

**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);

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;

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- (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;

- (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;

- (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

s.22(1)



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

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.

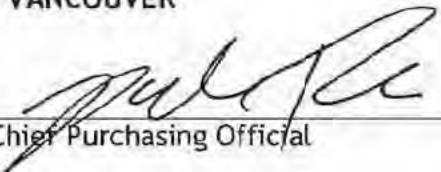
To witness this Contract, each of the Board, the Professional and Monaghan have signed it as of the Contract Date.

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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

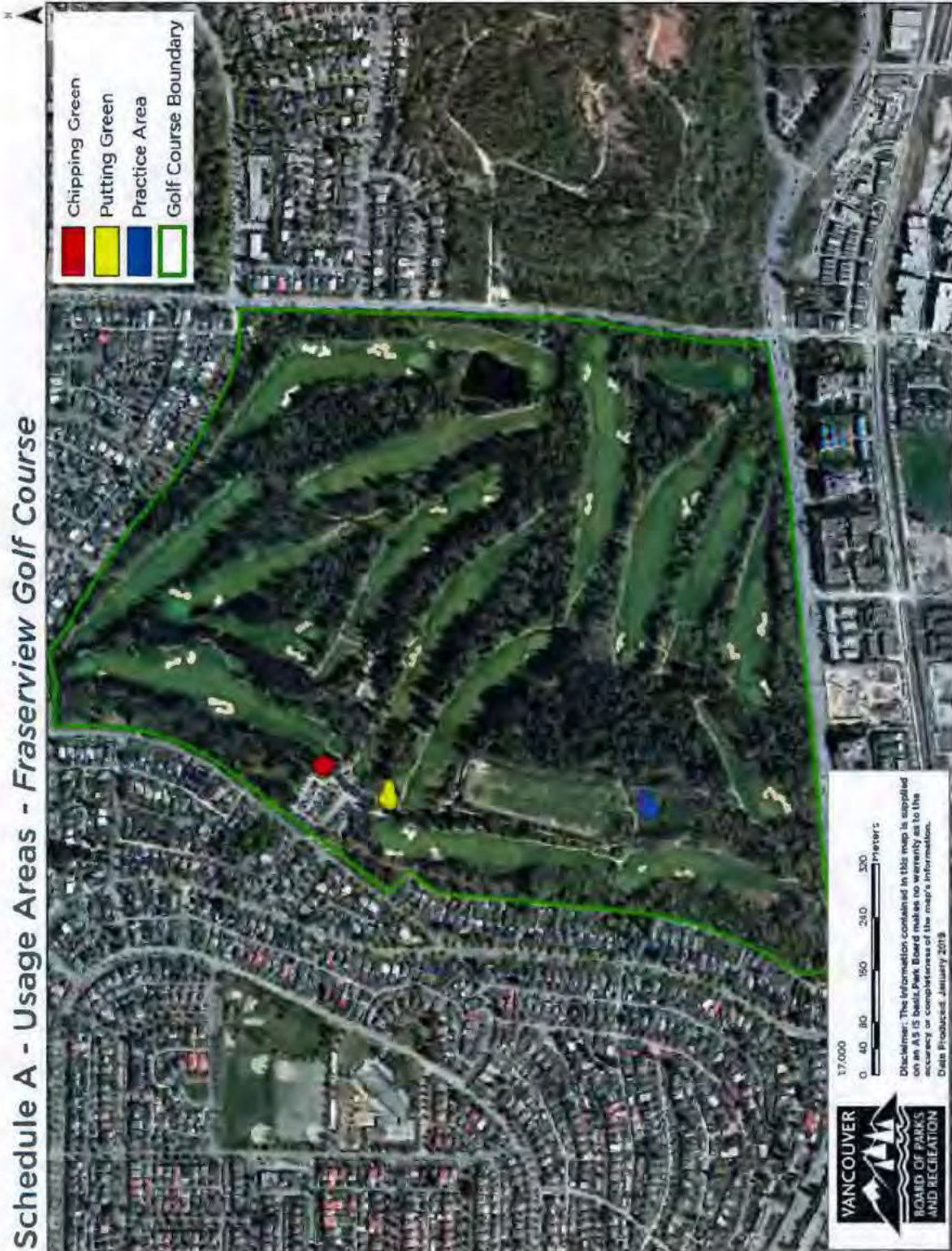
2099 BEACH AVE
Address VANCOUVER, BC

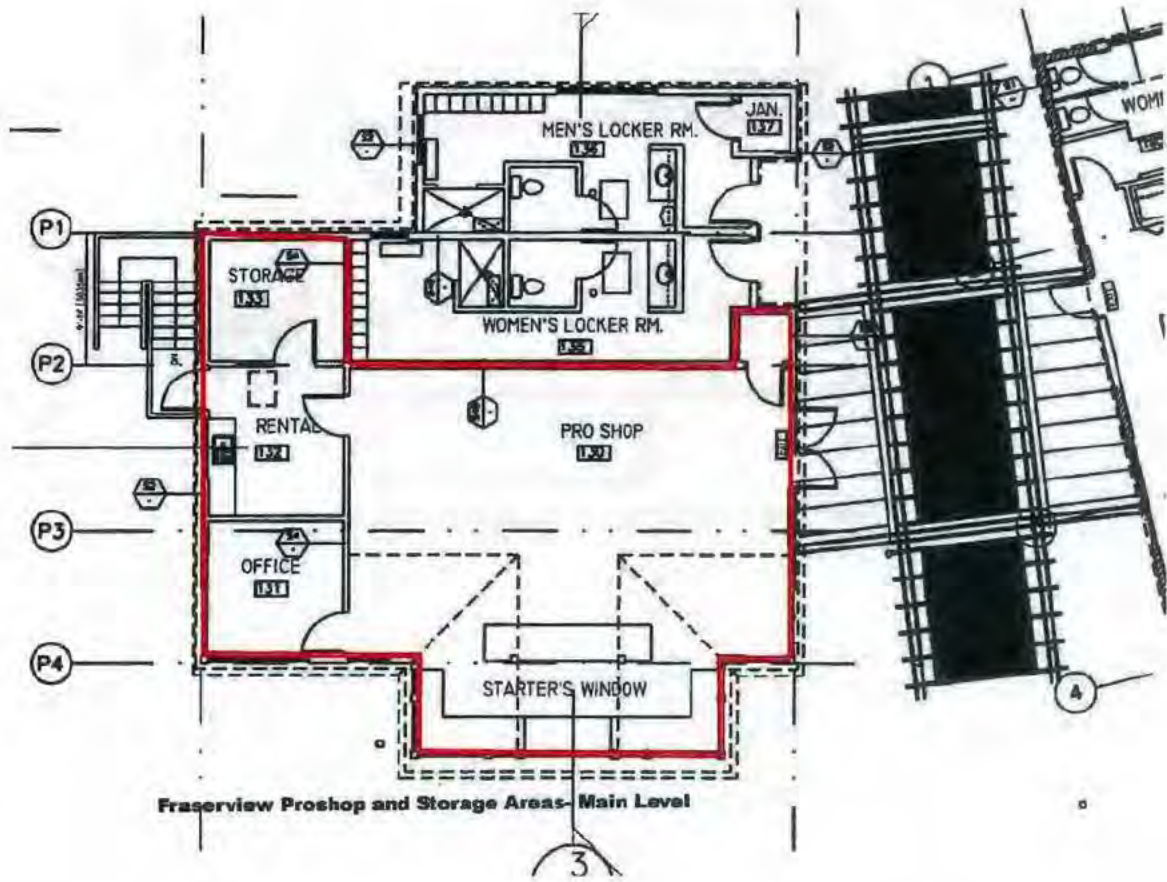
SUPERVISOR, COMMERCIAL
Occupation OPERATIONS, PARK BOARD

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.

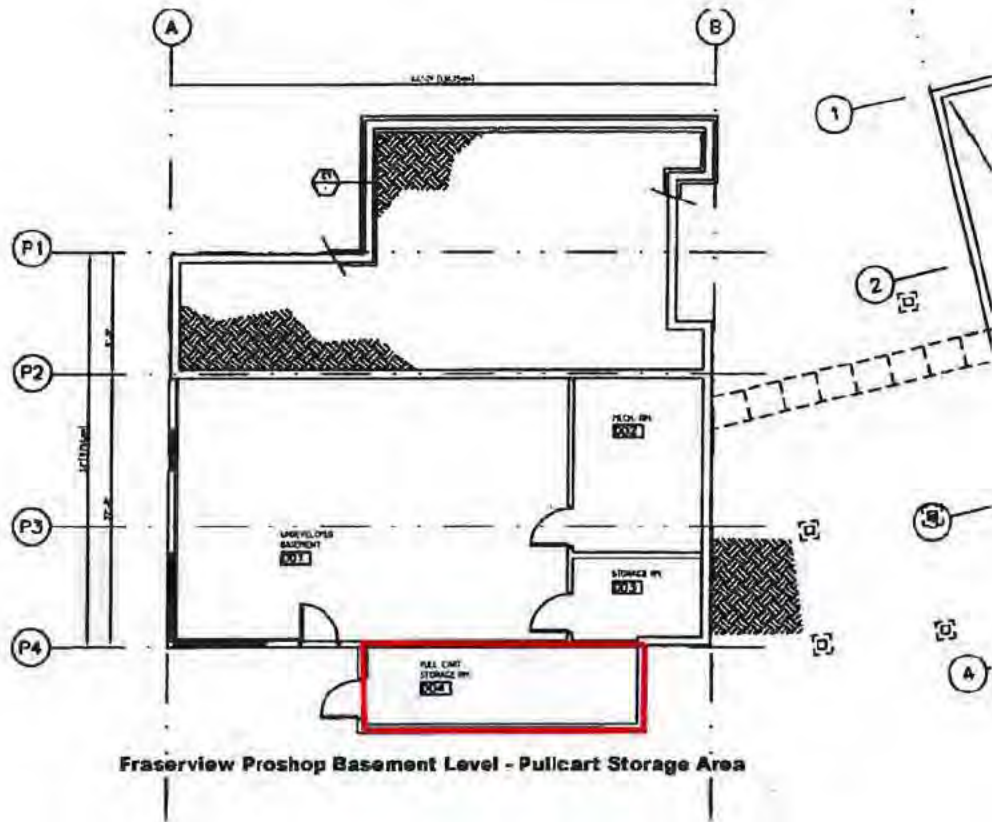
SCHEDULE A

PLANS OF DRIVING RANGE, SHORT GAME PRACTICE AREA, CHIPPING AND PUTTING GREENS, PRO SHOP AND BALL & CART STORAGE AREAS

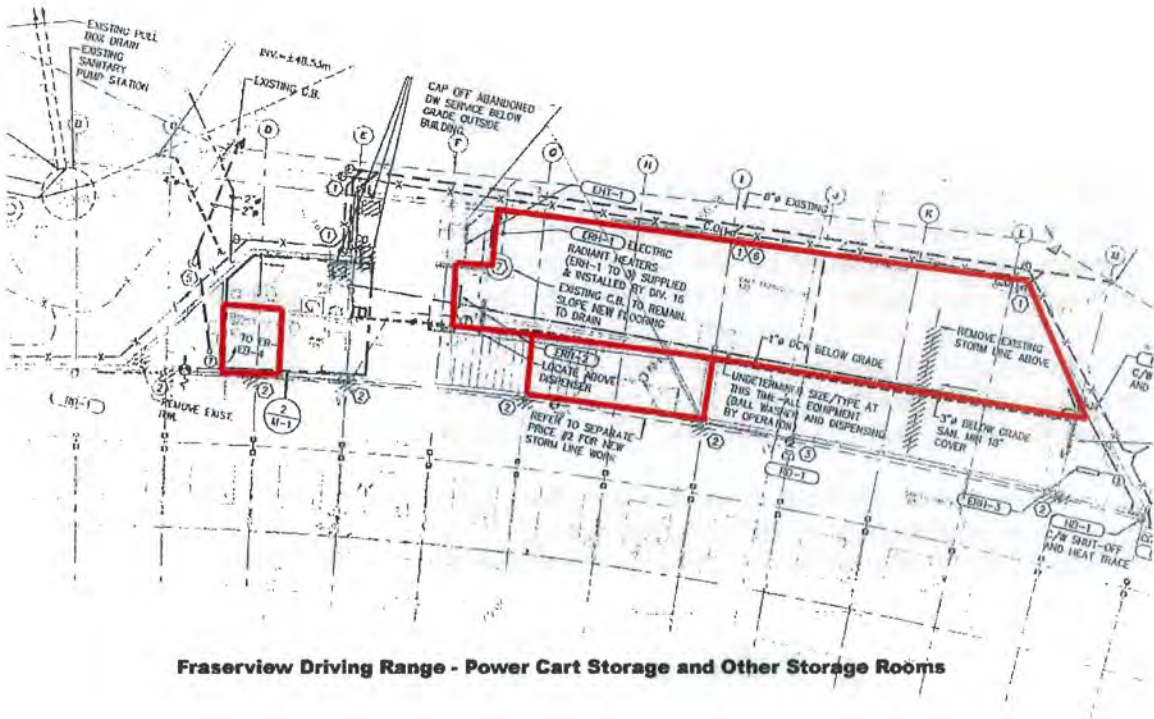




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SCHEDULE B

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

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

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- (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

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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.

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.



MEMORANDUM

SERVICE CONTRACT

Date: November 18, 2022

File: **Fraserview Golf Course**

TO: Donnie Rosa, General Manager

FROM: Sev Araujo, Manager Commercial Operations

RE: **Professional Golf Services contract: First (January 1, 2022) and Second (January 1, 2023) Renewals Monaghan Golf Inc. @ Fraserview golf course**

Approved

 Steve Jackson, Director
 Business Services

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 contract, which also covers the operator’s labour costs, under the Park Board’s Procurement Policy on November 18, 2019 the Park Board authorized its GM to execute said contract.

Key terms of contract:

Term: 3 years effective January 1, 2019

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

Cancellation: Park Board can cancel contract at anytime

Rent (payable to Park Board):

Yr. 1 & 2: s.21(1)

Yr. 3:

Driving Range: s.21(1)

Operator: responsible for day to day maintenance and equipment

Park Board: responsible for capital of building and site including netting

Golf Operations (payable to Operator):

Retainer: s.21(1)

Starter: s.21(1)

Current:

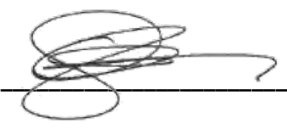
Attached please find the First Renewal effective January 1, 2022 and the Second Renewal effective January 1, 2023 for execution. Both Renewals are based on the same terms and conditions of the initial three-year term with the exception of:

i) Rent for both Renewals will continue to be s.21(1) [redacted]
s.21(1) [redacted]

ii) No further right to renew as agreement does not provide for it

If there are no concerns, please initial this memo below, execute both Renewals and return the package to my attention for filing and distribution to Operator, Legal and Clerks department.

Legal Services has / has not reviewed the Agreement.

Criteria Summary:	Executed by	Date
Type of Tenure: Service contract Value of Tenure: s.21(1) payable to operator Term Length: two(2) - 1 year terms Effective Date: January 1, 2022 Execution Required: General Manager	 _____	12/15/22 _____

**FIRST RENEWAL AGREEMENT OF GOLF PROFESSIONAL SERVICES CONTRACT
FRASERVIEW GOLF COURSE**

This Agreement is made effective as of January 1, 2022 (the "Effective Date")

BETWEEN:

**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”)

WHEREAS:

- A. The parties entered into a Golf Professional Services Contract - Fraserview Golf Course dated January 1, 2019 (the "Golf Agreement") for the provision of golf professional services at the Golf Course for a term of three years commencing on January 1, 2019 and ending on December 31, 2021;
- B. Pursuant to Sections 2.2 and 2.3 of the Golf Agreement, the Professional and Monaghan has, together, two options to renew the Golf Agreement, each for a further term of one year; and
- C. Professional and Monaghan has exercised the first option to renew under the Golf Agreement and the parties wish to enter into this Agreement to record their agreement with respect to same.

{01880291v1}

FIRST RENEWAL OF GOLF PROFESSIONAL SERVICES CONTRACT - FRASERVIEW GOLF COURSE

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which each of the parties hereto acknowledge and agree to), each of the parties hereby covenant and agree as follows:

1. Definitions

All capitalized terms used in this Agreement which are defined in the Golf Agreement will have the meaning ascribed to such terms in the Golf Agreement unless defined in this Agreement or the context otherwise requires.

2. First Renewal Term

As of the Effective Date, the each of the parties acknowledge and agree that the Golf Agreement, as modified hereby, is hereby renewed for a further term of one (1) year commencing on January 1, 2022 and ending on December 31, 2022 (the "First Renewal Term"). Each of the parties acknowledge that Professional and Monaghan, together, have one further right of renewal per section 2.3 of the Golf Agreement.

3. First Renewal Licence Fee

The Licence Fee payable by the Professional to the Board for the First Renewal Term will be s.21(1), plus applicable taxes.

4. Golf Agreement Ratified and Confirmed

Except as hereby expressly modified, the Golf Agreement is hereby ratified and confirmed by each of the parties to the effect and with the intent that the Golf Agreement and this Agreement shall be read and construed as one document.

5. Counterparts

This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this Agreement by signing any counterpart.

6. Electronic Execution

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

7. Enurement

This Agreement will enure to the benefit of and be binding upon each of the parties hereto and their respective successors and permitted assigns.

8. Time

Time shall be of the essence of this Agreement.

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FIRST RENEWAL OF GOLF PROFESSIONAL SERVICES CONTRACT - FRASERVIEW GOLF COURSE

9. Conflict

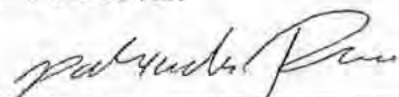
In the event of any conflict between the terms and conditions of the Golf Agreement and the terms and conditions of this Agreement, the terms and conditions of this Agreement will prevail.

IN WITNESS WHEREOF each of the parties have executed and delivered this Agreement to be effective as of the Effective Date.


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

Per: 
General Manager

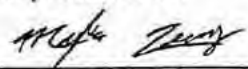
CITY OF VANCOUVER

Per: 
Chief Purchasing Official

MONAGHAN GOLF INC.

Per: 
Authorized Signatory

SIGNED, SEALED AND DELIVERED by
MICHAEL THOMAS MONAGHAN in
the presence of:


Signature of witness

Myles Leang
Name

s.22(1)
Address

Golf Shop Manager
Occupation


MICHAEL THOMAS MONAGHAN

{01880291v1}

FIRST RENEWAL OF GOLF PROFESSIONAL SERVICES CONTRACT - FRASERVIEW GOLF COURSE



MEMORANDUM

SERVICE CONTRACT

Date: November 18, 2022

File: **Fraserview Golf Course**

TO: Donnie Rosa, General Manager

FROM: Sev Araujo, Manager Commercial Operations

RE: **Professional Golf Services contract: First (January 1, 2022) and Second (January 1, 2023) Renewals Monaghan Golf Inc. @ Fraserview golf course**



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 contract, which also covers the operator's labour costs, under the Park Board's Procurement Policy on November 18, 2019 the Park Board authorized its GM to execute said contract.

Key terms of contract:

Term: 3 years effective January 1, 2019

Renewals: two(2)– 1 year terms at operator's option

Cancellation: Park Board can cancel contract at anytime

Rent (payable to Park Board):

Yr. 1 & 2: s.21(1)

Yr. 3:

Driving Range: s.21(1)

Operator: responsible for day to day maintenance and equipment

Park Board: responsible for capital of building and site including netting

Golf Operations (payable to Operator):

Retainer: s.21(1)

Starter: s.21(1)

Current:

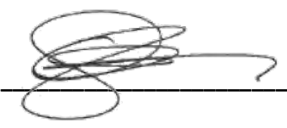
Attached please find the First Renewal effective January 1, 2022 and the Second Renewal effective January 1, 2023 for execution. Both Renewals are based on the same terms and conditions of the initial three-year term with the exception of:

i) Rent for both Renewals will continue to be s.21(1) [redacted]
s.21(1) [redacted]

ii) No further right to renew as agreement does not provide for it

If there are no concerns, please initial this memo below, execute both Renewals and return the package to my attention for filing and distribution to Operator, Legal and Clerks department.

Legal Services has / has not reviewed the Agreement.

Criteria Summary:	Executed by	Date
Type of Tenure: Service contract Value of Tenure: s.21(1) [redacted] <i>ayable to operator</i> Term Length: two(2) - 1 year terms Effective Date: January 1, 2022 Execution Required: General Manager	 _____	12/15/22 _____

**SECOND RENEWAL AGREEMENT OF GOLF PROFESSIONAL SERVICES CONTRACT
FRASERVIEW GOLF COURSE**

This Agreement is made effective as of January 1, 2023 (the "Effective Date")

BETWEEN:

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")

WHEREAS:

- A. The parties entered into a Golf Professional Services Contract - Fraserview Golf Course dated January 1, 2019 (the "Original Golf Agreement") for the provision of golf professional services at the Golf Course for a term of three years commencing on January 1, 2019 and ending on December 31, 2021;
- B. Pursuant to Sections 2.2 and 2.3 of the Original Golf Agreement, the Professional and Monaghan has, together, two options to renew the Original Golf Agreement, each for a further term of one year;
- C. By way of a First Renewal Agreement of Golf Professional Services Contract - Fraserview Golf Course made effective January 1, 2022 (together with the Original Golf Agreement, the "Golf Agreement"), the term of the Golf Agreement was renewed for a period of one year commencing on January 1, 2022 and ending on December 31, 2022; and

[01864002v1]

SECOND RENEWAL OF GOLF PROFESSIONAL SERVICES CONTRACT - FRASERVIEW GOLF COURSE

- D. Professional and Monaghan has exercised the second option to renew under the Golf Agreement and the parties wish to enter into this Agreement to record their agreement with respect to same.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which each of the parties hereto acknowledge and agree to), each of the parties hereby covenant and agree as follows:

1. Definitions

All capitalized terms used in this Agreement which are defined in the Golf Agreement will have the meaning ascribed to such terms in the Golf Agreement unless defined in this Agreement or the context otherwise requires.

2. Second Renewal Term

As of the Effective Date, the each of the parties acknowledge and agree that the Golf Agreement, as modified hereby, is hereby renewed for a further term of one (1) year commencing on January 1, 2023 and ending on December 31, 2023 (the "Second Renewal Term"). Each of the parties acknowledge that there are no further rights of renewal upon the exercise of the second option to renew per section 2.3 of the Original Golf Agreement.

3. Second Renewal Licence Fee

The Licence Fee payable by the Professional to the Board for the Second Renewal Term will be s.21(1), plus applicable taxes.

4. Golf Agreement Ratified and Confirmed

Except as hereby expressly modified, the Golf Agreement is hereby ratified and confirmed by each of the parties to the effect and with the intent that the Golf Agreement and this Agreement shall be read and construed as one document.

5. Counterparts

This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this Agreement by signing any counterpart.

6. Electronic Execution

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

7. Enurement

This Agreement will enure to the benefit of and be binding upon each of the parties hereto and their respective successors and permitted assigns.

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SECOND RENEWAL OF GOLF PROFESSIONAL SERVICES CONTRACT - FRASERVIEW GOLF COURSE

8. Time

Time shall be of the essence of this Agreement.

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9. Conflict

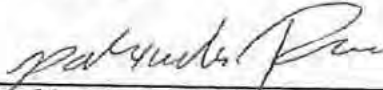
In the event of any conflict between the terms and conditions of the Golf Agreement and the terms and conditions of this Agreement, the terms and conditions of this Agreement will prevail.

IN WITNESS WHEREOF each of the parties have executed and delivered this Agreement to be effective as of the Effective Date.

