

## PURCHASE AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into on \_\_\_\_\_, by and between the **COUNTY OF BOULDER**, a body corporate and politic (“County”) and **TENNIS CENTER OF THE ROCKIES LLC** (“Seller”).

### RECITALS

County desires to purchase from Seller and Seller desires to sell to County that certain real property within the County of Boulder, State of Colorado, consisting of approximately 19.73 acres, and which is legally described on Exhibit A, attached hereto and incorporated herein by this reference (the “Property”).

### AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and the promises, payments, covenants, and undertakings hereinafter set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, County and Seller agree as follows:

### PURCHASE PROVISIONS

1. In consideration of the payment of TEN THOUSAND DOLLARS (\$10,000.00) as Earnest Money, which must be paid within twenty (20) days of execution of this Agreement and held by the title company described in Paragraph 4 below, Seller hereby agrees to sell, and County hereby agrees to purchase the Property. Seller will provide a copy of any available engineering and/or survey work of the Property to County. Additionally, County may at its sole expense contract for an ALTA engineering survey of the Property sufficient to satisfy the requirements of the title company to delete the standard pre-printed exceptions from County’s title policy, as set forth in Paragraph 4 below. Any survey must be certified to County and the title company and the legal description for the Property must be furnished to Seller on or before the closing of the Property, said legal descriptions to include a certificate of the acreage therein as determined by the surveyor. Any survey must be acceptable to County, in County’s sole discretion. Closing may be postponed for as long as is reasonably necessary for County to receive and approve the survey identified in this paragraph.

2. The purchase price for the Property will be ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$1,800,000.00), payable in good funds at closing. The Earnest Money will be applied to the purchase price for the Property. Additionally, Seller agrees to convey to County, at no extra cost, any quitclaim deeds requested by County to ensure that County receives title to the Property as historically described or to ensure that County receives Seller’s right, title,

and interest to any additional property adjacent to the Property for which Seller may have a claim by adverse possession or disputed boundary.

3. The purchase price for the Property includes all surface and subsurface water and water rights, ditches and ditch rights, ponds and pond rights, springs and spring rights, wells and well rights, whether decreed or not, if any, attached or appurtenant to or used in connection with the Property and owned by Seller. The purchase price will also include all minerals appurtenant to the Property. The purchase of the Property will also include any existing access to the Property to which Seller has title or in which Seller has an interest. If requested by County, Seller will convey to County access to the Property over any additional land owned by Seller.

4. Within three weeks after the execution of this Agreement by the Board of County Commissioners of Boulder County, Seller must furnish to County a title insurance commitment on all the Property, to insure County's ownership of a fee simple interest in the Property, in the amount of the purchase price. The title commitment will include copies of all exception documents identified in the commitment. The title insurance commitment must be on a form acceptable to County and issued by a title insurance company acceptable to County, which maintains an office in Boulder County, and is authorized to do business in the State of Colorado ("Title Company"). Seller will be solely responsible for the cost of said title commitment and an owner's policy of title insurance issued pursuant to the commitment.

5. Title to the Property must be merchantable in Seller, and the title commitment must contain no exceptions other than:

5.1. taxes and assessments for the current year, which will be adjusted and prorated to the date of delivery of the deed; and

5.2. rights-of-way, easements, restrictions, covenants, and mineral reservations, which are acceptable to County.

Seller must execute an affidavit concerning mechanic's liens and other reasonable documentation required by the Title Company to delete the standard pre-printed exceptions related to liens and rights of parties in possession.

6. Should title not be merchantable as aforesaid, or if the title commitment includes additional exceptions which are not acceptable to County (even though such additional exceptions would not make the title unmerchantable), a written notice of the defects must be given to Seller by County within 30 days after receipt of the title commitment and all exception documents as set forth in Paragraph 4 of this Agreement. If Seller provides County with a title commitment and exception documents before the execution of this Agreement by the Board of Commissioners, County will have 30 days from the date of the execution of the Agreement by the Board of Commissioners within which to provide Seller with a written notice of title defects. Seller agrees to attempt to correct such defects at Seller's expense within 120 days from receipt of said notice

of defects, and the closing will be postponed for said 120 days. If Seller has not corrected such defects within said 120 days, County, at its option, may complete the transaction notwithstanding the defects or may, upon notice to Seller in recordable form, declare this Agreement terminated, whereupon all payment made by County to Seller must be returned to County and both parties will be released herefrom.

7. Unless postponed pursuant to the provisions of this Agreement, closing will take place no later than July 30, 2025, at a mutually agreeable time, or closing may be done virtually, or as may otherwise be mutually agreed to by the Parties. The closing will be handled by the title company issuing a title policy to the County. Seller will have the title company provide County with settlement sheets for both County and Seller at least 10 days before the closing.

