

## **AGREEMENT REGARDING WOODS PARK TENNIS CENTER**

This Agreement ("Agreement") is made and entered into on the dates provided below by and between LANCASTER COUNTY SCHOOL DISTRICT 001, a political subdivision, commonly known as Lincoln Public Schools ("LPS"), CITY OF LINCOLN, NEBRASKA, a municipal corporation, on behalf of the Lincoln Parks and Recreation Department ("City"), and FRIENDS OF WOODS TENNIS, INC., a Nebraska nonprofit corporation ("FOWT").

WHEREAS, Lancaster County School District 001 is a political subdivision and a Class IV school district that provides educational and extracurricular activities for school age children in the City of Lincoln.

WHEREAS, Lincoln Parks and Recreation Department is a department of the City of Lincoln that provides and maintains quality parks and offers enriching recreation activities and facilities for all people in the City of Lincoln, in accordance with Title 12 of the Lincoln Municipal Code and the City Charter.

WHEREAS, Friends of Woods Tennis, Inc. ("FOWT") is a Nebraska nonprofit corporation organized for the purpose of capital improvements, fundraising, and operation of the Woods Tennis Center for tennis programming, including lessons, clinics, and leagues, for members of the public, consistent with its Articles of Incorporation and agreements with City, as amended from time to time.

WHEREAS, City is the owner of Woods Park, located generally west of 33rd Street, south of "O" Street and north of "J" Street, in Lincoln, Lancaster County, Nebraska, where the Woods Tennis Center currently sits and operates.

WHEREAS, CITY and FOWT, and its predecessor organization, have entered into numerous operating agreements, approved by Directorial Order No. 16341 on December 27, 2016; Directorial Order No. 14520 on February 4, 2016; Directorial Order No. 14459 on December 28, 2015; Ordinance No. 18569 on June 27, 2005 for a ten (10) year term from 2005 to 2015; and various Executive Orders prior to that date; for the operation of the Tennis Center by FOWT, and the City and FOWT have entered into several Operating Agreements over the years for the operation of Woods Park Tennis Center by FOWT, the most recent authorized by Directorial Order No. 16893 through August 15, 2017. City and FOWT have now entered into a new long-term ten (10) year Operating Agreement authorized by Ordinance No. \_\_\_\_\_ through the end of 2027 for FOWT's ongoing operation and management of Woods Tennis Center.

WHEREAS, FOWT and the Lincoln Parks and Recreation Foundation, another Nebraska nonprofit corporation, with City's approval, have been engaged in fundraising for a capital campaign for construction of a new Woods Tennis Center facility to include outdoor courts and related facilities as well as an indoor tennis building and related facilities to replace the two current aging air structures or "bubbles" that shelter six indoor tennis courts (collectively the "Woods Tennis Center Project").

WHEREAS, the existing air structures have been replaced in 2017 with a permanent structure indoor tennis facility consisting of a permanent steel beam, insulated structure with improved lighting indoor tennis facility to house six (6) indoor tennis courts, storage, staff offices, mezzanine and court-level viewing spaces, restrooms, locker rooms and showers, and other improvements, as shown on the facilities drawings in Exhibit "A", and including the proposed second phase of improvements as approved in the Woods Park Master Plan revised in December 2016 by Resolution No. A-90131 as shown on Exhibit "B", which exhibits are attached hereto and incorporated herein by this reference as though set forth in full, all of which is hereinafter referred to as the "Indoor Tennis Facility." The Indoor Tennis Facility, as it is referred to throughout this Agreement, shall not include the exterior tennis courts or other exterior improvements adjacent to the Indoor Tennis Facility except for those obligations separately provided for herein. The complex of indoor and outdoor courts and the clubhouse, including the Indoor Tennis Facility as depicted on Exhibit "C", are referred to as the "Tennis Center."

WHEREAS, the parties are desirous of setting forth in this Agreement the mutual responsibilities and understandings of the organizations regarding a payment in lieu of facility use fees, usage, and duration for LPS's use of Tennis Center in the City of Lincoln.

