

Term Sheet
for
Facility Operations Agreement
Chula Vista Elite Athlete Training Center

CONFIDENTIAL

This is a non-binding Term Sheet for a proposed Facility Operating Agreement (the "Agreement"). This Term Sheet is for negotiation purposes only. This Term Sheet is not intended to be, or to evidence, any legally binding terms or conditions of any agreement on the part of any party. No agreement shall be binding unless and until each party has reviewed, approved, and executed, after review by legal counsel, a definitive written agreement.

April 6, 2016

1. In General

1.1 **Parties.** City of Chula Vista, a chartered municipal corporation ("City"), and The Point Loma Trust, a California trust, or a wholly owned special purpose entity subsidiary thereof ("Operator"). Formation documents for The Point Loma Trust, and if Operator is a wholly owned special purpose entity of The Point Loma Trust, the Operator, will be provided by Operator to City for review prior to entering the Agreement.

1.2 **Basic Agreement.** City contracts with Operator to operate and maintain the Chula Vista Elite Athlete Training Center ("CVTC") consistent with the terms of (a) that certain Core Agreement between the United States Olympic Committee ("USOC") and City attached as **Exhibit A** ("Core Agreement"); (b) the initial CVTC Business Plan approved by both parties ("Business Plan"), which will be attached to the Agreement; and (c) the Agreement.

1.3 **Assignment of Rights and Duties.** Except as expressly provided in the Agreement, City shall assign to Operator all of its rights and obligations under the Core Agreement.

1.4 **Limits on Scope of Authority.** Except as expressly provided herein, without City's prior written approval, to be exercised in City's sole discretion, Operator shall not have the authority to:

- (a) Impose or cause the imposition of liens or encumbrances on CVTC property/facilities/equipment.
- (b) Transfer, remove or modify any material real property interests, physical structures or sporting venues that are part of CVTC.

1.5 Additional Standards of Performance/Duties.

- (a) Compliance with laws (including prevailing wage requirements, to the extent applicable).
- (b) Maintenance of adequate/effective work force.
- (c) Facility/Equipment maintenance per agreed upon schedules/standards.
- (d) Management, records and accounting system(s) that provide evidence of compliance with Core Agreement and GAAP.
- (e) Propose annual budget for approval by City Manager's designee and provide quarterly reports regarding adherence to approved budget.

1.6 Independent Contractor. Operator's relationships to City in the performance of its duties under the Agreement shall be that of an independent contractor.

2. Term

2.1 Initial Term. The effective date of the Agreement shall be April 1, 2016, and the Agreement shall remain in effect until December 31, 2024 ("Initial Term"). However, Operator shall not have any obligations under the Agreement from the time the Agreement is executed until the CVTC is transferred to the City (the "Pre-Acquisition Period"); provided that Operator will be subject to certain obligations during the Pre-Acquisition period to be memorialized in a separate Interim Agreement between City and Operator, which the parties will make commercially reasonable efforts to negotiate in good faith within the first ten days after the commencement of the Pre-Acquisition Period in accordance with a term sheet to be attached as an exhibit to the Agreement. Operator shall have one option to extend the Initial Term of the Agreement by an additional two (2) years, to be exercised by providing written notice to City by no later than January 1, 2024.

2.2 Extension Term(s). By no later than 18 months prior to the expiration of the Initial Term (as the same may be extended by Operator), the parties shall meet and confer regarding possible terms for extension of the term of the Agreement for up to an additional eight (8) years. Any agreement to extend the Initial Term shall be subject to each party's approval in its sole discretion. The Initial Term, as it may be extended, shall sometimes be referred to herein as the "Term."

