

File No.: 04-1000-20-2023-521

December 14, 2023

s.22(1)

Dear s.22(1)

Re: **Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")**

I am responding to your request of August 22, 2023 under the *Freedom of Information and Protection of Privacy Act* for:

City contract with Monaghan Golf Group to run the services of the Fraserview and Langara Golf Course, including any provisions to the contract. Date range: January 1, 2008 to August 21, 2023.

All responsive records are attached. Some information in the records has been severed (blacked out) under s.21(1) and s.22(1) of the Act. You can read or download these sections here: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00.

Under section 52 of the Act, and within 30 business days of receipt of this letter, you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your FOI request by writing to: Office of the Information & Privacy Commissioner, info@oipc.bc.ca or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number (#04-1000-20-2023-521); 2) a copy of this letter; 3) a copy of your original request; and 4) detailed reasons why you are seeking the review.

Yours truly,

[Signed by Cobi Falconer]

Cobi Falconer, MAS, MLIS, CIPP/C
Director, Access to Information & Privacy
cobi.falconer@vancouver.ca
453 W. 12th Avenue Vancouver BC V5Y 1V4

If you have any questions, please email us at foi@vancouver.ca and we will respond to you as soon as possible. Alternatively, you can call the FOI Case Manager at 604-871-6584.

Encl. (Response Package)

:dl


**FRASERVIEW GOLF COURSE AND DRIVING RANGE
GOLF PROFESSIONAL SERVICES
INTERIM AGREEMENT**

This Agreement is entered into as of midnight on December 31, 2008 by and:

BETWEEN:

CITY OF VANCOUVER (the "City"), as represented by its
BOARD OF PARKS AND RECREATION
2099 Beach Avenue
Vancouver, British Columbia
V6J 1Z4
(the "Board")

AND:

MONAGHAN GOLF INC.
s.22(1)

(the "Professional")

BACKGROUND:

- A. As a result of Request for Proposals P2008-14 (the "RFP"), the Board selected the Professional to provide golf professional services at the Fraserview Golf Course and Driving Range beginning January 1, 2009, for a term of 5 years, with the provision for a 4-year extension upon completion of capital upgrades to the Board's satisfaction, substantially on the terms and conditions set out in the form of contract (the "Form of Contract") attached to and forming part of the RFP as supplemented by the Professional's proposal, subject to final agreement by the Professional, the Board's General Manager and the City's Director of Legal Services (such final formal contract hereinafter referred to as the "Contract");
- B. Due to year end timing complexities, the parties acknowledge that the Contract cannot be concluded and executed prior to January 1, 2009; and
- C. Accordingly, the parties have agreed that this Interim Agreement will govern their legal rights and obligations pending execution of the Contract, with the intent that upon the execution of the Contract, the parties will make the Contract retroactive to January 1, 2009 and will make all appropriate and equitable financial adjustments between this Interim Agreement and the Contract retroactive to January 1, 2009.

THE BOARD AND PROFESSIONAL NOW AGREE as follows:

1. INTERIM AGREEMENT

The parties now enter into this Interim Agreement on the following terms and conditions:

(a) Term of Interim Agreement

The term of this Interim Agreement commences on January 1, 2009 and continues, subject to Section 1(b) below, until the earlier of:

- (i) execution and delivery of the Contract; and
- (ii) cancellation of this Interim Agreement pursuant to Section 17 of the Form of Contract (as incorporated by reference into this Interim Agreement pursuant to Section 2(b) below).

(b) Cancellation Without Cause

In the event that the parties have not signed the Contract on or before March 30, 2009, then at any time thereafter either party may give 90 days' prior written notice to cancel this Interim Agreement without cause or liability, and the Interim Agreement will then be deemed to have expired as of the 90th day following such notice.

(c) Terms of Interim Agreement

The terms and conditions in the Form of Contract are now deemed to be incorporated into this Interim Agreement by reference and will form an integral part of this Interim Agreement except that:

- (i) all references to "the engagement" and "this Contract" are now replaced with "this Interim Agreement",
- (ii) all references to "Term" are now replaced with "Term of this Interim Agreement";
- (iii) as set forth in the Professional's proposal and accepted by the Board:
 - A. the annual retainer payable by the Board will be **s.21(1)**
 - B. the annual rent payable by the Professional for the pro shop and cart storage area will be **s.21(1)**
 - C. the annual rent payable by the Professional for the short game practice area will be **s.21(1)**
 - D. the Board will be entitled to **s.21(1)**
s.21(1)
 - E. the Board will be entitled to **s.21(1)**
s.21(1) and
 - F. the Professional will be entitled to **s.21(1)**
s.21(1)

- (iv) adjustment, invoicing and payment (including in respect of GST and/or PST as and where applicable) of the foregoing amounts will be made on a monthly basis, in accordance with section 5 the Contract;
- (v) in the event of any inconsistency between the terms and conditions set out in the Form of Contract, the Professional's proposal and this Interim Agreement, those 3 documents will be interpreted and applied in the following order of priority:
 - A. this Interim Agreement;
 - B. the Form of Contract; and
 - C. the Professional's proposal; and
- (iv) the parties now agree to make such appropriate and equitable adjustments as are necessary, to account for the shorter term of this Interim Agreement.

THE BOARD AND THE PROFESSIONAL have acknowledged that they are legally bound by the terms and conditions of this Interim Agreement by signing where indicated below.

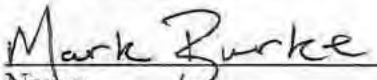
CITY OF VANCOUVER as
represented by its **BOARD OF
PARKS AND RECREATION:**

Per:



Susan Mundick, General Manager

SIGNED, SEALED, AND
DELIVERED BY **THOMAS MONAGHAN**
in the presence of:



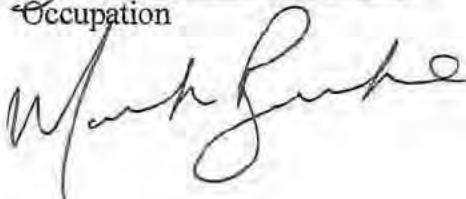
Name



THOMAS MONAGHAN

989 Richards St.
Address
Vancouver, BC
V6R6B6

Director of Coaching
Occupation



Name

Contract date: January 1, 2009

Parties:

**CITY OF VANCOUVER, as represented
by its BOARD OF PARKS AND RECREATION,**
2099 Beach Avenue
Vancouver, British Columbia
V6J 1Z4
(the "**Board**")

and:

MONAGHAN GOLF INC.
§ 22(1)

(the "**Professional**")

Background:

- A. By way of a Request for Pre-Qualifications issued by the Board on September 8, 2008, the Board requested submissions from golf course professionals interested in participating in the Board's upcoming Request for Proposals for the operation of the Fraserview Golf Course and Driving Range.
- B. The Professional submitted a request for pre-qualification, which the Board evaluated and accepted;
- C. By way of Request for Proposals P2008-14 (as amended and supplements, the "RFP"), the Board issued a request for proposals from each of the pre-qualified golf professionals for the provision of golf professional services at the Fraserview Golf Course and Driving Range.
- D. The Professional submitted a proposal in response to the RFP.
- E. Following its review and evaluation of the various proposals submitted by the Professional and other golf professionals pursuant to the RFP, the Board resolved on December 8, 2008 to enter into an agreement with the Professional for the provision of golf professional services at Fraserview Golf Course and Driving Range.
- F. This Contract sets forth the terms and conditions agreed to by the parties for the provision of such golf professional services by the Professional to the Board.

THE BOARD AND PROFESSIONAL NOW AGREE AS FOLLOWS:**1. Interpretation.**

- (a) In this Contract, the following terms have the following meanings:

“Ball Storage Area” means the area used to store golf balls for the Driving Range;

“Board and City” is defined in Section 14(b) below;

“Board’s Designated Representative” means either the Board’s Manager of Operations, Vancouver East District or the Supervisor of Golf Operations acting alone or together, and includes any person to whom the authority of the Board’s Manager of Operations, Vancouver East District or Supervisor of Golf Operations has been delegated by the Board or the Board’s General Manager;

“Cart Storage Area” means the cart storage areas for the Golf Course, more particularly identified in Schedule B as “Power Cart Storage” and “Pullcart Storage Area”;

“Chipping and Putting Green” means the practice chipping and putting green for the Golf Course, more particularly identified in Schedule B as “Practice Area”;

“City” means the City of Vancouver, a municipal corporation continued pursuant to the *Vancouver Charter*;

“Contract” means this Golf Professional Services Contract for the Fraserview Golf Course and Driving Range, between the Board and the Professional and includes all schedules, as amended or supplemented from time to time;

“Contractor” or “staff” means, with respect to the Professional, any officer, director, employee, agent, contractor, sub-contractor, licensee, guest, invitee or visitor of the Professional in or about the Golf Course in connection with any matter governed by this Contract;

“CPGA” means the Canadian Professional Golf Association;

“CPGA - Certified Employee” means any individual employed by the Professional or retained as an independent or dependent contractor of the Professional (including Tom Monaghan and the Professional’s Pro Shop Manager) who is a member or an apprentice member in good standing of the CPGA or any replacement or successor organization;

“Default” is defined in Section 18 below;

“determined by arbitration” is defined in Section 35(d) below;

“Driving Range” means the driving range for the Golf Course;

“Effective Date” means the effective date of this Contract, being January 1, 2009;

“Excluded Items” is defined in Section 25(c) below;

“Fixtures” means any and all Personal Property of the Professional and/or Tom Monaghan which may be located at any time at the Golf Course which is in the nature of ball dispensers, counters, shelves, racks or any other fixtures which are attached to, affixed to, or placed (in a fixed manner) on or into, the Golf Course;

“General Security Agreement” means the general security agreement to be granted by the Professional pursuant to this Contract on the terms set out in Schedule E hereto;

“Golf Course” means the Fraserview Golf Course, located at 7800 Vivian Drive, Vancouver, B.C., V5S 2V8, and except where the context otherwise requires, expressly includes the Driving Range, Pro Shop, Short Game Practice Area, Chipping and Putting Green and Cart Storage Area;

“Gross Revenue” means the gross amount received by the Professional and/or Tom Monaghan from all activity related to a specified activity or combination of activities pursuant to this Contract, including, without limitation or duplication;

- (1) gross revenue from all sources related to such activity(ies);
- (2) receipts representing reimbursement of costs incurred on behalf of consumers or customers of the Professional’s business related to such activity(ies); and
- (3) the fair market value of all goods and services received by the Professional from any third party in exchange for or by way of barter from the provision of goods and services by the Professional related to such activity(ies);

“Merchandise” means all of the Personal Property of the Professional and/or Tom Monaghan located from time to time or at any time on the Golf Course, which is intended for retail sale to the public at the Pro Shop, the Driving Range or elsewhere on the Golf Course;

“Minimum Cart Revenue Payment” means the minimum annual payment from the Professional to the Board, which is equal to the lesser of:

- (1) \$12,000.00; and

$$(2) \quad \frac{\$12,000.00 \times (365 - n)}{365}$$

where "n" is equal to the number of days in the applicable calendar year that the Golf Course is closed due to Unavoidable Delay;

"Miscellaneous Personal Property" means any and all personal property of the Professional and/or Tom Monaghan which may be located at any time at the Golf Course and is used for the purpose of providing Services pursuant to this Contract, which is not Fixtures, Merchandise, Rental Equipment or Office Equipment and Supplies, but includes range balls and other Driving Range equipment owned by the Professional;

"Office Equipment and Supplies" means and includes all office equipment and general supplies of the Professional used at the Golf Course in connection with the provision of Services, such as computer hardware, software and peripherals, office furniture, televisions, radios, cameras and other electronic equipment and peripherals, office décor and supplies, filing cabinets, cleaning supplies

"Option to Purchase" means the option to purchase the Professional's Personal Property as set out in Schedule F hereto;

"Permitted Creditor" is defined in Section 15(d) below;

"Permitted Encumbrance" means, for all purposes of the Contract except Schedule F hereto, a security interest (as that term is defined in the *Personal Property Security Act* (British Columbia) in favour of a Permitted Creditor, which is registered in priority to any security interest registered in favour of the Board or the City in respect of the subject matter of this Contract;

"Personal Property" means all of the personal property (of the nature and kinds to which the Personal Property Security Act (British Columbia) applies and relates) of the Professional and/or Tom Monaghan, used by the Professional in providing the Services;

"Prime Rate" mean, at any time, the per annum rate of interest published by the main branch in the City of Vancouver of the Bank of Montreal, or its successor at such time, as its reference rate for setting rates of interest on loans of Canadian dollars to customers in Canada and referred to by such bank as its "prime rate", provided however that if such bank publishes more than one such reference rate at any time, the Prime Rate shall be the highest thereof, and provided further that, if a court holds that this definition of Prime Rate is vague, uncertain or otherwise defective then the Prime Rate shall be three (3%) percent greater than the per annum rate of interest established by the Bank of Canada as the rate payable on overnight loans by Schedule I Canadian Chartered Banks;

“Professional’s RFP Proposal” means the proposal submitted by the Professional in response to the RFP;

“Professional’s Upgrades” means the upgrades the Professional has agreed to undertake as set out in Section 5;

“Pro Shop” means the pro shop for the Golf Course, more particularly identified in Schedule B as “Proshop and Storage Areas”;

“Rental Equipment” means any and all Personal Property of the Professional and/or Tom Monaghan which may be located at any time at the Golf Course, which is in the nature of power golf carts, pull carts, golf clubs, which members of the public may temporarily use on the Golf Course upon payment of a usage fee to the Professional;

“RFP” is defined in Recital C above;

“Services” means the services to be supplied and performed by the Professional pursuant to this Contract;

“Short Game Practice Area” means the short game practice area, and chipping and putting area for the Golf Course, more particularly identified in Schedule B as “Practice Area”;

“Term” means the term of this Contract, as set out in Section 2 below;

“360 Evaluations” is defined in Schedule C hereto;

“Tom Monaghan” means Michael Thomas Monaghan, the sole director, officer and shareholder of the Professional;

“Transfer Date” is defined in Section F.2 of Schedule F hereto;

“Unavoidable Delay” is defined in Section 30(b) below; and

“WCB OH&S Regulation” means the *Workers Compensation Act* (British Columbia), including without limitation, the Occupational Health & Safety Regulation (British Columbia Regulation 296/97, as amended by British Columbia Regulation 185/9) enacted pursuant to such Act, all as such Act or Regulations are amended or re-enacted from time to time.

- (b) The Professional and the Board acknowledge and agree that they will act in good faith in carrying out the spirit and intent of this Contract and will do all things and take all steps as may be reasonably required to give effect to their obligations under this Contract. For further certainty, where in this Contract the Board or Professional is given a right to make a determination or to grant or withhold the

consent or permission to anything, the Board or Professional will act reasonably in doing so except that where the Board is expressly granted the right to make a determination in its "sole discretion" or "arbitrarily", the Board now reserves the right to act unreasonably and arbitrarily provided always that it acts in good faith.

2. **Term.** The Term of this Contract will be from the Effective Date to December 31, 2013, provided, however, that the Term will be extended for a further period of 4 years starting January 1, 2014 and expiring on December 31, 2017 if:
 - (a) subject to Unavoidable Delay, the Professional has completed the Professional's Upgrades by not later 5:00 p.m. on December 31, 2010 to the Board's satisfaction and as otherwise required by this Contract; and
 - (b) the Professional is not otherwise in default under this Contract and wishes to extend the Term,

subject always to earlier termination in accordance with the terms of this Contract.

3. **Professional to Perform Services.** The Professional now agrees to provide the Services for the Golf Course according to the terms of this Contract.
4. **Option to Purchase Personal Property.** The Professional now grants the Board the Option to Purchase on the terms and conditions set out in Schedule F hereto.
5. **s.21(1)**

6. **Board to Pay for Services.** The Board will pay the Professional for the Services, and the Professional will account for and produce records in respect of the same, on the following terms:
 - (a) a gross retainer for each calendar year of the Term in the amount of **s.21(1)**
 - (b) deductions from this annual gross retainer will be limited to the following, subject to the other terms of this Contract:
 - (i) an annual usage fee for the Pro Shop and Cart Storage Area, which will be **s.21(1)**
 - (ii) an annual usage fee for the use of the Short Game Practice Area and the Chipping and Putting Green, which will be **s.21(1)** and

(iii) an amount equal to the greater of:

- (1) s.21(1) [REDACTED] and
- (2) s.21(1) [REDACTED]

provided always that where the Professional has rented power golf cart(s) additional to the Professional's normal inventory of power golf carts specifically for a particular tournament, the direct out-of-pocket cost to the Professional (as evidenced by the original third party invoices submitted to the Board) may be deducted from the sum payable pursuant to this paragraph (iii); and

(iv) s.21(1) [REDACTED]

and if, after making the above deductions, the resulting amount is negative the Professional will pay the Board such amount as required by Sections 6(e) and 6(h);

- (c) on or before the 15th day of each calendar month during the Term, commencing on February 15, 2009, the Professional will deliver to the Board a monthly invoice for the Services for the preceding calendar month;
- (d) that monthly invoice will set out:
 - (i) the monthly portion of the annual gross retainer (being s.21(1) [REDACTED]);
 - (ii) deductions from that monthly gross retainer for the monthly portion of the annual usage fee for:
 - (1) the Pro Shop and Cart Storage Area referred to in Section 6(b)(i) (being s.21(1) [REDACTED] and
 - (2) the Short Game Practice Area and Chipping and Putting Green referred to in Section 6(b)(ii) (being s.21(1) [REDACTED])
 - (iii) a further deduction from that monthly gross retainer for an amount equal to s.21(1) [REDACTED]

- (iv) a further deduction from that monthly gross retainer for an amount equal to the following percentage of the Gross Revenue for the preceding calendar month from the provision of golf lessons, consultations and instruction provided by the Professional or the Professional's Contractors on the Golf Course referred to in Section 6(b)(iv):
- (1) s.21(1) ; and
 - (2) s.21(1) and
- (v) the resulting monthly net monthly retainer, except that if the resulting amount is negative, the Professional will pay the Board such amount on or before the required date of delivery of the invoice;
- (e) the Board will pay that monthly net retainer to the Professional promptly after receipt of that invoice;
- (f) on or before the 15th day of January in each calendar year during the Term, beginning in 2010, and within 30 days after the expiry of the Term, the Professional will deliver to the Board an annual invoice for the Services for the preceding calendar year;
- (g) that annual invoice will set out:
- (i) the annual gross retainer (being s.21(1));
 - (ii) a deduction from that annual gross retainer for the annual user fee for:
 - (1) the Pro Shop and Cart Storage Area referred to in Section 6(b)(i) (being s.21(1)) and
 - (2) the Short Game Practice Area and Chipping and Putting Green referred to in Section 6(b)(ii) (being s.21(1))
 - (iii) a further deduction from that annual gross retainer for an amount equal to the greater of
 - (1) s.21(1) and
 - (2) s.21(1)
 - (iv) a further deduction from the annual gross retainer for an amount equal to the following percentage of the Gross Revenue for the preceding calendar

year from the provision of golf lessons, consultations and instruction provided by the Professional or the Professional's Contractors on the Golf Course referred to in Section 6(b)(iv):

- (1) s.21(1) [redacted] and
- (2) s.21(1) [redacted]
- (v) the resulting annual net retainer; and
- (vi) that sum which equals the aggregate of the monthly net retainers the Board has paid to the Professional during the preceding calendar year under Section 6(e);
- (h) if that invoice shows a balance owing to the Board, the Professional will pay that balance to the Board on or before the required date of delivery of the invoice, or, if that invoice shows a balance owing to the Professional, the Board will pay that balance to the Professional promptly after receipt of that invoice; and
- (i) the Professional may retain:
 - (i) in respect of the Gross Revenue from golf lessons, consultations and instructions the Professional or the Professional's Contractors give on the Golf Course under Section 9(b):
 - (1) s.21(1) [redacted]
 - (2) s.21(1) [redacted] and
 - (3) s.21(1) [redacted] and
 - (ii) s.21(1) [redacted]; and
 - (iii) s.21(1) [redacted] and
- (j) the Professional will also be entitled to s.21(1) [redacted]; and

7. **Professional's General Duties.** The Professional will, at the Professional's sole risk and expense, and will cause all of its staff, as applicable, to (except where otherwise expressly stated in this Contract):

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- (a) carry out the Professional's duties according to the terms of this Contract, to the standards of comparable golf courses and driving ranges, on a full-time basis, and faithfully, competently and diligently;
 - (b) comply with the standards accepted by the CPGA in respect of golf professionals;
 - (c) ensure that its principal, Tom Monaghan, maintains his status as a Class A or equivalent member in good standing of the CPGA or replacement or successor organization;
 - (d) not engage in any other businesses or activities that will conflict with the Professional's duties under this Contract, and disclose to the Board any activities that may have the potential to be construed as conflicting with the Professional's duties under this Contract, and will otherwise comply with the Professional's legal obligations of good faith as a fiduciary agent of the Board;
 - (e) comply promptly with all reasonable policies regarding the Golf Course and Driving Range that the Board may issue from time to time, with all procedures or directives the Board may issue from time to time, and with all reasonable orders the Board may give the Professional from time to time including, without limitation, and by way of example only:
 - (i) orders regarding the provision of the Services during the operational hours of the Golf Course and Driving Range; and
 - (ii) orders regarding the maintenance of the Board's safety standards and practices;

provided, however, that if any such policies, procedures, directives or orders should materially adversely affect the rights of either the Professional or the Board pursuant to this Agreement which are in effect as of the Effective Date, the parties will negotiate in good faith to revise this Contract in an effort to make such revisions to it as will reasonably minimize such adverse affects;

- (f) comply promptly with all bylaws of the City that, from time to time, apply to the rights or duties of the Professional under this Contract, or to any businesses or activities the Professional conducts under this Contract including, without limitation, obtaining and renewing all permits and licences necessary to operate the Driving Range, Pro Shop, Cart Storage Area, Short Game Practice Area and Chipping and Putting Green for which the Board provides space under Sections 11 and 13;
- (g) report to the Board, at the Board's Designated Representative's request from time to time, on the management and supervision of the Golf Course, Driving Range and the Professional's other duties under this Contract;

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- (h) maintain good public relations between the Professional and the public and the Professional's staff and the public;
 - (i) hire, train, supervise, and maintain a full staff of employees including, without limitation, a CPGA Professional, assistant professionals and starters to assist the Professional in performing the Professional's duties under this Contract to the extent that the Board considers necessary or desirable;
 - (j) ensure that a full time starter is either in the Pro Shop operating the intercom system or is physically standing at the first tee, or travelling between such locations at a reasonable pace, at all times when the Board makes the Golf Course open to the Public in order to supervise and ensure that each group of golfers is prompted to go to the first tee at the appropriate time and that each group tees off at the designated time;
 - (k) be solely responsible for the Professional's employees and Contractors including, without limitation, remitting, on the Professional's own behalf or in respect of the Professional's Services or work, and on their behalf or in respect of their employment or work, Canada Pension Plan premiums, Worker's Compensation Board assessments, employment insurance premiums, medical and dental coverage payments, income tax, goods and services tax, provincial sales tax, and other remittances required in respect of the Professional or the Professional's employees or the Professional's other Contractors by any government body;
 - (l) maintain a good credit rating with suppliers, manufacturers and other persons, firms and corporations with whom the Professional deals so as to protect the good reputation of the Professional and of the Golf Course and the Board and City;
 - (m) continuously provide good customer service to all members of the public who use or attempt to arrange for the use of the Golf Course, all as further set out in Schedule C hereto;
 - (n) at all times, ensure that those parts of the Golf Course which it has the care, use or control of are kept in a neat, tidy and safe condition, subject to reasonable wear and tear, and will, subject to Schedule G, promptly repair, at its cost, any damage done to any part of the Golf Course as a result of, and to the extent that the same results from, the act or omission of the Professional, its staff, Contractors or anyone else for whom it is responsible in law, to at least the same standard and condition as existed prior to such damage; and
 - (o) provide all of the Services set out in this Contract to the satisfaction of the Board's Designated Representative, and comply with all instructions of the Board's Designated Representative regarding those Services.

8. **Professional's Duties re Golf Course.** Subject always to Schedule G hereto, the Professional will, and will cause all of its staff, as applicable, to:
- (a) supervise all golf tournaments authorized by the Board's Designated Representative and meet with the Board's Designated Representative to discuss tournaments and make recommendations on future tournament bookings;
 - (b) subject to Section 9(b), provide, within the Short Game Practice Area, Chipping and Putting Green and Driving Range, golf instruction for all ages and levels for both boys and girls and men and women from beginner to advanced and for both private individuals and groups, including without limitation and by way of example only, a full junior golf program. The Professional will not, however, be entitled to provide golf instruction, consultations or lessons elsewhere on the Golf Course without the prior written consent of the Board's Designated Representative, which consent may be arbitrarily withheld. All golf instruction, consultations or lessons provided by the Professional will be provided to the same standards, or higher, as those provided by other golf professionals in British Columbia who are members of the CPGA, and at rates acceptable to the Board's General Manager and the CPGA in British Columbia;
 - (c) ensure full, proper and co-ordinated use of the Golf Course, including without limitation and by way of example only, the following:
 - (i) implement and maintain an adequate system of starting times;
 - (ii) ensure that the fees charged for golf play on the Golf Course are those fees determined by the Board from time to time;
 - (iii) use reasonable efforts to organize, supervise and control play on the Golf Course to ensure the most orderly, progressive, safe and effective use of the Golf Course;
 - (iv) use reasonable efforts to supervise the conduct of all persons on the Golf Course;
 - (v) use reasonable efforts to supervise, in conjunction with the course superintendent, the course marshal who is an employee of the Board, to ensure that all players maintain proper pace of play, are suitably attired and following golf course etiquette, and assist the course marshal if required;
 - (vi) use reasonable efforts to ensure that no person is permitted to play the Golf Course without being in possession of a valid green fee ticket, except for Board authorized play required to ascertain playing conditions and course maintenance, repair and improvement requirements;

- (vii) ensure that Tom Monaghan, another CPGA-Certified employee of the Professional or the Professional's Pro Shop manager is on location at the Golf Course at all times during which the Board makes the Golf Course open to the public; and
- (viii) ensure that the Pro Shop and Driving Range are open to the public from dawn until dusk on each and every day that the Board makes the Golf Course open to the public;
- (d) ensure that the Professional, who the Board will provide with adequate training, trains the Professional's staff sufficiently for them to operate an automated advanced reservation system;
- (e) ensure that the Professional or the Professional's staff appropriately monitors the automated advance reservation system, and immediately reports any malfunction of that system to the Board's Designated Representative and that the Professional trains the Professional's staff sufficiently to take appropriate remedial measures by contacting and following the appropriate Board supplied resource if the system fails, which will include immediately implementing alternate (manual or other) measures to minimize any interruption to the normal operations of the Golf Course caused by any such malfunction;
- (f) be responsible for and supervise the rental and use of power carts and pull carts, except that the greenskeeper or Board's Designated Representative may direct the removal from the Golf Course of any or all such carts or limit the number of such carts that may be in use on the Golf Course at any particular time or from time to time if the greenskeeper or Board's Designated Representative, acting reasonably, and in consultation with the Professional, anticipates that the unrestricted use of such carts may damage the Golf Course;
- (g) co-operate and work closely with all Golf Course managers and with greenskeepers;
- (h) collect the Gross Revenue from power golf cart rentals each day, and take reasonable precautions regarding the security of such Gross Revenue;
- (i) supply free of charge to each player using the Golf Course, a score card and pencil (it being understood that the Board will supply the score cards and pencils to the Professional, at the Board's expense);
- (j) subject to the Board's prior written approval as to size, content and location, post at least 3 professionally prepared signs at various locations on the Golf Course setting out the hours of operation of the Pro Shop and Driving Range, including such information as the Board may reasonably prescribe such as without limitation and by way of example only, the times by which patrons should purchase tokens prior to closing of the Driving Range, (it being understood that

such signs can be prepared using a computer and laser or inkjet printer on letter size paper);

- (k) not place, replace, install or bring onto the Golf Course any type of golf equipment, facility or apparatus of any type without the prior written consent of the Board's Designated Representative except for:
 - (i) Rental Equipment; and
 - (ii) Merchandise; and
- (l) collect, on behalf of the Board, all green fees and all other fees payable (in part or in whole) to the Board and associated with the operation of the Golf Course (other than payments made online through the Board's internet based payment collection system), secure cash and other valuables, at all times, make bank deposits of all cash amounts to the account of the Board daily for negotiation by it, and report daily in a form acceptable to the Board on all aspects of revenue and attendance.

9. **Professional's Rights and Duties re Driving Range, Short Game Practice Area and Chipping and Putting Green.** Subject always to Schedule G hereto, the Professional:

- (a) will supervise and operate the Driving Range including, without limitation, ball picking, ball washing, operation of ball dispensers and general cleaning;
- (b) may give golf lessons:
 - (i) on the Driving Range, but at no time may the Professional use more than 8 covered stalls simultaneously for that purpose;
 - (ii) on the Short Game Practice Area, and may exclude persons other than paying golf students from the Short Game Practice Area during such lessons, if exclusive use of the Short Game Practice Area is reasonably necessary for any such lesson, and if the Professional has received the prior written consent of the Board, which consent will not be unreasonably withheld; and
 - (iii) on the Chipping and Putting Green, but only in common with the other patrons of the Golf Course;

but for further certainty, may not give golf lessons anywhere else on the Golf Course without the prior written consent of the Board, which consent may be arbitrarily withheld;

- (c) may appoint assistants to help the Professional give such lessons and to operate the Driving Range;

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- (d) will provide the equipment necessary for giving such lessons and other equipment designated for the Professional's business;
- (e) will provide all equipment necessary for the operation of the Driving Range including, without limitation, all golf balls, tokens, mats, range yardage markers, ball baskets, ball storage containers, tees, ball picker, vehicle to tow the ball picker, gasoline for the ball picker, and other equipment necessary for ball picking, ball washing, ball and token dispensing and general cleaning, and will repair, maintain and replace that equipment, as a prudent owner of such equipment would do and as the Board's Designated Representative may reasonably require from time to time having regard to comparable standards of repair, maintenance and replacement at comparable golf courses and driving ranges;
- (f) will not install any equipment, machinery or signs on the Driving Range, Short Game Practice Area or Chipping and Putting Green, except if the Board's Designated Representative gives prior written consent;
- (g) will sell tokens, other selling instruments and devices from the Pro Shop for Driving Range golf ball rentals according to the following conditions:
- (i) the Board will supply and own the cash register in the Pro Shop that will be dedicated to the sale of tokens, and the Professional will be responsible for such sales;
 - (ii) only agents authorized by the Board's Designated Representative will have the higher level cash register keys that will enable the reading of special sales reports and price changing;
 - (iii) the Professional will collect the Gross Revenue from such rentals each day, and will take reasonable precautions regarding the security of such Gross Revenue;
 - (iv) the Professional will obtain from the encoder and from the cash register reports showing total daily sales and Gross Revenue from golf ball rentals;
 - (v) the Professional will:
 - (1) deliver the daily reports on Driving Range total daily sales and Gross Revenue referred to in paragraph (g)(iv) above to the Board's Designated Representative by the end of the following day; and
 - (2) obtain readings from the ball dispenser meter showing total daily number of balls dispensed and will package up and deliver to the

Board's Designated Representative, within 5 days after the end of each month, the individual daily readings for the prior month; and

the parties confirm that the ball dispensing meters and equipment may be monitored at any time and from time to time, at the Board's sole discretion, by the Board's Designated Representative;

- (vi) utilizing the cash register reports delivered to the Board's Designated Representative pursuant to paragraphs (g)(iv) and (v) above, the Board will pay the Professional s.21(1) s.21(1) within a reasonable period of time, and will make reasonable efforts to pay such amounts to the Professional on average once every 2 weeks;
- (vii) the Professional will permit the Board's Designated Representative access to the dedicated cash register at any time;
- (viii) the Professional acknowledges that the Board may, as a convenience to the public, s.21(1) s.21(1), provided that the Board ensures that the Professional receives s.21(1) s.21(1); and
- (ix) the Board may, from time to time, change the methods by which the Professional sells, records, controls and remits proceedings of the sale of tokens, and the Professional will comply with the Board's requirements regarding the same.

10. **Fees.** The Board will determine and consult with the Professional regarding, from time to time, the fees and other charges for golf play on the Golf Course for all categories of golf, and for golf ball rentals at the Driving Range. The Professional will determine, from time to time, the fees and other charges for use of the Professional's equipment including the rental rates for golf clubs, golf carts, and push carts, at reasonably competitive commercial rates and subject to the Board's Designated Representative's prior written approval. The Board reserves the right to decide on the final fee structure for the Golf Course and Driving Range.

11. **Board's Duties re Driving Range, Cart Storage Area, Short Game Practice Area and Chipping and Putting Green.** Subject always to Schedule G hereto, the Board will:

- (a) at its sole cost and expense, repair and maintain, reasonable wear and tear excepted, the Driving Range building, including fences, poles and nets, and maintain the grassed area, in a condition suitable for its use as a driving range, and make the Driving Range available during the Term to the Professional to the extent reasonably necessary for the provision of the Services;

- (b) subject to Schedule A hereto, repair and maintain, reasonable wear and tear excepted, the Cart Storage Area, including the building and pavement, in a condition suitable for its use as a power cart storage area, and make the Cart Storage Area available during the Term to the Professional to the extent reasonably necessary for the provision of the Services;
- (c) repair and maintain, reasonable wear and tear excepted, the soil and grass of the Short Game Practice Area, and make the Short Game Practice Area available during the Term to the Professional to the extent reasonably necessary for the provision of the Services set out in Section 9(b)(ii);
- (d) repair and maintain, reasonable wear and tear excepted, the soil and grass of the Chipping and Putting Green, and make the Chipping and Putting Green available during the Term to the Professional to the extent set out in Section 9(b)(iii);
- (e) supply heat, light, water and power to the Driving Range;
- (f) supply electrical power for the Cart Storage Area;
- (g) provide, for the operation of the Driving Range, a cash register and cash register tapes, and repair and maintain the cash register as the Board's Designated Representative considers reasonably necessary; and
- (h) provide telephone or other data transmission lines to link up the cash register and card reader as the Board's Designated Representative considers reasonably necessary, and be responsible for line rental, line repairs and the cost of card reader equipment.

12. **Professional's Rights and Duties re Pro Shop.** Subject always to Schedule G hereto, the Professional:

- (a) will continuously staff the Pro Shop with at least two qualified employees of the Professional, all of whom must be bonded in accordance with the requirements set out in Section D.3.0 of Schedule D hereto, and at least one of whom must have management experience, and will ensure that the Pro Shop is managed and operated in such a manner as to provide good quality customer service to the public, including without limitation and by way of example only, will ensure that at least two of the Professional's staff are physically and continuously present in the Pro Shop at all times during the months of March through October, inclusive, except during the first hour after opening and the last hour before closing, during which excepted months and times at least one such staff must be present;
- (b) will manage, operate and maintain the Pro Shop, keeping it well stocked and equipped at all times with Merchandise to a standard in keeping with current industry standards and the reputation of the Golf Course, and the Professional will pay all expenses arising out of or in connection with the management, operation

and maintenance of the Pro Shop, except to the extent that this Contract otherwise expressly stipulates;

- (c) will maintain the Pro Shop in a clean and attractive condition, and according to such directives as the Board's Designated Representative may issue from time to time, including without limitation and by way of example only:
 - (i) keeping all windows, carpets, counters and other surfaces clean; and
 - (ii) supplying and replacing all light bulbs, it being understood that the Board staff will assist in changing light bulbs that require the use of a ladder; by supplying the use of a ladder and staff to stabilize the ladder for the Professional's staff;
- (d) will be responsible for the costs of alarm system monitoring, fines for false alarms, and alarm response call charges respecting the Pro Shop and Cart Storage Area;
- (e) will acquire and provide to the Pro Shop such additional stock including, without limitation, golf equipment and accessories for sale and rent as the prudent operator of a similar shop would do, or as the Board's Designated Representative may reasonably consider necessary or desirable from time to time;
- (f) make available for rental a minimum of 40 pull carts, each of which will be in good working order and presentable condition at all times;
- (g) make available for rental an appropriate supply of rental golf clubs to meet the needs of the public, all of which will be in good working order and presentable condition at all times;
- (h) make available for rental a minimum of 20 power carts, each of which will at all times be in good working order and presentable condition, and no older than 5 years;
- (i) will not renovate or alter the Pro Shop or any other improvements on the Golf Course and Driving Range, except if the Board has given prior written consent; and
- (j) may keep all revenue from the sale of Merchandise in the Pro Shop, except as this Contract otherwise stipulates.

13. **Board's Duties re Pro Shop.** Subject always to Schedule G hereto, the Board will, at its sole cost and expense:

- (a) provide, in the Golf Course clubhouse or elsewhere on the Golf Course, such space for the Pro Shop and office as the Board's Designated Representative

considers necessary or desirable from time to time, and provide repair and maintenance to such space, subject to the Professional's obligations under Section 12, as the Board's Designated Representative, acting reasonably, considers necessary or desirable from time to time;

- (b) supply, at its cost, such heat and light to the Pro Shop as the Board's Designated Representative considers necessary or desirable, from time to time, and will be responsible for the repair and maintenance of the same;
- (c) provide such an alarm system and anti-theft window/door hardware for the Pro Shop as the Board's Designated Representative considers necessary, and be responsible for the repair, maintenance and replacement of that alarm system; and
- (d) provide all equipment and supplies, such as cash registers, POS hardware, computer hard drive and monitor, printer, stationery, receipt rolls, and other related devices, including data and telephone lines (to a maximum of two lines for local calls only) for the operation of the POS/automated advanced reservation system, and pay all system repair, maintenance and replacement costs.

14. Professional's Duties re Records and Financial Statements. The Professional will:

- (a) maintain daily, monthly and annual statistical records concerning the use of the Golf Course, including, without limitation, the numbers and types of users of the Golf Course, along with quantitative and qualitative information on customer behaviour and needs, based on formal or informal surveys, data gathered by point of sale or other means, all of which records will be in form and substance satisfactory to the Board's Designated Representative, and provide such records and other information to the Board's Designated Representative on or before the 5th day of the following month in each year of the Term and at such other times as the Board's Designated Representative may require;
- (b) maintain proper records covering all of the operations of the Golf Course and the activities and duties of the Professional under this Contract including, without limitation, a full inventory of all Personal Property, books of account, documents and receipts, which records will be in form and substance satisfactory to the Board's Designated Representative, and make such records available for the inspection of the Board's Designated Representative at such times as the Board's Designated Representative may require;
- (c) if and whenever the Board's automated advance reservation system malfunctions, to keep (manually or otherwise), to the extent reasonably possible, records of the information which that system would normally record and to provide the same to the Board together with the records and information to be provided pursuant to paragraph (a) above;
- (d) submit to the Board:

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- (i) on or before March 1st (or such other date as matches the Professional's fiscal year end, if the Board first agrees in writing) in each calendar year of the Term commencing in 2010, audited or unaudited unconsolidated financial statements prepared in accordance with generally accepted accounting principles for the calendar year ending December 31 of the preceding calendar year, and being specific to the Professional's operations pursuant to this Contract, including without limitation and by way of example only, the Services and all other activities of the Professional on and from the Golf Course, prepared by a chartered accountant who is a member in good standing with the Institute of Chartered Accountants of British Columbia, or a certified general accountant who is a member in good standing of the Certified General Accountants Association of British Columbia, or an accountant with a recognized accounting designation acceptable to the Board and who is at arm's length from the Professional and if the Professional chooses to provide unaudited statements the Professional must have complied with such reasonable control procedures as are stipulated by the Board from time to time, failing which the Board may order the Professional to submit audited statements; and
- (ii) on or before December 31st in each calendar year of the Term, a full inventory list of all Personal Property as at November 30 of that calendar year;
- (e) allow the Board, at its cost, subject to paragraph (f) below, to carry out an audit of all of the operations of the Golf Course and the activities and duties of the Professional under this Contract, at any time, and make available to the Board's Designated Representative, all records, information, and statements referred to in this Section 14 for the purpose of such audit;
- (f) promptly pay the amount determined by the Board's auditor to be owing with interest at the Prime Rate plus 10% per annum as calculated by the auditor for the period between the date such payment should have been made to the date of payment to the Board, where the Board's auditors determine that the Professional has reported less Gross Revenue from all sources than actually received or has remitted less money than the Professional is obligated to remit or has taken a greater percentage of Gross Revenue from all sources than the Professional is entitled to receive under this Contract, provided the auditor is a professionally licensed auditor, and the Board's auditor's determination will be conclusively deemed to be correct, and provided further that if the auditor concludes that there are insufficient records (using generally accepted auditing standards) to determine the actual fees owing, the auditor will provide the auditor's best estimate of the fees owing and the auditor's best estimate will be conclusively deemed to be the actual fees owing, and provided further that the Professional will pay the Board all of the costs of such audit whenever the audit discloses such an underpayment;

- (g) upon being given at least 24 hours' prior verbal notice, allow the Board's Designated Representative, to review all records, information and statements referred to in this Section 14 at a reasonable time, and to copy or make extracts therefrom; and
- (h) retain all such records, information and statements during the Term and for 3 years after the expiry or earlier termination of the Term, and, after the expiry or earlier termination of the Term, deliver such records, information, and statements to the Board's Designated Representative within 7 calendar days of any demand by the Board's Designated Representative.

15. **Insurance/Bonding/WCB, Indemnity and Performance Security.**

- (a) The Professional will comply at all times with the insurance, bonding and Workers Compensation Board provisions set out in Schedule D hereto. The insurance, bonding and WCB requirements set out in this Contract do not limit any insurance, bonding and WCB requirements otherwise imposed on the Professional or the Professional's Contractors of staff by any applicable laws. It will be the sole responsibility of the Professional to determine what additional insurance, bonding and WCB coverage, if any, is necessary or advisable for the Professional's or the Professional's Contractors' or staff's own protection and/or to fulfill the Professional's obligations under this Contract. All insurance, bonding and WCB will be provided and maintained by the Professional at the Professional's own expense.
- (b) The Professional will indemnify and save harmless each of the Board, the City and their respective officials, officers, employees, contractors and agents (collectively, the "Board and City"), from and against all liabilities, suits, actions, causes of action, obligations, statutory or other proceedings, judgements, injunctions, arbitrations, investigations, demands, claims, losses, damages, consequential damages, penalties, costs and expenses, including legal expenses on a full indemnity basis (collectively, "Losses"), arising out of or in connection with any breach of the Professional in observing or performing the Professional's obligations under this Contract, any activities under the control or supervision of the Professional or the Professional's staff for which the Professional is responsible under this Contract, any damage to property or injury or death to person on or about the Golf Course arising out of or in connection with the rights or duties of the Professional under this Contract, or any other matter or condition that would not have arisen or happened except for the existence of this Contract, except to the extent any such Losses arise from the negligence of the Board or the City or any breach of the Board in observing or performing any of its obligations under this Contract, and will at all times maintain insurance in respect of the same as more particularly set out in Schedule D. This indemnity will survive the expiry or earlier termination of the Term and this Contract.

For further certainty, but without in any way limiting the intentionally general scope of this indemnity and by way of example only, this indemnity will be interpreted and applied so as to obligate the Professional to indemnify the Board and City with respect to any lawsuits arising from any person injured by any errant golf balls hit by:

- (i) any golfer using the Driving Range; or
- (ii) anyone using the Short Game Practice Area or Chipping and Putting Green who is a customer or other Contractor of the Professional while the Professional or his staff is providing lessons and present for supervision,

and will be further applied and interpreted so as to exempt and exclude from such indemnity any lawsuits arising from errant golf balls hit by any other persons or golfers using any other part of the Golf Course.

- (c) As security for the Board's Option to Purchase the Personal Property, the Professional now grants the Board a security interest in the Personal Property on the terms attached as Schedule E hereto and consents to the Board's filing of all appropriate financing statements at the British Columbia Personal Property Registry in respect of such security interest. On the request and within 5 calendar days of such request by:

- (i) the Professional, the Board will execute and deliver an appropriate priority and subordination agreement subordinating the Board's security interest in the Personal Property to a Permitted Creditor; and
- (ii) the Board, the Professional and the applicable creditor will execute and deliver an appropriate priority and subordination agreement subordinating any and all security interests other than those in favour of a Permitted Creditor to the Board's security interest in the Personal Property; and

- (d) For the purposes of this Contract, a "Permitted Creditor" is a financial institution, credit union or other legitimate creditor of the Professional who deals at arm's length from the Professional and has either delivered Personal Property to the Golf Course or has extended credit to the Professional specifically for the purposes of financing the Professional's operations and activities at the Golf Course, but specifically excludes creditors who are affiliated or related to the Professional or Tom Monaghan in any way or have extended credit for personal, non-business purchases or liabilities of the Professional.

16. **Advertising.** Under no circumstances may the Professional or the Professional's staff:

- (a) communicate in any manner with the media with regard to the operation of the Golf Course, without the prior consent of the Board's Designated Representative;

- (b) advertise any of their goods or services with respect to the Golf Course without the written prior consent of the Board's Designated Representative;
- (c) advertise on the Golf Course in any manner whatsoever, any goods or services of the Professional or of any other person or entity, without the prior consent of the Board's Designated Representative; or
- (d) use any official marks, emblems, logos, badges, trade names, trade-marks and/or domain names of the City, the Board and/or their respective affiliates, including, without limitation, the name "Fraserview Golf Course" or any variation thereof (collectively, the "City Marks"), without the prior written consent of the Board's Designated Representative, and shall not apply for or register any domain name or other proprietary or statutory rights for the City Marks or for any similar marks. The City Marks shall remain the exclusive property of the Board, and any use thereof by the Professional (subject always, as set forth above, to the prior consent and approval of the Board), shall enure exclusively to the benefit of the Board, and the Professional shall not contest the Board's ownership of the City Marks, or oppose its actions to acquire, register or maintain its rights in the City Marks.

The Board will not involve the Professional, nor use the Professional's name or business in any advertising or promotions without the prior written consent of the Professional.

17. **Restrictions on Assignment by Professional.** Despite any other term of this Contract, the Professional may not:

- (a) assign, transfer or otherwise dispose of any of the Professional's rights or obligations under this Contract or any interest in this Contract (except for the delegation of those duties which this Contract expressly contemplates will be delegated to the Professional's Contractors or staff);
- (b) further to Section G.13 of Schedule G hereto, sub-license or otherwise permit access to or use of the Pro Shop, Driving Range, Short Game Practice Area, Cart Storage Area or any part of any of them or any other part of the Golf Course, for any purpose (except to provide access to the public for the purposes expressly contemplated by this Contract); or
- (c) conduct any commercial or other activities on the Golf Course except as this Contract specifically requires or permits,

without the prior written consent of the Board's Designated Representative, which consent the Board's Designated Representative may arbitrarily withhold.

18. **Default.** Subject to Section 19 below, default (a "Default") will occur under this Contract if the Professional breaches any of its obligations under this Contract and the breach is not cured within 15 days after written notice from the Board specifying the nature of the breach.

19. **Limited Extension for Non-Monetary Breaches.** Despite Section 18, if the breach is not a breach of an obligation to pay money and is of a nature that:

- (a) with reasonable resources and diligence, would require more than 15 days to remedy, then the Professional will not be in Default if the Professional, immediately after receiving notice of the breach, embarks on a diligent and continuous remedy of the breach; or
- (b) is not capable of being remedied (such as by way of example only a breach of an obligation not to disclose proprietary information) and the breach will not have a materially adverse effect on the Board, then the Professional will be in Default but the Board's remedies for such a Default will expressly exclude the right to cancel this Contract pursuant to Section 20(e).

For further certainty, paragraph (b) above will not apply to any breach by the Professional of an obligation to provide financial information and under no circumstances (except an Unavoidable Delay) will a failure to provide such financial information be treated as a breach not capable of being remedied, even where the Professional has through its own acts or omissions put itself in a position where it cannot provide such information.

20. **Default Remedies.** If a Default occurs, the Board may, in any order or combination that it chooses, and without prejudice to all of its other rights and remedies both at law and in equity, do any one or more of the following:

- (a) demand payment of any amounts due and unpaid;
- (b) sue the Professional for the amount of money due;
- (c) take proceedings or any other legal steps to compel the Professional to comply with this Contract;
- (d) where the Professional is in breach of an obligation to properly perform work or carry out any other obligation in respect of this Contract, the Board may remedy the breach and the Professional will then promptly reimburse the Board's commercially reasonable costs of doing so plus 20% on account of the Board's associated administrative costs; and
- (e) subject to Section 19(b), cancel this Contract as further set out in Section 21.

21. **Termination by Board for Cause.** If:

- (a) the Professional is in Default (but expressly excluding the type of Default described in Section 19(b));

- (b) Tom Monaghan becomes ill or incapacitated to the extent that, in the Board's Designated Representative's opinion, the Professional is or will be unable to observe or perform the Professional's obligations under this Contract for a continuous period of 30 days or any period which exceeds, in the aggregate, 60 days in any given 365 day period;
- (c) the Professional or Tom Monaghan becomes bankrupt or insolvent;
- (d) Tom Monaghan, in the Board's Designated Representative's opinion, exhibits dishonesty or conduct unbecoming a golf professional who is a member of the CPGA;
- (e) the Professional, in the Board's Designated Representative's opinion, exhibits continuing inattention to, or neglect of, the Professional's obligations under this Contract or is incompetent; or
- (f) Tom Monaghan is suspended by the CPGA,

the Board's Designated Representative may deliver notice to the Professional terminating this Contract, and such termination will take effect on the date the Professional is deemed to have received that notice. If Tom Monaghan dies, this Contract will terminate as of the date of death. However, the Board's Designated Representative will discuss with Tom Monaghan executor/executrix and the Professional's employees the possibility of temporary employment with the Board to continue providing services similar to the Services until such time as the Board completes a new Request for Proposal process and retains a new Professional.

