

Assessor's Parcel Number: N/A

Date: MAY 18, 2011

Recording Requested By: \_\_\_\_\_

Douglas County - NV  
Karen Ellison - Recorder  
Page: 1 Of 27 Fee: 0.00  
BK-0511 PG- 3172 RPTT: 0.00



Name: BRIAN FITZGERALD, RECREATION

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Real Property Transfer Tax: \$ N/A

LICENSE AGREEMENT AMENDMENT #2011.101

(Title of Document)

0783402 Page: 2 Of 27 05/18/2011  
BK- 0511  
PG- 3173

FILED

2011.101

2011 MAY 18 AM 9: 53

TED THIRAN  
CLERK

ZEPHYR COVE TENNIS COURT  
LICENSE AGREEMENT  
AMENDMENT

The Zephyr Cove Tennis Court License Agreement was entered into on 7th day of May, 2009. This Zephyr Cove Tennis Court License Agreement Amendment is made and entered into on the 21<sup>st</sup> day of April, 2011 by and between DOUGLAS COUNTY, a political subdivision of the State of Nevada, hereinafter referred to as "COUNTY" and "Robert Wheatley Jr." hereinafter referred to as "TENNIS PROFESSIONAL" or as "PROFESSIONAL" (collectively referred to as "THE PARTIES").

WITNESSETH

WHEREAS, the COUNTY owns and operates six (6) tennis courts, said courts being known as "ZEPHYR COVE TENNIS COMPLEX" and;

WHEREAS, the Parks & Recreation Commission, at a regularly scheduled and duly noticed meeting recommended the Community Services/Parks & Recreation Director continue with a multi-year agreement regarding tennis professional services at the ZEPHYR COVE TENNIS COMPLEX.

WHEREAS, on May 7, 2009 the PARTIES entered into the Zephyr Cove Tennis Court License Agreement, attached hereto as Attachment A..

WHEREAS, the PARTIES desire to amend and substitute this agreement for the May 7, 2009 agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions herein contained, the parties do mutually agree to follow:

1. Purpose and Term - Professional is hereby given the right, license and privilege to conduct and operate the tennis activities at the Zephyr Cove Tennis Complex, all in accordance with the terms and provisions of this agreement, and the court schedule approved by the Community Services/Parks & Recreation Department. This contract only applies to the present six (6) courts at Zephyr Cove Tennis Complex as outlined in Attachment "B". The term of these agreements shall be from May 15, 2009 until October 1, 2013, unless sooner terminated in accordance with this agreement. The maximum term of this agreement is five (5) years.

2. Duties of Professional - Professional shall devote his time and personal attention to the operations necessary to conduct a modern and efficient tennis complex and tennis program on the premises herein designated. His duties shall include, but shall not be limited to the following:
- a. Promote, create, and manage play at the Zephyr Cove Tennis Complex in accordance with this License Agreement in an efficient manner in accordance with the rules and regulations established by the Community Services/Parks & Recreation Department. Such functions include, but are not limited to: the collection of fees, preparing receipts for all cash, check or credit card transactions, scheduling of court times, reservation of court times, scheduling of tournaments, scheduling of leagues, providing youth programs, youth clinics, private lessons in accordance with the fees approved by Community Services/Parks & Recreation Director. Professional shall regulate play and conduct of players. Whenever possible, the manner of play should conform to the rules of tennis as adopted by the U.S.T.A. or U.S.P.T.A. Professional will be required to provide two (2) free youth clinics in each season of play under this contract.
  - b. Provide lessons and instruction in tennis to the public at Zephyr Cove Tennis Complex.
  - c. Comply in full with the U.S.P.T.A. code of ethics for tennis professionals.
  - d. Advertise, promote, and conduct all tennis activities as County operated programs.
  - e. Require all participants to register, and all youth to register and complete a parental consent authorization to medically treat as supplied by the Community Services and Parks & Recreation Department.
  - f. Weather - Professional, at his discretion, shall begin the tennis season anytime after May 1 as soon as weather permits or cancel services on a daily basis based on weather conditions which are not conducive to safe play. Further, Professional may end a season before October 1 if weather

conditions deteriorate and use declines. Professional shall notify the Community Services/Parks & Recreation Department when beginning the season, and prior to terminating a season prior to October 1.

g. Professional may operate a concession at the Zephyr Cove Tennis Complex for the sale of beverages (non-alcoholic), prepackaged food, equipment rental, equipment sale, and apparel.

h. Professional, unless prior approval is obtained from the Community Services/Parks & Recreation Department, must be in attendance to supervise the complex and perform all functions of Professional at least five (5) days of each week the courts are opened for play. The court must be supervised and staffed (7) seven days a week during the terms of this contract (weather permitting). The County acknowledges that attendance of Professional at out of town commitments may be required to fulfill his/her duties under this agreement. Professional agrees to notify the Community Services/Parks & Recreation Department, in advance, of any such absences. Professional shall be allowed vacation time not to exceed two (2) weeks in duration each season, but shall be responsible for providing adequately trained personnel to fulfill the duties of this agreement during his vacation period.

i. No complimentary play on the courts shall be allowed by Professional, except for two (2) required free youth clinics. Professional or his paid or non-paid employees are allowed free use of the courts for practice and exhibition.

j. Professional will provide the County with an end of the season gross revenue report in the manner as prescribed by the Community Services/Parks & Recreation Department.

k. Professional shall provide a facility membership list to the County at the end of each tennis season for the purposes of conducting a program evaluation.

l. Should any dispute arise between Professional and the Community Services/Parks & Recreation Department regarding day to day operations,

the County Manager shall have the authority and responsibility to resolve the dispute subject to review upon request by the Board of County Commissioners. Professional agrees that the decision of the County Manager or the Board is final and is not eligible for appeal.

