

RESOLUTION NO. R2012-55

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL
APPROVING AMENDMENT #2 AND AMENDMENT #3 TO
THE TENNIS CENTER MANAGEMENT AND
MAINTENANCE AGREEMENT BETWEEN WELLINGTON
AND CHEATHAM, INC. EXTENDING SAID AGREEMENT
FOR THE 2012-2013 AND 2013-2014 FISCAL YEARS; AND
PROVIDING AN EFFECTIVE DATE

WHEREAS, in June, 2010, Wellington issued a request for proposal entitled "Tennis Center Management and Maintenance Services RFP #014-10/JM" seeking proposals for the operation and maintenance of its tennis center located at the Wellington Community Center, 12165 Forest Hill Boulevard, Wellington, Florida 33414; and

WHEREAS, Cheatham, Inc. was selected by Wellington's Council to be the operator and maintenance provider for the tennis center; and

WHEREAS, a contract between the parties was entered into entitled "Tennis Center Management and Maintenance Services Agreement between Wellington and Cheatham, Inc." dated September 30, 2010 (a copy of which is attached hereto and incorporated herein as Exhibit "A"); and

WHEREAS, pursuant to paragraph 4 of the Agreement, the parties have the ability to renew the agreement on an annual basis and such renewal is required to be executed by the parties on or before June 1st of each year; and

WHEREAS, in June, 2011, the parties agreed to extend the Agreement for a second year from October 1, 2011 to September 30, 2012 ("Amendment No. 1"); and

WHEREAS, the parties mutually desire to extend the Agreement for an additional (third) year from October 1, 2012 to September 30, 2013, subject to the same terms and conditions as set forth in the Agreement, as amended by Amendment No. 1 and this Amendment No. 2 to the Agreement; and

WHEREAS, the parties mutually desire to extend the deadline for the renewal of the third year of the Agreement from June 1, 2012 to September 15, 2012; and

WHEREAS, the parties mutually desire to extend the Agreement for an additional (fourth) year from October 1, 2013 to September 30, 2014, subject to the same terms and conditions as set forth in the Agreement, as amended ("Amendment No. 3"); and

WHEREAS, the extension from October 1, 2013 to September 30, 2014 shall be cancellable by Wellington on or before March 1, 2013, in anticipation of the completion

1 of a new, relocated tennis facility or, in the alternative, upon a decision by the
2 Wellington Council to keep the tennis facility at its current location.

3
4 **NOW, THEREFORE, BE IT RESOLVED BY WELLINGTON, FLORIDA'S**
5 **COUNCIL that:**

6
7 **SECTION 1.** The foregoing recitals are hereby affirmed and ratified.

8
9 **SECTION 2.** The Wellington Council hereby accepts and approves Amendment
10 No. 2 and Amendment No. 3 to the Tennis Center Management and Maintenance
11 Agreement between Wellington and Cheatham, Inc. and hereby authorizes the Village
12 manager and Clerk to execute the Amendments attached hereto as Exhibit "B" and "C".

13
14 **SECTION 3.** This Resolution shall become effective immediately upon adoption.

15
16 **PASSED AND ADOPTED** this 11th day of September, 2012.

17
18 **ATTEST:**

WELLINGTON

19
20
21 By: Awilda Rodriguez
22 Awilda Rodriguez, Wellington Clerk

By: Bob Margolis
Bob Margolis, Mayor

23
24 **APPROVED AS TO FORM**
25 **AND LEGAL SUFFICIENCY**

26
27
28 By: Jeffrey S. Kurtz
29 Jeffrey S. Kurtz, Attorney for Wellington
30
31

RESOLUTION NO. R2010-58

**A RESOLUTION OF WELLINGTON, FLORIDA'S
COUNCIL APPROVING THE TENNIS CENTER
MANAGEMENT AND MAINTENANCE AGREEMENT
BETWEEN WELLINGTON AND CHEATHAM, INC.; AND
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Wellington issued a Request for Proposals entitled "Tennis Center Management and/Maintenance Services RFP #014-10/JM" in June of 2010 seeking proposals for the operation and maintenance of its tennis center located at the Wellington Community Center, 12165 Forest Hill Boulevard, Wellington, Florida 33414; and

WHEREAS, Cheatham responded to the RFP and was selected by Wellington's Council to be the operator and maintenance provider for the tennis center; and

WHEREAS, Cheatham desires to provide the tennis center maintenance and operation services on behalf of Wellington and Wellington desires for Cheatham to perform those services subject upon the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, BE IT RESOLVED BY WELLINGTON'S COUNCIL OF WELLINGTON, FLORIDA that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified.

