

CITY OF ROCHESTER HILLS/BYLEN GOLF COMPANY, LLC
GOLF COURSE LEASE

THIS IS A LEASE (“Lease”), made and entered into this ____ day of _____, 2024, by and between the City of Rochester Hills, a Michigan municipal corporation, with offices at 1000 Rochester Hills Drive, Rochester Hills, Oakland County, Michigan 48309, referred to as (“City”), and Bylen Golf Company, LLC, a Michigan limited liability company, whose address is 3600 Pine Trace Blvd., City of Rochester Hills, Oakland County, Michigan 48309, referred to as (“Lessee”).

RECITALS

Lessee, and its predecessors in interest, have developed, maintained and operated a municipal golf course (“Golf Course”) on City’s property, set forth on Exhibit A (referred to as “Parcel”) under a June 27, 1986 Lease Agreement and Eight Amendments (collectively, the “June 27, 1986 Lease”) which has been a benefit to the citizens of Rochester Hills and the City; and

Lessee has proposed to undertake significant upgrades to the Parcel, including improvements to the Golf Course and related facilities; and

Lessee has proposed to undertake significant additional capital improvements which shall include the construction of a new banquet facility (“Banquet Facility”) and the relocation of the existing driving range (“Relocated Driving Range”) on additional City properties adjacent to the Parcel, set forth in Exhibit B (referred to as “New Parcels”) (collectively, these upgrades to the Parcel and the additional capital improvements to the New Parcels are collectively referred to in this Lease as the “Improvement Project”); and

City has determined this new Lease covering both the Parcel and the New Parcels set forth as Exhibit A and Exhibit B (hereinafter collectively referred to as “Property”) is in the best interests of the citizens of Rochester Hills and the City.

NOW, THEREFORE, the City and Lessee covenant and agree as follows:

ARTICLE I

Term of Lease

Section 1.1 Fixed Term:

The term of this Lease shall be fifty-one (51) years, commencing on January 1, 2025 (“Effective Date”), and terminating at 11:59:59 (EST) on December 31, 2075 (the “Initial Term”, which, along with any extension term as may be afforded Tenant hereunder, is collectively referred to in this Lease as the “Term”). Upon the Effective Date, the June 27, 1986 Lease shall be declared and agreed to by the parties to no longer be in force or effect and the parties agree their rights, duties and obligations concerning the Property shall be governed and controlled by this Lease without regard to the June 27, 1986 Lease or any of its amendments. For purposes of this Lease, the term “Lease Year” shall mean a period of twelve consecutive full calendar months during the Lease Term. The first Lease Year shall begin on the Effective Date if the Effective Date shall occur on the first day of a calendar month; if not, then the first Lease Year shall commence upon the first day of the calendar month next following the Effective Date. Each succeeding Lease Year shall commence upon the anniversary date of the first Lease Year.

Section 1.2 Title at Termination:

Upon termination of this Lease, each of the improvements listed and described as Mandatory Items under Article II, Section 2.3, and each of the designed, constructed and installed improvements listed and described as Optional Items under Article II, Section 2.4, and all the equipment and furnishings related thereto shall be and become the property of the City and further upon the termination of this Lease, all buildings constructed by Lessee on the Property under provisions hereof and all fixtures appurtenant to such buildings shall be and become the property

of the City. As such, on termination of this Lease, the City shall reimburse Lessee for the then fair market value of all golf course equipment, maintenance and office equipment, and trade fixtures and furnishings prior to the City taking possession of the Property.

Section 1.3 Option to Extend Lease Term:

Subject to the terms of this Section, the City grants Lessee two (2) ten (10) year options to extend the Initial Term, subject to the same general terms and conditions contained herein and subject further to all of the following conditions:

- A. The first ten (10) year extension option (“First Extension Period”) will begin at the conclusion of the Initial Term, subject to Lessee giving written notice to the City of Lessee’s intent to exercise this option at any time after the first thirty (30) years of the Initial Term, but no later than forty (40) years from the Effective Date of this Lease. The First Extension Period shall be at the same annual Percentage Rent as the Initial Term, including the annual 3% year over year increase to the annual minimum rent set forth in Section 5.1.
- B. The second ten (10) year extension option (“Second Extension Period”) will begin at the conclusion of the First Extension Period, subject to Lessee giving written notice to the City of Lessee’s intent to exercise this option at any time after the first five (5) years of the First Extension Period, but no later than seven (7) years prior to the expiration of the First Extension Period. The parties shall mutually agree on the annual rental consideration for the Second Extension Period. The parties agree to negotiate in good faith in attempting to arrive at a mutually agreeable rental amount for the Second Extension Period. If the parties are unable to mutually agree on the annual rental consideration for the Second Extension Period, the option to

extend shall be considered not exercised and the Lease shall terminate at the end of the First Extension Period.

- C. Lessee may not exercise or be entitled to extend the Term (either for the First Extension Period or the Second Extension Period, as applicable), if Lessee is in default under the terms of this Lease as of the date Lessee then exercises the applicable extension option or at the commencement of the applicable extension period.

If all the above conditions are not met, the Lease shall terminate at the end of the then-current term.

ARTICLE II

Improvements

Section 2.1 Generally:

In connection with the Improvement Project, Lessee shall, as applicable, design, renovate, construct, and install upon the Property, at no cost to the City, the Mandatory Items under Section 2.3 and the Optional Items approved by the City under Section 2.4, which items (both Mandatory Items and Optional Items) will substantially conform to Lessee's Master Plan (as defined below).

Section 2.2 Time of Construction:

Construction of the Mandatory Items shall be started in accordance with the terms of this Lease, not later than sixty (60) days after City's approval of Lessee's final plans and specifications for the Improvement Project ("Master Plan") and shall thereafter proceed with due diligence until completed by Lessee.