7.1. At the closing of the sale of the Property to County, Seller must deliver to County the following:

a. A fully good and sufficient executed and acknowledged General Warranty Deed conveying to County good and merchantable title to the Property being purchased, free and clear of all liens, tenancies, and encumbrances except those set forth in Paragraphs 5.1 and 5.2 above;

b. Possession of the Property, free and clear of all existing leases and tenancies; except for those leases described in Paragraph 9.8 below, if any;

c. Documents acceptable to County and the Title Company evidencing the authority of Seller to execute this Agreement and to convey the Property being purchased to County;

d. All instruments, certificates, affidavits, and other documents necessary to satisfy the Requirements listed on Schedule B-1 of the title commitment;

e. A current update of the title commitment, at Seller's expense, showing title subject only to the permitted exceptions determined by Paragraph 5 of this Agreement. Seller will cause the Title Company to issue to County its standard form owner's policy of title insurance insuring good and merchantable title to the Property in County, with the standard printed exceptions concerning liens and rights of parties in possession deleted, and subject only to the permitted exceptions as determined in Paragraph 5 of this Agreement;

f. A certification that the representations and warranties of Seller pursuant to Paragraph 9 hereof continue to be true and correct as of the date of closing;

g. Seller's closing costs, which include Seller's portion of the prorated taxes and other assessments affecting the Property, all incidental costs and fees customarily paid by Seller in Boulder County land transactions, the cost of providing Owner's extended title coverage, and one-half of the cost of any closing fee;

h. If applicable, an affidavit by a professional engineer as described in Paragraph 12;

i. Any other documents required by this Agreement to be delivered by Seller to the title company or reasonably required by County or the Title Company in connection herewith; and

j. Any quitclaim deeds as described in Paragraph 2 of this Agreement, or documents required by Paragraph 3.

7.2. At the closing of the sale of the Property to County, County will deliver to Seller the following:

a. The applicable purchase price by County warrant, or other good funds for the Property; and

b. County's closing costs, which include all incidental costs and fees customarily paid by purchasers in Boulder County and one-half of the cost of any settlement or closing fee charged by the Title Company.

7.3. Prior to the closing of the sale of the Property to County, and except for the hay bales and picnic tables that are currently on the Property, Seller must remove all equipment, vehicles, salvage, rubbish, and other personal property from the Property. Closing may be postponed by County if equipment, vehicles, salvage, rubbish, and other personal property have not been removed prior to the scheduled closing date.

8. It is agreed that time is of the essence hereof. If County should fail or default in prompt payment of the purchase price for the Property according to the terms and conditions of this Agreement, and such failure is not attributable to any failure by Seller to timely and fully perform all of Seller's obligations hereunder, Seller, at Seller's option, may in writing declare this Agreement terminated and retain all monies paid to Seller as liquidated damages. It is agreed that such payments are Seller's sole and only remedy for County's failure to perform the obligations of this Agreement. Seller expressly waives the remedies of specific performance and additional damages. If Seller is in default: (1) County may elect to treat this Agreement as terminated, in which case all payments and things of value received hereunder must be returned to County; or (2) County may elect to treat this Agreement as being in full force and effect, and County will have the right to an action for specific performance or damages, or both.

## REPRESENTATIONS AND WARRANTIES

9. Seller hereby represents and warrants to County that as of the date of the signing of this Agreement:

9.1. Seller has received no notice of and has no other knowledge of any litigation, claim or proceeding pending or currently threatened which in any manner affects the Property; and

9.2. Seller has received no notice and has no other knowledge of any current, existing violations of, or pending investigations into possible violations of, any federal, state or local law, code, ordinance, rule, regulation or requirement affecting the Property; and

9.3. Seller has the full right, power, and authority to transfer and convey the Property to County as provided in this Agreement and to carry out Seller's obligations under this Agreement; and

9.4. Each and every document, schedule, item, and other information delivered or to be delivered by Seller to County hereunder, or made available to County for inspection hereunder, must be true, accurate, and correct to the best of Seller's knowledge; and

9.5. Seller has not entered into any agreement with any private person or entity or with any governmental or quasi-governmental entity with respect to the Property that may result in liability or expenses to County upon County's acquisition of all or any portion of the Property; and

9.6. There are no special assessments which now burden or encumber the Property and there are no special assessments currently proposed as to the Property; and

9.7. The execution and delivery of this Agreement and the performance of all of the obligations of Seller hereunder will not result in a breach of or constitute a default under any agreement entered into by Seller or under any covenant or restriction affecting the Property; and