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 of witness

Myles Leong
Name

s.22(1)
Address

Golf Shop Manager
Occupation


MICHAEL THOMAS MONAGHAN

Contract 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:

MUNCIE’S GOLF SHOP LTD.
6710 Alberta Street
Vancouver, British Columbia
V6J 4V8

(“**Muncie’s Golf**”)

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

(“**Monaghan Golf**”)

and:

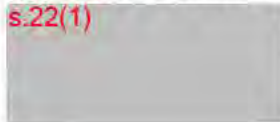
MAGNUS KENNEDY BOOTH
s.22(1)



(“**Muncie Booth**”)

and

MICHAEL THOMAS MONAGHAN
s.22(1)



(“**Tom Monaghan**”)

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 Langara Golf Course;
- B. Muncie's Golf submitted a request for pre-qualification, which the Board evaluated and accepted;
- C. By way of Request for Proposals P2008-14 (the "RFP"), the Board issued a request for proposals from each of the pre-qualified golf professionals, including Muncie's Golf and Muncie Booth, for the provision of golf professional services at the Langara Golf Course;
- D. Muncie's Golf submitted a proposal in response to the RFP;
- E. Following its review and evaluation of the various proposals submitted by the Muncie's Golf and other golf professionals pursuant to the RFP, the Board resolved on December 8, 2008 to enter into an agreement with Muncie's Golf for the provision of golf professional services at Langara Golf Course;
- F. Muncie's Golf and Muncie Booth (the sole officer, director and shareholder of Muncie's Golf) entered into a Golf Professional Services Contract – Langara with the Board effective January 1, 2009 (the "**Original Contract**");
- G. The term of the Original Contract expires on December 31, 2013 and Muncie's Golf and Muncie Booth wish to renew the Original Contract pursuant to the terms of Section 2 of the Original Contract (the "**Renewal Term**");
- H. Muncie's Golf and Muncie Booth have requested approval from the Board to add a partner, Monaghan Golf and Tom Monaghan (the sole officer and director of Monaghan Golf) as parties to this Contract for the Renewal Term, to be bound jointly and individually with Muncie's Golf and Muncie Booth during the Renewal Term;
- I. The Board approves Monaghan Golf and Tom Monaghan being added as parties to this Agreement;
- J. Muncie's Golf and Monaghan Golf are hereinafter collectively called the "Professionals";
- K. Muncie Booth and Tom Monaghan are hereinafter collectively called the "Directors"; and

- L. This Contract sets forth the terms and conditions agreed to by the Board, the Professionals and the Directors for the provision of golf professional services by the Professionals to the Board.

THE BOARD, THE DIRECTORS AND THE PROFESSIONALS NOW AGREE AS FOLLOWS:

1. Interpretation.

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

“Board and City” is defined in Section 13(b).

“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 area for the Golf Course, which is located under the Pro Shop.

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

“Contract” means this renewal contract which is intended to be on the same terms and conditions as the Original Contract except as noted by strike-through (to indicate deletions from the Original Contract) and by double-underlining (to indicate additions to the Original Contract) and includes all schedules, as amended or supplemented from time to time.

“CPGA” means the Canadian Professional Golf Association.

“CPGA Certified Employee” means any individual employed by the Professionals or retained as an independent or dependent contractor of the Professionals who is a member of the CPGA or any replacement or successor organization (including Muncie Booth, Tom Monaghan and the Professionals’ Pro Shop Manager, if applicable).

“Default” is defined in Section 16;

“determined by arbitration” is defined in Section 33(d).

“Directors” has the meaning set out in Recital K;

“Effective Date” means the effective date of this Contract, being January 1, 2014.

“Excluded Items” is defined in Section 23(c).

“Fixtures” means any and all Personal Property of the Professionals and/or the Directors which may be located at any time at the Golf Course which is in the nature of 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 Professionals and the Directors pursuant to this Contract on the terms set out in Schedule E - *General Security Agreement*.

“Golf Course” means the Langara Golf Course, located at 6706 Alberta Street, Vancouver, and except where the context otherwise requires, expressly includes the Pro Shop, chipping and putting practice areas and Cart Storage Area.

“Gross Revenue” means the gross amount received by the Professionals and/or the Directors 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 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 Professionals’ or the Directors’ business related to such activity(ies), and
- (3) the fair market value of all goods and services received by the Professionals or the Directors from any third party in exchange for or by way of barter from the provision of goods and services by the Professionals or the Directors related to such activity(ies).

“Merchandise” means all of the Personal Property of the Professionals and/or the Directors located from time to time at the Golf Course, which is intended for retail sale to the public.

“Minimum Cart Revenue Payment” means the minimum annual payment from the Professionals to the Board, 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 an Unavoidable Delay.

"Miscellaneous Personal Property" means any and all personal property of the Professionals and/or the Directors which may be located at any time at the Golf Course and is used for the purpose of providing Services pursuant to this Contract, including Office Equipment and Supplies, but excluding Fixtures, Merchandise and Rental Equipment.

"Office Equipment and Supplies" means and includes all office equipment and general supplies of the Professionals and/or the Directors 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 Personal Property contemplated by Section 4 and as set out in Schedule F - *Option to Purchase Golf Course Personal Property*.

"Original Contract" has the meaning set out in Recital F. above.

"Permitted Creditor" is defined in Section 13(d).

"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 Fixtures, Merchandise and Rental Equipment, and excludes Miscellaneous Personal Property.

"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.

“Professionals” has the meaning set out in Recital J;

“Professional’s RFP Proposal” means the proposal submitted by the Muncie’s Golf in response to the RFP.

“Pro Shop” means the pro shop for the Golf Course, in which the Professionals sell Merchandise, collect green fees and perform other services pursuant to this Agreement.

“Rental Equipment” means any and all Personal Property of the Professionals and/or the Directors 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 Professionals to use on the Golf Course.

“RFP” is defined in Recital C.

“Services” means the services to be supplied and performed by the Professionals and the Directors pursuant to this Contract.

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

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

“360 Evaluations” is defined in Schedule C.

“Transfer Date” is defined in Schedule F.

“Unavoidable Delay” is defined in Section 28(b).

“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 Professionals, the Directors 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, the Directors or the Professionals are given a right to make a determination or to grant or withhold the consent or permission to anything, the Board, the Directors or the Professionals 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 the earlier of December 31, 2018 and the effective date of termination under Section 19 or 20.
3. **Professionals to Perform Services.** The Professionals now jointly and severally agree to provide the Services for the Golf Course according to the terms of this Contract, and the Directors jointly and severally agree to cause them to do so.
4. **Option to Purchase Personal Property.** The Professionals and the Directors each now grant the Board the Option to Purchase on the terms and conditions set out in Schedule F - *Option to Purchase Golf Course Personal Property*.
5. **Board to Pay for Services.** The Board will pay the Professionals for the Services, on the following terms:
 - (a) the gross retainer for each calendar year of the Term will be s.21(1)
 - (b) deductions from the annual gross retainer will be limited to, subject to the other terms of this Contract:
 - (i) s.21(1)
 - (ii) s.21(1)
 - (iii) that amount which equals the greater of:
 - (1) s.21(1), and
 - (2) s.21(1)

provided always that where the Professionals have rented power golf cart(s) additional to the Professionals' normal inventory of power carts specifically for a particular tournament, the direct out-of-pocket cost to the Professionals (as evidenced by the original third party invoices submitted to the Board) may be deducted from the sum payable pursuant to this Section 5(b)(iii),

- (iv) that amount which represents the Professionals' and Directors' equitable and proportionate share of the charges (collectively, "Bank Charges") levied by credit card issuers (eg. VISA, MasterCard, American Express), debit card issuers (eg. INTERAC), credit and debit card payment processing companies (eg. Moneris) under their respective contracts with the Board or the City of Vancouver which share will be determined by allocating such Bank Charges in proportion to the revenue received by the Board and the Professionals/Directors in respect to same,

and if, after making the above deductions, the resulting amount is negative, the Professionals will pay the Board such amount as required pursuant to this Contract;

- (c) on or before the 15th day of each calendar month during the Term, commencing on February 15, 2014, the Professionals 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 payable by the Board s.21(1) [REDACTED]
 - (ii) deductions from that monthly portion of the annual gross retainer for the monthly portion of the annual use fee for:
 - (1) s.21(1) [REDACTED] and
 - (2) s.21(1) [REDACTED]
 - (iii) a further deduction from that monthly portion of the amount determined pursuant to Sections 5(b)(iii) and (iv), and
 - (iv) the resulting monthly net retainer, except that if the resulting amount is negative the Professionals will pay the Board such amount on or before the required date of delivery of the invoice;

- (e) subject to Section 5(d)(iv), the Board will pay that monthly net retainer to the Professionals promptly after receipt of that invoice;
- (f) on or before the 15th day of January in the year 2015 and in each following calendar year during the Term and within 30 days after the expiry of the Term, the Professionals 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,
 - (ii) a deduction from that annual gross retainer for the annual user fee for:
 - (1) the Pro Shop (see Section 5(b)(i)), and
 - (2) the Cart Storage Area (see Section 5(b)(ii)), and
 - (iii) a further deduction of the amounts determined pursuant to Sections 5(b)(iii) and (iv),
 - (iv) the resulting annual net retainer, and
 - (v) that sum which equals the aggregate of the monthly net retainers the Board has paid to the Professionals during the preceding calendar year under Section 5(e);
- (h) if that invoice shows a balance owing to the Board, the Professionals 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 Professionals, the Board will pay that balance to the Professionals promptly after receipt of that invoice; and
- (i) the Professionals may retain the Gross Revenue from the operation of the Pro Shop except as this Contract otherwise expressly stipulates.

6. **Professionals' General Duties.** The Professionals will, at the Professionals' 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 Professionals' 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 the Directors maintain their status as Class A or equivalent members 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 Professionals' duties under this Contract, and disclose to the Board any activities of the Professionals or the Directors that may have the potential to be construed as conflicting with the Professionals' or the Directors' duties under this Contract, and will otherwise comply with the Professionals' legal obligations of good faith as a fiduciary agent of the Board;
- (e) comply promptly with all reasonable policies regarding the Golf Course 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 Professionals from time to time including, without limitation, and by way of example only:
 - (i) orders regarding the provision of Services during the operational hours of the Golf Course; 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 any of the Professionals 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 Professionals under this Contract, or to any businesses or activities the Professionals conduct under this Contract including, without limitation, obtaining and renewing all permits and licences necessary to operate the Pro Shop and the Cart Storage Area;
- (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 and the Professionals' other duties under this Contract;
- (h) maintain good public relations between the Professionals and the public and the Professionals' 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 Professionals in performing the Professionals' 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 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 Professionals' employees including, without limitation, remitting, on the Professionals' own behalf or in respect of the Professionals' 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 Professionals or the Professionals' Staff by any government body;
- (l) maintain a good credit rating with suppliers, manufacturers and other persons, firms and corporations with whom the Professionals deal, so as to protect the good reputation of the Professionals and of the Golf Course, 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 - *Customer Service Duties*;
- (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 Professionals, their 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
- (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.

7. **Professionals' Duties re Golf Course.** Subject always to Schedule G - *Grant of Licence*, the Professionals will, and will cause all of their 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) not engage in the provision of golf instructions, consultations or lessons on the Golf Course without the prior written consent of the Board's Designated Representative, which consent may be arbitrarily withheld;
- (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 the Directors, another CPGA Certified Employee of the Professionals, or the Professionals' 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;
 - (viii) ensure that the Pro Shop is 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 Professionals, who the Board will provide with adequate training, trains the Professionals' Staff sufficiently for them to operate an automated advanced reservation system;
- (e) ensure that the Professionals or the Professionals' 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 Professionals train the Professionals' 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 greens keepers;
- (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 Professionals, 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, including such information as the Board may reasonably prescribe (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 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;
8. **Fees.** The Board will determine, and consult with the Professionals regarding, from time to time, the fees and other charges for golf play on the Golf Course for all categories of golf. The Professionals will determine, from time to time, the fees and other charges for use of the Professionals' 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.
9. **Board's Duties re Cart Storage Area.** Subject always to Schedule G - *Grant of Licence*, the Board will:
- (a) 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 Professionals to the extent reasonably necessary for the provision of the Services; and
 - (b) supply electrical power for the Cart Storage Area.
10. **Professionals' Rights and Duties re Pro Shop.** Subject always to Schedule G - *Grant of Licence*, the Professional:
- (a) will continuously staff the Pro Shop with at least two qualified employees of the Professionals, all of whom must be bonded in accordance with the requirements set out in Schedule D, Section D3.0, 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 without limitation and by way of example only, the management of the Professionals' Pro Shop Staff so as to guarantee that at least two of the Professionals' 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) will manage, operate and maintain the Pro Shop, keeping it well stocked and equipped at all times with retail golf apparel and equipment to a standard in keeping with current industry standards and the reputation of the Golf Course, and the Professionals 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 Professionals' 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) will 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) will 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) will 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, except if the Board has given prior written consent; and

- (j) may keep all revenue from the operation of the Pro Shop except as this Contract otherwise stipulates.

11. **Board's Duties re Pro Shop.** Subject always to Schedule G - *Grant of Licence*, the Board:

- (a) will 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 Professionals' obligations under Section 10, as the Board's Designated Representative, acting reasonably, considers necessary or desirable from time to time;
- (b) will supply, at its cost, such heat and electricity services 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) will provide such an alarm system and anti-theft window/door hardware 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; and
- (d) will 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 will pay all system repair, maintenance and replacement costs.

12. **Professionals' Duties re Records and Financial Statements.** The Professionals:

- (a) will 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 will 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) will maintain proper records covering the operations of the Golf Course, including separate records, if required by the terms of this Contract or

requested by the Board's Designated Representative, in respect of the Pro Shop, Cart Storage Area and the other activities and duties of the Professionals 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 will 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) will, if and whenever the Board's automated advance reservation system malfunctions, keep (manually or otherwise), to the extent reasonably possible, records of the information which that system would normally record, and will provide the same to the Board together with the records and information to be provided pursuant to paragraph (a);
- (d) will 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 2014, 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 Professionals' operations pursuant to this Contract, including without limitation and by way of example only, the Services and all other activities of the Professionals 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 Professionals, and if the Professionals choose to provide unaudited statements the Professionals 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 Professionals 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) will allow the Board, at its cost, subject to paragraph (f), to carry out an audit of the operations of the Golf Course, Pro Shop, Cart Storage Area and the other activities and duties of the Professionals 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 12 for the purpose of such audit;

- (f) will 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 Professionals have reported less Gross Revenue than actually received or has remitted less money than the Professionals are obligated to remit or has taken a greater percentage of Gross Revenue than the Professionals are 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 Professionals will pay the Board all of the costs of such audit whenever the audit discloses such an underpayment;
- (g) will, 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 12 at any time, and to copy or make extracts therefrom; and
- (h) will 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, 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.

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

- (a) The Professionals will comply at all times with the insurance, bonding and Workers Compensation Board provisions set out in Schedule D - *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 Professionals or the Professionals' Staff by any applicable laws. It will be the sole responsibility of the Professionals to determine what additional insurance/bonding/WCB coverage, if any, is necessary or advisable for the Professionals' or the Professionals' Staffs' own protection and/or to fulfill the Professionals' obligations under this Contract. All insurance/bonding/

WCB will be provided and maintained by the Professionals at the Professionals' own expense.

- (b) The Professionals will jointly and severally 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 Professionals, or either of them, in observing or performing the Professionals' obligations under this Contract, any activities under the control or supervision of the Professionals or the Professionals' Staff for which the Professionals are 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 Professionals 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 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.
- (c) As security for the Board's Option to Purchase the Personal Property, the Professionals and the Directors all now grant the Board a security interest in the Personal Property on the terms attached as Schedule E - *General Security Agreement* 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 Professionals or the Directors, 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 Professionals and/or the Directors 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.
- (d) For the purposes of this Contract, a "Permitted Creditor" is a financial institution or other legitimate creditor of the Professionals or the Directors who deal at arm's length from the Professionals or the Directors,

respectively, and has either delivered Personal Property to the Golf Course or has extended credit to the Professionals and/or the Directors specifically for the purposes of financing the Professionals' operations and activities at the Golf Course, but specifically excludes creditors who are affiliated or related to the Professionals or the Directors in any way or have extended credit for personal, non-business purchases or liabilities of the Professionals or the Directors.

14. **Advertising.** Under no circumstances may the Professionals or the Professionals' 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 Professionals 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 "Langara 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 Professionals (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 Professionals 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 Professionals, nor use the Professionals' names or businesses in any advertising or promotions, without the prior written consent of the Professionals.

15. **Restrictions on Assignment by Professionals and the Directors.** Despite any other term of this Contract, the Professionals and the Directors 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 Professionals' Staff);

- (b) further to Section G.13 of Schedule G, sub-license or otherwise permit access to or use of the Pro Shop, 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);
- (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.

16. **Default by Professionals or Directors.** Subject to Section 17, default (a "Default") will occur under this Contract if the Professionals or the Directors breach 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.

17. **Limited Extension for Non-Monetary Breaches.** Despite Section 16, 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 Professionals or the Directors, as applicable, will not be in Default if the Professionals or the Directors, 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 Professionals 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 18(e).

For further certainty, paragraph (b) will not apply to any breach by the Professionals 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 Professionals have through their own acts or omissions put themselves in a position where it cannot provide such information.

18. **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 Professionals or the Directors, as applicable, for the amount of money due,
 - (c) take proceedings or any other legal steps to compel the Professionals or the Directors, as applicable, to comply with this Contract,
 - (d) where the Professionals or the Directors, as applicable, are 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 Professionals 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 17 (b), cancel this Contract as further set out in Section 19.
19. **Termination by Board for Cause.** If:
- (a) the Professionals or the Directors are in Default (but expressly excluding the type of Default described in Section 17(b)),
 - (b) the Directors, or either of them, become ill or incapacitated to the extent that, in the Board's Designated Representative's opinion, the Professionals are or will be unable to observe or perform the Professionals' 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 Professionals or the Directors become bankrupt or insolvent,
 - (d) in the Board's Designated Representative's opinion, the Directors, or either of them, exhibit dishonesty or conduct unbecoming a golf professional who is a member of the CPGA,
 - (e) in the Board's Designated Representative's opinion, the Professionals exhibit continuing inattention to, or neglect of, the Professionals' obligations under this Contract, or
 - (f) the Directors, or either of them, are suspended by the CPGA,

the Board's Designated Representative may deliver notice to the Professionals terminating this Contract, and such termination will take effect on the date the Professionals are deemed to have received that notice. If the Directors, or either of them, dies, this Contract will terminate as of the date of death. However, the Board's Designated Representative will discuss with the deceased Director's executor/executrix and the Professionals' Staff 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 golf professional to manage the Golf Course.

20. **Termination Without Cause by Board or Professionals With 1 Year Notice.** Either the Board or the Professionals 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 Professionals 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.
21. **Termination Without Cause by Board With Fees in Lieu of Notice.** Despite Section 19 or 20, 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 Professionals or the date such notice is deemed to be delivered, whichever is earlier, but in such a case, the Board will pay the Professionals the sum of \$75,000 on or before the 30th day following such termination. However, in no event will the Board's Designated Representative's breach of this Section 21 or of Section 22 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.
22. **Securing of Personal Property on Termination or Expiry.** In any case where the Board has not exercised its 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 Personal Property until such time as the Professionals remove same or it becomes property of the Board, in accordance with Section 23(e).
23. **Consequences of Termination or Expiry.** As of the effective date of termination under Section 19, 20 or 21, or expiry of the Term:
 - (a) the Board will have no further obligation, unless negotiated under Section 19 or payable in lieu of notice under Section 21, to pay any compensation under Section 5 to the Professionals, and the Board will adjust and pro rate

such compensation to the termination or expiry date, the Board and Professionals will settle their accounts regarding compensation 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 Professionals any money the Professionals owe to the Board,

- (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 21,
- (c) subject to paragraph (f), 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), expressly elects not to exercise its Option to Purchase with respect to all but not part of the Merchandise, all but not part of the Rental Equipment, and/or all but not part of the Fixtures (the "Excluded Items"), and to such extent the Board will have a lien and charge on the Excluded Items until the Professionals have paid any money it owes to the Board (including without limitation any storage and administrative fee amounts payable pursuant to paragraph (e)), and if the Professionals fail 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 Professionals will have no further right to provide the Services to the Board,
- (e) subject to paragraph (f), 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 Professionals will promptly remove all of the Personal Property (or the Excluded Items, as applicable) from the Golf Course as of the date of termination or expiry of the Term. The Professionals shall also remove all Miscellaneous Personal Property from the Golf Course by the end of the day on the effective date of termination or expiry. If the Professionals fail to remove any of the Personal Property (or the Excluded Items, as applicable) or Miscellaneous Personal Property in accordance with the foregoing requirements, a storage and administrative fee will be payable by the Professionals to the Board equal to 2% of the fair market value of such items for each calendar day that the Professionals are in breach of the Professionals' obligation to remove such items from the Golf Course. The Board will have no obligation to release such items to the Professionals until the applicable storage fee is paid in full, and if the Professionals fail 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 Professionals, and the Professionals 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,

- (f) despite paragraphs (c) and (e):
 - (i) where the Board has exercised its rights of immediate termination under Section 21, the Board will be deemed to have exercised its Option to Purchase in respect of all of the Personal Property except for the Merchandise and the Rental Equipment, and the Board may then, by written notice to the Professional, elect to purchase all or none of such Merchandise and/or all or none of such Rental Equipment; and
 - (ii) if this Contract is terminated upon the expiry of its Term and not pursuant to Sections 19, 20 or 21, the Board will give the Professionals 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.

- 24. **Automatic Renewal.** Where the Professionals continue to provide and the Board continues to accept services pursuant to this Contract following the expiry of the Term, 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.
- 25. **Surviving Obligations.** Neither the termination of the engagement nor the expiry of the Term will void or terminate any obligations of the Professionals, the Directors or the Board, which by their nature are intended to survive such termination or expiry.
- 25. **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.
- 26. **Costs.** The Professionals will bear all the costs of observing or performing the Professionals' and the Directors' 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.

27. Unavoidable Delay

- (a) Subject to paragraph (c), except for the performance of obligations to pay money, time periods for the Board's, the Professionals' and the Directors' 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 Professionals' or the Directors' 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 Professionals or the Directors.

- (c) Despite paragraph (a), 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 Professionals 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), in the event of an Unavoidable Delay other than the type referred to in paragraph (c) 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 Professionals 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.

29. **Prior Arrangements.** This Contract supersedes all prior written or verbal contracts, permits, licences or other arrangements between the Board or City, the Directors and the Professionals concerning the subject matter of this Contract.
30. **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) all obligations of each of the Professionals and each of the Directors will be deemed for all purposes to be joint and several;
 - (d) 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;
 - (e) 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;
 - (f) time will be of the essence of this Contract, and if any party hereto expressly or impliedly waives that requirement, the that party may re-instate it by delivering notice to the other;
 - (g) the fact that any party hereto waives a default is not to be construed to mean that that party waives any other default;
 - (h) no amendment to this Contract will have any effect unless it is in writing, and each party hereto has signed it;
 - (i) this Contract represents the entire agreement between the parties hereto concerning the subject matter of this Contract, and there are no representations, warranties or agreements other than those expressed in this Contract;
 - (j) 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 Professionals and the Directors; and

- (k) the Professionals acknowledge and agree that none of the Professionals' Staff is an employee of the Board. Accordingly, the Professionals' 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 Professionals (or any of the Professionals' employees) to Canada Revenue Agency under the *Income Tax Act* (Canada) in respect of Canadian Pension Plan or Employment Insurance. The Professionals further acknowledge 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 Professionals' Staff. The Professionals further agree 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 Professionals in respect of the payments received by the Professionals under this Contract. The Professionals now indemnify the Board for any and all penalties, interest and arrears imposed on the Board in the event that the Professionals breach their 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 Professionals are other than independent contractor. Upon request, the Professionals will provide the Board with satisfactory evidence of compliance with all statutory remittance requirements.

31. **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 - *Professionals' Upgrades*, [intentionally deleted]
- Schedule B - *Description of Pro Shop and Cart Storage Areas*, [intentionally deleted]
- Schedule C - *Customer Service Duties*,
- Schedule D - *Insurance/Bonding/WCB Requirements*,
- Schedule E - *General Security Agreement*,
- Schedule F - *Option to Purchase Golf Course Personal Property*
- Schedule G - *Grant of Licence*
- Schedule H - *Prime Contractor Agreement*. [intentionally deleted]

32. **Certain Remedies Independent of Arbitration Proceedings.** Except for those disputes specifically referenced in Section 33, all disputes arising under this Contract will be determined by the courts of British Columbia in accordance with British Columbia law.

33. Arbitration Proceedings.

- (a) Any dispute as to the correctness of an auditor's report prepared pursuant to Section 12(e) will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 33.
- (b) Any dispute as to the correctness of a chartered accountant's or other asset valuator's determination made pursuant to paragraph (f) of Section F.3 of Schedule F - *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 33.
- (c) Any dispute as to the calculation of the Board's costs pursuant to Section 18(d) 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 12(c)(i). The Board will select the arbitrator within 5 days of the notice to arbitrate and then provide the Professionals with the selected arbitrator's name, place of business or employment, and reasonably detailed resume or outline of recent professional experience. The Professionals 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 Professionals all material information about his/her credentials, possible conflicts of interest and biases. If the Professionals elect to contest the appointment, the Professionals 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 will be as determined by the arbitrator, subject always to the specific terms of this Contract.

34. **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 12(f)).