WHEREAS, the parties desire to enter into this cooperative agreement to accomplish those purposes;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by the parties hereto as follows:

1. Purpose. The purpose of this Agreement is to create a ten (10) year cooperative undertaking between LPS, City, and FOWT. The Tennis Center facilities, both interior and exterior and its amenities are used from time to time by LPS for school and athletic purposes. LPS would like to continue its ongoing use of the Tennis Center.

2. LPS Payment. LPS shall make a payment in lieu of facility use fees to the Woods Tennis Center Project and in return for such payment to obtain an agreement as to its continued use of the Tennis Center. The LPS payment was intended to be Ten Thousand Dollars (\$10,000.00) per year for each year of a new Operating Agreement between the City and FOWT to a limit of One Hundred Thousand Dollars (\$100,000.00). As such, in light of the new ten (10) year term Operating Agreement between the City and FOWT referenced above, within thirty (30) days of the date of the last party to sign this Agreement, LPS shall pay for a ten (10) year term the amount One Hundred Thousand Dollars (\$100,000.00) to the Lincoln Parks and Recreation Foundation for the Woods Tennis Center Project. It is further agreed that this payment shall be the only cost, capital contribution, facility use, expense, reimbursement or rent LPS shall owe or pay to the City or FOWT for its use during the Term of this Agreement of (a) all Tennis Center exterior tennis courts (currently 12) for practices and matches, generally with an ending time of 6:30 p.m., or on such days and at times as necessary to accommodate the LPS tennis programs practices and matches, (b) use of all available indoor courts to finish matches interrupted by weather, and (c) use of the outdoor parking areas, outdoor plaza, outdoor court lights, indoor and/or outdoor drinking fountains, loud speaker for announcements, restrooms, and

bleachers, and other attendant outdoor Tennis Center improvements and facilities; and on coordination with and approval by the Program Administrators, of the mezzanine facilities, court-level viewing spaces, lockers, locker rooms, showers, and other attendant indoor Tennis Center improvements and facilities.. LPS schools may use indoor courts (currently 6) for practices or otherwise as needed, when available, on a school by school request at a \$22/court/hour for practices and \$13/court/hour for match play or tournaments or other negotiated rate to be billed to and paid by the individual requesting school unless otherwise provided by the LPS Program Administrator. These stated LPS rates may be raised by FOWT after five (5) years from the effective date of this Agreement after collaboration with and first receiving input from the LPS Administrator. The above also includes, but is not limited to, costs or expenses for electricity, water or other utilities, and other grounds keeping fees or costs necessary for maintenance. During the term(s) of the Agreement, City and FOWT agrees to and shall maintain the new Tennis Center and its amenities.

3. LPS Usage and Duration. In return for the LPS's payment referenced above, City and FOWT agree that LPS shall be entitled to use the Tennis Center facilities, both interior and exterior and the its amenities, for its school programs, practices, and tennis matches for the period of time specified herein. The term of LPS's use under this agreement shall begin retroactive to August 1, 2017 through July 31, 2027, for a total of ten (10) years (the "Term"). LPS shall be entitled to priority use as stated above, at least consistent with past usage. LPS' Use shall be coordinated by the Program Administrators; taking into consideration LPS program changes, district needs, and district growth during the Term of the Agreement. Also, during the Term hereunder, LPS shall be entitled to charge admission fees, sell memorabilia or other non-food related items at any of its matches or during its use of Tennis Center and shall be entitled to keep all funds or revenue generated therefrom. City and FOWT, jointly and separately, agree that neither shall affect, terminate nor disturb LPS' right and ability to use the Tennis Center as provided under this Agreement, notwithstanding any breach of its terms. The City as the owner of the Tennis Center, further agrees that in light of the LPS payment in paragraph 2 above that this Agreement shall continue in full force and effect through its Term regardless of the continued existence or termination, for any reason, of an Operating Agreement between the City and FOWT.

4. LPS Exterior Courts. City and FOWT during the Term of this Agreement may use LPS exterior courts for summer tennis programs and tournaments at such times and upon such terms and conditions as coordinated and agreed upon by the Program Administrators.