2.3 Operator's Early Termination Rights. The Operator shall have the right to terminate the Agreement on the fourth (4th) anniversary and the sixth (6th) anniversary of the Transfer Date with nine (9) months' prior written notice (the "Termination Notice") to the City; provided that such right may be exercised only if Operator and City have met and conferred for the purpose of agreeing upon an alternative business plan for the CVTC at least three (3) months prior to the Operator's delivery of the Termination Notice. In

addition, the Operator shall have the right to terminate the Agreement on sixty (60) days prior written notice to the City upon the occurrence of one or more of the following events: (i) the improvements and facilities at the CVTC suffer material damage (defined as damage costing in excess of \$750,000 to restore or repair) from the time the Core and Transfer Agreements are entered into until the Transfer Date, provided that such damage would materially adversely impact the Operator's ability to fulfill Operator's obligations under the Agreement, (ii) the City does not acquire the CVTC prior to March 1, 2017, (iii) the 100 bed facility to be constructed by Baldwin & Sons at the CVTC is not available for occupancy *and* City has not provided 100 alternative beds within 5 miles of the CVTC at no cost to PLT prior to July 15, 2017, and (iv) due to no fault of Operator, the Core Agreement is terminated during the first four (4) years of the Initial Term. If the Operator elects to terminate the Agreement pursuant to one of foregoing rights, after the expiration of the 60 day notice period, neither the Operator or the City shall have any further obligations related to the operation of the CVTC, other than obligations that are expressly intended to survive the termination of the Agreement. As used herein, the "Transfer Date" shall mean the date on which the City acquires the CVTC from the USOC.

3. Business Plan

3.1 Initial Business Plan. Operator shall prepare a draft Business Plan that does not conflict with the Core Agreement for City review/approval. The draft Business Plan shall include, at a minimum, the following elements: (a) mission/vision statement, (b) transition plan, (c) list of the targeted types and desired mix of users, (d) marketing plan summary, (e) principles for rate setting and/or a proposed preliminary rate structure for facility users, (f) principles for budget development and compliance, including operational/capital reserves, (g) community outreach plan summary, (h) special event plan summary, (i) staffing plan, (j) retail store proposal (to the extent the Operator elects to maintain and operate a retail store at CVTC), (k) plan for identifying/funding capital enhancements, and (l) plan for identifying potential business opportunities, including, without limitation, expansion of on-site retail such as restaurant and coffee retailers.

3.2 Retail Store. City anticipates proposal from Operator for Operator to directly or indirectly operate the existing retail store for a minimum of two years, with a City option to operate the retail store thereafter if Operator declines to operate the same.

3.3 USOC Review. The City-approved draft Business Plan shall be submitted to USOC for review and input, with reasonable consideration by Operator given to proposed USOC proposed adjustments.

3.4 Comprehensive Business Plan. Based upon and consistent with the draft Business Plan, Operator shall develop a more detailed and comprehensive Business Plan and shall submit that plan for the City Manager's review and approval by no later than July 1, 2016.

3.5 Annual Review Process. The parties shall meet and confer each year of the Term starting March 1st to discuss possible updates and modifications to the Business

Plan. Operator shall submit its updated plan to the City Manager for review and input, with reasonable consideration given to the City Manager's proposed modifications.

4. Staffing/Oversight

4.1 In General. Operator shall have the right and responsibility to hire/manage and terminate employees as necessary to operate/maintain the CVTC per the standards required by the Agreement.

4.2 Key Positions. Initially, City Manager (or designee) and Operator shall confer to identify key existing CVTC employees that may be offered positions with Operator. Until December 31, 2021, Operator shall continue to consult with City Manager (or designee) in advance of hiring, material changes in employment or termination of these individuals/positions. Notwithstanding the foregoing, the ultimate decisions regarding hiring, managing or terminating Operator employees shall be at Operator's sole discretion.

4.3 City CVTC Coordinator/Liaison. There shall be a CVTC "Coordinator/Liaison" to be employed by City, or a non-profit created thereby ("City Coordinator/Liaison"). The City Coordinator/Liaison shall be responsible for City's obligations in respect of CVTC operations, and shall be Operator's point of contact with the City and shall assist with the marketing of the CVTC, at no cost to Operator. Operator shall provide the City Coordinator Liaison with full access to the CVTC, along with reasonable office space and reasonable office support services at Operator's cost. Until December 31, 2021, City shall consult with Operator in advance of hiring, material changes in employment or termination of this position. Notwithstanding the foregoing, the ultimate decisions regarding hiring, managing or terminating the City Coordinator/Liaison shall be at City's discretion.