SECTION 2. The Council hereby accepts and approves the Tennis Center Management and Maintenance Agreement between Cheatham, Inc. and Wellington and hereby authorizes the Mayor and Clerk to execute the Agreement attached hereto as Exhibit "A".

SECTION 3. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 13th day of September, 2010.

ATTEST:

BY: Awilda Rodriguez
Awilda Rodriguez, Wellington Clerk

VILLAGE OF WELLINGTON

By: Darell Bowen
Darell Bowen, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY,**

BY: Jeffrey S. Kurtz
Jeffrey S. Kurtz, Esq., Attorney for Wellington

**TENNIS CENTER MANAGEMENT AND
MAINTENANCE SERVICES AGREEMENT BETWEEN
WELLINGTON AND CHEATHAM, INC.**

September, 2010

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**TENNIS CENTER MANAGEMENT AND MAINTENANCE SERVICES
AGREEMENT BETWEEN WELLINGTON AND CHEATHAM, INC.**

September, 2010

THIS AGREEMENT is made and entered into this ____ day of September, 2010, by and between the Village of Wellington, a Florida Municipal Corporation (hereinafter referred to as "Wellington"), and Cheatham, Inc., a Florida For Profit Corporation, with offices located at 1768 Hollyhock Road, Wellington, Florida 33414 (hereinafter referred to as "Cheatham").

WHEREAS, Wellington issued a Request for Proposals entitled "Tennis Center Management and Maintenance Services RFP #014-10/JM" in June of 2010 seeking proposals for the operation and maintenance of its tennis center located at the Wellington Community Center, 12165 Forest Hill Boulevard, Wellington, Florida 33414; and

WHEREAS, Cheatham responded to the RFP and was selected by Wellington's Council to be the operator and maintenance provider for the tennis center; and

WHEREAS, Cheatham desires to provide the tennis center maintenance and operation services on behalf of Wellington and Wellington desires for Cheatham to perform those services subject upon the terms and conditions set forth in this Agreement; and

WHEREAS, Cheatham shall at all times faithfully and industriously and to the best of their ability, experience and talent perform all duties that may be required of and from them pursuant to the express and implied terms articulated herein to the reasonable satisfaction of Wellington.

NOW, THEREFORE, in consideration of the mutual obligations set forth below, Cheatham and Wellington hereby agree as follows:

1. **RECITALS.**

The foregoing recitals are true and correct and are incorporated herein by reference.

2. **SCOPE OF SERVICES.**

Cheatham shall direct and oversee the operations and maintenance of the tennis center located at the Wellington Community Center, 12165 Forest Hill Boulevard, Wellington, Florida 33414 for the duration of this Agreement. These services will include: assuming primary responsibility of the operation of the tennis center including, fiscal management of same and coordinating with Wellington Parks & Recreation Department for the scheduling of tennis courts, instructions and

clinics and supervision of the tennis center and facilities and related staff. Cheatham will operate and manage a tennis pro shop to be located at the tennis center offering to the public tennis balls, rackets, tennis wear and other tennis related accessories. Cheatham shall be responsible for selecting and purchasing the inventory, maintain stock, selling merchandise and managing the staff of the tennis pro shop. Cheatham shall be responsible for all duties related to bookkeeping and accounting and any and all state and federal financial reporting requirements and shall insure that the tennis pro shop is adequately stocked at all times with high and medium quality merchandise. Cheatham will also provide maintenance services for the tennis courts as specifically set forth below. Cheatham will provide quality tennis instruction for individuals or groups and promote general and tournament use of the tennis center facilities. The fees for such services including annual passes and daily use of the tennis center shall be set by Cheatham but are subject to the approval of the Wellington's Parks & Recreation Director. All duties and responsibilities shall be performed by Cheatham subject to the review and coordination of same with the Wellington Parks & Recreation Department.

