

CITY USE ONLY			
Agreement No. _____	P.O. No. _____	Attorney _____	Code <u>atkl0995.docx</u>
CIP No. _____	Project _____	Finance _____	
Dept. No./MOU _____	Amount _____	City Engineer _____	

**AGREEMENT WITH THE SIOUX FALLS TENNIS ASSOCIATION  
AND THE CITY OF SIOUX FALLS REGARDING THE  
INDOOR TENNIS FACILITY TO BE LOCATED AT  
THE SANFORD SPORTS COMPLEX**

This Agreement is entered into as of this \_\_\_ day of \_\_\_\_\_, 2013, by and between the **Sioux Falls Tennis Association, Inc.**, a South Dakota nonprofit corporation (the "SFTA"), and the **City of Sioux Falls**, a home-ruled chartered South Dakota municipality (the "City").

WHEREAS, the SFTA desires to build an indoor public tennis facility consisting of seven (7) tennis courts, offices, parking, and related building site development (the "Facility") and identified as the building labeled "Tennis" in the Preliminary Site Plan attached hereto as **Exhibit "A"**; and

WHEREAS, the Facility will be built at the "Sanford Sports Complex" on North Westport Avenue between I-29 and the Sioux Falls Airport. A diagram of the Sanford Sports Complex is attached hereto as **Exhibit "B"**; and

WHEREAS, Sanford Health ("Sanford") owns and will retain ownership of fee simple title to the real estate underlying the Facility. SFTA has entered into a thirty- (30) year ground lease, along with two (2) twenty- (20) year renewal options with Sanford for tenancy and possession of the land that occupies the Facility (the "Ground Lease"). The Ground Lease will be for nominal annual rent. A Memorandum of the Ground Lease will be recorded in the public land records of Minnehaha County, South Dakota. A copy of the executed Ground Lease is attached hereto as **Exhibit "C"**; and

WHEREAS, consistent with the terms of the Ground Lease, the SFTA will cause the construction of the Facility to be undertaken and completed. SFTA anticipates the commencement date of the construction of the Facility to occur in or about the spring of 2014. The SFTA has entered into a Construction Manager at Risk Delivery Method with Fiegen Construction. The SFTA anticipates a continuous six- (6) to nine- (9) month construction project term in connection with the completion of the Facility with an anticipated substantial completion date to occur in or about the fall of 2014; and

WHEREAS, the City recognizes the benefit of tennis facilities to the City's economy and to the youth and families in the Sioux Falls community and desires to partner with and assist SFTA in furtherance of SFTA's equipping the facility;

NOW, THEREFORE, the parties to this Agreement, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

## **Section One Funding of Construction Costs By SFTA**

In order to pay for the costs associated with the construction of the Facility, the SFTA is engaged in various fund-raising activities including, but not limited to, receiving private donations, applying for assistance from various grants and foundations, and organizing and hosting various fund-raising events including a Chamber drive, granting naming rights, and arranging bank financing. The SFTA agrees that any funds to be received from the City are contingent upon the SFTA securing all necessary financing in connection with the constructing and equipping of the Facility.

## **Section Two CIP Funds**

The City has included Five Hundred Thousand Dollars (\$500,000) in its Capital Improvement Plan ("CIP") for year 2013 for the acquisition of equipment and other improvements (the "equipment") at the Facility. The City agrees that the Five Hundred Thousand Dollars (\$500,000) has been budgeted and appropriated for year 2013. It is agreed that the City's disbursement of the CIP funds is contingent upon SFTA securing the necessary financing, as set forth in Section One, to complete the constructing and equipping of the Facility, excluding any funds which are earmarked as CIP funds for equipment as detailed in this Agreement.

Eligible equipment that may be, but is not binding, purchased by the SFTA using CIP funds is attached to this Agreement as **Exhibit D**. The eligible equipment ultimately purchased will be mutually agreed upon by the City and the SFTA subsequent to the execution of this Agreement. Such equipment and other improvements will be purchased in accordance with the purchasing requirements of the South Dakota Codified Laws and Chapter 36 of the Code of Ordinances, Sioux Falls, SD. The City's Purchasing Office shall review the bid packages prior to the SFTA awarding the contract(s), which use CIP funds. The SFTA agrees to document and account for its use of the CIP funds. However, if the actual cost of the equipment should exceed the estimated cost set forth in **Exhibit D**, this Agreement shall impose no obligation on the City for payment beyond the Five Hundred Thousand Dollars (\$500,000) set aside in the CIP. This Agreement is limited to the payment herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage shall accrue to the benefit of SFTA, their successors or assignees, for any further payments.

## **Section Three Ownership and Maintenance of Assets**

Subject to the conditions set forth in Section Four below, the equipment purchased with CIP funds will be owned by the City and become capital assets on the City's balance sheets. SFTA will maintain the equipment and other improvements purchased by the City in accordance with the manufacturer's recommendations and industry standards comply with all applicable federal, state, and local laws, regulations, and orders as in effect and construed regarding the equipment during the term of the Agreement. Maintenance records shall be kept for the equipment and other improvements purchased by the City in a manner that shows adherence to manufacturer's recommendations and industry standards. The equipment described in this Section that is worn out or no longer necessary for the operation of the Facility shall be returned to the City for disposition. Such determination shall be made

by SFTA unless the Agreement is terminated for cause by the City. Any costs associated with the removal of the equipment shall be borne by the City.

#### **Section Four**

### **SFTA Responsible for All Facility Maintenance, Taxes, and Related Costs**

Once completed and consistent with the terms of the Ground Lease and the Holding Entity's ownership of the Facility, the SFTA shall be solely responsible for paying all real estate taxes, special assessments, insurance, maintenance, utility, management, staffing, and related costs associated with the Facility. It is understood and agreed by the parties hereto that all such costs associated with ownership, maintenance, and operation of the Facility, including costs associated with the Facility equipment repair, maintenance, and replacement, shall be the obligation of the SFTA alone and not the obligation of the City.

#### **Section Five**

### **Term**

This Agreement will commence on the last to occur of the signing of this Agreement by the Mayor, the attestation of this Agreement by the City Clerk, the approval of this Agreement by resolution adopted by the City Council, and the expiration of the time within which the City Council's approval of this Agreement may be challenged by referendum following the publishing of the City Council's resolution (the "Effective Date"), and will continue in full force and effect until the City no longer owns the equipment or no longer has equipment in the Facility.