9.8. There are no leases, tenancies or rental agreements relating to the Property, or to any part thereof, which cannot be terminated by Seller on or prior to the date of closing of the transactions provided in the Agreement; and

9.9. Seller has not granted or created, and has no knowledge of any third parties who may have the right to claim or assert any easement, right-of-way or claim of possession

not shown by record, whether by grant, prescription, adverse possession or otherwise, as to any part of the Property, except as to the leases, if any, as described above; and

9.10. To the best of Seller's knowledge, no part of the Property has ever been used as a landfill, and no materials have ever been stored or deposited upon the Property which under any applicable governmental law or regulation would require that the Property be treated or such materials removed from the Property prior to the use of the Property for any purpose which would be permitted by law, but for the existence of said materials on the Property; and

9.11. To the best of Seller's knowledge, no underground storage tank, as that term is defined by federal statute or Colorado statute, is located on the Property which under applicable governmental law or regulation would require such underground storage tank to be upgraded, modified, replaced, closed or removed; and

9.12. To the best of Seller's knowledge, Seller has not caused or permitted the release of any hazardous substance on the Property. The terms "hazardous substance" and "release" as used herein will have the same meaning and definition as set forth in Paragraphs (14), (22) and (23), respectively, of Title 42 U.S.C. Section 9601; provided, however, that the term "hazardous substance" as used herein also will include "hazardous waste", as defined in Paragraph (5) of 42 U.S.C. Section 6903; and

9.13. Seller has received no actual notice from any oil company or related business of any intention to conduct operations for the drilling of any oil or gas well on the Property, whether such notice is in the form of a "thirty-day notice" under the rules of the Energy and Carbon Management Conservation Commission of the State of Colorado, a notice to commence earthwork for drilling operations, a notice for the location of access roads, or any other notice of any kind related to the conduct of operations for such drilling; and

9.14. Seller has no knowledge of any claims or purported claims of adverse possession pertaining to the Property and/or any land adjacent thereto by reason of the location of any exterior boundary fence lines, or otherwise.

Seller must, at the time of closing, certify to County in writing that the above and foregoing representations and warranties remain true and correct as of the date of closing. Seller agrees that if, at any time, it is discovered that any of the foregoing representations and warranties were not true and correct at the time they were made, Seller will indemnify County and hold it harmless from and against claims for any and all liabilities, costs or damages, including, but not limited to, attorney fees, suffered by or claimed against County as a result of the breach. This indemnity will survive the closing of the Property.

10. In addition to all other rights and remedies of County and Seller as set forth and provided in this Agreement, Seller agrees that County will have the right to terminate this Agreement and to make the same of no further force and effect:

10.1. If the representations and warranties of Seller as set forth and provided for in Paragraph 9 herein are not true and correct as of the date of the closing of the Property; or

10.2. If Seller fails or refuses to provide the title insurance commitment and title insurance policy to County within the time period and in the form and content required under the provisions of this Agreement; or

10.3. If any part of the Property is condemned, or if proceedings for such condemnation are commenced or notice of condemnation is received by Seller from a condemning authority prior to the date of closing of the Property; or

10.4. If any of the standards provided for in Paragraph 11 and/or 12 are not satisfied as of the date of closing of the Property; or

If County terminates this Agreement pursuant to this provision all sums paid hereunder by County to Seller must be returned to County.

#### INSPECTION AND ENVIRONMENTAL AUDIT

11. At all reasonable times during the term of this Agreement, County will have access to the Property for the purpose of conducting tests, studies, and surveys thereon, including, without limitation, environmental audits, soil and subsoil tests. County may perform or have performed at its option and/or expense the following inspections:

11.1. Soil and percolation tests;

11.2. Inspections for asbestos, PCBs, underground tanks, or other hazardous substances;

11.3. Any other inspections, tests, and/or studies deemed necessary by County, which do not materially damage the Property.

County will promptly provide to Seller copies of the results of all such tests, inspections, and studies following the receipt of same by County. Any inspections conducted by County will not mitigate or otherwise affect Seller's representations and warranties above. Prior to closing of the sale of the Property to County, County may, at its sole expense, obtain a Phase I environmental audit of the Property. The Phase I environmental audit and any follow up testing must be

satisfactory to County, in the County's sole discretion. If the Phase I, or any other tests or inspections received by or performed by County, is/are not satisfactory to County, County will give Seller written notice of the defects. Seller agrees to attempt to correct such defects at Seller's expense within 120 days of said notice, or within a time agreed to, in writing, by both parties. If necessary, the closing set forth in Paragraph 7 of this Agreement, may be postponed for 120 days. If Seller has not corrected such defects within said 120 days, County, at its option, may complete the transaction notwithstanding the defects or may, upon notice to Seller in recordable form, declare this Agreement terminated, whereupon all payments made by County to Seller must be returned to County, and both parties released herefrom.