3. Equipment to be provided by Professional. Professional shall provide:
  - a. Tennis equipment to be available for public rental.
  - b. If desired, inventory of merchandise for sale. Canned or bottled beverage (no glass containers or alcohol), prepackaged food, and candy, tennis balls, rackets, and other apparel with prices approved by the Community Services/Parks & Recreation Department.
4. Collection of receipts and accounting:
  - a. Professional shall process, through a receipt book or cash register, all monies collected from reservation fees, season passes, lessons, clinics, instruction, and the court fees generated from camps, leagues and tournaments. Professional shall be responsible for all cash deposits, refunds, cash shortages and all returned checks.
  - b. Professional shall immediately report to the Douglas County Sheriff's office any suspected theft of money or County property.
5. Compensation to Professional and the County:
  - a. Professional shall receive the net profits, if any, that he realizes from the operation of the sale of concessions, equipment and rentals. The Community Services/Parks & Recreation Director must approve all prices.
  - b. **Year one (2009) and year two (2010)** - Professional shall pay the County a lump sum of \$2,500.00, twenty five percent (25%) on or before May 15, fifty percent (50%) on or before June 15, and twenty five percent (25%) on or before August 1. The year one lump sum was paid by the Professional in 2009 & 2010.  
**Year three (2011) and every year after** - Professional shall pay the County a lump sum of \$2,500.00, twenty five percent (25%) on or before May 1, fifty percent (50%) on or before June 15, and twenty five percent (25%) on or before August 1.

6. Employees and volunteers- Professional shall be responsible for hiring and paying any necessary employees or volunteers (paid or non-paid) including, but not limited to; assistant professionals, concession and court attendants to carry out the obligations set forth in this agreement. No person shall be hired by Professional, who are known to have a prior felony conviction or to have other convictions involving moral turpitude. The professional shall have all employees or volunteers submit to a background check, in accordance with County policies at the County expense
7. Alterations - Professional shall not make any permanent alterations or permanent additions to any portion of the premises covered by this agreement, or to have any equipment belonging to the County without having first obtained the County's written consent. Professional shall not be reimbursed for any permanent alterations or permanent additions to any portion of the premises covered by this agreement which occur after the execution of this agreement. The parties agree to cooperate in the expansion and development of new and additional facilities or improvements at the Zephyr Cove Tennis Complex. County may develop, with Professional's assistance, a five (5) year capital improvement program for improvements at the Zephyr Cove Tennis Complex for future consideration by the Board of County Commissioners.
8. Insurance - Professional shall file with County prior to May 1 of each year, evidence of liability insurance in the amount of \$4 million dollars for on-court bodily injury and damage to property. County shall be named as an additional insured. No separate payment shall be made by County for the cost of such insurance. Professional shall save and hold County harmless against all claims, demands, losses, damages, or liability arising or out of loss or damage to property, injury to death to persons resulting from the use or occupation of the Zephyr Cove Tennis Complex by Professional or his employees. In particular, Professional agrees to hold harmless and to indemnify County against all claims, demands, losses, damages, or

liability arising or out of loss or damage to property, injury or death to persons resulting from the use or occupation of the concession area.

9. Licenses, Permits and Taxes - Professional shall:
  - a. Obtain any and all permits or licenses which may be required by law to conduct his operation. He shall pay any and all taxes, which may be assessed against him or his property in regard to these operations.
  - b. Maintain, during the entire term of this agreement, a U.S.P.T.A. Professional Certificate.
10. Facilities to be provided by County - Professional shall have use and control, during times approved by the Community Services/Parks & Recreation Department, of the Zephyr Cove tennis courts as outlined in Attachment "B".
11. Maintenance - County shall perform maintenance on:
  - a. The tennis courts, nets, net posts, fences, gates, benches, pathways, windscreens, and other permanent fixtures associated with the Zephyr Cove Tennis Complex. County will also maintain lighting and restroom facilities at the same, and provide facilities for Reservation Center/Tennis Shack.
  - b. Professional shall provide day-to-day facility maintenance of the Professional's equipment and court facility including: trash pickup and emptying, court cleaning, and washing.
12. Utilities - Payment for utilities shall be as follows:
  - a. Applicable water, sewer, and electrical fees shall be the responsibility of County.
  - b. Professional shall be responsible for phone service charges, and toll charges for his use. Professional may restrict public use of telephone facilities to the general public.
  - c. County shall be responsible for refuse collection.
13. Termination - Either party may terminate this agreement without cause (and without damages or penalties of any kind) by providing at least 30 days written notice to the other party.