#### **Section Six**

### **Reservation of Public "Open Court" Scheduling**

At no cost to the City, SFTA will reserve time for the availability and use of the Facility by the public (e.g., "open court" scheduling) as described in the attached **Exhibit "E."** The block scheduling of published open court hours will be subject to approval by the City. The City acknowledges and agrees that the scheduling of the Facility by SFTA—in order to meet the demands and requirements for tennis by many and varied youth organizations and community groups—will vary from year to year, requires flexibility, and is fundamental to the financial viability of the Facility. The City, therefore, agrees that its approval of the published open court hours will not be unreasonably withheld or delayed.

SFTA acknowledges and agrees that the City has made a significant investment in the Facility for the purpose of providing a venue to serve the needs of tennis, but also to provide open court opportunities for the general public at times that are consistent and reasonably convenient. SFTA, therefore, agrees to block schedule open court hours that are consistent and reasonably convenient in good faith. SFTA and the City acknowledge, however, that from time-to-time the open court times may be modified or canceled due to unforeseen maintenance or special events which are open to the public, including, but not limited to, tournaments and exhibitions. Such temporary modifications or cancellations shall be subject to notification by SFTA to the City but will not be subject to City approval. SFTA shall keep public usage records pertaining to public participation during court rentals. Such records shall be given to the City on an annual basis and broken down monthly or quarterly.

**Section Seven**  
**SFTA to Control All Management and Decision**  
**Making for Facility; City Seat on Board**  
**Established to Oversee Facility**

Subject only to the City's reasonable approval of public open court hours, the parties understand and agree that the management and decision making relative to the Facility shall be under the auspices and authority of the SFTA alone. The parties agree that the Director of Parks and Recreation or his designee will serve as a nonvoting member of the board that is created to oversee the Facility.

**Section Eight**  
**Insurance**

- (a) **Casualty and Liability Insurance.** SFTA will procure and continuously maintain a policy or policies of commercial property insurance that will, at a minimum, cover the perils insured under the ISO Special Form, insuring the Facility, building, improvements, fixtures, furniture, signs, equipment, and all other items of personal property, including the City's equipment, for its full replacement value, naming the City as a loss payee of insurance proceeds payable with respect to the equipment. SFTA will carry reasonable deductibles based on premiums and exposure (e.g., the parties agree that a \$100,000 deductible would not be reasonable).

SFTA will also procure and maintain commercial general liability insurance, including contractual liability insurance coverage for injury or death to any person or damage to property, for any claims, demands, or causes of action of any person arising out of accidents occurring on or about the Facility or arising out of SFTA's use of the Facility. The insurance specified in this section may be in a policy or policies of insurance, primary or excess. Further such commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury, and property damage liability coverage with, at minimum, limits of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. The required minimum limit may include excess liability (umbrella) coverage. The policy shall by separate endorsement name the City and its representative as additional insureds. If "occurrence form" insurance is not available, "claims made" insurance will be acceptable. The policy shall be maintained for three years after this Agreement expires if it is a "claims made" policy.

- (b) **Damage or Destruction to the City's Equipment.** If the City's equipment is damaged or destroyed by fire or other casualty covered by insurance, all insurance proceeds will be used for the repair or replacement of the damaged or destroyed equipment as determined by SFTA.
- (c) **Certificates evidencing the existence of commercial property insurance and commercial general liability insurance maintained by SFTA pursuant to this Agreement must be delivered to the City no later than the opening day of the Facility. Further, SFTA will cause its insurance carrier to deliver to the City at least 45 days prior to expiration of the polic(ies) satisfactory evidence of renewal to the extent the polic(ies) expires and requires renewal while the City owns the assets.**

- (d) The insurance provisions of this Section Eight are separate and apart from any indemnification obligation.
- (e) To the extent damages are covered by property insurance, the City and SFTA waive all rights of subrogation.

### **Section Nine Hold Harmless**

- (a) SFTA and the City will mutually indemnify, defend, and hold harmless one another and their respective officers, directors, partners, employees, agents, elected and appointed officials, City Council members, successors, and permitted assigns from and against any and all claims, damages, losses, and judgments of third parties, including reasonable attorneys' fees and expenses recoverable under applicable law caused by their respective willful misconduct or negligent errors, acts, or omissions. Provided, however, with respect to claims, acts, and omissions covered by the insurance required to be carried under this Agreement, each party's liability to the other will be limited to the insurance proceeds payable as a result of the covered claims, acts, or omissions.
- (b) To the extent commercially practicable, the terms of all insurance policies of any independent contractors hired by SFTA must require the independent contractors to waive subrogation claims against the City and its elected and appointed officials, agents, officers, City Council members, and employees.
- (c) Each party's liability for losses hereunder will be strictly limited to direct damages actually incurred by the other party.
- (d) In the event a third party brings a claim against the City alleging damages and losses caused by or arising out of willful misconduct or the negligent errors, acts, or omissions of SFTA, its employees and agents, then nothing in this Agreement will prevent the City from tendering to SFTA the defense of the claim. Upon the City's tender of the claim to SFTA, SFTA will defend the claim alleging damages and losses caused by or arising out of the willful misconduct or the negligent errors, acts, or omissions of SFTA, its employees or agents.

### **Section Ten Default and Termination**

Default by SFTA. SFTA will be in material default under this Agreement if one or more of the following occur:

- (a) SFTA fails to maintain insurance as required by this Agreement; or
- (b) SFTA fails to maintain the equipment purchased with CIP dollars in adherence to material manufacturer's recommendations and industry standards and all material federal, state, and local laws, regulations, and orders; or
- (c) SFTA fails to reserve open court time for public tennis in accordance with and subject to Section Six of this Agreement; or

- (d) The commencement of bankruptcy or insolvency proceedings by or against SFTA which have not been dismissed within 90 days of the commencement thereof.

The City shall give written notice of the material default and SFTA shall have ninety (90) days to cure the material default. In the event a default is not reasonably susceptible to being cured within the 90-day period, SFTA will not be considered in default if, within the allowed ninety- (90) day period, SFTA will have commenced with due diligence to cure the noticed default and thereafter completes as soon as practicably possible the cure of the noticed default.