22. **Termination Without Cause by Board or Professional With 1 (One) Year Notice.** Either the Board or the Professional may deliver one (1) year notice to the other terminating this Contract without cause, and such termination will take effect on the 365th day after the Professional or the Board, as the case may be, is deemed to have received that notice. Any notice given by the Board's Designated Representative will take effect as a notice given by the Board.
23. **Termination Without Cause by Board With Fees in Lieu of Notice.** Despite Section 21 or 22, the Board may terminate this Contract without cause or prior notice on giving a written notice to such effect which notice will be effective immediately upon personal delivery of the notice to the Professional or the date such notice is deemed to be delivered whichever is earlier, but in such a case, the Board will pay the Professional the sum of **s.21(1)** on or before the 30th day following such termination. However, in no event will the Board's Designated Representative's breach of this Section 23 or 24 in securing the Professional's Personal Property, or in paying the required amount when due void or nullify the legal effect of the notice of immediate termination unless it is established by the arbitrator that the Board's Designated Representative was not acting in good faith. Any notice given by the Board's Designated Representative will take effect as a notice given by the Board.

24. **Securing of Professional's Personal Property on Termination or Expiry.** In any case where the Board has not exercised the Option to Purchase over all of the Personal Property, the Board will, prior to the effective date of the termination notice or Contract expiry, as applicable, appoint, at the Board's sole expense, a duly licensed and bonded bailiff to be present as of the termination or expiry of the Contract, which bailiff will be retained to secure and protect the Professional's Personal Property until such time as the Professional removes same or it becomes the property of the Board in accordance with Section 25(c).
25. **Consequences of Termination or Expiry.** As of the effective date of termination under Section 21, 22, or 23, or expiry of the Term or any extension thereof:
- (a) the Board will have no further obligation, unless negotiated under Section 21 or payable in lieu of notice under Section 23, to pay any compensation under Section 6 to the Professional, and the Board will adjust and pro rate such compensation to the termination or expiry date. The Board and Professional will settle their accounts regarding compensation promptly (and in any event within 30 calendar days);
 - (b) each party will pay any money it owes to the other party promptly, and in any event within 30 calendar days, except for those amounts permitted to be deferred under Section 23;
 - (c) subject to paragraph (f) below, the Board's Option to Purchase will be deemed to have been automatically exercised except to the extent that the Board, in any written notice of termination (or in any written notice given prior to the expiry date pursuant to Section 25(f)(ii)), expressly elects not to exercise its Option to Purchase with respect to all, but not part of, the Merchandise, Rental Equipment, Fixtures and/or Miscellaneous Personal Property, and/or all or part of the Office Equipment and Supplies (the "Excluded Items"), and to such extent the Board will have a lien and charge on the Excluded Items until the Professional has paid any money it owes to the Board (including without limitation any storage and administrative fee amounts payable pursuant to paragraph (e) below), and if the Professional fails to pay that money to the Board, the Board may seize and sell the Excluded Items to satisfy the debt, pursuant to the General Security Agreement;
 - (d) the Professional will have no further right or obligation to provide the Services to the Board;
 - (e) subject to paragraph (f) below, where the Board has expressly elected not to exercise the Option to Purchase (or has expressly elected not to exercise the Option to Purchase with respect to the Excluded Items), then the Professional will promptly remove all of the Personal Property (or the Excluded Items, as applicable) from the Golf Course and in any event within 18 calendar days of the effective date of termination or expiry. If the Professional fails to remove any of

the Personal Property or (or the Excluded Items, as applicable) in accordance with the foregoing requirements, a storage and administrative fee will be payable by the Professional to the Board equal to 2% of the fair market value of such items for each calendar day that the Professional is in breach of the Professional's obligation to remove such items from the Golf Course. The Board will have no obligation to release any such items to the Professional until the applicable storage fee is paid in full, and if the Professional fails to remove the requisite items within 45 days after the termination or expiry date of the Contract, all of such remaining items then remaining on the Golf Course will become the absolute property of the Board without payment of compensation to the Professional, and the Professional will execute such documents and do such things as the Board may reasonably require to effect the transfer of title, risk, and possession of such remaining items to the Board; and

- (f) despite paragraphs (c) and (e) above, where:
- (i) the Board has exercised its rights of immediate termination under Section 23, the Board will be deemed to have exercised its Option to Purchase over all of the Fixtures, and will only have the right to then elect whether or not to exercise its Option to Purchase with respect to all or none of the Merchandise, the Rental Equipment, the Miscellaneous Personal Property and the Office Equipment and Supplies; and
 - (ii) if this Contract is terminated upon the expiry of its Term and not pursuant to Sections 21, 22 or 23, the Board will give the Professional at least 365 days' prior written notice of which items if any it intends to elect to treat as "Excluded Items" pursuant to its Option to Purchase.

26. **Automatic Renewal.** Where the Professional continues to provide and perform, and the Board continues to accept, Services pursuant to this Contract following the expiry of the Term (including any extension of the Term granted pursuant to Section 2), then this Contract will be deemed to have been renewed on the same terms and conditions as before except that the Term will be deemed to be year to year, and may be cancelled by either party on 9 months' prior written notice.
27. **Surviving Obligations.** Neither the termination of the engagement nor the expiry of the Term will void or terminate any obligations of the Professional or the Board, which by their nature are intended to survive such termination or expiry.
28. **Delegation of Authority.** In addition to all rights and obligations expressly delegated by the Board under this Contract, the Board may further delegate all or any of its rights or obligations under this Contract to the General Manager of the Board or the Board's Designated Representative, provided that such delegation shall not relieve the Board of its obligations herein unless otherwise expressly stated.

29. **Costs.** The Professional will bear all the costs of observing or performing the Professional's obligations and exercising the Professional's rights under this Contract, and the Board will bear all the costs of observing or performing its obligations and exercising its rights under this Contract, unless this Contract otherwise specifies.

30. **Unavoidable Delay**

- (a) Subject to paragraph (c) below, except for the performance of obligations to pay money, time periods for the Board's and the Professional's performance under this Contract will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay.
- (b) For the purposes of this Contract, an "Unavoidable Delay" means any circumstances beyond the reasonable control of the party trying to perform, and includes without limitation and by way of example only:
- (i) strikes/lockouts, acts of God, terrorism, war or other strife or governmental action;
 - (ii) abnormal weather, being weather that is outside of the statistical norm for that time of year as measured over the last 10 years by Environment Canada; and
 - (iii) any event or situation in which the Board, in its sole discretion, decides that the Golf Course must be closed;

but expressly excludes any and all delays caused by the Professional's lack of financial resources or insolvency, strikes, lockouts or labour affiliations of the Professional's employees, or governmental action taken in the enforcement of law specifically against the Professional.

- (c) Despite paragraph (a) above, in the event of an Unavoidable Delay caused by a strike, lockout or other labour dispute involving the Board's employees and which results in the Golf Course being closed, the Professional will be relieved of his obligations to provide the Services and pay the use fees set out in this Contract, and the Board will be relieved of its obligations to pay the retainer and other fees for Service under this Contract for the period of such closure.
- (d) Despite paragraph (a) above, in the event of an Unavoidable Delay other than the type referred to in paragraph (c) above which results in the Golf Course being closed for more than 30 consecutive days, then from the 31st day of the closure until the re-opening of the Golf Course the Professional will be relieved of his obligations to provide the Services and pay the use fees set out in this Contract, and the Board will be relieved of its obligations to pay the retainer and other fees for Service payable under this Contract for the period of such closure.

31. **Prior Arrangements.** This Contract supersedes all prior written or verbal contracts, permits, licences, or other arrangements between the Board or City and the Professional concerning the subject matter of this Contract.
32. **Interpretation.** The following provisions will apply to this Contract:
- (a) Sections and headings are for convenient reference, and are not to affect the meanings of any provisions;
 - (b) use of the singular or masculine includes the plural, feminine, or body corporate, and vice versa;
 - (c) the laws of British Columbia will govern the interpretation and enforcement of this Contract, and the Board and the Professional accept the jurisdiction of the courts of British Columbia;
 - (d) if a court or arbitrator finds any provision of this Contract invalid, illegal, or unenforceable, it will be severed from this Contract and the remainder of the Contract will be enforceable;
 - (e) time will be of the essence of this Contract, and if the Board or Professional expressly or impliedly waives that requirement, the Board or Professional may re-instate it by delivering notice to the other;
 - (f) the fact that the Board or Professional waives a default is not to be construed to mean that the Board or Professional waives any other default;
 - (g) no amendment to this Contract will have any effect unless it is in writing, and the Board and Professional have signed it;
 - (h) this Contract represents the entire agreement between the Board and Professional concerning the subject matter of this Contract, and there are no representations, warranties, or agreements other than those expressed in this Contract;
 - (i) nothing expressly set out in or implied by this Contract will prejudice, abrogate, or affect the rights and powers of the Board or the City in the exercise of its functions under any public or private statute, bylaw, order, or regulation, all of which may be fully and effectively exercised as if the Board had not signed and delivered this Contract to the Professional; and
 - (j) the Professional acknowledges and agrees that neither Tom Monaghan nor any of the Professional's other staff is an employee of the Board. Accordingly, Tom Monaghan and the Professional's other staff are not entitled to any employment benefits of any kind from the Board, and the Board is under no obligation to make remittances on behalf of, or on account of, the Professional (or any of the Professional's employees) to Canada Revenue Agency under the *Income Tax Act*

(Canada) in respect of Canadian Pension Plan or Employment Insurance. The Professional further acknowledges that benefits such as, by way of example only and without limitation, Medical Services Plan, extended health care plan, dental services plan, life insurance, retirement pension benefits, long term disability coverage, sick leave, Workers Compensation benefits, vacation pay, employee savings plan benefits or gratuity benefits, are expressly excluded from this Agreement and will not be provided by the Board to Tom Monaghan or the Professional's other staff. The Professional further agrees that the Board is not responsible to make and will not make during the Term any Workers' Compensation Board remittances, *Excise Tax Act* (G.S.T.) remittances or any other statutory remittances required to be made by the Professional in respect of the payments received by the Professional under this Contract. The Professional now indemnifies the Board for any and all penalties, interest and arrears imposed on the Board in the event that the Professional breaches its obligations under this Contract to make all such remittances whether or not any court of law subsequently determines that the legal relationship between the Board and Professional is other than independent contractor. Upon request, the Professional will provide the Board with satisfactory evidence of compliance with all statutory remittance requirements.

33. **Schedules.** The following schedules are now deemed to form an integral part of this Contract, whether or not actually attached to this Contract at the time of signing:

Schedule A - *Professional's Upgrades,*

Schedule B - *Description of Areas,*

Schedule C - *Customer Service Duties,*

Schedule D - *Insurance/Bonding/WCB Requirements,*

Schedule E - *General Security Agreement,*

Schedule F - *Option to Purchase Professional's Golf Course Personal Property, and*

Schedule G - *Grant of Licence*

Schedule H - *Prime Contractor Agreement*

34. **Certain Remedies Independent of Arbitration Proceedings.** Except for those disputes specifically referenced in Section 35, all disputes arising under this Contract will be determined by the courts of British Columbia in accordance with British Columbia law.

35. **Arbitration Proceedings.**

- (a) Any dispute as to the correctness of an auditor's report prepared pursuant to Section 14(f) will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 35.
- (b) Any dispute as to the correctness of a chartered accountant's or other asset valuator's determination made pursuant to Section F.3(f) of Schedule F hereto, will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 35.

-
- (c) Any dispute as to the calculation of the Board's costs pursuant to Section 20 will be determined by arbitration.
- (d) In this Contract, "determined by arbitration" means arbitration conducted in accordance with the *Commercial Arbitration Act* (British Columbia) as amended or replaced from time to time, and the following procedures:
- (i) Only one arbitrator will be utilized, and the arbitrator must be a person who meets the criteria set out in Section 14(d)(i). The Board will select the arbitrator within 5 days of the notice to arbitrate and then provide the Professional with the selected arbitrator's name, place of business or employment, and reasonably detailed resume or outline of recent professional experience. The Professional will then have 10 calendar days to review the information supplied by the Board and to confirm or dispute the Board's choice for arbitrator. Within 5 days of a request to do so, the arbitrator must disclose to the Professional all material information about his/her credentials, possible conflicts of interest, and biases. If the Professional elects to contest the appointment, the Professional must make application to court seeking to remove the arbitrator on the basis of conflict of interest, bias or incompetence and each party will pay their own legal costs subject to any order as to costs made by the court;
 - (ii) The arbitration will be conducted in the City of Vancouver; and
 - (iii) The cost of the arbitration will be as determined by the arbitrator, subject always to the specific terms of this Contract.
36. **Interest on Arrears.** Whenever any amount payable under this Contract by either party is in arrears, such amount will bear interest at the Prime Rate plus 3% per annum calculated monthly, not in advance, from the date due until paid, except where expressly otherwise stipulated (such as in Section 14(f)).
37. **Notice.** Any notice, approval, request, or demand required or permitted under this Contract must be in writing, and the sender must deliver it by prepaid registered mail from any post office in British Columbia or by personal service addressed to:
- (a) In the case of a notice for the Board, addressed to:
 - City of Vancouver
 - c/o Board of Parks and Recreation
 - 2099 Beach Avenue
 - Vancouver, British Columbia
 - V6J 1Z4
 - Attention: General Manager

with a copy to:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4
Attention: Director of Legal Services; and

- (b) In the case of a notice for the Professional, addressed to:

s.22(1)



Attention: Tom Monaghan

or to:

Fraserview Golf Course
7800 Vivian Drive
Vancouver, British Columbia
V5S 2V8
Attention: Tom Monaghan


or to such other address in Canada as either party may specify in writing to the other party. Any such notice will be deemed to have been received, if delivered, on the date of delivery, and if mailed as aforesaid within Canada, then on the third business day following its mailing, provided that if mailed, should there be between the time of the mailing and the actual receipt of the notice, a mail strike, slowdown or other labour dispute which might affect delivery of such notice, then such notice will only be effective if and when actually delivered.

38. **Continuing effect.** This Contract will enure to the benefit of and bind the Board and its successors and assigns and the Professional and the Professional's heirs, executors, administrators, successors and permitted assigns.

IN WITNESS WHEREOF, the parties, by their respective authorized signatories, have signed this Contract as set out hereunder, as of the date first set forth above:

CITY OF VANCOUVER as
represented by its **BOARD OF
PARKS AND RECREATION:**

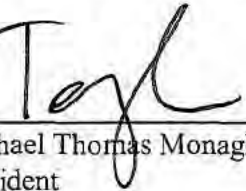
Per:



General Manager

MONAGHAN GOLF INC.


Per:



Michael Thomas Monaghan
President

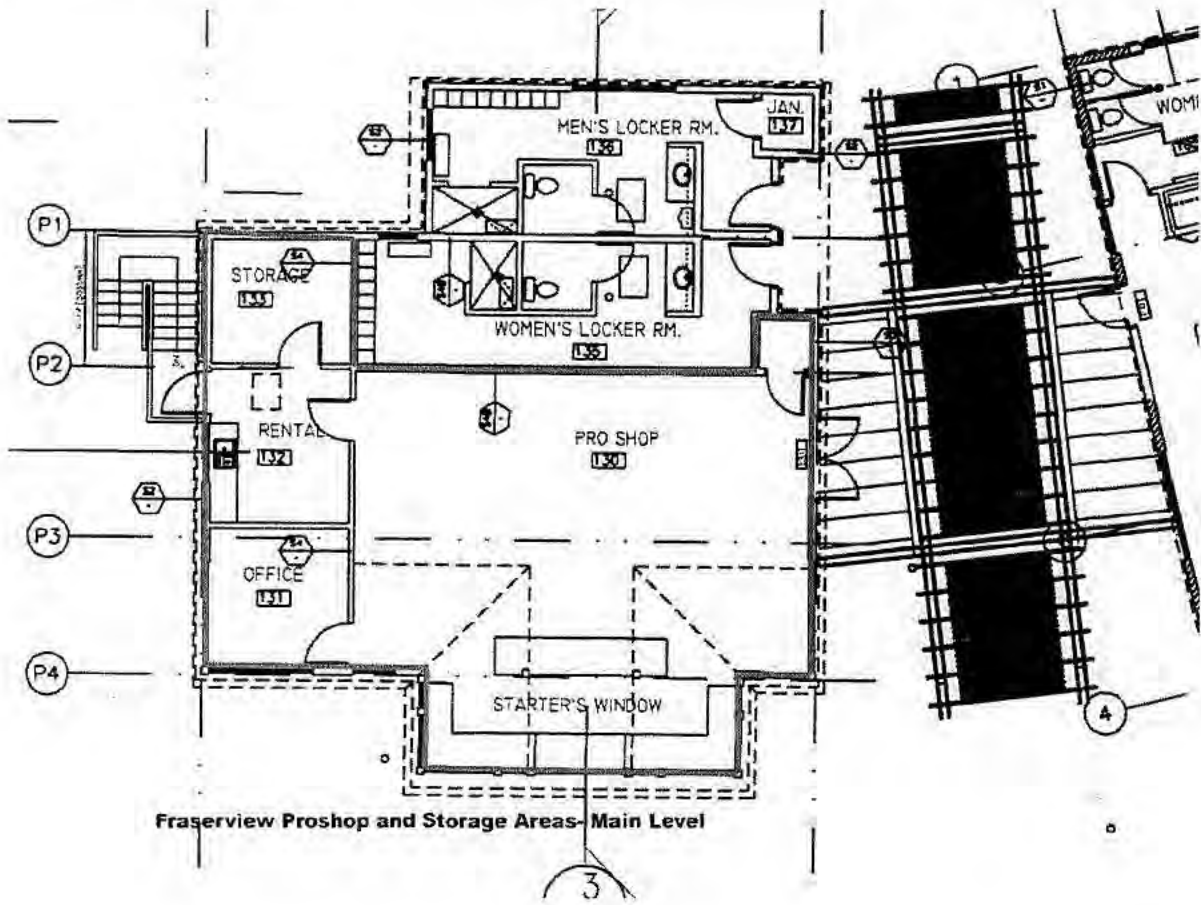
**SCHEDULE A
PROFESSIONAL'S UPGRADES**

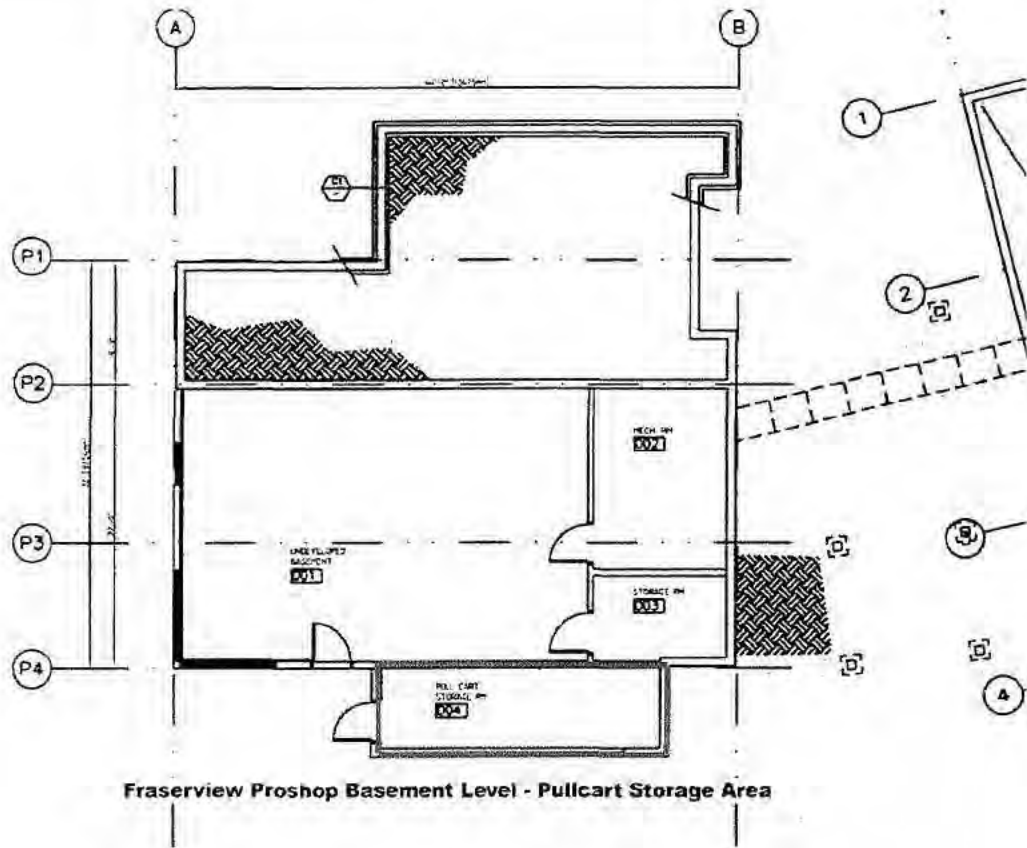
s.21(1)



**SCHEDULE B
DESCRIPTION OF AREAS**

(See plans attached.)







SCHEDULE C CUSTOMER SERVICE DUTIES

C.1 Customer Feedback Evaluations. The Board's Designated Representative may from time to time at any time during the Term conduct customer feedback evaluations ("360 Evaluations"), a sample of the form of which is attached to this Schedule C. The criteria used in 360 Evaluations may be modified by the Board's Designated Representative from time to time, acting reasonably, and having regard to any increased standards of customer service within the industry for golf courses similar in calibre to the Golf Course.

C.2 Professional Participation. Upon completion of each 360 Evaluation, the Professional will, within 5 calendar days of a request to do so, personally meet with the Board's Designated Representative at the Golf Course to review the results of the 360 Evaluation and discuss the areas, if any, of improvement which can be made.

C.3 Professional Customer Service Commitment. Following each review of and meeting to discuss each 360 Evaluation, the Professional will make all commercially reasonable efforts to implement the recommendations and improvements agreed upon at the meeting with the Board's Designated Representative promptly and in any event within 25 calendar days of the meeting. The Professional now confirms that it will promptly commence and implement the customer service enhancements set out in the Professional's RFP Proposal.

C.4 Reporting Obligations. Following each such review of and meeting to discuss each 360 Evaluation, the Board's Designated Representative and Professional will each, within 7 calendar days of such meeting prepare and deliver to the other a set of minutes summarizing what was discussed and agreed upon at the meeting and the recommendations, implementation plan, and timing settled upon.

C.5 Annual Performance Review. The Board may at its option perform its own annual review of the Professional's Services, and within 10 calendar days of any request to do so, the Professional will meet with the Board's Designated Representative to review and discuss same, following which the parties will carry out the same procedure with respect to such review and meeting as is set out in Section C.4 above.

C.6 SERVICE STANDARDS

Core Service Standards

- a) The telephone will be answered in 3 rings or less.
- b) All telephone calls will be answered consistently, an example may be – "thank you for calling XXX golf course, this is XXX, how may I help you?"
- c) When discussing other golf courses every effort will be made to promote the sister courses of the Vancouver Park Board.
- d) All visible public areas will always be clean from dust, debris and clutter.
- e) All message boards will be maintained with fresh internal promotions.
- f) No hand written signage will be used in any area of our properties.
- g) If there are double doors opening to any area, both doors will remain unlocked during the day.

- h) The customer will be acknowledged within 3 seconds of their arrival in the golf shop.
- i) Each customer will be presented with an opportunity to complete a Board approved survey prior to leaving the property.
- j) When a guest asks for a tee time that is not available, good alternate arrangements or an offer to call one of the other Vancouver Park Board courses to check for availability, will be made.
- k) All customers will be thanked for their patronage prior to leaving.
- l) All of the Professional's staff, including Tom Monaghan, will wear a name tag.
- m) All retail merchandise will be regularly moved around and displays will be neat, fresh and creative.

Golf Operations Standards

- a) The driving range mats will be in good, clean condition.
- b) The driving range practice balls will be in good, clean condition and will have a "true" flight to them.
- c) The power carts will be in good, clean condition and have a scorecard and pencil on them prior to being rented.
- d) Pace of play will be maintained through good tee sheet management and well trained player assistants.

**Golf Operations
Golf Professional Services Evaluation Form**

INFORMATION	
GOLF PROFESSIONAL	GOLF COURSE(S)
MANAGER	PERIOD COVERED BY THIS SESSION
Manager's Name	Review Start Date to Review End Date
TYPE OF SESSION () Annual () Quarterly () Other	SESSION DATE
SIGNATURE OF MANAGER	SIGNATURE OF GOLF PROFESSIONAL

Welcome to the Golf Professional Service Feedback Program.

The Golf Professional Service Feedback Program is a multi level (360) approach.

At minimum, the Professional and the Board's Manager of Golf Operations, Vancouver East District, or the Board's Supervisor of Golf Operations are involved in sessions to clarify and later evaluate the extent to which expectations are met and/or exceeded and to action plan any gaps that need closing.

Other participants in the feedback process can use this template to provide their input as well.

Simply reflect on each of the items on which you are able to provide your feedback and place an x in the appropriate column: M or A.

You may then make comments on the items you checked to give examples etc. as appropriate.

Expectations & Evaluation Checklist:

Review the following check list of expectations. For each item in the checklist place an x in either the meets column or the improve column as appropriate. You may make comments in the comments Section below where specific feedback/explanation can be given.

Customer Service: (Customers: General Public; Club Members etc.)	Meets	Improve
<p>Manner in which customers are approached by the Professional and Pro Shop staff is friendly and very pleasant at all times.</p> <p>Customers' phone enquiries are responded to politely and quickly.</p> <p>Customers in the Pro Shop are attended to a.s.a.p.</p> <p>Course conditions requests are answered completely and honestly.</p> <p>When it is very busy, every effort is made to give an initial acknowledgement to the customer (phone or live).</p> <p>Staff approaches customers with interest in helping them.</p> <p>There are adequate numbers of staff to provide expected levels of customer service.</p>		
<p>Comments:</p>		

<p>Tee Off/Pace of Play:</p> <p>Golfers are greeted warmly prior to their play. Golfers are given proper orientation to current conditions, pace of play and etiquette. (live and/or signs and/or brochures) Rangers/Marshals intervene politely when appropriate. Every effort is made to enhance the pace of play early on in the day to avoid problems later. (orientation at tee off, more marshalling early on etc.)</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Product Knowledge:</p> <p>Counter staff have adequate knowledge about golf and shop products and services. Staff are always current with course conditions and current course maintenance issues and projects. Pro staff/teaching staff are very knowledgeable about their services and respected for this in the golf community.</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Leadership/Supervision:</p> <p>Staff are selected for their interest in golf and customer service skills. Staff are thoroughly oriented/trained as to all course policies/procedures. Staff are knowledgeable of the roles of all of the Professional's staff as well as the Board's staff. Staff are aware of any compliant with customer service approaches, maintenance issues, delegation of authority re: rainouts, closures, etc. Staff receive ongoing performance planning, coaching and elevation.</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Products/Rentals:</p> <p>All products and rentals are maintained in good condition. Products are geared to the intended market(s). Clubs are canvassed re: product and service types.</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Teamwork:</p> <p>Professional's staff foster a respectful relationship with all other course staff. Professional's staff cross sell to other courses when appropriate. Professional's staff help other course staff to achieve good customer service, handling complaints, dealing with urgent matters etc. whenever possible. Professional's staff conduct themselves using a one team approach with all other course staff. Board staff are informed of issues and concerns in a polite and timely manner. Issues from Board staff are handled in a polite and timely manner. New ideas are brought to Board staff early on in the development process to increase collaboration.</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Revenue and Reporting:</p> <p>Good accounting procedures are used for all financing, account, inventory control and reporting. Reports to the Board are thorough and timely. Stats include year to date comparisons and previous year comparisons. Good balance of maximizing City asset and customer relations. Revenue projections are on target.</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

Handling Complaints/Conflicts:	Meets	Improve
<p>Listens well, diffuses conflict before it starts, finds causes of and solutions to problems, handles difficult people well. Has a win/win approach. Every effort is made to address customer complaints to the satisfaction of the customer. Complaints which cannot be resolved to the satisfaction of the customer are handled with compassion.</p>		
<p>Comments:</p>		

Innovation/Creativity:	Meets	Improve
<p>Generates new ideas, challenges the status quo, supports change, encourages innovation, solves problems creatively.</p>		
<p>Comments:</p>		

<p>Golf Professional Additional Input: <i>What can the Parks Board Golf Operations...</i></p> <p>Start doing...</p> <p>Stop doing...</p> <p>Do differently...that will help Professional's services be delivered more effectively and efficiently?</p>	
<p>Comments:</p>	

ACTION PLAN

List specific clear actions for development/improvement; use dates or other specifics where appropriate.

Item #1:

Item #2:

Item #3:

Manager Comments

Use the following space to SUMMARIZE and make any comments regarding this plan.

SCHEDULE D
INSURANCE/BONDING/WCB REQUIREMENTS

D1.0 General:

- D1.1 General Scope/Policy Limit Requirement - Without limiting any of its obligations or liabilities under the Contract, the Professional and Professional's Contractors will obtain and continuously carry during the Term, the following insurance, bonding and WCB coverages with minimum limits of not less than those shown in the respective items set out below.
- D1.2 The Professional Solely Liable for Premiums/Deductibles - The Professional will pay all premiums and deductible costs for all insurance, bonding and WCB required to be effected under the Contract, provided always that under no circumstances does the payment of such premiums give the Professional any interest in the proceeds of such insurance/bonds or any control over such policies as they relate to the Board's interests.
- D1.3 Insurer Requirements - All policies/bonds must be written with companies licensed to do business in British Columbia with a financial rating of VIII or better and a policy holder's rating of A- or better in the latest edition of *Best Rating Guide on Property and Casualty Insurance Companies*, or otherwise acceptable to the Board's Director of Risk Management.
- D1.4 Director of Risk Management Approval Required - All bonds and insurance policies must be in a form acceptable to the Board's Director of Risk Management. Self-funded, policy fronting or other non-risk transfer insurance mechanisms are not permitted.
- D1.5 Insurer Notice Requirements - All insurance policies must provide the Board with not less than 60 days' prior written notice of material change, replacement or cancellation. Any such notice must identify the Contract title, number and policy holder, and be delivered in accordance with Section 37 of the Contract. All insurance policies where the insurer could under any circumstances have any claim by subrogation against the Board, the City or their respective officers, officials, employees or agents, must contain a clause that waives the insurer's right of subrogation against the Board, the City and their respective officers, officials, employees, and agents.
- D1.6 Board Requirements Not Exhaustive - The Professional and each of the Professional's Contractors will provide at its own cost any additional insurance and bonding which it is required by any applicable laws to provide, or which it considers necessary or appropriate.
- D1.7 Insurance Requirements Independent of Other Covenants - Neither the providing of insurance or bonding by the Professional in accordance with these requirements, nor the insolvency, bankruptcy or the failure of any insurance company to pay any subsequent claim, will be held to relieve the Professional from any other provisions of the Contract with respect to the liability of the Professional or otherwise.

- D1.8 All Coverage Primary - The insurance and bonding coverage will be primary insurance as respects the Board and the City. Any insurance or self-insurance maintained by or on behalf of the Board, the City or their respective officers, officials, employees or agents will be excess of this insurance and will not contribute with it.
- D1.9 The Professional Duty of Good Faith - The Professional will properly disclose all risks in each insurance/bond application, ensure that the Professional does not violate or void any policy and will otherwise comply at all times with the requirements of the insurers, underwriters and sureties.
- D1.10 Board Remedy on Default - If at any time the Professional fails to provide a bond, certificate of insurance or certified copies of an insurance policy as required in Section D2.1 below, the Board may (but is not obligated to or liable for the manner in which it does so), effect such insurance or bond on behalf of the Professional and the cost of doing so will be paid by the Professional to the Board upon request and, in any event, within 5 calendar days of such a request.
- D1.11 Overall Limit on Deductibles - Except where a specified limit of deductibility is expressly permitted in the Contract, each insurance policy must provide coverage to the Professional without payment of any deductible in excess of \$5,000, as adjusted over the Term to reflect any increase in the Consumer Price Index (Vancouver - All Items) as published by Statistics Canada between the commencement date of the Term and the date on which the Professional obtains the applicable insurance policy. Where the Professional is unable (in its sole discretion) to obtain insurance having a deductible no greater than \$5,000 (as adjusted pursuant to the prior sentence), the Professional may obtain insurance with a higher deductible but only if the Professional first delivers to the Board a Letter of Credit having a limit of the difference between \$5,000 and the higher deductible. In the event of any loss under that policy and the Professional being unable to pay the deductible, the Board will be entitled to draw down on the Letter of Credit to pay all or any portion of the deductible that the Board, in its sole discretion, considers advisable.

D2.0 Evidence of Insurance/Bonds:

- D2.1 The Professional to Provide Policy/Certificates - Prior to the Board signing the Contract, the Professional will provide the Board with evidence of all required bonding and insurance to be taken out in the form of a detailed Certificate of Insurance, in form and contents acceptable to the Board, supported by a certified copy of each policy and bond. Such Certificate of Insurance must identify the Contract's title, Contract date, policy holder and contract subject-matter and must not contain any disclaimer whatsoever. At all times, and from time to time during the Term, the Professional agrees to comply with all of its obligations under such bonds and policies. Proof of bonds and insurance, in the form of a Certificate of Insurance, in form and contents acceptable to the Board, or certified copies of all insurance policies and bonds will be made available to the Board's Director of Risk Management at any time upon request.

D2.2 Obligations Extend to Contractors - The Professional will provide in all agreements with the Professional's Contractors clauses in the same form as those set out in this Schedule D. Upon request, the Professional will deposit with the Board's Director of Risk Management detailed certificates of insurance for the policies the Professional has obtained from the Professional's Contractors and a copy of the insurance requirements from each Contractor's contract with the Professional.

D3.0 Blanket Employee Dishonesty Insurance/Fidelity Bond

D3.1 Blanket Employee Dishonesty Insurance/Fidelity Bond - The Professional will maintain Blanket Employee Dishonesty Insurance or a Fidelity Bond protecting the Board, the City, and the Professional against all claims for loss of money, securities and property arising out of any fraudulent or dishonest acts committed by the Professional or its staff.

D3.2 Coverage Limits - The limit of the Professional's Blanket Employee Dishonesty Insurance or Fidelity Bond must be not less than \$50,000 per occurrence.

D3.3 Required Term of Bonds - The insurance/bond must be in effect for the period of time commencing with the start of the Term and continuing for the entire duration of the Term and for 2 years following the expiry or sooner termination of the Term.

D3.4 Required Form of Bonds - The insurance/bonds must be issued in a form and on terms and conditions approved by the Board's Director of Risk Management.

D.4 Comprehensive General Liability Insurance:

D4.1 Comprehensive General Liability Insurance - The Professional will maintain comprehensive general liability insurance in sufficient amounts and description to protect the Professional, the Professional's Contractors, the Board, the City and their respective officers, officials, employees, and agents against claims for damages, bodily injury including death and property damage which, may arise under the Contract.

D4.2 Comprehensive General Liability Policy Limit - The limit of comprehensive general liability insurance must be not less than \$5,000,000 per occurrence inclusive for personal injury, death, property damage losses and loss of use of property and in the aggregate with respect to products and completed operations.

D4.3 Required Period of Comprehensive General Liability Coverage - The comprehensive general liability insurance must be in effect for the period of time commencing with the start of the Term and continuing for the entire duration of the Term.

D4.4 Required Extensions of Comprehensive General Liability Coverage - The comprehensive general liability policy of insurance will:

- (a) be on an occurrence form,

- (b) add the Board, the City and their respective officials, officers, employees and agents as additional insureds,
- (c) contain a cross-liability or severability of interests clause, and
- (d) extend to cover non-owned automobile, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.

D5.0 Motor Vehicle Liability Insurance

D5.1 Scope, Limit and Duration Requirements - Motor vehicle liability insurance for owned and leased licensed vehicles with limits of not less than \$5,000,000 inclusive for accidental injury to or death of one or more persons or damage to or destruction of property as a result of any one accident. Where the policy has been issued pursuant to a government operated automobile insurance system, the Professional will provide the Board's Director of Risk Management with confirmation of the automobile insurance coverage for all automobiles registered in the name of the Professional and the Professional's staff.

D6.0 [intentionally deleted]

D7.0 All Risk Property Insurance

D7.1 All Risk Property Insurance - The Professional will maintain an all risks property insurance policy covering the Professional's Personal Property and property of every description owned by the Professional and others for whom the Professional may have assumed responsibility and located on the Golf Course from time to time.

D7.2 All Risk Property Policy Limit - The all risks property insurance must have a policy limit of not less than the full replacement cost value of the Professional's Personal Property and property of every description owned by the Professional and others for whom the Professional may have assumed responsibility and located on the Golf Course from time to time.

D7.3 Required Period of All Risks Property Insurance Coverage The all risks property insurance must be in effect for the period of time commencing with the start of the Term and continuing for the entire duration of the Term.

D7.4 Required Scope of All Risks Property Coverage The all risks property insurance must cover loss or damage caused by fire, earthquake, flood and other perils customarily provided on an "All Risk (Broad Form) Property Insurance" form and must contain the following extensions of coverage:

- (a) blanket building by-laws coverage (ie. where the insurer indemnifies the insured in respect of loss caused by an insured peril but arising indirectly from the enforcement of a by-law (or any other law) requiring, for example
 - (i) the undamaged portion of a building or property to be torn down or removed, or
 - (ii) requiring the repair or replacement work to be performed to different standards than previously existed (eg. installing sprinklers), and
 - (b) accidental breakdown of boilers and pressure vessels including heating, cooling, electrical and mechanical equipment.
- D7.5 Prior Approval Required For Co-Insurance - Any “stated amounts co-insurance clause” or “percentage type co-insurance clause” must be in a form specifically approved in writing by the Board’s Director of Risk Management.
- D7.6 Deductible Limit - The deductible on each all risks policy (builder’s, installation, or otherwise) must not exceed \$5,000.
- D7.7 Loss Payee Clause - The loss payable clause must state that the proceeds of any claim against insurers be payable to the Board (with respect to the Board’s Option to Purchase) and the Professional as their interests may appear.
- D7.8 Waiver of Subrogation Clause - The insurer must waive all rights which it may acquire by payment of a claim to recover the paid amount from the Professional’s affiliates or any of the Board’s, the City’s, the Professional’s or their respective directors, officers, officials, employees or agents (ie. a “waiver of subrogation”). In addition to this waiver of subrogation, all other property insurance policies of any kind carried by the Professional must contain such a waiver of subrogation by the insurer in favour of the Board, the City, and their respective directors, officers, officials, employees or agents (whether or not such property insurance is carried as a requirement of the Contract).
- D7.9 Primary Coverage Clause - The insurer must agree that the policy is primary coverage and any other insurance carried by the Board, the City or the Professional is secondary so that any secondary policies will only be drawn upon after exhausting the coverage under the primary coverage.
- D8.0 Business Interruption Insurance:**
- D8.1 Required Limit, Scope, Duration - The Professional will, commencing with the start of the Term and for the entire duration of the Term, continuously maintain business interruption insurance on a “Gross Profits” form for an indemnity period of not less than 12 months protecting the Professional against loss of profits including payroll expense, debt servicing expenses, payment of fees under the Contract and any standing charges and extra expenses resulting from any interruption or interference of its business

operations arising out of any loss or damage to property of every description used in connection with the Golf Course.

D9.0 [intentionally deleted]

D10.0 Workers' Compensation Board Compliance

D10.1 Payment of WCB Assessments. The Professional agrees that the Professional will at the Professional's own expense procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board coverage for all of the Professional's staff and all Contractors who are engaged in or upon any work or service which is the subject of the Contract. The Professional agrees that the Board has the unfettered right to set off the amount of the unpaid premiums and assessments for such Worker's Compensation Board coverage against any money owing by the Board to the Professional. The Board may withhold payment under the Contract until the Worker's Compensation Board premiums, assessments or penalties in respect of work done or service performed in fulfilling the Contract had been paid in full.

D10.2 Designation of Professional as Prime Contractor. The Board now designates the Professional as the Prime Contractor, and the Professional now acknowledges and agrees to being designated as the Prime Contractor, for the purposes of the WCB OH&S Regulation.

D10.3 Prime Contractor's Obligations. Without in any way limiting the Professional's obligations under the WCB OH&S Regulation, and by way of example only, the Professional will

- (a) appoint and provide a qualified coordinator for the purpose of ensuring the coordination of health and safety activities for the Golf Course;
- (b) provide and receive and respond to all information required to be given, received or relayed by the Professional (both as an employer and as the Prime Contractor) pursuant to the WCB OH&S Regulation, and
- (c) concurrently with signing the Contract, sign and deliver to the Board, the "Prime Contractor/Qualified Coordinator Agreement" in the form attached as Schedule H to the Contract.

D10.4 General WCB Obligations. In addition to, and not in lieu of, the Professional's obligations as the Prime Contractor, the Professional will have a safety program acceptable to the Workers' Compensation Board and will ensure that all Board and Workers' Compensation Board safety policies, rules and regulations are observed during performance of the Contract, not only by the Professional and its staff, but by all Contractors, material suppliers and others engaged in the performance of the Contract.

D10.5 Notice of Project. Prior to commencement of any construction permitted by the Contract, the Professional will

- (a) complete and file a "Notice of Project" with the Workers' Compensation Board in compliance with Section 20.2 of the WCB OH&S Regulation, and
- (b) post the Notice of Project at the Golf Course, and
- (c) will provide a copy of the Notice of Project to the Board's Designated Representative and confirm in writing that the Notice of Project has been posted at the Golf Course.

D10.5 Initial Proof of WCB Registration/Good Standing. Prior to signing the Contract, the Professional will provide the Board with the Professional's and all Contractors' Workers' Compensation Board registration numbers.

D10.6 Subsequent Proof of WCB Registration/Good Standing. Within 5 days of any request by the Board's Designated Representative to do so, the Professional will provide the Board with written confirmation that the Professional and all Contractors are registered in good standing with the Workers' Compensation Board and that all assessments have been paid to date.

D10.7 Pre-Contract Hazard Assessment. The Professional may or may not have received, as part of the Contract, a "Pre-Contract Hazard Assessment" prepared by or for the Board pursuant to the Board's statutory obligations under the WCB OH&S Regulation (Section 119 of the Act) as an "owner of a workplace". Despite the Board's statutory obligations, the Professional now acknowledges and agrees that the Professional may not rely on the "Pre-Contract Hazard Assessment" and now agrees to assume by the terms of the Contract full responsibility for carrying out the Board's obligations under Section 119 of the Act, including without limitation and by way of example only, conducting all due diligence inquiries of all applicable Board staff and departments in order to ascertain what, if any, information is known or has been recorded by Board staff about the Golf Course that is necessary to identify and eliminate or control hazards to the health or safety of persons at the Golf Course. The Board now agrees to make all reasonable efforts to assist the Professional in obtaining timely access to Board staff and Board records for this purpose. Within 10 days of signing the Contract, the Professional will start conducting such due diligence inquiries and must complete and deliver written confirmation of the completion of such inquiries to the Board's Designated Representative prior to the Board being obligated to approve the Professional's Plans and Specifications.

D10.8 Special Indemnity Against WCB Non-Compliance. The Professional will indemnify the Board and hold harmless the Board from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to

- (a) unpaid Workers' Compensation Board assessments of the Professional or any other employer for whom the Professional is responsible under the Contract,
- (b) the acts or omissions of any person engaged directly or indirectly by the Professional in the performance of the Contract, or for whom the Professional is liable pursuant to the Professional's obligations as the Prime Contractor, and which acts or omissions are or are alleged by the Workers' Compensation Board to constitute a breach of the WCB OH&S Regulation or other failure to observe safety rules, regulations and practices of Workers' Compensation Board, including any and all fines and penalties levied by the Workers' Compensation Board, or
- (c) any breach of the Professional's obligations under this Section D10.0.

**SCHEDULE E
GENERAL SECURITY AGREEMENT**

This Agreement made as of January 1, 2009.

BETWEEN:

MONAGHAN GOLF INC.

s.22(1)

(the "**Professional**")

AND:

CITY OF VANCOUVER, as

represented by its Board of Parks and Recreation

2099 Beach Avenue

Vancouver, British Columbia

V6J 1Z4

(the "**Board**")

Capitalized terms not otherwise or elsewhere defined, have the respective meanings ascribed to them in section 1.2 below.

E.1. SECURITY

1.1 For value received, the Professional grants and creates the security constituted by this General Security Agreement and agrees to the terms, covenants, agreements, conditions, provisos and other matters set out in this General Security Agreement.

1.1.1 As general and continuing security for the Obligations, the Professional:

- (a) hereby grants to the Board, by way of mortgage, charge, assignment and transfer, a security interest in all presently owned and hereafter acquired Accounts, Goods (including, without limiting the generality of the foregoing, Inventory and Equipment), Investment Property, Instruments, Documents of Title, Chattel Paper, Intangibles and Money of the Professional, located at, on or about the Golf Course (as defined in the Golf Professional Services Contract) or used or acquired in connection with or primarily related to the business of the Professional conducted on or with respect to the Golf Course, and all Proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor, (all of which are herein collectively called the "Personal Property Collateral"),

including, without limiting the generality of the foregoing, personal property described in any schedule now or hereafter annexed hereto; and

- (b) hereby charges as and by way of a floating charge in favour of the Board all the presently owned or held and hereafter acquired property, assets, effects and undertakings of the Professional of whatsoever nature and kind located on or about the Golf Course or used or acquired in connection with the business of the Professional conducted on or in respect of the Golf Course, other than such of the property, assets, effects and undertakings of the Professional as are validly and effectively subjected to the security interest granted to the Board pursuant to paragraph (a) above, (all of which property, assets, effects and undertakings so charged by this paragraph (b) are herein collectively called the "Other Collateral") including, without limiting the generality of the foregoing, all presently owned or held and hereafter acquired right, title and interest of the Professional in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plant, machinery, fixtures, apparatus and fixed assets; and the charge created by this paragraph (b) shall be a floating charge but so that the Professional shall not have power without the prior written consent of the Board to:
- (i) create or permit to exist any Encumbrance against any of the Other Collateral which ranks or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement, save for Permitted Encumbrances; and
- (ii) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral, except in the normal course of business which will include the types of transactions permitted pursuant to section 4.1.2.

1.1.2 The mortgages, charges and security interests granted in this General Security Agreement do not apply or extend to any Consumer Goods of the Professional.

1.2 In this General Security Agreement:

1.2.1 the Personal Property Collateral and the Other Collateral are herein together called (the "Collateral");

1.2.2 any reference to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof";

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- 1.2.3 any reference to "Professional" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Professional is one or more corporations and, if more than one Professional executes this General Security Agreement, this General Security Agreement shall apply and be binding upon each of them jointly and severally and all obligations hereunder shall be joint and several;
- 1.2.4 any reference to "General Security Agreement" shall, unless the context otherwise requires, be deemed a reference to this General Security Agreement as amended from time to time by written agreement together with the schedules hereto and any schedules added hereto pursuant to the provisions hereof;
- 1.2.5 any reference to "Golf Professional Services Contract" means the agreement between the Professional and the Board dated January 1, 2009 related to operation of the Golf Course, as amended, modified, supplemented, revised, restated or replaced from time to time;
- 1.2.6 any reference to "PPSA" shall mean the *Personal Property Security Act* of the Province as amended from time to time, including any amendments thereto and any Act substituted therefor and amendments thereto;
- 1.2.7 any reference to the "Province" shall mean the Province of British Columbia; and
- 1.2.8 the terms "Goods", "Chattel Paper", "Documents of Title", "Equipment", "Accounts" "Consumer Goods", "Instruments", "Intangibles", "Licences", "Money", "Investment Property", "Proceeds", "Inventory" and "Accessions" and other words and expressions which have been defined in the PPSA shall be interpreted in accordance with their respective meanings given in the PPSA unless otherwise defined herein or unless the context otherwise requires;
- 1.2.9 any reference to "Permitted Encumbrances" shall mean the Encumbrances set out in the attached Encumbrance Schedule;
- 1.2.10 any reference to "Encumbrances" or "Liens" shall mean any and all security interests, mortgages, liens, claims, charges and other encumbrances;
- 1.2.11 any reference to "default", "Default" or "Event of Default" means a "Default" as that term is defined in the Golf Professional Services Contract; and
- 1.2.12 any reference to "Obligations" shall mean the obligations, indebtedness and liabilities described in section 2.1 below.
- 1.3 The Board and the Professional have not agreed to postpone the time for attachment of the security interest granted hereby and the Professional and the Board intend that the security interest granted hereby shall attach to presently owned or held Personal Property Collateral.

forthwith upon execution of this General Security Agreement and shall attach to hereafter acquired Personal Property Collateral forthwith upon acquisition of any right, title and interest of the Professional in such Collateral.

1.4 The last 10 days of the term created by any lease or agreement therefor are hereby excepted out of the security constituted by this General Security Agreement but the Professional shall, subject to the rights of holders from time to time of Permitted Encumbrances, stand possessed of the reversion thereby remaining upon trust to assign and dispose thereof to any third party as the Board shall direct.

E.2.0 OBLIGATIONS SECURED

2.1 The security constituted by this General Security Agreement is general and continuing security for payment, performance and satisfaction of each and every obligation, indebtedness and liability of the Professional to the Board (including interest thereon), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, arising under or by virtue of the Golf Professional Services Contract.

2.2 This General Security Agreement and the security constituted hereby are in addition to and not in substitution for any other security or securities which the Board may now or from time to time hold or take from the Professional or from any other person whomsoever.

