

**EXCLUSIVE NEGOTIATING AGREEMENT
(Pembroke Recreational Complex)**

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Art. 1 Parties and Definitions.

This Agreement is by and between the following parties and involves the following terms:

City	City of Reno, a municipal corporation One East First Street Reno, Nevada, 89501 Authorized Contact: Director of Parks Department
Sports Developer	Rosewood Lakes Sports Village L.L.C., a California Limited Liability Company, and affiliates. 10824 Olson Dr. Suite C-216 Rancho Cordova, CA 95670 Authorized Representative: Gary Powers, Principal
Property	See Exhibit A
Project	Pembroke Recreational Complex, a possible development of the Property into a sports complex including a preliminary program of: <ul style="list-style-type: none"> • A nine hole golf course, clubhouse, driving range, two hole golf academy training zone and pitch/putt practice green and traps; • 11 natural turf baseball fields with bleacher facilities • 4 natural turf soccer fields with bleacher facilities, • a field house, restaurant facility, restrooms, paved parking all sufficient to accommodate tournaments, • solar panels covering parking lot • a 100,000 square foot data center.
Term of Agreement	This Agreement commences on execution and terminates 180 calendar days afterward unless extended under §5.01.c or sooner terminated as provided in § 7.02. Time is of the essence; both parties shall proceed in an expeditious manner to reach terms of agreement.

Art. 2 Recitals

A. The City of Reno (“City”) owns the Property and desires to develop it into a recreational complex which will include multiple competition sports fields and tournament space, with the entire Project designed and marketed to attract sports enthusiasts from throughout the western US region, thus generating an economic boost for the region as well as recreational facilities for local use.

B. City issued a request for qualifications seeking a qualified developer and operator for the Project and Rosewood Lakes Sports Village, L.L.C (“Sports Developer”) was selected as the most qualified candidate. Principals of Sports Developer include local sport experts and coaches, local and regional sports league officials, local and regional tournament organizers, local engineers, and sports facility developers. Sports Developer, its principals and their affiliates have built several large sports facilities in California and Arizona and for years have frequently sponsored regional sports tournaments in the Reno, Sparks and Carson City area that have brought thousands of players and hundreds of room nights and economic stimulus to the area.

C. To induce Sports Developer to expend time, money and effort in developing the proposal, City desires to enter into an exclusive negotiating agreement.

NOW THEREFORE, in exchange for the mutual covenants, burdens and benefits expressed herein, the parties agree as follows.

Art. 3 EXCLUSIVE NEGOTIATIONS; SCHEDULE.

§ 3.01 *Exclusive negotiations between City and Sports Developer*

a. For the term of this Agreement, City agrees to negotiate exclusively with Sports Developer, except as approved by Sports Developer, with respect to (i) the transfer, lease or other disposition of the Property; (ii) any proposal to develop the property; (iii) any special events to be conducted on the property; and (iv) the terms of any development agreement involving the Property (hereafter "Exclusive Matters")

b. For the term of this Agreement, Sports Developer agrees to negotiate exclusively with City with respect to all Exclusive Matters defined above, except as permitted by City.

§3.02 *Specific Duties and limitations.*

a. Except as approved by City, Sports Developer shall not (i) initiate negotiations

with or (ii) offer any incentives to any local business to relocate from any location in Reno to the Property, provided, however, that approval shall not be unreasonably withheld for pre-leasing of the proposed data center with existing clients of Sports Developer.

b. Each party shall pay all of its own expenses in the performance of this Agreement. Other than salaries of persons involved in these negotiations and normal office expenses, City has not appropriated any funds for activities under this Agreement.

c. It is understood that City staff does not have the authority to obligate or bind the City or the City Council to any approval or undertaking and neither party may rely on any implied or express representations, statements or positions until a definitive agreement is approved by the City Council in its sole discretion.

d. The City Council is a public body and its decisions regarding the use of public lands are legislative functions subject to public hearings and input, and City shall have sole and absolute discretion to approve or disapprove any matter submitted to it for any reason. If City disapproves a submittal or places conditions on it that are not acceptable to Sports Developer, Sports Developer's sole remedy is to terminate this Agreement, and City shall have no further liability to Sports Developer.

e. The parties agree to meet at least once each calendar month and to respond to phone calls, emails or requests for information within ten days. The parties agree to meet with each other's consultants, architects, engineers, financiers and investors within ten days from being requested.

f. If a party provides information that is subsequently changed or becomes out of date, the provider shall disclose the updated information.

