

## INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (this "Agreement"), is made and entered into as of \_\_\_\_\_, 2019 ("Effective Date"), by and between the Village of Romeoville, an Illinois municipal corporation (the "Village"), and Marc Howard ("Contractor").

### WITNESSETH:

WHEREAS, the Village desires to engage Contractor to provide facility usage development services to the Village in connection with the operation of the Village's Edward Athletic and Event Center; and

WHEREAS, Contractor desires to render such services to the Village on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Village and Contractor agree as follows:

1. Services and Insurance. The Village shall engage Contractor to provide the services described on "Exhibit A" attached hereto as an independent contractor of the Village, and Contractor shall provide such services to the Village. Contractor shall serve the Village faithfully and to the best of Contractor's ability, experience and talents. Contractor shall provide all such services in a manner consistent with the highest professional standards. At all times during the term of this Agreement, Contractor shall at its own cost maintain professional liability insurance, with limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, and shall maintain automobile liability insurance with a combined single limit of not less than \$1,000,000.00 per accident covering all liability arising from Contractor's use of a motor vehicle, including owned, hired, and non-owned motor vehicles. All such insurance shall be written on an occurrence basis, shall name the Village and its officials, employees, officers and agents as additional insureds by written endorsement, shall contain a waiver of subrogation in favor of the Village, and shall provide that it shall not be cancelled or modified without 30 days prior written notice to the Village.

2. Term. The term of this Agreement shall commence on the Effective Date and shall continue until the date set forth on "Exhibit A" ("Term") or until terminated, without cause, upon thirty (30) days prior written notice.

3. Independent Contractor Relationship.

(a) The Village hereby engages Contractor as an independent contractor and Contractor hereby accepts such engagement with the Village, upon the terms and subject to the conditions set forth herein. As compensation for the services to be rendered by Contractor hereunder, the Village shall pay to Contractor compensation in accordance with the terms set forth on "Exhibit A". Contractor shall be responsible for the payment of all federal, state and local taxes, withholding and other payments or amounts due arising out of the payment of compensation by the Village to Contractor, including, but not limited to, federal, state and local

income and employment taxes, social security taxes and unemployment insurance, and the Village shall have no responsibility for the same. Contractor shall not be entitled to participate in any benefit plans, programs or arrangements that are offered from time to time by the Village to its employees, and the Village shall have no obligation to extend to Contractor any benefits of any kind not expressly set forth herein.

(b) The relationship between Contractor and the Village created by this Agreement during the Term shall be that of an independent contractor. Contractor will not be an employee of the Village, and Contractor and the Village will not be construed as joint venturers, partners, or agents of the other. Contractor agrees that Contractor has no power to bind the Village or to act as an agent or representative of the Village.

(c) Contractor represents and warrants to the Village that he is not a party to any agreement containing a non-competition clause or other restriction with respect to the services which Contractor is required to perform hereunder.

4. Expenses. During the Term, subject to the policies of the Village, the Village shall pay or, if advanced by Contractor, reimburse all reasonable expenses which are actually incurred by Contractor on behalf of the Village or incident to the discharge and performance of Contractor's duties hereunder including, but not limited to, business expenses for travel, as evidenced by invoices and such other reasonable supporting materials as the Village may require. Contractor agrees that he will not incur any such expense for which Contractor shall seek reimbursement without the prior notice to and consent of the Village. Nothing herein shall entitle Contractor for reimbursement for insurance required to be obtained by Contractor under Section 1 hereof.

5. Non-Disclosure. During and after the Term, Contractor shall not use or disclose, or authorize anyone else to use or disclose, any client lists, prospective client lists, employee lists, personnel files, marketing plans, business plans or strategies, product information, product development programs, design information, graphics, product plans, designs, models, ideas, financial information, files, rolodexes, brochures, forms, reports, presentation materials (including product slides), know-how or any other secret or confidential information or matter relating to any aspect of the business of the Village (collectively, "Confidential Information") without the prior express written consent of the Village; provided, however, that for purposes of this Agreement, "know-how" shall not mean information or procedures which are generally known throughout the athletic and event center industry. At the direction of the Village, Contractor will immediately deliver to the Village all copies of all materials of any nature containing Confidential Information in Contractor's possession or control, and Contractor will not take or retain any such materials or reproductions thereof.

6. Business Opportunities and Conflicts of Interest. During the Term, Contractor shall not take for Contractor's personal benefit or the benefit of a third party any business opportunity that belongs to the Village, or is discovered through Contractor's engagement as a consultant with the Village or through use of the Village's assets, property or information. Contractor will not use Contractor's position as a consultant of the Village for personal gain or use or deploy the Village's assets, property or information for personal gain. Contractor will not solicit for Contractor's personal benefit or the benefit of a third party anything of value from any person or

business entity connected with the business of the Village or a client thereof. Contractor will not accept anything of value from any person or entity other than the Village in connection with the business of the Village or a client thereof; provided, that the foregoing prohibition shall not apply to reasonable business meals or similar social events with clients, vendors or potential clients or vendors. Contractor will not act on behalf of the Village in any matter or transaction in which Contractor or Contractor's immediate family has a direct or indirect financial interest.