Section 2.3 Mandatory Items:

Lessee covenants that it will renovate and/or construct the following (“Mandatory Items”) under this Lease:

A. Updated Regulation 18-hole Golf Course: Lessee shall renovate the existing Golf Course on the Parcel (“Renovated Golf Course”), which renovation will consist of the following:

1. Objective Requirements: The repair and renovation of the existing Golf Course shall consist of the following requirements: (a) Lessee’s repair and replacement of existing cart paths, which repaired or replaced cart paths (i) shall be located no nearer the Renovated Golf Course’s nearest property line than the cart paths currently serving the existing Golf Course, (ii) shall comply with the applicable requirements of the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”) to the extent Lessee’s repairs or replacements of the existing Golf Course involve any wetlands subject to EGLE’s jurisdiction, and (iii) will be asphalt/slag surfaced as necessary to protect heavily traveled areas and will divert carts from green and tee areas; (b) Lessee’s installation and maintenance of a permanent, electronic, fully automatic watering system that will deliver sufficient water to irrigate (i) the tees, fairways, and greens of the Renovated Golf Course; (ii) the practice greens, (iii) the Relocated Driving Range, and (iv) the clubhouse area shall be provided and maintained by Lessee (Lessee to construct and/or maintain any on-site ponds, with support wells, necessary to provide the primary irrigation source, with Lessee obtaining and/or

maintaining any necessary permits for such wells); (c) Lessee's rebuilding and/or regrassing of the existing Golf Course's greens, tee boxes, and selected fairways; and (d) Lessee's repair and/or addition of new bunkers to the existing Golf Course.

2. Subjective Requirements: The natural growth of the existing Golf Course will be protected and incorporated into the Renovated Golf Course wherever reasonably possible.

- B. Banquet Facility; Relocated Driving Range: Lessee shall design, construct, install, and maintain on the Property a Banquet Facility and a Relocated Driving Range, which shall both be approved by the City through its normal development approval processes. The working drawings prepared by Lessee and approved by the City shall be the final plans and specifications for construction improvements for the Banquet Facility and the Relocated Driving Range on the Property.
- C. Shelters: Lessee shall repair and or replace the existing weather shelters located on the Renovated Golf Course.
- D. Practice putting green: Lessee shall continue to maintain and may repair and/or replace the existing Golf Course's practice putting green(s), with easy access from the clubhouse and first tee.
- E. Relocated Driving Range. The Relocated Driving Range with provision for a minimum of fifty (50) tee spaces shall be constructed on the Property. Target areas shall be provided for in the Relocated Driving Range and the tee areas for the Relocated Driving shall be maintained in accordance with the standards established by the Golf Course Superintendents Association of America. If artificial surfaces

are used for tee areas for the Relocated Driving Range, provision must be made for a minimum of ten (10) grass teeing spaces.

- F. Pitching green: Lessee shall continue to maintain a pitching green with a practice sand bunker located conveniently near the clubhouse.
- G. Maintenance Building. Lessee shall continue to maintain the existing building used for maintenance equipment and storage currently located on the Property. It is the intent of the parties that all golf course equipment and materials shall be stored inside the maintenance building.
- H. Parking/Drives: The asphalt entrance drive from South Blvd. will be maintained to the clubhouse area and will be extended, as necessary, to serve the Banquet Facility and parking areas. Surface parking to accommodate cars for the clubhouse, Renovated Golf Course, and Banquet Facility shall be provided to allow parking of cars in an amount approved by the City. All surfaced areas will be kept in good condition and will be maintained regularly by Lessee. All surfaced areas shall meet minimum City standards as may be in effect from time to time.
- I. Landscaping: Tee areas of the Renovated Golf Course will continue to be landscaped with steps, wildflowers, trees, and shrubs where aesthetically appropriate and at Lessee's discretion.
- J. Fencing: The Lessee shall provide, at no cost to the City, fencing for the Property (including fencing around the New Parcel as appropriate), except in such instances where Lessee determines fencing in a particular area of the Property is not necessary or appropriate and requests City waive the fencing requirement and City approves a specific fencing waiver. The City and Lessee agree to work

cooperatively with fencing contractor to see that property lines are followed. The fencing will be placed at the outer boundaries of the Property and shall enclose as much of the Property as is reasonably possible. Once constructed and in place, the fencing shall be and become the property of the City, and during the entire Lease term or any extension, shall be maintained and repaired by the Lessee at no cost to the City.

- K. Maintenance Equipment: The Lessee shall acquire (or continue to maintain) sufficient maintenance equipment to properly maintain the developed areas of the Property (including, without limitation, the Renovated Golf Course) during the Term, commencing with the initial grow in period for the Renovated Golf Course. Lessee shall replace or keep in good condition all such maintenance equipment throughout the Term of the Lease and any agreed upon extension periods.
- L. Lessee shall cause acceleration, deceleration and passing lanes to be constructed along South Blvd., at the main entrance to the Property to extent so required by the Oakland County Road Commission.

Section 2.4 Optional Items:

In addition to the Mandatory Items set forth in Section 2.3 above, Lessee may, during Term of the Lease, construct, renovate, and operate other facilities on the Property that enhance the goal of providing recreational facilities for the public. If Lessee elects to construct any such additional facilities during the Term of this Lease, final plans, or subsequent plans prepared as final plans, for construction shall be submitted to and approved by the City prior to any construction. Any change in the need for certain facilities or requirements for a different type of installation and not specifically herein described may be considered and agreed upon by Lessee and the City. The

parties agree to meet regularly upon the request of either party to the other, but in any event, upon no less than thirty (30) days written notice from one party to the other. Coordination and implementation of reasonable requests shall be through the City's Director of Parks & Natural Resources and Lessee's management representative and shall not conflict with the normal operations of the Golf Course.

Section 2.5 Equal Rights of Access:

The Lessee agrees that the clubhouse, Renovated Golf Course, Banquet Facility, and the other improvements on the Property provided for herein shall be equally available to all members of the public without discrimination. Any discrimination by the Lessee in the dispensing of food and beverage as provided herein or in the use of any golf, recreation facility, or banquet facility, or other use of the Property by the public hereinabove described to members of the public on grounds of age, sex, color, religion, national origin, ancestry, or sexual orientation shall be deemed to be a material breach of this Lease.

Section 2.6 Equal Employment Opportunity:

Lessee agrees that it will not discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privilege of employment or any matter directly or indirectly related to employment because of age, except when based on a bona fide occupational qualification, sex, race, color, religion, national origin, ancestry, or sexual orientation. Lessee understand that any such discrimination shall be deemed to be a material breach of this Lease.