35. **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: Director of Legal Services

(b) In the case of a notice for the Professionals or the Directors, addressed to:

Muncie's Golf Shop Ltd.

s.22(1)

Attention: Muncie Booth

and

Monaghan Golf Inc.
7800 Vivian Drive
Vancouver, BC
V5S 2V8
Attention: Tom Monaghan

or to:

Langara Golf Course
6706 Alberta Street
Vancouver, British Columbia
V5X 4V8
Attention: Muncie Booth and Tom Monaghan

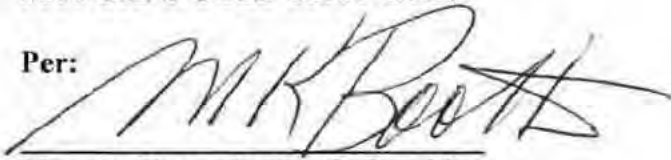
36. **Continuing effect.** This Contract will enure to the benefit of and bind the Board and its successors and assigns and the Professionals and the Directors and their respective successors and permitted assigns.

To witness this Contract each of the Board, the Directors and the Professionals have signed it as of the Contract Date.

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

Per: 
General Manager

MUNCIE'S GOLF SHOP LTD.

Per: 
Magnus Kennedy Booth, President

MONAGHAN'S GOLF INC.

Per: 
Michael Thomas Monaghan, President

**SCHEDULE A
PROFESSIONALS' UPGRADES**

[N/A and therefore deliberately deleted]

**SCHEDULE B
DESCRIPTION OF AREAS**

[N/A and therefore deliberately deleted]

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 caliber to the Golf Course.

C.2 Professionals' Participation. Upon completion of each 360 Evaluation, the Professionals 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 Professionals' Customer Service Commitment. Following each review of and meeting to discuss each 360 Evaluation, the Professionals 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 Professionals now confirm that they will promptly commence and implement the customer service enhancements set out in the Professionals' RFP Proposal.

C.4 Reporting Obligations. Following each such review of and meeting to discuss each 360 Evaluation, the Board's Designated Representative and Professionals 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 Professionals' Services, and within 10 calendar days of any request to do so, the Professionals 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.

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) The Professionals and each of the Professionals' Staff 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 power carts will be in good, clean condition and have a scorecard and pencil on them prior to being rented.
- b) Pace of play will be maintained through good tee sheet management and well trained player assistants.
- c)

**Golf Operations
Professional Services Evaluation Form**

INFORMATION	
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 PROFESSIONAL

Welcome to the Professional Service Feedback Program.

The 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
<ul style="list-style-type: none"> <input type="checkbox"/> Manner in which customers are approached by Professional and Pro Shop Staff is friendly and very pleasant at all times. <input type="checkbox"/> Customers' phone enquiries are responded to politely and quickly. <input type="checkbox"/> Customers in the Pro Shop are attended to a.s.a.p. <input type="checkbox"/> Course conditions requests are answered completely and honestly. <input type="checkbox"/> When it is very busy, every effort is made to give an initial acknowledgement to the customer (phone or live). <input type="checkbox"/> Staff approaches customers with interest in helping them. <input type="checkbox"/> There are adequate numbers of Staff to provide expected levels of customer service. 		
<p>Comments:</p>		

Tee Off/Pace of Play:	Meets	Improve
<ul style="list-style-type: none"> <input type="checkbox"/> Golfers are greeted warmly prior to their play. <input type="checkbox"/> Golfers are given proper orientation to current conditions, pace of play and etiquette (live and/or signs and/or brochures). <input type="checkbox"/> Rangers/Marshals intervene politely when appropriate. <input type="checkbox"/> 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.). 		
Comments:		

Product Knowledge:	Meets	Improve
<ul style="list-style-type: none"> <input type="checkbox"/> Counter Staff have adequate knowledge about golf and shop products and services. <input type="checkbox"/> Staff are always current with course conditions and current course maintenance issues and projects. <input type="checkbox"/> Pro Staff/teaching Staff are very knowledgeable about their services and respected for this in the golf community. 		
Comments:		

Leadership/Supervision:	Meets	Improve
<ul style="list-style-type: none"> <input type="checkbox"/> Staff are selected for their interest in golf and customer service skills. <input type="checkbox"/> Staff are thoroughly oriented/trained as to all course policies/procedures. <input type="checkbox"/> Staff are knowledgeable of the roles of all of the Professional's Staff as well as Board staff. <input type="checkbox"/> Staff are aware of any compliant with customer service approaches, maintenance issues, delegation of authority re: rainouts, closures, etc. <input type="checkbox"/> Staff receive ongoing performance planning, coaching and elevation. 		
Comments:		

<p>Products/Rentals:</p> <ul style="list-style-type: none"> <input type="checkbox"/> All products and rentals are maintained in good condition. <input type="checkbox"/> Products are geared to the intended market(s). <input type="checkbox"/> Clubs are canvassed re: product and service types. 	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Teamwork:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Staff foster a respectful relationship with all other course Staff (and Board employees, where applicable). <input type="checkbox"/> Staff cross sell to other courses when appropriate. <input type="checkbox"/> Staff help other course Staff (and Board employees, where applicable) to achieve good customer service, handling complaints, dealing with urgent matters etc. whenever possible. <input type="checkbox"/> Staff conduct themselves using a one team approach with all other course Staff (and Board employees, where applicable). <input type="checkbox"/> Board staff are informed of issues and concerns in a polite and timely manner. <input type="checkbox"/> Issues from Board staff are handled in a polite and timely manner. <input type="checkbox"/> New ideas are brought to Board staff early on in the development process to increase collaboration. 	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Revenue and Reporting:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Good accounting procedures are used for all financing, account, inventory control and reporting. <input type="checkbox"/> Reports to the Board are thorough and timely. <input type="checkbox"/> Stats include year to date comparisons and previous year comparisons. <input type="checkbox"/> Good balance of maximizing City asset and customer relations. <input type="checkbox"/> Revenue projections are on target. 	<p>Meets</p>	<p>Improve</p>
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Comments:

<p>Handling Complaints/Conflicts:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Listens well, diffuses conflict before it starts, finds causes of and solutions to problems, handles difficult people well. Has a win/win approach. <input type="checkbox"/> Every effort is made to address customer complaints to the satisfaction of the customer. <input type="checkbox"/> Complaints which cannot be resolved to the satisfaction of the customer are handled with compassion. 	<p>Meets</p>	<p>Improve</p>
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Comments:

<p>Innovation/Creativity:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Generates new ideas, challenges the status quo, supports change, encourages innovation, solves problems creatively. 	<p>Meets</p>	<p>Improve</p>
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Comments:

<p>Professional Additional Input: <i>What can the Parks Board Golf Operations...</i></p> <ul style="list-style-type: none"><input type="checkbox"/> Start doing...<input type="checkbox"/> Stop doing...<input type="checkbox"/> Do differently...that will help the Professional's Services be delivered more effectively and efficiently?	
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Comments:



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 this Contract, the Professionals and Professionals' 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.
- D1.2 The Professionals Solely Liable for Premiums/Deductibles - The Professionals 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 Professionals 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 60 days' prior written notice of material change, replacement or cancellation. Notice must identify the Contract title, number, policy holder, and be delivered in accordance with Section 35. 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.
- D1.6 Board Requirements Not Exhaustive - The Professionals and each of the Professionals' 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.
- D1.7 Insurance Requirements Independent of Other Covenants - Neither the providing of insurance or bonding by the Professionals 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 Professionals from any other provisions of this Contract with respect to the liability of the Professionals 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 Professionals' Duty of Good Faith - The Professionals will properly disclose all risks in each insurance/bond application, ensure that the Professionals do 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 Professionals fail to provide a bond, certificate of insurance or certified copies of all insurance policies as required in Section D2.1, 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 Professionals and the cost of doing so will be paid by the Professionals 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 this Contract, the insurance policy must provide coverage to the Professionals 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 Professionals obtain the applicable insurance policy. Where the Professionals are unable (in its sole discretion) to obtain insurance having a deductible no greater than \$5,000 (as adjusted pursuant to the prior sentence), the Professionals may obtain insurance with a higher deductible but only if the Professionals first deliver 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 Professionals 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 Professionals to Provide Policy/Certificates - Prior to the Board signing this Contract, the Professionals 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 Professionals agree 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 Staff - The Professionals will provide in all agreements with the Professionals' Staff clauses in the same form as those set out in this Schedule D. Upon request, the Professionals will deposit with the Board's Director of Risk Management detailed certificates of insurance for the policies the Professionals have obtained from the Professionals' Staff and a copy of the insurance requirements from each Staff's contract with the Professionals, unless the Board agrees otherwise in writing.

D3.0 Blanket Employee Dishonesty Insurance/Fidelity Bond

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

- D3.2 Coverage Limits - The limit of the Professionals' 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 Professionals will maintain comprehensive general liability insurance in sufficient amounts and description to protect the Professionals, the Professionals' Staff, the Board, the City, and their respective officers, officials, employees and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this 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 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 Professionals 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 Professionals and the Professionals' Staff.

D6.0 [intentionally deleted]

D7.0 All Risk Property Insurance

D7.1 All Risk Property Insurance - The Professionals will maintain an all risks property insurance policy covering the Professionals' Personal Property and property of every description owned by the Professionals and others for whom the Professionals 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 Professionals'

Personal Property and property of every description owned by the Professionals and others for whom the Professionals 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 Professionals 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 Professionals' affiliates or any of the Board's, the City's, the Professionals' 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 Professionals 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).

- 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 Professionals 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 Professionals 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 Professionals 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.

- D9.0 [intentionally deleted]

D10.0 Workers' Compensation Board Compliance

- D10.1 Payment of WCB Assessments. The Professionals agree that the Professionals will at the Professionals' own expense procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board coverage for all of the Professionals' Staff who are engaged in or upon any work or service which is the subject of this Contract. The Professionals agree 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 Professionals. 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.

- D10.2 Designation of Professionals as Prime Contractor. [intentionally deleted]

- D10.3 Prime Contractor's Obligations. [intentionally deleted]

- D10.4 General WCB Obligations. The Professionals 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 Professionals and their Staff, but by all material suppliers and others engaged in the performance of this Contract.

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

- (a) enter into a prime contractor agreement with the Board in form and contents satisfactory to the Board, and
- (b) 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 this Contract, the Professionals will provide the Board with the Professionals' and all Staffs' (as applicable) 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 Professionals will provide the Board with written confirmation that the Professionals and all Staff (as applicable) 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 Professionals may or may not have received, as part of this 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 Professionals now acknowledges and agrees that the Professionals may not rely on the "Pre-Contract Hazard Assessment" and now agrees to assume by the terms of this 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 Professionals in obtaining timely access to Board staff and Board records for this purpose. Within 10 days of signing this Contract, the Professionals 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 Professionals' Plans and Specifications.

D10.8 Special Indemnity Against WCB Non-Compliance. The Professionals 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 Professionals or any other employer for whom the Professionals are responsible under this Contract,
- (b) the acts or omissions of any person engaged directly or indirectly by the Professionals in the performance of this Contract, or for whom the Professionals are liable pursuant to the Professionals' 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 Professionals' obligations under this Section D10.0.

**SCHEDULE E
GENERAL SECURITY AGREEMENT**

This Agreement made as of January 1, 2014,

AMONG:


MUNCIE'S GOLF SHOP LTD.
6710 Alberta Street
Vancouver, British Columbia
V6J 4V8
("Muncie's Golf")

AND:


MONAGHAN GOLF INC.
7800 Vivian Drive
Vancouver, BC
V5S 2V8
("Monaghan Golf")

(Muncie's Golf and Monaghan Golf are collectively called the "Professionals")

AND:

MAGNUS KENNEDY BOOTH
s.22(1)

("Muncie Booth")

AND:

MICHAEL THOMAS MONAGHAN
s.22(1)

("Tom Monaghan")

(Muncie Booth and Tom Monaghan are hereinafter collectively called the "Directors")

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.

1. SECURITY

1.1 For value received, each of the Professionals and the Directors grant and create 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, each of the Professionals and The Directors:

- (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 Professionals and The Directors, respectively, located at, on or about the Golf Course (as defined in the Golf Professional Services Contract to which a copy of this General Security Agreement is attached as Schedule E) or used or acquired in connection with or primarily related to the business of the Professionals and The Directors, respectively, 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 Professionals and The Directors, respectively, of whatsoever nature and kind located on or about the Golf Course or used or acquired in connection with the business of the Professionals and the Directors, respectively,

conducted on or in respect of the Golf Course, other than such of the property, assets, effects and undertakings of the Professionals and the Directors, respectively, as are validly and effectively subjected to the security interest granted to the Board pursuant to paragraph (a), (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 Professionals and the Directors, respectively, 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 Professionals and the Directors, respectively, 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 Professionals and the Directors, respectively,

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 "Professionals" or the "Directors" 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 Professionals ARE one or more corporations or an individual, respectively, and 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 Professionals, the Directors and the Board dated January 1, 2009 related to operation of the Golf Course, to which a copy of this General Security Agreement is attached as Schedule E, as the same may be 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 Encumbrance known as a PPSA Security Agreement registered against Muncie Booth and Magnus Kennedy Booth under number 619181F in favour of Maxim Financial Services Inc. on June 18, 2010 in the Personal Property Registry of British Columbia;
- 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.

1.3 The Board, the Directors and the Professionals have not agreed to postpone the time for attachment of the security interest granted hereby and the Professionals, the Directors and the Board intend that the security interest granted hereby shall attach to presently owned or held Personal Property Collateral of the Professionals and the Directors, respectively, forthwith upon execution of this General Security Agreement and shall attach to hereafter acquired Personal Property Collateral of the Professionals and the Directors, respectively, forthwith upon acquisition of any right, title and interest of the Professionals or the Directors, respectively, 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 Professionals 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.

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 Professionals and the Directors, respectively, 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 Professionals and the Directors, respectively, or from any other person whomsoever.

3.0 REPRESENTATIONS AND WARRANTIES OF THE PROFESSIONALS AND THE DIRECTORS

3.1 Each of the Directors and the Professionals represent and warrant 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 Professionals 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 Professionals' obligations hereunder, legal, valid and binding;

- 3.1.2 the Collateral is genuine and is owned by the Directors and the Professionals, respectively, free of all Encumbrances, save for the security constituted by this General Security Agreement, the Permitted Encumbrances and Encumbrances approved in writing by the Board; and
- 3.1.3 the Professionals have good and lawful authority to create the security in the Collateral constituted by this General Security Agreement.

4.0 COVENANTS OF THE PROFESSIONALS AND THE DIRECTORS

4.1 Each of the Directors and the Professionals covenant and agree that at all times while this General Security Agreement remains in effect, it 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 Directors or the Professionals, respectively;
 - (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 Directors' or the Professionals' respective 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.

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 Professionals, the Directors 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 Professionals and the Directors, respectively, 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 Professionals' and the Directors, respectively, 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 Professionals or the Directors, respectively, 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 those 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 Professionals regarding the Professionals' 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 Professionals and Professionals' business and affairs, and the Directors and the Directors' business and affairs, respectively, 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 Professionals' and the Directors' respective 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.

5.0 BOARD ACTIONS AUTHORIZED

5.1 Each of the Directors and the Professionals hereby authorize 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 Directors' and the Professionals' respective 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 Directors and the Professionals, respectively, hereby irrevocably constitute and appoint the Board the true and lawful attorney of the Directors and the Professionals, respectively, with full power of substitution, to do any of the foregoing in its name whenever and wherever it may be deemed necessary or expedient by the Board.

5.2 If the Professionals or the Directors fail to perform any of its respective 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 Professionals 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.

6.0 DEFAULT

6.1 The Professionals and the Directors, respectively, 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.

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 Professionals or the Directors, respectively, and take possession of the Collateral with power to exclude the Professionals, the Directors and their respective agents and servants, as applicable, 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 Professionals or the Directors, respectively and as applicable, 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 Professionals and/or the Directors, as applicable, 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 Professionals and/or the Directors, as applicable, 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 Professionals and the Directors 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 Professionals or the Directors 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 Professionals or the Directors, as applicable.

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 Professionals will immediately pay to the Board the amount of such deficiency.

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 Professionals, the Directors, or any of them, and the Board that may be in effect from time to time.

10. APPOINTMENT OF ATTORNEY

10.1 Each of the Directors and the Professionals hereby irrevocably appoint the Board or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Directors and the Professionals, respectively, for and in its name to sign, endorse or

execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Professionals are obliged to sign, endorse or execute and generally to use the name of the Directors or the Professionals, respectively, 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 each of the Directors and the Professionals 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.

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 Professionals or the Directors, 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 Professionals or the Directors of any obligations or covenants imposed upon the Professionals or the Directors, respectively, 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 Professionals 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 Professionals, 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 Each of the Directors and the Professionals hereby waive 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.

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 Professionals, all without prejudice to the liability of the Professionals or the Directors, respectively, 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 Professionals 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.

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.

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 Professionals, the Directors, sureties and others and with the Collateral and other security as the Board may see fit without prejudice to the liability of the Professionals or the Directors, respectively, or the Board's right to hold and realize on the security constituted by this General Security Agreement.

15.0 ASSIGNMENT

15.1 The Board may, without further notice to the Professionals or the Directors, 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 Each of the Directors and the Professionals covenant and agree 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 Professionals or the Directors, as applicable, will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

16.0 SATISFACTION AND DISCHARGE

16.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Professionals or the Directors, respectively, 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 Each of the Directors and the Professionals 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 Professionals 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.

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 Professionals, the Directors 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 Professionals pursuant to Section 11.4 hereof or of any other right of the Board against the Professionals arising under this General Security Agreement prior to such release and discharge.

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;

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; and

18.1.4 [joint and several clause]

19.0 NOTICE

19.1 Whenever any of the Board, the Directors or the Professionals hereto are 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 Any party hereto may notify the others in accordance herewith of any change in its principal address to be used for the purposes hereof.

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.

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 Professionals and the Directors and their respective successors and permitted assigns.

22.0 COPY OF AGREEMENT AND FINANCING STATEMENT

22.1 Each of the Directors and the Professionals hereby:

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

22.1.2 waive 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.

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 Professionals or the Directors 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.

MUNCIE'S GOLF SHOP LTD.

Per:



Magnus Kennedy Booth, President

SIGNED, SEALED, AND DELIVERED

in the presence of:

Andrew Johnson

Name

s.22(1)

Address

s.22(1)

Golf Shop Manager

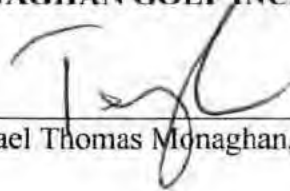
Occupation



MAGNUS KENNEDY BOOTH

MONAGHAN GOLF INC.

Per:



Michael Thomas Monaghan, President

SIGNED, SEALED, AND DELIVERED)

in the presence of:)

Andrew Johnson)

Name)

s.22(1))

Address)

s.22(1))

s.22(1))

Golf Shop Manager)

Occupation)


MICHAEL THOMAS MONAGHAN

SCHEDULE F
OPTION TO PURCHASE GOLF COURSE PERSONAL PROPERTY

F.1 Grant of Option

The Professionals and the Directors, to the extent the Directors have 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.

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 Professionals 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 Professionals 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 23(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 has in fact, 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), concurrently with the date of deemed exercise of the Option to Purchase.

- (a) [deliberately deleted].
- (b) The Professionals will, at the Professionals' sole cost and expense, have the Professionals' 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 Professionals and Board will pay its own legal fees. The Professionals, however, will pay all fees and disbursements associated

with registering all financing statements and other documents at the Personal Property Registry.

- (c) The Professionals and the Directors, to the extent the Directors have any ownership interest in any of the Personal Property, 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 Professionals and the Directors, as applicable, 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.
- (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 Professionals as of the date when title transfers to the Board in accordance with this Option to Purchase, provided always that the Board and Professionals will settle or determine the purchase price on the following terms and conditions:
 - (i) The Board's Designated Representative and Professionals 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, except that, if the Board's Designated Representative and Professionals are unable to agree on that purchase price as of the Transfer Date, the Board will 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 Professionals, to determine that purchase price, and each of the Board and the Professionals 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 that date to reflect any variations in value in the meantime.

- (ii) The Board will pay the Professionals 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 deduction by the Board of any amount the Professionals then owe to the Board.

F.4 Priority of Option to Purchase Over All Other Charges

The Professionals and the Directors, to the extent the Directors have 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.

F.6 No Further Encumbrances/Subdivisions Permitted

The Professionals and the Directors, to the extent the Directors have 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

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

F.7 Professionals' Representations

Regardless of any independent investigations that the Board may cause to be made, the Professionals and the Directors, to the extent the Directors have any ownership interest in any of the Personal Property, will each 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 Professionals and the Directors, to the extent the Directors have any ownership interest in any of the Personal Property, have 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 Professionals and the Directors, to the extent the Directors have any ownership interest in any of the Personal Property, have 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.8 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 Professionals' and the Directors', to the extent the Directors have 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 Langara Golf Course dated January 1, 2014, 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 Professionals' need for access to the Golf Course in order to provide the Services, the Board now grants the Professionals a licence for access and use of the Pro Shop 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 with any extension of the Term.

G.2 Licence Fee

The licence fees payable by the Professionals are as set out in Section 5 of this 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 Professionals in the provision of the Services and use of the Service Access Areas will be to the sole account of the Professionals except where expressly stated otherwise in this Contract.

G.4 Use of the Service Access Areas

The Professionals 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.

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 this Contract and to the public at all times during the Term and in common with the Professionals' rights of access under this licence. Despite any other term of this Schedule G or any other part of this Contract, the rights and privileges of use and access granted by this Schedule G and this Contract to the Professionals 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 Professionals now acknowledge and agree to same and further agree 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 Professionals have 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 Professionals' contractual rights and obligations under this Contract. The Professionals now acknowledge and agree 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.).

G5.3 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 Professionals' 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 Professionals now release 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 the Board's obligations to reimburse the Professionals' reasonable direct moving costs in the event of a re-location pursuant to Section G.17.

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 Professionals and the Professionals' Staff and will have the complete and unfettered right to prohibit the Professionals 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 Professionals and the Professionals' Staff for the provision of the Services.

G.7 No Representations or Warranties

The Professionals acknowledge and agree 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 Professionals. However, the Professionals 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 G to maintain and repair any part of the Golf Course or Service Access Areas. Accordingly, the Professionals now agree to accept the Golf Course and Service Access Areas on an "as is, where is" basis.

G.8 No Damage

The Professionals 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 Professionals or the Professionals' Staff, the Professionals 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 Professionals do the repairs, the Professionals will carry out the repairs at the Professionals' 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 Professionals fail to complete repairs within the time specified by the Board, the Board may carry out the repairs at the Professionals' sole cost and Section 16 of the Contract will apply.

G.10 Maintenance

The Professionals 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 9 and 11 of the Contract.

G.11 Indemnification

The indemnity set out in Section 13(b) 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 Professionals' use of the Service Access Areas, access to and from and across the Golf Course and/or relating to or arising from the Professionals' 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 this Contract.

G.12 Insurance

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

G.13 Assignment

Further to Section 15 of this Contract, the Professionals 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 Professionals 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 15 of this Contract.

G.14 Termination of the Licence

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

- (a) the Board's Designated Representative may terminate this licence immediately upon giving written notice to the Professionals pursuant to Section 21 of this Contract, and
- (b) termination or expiry of this Contract will automatically and without further or separate written notice, terminate this licence.

G.15 Laws and By-laws

The Professionals will, and will cause their 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 Professionals' 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 Professionals' 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 Professionals of the Service Access Areas in order to provide the Services.

G.16 No Alteration/Improvement

The Professionals 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.

G.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 Professionals for any resulting losses, costs, expenses or damages resulting from such changes. However, the Board will

reimburse the Professionals for any actual and direct out-of-pocket costs relating to the cost of physically moving or storing the Professionals' 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 this Term, the Professionals 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 Professionals pursuant to this Contract.