7. Non-Solicitation of Employees. During the Term and for the two (2) years immediately following the termination of this Agreement or the expiration of the Term, Contractor shall not, directly or indirectly, individually or as an equity-holder, member, manager, director, officer, employee, consultant, advisor, representative or agent of any person or entity, through Contractor's own actions or through an agent, representative or other third party acting in concert with Contractor, hire, engage, solicit or attempt to solicit or otherwise induce any employee of the Village, or solicit or attempt to solicit or otherwise induce any supplier or other contractor of the Village, to leave the employment, or to terminate or reduce any business relationship with the Village, or to violate any covenant-not-to-compete, non-solicitation agreement, confidentiality agreement, nondisclosure agreement or any other restrictive covenant, employment agreement, independent contractor agreement or other business relationship with the Village. Notwithstanding the foregoing, general solicitations of employment published in a publication of general circulation or listed on an internet site and not specifically directed towards such employees shall not be deemed to constitute a violation of the provisions of this Section.

8. Non-Interference with Business Relationships. During the Term and for the two (2) years immediately following the termination of this Agreement or the expiration of the Term, Contractor shall not, directly or indirectly, individually or as an equity-holder, member, manager, director, officer, employee, consultant, advisor, representative or agent of any person or entity, through Contractor's own actions or through an agent, representative or other third party acting in concert with Contractor, interfere in any way with the business relationships between the Village, on the one hand, and its respective clients, suppliers or other persons or business entities with whom the Village conducts business, on the other hand.

9. Non-Solicitation.

(a) During the Term and for the two (2) years immediately following the termination of this Agreement or the expiration of the Term, Contractor shall not, directly or indirectly, individually or as an equity-holder, member, manager, director, officer, employee, consultant, advisor, representative or agent of any person or entity, through Contractor's own actions or through an agent, representative or other third party acting in concert with Contractor, in the geographic locations served or marketed by the Village in connection with the operation of the Edward Athletic and Event Center, (i) solicit the performance of any service or the provision of any facilities to any Client or Prospective Client (as defined in Section 9(b)) of the Village which is competitive in any manner with services or facilities which the Village may perform or provide for such Client or Prospective Client in connection with the Village's operation of the Edward Athletic and Event Center, regardless of whether or not the Village has or is now performing such services or providing such facilities. Notwithstanding the foregoing, the restriction set forth in this Section 9(a) shall not prohibit Contractor from being employed by a

Client or Prospective Client; provided, however, Contractor shall not, as a part of his duties if so employed, perform, or directly assist others in obtaining the performance of services or provision of facilities for such Client or Prospective Client which are competitive in any manner with services or facilities which the Village may perform or provide for such client or Prospective Client in connection with the Village's operation of the Edward Athletic and Event Center. For purposes of this Section 9(a), the geographic locations served or marketed by the Village in connection with the operation of the Edward Athletic and Event Center shall mean and include the counties of Will, DuPage, Cook and Kendall in the State of Illinois.

(b) For purposes of this Agreement, the term "Prospective Client" means any person, firm or entity which has been in contact with any manager, employee, representative or agent of the Village regarding the services or facilities of the Village provided in connection with the operation of the Edward Athletic and Event Center during the then immediately preceding twelve (12)-month period, and the Village has reasonably considered selling such products or services thereto, and "Client" means any person, firm or entity that has received services or facilities from the Village in connection with the operation of the Edward Athletic and Event Center on or before the date of this Agreement or at any time during the then immediately preceding twelve (12)-month period.

(c) Nothing in this Section shall prohibit or prevent Contractor's acquisition or ownership of stock or securities listed on a foreign, national or regional exchange or the NASDAQ Stock Market, so long as such investments, in the aggregate, in any particular business enterprise constitute less than one percent (1%) of the total issued and outstanding stock and securities of such enterprise.

(d) Contractor agrees and acknowledges that the restrictions set forth in this Section are fair, reasonable and necessary to protect the legitimate business interests of the Village, that adequate consideration has been received by Contractor for such obligations, and that these obligations do not and will not prevent Contractor from earning a livelihood.

10. Two-Year Period. In the event Contractor violates Section 7, Section 8 or Section 9 of this Agreement, the two (2)-year periods provided for in such sections will be extended by a period of time equal to the period beginning when such violation commenced and ending when the activities constituting such violation terminated.