E.3.0 REPRESENTATIONS AND WARRANTIES OF THE PROFESSIONAL

3.1 The Professional represents and warrants that, and, so long as this General Security Agreement remains in effect, shall be deemed to continuously represent and warrant that:

3.1.1 this General Security Agreement has been authorized, executed and delivered in accordance with resolutions of the directors (and of the shareholders as applicable) of the Professional and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this General Security Agreement, the creation of the security constituted hereby and the performance of the Professional's obligations hereunder, legal, valid and binding;

3.1.2 the Collateral is genuine and is owned by the Professional free of all Encumbrances, save for the security constituted by this General Security Agreement, the Permitted Encumbrances and any other Encumbrances approved in writing by the Board; and

3.1.3 the Professional has good and lawful authority to create the security in the Collateral constituted by this General Security Agreement.

E.4.0 COVENANTS OF THE PROFESSIONAL

4.1 The Professional covenants and agrees that at all times while this General Security Agreement remains in effect the Professional will:

4.1.1 defend the Collateral for the benefit of the Board against the claims and demands of all other persons, except only the holders from time to time of Permitted Encumbrances;

4.1.2 not, without the prior written consent of the Board:

- (a) create or permit to exist any Encumbrance against any of the Personal Property Collateral which ranks or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement, save for:
 - (i) the Permitted Encumbrances; and
 - (ii) Encumbrances approved in writing by the Board prior to creation or assumption; or
- (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral, other than in the normal course of business, except for:
 - (i) any such sales or dispositions of obsolete or worn out Collateral no longer used or useful in the business of the Professional;
 - (ii) Collateral sold or disposed where the proceeds thereof or consideration received therefor is less than \$10,000 and is used within 12 months to reinvest in the Professional's Personal Property at the Golf Course or other assets subject to the security interest of the General Security Agreement of the Board, or which are otherwise sold or disposed of and resulting in replacement with similar or comparable assets;
 - (iii) abandonments, surrenders or terminations of rights or interests which are effected in accordance with prudent industry practice subject to the prior written consent of the Board such consent not to be unreasonably withheld, delayed or conditioned; and
 - (iv) to the extent not otherwise provided above, Collateral so disposed of if, in any twelve month period, the fair market value of consideration received in any single transaction does not exceed \$10,000 or, in the aggregate for all such transactions in any 12 month period does not exceed \$25,000.

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- 4.1.3 fully and effectively maintain and keep maintained valid and effective the security constituted by this General Security Agreement;
- 4.1.4 notify the Board promptly of:
- (a) the details of any acquisition of Collateral in excess of \$10,000;
 - (b) the details of any claims or litigation affecting the Professional or the Collateral in excess of \$10,000; and
 - (c) any loss, damage or proposed disposition of or to Collateral in excess of \$10,000 for each occurrence;
- 4.1.5 subject to section 4.1.2, keep the Collateral in good order, condition and repair and located at the Golf Course, except for records which may be kept at other locations pursuant to the Golf Professional Services Contract and not use the Collateral in violation of the provisions of this General Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- 4.1.6 subject to section 4.1.2, carry on and conduct the business of the Professional so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Professional's business as well as accurate and complete records concerning the Collateral;
- 4.1.7 forthwith pay:
- (a) all obligations to its employees and all obligations to others which relate to its employees when due, including, without limitation, all taxes, duties, levies, government fees, claims and dues related to its employees;
 - (b) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless the Professional shall in good faith contest its obligations so to pay; and
 - (c) all Encumbrances which rank or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, other than the Permitted Encumbrances and any other Encumbrances approved in writing by the Board;
- 4.1.8 prevent the Collateral from being or becoming an Accession to other property not covered by this General Security Agreement;

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- 4.1.9 insure the Collateral for such periods, in such amounts, on such terms and conditions as are set forth in Schedule D to the Golf Professional Services Contract;
- 4.1.10 following an Event of Default (which has not been remedied) deliver to the Board from time to time promptly upon request:
- (a) full and complete copies of all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
 - (b) full and complete copies of all financial statements prepared by or for the Professional regarding the Professional's business;
 - (c) full and complete copies of all policies and certificates of insurance relating to the Collateral; and
 - (d) such information concerning the Collateral, the Professional and Professional's business and affairs as the Board may reasonably require;
- 4.1.11 forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Board in:
- (a) taking, recovering, keeping possession of and insuring the Collateral;
 - (b) connection with any disclosure requirements under the PPSA; and
 - (c) all other actions and proceedings taken in connection with the preservation of the Collateral and the confirmation, perfection and enforcement of this General Security Agreement and of any other security held by the Board as security for the Obligations;
- 4.1.12 following an Event of Default which has not been remedied at the time of the request, at the Board's request at any time and from time to time create in favour of the Board, as security for the Obligations, a fixed charge or charges upon any of the Other Collateral;
- 4.1.13 at the Board's request at any time and from time to time execute and deliver such further and other documents and instruments and do all other acts and things as the Board reasonably requires in order to give effect to this General Security Agreement or to confirm and perfect, and maintain perfection of, the security constituted by this General Security Agreement in favour of the Board; and

4.1.14 following an Event of Default which has not been remedied, permit the Board and its representatives, at all reasonable times, access to all the Professional's property, assets and undertakings and to all its books of account and records for the purpose of inspection and render all assistance necessary for such inspection.

E.5.0 BOARD ACTIONS AUTHORIZED

5.1 The Professional hereby authorizes the Board to file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any Permitted Encumbrances affecting the Collateral or identifying the locations at which the Professional's business is carried on and the Collateral and records relating thereto are situate) as the Board may deem appropriate to perfect and continue the security constituted hereby, to protect and preserve the Collateral and to realize upon the security constituted hereby and the Professional hereby irrevocably constitutes and appoints the Board the true and lawful attorney of the Professional, with full power of substitution, to do any of the foregoing in the name of the Professional whenever and wherever it may be deemed necessary or expedient by the Board.

5.2 If the Professional fails to perform any of its Obligations hereunder, the Board may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Board hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Professional to the Board forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Board prior to all claims subsequent to this General Security Agreement.

E.6.0 DEFAULT

6.1 The Professional shall be in default under this General Security Agreement, unless otherwise agreed in writing by the Board, upon the occurrence of an Event of Default.

E.7.0 ENFORCEMENT

7.1 Upon an Event of Default, the security hereby constituted will immediately become enforceable.

7.2 To enforce and realize on the security constituted by this General Security Agreement the Board may take any action permitted by law or in equity, as it may deem expedient, and in particular, without limiting the generality of the foregoing, the Board may do any one or more of the following:

7.2.1 appoint by instrument a receiver, receiver and manager or receiver-manager (the person so appointed is herein called the "Receiver") of the Collateral, with or without bond as the Board may determine, and from time to time in its sole discretion remove such Receiver and appoint another in its stead;

- 7.2.2 enter upon any premises of the Professional and take possession of the Collateral with power to exclude the Professional, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
- 7.2.3 preserve, protect and maintain the Collateral and make such replacements thereof and repairs and additions thereto as the Board may deem advisable;
- 7.2.4 sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of all or any part of the Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Board may seem reasonable, provided that the Professional will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefor are actually received; and
- 7.2.5 exercise all of the rights and remedies of a secured party under the PPSA.

7.3 A Receiver appointed pursuant to this General Security Agreement shall be the agent of the Professional and not of the Board and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Board hereunder, and in addition shall have power to carry on the business of the Professional and for such purpose from time to time to borrow money either secured or unsecured, and if secured by a security on any of the Collateral, any such security may rank in priority to or pari passu with or behind the security constituted by this General Security Agreement, and if it does not so specify such security shall rank in priority to the security constituted by this General Security Agreement.

7.4 Any costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Board in connection with or incidental to:

- 7.4.1 the exercise by the Board of all or any of the powers granted to it pursuant to this General Security Agreement; and
- 7.4.2 the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted by the Receiver pursuant to this General Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;

shall be payable by the Professional to the Board forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Board prior to all claims subsequent to this General Security Agreement.

7.5 Subject to applicable law and the claims, if any, of the creditors of the Professional ranking in priority to the security constituted by this General Security Agreement, all amounts

realized from the disposition of the Collateral pursuant to this General Security Agreement will be applied as the Board, in its sole discretion, may direct as follows:

FIRSTLY: in or toward payment of all costs, charges and expenses referred to in sections 4.1.11 and 7.4, and other obligations owing under this General Security Agreement;

SECONDLY: in or toward payment to the Board of all principal and other monies (except interest) unpaid in respect of the Obligations;

THIRDLY: in or toward payment to the Board of all interest remaining unpaid in respect of the Obligations; and

FOURTHLY: any surplus will be paid to the Professional.

E.8.0 DEFICIENCY

8.1 If the amounts realized from the disposition of the Collateral are not sufficient to pay the Obligations in full to the Board, the Professional will immediately pay to the Board the amount of such deficiency.

E.9.0 RIGHTS CUMULATIVE

9.1 All rights and remedies of the Board set out in this General Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future general security agreement or now or hereafter existing at law or in equity or pursuant to any other agreement between the Professional and the Board that may be in effect from time to time.

E.10. APPOINTMENT OF ATTORNEY

10.1 The Professional hereby irrevocably appoints the Board or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Professional for and in the name of the Professional to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Professional is obliged to sign, endorse or execute and generally to use the name of the Professional and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Board or the Receiver, as the case may be, pursuant to this General Security Agreement. The Board now separately agrees with the Professional that the Board will not make use of this appointment except in the Event of Default and will cease the use of this appointment in the event that such a Default is remedied; provided, however, that this restriction will not apply in respect of the authority conferred on the Board pursuant to sections 5.1 and 5.2 above.

E.11.0 LIABILITY OF THE BOARD

11.1 The Board shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Board shall manage the Collateral upon entry or manage the business of the Professional, as herein provided, nor shall the Board be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss or realization or for any default or omission for which a mortgagee in possession may be liable.

11.2 The Board shall not be bound to do, observe or perform or to see to the observance or performance by the Professional of any obligations or covenants imposed upon the Professional nor shall the Board, in the case of Securities, Instruments or Chattel Paper, be obliged to reserve rights against other persons, nor shall the Board be obliged to keep any of the Collateral identifiable.

11.3 The Board shall not be obliged to inquire into the right of any person purporting to be entitled under the PPSA to information and materials from the Board by making a demand upon the Board for such information and materials and the Board shall be entitled to comply with such demand and shall not be liable for having complied with such demand notwithstanding that such person may in fact not be entitled to make such demand.

11.4 The Professional will indemnify the Board and hold the Board harmless from and against any and all claims, costs, losses, demands, actions, causes of action, lawsuits, damages, penalties, judgments and liabilities of whatsoever nature and kind in connection with or arising out of any representation or warranty given by the Professional, being untrue, the breach of any term, condition, proviso, agreement or covenant to the Board, or the exercise of any of the rights and or remedies of the Board, or any transaction contemplated in this General Security Agreement.

11.5 The Professional hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Board than provided in this General Security Agreement.

E.12.0 APPROPRIATION OF PAYMENTS AND OFFSET

12.1 Subject to any applicable provisions of the PPSA, any and all payments made in respect of the Obligations from time to time and monies realized from any security held therefor (including monies collected in accordance with or realized on any enforcement of this General Security Agreement) may be applied to such part or parts of the Obligations as the Board may see fit, and the Board may at all times and from time to time change any appropriation as the Board may see fit or, at the option of the Board, such payments and monies may be held unappropriated in a collateral account or released to the Professional, all without prejudice to the liability of the Professional or to the rights of the Board hereunder.

12.2 Without limiting any other right of the Board, whenever any of the Obligations is immediately due and payable or the Board has the right to declare any of the Obligations to be

immediately due and payable (whether or not it has so declared), the Board may, in its sole discretion, set off against any of the Obligations any and all monies then owed to the Professional by the Board in any capacity, whether or not due and to do so even though any charge therefor is made or entered on the Board's records subsequent thereto, and the Board shall be deemed to have exercised such right to set off immediately at the time of making its decision.

E.13.0 WAIVER

13.1 No delay or omission by the Board in exercising any right or remedy hereunder or with respect to any of the Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

13.2 The Board may from time to time and at any time waive in whole or in part any right, benefit or default under this General Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

E.14.0 EXTENSIONS

14.1 The Board may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security, and otherwise deal with the Professional, sureties and others and with the Collateral and other security as the Board may see fit without prejudice to the liability of the Professional or the Board's right to hold and realize on the security constituted by this General Security Agreement.

E.15.0 ASSIGNMENT

15.1 The Board may, without further notice to the Professional, at any time mortgage, charge, assign, transfer or grant a security interest in this General Security Agreement and the security constituted hereby, subject only to compliance with the Golf Professional Services Contract.

15.2 The Professional covenants and agrees that the assignee, transferee or secured party of the Board, as the case may be, shall have all of the Board's rights and remedies under this General Security Agreement and the Professional will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

E.16.0 SATISFACTION AND DISCHARGE

16.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Professional to be indebted to the Board, shall be deemed not to be redemption or discharge of the security constituted by this General Security Agreement.

16.2 The Professional shall be entitled to a release and discharge of the security constituted by this General Security Agreement upon full payment, performance and satisfaction of all

Obligations, or the securing of the Obligations to the satisfaction of the Board, and upon written request by the Professional and payment to the Board of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Board in connection with the Obligations and such release and discharge.

E.17.0 NO MERGER

17.1 This General Security Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security in any form held or which may hereafter be held by the Board from the Professional or from any other person whomsoever.

17.2 The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the terms, conditions, covenants, agreements or provisos contained in this General Security Agreement.

17.3 The release and discharge of the security constituted by this General Security Agreement by the Board shall not operate as a release or discharge of any right of the Board to be indemnified and held harmless by the Professional pursuant to section 11.4 hereof or of any other right of the Board against the Professional arising under this General Security Agreement prior to such release and discharge.

E.18.0 INTERPRETATION

18.1 In this General Security Agreement:

- 18.1.1 the invalidity or unenforceability of the whole or any part of any section or paragraph shall not affect the validity or enforceability of any other section or paragraph or the remainder of such section or paragraph;
- 18.1.2 the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this General Security Agreement; and
- 18.1.3 when the context so requires, the singular shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.

E.19.0 NOTICE

19.1 Whenever either the Board or the Professional hereto is required or entitled to notify or direct the other or to make a demand upon or request of the other relating to the Collateral, this General Security Agreement or the PPSA, such notice, direction, demand or request shall be sufficiently given if given in writing and delivered to the party for whom it is intended at the address of such party herein or as changed pursuant hereto or if sent by prepaid registered mail

addressed to the party for whom it is intended at the address of such party herein set forth or as changed pursuant hereto.

19.2 Either the Board or the Professional may notify the other in accordance herewith of any change in its principal address to be used for the purposes hereof.

E.20.0 VARIATION

20.1 Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this General Security Agreement shall be made except by written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

E.21.0 ENUREMENT

21.1 This General Security Agreement shall enure to the benefit of the Board and its successors and permitted assigns and shall be binding upon the Professional and its successors and permitted assigns.

E.22.0 COPY OF AGREEMENT AND FINANCING STATEMENT

22.1 The Professional hereby:

22.1.1 acknowledges receiving a copy of this General Security Agreement; and

22.1.2 waives all rights to receive from the Board a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this General Security Agreement.

E.23.0 GOVERNING LAW

23.1 The doctrine of consolidation shall apply to this General Security Agreement and to all other mortgages and charges of the Professional held by the Board and this section 23.1 shall be deemed to be an expression of intention contrary to the Property Law Act of British Columbia.

23.2 This General Security Agreement shall be governed by and construed in accordance with the laws of the Province.

SIGNED, SEALED, AND DELIVERED)
 by **MONAGHAN GOLF INC.** in the)
 presence of:)
)
RON CASWELL)
 Name)
VANCOUVER PATRIK BOARD)
 Address)
)
)
MANAGER)
 Occupation)

per: )
 Michael Thomas Monaghan, President)

ENCUMBRANCE SCHEDULE
 (see Section 1.2.9)

PPSA Security Agreement registered in the British Columbia Personal Property Registry under base registration number 900281E on April 2, 2009 in favour of National Leasing Group Inc., in respect of 30 golf carts together with all attachments, accessories and subsitutions.

SCHEDULE F
OPTION TO PURCHASE PROFESSIONAL'S PERSONAL PROPERTY

F.1 Grant of Option

The Professional now grants the Board the exclusive and irrevocable option to purchase (the "Option to Purchase") to purchase the Personal Property free and clear of all liens, charges and encumbrances.

F.2 Terms and Conditions of Exercise

This Option to Purchase will be deemed to be exercised by the Board upon the earlier of:

- (a) the effective date of termination or expiry of the Contract as contemplated by Section 25(c) of the Contract (the "Transfer Date"); or
- (b) the Board giving the Professional written notice of its intent to exercise the Option to Purchase, which notice will in any case be effective only as of termination or expiry to the Contract,

unless, and in that event, except to the extent that, the Board gives the Professional notice of its intention either not to exercise the Option to Purchase at all, or to exercise the Option to Purchase in respect of some but not all of the Personal Property, in accordance with Section 25(f)(ii) of the Contract.

F.3 Effect of Exercise

Exercise of this Option to Purchase will constitute a binding contract of purchase and sale for such of the Personal Property which the Board is deemed to have, or in fact has, given notice of its intent to purchase (in this Schedule F, the "Purchased Personal Property"). The contract arising from the exercise of this Option to Purchase will be completed, subject to paragraph (d) below, concurrently with the effective date of deemed or actual exercise of the Option to Purchase.

- (a) deliberately deleted.
- (b) The Professional will at the Professional's sole cost and expense have the Professional's lawyer prepare, or caused to be prepared, by not later than the Transfer Date, all necessary conveyance documents in respect of the Purchased Personal Property, including, without limitation, a bill of sale absolute (the "Bill of Sale Absolute"), discharges of liens, charges and encumbrances and any other necessary or appropriate documentation. Each of the Professional and Board will pay its own legal fees. The Professional, however, will pay all fees and disbursements associated with registering all financing statements and other documents at the Personal Property Registry.

-
- (c) The Professional will execute and deliver to the Board as of the Transfer Date, the Bill of Sale Absolute containing the usual covenants conveying the Purchased Personal Property to the Board free and clear of all liens, charges and encumbrances. The Professional will also execute and deliver as of the Transfer Date, any other documents or instruments as may reasonably be required by the Board for the purpose of completing the contract of purchase and sale of the Purchased Personal Property, including if requested by the Board, such documents or instruments as may be required for the registration of discharges and financing change statements at the Personal Property Registry.
- (d) Title, risk of loss or damage, and possession of the Purchased Personal Property will transfer to the Board on the date when transfer of title is effected and the purchase price is paid. If the parties are unable to agree on the price payable for, or any other material terms applicable to the transfer of, the Purchased Personal Property by the Transfer Date, then the sale and transfer may be completed at such later date as the parties may then agree.
- (e) At all times and from time to time prior to the exercise of this Option to Purchase, the Board will have full right of access to the Purchased Personal Property in order to conduct surveys, assessments, inventories, studies and tests including valuations and audits.
- (f) The purchase price for the Purchased Personal Property will be payable by the Board to the Professional as of the date when title transfers to the Board in accordance with this Option to Purchase, provided always that the Board and Professional will settle or determine the purchase price on the following terms and conditions:
- (i) The Board's Designated Representative and Professional will negotiate in good faith, as early as reasonably possible, to settle a purchase price for the Purchased Personal Property, which will be the lesser of fair market value as of the Transfer Date and cost (including the net amount of any taxes actually paid by the Professional), except that, if the Board's Designated Representative and Professional are unable to agree on that purchase price as of the Transfer Date, the Board and the Professional will jointly appoint a chartered accountant, who is a member in good standing of the Institute of Chartered Accountants of British Columbia, or such other qualified asset valuator as the parties may agree in writing, and who is at arm's length from the Board and the Professional, to determine that purchase price, and each of the Board and the Professional will be responsible for 50% of the chartered accountant's or asset valuator's, as the case may be, fees and disbursements, and will pay the amount it owes to the chartered accountant or asset valuator, as the case may be, on demand. Any price determined in advance of the date as of which title is transferred and the purchase price paid, will be adjusted as of the transfer/payment date to reflect any variations in value in the meantime.

- (ii) The Board will pay the Professional the purchase price for the Purchased Personal Property as settled or determined under Section F.3(f)(i), at such time as title is transferred to the Board in accordance with this Option to Purchase, or if the price has not by then be decided on, then at such time as the price has been determined, subject to any deduction by the Board of any amount the Professional then owes to the Board.

F.4 No Further Encumbrances/Subdivisions Permitted

The Professional will not permit any liens, charges or encumbrances to be registered against the Personal Property save and except:

- (a) Permitted Encumbrances; and
- (b) other encumbrances which the Board first agrees to in writing.

F.5 Professional's Representations

Regardless of any independent investigations that the Board may cause to be made, the Professional will represent and warrant to the Board, as of the date of transfer of title to the Board of any Purchased Personal Property, that:

- (a) the Professional has good, safeholding and marketable title to the Purchased Personal Property free and clear of all liens, encumbrances, charges, encroachments, defects in title, equities or claims; and
- (b) the Professional has no indebtedness to any person or governmental authority which might by operation of law or otherwise constitute a lien, charge or encumbrance on the Purchased Personal Property or which could affect the Board's right from and after the exercise of this Option to Purchase to own and use the Purchased Personal Property.

F.6 Interpretation

- (a) All terms and conditions of this Option to Purchase which by their nature require performance or fulfillment following the exercise of the Option to Purchase or the Transfer Date will survive and not merge with any transfer or agreement delivered in connection with the completion of the transfer of the Purchased Personal Property.
- (b) This Option to Purchase and the contract constituted by the exercise of it will enure to the benefit of and be binding upon the parties and their successors and assigns and for further certainty will charge and bind the Personal Property and the Professional's successors in title.

- (c) Capitalized terms not otherwise defined herein will have the respective meanings ascribed to them in the Golf Professional Services Contract for Fraserview Golf Course dated January 1, 2009, to which this Option to Purchase is attached as Schedule F.

SCHEDULE G GRANT OF LICENCE

G.1 Grant of Licence

In recognition of the Professional's need for access to the Golf Course in order to provide the Services, the Board now grants the Professional a licence for access and use of the Pro Shop, Driving Range, Cart Storage Area, Short Game Practice Area and the Chipping and Putting Green (collectively, the "Service Access Areas") provided that this licence will automatically be terminated with the expiry or sooner termination of the Term and will be automatically extended with any extension of the Term.

G.2 Licence Fee

The licence fees payable by the Professional are as set out in Section 6(b) the Contract and will be payable as a deduction from and set-off against the fees payable by the Board for the Services.

G.3 Utilities

All charges, rates and levies on account of utilities including electricity, water, garbage collection, telephone and all other expenses and outgoings incurred by the Professional in the provision of the Services and use of the Service Access Areas will be to the sole account of the Professional except where expressly stated otherwise in the Contract.

G.4 Use of the Service Access Areas

The Professional will only use the Service Access Areas for the provision of the Services and will not use or allow the Service Access Areas to be used by its agents or employees for any other purpose without the prior written consent of the Board's Designated Representative, which consent may be arbitrarily withheld.

G.5 Non-Exclusive Licence

G5.1 No Interest in Land. The Board will have full, free and uninterrupted access to the Service Access Areas for the purposes of inspection and carrying out its obligations under the Contract and to the public at all times during the Term and in common with the Professional's rights of access under this licence. Despite any other term of this Schedule G or any other part of the Contract, the rights and privileges of use and access granted by this Schedule G and the Contract to the Professional are purely contractual and are not grants of a lease, easement, right of way, right of exclusive possession, or any other interest in land and the Professional now acknowledges and agrees to same and further agrees not to register any instrument, claim or notice respecting the Contract in any Land Title Office, nor to make any claim in any arbitration or court of law that the Professional has any rights in respect to access to and use of the Golf Course other than purely contractual rights of a bare licensee.

G5.2 Board Reserves All Rights. Accordingly, the Board retains full ownership and exclusive possession of the Golf Course and reserves all rights to use the Golf Course in any manner it sees fit even where such uses interfere with the Professional's contractual rights and obligations under the Contract. The Professional now acknowledges and agrees that the Golf Course is owned and operated by a public sector entity which may at any time elect to modify the manner or mode of use of the Golf Course in any manner considered to be in the public interest, as determined by its publicly elected park board commissioners, including without limitation and by way of example only, modifications to increase revenue (such as advertising on the Driving Range walls and fences) or modifications to address public interest desires (such as re-configuring the golf course or reducing its size, converting to green space, etc.).

G5.3 Limitation on Liability. Despite any other term of the Contract, where any use by the Board of the Golf Course interferes or might interfere with the Professional's rights or obligations under the Contract, the Board's liability for damages is now expressly limited to \$1,000, or such other amount as the Professional and the Board may agree, whether or not such use constitutes a breach of the Contract and the Professional now releases the Board from all liability for all losses, expenses and damages arising from the type of breach or use described in this Section G.5, subject always to

- (a) the Board's obligations to reimburse the Professional's reasonable direct moving costs in the event of a re-location pursuant to Section G.17; and
- (b) the Board's obligations to reimburse the Professional's capital costs of constructing the Professional's Upgrades where (but only to the extent that) such interference by the Board prevents the Professional from making economically feasible use of the Professional's Upgrades, in which case the pro-rating formula set out in Section G.19 will apply.

G.6 Board's Right of Control over Access and Use

The Board will have the unfettered right to stipulate the extent of use and access over the Golf Course to the Service Access Areas permitted by the Professional and the Professional's staff and will have the complete and unfettered right to prohibit the Professional from access to any and all areas of the Golf Course other than the Service Access Areas and those which are necessarily required to provide access to the Professional and the Professional's staff for the provision of the Services.

G.7 No Representations or Warranties

The Professional acknowledges and agrees that the Board has made no representations or warranties as to the state of repair of the Service Access Areas or the suitability of the Service Access Areas for the provision of the Services. Subject to any obligations the Board may have to repair, maintain and/or replace the Service Access Areas pursuant to the Contract, to the extent that the Service Access Areas are not at any time in a condition suitable for the provision of the Services, then to the extent that such is the case, the Board will not be liable for any losses or damages suffered by the Professional. However, the Professional will not be liable for the

failure to provide Services to the extent to which same is caused by any breach by the Board of its obligations under the Contract or this Schedule G to maintain and repair any part of the Golf Course or Service Access Areas. Accordingly, the Professional now agrees to accept the Golf Course and Service Access Areas on an "as is, where is" basis.

G.8 No Damage

The Professional will at all times carry out the Services and operations with due care and attention and without negligence and will at no times create a nuisance or cause damage to the Service Access Areas or surrounding Golf Course.

G.9 Notify Board of Any Damage

If any of the Board's property is damaged by the Professional or the Professional's employees (or other Contractors), the Professional will notify the Board immediately, and the Board will have the right to elect within 48 hours whether or not the Board will itself repair the damage. If the Board fails to give a notice of election within the time specified, the Board will be deemed to have elected to do the repairs. If the Board elects to have the Professional do the repairs, the Professional will carry out the repairs at the Professional's sole cost, which repairs will be performed in the manner approved by the Board and within such time as is specified by the Board, acting reasonably, so as to bring the damaged property back to a standard and condition at least equal to the standard and condition it was in prior to the damage. A Default will be deemed to have occurred on the part of the Professional, and Section 18 of the Contract will apply, if:

- (a) the Board elects to have the Professional do the repairs, and the Professional fails to complete the repairs to such standard and condition, or in the manner or within the time specified by the Board, in which case the Board may carry out the repairs at the Professional's sole cost; and
- (b) the Board carries out some or all of such repairs itself and the Professional does not reimburse the Board for the cost payable by the Professional for the same, within 30 days of demand.

G.10 Maintenance

The Professional will maintain the Service Access Areas and all improvements within the Service Access Areas in a sanitary, neat, tidy and safe condition and free from nuisance at all times subject only to those obligations which are imposed on the Board pursuant to Sections 11 and 13 of the Contract.

G.11 Indemnification

The indemnity set out in Section 15(b) of the Contract will apply fully and completely to all costs, losses, damages, builders liens, expenses, actions, claims, demands, suits and judgments incurred by or against the Board, the City or their respective officers, officials, directors, agents,

employees and contractors on account of the Professional's use of the Service Access Areas, access to and from and across the Golf Course and/or relating to or arising from the Professional's exercise of its rights under this licence granted by this Schedule G and is in addition to and not in lieu of all other indemnities, releases and limitations on liability set out elsewhere in the Contract.

G.12 Insurance

As a condition of this grant of licence, the Professional must comply at all times and in strict accordance with the Insurance, Bonding and WCB Requirements set out in Schedule D to the Contract.

G.13 Assignment

Further to Section 17 of the Contract, the Professional will not in whole or in part assign this licence without the prior written consent of the Board's Designated Representative, which consent of the Board's Designated Representative may arbitrarily withhold and which consent may only be granted concurrently with any consent with respect to any assignment of the balance of the Contract. Accordingly, the Professional may not sub-licence or otherwise permit any other third party access to or use of the Golf Course or Service Access Areas without the prior written consent of the Board's Designated Representative in accordance with Section 17 of the Contract.

G.14 Termination of the Licence

Despite any other term of this Schedule G or any other part of the Contract:

- (a) the Board's Designated Representative may terminate this licence immediately upon giving written notice to the Professional pursuant to Section 23 of the Contract, and
- (b) termination or expiry of the Contract will automatically and without further or separate written notice terminate this licence.

G.15 Laws and By-laws

The Professional will, and will cause its staff and Contractors to, promptly and faithfully observe and comply with all laws, by-laws and lawful orders which relate to the Service Access Areas and the Professional's activities within the Service Access Areas, even if such laws, by their terms, apply to the Board. For further certainty and without limiting the generality of the foregoing, it will be the Professional's responsibility to obtain any and all development permits, business licences and building permits required to authorize or permit any of the uses required by the Professional of the Service Access Areas in order to provide the Services.

G.16 No Alteration/Improvement

The Professional will not, without the prior written consent of the Board's Designated Representative, which may be arbitrarily withheld, make any alterations, renovations, improvements or demolitions of any of the existing improvements located within the Service Access Areas, nor may the Professional alter, modify, renovate, or demolish any of the Professional's Upgrades which the Professional confirms and acknowledges must be constructed only in accordance with the procedures set out in Schedule A to the Contract.

G.17 Changes/Relocations

Despite any other term of the Contract, the Board may unilaterally change the structure, size, location or boundaries of any component of the Golf Course or any part of the Service Access Areas without any liability to the Professional for any resulting losses, costs, expenses or damages resulting from such changes. However, the Board will reimburse the Professional for any actual and direct out-of-pocket costs relating to the cost of physically moving or storing the Professional's Personal Property during any such change or relocation, provided that always such costs will expressly exclude all indirect inconsequential losses, costs, damages and expenses such as by way of example only and without limitation, loss of profits, loss of revenue, extra staffing costs or the like.

G.18 Termination or Expiry

Upon the expiry or sooner termination of the Term, the Professional will no longer be entitled to access or use the Service Access Areas nor to enter and exit along the permitted portions of the Golf Course and, subject to reasonable wear and tear, will leave the Service Access Areas in a sanitary, neat, tidy, safe and empty condition and in compliance with the standards of maintenance and repair imposed on the Professional pursuant to the Contract.

G.19 Ownership of Professional's Upgrades

All of the Professional's Upgrades become the sole and absolute property of the Board immediately upon their installation and the Professional will have no claim for compensation with respect to the Professional's Upgrades except as follows:

Where the Contract is terminated by the Board for any reason after completion by the Professional of the Professional's Upgrades as contemplated by Section 5 of the Contract, the Board will pay to the Professional, on account of the Professional's unamortized benefit of the use of and access to the Professional's Upgrades an amount of money payable within 90 days following such termination, which unamortized benefit will be calculated on a straight-line depreciation basis over the period commencing on the date when an occupancy permit is issued by the City for the Professional's Upgrades and ending on December 31, 2017. The calculation will be made as follows:

Number of days remaining between date of termination and December 31, 2017, divided by number of days between the date of issuance by the City of an occupancy permit for

the Professional's Upgrades and December 31, 2017, times the cost of the Professional's Upgrades, equals the amount payable to the Professional.

**SCHEDULE H
PRIME CONTRACTOR AGREEMENT**



**City of Vancouver – Park Board
Prime Contractor Agreement**

DEFINITIONS:

Owner	The City of Vancouver. According to the <i>Workers Compensation Act (Part 3, Division 1)</i> .
Prime Contractor	A contractor designated by the owner (City as represented by its Board of Parks and Recreation) to be the Prime Contractor on a project with respect to occupational health and safety only, namely MONAGHAN GOLF INC.

RESPONSIBILITIES

PRIME CONTRACTOR CANDIDATE

Provide a copy of their WCB “Clearance Letter”, a signed copy of this document and all other documents requested in the tender.

The Prime Contractor will notify the City of any changes of status with the WCB during the course of the project.

PRIME CONTRACTOR

After the Prime Contractor has been designated and before work has commenced, the Prime Contractor shall:

Conduct all necessary and appropriate inquiries of all relevant City staff and records as the City’s authorized agent in order to verify in writing to the City that the City has given to the contractor all information known to the City that is necessary to identify and eliminate or control hazards to the health and safety of persons at the site.

Carefully review, and plan to address, all hazards identified in the Pre-Contract Hazard Assessment (Appendix B).

Review and complete the Pre-Job Meeting Form (Appendix D) with the Contract Liaison.

Maintain and make available, the documents listed on the Pre-Job Meeting Form, where applicable.

Inform all other employers of the workplace their designation as Prime Contractor for the project.

Coordinate all occupational health and safety activities for the project.

Establish and maintain a system or process that will ensure compliance with the WCB OH&S Regulation when visitors (i.e. couriers, inspectors, suppliers, etc.) enter a multiple-employer workplace. The Prime Contractor will thus be responsible for site orientation and hazard communication.

Establish and maintain a system or process that will ensure compliance with the *Workers Compensation Act (Part 3)* and the WCB OH&S Regulation.

Maintain a current list of persons that each sub-trade (employer) has designated to be responsible for that employer's health and safety activities.

Ensure or coordinate first aid equipment and services as required by the WCB OH&S Regulation.

On a Construction Project, submit the Notice of Project (NOP) to the WCB a minimum of 24 hours before construction commences. (See WCB OH&S Regulation Section 20.2 for the general requirements of a Notice of Project.)

On a Construction Project, provide the information listed in WCB OH&S Regulation Section 20.3(4).

On a Construction Project, where workers of 2 or more employers are working at the same time and the combined workforce is greater than 5, identify and designate a Qualified Coordinator to coordinate health and safety activities.

PRIME CONTRACTOR'S QUALIFIED COORDINATOR (CONSTRUCTION ONLY)

Coordinate all health and safety activities for the project.

Ensure that all workers at the workplace are informed of workplace hazards, from both the pre-contract hazard assessment and from ongoing work activities of all employers at the workplace.

Ensure hazards are addressed throughout the duration of the work activity.

Post workplace drawings showing where first aid is located, emergency transportation system for injured workers, and evacuation marshalling points.

Ensure that regular workplace safety meetings are held and documented.

Know who all other contractors' Qualified Persons are.

DESIGNATION

By signing this agreement, the contractor accepts all responsibilities of a **Prime Contractor** as outlined in the City's Multiple-Employer Workplace / Contractor Coordination Program (2003), *Workers Compensation Act (Part 3)*, and WCB OH&S Regulation.

As a contractor signing this agreement with the City, you are agreeing that your company, management staff, supervisory staff and workers will comply with the Workers' Compensation Board (WCB) Occupational Health and Safety Regulation and the *Workers Compensation Act (Part 3)*.

Any WCB violation by the Prime Contractor may be considered a breach of contract resulting in possible termination or suspension of the contract and/or any other actions deemed appropriate at the discretion of the City.

Any penalties, sanctions or additional costs levied against the City, as a result of the actions of the Prime Contractor are the responsibility of the Prime Contractor.

I, the undersigned, acknowledge having read and understood the information above.

By signing this agreement, I agree as a representative of the firm noted below, to accept all responsibilities of the **Prime Contractor** for this project.

Contract #:		Date:	
Firm Name:	MONAGHAN GOLF INC.		
Qualified Coordinator's Name:			
Signature of Prime Contractor:			

THIS GENERAL CONVEYANCE (this "Deed") is dated as of January 1, 2009 by and

BETWEEN:

The CITY OF VANCOUVER, as represented by its BOARD OF PARKS AND RECREATION, of 955 Evans Avenue, Vancouver, British Columbia, V6A 4C8

(hereinafter referred to as the the "Grantor")

AND:

MONAGHAN GOLF INC., a company duly organized in the Province of British Columbia under registration number BC0841208, and having its mailing address at s.22(1) s.22(1)

(hereinafter referred to as the the "Grantee")

BACKGROUND:

- A. The Grantor is possessed of certain assets more particularly described in Schedule A hereto (the "Assets");
- B. The Grantor and the Grantee have entered into a contract dated as of January 1, 2009 (the "Contract"), for the provision by the Grantee of golf professional services at the Grantee's Fraserview Golf Course and Driving Range; and
- C. The Grantor has agreed with the Grantee pursuant to an asset purchase agreement dated for reference March 30, 2009 (the "Asset Purchase Agreement"), for the absolute sale and assignment to the Grantee of the Assets upon the terms and conditions and for the consideration therein and hereinafter set forth.


THIS DEED WITNESSES THAT In consideration of and for the sum of s.21(1) s.21(1) of lawful money of Canada and other good and valuable consideration, paid by the Grantee to the Grantor at or before the execution and delivery of this Deed, the receipt of which the Grantor hereby acknowledges, the Grantor hereby sells, assigns, transfers, conveys and sets over to the Grantee to and for its sole and only use forever, all and singular the Assets and all the right, title, interest, property, claim and demand, both at law and in equity, of the Grantor on, to and in the Assets.

1. The Grantor hereby REPRESENTS, COVENANTS, PROMISES and AGREES with the Grantee that:

- (a) the Grantor is now the sole legal and beneficial owner of the Assets;
 - (b) the Grantor has the right to convey the Assets to the Grantee notwithstanding any act of the Grantor and according to the true intent and meaning of this Deed and the Asset Purchase Agreement;
 - (c) the Grantee shall have quiet possession of the Assets, free of all encumbrances;
 - (a) the Grantor shall promptly:
 - (i) execute and deliver such further instruments; and
 - (ii) take and perform such other steps and actions,in respect of the Assets, as the Grantee may reasonably request in order to effect the purposes and intent of this Deed and the Asset Purchase Agreement; and
 - (d) the Grantor releases to the Grantee all its claims on, to and in the Assets, subject to the terms of the option to purchase set forth in the Contract.
2. It is expressly agreed between the Grantor and Grantee that all grants, representations, covenants, provisos and agreements, rights, powers, privileges, conditions and liabilities contained in this Deed shall be read and held as made by and with, and granted to and imposed upon the Grantor or Grantee, as applicable, and their respective successors and assigns.
3. Wherever the singular and masculine are used in this Deed, the same shall be construed as meaning the plural or the feminine or body corporate or politic where the context so requires.

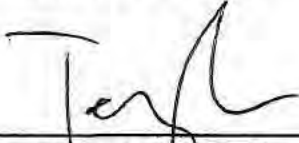
IN WITNESS WHEREOF, the parties hereto have respectively executed this Agreement as of the day and year first above written.

The CITY OF VANCOUVER, as represented by its
BOARD OF PARKS AND RECREATION

Per: 

(RON CASWELL)
Authorized Signatory, I have authority to bind the Grantor

MONAGHAN GOLF INC.



Per: Michael Thomas Monaghan

Authorized Signatory, I have authority to bind the Grantee

SCHEDULE A
to General Conveyance

Location and Description	Qty.	Model	Serial No.
Pro Shop – fixtures, equipment, furniture and supplies			
retail security system incl. Checkpoint exit scan and retail tags	1		
wall clock	1		
oak barrel	1		
display rack for 88 clubs	1		
maple rolling display table	1		
black retail display grid in window	1		
upholstered highback chair	1		
fitting room mirror, hooks and poster	1		
4-sided maple display rack w/ slat wall accessories	1		
4-sided rolling maple display rack w/ adjustable shelving	1		
round pedestal table	1		
maple framed black chair	1		
section of 8 ft. maple slatwall	8		
asstd. slatwall shelving and accessories in various styles			
framed display inc. tees, balls and mats	6		
FootJoy mirror	1		
Callaway foot stool	1		
oak pedestal mirror	1		
potted floral display	3		
basket	2		
jacket display bust	2		
Toshiba CRT TV	1		
rolling chrome clothing rack	1		
6 ft. FootJoy display	1		
maple-framed chalkboard	1		
gray 2 dr. lateral filing cabinet	1		
4 ft. bookcase	1		
small parts bin	1		
Sony radio	1		
AMD computer with Samsung 17 in. LCD monitor, cash drawer and Epson slip printer (including software)	1		
first aid kit	1		
HP printer	1	Photosmart	
PC for booking lessons w/ Acer widescreen LCD monitor and Linksys router	1		
Minuteman UPS	1		
HP laser printer	1	1080	
UPS power bar	1		
computer (slave for POS system) w/ Optique 17 in. LCD monitor	1		

GBC laminator	1		
PC (not in use)	1		
HP laser printer	1	LaserJet 5L	
copier stand	1		
blue tilt/swivel chair	1		
maple power cart key rack	1		
various totes and baskets			
maple built in desk unit, storage counter and tabling (matches retail sales counter that belongs to Park Board)	1		
asst'd office and retail store supplies			
Pro Shop – retail merchandise			
all merchandise for retail sale in the Pro Shop as of 12-31-08 (as agreed to and checked by Earl Francis and Tom Monaghan)			
Rentals/Repairs Room			
maple wall-mounted shelving	1		
totes of hangers	1		
cooler	1		
Golfworks grip machine	1		
asstd. plastic totes	10		
Jiffy steamer	1		
Smart Choice commercial vacuum	1		
parts bin	1		
asstd. tools in cabinet under sink and in rooms			
display baskets	8		
broom	1		
step ladder	1		
heat gun	1		
tournament shot stake	12		
plastic totes	2		
Baltusrol picture	1		
4 ft. vase	1		
Kenwood radio	2		
double black shelving unit	1		
single black shelving unit	1		
single black shelving unit	1		
potted floral display and clothing bust	1		
2 totes	1		
asstd. hangers			
Callaway X rental set with Odyssey putter and bag	2		
mid-end rental set with Callaway bag	10		
mixed rental set	9		
various other rental clubs, bags and putters			
asst'd grips and club repair supplies			
asst'd repair shop supplies			

Pro's Office			
Canon copier	1	NP 6035	
Muirfield picture	1		
5 dr. maple cabinet	1		
Canon fax	1	7000 Laserfax	
Ikea fax stand	1		
tan 4 dr. lateral filing cabinet	1		
black leather highback chair	1		
stool	1		
Ikea maple desk	1		
computer with 17 in. NEC LCD monitor	1		
HP laser printer	1	6L	
Royal Troon picture	1		
maple client chair	1		
Sony video camera	1		
various office software			
P4 computer -- not in use	1		
Outside of Clubhouse			
various generic signage, whiteboard and sandwich board	1		
Rikshaw pull cart lock-up rack	1		
Rikshaw pull cart	31		
Pull Cart Storage Room			
white board easel	1		
black grid	1		
bookcase	1		
Power Carts			
(see Schedule B)			
Driving Range - upper level			
traffic cone	3		
single-sided range mat	15		
double-sided range mat	3		
ball caddy	20		
Driving Range - lower level			
asstd. Golf Academy and generic range signage	1		
sandwich board	2		
single-sided range mat	13		
double-sided range mat	5		
ball caddy	19		
John Deere utility vehicle	1	Gator 6 x 4	
single-sided range mat	2		
ball caddy	2		
traffic cone	5		

ball baskets (approx count = 45)	1		
3-gang ball retriever	1		
Driving Range - storage lock-up			
John Deere utility vehicle	1	Gator TS	
gas can	8		
2-tiered cart	1		
portable compressor	1		
commercial hose	1		
asstd. cables and trouble light	1		
Range Servant ball washer with gravity feed system	1		
ball shagger	14		
4 ft. x 8 ft. wooden bench with vise	1		
asstd. rakes, brooms and shovels	10		
portable heaters	4		
commercial coffee machine	1		
wooden ladder	1		
maple 4-sided display	2		
maple 4-sided tower	1		
maple display pedestal	1		
round table	1		
chrome clothing rack	1		
Samsung TV	1		
Northstar phone	1		
loose tools and fluids			
fire extinguisher	2		
tie down	1		
pegboard shelving and work bench	1		
Maltby club machine	1		
ramps	2		
Ping fitting centre	1		
range mats on top of ball dispenser	1		
chair	1		
Range Servant token operated ball dispenser	1	982018	4588108
club washer	1		
alarm system	1		
Driving Range - storage rooms off lower stalls			
mannequin w/ stand	5		
asstd. hangers and retail fixtures			
FootJoy rack	1		
tote	3		
wooden shelving	1		
wall mounted shelving	1		
wooden displays and black shelves	1		

totes	2		
Driving Range - teaching office			
ball shaggers	2		
slatwall display	2		
6 ft. pine shelf	1		
red chair	1		
Nike training centre	1		
Zenith TV	1		
Sony Caddy Cam	1		
portable Gator ramps	1		
table	1		
misc. Christmas décor			
slatwall pieces	1		
smash bag	2		
ball totes	35		
new range mats in service	18		
Driving Range - miscellaneous			
approx count of dozens of range balls--in use	2,000		
approx count of dozens of range balls--new	20		
approx count of rubber tees	200		
Junior training club sets	10		
asst'd golf cart roof supports	1		
asst'd Yamaha cart parts and tires	1		
asst'd range and shop supplies	1		

ASSET PURCHASE AND SALE AGREEMENT
- Pro Shop and Driving Range Assets and Inventory -

THIS AGREEMENT (together with all Schedules attached hereto, this "Agreement"), dated for reference March 30, 2009, is entered into by and

BETWEEN:

THE CITY OF VANCOUVER, as represented by its **BOARD OF PARKS AND RECREATION** of 955 Evans Avenue, Vancouver, British Columbia, V6A 4C8

(hereinafter referred to as the "Seller")

AND:

MONAGHAN GOLF INC., a company duly organized in the Province of British Columbia under registration number BC0841208, and having its mailing address at s.22(1)

s.22(1)

(hereinafter referred to as the "Buyer")

WHEREAS:

- A. The Seller and the Buyer have entered into a contract dated as of January 1, 2009 (the "Contract"), for the provision by the Buyer of golf professional services at the Seller's Fraserview Golf Course and Driving Range (the "Golf Course");
- B. One term of the agreement pursuant to which the parties entered into the Contract is that the Buyer will buy from the Seller certain personal property and assets (as more particularly described in Schedule A hereto, the "Assets") of the Seller related to the services to be provided by the Buyer at the Golf Course; and
- C. The Seller and the Buyer have agreed to enter into this Agreement to effect the purchase and sale of such assets.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of the promises, covenants and agreements hereinafter set forth, the Seller and the Buyer agree as follows:

ARTICLE 1
ASSETS BEING SOLD AND PURCHASED

- 1.1 The Seller agrees to sell and the Purchaser agrees to purchase the Assets on the terms of this Agreement.

**ARTICLE 2
PURCHASE PRICE AND PAYMENT**

- 2.1 The price payable by the Buyer to the Seller for the Assets is ~~§.21(1)~~ (the "Purchase Price"). The Purchase Price shall be allocated as set out in Schedule B hereto.
- 2.2 The Buyer shall pay the Purchase Price, plus applicable Government of Canada Good and Services Tax (of ~~§.21(1)~~) and Province of British Columbia Social Services Tax (of ~~§.21(1)~~) (collectively, "Taxes") to the Seller by way of certified cheque or bank draft made payable to the City of Vancouver on or before April __, 2009 (the "Completion Date").

**ARTICLE 3
SELLER'S REPRESENTATIONS AND WARRANTIES**

- 3.1 The Seller represents and warrants that:
- (a) it is a municipality duly incorporated, and is validly existing, continued and in good standing under the *Vancouver Charter* (British Columbia);
 - (b) the Seller owns and has good and marketable title to the Assets free and clear of all mortgages, liens, charges, pledges, security interests, encumbrances and other claims;
 - (c) it has good and sufficient power and capacity to execute this Agreement and any other agreement or documents contemplated by this Agreement and to carry out their respective terms to the full extent, and the same have been duly and validly authorized by all necessary corporate action on the part of the Seller.

**ARTICLE 4
BUYER'S REPRESENTATIONS AND WARRANTIES**

- 4.1 The Buyer represents and warrants that:
- (a) the Buyer is a corporation duly incorporated, validly existing and in good standing under the *Business Corporations Act* (British Columbia) with respect to the filing of annual reports; and
 - (b) it has good and sufficient power and capacity to execute this Agreement and any other agreement or documents contemplated by this Agreement and to carry out their respective terms to the full extent, and the same have been duly and validly authorized by all necessary corporate action on the part of the Seller.