G.19 Ownership of Fixed Upgrades [deliberately deleted]

**SCHEDULE H
PRIME CONTRACTOR AGREEMENT**

[NA as no construction projects are planned, and therefore intentionally deleted]

2012 LANGARA

	AMEX Amount	CASH Amount	CHEQUE Amount	DEBIT Amount	MASTERCARD Amount	MONAGHAN G Amount	MUNCIES GOLF Amount	PARK BOARD Amount
CARTS	s.21(1)							
GIFT CERTIFICA								
GREEN FEES								
MERCHANDISE								
MISC								
PARK BOARD G								
RENTALS								
Grand Total								
	\$							
BANK CHARGE	\$							

NOTE: CALCULATIONS BASED ON

s.21(1)

VISA
M/C
AMEX

s.21(1)

Contract 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:

MUNCIE'S GOLF SHOP LTD.
6710 Alberta Street
Vancouver, British Columbia
V6J 4V8

(**"Muncie's Golf"**)

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

(**"Monaghan Golf"**)

and:

MAGNUS KENNEDY BOOTH
s.22(1)

(**"Muncie Booth"**)

and

MICHAEL THOMAS MONAGHAN
s.22(1)

(**"Tom Monaghan"**)

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 Langara Golf Course;
- B. Muncie's Golf submitted a request for pre-qualification, which the Board evaluated and accepted;
- C. By way of Request for Proposals P2008-14 (the "RFP"), the Board issued a request for proposals from each of the pre-qualified golf professionals, including Muncie's Golf and Muncie Booth, for the provision of golf professional services at the Langara Golf Course;
- D. Muncie's Golf submitted a proposal in response to the RFP;
- E. Following its review and evaluation of the various proposals submitted by the Muncie's Golf and other golf professionals pursuant to the RFP, the Board resolved on December 8, 2008 to enter into an agreement with Muncie's Golf for the provision of golf professional services at Langara Golf Course;
- F. Muncie's Golf and Muncie Booth (the sole officer, director and shareholder of Muncie's Golf) entered into a Golf Professional Services Contract – Langara with the Board effective January 1, 2009 (the "**Original Contract**");
- G. The term of the Original Contract expires on December 31, 2013 and Muncie's Golf and Muncie Booth wish to renew the Original Contract pursuant to the terms of Section 2 of the Original Contract (the "**Renewal Term**");
- H. Muncie's Golf and Muncie Booth have requested approval from the Board to add a partner, Monaghan Golf and Tom Monaghan (the sole officer and director of Monaghan Golf) as parties to this Contract for the Renewal Term, to be bound jointly and individually with Muncie's Golf and Muncie Booth during the Renewal Term;
- I. The Board approves Monaghan Golf and Tom Monaghan being added as parties to this Agreement;
- J. Muncie's Golf and Monaghan Golf are hereinafter collectively called the "Professionals";
- K. Muncie Booth and Tom Monaghan are hereinafter collectively called the "Directors"; and

- L. This Contract sets forth the terms and conditions agreed to by the Board, the Professionals and the Directors for the provision of golf professional services by the Professionals to the Board.

THE BOARD, THE DIRECTORS AND THE PROFESSIONALS NOW AGREE AS FOLLOWS:

1. Interpretation.

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

“Board and City” is defined in Section 13(b).

“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 area for the Golf Course, which is located under the Pro Shop.

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

“Contract” means this renewal contract which is intended to be on the same terms and conditions as the Original Contract except as noted by strike-through (to indicate deletions from the Original Contract) and by double-underlining (to indicate additions to the Original Contract) and includes all schedules, as amended or supplemented from time to time.

“CPGA” means the Canadian Professional Golf Association.

“CPGA Certified Employee” means any individual employed by the Professionals or retained as an independent or dependent contractor of the Professionals who is a member of the CPGA or any replacement or successor organization (including Muncie Booth, Tom Monaghan and the Professionals’ Pro Shop Manager, if applicable).

“Default” is defined in Section 16;

“determined by arbitration” is defined in Section 33(d).

“Directors” has the meaning set out in Recital K;

“Effective Date” means the effective date of this Contract, being January 1, 2014.

“Excluded Items” is defined in Section 23(c).

“Fixtures” means any and all Personal Property of the Professionals and/or the Directors which may be located at any time at the Golf Course which is in the nature of 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 Professionals and the Directors pursuant to this Contract on the terms set out in Schedule E - *General Security Agreement*.

“Golf Course” means the Langara Golf Course, located at 6706 Alberta Street, Vancouver, and except where the context otherwise requires, expressly includes the Pro Shop, chipping and putting practice areas and Cart Storage Area.

“Gross Revenue” means the gross amount received by the Professionals and/or the Directors 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 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 Professionals’ or the Directors’ business related to such activity(ies), and
- (3) the fair market value of all goods and services received by the Professionals or the Directors from any third party in exchange for or by way of barter from the provision of goods and services by the Professionals or the Directors related to such activity(ies).

“Merchandise” means all of the Personal Property of the Professionals and/or the Directors located from time to time at the Golf Course, which is intended for retail sale to the public.

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

- (1) s.21(1) and

(2)

§ 21(1)

where “n” is equal to the number of days in the applicable calendar year that the Golf Course is closed due to an Unavoidable Delay.

“Miscellaneous Personal Property” means any and all personal property of the Professionals and/or the Directors which may be located at any time at the Golf Course and is used for the purpose of providing Services pursuant to this Contract, including Office Equipment and Supplies, but excluding Fixtures, Merchandise and Rental Equipment.

“Office Equipment and Supplies” means and includes all office equipment and general supplies of the Professionals and/or the Directors 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 Personal Property contemplated by Section 4 and as set out in Schedule F - *Option to Purchase Golf Course Personal Property*.

“Original Contract” has the meaning set out in Recital F. above.

“Permitted Creditor” is defined in Section 13(d).

“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 Fixtures, Merchandise and Rental Equipment, and excludes Miscellaneous Personal Property.

“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.

“Professionals” has the meaning set out in Recital J;

“Professional’s RFP Proposal” means the proposal submitted by the Muncie’s Golf in response to the RFP.

“Pro Shop” means the pro shop for the Golf Course, in which the Professionals sell Merchandise, collect green fees and perform other services pursuant to this Agreement.

“Rental Equipment” means any and all Personal Property of the Professionals and/or the Directors 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 Professionals to use on the Golf Course.

“RFP” is defined in Recital C.

“Services” means the services to be supplied and performed by the Professionals and the Directors pursuant to this Contract.

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

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

“360 Evaluations” is defined in Schedule C.

“Transfer Date” is defined in Schedule F.

“Unavoidable Delay” is defined in Section 28(b).

“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 Professionals, the Directors 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, the Directors or the Professionals are given a right to make a determination or to grant or withhold the consent or permission to anything, the Board, the Directors or the Professionals 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 the earlier of December 31, 2018 and the effective date of termination under Section 19 or 20.

3. **Professionals to Perform Services.** The Professionals now jointly and severally agree to provide the Services for the Golf Course according to the terms of this Contract, and the Directors jointly and severally agree to cause them to do so.

4. **Option to Purchase Personal Property.** The Professionals and the Directors each now grant the Board the Option to Purchase on the terms and conditions set out in Schedule F - *Option to Purchase Golf Course Personal Property*.

5. **Board to Pay for Services.** The Board will pay the Professionals for the Services, on the following terms:

(a) the gross retainer for each calendar year of the Term will be §.21(1)

(b) deductions from the annual gross retainer will be limited to, subject to the other terms of this Contract:

(i) §.21(1) [Redacted]

(ii) §.21(1) [Redacted]

(iii) that amount which equals the greater of:

(1) §.21(1), and

(2) §.21(1) [Redacted]

provided always that where the Professionals have rented power golf cart(s) additional to the Professionals' normal inventory of power carts specifically for a particular tournament, the direct out-of-pocket cost to the Professionals (as evidenced by the original third party invoices submitted to the Board) may be deducted from the sum payable pursuant to this Section 5(b)(iii),

- (iv) that amount which represents the Professionals' and Directors' equitable and proportionate share of the charges (collectively, "Bank Charges") levied by credit card issuers (eg. VISA, MasterCard, American Express), debit card issuers (eg. INTERAC), credit and debit card payment processing companies (eg. Moneris) under their respective contracts with the Board or the City of Vancouver which share will be determined by allocating such Bank Charges in proportion to the revenue received by the Board and the Professionals/Directors in respect to same,

and if, after making the above deductions, the resulting amount is negative, the Professionals will pay the Board such amount as required pursuant to this Contract;

- (c) on or before the 15th day of each calendar month during the Term, commencing on February 15, 2014, the Professionals 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 payable by the Board s.21(1) [REDACTED]
- (ii) deductions from that monthly portion of the annual gross retainer for the monthly portion of the annual use fee for:
- (1) s.21(1) [REDACTED] and [REDACTED]
- (2) s.21(1) [REDACTED]
- (iii) a further deduction from that monthly portion of the amount determined pursuant to Sections 5(b)(iii) and (iv), and
- (iv) the resulting monthly net retainer, except that if the resulting amount is negative the Professionals will pay the Board such amount on or before the required date of delivery of the invoice;

- (e) subject to Section 5(d)(iv), the Board will pay that monthly net retainer to the Professionals promptly after receipt of that invoice;
 - (f) on or before the 15th day of January in the year 2015 and in each following calendar year during the Term and within 30 days after the expiry of the Term, the Professionals 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,
 - (ii) a deduction from that annual gross retainer for the annual user fee for:
 - (1) the Pro Shop (see Section 5(b)(i)), and
 - (2) the Cart Storage Area (see Section 5(b)(ii)), and
 - (iii) a further deduction of the amounts determined pursuant to Sections 5(b)(iii) and (iv),
 - (iv) the resulting annual net retainer, and
 - (v) that sum which equals the aggregate of the monthly net retainers the Board has paid to the Professionals during the preceding calendar year under Section 5(e);
 - (h) if that invoice shows a balance owing to the Board, the Professionals 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 Professionals, the Board will pay that balance to the Professionals promptly after receipt of that invoice; and
 - (i) the Professionals may retain the Gross Revenue from the operation of the Pro Shop except as this Contract otherwise expressly stipulates.
6. **Professionals' General Duties.** The Professionals will, at the Professionals' 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 Professionals' 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 the Directors maintain their status as Class A or equivalent members 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 Professionals' duties under this Contract, and disclose to the Board any activities of the Professionals or the Directors that may have the potential to be construed as conflicting with the Professionals' or the Directors' duties under this Contract, and will otherwise comply with the Professionals' legal obligations of good faith as a fiduciary agent of the Board;
- (e) comply promptly with all reasonable policies regarding the Golf Course 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 Professionals from time to time including, without limitation, and by way of example only:
 - (i) orders regarding the provision of Services during the operational hours of the Golf Course; 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 any of the Professionals 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 Professionals under this Contract, or to any businesses or activities the Professionals conduct under this Contract including, without limitation, obtaining and renewing all permits and licences necessary to operate the Pro Shop and the Cart Storage Area;
- (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 and the Professionals' other duties under this Contract;
- (h) maintain good public relations between the Professionals and the public and the Professionals' 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 Professionals in performing the Professionals' 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 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 Professionals' employees including, without limitation, remitting, on the Professionals' own behalf or in respect of the Professionals' 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 Professionals or the Professionals' Staff by any government body;
 - (l) maintain a good credit rating with suppliers, manufacturers and other persons, firms and corporations with whom the Professionals deal, so as to protect the good reputation of the Professionals and of the Golf Course, 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 - *Customer Service Duties*;
 - (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 Professionals, their 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
 - (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.
7. **Professionals' Duties re Golf Course.** Subject always to Schedule G - *Grant of Licence*, the Professionals will, and will cause all of their Staff, as applicable, to:

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- (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) not engage in the provision of golf instructions, consultations or lessons on the Golf Course without the prior written consent of the Board's Designated Representative, which consent may be arbitrarily withheld;
 - (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 the Directors, another CPGA Certified Employee of the Professionals, or the Professionals' 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;
 - (viii) ensure that the Pro Shop is 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 Professionals, who the Board will provide with adequate training, trains the Professionals' Staff sufficiently for them to operate an automated advanced reservation system;
- (e) ensure that the Professionals or the Professionals' 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 Professionals train the Professionals' 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 greens keepers;
- (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 Professionals, 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, including such information as the Board may reasonably prescribe (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

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- (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 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;
8. **Fees.** The Board will determine, and consult with the Professionals regarding, from time to time, the fees and other charges for golf play on the Golf Course for all categories of golf. The Professionals will determine, from time to time, the fees and other charges for use of the Professionals' 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.
9. **Board's Duties re Cart Storage Area.** Subject always to Schedule G - *Grant of Licence*, the Board will:
- (a) 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 Professionals to the extent reasonably necessary for the provision of the Services; and
- (b) supply electrical power for the Cart Storage Area.
10. **Professionals' Rights and Duties re Pro Shop.** Subject always to Schedule G - *Grant of Licence*, the Professional:
- (a) will continuously staff the Pro Shop with at least two qualified employees of the Professionals, all of whom must be bonded in accordance with the requirements set out in Schedule D, Section D3.0, 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 without limitation and by way of example only, the management of the Professionals' Pro Shop Staff so as to guarantee that at least two of the Professionals' 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) will manage, operate and maintain the Pro Shop, keeping it well stocked and equipped at all times with retail golf apparel and equipment to a standard in keeping with current industry standards and the reputation of the Golf Course, and the Professionals 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 Professionals' 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) will 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) will 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) will 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, except if the Board has given prior written consent; and

- (j) may keep all revenue from the operation of the Pro Shop except as this Contract otherwise stipulates.

11. Board's Duties re Pro Shop. Subject always to Schedule G - *Grant of Licence*, the Board:

- (a) will 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 Professionals' obligations under Section 10, as the Board's Designated Representative, acting reasonably, considers necessary or desirable from time to time;
- (b) will supply, at its cost, such heat and electricity services 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) will provide such an alarm system and anti-theft window/door hardware 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; and
- (d) will 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 will pay all system repair, maintenance and replacement costs.

12. Professionals' Duties re Records and Financial Statements. The Professionals:

- (a) will 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 will 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) will maintain proper records covering the operations of the Golf Course, including separate records, if required by the terms of this Contract or

requested by the Board's Designated Representative, in respect of the Pro Shop, Cart Storage Area and the other activities and duties of the Professionals 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 will 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) will, if and whenever the Board's automated advance reservation system malfunctions, keep (manually or otherwise), to the extent reasonably possible, records of the information which that system would normally record, and will provide the same to the Board together with the records and information to be provided pursuant to paragraph (a);
- (d) will 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 2014, 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 Professionals' operations pursuant to this Contract, including without limitation and by way of example only, the Services and all other activities of the Professionals 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 Professionals, and if the Professionals choose to provide unaudited statements the Professionals 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 Professionals 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) will allow the Board, at its cost, subject to paragraph (f), to carry out an audit of the operations of the Golf Course, Pro Shop, Cart Storage Area and the other activities and duties of the Professionals 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 12 for the purpose of such audit;

- (f) will 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 Professionals have reported less Gross Revenue than actually received or has remitted less money than the Professionals are obligated to remit or has taken a greater percentage of Gross Revenue than the Professionals are 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 Professionals will pay the Board all of the costs of such audit whenever the audit discloses such an underpayment;
- (g) will, 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 12 at any time, and to copy or make extracts therefrom; and
- (h) will 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, 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.

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

- (a) The Professionals will comply at all times with the insurance, bonding and Workers Compensation Board provisions set out in Schedule D - *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 Professionals or the Professionals' Staff by any applicable laws. It will be the sole responsibility of the Professionals to determine what additional insurance/bonding/WCB coverage, if any, is necessary or advisable for the Professionals' or the Professionals' Staffs' own protection and/or to fulfill the Professionals' obligations under this Contract. All insurance/bonding/

WCB will be provided and maintained by the Professionals at the Professionals' own expense.

- (b) The Professionals will jointly and severally 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 Professionals, or either of them, in observing or performing the Professionals' obligations under this Contract, any activities under the control or supervision of the Professionals or the Professionals' Staff for which the Professionals are 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 Professionals 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 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.
- (c) As security for the Board's Option to Purchase the Personal Property, the Professionals and the Directors all now grant the Board a security interest in the Personal Property on the terms attached as Schedule E - *General Security Agreement* 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 Professionals or the Directors, 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 Professionals and/or the Directors 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.
- (d) For the purposes of this Contract, a "Permitted Creditor" is a financial institution or other legitimate creditor of the Professionals or the Directors who deal at arm's length from the Professionals or the Directors,

respectively, and has either delivered Personal Property to the Golf Course or has extended credit to the Professionals and/or the Directors specifically for the purposes of financing the Professionals' operations and activities at the Golf Course, but specifically excludes creditors who are affiliated or related to the Professionals or the Directors in any way or have extended credit for personal, non-business purchases or liabilities of the Professionals or the Directors.

14. **Advertising.** Under no circumstances may the Professionals or the Professionals' 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 Professionals 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 "Langara 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 Professionals (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 Professionals 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 Professionals, nor use the Professionals' names or businesses in any advertising or promotions, without the prior written consent of the Professionals.

15. **Restrictions on Assignment by Professionals and the Directors.** Despite any other term of this Contract, the Professionals and the Directors 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 Professionals' Staff);

- (b) further to Section G.13 of Schedule G, sub-license or otherwise permit access to or use of the Pro Shop, 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);
- (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.

16. **Default by Professionals or Directors.** Subject to Section 17, default (a "Default") will occur under this Contract if the Professionals or the Directors breach 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.
17. **Limited Extension for Non-Monetary Breaches.** Despite Section 16, 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 Professionals or the Directors, as applicable, will not be in Default if the Professionals or the Directors, 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 Professionals 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 18(e).

For further certainty, paragraph (b) will not apply to any breach by the Professionals 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 Professionals have through their own acts or omissions put themselves in a position where it cannot provide such information.

18. **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 Professionals or the Directors, as applicable, for the amount of money due,
 - (c) take proceedings or any other legal steps to compel the Professionals or the Directors, as applicable, to comply with this Contract,
 - (d) where the Professionals or the Directors, as applicable, are 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 Professionals 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 17 (b), cancel this Contract as further set out in Section 19.
19. **Termination by Board for Cause.** If:
- (a) the Professionals or the Directors are in Default (but expressly excluding the type of Default described in Section 17(b)),
 - (b) the Directors, or either of them, become ill or incapacitated to the extent that, in the Board's Designated Representative's opinion, the Professionals are or will be unable to observe or perform the Professionals' 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 Professionals or the Directors become bankrupt or insolvent,
 - (d) in the Board's Designated Representative's opinion, the Directors, or either of them, exhibit dishonesty or conduct unbecoming a golf professional who is a member of the CPGA,
 - (e) in the Board's Designated Representative's opinion, the Professionals exhibit continuing inattention to, or neglect of, the Professionals' obligations under this Contract, or
 - (f) the Directors, or either of them, are suspended by the CPGA,

the Board's Designated Representative may deliver notice to the Professionals terminating this Contract, and such termination will take effect on the date the Professionals are deemed to have received that notice. If the Directors, or either of them, dies, this Contract will terminate as of the date of death. However, the Board's Designated Representative will discuss with the deceased Director's executor/executrix and the Professionals' Staff 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 golf professional to manage the Golf Course.

20. **Termination Without Cause by Board or Professionals With 1 Year Notice.** Either the Board or the Professionals 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 Professionals 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.
21. **Termination Without Cause by Board With Fees in Lieu of Notice.** Despite Section 19 or 20, 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 Professionals or the date such notice is deemed to be delivered, whichever is earlier, but in such a case, the Board will pay the Professionals the sum of \$75,000 on or before the 30th day following such termination. However, in no event will the Board's Designated Representative's breach of this Section 21 or of Section 22 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.
22. **Securing of Personal Property on Termination or Expiry.** In any case where the Board has not exercised its 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 Personal Property until such time as the Professionals remove same or it becomes property of the Board, in accordance with Section 23(e).
23. **Consequences of Termination or Expiry.** As of the effective date of termination under Section 19, 20 or 21, or expiry of the Term:
 - (a) the Board will have no further obligation, unless negotiated under Section 19 or payable in lieu of notice under Section 21, to pay any compensation under Section 5 to the Professionals, and the Board will adjust and pro rate

such compensation to the termination or expiry date, the Board and Professionals will settle their accounts regarding compensation 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 Professionals any money the Professionals owe to the Board,

- (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 21,
- (c) subject to paragraph (f), 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), expressly elects not to exercise its Option to Purchase with respect to all but not part of the Merchandise, all but not part of the Rental Equipment, and/or all but not part of the Fixtures (the "Excluded Items"), and to such extent the Board will have a lien and charge on the Excluded Items until the Professionals have paid any money it owes to the Board (including without limitation any storage and administrative fee amounts payable pursuant to paragraph (e)), and if the Professionals fail 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 Professionals will have no further right to provide the Services to the Board,
- (e) subject to paragraph (f), 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 Professionals will promptly remove all of the Personal Property (or the Excluded Items, as applicable) from the Golf Course as of the date of termination or expiry of the Term. The Professionals shall also remove all Miscellaneous Personal Property from the Golf Course by the end of the day on the effective date of termination or expiry. If the Professionals fail to remove any of the Personal Property (or the Excluded Items, as applicable) or Miscellaneous Personal Property in accordance with the foregoing requirements, a storage and administrative fee will be payable by the Professionals to the Board equal to 2% of the fair market value of such items for each calendar day that the Professionals are in breach of the Professionals' obligation to remove such items from the Golf Course. The Board will have no obligation to release such items to the Professionals until the applicable storage fee is paid in full, and if the Professionals fail 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 Professionals, and the Professionals 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,

- (f) despite paragraphs (c) and (e):
 - (i) where the Board has exercised its rights of immediate termination under Section 21, the Board will be deemed to have exercised its Option to Purchase in respect of all of the Personal Property except for the Merchandise and the Rental Equipment, and the Board may then, by written notice to the Professional, elect to purchase all or none of such Merchandise and/or all or none of such Rental Equipment; and
 - (ii) if this Contract is terminated upon the expiry of its Term and not pursuant to Sections 19, 20 or 21, the Board will give the Professionals 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.

- 24. **Automatic Renewal.** Where the Professionals continue to provide and the Board continues to accept services pursuant to this Contract following the expiry of the Term, 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.
- 25. **Surviving Obligations.** Neither the termination of the engagement nor the expiry of the Term will void or terminate any obligations of the Professionals, the Directors or the Board, which by their nature are intended to survive such termination or expiry.
- 25. **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.
- 26. **Costs.** The Professionals will bear all the costs of observing or performing the Professionals' and the Directors' 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.

27. Unavoidable Delay

- (a) Subject to paragraph (c), except for the performance of obligations to pay money, time periods for the Board's, the Professionals' and the Directors' 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 Professionals' or the Directors' 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 Professionals or the Directors.

- (c) Despite paragraph (a), 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 Professionals 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), in the event of an Unavoidable Delay other than the type referred to in paragraph (c) 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 Professionals 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.

29. **Prior Arrangements.** This Contract supersedes all prior written or verbal contracts, permits, licences or other arrangements between the Board or City, the Directors and the Professionals concerning the subject matter of this Contract.
30. **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) all obligations of each of the Professionals and each of the Directors will be deemed for all purposes to be joint and several;
 - (d) 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;
 - (e) 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;
 - (f) time will be of the essence of this Contract, and if any party hereto expressly or impliedly waives that requirement, the that party may reinstate it by delivering notice to the other;
 - (g) the fact that any party hereto waives a default is not to be construed to mean that that party waives any other default;
 - (h) no amendment to this Contract will have any effect unless it is in writing, and each party hereto has signed it;
 - (i) this Contract represents the entire agreement between the parties hereto concerning the subject matter of this Contract, and there are no representations, warranties or agreements other than those expressed in this Contract;
 - (j) 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 Professionals and the Directors; and

- (k) the Professionals acknowledge and agree that none of the Professionals' Staff is an employee of the Board. Accordingly, the Professionals' 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 Professionals (or any of the Professionals' employees) to Canada Revenue Agency under the *Income Tax Act* (Canada) in respect of Canadian Pension Plan or Employment Insurance. The Professionals further acknowledge 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 Professionals' Staff. The Professionals further agree 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 Professionals in respect of the payments received by the Professionals under this Contract. The Professionals now indemnify the Board for any and all penalties, interest and arrears imposed on the Board in the event that the Professionals breach their 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 Professionals are other than independent contractor. Upon request, the Professionals will provide the Board with satisfactory evidence of compliance with all statutory remittance requirements.

31. **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 - *Professionals' Upgrades*, [intentionally deleted]
- Schedule B - *Description of Pro Shop and Cart Storage Areas*, [intentionally deleted]
- Schedule C - *Customer Service Duties*,
- Schedule D - *Insurance/Bonding/WCB Requirements*,
- Schedule E - *General Security Agreement*,
- Schedule F - *Option to Purchase Golf Course Personal Property*
- Schedule G - *Grant of Licence*
- Schedule H - *Prime Contractor Agreement*. [intentionally deleted]

32. **Certain Remedies Independent of Arbitration Proceedings.** Except for those disputes specifically referenced in Section 33, all disputes arising under this Contract will be determined by the courts of British Columbia in accordance with British Columbia law.

33. Arbitration Proceedings.

- (a) Any dispute as to the correctness of an auditor's report prepared pursuant to Section 12(e) will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 33.
 - (b) Any dispute as to the correctness of a chartered accountant's or other asset valuator's determination made pursuant to paragraph (f) of Section F.3 of Schedule F - *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 33.
 - (c) Any dispute as to the calculation of the Board's costs pursuant to Section 18(d) 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 12(c)(i). The Board will select the arbitrator within 5 days of the notice to arbitrate and then provide the Professionals with the selected arbitrator's name, place of business or employment, and reasonably detailed resume or outline of recent professional experience. The Professionals 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 Professionals all material information about his/her credentials, possible conflicts of interest and biases. If the Professionals elect to contest the appointment, the Professionals 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 will be as determined by the arbitrator, subject always to the specific terms of this Contract.
- 34. 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 12(f)).

