

# FORSYTH COUNTY

## BOARD OF COMMISSIONERS

MEETING DATE: FEBRUARY 10, 2014 AGENDA ITEM NUMBER: 5


**SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT BETWEEN FORSYTH COUNTY AND WINSTON-SALEM TENNIS, INCORPORATED FOR LEASE OF COUNTY-OWNED PROPERTY (TANGLEWOOD PARK TENNIS COURTS AND ASSOCIATED BUILDINGS AND PERSONAL PROPERTY)**

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:** Recommend Approval

**SUMMARY OF INFORMATION:**

See attached

ATTACHMENTS:  YES  NO

SIGNATURE:  COUNTY MANAGER DATE: February 4, 2014

**RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT  
BETWEEN FORSYTH COUNTY AND WINSTON-SALEM TENNIS,  
INCORPORATED FOR LEASE OF COUNTY-OWNED PROPERTY  
(TANGLEWOOD PARK TENNIS COURTS AND ASSOCIATED BUILDINGS  
AND PERSONAL PROPERTY)**

**WHEREAS**, Forsyth County administrators recommend that the best method of using and operating the tennis courts and associated buildings (pro shop, office, and utility building) and personal property at Tanglewood Park is to lease the facilities to a person with experience in operating such facilities; and

**WHEREAS**, after completing a Request For Proposal process, it is recommended by County administrators that the tennis courts and associated buildings and personal property, identified in the attached Lease Agreement, be leased to Winston-Salem Tennis, Incorporated for a term of four years and eleven months at a fixed monthly rental rate of five hundred and 00/100 dollars (\$500.00) and other valuable consideration, pursuant to the provisions of N.C.G.S. 160A-272 and the attached Lease Agreement; and

**WHEREAS**, County administrators have determined that the Tanglewood Park tennis courts and associated buildings and personal property, which are the subject of the proposed Lease Agreement and this Resolution, will not be needed by Forsyth County for County purposes during the term of the proposed lease, except as provided and reserved in the Lease Agreement; and

**WHEREAS**, Forsyth County provided ten (10) days' public notice by publication of its intent to authorize this lease of County-owned property as required by N.C.G.S. 160A-272;

**NOW, THEREFORE, BE IT RESOLVED** that the Forsyth County Board of Commissioners hereby determines that the Tanglewood Park tennis courts and associated buildings (pro shop, office, and utility building) and personal property, which are the subject of the proposed Lease Agreement and this Resolution, will not be needed by Forsyth County for County purposes during the term of the proposed lease, except as provided and reserved in the Lease Agreement.

**BE IT FURTHER RESOLVED** by the Forsyth County Board of Commissioners that the Chairman or County Manager and Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, the attached Lease Agreement between Forsyth County and Winston-Salem Tennis, Incorporated for the lease of Tanglewood Park tennis courts and associated buildings (pro shop, office, and utility building) and personal property owned by Forsyth County for a term of four years and eleven months beginning March 1, 2014, at a fixed monthly rent of five hundred and 00/100 dollars (\$500.00) and other valuable consideration as outlined in the Lease Agreement, subject to a pre-audit certificate thereon by the Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney. The original contract is incorporated herein by reference.

Adopted this the 10<sup>th</sup> day of February 2014.

**PUBLIC NOTICE OF INTENT TO AUTHORIZE  
THE LEASE OF COUNTY-OWNED PROPERTY**

Pursuant to the provisions of N.C.G.S. 153A-176 and 160A-272, notice is hereby given that the Forsyth County Board of Commissioners will consider and intends to authorize at its regular meeting on February 10, 2014 a resolution authorizing execution of a lease agreement between Forsyth County and Winston-Salem Tennis, Incorporated for the use of County-owned property, which will not be needed by the County during the term of the proposed four year and eleven month lease. The property to be leased is located at Tanglewood Park in Forsyth County, and is described as the tennis courts and associated buildings (pro shop, office, and utility building) and personal property. The fixed monthly lease payment under the proposed lease is \$500.00.