Dispute Resolution Including Termination. However, in the event of material default, the City and SFTA acknowledge that termination of this Agreement and removal of the equipment may threaten the continued operation of the Facility. Consequently, the City and SFTA agree to use their best efforts, in good faith, to reach a negotiated resolution of a default, including mediation if requested by either party. If the parties do not resolve the dispute through either informal negotiation or mediation, then the City may terminate the Agreement. Upon termination of this Agreement, SFTA will return all equipment to the City in good repair, reasonable wear and tear excepted.

### **Section Eleven Freely and Voluntarily Entering Into Agreement**

The parties acknowledge that they are entering into this Agreement freely and voluntarily, that they have the opportunity to be represented and advised by counsel in the negotiations resulting in this Agreement, that they have ascertained and weighed all the facts and circumstances likely to influence their judgment, that they have given due consideration to the provisions contained herein, and that they thoroughly understand and consent to all provisions herein.

### **Section Twelve Audit of Books**

The City shall have the right to audit the books and records (in whatever form they may be kept, whether written, electronic, or other) of the SFTA relating or pertaining to public participation during court rentals and the purchase, repair, and maintenance of the City's equipment (including any and all documents and other materials in whatever form they may be kept, which support or underlie those books and records) kept by or under the control of SFTA, including, but not limited to, those kept by SFTA, its employees, agents, assigns, successors, and subcontractors. SFTA shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Agreement and for at least three years following the completion of this Agreement including all renewals thereof. The books and records, together with the supporting or underlying documents and materials, shall be made available, upon request, to the City, through its employees, agents, representatives, contractors, or other designees, during normal business hours at SFTA's office or place of business in Sioux Falls, SD. This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by state, City, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are expressed or implied.

**Section Thirteen  
Validity of Agreement**

Should any section or provision of this Agreement be declared by the courts to be invalid, the same will not affect the validity of the Agreement as a whole or any part thereof, other than the part declared invalid.

**Section Fourteen  
Jurisdiction**

The validity, performance, and enforcement of this Agreement are governed by the laws of the state of South Dakota. Jurisdiction and venue of any legal proceeding involving the parties in connection with this Agreement will lie exclusively with the state and federal courts located in Sioux Falls, South Dakota.

**Section Fifteen  
Construction of Agreement**

Headings in this Agreement are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall be construed as if it had been prepared jointly by the parties hereto. Unless otherwise indicated, all references to sections are to sections in this Agreement.

**Section Sixteen  
Entire Agreement**

This instrument contains the entire Agreement between the parties, and no statement, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding. This contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed hereon.

**Section Seventeen  
Binding Upon Successors and Assigns**

This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, assignees, and successors of the respective parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF SIOUX FALLS, SOUTH DAKOTA    SIOUX FALLS TENNIS ASSOCIATION, INC.**

By: \_\_\_\_\_  
Mike T. Huether, Mayor

By: \_\_\_\_\_  
Eric Weisser, President

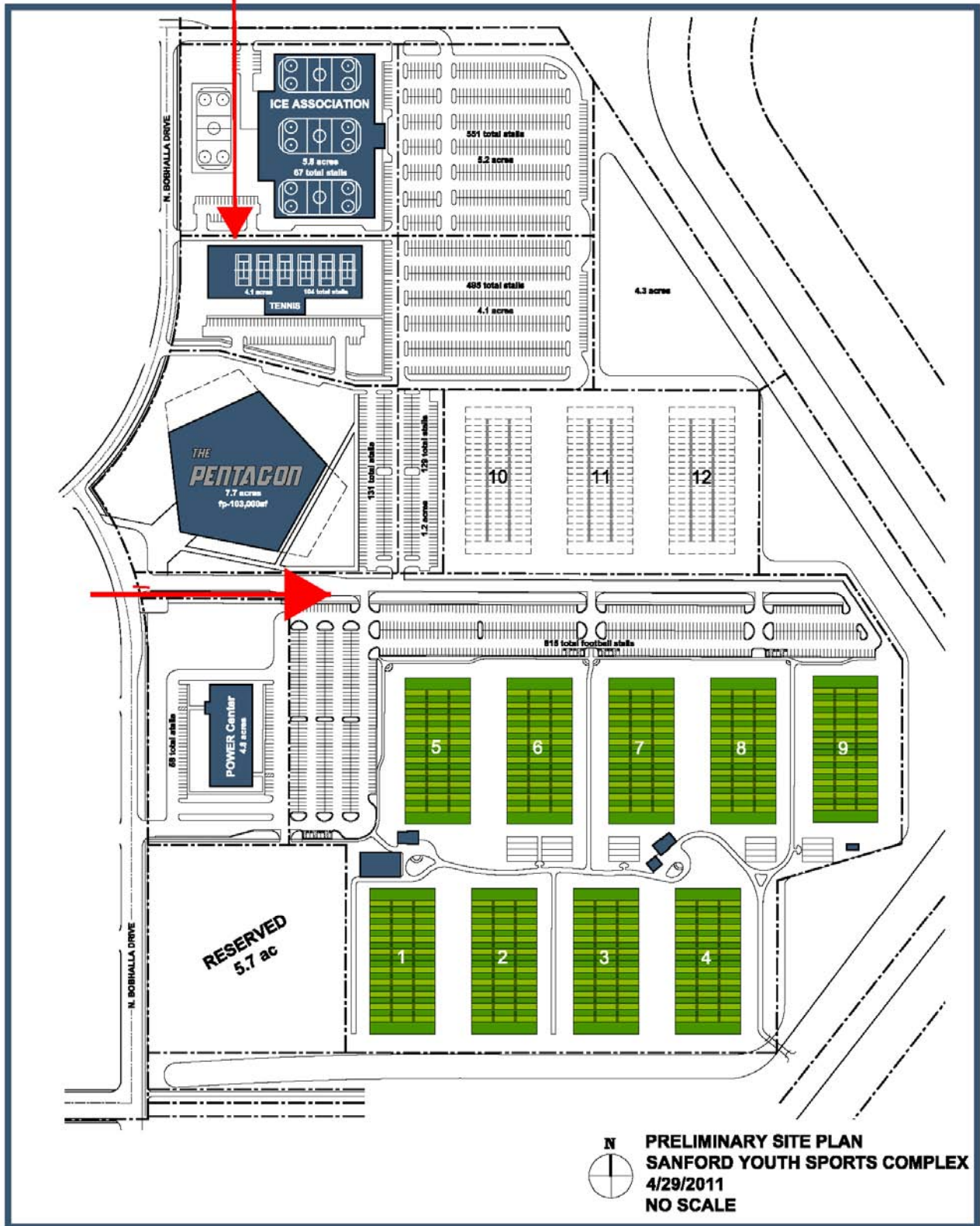
By: \_\_\_\_\_  
Becky Fiala, Vice President

