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OFFICIAL RECORDS

Requested By:

DC/PARKS & RECREATION

DOUGLAS COUNTY RECORDERS
Karen Ellison - Recorder

Page: 1 of 13 Fee: \$ 0.00

Bk: 0514 Pg: 3719



Deputy: gb

Assessor's Parcel Number: N/A

Date: MAY 19, 2014

Recording Requested By:

Name: PARKS & RECREATION/LIZ B

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A

AGREEMENT #2014.105

(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

This cover page must be typed or legibly hand printed.



BK 05 14
PG 3720
5/20/2014

FILED

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ZEPHYR COVE TENNIS COURT
PROFESSIONAL SERVICES AND LICENSE AGREEMENT

2014 MAY 19 PM 4: 21

TED THUAN
CLERK

BY *[Signature]* DEPUTY

This Agreement is made and entered into this 15th day of May, 2014, by and between DOUGLAS COUNTY, a political subdivision of the State of Nevada, hereinafter referred to as "COUNTY" and ZEPHYR COVE TENNIS CLUB FOUNDATION, a Nevada non-profit corporation, hereinafter referred to as "FOUNDATION".

WITNESSETH

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

WHEREAS, the COUNTY Parks & Recreation Commission, at a regularly scheduled and duly noticed meeting recommended the COUNTY 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 - FOUNDATION 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, 2014 until October 31, 2018, unless sooner terminated in accordance with this agreement. The maximum term of this agreement is five (5) years.
2. Duties of FOUNDATION - FOUNDATION shall devote their time and personal attention to the operations necessary to conduct a modern and efficient tennis complex and tennis program on the premises herein designated. The 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 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. FOUNDATION 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. FOUNDATION 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 FOUNDATIONS.
- 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 - FOUNDATION, at their discretion, shall begin the tennis season any time after April 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, FOUNDATION may end a season before October 31 if weather conditions deteriorate and use declines. FOUNDATION shall notify the Community Services/Parks & Recreation Department when beginning the season, and prior to terminating a season prior to October 31.

- g. FOUNDATION 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. Each year during the operations season of May 1 through September 30, FOUNDATION, 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 FOUNDATION at least five (5) days of each week the courts are opened for play during the terms of this contract (weather permitting).
 - i. Complimentary play will be made available to the public each tennis season from April 1 through April 30 and October 1 through October 31. During the operations season of May 1 through September 30 of each year the court schedule approved by the Community Services/Parks & Recreation Department shall include set hours of free play. Outside of those set hours of free play, no complimentary play on the courts shall be allowed by FOUNDATION, except for two (2) required free youth clinics. The FOUNDATION tennis professional or his paid or non-paid employees are allowed free use of the courts for practice and exhibition.
 - j. FOUNDATION 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. FOUNDATION 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 FOUNDATION 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. FOUNDATION 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 FOUNDATION. FOUNDATION 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. FOUNDATION 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. FOUNDATION shall be responsible for all cash deposits, refunds, cash shortages and all returned checks.
 - b. FOUNDATION shall immediately report to the Douglas County Sheriff's office any suspected theft of money or County property.
5. Compensation to FOUNDATION and the County:
- a. FOUNDATION shall receive the net profits, if any, that they realize from the operation of the sale of concessions, equipment and rentals. The Community Services/Parks & Recreation Director must approve all prices.
 - b. **Year One** - FOUNDATION shall pay the County a lump sum of \$3,000.00, payable in three installments as follows: 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.
Year Two - FOUNDATION shall pay the County a lump sum of \$3,500.00 payable in installments as follows: 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.
Year Three - FOUNDATION shall pay the County a lump sum of \$4,000.00, payable in three installments as follows: 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.
Year Four - FOUNDATION shall pay the County a lump sum of \$4,500.00, payable in three installments as follows: 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.

Year Five - FOUNDATION shall pay the County a lump sum of \$5,000.00, payable in three installments as follows: 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.

6. Employees - FOUNDATION shall be responsible for hiring and paying any necessary employees (paid or non-paid) including, but not limited to; tennis professional, assistant professionals, concession and court attendants to carry out the obligations set forth in this agreement. All such employees shall be deemed to be employees of FOUNDATION, and not County. No person shall be hired by FOUNDATION, who is known to have a prior felony conviction or to have other convictions involving moral turpitude. The FOUNDATION shall have finger printed all employees working independently with youth at County expense.