ARTICLE III

Plans

Section 3.2 Final Plans and Specifications:

Final plans and specifications for constructing the Banquet Facility shall be prepared with reasonable diligence after the beginning of the Term of this Lease. Final Plans and specifications for the Banquet Facility shall be prepared by a licensed Architect, Engineer, and/or Landscape Architect. The final plans shall be in sufficient detail to permit construction of the Banquet Facility in accordance with the approved general features and the specifications shall be in sufficient detail to provide for adequate control of materials and processes which conform with good practices and meet code requirements where applicable. If final plans covering the Banquet Facility are substantially the same as preliminary plans previously approved, the final plans will be approved. Approval of final plans, including any deviations from the preliminary plans as may be reasonably requested by Lessee, will not be unreasonably withheld by the City.

Section 3.3 Approval:

Wherever in this Lease provision is made for “Approval” or “Review and Approval”, such “Approval” or “Review and Approval” shall be made after following normal City policies and procedures by the Mayor of the City who is hereby designated as the representative of the City to whom all submissions requiring prior approval shall be made before construction is started. All requests by Lessee for approvals shall be acted on by the Mayor in a timely fashion and such approvals shall not be unreasonably withheld. Plans and specifications shall be stamped and noted as “Approved” and shall become a part of this Lease as a record of the constructed facilities for

the Improvement Project. Duplicate copies shall be submitted for approval signature in order that the City and Lessee may each have a record of the constructed facilities.

ARTICLE IV

Construction

Section 4.1 Conformance to Plan and Specifications:

All construction performed by Lessee under this Lease shall conform to the provisions of the approved plans and specifications, as applicable. The Lessee shall, at its own expense, give all notices and comply with all lawful laws, orders, regulations, rules, or ordinances of all municipal, County and State authorities affecting the Property and the development of facilities comprising the Improvement Project. It shall be the responsibility of the Lessee to secure and pay for all permits, fees and licenses as required.

Section 4.2 Approved by City:

No construction shall be undertaken until agreement and approval, as previously outlined, is reached. Inspection of the construction processes will be made by those public authorities bearing on the development and by the Mayor of the City or Mayor's designee.

Section 4.3 Disagreement Between Parties:

In case of disagreement with regard to compliance with approved plans, the City shall advise the Lessee in writing of the deficiency claimed. If the claimed deficiency is not corrected by Lessee within thirty (30) days, or within an appropriate period as may be otherwise agreed, the matter shall be submitted to a competent arbitrator agreed upon by the City and Lessee. If the parties are unable to agree upon an arbitrator within fourteen (14) days of written demand for arbitration served by either party upon the other, the arbitrator shall be selected under the Commercial Arbitration Rules of the American Arbitration Association upon application by either

party. The Commercial Arbitration Rules shall govern any arbitration proceeding. Upon a decision by arbitration requiring compliance by the Lessee, the deficiency shall be remedied within a thirty (30) day period.

Section 4.4 As Built Plans:

Lessee shall furnish to the City a complete set of “As Constructed” or “As Built” Plans upon the completion of construction of the Banquet Facility, but ownership of plans and specifications shall remain in Lessee until the termination of the Lease.

ARTICLE V

Consideration

Section 5.1 Annual Consideration:

As consideration for the use of the Property during the Lease, in addition to the surrender to the City of all fixed improvements and equipment at the end of the Lease term as provided, Lessee shall pay each calendar year, as rent to the City, the greater of (A) the annual Percentage Rent (as defined below) or (B) the annual minimum rent equal to the sum of \$350,000 beginning with Lease Year 4 (starting as of the third anniversary of the Effective Date), which annual minimum rent shall be increased by three percent (3.0%) each Lease Year commencing with Lease Year 5 and continuing through the balance of the Term (and any extensions thereof). For sake of clarity, Lessee shall only owe City Percentage Rent in Lease Year 1, Lease Year 2, and Lease Year 3 (and the minimum annual rent shall not apply to those Lease Years).

For purposes of this Lease, “Percentage Rent” shall be an annual sum equal to 5.5% of Lessee’s Gross Receipts (as defined below) for each Lease Year during the Term of this Lease. In turn, for purposes of this Lease, Lessee’s “Gross Receipts” shall mean exclusively the following line items of revenue from the operations of Pine Trace Golf Course at the Property: (a) golf

revenue consisting of revenues from green fees, cart and equipment rental, pro shop merchandise, and the driving range; (b) restaurant and banquet center revenue consisting of revenues from sales of food and non-alcoholic beverage/refreshment, facility rentals, on-site ceremonies, and bridal suite and facility fees; and (c) net rental revenue of items contracted with third party vendors such as tables, chairs, and other equipment. For sake of clarity, the following items of revenue are excluded from Lessee's Gross Receipts for purposes of this Lease: Lessee's revenue from instructional golf training or education; the sale of alcoholic beverages; service charges; tips or gratuities; any excise or sales taxes; and discounts, allowances and refunds to customers, including returns for credits and cash or credit refunds.

Section 5.2 Payments Due Monthly:

Payments of Percentage Rent due the City shall be based on gross receipts, exclusive of State of Michigan sales taxes, and shall be paid monthly on or before forty-five (45) days after the close of each prior calendar month, covering the receipts of the previous month, and shall be accompanied by a statement showing detailed receipts. The Lessee's gross revenues shall be evidenced by cash, register, and vending machine readings (or other records agreed to by the City) and must reflect all transactions made by the Lessee.

Section 5.3 Charges and Fees:

Since it is the sole responsibility of the Lessee to operate the Renovated Golf Course and the Banquet Facility and all other activities on the Property profitably, the City and the Lessee agree and understand that the Lessee shall have full and complete right to set all prices, fees, and charges, of any kind, in connection with Lessee's operation of the Golf Course, the Banquet Facility, and all other activities on the Property.

The City and Lessee intend that residents of the City of Rochester Hills will receive preferred greens fee rates. The City and Lessee will strive to develop a reasonable, workable system to implement such a rate structure.