ATTEST:

\_\_\_\_\_  
City Clerk

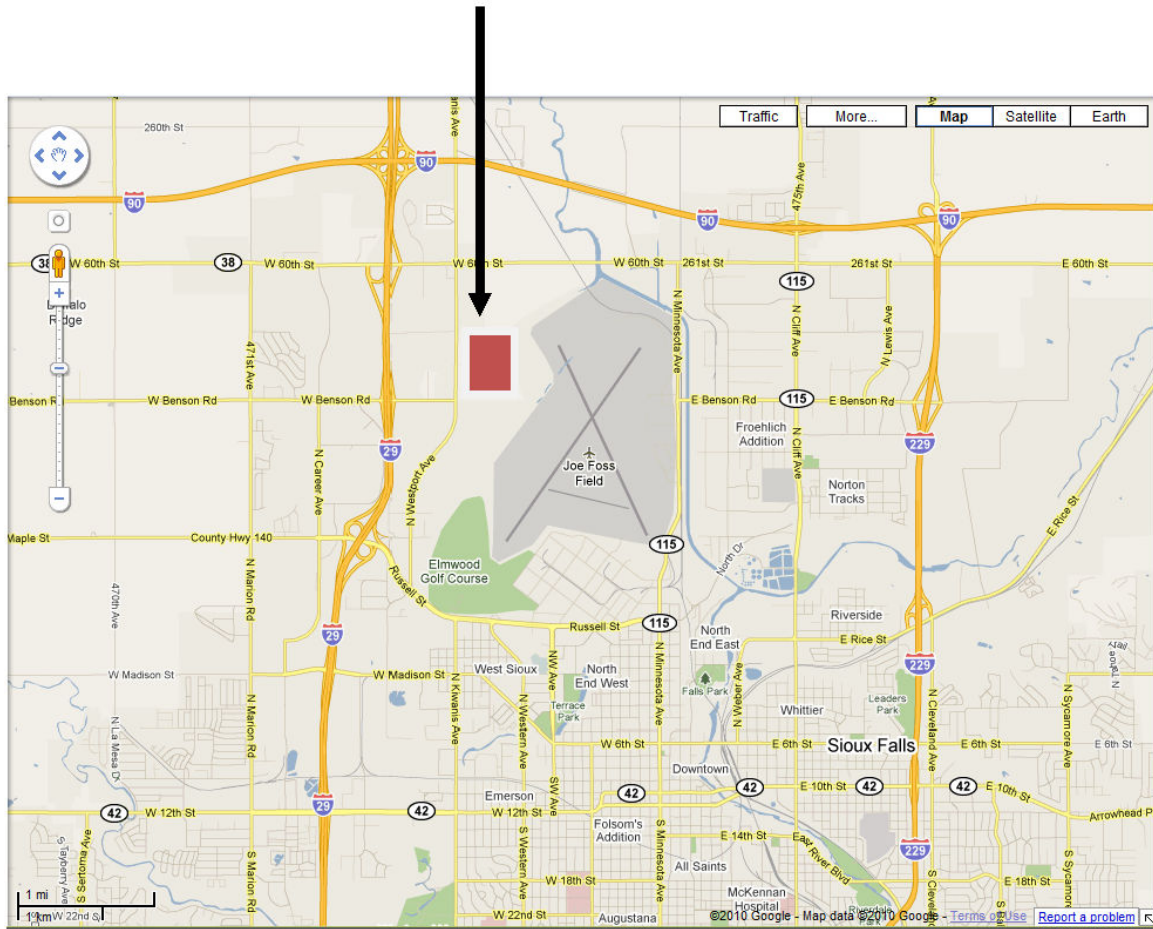


Exhibit "A"



# Exhibit "B"

Location of "Sanford Youth Sports Complex" in Northwest Sioux Falls, SD



## Exhibit C

### GROUND LEASE

THIS GROUND LEASE, made and entered into this 16<sup>th</sup> day of MAY, 2012, by and between SANFORD HEALTH ("Sanford") and COMMUNITY INDOOR TENNIS CENTER, INC. ("CITC") a South Dakota non-profit corporation.

#### WITNESSETH:

1. Premises. Sanford does hereby demise and lease unto CITC and CITC does hereby lease and take from Sanford all of that certain tract or parcel of land situated in the County of Minnehaha and State of South Dakota, described as follows:

Approximately 4 acres of land identified as the Tennis Facility within the Sanford Sports Complex, all of which is depicted on Exhibit A attached hereto and incorporated herein by this reference (the "Leased Premises").

CITC acknowledges that Sanford is in the process of securing all necessary approvals in connection with a survey and plat of the Leased Premises and the parties shall cooperate to take all necessary steps to record said plat on or prior to the Lease Commencement Date (defined below). Once platted, this lease shall be amended to add the legal description for the Leased Premises which shall be set forth on Exhibit B to be attached hereto. Following the Lease Commencement Date, CITC shall pay for any and all fees/expenses associated with platting the Leased Premises, including any and all city assessments/fees associated therewith.

2. Construction of Improvements. It is contemplated that CITC shall construct on the Leased Premises a tennis facility (the "Tennis Facility"), with substantial completion to occur on or before December 31, 2014. The plans and specifications (including the site plan) for the Tennis Facility shall be subject to Sanford's prior approval, which approval shall not be unreasonably withheld. The parties acknowledge and agree that it is contemplated that the Tennis Facility will include seven (7) courts, locker rooms and a mezzanine viewing area.

