AGREEMENT FOR CONSTRUCTION OF PLATFORM TENNIS COURTS AND THE MARYKNOLL SAFETY AND RECREATION CENTER

THIS AGREEMENT FOR CONSTRUCTION OF PLATFORM TENNIS COURTS AND THE MARYKNOLL SAFETY AND RECREATION CENTER ("the Agreement") is made by and between the Glen Ellyn Park District, an Illinois park district and unit of local government (the "Park District") and the Glen Ellyn Platform Tennis Club, NFP, an Illinois not-for-profit corporation ("GEPTC"), which hereinafter may be referred to together as the "Parties" or individually as a "Party."

WHEREAS, the Park District currently owns, operates and maintains two (2) platform tennis courts for Park District patrons on the premises commonly referred to as Maryknoll Park; and

WHEREAS, GEPTC members currently utilize said platform tennis courts in cooperation with the Park District's Platform Tennis program; and

WHEREAS, use of the platform tennis courts by Park District patrons has increased due to the promotional efforts of both the Park District and GEPTC; and

WHEREAS, GEPTC anticipates continued growth in its membership and use of the platform tennis courts by its members and all other Park District patrons through Park District operated programs; and

WHEREAS, in order to accommodate the existing and future use of the platform tennis courts by Park District patrons, including GEPTC members, GEPTC desires the Park District to construct, install and maintain two (2) additional platform tennis courts and the Maryknoll Safety and Recreation Center adjacent to the existing platform tennis courts at Maryknoll Park (the "Project"); and

WHEREAS, the Park District has agreed to construct, install and maintain two (2) additional platform tennis courts and the Maryknoll Safety and Recreation Center (the "Center") adjacent to the existing courts at Maryknoll Park based on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree, covenant and promise as follows:

1. Incorporation of Recitals. The recitals set forth above are hereby incorporated by this reference into this Agreement as though they were restated in their entirety in this Section 1.

2. Funding. The cost of construction of the Project is estimated to be Three Hundred and Fifty Thousand and 00/100 Dollars ($350,000.00). The Parties agree to the payment for the cost of construction for the Project as stated herein.
a) The Park District shall contribute Fifty Thousand and 00/100 Dollars ($50,000.00) for the construction of the Project;

b) GEPTC shall cause One Hundred and Fifty Thousand and 00/100 Dollars ($150,000.00), raised by GEPTC from donations from various sources, to be donated to the Glen Ellyn Parks Foundation and shall direct the Foundation to remit said funds in full immediately to the Park District for the purpose of construction of the Project; and

c) In addition to the funds contributed by GEPTC pursuant to 2(b) above, GEPTC shall cause One Hundred and Fifty Thousand and 00/100 Dollars ($150,000.00) to be deposited with the Park District in a segregated fund of the Park District, dedicated solely to the payment of expenses incurred by the Park District in the construction of the Project (the “Dedicated Fund”). The Park District shall use the Dedicated Funds for the sole purpose of construction of the Project in accordance with the terms and conditions of this Agreement. The Park District shall provide GEPTC with a monthly report detailing expenditures from the Dedicated Fund for the Project.

d) The Park District will repay GEPTC the total amount deposited by GEPTC in the Dedicated Fund (not to exceed $150,000) on or before April 25, 2013. GEPTC shall be solely responsible for and pay all interest, penalties and any other fines or costs associated with any loans GEPTC or its members may enter into in securing the funds to be deposited in the Park District’s Dedicated Fund. No third party lender providing funds to GEPTC or its members for the Dedicated Fund shall have any right of recourse whatsoever, against the Park District, the Dedicated Fund, or any real estate, materials, equipment, improvements, or other property of the Park District. The GEPTC shall defend indemnify and hold the Park District harmless from and against any claims by third parties arising from its actions or omissions in connection with its funding obligations under this Agreement, and this indemnification and hold harmless shall survive termination of this Agreement.

e) GEPTC shall also pursue any and all grants that may be available to it through the American Platform Tennis Association or any other organization or entity to reduce its contribution obligation pursuant to 2(b)-(c) above and thereby offset the cost of the construction of the Project.

