

## **NON-COMPETITION AND NON-SOLICITATION AGREEMENT**

As an consultant to the AAU basketball program administered by Rhode Island Magic LLC, a Rhode Island S-Corp company (hereinafter, "Company"), I, \_\_\_\_\_, hereby covenant and agree to observe all the provisions of this Agreement, as well as all other rules and policies currently in effect and which Company may announce from time to time in accordance with applicable law.

WHEREAS, I have agreed to provide basketball coaching consulting services to Company; and

WHEREAS, Company and I wish to set forth certain agreements and understandings regarding my consulting relationship with Company (hereinafter, the "Relationship");

NOW THEREFORE, in consideration of: (i) the commencement of the Relationship and its continuation beyond the effective date of this Agreement; (ii) monetary compensation paid to me by Company in exchange for my consulting services; (iii) the mutual covenants and agreements contained in this Agreement, and (iv) other good and valuable consideration, the receipt and sufficiency of which I hereby acknowledge, Company and I agree as follows:

### **SECTION 1. AT-WILL RELATIONSHIP**

I acknowledge and agree that (i) the Relationship is at will, which means that either Company or I may terminate the Relationship at any time with or without cause, and with or without notice; (ii) the continuation of the Relationship is contingent upon the acceptance and observance of this Agreement; (iii) the commencement and continuation of the Relationship constitute good, valuable and sufficient consideration for my agreements contained herein; and (iv) nothing in this Agreement shall be construed to alter the at-will status of the Relationship or create any implied or expressed contract of employment between Company and me.

### **SECTION 2. INDEPENDENT CONTRACTOR**

I acknowledge and agree that throughout the Relationship I shall be, and shall continually hold myself out to be, an independent contractor and nothing in this Agreement shall in any way be construed to constitute me as the agent, employee, or representative of Company. I acknowledge and agree that I shall have no right or authority to assume or create any obligation, responsibility, express or implied, on behalf of or in the name of Company, or to bind Company in any manner or thing whatsoever.

### **SECTION 3. LOYALTY AND CODE OF CONDUCT**

**3.1 Best Efforts.** Throughout the Relationship, I agree to (i) perform my duties and discharge my responsibilities in a faithful manner and to the best of my ability, (ii) use my best efforts to promote the interests of Company,

and (iii) refrain from acts or omissions detrimental to Company or harmful to its interests.

**3.2 Code of Conduct.** Throughout the Relationship, I agree to comply with, follow and adhere to the “Rhode Island Magic LLC Code of Conduct for Coaches” as amended from time to time (the “Code”). I acknowledge that a copy of the Code was provided to me at the time I was provided this Agreement.

#### **SECTION 4. CONFLICTS OF INTEREST**

Throughout the Relationship, I shall not engage in any business activity that conflicts with my duties to Company, nor shall I engage in or have any financial interest in any Competitive Business, as defined below.

#### **SECTION 5. NON-COMPETITION**

**5.1 No Competition.** I shall not, without Company’s prior written consent, engage directly or indirectly in any Competitive Business as a coach, administrator, recruiter, employer, executive, contractor, manager, officer, director, owner, stockholder, employee, partner, joint venturer or consultant, or assist others in engaging in any Competitive Business, throughout the period of the Relationship and for a period of twelve (12) months thereafter. This prohibition will apply to the Territory. For purposes of this Agreement, “Territory” means the geographic area that extends fifty (50) miles from any border of the State of Rhode Island.

**5.2 Competitive Business Defined.** For purposes of this Agreement, a “Competitive Business” means any person or organization engaged in, or planning to become engaged in, a basketball program, including, without limitation, any such program administered through the Amateur Athletic Union.

#### **SECTION 6. NON-SOLICITATION**

I shall not, without Company’s prior written consent, directly or indirectly (i) solicit, recruit, induce or otherwise encourage any coach, administrator, executive, contractor, manager or player of Company to terminate his or her relationship with Company or to engage in any Competitive Business; or (ii) attempt to solicit, recruit, induce or otherwise encourage any coach, administrator, executive, contractor, manager or player of Company to terminate his or her relationship with Company or to engage in any Competitive Business. This provision shall apply throughout the Relationship and for a period of twenty-four (24) months thereafter.