3. Term. The term of this Ground Lease shall commence one hundred twenty (120) days prior to commencement of construction of the Tennis Facility (or such other date as mutually agreed to by the parties) (the "Lease Commencement Date"), and terminate on December 31, 2043 (the "Initial Term"), subject to any renewals as provided for herein.

4. Renewal Options. Sanford hereby grants CITC two (2) twenty-year renewal options on the Leased Premises (together with the Initial Term, the "Term"). Prior to the expiration of the Initial Term of this Ground Lease or any renewal hereof, CITC shall provide Sanford with ninety (90) days' prior written notice of its intent to renew this Ground Lease.

5. Rental. During the Term of this Ground Lease, CITC shall pay to Sanford rent of One Dollar (\$1.00) per year, payable on the first day of each year of the Term of this Ground Lease against it.

6. Taxes, Assessments, Etc. All real estate taxes and costs assessed against the Leased Premises, including assessments for street, water, storm sewer and sanitary sewer improvements, and surface water drainage and detention made for the benefit of the Leased Premises during the Term of this Ground Lease, excluding such assessments associated with Bobhalla Drive, shall be paid by CITC.

7. Ordinances and Regulations. CITC covenants that during the Term of this Ground Lease in the use of the Leased Premises it will, at its own expense, comply with all valid and materially applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter in any manner affecting the Leased Premises and the Tennis Facility thereon or the use thereof by CITC.

8. Title to the Building. CITC shall at all times during the Term of this Ground Lease have title to the Tennis Facility which CITC constructs, makes or installs in, on or under the Leased Premises. Upon the expiration or termination of this Ground Lease by any cause

whatsoever, title to the Tennis Facility, to the extent located upon the Leased Premises, shall remain vested in CITC, its successors and assigns. If during the Term of this Ground Lease, the Tennis Facility, or any portion thereof, is damaged or destroyed by fire or other casualty whatsoever, CITC shall be entitled to the entire proceeds of all insurance which are payable by reason of such damage or destruction.

9. Liens. CITC will not permit any mechanic's, laborer's, or materialman's liens to stand against the Leased Premises for any labor or material furnished to or for the account of CITC or claimed to have been so furnished in connection with any work performed or claimed to have been performed on the Leased Premises or on the adjoining premises, or both, by or at the direction or acquiescence of CITC; provided, however, that CITC shall have the right to contest the validity or amount of any such liens if CITC shall give reasonable security (not to exceed one time the amount of the lien claim) as may be reasonably demanded by Sanford to ensure payment thereof and to prevent any forfeiture of the Leased Premises by reason of such nonpayment. Upon final determination of such lien action, CITC shall immediately pay any judgment rendered.

10. Indemnification. Except for the negligence or willful misconduct of a party, its agent or employee, each party agrees to indemnify the other and hold it harmless from all claims, loss, damage or injury of any kind or character (including, without limitation, attorneys' fees and costs of defense) to any person or property caused by or arising out of the negligence or willful misconduct of such party.

11. Assignment and Subletting. The parties acknowledge and agree that CITC shall have the right at any time during the Term of this Ground Lease to lease or sublease all or part of the Tennis Facility; provided, however, that CITC may not assign this Ground Lease or transfer its interest in the whole of the Tennis Facility without the prior written consent of Sanford. Any

sublease or lessee of the Tennis Facility shall, at all times, be subject to the terms and conditions contained in this Ground Lease. In addition, any lease or sublease of the Tennis Facility for a term in excess of five (5) days shall be subject to the prior written consent of Sanford. Notwithstanding any lease or sublease permitted herein, nothing herein shall release CITC of any of its obligations contained within this Ground Lease.

Sanford agrees that CITC shall have the right to mortgage the Tennis Facility and to grant security interests in the equipment and fixtures located in the Tennis Facility.

12. Use of Property. CITC shall use the Leased Premises solely as the primary location of CITC's indoor tennis programs in Sioux Falls, South Dakota, primarily benefiting the Sioux Falls Tennis community and for no other purpose. It is understood and agreed that no portion of the Leased Premises shall, at any time, be used, directly or indirectly, by an owner, tenant or any other party for the following uses: (i) operation of a hospital, surgery center, diagnostic imaging center, physician clinic, full-service fitness center, athletic training facility (other than tennis instruction), or other healthcare related uses; (ii) the sale of tobacco or alcohol as a principal business; (iii) the operation of a casino or other gambling establishment as a principal business; (iv) the operation of an establishment engaging in exotic dancing; or (v) the advertisement or sponsorship of any of the foregoing business or operational uses listed in (i) through (iv) above. Notwithstanding subsection (v) above, CITC may (i) post a sign, plaque or other form of recognition to acknowledge all contributors to its fundraising efforts; and (ii) in connection with temporary sponsorships of tennis organizations and other user groups, allow banners, signs and dasher board advertisements identifying clinics that do not provide the same services as Sanford (i.e., traditional dentist, orthodontics, chiropractor, etc.), limited service fitness centers and restaurants. If CITC materially neglects, fails to adhere or otherwise violates

the use restrictions set forth above, Sanford, pursuant to Section 17 below, may elect to terminate this Ground Lease.

13. Maintenance and Upkeep. CITC shall keep and maintain the Leased Premises and the Tennis Facility in good condition and repair, consistent with that of a first class tennis facility and the Tennis Facility's phase of completion, as set forth in Section 2 above.

14. Signage. CITC shall be allowed to install interior and exterior signage on the Leased Premises and the Tennis Facility, which signage shall be consistent with the signage requirements and specifications adopted by Sanford for the Sanford Sports Complex and in accordance with the City of Sioux Falls' ordinances and regulations. All exterior signage will be subject to Sanford's prior approval, which approval shall not be unreasonably withheld.

15. Warranty of Title. Sanford hereby represents, warrants and covenants: (1) that it has good and marketable title to the Leased Premises in fee simple absolute; (2) that the same are free from all encumbrances, liens, or defects in title affecting said Leased Premises, except for easements and covenants of record shown on Exhibit B hereto; and (3) that CITC, upon paying the rents and performing the covenants set forth herein, shall and may peaceably and quietly have, hold and enjoy the Leased Premises and shall have exclusive possession and the sole right to occupy the same for the Term and Primary Purposes hereof.