§3.03 Project Schedule

The parties contemplate the following overall project schedule.

	Reference	Event	Time Period Goal
a.		Approval of this Agreement	Sep 31, 2017
b.		Planning Workshops and Community Input, Due Diligence, and Preliminary Environmental Engineering.	Oct 2017 – Feb 2018
c.		Definitive Agreement Negotiated and Approved	Feb 2018 – Apr 2018
d.		Planning & Preliminary Design	Apr 2018 – Jun 2018

e.		Design Development	Jun 2018 – Aug 2018
f.		Construction Documents	Aug 2018 – Dec 2018
g		Pricing and Value Engineering	Dec 2018 – Jan 2019
h		Construction	Feb 2019 – Apr 2020
i		Construction Closeout and Start up	May 2020 – Jun 2020
j		Soft Opening & Ribbon Cutting	Jun 2020
k		First Full Operational Season	Summer 2020 – Spring 2021
l		Evaluation and Operational Refinement.	July 2021

Art. 4 PLANNING WORKSHOPS, PUBLIC INPUT, DUE DILIGENCE AND PRELIMINARY ENGINEERING

§4.01 General

During this phase, the parties will obtain community input, conduct preliminary site inspections and engineering and complete a feasibility analysis which can form the basis of a definitive agreement.

§4.02 Planning Workshops and Community Input

a. Neighborhood Advisory Board. The parties shall meet with the Neighborhood Advisory Board for the area to present the conceptual nature of the Project and seek input and comments regarding site design and contents. Upon the completion of the documents set out in §4.05.b a second meeting will be scheduled with the Neighborhood Advisory Board to discuss them. The Neighborhood Advisory Board shall be advised of the date of the public hearing before the City Council as set out in §5.01.

b. Sports Organizations. Sports Developer shall confer with at least one local organization involved in the conduct of soccer, baseball, softball, and golf events to present the conceptual nature of the Project and seek input and comments regarding site design and contents. Upon the completion of the documents set out in §4.05.b a second meeting will be scheduled with the sports organization to discuss them, and shall advise the organization of the date of the public hearing before the City Council as set out in §5.01.

c. Recreation and Parks Commission. The parties shall meet with the Recreation and Parks Commission to present the conceptual nature of the Project and seek input and comments. Upon the completion of the documents specified in §4.05.b, a second meeting will be scheduled with the Recreation and Parks Commission to discuss them and obtain a recommendation for the City Council

d. Homeowners Associations. Homeowners associations for subdivisions that are within the vicinity of the Project shall be notified of the Neighborhood Advisory Board meetings and invited to attend, and, if requested, Sports Developer shall attend a meeting of any homeowners' association in the vicinity of the Project.

e. One sole entity (Parks and Recreation Commission, Homeowners Associations, or Sports Organizations, Neighborhood Advisory Boards) shall not carry the weight of veto power for the project. Only the City Council can decide whether or not to enter into a definitive agreement in its sole and absolute discretion.

§4.03 *Due Diligence*

a. At its expense, Sports Developer will conduct to its satisfaction all building inspections, environmental inspections, geotechnical and soils inspections, flood zone investigations, and records inspections. City shall cooperate by permitting Sports Developer access to the Property and records.

b. City shall review the financial condition and experience of Sports Developer and the persons and entities that will be performing services in connection with the proposed Project. Sports Developer shall cooperate with all inspections and investigations.

c. The parties shall assemble and evaluate marketing information and identify possible uses of the sports complex including regional tournaments and events to be conducted by Sports Developer and the scheduling of the use of the complex by local sports organizations and the general public.