5. Program Administrators. Except as otherwise provided herein, the agreed upon payment and Tennis Center usage cooperative undertaking shall be administered by a program administrator from LPS and a program administrator of FOWT (the "Program Administrator(s)"). LPS designates the Director of Operations as its Program Administrator, and FOWT designates its Executive Director for this cooperative undertaking. The Program Administrators shall be directly responsible for making decisions, administering and managing this cooperative undertaking. LPS and FOWT Program Administrators shall work together on scheduling in an effort to maximize overall use of the courts as a community facility and to allow the scheduling of other high school use when it can be accommodated. The Program Administrators may be changed from time to time by any party appointing a successor Program Administrator upon no less than seven (7) days advance written notice to the other party.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representatives, successors and assigns. This Agreement is contingent upon the parties obtaining all necessary approvals under applicable state law, municipal ordinances, or any other laws applicable to construction, including, but not limited to, the Lincoln City Council and the LPS School Board.

7. Amendments. This Agreement may only be amended or modified in writing signed by all parties to this Agreement.

8. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

9. Execution in Counterparts. This Agreement may be executed on two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

10. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

11. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against any party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules and interpretation of contracts generally. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement and invalidity of any section shall not invalidate any other section thereof.

12. Relationship of Parties. Neither the method of computation of funding nor any other provisions contained in this Agreement nor any acts of any party shall be deemed or construed by the City, or by any third person to create the relationship of partnership or of shared venture or of any association between the parties, other than contractual relationships stated in this Agreement. The parties agree that each of them is acting on its own behalf and not as an employee, joint venturer or partner of the other. Each party is interested only in the results obtained from this Agreement, and each party shall be in exclusive charge and control of its own performance according to its own means and methods.

13. Assignment. In the case of the assignment of the obligations under this Agreement by any of the parties hereto, prompt written notice shall be given to the other party, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other party to this Agreement.

IN WITNESS WHEREOF, each of the parties hereto have executed and delivered this document by its duly authorized officer the date hereinafter shown.

**LANCASTER COUNTY SCHOOL DISTRICT 001**

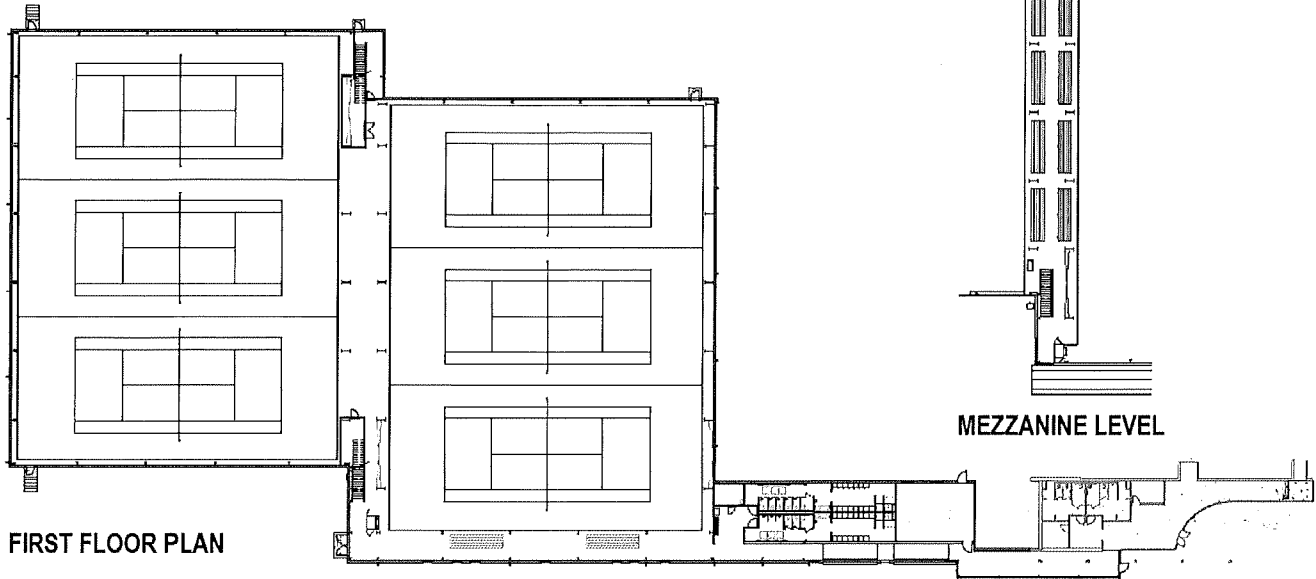
BY: \_\_\_\_\_  
Authorized Official Date