14. Conformance with conditions - It is expressly understood, and agreed by both parties to this agreement, that Professional's continued use of the premises prescribed herein, and his right to occupy the same, is hereby granted, and shall continue only so long as each and all undertakings, provisions, conveyances, agreements, stipulations, and conditions herein contained are strictly and promptly adhered to.
15. Notices - Any notices to Professional may be served personally, or may be deposited in the post office, postage prepaid, addressed to Professional. Any notice by Professional to County may be deemed properly served on County if same is delivered to the Community Services/Parks & Recreation Department, or deposited in the post office, postage paid, addressed to County.
16. Financial Audit - County shall have the right, at its expense, to conduct periodic financial and compliance audits of all activities conducted by Professional, on behalf of County at the Zephyr Cove Tennis Complex. The results and process of such audit shall be made available to Professional at his/her request.
17. Non Waiver - The failure of County or Professional to insist upon strict performance of the terms and conditions shall not be construed to be a waiver or relinquishment of any of the conditions of this agreement, but the same shall be, and shall remain, in full force and effect.
18. Independent Contractor Status - The parties agree that Professional shall have the status of and shall perform all work under this contract as an independent contractor, maintaining control over all its consultants, subconsultants, contractors, or subcontractors. The only contractual relationship created by this contract is between County and Professional, and nothing in this contract shall create any contractual relationship between County and Professional's consultants, subconsultants, contractors, or subcontractors. The parties also agree that this contract, by explicit agreement of the parties, incorporates and applies the provisions



of Nev.Rev.Stat.284.713, as necessarily adapted, to the parties, including that Professional is not a County employee and that there shall be no:

- (1) Withholding of income taxes by County;
- (2) Industrial insurance coverage provided by County;
- (3) Participation in group insurance plans which may be available to employees of County;
- (4) Participation or contributions by either Professional or County to the public employees retirement system;
- (5) Accumulation of vacation leave or sick leave provided by County;
- (6) Unemployment compensation coverage provided by County if the requirements of NRS 612.085 for independent contractors are met.

19. Industrial Insurance -

a. Unless the Professional complies with ¶ b below, Professional further agrees, as a precondition to the performance of any work under this contract and as a precondition to any obligation of the County to make any payment under this contract, to provide County with a work certificate issued by a qualified insurer in accordance with NRS § 616B.627.

Professional also agrees, prior to commencing any work under the contract, to complete and to provide the following written request to the qualified insurer:

(Company Name) has entered into a contract with Douglas County to perform work from (starting date) to (ending date) and requests that an industrial insurance provider qualified and licensed to offer such insurance within Nevada, provide to Douglas County 1) a certificate of coverage issued pursuant to NRS § 616B.627 and 2) notice of any lapse in coverage or nonpayment of coverage that the Professional is required to maintain.

The certificate and notice should be mailed to:

Douglas County Parks & Recreation

Post Office Box 218  
Minden, Nevada 89423

Professional agrees to maintain required workers compensation coverage throughout the entire term of the contract. If Professional does not maintain coverage throughout the entire term of the contract, Professional agrees that County may, at any time the coverage is not maintained by Professional, immediately order the Professional to stop work and may immediately suspend or terminate the contract.

b. Professional may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that he is a sole proprietor and that:

(1) In accordance with the provisions of NRS 616B.659, has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and

(2) Is otherwise in compliance with those terms, conditions and provisions.

20. Assignment and Sub-Leasing Prohibited - This agreement may not be assigned to any other person or persons, in whole or in part, nor shall any portion of the premises be sublet or utilized by any other person, in any manner whatsoever, without the express written approval of the Douglas County Board of Commissioners.

21. Severability - It is understood, and agreed by the parties, that if any part, term, or provision of this agreement is held invalid by the courts, held to be illegal or in conflict with any law, rule or regulation, the viability of the remaining portions of the provision shall be in effect, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain a particular part, term, or provision held to be invalid.

22. Hold Harmless - Professional shall, at his/her sole expense, defend, indemnify, and hold County harmless, its employees, elected officials, agents, and assigns including attorney's fees and costs of suit in any action



brought against County, its employees, elected officials, agents, and assigns based on the acts or omissions of Professional, or Professional's employees under this agreement.

23. Entire Agreement - This agreement shall be deemed, and construed, as the entire agreement of the parties, and there are no prior or contemporaneous oral or written agreements between the parties, which will alter the terms of this agreement in any particular way whatsoever. The May 7, 2009 agreement and any other prior agreements between the parties are hereby revoked, and any substantial amendment, or extension to this agreement, shall be in writing.

IN WITNESS THEREOF, the parties have set their hands the day and year first above writing.

PROFESSIONAL

By: L.T. Wheatly Co.