ARTICLE 5 CLOSING

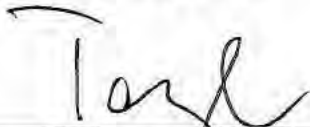
- 5.1 The closing will take place at the offices of the Seller's legal services department, #401 - 515 West 10th Avenue, Vancouver, British Columbia on the Completion Date.
- 5.2 At the closing the Seller agrees that it will deliver or cause to be delivered to the Buyer a general conveyance in form and content satisfactory to the Buyer's counsel, acting reasonably, to effectively vest a good and marketable title to the Assets in the Buyer to the extent contemplated by this Agreement, and immediately registrable in all places where registration of such instruments is required.
- 5.3 At the closing the Buyer will deliver or cause to be delivered a certified cheque or banker's draft payable to the City of Vancouver in the amount of ~~§.21(1)~~ ~~§.21(1)~~ representing the Purchase Price and applicable Taxes.
- 5.4 The Seller will remit the Taxes to the appropriate governmental agency in a timely manner.
- 5.4 Notwithstanding the actual time of the closing, the effective time of the sale and purchase of the Assets contemplated by this Agreement shall deemed to be at 12:01am, January 1, 2009. The Buyer acknowledges having taken actual possession of the Assets on January 1, 2009.

ARTICLE 6 GENERAL PROVISIONS

- 6.1 This Agreement and the Contract contains the whole Agreement between the Seller and the Buyer in respect to the purchase and sale of the Assets contemplated by this Agreement and there are no warranties, representations, terms, conditions or collateral agreements, express, implied or statutory, other than as expressly set forth in this Agreement. Without limiting the generality of the foregoing, the Assets are being sold on an "as is" basis.
- 6.2 All representations, warranties, covenants and agreements made by the parties in this Agreement or in any other agreements contemplated hereby shall, unless otherwise expressly stated, survive closing and shall continue in full force and effect.
- 6.3 Notwithstanding Article 6.1 of this Agreement, the Seller and the Buyer have agreed with each other to promptly execute and deliver such further documents or instruments, as may be necessary or desirable to effect the purpose and carry out the provisions of this Agreement.
- 6.4 Time will be of the essence of this Agreement.

IN WITNESS WHEREOF, the parties hereto have respectively executed this Agreement as of the day and year first above written.

MONAGHAN GOLF INC.



Per: Michael Thomas Monaghan
Authorized Signatory, I have authority to bind the corporation

**CITY OF VANCOUVER, as represented by its
BOARD OF PARKS AND RECREATION**



Per: (RON CASWELL)
Authorized Signatory, I have authority to bind the Seller

SCHEDULE A
to Asset Purchase and Sale Agreement

Location and Description	Qty.	Model	Serial No.
Pro Shop – fixtures, equipment, furniture and supplies			
retail security system incl. Checkpoint exit scan and retail tags	1		
wall clock	1		
oak barrel	1		
display rack for 88 clubs	1		
maple rolling display table	1		
black retail display grid in window	1		
upholstered highback chair	1		
fitting room mirror, hooks and poster	1		
4-sided maple display rack w/ slat wall accessories	1		
4-sided rolling maple display rack w/ adjustable shelving	1		
round pedestal table	1		
maple framed black chair	1		
section of 8 ft. maple slatwall	8		
asstd. slatwall shelving and accessories in various styles			
framed display inc. tees, balls and mats	6		
FootJoy mirror	1		
Callaway foot stool	1		
oak pedestal mirror	1		
potted floral display	3		
basket	2		
jacket display bust	2		
Toshiba CRT TV	1		
rolling chrome clothing rack	1		
6 ft. FootJoy display	1		
maple-framed chalkboard	1		
gray 2 dr. lateral filing cabinet	1		
4 ft. bookcase	1		
small parts bin	1		
Sony radio	1		
AMD computer with Samsung 17 in. LCD monitor, cash drawer and Epson slip printer (including software)	1		
first aid kit	1		
HP printer	1	Photosmart	
PC for booking lessons w/ Acer widescreen LCD monitor and Linksys router	1		
Minuteman UPS	1		
HP laser printer	1	1080	
UPS power bar	1		
computer (slave for POS system) w/ Optquest 17 in. LCD monitor	1		
GBC laminator	1		

PC (not in use)	1		
HP laser printer	1	LaserJet 5L	
copier stand	1		
blue tilt/swivel chair	1		
maple power cart key rack	1		
various totes and baskets			
maple built in desk unit, storage counter and tabling (matches retail sales counter that belongs to Park Board)	1		
asst'd office and retail store supplies			
Pro Shop – retail merchandise			
all merchandise for retail sale in the Pro Shop as of 12-31-08 (as agreed to and checked by Earl Francis and Tom Monaghan)			
Rentals/Repairs Room			
maple wall-mounted shelving	1		
totes of hangers	1		
cooler	1		
Golfworks grip machine	1		
asstd. plastic totes	10		
Jiffy steamer	1		
Smart Choice commercial vacuum	1		
parts bin	1		
asstd. tools in cabinet under sink and in rooms			
display baskets	8		
broom	1		
step ladder	1		
heat gun	1		
tournament shot stake	12		
plastic totes	2		
Baltusrol picture	1		
4 ft. vase	1		
Kenwood radio	2		
double black shelving unit	1		
single black shelving unit	1		
single black shelving unit	1		
potted floral display and clothing bust	1		
2 totes	1		
asstd. hangers			
Callaway X rental set with Odyssey putter and bag	2		
mid-end rental set with Callaway bag	10		
mixed rental set	9		
various other rental clubs, bags and putters			
asst'd grips and club repair supplies			
asst'd repair shop supplies			

Pro's Office			
Canon copier	1	NP 6035	
Muirfield picture	1		
5 dr. maple cabinet	1		
Canon fax	1	7000 Laserfax	
Ikea fax stand	1		
tan 4 dr. lateral filing cabinet	1		
black leather highback chair	1		
stool	1		
Ikea maple desk	1		
computer with 17 in. NEC LCD monitor	1		
HP laser printer	1	6L	
Royal Troon picture	1		
maple client chair	1		
Sony video camera	1		
various office software			
P4 computer -- not in use	1		
Outside of Clubhouse			
various generic signage, whiteboard and sandwich board	1		
Rikshaw pull cart lock-up rack	1		
Rikshaw pull cart	31		
Pull Cart Storage Room			
white board easel	1		
black grid	1		
bookcase	1		
Power Carts			
(see Schedule B)			
Driving Range - upper level			
traffic cone	3		
single-sided range mat	15		
double-sided range mat	3		
ball caddy	20		
Driving Range - lower level			
asstd. Golf Academy and generic range signage	1		
sandwich board	2		
single-sided range mat	13		
double-sided range mat	5		
ball caddy	19		
John Deere utility vehicle	1	Gator 6 x 4	
single-sided range mat	2		
ball caddy	2		
traffic cone	5		

ball baskets (approx count = 45)	1		
3-gang ball retriever	1		
Driving Range - storage lock-up			
John Deere utility vehicle	1	Gator TS	
gas can	8		
2-tiered cart	1		
portable compressor	1		
commercial hose	1		
asstd. cables and trouble light	1		
Range Servant ball washer with gravity feed system	1		
ball shagger	14		
4 ft. x 8 ft. wooden bench with vise	1		
asstd. rakes, brooms and shovels	10		
portable heaters	4		
commercial coffee machine	1		
wooden ladder	1		
maple 4-sided display	2		
maple 4-sided tower	1		
maple display pedestal	1		
round table	1		
chrome clothing rack	1		
Samsung TV	1		
Northstar phone	1		
loose tools and fluids			
fire extinguisher	2		
tie down	1		
pegboard shelving and work bench	1		
Maltby club machine	1		
ramps	2		
Ping fitting centre	1		
range mats on top of ball dispenser	1		
chair	1		
Range Servant token operated ball dispenser	1	982018	4588108
club washer	1		
alarm system	1		
Driving Range - storage rooms off lower stalls			
mannequin w/ stand	5		
asstd. hangers and retail fixtures			
FootJoy rack	1		
tote	3		
wooden shelving	1		
wall mounted shelving	1		
wooden displays and black shelves	1		

totes	2		
Driving Range - teaching office			
ball shaggers	2		
slatwall display	2		
6 ft. pine shelf	1		
red chair	1		
Nike training centre	1		
Zenith TV	1		
Sony Caddy Cam	1		
portable Gator ramps	1		
table	1		
misc. Christmas décor			
slatwall pieces	1		
smash bag	2		
ball totes	35		
new range mats in service	18		
Driving Range – miscellaneous			
approx count of dozens of range balls--in use	2,000		
approx count of dozens of range balls--new	20		
approx count of rubber tees	200		
Junior training club sets	10		
asst'd golf cart roof supports	1		
asst'd Yamaha cart parts and tires	1		
asst'd range and shop supplies	1		

SCHEDULE B
to Asset Purchase and Sale Agreement

Fraserview Golf Course Pro Shop and Driving Range Assets and Inventory

		5%	7%	
Summary of Asset and Inventory Value		GST	PST	Total inc. tax
Pro Shop – fixtures, equipment, furniture and supplies	s.21(1)			
Pro Shop – retail merchandise				
Rentals/Repairs				
Pro's Office				
Outside Clubhouse				
Driving Range - upper level				
Driving Range - lower level				
Driving Range - storage lockup				
Driving Range - storage rooms off lower stalls				
Driving Range - teaching office				
Driving Range - miscellaneous				
Total				

AMENDMENT NO. 1
OF
FRASERVIEW GOLF COURSE AND DRIVING RANGE
GOLF PROFESSIONAL SERVICES CONTRACT

Between:

**The City of Vancouver, as represented
by its Board of Parks and Recreation,**

and:

Monaghan Golf Inc.

Dated: January 1, 2014



Amendment date: January 1, 2014

Parties:

**City of Vancouver, as represented
by its Board of Parks and Recreation,
2099 Beach Avenue
Vancouver, British Columbia
V6J 1Z4
(the "Board")**

and:

Monaghan Golf Inc.
s.22(1)

(the "Professional")

Background:

- A. The Board and the Professional entered into the Fraserview Golf Course and Driving Range Golf Professional Services Contract as of January 1, 2009 (the "**2009 Fraserview Contract**") pursuant to which the Professional agreed to provide golf professional services to the Board at the Fraserview Golf Course and Driving Range for a term of five (5) years expiring December 31, 2013;
- B. The 2009 Fraserview Contract contained an option to renew for an additional term of four (4) years ending on December 31, 2017 if:
 - (a) subject to Unavoidable Delay, the Professional completed the Professional's Upgrades by no later than 5:00 p.m. on December 31, 2010 to the Board's satisfaction and as otherwise required by this Contract; and
 - (b) the Professional was not otherwise in default under the terms of the 2009 Fraserview Contract and wished to extend the Term;
- C. The Professional's Upgrades were completed to the Board's satisfaction, the Professional is not in default under the 2009 Fraserview Contract and the Professional expressed its wish to extend the Term of the 2009 Fraserview Contract; and
- D. This Amendment No. 1 of the 2009 Fraserview Contract has been prepared as a result to evidence the agreement of the parties.

NOW THEREFORE in consideration of the matters referred to in the foregoing recitals, the covenants and agreements contained in the 2009 Fraserview Contract and this Amendment No. 1 and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the Board and the Professional hereby covenant and agree as follows:

1. Interpretation. Unless otherwise defined herein, all capitalized words and expressions used in this Amendment No. 1 will be used and interpreted with the same meanings as are respectively ascribed to them in the 2009 Fraserview Contract.

2. Amendment of Section 2. Section 2 of the 2009 Fraserview Contract is hereby deleted and replaced with the following:

“The Term of this Contract will be from January 1, 2014 to the earlier of December 31, 2017 and the effective date of termination under Section 20, 21, 22 or 23.”

3. 2009 Fraserview Contract Otherwise Unaltered. All other terms and conditions of the 2009 Fraserview Contract will remain unchanged and unaltered as a result of this Amendment No. 1.

To witness this Amendment No. 1 to the 2009 Fraserview Contract each of the Board and Professional has signed below as of the 31 day of December, 2013.

CITY OF VANCOUVER

as represented by its

BOARD OF PARKS AND RECREATION:

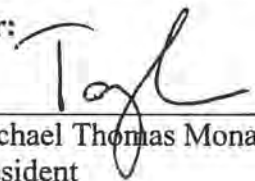
Per:



General Manager

MONAGHAN GOLF INC.

Per:



Michael Thomas Monaghan
President

Contract date: January 1, 2009

Parties:

**CITY OF VANCOUVER, as represented
by its BOARD OF PARKS AND RECREATION,
2099 Beach Avenue
Vancouver, British Columbia
V6J 1Z4
(the "Board")**

and:

MONAGHAN GOLF INC.
s.22(1)

(the "Professional")

Background:

- A. By way of a Request for Pre-Qualifications issued by the Board on September 8, 2008, the Board requested submissions from golf course professionals interested in participating in the Board's upcoming Request for Proposals for the operation of the Fraserview Golf Course and Driving Range.
- B. The Professional submitted a request for pre-qualification, which the Board evaluated and accepted;
- C. By way of Request for Proposals P2008-14 (as amended and supplements, the "RFP"), the Board issued a request for proposals from each of the pre-qualified golf professionals for the provision of golf professional services at the Fraserview Golf Course and Driving Range.
- D. The Professional submitted a proposal in response to the RFP.
- E. Following its review and evaluation of the various proposals submitted by the Professional and other golf professionals pursuant to the RFP, the Board resolved on December 8, 2008 to enter into an agreement with the Professional for the provision of golf professional services at Fraserview Golf Course and Driving Range.
- F. This Contract sets forth the terms and conditions agreed to by the parties for the provision of such golf professional services by the Professional to the Board.

THE BOARD AND PROFESSIONAL NOW AGREE AS FOLLOWS:**1. Interpretation.**

(a) In this Contract, the following terms have the following meanings:

“Ball Storage Area” means the area used to store golf balls for the Driving Range;

“Board and City” is defined in Section 14(b) below;

“Board’s Designated Representative” means either the Board’s Manager of Operations, Vancouver East District or the Supervisor of Golf Operations acting alone or together, and includes any person to whom the authority of the Board’s Manager of Operations, Vancouver East District or Supervisor of Golf Operations has been delegated by the Board or the Board’s General Manager;

“Cart Storage Area” means the cart storage areas for the Golf Course, more particularly identified in Schedule B as “Power Cart Storage” and “Pullcart Storage Area”;

“Chipping and Putting Green” means the practice chipping and putting green for the Golf Course, more particularly identified in Schedule B as “Practice Area”;

“City” means the City of Vancouver, a municipal corporation continued pursuant to the *Vancouver Charter*;

“Contract” means this Golf Professional Services Contract for the Fraserview Golf Course and Driving Range, between the Board and the Professional and includes all schedules, as amended or supplemented from time to time;

“Contractor” or “staff” means, with respect to the Professional, any officer, director, employee, agent, contractor, sub-contractor, licensee, guest, invitee or visitor of the Professional in or about the Golf Course in connection with any matter governed by this Contract;

“CPGA” means the Canadian Professional Golf Association;

“CPGA - Certified Employee” means any individual employed by the Professional or retained as an independent or dependent contractor of the Professional (including Tom Monaghan and the Professional’s Pro Shop Manager) who is a member or an apprentice member in good standing of the CPGA or any replacement or successor organization;

“Default” is defined in Section 18 below;

“determined by arbitration” is defined in Section 35(d) below;

"Driving Range" means the driving range for the Golf Course;

"Effective Date" means the effective date of this Contract, being January 1, 2009;

"Excluded Items" is defined in Section 25(c) below;

"Fixtures" means any and all Personal Property of the Professional and/or Tom Monaghan which may be located at any time at the Golf Course which is in the nature of ball dispensers, counters, shelves, racks or any other fixtures which are attached to, affixed to, or placed (in a fixed manner) on or into, the Golf Course;

"General Security Agreement" means the general security agreement to be granted by the Professional pursuant to this Contract on the terms set out in Schedule E hereto;

"Golf Course" means the Fraserview Golf Course, located at 7800 Vivian Drive, Vancouver, B.C., V5S 2V8, and except where the context otherwise requires, expressly includes the Driving Range, Pro Shop, Short Game Practice Area, Chipping and Putting Green and Cart Storage Area;

"Gross Revenue" means the gross amount received by the Professional and/or Tom Monaghan from all activity related to a specified activity or combination of activities pursuant to this Contract, including, without limitation or duplication;

- (1) gross revenue from all sources related to such activity(ies);
- (2) receipts representing reimbursement of costs incurred on behalf of consumers or customers of the Professional's business related to such activity(ies); and
- (3) the fair market value of all goods and services received by the Professional from any third party in exchange for or by way of barter from the provision of goods and services by the Professional related to such activity(ies);

"Merchandise" means all of the Personal Property of the Professional and/or Tom Monaghan located from time to time or at any time on the Golf Course, which is intended for retail sale to the public at the Pro Shop, the Driving Range or elsewhere on the Golf Course;

"Minimum Cart Revenue Payment" means the minimum annual payment from the Professional to the Board, which is equal to the lesser of:

- (1) s.21(1) and

(2) s.21(1)

where "n" is equal to the number of days in the applicable calendar year that the Golf Course is closed due to Unavoidable Delay;

"Miscellaneous Personal Property" means any and all personal property of the Professional and/or Tom Monaghan which may be located at any time at the Golf Course and is used for the purpose of providing Services pursuant to this Contract, which is not Fixtures, Merchandise, Rental Equipment or Office Equipment and Supplies, but includes range balls and other Driving Range equipment owned by the Professional;

"Office Equipment and Supplies" means and includes all office equipment and general supplies of the Professional used at the Golf Course in connection with the provision of Services, such as computer hardware, software and peripherals, office furniture, televisions, radios, cameras and other electronic equipment and peripherals, office décor and supplies, filing cabinets, cleaning supplies

"Option to Purchase" means the option to purchase the Professional's Personal Property as set out in Schedule F hereto;

"Permitted Creditor" is defined in Section 15(d) below;

"Permitted Encumbrance" means, for all purposes of the Contract except Schedule F hereto, a security interest (as that term is defined in the *Personal Property Security Act* (British Columbia) in favour of a Permitted Creditor, which is registered in priority to any security interest registered in favour of the Board or the City in respect of the subject matter of this Contract;

"Personal Property" means all of the personal property (of the nature and kinds to which the Personal Property Security Act (British Columbia) applies and relates) of the Professional and/or Tom Monaghan, used by the Professional in providing the Services;

"Prime Rate" mean, at any time, the per annum rate of interest published by the main branch in the City of Vancouver of the Bank of Montreal, or its successor at such time, as its reference rate for setting rates of interest on loans of Canadian dollars to customers in Canada and referred to by such bank as its "prime rate", provided however that if such bank publishes more than one such reference rate at any time, the Prime Rate shall be the highest thereof, and provided further that, if a court holds that this definition of Prime Rate is vague, uncertain or otherwise defective then the Prime Rate shall be three (3%) percent greater than the per annum rate of interest established by the Bank of Canada as the rate payable on overnight loans by Schedule I Canadian Chartered Banks;

"Professional's RFP Proposal" means the proposal submitted by the Professional in response to the RFP;

"Professional's Upgrades" means the upgrades the Professional has agreed to undertake as set out in Section 5;

"Pro Shop" means the pro shop for the Golf Course, more particularly identified in Schedule B as "Proshop and Storage Areas";

"Rental Equipment" means any and all Personal Property of the Professional and/or Tom Monaghan which may be located at any time at the Golf Course, which is in the nature of power golf carts, pull carts, golf clubs, which members of the public may temporarily use on the Golf Course upon payment of a usage fee to the Professional;

"RFP" is defined in Recital C above;

"Services" means the services to be supplied and performed by the Professional pursuant to this Contract;

"Short Game Practice Area" means the short game practice area, and chipping and putting area for the Golf Course, more particularly identified in Schedule B as "Practice Area";

"Term" means the term of this Contract, as set out in Section 2 below;

"360 Evaluations" is defined in Schedule C hereto;

"Tom Monaghan" means Michael Thomas Monaghan, the sole director, officer and shareholder of the Professional;

"Transfer Date" is defined in Section F.2 of Schedule F hereto;

"Unavoidable Delay" is defined in Section 30(b) below; and

"WCB OH&S Regulation" means the *Workers Compensation Act* (British Columbia), including without limitation, the Occupational Health & Safety Regulation (British Columbia Regulation 296/97, as amended by British Columbia Regulation 185/9) enacted pursuant to such Act, all as such Act or Regulations are amended or re-enacted from time to time.

- (b) The Professional and the Board acknowledge and agree that they will act in good faith in carrying out the spirit and intent of this Contract and will do all things and take all steps as may be reasonably required to give effect to their obligations under this Contract. For further certainty, where in this Contract the Board or Professional is given a right to make a determination or to grant or withhold the

consent or permission to anything, the Board or Professional will act reasonably in doing so except that where the Board is expressly granted the right to make a determination in its "sole discretion" or "arbitrarily", the Board now reserves the right to act unreasonably and arbitrarily provided always that it acts in good faith.

2. **Term.** The Term of this Contract will be from the Effective Date to December 31, 2013, provided, however, that the Term will be extended for a further period of 4 years starting January 1, 2014 and expiring on December 31, 2017 if:
- (a) subject to Unavoidable Delay, the Professional has completed the Professional's Upgrades by not later 5:00 p.m. on December 31, 2010 to the Board's satisfaction and as otherwise required by this Contract; and
 - (b) the Professional is not otherwise in default under this Contract and wishes to extend the Term,

subject always to earlier termination in accordance with the terms of this Contract.

3. **Professional to Perform Services.** The Professional now agrees to provide the Services for the Golf Course according to the terms of this Contract.
4. **Option to Purchase Personal Property.** The Professional now grants the Board the Option to Purchase on the terms and conditions set out in Schedule F hereto.

5. s.21(1)
- 

6. **Board to Pay for Services.** The Board will pay the Professional for the Services, and the Professional will account for and produce records in respect of the same, on the following terms:
- (a) a gross retainer for each calendar year of the Term in the amount of s.21(1)
 - (b) deductions from this annual gross retainer will be limited to the following, subject to the other terms of this Contract:
 - (i) an annual usage fee for the Pro Shop and Cart Storage Area, which will be s.21(1)
 - (ii) an annual usage fee for the use of the Short Game Practice Area and the Chipping and Putting Green, which will be s.21(1) and

(iii) an amount equal to the greater of:

- (1) s.21(1) [REDACTED]; and
- (2) s.21(1) [REDACTED]

provided always that where the Professional has rented power golf cart(s) additional to the Professional's normal inventory of power golf carts specifically for a particular tournament, the direct out-of-pocket cost to the Professional (as evidenced by the original third party invoices submitted to the Board) may be deducted from the sum payable pursuant to this paragraph (iii); and

(iv) s.21(1) [REDACTED]

and if, after making the above deductions, the resulting amount is negative the Professional will pay the Board such amount as required by Sections 6(e) and 6(h);

- (c) on or before the 15th day of each calendar month during the Term, commencing on February 15, 2009, the Professional will deliver to the Board a monthly invoice for the Services for the preceding calendar month;
- (d) that monthly invoice will set out:
 - (i) the monthly portion of the annual gross retainer (being s.21(1) [REDACTED])
 - (ii) deductions from that monthly gross retainer for the monthly portion of the annual usage fee for:
 - (1) the Pro Shop and Cart Storage Area referred to in Section 6(b)(i) (being s.21(1) [REDACTED] and
 - (2) the Short Game Practice Area and Chipping and Putting Green referred to in Section 6(b)(ii) (being s.21(1) [REDACTED]);
 - (iii) a further deduction from that monthly gross retainer for an amount equal to s.21(1) [REDACTED]

- (iv) a further deduction from that monthly gross retainer for an amount equal to the following percentage of the Gross Revenue for the preceding calendar month from the provision of golf lessons, consultations and instruction provided by the Professional or the Professional's Contractors on the Golf Course referred to in Section 6(b)(iv):
 - (1) s.21(1) [REDACTED]; and
 - (2) s.21(1) [REDACTED]; and
 - (v) the resulting monthly net monthly retainer, except that if the resulting amount is negative, the Professional will pay the Board such amount on or before the required date of delivery of the invoice;
- (e) the Board will pay that monthly net retainer to the Professional promptly after receipt of that invoice;
 - (f) on or before the 15th day of January in each calendar year during the Term, beginning in 2010, and within 30 days after the expiry of the Term, the Professional will deliver to the Board an annual invoice for the Services for the preceding calendar year;
 - (g) that annual invoice will set out:
 - (i) the annual gross retainer (being s.21(1) [REDACTED])
 - (ii) a deduction from that annual gross retainer for the annual user fee for:
 - (1) the Pro Shop and Cart Storage Area referred to in Section 6(b)(i) (being s.21(1) [REDACTED]) and
 - (2) the Short Game Practice Area and Chipping and Putting Green referred to in Section 6(b)(ii) (being s.21(1) [REDACTED])
 - (iii) a further deduction from that annual gross retainer for an amount equal to the greater of
 - (1) s.21(1) [REDACTED]; and
 - (2) s.21(1) [REDACTED]
 - (iv) a further deduction from the annual gross retainer for an amount equal to the following percentage of the Gross Revenue for the preceding calendar

year from the provision of golf lessons, consultations and instruction provided by the Professional or the Professional's Contractors on the Golf Course referred to in Section 6(b)(iv):

- (1) s.21(1) [redacted]; and
- (2) s.21(1) [redacted];
- (v) the resulting annual net retainer; and
- (vi) that sum which equals the aggregate of the monthly net retainers the Board has paid to the Professional during the preceding calendar year under Section 6(e);
- (h) if that invoice shows a balance owing to the Board, the Professional will pay that balance to the Board on or before the required date of delivery of the invoice, or, if that invoice shows a balance owing to the Professional, the Board will pay that balance to the Professional promptly after receipt of that invoice; and
- (i) the Professional may retain:
 - (i) in respect of the Gross Revenue from golf lessons, consultations and instructions the Professional or the Professional's Contractors give on the Golf Course under Section 9(b):
 - (1) s.21(1) [redacted];
 - (2) s.21(1) [redacted] and
 - (3) s.21(1) [redacted] and
 - (ii) s.21(1) [redacted] and
 - (iii) s.21(1) [redacted]; and
- (j) the Professional will also be entitled to s.21(1) [redacted]; and

7. **Professional's General Duties.** The Professional will, at the Professional's sole risk and expense, and will cause all of its staff, as applicable, to (except where otherwise expressly stated in this Contract):

- (a) carry out the Professional's duties according to the terms of this Contract, to the standards of comparable golf courses and driving ranges, on a full-time basis, and faithfully, competently and diligently;
- (b) comply with the standards accepted by the CPGA in respect of golf professionals;
- (c) ensure that its principal, Tom Monaghan, maintains his status as a Class A or equivalent member in good standing of the CPGA or replacement or successor organization; ✓
- (d) not engage in any other businesses or activities that will conflict with the Professional's duties under this Contract, and disclose to the Board any activities that may have the potential to be construed as conflicting with the Professional's duties under this Contract, and will otherwise comply with the Professional's legal obligations of good faith as a fiduciary agent of the Board; ✓
- (e) comply promptly with all reasonable policies regarding the Golf Course and Driving Range that the Board may issue from time to time, with all procedures or directives the Board may issue from time to time, and with all reasonable orders the Board may give the Professional from time to time including, without limitation, and by way of example only:
 - (i) orders regarding the provision of the Services during the operational hours of the Golf Course and Driving Range; and
 - (ii) orders regarding the maintenance of the Board's safety standards and practices;

provided, however, that if any such policies, procedures, directives or orders should materially adversely affect the rights of either the Professional or the Board pursuant to this Agreement which are in effect as of the Effective Date, the parties will negotiate in good faith to revise this Contract in an effort to make such revisions to it as will reasonably minimize such adverse affects;

- (f) comply promptly with all bylaws of the City that, from time to time, apply to the rights or duties of the Professional under this Contract, or to any businesses or activities the Professional conducts under this Contract including, without limitation, obtaining and renewing all permits and licences necessary to operate the Driving Range, Pro Shop, Cart Storage Area, Short Game Practice Area and Chipping and Putting Green for which the Board provides space under Sections 11 and 13;
- (g) report to the Board, at the Board's Designated Representative's request from time to time, on the management and supervision of the Golf Course, Driving Range and the Professional's other duties under this Contract;

- (h) maintain good public relations between the Professional and the public and the Professional's staff and the public;
- (i) hire, train, supervise, and maintain a full staff of employees including, without limitation, a CPGA Professional, assistant professionals and starters to assist the Professional in performing the Professional's duties under this Contract to the extent that the Board considers necessary or desirable;
- (j) ** E/O a day Full day April-Oct \$12,000*
 ensure that a full time starter is either in the Pro Shop operating the intercom system or is physically standing at the first tee, or travelling between such locations at a reasonable pace, at all times when the Board makes the Golf Course open to the Public in order to supervise and ensure that each group of golfers is prompted to go to the first tee at the appropriate time and that each group tees off at the designated time;
- (k) be solely responsible for the Professional's employees and Contractors including, without limitation, remitting, on the Professional's own behalf or in respect of the Professional's Services or work, and on their behalf or in respect of their employment or work, Canada Pension Plan premiums, Worker's Compensation Board assessments, employment insurance premiums, medical and dental coverage payments, income tax, goods and services tax, provincial sales tax, and other remittances required in respect of the Professional or the Professional's employees or the Professional's other Contractors by any government body;
- (l) maintain a good credit rating with suppliers, manufacturers and other persons, firms and corporations with whom the Professional deals so as to protect the good reputation of the Professional and of the Golf Course and the Board and City;
- (m) continuously provide good customer service to all members of the public who use or attempt to arrange for the use of the Golf Course, all as further set out in Schedule C hereto;
- (n) at all times, ensure that those parts of the Golf Course which it has the care, use or control of are kept in a neat, tidy and safe condition, subject to reasonable wear and tear, and will, subject to Schedule G, promptly repair, at its cost, any damage done to any part of the Golf Course as a result of, and to the extent that the same results from, the act or omission of the Professional, its staff, Contractors or anyone else for whom it is responsible in law, to at least the same standard and condition as existed prior to such damage; and
- (o) provide all of the Services set out in this Contract to the satisfaction of the Board's Designated Representative, and comply with all instructions of the Board's Designated Representative regarding those Services.

8. **Professional's Duties re Golf Course.** Subject always to Schedule G hereto, the Professional will, and will cause all of its staff, as applicable, to:
- (a) supervise all golf tournaments authorized by the Board's Designated Representative and meet with the Board's Designated Representative to discuss tournaments and make recommendations on future tournament bookings;
 - (b) subject to Section 9(b), provide, within the Short Game Practice Area, Chipping and Putting Green and Driving Range, golf instruction for all ages and levels for both boys and girls and men and women from beginner to advanced and for both private individuals and groups, including without limitation and by way of example only, a full junior golf program. The Professional will not, however, be entitled to provide golf instruction, consultations or lessons elsewhere on the Golf Course without the prior written consent of the Board's Designated Representative, which consent may be arbitrarily withheld. All golf instruction, consultations or lessons provided by the Professional will be provided to the same standards, or higher, as those provided by other golf professionals in British Columbia who are members of the CPGA, and at rates acceptable to the Board's General Manager and the CPGA in British Columbia;
 - (c) ensure full, proper and co-ordinated use of the Golf Course, including without limitation and by way of example only, the following:
 - (i) implement and maintain an adequate system of starting times;
 - (ii) ensure that the fees charged for golf play on the Golf Course are those fees determined by the Board from time to time;
 - (iii) use reasonable efforts to organize, supervise and control play on the Golf Course to ensure the most orderly, progressive, safe and effective use of the Golf Course;
 - (iv) use reasonable efforts to supervise the conduct of all persons on the Golf Course;
 - (v) use reasonable efforts to supervise, in conjunction with the course superintendent, the course marshal who is an employee of the Board, to ensure that all players maintain proper pace of play, are suitably attired and following golf course etiquette, and assist the course marshal if required;
 - (vi) use reasonable efforts to ensure that no person is permitted to play the Golf Course without being in possession of a valid green fee ticket, except for Board authorized play required to ascertain playing conditions and course maintenance, repair and improvement requirements;

- (vii) ensure that Tom Monaghan, another CPGA-Certified employee of the Professional or the Professional's Pro Shop manager is on location at the Golf Course at all times during which the Board makes the Golf Course open to the public; and
- (viii) ensure that the Pro Shop and Driving Range are open to the public from dawn until dusk on each and every day that the Board makes the Golf Course open to the public;
- (d) ensure that the Professional, who the Board will provide with adequate training, trains the Professional's staff sufficiently for them to operate an automated advanced reservation system;
- (e) ensure that the Professional or the Professional's staff appropriately monitors the automated advance reservation system, and immediately reports any malfunction of that system to the Board's Designated Representative and that the Professional trains the Professional's staff sufficiently to take appropriate remedial measures by contacting and following the appropriate Board supplied resource if the system fails, which will include immediately implementing alternate (manual or other) measures to minimize any interruption to the normal operations of the Golf Course caused by any such malfunction;
- (f) be responsible for and supervise the rental and use of power carts and pull carts, except that the greenskeeper or Board's Designated Representative may direct the removal from the Golf Course of any or all such carts or limit the number of such carts that may be in use on the Golf Course at any particular time or from time to time if the greenskeeper or Board's Designated Representative, acting reasonably, and in consultation with the Professional, anticipates that the unrestricted use of such carts may damage the Golf Course;
- (g) co-operate and work closely with all Golf Course managers and with greenskeepers;
- (h) collect the Gross Revenue from power golf cart rentals each day, and take reasonable precautions regarding the security of such Gross Revenue;
- (i) supply free of charge to each player using the Golf Course, a score card and pencil (it being understood that the Board will supply the score cards and pencils to the Professional, at the Board's expense);
- (j) subject to the Board's prior written approval as to size, content and location, post at least 3 professionally prepared signs at various locations on the Golf Course setting out the hours of operation of the Pro Shop and Driving Range, including such information as the Board may reasonably prescribe such as without limitation and by way of example only, the times by which patrons should purchase tokens prior to closing of the Driving Range, (it being understood that

such signs can be prepared using a computer and laser or inkjet printer on letter size paper);

- (k) not place, replace, install or bring onto the Golf Course any type of golf equipment, facility or apparatus of any type without the prior written consent of the Board's Designated Representative except for:
 - (i) Rental Equipment; and
 - (ii) Merchandise; and
- (l) collect, on behalf of the Board, all green fees and all other fees payable (in part or in whole) to the Board and associated with the operation of the Golf Course (other than payments made online through the Board's internet based payment collection system), secure cash and other valuables, at all times, make bank deposits of all cash amounts to the account of the Board daily for negotiation by it, and report daily in a form acceptable to the Board on all aspects of revenue and attendance.

9. **Professional's Rights and Duties re Driving Range, Short Game Practice Area and Chipping and Putting Green.** Subject always to Schedule G hereto, the Professional:

- (a) will supervise and operate the Driving Range including, without limitation, ball picking, ball washing, operation of ball dispensers and general cleaning;
- (b) may give golf lessons:
 - (i) on the Driving Range, but at no time may the Professional use more than 8 covered stalls simultaneously for that purpose;
 - (ii) on the Short Game Practice Area, and may exclude persons other than paying golf students from the Short Game Practice Area during such lessons, if exclusive use of the Short Game Practice Area is reasonably necessary for any such lesson, and if the Professional has received the prior written consent of the Board, which consent will not be unreasonably withheld; and
 - (iii) on the Chipping and Putting Green, but only in common with the other patrons of the Golf Course;

but for further certainty, may not give golf lessons anywhere else on the Golf Course without the prior written consent of the Board, which consent may be arbitrarily withheld;

- (c) may appoint assistants to help the Professional give such lessons and to operate the Driving Range;

- (d) will provide the equipment necessary for giving such lessons and other equipment designated for the Professional's business;
- (e) will provide all equipment necessary for the operation of the Driving Range including, without limitation, all golf balls, tokens, mats, range yardage markers, ball baskets, ball storage containers, tees, ball picker, vehicle to tow the ball picker, gasoline for the ball picker, and other equipment necessary for ball picking, ball washing, ball and token dispensing and general cleaning, and will repair, maintain and replace that equipment, as a prudent owner of such equipment would do and as the Board's Designated Representative may reasonably require from time to time having regard to comparable standards of repair, maintenance and replacement at comparable golf courses and driving ranges;
- (f) will not install any equipment, machinery or signs on the Driving Range, Short Game Practice Area or Chipping and Putting Green, except if the Board's Designated Representative gives prior written consent;
- (g) will sell tokens, other selling instruments and devices from the Pro Shop for Driving Range golf ball rentals according to the following conditions:
 - (i) the Board will supply and own the cash register in the Pro Shop that will be dedicated to the sale of tokens, and the Professional will be responsible for such sales;
 - (ii) only agents authorized by the Board's Designated Representative will have the higher level cash register keys that will enable the reading of special sales reports and price changing;
 - (iii) the Professional will collect the Gross Revenue from such rentals each day, and will take reasonable precautions regarding the security of such Gross Revenue;
 - (iv) the Professional will obtain from the encoder and from the cash register reports showing total daily sales and Gross Revenue from golf ball rentals;
 - (v) the Professional will:
 - (1) deliver the daily reports on Driving Range total daily sales and Gross Revenue referred to in paragraph (g)(iv) above to the Board's Designated Representative by the end of the following day; and
 - (2) obtain readings from the ball dispenser meter showing total daily number of balls dispensed and will package up and deliver to the

Board's Designated Representative, within 5 days after the end of each month, the individual daily readings for the prior month; and

the parties confirm that the ball dispensing meters and equipment may be monitored at any time and from time to time, at the Board's sole discretion, by the Board's Designated Representative;

- (vi) utilizing the cash register reports delivered to the Board's Designated Representative pursuant to paragraphs (g)(iv) and (v) above, the Board will pay the Professional s.21(1) _____), within a reasonable period of time, and will make reasonable efforts to pay such amounts to the Professional on average once every 2 weeks;
 - (vii) the Professional will permit the Board's Designated Representative access to the dedicated cash register at any time;
 - (viii) the Professional acknowledges that the Board may, as a convenience to the public, s.21(1) _____, provided that the Board ensures that the Professional receives s.21(1) _____ and
 - (ix) the Board may, from time to time, change the methods by which the Professional sells, records, controls and remits proceedings of the sale of tokens, and the Professional will comply with the Board's requirements regarding the same.
10. **Fees.** The Board will determine and consult with the Professional regarding, from time to time, the fees and other charges for golf play on the Golf Course for all categories of golf, and for golf ball rentals at the Driving Range. The Professional will determine, from time to time, the fees and other charges for use of the Professional's equipment including the rental rates for golf clubs, golf carts, and push carts, at reasonably competitive commercial rates and subject to the Board's Designated Representative's prior written approval. The Board reserves the right to decide on the final fee structure for the Golf Course and Driving Range.
11. **Board's Duties re Driving Range, Cart Storage Area, Short Game Practice Area and Chipping and Putting Green.** Subject always to Schedule G hereto, the Board will:
- (a) at its sole cost and expense, repair and maintain, reasonable wear and tear excepted, the Driving Range building, including fences, poles and nets, and maintain the grassed area, in a condition suitable for its use as a driving range, and make the Driving Range available during the Term to the Professional to the extent reasonably necessary for the provision of the Services;

- (b) subject to Schedule A hereto, repair and maintain, reasonable wear and tear excepted, the Cart Storage Area, including the building and pavement, in a condition suitable for its use as a power cart storage area, and make the Cart Storage Area available during the Term to the Professional to the extent reasonably necessary for the provision of the Services;
 - (c) repair and maintain, reasonable wear and tear excepted, the soil and grass of the Short Game Practice Area, and make the Short Game Practice Area available during the Term to the Professional to the extent reasonably necessary for the provision of the Services set out in Section 9(b)(ii);
 - (d) repair and maintain, reasonable wear and tear excepted, the soil and grass of the Chipping and Putting Green, and make the Chipping and Putting Green available during the Term to the Professional to the extent set out in Section 9(b)(iii);
 - (e) supply heat, light, water and power to the Driving Range;
 - (f) supply electrical power for the Cart Storage Area;
 - (g) provide, for the operation of the Driving Range, a cash register and cash register tapes, and repair and maintain the cash register as the Board's Designated Representative considers reasonably necessary; and
 - (h) provide telephone or other data transmission lines to link up the cash register and card reader as the Board's Designated Representative considers reasonably necessary, and be responsible for line rental, line repairs and the cost of card reader equipment.
12. **Professional's Rights and Duties re Pro Shop.** Subject always to Schedule G hereto, the Professional:
- (a) will continuously staff the Pro Shop with at least two qualified employees of the Professional, all of whom must be bonded in accordance with the requirements set out in Section D.3.0 of Schedule D hereto, and at least one of whom must have management experience, and will ensure that the Pro Shop is managed and operated in such a manner as to provide good quality customer service to the public, including without limitation and by way of example only, will ensure that at least two of the Professional's staff are physically and continuously present in the Pro Shop at all times during the months of March through October, inclusive, except during the first hour after opening and the last hour before closing, during which excepted months and times at least one such staff must be present;
 - (b) will manage, operate and maintain the Pro Shop, keeping it well stocked and equipped at all times with Merchandise to a standard in keeping with current industry standards and the reputation of the Golf Course, and the Professional will pay all expenses arising out of or in connection with the management, operation

- and maintenance of the Pro Shop, except to the extent that this Contract otherwise expressly stipulates;
- (c) will maintain the Pro Shop in a clean and attractive condition, and according to such directives as the Board's Designated Representative may issue from time to time, including without limitation and by way of example only:
 - (i) keeping all windows, carpets, counters and other surfaces clean; and
 - (ii) supplying and replacing all light bulbs, it being understood that the Board staff will assist in changing light bulbs that require the use of a ladder; by supplying the use of a ladder and staff to stabilize the ladder for the Professional's staff;
 - (d) will be responsible for the costs of alarm system monitoring, fines for false alarms, and alarm response call charges respecting the Pro Shop and Cart Storage Area;
 - (e) will acquire and provide to the Pro Shop such additional stock including, without limitation, golf equipment and accessories for sale and rent as the prudent operator of a similar shop would do, or as the Board's Designated Representative may reasonably consider necessary or desirable from time to time;
 - (f) make available for rental a minimum of 40 pull carts, each of which will be in good working order and presentable condition at all times;
 - (g) make available for rental an appropriate supply of rental golf clubs to meet the needs of the public, all of which will be in good working order and presentable condition at all times;
 - (h) make available for rental a minimum of 20 power carts, each of which will at all times be in good working order and presentable condition, and no older than 5 years;
 - (i) will not renovate or alter the Pro Shop or any other improvements on the Golf Course and Driving Range, except if the Board has given prior written consent; and
 - (j) may keep all revenue from the sale of Merchandise in the Pro Shop, except as this Contract otherwise stipulates.
13. **Board's Duties re Pro Shop.** Subject always to Schedule G hereto, the Board will, at its sole cost and expense:
- (a) provide, in the Golf Course clubhouse or elsewhere on the Golf Course, such space for the Pro Shop and office as the Board's Designated Representative

considers necessary or desirable from time to time, and provide repair and maintenance to such space, subject to the Professional's obligations under Section 12, as the Board's Designated Representative, acting reasonably, considers necessary or desirable from time to time;

- (b) supply, at its cost, such heat and light to the Pro Shop as the Board's Designated Representative considers necessary or desirable, from time to time, and will be responsible for the repair and maintenance of the same;
- (c) provide such an alarm system and anti-theft window/door hardware for the Pro Shop as the Board's Designated Representative considers necessary, and be responsible for the repair, maintenance and replacement of that alarm system; and
- (d) provide all equipment and supplies, such as cash registers, POS hardware, computer hard drive and monitor, printer, stationery, receipt rolls, and other related devices, including data and telephone lines (to a maximum of two lines for local calls only) for the operation of the POS/automated advanced reservation system, and pay all system repair, maintenance and replacement costs.

14. **Professional's Duties re Records and Financial Statements.** The Professional will:

- (a) maintain daily, monthly and annual statistical records concerning the use of the Golf Course, including, without limitation, the numbers and types of users of the Golf Course, along with quantitative and qualitative information on customer behaviour and needs, based on formal or informal surveys, data gathered by point of sale or other means, all of which records will be in form and substance satisfactory to the Board's Designated Representative, and provide such records and other information to the Board's Designated Representative on or before the 5th day of the following month in each year of the Term and at such other times as the Board's Designated Representative may require;
- (b) maintain proper records covering all of the operations of the Golf Course and the activities and duties of the Professional under this Contract including, without limitation, a full inventory of all Personal Property, books of account, documents and receipts, which records will be in form and substance satisfactory to the Board's Designated Representative, and make such records available for the inspection of the Board's Designated Representative at such times as the Board's Designated Representative may require;
- (c) if and whenever the Board's automated advance reservation system malfunctions, to keep (manually or otherwise), to the extent reasonably possible, records of the information which that system would normally record and to provide the same to the Board together with the records and information to be provided pursuant to paragraph (a) above;
- (d) submit to the Board:

- (i) on or before March 1st (or such other date as matches the Professional's fiscal year end, if the Board first agrees in writing) in each calendar year of the Term commencing in 2010, audited or unaudited unconsolidated financial statements prepared in accordance with generally accepted accounting principles for the calendar year ending December 31 of the preceding calendar year, and being specific to the Professional's operations pursuant to this Contract, including without limitation and by way of example only, the Services and all other activities of the Professional on and from the Golf Course, prepared by a chartered accountant who is a member in good standing with the Institute of Chartered Accountants of British Columbia, or a certified general accountant who is a member in good standing of the Certified General Accountants Association of British Columbia, or an accountant with a recognized accounting designation acceptable to the Board and who is at arm's length from the Professional and if the Professional chooses to provide unaudited statements the Professional must have complied with such reasonable control procedures as are stipulated by the Board from time to time, failing which the Board may order the Professional to submit audited statements; and
 - (ii) on or before December 31st in each calendar year of the Term, a full inventory list of all Personal Property as at November 30 of that calendar year;
- (e) allow the Board, at its cost, subject to paragraph (f) below, to carry out an audit of all of the operations of the Golf Course and the activities and duties of the Professional under this Contract, at any time, and make available to the Board's Designated Representative, all records, information, and statements referred to in this Section 14 for the purpose of such audit;
- (f) promptly pay the amount determined by the Board's auditor to be owing with interest at the Prime Rate plus 10% per annum as calculated by the auditor for the period between the date such payment should have been made to the date of payment to the Board, where the Board's auditors determine that the Professional has reported less Gross Revenue from all sources than actually received or has remitted less money than the Professional is obligated to remit or has taken a greater percentage of Gross Revenue from all sources than the Professional is entitled to receive under this Contract, provided the auditor is a professionally licensed auditor, and the Board's auditor's determination will be conclusively deemed to be correct, and provided further that if the auditor concludes that there are insufficient records (using generally accepted auditing standards) to determine the actual fees owing, the auditor will provide the auditor's best estimate of the fees owing and the auditor's best estimate will be conclusively deemed to be the actual fees owing, and provided further that the Professional will pay the Board all of the costs of such audit whenever the audit discloses such an underpayment;

- (g) upon being given at least 24 hours' prior verbal notice, allow the Board's Designated Representative, to review all records, information and statements referred to in this Section 14 at a reasonable time, and to copy or make extracts therefrom; and
- (h) retain all such records, information and statements during the Term and for 3 years after the expiry or earlier termination of the Term, and, after the expiry or earlier termination of the Term, deliver such records, information, and statements to the Board's Designated Representative within 7 calendar days of any demand by the Board's Designated Representative.

15. Insurance/Bonding/WCB, Indemnity and Performance Security.

- (a) The Professional will comply at all times with the insurance, bonding and Workers Compensation Board provisions set out in Schedule D hereto. The insurance, bonding and WCB requirements set out in this Contract do not limit any insurance, bonding and WCB requirements otherwise imposed on the Professional or the Professional's Contractors of staff by any applicable laws. It will be the sole responsibility of the Professional to determine what additional insurance, bonding and WCB coverage, if any, is necessary or advisable for the Professional's or the Professional's Contractors' or staff's own protection and/or to fulfill the Professional's obligations under this Contract. All insurance, bonding and WCB will be provided and maintained by the Professional at the Professional's own expense.
- (b) The Professional will indemnify and save harmless each of the Board, the City and their respective officials, officers, employees, contractors and agents (collectively, the "Board and City"), from and against all liabilities, suits, actions, causes of action, obligations, statutory or other proceedings, judgements, injunctions, arbitrations, investigations, demands, claims, losses, damages, consequential damages, penalties, costs and expenses, including legal expenses on a full indemnity basis (collectively, "Losses"), arising out of or in connection with any breach of the Professional in observing or performing the Professional's obligations under this Contract, any activities under the control or supervision of the Professional or the Professional's staff for which the Professional is responsible under this Contract, any damage to property or injury or death to person on or about the Golf Course arising out of or in connection with the rights or duties of the Professional under this Contract, or any other matter or condition that would not have arisen or happened except for the existence of this Contract, except to the extent any such Losses arise from the negligence of the Board or the City or any breach of the Board in observing or performing any of its obligations under this Contract, and will at all times maintain insurance in respect of the same as more particularly set out in Schedule D. This indemnity will survive the expiry or earlier termination of the Term and this Contract.

For further certainty, but without in any way limiting the intentionally general scope of this indemnity and by way of example only, this indemnity will be interpreted and applied so as to obligate the Professional to indemnify the Board and City with respect to any lawsuits arising from any person injured by any errant golf balls hit by:

- (i) any golfer using the Driving Range; or
- (ii) anyone using the Short Game Practice Area or Chipping and Putting Green who is a customer or other Contractor of the Professional while the Professional or his staff is providing lessons and present for supervision,

and will be further applied and interpreted so as to exempt and exclude from such indemnity any lawsuits arising from errant golf balls hit by any other persons or golfers using any other part of the Golf Course.

