licensee's own expense, Licensee shall remove all alterations, additions or improvements made by Licensee and designated by Licensor to be removed by written notice given not less than thirty (30) days prior to such expiration, and shall repair any damages caused by the removal
- (b) All work performed to the Premises shall be done in strict compliance with all applicable laws, including permitting requirements. Prior to the commencement of any work, Licensee shall submit to Licensor's Property Manager and obtain Licensor's written consent to all of the following: Licensee's detailed plans signed by a licensed architect or engineer; Licensee's estimated costs; and, the names of Licensee's general contractors and major subcontractors, along with copies of all permits and contractors/subcontractors' certificates of insurance and bonding. Licensee shall provide Licensor all construction drawings (inclusive of architectural, structural, mechanical, and electrical drawings) on computer disks in format readable by AutoCAD 2008 (or the appropriate version utilized by the City), at completion of Licensee's construction.
- (c) Licensor's written consent and approval of proposed or constructed Licensee Improvement shall create no responsibility or liability on the part of Licensor for design completeness, sufficiency, or compliance with all laws, rules and regulations

of governmental agencies or authorities, and shall not be construed as Licensor's warranty or approval of the adequacy, competence, experience, bonding or licensure of any contractors/subcontractors or the quality of the work that may be performed by these persons. Licensee remains liable to Licensor for non-compliance and defects in any work performed by Licensee's contractors/subcontractors.

14. **No Liens.** PAST&E shall keep the PPR Premises and all PPR property used in connection with this agreement free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of PAST&E. If PAST&E fails to discharge, bond or secure any lien within such thirty (30) days from notice that the lien has been filed, then, in addition to any other right or remedy of PPR, PPR may, at its election, upon five (5) days' prior written notice to PAST&E, discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding. PAST&E shall pay on demand any amount so paid by PPR for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of PPR incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary reasonable disbursements in connection therewith.

15. **Indemnification**

- a) Licensee shall indemnify, defend, and hold harmless Licensor and Licensor's officers, agents and employees from any and all liability, damage, expenses, attorney's fees, causes of actions, suits, claims or judgments, arising out of or connected with (i) Licensee's use, occupancy, management or control of the Premises, (ii) any failure of Licensee to comply with the terms of this License or any violation of law or ordinance by Licensee and (iii) the acts or omission of Licensee, its agents, officers, directors, employees or invitees. However, Licensee shall not be liable for claims to the extent caused by Licensor or its officers, agents or employees. Licensor and its officers, agents and employees shall not be liable for any injury to the equipment, materials, or any other property of Licensee or to any person in or upon the Premises including, but not limited to, damage by fire, explosion, earthquakes, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the building or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place resulting from dampness or any other cause whatsoever, or collapse of the building in which the Premises are located or any portion thereof, or any other cause, unless caused by or due to the sole negligence of Licensor or its officers, agents, and employees.
- b) Licensee shall give Licensor prompt written notice of casualty or accident on the Premises within 24 hours of any occurrence. As a material part of the consideration to Licensor, Licensee assumes all risk of damage to property or injury to persons, in, upon or about the Premises from any cause other than Licensor's sole negligence, and Licensee waives all claims in respect thereof against Licensor.

16. **Insurance.**

- (a) Licensee shall maintain public liability and property damage insurance that protects the Licensee and the City and its officers, agents and employees from any

and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the Licensee's work under this Permit. The insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence. (Limits subject to change at Licensor's discretion with 30 days notice). The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

- (b) The insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the Property Manager, Portland Parks and Recreation. The Licensee shall maintain continuous, uninterrupted coverage for the duration of the License.
- (c) Licensee shall maintain on file with the Property Manager, Parks and Recreation, a certificate of insurance certifying the coverage required under this Permit. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this License by the City.
- (d) Licensee and all employers working under this Permit of Entry shall comply with Oregon's workers compensation law, Oregon Revised Statutes Chapter 656, that requires subject employers to provide workers' compensation coverage for all their subject workers. The Licensee shall maintain workers' compensation insurance coverage for the duration of this Permit. In the event the Licensee's workers compensation insurance coverage is due to expire during the term of this Permit, the Licensee shall timely renew their insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and the Licensee shall provide the City of Portland such further certification of workers' compensation insurance as renewals of said insurance occur.