3. **Condition Precedent.** The Park District’s obligation to construct the Project is expressly conditioned upon GEPTC: 1) contributing the sum of One Hundred and Fifty Thousand and 00/100 Dollars ($150,000.00) to the Foundation and directing the Foundation to immediately donate said sum to the Park District to defray the costs of Project construction; and 2) depositing the sum of One Hundred and Fifty Thousand and 00/100 Dollars ($150,000.00) into the Dedicated Fund as described in Section 2 of this Agreement. The Park District shall have no duty to design, bid or construct the Project until such time that GEPTC has met these conditions. In the event that GEPTC has not deposited or caused to be deposited $150,000, as directed in Section 2b above, within fourteen (14) days of the execution of this Agreement, GEPTC shall pay to the Park District interest on the unpaid amount at a rate of twelve (12) percent per annum, commencing on the date the deposit was due until the date the deposit is paid in full. Notwithstanding the foregoing, in the event that GEPTC has not deposited or
caused to be deposited a total of Three Hundred Thousand and 00/100 Dollars, as directed in Sections 2b-c above, within six (6) months of the execution of this Agreement, then this Agreement shall terminate and shall be null and void, releasing the Park District from any and all of its obligations under this Agreement.

4. **Construction.** The Park District shall be solely responsible for the construction of the Project pursuant to the concept drawing set forth in Exhibit A, attached hereto and incorporated herein. The Park District shall consult with GEPTC on the design and construction of the Project, but the Park District shall make all final decisions, in its sole discretion, on said design, costs and construction. The Park District shall secure and administer all contracts for the construction of the Project and GEPTC shall have no role in the construction or management of the Project, including the design of the platform tennis courts and the Center or the methods, means or techniques utilized by the Park District in construction of the Project. In the event that bids received by the Park District for construction of the Project exceed Three Hundred Fifty Thousand and 00/100 Dollars ($350,000.00), the Park District shall have the option in its sole discretion to modify the Project Design and/or elements of the Project, or to terminate the Project. In the event that the Park District determines that it will not construct the Project under this Section, the Park District shall promptly refund to GEPTC the balance of the funds contained in the Dedicated Fund, after payment from the Dedicated Fund of the Park District’s Project costs, design fees and expenses, in exchange for GEPTC’s waiver and release of any and all claims arising from the Project.

5. **Ownership and Maintenance.** The Park District shall, at all times, retain all rights, title, and interest in and to the platform tennis courts and the Center constructed pursuant to this Agreement. The Park District shall be responsible for the maintenance, and all costs associated with said maintenance, of the new platform tennis courts and the Center constructed pursuant to terms of this Agreement.

6. **Operation and Scheduled Use.** The Park District, with consultation from a GEPTC representative, shall manage and schedule the use of the completed platform tennis facilities at Maryknoll Park in cooperation with the Park District’s programs, including but not limited to the Park District’s Safety Village program, pursuant to the Agreement for Usage of Platform Tennis Courts and the Maryknoll Safety and Recreation Center between the Glen Ellyn Park District and the Glen Ellyn Platform Tennis Club, attached hereto and incorporated herein as Exhibit B.

7. **Termination.** This Agreement shall terminate: (a) immediately upon written agreement of the Parties; or (b) immediately upon the default of either Party to fulfill its obligations under this Agreement, if the defaulting Party has not commenced to cure said default within fourteen (14) days after written notice of said default from the non-defaulting Party. In the event GEPTC terminates this Agreement or is the defaulting Party, then GEPTC shall forfeit all of the construction costs paid by GEPTC for the construction of the Project. In the event that the Park District is the defaulting Party, the sole remedy for the GEPTC is the refund of any amounts deposited by GEPTC with the Foundation and the unspent balance of the Dedicated Fund as of
the effective date of termination. The Park District shall not be responsible for reimbursing GEPTC for any penalties or damages for canceling any loans or other contractual commitments entered into for the purposes of fulfilling GEPTC’s funding obligations pursuant to Section 2 of this Agreement.

8. **Indemnification.** The Park District and GEPTC each agree to indemnify, defend, save, and hold harmless the other Party and the other Party’s officers, directors, employees, volunteers and agents, from any and all claims, liabilities, causes of action, losses and damages that may at any time arise or be claimed by any person or entity as a result of bodily injury, sickness, death or property damage or as a result of any other claim or suit of any nature whatsoever, allegedly arising out of or in any manner directly connected with the construction of the Project but only to the extent caused in whole or in part by any wrongful or negligent act of the indemnifying Party.