DOUGLAS COUNTY

By: Michael H. [Signature]

Chairman

ATTEST

By: [Signature]

Theodore Thran, County Clerk

By: [Signature]

Clerk to the Board

Attachments

AFFIDAVIT

I, Robert Wheatley, on behalf of my company, Sely,  
being duly sworn, depose and declare:

- 1) I am a Sole Proprietor;
- 2) I will not use the services of any employees in the performance of this contract;
- 3) I have elected to not be included in the terms, conditions, and provisions of NRS Chapters 616A- 616D, inclusive; and
- 4) I am otherwise in compliance with the terms, conditions and provisions of NRS chapters 616A-616D.

I release Douglas County and Douglas County from all liability associated with claims made against me and my company, in the performance of this contract, that relate to compliance with NRS Chapters 616A-616D, inclusive.

Signed this 1 day of May, 2011.

R. Wheatley  
Signature

State of Nevada  
County of Douglas

On this \_\_\_ day of \_\_\_\_\_ before the undersigned Notary Public, personally appeared \_\_\_\_\_ having proved on a satisfactory basis to be the person whose name is subscribed to this instrument and acknowledge that \_\_\_\_\_ executed it.

Witness my hand and official seal.

SEE ATTACHED FOR NOTARY

\_\_\_\_\_  
Notary's Signature

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of RIVERSIDE

On 5/2/2011 before me, FERNANDO FIMBRES, A NOTARY PUBLIC  
Date Here Insert Name and Title of the Officer

personally appeared ROBERT THOMPSON WHEATLEY JR  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(x) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: AFFIDAVIT

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

# ATTACHMENT A

## ZEPHYR COVE TENNIS COURT LICENSE AGREEMENT

This agreement is made and entered into this 7th day of May, 2009, by and between DOUGLAS COUNTY, a political subdivision of the State of Nevada, hereinafter referred to as "COUNTY" and "Robert Wheatley Jr." hereinafter referred to as "TENNIS PROFESSIONAL" or as "PROFESSIONAL".

### WITNESSETH

WHEREAS, the COUNTY owns and operates six (6) tennis courts, said courts being known as "ZEPHYR COVE TENNIS COMPLEX" and;

WHEREAS, the Parks & Recreation Commission, at a regularly scheduled and duly noticed meeting recommended the Community Services/Parks & Recreation Director continue with a multi-year agreement regarding tennis professional services at the ZEPHYR COVE TENNIS COMPLEX.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions herein contained, the parties do mutually agree to follow:

1. Purpose and Term - Professional is hereby given the right, license and privilege to conduct and operate the tennis activities at the Zephyr Cove Tennis Complex, all in accordance with the terms and provisions of this agreement, and the court schedule approved by the Community Services/Parks & Recreation Department. This contract only applies to the present six (6) courts at Zephyr Cove Tennis Complex as outlined in Attachment "A". The term of this agreement shall be from May 15, 2009 until October 1, 2013, unless sooner terminated in accordance with this agreement. The maximum term of this agreement is five (5) years.
2. Duties of Professional - Professional shall devote his time and personal attention to the operations necessary to conduct a modern and efficient tennis complex and tennis program on the premises herein designated. His duties shall include, but shall not be limited to the following:
  - a. Promote, create, and manage play at the Zephyr Cove Tennis Complex in accordance with this License Agreement in an efficient manner in accordance with the rules and regulations established by the Community



Services/Parks & Recreation Department. Such functions include, but are not limited to: the collection of fees, preparing receipts for all cash, check or credit card transactions, scheduling of court times, reservation of court times, scheduling of tournaments, scheduling of leagues, providing youth programs, youth clinics, private lessons in accordance with the fees approved by Community Services/Parks & Recreation Director.

Professional shall regulate play and conduct of players. Whenever possible, the manner of play should conform to the rules of tennis as adopted by the U.S.T.A. or U.S.P.T.A. Professional will be required to provide two (2) free youth clinics in each season of play under this contract.

- b. Provide lessons and instruction in tennis to the public at Zephyr Cove Tennis Complex.
- c. Comply in full with the U.S.P.T.A. code of ethics for tennis professionals.
- d. Advertise, promote, and conduct all tennis activities as County operated programs.
- e. Require all participants to register, and all youth to register and complete a parental consent authorization to medically treat as supplied by the Community Services and Parks & Recreation Department.
- f. Weather - Professional, at his discretion, shall begin the tennis season anytime after May 1 as soon as weather permits or cancel services on a daily basis based on weather conditions which are not conducive to safe play. Further, Professional may end a season before October 1 if weather conditions deteriorate and use declines. Professional shall notify the Community Services/Parks & Recreation Department when beginning the season, and prior to terminating a season prior to October 1.
- g. Professional may operate a concession at the Zephyr Cove Tennis Complex for the sale of beverages (non-alcoholic), prepackaged food, equipment rental, equipment sale, and apparel.

