

INDOOR TENNIS COURTS DEVELOPMENT AGREEMENT

This Indoor Tennis Courts Development Agreement (“Development Agreement”) is between Washoe County, a political subdivision of the State of Nevada (“Washoe County”), and Nevada Indoor Tennis, LLC, a Nevada limited liability company (“TENNIS”).

TENNIS wants to use Washoe County property to develop an indoor-tennis-courts facility (the “Project”). The property that TENNIS wants to use for the Project is an approximately three-acre parcel of land in Washoe County’s Washoe Golf Course located west of Plumas Street and south of Urban Road (the “Property”). Currently, the Property is an undeveloped portion of the Washoe Golf Course. The Property is described and shown in Exhibit A to this Development Agreement. The undeveloped portion of the Washoe Golf Course from which the three-acre parcel will be created is described and shown in Exhibit B to this Development Agreement.

The indoor tennis court will provide indoor tennis-based recreation to Northern Nevada and neighboring California communities, among other regions.

TENNIS wants to complete the Project in two phases. The Project’s first phase envisions constructing a six-court bubble for indoor tennis and club house to include access, parking, and utilities (“Phase One”). If applicable, the Project’s second phase would involve constructing a pickle ball court (“Phase Two”).

Washoe County is interested in TENNIS using the Property for the Project.

TENNIS wants Kurtis Mark Richter, manager of Nevada Indoor Tennis Center, a TENNIS affiliate, to operate the indoor tennis court.

Along with entering into this Development Agreement, Washoe County; TENNIS; or Kurtis Mark Richter, in a capacity as operator of a not-for-profit entity, are entering into the following leases: (1) a ground lease under NRS 244.286 for TENNIS to develop the Indoor Tennis Courts on the Property; (2) a leaseback for Washoe County to rent the indoor tennis courts from TENNIS; and (3) a sublease for a not-for-profit entity operated by Kurtis Mark Richter to operate the indoor tennis courts.

Therefore, Washoe County and TENNIS agree as follows:

I. Property. The Property is approximately three acres of land in Washoe County’s Washoe Golf Course. The Property is within the Reno Sphere of Influence; thus, TENNIS will work with the City of Reno to convert the Property into a three-acre parcel. Because Washoe County owns the

Property, Washoe County shall apply with TENNIS to convert the Property into a three-acre parcel.

2. Ground Lease.

2.1 TENNIS plans to complete the indoor tennis courts in two phases and states that the cost estimate to complete the first phase is \$1,606,440.

2.2 Washoe County shall lease the Property, under NRS 244.286, to TENNIS for the Project and on the terms provided in a ground lease executed by Washoe County and TENNIS ("Ground Lease").

2.3 Before TENNIS begins Phase One's construction, TENNIS shall demonstrate to Washoe County's reasonable satisfaction that TENNIS has obtained the \$1,606,440 it estimates is necessary to complete the first phase,

3. Leasebacks. After TENNIS finishes each phase of the Project, TENNIS agrees to lease that phase's improvements to Washoe County and Washoe County agrees to lease that phase's completed improvements from TENNIS, under NRS 244.286, on terms provided by a leaseback ("Leaseback").

4. Subleases. On entering each Leaseback with TENNIS, Washoe County shall sublease that phase's construction and improvements to a not-for-profit entity operated by Kurtis Mark Richter to operate them on the terms provided in a sublease ("Sublease").

5. Project Construction and Design.

5.1 TENNIS shall provide all planning, architectural, engineering, construction, and supervision services for the Project. Under NRS 244.286, before TENNIS can begin the Project, Washoe County's governing body must adopt the Project specifications for the Indoor Tennis Courts, which TENNIS will submit to describe the Project's requirements ("Project Specifications"). Washoe County will not unreasonably refuse, or delay adopting of, the Project Specifications. TENNIS shall complete the Project as the Project Specifications provide. The Project Specifications may be changed only with the parties' written consent.

5.2 TENNIS shall obtain all necessary government approvals and permits for the Project.

5.3 To construct the Indoor Tennis Courts, TENNIS will enter into a construction agreement between TENNIS and a Nevada-licensed contractor (the "Construction Agreement"). The Construction Agreement will name TENNIS as the owner of the Project, and TENNIS will be responsible to satisfy the duties and obligations the Construction Agreement imposes upon the owner of the Project. Under NRS 244.286, the provisions of NRS 338.013 through NRS 338.090

apply to the Construction Agreement and all other construction agreements for the indoor tennis courts. TENNIS, TENNIS's contractor, and all subcontractors involved in the Project shall pay the Prevailing Wage Rate as required by NRS 244.286 and NRS Chapter 338. TENNIS or its authorized agent shall manage the Project.