3. TENNIS CENTER DESCRIPTION.

The tennis center is currently part of the Wellington's Community Center located at 12165 Forest Hill Boulevard, Wellington, Florida. The tennis center facilities that are subject of this Agreement and made available for the use of Cheatham consist of the following:

- a. 16, lighted, hard true clay tennis courts;
- b. 10X15 maintenance shed adjacent to the courts;
- c. Tennis pro shop consisting of customer service counter, merchandise display area and two offices totaling approximately 1,200 square feet;
- d. One men's restroom/locker room area of approximately 600 square feet;
- e. One women's restroom/locker room area of approximately 600 square feet;
- f. Immediately adjacent to the tennis pro shop is a concrete deck of approximately 1,600 square feet covered with a canvas canopy overlooking the tennis courts with patio tables and chairs on the set on the deck;
- g. Parking lot adjoining the Wellington Community Center which is available for tennis center patrons;

During the term of this Agreement the Wellington Community Center may be renovated requiring the relocation of the pro shop, restroom/locker room areas and maintenance shed, and deck area. Cheatham understands that the relocation and/or reconfiguration of those areas are a possibility and the design and allocation of space are solely up to the discretion of Wellington. If the Community Center is renovated, space will be provided for tennis operations but

the extent and nature of those areas are solely up to the discretion of Wellington. Cheatham understands that there is no guarantee as to the amount of space that will be dedicated to tennis operations or its location and further understands that movement to temporary facilities may be necessary during the course of the construction or renovation. Wellington will provide temporary facilities during at the time of such reconstruction or renovation. However, Wellington will be the sole determiner of the extent nature and adequacy of those temporary facilities. Cheatham understands that a reduction in the size, nature or quality of the facilities and location is not the basis for their termination of the Agreement or a lessening of their obligations under this Agreement including any fees that may be payable by them to Wellington. Wellington shall insure that the Community Center architect, engineer, design consultants and staff provide notice to Cheatham during the preliminary design process and advise Cheatham in regard to the design, set up and location of the tennis center offices, pro shop and covered deck. Wellington shall provide Tommy Cheatham and Cheatham, Inc. with a minimum of sixty (60) days notice prior to the commencement of any demolition or construction at the Community Center/Tennis Center.

4. TERM OF THE AGREEMENT.

The effective date of this Agreement is October 1, 2010. The term of the Agreement shall be for one (1) year beginning on October 1, 2010 and ending on September 30, 2011 and may be renewed by the parties for up to four (4) additional one (1) year renewal periods. The renewals shall be under the same terms and conditions as set forth in this Agreement unless mutually agreed to by the parties in writing. The renewal Agreements shall be executed by the parties on or before June 1st of each year. In the event a renewal has not been executed by the parties on or before June 1st, Cheatham shall be prepared to vacate the premises and close down its operations by the end of its term. In the event of a transition in management and/or maintenance services to another party, Cheatham shall cooperate with the successor party to make a smooth and cohesive transition.

5. COMPENSATION.

As compensation for the services rendered during the term of this Agreement, Cheatham shall receive 100% of all tennis center revenues including annual pass fees, daily fees, lesson fees, tournaments, camp fees, revenues derived from the sale of goods and services at the pro shop and any other activity generating revenue by the tennis center. In addition for the maintenance services to be provided hereunder Wellington shall pay Cheatham in equal quarterly installments due on the 1st day of each quarter and payable by the 10th day of each quarter the annual sum of \$110,000.00 (110,000.00) dollars.

6. RESPONSIBILITIES FOR CHEATHAM FOR TENNIS CENTER MANAGEMENT.

Cheatham agrees to provide the public with tennis instruction and promote the game of tennis and use of the tennis center as follows:

- a. Cheatham must employ at least one person who is a USPTA Certified Professional.
- b. Provide sufficient qualified staff (over the age of 16) to provide the services herein.
- c. Complete Wellington's mandated background screening check for Cheatham and all personnel, instructors, staff, or contractors associated with provision of tennis management and maintenance services. Cheatham is to pay for all background screening costs.
- d. Cheatham is responsible for hiring and compensating the staff and professionals required to operate the Tennis Center.
- e. Direct and manage the operation of the Tennis Center at the Wellington Community Center.
- f. Fiscally manage the Tennis Center in coordination with the Wellington Parks and Recreation Department. Maintain complete accounting records and implement appropriate account controls consistent with standard business practices. Accounting records shall be available for audit/inspection by Wellington during regular working hours.
- g. Establish the rates for annual passes, private lessons, group lessons, clinics, camps, and league participation, etc. Provided, however; the rates are subject to Wellington approval and cannot be amended without prior approval by Wellington. The approved rates to be in effect from October 1, 2010 to September 30, 2011 are those set forth in Exhibit "A" attached hereto. On an annual basis increases in the rates, from those previously approved, of 10% or less shall be deemed approved so long as Wellington has received notice of the change at least 60 days prior to the advertisement of the new rates to customers and the new rates are effective on or after the renewal date of the Agreement. Interim changes in the rates or charges must be specifically approved by Wellington.