This notice shall be published once at least ten days prior to the regular meeting date in which the resolution referred to herein is considered.

**FORSYTH COUNTY**

By: \_\_\_\_\_  
Carla D. Holt  
Clerk to the Board

## LEASE AGREEMENT

NORTH CAROLINA

FORSYTH COUNTY

THIS AGREEMENT, made and entered into this Saturday, March 1<sup>st</sup>, 2014, by and between Forsyth County, North Carolina, hereinafter referred to as the "County," and Winston-Salem Tennis, Inc. hereinafter referred to as the "Lessee".

### WITNESSETH

For the purpose and subject to the terms and conditions hereinafter set forth, the County does hereby lease unto the Lessee the following described property located at Tanglewood Park in Forsyth County, North Carolina:

The four (4) cushion tennis courts and six (6) clay tennis courts, the existing office and pro shop building, and the tennis utility building, and such personal property as set forth in Exhibit A, attached hereto and incorporated herein by reference (hereinafter collectively "Property").

**1. Term.** The term of this agreement shall commence on March 1, 2014, and shall expire on February 1, 2019, unless sooner terminated pursuant to this Agreement.

**2. Responsibilities.** Lessee, functioning as an independent contractor, shall have the exclusive right and obligation during the Term to operate tennis activities at Tanglewood Park. Lessee shall organize, direct and publicize Tanglewood Park's total tennis instructional program, hiring and paying additional staff as needed and resolving all disputes that may arise from the conduct of the program. Lessee shall offer tennis services including private lessons, clinics, camps, tennis tournaments, and new tennis programs at the Tanglewood Park tennis facilities. Lessee shall provide updated schedules of tournaments and events at Tanglewood Tennis Facility sites to the County's Parks & Recreation Department staff Lessee must have prior authorization by the Parks & Recreation Director to hold tournaments and special events in order to coordinate these tennis events with other Tanglewood events.

**3. Sales.** Lessee shall, at its own expense, have the discretion but shall not be obligated to engage in the sale of tennis balls, other tennis-related merchandise, and tennis-related services the Property and to retain all proceeds from such sales. Only if Lessee receives prior permits and licenses required by law, including those from the Forsyth County Health Department and ABC Board, Lessee may serve food, non-alcoholic beverages, beer and wine. Alcohol consumption shall be limited to the pro shop building and deck. Proof of necessary certificates and licenses shall be provided to Parks and Recreation.

#### **4. Complex Management.**

**a.** Operational hours, schedules and courts rentals shall be mutually agreed upon by Lessee and the County with annual review of these elements. The Festival of Lights and other special events may have an impact on tennis hours and accessibility to the tennis courts. At a minimum, Lessee shall keep all tennis courts open for activity for the following hours:

**During the period of January 1 through December 31:**

Monday through Thursday	9 am to noon and 2:30 pm to 8:00 pm.
Friday	9 am to noon and 2:30 pm to 6:00 pm.
Saturday	9 am to 2 pm.
Sunday	12:30 pm to 4 pm.

These times would be adjusted due to weather issues (i.e. rain or inclement weather). As needed, Lessee may close the clay courts during weekday afternoons for watering or other maintenance.

The cushion courts shall be open year-round. Except during tournaments, at least one court shall be available for use by the public for non-league play for at least 1.5 hours per day. Lessee may not operate the Property while Tanglewood Park is closed. The County reserves the right to close Tanglewood Park for weather-related causes, special events, and other circumstances, but shall notify Lessee in advance of such closing, if possible.

The County acknowledges that operational hours will be adjusted during the period of December through March each year to reflect seasonal weather conditions.

b. All fees collected for court rentals, tennis lessons, camps, clinics, tournaments, leagues, and tennis season passes and other tennis related activities shall be retained by Lessee. Lessee shall submit a schedule of proposed fees no later than January 1 of each year

Initially the fees shall be as follows:

Clay Courts	\$4 per person for 1.5 hours of play for singles or doubles.
Hard Courts	\$2 per person for 1.5 hours of play for singles or doubles.