§4.04 *Preliminary engineering and feasibility analysis.*

a. General. Sports Developer shall provide, at its own expense, the following documents or information.

b. For general distribution. The following documents shall be presented to the entities listed in §4.02 and the City Council in connection with the proposal for a definitive agreement under §5.01:

(1) Site Plan. A rough site plan showing the location, size and use of all improvements to be constructed on the Property, including (i) the proposed location and size of each athletic facility and other facilities; (ii) preliminary renderings showing the architectural style of the Project; and (iii) information about the flood zones and how the facilities will be integrated.

(2) Project Program Description. A description of how the golf course and athletic fields will be used and scheduled, what programs will be offered; how tournaments will be scheduled.

(3) Schedule. An update to the proposed schedule set out in §3.03.

(4) Economic/ marketing study and plan. An economic development/market report showing the expected use of the facilities by local and out of town persons, projected economic impact including room nights, and projected employment to be generated by the project.

c. For limited distribution. While they will be public documents available upon request when completed, the following documents/information shall be prepared for the City Council for consideration with respect to the Definitive Agreement:

(1) Construction Budget. An engineer's estimate of the cost of construction; sources and uses of construction funds.

(2) Project Pro Formas. A three year pro forma for the Project including sources and uses of funds.

(3) Financing Plans. Information about how construction and operation financing, including investors and providers of funds and how they will be repaid.

§4.05 Appraisal

Before the City Council can agree on a sale or rental price, an appraisal shall be conducted at by an independent appraiser in accordance with NRS 268.059 for the property being sold or leased. Sports Developer shall reimburse City for the cost of the appraisal(s).

Article 5 DEFINITIVE AGREEMENT AND FOLLOW UP STUDIES AND INFORMATION.

§5.01 Public hearing and approval by City Council.

- a. As provided in §4.02, prior to presentation to the City Council, the documents listed in §4.05.b shall be discussed with Neighborhood Advisory Boards, sports organizations the Recreation and Parks Commission, and neighboring Homeowners' Associations.
- b. After completing the foregoing, the parties agree to negotiate a draft term sheet or a definitive agreement and present it to the City Council for approval at a public hearing.
- c. If a draft of a term sheet or definitive agreement has been prepared, the termination date of this agreement is automatically extended until it is considered by the City Council.
- d. It is contemplated that the sale or lease of the Property to the Sports Developer will be accomplished without first offering the Property to the public, and at a price below its market or lease value as authorized by NRS 268.063, it being the City Council's sole discretion to authorize such a sale or lease.

§5.02 Follow up information and documents.

- a. To avoid premature or unnecessary cost of some due diligence and engineering items, some documents and reports have been deferred to make sure they will be relevant to the project as contemplated under the definitive agreement. Accordingly, the following items have been deferred to being provided during the "Preliminary Environmental Engineering" phase of the Project or as otherwise provided for in the definitive agreement.
- b. Survey and Parcel Map. As needed to accommodate any approved sale or lease of the portions of the Property, a survey and Parcel Map shall be prepared at Sports Developer's expense. Sports developer shall be the applicant for approval of the Parcel Map and City shall execute an owner's affidavit. Approval of the parcel map shall be in City's sole legislative or administrative discretion in accordance with the City's Land Development Code. No obligation to approve the survey or parcel map is implied by this or the Definitive Agreement.
- c. Information about service providers. Sports Developer shall provide:
 - (i) A listing of the service providers, including who will construct the Project, who will operate the facilities, who will schedule and run tournaments; who will operate the concessions.

- (ii) Proposed contractual arrangements with service providers.
- (iii) Qualifications of service providers.
- (iv) Organizational documents of service providers.
- (v) Financial information and capabilities of service providers.

d. Traffic Study. Sports Developer shall provide a traffic study based on uses anticipated in the approved definitive agreement.

e. Noise and Light Study. Sports Developer shall provide a noise and light study based on uses anticipated in the approved definitive agreement.

f. Lender and Investor Information. As requested by City, Sports Developer shall provide information regarding potential lenders and investors in the Project, to include the names, level of commitment to the project at the time, the financial capacity to fund their loan or investment, and any terms of the loan or investment.

g. Follow up or additional information. Sports Developer shall provide follow up or additional information requested by City, and City shall provide information from its records as requested.