35. **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: Director of Legal Services

(b) In the case of a notice for the Professionals or the Directors, addressed to:

Muncie's Golf Shop Ltd.

s.22(1)

Attention: Muncie Booth

and

Monaghan Golf Inc.
7800 Vivian Drive
Vancouver, BC
V5S 2V8
Attention: Tom Monaghan

or to:

Langara Golf Course
6706 Alberta Street
Vancouver, British Columbia
V5X 4V8
Attention: Muncie Booth and Tom Monaghan

36. **Continuing effect.** This Contract will enure to the benefit of and bind the Board and its successors and assigns and the Professionals and the Directors and their respective successors and permitted assigns.

To witness this Contract each of the Board, the Directors and the Professionals have signed it as of the Contract Date.

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

Per: 
General Manager

MUNCIE'S GOLF SHOP LTD.

Per: 
Magnus Kennedy Booth, President

MONAGHAN'S GOLF INC.

Per: 
Michael Thomas Monaghan, President

SIGNED, SEALED, AND DELIVERED)
in the presence of:)

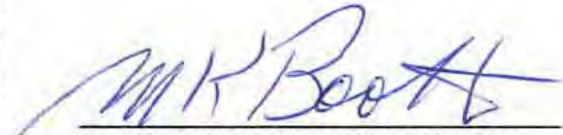
Alex Provette)

Name)
s.22(1))

Address)

Langara Shop Manager)

Occupation)



MAGNUS KENNEDY BOOTH

SIGNED, SEALED, AND DELIVERED)
in the presence of:)

Alex Provette)

Name)
s.22(1))

Address)

Langara Shop Manager)

Occupation)



MICHAEL THOMAS MONAGHAN

**SCHEDULE A
PROFESSIONALS' UPGRADES**

[N/A and therefore deliberately deleted]

**SCHEDULE B
DESCRIPTION OF AREAS**

[N/A and therefore deliberately deleted]

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 caliber to the Golf Course.

C.2 Professionals' Participation. Upon completion of each 360 Evaluation, the Professionals 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 Professionals' Customer Service Commitment. Following each review of and meeting to discuss each 360 Evaluation, the Professionals 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 Professionals now confirm that they will promptly commence and implement the customer service enhancements set out in the Professionals' RFP Proposal.

C.4 Reporting Obligations. Following each such review of and meeting to discuss each 360 Evaluation, the Board's Designated Representative and Professionals 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 Professionals' Services, and within 10 calendar days of any request to do so, the Professionals 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.

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) The Professionals and each of the Professionals' Staff 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 power carts will be in good, clean condition and have a scorecard and pencil on them prior to being rented.
- b) Pace of play will be maintained through good tee sheet management and well trained player assistants.
- c)

**Golf Operations
Professional Services Evaluation Form**

INFORMATION	
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 PROFESSIONAL

Welcome to the Professional Service Feedback Program.

The 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
<ul style="list-style-type: none"> <input type="checkbox"/> Manner in which customers are approached by Professional and Pro Shop Staff is friendly and very pleasant at all times. <input type="checkbox"/> Customers' phone enquiries are responded to politely and quickly. <input type="checkbox"/> Customers in the Pro Shop are attended to a.s.a.p. <input type="checkbox"/> Course conditions requests are answered completely and honestly. <input type="checkbox"/> When it is very busy, every effort is made to give an initial acknowledgement to the customer (phone or live). <input type="checkbox"/> Staff approaches customers with interest in helping them. <input type="checkbox"/> There are adequate numbers of Staff to provide expected levels of customer service. 		
<p>Comments:</p>		

<p>Tee Off/Pace of Play:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Golfers are greeted warmly prior to their play. <input type="checkbox"/> Golfers are given proper orientation to current conditions, pace of play and etiquette (live and/or signs and/or brochures). <input type="checkbox"/> Rangers/Marshals intervene politely when appropriate. <input type="checkbox"/> 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>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Product Knowledge:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Counter Staff have adequate knowledge about golf and shop products and services. <input type="checkbox"/> Staff are always current with course conditions and current course maintenance issues and projects. <input type="checkbox"/> Pro Staff/teaching Staff are very knowledgeable about their services and respected for this in the golf community. 	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Leadership/Supervision:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Staff are selected for their interest in golf and customer service skills. <input type="checkbox"/> Staff are thoroughly oriented/trained as to all course policies/procedures. <input type="checkbox"/> Staff are knowledgeable of the roles of all of the Professional's Staff as well as Board staff. <input type="checkbox"/> Staff are aware of any compliant with customer service approaches, maintenance issues, delegation of authority re: rainouts, closures, etc. <input type="checkbox"/> Staff receive ongoing performance planning, coaching and elevation. 	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Products/Rentals:</p> <ul style="list-style-type: none"> <input type="checkbox"/> All products and rentals are maintained in good condition. <input type="checkbox"/> Products are geared to the intended market(s). <input type="checkbox"/> Clubs are canvassed re: product and service types. 	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Teamwork:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Staff foster a respectful relationship with all other course Staff (and Board employees, where applicable). <input type="checkbox"/> Staff cross sell to other courses when appropriate. <input type="checkbox"/> Staff help other course Staff (and Board employees, where applicable) to achieve good customer service, handling complaints, dealing with urgent matters etc. whenever possible. <input type="checkbox"/> Staff conduct themselves using a one team approach with all other course Staff (and Board employees, where applicable). <input type="checkbox"/> Board staff are informed of issues and concerns in a polite and timely manner. <input type="checkbox"/> Issues from Board staff are handled in a polite and timely manner. <input type="checkbox"/> New ideas are brought to Board staff early on in the development process to increase collaboration. 	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Revenue and Reporting:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Good accounting procedures are used for all financing, account, inventory control and reporting. <input type="checkbox"/> Reports to the Board are thorough and timely. <input type="checkbox"/> Stats include year to date comparisons and previous year comparisons. <input type="checkbox"/> Good balance of maximizing City asset and customer relations. <input type="checkbox"/> Revenue projections are on target. 	<p>Meets</p>	<p>Improve</p>
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Comments:

Handling Complaints/Conflicts:	Meets	Improve
<ul style="list-style-type: none"> <input type="checkbox"/> Listens well, diffuses conflict before it starts, finds causes of and solutions to problems, handles difficult people well. Has a win/win approach. <input type="checkbox"/> Every effort is made to address customer complaints to the satisfaction of the customer. <input type="checkbox"/> Complaints which cannot be resolved to the satisfaction of the customer are handled with compassion. 		
Comments:		

Innovation/Creativity:	Meets	Improve
<ul style="list-style-type: none"> <input type="checkbox"/> Generates new ideas, challenges the status quo, supports change, encourages innovation, solves problems creatively. 		
Comments:		

<p>Professional Additional Input: <i>What can the Parks Board Golf Operations...</i></p> <ul style="list-style-type: none"><input type="checkbox"/> Start doing...<input type="checkbox"/> Stop doing...<input type="checkbox"/> Do differently...that will help the Professional's Services be delivered more effectively and efficiently?	
<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 this Contract, the Professionals and Professionals' 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.
- D1.2 The Professionals Solely Liable for Premiums/Deductibles - The Professionals 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 Professionals 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 60 days' prior written notice of material change, replacement or cancellation. Notice must identify the Contract title, number, policy holder, and be delivered in accordance with Section 35. 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.
- D1.6 Board Requirements Not Exhaustive - The Professionals and each of the Professionals' 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.
- D1.7 Insurance Requirements Independent of Other Covenants - Neither the providing of insurance or bonding by the Professionals 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 Professionals from any other provisions of this Contract with respect to the liability of the Professionals 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 Professionals' Duty of Good Faith - The Professionals will properly disclose all risks in each insurance/bond application, ensure that the Professionals do 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 Professionals fail to provide a bond, certificate of insurance or certified copies of all insurance policies as required in Section D2.1, 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 Professionals and the cost of doing so will be paid by the Professionals 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 this Contract, the insurance policy must provide coverage to the Professionals 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 Professionals obtain the applicable insurance policy. Where the Professionals are unable (in its sole discretion) to obtain insurance having a deductible no greater than \$5,000 (as adjusted pursuant to the prior sentence), the Professionals may obtain insurance with a higher deductible but only if the Professionals first deliver 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 Professionals 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 Professionals to Provide Policy/Certificates - Prior to the Board signing this Contract, the Professionals 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 Professionals agree 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 Staff - The Professionals will provide in all agreements with the Professionals' Staff clauses in the same form as those set out in this Schedule D. Upon request, the Professionals will deposit with the Board's Director of Risk Management detailed certificates of insurance for the policies the Professionals have obtained from the Professionals' Staff and a copy of the insurance requirements from each Staff's contract with the Professionals, unless the Board agrees otherwise in writing.

D3.0 Blanket Employee Dishonesty Insurance/Fidelity Bond

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

D3.2 Coverage Limits - The limit of the Professionals' 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 Professionals will maintain comprehensive general liability insurance in sufficient amounts and description to protect the Professionals, the Professionals' Staff, the Board, the City, and their respective officers, officials, employees and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this 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 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 Professionals 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 Professionals and the Professionals' Staff.

D6.0 [intentionally deleted]

D7.0 All Risk Property Insurance

D7.1 All Risk Property Insurance - The Professionals will maintain an all risks property insurance policy covering the Professionals' Personal Property and property of every description owned by the Professionals and others for whom the Professionals 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 Professionals'

Personal Property and property of every description owned by the Professionals and others for whom the Professionals 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 Professionals 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 Professionals' affiliates or any of the Board's, the City's, the Professionals' 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 Professionals 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).

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 Professionals 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 Professionals 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 Professionals 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.

D9.0 [intentionally deleted]

D10.0 Workers' Compensation Board Compliance

D10.1 Payment of WCB Assessments. The Professionals agree that the Professionals will at the Professionals' own expense procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board coverage for all of the Professionals' Staff who are engaged in or upon any work or service which is the subject of this Contract. The Professionals agree 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 Professionals. 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.

D10.2 Designation of Professionals as Prime Contractor. [intentionally deleted]

D10.3 Prime Contractor's Obligations. [intentionally deleted]

D10.4 General WCB Obligations. The Professionals 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 Professionals and their Staff, but by all material suppliers and others engaged in the performance of this Contract.

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

- (a) enter into a prime contractor agreement with the Board in form and contents satisfactory to the Board, and
- (b) 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 this Contract, the Professionals will provide the Board with the Professionals' and all Staffs' (as applicable) 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 Professionals will provide the Board with written confirmation that the Professionals and all Staff (as applicable) 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 Professionals may or may not have received, as part of this 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 Professionals now acknowledges and agrees that the Professionals may not rely on the "Pre-Contract Hazard Assessment" and now agrees to assume by the terms of this 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 Professionals in obtaining timely access to Board staff and Board records for this purpose. Within 10 days of signing this Contract, the Professionals 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 Professionals' Plans and Specifications.

D10.8 Special Indemnity Against WCB Non-Compliance. The Professionals 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 Professionals or any other employer for whom the Professionals are responsible under this Contract,
- (b) the acts or omissions of any person engaged directly or indirectly by the Professionals in the performance of this Contract, or for whom the Professionals are liable pursuant to the Professionals' 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 Professionals' obligations under this Section D10.0.

**SCHEDULE E
GENERAL SECURITY AGREEMENT**

This Agreement made as of January 1, 2014,

AMONG:


MUNCIE'S GOLF SHOP LTD.
6710 Alberta Street
Vancouver, British Columbia
V6J 4V8
(**"Muncie's Golf"**)

AND:


MONAGHAN GOLF INC.
7800 Vivian Drive
Vancouver, BC
V5S 2V8
(**"Monaghan Golf"**)

(Muncie's Golf and Monaghan Golf are collectively called the
"Professionals")

AND:

MAGNUS KENNEDY BOOTH
s.22(1)

(**"Muncie Booth"**)

AND:

MICHAEL THOMAS MONAGHAN
s.22(1)

(**"Tom Monaghan"**)

(Muncie Booth and Tom Monaghan are hereinafter collectively called the
"Directors")

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.

1. SECURITY

1.1 For value received, each of the Professionals and the Directors grant and create 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, each of the Professionals and The Directors:

- (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 Professionals and The Directors, respectively, located at, on or about the Golf Course (as defined in the Golf Professional Services Contract to which a copy of this General Security Agreement is attached as Schedule E) or used or acquired in connection with or primarily related to the business of the Professionals and The Directors, respectively, 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 Professionals and The Directors, respectively, of whatsoever nature and kind located on or about the Golf Course or used or acquired in connection with the business of the Professionals and the Directors, respectively,

conducted on or in respect of the Golf Course, other than such of the property, assets, effects and undertakings of the Professionals and the Directors, respectively, as are validly and effectively subjected to the security interest granted to the Board pursuant to paragraph (a), (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 Professionals and the Directors, respectively, 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 Professionals and the Directors, respectively, 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 Professionals and the Directors, respectively,

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 "Professionals" or the "Directors" 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 Professionals ARE one or more corporations or an individual, respectively, and 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 Professionals, the Directors and the Board dated January 1, 2009 related to operation of the Golf Course, to which a copy of this General Security Agreement is attached as Schedule E, as the same may be 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 Encumbrance known as a PPSA Security Agreement registered against Muncie Booth and Magnus Kennedy Booth under number 619181F in favour of Maxim Financial Services Inc. on June 18, 2010 in the Personal Property Registry of British Columbia;
- 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.

1.3 The Board, the Directors and the Professionals have not agreed to postpone the time for attachment of the security interest granted hereby and the Professionals, the Directors and the Board intend that the security interest granted hereby shall attach to presently owned or held Personal Property Collateral of the Professionals and the Directors, respectively, forthwith upon execution of this General Security Agreement and shall attach to hereafter acquired Personal Property Collateral of the Professionals and the Directors, respectively, forthwith upon acquisition of any right, title and interest of the Professionals or the Directors, respectively, 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 Professionals 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.

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 Professionals and the Directors, respectively, 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 Professionals and the Directors, respectively, or from any other person whomsoever.

3.0 REPRESENTATIONS AND WARRANTIES OF THE PROFESSIONALS AND THE DIRECTORS

3.1 Each of the Directors and the Professionals represent and warrant 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 Professionals 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 Professionals' obligations hereunder, legal, valid and binding;

- 3.1.2 the Collateral is genuine and is owned by the Directors and the Professionals, respectively, free of all Encumbrances, save for the security constituted by this General Security Agreement, the Permitted Encumbrances and Encumbrances approved in writing by the Board; and
- 3.1.3 the Professionals have good and lawful authority to create the security in the Collateral constituted by this General Security Agreement.

4.0 COVENANTS OF THE PROFESSIONALS AND THE DIRECTORS

4.1 Each of the Directors and the Professionals covenant and agree that at all times while this General Security Agreement remains in effect, it 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 Directors or the Professionals, respectively;
 - (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 Directors' or the Professionals' respective 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.
- 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 Professionals, the Directors 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 Professionals and the Directors, respectively, 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 Professionals' and the Directors, respectively, 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 Professionals or the Directors, respectively, 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 those 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 Professionals regarding the Professionals' 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 Professionals and Professionals' business and affairs, and the Directors and the Directors' business and affairs, respectively, as the Board may reasonably require;

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- 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 Professionals' and the Directors' respective 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.

5.0 BOARD ACTIONS AUTHORIZED

5.1 Each of the Directors and the Professionals hereby authorize 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 Directors' and the Professionals' respective 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 Directors and the Professionals, respectively, hereby irrevocably constitute and appoint the Board the true and lawful attorney of the Directors and the Professionals, respectively, with full power of substitution, to do any of the foregoing in its name whenever and wherever it may be deemed necessary or expedient by the Board.

5.2 If the Professionals or the Directors fail to perform any of its respective 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 Professionals 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.

6.0 DEFAULT

6.1 The Professionals and the Directors, respectively, 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.

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;

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- 7.2.2 enter upon any premises of the Professionals or the Directors, respectively, and take possession of the Collateral with power to exclude the Professionals, the Directors and their respective agents and servants, as applicable, 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 Professionals or the Directors, respectively and as applicable, 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 Professionals and/or the Directors, as applicable, 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 Professionals and/or the Directors, as applicable, 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 Professionals and the Directors 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 Professionals or the Directors 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 Professionals or the Directors, as applicable.

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 Professionals will immediately pay to the Board the amount of such deficiency.

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 Professionals, the Directors, or any of them, and the Board that may be in effect from time to time.

10. APPOINTMENT OF ATTORNEY

10.1 Each of the Directors and the Professionals hereby irrevocably appoint the Board or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Directors and the Professionals, respectively, for and in its name to sign, endorse or

execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Professionals are obliged to sign, endorse or execute and generally to use the name of the Directors or the Professionals, respectively, 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 each of the Directors and the Professionals 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.

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 Professionals or the Directors, 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 Professionals or the Directors of any obligations or covenants imposed upon the Professionals or the Directors, respectively, 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 Professionals 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 Professionals, 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 Each of the Directors and the Professionals hereby waive 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.

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 Professionals, all without prejudice to the liability of the Professionals or the Directors, respectively, 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 Professionals 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.

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.

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 Professionals, the Directors, sureties and others and with the Collateral and other security as the Board may see fit without prejudice to the liability of the Professionals or the Directors, respectively, or the Board's right to hold and realize on the security constituted by this General Security Agreement.

15.0 ASSIGNMENT

15.1 The Board may, without further notice to the Professionals or the Directors, 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 Each of the Directors and the Professionals covenant and agree 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 Professionals or the Directors, as applicable, will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

16.0 SATISFACTION AND DISCHARGE

16.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Professionals or the Directors, respectively, 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 Each of the Directors and the Professionals 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 Professionals 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.

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 Professionals, the Directors 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 Professionals pursuant to Section 11.4 hereof or of any other right of the Board against the Professionals arising under this General Security Agreement prior to such release and discharge.

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;

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; and

18.1.4 [joint and several clause]

19.0 NOTICE

19.1 Whenever any of the Board, the Directors or the Professionals hereto are 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 Any party hereto may notify the others in accordance herewith of any change in its principal address to be used for the purposes hereof.

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.

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 Professionals and the Directors and their respective successors and permitted assigns.

22.0 COPY OF AGREEMENT AND FINANCING STATEMENT

22.1 Each of the Directors and the Professionals hereby:

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

22.1.2 waive 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.

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 Professionals or the Directors 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.

MUNCIE'S GOLF SHOP LTD.

Per:


Magnus Kennedy Booth, President

SIGNED, SEALED, AND DELIVERED)

in the presence of:)

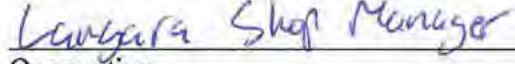
)

Name)

s.22(1))

Address)

)

)

Occupation)


MAGNUS KENNEDY BOOTH

MONAGHAN GOLF INC.

Per:

Taylor

Michael Thomas Monaghan, President

SIGNED, SEALED, AND DELIVERED)

in the presence of:)

Alex Doucette)

Name)
s.22(1)

Address)

Langara Shop Manager)
Occupation)

Taylor
MICHAEL THOMAS MONAGHAN

SCHEDULE F
OPTION TO PURCHASE GOLF COURSE PERSONAL PROPERTY

F.1 Grant of Option

The Professionals and the Directors, to the extent the Directors have 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.

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 Professionals 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 Professionals 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 23(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 has in fact, 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), concurrently with the date of deemed exercise of the Option to Purchase.

- (a) [deliberately deleted].
- (b) The Professionals will, at the Professionals' sole cost and expense, have the Professionals' 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 Professionals and Board will pay its own legal fees. The Professionals, however, will pay all fees and disbursements associated

with registering all financing statements and other documents at the Personal Property Registry.

- (c) The Professionals and the Directors, to the extent the Directors have any ownership interest in any of the Personal Property, 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 Professionals and the Directors, as applicable, 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.
- (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 Professionals as of the date when title transfers to the Board in accordance with this Option to Purchase, provided always that the Board and Professionals will settle or determine the purchase price on the following terms and conditions:
 - (i) The Board's Designated Representative and Professionals 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, except that, if the Board's Designated Representative and Professionals are unable to agree on that purchase price as of the Transfer Date, the Board will 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 Professionals, to determine that purchase price, and each of the Board and the Professionals 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 that date to reflect any variations in value in the meantime.

- (ii) The Board will pay the Professionals 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 deduction by the Board of any amount the Professionals then owe to the Board.

F.4 Priority of Option to Purchase Over All Other Charges

The Professionals and the Directors, to the extent the Directors have 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.

F.6 No Further Encumbrances/Subdivisions Permitted

The Professionals and the Directors, to the extent the Directors have 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

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

F.7 Professionals' Representations

Regardless of any independent investigations that the Board may cause to be made, the Professionals and the Directors, to the extent the Directors have any ownership interest in any of the Personal Property, will each 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 Professionals and the Directors, to the extent the Directors have any ownership interest in any of the Personal Property, have 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 Professionals and the Directors, to the extent the Directors have any ownership interest in any of the Personal Property, have 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.8 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 Professionals' and the Directors', to the extent the Directors have 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 Langara Golf Course dated January 1, 2014, 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 Professionals' need for access to the Golf Course in order to provide the Services, the Board now grants the Professionals a licence for access and use of the Pro Shop 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 with any extension of the Term.

G.2 Licence Fee

The licence fees payable by the Professionals are as set out in Section 5 of this 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 Professionals in the provision of the Services and use of the Service Access Areas will be to the sole account of the Professionals except where expressly stated otherwise in this Contract.

G.4 Use of the Service Access Areas

The Professionals 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.

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 this Contract and to the public at all times during the Term and in common with the Professionals' rights of access under this licence. Despite any other term of this Schedule G or any other part of this Contract, the rights and privileges of use and access granted by this Schedule G and this Contract to the Professionals 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 Professionals now acknowledge and agree to same and further agree 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 Professionals have 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 Professionals' contractual rights and obligations under this Contract. The Professionals now acknowledge and agree 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.).

G5.3 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 Professionals' 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 Professionals now release 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 the Board's obligations to reimburse the Professionals' reasonable direct moving costs in the event of a re-location pursuant to Section G.17.

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 Professionals and the Professionals' Staff and will have the complete and unfettered right to prohibit the Professionals 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 Professionals and the Professionals' Staff for the provision of the Services.

G.7 No Representations or Warranties

The Professionals acknowledge and agree 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 Professionals. However, the Professionals 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 G to maintain and repair any part of the Golf Course or Service Access Areas. Accordingly, the Professionals now agree to accept the Golf Course and Service Access Areas on an "as is, where is" basis.

G.8 No Damage

The Professionals 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 Professionals or the Professionals' Staff, the Professionals 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 Professionals do the repairs, the Professionals will carry out the repairs at the Professionals' 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 Professionals fail to complete repairs within the time specified by the Board, the Board may carry out the repairs at the Professionals' sole cost and Section 16 of the Contract will apply.

G.10 Maintenance

The Professionals 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 9 and 11 of the Contract.

G.11 Indemnification

The indemnity set out in Section 13(b) 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 Professionals' use of the Service Access Areas, access to and from and across the Golf Course and/or relating to or arising from the Professionals' 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 this Contract.

G.12 Insurance

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

G.13 Assignment

Further to Section 15 of this Contract, the Professionals 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 Professionals 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 15 of this Contract.

G.14 Termination of the Licence

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

- (a) the Board's Designated Representative may terminate this licence immediately upon giving written notice to the Professionals pursuant to Section 21 of this Contract, and
- (b) termination or expiry of this Contract will automatically and without further or separate written notice, terminate this licence.

G.15 Laws and By-laws

The Professionals will, and will cause their 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 Professionals' 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 Professionals' 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 Professionals of the Service Access Areas in order to provide the Services.

G.16 No Alteration/Improvement

The Professionals 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.

G.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 Professionals for any resulting losses, costs, expenses or damages resulting from such changes. However, the Board will

reimburse the Professionals for any actual and direct out-of-pocket costs relating to the cost of physically moving or storing the Professionals' 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 this Term, the Professionals 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 Professionals pursuant to this Contract.