4.4 Facility Operations Advisory Committee ("FOAC"). City envisions representative(s) from USOC, Easton, Operator, City and CVTC coaches/athletes to share ideas and issues relative to CVTC operations. This entity shall have no decision making or governance function but shall be consulted from time to time for its input on CVTC operations and policy. This entity shall have not less than 20% CVTC resident athlete representation. Determine if the FOAC could serve as the agent for administering the annual review process [Section 11], and/or the "athlete representative" function [Section 30] required under the Core Agreement.

5. Revenues/Compensation

5.1 In General. All CVTC revenues generated by the use and/or operation of CVTC shall go to CVTC operations and maintenance as Operator shall direct, consistent with terms of Business Plan and Budget, except as otherwise expressly provided herein. All revenues from the sale of naming rights shall be treated the same as all other revenues generated by the operation of the CVTC, provided that to the extent that revenues from the sale of naming rights generate "Surplus Revenues" (as defined below), the percentages designated in Section 5.3(b) below shall be changed from 10% and 70% to

40% and 40% with respect to those portions of the Surplus Revenues directly allocable to the sale of such naming rights.

5.2 Operator Fee. In consideration of Operator's provision of services under the Agreement, Operator shall be entitled to a fee equal to the greater of \$300,000 or 10% of CVTC gross revenues, payable out of CVTC revenues on an annual basis, in arrears ("Operator Fee"). Starting in calendar year 2018, and each year of the Term thereafter, the Operator Fee shall be payable monthly out of CVTC revenues based upon Operator's reasonable revenue projections for that calendar year, subject to a year-end reconciliation. Although the Operator Fee is the greater of a fixed amount or an amount calculated based on a percentage of gross revenues, the Operator Fee shall be paid only to the extent there is sufficient revenue generated from the CVTC to first pay all other third party creditors providing goods or services to the CVTC and any and all other operating costs for which the Operator is responsible under the Operating Agreement, provided that the Operator Fee will be paid before any monies are set aside to fund any budgeted operating reserve or capital reserve requirements. To the extent that there is not sufficient revenue to pay the Operator Fees when due, the unpaid portions of the Operator Fees shall be treated as Deferred Operator Losses (as defined below); provided, however, that if in any year the Operator Fee exceeds \$300,000, no interest will accrue with respect to the unpaid portion of the Operator Fee that exceeds \$300,000.

5.3 Surplus Revenues. To extent any "surplus net revenues" are generated from operations of the CVTC (to be defined) ("Surplus Revenues"), then (a) 20% of such Surplus Revenues shall be allocated towards "CVTC Special Projects" to be mutually agreed between the parties, but generally intended to address CVTC additions and/or enhancements, and (b) 80% of such Surplus Revenues shall be paid to Operator as an additional fee for Operator's services under the Agreement, with (i) 10% of the Surplus Revenues to be donated by Operator towards enhancing or adding to existing Operator projects or programs benefiting Chula Vista residents or students determined after consultations with the City, and (ii) the remaining 70% of the Surplus Revenues to be available for disposition by Operator in its sole discretion. "Surplus Revenues" shall be determined annually, in arrears, based upon a reconciliation of revenues generated and costs incurred for that budget year, after paying off (in the following order) any and all operating costs for the current year, any unpaid Operator Fees and any Deferred Operator Losses.

5.4 Loss Recovery. The Operator shall be responsible for the payment of all losses resulting from the operation of the CVTC except to the extent that such losses are caused by costs expressly allocated to the City under the Agreement (the "Deferred Operator Losses"). The amount of Deferred Operator Losses from each year of operations, plus interest to accrue on the outstanding balance of such losses at a per annum rate equal to that of the ten (10) year U.S. Treasury rate, as such may change from time to time shall be recovered by the Operator from subsequent years revenues from operations and capital events (such as a sale or refinancing of the CVTC) net of operating expenses but not net of operating or capital reserves.