Section 5.4 Accounting:

Lessee shall permit inspection of its books, records, and accounts relating exclusively to Lessee's Gross Receipts, both for cash and on credit; these books, records, and accounts relating exclusively to Lessee's Gross Receipts shall at all reasonable times and upon reasonable advance notice, be open at Lessee's main office to the inspection by City, City's auditor, or other authorized representative or agent of City. Lessee shall also submit within ninety (90) days after the end of each calendar year during the Term (or less frequently if not required by City), an annual reviewed statement of Lessee's Gross Receipts for the calendar year then-ended, all in a form as prepared by a certified public account reasonably acceptable to City. In the event that the total of the monthly installments of Percentage Rent for any calendar year does not equal the annual Percentage Rent computed on the total amount of Gross Receipts for such calendar year, then Lessee, at the time it submits the annual statement of Gross Receipts required hereunder, shall pay the City any deficiency, or the City shall credit any over-payment to the next monthly installment of Percentage Rent due from Lessee, as the case may be.

Section 5.5 Taxes:

The Property is owned by the City and is exempt from property taxation. The parties have intentionally structured this Lease as a concession/lease agreement under Michigan law, and the parties intend, and are of the opinion, that Lessee's use of the Property under this Lease is as a concession that is exempt from real property taxation under MCL Section 211.181(2)(b). If it is later determined by a taxing authority having jurisdiction over the Property that the land and/or

real estate leased to BGC under this Lease no longer qualifies as a concession under Michigan law, then the parties shall, in good faith, renegotiate and amend the terms of this Lease to the extent necessary to qualify the land and/or real estate that comprises the Property as a concession for property tax purposes.

It is contemplated that Lessee shall be subject to taxation upon all personal property owned by Lessee and used on or in connection with the Property, other than any interest of Lessee in buildings constructed by Lessee or leasehold improvements to the land or real property made by Lessee. Lessee covenants to pay such taxes as may be lawfully assessed against such personal property. Any improvements to the Property made by the City shall not impose any additional personal property taxes on the Lessee.

Section 5.6 Utilities:

Lessee shall provide and pay all public and utility bills for electricity, gas, water, sewer, telephone, refuse removal and any and all other utilities consumed within the Property covered by this Lease and to procure at its expense all meters and permits necessary for making connections and continuing the service in proper manner for a facility which services the general public.

Section 5.7 Alcoholic Liquor Sales:

The calculation of the Percentage Rent due from Lessee under this Lease shall not include the sale of any alcoholic beverages. At termination of the Lease, Lessee shall assign and/or transfer the liquor license and related permits to the City without any consideration, subject to the approval of the Michigan Liquor Control Commission.

ARTICLE VI

Possession and Maintenance

Section 6.1 Lessee's Obligations to Maintain; Trees:

Lessee shall have sole possession of, and responsibility for proper maintenance of the Property, including all improvements constructed thereon. The City shall have the right to inspect the Property at all reasonable times with reasonable prior notice to Lessee. Lessee shall maintain the Property consistent with other public courses in Oakland County and Lessee's prior practice at the Property. The City will respond to concerns from the Lessee and from owners/occupiers of real estate parcels located adjacent to the Property as to dead, diseased, or damaged trees located on the Property and within twenty-five (25) feet of the Property's boundary line (collectively, "Dead, Diseased, or Damaged Trees"). The City shall remove Dead, Diseased, or Damaged Trees or portions of trees to the extent necessary for the protection of persons and property and elimination of any public nuisance. Notwithstanding the foregoing, however, the City will not perform Property fence line inspections for the purpose of general tree maintenance on the Property nor will the City be responsible for general tree maintenance on the Property; rather, subject to the City's obligation under the preceding sentence with respect to Dead, Diseased, or Damaged Trees, Lessee shall be responsible for general tree maintenance on the Property.

Section 6.2 Maintenance Disagreement:

In case of disagreement with regard to the general standards of maintenance, the City shall advise the Lessee in writing of the claimed deficiency. The City and Lessee shall make a good faith effort to resolve the City's objection to the maintenance standards of Lessee within thirty (30) days. If the parties are not able to agree on a resolution of the dispute within that time period, the matter shall be referred to arbitration, and the provisions of Section 4.3 of this Lease shall govern.

ARTICLE VII

Operation of Property

Section 7.1 Compliance with all Laws:

In its operations of the Property, Lessee shall observe all federal, state, and municipal laws applicable to the protection of health, safety and well-being of the public. Lessee shall at its expense meet the requirements of local and state health departments covering the handling and dispensing of food and beverages. Adequate toilet facilities in accordance with the plans and specifications shall be provided at locations on the Golf Course, at the clubhouse, and the Banquet Facility. Refuse and waste materials shall be handled as provided by local ordinances.

Section 7.2 Cooperation with City:

For purposes of promoting good will and publicity of the facility the City and Lessee may agree from time to time to hold and promote tournaments and programs of community significance.

Section 7.3 Days and Hours of Operation:

Lessee shall operate the Renovated Golf Course and related facilities during the regular and customary hours for a public golf course business in the vicinity. The Renovated Golf Course shall be opened for play on or before April 1 of each year and shall not close for the season before November 1 of each year, and shall be open for play, weather permitting, every day during the golf season from on hour after dawn until dusk.

Section 7.4 Standard of Service:

Lessee shall operate the Renovated Golf Course and Banquet Facility as a superior municipal golf course and banquet facility that is constructed, operated, and maintained in a manner that fosters community pride and will not require the expenditure of City funds.

Section 7.5 City Oversight:

Lessee shall be responsible for the operation of the Property in accordance with this Article. At the parties' regular meeting, if needed pursuant to Section 2.4, the parties will review the Renovated Golf Course operation and Banquet Facility operation discuss any changes, goals and objectives for the following year. In case of disagreement over the requirements and standards for operation of the Property, the City shall advise Lessee in writing of the claimed deficiency. The City and Lessee shall make a good faith effort to resolve the City's objection to Lessee's operation of the Property within Thirty (30) days. If the parties are not able to agree on a satisfactory resolution within that time period, the matter shall be referred to arbitration, and the provisions of Section 4.3 of the Lease shall govern.

ARTICLE VIII

Insurance

Section 8.1 Insurance Required:

During the Term of this Lease, Lessee shall maintain the insurance required under this section and shall keep such insurance in force during the entire life of this Lease. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan. The requirements below should not be interpreted to limit the liability of Lessee and all deductibles and SIR's are the responsibility of Lessee.