- h. Schedule use of the tennis courts and provide tennis instructions and clinics.
- i. Supervise the Tennis Center and any tennis contractual staff.
- j. Operate and manage a Tennis Pro Shop offering clientele and the public tennis balls and rackets, tennis wear, and other tennis related accessories.
- k. Select and purchase Tennis Pro Shop inventory, maintain stock, and sell merchandise. Inventory is to be adequately stocked at all times with high and medium quality merchandise.
- l. Provide all duties related to tennis center bookkeeping and state and federal financial reporting requirements.
- m. Provide quality tennis instruction for individuals or groups and promote general and tournament use of the Tennis Center.
- n. Have a manager who maintains an office schedule comprising a minimum of ten (10) hours per week for administrative functions and duties.
- o. Management activities are not to infringe upon the public's use and enjoyment of the Tennis Center, except as in accordance with this agreement and the rules and regulations provided by Wellington.
- p. Provide all equipment, which includes balls, ball machines, racquets and any other necessary equipment, required to conduct lessons, clinics, camps, etc.
- q. Distribute to their customers an annual customer satisfaction survey and provide annual results to Wellington. Wellington will prepare the survey and be responsible for any mailing and copying costs associated with the survey.

7. TENNIS CENTER HOURS OF OPERATION.

- a. Open every day throughout the year, weather permitting, at hours which are consistent with tennis industry practices and the community's needs, except for Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve, Christmas Day, and New Year's Day.

- b. The Tennis Center is at a minimum to be accessible to the public from 8:00 a.m. to 10:00 p.m., Monday through Thursday, and from 8:00 a.m. through 5:00 p.m. on Fridays, Saturdays, and Sundays.
- c. The Tennis Center is to be accessible on certain holidays, as defined by Wellington, except for Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve, Christmas Day, and New Year's Day.

8. COURT SCHEDULE.

At all times, a minimum of two (2) courts will be available for general public use subject to either daily or annual fees. This schedule may be revised from time to time by Wellington.

9. TOURNAMENT SCHEDULES.

The Organization and conduct of tennis tournaments by Cheatham is permissible. The annual schedule for these tournaments is to be submitted to the Parks and Recreation Director for approval prior to October 1st of each year.

10. CHEATHAM RESPONSIBILITIES FOR MAINTENANCE SERVICES.

All maintenance (internal/external/minor) of the Tennis Center, including the Tennis Pro Shop, is the responsibility of Cheatham. All tools and equipment for the Tennis Center maintenance will be the sole responsibility of Cheatham. All equipment, materials, and supplies to maintain the tennis courts will be the responsibility of Cheatham. Maintenance duties include:

- a. Drag all tennis courts three (3) times each day.
- b. Brush all of the lines on the courts three (3) times each day.
- c. Water all of the courts three (3) times each day.
- d. Blow off all of the concrete pads and sidewalks two (2) times each day.
- e. Re-organize chairs in the proper positions.
- f. Pick up all the trash and tennis balls lying around three (3) times each day.
- g. Change all of the garbage bags around the Tennis Center and inside the Tennis Pro Shop.
- h. Add additional clay to the courts, when needed, in low areas.

- i. After heavy rains, add additional clay to washed out areas of the courts.
- j. Zip-tie and/or replace the windscreen or nets that have become loose or have ripped.
- k. Unlock all gates in the morning and lock all gates at night.
- l. Clean Tennis Center restrooms and replenish supplies.
- m. Vacuum the Tennis Pro Shop.
- n. Remove and install new lines on the courts.
- o. Pressure wash concrete and canopies.
- p. Clean water fountains.
- q. Inspect the Tennis Center for maintenance or repairs once per week.
- r. Cheatham shall provide all materials and supplies used annually for maintenance of the courts, tennis pro shop, lockerooms/bathrooms and the deck area.
- s. Wellington currently has available for Cheatham's use in performing the maintenance functions the following equipment and tool inventory.
 - i. Service Alloy Cart - Qty: 2
 - ii. 30" lute brush - Qty: 4
 - iii. 48" lute brush - Qty: 4
 - iv. Tow/rake panels - Qty: 4
 - v. Rear brush carts - Qty: 4
 - vi. Blowers - Qty: 2
 - vii. Brooms - Qty: 4
 - viii. Cleaning supplies - Assorted
 - ix. Paper goods - Assorted
 - x. Pressure washer - Qty: 1

During the term of the agreement as the above equipment wears out, it shall be Cheatham's responsibility to replace the equipment and tool items with those of like kind and quality.