5.5 City Responsibility for Certain Costs.

(a) City shall be solely responsible for payment of each of the following expenses on a timely basis, and the Operator shall have no obligation at any time to pay any of the following expenses: (i) all costs to investigate and/or remediate any environmentally sensitive materials and/or hazardous materials or substances that relate to the CVTC and the operation thereof, including the operation of the Sports Performance Facilities by the USOC, except to the extent caused or allowed by Operator, (ii) City's violation of any and all obligations under the Core Agreement and the Transfer Agreement that are not specifically assigned and assumed by the Operator under the Agreement, (iii) events hosted, sponsored or organized by the City and agreed to by the Operator to be held at the CVTC, (iv) all costs necessary to change the signage at the CVTC, or on any off-site locations including on public streets, (v) the cost of property insurance for the CVTC, including coverage and subject to deductibles that are standard for a project of similar size and scope, provided that the parties acknowledge that the City may self-insure if permitted to do so under the Core Agreement, (vi) any taxes of any kind (including real property taxes, possessory interest or similar taxes) imposed by any taxing authority arising out of City's ownership of the CVTC, as opposed to Operator's use and operation of the CVTC and/or Operator's tax exempt status, or lack thereof; provided, however, that if the applicable taxing authority determines that real property taxes, possessory interest taxes or similar taxes must be paid due to the operation of the CVTC by an entity other than the City, or for any other reason, such taxes shall be treated as operating expenses of the CVTC and shall be subject to the loss recovery provisions set forth in Section 5.4 hereof, and (vii) any cost related to the condition of the sewer lines servicing the CVTC.

(b) In the event that any "Major Repairs" (defined as repairs costing in excess of \$750,000 that must be made to the CVTC, that are not caused by force majeure events, that are not due to the fault of the City or the Operator (in which event the repairs shall be made by the party causing such damage) and which, if not repaired, would materially adversely impact the Operator's ability to fulfill Operator's obligations under the Agreement), or if the City and the Operator determine that certain capital improvements should be built on the CVTC, then the Operator and the City shall meet and confer to determine (i) which Major Repairs or capital improvements should be made, and (ii) if a mutual decision is made to proceed, how to reasonably allocate the cost and responsibility of commencing and completing such Major Repairs or capital improvements between the Operator and the City. In such discussions, the parties will give consideration to all relevant facts and circumstances, including without limitation the (A) cost of such repairs and/or capital improvements, (B) if the repairs are covered by either party's insurance policy or policies, or are self-insured by City through an applicable program of self insurance (in which event the cost of the Major Repairs will be covered to the extent of such insurance proceeds), (C) Operator Fees then paid to date and projected, (D) the remaining Term of the Agreement, and (E) the ability of the Operator to generate Surplus Revenues.

Notwithstanding the foregoing, the parties agree that the Operator shall be required to pay all amounts towards Major Repairs to the extent that Operator reasonably

anticipates it will be able to recover such amounts, plus interest at a per annum rate equal to that of the ten (10) year U.S. Treasury rate, as such rate may change from time to time until paid in full, from the payments due to the Operator under the Agreement for the to-be-agreed-upon remainder of the Term. In the event that the City and the Operator have a dispute over whether the Operator can reasonably anticipate that it will be able to recover such amounts, plus interest at a per annum rate equal to that of the ten (10) year U.S. Treasury rate, as such rate may change from time to time until paid in full, from the payments due to the Operator under the Agreement for the to-be-agreed-upon remainder of the Term, then such dispute will be resolved in accordance with a dispute resolution mechanism to be agreed upon between the parties and set forth in the Agreement.

To the extent that the City or the Operator funds such Major Repairs or capital improvements, (unless otherwise agreed with respect to capital improvements) each such party shall have the right to recover its contributions toward funding such Major Repairs or capital improvements, plus interest per annum at the rate equal to that of the ten (10) year U.S. Treasury rate, as such may change from time to time, out of future Surplus Revenues pari passu with the other party and prior to the allocation of Surplus Revenue set forth in Section 5.3 hereof; provided, however, that the City's right to recover its contributions toward funding any Major Repairs shall be given priority over payment to the Operator of any unpaid Operator Fees included in the Deferred Operator Losses but such priority shall apply (i) only to the extent that such unpaid Operator Fees are first due and payable after the City makes its first contribution of capital towards the applicable Major Repairs, and (ii) with respect to that portion of the unpaid Operator Fees that exceed \$300,000 in any given year commencing with the year in which the City makes its first contribution of capital towards the applicable Major Repairs.

5.6 Records/Audit Rights

- (a) Duty to Maintain Records in accordance with GAAP.
- (b) City Access to Review Records and pay for one complete audit per year, with any additional audit's at City's sole cost.
- (c) Confidential Treatment of Operator Records that are proprietary in nature, except to the extent that they must be released pursuant to applicable law.