- A. Worker's Compensation Insurance including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- B. Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$2,000,000 per occurrence and aggregate. Coverage shall include an endorsement stating the City shall be named as additional insured. It is

understood and agreed by naming the City as additional insured, coverage afforded is considered primary and any other insurance the City may have in effect shall be considered secondary and/or excess. Required liability limits may be obtained by using an Excess/Umbrella Liability policy in addition to the primary liability policy. If coverage limits are satisfied by an Excess and/or Umbrella policy, coverage must follow form of the primary liability policy, including but not limited to additional insured and primary/non-contributory coverage.

- C. Property Insurance covering all buildings constructed by Lessee during the term of this Lease in an amount equal to at least one hundred (100%) percent of the full replacement value of such buildings above foundations. Lessee shall have the obligation to repair or rebuild any damaged structures located upon the Property to their previous condition. The entire amount collected for losses under any fire and extended coverage policies shall be held under joint control of the City, Lessee and any leasehold mortgagee, and shall be made available to repair, restore, or rebuild the damaged improvements. Any excess portion of the insurance fund remaining after the cost of repairs, rebuilding or restoration is paid, shall be paid to the Lessee. In the event the insurance fund is insufficient to cover the cost of repairs, rebuilding or restoration, the excess cost shall be borne by Lessee.
- D. Cancellation Notice: All policies, as described above, shall include an endorsement stating that a provision that the insurer will not cancel, materially change, or fail to renew the coverage provided by such policy without first giving City no less than thirty (30) days prior written notice thereof.

- E. Proof of Insurance Coverage: Lessee shall provide the City at the time that the Lease is returned for execution, a Certificate of Insurance as well as the required endorsements. In lieu of required endorsements, if applicable, a copy of the policy sections where coverage is provided for additional insured and cancellation notice would be acceptable.
- F. If any of the above coverages expire during the term of this Lease, the Lessee shall deliver renewal certificates and endorsements to the City at least ten (10) days prior to the expiration date.

Section 8.2 Review of Insurance:

The parties agree to reassess insurance needs at least every three (3) years to determine whether the coverage needs to be changed. If the review indicates a change is needed, Lessee shall provide and pay for the required protection.

ARTICLE IX

Performance and Payment Bond

Section 9.1:

Upon approval of the final plans and specifications for the initial construction of the Banquet Facility, Lessee shall cause its general contractor and/or its subcontractors to furnish to the City performance and payment bonds (to be either a deposit of cash or negotiable securities or a bond with a corporate surety licensed to do business in the State of Michigan) in the amount of the projected cost of the construction of the Banquet Facility including equipment and furnishing, conditioned that Lessee's general contractor and/or subcontractors complete the initial construction in accordance with the final approved plans and specifications and that Lessee's general contractor and subcontractors pay for all labor, materials, tools and equipment furnished

for the work. The said bonds shall be payable to the City and Lessee and shall be approved by the City and Lessee as to form.

ARTICLE X

Assignment of Lease

Section 10.1:

Except as provided in Article XI below, this Lease shall not be assigned in whole or in part, unless and until the City authorizes such assignment by resolution. Lessee shall have the right to sublease food, beverage and other incidental activities relating to the Golf Course and Banquet Facility, only upon written approval by the City, which approval shall not be unreasonably withheld, and the Lessee remaining liable for all performance required under this Lease.

ARTICLE XI

Pledge of Lease

Section 11.1 Improvements to Property:

It is understood that in borrowing funds Lessee cannot place a mortgage on the land covered by this Lease or on the fixed improvements placed thereon, which improvements shall be and become the property of the City. However, it is contemplated that Lessee may be required to borrow funds for the initial construction of improvements and that from time to time during the terms of this Lease it may be desirable or convenient for Lessee to borrow additional funds for additional improvements, alterations, repairs or for other purposes. Accordingly, it is agreed that Lessee shall at all times during the term of this Lease have the right to assign, mortgage or convey by deed of trust or any other security instrument this Lease and the leasehold rights of Lessee created by this Lease provided that any such assignment, mortgage, deed of trust, or other security instrument will at all times be subject to, and will recognize, the right, title and interest of the City

as owner of the land covered by this Lease and the fixed improvements placed thereon, and the right of the City to require the payment of all rentals due hereunder and the full and faithful performance of the covenants and conditions of this Lease by the Lessee, the assignee or mortgagee of any leasehold interest having the right to cure any default by Lessee in the terms of its mortgage.

Section 11.2 Personal Property and Equipment:

Subject to any such assignment, mortgage, deed of trust or other security instrument, the City shall have a lien upon all personal property not daily exposed to sale, owned by Lessee and used on the Property to secure the payment of rentals as they respectfully come due hereunder, but the City agrees to enter into a subordination of its landlord's lien on such property to the rights of the holder of any such assignment, mortgage, deed of trust or other security instrument.

Section 11.3 Default of Lessee:

In the event at any time during the term of this Lease Lessee or anyone holding under Lessee shall be in material default of any of the covenants or conditions of this Lease, then and in such event, before forfeiture is invoked by the City, the holder of the mortgage, deed of trust or other security instrument may make any and all payments and do and perform any and all acts and things which may be necessary or required to prevent a forfeiture of this Lease and the party making such payments or performing such acts or things shall thereby and thereupon be subrogated to all rights of the Lessee under this Lease. The City agrees, that, if requested in writing by the holder of any mortgage, deed of trust, or other security instrument the City will send to the said holder at the address specified in such written request copies of all written notices or demands which the City may serve upon Lessee or anyone holding under Lessee under and pursuant to the terms of this Lease or otherwise.

It is understood, however, that the mortgagee, trustee, beneficiary of said deed of trust or other holder of security above mentioned shall be in no way liable to the City for the payment of rent or for the performance of any other covenant and condition under this Lease until such time as it shall acquire by conveyance from the Lessee, or by foreclosure or other proceedings provided by law or by the terms of the mortgage, deed of trust or security instrument, all the right, title and interest of the Lessee under this Lease, provided, however, that any party who shall acquire said right, title and interest of the Lessee, as above provided, shall thereupon and thereby become liable for the full performance and all payments theretofore and thereafter required to be made by Lessee under the covenants and conditions of this Lease, as fully and completely and to the same extent as the Lessee itself would have been if it still had retained its right, title and interest hereunder. Nothing in this Article XI shall prevent or delay the termination of this Lease under the provisions of Article XII provided the City has given all notices and opportunities of performance provided for herein and default has not been cured.