- h. Professional, unless prior approval is obtained from the Community Services/Parks & Recreation Department, must be in attendance to supervise the complex and perform all functions of Professional at least five (5) days of each week the courts are opened for play. The court must be supervised and staffed (7) seven days a week during the terms of this contract (weather permitting). The County acknowledges that attendance of Professional at out of town commitments may be required to fulfill his/her duties under this agreement. Professional agrees to notify the Community Services/Parks & Recreation Department, in advance, of any such absences. Professional shall be allowed vacation time not to exceed two (2) weeks in duration each season, but shall be responsible for providing adequately trained personnel to fulfill the duties of this agreement during his vacation period.
- i. No complimentary play on the courts shall be allowed by Professional, except for two (2) required free youth clinics. Professional or his paid or non-paid employees are allowed free use of the courts for practice and exhibition.
- j. Professional will provide the County with an end of the season gross revenue report in the manner as prescribed by the Community Services/Parks & Recreation Department.
- k. Professional shall provide a facility membership list to the County at the end of each tennis season for the purposes of conducting a program evaluation.
- l. Should any dispute arise between Professional and the Community Services/Parks & Recreation Department regarding day to day operations, the County Manager shall have the authority and responsibility to resolve the dispute subject to review upon request by the Board of County Commissioners. Professional agrees that the decision of the County Manager or the Board is final and is not eligible for appeal.
3. Equipment to be provided by Professional. Professional shall provide:
- a. Tennis equipment to be available for public rental.



- b. If desired, inventory of merchandise for sale. Canned or bottled beverage (no glass containers or alcohol), prepackaged food, and candy, tennis balls, rackets, and other apparel with prices approved by the Community Services/Parks & Recreation Department.
4. Collection of receipts and accounting:
  - a. Professional shall process, through a receipt book or cash register, all monies collected from reservation fees, season passes, lessons, clinics, instruction, and the court fees generated from camps, leagues and tournaments. Professional shall be responsible for all cash deposits, refunds, cash shortages and all returned checks.
  - b. Professional shall immediately report to the Douglas County Sheriff's office any suspected theft of money or County property.
5. Compensation to Professional and the County:
  - a. Professional shall receive the net profits, if any, that he realizes from the operation of the sale of concessions, equipment and rentals. The Community Services/Parks & Recreation Director must approve all prices.
  - b. **Year One** - Professional shall pay the County a lump sum of \$2,500.00, twenty five percent (25%) on or before May 15, fifty percent (50%) on or before June 15, twenty five percent (25%) on or before August 1.  
**Year two and every year after** - Professional shall pay the County a lump sum of \$5,000.00, twenty five percent (25%) on or before May 1, fifty percent (50%) on or before June 15, twenty five percent (25%) on or before August 1.
6. Employees - Professional shall be responsible for hiring and paying any necessary employees (paid or non-paid) including, but not limited to; assistant professionals, concession and court attendants to carry out the obligations set forth in this agreement. No person shall be hired by Professional, who are known to have a prior felony conviction or to have other convictions involving moral turpitude. The professional shall have finger printed, in accordance with County hire policy, all employees at County expense.

7. Alterations - Professional shall not make any permanent alterations or permanent additions to any portion of the premises covered by this agreement, or to have any equipment belonging to the County without having first obtained the County's written consent. Professional shall not be reimbursed for any permanent alterations or permanent additions to any portion of the premises covered by this agreement which occur after the execution of this agreement. The parties agree to cooperate in the expansion and development of new and additional facilities or improvements at the Zephyr Cove Tennis Complex. County may develop, with Professional's assistance, a five (5) year capital improvement program for improvements at the Zephyr Cove Tennis Complex for future consideration by the Board of County Commissioners.
8. Insurance - Professional shall file with County prior to May 1, evidence of liability insurance in the amount of \$4 million dollars for on-court bodily injury and damage to property. County shall be named as an additional insured. No separate payment shall be made by County for the cost of such insurance. Professional shall save and hold County harmless against all claims, demands, losses, damages, or liability arising or out of loss or damage to property, injury to death to persons resulting from the use or occupation of the Zephyr Cove Tennis Complex by Professional or his employees. In particular, Professional agrees to hold harmless and to indemnify County against all claims, demands, losses, damages, or liability arising or out of loss or damage to property, injury or death to persons resulting from the use or occupation of the concession area.
9. Licenses, Permits and Taxes - Professional shall:
  - a. Obtain any and all permits or licenses which may be required by law to conduct his operation. He shall pay any and all taxes, which may be assessed against him or his property in regard to these operations.
  - b. Maintain, during the entire term of this agreement, a U.S.P.T.A. Professional Certificate.



10. Facilities to be provided by County - Professional shall have use and control, during times approved by the Community Services/Parks & Recreation Department, of the Zephyr Cove tennis courts as outlined in Attachment "A".
11. Maintenance - County shall perform maintenance on:
  - a. The tennis courts, nets, net posts, fences, gates, benches, pathways, windscreens, and other permanent fixtures associated with the Zephyr Cove Tennis Complex. County will also maintain lighting and restroom facilities at the same, and provide facilities for Reservation Center/Tennis Shack.
  - b. Professional shall provide day-to-day facility maintenance of the Professional's equipment and court facility including: trash pickup and emptying, court cleaning, and washing.
12. Utilities - Payment for utilities shall be as follows:
  - a. Applicable water, sewer, and electrical fees shall be the responsibility of County.
  - b. Professional shall be responsible for phone service charges, and toll charges for his use. Professional may restrict public use of telephone facilities to the general public.
  - c. County shall be responsible for refuse collection.
13. Termination - Either party may terminate this agreement without cause (and without damages or penalties of any kind) by providing at least 30 days written notice to the other party.
14. Conformance with conditions - It is expressly understood, and agreed by both parties to this agreement, that Professional's continued use of the premises prescribed herein, and his right to occupy the same, is hereby granted, and shall continue only so long as each and all undertakings, provisions, conveyances, agreements, stipulations, and conditions herein contained are strictly and promptly adhered to.
15. Notices - Any notices to Professional may be served personally, or may be deposited in the post office, postage prepaid, addressed to Professional.