11. MAINTENANCE OF LICENSES AND PERMITS.

Cheatham shall secure and maintain all licenses necessary to do business in Palm Beach County, Village of Wellington and the State of Florida and shall

secure all necessary permits and licenses for the operation of a pro shop and all other operations provided by Cheatham at the tennis center. All such licenses and permits shall be obtained at Cheatham's sole cost and expense. Cheatham shall comply with all applicable federal state and local laws, codes and ordinances and rules and regulations relating to Cheatham's performance under the Agreement.

12. TAXES.

Cheatham is solely responsible for the payment of any and all pertinent federal state or local business, employment, self-employment, workers' compensation or income taxes or other assessments levied by governmental authorities on any monies earned as a result of their contractual relationship with Wellington. Cheatham agrees to reimburse Wellington for any claim or assessment, including interest and penalties, by any taxing authority arising from this paragraph.

13. INSURANCE.

Cheatham shall provide workers' compensation insurance coverage to the extent required by Florida State Statute as well as a valid copy of liability insurance coverage throughout the term services are provided, or a comparable group (minimum coverage: One Million Dollars (\$1,000,000) per occurrence/aggregate, naming the Village of Wellington as an additional insured), for any acts/injuries involving Cheatham related to or arising from performance of services, or proof of exemption from the State of Florida. Coverage must include liability for acts/injuries occurred in connection with or related to performance of services. Cheatham is responsible for acquiring insurance covering Tennis Pro Shop merchandise for fire, theft, etc., should Cheatham so desire.

14. INDEMNIFICATION.

Cheatham shall indemnify and hold harmless, Wellington and its affiliates, their respective officers, directors, agents, representatives from and against all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorneys' fees and court costs at any trial and appellate levels) arising out of or in connection with the performance of or failure to perform Cheatham's duties and responsibilities under this Agreement. The provisions of this paragraph shall survive the termination of the Agreement.

15. BACKGROUND CHECKS.

All of Cheatham's independent contractors and employees providing services under the terms of this Agreement shall complete the Wellington Parks and Recreation Department's mandated background check process on an annual basis and Cheatham shall pay for any and all associated background screening costs.

16. PURCHASING AUTHORITY.

Cheatham may not incur any costs or expenses on behalf of Wellington as a result of Cheatham's performance or duties under this Agreement. As such costs and expenses shall be the sole and exclusive responsibility of Cheatham.

17. FEES PAID TO WELLINGTON.

In exchange for the right granted to Cheatham under this Agreement, Cheatham shall pay quarterly to Wellington a fee equal to 4% of its gross revenues from any and all sources for the previous quarter, excluding from the calculation of gross revenues, any and all maintenance fees paid by Wellington to Cheatham pursuant to paragraph 5 of this Agreement.

18. ACCOUNTING PROCEDURES.

1. Cheatham will maintain complete and adequate accounting records supporting all charges, fees, expenses and costs associated with the contract.
2. Cheatham will implement appropriate accounting controls consistent with standard business practices.
3. All transactions generated as a result of instruction shall be accounted for as follows:
 - a. Cheatham shall maintain and have available for Wellington quarterly participation and revenue reports to include:
 - i. all participant names;
 - ii. addresses of participants;
 - iii. whether the participant is a non-resident or resident of Wellington and whether they are a junior, adult, or senior participant;
 - iv. type of instruction (including use of ball machine);
 - v. frequency of lesson;
 - vi. amount paid by participant; and
 - vii. gross revenues broken down by category including but not limited to annual passes, daily fees, lessons, clinics, camps, league play, events, tournament receipts, tennis pro shop merchandise sales, stringing fees, maintenance fees paid by Wellington and food and beverage sales;
 - viii. Trial balance which must contain quarter end balances for all accounts including cash, accounts payable, revenues and expenses;
 - ix. Sales tax returns;

- x. Documentation of court usage (copies of calendar indicating reservations and actual usage is acceptable); and
- xi. Report on the number and frequency of tournaments; leagues, camps, clinics and special events.

