

APN: 027-011-12

When recorded, mail to:

Washoe County Community Services Department
1001 East Ninth Street
Reno, Nevada 89512

AND

Michael J. Fleiner, Board Chair
Northern Nevada Youth Golf Foundation
c/o First Tee Northern Nevada
3550 Barron Way, Suite 10B
Reno, Nevada 89511

Notice: Per NRS 239B.030, this document does not
contain personal information as defined in NRS 603A.040

GOLF COURSE DEVELOPMENT AGREEMENT

This Golf Course Development Agreement (“Development Agreement”) is between Washoe County, a political subdivision of the State of Nevada (“Washoe County”), and the Northern Nevada Youth Golf Foundation a Nevada non-profit corporation, doing business as First Tee Northern Nevada (“Youth Golf Foundation”).

Youth Golf Foundation intends to acquire property owned by Washoe County to develop a golf course (the “Project”). The property to be deeded from Washoe County to the Youth Golf Foundation is comprised of one parcel: APN 027-011-12 (the “Parcel”). The Project will provide affordable and charitable golf recreation to Northern Nevada and neighboring communities, among other regions.

Washoe County and the Youth Golf Foundation are entering into a Purchase and Sale Agreement to transfer the Parcel to the Youth Golf Foundation. The Parcel will contain a restrictive covenant limiting its use to charitable and affordable golf. A portion of the Orr Ditch is located on the Parcel. The Youth Golf Foundation will grant the County an Easement to access the Orr Ditch and carryout its contractual maintenance obligations. The County will also enter into a Maintenance Agreement with the Orr Ditch to carry out specified maintenance along the Orr Ditch.

Washoe County currently possesses funds that it would like to use to develop the Project. The Youth Golf Foundation's proposed golf course design encompasses the Parcel and a portion of the parcel currently known as APN 035-080-04 (the "BLM Patent Parcel"). The BLM Patent Parcel is owned by Washoe County, but restricted by terms of a Bureau of Land Management land patent. Washoe County must purchase from the U.S. Government a portion of the BLM Patent Parcel before it can be transferred to the Youth Golf Foundation. Washoe County intends to use the proposed development funds to complete this purchase.

Therefore, Washoe County and Youth Golf Foundation agree as follows:

1. Property. The Parcel is located at 3530 Sullivan Lane in Sparks, Nevada.

2. Project Construction and Design.

2.1 Youth Golf Foundation shall provide all planning, architectural, engineering, construction, and supervision services for the Project.

2.2 Youth Golf Foundation shall obtain all necessary government approvals and permits for the Project.

2.3 The Project will be completed in two phases. First, a golf course will be constructed on the existing Parcel (hereinafter referred to as "Phase 1"). Concurrently, Washoe County will be acquiring the BLM Patent Parcel from the U.S. Government. When Washoe County acquires the BLM Patent Parcel, it shall transfer the same to Youth Golf Foundation through a boundary line adjustment. Once the BLM Patent Parcel is transferred to Youth Golf Foundation, the remaining portions of the golf course will be constructed (hereinafter referred to as "Phase 2").

3. Development Funds

3.1 Washoe County currently possesses approximately 3.1 million dollars (the "Development Funds") from the sale of real property near the Project. Washoe County intends to invest the Development Funds into the Project.

3.2 Washoe County intends to distribute up to \$2.2 million of the Development Funds to Youth Golf Foundation during Phase 1 in accordance with this Development Agreement (the "Phase 1 Funds"). Washoe County will distribute the Phase 1 Funds based on a 1:1 match from Youth Golf Foundation. When Youth Golf Foundation has sufficient funding and desires development funding from Washoe County, it shall send a written request to Washoe County to match those funds. The

written request shall include proof of Youth Golf Foundation's match funds. No later than 60 days from receipt of Youth Golf Foundation's written request, Washoe County shall distribute the matched Phase 1 Funds to Youth Golf Foundation.

3.3 If, after Washoe County purchases the BLM Patent Parcel, there are remaining Development Funds, Washoe County intends distribute the remaining funds to Youth Golf Foundation with a 1:1 match as set forth in Section 3.2. Washoe County estimates the cost to purchase the BLM Patent Parcel will be approximately \$900,000.

3.4 Any Development Funds distributed to the Youth Golf Foundation shall be used solely for the development of the Project. "Development" means the design and construction of a golf course and golf-related facilities on the Parcel.

3.5 Any and all Youth Golf Foundation funds used to match Washoe County's Development Funds shall be used solely for the development of the Project.

4. Project Schedule.

4.1 The Phase 1 construction shall be completed no later than 24 months after the last distribution of Phase 1 Development Funds.

5. Indemnity and Insurance

5.1 Youth Golf Foundation agrees to indemnify, defend, and hold harmless Washoe County from and against any and all losses, liabilities, damages to persons or property, costs and expenses, including reasonable attorney's fees, made against or incurred by Washoe County resulting or arising from any willful or negligent act or omission of Youth Golf Foundation, its employees, officers, agents and subcontractors, related to this Agreement, including Youth Golf Foundation's use of the Development Funds, or from any breach of this Agreement.