7. Alterations - FOUNDATION 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 removed without having first obtained the County's written consent. FOUNDATION 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 FOUNDATION'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 - FOUNDATION shall file with County prior to May 1 annually, 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. FOUNDATION 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 FOUNDATION or their employees. In particular, FOUNDATION agrees to hold harmless and to indemnify County against all claims, demands, losses, damages, attorney fees, 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. Events, Licenses, Permits and Taxes - FOUNDATION shall:

a. Follow established Parks & Recreation Department protocol for facility reservations when scheduling special events and/or tournaments that will exceed 100 attendees. FOUNDATION shall file appropriate applications for said events and shall pay fees for additional sanitary and/or refuse requirements attributed to event.

b. Obtain any and all permits or licenses which may be required by law to conduct his operation. FOUNDATION shall pay any and all taxes, which may be assessed against FOUNDATION or its property in regard to these operations.

c. Maintain, during the entire term of this agreement, a U.S.P.T.A. FOUNDATION Certificate.

10. Facilities to be provided by County - FOUNDATION 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". County will provide facilities for Reservation Center/Tennis Shack. Under an Administrative Memorandum of Understanding with the Douglas County Public Library, County will allow FOUNDATION access to an operations office, during an agreed upon schedule, within the Lake Tahoe Branch Library. Further, County will allow FOUNDATION, its representatives and program participants access to the Lake Tahoe Branch Library Lobby and Restrooms during operational hours of the operations office.

11. Maintenance -

a. County shall perform wholesale maintenance on 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 porta-potty restroom facilities. County will provide hoses and a blower for day-to-day maintenance as well as fuel to operate said blower.

b. FOUNDATION shall provide day-to-day facility maintenance of the FOUNDATION's equipment and court facility including: trash pickup and emptying, court cleaning, and washing. FOUNDATION shall maintain operations office within the Lake Tahoe Branch Library and be responsible for key control to said facility, including Lake Tahoe Branch Library Lobby and Restrooms, as well as responsibility for security / alarm system functions of same. FOUNDATION shall provide day-to-day light maintenance of restroom facilities within Lake Tahoe Branch Library Lobby.

12. Utilities - Payment for utilities shall be as follows:

a. Applicable water, sewer, and electrical fees shall be the responsibility of County.

b. FOUNDATION shall be responsible for phone service charges, and toll charges for FOUNDATION's use. FOUNDATION may restrict public use of telephone facilities to the general public.

c. County shall be responsible for refuse collection.

d. County may assess a seasonal cleaning cost surcharge upon FOUNDATION in the event reasonably attributed use of restroom facilities within the Lake Tahoe Branch Library Lobby warrants additional cleaning costs placed upon County.

13. Termination - Either party may terminate this agreement without cause (and without damages or penalties of any kind) by providing at least 90 days written notice to the other party.

14. Conformance with conditions - It is expressly understood, and agreed by both parties to this agreement, that FOUNDATION'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 FOUNDATION may be served personally, or may be deposited in the post office, postage prepaid, addressed to FOUNDATION at the following address: P.O Box 1122, Zephyr Cove, NV 89448. Any notice by FOUNDATION 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 FOUNDATION, on behalf of County at the Zephyr Cove Tennis Complex. The results and process of such audit shall be made available to FOUNDATION at his/her request.
17. **Non Waiver** - The failure of County or FOUNDATION 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 FOUNDATION shall have the status of and shall perform all work under this contract as an independent contractor, maintaining control over all its employees, consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between County and FOUNDATION, and nothing in this contract shall create any contractual relationship between County and FOUNDATION's employees, consultants, sub consultants, 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 representatives of FOUNDATION are not County employees 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 FOUNDATION 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 FOUNDATION complies with ¶ b below, FOUNDATION 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. FOUNDATION 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 FOUNDATION is required to maintain. The certificate and notice should be mailed to:

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

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

b. FOUNDATION 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 organization, entity, person or persons, in whole or in part, nor shall any portion of the premises be sublet or utilized by any other organization, entity, or 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** - FOUNDATION shall, at their 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 FOUNDATION, or

FOUNDATION's representatives, agents, and 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.