G.19 Ownership of Fixed Upgrades [deliberately deleted]

**SCHEDULE H
PRIME CONTRACTOR AGREEMENT**

[NA as no construction projects are planned, and therefore intentionally deleted]

Contract 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:

MUNCIE'S GOLF SHOP LTD.
6710 Alberta Street
Vancouver, British Columbia
V6J 4V8

(“Muncie’s Golf”)

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

(“Monaghan Golf”)

and:

MAGNUS KENNEDY BOOTH
s.22(1)



(“Muncie Booth”)

and

MICHAEL THOMAS MONAGHAN
s.22(1)



(“Tom Monaghan”)

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 Langara Golf Course;
- B. Muncie's Golf submitted a request for pre-qualification, which the Board evaluated and accepted;
- C. By way of Request for Proposals P2008-14 (the "RFP"), the Board issued a request for proposals from each of the pre-qualified golf professionals, including Muncie's Golf and Muncie Booth, for the provision of golf professional services at the Langara Golf Course;
- D. Muncie's Golf submitted a proposal in response to the RFP;
- E. Following its review and evaluation of the various proposals submitted by the Muncie's Golf and other golf professionals pursuant to the RFP, the Board resolved on December 8, 2008 to enter into an agreement with Muncie's Golf for the provision of golf professional services at Langara Golf Course;
- F. Muncie's Golf and Muncie Booth (the sole officer, director and shareholder of Muncie's Golf) entered into a Golf Professional Services Contract – Langara with the Board effective January 1, 2009 (the "**Original Contract**");
- G. The term of the Original Contract expires on December 31, 2013 and Muncie's Golf and Muncie Booth wish to renew the Original Contract pursuant to the terms of Section 2 of the Original Contract (the "**Renewal Term**");
- H. Muncie's Golf and Muncie Booth have requested approval from the Board to add a partner, Monaghan Golf and Tom Monaghan (the sole officer and director of Monaghan Golf) as parties to this Contract for the Renewal Term, to be bound jointly and individually with Muncie's Golf and Muncie Booth during the Renewal Term;
- I. The Board approves Monaghan Golf and Tom Monaghan being added as parties to this Agreement;
- J. Muncie's Golf and Monaghan Golf are hereinafter collectively called the "Professionals";
- K. Muncie Booth and Tom Monaghan are hereinafter collectively called the "Directors"; and

- L. This Contract sets forth the terms and conditions agreed to by the Board, the Professionals and the Directors for the provision of golf professional services by the Professionals to the Board.

THE BOARD, THE DIRECTORS AND THE PROFESSIONALS NOW AGREE AS FOLLOWS:

1. Interpretation.

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

“Board and City” is defined in Section 13(b).

“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 area for the Golf Course, which is located under the Pro Shop.

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

“Contract” means this renewal contract which is intended to be on the same terms and conditions as the Original Contract except as noted by strike-through (to indicate deletions from the Original Contract) and by double-underlining (to indicate additions to the Original Contract) and includes all schedules, as amended or supplemented from time to time.

“CPGA” means the Canadian Professional Golf Association.

“CPGA Certified Employee” means any individual employed by the Professionals or retained as an independent or dependent contractor of the Professionals who is a member of the CPGA or any replacement or successor organization (including Muncie Booth, Tom Monaghan and the Professionals’ Pro Shop Manager, if applicable).

“Default” is defined in Section 16;

“determined by arbitration” is defined in Section 33(d).

“Directors” has the meaning set out in Recital K;

“Effective Date” means the effective date of this Contract, being January 1, 2014.

“Excluded Items” is defined in Section 23(c).

“Fixtures” means any and all Personal Property of the Professionals and/or the Directors which may be located at any time at the Golf Course which is in the nature of 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 Professionals and the Directors pursuant to this Contract on the terms set out in Schedule E - *General Security Agreement*.

“Golf Course” means the Langara Golf Course, located at 6706 Alberta Street, Vancouver, and except where the context otherwise requires, expressly includes the Pro Shop, chipping and putting practice areas and Cart Storage Area.

“Gross Revenue” means the gross amount received by the Professionals and/or the Directors 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 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 Professionals’ or the Directors’ business related to such activity(ies), and
- (3) the fair market value of all goods and services received by the Professionals or the Directors from any third party in exchange for or by way of barter from the provision of goods and services by the Professionals or the Directors related to such activity(ies).

“Merchandise” means all of the Personal Property of the Professionals and/or the Directors located from time to time at the Golf Course, which is intended for retail sale to the public.

“Minimum Cart Revenue Payment” means the minimum annual payment from the Professionals to the Board, 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 an Unavoidable Delay.

"Miscellaneous Personal Property" means any and all personal property of the Professionals and/or the Directors which may be located at any time at the Golf Course and is used for the purpose of providing Services pursuant to this Contract, including Office Equipment and Supplies, but excluding Fixtures, Merchandise and Rental Equipment.

"Office Equipment and Supplies" means and includes all office equipment and general supplies of the Professionals and/or the Directors 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 Personal Property contemplated by Section 4 and as set out in Schedule F - *Option to Purchase Golf Course Personal Property*.

"Original Contract" has the meaning set out in Recital F. above.

"Permitted Creditor" is defined in Section 13(d).

"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 Fixtures, Merchandise and Rental Equipment, and excludes Miscellaneous Personal Property.

"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.

“Professionals” has the meaning set out in Recital J;

“Professional’s RFP Proposal” means the proposal submitted by the Muncie’s Golf in response to the RFP.

“Pro Shop” means the pro shop for the Golf Course, in which the Professionals sell Merchandise, collect green fees and perform other services pursuant to this Agreement.

“Rental Equipment” means any and all Personal Property of the Professionals and/or the Directors 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 Professionals to use on the Golf Course.

“RFP” is defined in Recital C.

“Services” means the services to be supplied and performed by the Professionals and the Directors pursuant to this Contract.

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

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

“360 Evaluations” is defined in Schedule C.

“Transfer Date” is defined in Schedule F.

“Unavoidable Delay” is defined in Section 28(b).

“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 Professionals, the Directors 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, the Directors or the Professionals are given a right to make a determination or to grant or withhold the consent or permission to anything, the Board, the Directors or the Professionals 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 the earlier of December 31, 2018 and the effective date of termination under Section 19 or 20.
- 3. **Professionals to Perform Services.** The Professionals now jointly and severally agree to provide the Services for the Golf Course according to the terms of this Contract, and the Directors jointly and severally agree to cause them to do so.
- 4. **Option to Purchase Personal Property.** The Professionals and the Directors each now grant the Board the Option to Purchase on the terms and conditions set out in Schedule F - *Option to Purchase Golf Course Personal Property*.
- 5. **Board to Pay for Services.** The Board will pay the Professionals for the Services, on the following terms:
 - (a) the gross retainer for each calendar year of the Term will be s.21(1)
 - (b) deductions from the annual gross retainer will be limited to, subject to the other terms of this Contract:
 - (i) s.21(1)
 - (ii) s.21(1)
 - (iii) that amount which equals the greater of:
 - (1) s.21(1), and
 - (2) s.21(1)

provided always that where the Professionals have rented power golf cart(s) additional to the Professionals' normal inventory of power carts specifically for a particular tournament, the direct out-of-pocket cost to the Professionals (as evidenced by the original third party invoices submitted to the Board) may be deducted from the sum payable pursuant to this Section 5(b)(iii),

- (iv) that amount which represents the Professionals' and Directors' equitable and proportionate share of the charges (collectively, "Bank Charges") levied by credit card issuers (eg. VISA, MasterCard, American Express), debit card issuers (eg. INTERAC), credit and debit card payment processing companies (eg. Moneris) under their respective contracts with the Board or the City of Vancouver which share will be determined by allocating such Bank Charges in proportion to the revenue received by the Board and the Professionals/Directors in respect to same,

and if, after making the above deductions, the resulting amount is negative, the Professionals will pay the Board such amount as required pursuant to this Contract;

- (c) on or before the 15th day of each calendar month during the Term, commencing on February 15, 2014, the Professionals 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 payable by the Board ^{s.21(1)} [REDACTED]
- (ii) deductions from that monthly portion of the annual gross retainer for the monthly portion of the annual use fee for:
- (1) ^{s.21(1)} [REDACTED] and
- (2) ^{s.21(1)} [REDACTED]
- (iii) a further deduction from that monthly portion of the amount determined pursuant to Sections 5(b)(iii) and (iv), and
- (iv) the resulting monthly net retainer, except that if the resulting amount is negative the Professionals will pay the Board such amount on or before the required date of delivery of the invoice;

- (e) subject to Section 5(d)(iv), the Board will pay that monthly net retainer to the Professionals promptly after receipt of that invoice;
 - (f) on or before the 15th day of January in the year 2015 and in each following calendar year during the Term and within 30 days after the expiry of the Term, the Professionals 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,
 - (ii) a deduction from that annual gross retainer for the annual user fee for:
 - (1) the Pro Shop (see Section 5(b)(i)), and
 - (2) the Cart Storage Area (see Section 5(b)(ii)), and
 - (iii) a further deduction of the amounts determined pursuant to Sections 5(b)(iii) and (iv),
 - (iv) the resulting annual net retainer, and
 - (v) that sum which equals the aggregate of the monthly net retainers the Board has paid to the Professionals during the preceding calendar year under Section 5(e);
 - (h) if that invoice shows a balance owing to the Board, the Professionals 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 Professionals, the Board will pay that balance to the Professionals promptly after receipt of that invoice; and
 - (i) the Professionals may retain the Gross Revenue from the operation of the Pro Shop except as this Contract otherwise expressly stipulates.
6. **Professionals' General Duties.** The Professionals will, at the Professionals' 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 Professionals' 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 the Directors maintain their status as Class A or equivalent members 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 Professionals' duties under this Contract, and disclose to the Board any activities of the Professionals or the Directors that may have the potential to be construed as conflicting with the Professionals' or the Directors' duties under this Contract, and will otherwise comply with the Professionals' legal obligations of good faith as a fiduciary agent of the Board;
- (e) comply promptly with all reasonable policies regarding the Golf Course 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 Professionals from time to time including, without limitation, and by way of example only:
 - (i) orders regarding the provision of Services during the operational hours of the Golf Course; 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 any of the Professionals 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 Professionals under this Contract, or to any businesses or activities the Professionals conduct under this Contract including, without limitation, obtaining and renewing all permits and licences necessary to operate the Pro Shop and the Cart Storage Area;
- (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 and the Professionals' other duties under this Contract;
- (h) maintain good public relations between the Professionals and the public and the Professionals' 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 Professionals in performing the Professionals' 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 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 Professionals' employees including, without limitation, remitting, on the Professionals' own behalf or in respect of the Professionals' 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 Professionals or the Professionals' Staff by any government body;
- (l) maintain a good credit rating with suppliers, manufacturers and other persons, firms and corporations with whom the Professionals deal, so as to protect the good reputation of the Professionals and of the Golf Course, 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 - *Customer Service Duties*;
- (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 Professionals, their 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
- (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.

7. **Professionals' Duties re Golf Course.** Subject always to Schedule G - *Grant of Licence*, the Professionals will, and will cause all of their 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) not engage in the provision of golf instructions, consultations or lessons on the Golf Course without the prior written consent of the Board's Designated Representative, which consent may be arbitrarily withheld;
- (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 the Directors, another CPGA Certified Employee of the Professionals, or the Professionals' 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;
 - (viii) ensure that the Pro Shop is 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 Professionals, who the Board will provide with adequate training, trains the Professionals' Staff sufficiently for them to operate an automated advanced reservation system;
- (e) ensure that the Professionals or the Professionals' 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 Professionals train the Professionals' 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 greens keepers;
- (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 Professionals, 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, including such information as the Board may reasonably prescribe (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 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;
8. **Fees.** The Board will determine, and consult with the Professionals regarding, from time to time, the fees and other charges for golf play on the Golf Course for all categories of golf. The Professionals will determine, from time to time, the fees and other charges for use of the Professionals' 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.
9. **Board's Duties re Cart Storage Area.** Subject always to Schedule G - *Grant of Licence*, the Board will:
- (a) 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 Professionals to the extent reasonably necessary for the provision of the Services; and
 - (b) supply electrical power for the Cart Storage Area.
10. **Professionals' Rights and Duties re Pro Shop.** Subject always to Schedule G - *Grant of Licence*, the Professional:
- (a) will continuously staff the Pro Shop with at least two qualified employees of the Professionals, all of whom must be bonded in accordance with the requirements set out in Schedule D, Section D3.0, 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 without limitation and by way of example only, the management of the Professionals' Pro Shop Staff so as to guarantee that at least two of the Professionals' 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) will manage, operate and maintain the Pro Shop, keeping it well stocked and equipped at all times with retail golf apparel and equipment to a standard in keeping with current industry standards and the reputation of the Golf Course, and the Professionals 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 Professionals' 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) will 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) will 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) will 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, except if the Board has given prior written consent; and

- (j) may keep all revenue from the operation of the Pro Shop except as this Contract otherwise stipulates.

11. **Board's Duties re Pro Shop.** Subject always to Schedule G - *Grant of Licence*, the Board:

- (a) will 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 Professionals' obligations under Section 10, as the Board's Designated Representative, acting reasonably, considers necessary or desirable from time to time;
- (b) will supply, at its cost, such heat and electricity services 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) will provide such an alarm system and anti-theft window/door hardware 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; and
- (d) will 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 will pay all system repair, maintenance and replacement costs.

12. **Professionals' Duties re Records and Financial Statements.** The Professionals:

- (a) will 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 will 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) will maintain proper records covering the operations of the Golf Course, including separate records, if required by the terms of this Contract or

requested by the Board's Designated Representative, in respect of the Pro Shop, Cart Storage Area and the other activities and duties of the Professionals 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 will 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) will, if and whenever the Board's automated advance reservation system malfunctions, keep (manually or otherwise), to the extent reasonably possible, records of the information which that system would normally record, and will provide the same to the Board together with the records and information to be provided pursuant to paragraph (a);
- (d) will 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 2014, 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 Professionals' operations pursuant to this Contract, including without limitation and by way of example only, the Services and all other activities of the Professionals 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 Professionals, and if the Professionals choose to provide unaudited statements the Professionals 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 Professionals 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) will allow the Board, at its cost, subject to paragraph (f), to carry out an audit of the operations of the Golf Course, Pro Shop, Cart Storage Area and the other activities and duties of the Professionals 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 12 for the purpose of such audit;

- (f) will 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 Professionals have reported less Gross Revenue than actually received or has remitted less money than the Professionals are obligated to remit or has taken a greater percentage of Gross Revenue than the Professionals are 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 Professionals will pay the Board all of the costs of such audit whenever the audit discloses such an underpayment;
- (g) will, 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 12 at any time, and to copy or make extracts therefrom; and
- (h) will 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, 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.

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

- (a) The Professionals will comply at all times with the insurance, bonding and Workers Compensation Board provisions set out in Schedule D - *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 Professionals or the Professionals' Staff by any applicable laws. It will be the sole responsibility of the Professionals to determine what additional insurance/bonding/WCB coverage, if any, is necessary or advisable for the Professionals' or the Professionals' Staffs' own protection and/or to fulfill the Professionals' obligations under this Contract. All insurance/bonding/

WCB will be provided and maintained by the Professionals at the Professionals' own expense.

- (b) The Professionals will jointly and severally 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 Professionals, or either of them, in observing or performing the Professionals' obligations under this Contract, any activities under the control or supervision of the Professionals or the Professionals' Staff for which the Professionals are 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 Professionals 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 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.
- (c) As security for the Board's Option to Purchase the Personal Property, the Professionals and the Directors all now grant the Board a security interest in the Personal Property on the terms attached as Schedule E - *General Security Agreement* 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 Professionals or the Directors, 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 Professionals and/or the Directors 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.
- (d) For the purposes of this Contract, a "Permitted Creditor" is a financial institution or other legitimate creditor of the Professionals or the Directors who deal at arm's length from the Professionals or the Directors,

respectively, and has either delivered Personal Property to the Golf Course or has extended credit to the Professionals and/or the Directors specifically for the purposes of financing the Professionals' operations and activities at the Golf Course, but specifically excludes creditors who are affiliated or related to the Professionals or the Directors in any way or have extended credit for personal, non-business purchases or liabilities of the Professionals or the Directors.

14. **Advertising.** Under no circumstances may the Professionals or the Professionals' 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 Professionals 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 "Langara 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 Professionals (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 Professionals 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 Professionals, nor use the Professionals' names or businesses in any advertising or promotions, without the prior written consent of the Professionals.

15. **Restrictions on Assignment by Professionals and the Directors.** Despite any other term of this Contract, the Professionals and the Directors 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 Professionals' Staff);

- (b) further to Section G.13 of Schedule G, sub-license or otherwise permit access to or use of the Pro Shop, 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);
- (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.

16. **Default by Professionals or Directors.** Subject to Section 17, default (a "Default") will occur under this Contract if the Professionals or the Directors breach 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.
17. **Limited Extension for Non-Monetary Breaches.** Despite Section 16, 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 Professionals or the Directors, as applicable, will not be in Default if the Professionals or the Directors, 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 Professionals 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 18(e).

For further certainty, paragraph (b) will not apply to any breach by the Professionals 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 Professionals have through their own acts or omissions put themselves in a position where it cannot provide such information.

18. **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 Professionals or the Directors, as applicable, for the amount of money due,
 - (c) take proceedings or any other legal steps to compel the Professionals or the Directors, as applicable, to comply with this Contract,
 - (d) where the Professionals or the Directors, as applicable, are 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 Professionals 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 17 (b), cancel this Contract as further set out in Section 19.
19. **Termination by Board for Cause.** If:
- (a) the Professionals or the Directors are in Default (but expressly excluding the type of Default described in Section 17(b)),
 - (b) the Directors, or either of them, become ill or incapacitated to the extent that, in the Board's Designated Representative's opinion, the Professionals are or will be unable to observe or perform the Professionals' 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 Professionals or the Directors become bankrupt or insolvent,
 - (d) in the Board's Designated Representative's opinion, the Directors, or either of them, exhibit dishonesty or conduct unbecoming a golf professional who is a member of the CPGA,
 - (e) in the Board's Designated Representative's opinion, the Professionals exhibit continuing inattention to, or neglect of, the Professionals' obligations under this Contract, or
 - (f) the Directors, or either of them, are suspended by the CPGA.

the Board's Designated Representative may deliver notice to the Professionals terminating this Contract, and such termination will take effect on the date the Professionals are deemed to have received that notice. If the Directors, or either of them, dies, this Contract will terminate as of the date of death. However, the Board's Designated Representative will discuss with the deceased Director's executor/executrix and the Professionals' Staff 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 golf professional to manage the Golf Course.

20. **Termination Without Cause by Board or Professionals With 1 Year Notice.** Either the Board or the Professionals 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 Professionals 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.
21. **Termination Without Cause by Board With Fees in Lieu of Notice.** Despite Section 19 or 20, 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 Professionals or the date such notice is deemed to be delivered, whichever is earlier, but in such a case, the Board will pay the Professionals the sum of \$75,000 on or before the 30th day following such termination. However, in no event will the Board's Designated Representative's breach of this Section 21 or of Section 22 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.
22. **Securing of Personal Property on Termination or Expiry.** In any case where the Board has not exercised its 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 Personal Property until such time as the Professionals remove same or it becomes property of the Board, in accordance with Section 23(e).
23. **Consequences of Termination or Expiry.** As of the effective date of termination under Section 19, 20 or 21, or expiry of the Term:
 - (a) the Board will have no further obligation, unless negotiated under Section 19 or payable in lieu of notice under Section 21, to pay any compensation under Section 5 to the Professionals, and the Board will adjust and pro rate

such compensation to the termination or expiry date, the Board and Professionals will settle their accounts regarding compensation 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 Professionals any money the Professionals owe to the Board,

- (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 21,
- (c) subject to paragraph (f), 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), expressly elects not to exercise its Option to Purchase with respect to all but not part of the Merchandise, all but not part of the Rental Equipment, and/or all but not part of the Fixtures (the "Excluded Items"), and to such extent the Board will have a lien and charge on the Excluded Items until the Professionals have paid any money it owes to the Board (including without limitation any storage and administrative fee amounts payable pursuant to paragraph (e)), and if the Professionals fail 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 Professionals will have no further right to provide the Services to the Board,
- (e) subject to paragraph (f), 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 Professionals will promptly remove all of the Personal Property (or the Excluded Items, as applicable) from the Golf Course as of the date of termination or expiry of the Term. The Professionals shall also remove all Miscellaneous Personal Property from the Golf Course by the end of the day on the effective date of termination or expiry. If the Professionals fail to remove any of the Personal Property (or the Excluded Items, as applicable) or Miscellaneous Personal Property in accordance with the foregoing requirements, a storage and administrative fee will be payable by the Professionals to the Board equal to 2% of the fair market value of such items for each calendar day that the Professionals are in breach of the Professionals' obligation to remove such items from the Golf Course. The Board will have no obligation to release such items to the Professionals until the applicable storage fee is paid in full, and if the Professionals fail 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 Professionals, and the Professionals 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,

- (f) despite paragraphs (c) and (e):
 - (i) where the Board has exercised its rights of immediate termination under Section 21, the Board will be deemed to have exercised its Option to Purchase in respect of all of the Personal Property except for the Merchandise and the Rental Equipment, and the Board may then, by written notice to the Professional, elect to purchase all or none of such Merchandise and/or all or none of such Rental Equipment; and
 - (ii) if this Contract is terminated upon the expiry of its Term and not pursuant to Sections 19, 20 or 21, the Board will give the Professionals 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.

- 24. **Automatic Renewal.** Where the Professionals continue to provide and the Board continues to accept services pursuant to this Contract following the expiry of the Term, 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.
- 25. **Surviving Obligations.** Neither the termination of the engagement nor the expiry of the Term will void or terminate any obligations of the Professionals, the Directors or the Board, which by their nature are intended to survive such termination or expiry.
- 25. **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.
- 26. **Costs.** The Professionals will bear all the costs of observing or performing the Professionals' and the Directors' 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.

27. Unavoidable Delay

- (a) Subject to paragraph (c), except for the performance of obligations to pay money, time periods for the Board's, the Professionals' and the Directors' 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 Professionals' or the Directors' 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 Professionals or the Directors.

- (c) Despite paragraph (a), 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 Professionals 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), in the event of an Unavoidable Delay other than the type referred to in paragraph (c) 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 Professionals 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.

29. **Prior Arrangements.** This Contract supersedes all prior written or verbal contracts, permits, licences or other arrangements between the Board or City, the Directors and the Professionals concerning the subject matter of this Contract.
30. **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) all obligations of each of the Professionals and each of the Directors will be deemed for all purposes to be joint and several;
 - (d) 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;
 - (e) 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;
 - (f) time will be of the essence of this Contract, and if any party hereto expressly or impliedly waives that requirement, the that party may re-instate it by delivering notice to the other;
 - (g) the fact that any party hereto waives a default is not to be construed to mean that that party waives any other default;
 - (h) no amendment to this Contract will have any effect unless it is in writing, and each party hereto has signed it;
 - (i) this Contract represents the entire agreement between the parties hereto concerning the subject matter of this Contract, and there are no representations, warranties or agreements other than those expressed in this Contract;
 - (j) 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 Professionals and the Directors; and

- (k) the Professionals acknowledge and agree that none of the Professionals' Staff is an employee of the Board. Accordingly, the Professionals' 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 Professionals (or any of the Professionals' employees) to Canada Revenue Agency under the *Income Tax Act* (Canada) in respect of Canadian Pension Plan or Employment Insurance. The Professionals further acknowledge 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 Professionals' Staff. The Professionals further agree 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 Professionals in respect of the payments received by the Professionals under this Contract. The Professionals now indemnify the Board for any and all penalties, interest and arrears imposed on the Board in the event that the Professionals breach their 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 Professionals are other than independent contractor. Upon request, the Professionals will provide the Board with satisfactory evidence of compliance with all statutory remittance requirements.

31. **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 - *Professionals' Upgrades*, [intentionally deleted]
- Schedule B - *Description of Pro Shop and Cart Storage Areas*, [intentionally deleted]
- Schedule C - *Customer Service Duties*,
- Schedule D - *Insurance/Bonding/WCB Requirements*,
- Schedule E - *General Security Agreement*,
- Schedule F - *Option to Purchase Golf Course Personal Property*
- Schedule G - *Grant of Licence*
- Schedule H - *Prime Contractor Agreement*, [intentionally deleted]

32. **Certain Remedies Independent of Arbitration Proceedings.** Except for those disputes specifically referenced in Section 33, all disputes arising under this Contract will be determined by the courts of British Columbia in accordance with British Columbia law.

33. Arbitration Proceedings.

- (a) Any dispute as to the correctness of an auditor's report prepared pursuant to Section 12(e) will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 33.
- (b) Any dispute as to the correctness of a chartered accountant's or other asset valuator's determination made pursuant to paragraph (f) of Section F.3 of Schedule F - *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 33.
- (c) Any dispute as to the calculation of the Board's costs pursuant to Section 18(d) 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 12(c)(i). The Board will select the arbitrator within 5 days of the notice to arbitrate and then provide the Professionals with the selected arbitrator's name, place of business or employment, and reasonably detailed resume or outline of recent professional experience. The Professionals 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 Professionals all material information about his/her credentials, possible conflicts of interest and biases. If the Professionals elect to contest the appointment, the Professionals 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 will be as determined by the arbitrator, subject always to the specific terms of this Contract.

- 34. 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 12(f)).