5.4 TENNIS will be responsible for furnishing a State of Nevada-licensed architect and civil engineer to furnish the Project's design and contractor to construct the Project. When constructing the Project, TENNIS shall consider the topography and soil conditions at the Property. TENNIS shall use engineering and soils analysis of the Property conducted by a State of Nevada licensed engineer.

5.5 TENNIS shall submit the Construction Agreement and Project Specifications to Washoe County for its review and approval when the Construction Agreement and Project Specifications are 30 percent complete and, again, when they are 90 percent complete. If the Construction Agreement or Project Specifications are not reasonably satisfactory to Washoe County at each review, TENNIS shall revise the Construction Agreement or Project Specifications to Washoe County's reasonable satisfaction. Washoe County shall not unreasonably withhold or delay its approval of the Project Specifications and Construction Agreement. Unless Washoe County provides TENNIS with a written objection within 14 business days of any such submission, Washoe County shall be deemed to have approved such submission.

5.6 TENNIS may provide separate Project Specifications and a separate Construction Agreement for each phase of the Project.

5.7 As long as this Development Agreement and the Ground Lease are in effect, TENNIS shall retain full ownership of the Project.

6. Washoe County's Responsibilities.

6.1 Upon execution of this Development Agreement, Washoe County shall provide full information regarding its requirements for the Project.

6.2 Washoe County shall designate a representative who will be fully acquainted with the Project and has authority to, as promptly as possible using all reasonable efforts, approve changes in the scope of the Project, render prompt decisions, and furnish information. In this agreement, "reasonable efforts" means, with respect to a given obligation, the efforts that a reasonable person in Washoe County's position would use to comply with the obligation as promptly as possible.

6.3 If Washoe County becomes aware of any fault or defect in the Project or non-conformance with the Construction Agreement or the Project's other construction-related documents, it shall give prompt written notice thereof to TENNIS.

6.4 Washoe County shall use reasonable efforts to assist TENNIS with applying for permits and approvals.

7. Project Schedule.

7.1 TENNIS shall have three years from the date that it enters into this Development Agreement to begin constructing the indoor tennis courts. Once TENNIS begins constructing the Indoor Tennis Courts, Phase One shall be completed within two years, unless Washoe County and TENNIS agree otherwise in writing. TENNIS may, but shall not be required to, complete Phase Two. If TENNIS commences construction of Phase Two, however, it shall ensure that Phase Two is completed within two years of commencing Phase Two.

7.2 The Project's construction shall be completed in accordance with a formal project schedule developed by TENNIS's contractor and adopted by TENNIS and Washoe County (the "Project Schedule"). The Project Schedule shall include the date construction commences and the timeline for its substantial completion. The Project Schedule may be changed only with TENNIS and Washoe County's written consent.

8. Changes in the Project. Washoe County and TENNIS may jointly order changes in the Project within the general scope of this Development Agreement. If Washoe County and TENNIS order changes in the Project, then the Construction Agreement, Project Specifications, Project Schedule, and all other construction documents will be adjusted accordingly.

9. Indemnity and Insurance

9.1 With respect to any Proceeding brought by someone other than TENNIS or someone other than one or more Washoe County Indemnitees against one or more Washoe County Indemnitees and that arises out of this Development Agreement or TENNIS's use of the Property for the Project (each, a "Nonparty Claim"), TENNIS shall indemnify those Washoe County Indemnitees against all Indemnifiable Losses arising out of that Proceeding, except to the extent that Washoe County negligently or intentionally caused those Indemnifiable Losses.

9.2 To be entitled to indemnification under this section, a Washoe County Indemnitee subject to any Nonparty Claim must promptly (and in any event no later than ten days after the Washoe County Indemnitee first knows of that Nonparty Claim) notify TENNIS of that Nonparty Claim and deliver to TENNIS a copy of all legal pleadings with respect to the Nonparty Claim. If the Washoe County Indemnitee fails to timely notify TENNIS of a Nonparty Claim, TENNIS will be relieved of its indemnification obligations with respect to that Nonparty Claim to the extent that TENNIS was prejudiced by that failure and TENNIS will not be required to reimburse the Washoe County Indemnitee for any Litigation Expenses the Washoe County Indemnitee incurred during the period in which the Washoe County Indemnitee failed to notify TENNIS.

9.3 TENNIS shall be responsible for Litigation Expenses to the extent provided in the insurance requirements set forth in Exhibit C to this Ground Lease, except that TENNIS shall not be liable for any Litigation Expenses with respect to any period during which the Washoe County Indemnatee fails to timely notify TENNIS of that Nonparty Claim.