FOUNDATION

By: *Cravitz*, President

DOUGLAS COUNTY

By: *Doug N. Johnson*
Chairman

ATTEST

By: *Theodore Thran*
Theodore Thran, County Clerk

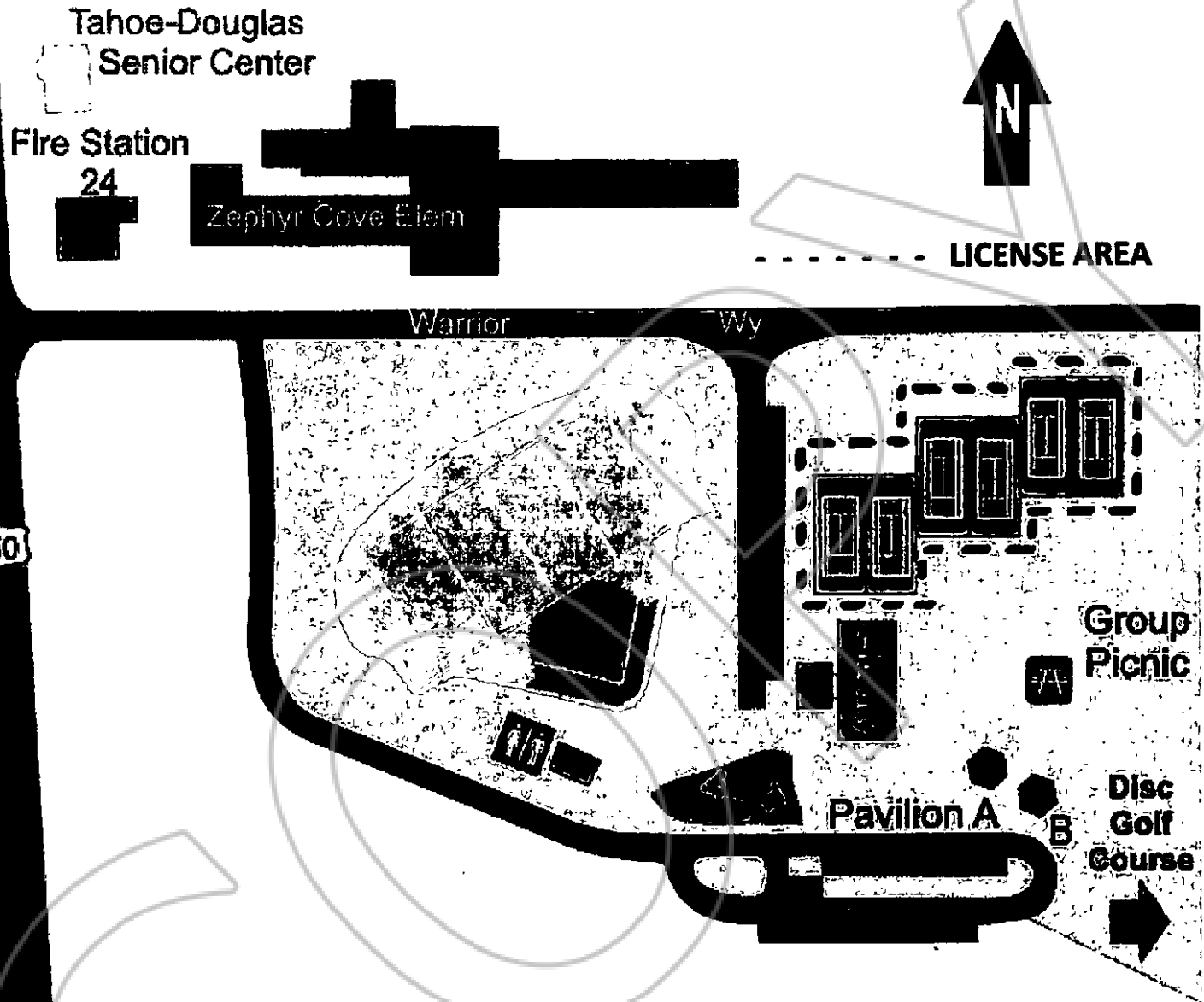
BY: *Tammy*
Clerk to the Board

COUNTY MANAGER - APPROVED TO CONTENT

By: *[Signature]*

Attachment A

Zephyr Cove Park



ATTACHMENT A

Douglas Co

Douglas County

State of Nevada

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

19th day of May 2014

By [Signature] Deputy