16. Hazardous Waste. During the Term of this Ground Lease, CITC covenants that it shall comply with all present and future environmental laws, ordinances, rules or regulations, and that CITC shall not permit the generation, creation, treatment, incorporation, discharge, disposal, escape, release or threat of release of any contaminant above, upon, under, within or from the Tennis Facility or the Leased Premises, and that no underground storage tanks containing any contaminant shall be located upon the Leased Premises. Prior to the Term of this Ground Lease, Sanford represents that it has complied with all previous and present environmental laws.

ordinances, rules and regulations, that to the extent of its actual knowledge without independent inquiry, the Leased Premises is free of contaminants, and that Sanford has not during the period of its ownership permitted the generation, creation, treatment, incorporation, discharge, disposal, escape, release or threat of release of any contaminant above, upon, under, within or from the Leased Premises, and that to the extent of its actual knowledge without independent inquiry, no underground storage tanks containing any contaminant were located upon the Leased Premises. For the purposes of this Ground Lease, contaminant shall be defined as any hydraulic fluid, petroleum product or petroleum derivative or mixture, including gasoline and diesel fuel, waste oil, lubricating oil, fuel oil, solvents, paints, enamels, thinners, acetones, acids, pesticides, herbicides, fungicides, mercury, lead, cyanide, polychlorinated biphenyls, asbestos, or any federal, state or locally defined or regulated pollutant or substance, and any corresponding federal, state or local regulations, rules, ordinances or orders promulgated or issued thereunder as well as amendments, deletions or corrections to such laws, orders, ordinances, or regulations.

CITC covenants that it will, at its own expense, abate, remedy and remove any contaminant discovered on the Leased Premises which was located, generated, created, stored, treated, incorporated, discharged, disposed of, allowed to escape, released or about to be released by CITC or its employees or agents. CITC shall indemnify Sanford, without prior payment being made by Sanford, against and shall hold Sanford harmless from any and all claims, demands, judgments, penalties, liabilities, costs, damages and expenses, including court costs and attorneys' fees prior to trial, at trial and on appeal, whether private or mandated by any governmental body, resulting from any breach of the foregoing covenant or from the discovery of a contaminant in, above, upon, across or under the Leased Premises and caused by CITC, its agents or employees.



Sanford covenants that it will, at its own expense, abate, remedy and remove any contaminant discovered on the Leased Premises which was located, generated, created, stored, treated, incorporated, discharged, disposed of, allowed to escape, released or about to be released by Sanford or its employees or agents. Sanford shall indemnify CITC, without prior payment being made by CITC, against and shall hold CITC harmless from any and all claims, demands, judgments, penalties, liabilities, costs, damages and expenses, including court costs and attorneys' fees prior to trial, at trial and on appeal, whether private or mandated by any governmental body, resulting from any breach of the foregoing covenant or from the discovery of a contaminant in, above, upon, across or under the Leased Premises caused by Sanford, its agents or employees.

17. Default. If CITC shall default in the observance or performance of any of CITC's covenants, agreements or obligations hereunder, and if Sanford shall give CITC notice in writing of such default and CITC shall fail to pay such rent or cure such other default within thirty (30) days after the giving of such notice, or if such other default is of such a character as to require more than thirty (30) days within which to cure and CITC shall fail to use reasonable diligence in curing such default, then, and in such event (i) Sanford may, at its option, cure any default at the cost and expense of CITC, and all sums so expended by Sanford shall be deemed to be additional rent and upon demand shall be paid by CITC, and (ii) Sanford, at its option, may declare a forfeiture of this Ground Lease and may thereupon re-enter into possession of the Leased Premises and remove all persons therefrom and collect all rents owing but unpaid for all periods to and including the last day of the month during which Sanford shall obtain possession of the Leased Premises, together with any costs, expenses or damages incurred or suffered as a result of such default, which sums shall thereupon become immediately due and payable.

No right or remedy herein conferred upon Sanford is intended to be exclusive of any other right or remedy, and each right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity. No waiver by Sanford or any breach by CITC hereunder shall be deemed to be a waiver of any subsequent breach nor shall any forbearance by Sanford to seek a remedy for such breach by CITC be deemed a waiver by Sanford of its right and remedy with respect to such breach. Reasonable attorneys' fees and other expenses incurred by Sanford by reason of any default of CITC in complying with any requirement of this Ground Lease shall constitute an additional rental hereunder, payable upon demand with interest thereon at the legal rate per annum until fully satisfied.

Notwithstanding anything contained herein to the contrary, the rights and remedies of Sanford, in the event of a default, may not be exercised until written notice of such default has been given, pursuant to the provisions of Section 21 below, to any lender known by Sanford to have provided financing to CITC for purposes of constructing the Tennis Facility in which said Lender holds a mortgage interest in (together with its successors or assigns, the "Lender"). For purposes of this Section 17 and Section 21 below, Sanford shall be deemed to have knowledge of any Lender for whom a written notice containing said Lender's name and address has been delivered to Sanford by CITC. It is agreed that Lender shall have the right to cure any such default within the time frame and on the terms as provided herein to CITC. Sanford hereby agrees that any such curative action by Lender shall be tantamount to curative action by CITC.

18. Exclusive Sports Medicine Rights. Sanford shall, during the Term of this Lease, be the exclusive provider of sports medicine services at and from the Tennis Facility. Accordingly, CITC shall not (a) enter into an agreement with any other entity to provide rehabilitation services, sports medicine, wellness, physical therapy, and like medical or health

services (collectively, the "Sports/Rehab/Student Health Services") at or from the Tennis Facility, or (b) enter into any services agreement or lease for the provision of healthcare services or products within the Tennis Facility with any person or entity substantially engaged in the provision of healthcare services or products ("Providers"). Further, CITC agrees that Sanford shall have the right of first refusal with respect to any agreement, lease or other arrangement for the provision of any other healthcare services or products. If at any time during the Term of this Ground Lease CITC should receive an offer acceptable to CITC to provide (via agreement, lease or other arrangement) any such services within the Tennis Facility, CITC shall first offer to Sanford the opportunity to provide said services upon identical terms and conditions to those offered by the third-party Provider. Provided, however, that Sanford hereby acknowledges and agrees that other tennis organizations and users of the Tennis Facility may have independent relationships, sponsorships, agreements or other arrangements with other providers for Sports/Rehab/Student Health Services, for other services or with respect to other matters (i.e., teams participating within the Tennis Facility may be sponsored by competing healthcare providers). Such relationships, sponsorships, agreements or other arrangements will not be prohibited or constitute a breach of this Ground Lease as long as said relationships, sponsorships or other arrangements are not endorsed, facilitated or collaborated by CITC. Additionally, the parties hereby agree to work together in good faith to promote the parties' respective athletic skills, strength and conditioning enhancement programs.