Court fees may be adjusted by the Lessee and must be mutually agreed upon in writing between Lessee and the County.

c. Lessee shall be responsible and available to staff the Property at all times at which it is operating and will establish all procedures for the professional operation of the Property.

d. The County shall provide the supplies necessary to maintain the clay court (6) surfaces, in the County's discretion and as budgeted each fiscal year, including all court surface materials and supplies, court maintenance equipment, nets, and windscreens. The County shall resurface the cushion courts (4), as necessary and as budgeted each fiscal year as outlined in Exhibit A. The schedule for resurfacing the cushion courts shall be a minimum of every 5-7 years dependent upon the condition of the cushion courts at that time. The County and Lessee shall work together on determining the optimum time period to conduct and schedule any re-surfacing work to be done upon the cushion courts. The County and Lessee will work together to ensure that the cushion court surface is maintained at the highest level. The County will annually purchase the clay surface materials for the purpose of any required daily maintenance, this material will be stored onsite at the Tennis facility. Annual clay court maintenance shall include top dressing which includes removing the old "dead" surfacing material and the replacement of approximately 1/8" of new clay surfacing materials will be the responsibility of the County.

Court playing lines will be replaced as needed every two to four years or when broken or damaged and shall be the responsibility of the County. Annual court maintenance shall be completed no later than April 1<sup>st</sup> each year as conditions permit. Major long term court maintenance activities shall occur a minimum of every 10-12 years. Long term maintenance shall include a "lift" for each court which is the removal and addition of approximately 1" of new clay surfacing material. The County shall also provide electrical and water utilities, perimeter mowing, and major repairs or maintenance of the Property. Items listed in Exhibit A are available to Lessee for the duration of the contract. Repairs and replacements of such items are the responsibility of the County as necessary and as budgeted each fiscal year.

e. Lessee shall provide the labor necessary to maintain the clay court surfaces, lines, nets, and windscreens at the Tanglewood Park Tennis Courts, and keep clean the cushion court surfaces regularly used and managed by Lessee. Lessee shall be responsible for leaf removal from courts and adjustment of irrigation heads. Lessee shall notify the County of necessary major repairs and maintenance required at the Property and managed by Lessee. Further, Lessee shall provide minor repairs and maintenance and custodial services, including the Pro Shop bathrooms, at the Property used and managed by Lessee. A major repair or maintenance shall be a repair or maintenance event that costs more than \$150.00 and that is not caused by the negligence of Lessee or its guests. The Property shall be kept clean and free of trash. Trash shall be deposited into a single 55-gallon can located near the Pro Shop. County will empty it daily.

f. Lessee shall be responsible to ensure that the clay and cushion courts at the Property regularly used and managed by Lessee, are suitable and safe for play and shall prohibit play on any courts that are not safe for play. Lessee shall close any court that the Lessee determines unsafe for play.

g. Employees of Lessee must not use the Property for any non-tennis-related activity, including child care.

h. The Tanglewood gate fee applies to all tennis participants. Tournament participants shall pay the gate fee one time per day unless otherwise arranged with the County in advance. The gate fee will not apply to Lessee's employees.

i. County equipment shall be stored in and secured in the utility building when not in use. Repairs to motorized equipment left outside shall be the responsibility of Lessee. The Lessee agrees to keep the utility building in a neat and orderly condition.

j. Lessee will make good faith efforts to run a variety of tennis programs for all ages and abilities at Tanglewood Park.

k. Lessee's employees shall be supportive of the County and Tanglewood Park and uphold the good reputation of Tanglewood and Forsyth County.

l. County will supply wind screens; however, no print or logos will be allowed to be painted on them. If Lessee desires banners, subject to prior approval by the County, Lessee may purchase and hang such banners.

m. If the motorized roller unit must be replaced or repaired, the County has the option to replace or repair it, or can acquire a non-motorized roller that can be pulled to maintain the courts.

n. County will provide a first aid kit and an automated external defibrillator (AED) installed inside of the Pro Shop. All employees of the Lessee shall be trained in the proper operation of the AED as required by the Forsyth County Risk Manager

o. County will provide weed control services for the property and apply calcium to bond moisture in clay if so required.