5.7 Budget Process. Proposed similar to process for annual review of Business Plan.

6. City Reservation of Access/Events

PLT shall provide City a specified number passes to special CVTC events to be distributed by City under City policies at no cost, subject to reasonable restrictions. City to have access to the CVTC (time/space permitting) for a certain number and type of City events. By way of example, a certain number of City staff/official retreats/meetings would be at cost only, with preferred rates on a certain number of additional events (e.g.,

the City Library Foundation, Friends of Parks and Rec. and Police Activities League). Any such City events shall be scheduled with prior approval of Operator

7. Creation of Fundraising Non-Profit

Parties to meet and confer with intent of creating a separate non-profit to fund-raise and otherwise support CVTC facilities and programs. Intended for both parties to have a role and representation, with potential addition of USOC and/or Easton.

8. Security for Performance

As security for Operator's performance under the Agreement, Operator shall ensure that (a) Operator has initial capitalization of not less than \$1,500,000, and (b) Operator maintains cash reserves during the Term of the Agreement of no less than \$500,000.

9. Insurance and Indemnity.

9.1 Insurance. Intended to be patterned after Core Agreement unless additional/special coverages deemed necessary/appropriate.

9.2 Mutual Indemnities.

(a) Except for those matters for which the City is indemnifying Operator in accordance with Section 9.2(b) below, Operator agrees to protect, indemnify, defend and hold harmless City and its respective officers, officials, directors, elected officials, officers, directors, employees, agents, affiliates, representatives and lenders ("City's Affiliates") entirely harmless from and against any and all liabilities, costs, fees, losses, demands, actions, judgments, expenses or claims (including reasonable attorney's fees, fees of experts and court costs) for personal and bodily injury to or death of any person or for damages to any property arising out of or in any manner connected with (i) the management, operation, occupancy or enjoyment of the CVTC by Operator and any of its sublessees, agents, employees, permittees, licensees or contractors (the "Operator's Agents") or any work or activity or other things allowed or suffered by Operator or Operator's Agents to be done in or about the CVTC, and (ii) any breach or default in the performance obligations of Operator under the Agreement. If Operator is required to defend City, Operator shall be responsible for the reasonable cost of counsel, provided that Operator shall have the right to control the defense, subject to City's right to consent to any settlement of claims.

(b) Except to the extent caused by Operator's negligence or willful misconduct, City agrees to protect, indemnify, defend and hold harmless Operator and its officers, officials, directors, employees, agents, affiliates, representatives and lenders ("Operator's Affiliates") entirely harmless from and against any and all liabilities, costs, fees, losses, demands, actions, judgments, expenses or claims (including reasonable attorney's fees, fees of experts and court costs) for personal and bodily injury to or death of any person or for damages to any property arising out of or in any manner connected with (i) the active negligence, willfully wrong or illegal use, management, operation,

occupancy or enjoyment of the CVTC by City and any of its, agents, employees, invitees, permittees, licensees or contractors (excluding Operator) (the "City's Agents") or any work or activity or other things negligently, wrongfully, or illegally caused by City or City's Agents to be done in or about the CVTC, and (ii) any breach or default in the performance obligations of City under the Agreement. If City is required to defend Operator, City shall be responsible for the reasonable cost of such counsel, provided that City shall have the right to control the defense, subject to Operator's right to consent to any settlement of claims.

9.3 Assignment of Indemnity from USOC. To the extent such assignment is effective under applicable law, City shall assign its rights under the express indemnities from USOC in City's favor pursuant to the Core Agreement and the Transfer Agreement (the "USOC Indemnities") to Operator.