19. Parking. CITC shall be responsible for constructing sufficient parking spaces in accordance with the City of Sioux Falls' ordinances and regulations. CITC hereby grants Sanford (or its assigns) a non-exclusive parking easement such that Sanford may utilize CITC's parking area.

20. Right of First Refusal. CITC hereby grants to Sanford an exclusive, irrevocable

right of first refusal to purchase the Tennis Facility, on and subject to the terms contained herein.

During the Term of this Ground Lease, in the event CITC shall receive a bona fide offer to purchase the Tennis Facility, CITC shall give Sanford a right of first refusal to purchase the Tennis Facility. CITC shall send written notice to Sanford by certified mail, specifying the terms of the offer, requiring Sanford to accept the offer in writing and to sign a suitable agreement to purchase the Tennis Facility within the period of ninety (90) days after the mailing of the notice. The failure of Sanford to exercise its first right of refusal within the period provided shall nullify and void the right of Sanford, and CITC shall be at liberty to sell the Tennis Facility to said third-party upon the disclosed terms and conditions. Provided, however, that in the event a third-party purchases the Tennis Facility from CITC during the Term of this Ground Lease, CITC warrants and covenants that that this Ground Lease shall remain in full force and effect and shall be a condition of said purchase agreement.

21. Notices. Wherever in this Ground Lease it shall be required or permitted that payments, notice or demand be given or served, such notice or demand shall be given or served and shall not be deemed to have been duly given or served unless in writing and forwarded by certified mail, postage prepaid, addressed as follows:

To Sanford:	Sanford Health P.O. Box 5039 Sioux Falls, SD 57117-5039 Attn: <u>Eric Larsen</u>
To CITC:	Sioux Falls Tennis Association, Inc. <u>Cindy Muehlen</u> <u>Executive Director SFTTA</u>
To Lender:	_____ _____ _____

Such addresses may be changed from time to time by serving notices as above provided.

22. Successors and Assigns. All of the terms, covenants, provisions and conditions of this Ground Lease shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

23. Memorandum of Ground Lease. The parties hereto covenant and agree that at the request of either party a Memorandum of Ground Lease shall be prepared in form and substance (including, without limitation, the Term and right of first refusal) reasonably satisfactory to each of the parties hereto and shall be executed by each of the parties hereto, in duplicate, such Memorandum of Ground Lease to be filed for record in the office of the Register of Deeds in and for Minnehaha County, South Dakota.

24. Survival of Representations, Warranties and Covenants. The provisions of this Ground Lease shall survive the termination of this Ground Lease.

25. Entire Agreement. This Ground Lease contains the entire agreement of the parties, and no representations, inducements, promises or agreements, oral or otherwise, not embodied herein, shall be of any force or effect.

26. Drafting Presumption. Sanford and CITC agree that they participated in the drafting of this Ground Lease and, in the event that any dispute arises in the interpretation or construction of this Ground Lease, no presumption shall arise that either one party or the other drafted this Ground Lease.

27. Counterparts. This Ground Lease may be executed in several counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall, together, constitute and be one and the same instrument. This Ground Lease may be executed by facsimile, which faxed signature pages shall constitute a binding obligation on all parties hereto.

28. Time of Essence. Time is of the essence hereof in complying with the terms, conditions, representations, warranties, covenants and agreements contained in this Ground Lease.

29. Eminent Domain. In the event of the total or partial taking of the Leased Premises by eminent domain, then in any such condemnation proceeding, Sanford and CITC shall be free to make claim against the condemning or taking authority for the amount of damage done to them, respectively, as a result thereof, in light of the Ground Lease, and to retain their respective rewards.

IN WITNESS WHEREOF, Sanford and CITC have caused this instrument to be duly executed the day and year first above written.

SANFORD HEALTH

By   
Its COO

SIOUX FALLS TENNIS ASSOCIATION, INC.