Art. 6 WARRANTIES AND REPRESENTATIONS.

§6.01 By City:

a. City represents, warrants and agrees:

(1) That the City has the authority to enter into this Agreement.

(2) That (i) entering into this Agreement does not violate any contract, court order, administrative order or other undertaking; (ii) that City has complete authority to enter into this Agreement without obtaining any court order or permission or agreement of another party; (iii) to the best of City's knowledge, there are no suits, other proceedings or investigations pending or threatened against City that City reasonably believes would prevent City from performing its duties and obligations hereunder.

§6.02 ***By Sports Developer.***

a. Sports Developer warrants and represents:

(1) That Sports Developer is and shall be during the term of this agreement duly and validly organized and existing in good standing as a limited liability company in the state of California and has all requisite power and authority to enter into and perform its obligations under this Agreement; and that all necessary actions have been taken under Sports Developer's operating agreement to authorize entering into this Agreement and bind Sports Developer to it and all obligations to accomplish the purposes stated herein.

(2) That during the term of this Agreement, (i) entering into or performing under this Agreement does not violate any contract, court order, administrative order or other undertaking; (ii) that Sports Developer has complete authority to enter into this Agreement without obtaining any court order or permission or agreement of another party; (iii) to the best of Sports Developer's knowledge, there are no suits, other proceedings or investigations pending or threatened against Sports Developer that Sports Developer reasonably believes would prevent Sports Developer from performing its duties and obligations hereunder or would have a material adverse effect on the financial condition of the Sports Developer.

(3) That as of the date hereof, and continuously throughout the term of this Agreement, that except as specifically disclosed to and approved in writing by the City Council, no employee, officer, member of the City, no consultant who is providing consulting to the City with respect to the Project, and no person related (within the third degree of consanguinity) to any such person: (i) now is or will be permitted to become a member of Sports Developer; or (ii) now has or will be permitted to have any contractual relationship with Sports Developer (except if jointly employed by City and Sports Developer); or (iii) now has or ever will have any direct or indirect pecuniary or other interest in this Agreement; or (iv) has been paid or given, and will not be paid or given any money or other consideration for obtaining this Agreement; or (v) now has or will be permitted to own or have any interest, direct or indirect, in the Project.

(4) That except as otherwise disclosed to City, neither Sports Developer nor any person who will perform duties hereunder has been convicted of or had a civil judgment entered against him or her of fraud, misrepresentation, embezzlement, theft, obtaining money under false pretenses, violations of disclosure requirements required by federal or state securities laws, or violation of any law designed to protect the environment. This is a continuing warranty and representation throughout the term of this Agreement.

§6.03 *Representations by persons who sign this document.*

Each person who executes this Agreement warrants and represents to the other that he or she has taken all steps to obtain and does in fact have actual authority to execute this Agreement and bind his or her City, Agency or company, as applicable, to all of the provisions herein.

Art. 7 **TERM OF AGREEMENT; DUTIES UPON TERMINATION;
DEFAULT AND REMEDIES.**

§7.01 *Termination by Expiration.*

Unless sooner terminated in accordance with §7.02 or §7.04, this Agreement expires the date specified in Article 1 above unless extended by mutual agreement of the parties or under §5.01.c above.

§7.02 *Early Termination.*

- a. Sports Developer may, in Sports Developer's sole and absolute discretion, terminate this Agreement at any time for any reason or no reason at all without any liability to City, except as provided in §7.03 below.
- b. If it is reasonably determined that any material term of this agreement or the proposed definitive agreement cannot be accomplished under Nevada law, including, but not limited to NRS 268.063, this Agreement may be terminated.
- c. Upon default of this Agreement, the non-defaulting party may terminate this Agreement and pursue available remedies, as provided below.