12. If any underground tank/s is/are located on the Property, said tank/s must be removed by Seller at Seller's expense prior to the closing of the Property. If any underground tank/s is/are removed prior to closing pursuant to this Paragraph, Seller will provide at the time of closing of the Property an affidavit, subscribed and sworn to by a registered professional engineer licensed in the State of Colorado and approved by County, stating that the Property meets all applicable federal, state and local laws, regulations, and standards regarding such sites, including without limitation, the following standards:

12.1. No more than 75 parts per million total petroleum hydrocarbons in the soil using an analytical test/s which are standard in the industry for the detection of specific compound mentioned herein.

12.2. No more than 10 parts per million total petroleum hydrocarbons in ground water, other than drinking water, using an analytical test/s which are standard in the industry for the detection of the specific compound mentioned herein.

12.3. The BTEX (benzene, toluene, ethyl benzene and xylene) and the petroleum contaminants in the ground water must not exceed the maximum contaminant levels for these components in the ground water as set forth by the state water quality provisions in effect at the time of the execution of this contract.

13. This contract is not intended and will not be deemed to create, expand, diminish or in any way affect any liability or responsibility of Seller or County for any hazardous materials or other environmental matters on or relating in any way to the Property. "Hazardous materials" as used herein will mean and include any pollutant, contaminants or hazardous or toxic materials, wastes or materials as defined, listed or regulated by any federal, state or local law, regulation, order or decree. "Environmental matters" will mean and include any condition, claim, cost, order, demand, requirement or liability either (1) regulated or arising under any federal, state or local laws or regulations governing or relating to the environment, including without limitation RCRA, 42 U.S.C. Sec. 6901 et seq., and CERCLA, 42 U.S.C. Sec. 9601 et seq., as amended, or (2) caused by or relating to the presence or release of any hazardous materials in or to the air, soil, surface waters or groundwater.



## REAL ESTATE COMMISSION

14. Any real estate commission due to any broker upon sale of the Property to County must be paid by Seller. County represents to Seller that County is not a party to a contract which requires the payment of any real estate commission upon sale of a fee simple interest in the Property to County.

## PROPERTY TO REMAIN UNENCUMBERED

15. Seller agrees that Seller will not, so long as this Agreement is in effect, encumber or burden the Property or any part thereof without County's consent. Seller further agrees that during the term of this Agreement and through the date of delivery of possession of the Property to County, Seller must not develop the Property in any manner, including without limitation, constructing any improvements or erecting any structures on the Property, leasing mineral rights for the Property, or disturbing the surface of the Property.

## ASSIGNMENT

16. Seller must not assign Seller's rights and obligations hereunder unless County first consents thereto in writing, which consent will not be unreasonably withheld.

County does, however, consent to Seller assigning Seller's rights hereunder in furtherance of an IRC Section 1031 tax-deferred exchange so long as County incurs no increased expense, delay of closing, or liability exposure and so long as the assignee complies with all the provisions of this Agreement. Said consent does not give Seller the right to impose any responsibilities on County that are not set forth in this Agreement other than the consent to the assignment. Seller agrees that so long as County is not in default hereunder, Seller must not sell or convey any of the Property except to County pursuant to this Agreement. County may assign its rights to purchase all or a portion of the Property or any interest in the Property, without the consent of Seller and Seller will cooperate in executing appropriate documentation for the transfer of all or part of the Property, or any interest in the Property, to any assignee of County, so long as Seller incurs no increased expense or liability exposure and so long as the assignee complies with all of the provisions of this agreement.

## CONDEMNATION

17.1. Condemnation of the Entire Property Which is the Subject of This Agreement

If another governmental entity or agency exercises its powers of eminent domain to acquire title to the Property, County will, in such event, release its rights and option to purchase as to the Property so condemned and will make no claim as to the monies paid for the Property so taken by the condemning authority. In the event of such a condemnation,

the money paid by the condemning authority for the Property so taken will be and become the sole and separate Property of Seller. The provisions of this Paragraph will not be construed, however, as precluding or preventing County from condemning any property which it is statutorily authorized to condemn.