11. Non-Disparagement. During the Term and thereafter, (a) Contractor will not make any derogatory, disparaging or defamatory statements, remarks or comments, oral or written, directly or indirectly, to any individual or entity about or with reference to the Village or any manager, member, employee, officer, agent, client or supplier thereof; and (b) the Village will not make any derogatory, disparaging or defamatory statements, remarks or comments, oral or written, directly or indirectly, to any individual or entity about or with reference to Contractor.

12. Enforcement by Injunction. Contractor acknowledges the following: (a) the protections of this Agreement are of vital concern and essential to the business of the Village in connection with its operation of the Edward Athletic and Event Center, and any violation thereof would cause irreparable harm to the Village; and (b) because Contractor's services are unique and Contractor has access to Confidential Information, money damages would not be an

adequate remedy for any breach by Contractor of this Agreement. In the event of a breach or threatened breach of this Agreement by Contractor, in addition to other rights and remedies, the Village will be entitled to specific performance and/or injunctive or other relief from any court of competent jurisdiction in order to enforce or prevent any violations of the provisions hereof without posting a bond or other security. Village and Contractor agree that the exclusive venue for any suit based upon a breach or threatened breach of this Agreement, or to enjoin any breach or threatened breach of this Agreement, or relating to any rights or obligations hereunder, shall be the Circuit Court of the Twelfth Judicial Circuit in Will County, Illinois.

13. Severability. Each provision of this Agreement is intended to be severable. If any court of competent jurisdiction determines that one or more of the provisions of this Agreement, or any part thereof, is or are invalid, illegal or unenforceable, such determination will not affect or impair any other provision of this Agreement, and this Agreement will be given full force and effect while being construed as if such invalid or unenforceable provision is not contained within it. If, at the time of enforcement of this Agreement, a court holds that any duration, scope or geographic area stated herein is contrary to applicable law or unreasonable under circumstances then existing, the maximum duration, scope or area in compliance with law and reasonable under such circumstances will be added or substituted for the stated duration, scope or area, and the court will be allowed to revise the restrictions contained herein to cover such maximum period, scope and area.

14. Cumulative Rights. Each and all of the various rights, powers and remedies of the Village as set forth in this Agreement shall be considered as cumulative, with and in addition to any other rights, powers or remedies of such parties, and no one of them is exclusive of the others or is exclusive of any other rights, powers and remedies allowed by law or in equity. The exercise, partial exercise or non-exercise of any rights, powers or remedies shall constitute neither the election thereof nor the waiver of any other rights, powers or remedies. All rights, powers and remedies of the parties hereto shall survive the termination of this Agreement.

15. Attorneys' Fees. If the Village is the prevailing party in any litigation or enforcement proceedings in connection with this Agreement, the Village will be entitled to recover from Contractor all costs and expenses, including but not limited to reasonable attorneys' fees and costs incurred by the Village in connection with any such litigation or proceedings.

16. No Waiver. Failure to insist upon strict compliance with any of the terms, covenants or conditions hereof will not be deemed a waiver of such term, covenant or condition, nor will any waiver or relinquishment of, or failure to insist upon strict compliance with, any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

17. Binding Effect. All of the terms and provisions of this Agreement will be binding upon Contractor's heirs and legal representatives and will inure to the benefit of and be enforceable by the successors and assigns of the Village (including any successor or assign as a result of a merger, acquisition, sale of all or substantially all of the Village's assets or similar reorganization) and the assignees of any Inventions and Innovations. Contractor's duties and responsibilities hereunder are personal in nature and may not be assigned or transferred in whole or in part.

18. Governing Law. It is the intention of the parties that the internal laws of the State of Illinois (irrespective of its choice of law principles) shall govern the validity of this Agreement.

19. Waiver of Jury Trial. Each of the Village and Contractor acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury in respect of any litigation directly or indirectly arising out of or relating to this Agreement, or the transactions contemplated by this Agreement. Each of the Village and Contractor certifies and acknowledges that (a) each such party understands and has considered the implications of this waiver, (b) each such party makes this waiver voluntarily and (c) each such party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

20. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party hereto.

21. Titles and Headings. Titles and headings to sections hereof are for the purpose of reference only and do not affect the provisions hereof or the rights of the parties hereto.

22. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all understandings and agreements, written and oral, between the parties with respect to the subject matter hereof.

23. Amendment. This Agreement and the provisions hereof shall not be altered, modified, amended, terminated or waived except by written instrument executed by both parties hereto.

24. Survival. The covenants set forth in this Agreement will survive and be enforceable in law or in equity after the termination of this Agreement and after the termination of the Term.

25. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, when taken together, shall be considered a single agreement. One or more counterparts of this Agreement may be delivered by facsimile or email, with the intention that delivery by such means shall have the same effect as delivery of an original counterpart thereof.