ARTICLE XII

Cancellation and Forfeiture

Section 12.1 Termination:

In the event the Lessee shall be declared bankrupt according to law, or if any assignment shall be attempted to be made of this Lease for the benefit of creditors (other than as herein permitted) or if Lessee shall abandon the Property or in the event rental finally determined to be due hereunder remains unpaid for thirty (30) days after notice of non-payment given to Lessee or in the event of a material breach by Lessee, then in any of said events the City may declare the lease to be terminated and may enter into and upon the land covered by this Lease or any part thereof and repossess the same (including capital improvements and installed fixtures) and expel

the Lessee and those claiming under it and remove its effects, forcibly, if necessary, without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for possession or for arrears of rent.

Section 12.2 Disagreement Regarding Rent Payments:

In the event of a disagreement as between the City and Lessee regarding the amount of rental payments owed by the Lessee to the City, the amount to be paid shall be finally determined by a qualified and recognized firm of certified public accountants mutually agreed upon by the City and Lessee who has not been previously employed by either party within the immediately preceding two (2) years and who has not for either party audited the accounts or records in question. If the parties are unable to agree upon an accounting firm, it shall be selected by the Chief Probate Judge of Oakland County. If such determination indicates the City's figures are correct, the cost of the audit shall be paid by the Lessee. If such determination indicates Lessee's figures to be correct, the cost of the audit shall be paid by the City. If neither is correct, the cost shall be borne equally, except Lessee shall pay the cost of audit if the figures, accounts and/or records furnished to the City by Lessee are incorrect.

Section 12.3 Termination City Council Decision:

The termination and cancellation of this Lease shall only be made by resolution of the Rochester Hills City Council for failure of Lessee to comply with the terms and provisions of the Lease after thirty (30) days written notice to Lessee.

ARTICLE XIII

Indemnification

Section 13.1 Lessee to Indemnify and Hold City Harmless:

Except as provided below in this paragraph, Lessee shall protect, indemnify and save the City and its employees harmless from and against any and all claims, demands and causes of action of any kind whatsoever for injury to or death of persons, or loss or damage to property, occurring on the Property, and in any manner growing out of, and connected with the Lessee's use and occupation of the Property, and the condition of the Property during the term of this Lease. If, however, the City is found liable by a Court of law, and insurance is not then in force providing coverage to the City for a judgment suffered by the City, the terms of this indemnification shall govern, and Lessee shall honor its obligation, and rent payments otherwise due the City under this Lease shall fully abate until Lessee has thereby recouped all monies expended under this indemnification. This indemnification of the City and its employees by Lessee shall not include any indemnification to the City or its employees for the torts or negligence of City employees or City retained contractors on the Property while on City business.

ARTICLE XIV

Waiver of Default

Section 14.1:

Any waiver by the City of any default or breach of this Lease shall not be construed to be a continuing waiver of such default or breach nor as a waiver or permission, express or implied, of any other or subsequent default or breach.

ARTICLE XV

Force Majeure

Section 15.1:

If, by reason of orders of a governmental authority (whether federal, state, or local); national, state or local emergencies; insurrections; strikes; walkouts; riots; floods; earthquakes; fires; casualties; acts of god; acts of the public enemy; epidemics or pandemics; quarantine or isolation restrictions; freight embargos; lack of transportation; severe weather; inability to secure necessary labor, materials or tools; or by any other matter not within its control, the City or Lessee is, in good faith and without fault or neglect on its part, prevented or delayed in the construction of any improvements or in the performance of any covenant and condition which under the terms of this Lease it is required to do within a specified period of time (including any of the improvements that comprise the Improvement Project, the period of time within which such performance was to have been completed shall be extended by a period of time equal to that of such delay or prevention, and the City or Lessee, as the case may be, shall not be deemed to be in default if it performs and complete such work or covenant or condition in this manner required by the terms of this Lease within the specified period of time as so extended.

ARTICLE XVI

Drainage

Section 16.1:

It is contemplated that the existing drainage within the Property will be retained as the drainage way for upstream properties and the Property. Any construction, relocation or expansion of existing drainage required for the Golf Course operation shall be by Lessee at Lessee's expense and subject to the prior approval of the City.

ARTICLE XVII

Easements

Section 17.1 Easements of Record:

This Lease is made subject to: All easements across the Property that are on record in the Office of the Register of Deeds, Oakland County, Michigan; all natural drainage courses, and the above drainage easement.

ARTICLE XVIII

General Clauses

Section 18.1 Word References and Gender, etc.:

All references to the parties to this Lease and all covenants, conditions and agreements of this Lease shall apply to and be binding upon the City and Lessee and their respective heirs, executors, administrators, legal representatives, successors, and assigns (when assignment is made in accordance with the provisions hereof) as if they were in each case fully named and stated. In this Lease both the City and Lessee are referred to in the singular and neuter gender. However, such words and all other terms and words used in this Lease regardless of the neuter gender in which they are used, shall be deemed and construed to include any other number (singular or plural) any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in the required neuter gender.

Section 18.2 Consumers Power Lease:

The City and Lessee (as the assignee of Golf Concepts, Inc., a Michigan corporation) previously entered into a certain lease agreement (“Consumers Lease”) with Consumers Energy Company, a Michigan corporation formerly known as Consumers Power Company, on December 16, 1987, as amended, whereby Consumers Energy Company leased the use of certain of its land

dissecting the Property jointly to City and Lessee in connection with Lessee's use and operation of the Golf Course on the Property. This Consumers Lease now scheduled to expire on December 15, 2038. The City and Lessee now agree to use their best efforts to obtain from Consumers Energy Company suitable extensions for the Consumers Lease so that the term of the Consumers Lease will expire coterminously with the expiration of this Lease (inclusive of any extensions hereof).

Section 18.3 Mutual Cooperation:

The City and Lessee agree that the Golf Course shall be named "Pine Trace" or a reasonable derivative thereof. City and Lessee agree to cooperate and mutually agree on the name for other related facilities. Parties agree to meet periodically to discuss mutual concerns and to attempt to resolve said concerns to the benefit of both parties.