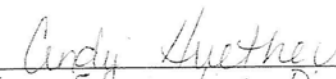
By   
Its Executive Director SFTA

EXHIBIT A

Leased Premises

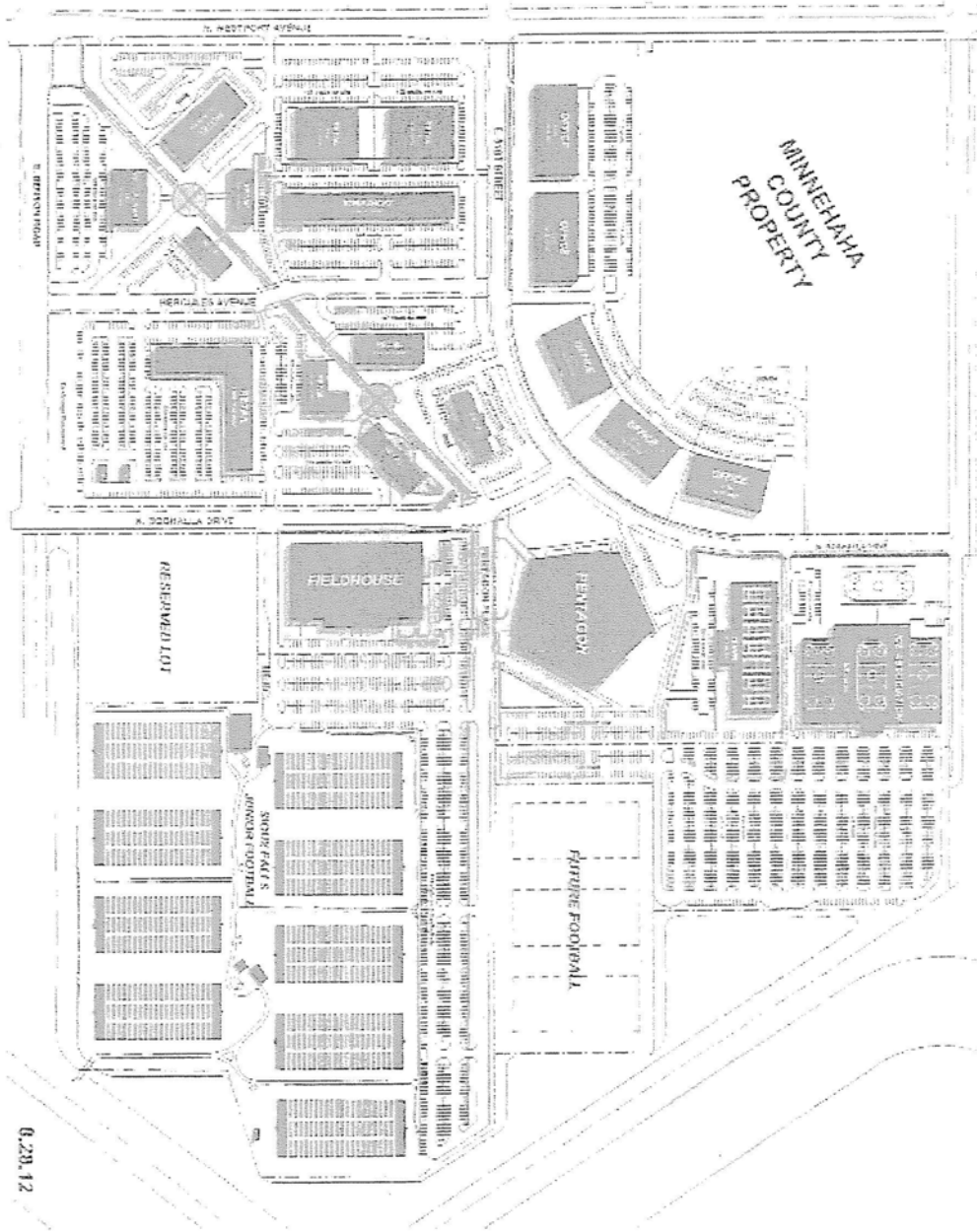


EXHIBIT B

Legal Description



EXHIBIT C

Easements and Covenants of Record

## Exhibit D

### Capital Improvement Plan Funding Estimate

The parties acknowledge that the below list is not completed at the time of execution of the Agreement. As further items become known, this Exhibit E will be updated by SFTA and SFTA agrees to copy City with an updated itemization prior to purchase of the equipment. Such items will need preapproval from the City before CIP funds will be disbursed to SFTA.

		<u>RANGE</u>
HVAC Equipment	\$270,000	\$275,000
Electrical Fixtures	\$130,000	\$140,000
Lockers and Benches	\$18,000	\$20,000
FF&E		
Furnishings	\$33,000	\$40,000
Computers/Office Equipment	\$12,000	\$15,000
Tennis Equipment	\$15,000	\$18,000
Sweeper	<u>\$22,000</u>	<u>\$24,000</u>
<b>Funding Estimate Range</b>	<b>\$500,000</b>	<b>\$532,000</b>

# Exhibit E

CITC  
PO Box 84627  
Sioux Falls, SD 57118  
Tel (605)336-9396  
www.sfindoortennis.net



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## COMMUNITY INDOOR TENNIS HOURS OF OPERATION

### PROJECTED HOURS

#### **Winter schedule (36 weeks)**

Monday – Friday 7am-10pm

Saturday 7am- 9pm

Sunday 9am- 8pm

#### **Summer schedule (16 weeks)**

Monday – Thursday 7am-10pm

Friday 7am- 7pm

Saturday 7am- 5pm

Sunday Noon- 6pm

### TENNIS COURT UTILIZATION

Court time in a tennis center is divided into primetime and non primetime.

Non prime time is very difficult to fill to capacity. There will always be more court supply than court demand.

These times are:

#### Weekdays

Opening to 9:00am

1:00 pm- 3:30 pm

9:00pm to close

#### Weekends

##### Saturday

7:00-9:00 am

4:00pm to close

##### Sunday

Opening to noon

Unless there is a special event scheduled, the public should never have difficulty obtaining a court during these times.

Non prime time represents approximately 40% of all court time where access to public should be guaranteed on a routine basis. The tennis center is projected to be open roughly 110 hours per week in the winter season.

The remainder of the time is prime time. Prime time should be filled when the tennis center matures. This will be filled with open court time available for rent, permanent court time, drills for adults and youth, mixers, social tennis events, and league matches. These times/events are available to the public but members will have first priority.

A typical weekday during prime time in the winter would be:

Monday – Friday

4:00pm- 6:00pm 5 courts youth lessons and 2 courts open for players to sign up for

6:00pm- 8:00pm 3-4 courts for lesson programs and 3-4 courts open for players to sign up for

8:00pm- close League play on 5 courts

The majority of prime time activity would be used by members.

Special events are necessary to serve the larger community and be of service to members,

College matches for South Dakota schools would be held on down time- late Saturday afternoons and evenings. High schools would use the days during inclement weather and if available. The tennis center could host sectional playoffs and the state tournament if so asked.

Tournaments are valuable for players and bring dollars into the community. They would take most courts when held on weekends. They would try to be scheduled during slower weeks. For example, over spring break. The best guess is 10 tournaments per year would be a good balance.

The best estimate is 80-90% of the hours of operation would be business as usual. Programs and play for the community. Not more than 20% of the time would be for outside activities with many of those filling non prime time.

There are approximately 17,000 court hours available during the winter and 8,500 court hours available during the summer on six courts for a total of 25,000 available public rentable hours. Achieving court utilization rates above 50-60% is not realistic when considering all of the down time early morning, later in the evening, and daytime during the school year when so many people are now working in our society.

There would be 2,700 winter hours and 1,300 hours summer hours available on the single teaching court for a total of 4,000 hours. These lessons will be made available to the general public. It is understood that sometimes more than one court would be taken for lessons and that sometimes courts would be used for tournaments, school matches, and special events.

Serious investigation should be given to the honor system for entry for members who want play at different times. Various card reader systems make this possible.