Any notice by Professional to County may be deemed properly served on County if same is delivered to the Community Services/Parks & Recreation Department, or deposited in the post office, postage paid, addressed to County.

16. **Financial Audit** - County shall have the right, at its expense, to conduct periodic financial and compliance audits of all activities conducted by Professional, on behalf of County at the Zephyr Cove Tennis Complex. The results and process of such audit shall be made available to Professional at his/her request.
17. **Non Waiver** - The failure of County or Professional to insist upon strict performance of the terms and conditions shall not be construed to be a waiver or relinquishment of any of the conditions of this agreement, but the same shall be, and shall remain, in full force and effect.
18. **Independent Contractor Status** - The parties agree that Professional shall have the status of and shall perform all work under this contract as an independent contractor, maintaining control over all its consultants, subconsultants, contractors, or subcontractors. The only contractual relationship created by this contract is between County and Professional, and nothing in this contract shall create any contractual relationship between County and Professional's consultants, subconsultants, contractors, or subcontractors. The parties also agree that this contract, by explicit agreement of the parties, incorporates and applies the provisions of Nev.Rev.Stat.284.713, as necessarily adapted, to the parties, including that Professional is not a County employee and that there shall be no:
  - (1) Withholding of income taxes by County;
  - (2) Industrial insurance coverage provided by County;
  - (3) Participation in group insurance plans which may be available to employees of County;
  - (4) Participation or contributions by either Professional or County to the public employees retirement system;

(5) Accumulation of vacation leave or sick leave provided by County;

(6) Unemployment compensation coverage provided by County if the requirements of NRS 612.085 for independent contractors are met.

19. Industrial Insurance -

a. Unless the Professional complies with ¶ b below, Professional further agrees, as a precondition to the performance of any work under this contract and as a precondition to any obligation of the County to make any payment under this contract, to provide County with a work certificate issued by a qualified insurer in accordance with NRS § 616B.627. Professional also agrees, prior to commencing any work under the contract, to complete and to provide the following written request to the qualified insurer:

(Company Name) has entered into a contract with Douglas County to perform work from (starting date) to (ending date) and requests that an industrial insurance provider qualified and licensed to offer such insurance within Nevada, provide to Douglas County 1) a certificate of coverage issued pursuant to NRS § 616B.627 and 2) notice of any lapse in coverage or nonpayment of coverage that the Professional is required to maintain.

The certificate and notice should be mailed to:

Douglas County Parks & Recreation  
Post Office Box 218  
Minden, Nevada 89423

Professional agrees to maintain required workers compensation coverage throughout the entire term of the contract. If Professional does not maintain coverage throughout the entire term of the contract, Professional agrees that County may, at any time the coverage is not maintained by

- Professional, immediately order the Professional to stop work and may immediately suspend or terminate the contract.
- b. Professional may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that he is a sole proprietor and that:
- (1) In accordance with the provisions of NRS 616B.659, has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and
  - (2) Is otherwise in compliance with those terms, conditions and provisions.
20. Assignment and Sub-Leasing Prohibited - This agreement may not be assigned to any other person or persons, in whole or in part, nor shall any portion of the premises be sublet or utilized by any other person, in any manner whatsoever, without the express written approval of the Douglas County Board of Commissioners.
21. Severability - It is understood, and agreed by the parties, that if any part, term, or provision of this agreement is held invalid by the courts, held to be illegal or in conflict with any law, rule or regulation, the viability of the remaining portions of the provision shall be in effect, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain a particular part, term, or provision held to be invalid.
22. Hold Harmless - Professional shall, at his/her sole expense, defend, indemnify, and hold County harmless, its employees, elected officials, agents, and assigns including attorney's fees and costs of suit in any action brought against County, its employees, elected officials, agents, and assigns based on the acts or omissions of Professional, or Professional's employees under this agreement.
23. Entire Agreement - This agreement shall be deemed, and construed, as the entire agreement of the parties, and there are no prior or contemporaneous oral or written agreements between the parties, which will alter the terms of this agreement in any particular way whatsoever. Any prior agreements

between the parties are hereby revoked, and any substantial amendment, or extension to this agreement, shall be in writing.

IN WITNESS THEREOF, the parties have set their hands the day and year first above writing.