Section 18.4 Lease Contingent Upon Lessee's Financing:

This Lease and Lessee's obligations hereunder, including Lessee's obligation to construct the items included in the Improvement Project, are completely contingent upon Lessee obtaining project financing from a qualified lending institution, the terms of which financing are to be acceptable to Lessee in its sole discretion. If Lessee does not obtain the above financing within twenty-four months following the Effective Date, Lessee may so notify the City, in which event this Lease shall then and there terminate without cost or further obligation by either party.

Section 18.5 Modifications Must be in Writing:

This Lease contains the entire agreement of the parties and replaces and supersedes all previous agreements (including, without limitation, the June 27, 1986 Lease and any amendments thereto), if any, both oral and written. Any modification to this Lease must be in writing, signed

and agreed to by both parties, before said modification becomes effective and binding under the terms hereof.

Section 18.6 Notices:

All notices to the City shall be sent by certified or registered mail addressed to the Mayor, City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309, or at such other address as the City may in writing from time to time designate. All notices to Lessee shall be sent by certified or registered mail addressed to Lessee at 3600 Pine Trace Blvd., Rochester Hills, Michigan 48309 or at such other address as the Lessee may in writing from time to time designate.

Section 18.7 “Reference to State Land Trust Fund Project Agreement”:

Lessee recognizes that the City’s rights, duties, and obligations under this Lease are subject to the Department of Natural Resources State Land Trust Fund Project Agreement dated April 7, 1982, which Agreement pertains to the Property.

Section 18.8 “Eminent Domain”:

If the whole, or any part, of the Property hereby leased shall be taken by any public authority under the power of eminent domain, then the term of this Lease shall cease on the part so taken, from the day the possession of that part shall be required for any public purpose. If either City or Lessee believes that the Lease should be terminated as a result of the public taking, then City and Lessee shall have sixty (60) days from the date notice of this taking is received by both City and Lessee to reach a mutually satisfactory resolution of the issue. If, at the conclusion of said sixty (60) days period, City and Lessee do not agree that the Lease should terminate, then the matter shall be referred to a competent arbitrator agreed upon by the City and Lessee. If the parties are unable to agree upon an arbitrator within fourteen (14) days of written demand for arbitration

served by either party upon the other, the arbitrator shall be selected under the Commercial Arbitration Rules of the American Arbitration Association under application by either party. The said Commercial Arbitration Rules shall govern any arbitration proceeding. The sole issue to be submitted for arbitration under this Sub-Section is whether, given the economic expectations of City and Lessee in entering into this Lease, and the fact that a certain portion of the Property has then been taken under the power of eminent domain, this Lease should be terminated. The decision of the arbitrator shall be final and binding on the parties and may be certified to a court of competent jurisdiction. In the event this Lease is not then terminated, whether by agreement of City and Lessee, or by decision of the arbitrator, then said Lease shall continue with possession of the remainder of same under the terms herein provided, except that the City and Lessee shall then meet to discuss a reduction, if any, in rental payments appropriate as a result of said taking.

All damages awarded for any such taking allocated for the payment of land shall be the property of the City. Lessee shall be entitled to receive that portion of the award paid for the value of the buildings, leasehold improvements, and personal property owned, constructed or installed by Lessee; provided further, that the City shall not be entitled to any portion of the award to the Lessee for its loss of business and related relocation costs and expenses. Both City and Lessee agree that at the time any award is made for the buildings on the Property, if the useful life of the buildings extends beyond the initial Lease term, that portion of said award to be paid to Lessee shall be limited to the value of the buildings for the remaining Lease term (i.e. if the buildings have a useful life of an additional 40 years at the time of the award, and the balance of the Lease term is 10 years, the portion of the award allocated for said buildings to be paid Lessee shall be 25%, with the balance of the award paid to the City).

The City and Lessee further agree that for the limited purpose of this Sub-Section, at any time during the Lease term, or any extension thereof, and for the sole purpose of the taking of the leasehold improvements under the power of eminent domain, the leasehold improvements shall have a remaining useful life of fifty (50) years. Both City and Lessee agree that at the time any award is made for the leasehold improvements on the Property, that portion of said award to be paid to Lessee shall be limited to the value of the leasehold improvements for the remaining Lease term (i.e. since the leasehold improvements would have a useful life of an additional 50 years at the time of the award, if the balance of the Lease term is then 10 years, the portion of the award allocated for said leasehold improvements to be paid Lessee shall be 10%, with the balance of the award paid to the City).

EXHIBIT A

LEGAL DESCRIPTION

Land in the Township of Avon, County of Oakland, State of Michigan, described as:

Parcel 1: *AK 4*

Part of the Southeast 1/4 of Section 31, and part of the Southwest 1/4 of Section 32, OF AVON TOWNSHIP, OAKLAND COUNTY, MICHIGAN, described as beginning at the Southeast corner of said Section 31; thence due West along South line of said Section 31 a distance of 23.64 feet; thence North 7 degrees 55 minutes West 692.24 feet; thence North 88 degrees 55 minutes 40 seconds West 153.96 feet; thence South 7 degrees 55 minutes East 695.24 feet to the South line of said Section 31; thence due West along said South line 174.32 feet; thence North 7 degrees 55 minutes West 645.35 feet; thence North 89 degrees 01 minute 55 seconds West 150.93 feet; thence North 88 degrees 25 minutes West 150.0 feet; thence North 8 degrees 32 minutes 50 seconds West 1817.05 feet to the East and West 1/4 section line of said Section 31; thence North 86 degrees 46 minutes East along said East and West 1/4 section line 116.54 feet; thence continuing along said East and West 1/4 section line North 87 degrees 50 minutes East 436.10 feet to the East 1/4 corner of said Section 31, also being the West 1/4 corner of said Section 32; thence continuing along said East and West 1/4 section line of said Section 32, North 88 degrees 26 minutes East 168.10 feet; thence South 8 degrees 49 minutes East 938.29 feet; thence North 82 degrees 54 minutes East 1243.57 feet; thence North 3 degrees 49 minutes West 914.05 feet to said East and West 1/4 section line; thence North 88 degrees 52 minutes East along said East and West 1/4 section line 172.32 feet; thence South 1 degree 08 minutes East 30.01 feet; thence North 88 degrees 52 minutes East 330.31 feet; thence South 1 degree 08 minutes East 1241.43 feet to the North line of "Supervisor's Plat of Messmore Farms Subdivision"; thence North 89 degrees 49 minutes 17 seconds West along said North line 665.10 feet to the West line of said subdivision; thence South 7 degrees 40 minutes 44 seconds East along said West line 1315.91 feet to the South line of said Section 32; thence North 89 degrees 24 minutes West along said South line 993.95 feet to the point of beginning.