**5. Advertising.** If Lessee chooses to erect an outside sign (3' X 5') on the Property identifying Lessee as the operator of the Property and/or sponsors, the County must agree upon its content, appearance, and location before placement. The decision to erect a sign shall be at the discretion of the Lessee. Additional signage may be requested by the Lessee but must have prior approval by the County before placement.

**6. Parks & Recreation Regulations.** Lessee shall abide by and comply with all County regulations related to the operation and activities allowed within Tanglewood Park.

**7. Monthly Fee.** In consideration of the Lease and such conditions set forth herein, Lessee shall pay a fixed monthly fee to the County in the amount of \$500 per month. Such fees shall be due on the first day of each calendar month during the Term. If rent payment is not postmarked or hand-delivered by the 15<sup>th</sup> day of the month, Lessee shall pay the County, an additional late charge equal to five percent (5%) of the overdue amount, plus any bank fees incurred for returned or dishonored checks. In addition, during the term of the Lease, Lessee shall provide the County an annual accounting of the sources and amounts of income generated by Lessee as a direct result of Lessee's use of the Property.

#### **8. Insurance.**

**a. General Liability Insurance.** Lessee shall carry general liability insurance with bodily injury limits of not less than \$1,000,000 for each occurrence and with property damage limits of not less than \$1,000,000 for each occurrence.

**b. Worker's Compensation Insurance,** If required by law, Lessee shall provide Worker's Compensation Insurance, in accordance with statutory requirements, and Employer's Liability Insurance with limits of not less than \$100,000 for each occurrence. In case any work is subcontracted under this Agreement, Lessee will require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work.

**c. Automobile Liability Insurance.** Lessee shall provide automobile liability insurance covering owned, non-owned, hired vehicles and trailers used in connection with the performance of services hereunder. This insurance shall provide bodily injury and property damage limits of not less than \$1,000,000 combined single limit/aggregate.

Lessee shall furnish to the County Risk Manager a certificate of insurance listing the County as an additional insured for all the insurance coverage described herein prior to commencement of work, and certified copies of the amendments and/or renewals to the certificates which occur thereafter. At least thirty (30) days written notice shall be given to the Risk Manager prior to any cancellation, modification or non-renewal of any insurance required under this Agreement. Lessee shall require all subcontractors to include the County and Lessee as additional insureds on their General Liability Insurance policies and furnish a certificate of insurance indicating such to the County Risk Manager.

**9. Indemnification.** Lessee does hereby agree to indemnify, save harmless and defend the County, its officers, agents, and employees against all claims, actions, lawsuits, and demands made by anyone for any damages, loss, or injury of any kind which may arise out of the performance of this Agreement attributable to its negligence or wrongful acts. The County does hereby agree to indemnify, save harmless and defend Lessee and its employees against all claims, actions, lawsuits, and demands made by anyone for any damages, loss, or injury of any kind caused solely and exclusively by the negligence or intentional misconduct of the County or its employees. The obligation to defend shall include all costs related to defending such claim, including, but not limited to, reasonable attorney's fees.

**10. Release.** Lessee understands and acknowledges that the County's obligation to provide supplies or to perform major repairs or maintenance is dependent on funds being budgeted for such repairs or maintenance and the County retains the sole discretion to budget the necessary funds.