17. Default; Remedies

- A. Events of Default. The following events shall constitute events of default by PAST&E:
 - 1) If PAST&E's use of the Premises constitutes a violation of federal, state or local law;
 - 2) If PAST&E fails to pay any portion of the License Fees or other amounts payable hereunder within ten (10) days of written notice of such failure to pay;
 - 3) If PAST&E fails to perform any other covenant in this Agreement within thirty (30) days after written notice from PPR specifying the failure, provided that if such failure cannot, with due diligence, be cured within a period of

thirty (30) days, PAST&E shall not be deemed to be in default if PAST&E begins to cure the failure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion;

- 4) The bankruptcy or insolvency of PAST&E or if a receiver or trustee is appointed to take charge of any of the assets of PAST&E in or on the Premises and such receiver or trustee is not removed within thirty (30) days after the date of appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against Licenses thereunder; or
- 5) If PAST&E is dissolved or fails to maintain its status as an Oregon corporation in good standing.

B. Remedies for Default. Upon the occurrence of an event of default under this Section 17, PPR shall have the following rights and remedies, as well as any other remedies available at law or in equity.

- 1) City shall have the right to suspend PAST&E's use of the Premises until the default is cured.
- 2) So long as the default is not cured, PPR shall have the right to terminate this Agreement by written notice to PAST&E. Such termination shall be effective immediately if public health, safety or welfare is at risk. Otherwise such termination shall be effective thirty (30) days after the written notice.

18. **Termination.**

A. Upon expiration of the license term or early termination, Licensee shall deliver all keys to City and shall surrender the Premises to City in first class condition. All repairs for which Licensee is responsible shall be completed prior to such surrender. All Licensee property shall be removed immediately upon termination, and a failure to do so shall be considered abandonment of such property. Should Licensee fail to effect the removals or make repairs, City may do so and charge the cost to Licensee together with late charges as provided by this Agreement from the date of the expenditure. Licensee shall be responsible for all damages to City as a result of Licensee's failure to surrender the Premises in accordance with the Agreement, and this clause shall survive the termination of the Agreement.

19. **Exclusion of Certain Damages.** Neither party shall be liable to the other party hereunder or in connection with the transactions contemplated hereunder, whether in contract or in tort, for indirect, incidental, exemplary, punitive, consequential or other special damages (including lost profits), whether or not such damages are foreseeable or unforeseeable, except to the extent that such damages are included in third-party claims that are covered by the indemnities under Section 15.

20. **Force Majeure**

A. Neither PPR nor PAST&E shall be in default hereunder if the performance of any act required of it hereunder is prevented or delayed by reason of events, contingencies or causes beyond its reasonable control and without its fault, including, but not limited to, fire, flood, earthquakes, lightning, unusually severe weather, acts of God, acts of any governmental authority, war, riot, accidents, embargoes, strikes, labor disputes, shortage of labor, fuel, raw materials, or machinery, or technical or yield failure, affecting such party or its suppliers or subcontractors; provided, however, that nothing in this Section shall excuse

PAST&E from the prompt payment of any amount required under this Agreement.

- B. If such condition described in Section 20(A) continues for more than sixty (60) consecutive days or if PPR notifies PAST&E that it is impractical or uneconomic to restore any physical damage that is responsible for the interruption of service, either PPR or PAST&E may terminate this Agreement by written notice to the other party.

21. Miscellaneous

- A. City Consent. Unless otherwise stated, whenever consent, approval or direction by Licensor is required under the terms contained herein, all such consent, approval or direction must be in writing from the Director of PPR or a person designated in writing by the Director.

B. Taxes.

- 1) If any other real property or personal property taxes or assessments of any kind are levied with respect to the PAST&E's use of the PPR Premises, PAST&E shall be responsible for such taxes or assessments. If bills for such taxes or assessments are sent to PPR, rather than PAST&E, PPR shall timely provide PAST&E with such bills or, if appropriate, with an invoice and documentation evidencing PAST&E's share of such taxes or assessments.
- 2) PAST&E shall pay all taxes or assessments for which it is responsible, above, before the same become delinquent. PAST&E shall have the right, at no cost to PPR, to contest with the taxing authorities any such taxes or assessments.

C. Eminent Domain

- 1) Either party receiving any notice of an intended taking affecting the premises or any portion thereof, any service of legal process relating to condemnation or any other notification in connection with any taking, condemnation or purchase, sale or transfer in lieu of condemnation, shall promptly give the other party notice. For purposes of this License, taking or condemnation includes a sale to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power.
- 2) If all or a portion of the premises, is taken by a corporation or governmental authority having right of eminent domain, by exercise of that right or by purchase, whether the taking be a direct physical taking or an indirect taking compensable by way of severance damages or the like, Licensor shall be entitled to all of the proceeds of the taking and PAST&E shall have no claim against Licensor as a result of the taking except for a return of prepaid rent. If the premises remaining after the taking, if any, are sufficient for practical operation of PAST&E's business, PAST&E shall pay rent reduced commensurately with the reduction in size of the premises on account of the taking. If the premises remaining are not sufficient for practical operation of PAST&E's business, this license shall terminate as of the date possession of the premises is taken, unless the parties otherwise agree.