- (c) As security for the Board's Option to Purchase the Personal Property, the Professional now grants the Board a security interest in the Personal Property on the terms attached as Schedule E hereto and consents to the Board's filing of all appropriate financing statements at the British Columbia Personal Property Registry in respect of such security interest. On the request and within 5 calendar days of such request by:
 - (i) the Professional, the Board will execute and deliver an appropriate priority and subordination agreement subordinating the Board's security interest in the Personal Property to a Permitted Creditor; and
 - (ii) the Board, the Professional and the applicable creditor will execute and deliver an appropriate priority and subordination agreement subordinating any and all security interests other than those in favour of a Permitted Creditor to the Board's security interest in the Personal Property; and
- (d) For the purposes of this Contract, a "Permitted Creditor" is a financial institution, credit union or other legitimate creditor of the Professional who deals at arm's length from the Professional and has either delivered Personal Property to the Golf Course or has extended credit to the Professional specifically for the purposes of financing the Professional's operations and activities at the Golf Course, but specifically excludes creditors who are affiliated or related to the Professional or Tom Monaghan in any way or have extended credit for personal, non-business purchases or liabilities of the Professional.

16. **Advertising.** Under no circumstances may the Professional or the Professional's staff:

- (a) communicate in any manner with the media with regard to the operation of the Golf Course, without the prior consent of the Board's Designated Representative;

- (b) advertise any of their goods or services with respect to the Golf Course without the written prior consent of the Board's Designated Representative;
- (c) advertise on the Golf Course in any manner whatsoever, any goods or services of the Professional or of any other person or entity, without the prior consent of the Board's Designated Representative; or
- (d) use any official marks, emblems, logos, badges, trade names, trade-marks and/or domain names of the City, the Board and/or their respective affiliates, including, without limitation, the name "Fraserview Golf Course" or any variation thereof (collectively, the "City Marks"), without the prior written consent of the Board's Designated Representative, and shall not apply for or register any domain name or other proprietary or statutory rights for the City Marks or for any similar marks. The City Marks shall remain the exclusive property of the Board, and any use thereof by the Professional (subject always, as set forth above, to the prior consent and approval of the Board), shall enure exclusively to the benefit of the Board, and the Professional shall not contest the Board's ownership of the City Marks, or oppose its actions to acquire, register or maintain its rights in the City Marks.

The Board will not involve the Professional, nor use the Professional's name or business in any advertising or promotions without the prior written consent of the Professional.

17. **Restrictions on Assignment by Professional.** Despite any other term of this Contract, the Professional may not:

- (a) assign, transfer or otherwise dispose of any of the Professional's rights or obligations under this Contract or any interest in this Contract (except for the delegation of those duties which this Contract expressly contemplates will be delegated to the Professional's Contractors or staff);
- (b) further to Section G.13 of Schedule G hereto, sub-license or otherwise permit access to or use of the Pro Shop, Driving Range, Short Game Practice Area, Cart Storage Area or any part of any of them or any other part of the Golf Course, for any purpose (except to provide access to the public for the purposes expressly contemplated by this Contract); or
- (c) conduct any commercial or other activities on the Golf Course except as this Contract specifically requires or permits,

without the prior written consent of the Board's Designated Representative, which consent the Board's Designated Representative may arbitrarily withhold.

18. **Default.** Subject to Section 19 below, default (a "Default") will occur under this Contract if the Professional breaches any of its obligations under this Contract and the breach is not cured within 15 days after written notice from the Board specifying the nature of the breach.

19. **Limited Extension for Non-Monetary Breaches.** Despite Section 18, if the breach is not a breach of an obligation to pay money and is of a nature that:
- (a) with reasonable resources and diligence, would require more than 15 days to remedy, then the Professional will not be in Default if the Professional, immediately after receiving notice of the breach, embarks on a diligent and continuous remedy of the breach; or
 - (b) is not capable of being remedied (such as by way of example only a breach of an obligation not to disclose proprietary information) and the breach will not have a materially adverse effect on the Board, then the Professional will be in Default but the Board's remedies for such a Default will expressly exclude the right to cancel this Contract pursuant to Section 20(e).

For further certainty, paragraph (b) above will not apply to any breach by the Professional of an obligation to provide financial information and under no circumstances (except an Unavoidable Delay) will a failure to provide such financial information be treated as a breach not capable of being remedied, even where the Professional has through its own acts or omissions put itself in a position where it cannot provide such information.

20. **Default Remedies.** If a Default occurs, the Board may, in any order or combination that it chooses, and without prejudice to all of its other rights and remedies both at law and in equity, do any one or more of the following:
- (a) demand payment of any amounts due and unpaid;
 - (b) sue the Professional for the amount of money due;
 - (c) take proceedings or any other legal steps to compel the Professional to comply with this Contract;
 - (d) where the Professional is in breach of an obligation to properly perform work or carry out any other obligation in respect of this Contract, the Board may remedy the breach and the Professional will then promptly reimburse the Board's commercially reasonable costs of doing so plus 20% on account of the Board's associated administrative costs; and
 - (e) subject to Section 19(b), cancel this Contract as further set out in Section 21.
21. **Termination by Board for Cause.** If:
- (a) the Professional is in Default (but expressly excluding the type of Default described in Section 19(b));

- (b) Tom Monaghan becomes ill or incapacitated to the extent that, in the Board's Designated Representative's opinion, the Professional is or will be unable to observe or perform the Professional's obligations under this Contract for a continuous period of 30 days or any period which exceeds, in the aggregate, 60 days in any given 365 day period;
- (c) the Professional or Tom Monaghan becomes bankrupt or insolvent;
- (d) Tom Monaghan, in the Board's Designated Representative's opinion, exhibits dishonesty or conduct unbecoming a golf professional who is a member of the CPGA;
- (e) the Professional, in the Board's Designated Representative's opinion, exhibits continuing inattention to, or neglect of, the Professional's obligations under this Contract or is incompetent; or
- (f) Tom Monaghan is suspended by the CPGA,

the Board's Designated Representative may deliver notice to the Professional terminating this Contract, and such termination will take effect on the date the Professional is deemed to have received that notice. If Tom Monaghan dies, this Contract will terminate as of the date of death. However, the Board's Designated Representative will discuss with Tom Monaghan executor/executrix and the Professional's employees the possibility of temporary employment with the Board to continue providing services similar to the Services until such time as the Board completes a new Request for Proposal process and retains a new Professional.

22. **Termination Without Cause by Board or Professional With 1 (One) Year Notice.** Either the Board or the Professional may deliver one (1) year notice to the other terminating this Contract without cause, and such termination will take effect on the 365th day after the Professional or the Board, as the case may be, is deemed to have received that notice. Any notice given by the Board's Designated Representative will take effect as a notice given by the Board.
23. **Termination Without Cause by Board With Fees in Lieu of Notice.** Despite Section 21 or 22, the Board may terminate this Contract without cause or prior notice on giving a written notice to such effect which notice will be effective immediately upon personal delivery of the notice to the Professional or the date such notice is deemed to be delivered whichever is earlier, but in such a case, the Board will pay the Professional the sum of **s.21(1)** on or before the 30th day following such termination. However, in no event will the Board's Designated Representative's breach of this Section 23 or 24 in securing the Professional's Personal Property, or in paying the required amount when due void or nullify the legal effect of the notice of immediate termination unless it is established by the arbitrator that the Board's Designated Representative was not acting in good faith. Any notice given by the Board's Designated Representative will take effect as a notice given by the Board.

24. **Securing of Professional's Personal Property on Termination or Expiry.** In any case where the Board has not exercised the Option to Purchase over all of the Personal Property, the Board will, prior to the effective date of the termination notice or Contract expiry, as applicable, appoint, at the Board's sole expense, a duly licensed and bonded bailiff to be present as of the termination or expiry of the Contract, which bailiff will be retained to secure and protect the Professional's Personal Property until such time as the Professional removes same or it becomes the property of the Board in accordance with Section 25(c).
25. **Consequences of Termination or Expiry.** As of the effective date of termination under Section 21, 22, or 23, or expiry of the Term or any extension thereof:
- (a) the Board will have no further obligation, unless negotiated under Section 21 or payable in lieu of notice under Section 23, to pay any compensation under Section 6 to the Professional, and the Board will adjust and pro rate such compensation to the termination or expiry date. The Board and Professional will settle their accounts regarding compensation promptly (and in any event within 30 calendar days);
 - (b) each party will pay any money it owes to the other party promptly, and in any event within 30 calendar days, except for those amounts permitted to be deferred under Section 23;
 - (c) subject to paragraph (f) below, the Board's Option to Purchase will be deemed to have been automatically exercised except to the extent that the Board, in any written notice of termination (or in any written notice given prior to the expiry date pursuant to Section 25(f)(ii)), expressly elects not to exercise its Option to Purchase with respect to all, but not part of, the Merchandise, Rental Equipment, Fixtures and/or Miscellaneous Personal Property, and/or all or part of the Office Equipment and Supplies (the "Excluded Items"), and to such extent the Board will have a lien and charge on the Excluded Items until the Professional has paid any money it owes to the Board (including without limitation any storage and administrative fee amounts payable pursuant to paragraph (e) below), and if the Professional fails to pay that money to the Board, the Board may seize and sell the Excluded Items to satisfy the debt, pursuant to the General Security Agreement;
 - (d) the Professional will have no further right or obligation to provide the Services to the Board;
 - (e) subject to paragraph (f) below, where the Board has expressly elected not to exercise the Option to Purchase (or has expressly elected not to exercise the Option to Purchase with respect to the Excluded Items), then the Professional will promptly remove all of the Personal Property (or the Excluded Items, as applicable) from the Golf Course and in any event within 18 calendar days of the effective date of termination or expiry. If the Professional fails to remove any of

the Personal Property or (or the Excluded Items, as applicable) in accordance with the foregoing requirements, a storage and administrative fee will be payable by the Professional to the Board equal to 2% of the fair market value of such items for each calendar day that the Professional is in breach of the Professional's obligation to remove such items from the Golf Course. The Board will have no obligation to release any such items to the Professional until the applicable storage fee is paid in full, and if the Professional fails to remove the requisite items within 45 days after the termination or expiry date of the Contract, all of such remaining items then remaining on the Golf Course will become the absolute property of the Board without payment of compensation to the Professional, and the Professional will execute such documents and do such things as the Board may reasonably require to effect the transfer of title, risk, and possession of such remaining items to the Board; and

- (f) despite paragraphs (c) and (e) above, where:
- (i) the Board has exercised its rights of immediate termination under Section 23, the Board will be deemed to have exercised its Option to Purchase over all of the Fixtures, and will only have the right to then elect whether or not to exercise its Option to Purchase with respect to all or none of the Merchandise, the Rental Equipment, the Miscellaneous Personal Property and the Office Equipment and Supplies; and
 - (ii) if this Contract is terminated upon the expiry of its Term and not pursuant to Sections 21, 22 or 23, the Board will give the Professional at least 365 days' prior written notice of which items if any it intends to elect to treat as "Excluded Items" pursuant to its Option to Purchase.

26. **Automatic Renewal.** Where the Professional continues to provide and perform, and the Board continues to accept, Services pursuant to this Contract following the expiry of the Term (including any extension of the Term granted pursuant to Section 2), then this Contract will be deemed to have been renewed on the same terms and conditions as before except that the Term will be deemed to be year to year, and may be cancelled by either party on 9 months' prior written notice.
27. **Surviving Obligations.** Neither the termination of the engagement nor the expiry of the Term will void or terminate any obligations of the Professional or the Board, which by their nature are intended to survive such termination or expiry.
28. **Delegation of Authority.** In addition to all rights and obligations expressly delegated by the Board under this Contract, the Board may further delegate all or any of its rights or obligations under this Contract to the General Manager of the Board or the Board's Designated Representative, provided that such delegation shall not relieve the Board of its obligations herein unless otherwise expressly stated.

29. **Costs.** The Professional will bear all the costs of observing or performing the Professional's obligations and exercising the Professional's rights under this Contract, and the Board will bear all the costs of observing or performing its obligations and exercising its rights under this Contract, unless this Contract otherwise specifies.

30. **Unavoidable Delay**

- (a) Subject to paragraph (c) below, except for the performance of obligations to pay money, time periods for the Board's and the Professional's performance under this Contract will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay.
- (b) For the purposes of this Contract, an "Unavoidable Delay" means any circumstances beyond the reasonable control of the party trying to perform, and includes without limitation and by way of example only:
 - (i) strikes/lockouts, acts of God, terrorism, war or other strife or governmental action;
 - (ii) abnormal weather, being weather that is outside of the statistical norm for that time of year as measured over the last 10 years by Environment Canada; and
 - (iii) any event or situation in which the Board, in its sole discretion, decides that the Golf Course must be closed;

but expressly excludes any and all delays caused by the Professional's lack of financial resources or insolvency, strikes, lockouts or labour affiliations of the Professional's employees, or governmental action taken in the enforcement of law specifically against the Professional.

- (c) Despite paragraph (a) above, in the event of an Unavoidable Delay caused by a strike, lockout or other labour dispute involving the Board's employees and which results in the Golf Course being closed, the Professional will be relieved of his obligations to provide the Services and pay the use fees set out in this Contract, and the Board will be relieved of its obligations to pay the retainer and other fees for Service under this Contract for the period of such closure.
- (d) Despite paragraph (a) above, in the event of an Unavoidable Delay other than the type referred to in paragraph (c) above which results in the Golf Course being closed for more than 30 consecutive days, then from the 31st day of the closure until the re-opening of the Golf Course the Professional will be relieved of his obligations to provide the Services and pay the use fees set out in this Contract, and the Board will be relieved of its obligations to pay the retainer and other fees for Service payable under this Contract for the period of such closure.

31. **Prior Arrangements.** This Contract supersedes all prior written or verbal contracts, permits, licences, or other arrangements between the Board or City and the Professional concerning the subject matter of this Contract.
32. **Interpretation.** The following provisions will apply to this Contract:
- (a) Sections and headings are for convenient reference, and are not to affect the meanings of any provisions;
 - (b) use of the singular or masculine includes the plural, feminine, or body corporate, and vice versa;
 - (c) the laws of British Columbia will govern the interpretation and enforcement of this Contract, and the Board and the Professional accept the jurisdiction of the courts of British Columbia;
 - (d) if a court or arbitrator finds any provision of this Contract invalid, illegal, or unenforceable, it will be severed from this Contract and the remainder of the Contract will be enforceable;
 - (e) time will be of the essence of this Contract, and if the Board or Professional expressly or impliedly waives that requirement, the Board or Professional may re-instate it by delivering notice to the other;
 - (f) the fact that the Board or Professional waives a default is not to be construed to mean that the Board or Professional waives any other default;
 - (g) no amendment to this Contract will have any effect unless it is in writing, and the Board and Professional have signed it;
 - (h) this Contract represents the entire agreement between the Board and Professional concerning the subject matter of this Contract, and there are no representations, warranties, or agreements other than those expressed in this Contract;
 - (i) nothing expressly set out in or implied by this Contract will prejudice, abrogate, or affect the rights and powers of the Board or the City in the exercise of its functions under any public or private statute, bylaw, order, or regulation, all of which may be fully and effectively exercised as if the Board had not signed and delivered this Contract to the Professional; and
 - (j) the Professional acknowledges and agrees that neither Tom Monaghan nor any of the Professional's other staff is an employee of the Board. Accordingly, Tom Monaghan and the Professional's other staff are not entitled to any employment benefits of any kind from the Board, and the Board is under no obligation to make remittances on behalf of, or on account of, the Professional (or any of the Professional's employees) to Canada Revenue Agency under the *Income Tax Act*

(Canada) in respect of Canadian Pension Plan or Employment Insurance. The Professional further acknowledges that benefits such as, by way of example only and without limitation, Medical Services Plan, extended health care plan, dental services plan, life insurance, retirement pension benefits, long term disability coverage, sick leave, Workers Compensation benefits, vacation pay, employee savings plan benefits or gratuity benefits, are expressly excluded from this Agreement and will not be provided by the Board to Tom Monaghan or the Professional's other staff. The Professional further agrees that the Board is not responsible to make and will not make during the Term any Workers' Compensation Board remittances, *Excise Tax Act* (G.S.T.) remittances or any other statutory remittances required to be made by the Professional in respect of the payments received by the Professional under this Contract. The Professional now indemnifies the Board for any and all penalties, interest and arrears imposed on the Board in the event that the Professional breaches its obligations under this Contract to make all such remittances whether or not any court of law subsequently determines that the legal relationship between the Board and Professional is other than independent contractor. Upon request, the Professional will provide the Board with satisfactory evidence of compliance with all statutory remittance requirements.

33. **Schedules.** The following schedules are now deemed to form an integral part of this Contract, whether or not actually attached to this Contract at the time of signing:

Schedule A - *Professional's Upgrades,*
Schedule B - *Description of Areas,*
Schedule C - *Customer Service Duties,*
Schedule D - *Insurance/Bonding/WCB Requirements,*
Schedule E - *General Security Agreement,*
Schedule F - *Option to Purchase Professional's Golf Course Personal Property,* and
Schedule G - *Grant of Licence*
Schedule H - *Prime Contractor Agreement*

34. **Certain Remedies Independent of Arbitration Proceedings.** Except for those disputes specifically referenced in Section 35, all disputes arising under this Contract will be determined by the courts of British Columbia in accordance with British Columbia law.

35. **Arbitration Proceedings.**

- (a) Any dispute as to the correctness of an auditor's report prepared pursuant to Section 14(f) will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 35.
- (b) Any dispute as to the correctness of a chartered accountant's or other asset valuator's determination made pursuant to Section F.3(f) of Schedule F hereto, will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 35.

- (c) Any dispute as to the calculation of the Board's costs pursuant to Section 20 will be determined by arbitration.
- (d) In this Contract, "determined by arbitration" means arbitration conducted in accordance with the *Commercial Arbitration Act* (British Columbia) as amended or replaced from time to time, and the following procedures:
- (i) Only one arbitrator will be utilized, and the arbitrator must be a person who meets the criteria set out in Section 14(d)(i). The Board will select the arbitrator within 5 days of the notice to arbitrate and then provide the Professional with the selected arbitrator's name, place of business or employment, and reasonably detailed resume or outline of recent professional experience. The Professional will then have 10 calendar days to review the information supplied by the Board and to confirm or dispute the Board's choice for arbitrator. Within 5 days of a request to do so, the arbitrator must disclose to the Professional all material information about his/her credentials, possible conflicts of interest, and biases. If the Professional elects to contest the appointment, the Professional must make application to court seeking to remove the arbitrator on the basis of conflict of interest, bias or incompetence and each party will pay their own legal costs subject to any order as to costs made by the court;
 - (ii) The arbitration will be conducted in the City of Vancouver; and
 - (iii) The cost of the arbitration will be as determined by the arbitrator, subject always to the specific terms of this Contract.
36. **Interest on Arrears.** Whenever any amount payable under this Contract by either party is in arrears, such amount will bear interest at the Prime Rate plus 3% per annum calculated monthly, not in advance, from the date due until paid, except where expressly otherwise stipulated (such as in Section 14(f)).
37. **Notice.** Any notice, approval, request, or demand required or permitted under this Contract must be in writing, and the sender must deliver it by prepaid registered mail from any post office in British Columbia or by personal service addressed to:
- (a) In the case of a notice for the Board, addressed to:
City of Vancouver
c/o Board of Parks and Recreation
2099 Beach Avenue
Vancouver, British Columbia
V6J 1Z4
Attention: General Manager

with a copy to:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4
Attention: Director of Legal Services; and

- (b) In the case of a notice for the Professional, addressed to:
Monaghan Golf Inc.

s.22(1)



Attention: Tom Monaghan

or to:

Fraserview Golf Course
7800 Vivian Drive
Vancouver, British Columbia
V5S 2V8
Attention: Tom Monaghan


or to such other address in Canada as either party may specify in writing to the other party. Any such notice will be deemed to have been received, if delivered, on the date of delivery, and if mailed as aforesaid within Canada, then on the third business day following its mailing, provided that if mailed, should there be between the time of the mailing and the actual receipt of the notice, a mail strike, slowdown or other labour dispute which might affect delivery of such notice, then such notice will only be effective if and when actually delivered.

38. **Continuing effect.** This Contract will enure to the benefit of and bind the Board and its successors and assigns and the Professional and the Professional's heirs, executors, administrators, successors and permitted assigns.

IN WITNESS WHEREOF, the parties, by their respective authorized signatories, have signed this Contract as set out hereunder, as of the date first set forth above:

CITY OF VANCOUVER as
represented by its **BOARD OF
PARKS AND RECREATION:**


Per:



General Manager

MONAGHAN GOLF INC.

Per:



Michael Thomas Monaghan
President

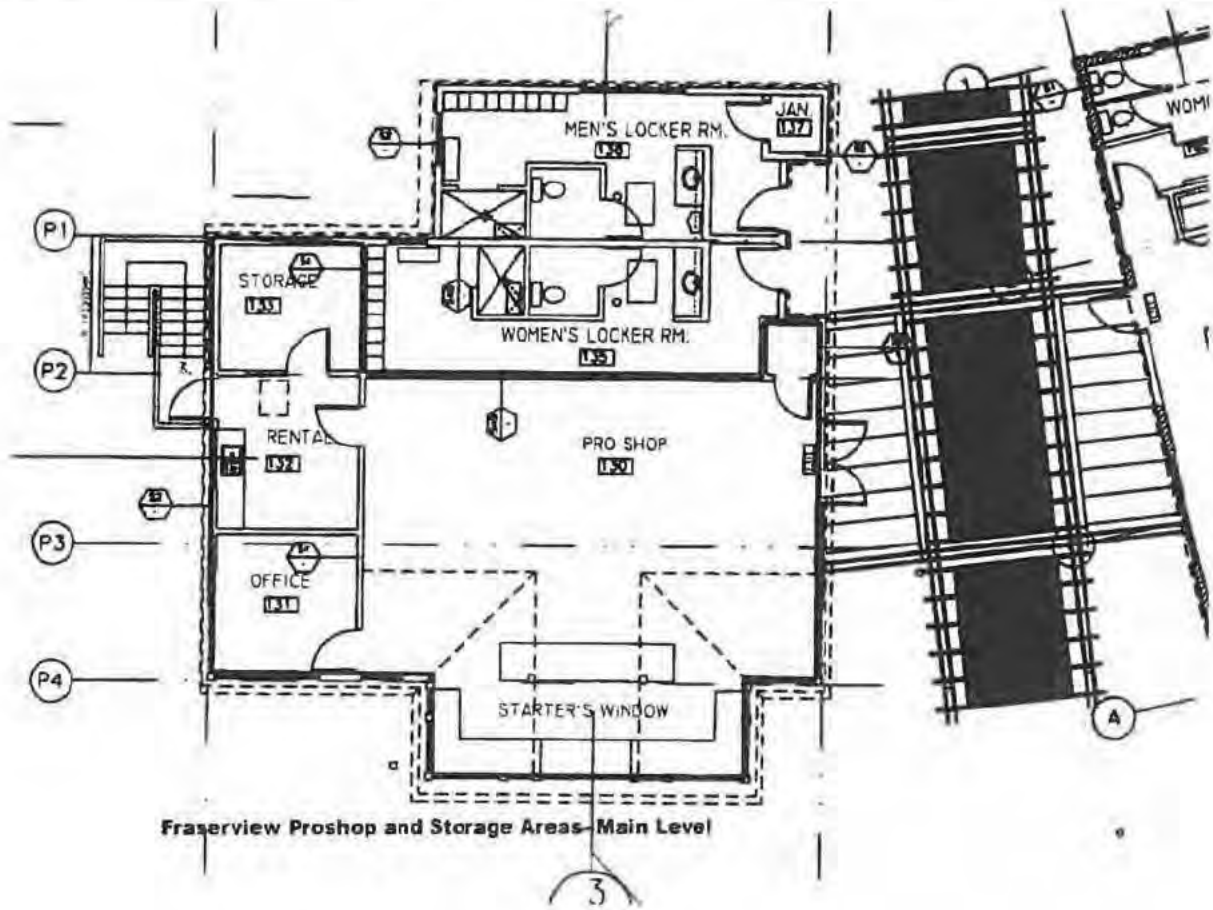
**SCHEDULE A
PROFESSIONAL'S UPGRADES**

s.21(1)

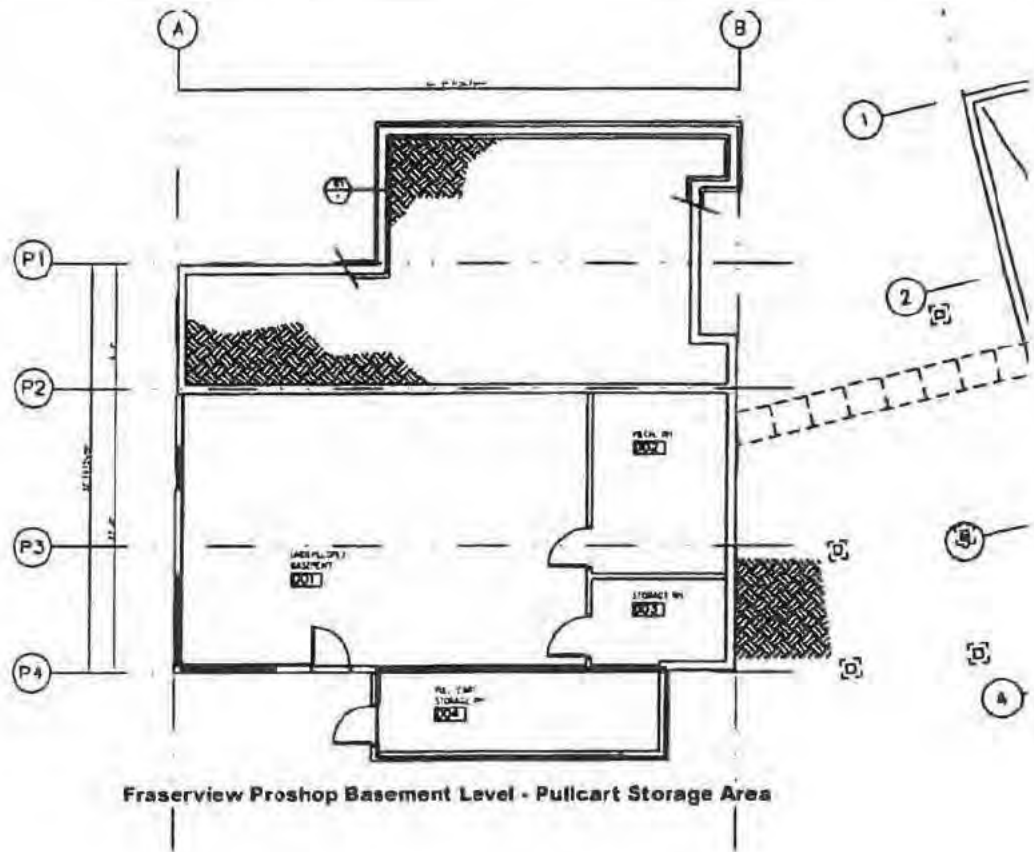


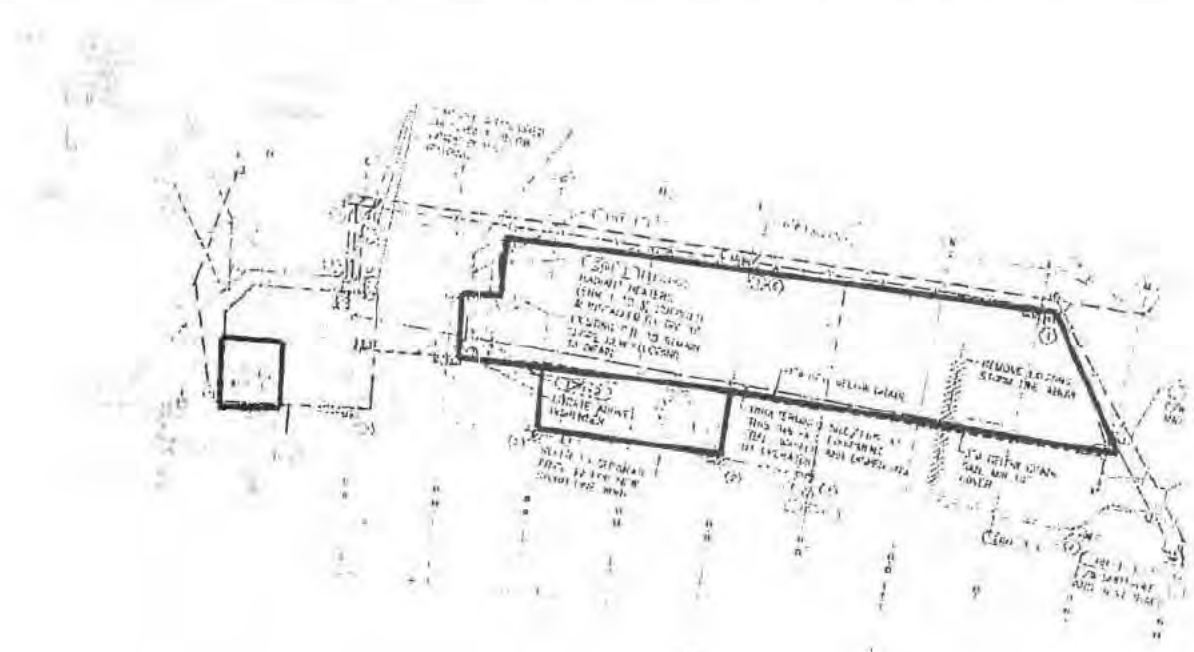
**SCHEDULE B
DESCRIPTION OF AREAS**

(See plans attached.)

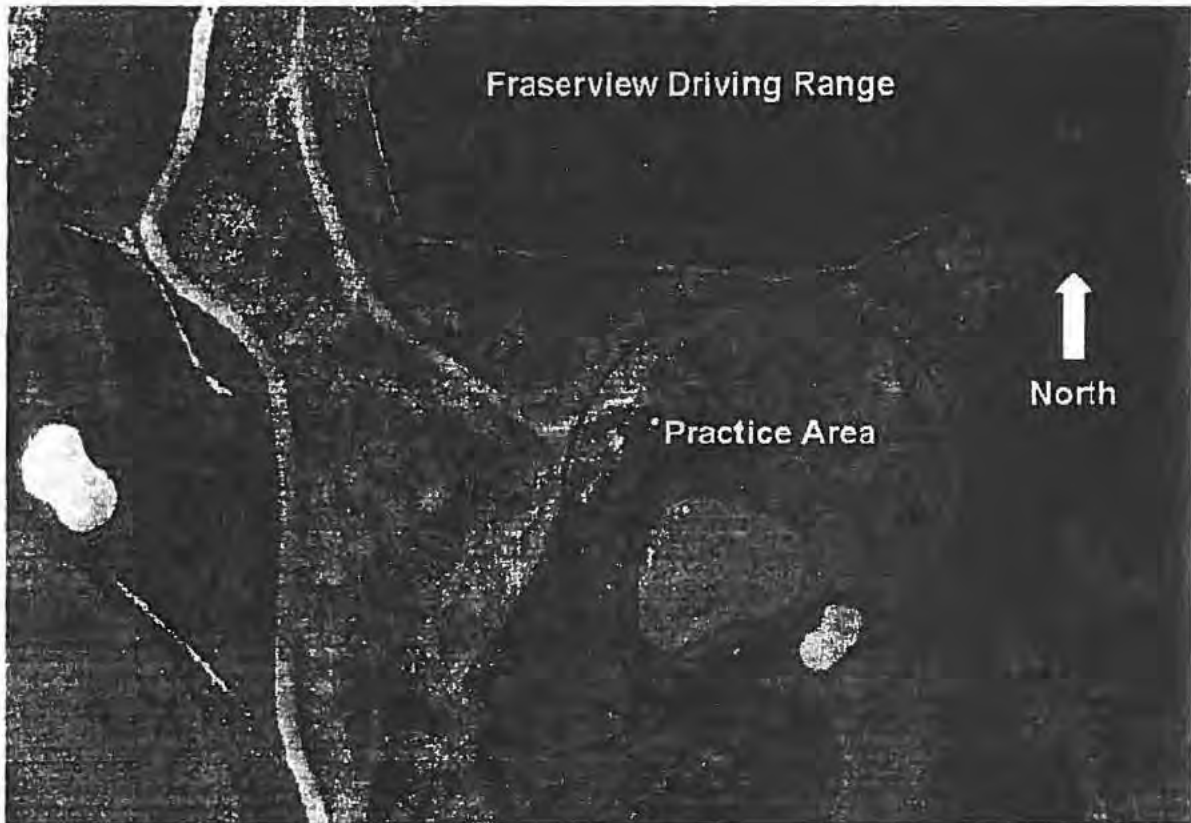


Fraserview Proshop and Storage Areas - Main Level





Fraserview Driving Range - Power Cart Storage and Other Storage Rooms



SCHEDULE C CUSTOMER SERVICE DUTIES

C.1 Customer Feedback Evaluations. The Board's Designated Representative may from time to time at any time during the Term conduct customer feedback evaluations ("360 Evaluations"), a sample of the form of which is attached to this Schedule C. The criteria used in 360 Evaluations may be modified by the Board's Designated Representative from time to time, acting reasonably, and having regard to any increased standards of customer service within the industry for golf courses similar in calibre to the Golf Course.

C.2 Professional Participation. Upon completion of each 360 Evaluation, the Professional will, within 5 calendar days of a request to do so, personally meet with the Board's Designated Representative at the Golf Course to review the results of the 360 Evaluation and discuss the areas, if any, of improvement which can be made.

C.3 Professional Customer Service Commitment. Following each review of and meeting to discuss each 360 Evaluation, the Professional will make all commercially reasonable efforts to implement the recommendations and improvements agreed upon at the meeting with the Board's Designated Representative promptly and in any event within 25 calendar days of the meeting. The Professional now confirms that it will promptly commence and implement the customer service enhancements set out in the Professional's RFP Proposal.

C.4 Reporting Obligations. Following each such review of and meeting to discuss each 360 Evaluation, the Board's Designated Representative and Professional will each, within 7 calendar days of such meeting prepare and deliver to the other a set of minutes summarizing what was discussed and agreed upon at the meeting and the recommendations, implementation plan, and timing settled upon.

C.5 Annual Performance Review. The Board may at its option perform its own annual review of the Professional's Services, and within 10 calendar days of any request to do so, the Professional will meet with the Board's Designated Representative to review and discuss same, following which the parties will carry out the same procedure with respect to such review and meeting as is set out in Section C.4 above.

C.6 SERVICE STANDARDS

Core Service Standards

- a) The telephone will be answered in 3 rings or less.
- b) All telephone calls will be answered consistently, an example may be – "thank you for calling XXX golf course, this is XXX, how may I help you?"
- c) When discussing other golf courses every effort will be made to promote the sister courses of the Vancouver Park Board.
- d) All visible public areas will always be clean from dust, debris and clutter.
- e) All message boards will be maintained with fresh internal promotions.
- f) No hand written signage will be used in any area of our properties.
- g) If there are double doors opening to any area, both doors will remain unlocked during the day.

- h) The customer will be acknowledged within 3 seconds of their arrival in the golf shop.
- i) Each customer will be presented with an opportunity to complete a Board approved survey prior to leaving the property.
- j) When a guest asks for a tee time that is not available, good alternate arrangements or an offer to call one of the other Vancouver Park Board courses to check for availability, will be made.
- k) All customers will be thanked for their patronage prior to leaving.
- l) All of the Professional's staff, including Tom Monaghan, will wear a name tag.
- m) All retail merchandise will be regularly moved around and displays will be neat, fresh and creative.

Golf Operations Standards

- a) The driving range mats will be in good, clean condition.
- b) The driving range practice balls will be in good, clean condition and will have a "true" flight to them.
- c) The power carts will be in good, clean condition and have a scorecard and pencil on them prior to being rented.
- d) Pace of play will be maintained through good tee sheet management and well trained player assistants.

**Golf Operations
Golf Professional Services Evaluation Form**

INFORMATION	
GOLF PROFESSIONAL	GOLF COURSE(S)
MANAGER	PERIOD COVERED BY THIS SESSION
Manager's Name	Review Start Date to Review End Date
TYPE OF SESSION	SESSION DATE
<input type="checkbox"/> Annual <input type="checkbox"/> Quarterly <input type="checkbox"/> Other	
SIGNATURE OF MANAGER	SIGNATURE OF GOLF PROFESSIONAL

Welcome to the Golf Professional Service Feedback Program.

The Golf Professional Service Feedback Program is a multi level (360) approach.

At minimum, the Professional and the Board's Manager of Golf Operations, Vancouver East District, or the Board's Supervisor of Golf Operations are involved in sessions to clarify and later evaluate the extent to which expectations are met and/or exceeded and to action plan any gaps that need closing.

Other participants in the feedback process can use this template to provide their input as well.

Simply reflect on each of the items on which you are able to provide your feedback and place an x in the appropriate column: M or A.

You may then make comments on the items you checked to give examples etc. as appropriate.

Expectations & Evaluation Checklist:

Review the following check list of expectations. For each item in the checklist place an x in either the meets column or the improve column as appropriate. You may make comments in the comments Section below where specific feedback/explanation can be given.

Customer Service: (Customers: General Public; Club Members etc.)	Meets	Improve
<p>Manner in which customers are approached by the Professional and Pro Shop staff is friendly and very pleasant at all times.</p> <p>Customers' phone enquiries are responded to politely and quickly.</p> <p>Customers in the Pro Shop are attended to a.s.a.p.</p> <p>Course conditions requests are answered completely and honestly.</p> <p>When it is very busy, every effort is made to give an initial acknowledgement to the customer (phone or live).</p> <p>Staff approaches customers with interest in helping them.</p> <p>There are adequate numbers of staff to provide expected levels of customer service.</p>		
<p>Comments:</p>		

<p>Tee Off/Pace of Play:</p> <p>Golfers are greeted warmly prior to their play. Golfers are given proper orientation to current conditions, pace of play and etiquette. (live and/or signs and/or brochures) Rangers/Marshals intervene politely when appropriate. Every effort is made to enhance the pace of play early on in the day to avoid problems later. (orientation at tee off, more marshalling early on etc.)</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Product Knowledge:</p> <p>Counter staff have adequate knowledge about golf and shop products and services. Staff are always current with course conditions and current course maintenance issues and projects. Pro staff/teaching staff are very knowledgeable about their services and respected for this in the golf community.</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Leadership/Supervision:</p> <p>Staff are selected for their interest in golf and customer service skills. Staff are thoroughly oriented/trained as to all course policies/procedures. Staff are knowledgeable of the roles of all of the Professional's staff as well as the Board's staff. Staff are aware of any compliant with customer service approaches, maintenance issues, delegation of authority re: rainouts, closures, etc. Staff receive ongoing performance planning, coaching and elevation.</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Products/Rentals:</p> <p>All products and rentals are maintained in good condition. Products are geared to the intended market(s). Clubs are canvassed re: product and service types.</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Teamwork:</p> <p>Professional's staff foster a respectful relationship with all other course staff. Professional's staff cross sell to other courses when appropriate. Professional's staff help other course staff to achieve good customer service, handling complaints, dealing with urgent matters etc. whenever possible. Professional's staff conduct themselves using a one team approach with all other course staff. Board staff are informed of issues and concerns in a polite and timely manner. Issues from Board staff are handled in a polite and timely manner. New ideas are brought to Board staff early on in the development process to increase collaboration.</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Revenue and Reporting:</p> <p>Good accounting procedures are used for all financing, account, inventory control and reporting. Reports to the Board are thorough and timely. Stats include year to date comparisons and previous year comparisons. Good balance of maximizing City asset and customer relations. Revenue projections are on target.</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Handling Complaints/Conflicts:</p> <p>Listens well, diffuses conflict before it starts, finds causes of and solutions to problems, handles difficult people well. Has a win/win approach. Every effort is made to address customer complaints to the satisfaction of the customer. Complaints which cannot be resolved to the satisfaction of the customer are handled with compassion.</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Innovation/Creativity:</p> <p>Generates new ideas, challenges the status quo, supports change, encourages innovation, solves problems creatively.</p>	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Golf Professional Additional Input: <i>What can the Parks Board Golf Operations...</i></p> <p>Start doing...</p> <p>Stop doing...</p> <p>Do differently...that will help Professional's services be delivered more effectively and efficiently?</p>	
<p>Comments:</p>	

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ACTION PLAN

List specific clear actions for development/improvement; use dates or other specifics where appropriate.

Item #1:

Item #2:

Item #3:

Manager Comments

Use the following space to SUMMARIZE and make any comments regarding this plan.

SCHEDULE D
INSURANCE/BONDING/WCB REQUIREMENTS

D1.0 General:

- D1.1 General Scope/Policy Limit Requirement - Without limiting any of its obligations or liabilities under the Contract, the Professional and Professional's Contractors will obtain and continuously carry during the Term, the following insurance, bonding and WCB coverages with minimum limits of not less than those shown in the respective items set out below.
- D1.2 The Professional Solely Liable for Premiums/Deductibles - The Professional will pay all premiums and deductible costs for all insurance, bonding and WCB required to be effected under the Contract, provided always that under no circumstances does the payment of such premiums give the Professional any interest in the proceeds of such insurance/bonds or any control over such policies as they relate to the Board's interests.
- D1.3 Insurer Requirements - All policies/bonds must be written with companies licensed to do business in British Columbia with a financial rating of VIII or better and a policy holder's rating of A- or better in the latest edition of *Best Rating Guide on Property and Casualty Insurance Companies*, or otherwise acceptable to the Board's Director of Risk Management.
- D1.4 Director of Risk Management Approval Required - All bonds and insurance policies must be in a form acceptable to the Board's Director of Risk Management. Self-funded, policy fronting or other non-risk transfer insurance mechanisms are not permitted.
- D1.5 Insurer Notice Requirements - All insurance policies must provide the Board with not less than 60 days' prior written notice of material change, replacement or cancellation. Any such notice must identify the Contract title, number and policy holder, and be delivered in accordance with Section 37 of the Contract. All insurance policies where the insurer could under any circumstances have any claim by subrogation against the Board, the City or their respective officers, officials, employees or agents, must contain a clause that waives the insurer's right of subrogation against the Board, the City and their respective officers, officials, employees, and agents.
- D1.6 Board Requirements Not Exhaustive - The Professional and each of the Professional's Contractors will provide at its own cost any additional insurance and bonding which it is required by any applicable laws to provide, or which it considers necessary or appropriate.
- D1.7 Insurance Requirements Independent of Other Covenants - Neither the providing of insurance or bonding by the Professional in accordance with these requirements, nor the insolvency, bankruptcy or the failure of any insurance company to pay any subsequent claim, will be held to relieve the Professional from any other provisions of the Contract with respect to the liability of the Professional or otherwise.

- D1.8 All Coverage Primary - The insurance and bonding coverage will be primary insurance as respects the Board and the City. Any insurance or self-insurance maintained by or on behalf of the Board, the City or their respective officers, officials, employees or agents will be excess of this insurance and will not contribute with it.
- D1.9 The Professional Duty of Good Faith - The Professional will properly disclose all risks in each insurance/bond application, ensure that the Professional does not violate or void any policy and will otherwise comply at all times with the requirements of the insurers, underwriters and sureties.
- D1.10 Board Remedy on Default - If at any time the Professional fails to provide a bond, certificate of insurance or certified copies of an insurance policy as required in Section D2.1 below, the Board may (but is not obligated to or liable for the manner in which it does so), effect such insurance or bond on behalf of the Professional and the cost of doing so will be paid by the Professional to the Board upon request and, in any event, within 5 calendar days of such a request.
- D1.11 Overall Limit on Deductibles - Except where a specified limit of deductibility is expressly permitted in the Contract, each insurance policy must provide coverage to the Professional without payment of any deductible in excess of \$5,000, as adjusted over the Term to reflect any increase in the Consumer Price Index (Vancouver - All Items) as published by Statistics Canada between the commencement date of the Term and the date on which the Professional obtains the applicable insurance policy. Where the Professional is unable (in its sole discretion) to obtain insurance having a deductible no greater than \$5,000 (as adjusted pursuant to the prior sentence), the Professional may obtain insurance with a higher deductible but only if the Professional first delivers to the Board a Letter of Credit having a limit of the difference between \$5,000 and the higher deductible. In the event of any loss under that policy and the Professional being unable to pay the deductible, the Board will be entitled to draw down on the Letter of Credit to pay all or any portion of the deductible that the Board, in its sole discretion, considers advisable.

D2.0 Evidence of Insurance/Bonds:

- D2.1 The Professional to Provide Policy/Certificates - Prior to the Board signing the Contract, the Professional will provide the Board with evidence of all required bonding and insurance to be taken out in the form of a detailed Certificate of Insurance, in form and contents acceptable to the Board, supported by a certified copy of each policy and bond. Such Certificate of Insurance must identify the Contract's title, Contract date, policy holder and contract subject-matter and must not contain any disclaimer whatsoever. At all times, and from time to time during the Term, the Professional agrees to comply with all of its obligations under such bonds and policies. Proof of bonds and insurance, in the form of a Certificate of Insurance, in form and contents acceptable to the Board, or certified copies of all insurance policies and bonds will be made available to the Board's Director of Risk Management at any time upon request.

D2.2 Obligations Extend to Contractors - The Professional will provide in all agreements with the Professional's Contractors clauses in the same form as those set out in this Schedule D. Upon request, the Professional will deposit with the Board's Director of Risk Management detailed certificates of insurance for the policies the Professional has obtained from the Professional's Contractors and a copy of the insurance requirements from each Contractor's contract with the Professional.

D3.0 **Blanket Employee Dishonesty Insurance/Fidelity Bond**

D3.1 Blanket Employee Dishonesty Insurance/Fidelity Bond - The Professional will maintain Blanket Employee Dishonesty Insurance or a Fidelity Bond protecting the Board, the City, and the Professional against all claims for loss of money, securities and property arising out of any fraudulent or dishonest acts committed by the Professional or its staff.

D3.2 Coverage Limits - The limit of the Professional's Blanket Employee Dishonesty Insurance or Fidelity Bond must be not less than \$50,000 per occurrence.

D3.3 Required Term of Bonds - The insurance/bond must be in effect for the period of time commencing with the start of the Term and continuing for the entire duration of the Term and for 2 years following the expiry or sooner termination of the Term.

D3.4 Required Form of Bonds - The insurance/bonds must be issued in a form and on terms and conditions approved by the Board's Director of Risk Management.

D.4 **Comprehensive General Liability Insurance:**

D4.1 Comprehensive General Liability Insurance - The Professional will maintain comprehensive general liability insurance in sufficient amounts and description to protect the Professional, the Professional's Contractors, the Board, the City and their respective officers, officials, employees, and agents against claims for damages, bodily injury including death and property damage which, may arise under the Contract.

D4.2 Comprehensive General Liability Policy Limit - The limit of comprehensive general liability insurance must be not less than \$5,000,000 per occurrence inclusive for personal injury, death, property damage losses and loss of use of property and in the aggregate with respect to products and completed operations.

D4.3 Required Period of Comprehensive General Liability Coverage - The comprehensive general liability insurance must be in effect for the period of time commencing with the start of the Term and continuing for the entire duration of the Term.

D4.4 Required Extensions of Comprehensive General Liability Coverage - The comprehensive general liability policy of insurance will:

- (a) be on an occurrence form,

- (b) add the Board, the City and their respective officials, officers, employees and agents as additional insureds,
- (c) contain a cross-liability or severability of interests clause, and
- (d) extend to cover non-owned automobile, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.

D5.0 Motor Vehicle Liability Insurance

D5.1 Scope, Limit and Duration Requirements - Motor vehicle liability insurance for owned and leased licensed vehicles with limits of not less than \$5,000,000 inclusive for accidental injury to or death of one or more persons or damage to or destruction of property as a result of any one accident. Where the policy has been issued pursuant to a government operated automobile insurance system, the Professional will provide the Board's Director of Risk Management with confirmation of the automobile insurance coverage for all automobiles registered in the name of the Professional and the Professional's staff.

D6.0 [intentionally deleted]

D7.0 All Risk Property Insurance

D7.1 All Risk Property Insurance - The Professional will maintain an all risks property insurance policy covering the Professional's Personal Property and property of every description owned by the Professional and others for whom the Professional may have assumed responsibility and located on the Golf Course from time to time.

D7.2 All Risk Property Policy Limit - The all risks property insurance must have a policy limit of not less than the full replacement cost value of the Professional's Personal Property and property of every description owned by the Professional and others for whom the Professional may have assumed responsibility and located on the Golf Course from time to time.

D7.3 Required Period of All Risks Property Insurance Coverage The all risks property insurance must be in effect for the period of time commencing with the start of the Term and continuing for the entire duration of the Term.