*17-31-400-006
20-300-001/2/3/4*

Parcel 2: *AK "H"*

Part of the West 1/2 of the Southeast 1/4 and the West 1/2 of the East 1/2 of the Southeast 1/4 of Section 31, described as: Commencing at a point North 0 degrees 06 minutes East 990.0 feet from the Southwest corner of said Southeast 1/4 of Section 31; thence along the North and South 1/4 line North 0 degrees 06 minutes East 1457 feet to a monument at the center of said Section 31; thence North 86 degrees 48 minutes 40 seconds East 625.89 feet along the East and West 1/4 Section line to a monument which is the Southwest corner of Klem Gardens Subdivision, as recorded in Liber 47 of Plats, Page 34, Oakland County Records; thence continuing along said 1/4 section line (and South line of Klem Gardens Subdivision) North 88 degrees 21 minutes East 634.93 feet to a monument; thence continuing along said East and West 1/4 section line North 88 degrees 50 minutes East 345.40 feet to a point; South 8 degrees 13 minutes 45 seconds East 1306.39 feet to a point; thence due West 800.0 feet to a point; thence South 3 degrees 13 minutes 45 seconds East 1222.70 feet to a point on the South Section line being the center line of South Boulevard; thence along said Section line due West 1148.50 feet to a point; thence North 1 degree 57 minutes East 990.5 feet to a point; thence due West 199.0 feet to the point of beginning.

17-31-400-001

Parcel 3: ^{12'}
 Part of the Southwest 1/4 of Section 32, Town 3 North, Range 11 East, Avon Township, Oakland County, Michigan, described as: Beginning at a point in the East and West 1/4 section line of said Section 32, distant North 28 degrees 26 minutes East on said 1/4 section line 168.10 feet from the West 1/4 corner of said Section 32; thence South 3 degrees 49 minutes East 938.29 feet; thence North 82 degrees 54 minutes East 1243.57 feet; thence North 8 degrees 49 minutes West 814.05 feet to a corner of Coolidge Highway Subdivision; thence South 88 degrees 37 minutes West on East and West 1/4 section line 957.10 feet; thence South 88 degrees 26 minutes West along said East and West 1/4 section line 296.53 feet to the point of beginning.

Excepting from Parcels 1 and 3 the following land, being Parcel 4, which was deeded to Consumers Power Co. by deed recorded in Liber 5364, Page 50.

Parcel 4:
 A parcel of land in the Southwest 1/4 of Section 32, Town 3 North, Range 11 East, described as follows: Beginning at the West 1/4 post of Section 32; thence North 88 degrees 39 minutes 00 seconds East along the East and West 1/4 line of section 463.68 feet; thence North 88 degrees 48 minutes 10 seconds East 83.93 feet; thence South 36 degrees 57 minutes 00 seconds West 641.55 feet; thence South 10 degrees 43 minutes 00 seconds East 2054.50 feet to the South line of said section; thence North 89 degrees 24 minutes 00 seconds West along said section line 67.31 feet to the Southwest corner of said section; thence North 10 degrees 43 minutes 00 seconds West along said West section line 479.10 feet; thence North 07 degrees 55 minutes 00 seconds West 216.97 feet; thence North 88 degrees 53 minutes 40 seconds West 10.63 feet to the West line of said section; thence North 10 degrees 43 minutes 00 seconds West along said section line 1864.55 feet to the place of beginning.

Together with the easement and right to cross said Parcel 4 above described at such places and in such a manner as is mutually satisfactory to Consumers Power Co. and Charter Township of Avon, so long as such crossing shall not interfere with the use of said land by Consumers Power Co., its successors and assigns.

Also, together with all oil, gas and other minerals (but not including sand, clay or gravel) in and under said Parcel 4 above described, together with the right to remove the same by wells or shafts placed on the adjoining land. No wells or shafts are to be placed upon said Parcel 4 above described.

- 47445
- 15-31-400-000
- 15-33-300-001
- 15-31-400-001

Exhibit B

"New Parcels" Property Descriptions.

1. The real property consisting of a 7.09 acre parcel of real property (depicted in Exhibit A) located at 3308 South Blvd. W., Rochester Hills, Oakland County, Michigan, Parcel I.D. No. 70-15-31-400-016, more particularly described as:

Part of the Southeast 1/4 of Section 31, Town 3 North, Range 11 East, described as follows: Part of the West 1/2 of the Southeast 1/4 of Section 31, Town 3 North, Range 11 East, beginning at the Southwest corner of the Southeast 1/4 of Section 31; thence North 0 degrees 06 minutes East 990.0 feet along the North-South 1/4; thence due East 369.9 feet; thence South 1 degree 57 minutes West 990.5 feet to a point on the South Section line; thence due West along the South Section line to the point of beginning. EXCEPT: part of the Southeast 1/4 of Section 31, Town 3 North, Range 11 East, beginning at a point distant North 89 degrees 46 minutes 35 seconds East 157.92 feet from the South 1/4; thence North 89 degrees 46 minutes 35 seconds East 180.00 feet; thence North 01 degrees 43 minutes 35 seconds East 230.00 feet; thence South 89 degrees 46 minutes 35 seconds West 180.00 feet; thence South 01 degrees 43 minutes 35 seconds West 230.00 feet to the point of beginning.

2. The real property consisting of real property located at 3300 South Blvd. W., Rochester Hills, Oakland County, Michigan, Parcel I.D. No. 70-15-31-400-017, more particularly described as:

T3N, R11E, SEC 31 PART OF SE 1/4 BEG AT PT DIST N 89-46-35 E 157.92 FT FROM S 1/4 COR, TH N 89-46-35 E 180.00 FT, TH N 01-43-35 E 230.00 FT, TH S 89-46-35 W 180.00 FT, TH S 01-43-35 W 230.00 FT TO BEG 0.95 A