The quarterly reports are to be delivered to Wellington on or before the thirtieth (30) day following the end of the quarters. The quarters' end on December 31, March 30, June 30 and September 30 of each year.

- b. Cheatham shall provide Wellington with Financial Statements for the tennis center operations on an annual basis. Such Financial Statements shall be due within one hundred twenty days of the anniversary date of the effective date of the contract. The Financial Statements shall reflect Cheatham's financial position at the conclusion of the previous fiscal year. The Financial Statements shall include such information as Wellington's Finance Director may reasonably require, which shall include an annualized statement of the quarterly information required in paragraph 18. 3 (a) above, and a balance sheet and income statement, tax return, general ledger, bank statement along with documentation of amounts paid to independent contractors and employees. Wellington shall have the right to review Financial Statements more frequently during the year and at Wellington's discretion may require monthly reports. Wellington at its own cost and expense may audit contractor operations from a financial and management perspective at any time during the term of the Agreement
- c. Cheatham's accounting records shall be available for audit and inspection by Wellington during hours of operation.

19. KEY PERSONNEL.

Cheatham shall notify Wellington in the event of key personnel changes which might effect this Agreement. Notification shall be made within ten (10) days of said changes. Wellington has the right to reject proposed changes in key personnel and/or terminate the Agreement in the event of the unavailability of key personnel. The following personnel shall be considered key personnel: Thomas Cheatham.

20. WELLINGTON NOT RESPONSIBLE FOR EMPLOYEE COMPENSATION OR BENEFITS.

Cheatham is not entitled to any benefits provided by Wellington to its employees which include but are not limited to workers' compensation insurance, health insurance, unemployment insurance and pension plan coverage.

21. ADVERTISING AND PROMOTIONS.

Wellington may promote the services of Cheatham using Cheatham's name in any advertising or promotion. The Wellington logo will appear on all promotional and advertising materials. The cost of advertising for promotion promulgated by Wellington will be paid for by Wellington. Cheatham will be authorized to advertise and promote Cheatham's services offered under this contract at Cheatham's expense.

22. UTILITY SERVICES.

All electrical, water and sewer, trash collection, telephone, internet, and cable television service costs are paid by Wellington.

23. CAPITAL MAINTENANCE AND REPAIR.

Major repairs and capital improvements will be provided by Wellington as set forth below:

- a. Fencing repairs when the cost of such repairs is in excess of \$1,000.00,
- b. All lighting repair and/or replacements,
- c. All repairs and maintenance of the irrigation system for the tennis courts,
- d. Any and all laser grading of courts as necessary,
- e. Any and all of the repairs or replacements to the facility when such individual repair or replacement exceeds \$1,000.00 in cost

24. TERMINATION.

Either party may terminate this Agreement at any time with just cause by giving the other party at least ninety (90) days prior written notice (the notice period; however, Wellington reserves the right to terminate this Agreement immediately and without notice in the event of misconduct or material breach of the Agreement by Cheatham including but not limited to Cheatham's failure to perform the duties, responsibilities or other obligations under this Agreement or

Cheatham's negligence, willful misconduct, fraud, theft, dishonestly, or embezzlement.

Upon termination of this Agreement:

- a. Cheatham shall receive pro rata share, based upon his annual rate of compensation, for days of service completed through the effective date of their termination.
- b. Cheatham shall receive income derived from private tennis lessons provided personally by Cheatham, as provided in paragraph 3 of this Agreement, only for services rendered during the term of this Agreement, and only for income received within thirty (30) days after the effective date of Cheatham's termination.
- c. Cheatham will make a good faith effort during the notice period, if applicable, to perform the duties described in this Agreement and to act in the best interest of Wellington.
- d. Cheatham will be responsible for removal of all pro shop merchandise within thirty (30) days of notice of termination. Failure to do so will result in disposal of merchandise by Wellington as deemed appropriate.