D7.4 Required Scope of All Risks Property Coverage The all risks property insurance must cover loss or damage caused by fire, earthquake, flood and other perils customarily provided on an "All Risk (Broad Form) Property Insurance" form and must contain the following extensions of coverage:

- (a) blanket building by-laws coverage (ie. where the insurer indemnifies the insured in respect of loss caused by an insured peril but arising indirectly from the enforcement of a by-law (or any other law) requiring, for example
 - (i) the undamaged portion of a building or property to be torn down or removed, or
 - (ii) requiring the repair or replacement work to be performed to different standards than previously existed (eg. installing sprinklers), and
 - (b) accidental breakdown of boilers and pressure vessels including heating, cooling, electrical and mechanical equipment.
- D7.5 Prior Approval Required For Co-Insurance - Any “stated amounts co-insurance clause” or “percentage type co-insurance clause” must be in a form specifically approved in writing by the Board’s Director of Risk Management.
- D7.6 Deductible Limit - The deductible on each all risks policy (builder’s, installation, or otherwise) must not exceed \$5,000.
- D7.7 Loss Payee Clause - The loss payable clause must state that the proceeds of any claim against insurers be payable to the Board (with respect to the Board’s Option to Purchase) and the Professional as their interests may appear.
- D7.8 Waiver of Subrogation Clause - The insurer must waive all rights which it may acquire by payment of a claim to recover the paid amount from the Professional’s affiliates or any of the Board’s, the City’s, the Professional’s or their respective directors, officers, officials, employees or agents (ie. a “waiver of subrogation”). In addition to this waiver of subrogation, all other property insurance policies of any kind carried by the Professional must contain such a waiver of subrogation by the insurer in favour of the Board, the City, and their respective directors, officers, officials, employees or agents (whether or not such property insurance is carried as a requirement of the Contract).
- D7.9 Primary Coverage Clause - The insurer must agree that the policy is primary coverage and any other insurance carried by the Board, the City or the Professional is secondary so that any secondary policies will only be drawn upon after exhausting the coverage under the primary coverage.
- D8.0 Business Interruption Insurance:**
- D8.1 Required Limit, Scope, Duration - The Professional will, commencing with the start of the Term and for the entire duration of the Term, continuously maintain business interruption insurance on a “Gross Profits” form for an indemnity period of not less than 12 months protecting the Professional against loss of profits including payroll expense, debt servicing expenses, payment of fees under the Contract and any standing charges and extra expenses resulting from any interruption or interference of its business

operations arising out of any loss or damage to property of every description used in connection with the Golf Course.

D9.0 [intentionally deleted]

D10.0 Workers' Compensation Board Compliance

D10.1 Payment of WCB Assessments. The Professional agrees that the Professional will at the Professional's own expense procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board coverage for all of the Professional's staff and all Contractors who are engaged in or upon any work or service which is the subject of the Contract. The Professional agrees that the Board has the unfettered right to set off the amount of the unpaid premiums and assessments for such Worker's Compensation Board coverage against any money owing by the Board to the Professional. The Board may withhold payment under the Contract until the Worker's Compensation Board premiums, assessments or penalties in respect of work done or service performed in fulfilling the Contract had been paid in full.

D10.2 Designation of Professional as Prime Contractor. The Board now designates the Professional as the Prime Contractor, and the Professional now acknowledges and agrees to being designated as the Prime Contractor, for the purposes of the WCB OH&S Regulation.

D10.3 Prime Contractor's Obligations. Without in any way limiting the Professional's obligations under the WCB OH&S Regulation, and by way of example only, the Professional will

- (a) appoint and provide a qualified coordinator for the purpose of ensuring the coordination of health and safety activities for the Golf Course;
- (b) provide and receive and respond to all information required to be given, received or relayed by the Professional (both as an employer and as the Prime Contractor) pursuant to the WCB OH&S Regulation, and
- (c) concurrently with signing the Contract, sign and deliver to the Board, the "Prime Contractor/Qualified Coordinator Agreement" in the form attached as Schedule H to the Contract.

D10.4 General WCB Obligations. In addition to, and not in lieu of, the Professional's obligations as the Prime Contractor, the Professional will have a safety program acceptable to the Workers' Compensation Board and will ensure that all Board and Workers' Compensation Board safety policies, rules and regulations are observed during performance of the Contract, not only by the Professional and its staff, but by all Contractors, material suppliers and others engaged in the performance of the Contract.

- D10.5 Notice of Project. Prior to commencement of any construction permitted by the Contract, the Professional will
- (a) complete and file a "Notice of Project" with the Workers' Compensation Board in compliance with Section 20.2 of the WCB OH&S Regulation, and
 - (b) post the Notice of Project at the Golf Course, and
 - (c) will provide a copy of the Notice of Project to the Board's Designated Representative and confirm in writing that the Notice of Project has been posted at the Golf Course.
- D10.5 Initial Proof of WCB Registration/Good Standing. Prior to signing the Contract, the Professional will provide the Board with the Professional's and all Contractors' Workers' Compensation Board registration numbers.
- D10.6 Subsequent Proof of WCB Registration/Good Standing. Within 5 days of any request by the Board's Designated Representative to do so, the Professional will provide the Board with written confirmation that the Professional and all Contractors are registered in good standing with the Workers' Compensation Board and that all assessments have been paid to date.
- D10.7 Pre-Contract Hazard Assessment. The Professional may or may not have received, as part of the Contract, a "Pre-Contract Hazard Assessment" prepared by or for the Board pursuant to the Board's statutory obligations under the WCB OH&S Regulation (Section 119 of the Act) as an "owner of a workplace". Despite the Board's statutory obligations, the Professional now acknowledges and agrees that the Professional may not rely on the "Pre-Contract Hazard Assessment" and now agrees to assume by the terms of the Contract full responsibility for carrying out the Board's obligations under Section 119 of the Act, including without limitation and by way of example only, conducting all due diligence inquiries of all applicable Board staff and departments in order to ascertain what, if any, information is known or has been recorded by Board staff about the Golf Course that is necessary to identify and eliminate or control hazards to the health or safety of persons at the Golf Course. The Board now agrees to make all reasonable efforts to assist the Professional in obtaining timely access to Board staff and Board records for this purpose. Within 10 days of signing the Contract, the Professional will start conducting such due diligence inquiries and must complete and deliver written confirmation of the completion of such inquiries to the Board's Designated Representative prior to the Board being obligated to approve the Professional's Plans and Specifications.
- D10.8 Special Indemnity Against WCB Non-Compliance. The Professional will indemnify the Board and hold harmless the Board from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to

- (a) unpaid Workers' Compensation Board assessments of the Professional or any other employer for whom the Professional is responsible under the Contract,
- (b) the acts or omissions of any person engaged directly or indirectly by the Professional in the performance of the Contract, or for whom the Professional is liable pursuant to the Professional's obligations as the Prime Contractor, and which acts or omissions are or are alleged by the Workers' Compensation Board to constitute a breach of the WCB OH&S Regulation or other failure to observe safety rules, regulations and practices of Workers' Compensation Board, including any and all fines and penalties levied by the Workers' Compensation Board, or
- (c) any breach of the Professional's obligations under this Section D10.0.

**SCHEDULE E
GENERAL SECURITY AGREEMENT**

This Agreement made as of January 1, 2009,

BETWEEN:

MONAGHAN GOLF INC.

s.22(1)



(the "Professional")

AND:

CITY OF VANCOUVER, as
represented by its Board of Parks and Recreation
2099 Beach Avenue
Vancouver, British Columbia
V6J 1Z4
(the "Board")

Capitalized terms not otherwise or elsewhere defined, have the respective meanings ascribed to them in section 1.2 below.

E.1. SECURITY

1.1 For value received, the Professional grants and creates the security constituted by this General Security Agreement and agrees to the terms, covenants, agreements, conditions, provisos and other matters set out in this General Security Agreement.

1.1.1 As general and continuing security for the Obligations, the Professional:

- (a) hereby grants to the Board, by way of mortgage, charge, assignment and transfer, a security interest in all presently owned and hereafter acquired Accounts, Goods (including, without limiting the generality of the foregoing, Inventory and Equipment), Investment Property, Instruments, Documents of Title, Chattel Paper, Intangibles and Money of the Professional, located at, on or about the Golf Course (as defined in the Golf Professional Services Contract) or used or acquired in connection with or primarily related to the business of the Professional conducted on or with respect to the Golf Course, and all Proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor, (all of which are herein collectively called the "Personal Property Collateral"),

including, without limiting the generality of the foregoing, personal property described in any schedule now or hereafter annexed hereto; and

- (b) hereby charges as and by way of a floating charge in favour of the Board all the presently owned or held and hereafter acquired property, assets, effects and undertakings of the Professional of whatsoever nature and kind located on or about the Golf Course or used or acquired in connection with the business of the Professional conducted on or in respect of the Golf Course, other than such of the property, assets, effects and undertakings of the Professional as are validly and effectively subjected to the security interest granted to the Board pursuant to paragraph (a) above, (all of which property, assets, effects and undertakings so charged by this paragraph (b) are herein collectively called the "Other Collateral") including, without limiting the generality of the foregoing, all presently owned or held and hereafter acquired right, title and interest of the Professional in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plant, machinery, fixtures, apparatus and fixed assets; and the charge created by this paragraph (b) shall be a floating charge but so that the Professional shall not have power without the prior written consent of the Board to:
- (i) create or permit to exist any Encumbrance against any of the Other Collateral which ranks or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement, save for Permitted Encumbrances; and
- (ii) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral, except in the normal course of business which will include the types of transactions permitted pursuant to section 4.1.2.

1.1.2 The mortgages, charges and security interests granted in this General Security Agreement do not apply or extend to any Consumer Goods of the Professional.

1.2 In this General Security Agreement:

1.2.1 the Personal Property Collateral and the Other Collateral are herein together called (the "Collateral");

1.2.2 any reference to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof";

- 1.2.3 any reference to "Professional" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Professional is one or more corporations and, if more than one Professional executes this General Security Agreement, this General Security Agreement shall apply and be binding upon each of them jointly and severally and all obligations hereunder shall be joint and several;
- 1.2.4 any reference to "General Security Agreement" shall, unless the context otherwise requires, be deemed a reference to this General Security Agreement as amended from time to time by written agreement together with the schedules hereto and any schedules added hereto pursuant to the provisions hereof;
- 1.2.5 any reference to "Golf Professional Services Contract" means the agreement between the Professional and the Board dated January 1, 2009 related to operation of the Golf Course, as amended, modified, supplemented, revised, restated or replaced from time to time;
- 1.2.6 any reference to "PPSA" shall mean the *Personal Property Security Act* of the Province as amended from time to time, including any amendments thereto and any Act substituted therefor and amendments thereto;
- 1.2.7 any reference to the "Province" shall mean the Province of British Columbia; and
- 1.2.8 the terms "Goods", "Chattel Paper", "Documents of Title", "Equipment", "Accounts" "Consumer Goods", "Instruments", "Intangibles", "Licences", "Money", "Investment Property", "Proceeds", "Inventory" and "Accessions" and other words and expressions which have been defined in the PPSA shall be interpreted in accordance with their respective meanings given in the PPSA unless otherwise defined herein or unless the context otherwise requires;
- 1.2.9 any reference to "Permitted Encumbrances" shall mean the Encumbrances set out in the attached Encumbrance Schedule;
- 1.2.10 any reference to "Encumbrances" or "Liens" shall mean any and all security interests, mortgages, liens, claims, charges and other encumbrances;
- 1.2.11 any reference to "default", "Default" or "Event of Default" means a "Default" as that term is defined in the Golf Professional Services Contract; and
- 1.2.12 any reference to "Obligations" shall mean the obligations, indebtedness and liabilities described in section 2.1 below.
- 1.3 The Board and the Professional have not agreed to postpone the time for attachment of the security interest granted hereby and the Professional and the Board intend that the security interest granted hereby shall attach to presently owned or held Personal Property Collateral

forthwith upon execution of this General Security Agreement and shall attach to hereafter acquired Personal Property Collateral forthwith upon acquisition of any right, title and interest of the Professional in such Collateral.

1.4 The last 10 days of the term created by any lease or agreement therefor are hereby excepted out of the security constituted by this General Security Agreement but the Professional shall, subject to the rights of holders from time to time of Permitted Encumbrances, stand possessed of the reversion thereby remaining upon trust to assign and dispose thereof to any third party as the Board shall direct.

E.2.0 OBLIGATIONS SECURED

2.1 The security constituted by this General Security Agreement is general and continuing security for payment, performance and satisfaction of each and every obligation, indebtedness and liability of the Professional to the Board (including interest thereon), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, arising under or by virtue of the Golf Professional Services Contract.

2.2 This General Security Agreement and the security constituted hereby are in addition to and not in substitution for any other security or securities which the Board may now or from time to time hold or take from the Professional or from any other person whomsoever.

E.3.0 REPRESENTATIONS AND WARRANTIES OF THE PROFESSIONAL

3.1 The Professional represents and warrants that, and, so long as this General Security Agreement remains in effect, shall be deemed to continuously represent and warrant that:

- 3.1.1 this General Security Agreement has been authorized, executed and delivered in accordance with resolutions of the directors (and of the shareholders as applicable) of the Professional and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this General Security Agreement, the creation of the security constituted hereby and the performance of the Professional's obligations hereunder, legal, valid and binding;
- 3.1.2 the Collateral is genuine and is owned by the Professional free of all Encumbrances, save for the security constituted by this General Security Agreement, the Permitted Encumbrances and any other Encumbrances approved in writing by the Board; and
- 3.1.3 the Professional has good and lawful authority to create the security in the Collateral constituted by this General Security Agreement.

E.4.0 COVENANTS OF THE PROFESSIONAL

4.1 The Professional covenants and agrees that at all times while this General Security Agreement remains in effect the Professional will:

- 4.1.1 defend the Collateral for the benefit of the Board against the claims and demands of all other persons, except only the holders from time to time of Permitted Encumbrances;
- 4.1.2 not, without the prior written consent of the Board:
 - (a) create or permit to exist any Encumbrance against any of the Personal Property Collateral which ranks or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement, save for:
 - (i) the Permitted Encumbrances; and
 - (ii) Encumbrances approved in writing by the Board prior to creation or assumption; or
 - (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral, other than in the normal course of business, except for:
 - (i) any such sales or dispositions of obsolete or worn out Collateral no longer used or useful in the business of the Professional;
 - (ii) Collateral sold or disposed where the proceeds thereof or consideration received therefor is less than \$10,000 and is used within 12 months to reinvest in the Professional's Personal Property at the Golf Course or other assets subject to the security interest of the General Security Agreement of the Board, or which are otherwise sold or disposed of and resulting in replacement with similar or comparable assets;
 - (iii) abandonments, surrenders or terminations of rights or interests which are effected in accordance with prudent industry practice subject to the prior written consent of the Board such consent not to be unreasonably withheld, delayed or conditioned; and
 - (iv) to the extent not otherwise provided above, Collateral so disposed of if, in any twelve month period, the fair market value of consideration received in any single transaction does not exceed \$10,000 or, in the aggregate for all such transactions in any 12 month period does not exceed \$25,000.

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- 4.1.3 fully and effectively maintain and keep maintained valid and effective the security constituted by this General Security Agreement;
- 4.1.4 notify the Board promptly of:
- (a) the details of any acquisition of Collateral in excess of \$10,000;
 - (b) the details of any claims or litigation affecting the Professional or the Collateral in excess of \$10,000; and
 - (c) any loss, damage or proposed disposition of or to Collateral in excess of \$10,000 for each occurrence;
- 4.1.5 subject to section 4.1.2, keep the Collateral in good order, condition and repair and located at the Golf Course, except for records which may be kept at other locations pursuant to the Golf Professional Services Contract and not use the Collateral in violation of the provisions of this General Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- 4.1.6 subject to section 4.1.2, carry on and conduct the business of the Professional so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Professional's business as well as accurate and complete records concerning the Collateral;
- 4.1.7 forthwith pay:
- (a) all obligations to its employees and all obligations to others which relate to its employees when due, including, without limitation, all taxes, duties, levies, government fees, claims and dues related to its employees;
 - (b) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless the Professional shall in good faith contest its obligations so to pay; and
 - (c) all Encumbrances which rank or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement, other than the Permitted Encumbrances and any other Encumbrances approved in writing by the Board;
- 4.1.8 prevent the Collateral from being or becoming an Accession to other property not covered by this General Security Agreement;

- 4.1.9 insure the Collateral for such periods, in such amounts, on such terms and conditions as are set forth in Schedule D to the Golf Professional Services Contract;
- 4.1.10 following an Event of Default (which has not been remedied) deliver to the Board from time to time promptly upon request:
- (a) full and complete copies of all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
 - (b) full and complete copies of all financial statements prepared by or for the Professional regarding the Professional's business;
 - (c) full and complete copies of all policies and certificates of insurance relating to the Collateral; and
 - (d) such information concerning the Collateral, the Professional and Professional's business and affairs as the Board may reasonably require;
- 4.1.11 forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Board in:
- (a) taking, recovering, keeping possession of and insuring the Collateral;
 - (b) connection with any disclosure requirements under the PPSA; and
 - (c) all other actions and proceedings taken in connection with the preservation of the Collateral and the confirmation, perfection and enforcement of this General Security Agreement and of any other security held by the Board as security for the Obligations;
- 4.1.12 following an Event of Default which has not been remedied at the time of the request, at the Board's request at any time and from time to time create in favour of the Board, as security for the Obligations, a fixed charge or charges upon any of the Other Collateral;
- 4.1.13 at the Board's request at any time and from time to time execute and deliver such further and other documents and instruments and do all other acts and things as the Board reasonably requires in order to give effect to this General Security Agreement or to confirm and perfect, and maintain perfection of, the security constituted by this General Security Agreement in favour of the Board; and

- 4.1.14 following an Event of Default which has not been remedied, permit the Board and its representatives, at all reasonable times, access to all the Professional's property, assets and undertakings and to all its books of account and records for the purpose of inspection and render all assistance necessary for such inspection.

E.5.0 BOARD ACTIONS AUTHORIZED

5.1 The Professional hereby authorizes the Board to file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any Permitted Encumbrances affecting the Collateral or identifying the locations at which the Professional's business is carried on and the Collateral and records relating thereto are situate) as the Board may deem appropriate to perfect and continue the security constituted hereby, to protect and preserve the Collateral and to realize upon the security constituted hereby and the Professional hereby irrevocably constitutes and appoints the Board the true and lawful attorney of the Professional, with full power of substitution, to do any of the foregoing in the name of the Professional whenever and wherever it may be deemed necessary or expedient by the Board.

5.2 If the Professional fails to perform any of its Obligations hereunder, the Board may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Board hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Professional to the Board forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Board prior to all claims subsequent to this General Security Agreement.

E.6.0 DEFAULT

6.1 The Professional shall be in default under this General Security Agreement, unless otherwise agreed in writing by the Board, upon the occurrence of an Event of Default.

E.7.0 ENFORCEMENT

7.1 Upon an Event of Default, the security hereby constituted will immediately become enforceable.

7.2 To enforce and realize on the security constituted by this General Security Agreement the Board may take any action permitted by law or in equity, as it may deem expedient, and in particular, without limiting the generality of the foregoing, the Board may do any one or more of the following:

- 7.2.1 appoint by instrument a receiver, receiver and manager or receiver-manager (the person so appointed is herein called the "Receiver") of the Collateral, with or without bond as the Board may determine, and from time to time in its sole discretion remove such Receiver and appoint another in its stead;

- 7.2.2 enter upon any premises of the Professional and take possession of the Collateral with power to exclude the Professional, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
- 7.2.3 preserve, protect and maintain the Collateral and make such replacements thereof and repairs and additions thereto as the Board may deem advisable;
- 7.2.4 sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of all or any part of the Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Board may seem reasonable, provided that the Professional will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefor are actually received; and
- 7.2.5 exercise all of the rights and remedies of a secured party under the PPSA.

7.3 A Receiver appointed pursuant to this General Security Agreement shall be the agent of the Professional and not of the Board and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Board hereunder, and in addition shall have power to carry on the business of the Professional and for such purpose from time to time to borrow money either secured or unsecured, and if secured by a security on any of the Collateral, any such security may rank in priority to or pari passu with or behind the security constituted by this General Security Agreement, and if it does not so specify such security shall rank in priority to the security constituted by this General Security Agreement.

7.4 Any costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Board in connection with or incidental to:

- 7.4.1 the exercise by the Board of all or any of the powers granted to it pursuant to this General Security Agreement; and
- 7.4.2 the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted by the Receiver pursuant to this General Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;

shall be payable by the Professional to the Board forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Board prior to all claims subsequent to this General Security Agreement.

7.5 Subject to applicable law and the claims, if any, of the creditors of the Professional ranking in priority to the security constituted by this General Security Agreement, all amounts

realized from the disposition of the Collateral pursuant to this General Security Agreement will be applied as the Board, in its sole discretion, may direct as follows:

FIRSTLY: in or toward payment of all costs, charges and expenses referred to in sections 4.1.11 and 7.4, and other obligations owing under this General Security Agreement;

SECONDLY: in or toward payment to the Board of all principal and other monies (except interest) unpaid in respect of the Obligations;

THIRDLY: in or toward payment to the Board of all interest remaining unpaid in respect of the Obligations; and

FOURTHLY: any surplus will be paid to the Professional.

E.8.0 DEFICIENCY

8.1 If the amounts realized from the disposition of the Collateral are not sufficient to pay the Obligations in full to the Board, the Professional will immediately pay to the Board the amount of such deficiency.

E.9.0 RIGHTS CUMULATIVE

9.1 All rights and remedies of the Board set out in this General Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future general security agreement or now or hereafter existing at law or in equity or pursuant to any other agreement between the Professional and the Board that may be in effect from time to time.

E.10. APPOINTMENT OF ATTORNEY

10.1 The Professional hereby irrevocably appoints the Board or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Professional for and in the name of the Professional to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Professional is obliged to sign, endorse or execute and generally to use the name of the Professional and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Board or the Receiver, as the case may be, pursuant to this General Security Agreement. The Board now separately agrees with the Professional that the Board will not make use of this appointment except in the Event of Default and will cease the use of this appointment in the event that such a Default is remedied; provided, however, that this restriction will not apply in respect of the authority conferred on the Board pursuant to sections 5.1 and 5.2 above.

E.11.0 LIABILITY OF THE BOARD

11.1 The Board shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Board shall manage the Collateral upon entry or manage the business of the Professional, as herein provided, nor shall the Board be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss or realization or for any default or omission for which a mortgagee in possession may be liable.

11.2 The Board shall not be bound to do, observe or perform or to see to the observance or performance by the Professional of any obligations or covenants imposed upon the Professional nor shall the Board, in the case of Securities, Instruments or Chattel Paper, be obliged to reserve rights against other persons, nor shall the Board be obliged to keep any of the Collateral identifiable.

11.3 The Board shall not be obliged to inquire into the right of any person purporting to be entitled under the PPSA to information and materials from the Board by making a demand upon the Board for such information and materials and the Board shall be entitled to comply with such demand and shall not be liable for having complied with such demand notwithstanding that such person may in fact not be entitled to make such demand.

11.4 The Professional will indemnify the Board and hold the Board harmless from and against any and all claims, costs, losses, demands, actions, causes of action, lawsuits, damages, penalties, judgments and liabilities of whatsoever nature and kind in connection with or arising out of any representation or warranty given by the Professional, being untrue, the breach of any term, condition, proviso, agreement or covenant to the Board, or the exercise of any of the rights and or remedies of the Board, or any transaction contemplated in this General Security Agreement.

11.5 The Professional hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Board than provided in this General Security Agreement.

E.12.0 APPROPRIATION OF PAYMENTS AND OFFSET

12.1 Subject to any applicable provisions of the PPSA, any and all payments made in respect of the Obligations from time to time and monies realized from any security held therefor (including monies collected in accordance with or realized on any enforcement of this General Security Agreement) may be applied to such part or parts of the Obligations as the Board may see fit, and the Board may at all times and from time to time change any appropriation as the Board may see fit or, at the option of the Board, such payments and monies may be held unappropriated in a collateral account or released to the Professional, all without prejudice to the liability of the Professional or to the rights of the Board hereunder.

12.2 Without limiting any other right of the Board, whenever any of the Obligations is immediately due and payable or the Board has the right to declare any of the Obligations to be

immediately due and payable (whether or not it has so declared), the Board may, in its sole discretion, set off against any of the Obligations any and all monies then owed to the Professional by the Board in any capacity, whether or not due and to do so even though any charge therefor is made or entered on the Board's records subsequent thereto, and the Board shall be deemed to have exercised such right to set off immediately at the time of making its decision.

E.13.0 WAIVER

13.1 No delay or omission by the Board in exercising any right or remedy hereunder or with respect to any of the Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

13.2 The Board may from time to time and at any time waive in whole or in part any right, benefit or default under this General Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

E.14.0 EXTENSIONS

14.1 The Board may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security, and otherwise deal with the Professional, sureties and others and with the Collateral and other security as the Board may see fit without prejudice to the liability of the Professional or the Board's right to hold and realize on the security constituted by this General Security Agreement.

E.15.0 ASSIGNMENT

15.1 The Board may, without further notice to the Professional, at any time mortgage, charge, assign, transfer or grant a security interest in this General Security Agreement and the security constituted hereby, subject only to compliance with the Golf Professional Services Contract.

15.2 The Professional covenants and agrees that the assignee, transferee or secured party of the Board, as the case may be, shall have all of the Board's rights and remedies under this General Security Agreement and the Professional will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

E.16.0 SATISFACTION AND DISCHARGE

16.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Professional to be indebted to the Board, shall be deemed not to be redemption or discharge of the security constituted by this General Security Agreement.

16.2 The Professional shall be entitled to a release and discharge of the security constituted by this General Security Agreement upon full payment, performance and satisfaction of all

Obligations, or the securing of the Obligations to the satisfaction of the Board, and upon written request by the Professional and payment to the Board of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Board in connection with the Obligations and such release and discharge.

E.17.0 NO MERGER

17.1 This General Security Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security in any form held or which may hereafter be held by the Board from the Professional or from any other person whomsoever.

17.2 The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the terms, conditions, covenants, agreements or provisos contained in this General Security Agreement.

17.3 The release and discharge of the security constituted by this General Security Agreement by the Board shall not operate as a release or discharge of any right of the Board to be indemnified and held harmless by the Professional pursuant to section 11.4 hereof or of any other right of the Board against the Professional arising under this General Security Agreement prior to such release and discharge.

E.18.0 INTERPRETATION

18.1 In this General Security Agreement:

18.1.1 the invalidity or unenforceability of the whole or any part of any section or paragraph shall not affect the validity or enforceability of any other section or paragraph or the remainder of such section or paragraph;

18.1.2 the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this General Security Agreement; and

18.1.3 when the context so requires, the singular shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.

E.19.0 NOTICE

19.1 Whenever either the Board or the Professional hereto is required or entitled to notify or direct the other or to make a demand upon or request of the other relating to the Collateral, this General Security Agreement or the PPSA, such notice, direction, demand or request shall be sufficiently given if given in writing and delivered to the party for whom it is intended at the address of such party herein or as changed pursuant hereto or if sent by prepaid registered mail

addressed to the party for whom it is intended at the address of such party herein set forth or as changed pursuant hereto.

19.2 Either the Board or the Professional may notify the other in accordance herewith of any change in its principal address to be used for the purposes hereof.

E.20.0 VARIATION

20.1 Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this General Security Agreement shall be made except by written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

E.21.0 ENUREMENT

21.1 This General Security Agreement shall enure to the benefit of the Board and its successors and permitted assigns and shall be binding upon the Professional and its successors and permitted assigns.

E.22.0 COPY OF AGREEMENT AND FINANCING STATEMENT

22.1 The Professional hereby:

22.1.1 acknowledges receiving a copy of this General Security Agreement; and

22.1.2 waives all rights to receive from the Board a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this General Security Agreement.


E.23.0 GOVERNING LAW

23.1 The doctrine of consolidation shall apply to this General Security Agreement and to all other mortgages and charges of the Professional held by the Board and this section 23.1 shall be deemed to be an expression of intention contrary to the Property Law Act of British Columbia.

23.2 This General Security Agreement shall be governed by and construed in accordance with the laws of the Province.

SIGNED, SEALED, AND DELIVERED)
by MONAGHAN GOLF INC. in the)
presence of:)

RON CASWELL)
Name)
VANCOUVER PARK BOARD)
Address)
_____)
MANAGER)
Occupation)

per: )
Michael Thomas Monaghan, President

ENCUMBRANCE SCHEDULE
(see Section 1.2.9)

PPSA Security Agreement registered in the British Columbia Personal Property Registry under base registration number 900281E on April 2, 2009 in favour of National Leasing Group Inc., in respect of 30 golf carts together with all attachments, accessories and substitutions.

SCHEDULE F
OPTION TO PURCHASE PROFESSIONAL'S PERSONAL PROPERTY

F.1 Grant of Option

The Professional now grants the Board the exclusive and irrevocable option to purchase (the "Option to Purchase") to purchase the Personal Property free and clear of all liens, charges and encumbrances.

F.2 Terms and Conditions of Exercise

This Option to Purchase will be deemed to be exercised by the Board upon the earlier of:

- (a) the effective date of termination or expiry of the Contract as contemplated by Section 25(c) of the Contract (the "Transfer Date"); or
- (b) the Board giving the Professional written notice of its intent to exercise the Option to Purchase, which notice will in any case be effective only as of termination or expiry to the Contract,

unless, and in that event, except to the extent that, the Board gives the Professional notice of its intention either not to exercise the Option to Purchase at all, or to exercise the Option to Purchase in respect of some but not all of the Personal Property, in accordance with Section 25(f)(ii) of the Contract.

F.3 Effect of Exercise

Exercise of this Option to Purchase will constitute a binding contract of purchase and sale for such of the Personal Property which the Board is deemed to have, or in fact has, given notice of its intent to purchase (in this Schedule F, the "Purchased Personal Property"). The contract arising from the exercise of this Option to Purchase will be completed, subject to paragraph (d) below, concurrently with the effective date of deemed or actual exercise of the Option to Purchase.

- (a) deliberately deleted.
- (b) The Professional will at the Professional's sole cost and expense have the Professional's lawyer prepare, or caused to be prepared, by not later than the Transfer Date, all necessary conveyance documents in respect of the Purchased Personal Property, including, without limitation, a bill of sale absolute (the "Bill of Sale Absolute"), discharges of liens, charges and encumbrances and any other necessary or appropriate documentation. Each of the Professional and Board will pay its own legal fees. The Professional, however, will pay all fees and disbursements associated with registering all financing statements and other documents at the Personal Property Registry.

- (c) The Professional will execute and deliver to the Board as of the Transfer Date, the Bill of Sale Absolute containing the usual covenants conveying the Purchased Personal Property to the Board free and clear of all liens, charges and encumbrances. The Professional will also execute and deliver as of the Transfer Date, any other documents or instruments as may reasonably be required by the Board for the purpose of completing the contract of purchase and sale of the Purchased Personal Property, including if requested by the Board, such documents or instruments as may be required for the registration of discharges and financing change statements at the Personal Property Registry.
- (d) Title, risk of loss or damage, and possession of the Purchased Personal Property will transfer to the Board on the date when transfer of title is effected and the purchase price is paid. If the parties are unable to agree on the price payable for, or any other material terms applicable to the transfer of, the Purchased Personal Property by the Transfer Date, then the sale and transfer may be completed at such later date as the parties may then agree.
- (e) At all times and from time to time prior to the exercise of this Option to Purchase, the Board will have full right of access to the Purchased Personal Property in order to conduct surveys, assessments, inventories, studies and tests including valuations and audits.
- (f) The purchase price for the Purchased Personal Property will be payable by the Board to the Professional as of the date when title transfers to the Board in accordance with this Option to Purchase, provided always that the Board and Professional will settle or determine the purchase price on the following terms and conditions:
- (i) The Board's Designated Representative and Professional will negotiate in good faith, as early as reasonably possible, to settle a purchase price for the Purchased Personal Property, which will be the lesser of fair market value as of the Transfer Date and cost (including the net amount of any taxes actually paid by the Professional), except that, if the Board's Designated Representative and Professional are unable to agree on that purchase price as of the Transfer Date, the Board and the Professional will jointly appoint a chartered accountant, who is a member in good standing of the Institute of Chartered Accountants of British Columbia, or such other qualified asset valuator as the parties may agree in writing, and who is at arm's length from the Board and the Professional, to determine that purchase price, and each of the Board and the Professional will be responsible for 50% of the chartered accountant's or asset valuator's, as the case may be, fees and disbursements, and will pay the amount it owes to the chartered accountant or asset valuator, as the case may be, on demand. Any price determined in advance of the date as of which title is transferred and the purchase price paid, will be adjusted as of the transfer/payment date to reflect any variations in value in the meantime.

- (ii) The Board will pay the Professional the purchase price for the Purchased Personal Property as settled or determined under Section F.3(f)(i), at such time as title is transferred to the Board in accordance with this Option to Purchase, or if the price has not by then be decided on, then at such time as the price has been determined, subject to any deduction by the Board of any amount the Professional then owes to the Board.

F.4 No Further Encumbrances/Subdivisions Permitted

The Professional will not permit any liens, charges or encumbrances to be registered against the Personal Property save and except:

- (a) Permitted Encumbrances; and
- (b) other encumbrances which the Board first agrees to in writing.

F.5 Professional's Representations

Regardless of any independent investigations that the Board may cause to be made, the Professional will represent and warrant to the Board, as of the date of transfer of title to the Board of any Purchased Personal Property, that:

- (a) the Professional has good, safeholding and marketable title to the Purchased Personal Property free and clear of all liens, encumbrances, charges, encroachments, defects in title, equities or claims; and
- (b) the Professional has no indebtedness to any person or governmental authority which might by operation of law or otherwise constitute a lien, charge or encumbrance on the Purchased Personal Property or which could affect the Board's right from and after the exercise of this Option to Purchase to own and use the Purchased Personal Property.

F.6 Interpretation

- (a) All terms and conditions of this Option to Purchase which by their nature require performance or fulfillment following the exercise of the Option to Purchase or the Transfer Date will survive and not merge with any transfer or agreement delivered in connection with the completion of the transfer of the Purchased Personal Property.
- (b) This Option to Purchase and the contract constituted by the exercise of it will enure to the benefit of and be binding upon the parties and their successors and assigns and for further certainty will charge and bind the Personal Property and the Professional's successors in title.

- (c) Capitalized terms not otherwise defined herein will have the respective meanings ascribed to them in the Golf Professional Services Contract for Fraserview Golf Course dated January 1, 2009, to which this Option to Purchase is attached as Schedule F.

SCHEDULE G GRANT OF LICENCE

G.1 Grant of Licence

In recognition of the Professional's need for access to the Golf Course in order to provide the Services, the Board now grants the Professional a licence for access and use of the Pro Shop, Driving Range, Cart Storage Area, Short Game Practice Area and the Chipping and Putting Green (collectively, the "Service Access Areas") provided that this licence will automatically be terminated with the expiry or sooner termination of the Term and will be automatically extended with any extension of the Term.

G.2 Licence Fee

The licence fees payable by the Professional are as set out in Section 6(b) the Contract and will be payable as a deduction from and set-off against the fees payable by the Board for the Services.

G.3 Utilities

All charges, rates and levies on account of utilities including electricity, water, garbage collection, telephone and all other expenses and outgoings incurred by the Professional in the provision of the Services and use of the Service Access Areas will be to the sole account of the Professional except where expressly stated otherwise in the Contract.

G.4 Use of the Service Access Areas

The Professional will only use the Service Access Areas for the provision of the Services and will not use or allow the Service Access Areas to be used by its agents or employees for any other purpose without the prior written consent of the Board's Designated Representative, which consent may be arbitrarily withheld.

G.5 Non-Exclusive Licence

G5.1 No Interest in Land. The Board will have full, free and uninterrupted access to the Service Access Areas for the purposes of inspection and carrying out its obligations under the Contract and to the public at all times during the Term and in common with the Professional's rights of access under this licence. Despite any other term of this Schedule G or any other part of the Contract, the rights and privileges of use and access granted by this Schedule G and the Contract to the Professional are purely contractual and are not grants of a lease, easement, right of way, right of exclusive possession, or any other interest in land and the Professional now acknowledges and agrees to same and further agrees not to register any instrument, claim or notice respecting the Contract in any Land Title Office, nor to make any claim in any arbitration or court of law that the Professional has any rights in respect to access to and use of the Golf Course other than purely contractual rights of a bare licensee.

G5.2 Board Reserves All Rights. Accordingly, the Board retains full ownership and exclusive possession of the Golf Course and reserves all rights to use the Golf Course in any manner it sees fit even where such uses interfere with the Professional's contractual rights and obligations under the Contract. The Professional now acknowledges and agrees that the Golf Course is owned and operated by a public sector entity which may at any time elect to modify the manner or mode of use of the Golf Course in any manner considered to be in the public interest, as determined by its publicly elected park board commissioners, including without limitation and by way of example only, modifications to increase revenue (such as advertising on the Driving Range walls and fences) or modifications to address public interest desires (such as re-configuring the golf course or reducing its size, converting to green space, etc.).

G5.3 Limitation on Liability. Despite any other term of the Contract, where any use by the Board of the Golf Course interferes or might interfere with the Professional's rights or obligations under the Contract, the Board's liability for damages is now expressly limited to \$1,000, or such other amount as the Professional and the Board may agree, whether or not such use constitutes a breach of the Contract and the Professional now releases the Board from all liability for all losses, expenses and damages arising from the type of breach or use described in this Section G.5, subject always to

- (a) the Board's obligations to reimburse the Professional's reasonable direct moving costs in the event of a re-location pursuant to Section G.17; and
- (b) the Board's obligations to reimburse the Professional's capital costs of constructing the Professional's Upgrades where (but only to the extent that) such interference by the Board prevents the Professional from making economically feasible use of the Professional's Upgrades, in which case the pro-rating formula set out in Section G.19 will apply.

G.6 Board's Right of Control over Access and Use

The Board will have the unfettered right to stipulate the extent of use and access over the Golf Course to the Service Access Areas permitted by the Professional and the Professional's staff and will have the complete and unfettered right to prohibit the Professional from access to any and all areas of the Golf Course other than the Service Access Areas and those which are necessarily required to provide access to the Professional and the Professional's staff for the provision of the Services.

G.7 No Representations or Warranties

The Professional acknowledges and agrees that the Board has made no representations or warranties as to the state of repair of the Service Access Areas or the suitability of the Service Access Areas for the provision of the Services. Subject to any obligations the Board may have to repair, maintain and/or replace the Service Access Areas pursuant to the Contract, to the extent that the Service Access Areas are not at any time in a condition suitable for the provision of the Services, then to the extent that such is the case, the Board will not be liable for any losses or damages suffered by the Professional. However, the Professional will not be liable for the

failure to provide Services to the extent to which same is caused by any breach by the Board of its obligations under the Contract or this Schedule G to maintain and repair any part of the Golf Course or Service Access Areas. Accordingly, the Professional now agrees to accept the Golf Course and Service Access Areas on an "as is, where is" basis.

G.8 No Damage

The Professional will at all times carry out the Services and operations with due care and attention and without negligence and will at no times create a nuisance or cause damage to the Service Access Areas or surrounding Golf Course.

G.9 Notify Board of Any Damage

If any of the Board's property is damaged by the Professional or the Professional's employees (or other Contractors), the Professional will notify the Board immediately, and the Board will have the right to elect within 48 hours whether or not the Board will itself repair the damage. If the Board fails to give a notice of election within the time specified, the Board will be deemed to have elected to do the repairs. If the Board elects to have the Professional do the repairs, the Professional will carry out the repairs at the Professional's sole cost, which repairs will be performed in the manner approved by the Board and within such time as is specified by the Board, acting reasonably, so as to bring the damaged property back to a standard and condition at least equal to the standard and condition it was in prior to the damage. A Default will be deemed to have occurred on the part of the Professional, and Section 18 of the Contract will apply, if:

- (a) the Board elects to have the Professional do the repairs, and the Professional fails to complete the repairs to such standard and condition, or in the manner or within the time specified by the Board, in which case the Board may carry out the repairs at the Professional's sole cost; and
- (b) the Board carries out some or all of such repairs itself and the Professional does not reimburse the Board for the cost payable by the Professional for the same, within 30 days of demand.

G.10 Maintenance

The Professional will maintain the Service Access Areas and all improvements within the Service Access Areas in a sanitary, neat, tidy and safe condition and free from nuisance at all times subject only to those obligations which are imposed on the Board pursuant to Sections 11 and 13 of the Contract.

G.11 Indemnification

The indemnity set out in Section 15(b) of the Contract will apply fully and completely to all costs, losses, damages, builders liens, expenses, actions, claims, demands, suits and judgments incurred by or against the Board, the City or their respective officers, officials, directors, agents,

employees and contractors on account of the Professional's use of the Service Access Areas, access to and from and across the Golf Course and/or relating to or arising from the Professional's exercise of its rights under this licence granted by this Schedule G and is in addition to and not in lieu of all other indemnities, releases and limitations on liability set out elsewhere in the Contract.

G.12 Insurance

As a condition of this grant of licence, the Professional must comply at all times and in strict accordance with the Insurance, Bonding and WCB Requirements set out in Schedule D to the Contract.

G.13 Assignment

Further to Section 17 of the Contract, the Professional will not in whole or in part assign this licence without the prior written consent of the Board's Designated Representative, which consent of the Board's Designated Representative may arbitrarily withhold and which consent may only be granted concurrently with any consent with respect to any assignment of the balance of the Contract. Accordingly, the Professional may not sub-licence or otherwise permit any other third party access to or use of the Golf Course or Service Access Areas without the prior written consent of the Board's Designated Representative in accordance with Section 17 of the Contract.

G.14 Termination of the Licence

Despite any other term of this Schedule G or any other part of the Contract:

- (a) the Board's Designated Representative may terminate this licence immediately upon giving written notice to the Professional pursuant to Section 23 of the Contract, and
- (b) termination or expiry of the Contract will automatically and without further or separate written notice terminate this licence.

G.15 Laws and By-laws

The Professional will, and will cause its staff and Contractors to, promptly and faithfully observe and comply with all laws, by-laws and lawful orders which relate to the Service Access Areas and the Professional's activities within the Service Access Areas, even if such laws, by their terms, apply to the Board. For further certainty and without limiting the generality of the foregoing, it will be the Professional's responsibility to obtain any and all development permits, business licences and building permits required to authorize or permit any of the uses required by the Professional of the Service Access Areas in order to provide the Services.

G.16 No Alteration/Improvement

The Professional will not, without the prior written consent of the Board's Designated Representative, which may be arbitrarily withheld, make any alterations, renovations, improvements or demolitions of any of the existing improvements located within the Service Access Areas, nor may the Professional alter, modify, renovate, or demolish any of the Professional's Upgrades which the Professional confirms and acknowledges must be constructed only in accordance with the procedures set out in Schedule A to the Contract.

G.17 Changes/Relocations

Despite any other term of the Contract, the Board may unilaterally change the structure, size, location or boundaries of any component of the Golf Course or any part of the Service Access Areas without any liability to the Professional for any resulting losses, costs, expenses or damages resulting from such changes. However, the Board will reimburse the Professional for any actual and direct out-of-pocket costs relating to the cost of physically moving or storing the Professional's Personal Property during any such change or relocation, provided that always such costs will expressly exclude all indirect inconsequential losses, costs, damages and expenses such as by way of example only and without limitation, loss of profits, loss of revenue, extra staffing costs or the like.

G.18 Termination or Expiry

Upon the expiry or sooner termination of the Term, the Professional will no longer be entitled to access or use the Service Access Areas nor to enter and exit along the permitted portions of the Golf Course and, subject to reasonable wear and tear, will leave the Service Access Areas in a sanitary, neat, tidy, safe and empty condition and in compliance with the standards of maintenance and repair imposed on the Professional pursuant to the Contract.

G.19 Ownership of Professional's Upgrades

All of the Professional's Upgrades become the sole and absolute property of the Board immediately upon their installation and the Professional will have no claim for compensation with respect to the Professional's Upgrades except as follows:

Where the Contract is terminated by the Board for any reason after completion by the Professional of the Professional's Upgrades as contemplated by Section 5 of the Contract, the Board will pay to the Professional, on account of the Professional's unamortized benefit of the use of and access to the Professional's Upgrades an amount of money payable within 90 days following such termination, which unamortized benefit will be calculated on a straight-line depreciation basis over the period commencing on the date when an occupancy permit is issued by the City for the Professional's Upgrades and ending on December 31, 2017. The calculation will be made as follows:

Number of days remaining between date of termination and December 31, 2017, divided by number of days between the date of issuance by the City of an occupancy permit for

the Professional's Upgrades and December 31, 2017, times the cost of the Professional's Upgrades, equals the amount payable to the Professional.

**SCHEDULE H
PRIME CONTRACTOR AGREEMENT**



City of Vancouver – Park Board

Prime Contractor Agreement

DEFINITIONS:

Owner	The City of Vancouver. According to the <i>Workers Compensation Act (Part 3, Division 1)</i> .
Prime Contractor	A contractor designated by the owner (City as represented by its Board of Parks and Recreation) to be the Prime Contractor on a project with respect to occupational health and safety only, namely MONAGHAN GOLF INC.

RESPONSIBILITIES

PRIME CONTRACTOR CANDIDATE

Provide a copy of their WCB "Clearance Letter", a signed copy of this document and all other documents requested in the tender.

The Prime Contractor will notify the City of any changes of status with the WCB during the course of the project.

PRIME CONTRACTOR

After the Prime Contractor has been designated and before work has commenced, the Prime Contractor shall:

Conduct all necessary and appropriate inquiries of all relevant City staff and records as the City's authorized agent in order to verify in writing to the City that the City has given to the contractor all information known to the City that is necessary to identify and eliminate or control hazards to the health and safety of persons at the site.

Carefully review, and plan to address, all hazards identified in the Pre-Contract Hazard Assessment (Appendix B).

Review and complete the Pre-Job Meeting Form (Appendix D) with the Contract Liaison.

Maintain and make available, the documents listed on the Pre-Job Meeting Form, where applicable.

Inform all other employers of the workplace their designation as Prime Contractor for the project.

Coordinate all occupational health and safety activities for the project.

Establish and maintain a system or process that will ensure compliance with the WCB OH&S Regulation when visitors (i.e. couriers, inspectors, suppliers, etc.) enter a multiple-employer workplace. The Prime Contractor will thus be responsible for site orientation and hazard communication.

Establish and maintain a system or process that will ensure compliance with the *Workers Compensation Act (Part 3)* and the WCB OH&S Regulation.

Maintain a current list of persons that each sub-trade (employer) has designated to be responsible for that employer's health and safety activities.

Ensure or coordinate first aid equipment and services as required by the WCB OH&S Regulation.

On a Construction Project, submit the Notice of Project (NOP) to the WCB a minimum of 24 hours before construction commences. (See WCB OH&S Regulation Section 20.2 for the general requirements of a Notice of Project.)

On a Construction Project, provide the information listed in WCB OH&S Regulation Section 20.3(4).

On a Construction Project, where workers of 2 or more employers are working at the same time and the combined workforce is greater than 5, identify and designate a Qualified Coordinator to coordinate health and safety activities.

PRIME CONTRACTOR'S QUALIFIED COORDINATOR (CONSTRUCTION ONLY)

Coordinate all health and safety activities for the project.

Ensure that all workers at the workplace are informed of workplace hazards, from both the pre-contract hazard assessment and from ongoing work activities of all employers at the workplace.

Ensure hazards are addressed throughout the duration of the work activity.

Post workplace drawings showing where first aid is located, emergency transportation system for injured workers, and evacuation marshalling points.

Ensure that regular workplace safety meetings are held and documented.

Know who all other contractors' Qualified Persons are.

DESIGNATION

By signing this agreement, the contractor accepts all responsibilities of a **Prime Contractor** as outlined in the City's Multiple-Employer Workplace / Contractor Coordination Program (2003), *Workers Compensation Act (Part 3)*, and WCB OH&S Regulation.

As a contractor signing this agreement with the City, you are agreeing that your company, management staff, supervisory staff and workers will comply with the Workers' Compensation Board (WCB) Occupational Health and Safety Regulation and the *Workers Compensation Act (Part 3)*.

Any WCB violation by the Prime Contractor may be considered a breach of contract resulting in possible termination or suspension of the contract and/or any other actions deemed appropriate at the discretion of the City.

Any penalties, sanctions or additional costs levied against the City, as a result of the actions of the Prime Contractor are the responsibility of the Prime Contractor.

I, the undersigned, acknowledge having read and understood the information above.

By signing this agreement, I agree as a representative of the firm noted below, to accept all responsibilities of the **Prime Contractor** for this project.

Contract #:		Date:	
Firm Name:	MONAGHAN GOLF INC.		
Qualified Coordinator's Name:			
Signature of Prime Contractor:			



MEMORANDUM

REAL PROPERTY TRANSACTION

Date: November 18, 2019
File: Fraserview Golf Course
TO: Malcolm Bromley
FROM: Sev Araujo, Manager Commercial Operations

Approved

Shauna Wilton, DGM

RE: Execution of Professional Services Golf Contract Fraserview Golf Course with Monaghan Golf Inc. effective January 1, 2019

Please initial this memo below approving the Agreement and return the package to my attention.

Background:

On July 4, 2019 the City of Vancouver’s Bid Committee approved the Park Board sole sourcing a short term Golf Professional Services contract with incumbent Monaghan Golf Inc. for the Fraserview golf course in order to facilitate a comprehensive review of golf services. Given the value of the Fraserview golf course to cover the Professionals labour costs, under the Park Board’s Procurement Policy on November 18, 2019 the Vancouver Park Board authorized its GM to execute said contract.

Key terms of contract:

Term: 3 years effective January 1, 2019

Renewals: 2 – 1 year terms at operator’s option

Cancellation: Park Board can cancel contract at anytime

Rent: Yr. 1 & 2: s.21(1) [Redacted]
Yr. 3: [Redacted]

Note: i) industry average is 6-8%
ii) rate to be reviewed during renewals

Driving Range: s.21(1) [Redacted]

Operator: responsible for day to day maintenance and equipment
Park Board: responsible for capital of building and site including netting

Golf Operations:

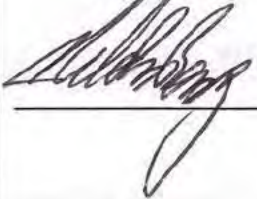
Retainer: s.21(1) [Redacted]
Starter: s.21(1) [Redacted]

MEMORANDUM



Legal Services has / has not reviewed the Agreement.

If you have any questions, please call me at 604 257 8436 .