5.2 Youth Golf Foundation, its contractors and subcontractors shall maintain or cause to be maintained the following types and limits of insurance during this Agreement:

- i. Workers' Compensation meeting the statutory requirements of the State of Nevada and Employer's Liability with limits of not less than \$1,000,000. Coverage shall include a waiver of subrogation in favor of Washoe County.
- ii. Commercial General Liability insurance, written on ISO occurrence form CG 00 01 04 13) or substitute form providing equivalent

coverage) and if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each occurrence. Washoe County shall be included as an additional insured with respect to the premises, operations, construction, and development activities under this Agreement.

- iii. Commercial Auto Liability insurance for liability arising out of any auto with a limit of not less than \$1,000,000 each accident.
- iv. Commercial property or builder's risk insurance, written on a completed value form, for construction or development of any improvements upon the Project, including both the Youth Golf Foundation and Washoe County as insureds with respect to each party's interest in the Project.
- v. Environmental liability insurance applying to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The minimum limit of liability shall be at least \$1,000,000 per claim. Washoe County shall be included as an additional insured.
- vi. Youth Golf Foundation shall provide evidence of the required coverage prior to the inception of this Agreement and for each renewal of any required coverage. Insurance is to be placed with insurers having an A.M. Best's Rating of no less than A-, VII. Youth Golf Foundation shall require each of its service providers to maintain the same types and limits of insurance or include coverage.

6. Access. Upon 72 hours' prior written notice, Youth Golf Foundation shall arrange access to the Parcel for Washoe County's agents and employees during the Project's design and construction during normal business hours.

7. Third Party Beneficiary Rights of Washoe.

7.1 Youth Golf Foundation agrees as follows: (1) any contract entered into by Youth Golf Foundation or any provider of services and materials shall not contain a provision that limits Youth Golf Foundation's or the service or materials providers' liability to Washoe County for negligently performing their services, providing defective materials, or any design, engineering or construction defects; and (2) all contracts with service or material providers shall contain a provision stating that Washoe County is a third- party beneficiary of those contracts and is eligible to pursue any causes of action that may arise for negligent performance of those services, defective materials, or any design, engineering, or construction defects directly against Youth Golf

Foundation or the applicable service or material provider.

8. Financing. Youth Golf Foundation shall finance the Project, using its own funds and the Development funds.

9. Youth Golf Foundation Default and Remedies to Washoe County.

9.1 In addition to the other defaults under this Development Agreement, Youth Golf Foundation defaults under this Development Agreement if any of the following occur:

- a. Youth Golf Foundation fails to perform any covenant or promise in this Development Agreement to be performed by it under this Development Agreement and Youth Golf Foundation does not cure the failure within 30 days after written notice from Washoe County to Youth Golf Foundation specifying Youth Golf Foundation's failure to perform;
- b. There is filed by or against Youth Golf Foundation as debtor, a petition under the U.S. Bankruptcy Code, and the petition is not dismissed within 60 days after it is filed or Youth Golf Foundation proceeds under any similar insolvency laws or proceeds to wind up its affairs;
- c. Youth Golf Foundation uses the Funds for any purposes other than the purposes set forth in this Development Agreement;
- d. The discovery by Washoe County that any material statement, representation, or warranty made by Youth Golf Foundation in this Development Agreement, the Purchase and Sale Agreement, Grant, Bargain, Sale Deed, Orr Ditch Easement, or Maintenance Agreement is misleading, or erroneous in any material respect; or
- e. Youth Golf Foundation fails to remain in good standing in the State of Nevada during the term of this Development Agreement after thirty 30 days' prior written notice from Washoe County.

9.2 If Youth Golf Foundation defaults under this Development Agreement and fails to cure the default within 30 days after Washoe County provides Youth Golf Foundation with written notice that it failed to perform, Youth Golf Foundation shall surrender any unused Development Funds or misappropriated Development Funds to Washoe County free of liens and encumbrances.

9.3 In the event Youth Golf Foundation defaults under this Development Agreement, Washoe

County shall be authorized to take any action it is permitted to take at law or in equity to enforce Youth Golf Foundation's obligations under this Development Agreement, including an action requesting specific performance of this Development Agreement's provisions that have not been followed and an action for any damages caused by Youth Golf Foundation's failure to perform the Development Agreement.

9.4 In the event that Youth Golf Foundation defaults under this Development Agreement, and fails to cure that default, Washoe County may, at its option, terminate this Development Agreement, in which event it shall owe Youth Golf Foundation no further sums under this Development Agreement and may recover damages from Youth Golf Foundation arising out of its default.

9.5 Nothing in this Development Agreement limits any remedy that Washoe County may have in the event Youth Golf Foundation defaults under this Development Agreement and, except as otherwise provided by law, no delay by Washoe County in pursuing any remedy or decision to pursue any particular remedy shall be waived by Washoe County or any other remedy that may be available or shall operate to prevent Washoe County from later exercising any remedy it may have available as a result of such Youth Golf Foundation's default.