*[signature page follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered on the date first above written.

BY SIGNING BELOW, CONTRACTOR ACKNOWLEDGES THAT CONTRACTOR RECEIVED, READ AND UNDERSTANDS ALL OF THE PROVISIONS OF THIS AGREEMENT AND HAD THE OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN ATTORNEY.

**CONTRACTOR:**

\_\_\_\_\_  
Marc Howard

**VILLAGE:**

Village of Romeoville, an Illinois Municipal Corporation

By: \_\_\_\_\_  
John D. Noak, Mayor

## EXHIBIT A

**Services:** Contractor will be responsible for developing and pursuing leads for the rental of athletic court space for tournament usage within and sponsorship of the Edward Athletic and Event Center leading to the actual rental of space within and/or sponsorship of the Edward Athletic and Event Center by such leads. It is anticipated by the Village and the Contractor that the Contractor will focus on developing rental business for the Edward Athletic and Event Center from the youth athletic tournament market, including but not necessarily limited to youth basketball tournaments. Contractor shall devote not less than the equivalent of a full time forty hours per week work week to the provision of such services, provided, however, that the particular times and days of the week that Contractor shall devote to such services shall be determined after consultation with and approval of Mr. Noel Maldonado, CPRP, Village Recreation Department Manager of Revenue and Athletic Facilities

**Term (end date):** April \_\_\_\_, 2020.

**Compensation:** In exchange for the performance of the services herein described, Village shall pay Contractor a monthly stipend of \$6,300.00, plus commissions as hereinafter described. This stipend shall be payable in monthly installments on the first of each month during the term of this Agreement, with the first such installment being due on \_\_\_\_, 2019.

**Commissions:** At such time as the Village shall have received not less than a total of \$75,600.00 in new revenues in the categories hereinafter described resulting from Contractor's performance of the services hereinabove described, Contractor shall thereafter be entitled to a receive a commission on all further such revenues resulting from Contractor's performance of the services hereinabove described, at the rates hereinafter set forth, provided, however, that Contractor shall not be entitled to receive any commission on any such revenues resulting from tournaments booked or sponsorships generated from the activities of the Village and its staff without Contractor's participation or rendering of services in connection therewith. Commission to which Contractor shall be entitled hereunder shall be paid by Village within 30 days of the Village's receipt of the revenues which entitle Contractor to the payment of such commission. No commission shall be due or payable



hereunder unless and until the Village shall first receive payment for the tournament fee, sponsorship fee or naming rights sponsorship fee from time to time due and owing to the Village, and no commission shall be due or payable on any revenues received by the Village after the term of this Agreement. As used herein "new rental and/or sponsorship revenues" shall mean revenues generated from persons or entities as a result of Contractor's performance of the services hereinabove described for the rental of the Edward Athletic and Event Center for athletic tournament usage or for the sponsorship of the Edward Athletic and Event Center, where the Village has no relationship with such persons or entities as Clients or Prospective Clients (as defined in Section 9(b)) at any time prior to the date of this Agreement.

Local tournament and sponsorship revenues: 10 percent. Local tournament and sponsorship revenues shall mean and include tournament and sponsorship revenues from or relating to the conduct of any tournament which is not a national brand tournament as hereinafter described. Such revenues typically consist of (i) fees paid for Athletic and Event Center facility usage and (ii) sponsorship fee payments for the right to place banners within the Athletic and Event Center, or for the right to place sponsor name and logo material on court floors within the Athletic and Event Center.

National brand tournament and sponsorship revenues: 15 percent. National brand tournament and sponsorship revenues shall mean tournament and sponsorship revenues from or relating to the conduct of those athletic tournaments that are organized, administered, conducted, sponsored by or affiliated with any brand of athletic apparel which is marketed, sold, advertised and distributed nationally in all markets within the United States. Such revenues typically consist of (i) fees paid for Athletic and Event Center facility usage and (ii) sponsorship fee payments for the right to place banners within the Athletic and Event Center, or for the right to place sponsor name and logo material on court floors within the Athletic and Event Center.

Naming rights sponsorship revenues: Naming rights sponsorship revenues shall mean and refer to revenues paid by sponsoring entities in exchange for the right to cause the name of the sponsoring entity to be placed on the Athletic and Event Center as a whole, or upon any discrete room, area or portion thereof and to be used as the official name of the Athletic and Event Center for a fixed term, or as the official name of the discrete room, area or portion thereof in question. Commission on naming rights

revenues for the Athletic and Event Center as a whole shall be payable at a rate of 5 percent. Commission on naming rights revenues for any discrete room, area or portion of the Athletic and Event Center shall be payable at a rate of 10 percent.