9.4 In this Development Agreement, the following definitions apply:

9.4.1 “Washoe County Indemnatee” means Washoe County or any Representative.

9.4.2 “Indemnifiable Losses” means the aggregate of Losses and Litigation Expenses.

9.4.3 “Litigation Expense” means any reasonable out-of-pocket expense incurred in defending a Proceeding or in any related investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys’ and other professionals’ fees and disbursements.

9.4.4 “Loss” means any amount awarded in, or paid in settlement of, any Proceeding, including any interest but excluding any Litigation Expenses.

9.4.5 “Proceeding” means any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding.

9.4.6 “Representative” means any of Washoe County’s directors, officers, or employees.

9.5 Before commencing a given phase of construction, TENNIS shall furnish Washoe County with a completion bond provided by a company or companies acceptable to Washoe County.

9.5.1 If TENNIS enters into a separate Construction Agreement for each phase of the Project, it shall provide either (1) a completion bond in an amount equal to the sum of both Construction Agreements or (2) a separate completion bond for each Construction Agreement equal to the sum of the Construction Agreement to which the bond pertains.

9.5.2 The completion bond or bonds shall require that the Project work be performed according to the Development Agreement’s, Project Specification’s, Construction Agreement’s, and Ground Lease’s terms. The failure to provide Washoe County with a completion bond before the Project’s construction begins, shall constitute a default under this Development Agreement.

9.6 TENNIS states that maintaining and operating Phase One of the Project is estimated to cost \$170,512 per year. Before Phase One of the Project is complete, TENNIS shall furnish Washoe County with a letter of credit equal to 110 percent of the \$170,512 estimated cost to maintain and operate Phase One for one year, in the event TENNIS defaults under the Ground Lease.

9.7 Before Phase Two of the Project is complete, TENNIS shall furnish Washoe County with a letter of credit equal to 110 percent of the estimated cost to maintain and operate Phase Two for one year, in the event TENNIS defaults under the Ground Lease.

10. Access. Upon 48 hours' prior written notice, TENNIS shall arrange access to the Property for Washoe County's agents and employees during the Project's design and construction phases during normal business hours.

11. Third Party Beneficiary Rights of Washoe.

11.1 TENNIS agrees as follows: (1) neither the Construction Agreement nor any other contract entered into by TENNIS or any provider of services and materials shall contain a provision that limits TENNIS'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) the Construction Agreement and 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 TENNIS or the applicable service or material provider.

11.2 TENNIS shall insert a provision in the Construction Agreement to the effect of section 11.1.

12. Financing. TENNIS shall finance the Project. TENNIS's financing will not constitute general obligation financing.

13. TENNIS Default and Remedies to Washoe County.

13.1 In addition to the other defaults under this Development Agreement, TENNIS defaults under this Development Agreement if any of the following occur:

- a. TENNIS fails to perform any covenant or promise in this Development Agreement to be performed by it under this Development Agreement and TENNIS does not cure the failure within 30 days after written notice from Washoe County to TENNIS specifying TENNIS's failure to perform;

- b. A lien of any kind is placed on the Property before Washoe County accepts the Project and after TENNIS substantially completes it and the lien is not removed within 60 days after Washoe County provides TENNIS with written notice of the lien;
- c. There is filed by or against TENNIS as debtor, a petition under the U.S. Bankruptcy Code, and the petition is not dismissed within 60 days after it is filed or TENNIS proceeds under any similar insolvency laws or proceeds to wind up its affairs;
- d. The discovery by Washoe County that any material statement, representation, or warranty made by TENNIS in this Development Agreement, the Ground Lease, the Leaseback, or the Sublease is false, misleading, or erroneous in any material respect.
- e. TENNIS fails to remain in good standing in the State of Nevada during the term of this Development Agreement and the construction contract after thirty 30 days' prior written notice from Washoe County.

13.2 If TENNIS defaults under this Development Agreement and fails to cure the default within 30 days after Washoe County provides TENNIS with written notice that it failed to perform, TENNIS shall surrender the Property, building, and other improvements on the Property to Washoe County free of liens and encumbrances.

13.3 In the event TENNIS 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 TENNIS'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 TENNIS's failure to perform the Development Agreement.

13.4 In the event that TENNIS 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 TENNIS no further sums under this Development Agreement and may recover damages from TENNIS arising out of its default. In this event, Washoe County may proceed against any bonds provided by TENNIS to complete the Project and may apply the proceeds toward those Project costs. Washoe County may hire such contractors or subcontractors it deems necessary to complete the Project and pay those contractors or subcontractors from these sources.