10. Washoe County Default and Remedies to Youth Golf Foundation.

10.1 In addition to the other defaults under this Development Agreement, Washoe County shall be in default with Youth Golf Foundation if any of the following occur:

- a.** Washoe County fails to comply with any term, condition, or covenant of this Development Agreement.

10.2 In the event Washoe County defaults under any of the parties' agreements, Youth Golf Foundation shall be authorized to take any action it is permitted to take at law or in equity to enforce Washoe County's obligations, including an action requesting specific performance of any provisions that have not been followed and an action for any damages caused by Washoe County's failure to perform.

10.3 Nothing in this Development Agreement limits any remedy that Youth Golf Foundation may have in the event Washoe County defaults under this Development Agreement or any of the parties' other agreements. Except as otherwise provided by law, no delay by Youth Golf Foundation in pursuing any remedy or decision to pursue any particular remedy shall be deemed as a waiver by Youth Golf Foundation of any other remedy that may be available, nor shall any delay or decision operate to prevent Youth Golf Foundation from later exercising any remedy it may have available as a result of such Washoe County's default.

11. Authority of Parties.

11.1 Youth Golf Foundation states that this Development Agreement and all other documents delivered in connection with this Development Agreement:

- a.** have been authorized, executed, and delivered by Youth Golf Foundation; and
- b.** are valid, binding, and enforceable obligations of Youth Golf Foundation.

11.2 Washoe County states that this Development Agreement and all other documents delivered in connection with this Development Agreement:

- a.** have been authorized, executed, and delivered by Washoe County;
- b.** are valid, binding and enforceable obligations of Washoe County; and
- c.** have been duly and regularly approved by Washoe County's governing body, which has budgeted the funds necessary to perform those of its obligations that are to be performed in this fiscal year from sources other than proceeds of any financing.

11.3 The parties state that the persons executing this Development Agreement on their respective behalves are authorized to do so.

12. Brokers. Each party represents to the other that no brokers have been retained or consulted by such party in connection with this transaction.

13. Assignment. Neither party shall have the right to assign its rights and liabilities under this Development Agreement to any person or entity without the written consent of the other party. The parties agree, however, that Youth Golf Foundation has the right to change its name or tradename consistent with Nevada law.

14. Notices. All notices to be given under this Development Agreement shall be in writing and sent as follows:

- a.** certified mail, return receipt requested, in which case notice shall be

deemed delivered three business days after deposit, postage prepaid in the United States Mail;

- b. a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with that courier; or
- c. by personal service to:

Youth Golf Foundation:
5422 Longley Lane, Suite A
Reno, Nevada 89511

WASHOE COUNTY:
County Manager
1001 East 9th Street
Reno, Nevada 89512

15. Entire Agreement. This Development Agreement, the Purchase and Sale Agreement, Grant, Bargain Sale Deed, Orr Ditch Easement, the Maintenance Agreement, and the Exhibits to these agreements, contain the entire agreement between the parties to this Development Agreement. This Development Agreement shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

16. Severability. If any provision of this Development Agreement is held to be unenforceable, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not). But if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this Development Agreement, the entire Development Agreement is to be held unenforceable. The parties acknowledge that enforcement of section 2 as written is an essential purpose of this Development Agreement. If an unenforceable provision is modified or disregarded, the rest of the Development Agreement is to remain in effect as written, and the unenforceable provision is to remain as written in any circumstances other than those in which the provision is held to be unenforceable.

17. Waivers. A waiver or breach of covenant or provision in this Development Agreement shall not be deemed a waiver of any other covenant or provision in this Development Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for

performance of any other obligation or act.

18. Construction. The section headings and captions of this Development Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Development Agreement. The section headings, captions, and arrangement of this Development Agreement do not in any way affect, limit, amplify, or modify the terms and provisions of this Development Agreement. The singular form shall include plural, and vice versa. This Development Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Development Agreement. All exhibits referred to in this Development Agreement are attached to it and incorporated in it by this reference.

19. Recording. This Development Agreement shall be recorded in the records of the County Recorder of Washoe County.

20. Counterparts. This Development Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

21. Governing Law and Venue. Nevada law governs this Development Agreement and all adversarial proceedings arising out of this Development Agreement or arising out of planning or constructing the Project. Venue for all adversarial proceedings arising out of this Development Agreement or arising out of planning or constructing the Project shall be in state district court in Washoe County, Nevada.

22. Effective Date. This Development Agreement will become effective when all the parties have signed it. The date this Development Agreement is signed by the last party to sign it (as indicated by the date stated under that party's signature) will be deemed this Development Agreement's effective date.

Youth Golf Foundation:

Washoe County Board of Commissioners:

By: Michael J. Fleiner
Its: Board Chair

By: Vaughn Hartung
Its: Chair, Washoe County Commission

Date: _____

Date: _____

Attest:

County Clerk