§7.03 *Duties upon termination.*

- a. When this Agreement expires or is terminated, the parties agree as follows (and this provision survives the termination of this Agreement):
- b. Sports Developer shall return to City all property of the City (including a copy of materials jointly owned and not previously distributed to City) in the possession of Sports Developer or any of Sports Developer's agents or contractors, and all materials furnished to Sports Developer.
- c. City shall return to Sports Developer all materials submitted to City and all property of Sports Developer (including a copy of materials jointly owned and not previously distributed to Sports Developer) in the possession of City or any of their agents or contractors.

§7.04 *Default, remedies*

a. Excuse due to Force Majeure.

1. Except as provided elsewhere herein, if a "force majeure" makes performance of an obligation or cure of a breach or default impossible, such performance or cure is excused for the duration of the force majeure provided that the obligated party (i) within a reasonable time after the commencement of the force majeure notifies the other party of the nature of the force majeure, when it commenced, why it makes performance or cure impossible, and the expected duration (if known), and (ii) agrees to and does in fact diligently pursue remediation of the effects of the force majeure, and (iii) agrees to notify the other party immediately when it becomes possible to commence efforts to cure the default.

2. A "force majeure" is defined as (i) without the fault of and beyond the reasonable control of the obligated party, a war; insurrection; riot; flood; earthquake; fire; casualty; act of God; act of a public enemy; failure of power system or public infrastructure, quarantine restriction or other effect of epidemic or disease; freight embargo; weather-caused delay; lack of transportation attributable to any of these; (ii) labor strikes, boycotts or picketing (unless the labor action is taken because of a violation of the prevailing wage provisions in this Agreement, if any); (iii) a lawsuit challenging the validity or approval of this Agreement if an order is entered prohibiting performance by the obligated party, and so long as the obligated party defends such lawsuit with reasonable diligence; (iv) provided, however, that if the breach or default is the failure to pay money, the force majeure must actually prevent access to or payment from a bank account or payment mechanism, such as during a banking holiday, moratorium, or sabotage of wire or automated transfer systems. A force majeure does not include economic or market conditions, or the financial condition of a party even if they are influenced by any of the foregoing.

3. A force majeure is deemed to cease for purposes of this Agreement and a party is deemed to be in breach of an obligation or cure when it becomes possible for the obligated party to commence to perform the obligation or cure.

b. Default.

Subject to §7.04 (a), a default occurs when (i) any representation of a material fact expressed herein was false at the time it was made, or, if a continuing representation, becomes false as a result of a subsequent event or occurrence; (ii) any warranty made herein is breached at the time made or, if a continuing warranty, is breached as a result of a subsequent event or occurrence; (iii) any party repudiates, breaches or fails to perform

any covenant, material term or provision in this Agreement; (iv) an event required to occur does not occur by the time required; or (v) an event described in this Agreement as a default or which gives rise to a right of termination occurs.

c. Notice and opportunity to cure.

Upon a default, the non-defaulting party shall give notice and an opportunity to cure the default for a period of ten business days from the date that the notice is deemed received.

d. Remedies for default by City.

In the event of a default by City which is not cured within the time provided above Sports Developer may, in addition to any other remedy stated in this Agreement: (i) suspend any counter-performance due hereunder; (ii) terminate this Agreement; and/or (iii) if City's default has resulted in damages to Sports Developer, file an action in the Second Judicial District Court for the State of Nevada for damages.

e. Remedies for default by Sports Developer

In the event of a default by Sports Developer which is not cured within the time provided above City may (i) suspend any counter-performance due hereunder; (ii) terminate this Agreement; and/or (iii) if Sports Developer's default has resulted in damages to City, file an action in the Second Judicial District Court for the State of Nevada for damages.

f. Cumulative Remedies.

All remedies stated in this Agreement are cumulative with each other and with any remedy afforded in law or equity. The election of any remedy does not constitute a waiver of any other remedy.

g. Waivers.

Any forbearance, inaction, or failure to promptly pursue any remedy (whether intentional or negligent) shall not be deemed a waiver of any default or remedy. Waivers must be expressed in writing signed by the waiving party, and a waiver of a default is limited to the specific default identified in the written waiver and does not constitute a course of dealing or implication that similar defaults will be waived in the future.