Criteria Summary:	Executed by	Date
Type of Tenure: Professional Services Value of Tenure: s.21(1) Term Length: 3 years Effective Date: January 1, 2019 Execution Required: General Manager	 _____	NOV. 25, 2019 _____

**GOLF PROFESSIONAL SERVICES CONTRACT
FRASERVIEW GOLF COURSE**

AMONG:

**CITY OF VANCOUVER, as represented by its
BOARD OF PARKS AND RECREATION**

and

MONAGHAN GOLF INC.

and

MICHAEL THOMAS MONAGHAN

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Contract Date: January 1, 2019

Parties:

CITY OF VANCOUVER, as represented
by its **BOARD OF PARKS AND RECREATION**
2099 Beach Avenue
Vancouver, British Columbia
V6J 1Z4

(the “**Board**”)

and:

MONAGHAN GOLF INC.
7800 Vivian Drive
Vancouver, British Columbia
V5S 2V8

(the “**Professional**”)

and:

MICHAEL THOMAS MONAGHAN
s.22(1)

(“**Monaghan**”)

Background:

- A. Pursuant to a Request for Proposals P2008-14, the Board entered into an agreement with the Professional dated January 1, 2009 for the provision of golf professional services at the Golf Course (the “**2009 Contract**”);
- B. The 2009 Contract was amended on January 1, 2014 to confirm the extension of the Term until December 31, 2017;
- C. The 2009 Contract (as extended) expired on December 31, 2017, and was automatically renewed pursuant to Section 26 thereof until December 31, 2018;
- D. The Professional wishes to continue to provide, and the Board wishes to continue to receive, golf professional services at the Golf Course; and
- E. The Bid Committee has approved the procurement strategy of sole sourcing to the Professional and Monaghan for the provision of golf professional services for the short term.

NOW THEREFORE, in consideration of the matters referred to in the foregoing Recitals, the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed), the Board, the Professional and Monaghan now agree as follows:

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

- 1.1 Definitions.** In this Contract, the following terms have the following meanings:
- (a) **“Ball Storage Area”** means the area used to store golf balls for the Driving Range, generally as shown on Schedule A;
 - (b) **“Bank Recovery Fee”** is defined in Section 4.3;
 - (c) **“Bid Committee”** has the meaning given in the Procurement Policy;
 - (d) **“Board and City”** is defined in Section 8.1;
 - (e) **“Board’s Designated Representative”** means the person appointed as the General Manager of the Board or his designate, deputy or anyone else authorized from time to time to carry out his authority under this Contract;
 - (f) **“Cart Storage Area”** means the cart storage area for the Golf Course, as generally shown on Schedule A;
 - (g) **“Chief Purchasing Official”** means the person designated from time to time by the City Manager to supervise and carry out the procurement function on behalf of the Board in accordance with the Procurement Policy;
 - (h) **“Chipping and Putting Greens”** means the practice chipping green and putting green for the Golf Course, as generally shown on Schedule A as “Chipping Green” and “Putting Green”;
 - (i) **“City”** means the City of Vancouver, a municipal corporation continued pursuant to the *Vancouver Charter*;
 - (j) **“City Manager”** means the person appointed by Council pursuant to Section 162A of the *Vancouver Charter* as the City Manager;
 - (k) **“Contract”** means this Golf Professional Services Contract for the Golf Course among the Board, the Professional and Monaghan, including all schedules, as amended or supplemented from time to time;
 - (l) **“Council”** means the elected council of the City;
 - (m) **“CPGA”** means the Canadian Professional Golf Association;

- (n) **“CPGA Certified Employee”** means any individual employed by the Professional or retained as an independent or dependent contractor of the Professional who is a member or an apprentice member in good standing of the CPGA or any replacement or successor organization (including Monaghan and the Professional's Pro Shop Manager, if applicable);
- (o) **“Default”** is defined in Section 11.1;
- (p) **“determined by arbitration”** is defined in Section 12.2(d);
- (q) **“Driving Range”** means the driving range for the Golf Course as shown on Schedule A;
- (r) **“Driving Range Equipment”** means all equipment owned by the Professional or Monaghan used in connection with the operation of the Driving Range;
- (s) **“Driving Range Commission”** is defined in Section 4.1(b);
- (t) **“Effective Date”** means the effective date of this Contract, being January 1, 2019;
- (u) **“Exclusions”** means the exclusions from Gross Revenue listed at subparagraphs 1.1(x)(iii)-(ix);
- (v) **“Golf Course”** means the Fraserview Golf Course, located at 7800 Vivian Drive, Vancouver, British Columbia, V5S 2V8, and except where the context otherwise requires, expressly includes the Driving Range, Pro Shop, Short Game Practice Area, Chipping and Putting Greens and Cart Storage Area;
- (w) **“Green Fee”** means the set fee users of the Golf Course must pay in order to gain access to the Golf Course for golf play;
- (x) **“Gross Revenue”** means the gross amount received by the Professional and/or Monaghan from all activity, or where applicable, from one or more specified activities, pursuant to this Contract, arising directly or indirectly from the Golf Course, including, without duplication:
 - (i) gross revenue from all sources related to such activity(ies), and for greater certainty, including revenues from Green Fees, advance booking fees, the Driving Range, Merchandise, Rental Equipment and Lessons, net of applicable discounts, promotions or other ‘free portion’ of bona fide sales, public relations or promotional programs and refunds to patrons; and
 - (ii) the fair market value of all goods and services received by the Professional or Monaghan from any third party in exchange for or by way of barter from the provision of goods and services by the Professional or Monaghan related to such activity(ies);

Thm

- but excluding:
- (iii) grants, gratuities and/or donations;
 - (iv) all sums collected and paid out for any direct retail sales tax imposed by any government authority, including GST and PST;
 - (v) tournament credits;
 - (vi) Merchandise coupons and/or Pro Shop gift cards;
 - (vii) payments received from patrons for damage to Rental Equipment;
 - (viii) all sums received in connection with the sale or disposal of Personal Property; and
 - (ix) proceeds of insurance in reimbursement of any losses, damages or claims suffered by the Professional, except for reimbursement for loss of revenue;
- (y) “**Lessons**” means golf instruction, consultation, coaching and/or lessons for all ages and levels for both boys and girls and men and women from beginner to advanced and for both private individuals and groups, including by way of example, a full junior golf program;
- (z) “**Licence**” means the licence granted by the Board to the Professional pursuant to Schedule E for the purpose of using and operating the Pro Shop, Driving Range, Cart Storage Area, Short Game Practice Area and the Chipping and Putting Greens;
- (aa) “**Licence Fee**” is defined in Section 4.3;
- (bb) “**Merchandise**” means all of the goods, wares and/or stock of the Professional and/or Monaghan located from time to time or at any time on the Golf Course, which are intended for retail sale to the public at the Pro Shop, the Driving Range or elsewhere on the Golf Course;
- (cc) “**Option to Purchase**” means the option to purchase the Personal Property contemplated by Schedule D - *Option to Purchase Golf Course Personal Property*;
- (dd) “**Permitted Creditor**” means a financial institution or other legitimate creditor of the Professional or Monaghan who deals at arm’s length from the Professional or Monaghan, respectively, and has either delivered Personal Property to the Golf Course or has extended credit to the Professional and/or Monaghan specifically for the purposes of financing the Professional’s operations and activities at the Golf Course, but specifically excludes creditors who are affiliated with or related to the Professional or Monaghan in any way or have extended credit for

personal, non-business purchases or liabilities of the Professional or Monaghan;

- (ee) **“Permitted Encumbrance”** means a security interest (as that term is defined in the *Personal Property Security Act* (British Columbia)) in favour of a Permitted Creditor;
- (ff) **“Personal Property”** means the Merchandise, Rental Equipment, Driving Range Equipment and retail display fixtures;
- (gg) **“POS System”** means the point of sale/automated advance reservation system and other related systems (eg. Moneris and ANET);
- (hh) **“Prime Rate”** means, at any time, the per annum rate of interest published by the main branch in the City of Vancouver of The Bank of Montreal, or its successor at such time, as its reference rate for setting rates of interest on loans of Canadian dollars to customers in Canada and referred to by such bank as its “prime rate”, provided however that if such bank publishes more than one such reference rate at any time, the Prime Rate shall be the highest thereof, and provided further that, if a court holds that this definition of Prime Rate is vague, uncertain or otherwise defective then the Prime Rate shall be three (3%) percent greater than the per annum rate of interest established by the Bank of Canada as the rate payable on overnight loans by Schedule I Canadian Chartered Banks;
- (ii) **“Procurement Policy”** means the Board’s Procurement Policy approved by the Board on April 19, 2010;
- (jj) **“Professional’s Share of Gross Revenue”** means the aggregate Gross Revenue generated from the Rental Equipment, Merchandise and Lessons;
- (kk) **“Pro Shop”** means the pro shop for the Golf Course, in which the Professional sells Merchandise, collects Green Fees and performs other Services pursuant to this Contract, as generally shown on Schedule A as “Pro Shop”;
- (ll) **“Purchased Personal Property”** means the Personal Property which the Board has notified the Professional that it intends to purchase pursuant to the Option to Purchase;
- (mm) **“Rental Equipment”** means any and all equipment of the Professional and/or Monaghan which may be located at any time at the Golf Course, which is in the nature of power golf carts, pull carts, golf clubs and the like, which members of the public may rent from the Professional to use on the Golf Course;
- (nn) **“Service Fee”** is defined in Section 4.1(a);

- (oo) “**Services**” means the services to be supplied and performed by the Professional and/or Monaghan pursuant to Article 3;
- (pp) “**Short Game Practice Area**” means the short game practice area for the Golf Course, as generally shown on Schedule A as “Practice Area”;
- (qq) “**Staff**” means any officer, director, employee, agent, contractor, sub-contractor, licensee, guest, invitee or visitor of the Professional in or about the Golf Course in connection with any matter governed by this Contract;
- (rr) “**Term**” means the term of this Contract, as set out in Section 2.1;
- (ss) “**Unavoidable Delay**” means any circumstances beyond the reasonable control of the party trying to perform, and includes without limitation and by way of example only:
 - (i) strikes/lockouts, acts of God, terrorism, war or other strife or governmental action;
 - (ii) abnormal weather, being weather that is outside of the statistical norm for that time of year as measured over the last 10 years by Environment Canada; and
 - (iii) any event or situation in which the Board, in its sole discretion, decides that the Golf Course must be closed,but expressly excludes any and all delays caused by the Professional's or Monaghan's lack of financial resources or insolvency, strikes, lockouts or labour affiliations of the Professional's employees, or governmental action taken in the enforcement of law specifically against the Professional or Monaghan;
- (tt) “**WCB OH&S Regulation**” means the *Workers Compensation Act* (British Columbia), including without limitation, the Occupational Health & Safety Regulation (British Columbia Regulation 296/97, as amended by British Columbia Regulation 185/9).

1.2 Interpretation.

- (a) Sections and headings are for convenient reference, and are not to affect the meanings of any provisions.
- (b) Use of the singular or masculine includes the plural, feminine or body corporate, and vice versa.
- (c) The words “include” and “including” are to be construed as meaning “including without limitation”.
- (d) Any reference to a statute or policy is to the statute or policy and its respective regulations or guidelines in force on the Contract Date and to

subsequent amendments to or replacements of the statute, policy, regulations or guidelines.

1.3 Schedules. The following schedules are now deemed to form an integral part of this Contract, whether or not actually attached to this Contract at the time of signing:

Schedule A - Plans of Driving Range, Short Game Practice Area, Chipping and Putting Greens, Pro Shop and Ball & Cart Storage Areas

Schedule B - Customer Service Duties

Schedule C - Insurance/Bonding/WCB Requirements

Schedule D - Option to Purchase Golf Course Personal Property

Schedule E - Grant of Licence

ARTICLE 2 TERM AND OPTIONS TO RENEW

2.1 Term. The Term of this Contract will be three (3) years, commencing on the Effective Date and expiring on December 31, 2021.

2.2 First Option to Renew. If:

- (a) the Professional and Monaghan are not in default of this Contract;
- (b) the Board determines, in its sole discretion, that the Professional and Monaghan have both satisfactorily discharged their respective obligations hereunder; and
- (c) the Professional and Monaghan have given the Board written notice of their desire to renew this Contract no later than September 1, 2021 and no sooner than June 1, 2021,

then the Board will grant a renewal of this Contract upon the expiration of the Term for a period of one year starting January 1, 2022 and expiring on December 31, 2022 (the "First Renewal Term"), on the same terms and conditions as set out in this Contract, except that the Licence Fee for the First Renewal Term will be a percentage of the Professional's Share of Gross Revenue to be mutually agreed upon based on prevailing market factors and rates, provided that such percentage will not be less than the percentage payable in the immediately preceding year. If an agreement is not reached by the commencement of the First Renewal Term, the percentage will be determined by arbitration.

2.3 Second Option to Renew. If:

- (a) the Professional and Monaghan are not in default of this Contract;

- (b) the Board determines, in its sole discretion, that the Professional and Monaghan have both satisfactorily discharged their respective obligations hereunder; and
- (c) the Professional and Monaghan have given the Board written notice of their desire to renew this Contract no later than September 1, 2022 and no sooner than June 1, 2022,

then the Board will grant a renewal of this Contract upon the expiration of the First Renewal Term for a period of one year starting January 1, 2023 and expiring on December 31, 2023 (the "Second Renewal Term"), on the same terms and conditions as set out in this Contract, except that the Licence Fee for the Second Renewal Term will be a percentage of the Professional's Share of Gross Revenue to be mutually agreed upon based on prevailing market factors and rates, provided that such percentage will not be less than the percentage payable in the immediately preceding year. If an agreement is not reached by the commencement of the Second Renewal Term, the percentage will be determined by arbitration.

ARTICLE 3 SERVICES TO BE PROVIDED BY PROFESSIONAL

3.1 Professional to Perform Services. The Professional now agrees to provide the Services for the Golf Course according to the terms of this Contract, and Monaghan agrees to cause it to do so.

3.2 General Duties. The Professional will, at the Professional's sole risk and expense, and will cause its Staff, as applicable, to (except where otherwise expressly stated in this Contract):

- (a) ensure that:
 - (i) all transactions are diligently, completely and correctly processed in the POS System (and any related systems);
 - (ii) all monies processed through the POS System (other than payments made online through the Board's internet based payment collection system) are collected on behalf of the Board;
 - (iii) all cash and other valuables are secured at all times;
 - (iv) bank deposits for all amounts collected, including overages, are prepared to the account of the Board, at such frequency as required by the Board for negotiation by it; and
 - (v) daily reports are provided, in a form acceptable to the Board, on all aspects of revenue and attendance;
- (b) manage and supervise the Golf Course and carry out the Professional's duties according to the terms of this Contract, to the standards of comparable golf courses, on a full-time basis, and faithfully, competently, and diligently;

- (c) comply with the standards accepted by the CPGA in respect of golf professionals;
- (d) ensure that its principal, Monaghan, maintains his status as a Class A or equivalent member in good standing of the CPGA or replacement or successor organization;
- (e) not engage in any other businesses or activities that will conflict with the Professional's duties under this Contract, and disclose to the Board any activities of the Professional or Monaghan that may have the potential to be construed as conflicting with the Professional's or Monaghan's duties under this Contract, and will otherwise comply with the Professional's legal obligations of good faith as a fiduciary agent of the Board;
- (f) comply promptly with all policies regarding the Golf Course that the Board or the City may issue from time to time, with all rules, procedures or directives the Board may issue from time to time, and with all orders the Board may give the Professional from time to time including, without limitation, and by way of example only:
 - (i) the City's Corporate Cash Handling Procedures Manual;
 - (ii) all business rules pertaining to the administration of transactions through a POS System;
 - (iii) all rules governing the use of the Golf Course by Board employees (which, for greater certainty, means that Staff must abide by the same rules as the Board's employees with respect to play on the Golf Course for their own enjoyment);
 - (iv) orders regarding the provision of Services during the operational hours of the Golf Course; and
 - (v) orders regarding the maintenance of the Board's safety standards and practices;
- (g) comply promptly with all bylaws of the City that, from time to time, apply to the rights or duties of the Professional under this Contract, or to any businesses or activities the Professional conducts under this Contract including, without limitation, obtaining and renewing all permits and licences necessary to operate the Driving Range, Pro Shop, Cart Storage Area, Short Game Practice Area and Chipping and Putting Greens;
- (h) report to the Board, at the Board's Designated Representative's request from time to time, on the management and supervision of the Golf Course, Driving Range and the Professional's other duties under this Contract;

GOLF PROFESSIONAL SERVICES CONTRACT - Frasersview

- (i) maintain good public relations between the Professional and the public and the Staff and the public;
- (j) hire, train, supervise and maintain a full staff of employees including, without limitation, a CPGA professional, assistant professionals and starters to assist the Professional in performing the Professional's duties under this Contract to the extent that the Board considers necessary or desirable;
- (k) ensure that a full time starter is:
 - (i) physically standing at the first tee at all times when the Board makes the Golf Course open to the public during the period of May 1st to October 15th; and
 - (ii) available in the Pro Shop at all times when the Board makes the Golf Course open to the public during the period of October 16th to April 30th,

in order to supervise and ensure that each group of golfers is prompted to go to the first tee at the appropriate time and that each group tees off at the designated time;

- (l) be solely responsible for the Professional's Staff, including remitting Canada Pension Plan premiums, Worker's Compensation Board assessments, employment insurance premiums, medical and dental coverage payments, income tax, goods and services tax, provincial sales tax, and other remittances required by any government body;
- (m) be solely responsible for remitting all applicable taxes on any amounts payable to the Professional hereunder, including the Professional's Share of Gross Revenue, the Driving Range Commission and the Service Fee;
- (n) maintain a good credit rating with suppliers, manufacturers and other persons, firms and corporations with whom the Professional deals, so as to protect the good reputation of the Professional and of the Golf Course, the Board and City;
- (o) continuously provide good customer service to all members of the public who use or attempt to arrange for the use of the Golf Course, all as may be further set out in Schedule B - *Customer Service Duties*;
- (p) at all times, ensure that those parts of the Golf Course of which it has the care, use or control are kept in a neat, tidy and safe condition, subject to reasonable wear and tear, and will, subject to Schedule E - *Grant of Licence*, promptly repair, at its cost, any damage done to any part of the Golf Course as a result of, and to the extent that the same results from, the act or omission of the Professional, its Staff or anyone else for whom it is responsible in law, to at least the same standard and condition as existed prior to such damage; and

- (q) provide all of the Services to the satisfaction of the Board's Designated Representative, and comply with all instructions of the Board's Designated Representative regarding those Services.

3.3 **Golf Course.** Subject always to Schedule E - *Grant of Licence*, the Professional will, and will cause its Staff, as applicable, to:

- (a) supervise all golf tournaments authorized by the Board's Designated Representative and meet with the Board's Designated Representative to discuss tournaments and make recommendations on future tournament bookings;
- (b) subject to Section 3.4(b), provide Lessons within the Short Game Practice Area, Chipping and Putting Greens and Driving Range. The Professional will not, however, be entitled to provide Lessons elsewhere on the Golf Course without the prior written consent of the Board's Designated Representative, which consent may be arbitrarily withheld. All Lessons provided by the Professional will be provided to the same standards, or higher, as those provided by other golf professionals in British Columbia who are members of the CPGA, and at rates acceptable to the Board's Designated Representative and the CPGA in British Columbia;
- (c) ensure full, proper and co-ordinated use of the Golf Course, including by way of example only, the following:
 - (i) work in consultation with the Board's Designated Representative to establish and maintain an adequate system of starting times;
 - (ii) ensure that the Green Fees charged are those fees determined by the Board from time to time;
 - (iii) use reasonable efforts to organize, supervise and control play on the Golf Course to ensure the most orderly, progressive, safe and effective use of the Golf Course;
 - (iv) use reasonable efforts to supervise the conduct of all persons on the Golf Course;
 - (v) use reasonable efforts to ensure that no person is permitted to play the Golf Course without being in possession of a valid green fee ticket (or equivalent), except for Board authorized play required to ascertain playing conditions and course maintenance, repair and improvement requirements;
 - (vi) ensure that Monaghan, another CPGA Certified Employee of the Professional, or the Professional's Pro Shop manager or Asst. Manager is on location at the Golf Course at all times during which the Board makes the Golf Course open to the public;

- (vii) ensure that the Pro Shop and the Driving Range are open to the public from dawn until dusk on each and every day that the Board makes the Golf Course open to the public;
- (d) train its Staff sufficiently for them to operate the designated POS System(s);
- (e) appropriately monitor the POS System, and immediately report any malfunction of that system to the Board's Designated Representative and train its Staff sufficiently to take appropriate remedial measures by contacting and following the appropriate Board supplied resource if the system fails, which will include immediately implementing alternate (manual or other) measures to minimize any interruption to the normal operations of the Golf Course caused by any such malfunction;
- (f) be responsible for and supervise the rental and use of power carts and pull carts, except that the greenskeeper or Board's Designated Representative may direct the removal from the Golf Course of any or all such carts or limit the number of such carts that may be in use on the Golf Course at any particular time or from time to time if the greenskeeper or Board's Designated Representative, acting reasonably, and in consultation with the Professional, anticipates that the unrestricted use of such carts may damage the Golf Course;
- (g) co-operate and work closely with all Golf Course managers, greenskeepers and Board or City employees involved in the administration of Golf Course operations;
- (h) supply free of charge to each player using the Golf Course, a score card and pencil (it being understood that the Board will supply the score cards and pencils to the Professional, at the Board's expense);
- (i) not post any signs without the Board's prior written approval, and not interfere with any signs that may be posted by the Board, which signs may, at the Board's discretion, set out the hours of operation of the Pro Shop and the Driving Range, as well as such other information as the Board may reasonably require to be posted;
- (j) not place, replace, install or bring onto the Golf Course any type of golf equipment, facility or apparatus of any type without the prior written consent of the Board's Designated Representative except for:
 - (i) Rental Equipment;
 - (ii) Driving Range Equipment; and
 - (iii) Merchandise.

3.4 Driving Range, Short Game Practice Area and Chipping and Putting Greens.
Subject always to Schedule E - *Grant of Licence*, the Professional:

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- (a) will supervise and operate the Driving Range including ball picking, ball washing, operation of ball dispensers and general cleaning;
- (b) may give Lessons:
 - (i) on the Driving Range, but at no time may the Professional use more than 8 covered stalls simultaneously for that purpose;
 - (ii) on the Short Game Practice Area, and may exclude persons other than paying golf students from the Short Game Practice Area during such Lessons, if exclusive use of the Short Game Practice Area is reasonably necessary for any such Lesson, and if the Professional has received the prior written consent of the Board, which consent will not be unreasonably withheld; and/or
 - (iii) on the Chipping and Putting Greens, but only in common with the other patrons of the Golf Course,

but for further certainty, may not give Lessons anywhere else on the Golf Course without the prior written consent of the Board, which consent may be arbitrarily withheld;

- (c) may appoint assistants to help the Professional give such Lessons and to operate the Driving Range;
- (d) will provide the equipment necessary for giving such Lessons and other equipment designated for the Professional's business;
- (e) will provide all equipment necessary for the operation of the Driving Range including all golf balls, tokens, mats, range yardage markers, ball baskets, ball storage containers, tees, ball picker, vehicle to tow the ball picker, gasoline for the ball picker, and other equipment necessary for ball picking, ball washing, ball and token dispensing and general cleaning, and will repair, maintain and replace that equipment, as a prudent owner of such equipment would do and as the Board's Designated Representative may reasonably require from time to time having regard to comparable standards of repair, maintenance and replacement at comparable golf courses and driving ranges;
- (f) will not install any equipment, machinery or signs on the Driving Range, Short Game Practice Area or Chipping and Putting Greens, except if the Board's Designated Representative gives prior written consent;
- (g) will sell golf ball rentals according to the following conditions:
 - (i) except where expressly authorized by the Board, enter all transactions regarding golf ball rentals concurrently in the POS System and in the applicable token/ticket delivery system (eg. 'Range Servant'), such that no tokens, tickets (or equivalent) are issued without the transaction having been entered in the POS System;

- (ii) maintain meaningful, auditable records/reports of both aforementioned systems;
- (h) will maintain the ball dispensing machines and equipment and permit the same to be monitored at any time and from time to time, at the Board's sole discretion, by the Board's Designated Representative; and
- (i) will comply with the Board's requirements regarding the sale of, record keeping for, reporting on, control of and remittance of proceedings from, golf ball rentals, as such requirements may be revised by the Board from time to time.

3.5 Pro Shop. Subject always to Schedule E - *Grant of Licence*, the Professional will:

- (a) continuously staff the Pro Shop with at least two qualified employees of the Professional, all of whom must be bonded in accordance with the requirements set out in Schedule C, Section C3.0, and at least one of whom must have management experience, and in such a manner as to provide good quality customer service to the public, including the management of the Pro Shop Staff so as to guarantee that at least two of the Professional's employees are physically and continuously present in the Pro Shop at all times during the months of March through October, inclusive, except during the first hour after opening and the last hour before closing, during which excepted months and times at least one such employee must be present;
- (b) manage, operate and maintain the Pro Shop, keeping it well stocked and equipped at all times with Merchandise to a standard in keeping with current industry standards and the reputation of the Golf Course, and the Professional will pay all expenses arising out of or in connection with the management, operation and maintenance of the Pro Shop except to the extent that this Contract otherwise expressly stipulates;
- (c) determine, from time to time, the fees and other charges for use of the Rental Equipment including the rental rates for golf clubs, golf carts and push carts, at reasonably competitive commercial rates and subject to the Board's Designated Representative's prior written approval;
- (d) maintain the Pro Shop in a clean and attractive condition, and according to such directives as the Board's Designated Representative may issue from time to time, including without limitation and by way of example only:
 - (i) keeping all windows, carpets, counters and other surfaces clean; and
 - (ii) supplying and replacing all light bulbs, it being understood that the Board's staff will assist in changing light bulbs that require the use of a ladder by supplying the use of a ladder and staff to stabilize the ladder for the Professional's Staff;

- (e) be responsible for any fines for false alarms, and alarm response call charges respecting the Pro Shop and Cart Storage Area;
- (f) acquire and provide to the Pro Shop such additional stock, including golf equipment and accessories for sale and rent as the prudent operator of a similar shop would do, or as the Board's Designated Representative may reasonably consider necessary or desirable from time to time;
- (g) make available for rental a minimum of 40 pull carts, each of which will be in good working order and presentable condition at all times;
- (h) make available for rental an appropriate supply of rental golf clubs to meet the needs of the public, all of which will be in good working order and presentable condition at all times;
- (i) make available for rental a minimum of 20 power carts, each of which will at all times be in good working order and presentable condition, and no older than 7 years;
- (j) not renovate or alter the Pro Shop or any other improvements on the Golf Course and Driving Range, except if the Board has given prior written consent; and
- (k) provide its own cash float and maintain a minimum float balance.

ARTICLE 4 FINANCIAL ARRANGEMENT

4.1 Compensation for Services. In consideration for the Services to be provided by the Professional, the Board will pay the Professional:

- (a) a flat fee (the "Service Fee") for the Services of **s.21(1)** plus applicable taxes for each calendar year of the Term, comprised of a retainer of **s.21(1)** plus a starter fee of **s.21(1)**. The Service Fee will be payable by the Board in equal monthly instalments of **s.21(1)** plus applicable taxes; and
- (b) **s.21(1)**

4.2 Gross Revenue. The Gross Revenue will be apportioned as follows:

- (a) the Professional will be entitled to the Professional's Share of Gross Revenue less any deductions, which will be repaid by the Board to the Professional, all in accordance with Section 4.4;
- (b) all other Gross Revenue will be the exclusive property of the Board, and the Professional will have no claim or entitlement thereto.

4.3 Licence Fee and Other Charges. Subject to the following paragraph, the Professional will pay to the Board a fee (the "Licence Fee") plus applicable taxes, for the rights granted pursuant to the Licence, in the amount of s.21(1)

Where the Professional has rented power golf cart(s) additional to the Professional's normal inventory of power carts specifically for a particular tournament, the direct out-of-pocket cost to the Professional (as evidenced by the original third party invoices submitted to the Board) will be deducted from the Licence Fee.

The Professional will also pay to the Board, plus any applicable taxes, a percentage (currently s.21(1) subject to review and adjustment by the Board on an annual basis to coincide with fees set by the City's Treasury Services Department) of the Professional's Share of Gross Revenue and the Exclusions tendered using payment cards, on account of bank charges levied by card issuers such as, for example, Moneris (the "Bank Recovery Fee").

The Licence Fee and the Bank Recovery Fee will be paid by way of deduction from the Professional's Share of Gross Revenue, as set out in Section 4.4.

4.4 Payment to Professional. The Board will review the Professional's revenue reporting and cash reconciliations provided pursuant to Section 3.2(a) at regular intervals and will determine the Professional's Share of Gross Revenue, the Licence Fee, the Bank Recovery Fee and the Driving Range Commission for the related period. The Board will pay the Professional, subject to applicable taxes:

- (a) the Professional's Share of Gross Revenue and the related amount of taxes collected by the Professional;
- (b) s.21(1)
- (c) s.21(1)
and
- (d) any overage in monies collected at the Pro Shop;

less:

- (e) the Licence Fee (adjusted for any deductions as contemplated by Section 4.3);
- (f) the Bank Recovery Fee; and
- (g) any shortage in monies that should have been collected at the Pro Shop,

within a reasonable period of time, and will make reasonable efforts to pay such amount to the Professional at a minimum once every 2 weeks, except during City holiday closure periods.

The amount of the Professional's Share of Gross Revenue paid is subject to the amount of funds deposited and received in the Board's bank account, meaning that over deposits will be paid out and shortages, including deposits of counterfeit money, will be recovered in the payment following discovery of the discrepancy.

For overages and shortages in monies collected at the Pro Shop, any net overages above shortages that have been paid/deducted over the course of the calendar year will be recovered by the Board in the last payment related to the calendar year's revenues.

ARTICLE 5 BOARD'S ROLE, RIGHTS AND RESPONSIBILITIES

5.1 Golf Course Fees. The Board will determine, and will consult with the Professional from time to time regarding the amount of the Green Fees and other charges for golf play on the Golf Course for all categories of golf, and for golf ball rentals at the Driving Range. The Board reserves the right to decide on the final fee structure for the Golf Course and Driving Range.

5.2 Right to Use Golf Course for Board Objectives. The Board reserves the right to utilize portions of the Golf Course from time to time for Board or Board-affiliated programs or promotions that support the objectives of the Board (eg. diversity, inclusivity, accessibility and growing the game), and the Professional will provide all equipment reasonably required to facilitate such initiatives, PROVIDED that the Board will provide the Professional 30 days' notice of any such program or promotion and will take reasonable steps to lessen any adverse impacts to the Professional. For greater certainty, the Gross Revenue will be net of the 'free' portion of such programs or promotions, and the Professional will not be compensated for "lost revenue" as a result of any such programs or promotions.

5.3 Driving Range, Cart Storage Area, Short Game Practice Area and Chipping and Putting Greens. Subject always to Schedule E - *Grant of Licence*, the Board will:

- (a) at its sole cost and expense, repair and maintain, reasonable wear and tear excepted, the Driving Range structure, including fences, poles and nets, and maintain the grassed area, in a condition suitable for its use as a driving range, and make the Driving Range available during the Term to the Professional to the extent reasonably necessary for the provision of the Services;
- (b) repair and maintain the Cart Storage Area, including the building and pavement, in a condition suitable for its use as a power cart storage area, except for reasonable wear and tear, and make the Cart Storage Area available during the Term to the Professional to the extent reasonably necessary for the provision of the Services;
- (c) repair and maintain, reasonable wear and tear excepted, the soil and grass of the Short Game Practice Area and the Chipping and Putting Greens, and make such areas available during the Term to the

Professional to the extent reasonably necessary for the provision of the Services;

- (d) supply heat, light, water and power to the Driving Range;
- (e) supply day to day electrical power for the Cart Storage Area (provided that any electrical upgrades will be the Professional's responsibility);
- (f) provide the POS System and related supplies for the operation of the Driving Range, such as, for example only, POS System hardware, computer hard drive and monitor, printer, stationery, receipt rolls and other related devices for the operation of the POS System, and will pay all system repair, maintenance and replacement costs; and
- (g) provide telephone or other data transmission lines to link up the POS System and the card reader as the Board's Designated Representative considers reasonably necessary, and be responsible for line rental, line repairs and the cost of card reader equipment.

5.4 Pro Shop. Subject always to Schedule E - *Grant of Licence*, the Board will:

- (a) provide, in the Golf Course clubhouse or elsewhere on the Golf Course, such space for the Pro Shop (including office space within the Pro Shop) as the Board's Designated Representative considers necessary or desirable from time to time, and provide capital repair and maintenance to such space, subject to the Professional's obligations under Section 3.5, as the Board's Designated Representative, acting reasonably, considers necessary or desirable from time to time;
- (b) supply, at its cost, such heat, light, electricity and telephone services (maximum 2 lines, local calls only) to the Pro Shop as the Board's Designated Representative considers necessary or desirable from time to time, and will be responsible for the repair and maintenance of those services;
- (c) provide such an alarm system and anti-theft window/door hardware and other anti-theft related equipment for the Pro Shop as the Board's Designated Representative considers necessary, and will be responsible for the repair and maintenance of that alarm system;
- (d) provide all equipment and supplies, such as, for example only, POS System hardware, computer hard drive and monitor, printer, stationery, receipt rolls, and other related devices for the operation of the POS System, and will pay all system repair, maintenance and replacement costs; and
- (e) provide the Professional with adequate training to enable it to train its Staff sufficiently for them to operate the POS System. It is understood that only agents authorized by the Board's Designated Representative will have the higher level cash register keys that will enable the reading of special sales reports and price changing.

**ARTICLE 6
FINANCIAL REPORTING BY PROFESSIONAL**

6.1 Records and Financial Statements. The Professional will:

- (a) maintain reasonable and proper records (including manual records if and whenever the Board's POS System malfunctions) concerning the use and operation of the Golf Course, including statistical data concerning the numbers and types of users and customer behaviour and needs, as well as revenue data including a full inventory of Personal Property, books of account, and documents and receipts, all of which records will be in form and substance satisfactory to the Board's Designated Representative, and the Professional will make such records available for inspection by the Board's Designated Representative at such times as the Board's Designated Representative may require, and will promptly provide copies of same upon request;
- (b) reconcile all shortages and overages on a daily, weekly, monthly and annual basis, and upon request, provide copies of reconciliation reports to the Board's Designated Representative, which reports must be in form and substance satisfactory to the Board's Designated Representative;
- (c) allow the Board, at its cost, subject to paragraph (d), to audit or cause to be audited, the books, records, reports and accounts of the Professional with respect to all aspects of use and operation of the Golf Course;
- (d) promptly pay the amount determined by the Board's audit to be owing, with interest at the Prime Rate plus 10% per annum, as calculated by the Board or its auditor for the period between the date such payment should have been made to the date of payment to the Board, where the Board's audit has determined that the Professional has reported less Gross Revenue than actually received or has remitted less money than the Professional is obligated to remit or has received a greater Professional's Share of Gross Revenue or Driving Range Commission than the Professional is entitled to receive under this Contract; PROVIDED that if, in carrying out its audit, the Board concludes that there are insufficient records to determine the actual amount owing, the Board or its auditor will provide its best, reasonable estimate of the amount owing and that will be conclusively deemed to be the actual amount owing, and PROVIDED further that the Professional will pay the Board all of the costs of such audit whenever the audit discloses such an under-reporting, under-remittance or over-payment;
- (e) provide audited financial statements, with supporting schedules as requested by the Board, within a reasonable period of time if so requested by the Board's Designated Representative; and
- (f) retain all such records, information and statements during the Term and for 7 years after the expiry or earlier termination of the Term, and,

after the expiry or earlier termination of the Term, will deliver such records, information and statements to the Board's Designated Representative within 7 calendar days of any request for the same by the Board's Designated Representative.

ARTICLE 7 INSURANCE, BONDING, WCB, NATURE OF RELATIONSHIP

7.1 Insurance/Bonding/WCB. The Professional will comply at all times with the insurance, bonding and Workers Compensation Board provisions set out in Schedule C - *Insurance/Bonding/WCB Requirements*. The insurance/bonding/WCB requirements set out in this Contract do not limit any insurance/ bonding/WCB requirements otherwise imposed on the Professional or the Staff by any applicable laws. It will be the sole responsibility of the Professional to determine what additional insurance/bonding/WCB coverage, if any, is necessary or advisable for the Professional's or its Staffs' own protection and/or to fulfill the Professional's obligations under this Contract. All insurance/bonding/ WCB will be provided and maintained by the Professional at the Professional's own expense.

7.2 Relationship. The Professional acknowledges and agrees that none of its Staff is an employee of the Board. Accordingly, the Staff are not entitled to any employment benefits of any kind from the Board, and the Board is under no obligation to make remittances on behalf of, or on account of, the Professional (or any of the Professional's employees) to Canada Revenue Agency under the *Income Tax Act* (Canada) in respect of Canadian Pension Plan or Employment Insurance. The Professional further acknowledges that benefits such as, by way of example only and without limitation, Medical Services Plan, extended health care plan, dental services plan, life insurance, retirement pension benefits, long term disability coverage, sick leave, Workers Compensation benefits, vacation pay, employee savings plan benefits or gratuity benefits, are expressly excluded from this Agreement and will not be provided by the Board to the Staff. The Professional further agrees that the Board is not responsible to make and will not make during the Term any Workers' Compensation Board remittances, *Excise Tax Act* (GST) remittances or any other statutory remittances required to be made by the Professional in respect of the payments received by the Professional under this Contract. The Professional now indemnifies the Board for any and all penalties, interest and arrears imposed on the Board in the event that the Professional breaches its obligations under this Contract to make all such remittances whether or not any court of law subsequently determines that the legal relationship between the Board and Professional is other than independent contractor. Upon request, the Professional will provide the Board with satisfactory evidence of compliance with all statutory remittance requirements.

ARTICLE 8 INDEMNITY

8.1 Indemnity. The Professional will indemnify and save harmless each of the Board and City, and their respective officials, officers, employees, contractors and agents (collectively, the "Board and City"), from and against all liabilities, suits, actions, causes of action, obligations, statutory or other proceedings, judgements, injunctions, arbitrations, investigations, demands, claims, losses, damages,

consequential damages, penalties, costs, and expenses, including legal expenses on a full indemnity basis, (collectively, "Losses") arising out of or in connection with any breach of the Professional in observing or performing the Professional's obligations under this Contract, any activities under the control or supervision of the Professional or its Staff for which the Professional is responsible under this Contract, any damage to property or injury or death to person on or about the Golf Course arising out of or in connection with the rights or duties of the Professional under this Contract, or any other matter or condition that would not have arisen or happened except for the existence of this Contract (including, for greater certainty, loss or theft by Staff), except to the extent any such Losses arise from any breach of the Board in observing or performing any of its obligations under this Contract. This indemnity will survive the expiry or earlier termination of the Term and this Contract.

For further certainty, but without in any way limiting the intentionally general scope of this indemnity and by way of example only, this indemnity will be interpreted and applied so as to obligate the Professional to indemnify the Board and City with respect to any lawsuits arising from any person injured by any errant golf balls hit by:

- (a) any golfer using the Driving Range; or
- (b) anyone using the Short Game Practice Area or Chipping and Putting Greens who is a customer, Staff or other contractor of the Professional while the Professional or the Staff are providing Lessons and present for supervision,

and will be further applied and interpreted so as to exempt and exclude from such indemnity any lawsuits arising from errant golf balls hit by any other persons or golfers using any other part of the Golf Course.

ARTICLE 9 ADVERTISING

9.1 Advertising. Under no circumstances may the Professional or its Staff:

- (a) communicate in any manner with the media with regard to the operation of the Golf Course, without the prior consent of the Board's Designated Representative;
- (b) advertise any of their goods or services with respect to the Golf Course, without the written prior consent of the Board's Designated Representative;
- (c) advertise on the Golf Course, on social media, or in print, in any manner whatsoever, any goods or services of the Professional or of any other person or entity, without the prior consent of the Board's Designated Representative; or
- (d) use any official marks, emblems, logos, badges, trade names, trademarks and/or domain names of the City, the Board and/or their respective affiliates, including, without limitation, the name "Fraserview Golf Course" or any variation thereof (collectively, the

“City Marks”), without the prior written consent of the Board’s Designated Representative, and shall not apply for or register any domain name or other proprietary or statutory rights for the City Marks or for any similar marks. The City Marks shall remain the exclusive property of the Board, and any use thereof by the Professional (subject always, as set forth above, to the prior consent and approval of the Board), shall enure exclusively to the benefit of the Board, and the Professional shall not contest the Board’s ownership of the City Marks, or oppose its actions to acquire, register or maintain its rights in the City Marks.

The Board will not involve the Professional, nor use the Professional’s name or business in any advertising or promotions, without the prior written consent of the Professional.

ARTICLE 10 ASSIGNMENT

10.1 Restrictions on Assignment by Professional and Monaghan. Despite any other term of this Contract, the Professional and Monaghan may not:

- (a) assign, transfer or otherwise dispose of any of their respective rights or obligations under this Contract or any interest in this Contract (except for the delegation of those duties which this Contract expressly contemplates will be delegated to the Professional’s Staff);
- (b) further to Section E.13 of Schedule E, sub-license or otherwise permit access to or use of the Driving Range, Pro Shop, Short Game Practice Area, Chipping and Putting Greens, Cart Storage Area or any part of any of them, or any other part of the Golf Course, for any purpose (except to provide access to the public for the purposes expressly contemplated by this Contract); or
- (c) conduct any commercial or other activities on the Golf Course except as this Contract specifically requires or permits;

without the prior written consent of the Board’s Designated Representative, which consent the Board’s Designated Representative may arbitrarily withhold.

ARTICLE 11 DEFAULT AND TERMINATION

11.1 Default by Professional or Monaghan. Subject to Section 11.2, default (a “Default”) will occur under this Contract if the Professional or Monaghan breaches any of its obligations under this Contract and the breach is not cured within 15 days after written notice from the Board specifying the nature of the breach.

11.2 Limited Extension for Non-Monetary Breaches. Despite Section 11.1, if the breach is not a breach of an obligation to pay money and is of a nature that:

- (a) with reasonable resources and diligence, would require more than 15 days to remedy, then the Professional or Monaghan, as applicable, will not be in Default if the Professional or Monaghan, as applicable, immediately after receiving notice of the breach, embarks on a diligent and continuous remedy of the breach; or
- (b) is not capable of being remedied (such as, by way of example only, a breach of an obligation not to disclose proprietary information) and the breach will not have a materially adverse effect on the Board, then the Professional will be in Default but the Board's remedies for such a Default will expressly exclude the right to cancel this Contract pursuant to Section 11.3(e).

For further certainty, paragraph (b) will not apply to any breach by the Professional of an obligation to provide financial information and under no circumstances (except an Unavoidable Delay) will a failure to provide such financial information be treated as a breach not capable of being remedied, even where the Professional has through its own acts or omissions put itself in a position where it cannot provide such information.

11.3 Default Remedies. If a Default occurs, the Board may, in any order or combination that it chooses, and without prejudice to all of its other rights and remedies both at law and in equity, do any one or more of the following:

- (a) demand payment of any amounts due and unpaid;
- (b) sue the Professional or Monaghan, as applicable, for the amount of money due;
- (c) take proceedings or any other legal steps to compel the Professional or Monaghan, as applicable, to comply with this Contract;
- (d) where the Professional or Monaghan, as applicable, is in breach of an obligation to properly perform work or carry out any other obligation in respect of this Contract, the Board may remedy the breach and the Professional will then promptly reimburse the Board's commercially reasonable costs of doing so plus 20% on account of the Board's associated administrative costs; and
- (e) subject to Section 11.2(b), cancel this Contract as further set out in Section 11.4.

11.4 Termination by Board for Cause. If:

- (a) the Professional or Monaghan is in Default (but expressly excluding the type of Default described in Section 11.2(b));
- (b) Monaghan becomes ill or incapacitated to the extent that, in the Board's Designated Representative's opinion, the Professional is or will be unable to observe or perform the Professional's obligations under this Contract for a continuous period of 30 days or any period which exceeds, in the aggregate, 60 days in any given 365 day period;

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- (c) the Professional or Monaghan becomes bankrupt or insolvent;
- (d) in the Board's Designated Representative's opinion, Monaghan exhibits dishonesty or conduct unbecoming a golf professional who is a member of the CPGA;
- (e) in the Board's Designated Representative's opinion, the Professional exhibits continuing inattention to, or neglect of, the Professional's obligations under this Contract; or
- (f) Monaghan is suspended by the CPGA,

the Board's Designated Representative may deliver notice to the Professional terminating this Contract, and such termination will take effect on the date the Professional is deemed to have received that notice. If Monaghan dies, this Contract will terminate as of the date of death. However, the Board's Designated Representative may discuss with Monaghan's executor/executrix and the Staff the possibility of a temporary arrangement with the Board to continue providing services similar to the Services until such time as the Board completes a new Request for Proposal process and retains a new golf professional to manage the Golf Course.

11.5 Termination Without Cause by Board or Professional With 1 Year Notice.

Either the Board or the Professional may deliver 1 year notice to the other terminating this Contract without cause, and such termination will take effect on the 365th day after the Professional or the Board, as the case may be, is deemed to have received that notice. Any notice given by the Board's Designated Representative will take effect as a notice given by the Board.

11.6 Termination Without Cause by Board With Fees in Lieu of Notice.

Despite Section 11.4 or 11.5, the Board may terminate this Contract without cause or prior notice on giving a written notice to such effect which notice will be effective immediately upon personal delivery of the notice to the Professional or the date such notice is deemed to be delivered, whichever is earlier, but in such a case, the Board will pay the Professional a sum equivalent to the out of pocket costs incurred by the Professional as a result of such early termination, up to a maximum of \$100,000, on or before the 30th day following the date upon which the Professional has provided to the Board sufficient supporting documentation. However, in no event will the Board's Designated Representative's breach of this Section 11.6 in paying the required amount when due, void or nullify the legal effect of the notice of immediate termination unless it is established by the arbitrator that the Board's Designated Representative was not acting in good faith. Any notice given by the Board's Designated Representative will take effect as a notice given by the Board.

11.7 Consequences of Termination or Expiry.

- (a) The Board may exercise its Option to Purchase by giving the Professional a written notice stating that it is exercising the Option to Purchase and specifying the Personal Property that the Board intends to purchase, as follows:

- (i) along with the notice required to be delivered pursuant to Section 11.4 or 11.6; or
 - (ii) six (6) months before the expiry of the notice period under Section 11.5; or
 - (iii) six (6) months before the expiry of the Term.
- (b) As of the effective date of termination under Section 11.4, 11.5 or 11.6, or expiry of the Term:
- (i) the Board will have no further obligation to pay any compensation under Section 4.1 to the Professional, nor will the Professional have any further obligation to pay any compensation under Section 4.3 to the Board, such amounts will be pro-rated to the termination or expiry date, the Board and Professional will settle their accounts promptly (and in any event within 30 calendar days), and, in doing so, the Board may deduct from any compensation it then owes to the Professional any money the Professional owes to the Board;
 - (ii) each party will pay any money it owes to the other party promptly, and in any event within 30 calendar days;
 - (iii) the Board will have a lien and charge on all Personal Property that is not Purchased Personal Property until the Professional has paid any money it owes to the Board (including without limitation any storage and administrative fee amounts payable pursuant to paragraph (v)), and if the Professional fails to pay that money to the Board, the Board may seize and sell the Personal Property that is not Purchased Personal Property to satisfy the debt;
 - (iv) the Professional will have no further right to provide the Services to the Board;
 - (v) subject to paragraph (iii), the Professional will promptly remove all of the Personal Property that is not Purchased Personal Property from the Golf Course as of the date of termination or expiry of the Term, along with all of its other personal property including equipment, supplies, furnishing and materials (but excluding any of the foregoing supplied by the Board and excluding any trade fixtures unless the Board's prior consent has first been obtained) and leave the Pro Shop and Cart Storage Area in a sanitary, neat, safe and empty condition. If the Professional fails to remove any of such personal property in accordance with the foregoing requirements, a storage and administrative fee will be payable by the Professional to the Board equal to 2% of the fair market value of such items for each calendar day that the Professional is in breach of the Professional's obligation to remove such items from the Golf

Course. The Board will have no obligation to release such items to the Professional until the applicable storage fee is paid in full, and if the Professional fails to remove the requisite items within 45 days after the termination or expiry date of the Contract, all of such remaining items then remaining on the Golf Course will become the absolute property of the Board without payment of compensation to the Professional, and the Professional will execute such documents and do such things as the Board may reasonably require to effect the transfer of title, risk and possession of such remaining items to the Board.

ARTICLE 12 ARBITRATION

12.1 Certain Remedies Independent of Arbitration Proceedings. Except for those disputes specifically referenced in Section 12.2(a) or elsewhere in this Contract, all disputes arising under this Contract will be determined by the courts of British Columbia in accordance with British Columbia law.

12.2 Arbitration Proceedings.

- (a) Any dispute as to the correctness of an audit conducted pursuant to Section 6.1(d) will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 12.2.
- (b) Any dispute as to the correctness of a chartered professional accountant's or other asset valuator's determination made pursuant to paragraph (f) of Section D.3 of Schedule D - Option to Purchase Golf Course Personal Property - will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 12.2.
- (c) Any dispute as to the calculation of the Board's costs pursuant to Section 11.3(d) will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 12.2.
- (d) In this Contract, "determined by arbitration" means arbitration conducted in accordance with the *Arbitration Act* (British Columbia), and the following procedures:
 - (i) only one arbitrator will be utilized, and the arbitrator must be a chartered professional accountant who is a member in good standing with the Organization of Chartered Professional Accountants of British Columbia or an accountant with a recognized accounting designation acceptable to the Board who is at arm's length to the Professional and the Board. The Board will select the arbitrator within 5 days of the notice to arbitrate and then provide the Professional with the selected arbitrator's name, place of business or employment, and reasonably detailed resume or outline of recent professional experience. The

Professional will then have 10 calendar days to review the information supplied by the Board and to confirm or dispute the Board's choice for arbitrator. Within 5 days of a request to do so, the arbitrator must disclose to the Professional all material information about his/her credentials, possible conflicts of interest and biases. If the Professional elects to contest the appointment, the Professional must make application to court seeking to remove the arbitrator on the basis of conflict of interest, bias or incompetence and each party will pay their own legal costs subject to any order as to costs made by the court;

- (ii) the arbitration will be conducted in the City of Vancouver;
- (iii) the cost of the arbitration and responsibility therefor will be as determined by the arbitrator, subject always to the specific terms of this Contract.