PROFESSIONAL  
By: Nancy McDermid

PROFESSIONAL  
By: [Signature]

DOUGLAS COUNTY  
By: Nancy McDermid  
Chairman

ATTEST  
By: [Signature]  
Theodore Thran, County Clerk

BY: [Signature], Clerk to the Board  
COUNTY MANAGER - APPROVED TO CONTENT

By: [Signature]  
District Attorney

Attachment A

AFFIDAVIT

I, Rob Wheatley, on behalf of my company, \_\_\_\_\_  
being duly sworn, depose and declare:

- 1) I am a Sole Proprietor;
- 2) I will not use the services of any employees in the performance of this contract;
- 3) I have elected to not be included in the terms, conditions, and provisions of NRS Chapters 616A- 616D, inclusive; and
- 4) I am otherwise in compliance with the terms, conditions and provisions of NRS chapters 616A-616D.

I release Douglas County and Douglas County from all liability associated with claims made against me and my company, in the performance of this contract, that relate to compliance with NRS Chapters 616A-616D, inclusive.

Signed this 13<sup>th</sup> day of May, 2008

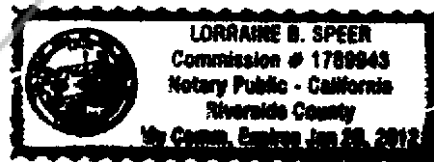
Rob Wheatley  
Signature

~~State of Nevada~~  
~~County of Douglas~~ California  
Riverside

On this 30<sup>th</sup> day of May, 2009 before the undersigned Notary Public, personally appeared Rob Wheatley having proved on a satisfactory basis to be the person whose name is subscribed to this instrument and acknowledge that he executed it.

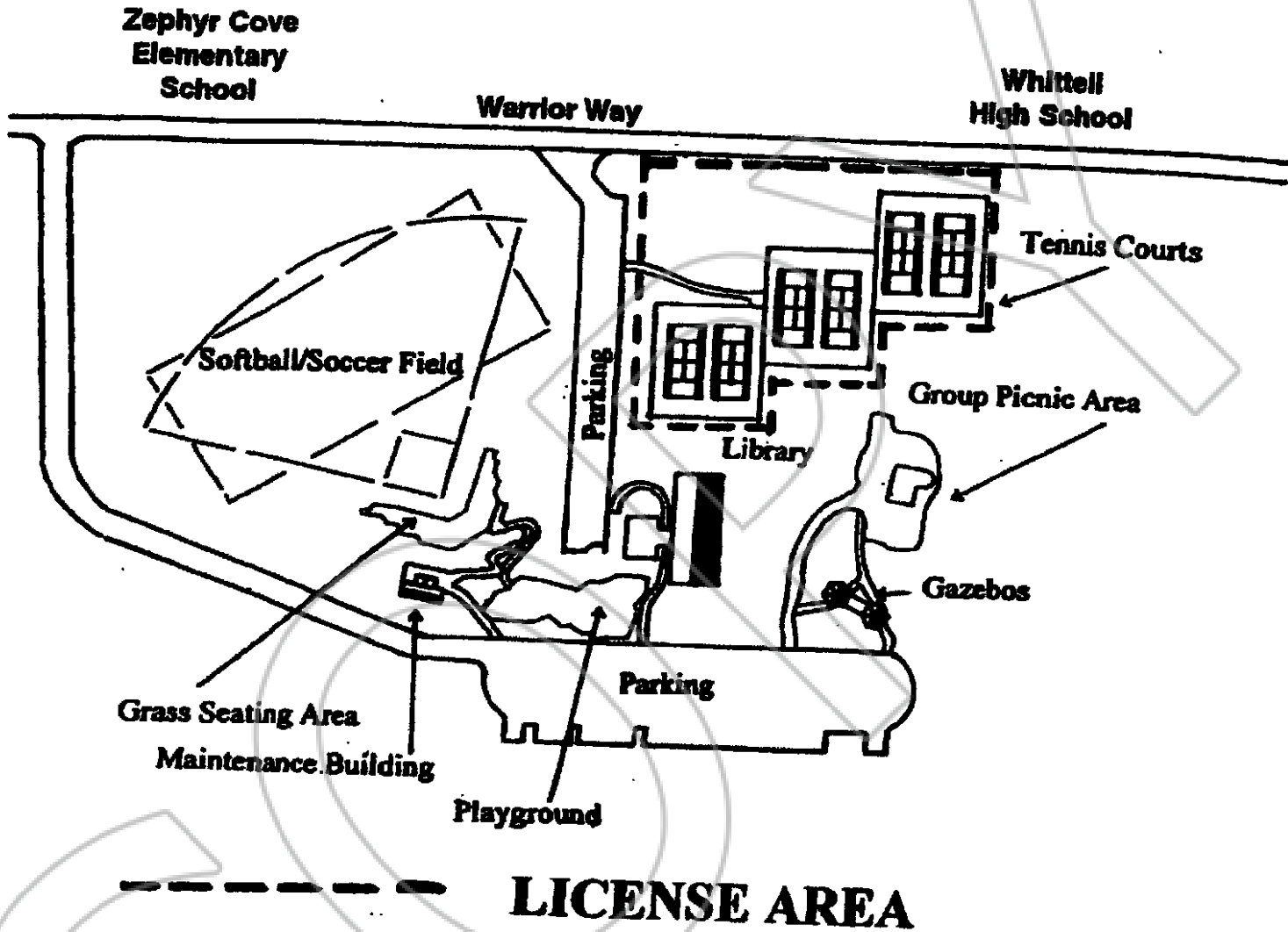
Witness my hand and official seal.