17.2. Condemnation of a Portion of the Property Which is The Subject of This Agreement

If another governmental entity or agency exercises its powers of eminent domain to acquire title to a portion of the Property which is the subject of this Agreement, County will still retain the rights granted under this Agreement as to such of the Property described in Exhibit A which is not taken by the condemnation. In such event, the portion of the Property which is not condemned will remain subject to the terms of the Agreement. The purchase price of the portion of the Property remaining subject to this Agreement will be determined on a per acre basis, by dividing the total purchase price for the Property by the total acreage of the Property to determine a per acre price.

TAX CONSEQUENCES

18. Seller acknowledges that neither the County, nor any of its agents or attorneys, has made any representations as to the tax treatment to be accorded to this sale or to any proceeds thereof by the Internal Revenue Service under the Internal Revenue Code or by the officials of the State of Colorado under Colorado law. Seller acknowledges they are solely responsible for meeting any and all Internal Revenue Service and/or State of Colorado statutes, rules, and regulations related to this transaction and that the County has encouraged Seller to obtain her own legal, tax, and financial advice.

AGREEMENT TO SURVIVE CLOSING

19. The parties hereto agree that, except for such of the terms, conditions, covenants, and agreements hereof which are, by their very nature fully and completely performed upon the closing of the purchase-sale transactions herein provided for, all of the terms, conditions, representations, warranties, covenants, and agreements herein set forth and contained will survive the closing of any purchase-sale transaction herein provided for and will continue after said closing to be binding upon and inure to the benefit of the parties hereto, their successors, and assigns.

ENTIRE AGREEMENT

20. This Agreement, including exhibits, contains the entire contract, understanding, and agreement between the parties and supersedes all prior understandings, warranties, representations, letters of intent, all of which are by execution hereof rendered null and void.

## NOTICE

21. Within sixty (60) days after a change to a party's address, that party must provide written notice of any change of address to all other parties. Whenever notice is required to be given hereunder, it will be in writing and may be mailed, or hand delivered to the party entitled thereto, and if mailed, it will be done by registered or certified mail, return receipt requested. If mailed, said notice will be effective and complete as of the date of mailing. If hand delivered, said notice will be effective and complete upon completion of the hand delivery. Notice may also be accomplished by email, if emailed to a current email address specified in writing by the receiving party. Until changed by notice in writing, each party's mailing addresses are as follows:

To County:	Real Estate Division Boulder County Parks & Open Space Administration Building 5201 St. Vrain Road Longmont, Colorado 80503
With copy to:	The Boulder County Attorney's Office P.O. Box 471 Boulder, Colorado 80306
To Seller:	Tennis Center of the Rockies LLC <u>924 Hawthorne Ave</u> <u>Boulder, CO 80304</u>

## GOVERNING LAW

22. The validity and effect of this Agreement will be determined in accordance with the laws of the State of Colorado.

## COUNTERPARTS

23. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which will constitute one and the same agreement. Digital signatures conforming with the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101 through 24-71.3-121 will be acceptable to and binding upon all Parties.

## RECORDING

24. This Agreement will be recorded in the office of the Clerk and Recorder of Boulder County, Colorado.

## SEVERABILITY

25. If any part of this Agreement is found, decreed or held to be void or unenforceable, such finding, decree or holding will not affect the other remaining provisions of this Agreement which will remain in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

COUNTY OF BOULDER,  
a body corporate and politic

By: \_\_\_\_\_  
Marta Loachamin, Chair of the Board of  
County Commissioners of Boulder County,  
Colorado.

**TENNIS CENTER OF THE ROCKIES LLC:**

*Tracy Woodward*

By

Tennis Center of the Rockies, LLC  
By: Tracy Woodward, Managing Member, CFO

Title

## **EXHIBIT A**

### **Legal Description**

That certain real estate situated in the County of Boulder, State of Colorado, and legally described as:

A tract of land located in the Southeast Quarter of Section 1, Township 1 North, Range 70 West of the 6th P.M., County of Boulder, State of Colorado; said tract being more particularly described as follows:

Beginning at the East Quarter corner (a 1 1/2 inch aluminum cap) of Section 1 from whence the Southeast corner (an aluminum cap) of said Section 1 bears South 00°21'43" West and with all other bearings contained herein relative thereto; thence South 00°21'43" West, 1315.59 feet along the centerline of North 79th Street; thence North 89°41'30" West, 670.00 feet; thence North 00°21'43" East, 1315.72 feet to a point on the North line of said Southeast Quarter, Section 1; thence South 89°40'49" East, 670.00 feet to the point of beginning,

Except the Easterly 20 feet as conveyed to The County of Boulder by Quit Claim Deed recorded April 30, 1984 as Reception No. 617910, County of Boulder, State of Colorado.

Also known by street address as: 5701 North 79th Street, Longmont, CO 80503  
APN: 146301400013