9.4 Additional Indemnity from City to Operator. Except to the extent such matters are caused or allowed by Operator, City will indemnify, defend, protect (with counsel acceptable to the Operator) and hold the Operator harmless from any and all costs, fees, expenses, claims, liabilities, damages, or losses (the "Claims") related to the following: (i) any environmental condition related to the CVTC not caused by Operator, (ii) any claim for or by any occupant, tenant, licensee, invitee, declarant, or any party that claims a right to the CVTC pursuant to a recorded or unrecorded instrument, or by means of adverse possession or prescription, that their rights have been violated by the operation of the CVTC as required by the Core Agreement, the Transfer Agreement, the Easton Agreement, the Agreement, that is not caused by the Operator after the Transfer Date acting in violation of its obligations in the Core Agreement, (iii) any event or circumstances that occurs related to the operation, management, ownership and use of the CVTC that is not due to any act or omission of the Operator or any of Operator's affiliates, employees, agents, representatives, or contractors, to the extent that the City actually recovers the amount of such Claims from the USOC pursuant to City's rights under the Core Agreement or the Transfer Agreement, provided that the City shall make good faith efforts to exercise any rights City may have under both such agreements to recover such amounts, and (iv) for any events held at the CVTC by the City, sponsored or co-sponsored by the City.

Under no circumstances will any of the foregoing indemnity rights require any indemnifying party to indemnify the other party for the indemnified party's negligence or wrongful conduct.

In addition, in the event that a claim is made against both the City and the Operator by any USOC employee based on events, benefits or salary accruing prior to the Transfer Date, the City and the Operator will equally share the legal fees incurred in defending such claim by counsel reasonably acceptable to both parties and each party shall have the right to approve or disapprove of any settlement agreement affecting such party in connection with such claim.

10. General Provisions.

10.1 Additional Covenants.

(a) City Covenants. City covenants to the Operator as follows: (i) City shall not make or allow any material alterations to any existing facilities or improvements at the CVTC or to any new facilities at the CVTC, to the extent that any the Operator reasonably believes that such alterations or improvements would have a material adverse impact on the Operator's ability to operate the CVTC in accordance with the Agreement or the Business Plan, without first receiving Operator's prior written approval, (ii) City shall not take any actions to violate any use restrictions applicable to the CVTC, and the Operator shall agree to do the same, (iii) City shall use good faith efforts to and cooperate with PLT to seek ways to increase revenues and decrease costs of operations for the CVTC, including good faith efforts to attempt to negotiate an agreement with the local electricity and water providers to lower the cost of electricity and water, respectively, if the City is able to achieve a lower electricity and/or water rate; (iv) to the extent permissible under applicable law and to the extent City will not have to pay for the following items, City shall waive any and all City based taxes, fees, payments, charges, processing costs, inspection costs or fees, or any other costs or fees related to the operation and use of the CVTC that City is authorized to charge to private landowners;(v) City shall rigorously enforce its rights and remedies under its agreement for construction of the 100-bed facility pursuant to with Baldwin & Sons; and (vi) City will endeavor, in good faith, to make Operator an express third-party beneficiary under City's agreement with Baldwin & Sons.

(b) Mutual Covenants. During the initial transition period, the parties shall cooperate to attempt to obtain a favorable arrangement with Easton, which would include significant availability of the usage of Easton Housing, and will work with the USOC to explore additional opportunities for usage of the CVTC by the USOC, over and above its Minimum Usage Commitment.

10.2 Assignment of Agreement. Neither party may assign the Agreement without the other party's prior written consent, except to a wholly-owned subsidiary of the assigning party.

10.3 Limitation of Remedies. In the event of a breach by either party hereunder, or the enforcement of any indemnity obligation, the other party may recover only its direct, actual damages as a result of such breach. In no event shall either party have a right to recover punitive or consequential damages including, without limitation, lost profits.

10.4 Force Majeure. Operator and City to include a mutually acceptable provision addressing responsibility for repairing damage caused to the CVTC by force majeure events.

10.5 Naming Rights. Any agreement with respect to naming rights for all or any portion of the CVTC shall be subject to the prior written approval of the City, after

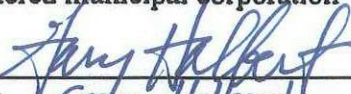
meeting and conferring with PLT, in City's reasonable discretion; provided, however, in no event will City approve naming rights for any CVTC facility for a university or college institution without PLT's prior approval.

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ACKNOWLEDGED BY CITY AND OPERATOR

City of Chula Vista,
a chartered municipal corporation

By: 
Name: Gary Halbert
Its: City Manager

The Point Loma Trust,
a California trust

By: 
Name: Joe Watkins
Its: CEO

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