35. **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: Director of Legal Services

(b) In the case of a notice for the Professionals or the Directors, addressed to:

Muncie's Golf Shop Ltd.

s.22(1)

Attention: Muncie Booth

and

Monaghan Golf Inc.
7800 Vivian Drive
Vancouver, BC
V5S 2V8
Attention: Tom Monaghan

or to:

Langara Golf Course
6706 Alberta Street
Vancouver, British Columbia
V5X 4V8
Attention: Muncie Booth and Tom Monaghan

36. **Continuing effect.** This Contract will enure to the benefit of and bind the Board and its successors and assigns and the Professionals and the Directors and their respective successors and permitted assigns.

To witness this Contract each of the Board, the Directors and the Professionals have signed it as of the Contract Date.

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

Per: 
General Manager

MUNCIE'S GOLF SHOP LTD.

Per: 
Magnus Kennedy Booth, President

MONAGHAN'S GOLF INC.

Per: 
Michael Thomas Monaghan, President

SIGNED, SEALED, AND DELIVERED)
in the presence of:)

Andrew Johnson)

Name)
s.22(1))

Address)
s.22(1))

Golf Shop Manager)
Occupation)


MAGNUS KENNEDY BOOTH

SIGNED, SEALED, AND DELIVERED)
in the presence of:)

Andrew Johnson)

Name)
s.22(1))

Address)
s.22(1))

Golf Shop Manager)
Occupation)


MICHAEL THOMAS MONAGHAN

**SCHEDULE A
PROFESSIONALS' UPGRADES**

[N/A and therefore deliberately deleted]

**SCHEDULE B
DESCRIPTION OF AREAS**

[N/A and therefore deliberately deleted]

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 caliber to the Golf Course.

C.2 Professionals' Participation. Upon completion of each 360 Evaluation, the Professionals 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 Professionals' Customer Service Commitment. Following each review of and meeting to discuss each 360 Evaluation, the Professionals 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 Professionals now confirm that they will promptly commence and implement the customer service enhancements set out in the Professionals' RFP Proposal.

C.4 Reporting Obligations. Following each such review of and meeting to discuss each 360 Evaluation, the Board's Designated Representative and Professionals 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 Professionals' Services, and within 10 calendar days of any request to do so, the Professionals 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.

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) The Professionals and each of the Professionals' Staff 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 power carts will be in good, clean condition and have a scorecard and pencil on them prior to being rented.
- b) Pace of play will be maintained through good tee sheet management and well trained player assistants.
- c)

**Golf Operations
Professional Services Evaluation Form**

INFORMATION	
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 PROFESSIONAL

Welcome to the Professional Service Feedback Program.

The 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
<ul style="list-style-type: none"> <input type="checkbox"/> Manner in which customers are approached by Professional and Pro Shop Staff is friendly and very pleasant at all times. <input type="checkbox"/> Customers' phone enquiries are responded to politely and quickly. <input type="checkbox"/> Customers in the Pro Shop are attended to a.s.a.p. <input type="checkbox"/> Course conditions requests are answered completely and honestly. <input type="checkbox"/> When it is very busy, every effort is made to give an initial acknowledgement to the customer (phone or live). <input type="checkbox"/> Staff approaches customers with interest in helping them. <input type="checkbox"/> There are adequate numbers of Staff to provide expected levels of customer service. 		
<p>Comments:</p>		

Tee Off/Pace of Play:	Meets	Improve
<ul style="list-style-type: none"> <input type="checkbox"/> Golfers are greeted warmly prior to their play. <input type="checkbox"/> Golfers are given proper orientation to current conditions, pace of play and etiquette (live and/or signs and/or brochures). <input type="checkbox"/> Rangers/Marshals intervene politely when appropriate. <input type="checkbox"/> 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>Comments:</p>		

Product Knowledge:	Meets	Improve
<ul style="list-style-type: none"> <input type="checkbox"/> Counter Staff have adequate knowledge about golf and shop products and services. <input type="checkbox"/> Staff are always current with course conditions and current course maintenance issues and projects. <input type="checkbox"/> Pro Staff/teaching Staff are very knowledgeable about their services and respected for this in the golf community. 		
<p>Comments:</p>		

Leadership/Supervision:	Meets	Improve
<ul style="list-style-type: none"> <input type="checkbox"/> Staff are selected for their interest in golf and customer service skills. <input type="checkbox"/> Staff are thoroughly oriented/trained as to all course policies/procedures. <input type="checkbox"/> Staff are knowledgeable of the roles of all of the Professional's Staff as well as Board staff. <input type="checkbox"/> Staff are aware of any compliant with customer service approaches, maintenance issues, delegation of authority re: rainouts, closures, etc. <input type="checkbox"/> Staff receive ongoing performance planning, coaching and elevation. 		
<p>Comments:</p>		

<p>Products/Rentals:</p> <ul style="list-style-type: none"> <input type="checkbox"/> All products and rentals are maintained in good condition. <input type="checkbox"/> Products are geared to the intended market(s). <input type="checkbox"/> Clubs are canvassed re: product and service types. 	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Teamwork:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Staff foster a respectful relationship with all other course Staff (and Board employees, where applicable). <input type="checkbox"/> Staff cross sell to other courses when appropriate. <input type="checkbox"/> Staff help other course Staff (and Board employees, where applicable) to achieve good customer service, handling complaints, dealing with urgent matters etc. whenever possible. <input type="checkbox"/> Staff conduct themselves using a one team approach with all other course Staff (and Board employees, where applicable). <input type="checkbox"/> Board staff are informed of issues and concerns in a polite and timely manner. <input type="checkbox"/> Issues from Board staff are handled in a polite and timely manner. <input type="checkbox"/> New ideas are brought to Board staff early on in the development process to increase collaboration. 	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Revenue and Reporting:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Good accounting procedures are used for all financing, account, inventory control and reporting. <input type="checkbox"/> Reports to the Board are thorough and timely. <input type="checkbox"/> Stats include year to date comparisons and previous year comparisons. <input type="checkbox"/> Good balance of maximizing City asset and customer relations. <input type="checkbox"/> Revenue projections are on target. 	<p>Meets</p>	<p>Improve</p>
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Comments:

<p>Handling Complaints/Conflicts:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Listens well, diffuses conflict before it starts, finds causes of and solutions to problems, handles difficult people well. Has a win/win approach. <input type="checkbox"/> Every effort is made to address customer complaints to the satisfaction of the customer. <input type="checkbox"/> Complaints which cannot be resolved to the satisfaction of the customer are handled with compassion. 	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Innovation/Creativity:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Generates new ideas, challenges the status quo, supports change, encourages innovation, solves problems creatively. 	<p>Meets</p>	<p>Improve</p>
<p>Comments:</p>		

<p>Professional Additional Input: <i>What can the Parks Board Golf Operations...</i></p> <ul style="list-style-type: none"><input type="checkbox"/> Start doing...<input type="checkbox"/> Stop doing...<input type="checkbox"/> Do differently...that will help the Professional's Services be delivered more effectively and efficiently?	
<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 this Contract, the Professionals and Professionals' 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.
- D1.2 The Professionals Solely Liable for Premiums/Deductibles - The Professionals 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 Professionals 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 60 days' prior written notice of material change, replacement or cancellation. Notice must identify the Contract title, number, policy holder, and be delivered in accordance with Section 35. 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.
- D1.6 Board Requirements Not Exhaustive - The Professionals and each of the Professionals' 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.
- D1.7 Insurance Requirements Independent of Other Covenants - Neither the providing of insurance or bonding by the Professionals 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 Professionals from any other provisions of this Contract with respect to the liability of the Professionals 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 Professionals' Duty of Good Faith - The Professionals will properly disclose all risks in each insurance/bond application, ensure that the Professionals do 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 Professionals fail to provide a bond, certificate of insurance or certified copies of all insurance policies as required in Section D2.1, 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 Professionals and the cost of doing so will be paid by the Professionals 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 this Contract, the insurance policy must provide coverage to the Professionals 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 Professionals obtain the applicable insurance policy. Where the Professionals are unable (in its sole discretion) to obtain insurance having a deductible no greater than \$5,000 (as adjusted pursuant to the prior sentence), the Professionals may obtain insurance with a higher deductible but only if the Professionals first deliver 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 Professionals 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 Professionals to Provide Policy/Certificates - Prior to the Board signing this Contract, the Professionals 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 Professionals agree 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 Staff - The Professionals will provide in all agreements with the Professionals' Staff clauses in the same form as those set out in this Schedule D. Upon request, the Professionals will deposit with the Board's Director of Risk Management detailed certificates of insurance for the policies the Professionals have obtained from the Professionals' Staff and a copy of the insurance requirements from each Staff's contract with the Professionals, unless the Board agrees otherwise in writing.

D3.0 Blanket Employee Dishonesty Insurance/Fidelity Bond

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

- D3.2 Coverage Limits - The limit of the Professionals' 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 Professionals will maintain comprehensive general liability insurance in sufficient amounts and description to protect the Professionals, the Professionals' Staff, the Board, the City, and their respective officers, officials, employees and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this 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 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 Professionals 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 Professionals and the Professionals' Staff.

D6.0 [intentionally deleted]

D7.0 All Risk Property Insurance

D7.1 All Risk Property Insurance - The Professionals will maintain an all risks property insurance policy covering the Professionals' Personal Property and property of every description owned by the Professionals and others for whom the Professionals 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 Professionals'

Personal Property and property of every description owned by the Professionals and others for whom the Professionals 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 Professionals 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 Professionals' affiliates or any of the Board's, the City's, the Professionals' 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 Professionals 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).

- 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 Professionals 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 Professionals 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 Professionals 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.

- D9.0 [intentionally deleted]

D10.0 Workers' Compensation Board Compliance

- D10.1 Payment of WCB Assessments. The Professionals agree that the Professionals will at the Professionals' own expense procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board coverage for all of the Professionals' Staff who are engaged in or upon any work or service which is the subject of this Contract. The Professionals agree 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 Professionals. 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.

- D10.2 Designation of Professionals as Prime Contractor. [intentionally deleted]

- D10.3 Prime Contractor's Obligations. [intentionally deleted]

- D10.4 General WCB Obligations. The Professionals 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 Professionals and their Staff, but by all material suppliers and others engaged in the performance of this Contract.

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

- (a) enter into a prime contractor agreement with the Board in form and contents satisfactory to the Board, and
- (b) 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 this Contract, the Professionals will provide the Board with the Professionals' and all Staffs' (as applicable) 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 Professionals will provide the Board with written confirmation that the Professionals and all Staff (as applicable) 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 Professionals may or may not have received, as part of this 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 Professionals now acknowledges and agrees that the Professionals may not rely on the "Pre-Contract Hazard Assessment" and now agrees to assume by the terms of this 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 Professionals in obtaining timely access to Board staff and Board records for this purpose. Within 10 days of signing this Contract, the Professionals 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 Professionals' Plans and Specifications.

D10.8 Special Indemnity Against WCB Non-Compliance. The Professionals 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 Professionals or any other employer for whom the Professionals are responsible under this Contract,
- (b) the acts or omissions of any person engaged directly or indirectly by the Professionals in the performance of this Contract, or for whom the Professionals are liable pursuant to the Professionals' 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 Professionals' obligations under this Section D10.0.

**SCHEDULE E
GENERAL SECURITY AGREEMENT**

This Agreement made as of January 1, 2014.

AMONG:


MUNCIE'S GOLF SHOP LTD.
6710 Alberta Street
Vancouver, British Columbia
V6J 4V8
(**"Muncie's Golf"**)

AND:


MONAGHAN GOLF INC.
7800 Vivian Drive
Vancouver, BC
V5S 2V8
(**"Monaghan Golf"**)

(Muncie's Golf and Monaghan Golf are collectively called the
"Professionals")

AND:

MAGNUS KENNEDY BOOTH
s.22(1)

(**"Muncie Booth"**)

AND:

MICHAEL THOMAS MONAGHAN
s.22(1)

(**"Tom Monaghan"**)

(Muncie Booth and Tom Monaghan are hereinafter collectively called the
"Directors")

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.

1. SECURITY

1.1 For value received, each of the Professionals and the Directors grant and create 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, each of the Professionals and The Directors:

- (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 Professionals and The Directors, respectively, located at, on or about the Golf Course (as defined in the Golf Professional Services Contract to which a copy of this General Security Agreement is attached as Schedule E) or used or acquired in connection with or primarily related to the business of the Professionals and The Directors, respectively, 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 Professionals and The Directors, respectively, of whatsoever nature and kind located on or about the Golf Course or used or acquired in connection with the business of the Professionals and the Directors, respectively,

conducted on or in respect of the Golf Course, other than such of the property, assets, effects and undertakings of the Professionals and the Directors, respectively, as are validly and effectively subjected to the security interest granted to the Board pursuant to paragraph (a), (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 Professionals and the Directors, respectively, 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 Professionals and the Directors, respectively, 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 Professionals and the Directors, respectively,

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 "Professionals" or the "Directors" 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 Professionals ARE one or more corporations or an individual, respectively, and 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 Professionals, the Directors and the Board dated January 1, 2009 related to operation of the Golf Course, to which a copy of this General Security Agreement is attached as Schedule E, as the same may be 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 Encumbrance known as a PPSA Security Agreement registered against Muncie Booth and Magnus Kennedy Booth under number 619181F in favour of Maxim Financial Services Inc. on June 18, 2010 in the Personal Property Registry of British Columbia;
- 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.

1.3 The Board, the Directors and the Professionals have not agreed to postpone the time for attachment of the security interest granted hereby and the Professionals, the Directors and the Board intend that the security interest granted hereby shall attach to presently owned or held Personal Property Collateral of the Professionals and the Directors, respectively, forthwith upon execution of this General Security Agreement and shall attach to hereafter acquired Personal Property Collateral of the Professionals and the Directors, respectively, forthwith upon acquisition of any right, title and interest of the Professionals or the Directors, respectively, 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 Professionals 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.

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 Professionals and the Directors, respectively, 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 Professionals and the Directors, respectively, or from any other person whomsoever.

3.0 REPRESENTATIONS AND WARRANTIES OF THE PROFESSIONALS AND THE DIRECTORS

3.1 Each of the Directors and the Professionals represent and warrant 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 Professionals 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 Professionals' obligations hereunder, legal, valid and binding;

- 3.1.2 the Collateral is genuine and is owned by the Directors and the Professionals, respectively, free of all Encumbrances, save for the security constituted by this General Security Agreement, the Permitted Encumbrances and Encumbrances approved in writing by the Board; and
- 3.1.3 the Professionals have good and lawful authority to create the security in the Collateral constituted by this General Security Agreement.

4.0 COVENANTS OF THE PROFESSIONALS AND THE DIRECTORS

4.1 Each of the Directors and the Professionals covenant and agree that at all times while this General Security Agreement remains in effect, it 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 Directors or the Professionals, respectively;
 - (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 Directors' or the Professionals' respective 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.

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 Professionals, the Directors 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 Professionals and the Directors, respectively, 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 Professionals' and the Directors, respectively, 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 Professionals or the Directors, respectively, 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 those 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 Professionals regarding the Professionals' 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 Professionals and Professionals' business and affairs, and the Directors and the Directors' business and affairs, respectively, 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 Professionals' and the Directors' respective 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.

5.0 BOARD ACTIONS AUTHORIZED

5.1 Each of the Directors and the Professionals hereby authorize 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 Directors' and the Professionals' respective 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 Directors and the Professionals, respectively, hereby irrevocably constitute and appoint the Board the true and lawful attorney of the Directors and the Professionals, respectively, with full power of substitution, to do any of the foregoing in its name whenever and wherever it may be deemed necessary or expedient by the Board.

5.2 If the Professionals or the Directors fail to perform any of its respective 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 Professionals 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.

6.0 DEFAULT

6.1 The Professionals and the Directors, respectively, 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.

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 Professionals or the Directors, respectively, and take possession of the Collateral with power to exclude the Professionals, the Directors and their respective agents and servants, as applicable, 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 Professionals or the Directors, respectively and as applicable, 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 Professionals and/or the Directors, as applicable, 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 Professionals and/or the Directors, as applicable, 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 Professionals and the Directors 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 Professionals or the Directors 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 Professionals or the Directors, as applicable.

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 Professionals will immediately pay to the Board the amount of such deficiency.

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 Professionals, the Directors, or any of them, and the Board that may be in effect from time to time.

10. APPOINTMENT OF ATTORNEY

10.1 Each of the Directors and the Professionals hereby irrevocably appoint the Board or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Directors and the Professionals, respectively, for and in its name to sign, endorse or

execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Professionals are obliged to sign, endorse or execute and generally to use the name of the Directors or the Professionals, respectively, 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 each of the Directors and the Professionals 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.

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 Professionals or the Directors, 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 Professionals or the Directors of any obligations or covenants imposed upon the Professionals or the Directors, respectively, 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 Professionals 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 Professionals, 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 Each of the Directors and the Professionals hereby waive 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.

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 Professionals, all without prejudice to the liability of the Professionals or the Directors, respectively, 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 Professionals 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.

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.

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 Professionals, the Directors, sureties and others and with the Collateral and other security as the Board may see fit without prejudice to the liability of the Professionals or the Directors, respectively, or the Board's right to hold and realize on the security constituted by this General Security Agreement.

15.0 ASSIGNMENT

15.1 The Board may, without further notice to the Professionals or the Directors, 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 Each of the Directors and the Professionals covenant and agree 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 Professionals or the Directors, as applicable, will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

16.0 SATISFACTION AND DISCHARGE

16.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Professionals or the Directors, respectively, 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 Each of the Directors and the Professionals 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 Professionals 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.

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 Professionals, the Directors 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 Professionals pursuant to Section 11.4 hereof or of any other right of the Board against the Professionals arising under this General Security Agreement prior to such release and discharge.

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;

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; and

18.1.4 [joint and several clause]

19.0 NOTICE

19.1 Whenever any of the Board, the Directors or the Professionals hereto are 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 Any party hereto may notify the others in accordance herewith of any change in its principal address to be used for the purposes hereof.

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.

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 Professionals and the Directors and their respective successors and permitted assigns.

22.0 COPY OF AGREEMENT AND FINANCING STATEMENT

22.1 Each of the Directors and the Professionals hereby:

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

22.1.2 waive 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.


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 Professionals or the Directors 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.

MUNCIE'S GOLF SHOP LTD.

Per:



Magnus Kennedy Booth, President

SIGNED, SEALED, AND DELIVERED

in the presence of:

Andrew Johnson

Name
s.22(1)

Address
s.22(1)

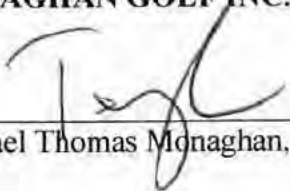
Golf Shop Manager
Occupation



MAGNUS KENNEDY BOOTH

MONAGHAN GOLF INC.

Per:



Michael Thomas Monaghan, President

SIGNED, SEALED, AND DELIVERED)

in the presence of:)

Andrew Johnson)


Name)

s.22(1))

As)

Golf Shop Manager)

Occupation)


MICHAEL THOMAS MONAGHAN

SCHEDULE F
OPTION TO PURCHASE GOLF COURSE PERSONAL PROPERTY

F.1 Grant of Option

The Professionals and the Directors, to the extent the Directors have 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.

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 Professionals 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 Professionals 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 23(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 has in fact, 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), concurrently with the date of deemed exercise of the Option to Purchase.

- (a) [deliberately deleted].
- (b) The Professionals will, at the Professionals' sole cost and expense, have the Professionals' 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 Professionals and Board will pay its own legal fees. The Professionals, however, will pay all fees and disbursements associated

with registering all financing statements and other documents at the Personal Property Registry.

- (c) The Professionals and the Directors, to the extent the Directors have any ownership interest in any of the Personal Property, 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 Professionals and the Directors, as applicable, 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.
- (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 Professionals as of the date when title transfers to the Board in accordance with this Option to Purchase, provided always that the Board and Professionals will settle or determine the purchase price on the following terms and conditions:
 - (i) The Board's Designated Representative and Professionals 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, except that, if the Board's Designated Representative and Professionals are unable to agree on that purchase price as of the Transfer Date, the Board will 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 Professionals, to determine that purchase price, and each of the Board and the Professionals 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 that date to reflect any variations in value in the meantime.

- (ii) The Board will pay the Professionals 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 deduction by the Board of any amount the Professionals then owe to the Board.

F.4 Priority of Option to Purchase Over All Other Charges

The Professionals and the Directors, to the extent the Directors have 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.

F.6 No Further Encumbrances/Subdivisions Permitted

The Professionals and the Directors, to the extent the Directors have 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

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

F.7 Professionals' Representations

Regardless of any independent investigations that the Board may cause to be made, the Professionals and the Directors, to the extent the Directors have any ownership interest in any of the Personal Property, will each 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 Professionals and the Directors, to the extent the Directors have any ownership interest in any of the Personal Property, have 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 Professionals and the Directors, to the extent the Directors have any ownership interest in any of the Personal Property, have 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.8 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 Professionals' and the Directors', to the extent the Directors have 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 Langara Golf Course dated January 1, 2014, 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 Professionals' need for access to the Golf Course in order to provide the Services, the Board now grants the Professionals a licence for access and use of the Pro Shop 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 with any extension of the Term.

G.2 Licence Fee

The licence fees payable by the Professionals are as set out in Section 5 of this 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 Professionals in the provision of the Services and use of the Service Access Areas will be to the sole account of the Professionals except where expressly stated otherwise in this Contract.

G.4 Use of the Service Access Areas

The Professionals 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.

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 this Contract and to the public at all times during the Term and in common with the Professionals' rights of access under this licence. Despite any other term of this Schedule G or any other part of this Contract, the rights and privileges of use and access granted by this Schedule G and this Contract to the Professionals 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 Professionals now acknowledge and agree to same and further agree 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 Professionals have 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 Professionals' contractual rights and obligations under this Contract. The Professionals now acknowledge and agree 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.).

G5.3 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 Professionals' 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 Professionals now release 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 the Board's obligations to reimburse the Professionals' reasonable direct moving costs in the event of a re-location pursuant to Section G.17.

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 Professionals and the Professionals' Staff and will have the complete and unfettered right to prohibit the Professionals 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 Professionals and the Professionals' Staff for the provision of the Services.

G.7 No Representations or Warranties

The Professionals acknowledge and agree 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 Professionals. However, the Professionals 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 G to maintain and repair any part of the Golf Course or Service Access Areas. Accordingly, the Professionals now agree to accept the Golf Course and Service Access Areas on an "as is, where is" basis.

G.8 No Damage

The Professionals 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 Professionals or the Professionals' Staff, the Professionals 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 Professionals do the repairs, the Professionals will carry out the repairs at the Professionals' 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 Professionals fail to complete repairs within the time specified by the Board, the Board may carry out the repairs at the Professionals' sole cost and Section 16 of the Contract will apply.

G.10 Maintenance

The Professionals 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 9 and 11 of the Contract.

G.11 Indemnification

The indemnity set out in Section 13(b) 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 Professionals' use of the Service Access Areas, access to and from and across the Golf Course and/or relating to or arising from the Professionals' 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 this Contract.

G.12 Insurance

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

G.13 Assignment

Further to Section 15 of this Contract, the Professionals 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 Professionals 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 15 of this Contract.

G.14 Termination of the Licence

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

- (a) the Board's Designated Representative may terminate this licence immediately upon giving written notice to the Professionals pursuant to Section 21 of this Contract, and
- (b) termination or expiry of this Contract will automatically and without further or separate written notice, terminate this licence.

G.15 Laws and By-laws

The Professionals will, and will cause their 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 Professionals' 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 Professionals' 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 Professionals of the Service Access Areas in order to provide the Services.

G.16 No Alteration/Improvement

The Professionals 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.

G.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 Professionals for any resulting losses, costs, expenses or damages resulting from such changes. However, the Board will

reimburse the Professionals for any actual and direct out-of-pocket costs relating to the cost of physically moving or storing the Professionals' 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 this Term, the Professionals 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 Professionals pursuant to this Contract.