**11. Termination.**

a. Lessee may terminate this Agreement without cause upon 120 days prior written notice to the County or upon 60 days prior written notice if the County breaches the and fails to cure such breach within 60 days.

b. The County may terminate this Agreement upon 30 days prior written notice to Lessee of any breach set forth below if Lessee fails to cure such breach within 30 days:

i. The County has determined that the Property regularly used and managed by Lessee is in such disrepair or poor condition that they are unsuitable or unsafe for play or use; or

ii. Lessee has failed to or refused to repair, maintain, or present the Property regularly used and managed by Lessee in a clean and professional manner, as reasonably determined by the County; or

iii. Lessee has failed to or refused to staff and operate the Property regularly used and managed by Lessee according to the schedule established herein; or

iv. Lessee has otherwise breached this Agreement or violated a local state or federal law, unless termination is based on a provision below; or



vi. Lessee fails to pay the Monthly Fee and such payment is more than fifteen (15) days past due.

c. The County may terminate this agreement immediately upon the following circumstances:

i. An officer, manager, employee, or agent of Lessee on duty consumes alcohol or any other illegal controlled substance at a Tennis Site owned or operated by the County; or

ii. An owner, officer, or manager or agent of the Lessee is charged with a crime relating to the use or possession of an illegal-controlled substance or a violent crime; or

iii. An officer, manager, employee, or agent of Lessee allows or acquiesces in the use or possession of any other illegal controlled substance by any participant in a Lessee program or event; or

iv. Lessee fails to maintain the insurance required hereinabove.

**12. Repairs by Lessee.** Lessee accepts the Property in their present condition and as suited for the uses intended by Lessee. Lessee shall, throughout the initial term of this Lease, at its expense, maintain in good order and repair the Property. Lessee agrees to return the Property to the County at the expiration or prior termination of this Lease, in as good condition and repair as when first received, natural wear and tear, damage by storm, fire, lightning, earthquake, or other casualty alone excepted. Lessee, Lessee's employees, agents, contractors, or subcontractors shall take no action which may void any manufacturers or installers warranty with relation to the Property. Lessee shall indemnify and hold the County harmless from any liability, claim, demand or cause of action arising on account of Lessee's breach of the provisions of this paragraph.

**13. Alterations.** Lessee shall not make any alterations, additions, or improvements to the Property without The County's prior written consent. Lessee shall promptly remove any alterations, additions, or improvements constructed in violation of this Paragraph upon The County's written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by The County, free of any liens or encumbrances. The County may require Lessee to remove any alterations, additions, or improvements (whether or not made with the County's consent) at the termination of the Lease and to restore the Property to its prior condition, all at Lessee's expense. All alterations, additions and improvements which the County has not required Lessee to remove shall become the County's property and shall be surrendered to the County upon the termination of this Lease, except that Lessee may remove any of Lessee's machinery or equipment which can be removed without material damage to the Property. Lessee shall repair, at Lessee's expense, any damage to the Property caused by the removal of any such machinery or equipment.

**14. Removal of Fixtures.** Lessee may, if not in default hereunder, prior to the expiration of this Lease, or any extension or renewal thereof, remove all fixtures and equipment which it has placed in the Property, provided Lessee repairs all damage to the Property caused by such removal.

**15. Destruction of or Damage to Property.** If the Property is totally destroyed by storm, fire, lightning, earthquake, or other casualty, this lease shall terminate as of the date of such destruction and rental shall be accounted for as between the County and Lessee as of that date. If the premises are damaged but not wholly destroyed by any such casualties, rental shall abate in such proportion as effective use of the Property has been affected and the County shall restore Property to substantially the same condition as before damage as speedily as is practicable, whereupon full rental shall recommence. Lessee is responsible for insuring its personal property stored on the Property, and the County shall not be responsible for any damage or loss to Lessee's property.

**16. Holding Over.** If Lessee remains in possession of the Property after expiration of the term hereof, with the County's acquiescence and without any express agreement of the parties, Lessee shall be a Lessee at will at the rental rate which is in effect at end of this Lease and there shall be no renewal of this Lease by operation of law. If Lessee remains in possession of the Property after expiration of the term hereof without the County's acquiescence, Lessee shall be a Lessee at sufferance and commencing on the fraction thereof during which Lessee so remains in possession of the premises, be twice the monthly rental otherwise payable under Paragraph 7 above.