ARTICLE 13 UNAVOIDABLE DELAY

13.1 Unavoidable Delay. Subject as hereinafter provided, except for the performance of obligations to pay money, time periods for the Board's, the Professional's and Monaghan's performance under this Contract will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. Notwithstanding the foregoing, in the event of an Unavoidable Delay:

- (a) caused by a strike, lockout or other labour dispute involving the Board's employees and which results in the Golf Course being closed; or
- (b) other than the type referred to in paragraph (a) which results in the Golf Course being closed for more than 30 consecutive days, then from the 31st day of the closure until the re-opening of the Golf Course,

the Professional will be relieved of its obligations to provide the Services or the payments pursuant to Section 4.3 and the Board will be relieved of its obligations to pay the Service Fee and provide the Licence for the period of such closure.

ARTICLE 14 OVERHOLDING

14.1 Automatic Renewal. Where the Professional continues to provide and perform and the Board continues to accept Services pursuant to this Contract following the expiry of the Term (and the Professional has not exercised a right of renewal), then this Contract will be deemed to have been renewed on the same terms and conditions as before except that the Term will be deemed to be year to year, and may be cancelled by either party on 9 months' prior written notice.

**ARTICLE 15
MISCELLANEOUS**

15.1 Parties' Intention. The Professional, Monaghan and the Board acknowledge and agree that they will act in good faith in carrying out the spirit and intent of this Contract and will do all things and take all steps as may be reasonably required to give effect to their obligations under this Contract. For further certainty, where in this Contract the Board, Monaghan or the Professional is given a right to make a determination or to grant or withhold the consent or permission to anything, the Board, Monaghan or the Professional will act reasonably in doing so except that where the Board is expressly granted the right to make a determination in its "sole discretion" or "arbitrarily", the Board now reserves the right to act unreasonably and arbitrarily provided always that it acts in good faith.

15.2 Surviving Obligations. Neither the termination of the engagement nor the expiry of the Term will void or terminate any obligations of the Professional, Monaghan or the Board, which by their nature are intended to survive such termination or expiry.

15.3 Delegation of Authority. In addition to all rights and obligations expressly delegated by the Board under this Contract, the Board may further delegate all or any of its rights or obligations under this Contract to the General Manager of the Board or the Board's Designated Representative, provided that such delegation shall not relieve the Board of its obligations herein unless otherwise expressly stated.

15.4 Costs. The Professional will bear all the costs of observing or performing the Professional's and Monaghan's obligations and exercising their respective rights under this Contract, and the Board will bear all the costs of observing or performing its obligations and exercising its rights under this Contract, unless this Contract otherwise specifies.

15.5 Interest on Arrears. Whenever any amount payable under this Contract by either party is in arrears, such amount will bear interest at the Prime Rate plus 3% per annum calculated monthly, not in advance, from the date due until paid, except where expressly otherwise stipulated (such as in Section 6.1(d)).

15.6 Notice. Any notice, approval, request, or demand required or permitted under this Contract must be in writing, and the sender must deliver it by prepaid registered mail from any post office in British Columbia or by personal service:

- (a) In the case of a notice for the Board, addressed to:
City of Vancouver
c/o Board of Parks and Recreation
2099 Beach Avenue
Vancouver, British Columbia
V6J 1Z4

Attention: General Manager

with a copy to:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: Chief Purchasing Official

- (b) In the case of a notice for the Professional or Monaghan, addressed to:
Monaghan Golf Inc.
7800 Vivian Drive
Vancouver, British Columbia
V5S 2V8

Attention: Tom Monaghan

or to:

Michael Thomas Monaghan

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15.7 Continuing Effect. This Contract will enure to the benefit of and bind the Board and its successors and assigns and the Professional and Monaghan and their respective successors and permitted assigns.

15.8 Governing Laws. The laws of British Columbia will govern the interpretation and enforcement of this Contract, and each party hereto accepts the jurisdiction of the courts of British Columbia.

15.9 Joint and Several. The Professional and Monaghan shall be jointly and severally liable for all obligations of the Professional and Monaghan under this Contract.

15.10 Severability. If a court or arbitrator finds any provision of this Contract invalid, illegal or unenforceable, it will be severed from this Contract and the remainder of the Contract will be enforceable.

15.11 Time of the Essence. Time will be of the essence of this Contract, and if any party hereto expressly or impliedly waives that requirement, that party may re-instate it by delivering notice to the other.

15.12 Waiver. The fact that any party hereto waives a default is not to be construed to mean that that party waives any other default.

15.13 Amendments. No amendment to this Contract will have any effect unless it is in writing, and each party hereto has signed it.

15.14 Entire Agreement. This Contract represents the entire agreement between the parties hereto concerning the subject matter of this Contract, and there are no

GOLF PROFESSIONAL SERVICES CONTRACT - Fraserview

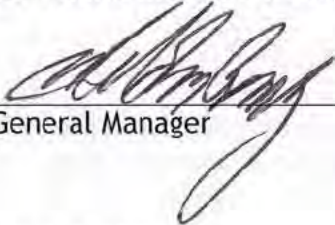
representations, warranties or agreements other than those expressed in this Contract.

15.15 No Derogation. Nothing expressly set out in or implied by this Contract will prejudice, abrogate or affect the rights and powers of the Board or the City in the exercise of its functions under any public or private statute, bylaw, order or regulation, all of which may be fully and effectively exercised as if the Board had not signed and delivered this Contract to the Professional and Monaghan.

To witness this Contract, each of the Board, the Professional and Monaghan have signed it as of the Contract Date.

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CITY OF VANCOUVER as represented by its
BOARD OF PARKS AND RECREATION

Per: 
General Manager

CITY OF VANCOUVER

Per: 
Chief Purchasing Official

MONAGHAN GOLF INC.

Per: 
Authorized Signatory

SIGNED, SEALED AND DELIVERED by
MICHAEL THOMAS MONAGHAN in
the presence of:


Signature

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GOLF PROFESSIONAL SERVICES CONTRACT - Fraserview

JOAN PROBERT

Name

MICHAEL THOMAS MONAGHAN

2099 BEACH AVE

Address

VANCOUVER, BC

SUPERVISOR, COMMERCIAL

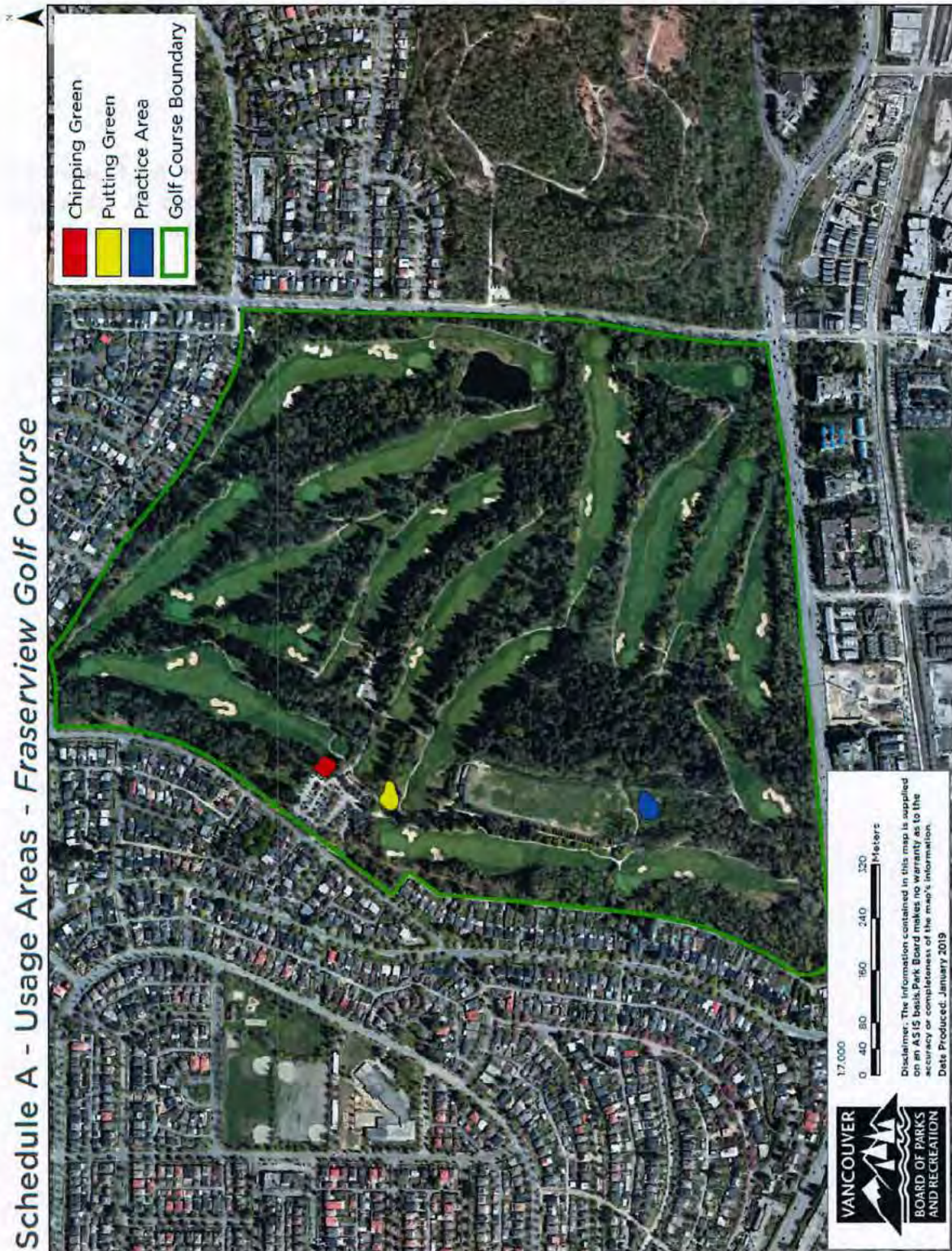
Occupation

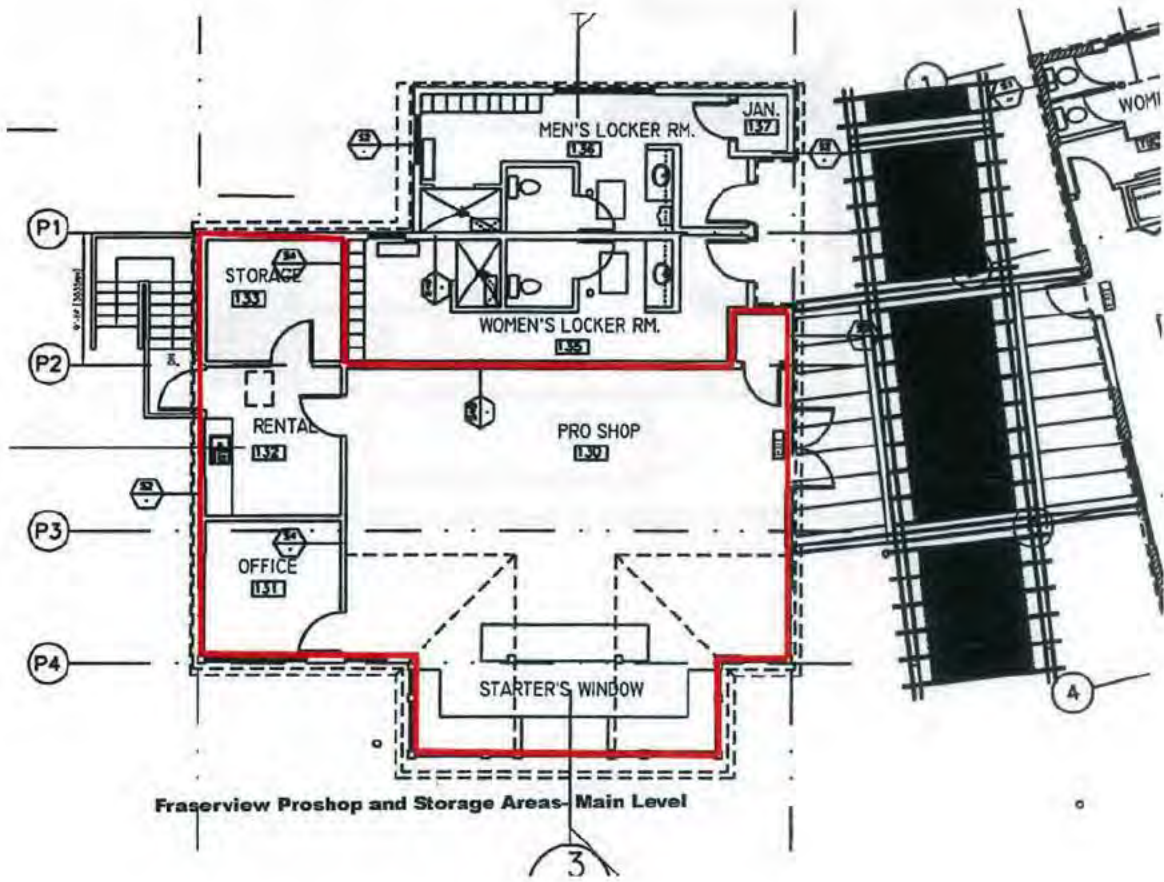
OPERATIONS, PARK BOARD

This is the signature page of the Golf Professional Services Contract for Fraserview Golf Course among the City of Vancouver as represented by its Board of Parks and Recreation, Monaghan Golf Inc. and Michael Thomas Monaghan dated January 1, 2019.

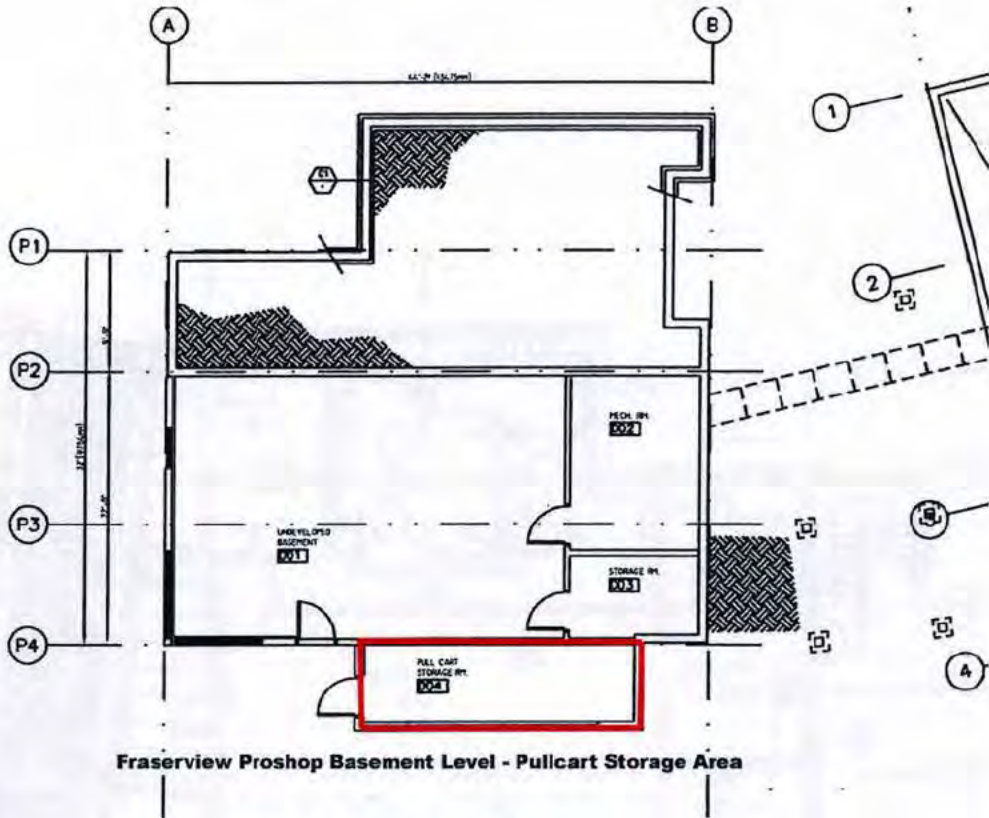
SCHEDULE A

PLANS OF DRIVING RANGE, SHORT GAME PRACTICE AREA, CHIPPING AND PUTTING GREENS, PRO SHOP AND BALL & CART STORAGE AREAS



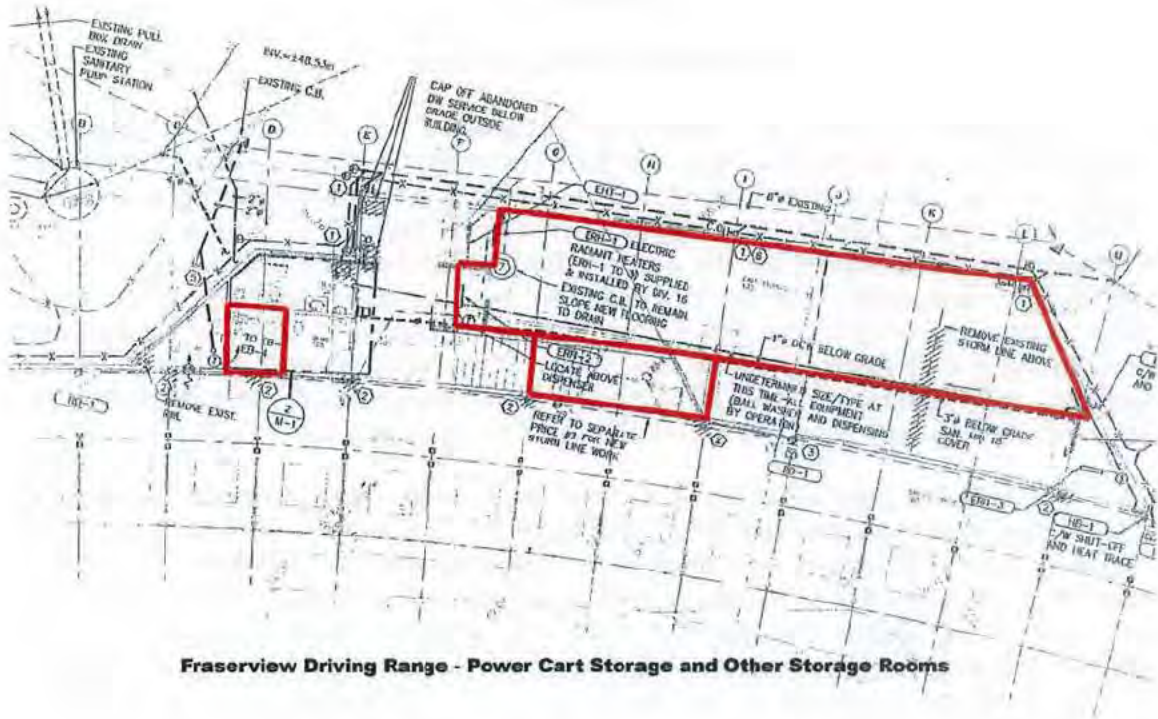


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Fraserview Proshop Basement Level - Pulcart Storage Area

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Fraserview Driving Range - Power Cart Storage and Other Storage Rooms

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SCHEDULE B

CUSTOMER SERVICE DUTIES

B.1 Customer Service & Feedback Programs. The Board's Designated Representative may during the Term conduct customer feedback evaluations through monthly and year end surveys, secret shopping programs and surveying through social media, newsletters, POS Systems and the Golf Course App. The criteria used in the surveying may be modified by the Board's Designated Representative from time to time, acting reasonably, and having regard to any increased standards of customer service within the industry for golf courses similar in caliber to the Golf Course. The Board's Designated Representative may during the Term provide customer service standards and expectations, and if so provided, the Professional will be expected to implement and deliver them as part of the Golf Course management team.

B.2 Professional Participation & Customer Service Commitment. The Board expects the Professional to actively participate in all customer service & feedback programs. The Professional will provide recommendations and feedback to enhance the service offering. The Professional will participate in bi-monthly team meetings as a part of the Golf Course management team. As required, the Professional will meet with the Board's Designated Representative to review results of surveying programs and discuss the areas, if any, of improvement which can be made to services offered by the Professional. The Professional will make all commercially reasonable efforts to implement the recommendations and improvements agreed upon with the Board's Designated Representative in a timely manner.

B.3 Annual Performance Review. The Board may at its option perform its own annual review of the Professional's Services, and within 10 calendar days of any request to do so, the Professional will meet with the Board's Designated Representative to review and discuss same, following which the parties will carry out the same procedure with respect to such review and meeting as is set out in Section B.2.

SCHEDULE C

INSURANCE/BONDING/WCB REQUIREMENTS

C1.0 General:

- C1.1 General Scope/Policy Limit Requirement - Without limiting any of its obligations or liabilities under this Contract, the Professional and Professional's Staff will obtain and continuously carry during the Term, the following insurance/bonding/WCB coverages with minimum limits of not less than those shown in the respective items set out below.
- C1.2 The Professional Solely Liable for Premiums/Deductibles - The Professional will pay all premiums and deductible costs for all insurance/bonding/WCB required to be effected under this Contract, provided always that under no circumstances does the payment of such premiums give the Professional any interest in the proceeds of such insurance/bonds or any control over such policies as they relate to the Board's interests.
- C1.3 Insurer Requirements - All policies/bonds must be written with companies licensed to do business in British Columbia with a financial rating of VIII or better and a policy holder's rating of A- or better in the latest edition of *A.M. Best Rating Guide on Property and Casualty Insurance Companies*, or otherwise acceptable to the Board's Director of Risk Management.
- C1.4 Director of Risk Management Approval Required - All bonds and insurance policies must be in a form acceptable to the Board's Director of Risk Management. Self-funded, policy fronting or other non-risk transfer insurance mechanisms are not permitted.
- C1.5 Insurer Notice Requirements - All insurance policies must provide the Board with 30 days' prior written notice of either an insurance policy cancellation or that the insurance be endorsed to reduce the limit of liability. Notice must identify the Contract title, number, policy holder, and be delivered in accordance with Section 15.6.
- C1.6 Waiver of Subrogation - All insurance policies where the insurer could under any circumstances have any claim by subrogation against the Board, City or their officers, officials, employees and agents, must contain a clause that waives the insurer's right of subrogation against the Board, the City and their respective officers, officials, employees and agents.
- C1.7 Board Requirements Not Exhaustive - The Professional and each of the Professional's Staff will provide at its own cost any additional insurance/bonding which it is required by any applicable laws to provide or which it considers necessary.
- C1.8 Insurance Requirements Independent of Other Covenants - Neither the providing of insurance or bonding by the Professional in accordance with these requirements nor the insolvency, bankruptcy or the failure of any insurance company to pay any subsequent claim will be held to relieve the Professional

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from any other provisions of this Contract with respect to the liability of the Professional or otherwise.

- C1.9 All Coverage Primary - The insurance and bonding coverage will be primary insurance as respects the Board and the City. Any insurance or self-insurance maintained by or on behalf of the Board, the City or their respective officers, officials, employees or agents will be excess of this insurance and will not contribute with it.
- C1.10 The Professional Duty of Good Faith - The Professional will properly disclose all risks in each insurance/bond application, ensure that the Professional does not violate or void any policy and will otherwise comply at all times with the requirements of the insurers, underwriters and sureties.
- C1.11 Board Remedy on Default If at any time the Professional fails to provide a bond, certificate of insurance or certified copies of all insurance policies as required in Section C2.1, the Board may (but is not obligated to or liable for the manner in which it does so), effect such insurance or bond on behalf of the Professional and the cost of doing so will be paid by the Professional to the Board upon request and, in any event, within 5 calendar days of such a request.
- C1.12 Overall Limit on Deductibles - Except where a specified limit of deductibility is expressly permitted in this Contract, the insurance policy must provide coverage to the Professional without payment of any deductible in excess of \$5,000, as adjusted over the Term to reflect any increase in the Consumer Price Index (Vancouver - All Items) as published by Statistics Canada between the commencement date of the Term and the date on which the Professional obtains the applicable insurance policy. Where the Professional is unable (in its sole discretion) to obtain insurance having a deductible no greater than \$5,000 (as adjusted pursuant to the prior sentence), the Professional may obtain insurance with a higher deductible but only if the Professional first delivers to the Board a Letter of Credit having a limit of the difference between \$5,000 and the higher deductible. In the event of any loss under that policy and the Professional being unable to pay the deductible, the Board will be entitled to draw down on the Letter of Credit to pay all or any portion of the deductible that the Board, in its sole discretion, considers advisable.

C2.0 Evidence of Insurance/Bonds:

- C2.1 The Professional to Provide Policy/Certificates - Prior to the Board signing this Contract, the Professional will provide the Board with evidence of all required bonding and insurance to be taken out in the form of a detailed Certificate of Insurance, in form and contents acceptable to the Board, supported by a certified copy of each policy and bond. The Certificate of Insurance must identify this Contract's title, Contract date, policy holder and contract subject-matter and must not contain any disclaimer whatsoever. At all times, and from time to time during the Term, the Professional agrees to comply with all of its obligations under such bonds and policies. Proof of bonds and insurance, in the form of a Certificate of Insurance, in form and contents acceptable to the

Board, or certified copies of all insurance policies and bonds will be made available to the Board's Director of Risk Management at any time upon request.

C2.2 Obligations Extend to Staff - The Professional will provide in all agreements with the Professional's Staff clauses in the same form as those set out in this Schedule C. Upon request, the Professional will deposit with the Board's Director of Risk Management detailed certificates of insurance for the policies the Professional has obtained from the Professional's Staff and a copy of the insurance requirements from each Staff's contract with the Professional, unless the Board agrees otherwise in writing.

C3.0 Crime Insurance/Fidelity Bond

C3.1 Crime Insurance/Fidelity Bond - The Professional will maintain crime insurance or a fidelity bond protecting the Board, the City and the Professional against all claims for loss of money, securities and property arising out of any fraudulent or dishonest acts committed by the Professional, its employees, any third party, or an unknown third party.

C3.2 Coverage Limits - The limit of the Professional's crime insurance or fidelity bond must be not less than \$50,000 per occurrence.

C3.3 Required Term of Bonds - The insurance/bond must be in effect for the period of time commencing with the start of the Term and continuing for the entire duration of the Term and for 2 years following the expiry or sooner termination of the Term.

C3.4 Required Form of Bonds - The insurance/bonds must be issued in a form and on terms and conditions approved by the Board's Director of Risk Management.

C.4 Commercial General Liability Insurance:

C4.1 Commercial General Liability Insurance - The Professional will maintain commercial general liability insurance to protect the Professional, the Professional's Staff, the Board, the City, and their respective officers, officials, employees and agents against claims for bodily injury including death, personal injury, advertising liability, products liability and completed operations, and property damage which may arise under this Contract.

C4.2 Commercial General Liability Policy Limit - The limit of commercial general liability insurance must be not less than \$5,000,000 per occurrence inclusive for bodily injury including death, personal injury, advertising liability, property damage losses and loss of use of property and in the aggregate with respect to products liability and completed operations.

C4.3 Required Period of Commercial General Liability Coverage - The commercial general liability insurance must be in effect for the period of time commencing with the start of the Term and continuing for the entire duration of the Term.

C4.4 Required Extensions of Commercial General Liability Coverage - The commercial general liability policy of insurance will:

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- (a) be on an occurrence form,
- (b) add the Board, the City, and their officials, officers, employees and agents as additional insureds,
- (c) contain a cross-liability or severability of interests clause, and
- (d) extend to cover non-owned automobile, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.

C5.0 Motor Vehicle Liability Insurance

C5.1 Scope, Limit and Duration Requirements - Motor vehicle liability insurance for owned and leased licensed vehicles with limits of not less than \$5,000,000 inclusive for accidental injury to or death of one or more persons or damage to or destruction of property as a result of any one accident. Where the policy has been issued pursuant to a government operated automobile insurance system, the Professional will provide the Board's Director of Risk Management with confirmation of the automobile insurance coverage for all automobiles registered in the name of the Professional and the Professional's Staff.

C6.0 [intentionally deleted]

C7.0 All Risk Property Insurance

C7.1 All Risk Property Insurance - The Professional will maintain an all risks property insurance policy covering the Professional's Personal Property and property of every description owned by the Professional and others for whom the Professional may have assumed responsibility and located on the Golf Course from time to time.

C7.2 All Risk Property Policy Limit - The all risks property insurance must have a policy limit of not less than the full replacement cost value of the Professional's Personal Property and property of every description owned by the Professional and others for whom the Professional may have assumed responsibility and located on the Golf Course from time to time.

C7.3 Required Period of All Risks Property Insurance Coverage The all risks property insurance must be in effect for the period of time commencing with the start of the Term and continuing for the entire duration of the Term.

C7.4 Required Scope of All Risks Property Coverage The all risks property insurance must cover loss or damage caused by fire, earthquake, flood and other perils customarily provided on an "All Risk (Broad Form) Property Insurance" form and must contain the following extensions of coverage:

- (a) blanket building by-laws coverage (ie. where the insurer indemnifies the insured in respect of loss caused by an insured peril but arising indirectly from the enforcement of a by-law (or any other law) requiring, for example

- (i) the undamaged portion of a building or property to be torn down or removed, or
 - (ii) requiring the repair or replacement work to be performed to different standards than previously existed (eg. installing sprinklers), and
 - (b) accidental breakdown of boilers and pressure vessels including heating, cooling, electrical and mechanical equipment.
- C7.5 Prior Approval Required For Co-Insurance - Any “stated amounts co-insurance clause” or “percentage type co-insurance clause” must be in a form specifically approved in writing by the Board’s Director of Risk Management.
- C7.6 Loss Payee Clause - The loss payable clause must state that the proceeds of any claim against insurers be payable to the Board (with respect to the Board’s Option to Purchase) and the Professional as their interests may appear.
- C7.7 Waiver of Subrogation Clause - The insurer must waive all rights which it may acquire by payment of a claim to recover the paid amount from the Professional’s affiliates or any of the Board’s, the City’s, the Professional’s or their respective directors, officers, officials, employees or agents (ie. a “waiver of subrogation”). In addition to this waiver of subrogation, all other property insurance policies of any kind carried by the Professional must contain such a waiver of subrogation by the insurer in favour of the Board, the City and their respective directors, officers, officials, employees or agents (whether or not such property insurance is carried as a requirement of this Contract).
- C7.8 Primary Coverage Clause - The insurer must agree that the policy is primary coverage and any other insurance carried by the Board, the City or the Professional is secondary so that any secondary policies will only be drawn upon after exhausting the coverage under the primary coverage.
- C8.0 Business Interruption Insurance:**
- C8.1 Required Limit, Scope, Duration - The Professional will, commencing with the start of the Term and for the entire duration of the Term, continuously maintain business interruption insurance on a “Gross Profits” form for an indemnity period of not less than 12 months protecting the Professional against loss of profits including payroll expense, debt servicing expenses, payment of fees under this Contract and any standing charges and extra expenses resulting from any interruption or interference of its business operations arising out of any loss or damage to property of every description used in connection with the Golf Course.
- C9.0 [intentionally deleted]
- C10.0 Workers’ Compensation Board Compliance**
- C10.1 Payment of WCB Assessments. The Professional agrees that the Professional will at the Professional’s own expense procure and carry or cause to be

procured and carried and paid for, full Workers' Compensation Board coverage for all of the Professional's Staff who are engaged in or upon any work or service which is the subject of this Contract. The Professional agrees that the Board has the unfettered right to set off the amount of the unpaid premiums and assessments for such Worker's Compensation Board coverage against any money owing by the Board to the Professional. The Board may withhold payment under this Contract until the Worker's Compensation Board premiums, assessments or penalties in respect of work done or service performed in fulfilling this Contract had been paid in full.

C10.2 Designation of Professional as Prime Contractor. [intentionally deleted]

C10.3 Prime Contractor's Obligations. [intentionally deleted]

C10.4 General WCB Obligations. The Professional will have a safety program acceptable to the Workers' Compensation Board and will ensure that all Board and Workers' Compensation Board safety policies, rules and regulations are observed during performance of this Contract, not only by the Professional and its Staff, but by all material suppliers and others engaged in the performance of this Contract.

C10.5 Notice of Project. [intentionally deleted]

C10.5 Initial Proof of WCB Registration/Good Standing. Prior to signing this Contract, the Professional will provide the Board with the Professional's and all Staffs' (as applicable) Workers' Compensation Board registration numbers.

C10.6 Subsequent Proof of WCB Registration/Good Standing. Within 5 days of any request by the Board's Designated Representative to do so, the Professional will provide the Board with written confirmation that the Professional and all Staff (as applicable) are registered in good standing with the Workers' Compensation Board and that all assessments have been paid to date.

C10.7 Pre-Contract Hazard Assessment. [intentionally deleted]

C10.8 Special Indemnity Against WCB Non-Compliance. The Professional will indemnify the Board and hold harmless the Board from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to

- (a) unpaid Workers' Compensation Board assessments of the Professional or any other employer for whom the Professional is responsible under this Contract,
- (b) the acts or omissions of any person engaged directly or indirectly by the Professional in the performance of this Contract, or for whom the Professional is liable pursuant to the Professional's obligations as the Prime Contractor, and which acts or omissions are or are alleged by the Workers' Compensation Board to constitute a breach of the WCB OH&S Regulation or other failure to observe safety rules, regulations and practices of Workers' Compensation Board, including any and all fines and penalties levied by the Workers' Compensation Board, or

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- (c) any breach of the Professional's obligations under this Section C10.0.

OPTION TO PURCHASE GOLF COURSE PERSONAL PROPERTY

Grant of Option

The Professional and Purchaser have agreed to the exact language in any agreement relating to any of the Personal Property, and any such agreement shall be deemed to have been entered into by the Professional and Purchaser for the purpose of this Section C10.0.

Terms and Conditions of Exercise

The Option/Purchase may be exercised in accordance with Section C10.0 of the Contract.

Effect of Exercise

Exercise of the Option to Purchase will constitute a binding contract as defined in the Contract. The Professional and Purchaser shall be deemed to have agreed to the exact language in any agreement relating to any of the Personal Property, and any such agreement shall be deemed to have been entered into by the Professional and Purchaser for the purpose of this Section C10.0.

The Professional will, at the Professional's sole cost and expense, cause the Professional's lawyer to prepare a deed to transfer the Personal Property to the Purchaser. The Professional will also cause the deed to be registered in the Land Title Office. The Professional will also cause the deed to be registered in the Land Title Office. The Professional will also cause the deed to be registered in the Land Title Office.

The Professional and Purchaser, in the event of exercise of the Option, shall be deemed to have agreed to the exact language in any agreement relating to any of the Personal Property, and any such agreement shall be deemed to have been entered into by the Professional and Purchaser for the purpose of this Section C10.0.

This is not to be construed as a limitation on the Professional's liability.

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SCHEDULE D

OPTION TO PURCHASE GOLF COURSE PERSONAL PROPERTY

D.1 Grant of Option

The Professional and Monaghan, to the extent Monaghan has any ownership interest in any of the Personal Property, each now grants the Board the exclusive and irrevocable option to purchase (the “**Option to Purchase**”) the Personal Property free and clear of all liens, charges and encumbrances.

D.2 Terms and Conditions of Exercise

This Option to Purchase may be exercised in accordance with Section 11.7(a) of the Contract.

D.3 Effect of Exercise

Exercise of this Option to Purchase will constitute a binding contract of purchase and sale for such of the Personal Property which the Board has given notice of its intent to purchase (in this Schedule “D”, the “**Purchased Personal Property**”). The contract arising from the exercise of this Option to Purchase will be completed, if exercised in accordance with Section 11.7(a)(i), on the tenth (10th) day following the effective date of termination, and if exercised in accordance with Section 11.7(a)(ii), on the effective date of termination, and if exercised in accordance with Section 11.7(a)(iii), on the last day of the Term (as applicable, the “**Closing Date**”).

- (a) The Professional will, at the Professional’s sole cost and expense, have the Professional’s lawyer prepare, or caused to be prepared, all necessary conveyance documents in respect of the Purchased Personal Property including, without limitation, a bill of sale absolute (the “**Bill of Sale Absolute**”), discharges of liens, charges and encumbrances and any other necessary or appropriate documentation. Each of the Professional and Board will pay its own legal fees. The Professional, however, will pay all fees and disbursements associated with registering any documents at the Personal Property Registry.
- (c) The Professional and Monaghan, to the extent Monaghan has any ownership interest in any of the Personal Property, will execute and deliver to the Board as of the Closing Date, the Bill of Sale Absolute containing the usual covenants conveying the Purchased Personal Property to the Board free and clear of all liens, charges and encumbrances. The Professional and Monaghan, as applicable, will also execute and deliver as of the Closing Date any other documents or instruments as may reasonably be required by the Board for the purpose of completing the purchase and sale of the Purchased Personal Property, including if requested by the Board, such documents or instruments as may be required for the registration of discharges and financing change statements at the Personal Property Registry.
- (d) Title, risk of loss or damage, and possession of the Purchased Personal

Property will transfer to the Board on the Closing Date.

- (e) At all times and from time to time prior to the Closing Date, the Board will have full right of access to the Personal Property in order to conduct surveys, assessments, inventories, studies and tests including valuations and audits.
- (f) The purchase price for the Purchased Personal Property will be payable by the Board to the Professional on the Closing Date, provided always that the Board and Professional will settle or determine the purchase price on the following terms and conditions:
 - (i) The Board's Designated Representative and Professional will negotiate in good faith, as early as reasonably possible, to settle a purchase price for the Purchased Personal Property, which will be the lesser of fair market value as of the Closing Date and cost, except that, if the Board's Designated Representative and Professional are unable to agree on that purchase price prior to the Closing Date, the Board will appoint a chartered professional accountant, who is a member in good standing of the Organization of Chartered Professional Accountants of British Columbia, or such other qualified asset valuator as the parties may agree in writing, and who is at arm's length from the Board and the Professional, to determine that purchase price, and each of the Board and the Professional will be responsible for 50% of the chartered professional accountant's or asset valuator's, as the case may be, fees and disbursements, and will pay the amount it owes to the chartered professional accountant or asset valuator, as the case may be, on demand.
 - (ii) Any price determined in advance of the Closing Date will be adjusted as of that date to reflect any variations in value in the meantime.
 - (iii) The Board will pay the Professional the purchase price for the Purchased Personal Property as settled or determined under Section D.3(f)(i), on the Closing Date, or if the price has not by then been determined, then promptly upon determination of the purchase price, subject to deduction by the Board of any amount the Professional then owes to the Board.

D.4 Priority of Option to Purchase Over All Other Charges

The Professional and Monaghan, to the extent Monaghan has any ownership interest in any of the Personal Property, will ensure that this Option to Purchase is registered in priority to all liens, charges and encumbrances except the Permitted Encumbrances.

D.5 No Further Encumbrances Permitted

The Professional and Monaghan, to the extent Monaghan has any ownership

interest in any of the Personal Property, will not permit any liens, charges or encumbrances to be registered against the Personal Property save and except for:

- (a) Permitted Encumbrances; and
- (b) other encumbrances which the Board first agrees to in writing.

D.6 Professional's Representations

Regardless of any independent investigations that the Board may cause to be made, the Professional and Monaghan, to the extent Monaghan has any ownership interest in any of the Personal Property, will each represent and warrant to the Board, as of the Closing Date, that:

- (a) the Professional and Monaghan, to the extent Monaghan has any ownership interest in any of the Personal Property, has good, safeholding and marketable title to the Purchased Personal Property, free and clear of all liens, encumbrances, charges, encroachments, defects in title, equities or claims; and
- (b) the Professional and Monaghan, to the extent Monaghan has any ownership interest in any of the Personal Property, has no indebtedness to any person or governmental authority which might by operation of law or otherwise constitute a lien, charge or encumbrance on the Purchased Personal Property or which could affect the Board's right from and after the exercise of this Option to Purchase to own and use the Purchased Personal Property.

D.7 Interpretation

- (a) All terms and conditions of this Option to Purchase which by their nature require performance or fulfillment following the exercise of the Option to Purchase or the Closing Date will survive and not merge with any transfer or agreement delivered in connection with the completion of the transfer of the Purchased Personal Property.
- (b) This Option to Purchase and the contract constituted by the exercise of it will enure to the benefit of and be binding upon the parties and their successors and assigns and for further certainty will charge and bind the Personal Property and the Professional's and Monaghan's, to the extent Monaghan has any ownership interest in any of the Personal Property, successors in title.
- (c) Capitalized terms not otherwise defined herein will have the respective meanings ascribed to them in the Golf Professional Services Contract for Fraserview Golf Course dated January 1, 2019, to which this Option to Purchase is attached as Schedule D.

SCHEDULE E

GRANT OF LICENCE

E.1 Grant of Licence

In recognition of the Professional's need for access to the Golf Course in order to provide the Services, the Board now grants the Professional a licence for access and use of the Driving Range, Pro Shop, Short Game Practice Area, Chipping and Putting Greens and the Cart Storage Area (collectively, the "Service Access Areas") provided that this licence will automatically be terminated with the expiry or sooner termination of the Term and will be automatically extended or renewed with any extension or renewal of the Term.

E.2 Licence Fee

The Licence Fee payable by the Professional is as set out in Section 4.3 of this Contract and will be payable as a deduction from and set-off against the portion of the Gross Revenue payable to the Professional pursuant to Section 4.2(a).

E.3 Utilities

All charges, rates and levies on account of utilities including electricity, water, garbage collection, telephone and all other expenses and outgoings incurred by the Professional in the provision of the Services and use of the Service Access Areas will be to the sole account of the Professional except where expressly stated otherwise in this Contract.

E.4 Use of the Service Access Areas

The Professional will only use the Service Access Areas for the provision of the Services and will not use or allow the Service Access Areas to be used for any other purpose without the prior written consent of the Board's Designated Representative, which consent may be arbitrarily withheld.

E.5 Non-Exclusive Licence

E5.1 No Interest in Land. The Board will have full, free and uninterrupted access to the Service Access Areas for the purposes of inspection and carrying out its obligations under this Contract and to the public at all times during the Term and in common with the Professional's rights of access under this licence. Despite any other term of this Schedule E or any other part of this Contract, the rights and privileges of use and access granted by this Schedule E and this Contract to the Professional are purely contractual and are not grants of a lease, easement, right of way, right of exclusive possession, or any other interest in land and the Professional now acknowledges and agrees to same and further agrees not to register any instrument, claim or notice respecting this Contract in any Land Title Office, nor to make any claim in any arbitration or court of law that the Professional has any rights in respect to access to and use of the Golf Course other than purely contractual rights of a bare licensee.

E5.2 Board Reserves All Rights. Accordingly, the Board retains full ownership and exclusive possession of the Golf Course and reserves all rights to use the Golf Course in any manner it sees fit even where such uses interfere with the Professional's contractual rights and obligations under this Contract. The Professional now acknowledges and agrees that the Golf Course is owned and operated by a public sector entity which may at any time elect to modify the manner or mode of use of the Golf Course in any manner considered to be in the public interest, as determined by its publicly elected park board commissioners, including without limitation and by way of example only, modifications to increase revenue or modifications to address public interest desires (such as re-configuring the Golf Course or reducing its size, converting to green space, etc.).

E5.3 Limitation on Liability. Despite any other term of this Contract, where any use by the Board of the Golf Course interferes or might interfere with the Professional's rights or obligations under this Contract, the Board's liability for damages is now expressly limited to \$1,000 whether or not such use constitutes a breach of this Contract, and the Professional now releases the Board from all liability for all losses, expenses and damages arising from the type of breach or use described in this Section E.5.3, subject always to the Board's obligations to reimburse the Professional's reasonable direct moving costs in the event of a re-location pursuant to Section E.17.

E.6 Board's Right of Control over Access and Use

The Board will have the unfettered right to stipulate the extent of use and access over the Golf Course to the Service Access Areas permitted by the Professional and the Professional's Staff and will have the complete and unfettered right to prohibit the Professional from access to any and all areas of the Golf Course other than the Service Access Areas and those which are necessarily required to provide access to the Professional and the Professional's Staff for the provision of the Services.

E.7 No Representations or Warranties

The Professional acknowledges and agrees that the Board has made no representations or warranties as to the state of repair of the Service Access Areas or the suitability of the Service Access Areas for the provision of the Services. To the extent that the Service Access Areas are not at any time in a condition suitable for the provision of the Services, then to the extent that such is the case, the Board will not be liable for any losses or damages suffered by the Professional. However, the Professional will not be liable for the failure to provide Services to the extent to which same is caused by any breach by the Board of its obligations under this Contract or this Schedule E to maintain and repair any part of the Golf Course or Service Access Areas. Accordingly, the Professional now agrees to accept the Golf Course and Service Access Areas on an "as is, where is" basis.

E.8 No Damage

The Professional will at all times carry out the Services and operations with due care and attention and without negligence and will at no times create a nuisance or cause damage to the Service Access Areas or surrounding Golf Course.

E.9 Notify Board of Any Damage

If any of the Board's property is damaged by the Professional or the Professional's Staff, the Professional will notify the Board immediately and the Board will have the right to elect within 48 hours whether or not the Board will repair the damage. If the Board fails to give a notice of election within the time specified, the Board will be deemed to have elected to itself do the repairs. If the Board elects to have the Professional do the repairs, the Professional will carry out the repairs at the Professional's sole cost, which repairs will be performed, in the manner approved by the Board and within such time as is specified by the Board, acting reasonably, so as to bring the damaged property back to a standard and condition at least equal to the standard and condition it was in prior to the damage. If the Board elects or is deemed to have elected to itself do the repairs, or the Professional fails to complete repairs within the time specified by the Board, the Board may carry out the repairs at the Professional's sole cost and Section 11.1 of the Contract will apply.

E.10 Maintenance

The Professional will maintain the Service Access Areas and all improvements within the Service Access Areas in a sanitary, neat, tidy and safe condition and free from nuisance at all times subject only to those obligations of which are imposed on the Board pursuant to Sections 5.3 and 5.4 of the Contract.

E.11 Indemnification

The indemnity set out in Section 8.1 of this Contract will apply fully and completely to all costs, losses, damages, builders liens, expenses, actions, claims, demands, suits and judgments incurred by or against the Board, the City or their respective officers, officials, directors, agents, employees and contractors on account of the Professional's use of the Service Access Areas, access to and from and across the Golf Course and/or relating to or arising from the Professional's exercise of its rights under this licence granted by this Schedule E and is in addition to and not in lieu of all other indemnities, releases and limitations on liability set out elsewhere in this Contract.

E.12 Insurance

As a condition of this grant of licence, the Professional must comply at all times and in strict accordance with the Insurance Bonding WCB Requirements set out in Schedule C - *Insurance/Bonding/WCB Requirements* of this Contract.

E.13 Assignment

Further to Section 10.1 of this Contract, the Professional will not in whole or in part assign this licence without the prior written consent of the Board's Designated Representative, which consent of the Board's Designated Representative may arbitrarily withhold and which consent may only be granted concurrently with any consent with respect to any assignment of the balance of this Contract. Accordingly, the Professional may not sub-licence or otherwise permit any other third party access to or use of the Golf Course or Service Access Areas without the prior written consent of the Board's Designated Representative in accordance with Section 10.1 of this Contract.

E.14 Termination of the Licence

Despite any other term of this Schedule E or any other part of this Contract:

- (a) the Board's Designated Representative may terminate this licence immediately upon giving written notice to the Professional pursuant to Section 11.6 of this Contract, and
- (b) termination or expiry of this Contract will automatically and without further or separate written notice, terminate this licence.

E.15 Laws and By-laws

The Professional will, and will cause its Staff to, promptly and faithfully observe and comply with all laws, by-laws and lawful orders which relate to the Service Access Areas and the Professional's activities within the Service Access Areas, even if such laws, by their terms, apply to the Board. For further certainty and without limiting the generality of the foregoing, it will be the Professional's responsibility to obtain any and all development permits, business licences and building permits required to authorize or permit any of the uses required by the Professional of the Service Access Areas in order to provide the Services.

E.16 No Alteration/Improvement

The Professional will not, without the prior written consent of the Board's Designated Representative, which may be arbitrarily withheld, make any alterations, renovations, improvements or demolitions of any of the existing improvements located within the Service Access Areas.

E.17 Changes/Relocations

Despite any other term of this Contract, the Board may unilaterally change the structure, size, location or boundaries of any component of the Golf Course or any part of the Service Access Areas without any liability to the Professional for any resulting losses, costs, expenses or damages resulting from such changes. However, the Board will reimburse the Professional for any actual and direct out-of-pocket costs relating to the cost of physically moving or storing the Professional's Personal Property during any such change or relocation, provided that always such costs will expressly exclude all indirect inconsequential losses, costs, damages and expenses such as by way of example only and without limitation, loss of profits, loss of revenue, extra staffing costs or the like.

E.18 Termination or Expiry

Upon the expiry or sooner termination of this Term, the Professional will no longer be entitled to access or use the Service Access Areas nor to enter and exit along the permitted portions of the Golf Course and will leave the Service Access Areas in a sanitary, neat, tidy, safe and empty condition and in compliance with the standards of maintenance and repair imposed on the Professional pursuant to this Contract.