**THE CITY OF LINCOLN, NEBRASKA**

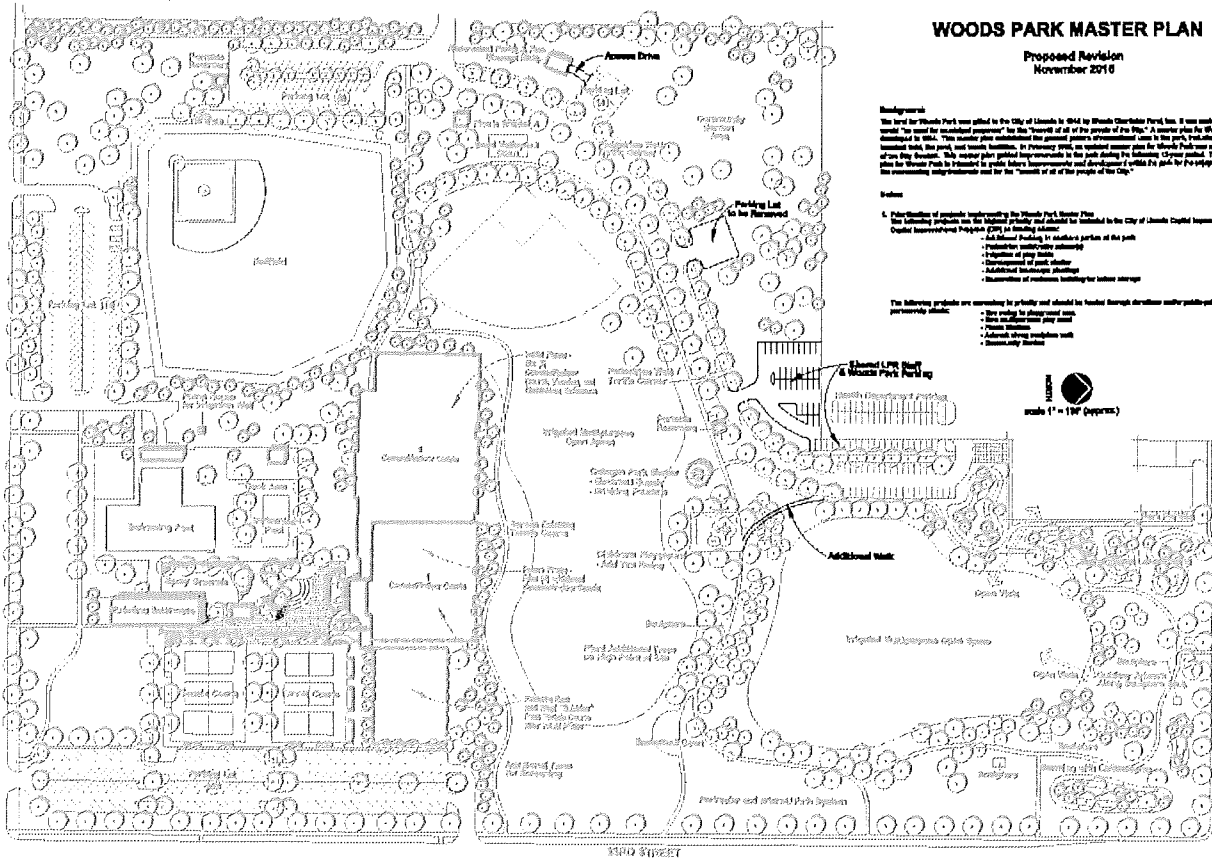
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**FRIENDS OF WOODS TENNIS, INC.**