- D. Holding Over. If PAST&E remains in possession of the premises or any part thereof after the expiration of the term hereof without the express written consent of Licensor, such occupancy shall be a tenancy from month-to-month with

monthly rent to be 103% of the rent at the time of expiration, plus all other charges payable hereunder, and upon all terms hereof, applicable to month-to-month tenancy. The hold over tenancy may be terminated at will at any time by Licensor. Licensor shall have the right to adjust the rent payments, charges, or use fees upon thirty (30) days written notice to PAST&E.

E. Dispute Resolution. In the event of disputes, the parties agree to make every effort to resolve the dispute using the City's normal administrative procedures, including, but not limited to, the use of a City Hearing Officer, before initiating any formal legal action. Any litigation arising under this License shall occur in the court sitting in Multnomah County having proper jurisdiction.

F. Third-Party Use of the Premises. PAST&E may not lease, license, transfer to, or swap, exchange with, or otherwise allow the use of the Premises by third parties without the written approval of PPR, which approval shall not be unreasonably withheld or delayed.

G. Signage. PAST&E may not display or erect any signs or banners, whether temporary or permanent, on the Premises or other PPR property used in connection with this agreement without the advanced written approval of the SJRC Director, which shall not be unreasonably withheld.

H. Assignment

- 1) PPR may assign, at its sole discretion, this Agreement to any successor entity having responsibility for PPR management and/or operation the property and premises thereon; and the assignee shall be responsible for the performance of all terms and conditions of this Agreement applicable to PPR.
- 2) PAST&E shall not assign this Agreement without the prior written consent of PPR, which consent may be withheld at PPR's sole discretion, and any purported assignment without such consent shall be void.

I. Notices

All notices under this Agreement shall be in writing and shall be deemed validly given if sent by mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. If any such notice or communication is not received or cannot be delivered due to a change in the address of the receiving party of which notice was not previously given to the sending party or due to a refusal to accept by the receiving party, such notice or other communication shall be effective on the date delivery is attempted. Notices should be addressed as follows:

<u>PPR:</u>	Portland Parks and Recreation Bureau 1120 SW 5 th Ave, Suite 1302 Portland, Or 97204
	Attention: Property Manager Telephone: (503) 823-5229 Facsimile: (503) 823-5570
	<u>With a copy to:</u> Office of the City Attorney

	1221 SW 4 th Ave, Room 430 Portland, OR 97204 Attention: Harry Auerbach Telephone: (503) 823-4047 Facsimile: (503) 823-3089
<u>PAST&E:</u>	Portland After-School Tennis & Education 16055 SW Walker Road #439 Beaverton, OR 97006 Attention: PAST&E Director Telephone: (503) 697-0598

Any party may change the designated recipient of notices by so notifying the other party in writing.

- J. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Oregon, excluding its choice of law principles.
- K. Entire Agreement. This Agreement constitutes the entire agreement of the parties and shall supersede any prior or contemporaneous agreements or negotiations, whether written or oral, between the parties, regarding the subject matter herein.
- L. No Third Party Rights. Nothing in this Agreement is intended to create any rights in any third parties.
- M. Further Documents. Each party agrees to cooperate with the other in the execution of any documents necessary to protect its rights under this Agreement.
- N. Illegality. If any provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision.
- O. Waiver in Writing. No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.
- P. No Partnership. Nothing contained in this Agreement is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership or a joint venture between PPR and PAST&E.
- Q. Exhibits; Successors; Time of Essence; Counterparts; Amendments. The Exhibits attached to this Agreement are made a part of this Agreement. This Agreement shall benefit and bind PPR and PAST&E and their respective personal representatives, heirs, successors and assigns. Time is of the essence of this Agreement. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement. This

Agreement may not be amended or modified except by a written instrument signed by the PPR Director and PAST&E.

IN WITNESS WHEREOF, PPR and PAST&E have caused their duly authorized representatives to execute this Agreement in triplicate.

LICENSOR:

PAST&E:

PORTLAND PARK AND RECREATION BUREAU

PORTLAND AFTER-SCHOOL TENNIS & EDUCATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Form

Benjamin Walters
Chief Deputy City Attorney
12/22/10