Lorraine B. Speer  
Notary's Signature





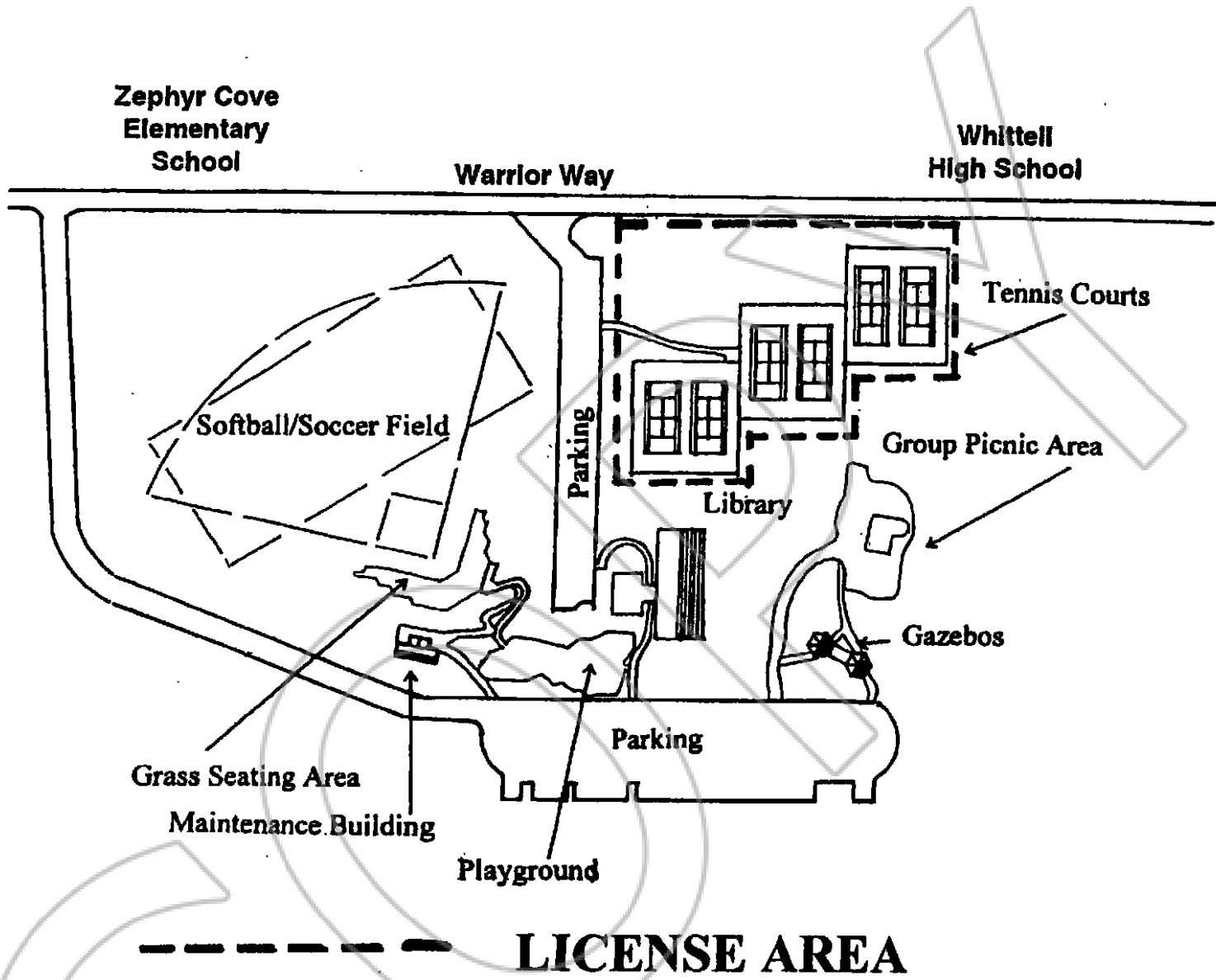
# Zephyr Cove Park



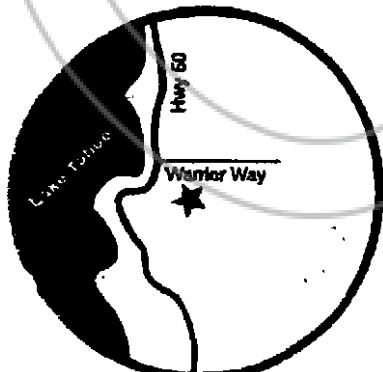
## ATTACHMENT A



# Zephyr Cove Park



## ATTACHMENT B



Location Map



**NORTH**  
NOT TO SCALE

Douglas County Parks & Recreation Department  
Master Plan

*"More than Just Fun and Games"*

COPY

**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: May 18, 2011  
[Signature] Clerk of the 9th Judicial District Court  
of the State of Nevada and for the County of Douglas.  
By [Signature] Deputy