25. NOTICE.

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage pre-paid as follows:

As to Wellington:

Attn: Parks & Recreation Director
14000 Greenbrier Boulevard
Wellington, Florida 33414

With a copy to:

Attn: Paul Schofield, Manager
14000 Greenbrier Boulevard
Wellington, Florida 33414

**AMENDMENT NO. 2 TO THE TENNIS CENTER MANAGEMENT
AND MAINTENANCE SERVICES AGREEMENT BETWEEN
WELLINGTON AND CHEATHAM INC.**

COMES NOW, this 11th day of September, 2012, the Village of Wellington, a Florida municipal corporation (hereinafter referred to as "Wellington"), and Cheatham, Inc., a Florida for Profit corporation with offices located at 1768 Hollyhock Road, Wellington, Florida, 33414 (hereinafter referred to as "Cheatham") and do exercise their rights under that certain Tennis Center Management and Maintenance Services Agreement between Wellington and Cheatham, Inc., dated September 23, 2010 (the "Agreement") to amend the Agreement as follows:

WHEREAS, in June, 2010, Wellington issued a request for proposal entitled "Tennis Center Management and Maintenance Services RFP 014-10/JM" seeking proposals for the operation and maintenance of its tennis center located at the Wellington Community Center, 12165 Forest Hill Boulevard, Wellington, Florida 33441; and

WHEREAS, Cheatham was selected by Wellington's Council to be the operator and maintenance provider for the tennis center; and

WHEREAS, a contract between the parties was entered into entitled Tennis Center Management and Maintenance Services Agreement between Wellington and Cheatham, Inc. dated September 30, 2010 (a copy of which is attached hereto and incorporated herein as **Exhibit A**); and

WHEREAS, pursuant to paragraph 4 of the Agreement, the parties have the ability to renew the agreement on an annual basis and such renewal is required to be executed by the parties on or before June 1st of each year; and

WHEREAS, in June 2011, the parties agreed to extend the Agreement for a second year from October 1, 2011 to September 30, 2012 ("Amendment No. 1"); and

WHEREAS, the parties mutually desire to extend the Agreement for an additional (third) year from October 1, 2012 to September 30, 2013, subject to the same terms and conditions as set forth in the Agreement, as amended by Amendment No. 1 and this Amendment No. 2 to the Agreement; and

WHEREAS, the parties mutually desire to extend the deadline for the renewal of the third year of the Agreement from June 1, 2012 to September 15, 2012; and

WHEREAS, the remaining terms and conditions of the Agreement, except as amended by Amendment No. 1 and this Amendment No. 2, shall remain in effect; and

NOW THEREFORE, in consideration and mutual obligation set forth below, Cheatham and Wellington hereby agree as follows:

1. The foregoing whereas clauses are true and correct and are incorporated herein by this reference.

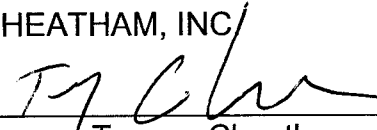
2. Paragraph 4 "Term of the Agreement" of the Tennis Center Management and Maintenance Services Agreement between Wellington and Cheatham shall be amended, in part, as follows: "The renewal agreement for October 1, 2012 through September 30, 2013 shall be executed by the parties on or before September 15, 2012. All remaining renewal agreements shall be executed by the parties on or before June 1st of each year."

3. The Tennis Center Management and Maintenance Services Agreement between Wellington and Cheatham shall be extended for a one year period from October 1, 2012 to September 30, 2013.

4. All terms and conditions of the Agreement, except as amended by Amendment No. 1 and this Amendment No. 2, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Wellington and Cheatham have executed this Amendment No. 2 to the Agreement as of the day and year first written above.

CHEATHAM, INC.


Name: Tommy Cheatham
Title: President

Seal:

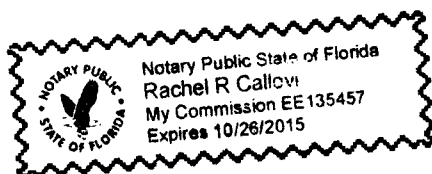
STATE OF FLORIDA

COUNTY OF PALM BEACH

Before me, the undersigned Personally Known to me authority, personally appeared Tommy Cheatham who produced as identification a Driver's License, showing him/her to be the person described in and who executed the foregoing instrument as President of CHEATHAM, INC., a Florida corporation and did acknowledge before me that he/she executed the same for and on behalf of said corporation as such officer by due and regular corporate and company authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 11 day of September, 2012.