9. **Insurance.** The Park District shall keep in full force and effect during the construction of the Project, professional and general public liability insurance, workers’ compensation insurance, and such other types of insurance in such amounts reasonably acceptable by the Parties with its self-insurance pool.

The Park District shall require each contractor and subcontractor hired for the performance of any work contemplated herein to purchase and maintain professional liability (if applicable), auto, workers compensation, employer’s liability and umbrella coverage in forms and amounts as may be reasonably required for the duration of any construction or other work related in any way to the construction of the Project.

The Park District, all contractors and all subcontractors shall provide GEPTC with appropriate certificates of insurance demonstrating that the coverages required hereunder are in effect, which certificates shall not be cancelable except upon thirty (30) days prior written notice to the Park District.

10. **No Duty to Third Parties.** This Agreement is entered into solely for the benefit of the Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and entity who is not a party to this Agreement or to acknowledge, establish, or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any defenses available to the Park District under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, and/or any common law defenses and/or immunities, with respect to claims by third parties.

11. **No other Relationship.** Nothing contained in or done pursuant to this Agreement shall be construed as creating a partnership, agency, joint employer or joint venture relationship between the Park District and GEPTC. Except as otherwise expressly provided in this Agreement, no Party shall become bound, with respect to third parties, by any representation,
With a copy to:
Steven B. Adams
Tressler, LLP
233 S. Wacker Drive, 22nd Floor
Chicago, Illinois 60606
Fax: 312-627-1717

To the GEPTC:
Scott Park
500 Roosevelt Road #300
Glen Ellyn, Illinois 60137
Fax:

19. **Captions.** Captions and paragraphs headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

IN WITNESS WHEREOF, the PARTIES have entered into this Agreement as of the 19th day of October, 2010.

GLEN ELLYN PLATFORM TENNIS CLUB, NFP

By: [Signature]

Its: Treasurer

GLEN ELLYN PARK DISTRICT

By: [Signature]

Its: President

ATTEST

By: Katherine Wardland

Its: Board Secretary

ATTEST

By: Katherine Wardland

Its: Board Secretary
act or omission of the other Party. Nothing contained in this Agreement shall be construed as creating an employment relationship between the Park District and GEPTC.

12. **Waiver.** Waiver by the Park District or GEPTC of any breach of this Agreement by the other Party shall not be held to be a waiver of any other or subsequent breach by the Park District or GEPTC.

13. **Compliance with Laws and Permits.** The Parties shall comply with all applicable local, state and federal rules, regulations, ordinances and laws in the construction of the Project, including but not limited to any bidding and prevailing wage requirements. The Park District shall obtain all necessary permits for the construction of the improvements contemplated under this Agreement.

14. **Assignment.** GEPTC shall not assign any rights or obligations under this Agreement without the prior written approval of the Park District.

15. **Entire Agreement.** The provisions set forth herein represent the entire agreement between the Parties and supersede any prior agreements, promises, representations or understandings, whether oral or written, as it is the intent of the Parties to provide for a complete integration within the terms of this Agreement. Neither Party has, in entering into this Agreement, relied on any statements, documents or other materials not a part of this Agreement. No provision may be modified in any respect unless such modification is in writing and duly approved and signed by all Parties.

16. **Severability.** If any of the provisions of this Agreement are determined by a court of competent jurisdiction to be invalid, such provisions shall be deemed to be stricken, and such adjudication shall not affect the validity of the remainder of the terms of this Agreement as a whole or of any section, subsection, sentence or clause not adjudged to be invalid.

17. **Governing Law.** This Agreement is subject to the laws of the State of Illinois any suit to enforce any provision of the contract shall be brought in DuPage County, Illinois.

18. **Notices.** All notices required to be given under the terms of this Agreement shall be in writing and either (a) served personally during regular business hours; (b) served by facsimile transmission during regular business hours; or (c) served by certified or registered mail, return receipt requested, properly addressed with the postage prepaid and deposited in the United States mail. The Parties may substitute names and addresses for notices as appropriate. Notices shall be sent as follows:

   To the Park District:  Cory Atwell, Executive Director
   Glen Ellyn Park District
   185 Spring Avenue
   Glen Ellyn, Illinois 60187