13.5 Nothing in this Development Agreement limits any remedy that Washoe County might have in the event TENNIS defaults under this Development Agreement and, except as otherwise provided by law, a delay by Washoe County in pursuing any remedy or decision to pursue any particular remedy shall neither waive any other remedy that might be available to Washoe County nor operate to prevent Washoe County from later exercising any remedy it might have available as a result of such TENNIS's default.

14. Washoe County Default and Remedies to TENNIS.

14.1 In addition to the other defaults under this Development Agreement, Washoe County shall be in default under its agreements with TENNIS if any of the following occur:

- a. Washoe County fails to comply with any term, condition, or covenant of this Development Agreement;
- b. Washoe County fails to reasonably cooperate with TENNIS in fulfilling the goals of this Development Agreement, after 30 days' prior written notice; or
- c. During the term of this Development Agreement, Washoe County grants, or attempts to grant, any interest in the Property or the Project to any party other than TENNIS; or
- d. Washoe County fails to respond to a written request from TENNIS within 30 days.

14.2 In the event Washoe County defaults under any of the parties' agreements, TENNIS 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.

14.3 In addition to any other rights or remedies available to TENNIS, whether at law, in equity, under the parties' various agreements, or otherwise, TENNIS shall also have the right, but not the obligation to terminate any or all of the parties' agreements without any further obligation to Washoe County.

14.4 Nothing in this Development Agreement limits any remedy that TENNIS 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 TENNIS in pursuing any remedy or decision to pursue any particular remedy shall be deemed as a waiver by TENNIS of any other remedy that may be available, nor shall any delay or decision operate to prevent TENNIS from later exercising any remedy it may have available as a result of such Washoe County's default.

15. As Is. TENNIS shall accept the Property under the Ground Lease "as is." TENNIS agrees and acknowledges that neither Washoe County nor any agent, broker, attorney, employee, or other representative of Washoe County, has made any representation respecting or has made any warranty whatsoever, express or implied, regarding the Property, including without limitation, representations or warranties regarding the physical nature or condition of the Property. TENNIS acknowledges that it has examined and inspected, or will examine and inspect, the Property; that the ground-lease transaction is an "as is" conveyance and that Washoe County shall have no responsibility for any conditions on the Property on commencement of the Ground Lease. Washoe County acknowledges that any information, reports, statements, or documents provided or made to Washoe County by the prior owner of the Property or its agents, employees, attorneys, or other representatives concerning the Property shall be assigned to TENNIS, to the extent allowed

by law or the applicable contracts. Washoe County makes no warranty or representation with respect to hazardous substances.

16. Authority of Parties.

16.1 TENNIS states that this Development Agreement and all other documents delivered in connection with this Development Agreement:

- (1) have been authorized, executed, and delivered by TENNIS; and
- (2) are valid, binding, and enforceable obligations of TENNIS.

16.2 The statements in section 16.1 are subject to applicable bankruptcy, insolvency, and other similar laws affecting the enforcement of creditors' rights and to principles of equitable remedies. TENNIS further states that TENNIS is, or will be, a corporation existing under the laws of the State of Nevada with its principal place of business in Washoe County, Nevada.

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

- (1) have been authorized, executed, and delivered by Washoe County;
- (2) are valid, binding and enforceable obligations of Washoe County; and
- (3) 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.

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

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

18. 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 TENNIS and the not-for-profit entity that will operate the indoor tennis courts have the right to change their names or tradenames consistent with Nevada law.

19. Attorney Fees. If litigation is commenced between the parties, the prevailing party shall be entitled to recover from the other party all reasonable attorneys' fees and costs. The prevailing party shall include a party who dismisses an action in exchange for sums allegedly due; the party who receives performance from the other party for an alleged breach of contract or a desired

remedy when the performance is substantially equal to the relief sought in an action; or the party determined to be the prevailing party by a court of law.

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

- (1) 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;
- (2) a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with that courier; or
- (3) by personal service to:

TENNIS:

4790 Caughlin Parkway, #834
Reno, NV 89519

with a copy to TENNIS' counsel:
Joey Gilbert Law
201 West Liberty Street, Suite 210
Reno, NV 89501

WASHOE COUNTY:

County Manager
1001 East 9th Street
Reno, Nevada 89512

21. Entire Agreement. This Development Agreement, the Ground Lease, Leaseback, Sublease, 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.

22. 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 in accordance with this section 22, 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.

23. 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.

24. 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.

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

26. 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.

27. Governing Law. 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.

28. 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.

TENNIS:

Washoe County Board of Commissioners:

By:

Its:

Date: _____

By: Marsha Berkbigler

Its: Chair, Washoe County Commission

Date: _____

Attest:

County Clerk