**Art 8. RELATIONSHIP OF PARTIES; INDEMNIFICATIONS;
INSURANCE**

§8.01 Relationship of parties.

Neither party is the agent of the other and neither party may make representations, undertakings or agreements which are binding on the other. Nothing in this Agreement or the performance thereof shall be construed as creating or implying a joint venture, partnership or other arrangement which imposes an agency or fiduciary relationship.

§8.02 Indemnifications

a. By Sports Developer To the fullest extent permitted by law, Sports Developer shall indemnify, hold harmless and defend the indemnified parties from and against all liability arising out of the administration of this Agreement and caused in whole or in part by an act or omission of Sports Developer or a related party. "Indemnified parties" includes the other parties to this Agreement and their related parties. "Arising out of the administration of this Agreement" means the performance of any task, responsibility or right contemplated under this Agreement including negotiations with property owners, any travel and any site visits.

b. By City. To the fullest extent provided by law, and subject to the conditions, limitations and immunities contained in NRS 41.0305 through NRS 41.039, as amended from time to time, City shall indemnify, hold harmless and defend the indemnified parties from and against all liability arising out of the administration of this Agreement and caused in whole or in part by an act or omission of the City or a related party. "Indemnified parties" includes Sports Developer and its related parties. "Arising out of the administration of this Agreement" does not include any legislative or administrative acts of discretion by City or a related party in connection with the exercise of police powers or regulatory powers over land use planning.

c. Definitions. "Liability" means all third party claims, actions, damages, losses, judgments, injuries, costs and expenses, including but not limited to attorneys' fees and costs, including those related to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (including the loss of use resulting therefrom) and other economic damages. "An act or omission" includes any act, negligence, or omission and any act which is in breach of this Agreement. A "related party" includes all officers, employees, agents, contractors and subcontractors of the party who are acting within the scope of their assigned and lawful duties, as well as anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

d. Limitations and Conditions The current laws of Nevada limiting liability due to comparative or contributory negligence shall apply. The obligations of each indemnifying party hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section. The indemnification shall not be diminished or limited in any way to the total limits of insurance required in this contract or otherwise available to the indemnifying party. If the liability is asserted by an employee of an indemnifying party, the indemnification herein is not limited to damages, compensation or benefits payable by or for the indemnifying party under worker's compensation acts, disability benefit acts or other employee benefit acts. Each indemnifying party shall be permitted to participate, if it chooses, in the defense of any action claiming liability, even if the indemnified party is indemnified hereunder. Either party may set off any of its rights under this subsection against any consideration it provides under this Agreement. The obligations to indemnify and save harmless herein survive the expiration or termination of this Agreement with respect to any act or omission which occurred before expiration or early termination.

§8.03 Insurance.

a. Industrial Insurance. It is understood and agreed that there shall be no worker's compensation or industrial insurance coverage provided by City or Agency for Sports Developer or any related party as that term is defined in §8.02(d). Sports Developer shall provide all industrial insurance required by Nevada law, and, if requested, shall provide a certificate issued by an insurer in accordance with NRS 616B.627 and with a certificate of an insurer showing coverage pursuant to NRS 617.210.

b. Other Insurance. Sports Developer shall insure itself with general liability and automobile insurance consistent with sound management practices in the industry and as may be required by law. If requested, Sports Developer shall provide certificates of insurance.

Art. 9 GENERAL TERMS.

§9.01 No Assignment; binding effect.

No party may assign or delegate any obligations or rights under this Agreement without the consent of the other party which may be withheld in its sole discretion. This Agreement shall be binding on and inure to the benefit of any permitted assignee of the parties.

§9.02 No Third-Party Beneficiaries.

None of the provisions of this Agreement is intended to make any person who is

not a party to this Agreement a third party beneficiary hereunder or to authorize anyone who is not a party to this Agreement to maintain any suit pursuant to this Agreement for any reason, including, without limitation, any suit for personal injuries or property damage.

§9.03 *Further acts and assurances.*

Each party agrees to do such further acts and things and to execute and deliver to the other such additional certificates, documents and instruments as the other may reasonably require or deem advisable to carry into effect the purposes of this Agreement or to better assure and confirm unto the other party its rights, powers, and remedies hereunder.