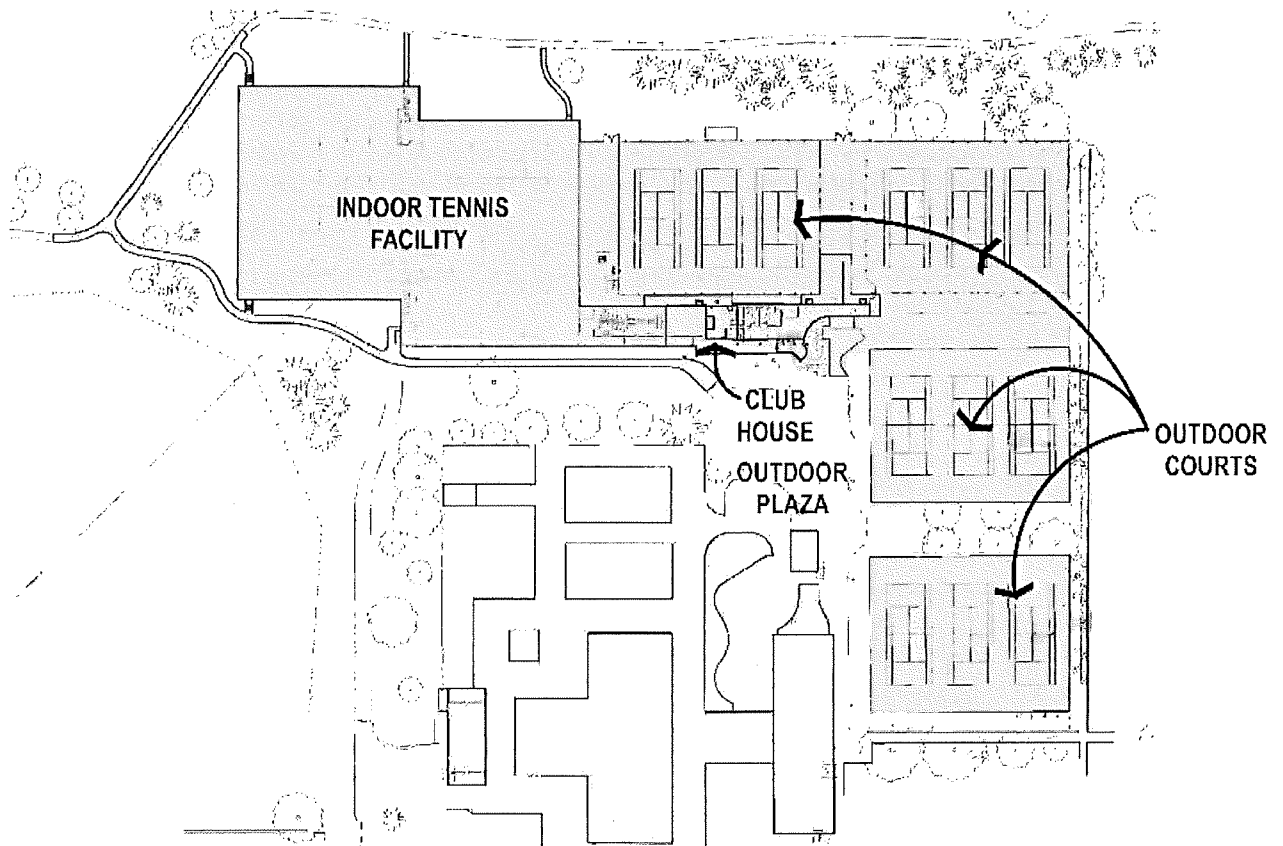
BY: Carmen H. Grant / President 12-28-2017  
Authorized Official



WOODS TENNIS OPERATING AGREEMENT - EXHIBIT A



**WOODS PARK MASTER PLAN APPROVED DECEMBER 12, 2016 - EXHIBIT B**



**WOODS TENNIS CENTER - EXHIBIT C**