Notary Public



My commission expires: 10/26/2015

State of Florida

ATTEST:

VILLAGE OF WELLINGTON

By: Awilda Rodriguez
Awilda Rodriguez, Clerk

By: Paul Schofield
Paul Schofield, Village Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: Jeffrey S. Kurtz
Jeffrey S. Kurtz, Wellington Attorney

AMENDMENT NO. 3 OF THE TENNIS CENTER MANAGEMENT AND MAINTENANCE SERVICES AGREEMENT BETWEEN WELLINGTON AND CHEATHAM INC., FOR A ONE YEAR TERM BEGINNING OCTOBER 1, 2013 THROUGH SEPTEMBER 30, 2014

COMES NOW, this 11th day of September, 2012, the Village of Wellington, a Florida municipal corporation (hereinafter referred to as "Wellington"), and Cheatham, Inc., a Florida for Profit corporation with offices located at 1768 Hollyhock Road, Wellington, Florida, 33414 (hereinafter referred to as "Cheatham") and do exercise their rights under that certain Tennis Center Management and Maintenance Services Agreement between Wellington and Cheatham, Inc., dated September 23, 2010 and extend the term of the agreement for a fourth year being from October 1, 2013 to September 30, 2014:

WHEREAS, in June, 2010, Wellington issued a request for proposal entitled "Tennis Center Management and Maintenance Services RFP 014-10/JM" seeking proposals for the operation and maintenance of its tennis center located at the Wellington Community Center, 12165 Forest Hill Boulevard, Wellington, Florida 33441; and

WHEREAS, Cheatham was selected by Wellington's counsel to be the operator and maintenance provider for the tennis center; and

WHEREAS, a contract between the parties was entered into entitled Tennis Center Management and Maintenance Services Agreement between Wellington and Cheatham, Inc. dated September 30, 2010 (the "Agreement") (a copy of which is attached hereto and incorporated herein as **Exhibit A**); and

WHEREAS, pursuant to paragraph 4 of the Agreement, the parties have the ability to renew the Agreement on an annual basis; and

WHEREAS, in June 2011, the parties agreed to extend the Agreement for a second year from October 1, 2011 to September 30, 2012 ("Amendment No. 1"); and

WHEREAS, by a companion amendment to this current amendment, the parties agreed to extend the Agreement for a third year from October 1, 2012 to September 30, 2013 ("Amendment No. 2"); and

WHEREAS, the parties mutually desire to extend the Agreement for an additional (fourth) year from October 1, 2013 to September 30, 2014, subject to the same terms and conditions as set forth in the Agreement, as amended ("Amendment No. 3"); and

NOW THEREFORE, in consideration and mutual obligation set forth below, Cheatham and Wellington hereby agree as follows:

1. The foregoing whereas clauses are true and correct and are incorporated herein by this reference.

2. The Tennis Center Management and Maintenance Services Agreement between Wellington and Cheatham shall be extended for a one year period from October 1, 2013 to September 30, 2014.

3. All terms and conditions of the Agreement, except as amended by Amendment No. 1, Amendment No. 2 and this Amendment No. 3, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Wellington and Cheatham have executed this Amendment No. 3 to the Agreement as of the day and year first written above.

CHEATHAM, INC.


Name: Tommy Cheatham
Title: President

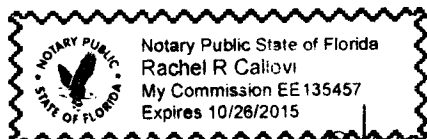
Seal:

STATE OF FLORIDA

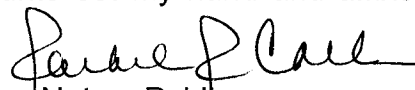
COUNTY OF PALM BEACH

Personally known to me
Before me, the undersigned authority, personally appeared Tommy Cheatham who produced as identification a Driver's License, showing him/her to be the person described in and who executed the foregoing instrument as President of CHEATHAM, INC., a Florida corporation and did acknowledge before me that he/she executed the same for and on behalf of said corporation as such officer by due and regular corporate and company authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 11th day of September, 2012.



My commission expires: 10/26/2015

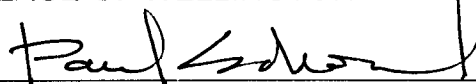

Notary Public

State of Florida

ATTEST:

By: 

VILLAGE OF WELLINGTON

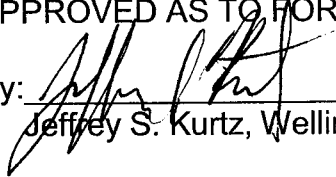
By: 

Awilda Rodriguez, Clerk

Paul Schofield, Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:



Jeffrey S. Kurtz, Wellington Attorney