§9.04 *Severability.*

a. Each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law, taking into account permissible waivers or provisions which may be upon agreement of the parties. If any term or provision of this Agreement or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this Agreement and the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

b. To prevent windfall or unintended consideration, if any term or provision of this Agreement is deemed invalid or unenforceable or enforceable only to a limited extent, the parties agree to negotiate in good faith to adjust any counter-performance, condition, or corresponding consideration.

§9.05 *Governing Law*

This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada.

§9.06 *Counterparts.*

This Agreement may be executed in one or more counterparts, each of which shall be regarded as an original and all of which shall constitute the same Agreement.

§9.07 *Notices and deliveries.*

a. Except as otherwise provided herein, all notices, demands, instructions, deliveries

and other communications required or permitted to be given upon any party hereto shall be in writing and shall be delivered to the mailing addresses indicated in Article 1 above or to any subsequent address given in writing to the delivering party, and shall be deemed delivered upon the earlier of:

- (1) Regardless of the method of delivery, when actually delivered to or received by the addressee, or
- (2) If delivered or sent by registered or certified mail, postage prepaid, three business days after delivery to the U.S. Post Office, as indicated on the receipt issued by the U.S. Post Office;
- (3) If sent by recognized overnight courier or delivery service (Federal Express, UPS Overnight) when actually delivered to the location specified above, as indicated on the receipt; or
- (4) If sent by electronic mail (provided a copy is also sent by U.S. Mail), when actually recorded as sent by the sender's electronic records.

§9.08 *Attorney's fees.*

Each party shall bear its own attorney's fees regardless of the outcome of any proceeding brought to enforce or interpret this Agreement. Costs of the proceeding, however, may be awarded as deemed appropriate under the circumstances by the presiding judge.

§9.09 *Construction; time for performance; holidays; weekends.*

- a. Titles and headlines of this Agreement are intended for editorial convenience and are not to be construed as a part of this Agreement.
- b. The word "include" or "including" is not intended as a limitation and shall be construed to include the words "but not limited to."
- c. Any reference to the masculine genders includes, where appropriate in the context, the feminine gender. Any term in the singular includes, where appropriate in the context, the plural.
- d. The parties hereto were each advised by counsel in drafting and negotiating this Agreement, and all parties contributed to its contents. No presumptions against or in favor of either party are appropriate based on who drafted this Agreement or any provision herein. This Agreement shall be interpreted and enforced only to the extent permitted by law. If any provision of this Agreement is deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining

provisions hereof that can be given effect without the invalid or unenforceable provision and the parties agree to replace such invalid or unenforceable provision with a valid provision which has, as nearly as possible, the same effect.

e. Time is of the essence with respect to all of the provisions herein. If a period of time for performance is specified in terms of days, it means calendar days unless otherwise specified. If, however, a time period for performance expires on a weekend or a holiday recognized in NRS 236.015 then the time for performance is extended to 5 p.m. on the next business day for the City.

§9.10 Authority to administer agreement.

Except as otherwise specifically provided herein, the “Authorized Contact” specified above for City has the authority to negotiate and execute any approvals, waivers, modifications, amendments, and acceptances of performance under this Agreement, EXCEPT approval of commitments by the City to expend more \$24,999.00 which must be approved by the City Council.

§9.11 Entire Agreement; modifications.

a. This Agreement, including the recitals and exhibits hereto, constitutes the entire agreement of the parties hereto. All statements, representations, promises, undertakings made by any party or any contractor, employee or agent of either party not expressly contained herein is hereby superseded by this Agreement.

b. This Agreement may be modified by the parties hereto but only by a written instrument signed by the party to be bound.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the dates indicated below.

Sports Developer

Rosewood Lakes Sports Village L.L.C., a California Limited Liability Company.

By _____
Gary Powers, Principal

Date _____

City
City of Reno, a Municipal Corporation

By _____
Hillary Schieve, Mayor

Date _____

Attest:

By _____
City Clerk

Date _____