**SECTION 7.           ENFORCEMENT OF NON-COMPETITION AND NON-SOLICITATION PROVISIONS**

**7.1 Purpose of Restrictions.** I understand that the non-competition and non-solicitation obligations in this Agreement are not meant to prevent me from earning a living or pursuing my career or interests. I further acknowledge and agree that the time, geographic and scope limitations of my obligations are reasonable and necessary to protect Company, and that based on my education, training and background I will not be precluded from gainful employment and will be able to maintain an adequate standard of living if I comply with those obligations during the period and within the Territory described above.

**7.2 Scope of Restrictions.** The non-competition and non-solicitation covenants contained in this Agreement shall be construed as a series of separate covenants, one for each city, county and state of any geographic area in the Territory. Except for geographic coverage, each of these covenants shall be deemed identical to their corresponding non-competition or non-solicitation restrictions. If, in any judicial proceeding, a court refuses to enforce any of the separate covenants (or any part thereof), then the unenforceable covenant (or part) shall be eliminated or "blue penciled" from this Agreement to the extent necessary to permit the remaining covenants (or portions thereof) to be enforced. If any provisions of the non-competition or non-solicitation restrictions are deemed to exceed the time, geographic or scope limitations permitted by applicable law, then such provisions shall be reformed to the maximum time, geographic or scope limitations permissible. Company expressly reserves the right to limit the scope of these covenants unilaterally to ensure enforcement.

**7.3 Extended Duration for Violations.** I agree that the duration of my non-competition and non-solicitation obligations hereunder shall be extended by the period of time in which I am in breach of those obligations.

**7.4 Extended Duration During Lawsuit.** I further agree that the duration of my non-competition and non-solicitation obligations hereunder shall be extended and their expirations tolled upon the filing of any lawsuit challenging the validity or enforceability of the Agreement until the lawsuit is finally resolved and all rights of appeal have expired.

**SECTION 8.           INJUNCTIVE RELIEF AND OTHER REMEDIES**

**8.1 Injunctions.** I acknowledge and agree that (i) any breach or threatened breach of this Agreement would cause irreparable harm to Company, and (ii) monetary damages alone would not be an adequate remedy because they would be difficult or impossible to measure in a timely manner. Therefore, I further acknowledge and agree that in the case of any breach or threatened breach of this Agreement Company shall be entitled to injunctive relief in addition to any other available rights and remedies.

**8.2 Attorneys' Fees.** If I am found to have breached this Agreement, Company will be entitled to collect from me its damages, plus the costs and reasonable attorneys' fees Company incurred in seeking to enforce this Agreement.

## **SECTION 9. GENERAL PROVISIONS**

**9.1 Amendments and Modifications.** No amendment to or modification of this Agreement will be effective unless in writing signed by the party to be charged.

**9.2 Changes in Relationship.** I acknowledge and agree that this Agreement shall be binding upon me regardless of whether (i) the Relationship continues for any length of time hereafter, (ii) there are any subsequent changes in my duties, salary or compensation, or (iii) the Relationship is terminated by Company or me or both, for any reason or no reason at all.

**9.3 Forum.** All disputes arising under this Agreement shall be brought exclusively in the federal or state courts of the State of Rhode Island. I hereby agree to submit to the jurisdiction of each such court and that venue is proper in Providence County, State of Rhode Island.

**9.4 Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Rhode Island, without regard to its conflict of laws principles.

**9.5 Interpretation.** This Agreement shall be construed in accordance with the intent of the parties and not strictly for or against any party.

**9.6 Merger and Bar.** This Agreement sets forth the entire agreement and understanding between me and Company concerning the subject matter herein. This Agreement merges with, supersedes and bars all prior agreements, promises and representations, whether oral or written, express or implied, to the extent they contradict or conflict with the provisions hereof.

**9.7 Severability.** Any term or provision of this Agreement that is held to be invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

**9.8 Successors and Assigns.** This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will inure to the benefit of Company, its successors and assigns.

**9.9 Survivability.** My covenants and obligations under this Agreement will survive the termination of the Relationship, unless otherwise expressly stated herein.

**9.10 Waiver.** No waiver of any rights under this Agreement shall be effective unless expressed in writing by the party to be charged. The waiver by Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

**9.11 Waiver of Jury Right.** Any dispute under this Agreement shall be tried by the court *without* a jury. By entering into this Agreement, I acknowledge that I am expressly waiving my right to a jury trial on any dispute arising out of this Agreement.

IN WITNESS WHEREOF, I have accepted and executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature: \_\_\_\_\_

Name (printed): \_\_\_\_\_