**17. Miscellaneous.** Lessee shall not be treated as an employee of the County with respect to the service performed hereunder for federal or state tax, unemployment or worker's compensation purposes. Lessee understands that neither federal, nor state, nor payroll tax of any kind shall be withheld or paid by the County on behalf of Lessee or the employees of Lessee. Lessee further understands and agrees that Lessee is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement.

Lessee shall not be treated as an employee of the County with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the County.

The County shall not be liable to Lessee for any expenses paid or incurred by Lessee unless otherwise agreed in writing.

Lessee shall supply, at its -sole expense, all equipment, tools, materials, and/or supplies required to provide contracted services unless otherwise agreed in writing

Lessee has no authority to enter into contracts or agreements on behalf of the County.

Lessee declares that it has complied with all federal, state, and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under the Agreement.

Lessee and its subcontractors shall comply with Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of the Lessee to comply with this provision or failure of its subcontractors to comply could render this contract void under North Carolina law. It is the expectation of Forsyth County that the Lessee will comply, and the Lessee

agrees to comply, with all applicable federal immigration laws in its hiring and contracting practices relating to the services covered by this contract involving County funds, as outlined in the Resolution adopted by the Forsyth County Board of Commissioners at its regular meeting on October 23, 2006.

**18. Standard of Behavior.** Where this Agreement gives either party the discretion to act, it is assumed that each party is acting in good faith and in a reasonable manner.

**19. No Assignment.** Neither this Agreement nor any of the rights, interest or obligations under the Agreement shall be transferred, assigned, or subleased by Lessee.

**20. Notices.** All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by U.S. certified mail, return receipt requested, postage prepaid. Notices to Lessee shall be delivered or sent to the following address:

Winston-Salem Tennis, Inc.  
P. O. Box 5421  
Winston-Salem, NC 27113

Notice to County shall be delivered or sent to the following address:

Mike Anderson, Director  
Parks & Recreation Department  
Forsyth County Government Center  
201 North Chestnut Street, Winston-Salem, NC 27101

All notices shall be effective upon delivery. Any party may change its notice address upon written notice to the other parties, given as provided herein.

**21. Entire Agreement.** This Lease contains the entire agreement of the parties hereto, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties, not embodied herein shall be of any force or effect. This Lease may not be modified except in writing signed by the parties hereto.

**22. Governing--Law.** This Agreement is governed by the laws of North Carolina, except that provisions relating to conflict of laws shall not apply.

IN WITNESS WHEREOF, the County and the Lessee have set their hands and seals as of the day and year first above written.

FORSYTH COUNTY, NORTH CAROLINA

By: \_\_\_\_\_  
J Dudley Watts, Jr  
Forsyth County Manager

ATTEST:

\_\_\_\_\_  
Clerk to the Board

(SEAL)

WINSTON-SALEM TENNIS, INC.

By: \_\_\_\_\_  
John Keeter President,  
Winston-Salem Tennis, Inc.

Social Security Number or Tax Id. No.  
\_\_\_\_\_

## Exhibit A

### Equipment available to Lessee

1. Office furniture in Pro Shop
2. Small storage shed next to cushioned courts
3. 10 Court benches
4. 1 German mat
5. 2 Aussie mats
6. 2 Hand pull brooms
7. 2 Cart pull brooms
8. 1 Heavy broom
9. 2 Court liners
10. 1 4 foot riding Har Tru roller
11. 1 Backpack blower
12. 1 Push blower
13. 1 Pressure washer
14. 1 Spreader for Har Tru surfacing material
15. 1 golf cart with seats
16. 1 golf cart with equipment bed
17. 2 shopping carts
18. 1 Prince Ball Machine
19. 1 Prince Stringing Machine
20. Large storage shed by clay courts
21. Plastic outdoor chairs
22. Cash register in office
23. Internet access
24. Video surveillance
25. Telephone service
26. 10 Flip court scores
27. 10 Court tidies (small trash containers by nets)

### Items for use by Lessee not available for replacement or repair

1. Refrigerator
2. 1 Vacuum cleaner