

TRADEMARK COEXISTENCE AGREEMENT

THIS TRADEMARK COEXISTENCE AGREEMENT ("Agreement") is made and entered into effective as of this 11 day of ~~October~~ ^{December}, 2015 (the "Effective Date") by and between GLENVIEW PARK DISTRICT, Glenview, Illinois, a body corporate and unit of local government of the State of Illinois (hereinafter "GLENVIEW") and CITY OF OLYMPIA, Olympia, Washington, a body corporate and unit of local government of the State of Washington (hereinafter "OLYMPIA", and collectively, the "Parties").

RECITALS

WHEREAS, GLENVIEW owns a federal trademark registration for the phrase "Experience It!" for use in connection with "recreation activities, namely, providing a system of community and neighborhood parks, namely, recreational parks offering both passive pursuits on nature trails, hiking, enjoyment of open space, ponds, woodlands and nature preserves; and active pursuits, namely, providing swimming pools, providing park facilities for bicycling, running, jogging, and ice skating; providing facilities for sporting activities, namely, providing skating rinks, providing skateboarding facilities, providing triathlon facilities, providing baseball fields for youth and adult baseball, providing facilities for soccer and hockey games and providing golf facilities; cultural activities, namely, providing and sponsoring entertainment in the nature of theater-guild live show performances and art exhibits, dance, namely, ballroom and exercise dancing facilities and instruction; arts and crafts, namely, facilities and instruction for oil and watercolor and pastel paintings, sewing, weaving, pottery and jewelry making; providing senior citizen socialization activities, namely, educational and entertainment services, namely, providing civic dinners, picnics on Park facilities, and providing motivational and educational speakers in the field of public affairs; senior educational services, namely, conducting classes and workshops in the field of arts and crafts; youth educational services, namely, conducting classes, forums and workshops in the field of childhood learning skills, namely, introduction to alphabet, numbers and story telling; and historic educational services, namely, providing cultural enrichment through field trips to a farm, prairie and an historic homestead property; providing sports camps with training in the form of instruction and coaching in rhythmic gymnastics, volleyball and Lacrosse; and providing a community dog park taking the form of a dedicated open space for patrons to assemble, socialize and exercise their dogs" (Reg. No. 3,918,360) (the "Federal Mark");

WHEREAS, OLYMPIA is the owner of Washington State Trademark Registration No. 50919 for the mark EXPERIENCE IT!, for use with "educational, enrichment and entertainment services in the field of providing parks, arts and recreational activities and information; providing facilities for active and passive recreational and cultural activities, services and exhibitions; provide rental spaces for parties, meetings, classes, training and nutrition services; organize exhibitions, community festivals and sporting events; provide enrichment classes, after school programs, outdoor adventures and a variety of camp experiences; manage and maintain parks, trails, gardens, public art collection, boating moorage, farmers market and community center";

WHEREAS, GLENVIEW acknowledges that in the State of Washington, OLYMPIA has a date of first use earlier than the mark shown in U.S. Registration No. 3918360;

WHEREAS, the Parties have each determined that use by both Parties of their respective marks in the manner defined herein will avoid conflict or infringement of their own respective rights, or a likelihood of confusion relating to source, affiliation or origin of goods bearing and services provided under the mark;

WHEREAS, each Party desires to avoid any conflict with or infringement of the rights of the other Party, or any future controversy with the other Party, and to maintain the distinctiveness of its own use of its own mark;

NOW, THEREFORE, in consideration of the above premises and the mutual covenants set forth below, the sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. The above Recitals are incorporated and made a part of this Agreement.
2. With respect to OLYMPIA'S rights, GLENVIEW has rights to the mark EXPERIENCE IT in the entire United States except in the State of Washington.
3. OLYMPIA shall use its mark EXPERIENCE IT! in the connection with the activities covered by WA Registration No. 50919 solely within the State of Washington. OLYMPIA shall engage in marketing and advertising activities that use the mark EXPERIENCE IT! through all of the currently-used channels including without limitation on the Internet, on OLYMPIA'S official websites, on one or more third party websites, and/or through one or more social media platforms; provided that any such use contains the disclaimer that the services associated with the mark are for use only in the state of Washington.
4. Each Party shall not use the phrase in any manner that would convey or suggest to patrons or the public that its programs, products and/or services are sponsored, endorsed or approved by, or are in any way affiliated with the other. GLENVIEW acknowledges that OLYMPIA'S Internet marketing and advertising activities have the potential to reach consumers outside the State of Washington, and acknowledges that there is no likelihood of confusion stemming from OLYMPIA'S activities in this regard provided such Internet marketing and advertising activities are performed in accordance with this Agreement.
5. Each Party further agrees to work together if necessary to minimize and/or resolve any likelihood of or actual customer confusion regarding the use of the its respective mark, and each Party grants to the other an immunity from suit for any uses of its respective mark, alone or in combination with other words or symbols, in the above-described manner. Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder to carry out the spirit and intent of this Agreement.
6. This Agreement shall continue in full force and effect for until either Party abandons its trademark rights in its respective mark, at which time this Agreement shall terminate.

7. This Agreement is binding on the parties hereto, their divisions, successors and assigns.
8. Either Party may assign, sub-license, transfer, or otherwise convey its rights and obligations under this Agreement, provided that prior written notice of same is given to the other.
9. This Agreement shall be interpreted, construed, and enforced pursuant to, and in accordance with, the laws of the State of Illinois, without regard to its conflict-of-laws principles. Any legal actions with respect to any matters arising under this Agreement shall be brought in a court of competent jurisdiction in Illinois. The parties hereby consent to the jurisdiction and venue of such courts for such purpose.
10. In the event that any dispute between the Parties should result in litigation or arbitration, the prevailing Party in such dispute shall be entitled to seek from the other Party all reasonable fees, costs, and expenses of enforcing any right of the prevailing Party, including, without limitation, reasonable attorneys' fees, expert witness fees, and expenses.
11. This Agreement supersedes all previous agreements, understandings, and arrangements between the parties, whether oral or written, and constitutes the entire agreement between the parties. No correspondence between the parties prior to the Effective Date is incorporated into this Agreement, nor does any such correspondence constitute an independent agreement by the parties.
12. If any part, term or provision of this Agreement, or any document executed in connection with this Agreement, should be declared invalid, void or unenforceable, then all remaining parts, terms and provisions and all remaining documents executed in connection herewith shall remain in full force and effect and will not be invalidated, impaired or affected.
13. The terms and conditions of this Agreement are confidential between the parties and shall not be disclosed to anyone else, except as may be necessary to effectuate its terms.
14. The parties acknowledge that each Party has had the opportunity to review this Agreement with counsel and that each Party fully understands and voluntarily accepts each and every term, condition, and provision contained herein and is capable of performing all obligations set forth herein.
15. This Agreement may be executed in multiple counterparts with each constituting an original. Each Party represents that the individual signing this Agreement on its behalf has the authority to bind the Party. Each of the signatories represents and warrants to the other that it has the full power and authority to enter into the Agreement and bind its respective entity to the terms of this Agreement.
16. The Parties expressly reserve their rights to object to any use of any trade names, marks, logos, designs or other indicia that do not correspond with the terms of this Agreement. Any failure by a Party to object to any such use will not constitute a waiver of that Party's rights hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

GLENVIEW PARK DISTRICT

CITY OF OLYMPIA

By: *[Handwritten Signature]*

By: _____

Its: *Executive Director*
1930 Prairie Street
Glenview, IL 60025

Its: _____
222 Columbia Street NW
Olympia, WA 98501