G.19 Ownership of Fixed Upgrades [deliberately deleted]

**SCHEDULE H
PRIME CONTRACTOR AGREEMENT**

[NA as no construction projects are planned, and therefore intentionally deleted]

2012 LANGARA

	AMEX Amount	CASH Amount	CHEQUE Amount	DEBIT Amount	MASTERCARD Amount	MONAGHAN G Amount	MUNCIES GOLF PARK BOARD Amount	PARK BOARD Amount
CARTS	s.21(1)							
GIFT CERTIFICA								
GREEN FEES								
MERCHANDISE								
MISC								
PARK BOARD G								
RENTALS								
Grand Total	\$							
BANK CHARGE	\$							

NOTE: CALCULATIONS BASED ON

s.21(1)

VISA
M/C
AMEX

s.21(1)

Contract 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:

MUNCIE'S GOLF SHOP LTD.
6710 Alberta Street
Vancouver, British Columbia
V6J 4V8

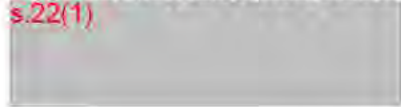
(**"Muncie's Golf"**)

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

(**"Monaghan Golf"**)

and:

MAGNUS KENNEDY BOOTH
s.22(1)



(**"Muncie Booth"**)

and

MICHAEL THOMAS MONAGHAN
s.22(1)



(**"Tom Monaghan"**)

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 Langara Golf Course;
- B. Muncie's Golf submitted a request for pre-qualification, which the Board evaluated and accepted;
- C. By way of Request for Proposals P2008-14 (the "RFP"), the Board issued a request for proposals from each of the pre-qualified golf professionals, including Muncie's Golf and Muncie Booth, for the provision of golf professional services at the Langara Golf Course;
- D. Muncie's Golf submitted a proposal in response to the RFP;
- E. Following its review and evaluation of the various proposals submitted by the Muncie's Golf and other golf professionals pursuant to the RFP, the Board resolved on December 8, 2008 to enter into an agreement with Muncie's Golf for the provision of golf professional services at Langara Golf Course;
- F. Muncie's Golf and Muncie Booth (the sole officer, director and shareholder of Muncie's Golf) entered into a Golf Professional Services Contract – Langara with the Board effective January 1, 2009 (the "**Original Contract**");
- G. The term of the Original Contract expires on December 31, 2013 and Muncie's Golf and Muncie Booth wish to renew the Original Contract pursuant to the terms of Section 2 of the Original Contract (the "**Renewal Term**");
- H. Muncie's Golf and Muncie Booth have requested approval from the Board to add a partner, Monaghan Golf and Tom Monaghan (the sole officer and director of Monaghan Golf) as parties to this Contract for the Renewal Term, to be bound jointly and individually with Muncie's Golf and Muncie Booth during the Renewal Term;
- I. The Board approves Monaghan Golf and Tom Monaghan being added as parties to this Agreement;
- J. Muncie's Golf and Monaghan Golf are hereinafter collectively called the "Professionals";
- K. Muncie Booth and Tom Monaghan are hereinafter collectively called the "Directors"; and

- L. This Contract sets forth the terms and conditions agreed to by the Board, the Professionals and the Directors for the provision of golf professional services by the Professionals to the Board.

THE BOARD, THE DIRECTORS AND THE PROFESSIONALS NOW AGREE AS FOLLOWS:

1. Interpretation.

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

“Board and City” is defined in Section 13(b).

“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 area for the Golf Course, which is located under the Pro Shop.

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

“Contract” means this renewal contract which is intended to be on the same terms and conditions as the Original Contract except as noted by strike-through (to indicate deletions from the Original Contract) and by double-underlining (to indicate additions to the Original Contract) and includes all schedules, as amended or supplemented from time to time.

“CPGA” means the Canadian Professional Golf Association.

“CPGA Certified Employee” means any individual employed by the Professionals or retained as an independent or dependent contractor of the Professionals who is a member of the CPGA or any replacement or successor organization (including Muncie Booth, Tom Monaghan and the Professionals’ Pro Shop Manager, if applicable).

“Default” is defined in Section 16;

“determined by arbitration” is defined in Section 33(d).

“Directors” has the meaning set out in Recital K;

“Effective Date” means the effective date of this Contract, being January 1, 2014.

“Excluded Items” is defined in Section 23(c).

“Fixtures” means any and all Personal Property of the Professionals and/or the Directors which may be located at any time at the Golf Course which is in the nature of 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 Professionals and the Directors pursuant to this Contract on the terms set out in Schedule E - *General Security Agreement*.

“Golf Course” means the Langara Golf Course, located at 6706 Alberta Street, Vancouver, and except where the context otherwise requires, expressly includes the Pro Shop, chipping and putting practice areas and Cart Storage Area.

“Gross Revenue” means the gross amount received by the Professionals and/or the Directors 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 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 Professionals’ or the Directors’ business related to such activity(ies), and
- (3) the fair market value of all goods and services received by the Professionals or the Directors from any third party in exchange for or by way of barter from the provision of goods and services by the Professionals or the Directors related to such activity(ies).

“Merchandise” means all of the Personal Property of the Professionals and/or the Directors located from time to time at the Golf Course, which is intended for retail sale to the public.

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

- (1) s.21(1) and

(2)

§ 21(1)

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

"Miscellaneous Personal Property" means any and all personal property of the Professionals and/or the Directors which may be located at any time at the Golf Course and is used for the purpose of providing Services pursuant to this Contract, including Office Equipment and Supplies, but excluding Fixtures, Merchandise and Rental Equipment.

"Office Equipment and Supplies" means and includes all office equipment and general supplies of the Professionals and/or the Directors 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 Personal Property contemplated by Section 4 and as set out in Schedule F - *Option to Purchase Golf Course Personal Property*.

"Original Contract" has the meaning set out in Recital F. above.

"Permitted Creditor" is defined in Section 13(d).

"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 Fixtures, Merchandise and Rental Equipment, and excludes Miscellaneous Personal Property.

"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.

“Professionals” has the meaning set out in Recital J;

“Professional’s RFP Proposal” means the proposal submitted by the Muncie’s Golf in response to the RFP.

“Pro Shop” means the pro shop for the Golf Course, in which the Professionals sell Merchandise, collect green fees and perform other services pursuant to this Agreement.

“Rental Equipment” means any and all Personal Property of the Professionals and/or the Directors 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 Professionals to use on the Golf Course.

“RFP” is defined in Recital C.

“Services” means the services to be supplied and performed by the Professionals and the Directors pursuant to this Contract.

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

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

“360 Evaluations” is defined in Schedule C.

“Transfer Date” is defined in Schedule F.

“Unavoidable Delay” is defined in Section 28(b).

“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 Professionals, the Directors 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, the Directors or the Professionals are given a right to make a determination or to grant or withhold the consent or permission to anything, the Board, the Directors or the Professionals 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 the earlier of December 31, 2018 and the effective date of termination under Section 19 or 20.

3. **Professionals to Perform Services.** The Professionals now jointly and severally agree to provide the Services for the Golf Course according to the terms of this Contract, and the Directors jointly and severally agree to cause them to do so.

4. **Option to Purchase Personal Property.** The Professionals and the Directors each now grant the Board the Option to Purchase on the terms and conditions set out in Schedule F - *Option to Purchase Golf Course Personal Property*.

5. **Board to Pay for Services.** The Board will pay the Professionals for the Services, on the following terms:

- (a) the gross retainer for each calendar year of the Term will be §.21(1)
- (b) deductions from the annual gross retainer will be limited to, subject to the other terms of this Contract:

- (i) §.21(1) 

- (ii) §.21(1) 

(iii) that amount which equals the greater of:

(1) §.21(1) , and

(2) §.21(1) 

provided always that where the Professionals have rented power golf cart(s) additional to the Professionals' normal inventory of power carts specifically for a particular tournament, the direct out-of-pocket cost to the Professionals (as evidenced by the original third party invoices submitted to the Board) may be deducted from the sum payable pursuant to this Section 5(b)(iii),

- (iv) that amount which represents the Professionals' and Directors' equitable and proportionate share of the charges (collectively, "Bank Charges") levied by credit card issuers (eg. VISA, MasterCard, American Express), debit card issuers (eg. INTERAC), credit and debit card payment processing companies (eg. Moneris) under their respective contracts with the Board or the City of Vancouver which share will be determined by allocating such Bank Charges in proportion to the revenue received by the Board and the Professionals/Directors in respect to same,

and if, after making the above deductions, the resulting amount is negative, the Professionals will pay the Board such amount as required pursuant to this Contract;

- (c) on or before the 15th day of each calendar month during the Term, commencing on February 15, 2014, the Professionals 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 payable by the Board s.21(1)
- (ii) deductions from that monthly portion of the annual gross retainer for the monthly portion of the annual use fee for:
- (1) s.21(1) _____ and _____
- (2) s.21(1) _____
- (iii) a further deduction from that monthly portion of the amount determined pursuant to Sections 5(b)(iii) and (iv), and
- (iv) the resulting monthly net retainer, except that if the resulting amount is negative the Professionals will pay the Board such amount on or before the required date of delivery of the invoice;

- (e) subject to Section 5(d)(iv), the Board will pay that monthly net retainer to the Professionals promptly after receipt of that invoice;
 - (f) on or before the 15th day of January in the year 2015 and in each following calendar year during the Term and within 30 days after the expiry of the Term, the Professionals 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,
 - (ii) a deduction from that annual gross retainer for the annual user fee for:
 - (1) the Pro Shop (see Section 5(b)(i)), and
 - (2) the Cart Storage Area (see Section 5(b)(ii)), and
 - (iii) a further deduction of the amounts determined pursuant to Sections 5(b)(iii) and (iv),
 - (iv) the resulting annual net retainer, and
 - (v) that sum which equals the aggregate of the monthly net retainers the Board has paid to the Professionals during the preceding calendar year under Section 5(e);
 - (h) if that invoice shows a balance owing to the Board, the Professionals 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 Professionals, the Board will pay that balance to the Professionals promptly after receipt of that invoice; and
 - (i) the Professionals may retain the Gross Revenue from the operation of the Pro Shop except as this Contract otherwise expressly stipulates.
6. **Professionals' General Duties.** The Professionals will, at the Professionals' 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 Professionals' 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 the Directors maintain their status as Class A or equivalent members 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 Professionals' duties under this Contract, and disclose to the Board any activities of the Professionals or the Directors that may have the potential to be construed as conflicting with the Professionals' or the Directors' duties under this Contract, and will otherwise comply with the Professionals' legal obligations of good faith as a fiduciary agent of the Board;
- (e) comply promptly with all reasonable policies regarding the Golf Course 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 Professionals from time to time including, without limitation, and by way of example only:
 - (i) orders regarding the provision of Services during the operational hours of the Golf Course; 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 any of the Professionals 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 Professionals under this Contract, or to any businesses or activities the Professionals conduct under this Contract including, without limitation, obtaining and renewing all permits and licences necessary to operate the Pro Shop and the Cart Storage Area;
- (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 and the Professionals' other duties under this Contract;
- (h) maintain good public relations between the Professionals and the public and the Professionals' 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 Professionals in performing the Professionals' 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 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 Professionals' employees including, without limitation, remitting, on the Professionals' own behalf or in respect of the Professionals' 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 Professionals or the Professionals' Staff by any government body;
 - (l) maintain a good credit rating with suppliers, manufacturers and other persons, firms and corporations with whom the Professionals deal, so as to protect the good reputation of the Professionals and of the Golf Course, 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 - *Customer Service Duties*;
 - (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 Professionals, their 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
 - (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.
7. **Professionals' Duties re Golf Course.** Subject always to Schedule G - *Grant of Licence*, the Professionals will, and will cause all of their Staff, as applicable, to:

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- (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) not engage in the provision of golf instructions, consultations or lessons on the Golf Course without the prior written consent of the Board's Designated Representative, which consent may be arbitrarily withheld;
 - (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 the Directors, another CPGA Certified Employee of the Professionals, or the Professionals' 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;
 - (viii) ensure that the Pro Shop is 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 Professionals, who the Board will provide with adequate training, trains the Professionals' Staff sufficiently for them to operate an automated advanced reservation system;
- (e) ensure that the Professionals or the Professionals' 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 Professionals train the Professionals' 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 greens keepers;
- (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 Professionals, 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, including such information as the Board may reasonably prescribe (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

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- (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 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;
8. **Fees.** The Board will determine, and consult with the Professionals regarding, from time to time, the fees and other charges for golf play on the Golf Course for all categories of golf. The Professionals will determine, from time to time, the fees and other charges for use of the Professionals' 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.
9. **Board's Duties re Cart Storage Area.** Subject always to Schedule G - *Grant of Licence*, the Board will:
- (a) 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 Professionals to the extent reasonably necessary for the provision of the Services; and
- (b) supply electrical power for the Cart Storage Area.
10. **Professionals' Rights and Duties re Pro Shop.** Subject always to Schedule G - *Grant of Licence*, the Professional:
- (a) will continuously staff the Pro Shop with at least two qualified employees of the Professionals, all of whom must be bonded in accordance with the requirements set out in Schedule D, Section D3.0, 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 without limitation and by way of example only, the management of the Professionals' Pro Shop Staff so as to guarantee that at least two of the Professionals' 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;

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- (b) will manage, operate and maintain the Pro Shop, keeping it well stocked and equipped at all times with retail golf apparel and equipment to a standard in keeping with current industry standards and the reputation of the Golf Course, and the Professionals 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 Professionals' 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) will 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) will 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) will 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, except if the Board has given prior written consent; and

- (j) may keep all revenue from the operation of the Pro Shop except as this Contract otherwise stipulates.

11. Board's Duties re Pro Shop. Subject always to Schedule G - *Grant of Licence*, the Board:

- (a) will 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 Professionals' obligations under Section 10, as the Board's Designated Representative, acting reasonably, considers necessary or desirable from time to time;
- (b) will supply, at its cost, such heat and electricity services 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) will provide such an alarm system and anti-theft window/door hardware 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; and
- (d) will 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 will pay all system repair, maintenance and replacement costs.

12. Professionals' Duties re Records and Financial Statements. The Professionals:

- (a) will 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 will 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) will maintain proper records covering the operations of the Golf Course, including separate records, if required by the terms of this Contract or

requested by the Board's Designated Representative, in respect of the Pro Shop, Cart Storage Area and the other activities and duties of the Professionals 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 will 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) will, if and whenever the Board's automated advance reservation system malfunctions, keep (manually or otherwise), to the extent reasonably possible, records of the information which that system would normally record, and will provide the same to the Board together with the records and information to be provided pursuant to paragraph (a);
- (d) will 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 2014, 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 Professionals' operations pursuant to this Contract, including without limitation and by way of example only, the Services and all other activities of the Professionals 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 Professionals, and if the Professionals choose to provide unaudited statements the Professionals 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 Professionals 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) will allow the Board, at its cost, subject to paragraph (f), to carry out an audit of the operations of the Golf Course, Pro Shop, Cart Storage Area and the other activities and duties of the Professionals 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 12 for the purpose of such audit;

- (f) will 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 Professionals have reported less Gross Revenue than actually received or has remitted less money than the Professionals are obligated to remit or has taken a greater percentage of Gross Revenue than the Professionals are 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 Professionals will pay the Board all of the costs of such audit whenever the audit discloses such an underpayment;
- (g) will, 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 12 at any time, and to copy or make extracts therefrom; and
- (h) will 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, 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.

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

- (a) The Professionals will comply at all times with the insurance, bonding and Workers Compensation Board provisions set out in Schedule D - *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 Professionals or the Professionals' Staff by any applicable laws. It will be the sole responsibility of the Professionals to determine what additional insurance/bonding/WCB coverage, if any, is necessary or advisable for the Professionals' or the Professionals' Staffs' own protection and/or to fulfill the Professionals' obligations under this Contract. All insurance/bonding/

WCB will be provided and maintained by the Professionals at the Professionals' own expense.

- (b) The Professionals will jointly and severally 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 Professionals, or either of them, in observing or performing the Professionals' obligations under this Contract, any activities under the control or supervision of the Professionals or the Professionals' Staff for which the Professionals are 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 Professionals 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 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.
- (c) As security for the Board's Option to Purchase the Personal Property, the Professionals and the Directors all now grant the Board a security interest in the Personal Property on the terms attached as Schedule E - *General Security Agreement* 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 Professionals or the Directors, 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 Professionals and/or the Directors 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.
- (d) For the purposes of this Contract, a "Permitted Creditor" is a financial institution or other legitimate creditor of the Professionals or the Directors who deal at arm's length from the Professionals or the Directors,

respectively, and has either delivered Personal Property to the Golf Course or has extended credit to the Professionals and/or the Directors specifically for the purposes of financing the Professionals' operations and activities at the Golf Course, but specifically excludes creditors who are affiliated or related to the Professionals or the Directors in any way or have extended credit for personal, non-business purchases or liabilities of the Professionals or the Directors.

14. **Advertising.** Under no circumstances may the Professionals or the Professionals' 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 Professionals 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 "Langara 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 Professionals (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 Professionals 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 Professionals, nor use the Professionals' names or businesses in any advertising or promotions, without the prior written consent of the Professionals.

15. **Restrictions on Assignment by Professionals and the Directors.** Despite any other term of this Contract, the Professionals and the Directors 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 Professionals' Staff);

- (b) further to Section G.13 of Schedule G, sub-license or otherwise permit access to or use of the Pro Shop, 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);
- (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.

16. **Default by Professionals or Directors.** Subject to Section 17, default (a "Default") will occur under this Contract if the Professionals or the Directors breach 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.
17. **Limited Extension for Non-Monetary Breaches.** Despite Section 16, 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 Professionals or the Directors, as applicable, will not be in Default if the Professionals or the Directors, 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 Professionals 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 18(e).

For further certainty, paragraph (b) will not apply to any breach by the Professionals 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 Professionals have through their own acts or omissions put themselves in a position where it cannot provide such information.

18. **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 Professionals or the Directors, as applicable, for the amount of money due,
 - (c) take proceedings or any other legal steps to compel the Professionals or the Directors, as applicable, to comply with this Contract,
 - (d) where the Professionals or the Directors, as applicable, are 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 Professionals 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 17 (b), cancel this Contract as further set out in Section 19.
19. **Termination by Board for Cause.** If:
- (a) the Professionals or the Directors are in Default (but expressly excluding the type of Default described in Section 17(b)),
 - (b) the Directors, or either of them, become ill or incapacitated to the extent that, in the Board's Designated Representative's opinion, the Professionals are or will be unable to observe or perform the Professionals' 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 Professionals or the Directors become bankrupt or insolvent,
 - (d) in the Board's Designated Representative's opinion, the Directors, or either of them, exhibit dishonesty or conduct unbecoming a golf professional who is a member of the CPGA,
 - (e) in the Board's Designated Representative's opinion, the Professionals exhibit continuing inattention to, or neglect of, the Professionals' obligations under this Contract, or
 - (f) the Directors, or either of them, are suspended by the CPGA,

the Board's Designated Representative may deliver notice to the Professionals terminating this Contract, and such termination will take effect on the date the Professionals are deemed to have received that notice. If the Directors, or either of them, dies, this Contract will terminate as of the date of death. However, the Board's Designated Representative will discuss with the deceased Director's executor/executrix and the Professionals' Staff 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 golf professional to manage the Golf Course.

20. **Termination Without Cause by Board or Professionals With 1 Year Notice.** Either the Board or the Professionals 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 Professionals 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.
21. **Termination Without Cause by Board With Fees in Lieu of Notice.** Despite Section 19 or 20, 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 Professionals or the date such notice is deemed to be delivered, whichever is earlier, but in such a case, the Board will pay the Professionals the sum of \$75,000 on or before the 30th day following such termination. However, in no event will the Board's Designated Representative's breach of this Section 21 or of Section 22 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.
22. **Securing of Personal Property on Termination or Expiry.** In any case where the Board has not exercised its 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 Personal Property until such time as the Professionals remove same or it becomes property of the Board, in accordance with Section 23(e).
23. **Consequences of Termination or Expiry.** As of the effective date of termination under Section 19, 20 or 21, or expiry of the Term:
 - (a) the Board will have no further obligation, unless negotiated under Section 19 or payable in lieu of notice under Section 21, to pay any compensation under Section 5 to the Professionals, and the Board will adjust and pro rate

such compensation to the termination or expiry date, the Board and Professionals will settle their accounts regarding compensation 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 Professionals any money the Professionals owe to the Board,

- (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 21,
- (c) subject to paragraph (f), 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), expressly elects not to exercise its Option to Purchase with respect to all but not part of the Merchandise, all but not part of the Rental Equipment, and/or all but not part of the Fixtures (the "Excluded Items"), and to such extent the Board will have a lien and charge on the Excluded Items until the Professionals have paid any money it owes to the Board (including without limitation any storage and administrative fee amounts payable pursuant to paragraph (e)), and if the Professionals fail 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 Professionals will have no further right to provide the Services to the Board,
- (e) subject to paragraph (f), 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 Professionals will promptly remove all of the Personal Property (or the Excluded Items, as applicable) from the Golf Course as of the date of termination or expiry of the Term. The Professionals shall also remove all Miscellaneous Personal Property from the Golf Course by the end of the day on the effective date of termination or expiry. If the Professionals fail to remove any of the Personal Property (or the Excluded Items, as applicable) or Miscellaneous Personal Property in accordance with the foregoing requirements, a storage and administrative fee will be payable by the Professionals to the Board equal to 2% of the fair market value of such items for each calendar day that the Professionals are in breach of the Professionals' obligation to remove such items from the Golf Course. The Board will have no obligation to release such items to the Professionals until the applicable storage fee is paid in full, and if the Professionals fail 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 Professionals, and the Professionals 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,

- (f) despite paragraphs (c) and (e):
 - (i) where the Board has exercised its rights of immediate termination under Section 21, the Board will be deemed to have exercised its Option to Purchase in respect of all of the Personal Property except for the Merchandise and the Rental Equipment, and the Board may then, by written notice to the Professional, elect to purchase all or none of such Merchandise and/or all or none of such Rental Equipment; and
 - (ii) if this Contract is terminated upon the expiry of its Term and not pursuant to Sections 19, 20 or 21, the Board will give the Professionals 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.

24. **Automatic Renewal.** Where the Professionals continue to provide and the Board continues to accept services pursuant to this Contract following the expiry of the Term, 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.

25. **Surviving Obligations.** Neither the termination of the engagement nor the expiry of the Term will void or terminate any obligations of the Professionals, the Directors or the Board, which by their nature are intended to survive such termination or expiry.

25. **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.

26. **Costs.** The Professionals will bear all the costs of observing or performing the Professionals' and the Directors' 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.

27. Unavoidable Delay

- (a) Subject to paragraph (c), except for the performance of obligations to pay money, time periods for the Board's, the Professionals' and the Directors' 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 Professionals' or the Directors' 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 Professionals or the Directors.

- (c) Despite paragraph (a), 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 Professionals 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), in the event of an Unavoidable Delay other than the type referred to in paragraph (c) 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 Professionals 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.

29. **Prior Arrangements.** This Contract supersedes all prior written or verbal contracts, permits, licences or other arrangements between the Board or City, the Directors and the Professionals concerning the subject matter of this Contract.
30. **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) all obligations of each of the Professionals and each of the Directors will be deemed for all purposes to be joint and several;
 - (d) 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;
 - (e) 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;
 - (f) time will be of the essence of this Contract, and if any party hereto expressly or impliedly waives that requirement, the that party may reinstate it by delivering notice to the other;
 - (g) the fact that any party hereto waives a default is not to be construed to mean that that party waives any other default;
 - (h) no amendment to this Contract will have any effect unless it is in writing, and each party hereto has signed it;
 - (i) this Contract represents the entire agreement between the parties hereto concerning the subject matter of this Contract, and there are no representations, warranties or agreements other than those expressed in this Contract;
 - (j) 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 Professionals and the Directors; and

- (k) the Professionals acknowledge and agree that none of the Professionals' Staff is an employee of the Board. Accordingly, the Professionals' 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 Professionals (or any of the Professionals' employees) to Canada Revenue Agency under the *Income Tax Act* (Canada) in respect of Canadian Pension Plan or Employment Insurance. The Professionals further acknowledge 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 Professionals' Staff. The Professionals further agree 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 Professionals in respect of the payments received by the Professionals under this Contract. The Professionals now indemnify the Board for any and all penalties, interest and arrears imposed on the Board in the event that the Professionals breach their 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 Professionals are other than independent contractor. Upon request, the Professionals will provide the Board with satisfactory evidence of compliance with all statutory remittance requirements.

31. **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 - *Professionals' Upgrades*, [intentionally deleted]
- Schedule B - *Description of Pro Shop and Cart Storage Areas*, [intentionally deleted]
- Schedule C - *Customer Service Duties*,
- Schedule D - *Insurance/Bonding/WCB Requirements*,
- Schedule E - *General Security Agreement*,
- Schedule F - *Option to Purchase Golf Course Personal Property*
- Schedule G - *Grant of Licence*
- Schedule H - *Prime Contractor Agreement*. [intentionally deleted]

32. **Certain Remedies Independent of Arbitration Proceedings.** Except for those disputes specifically referenced in Section 33, all disputes arising under this Contract will be determined by the courts of British Columbia in accordance with British Columbia law.

33. Arbitration Proceedings.

- (a) Any dispute as to the correctness of an auditor's report prepared pursuant to Section 12(e) will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 33.
 - (b) Any dispute as to the correctness of a chartered accountant's or other asset valuator's determination made pursuant to paragraph (f) of Section F.3 of Schedule F - *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 33.
 - (c) Any dispute as to the calculation of the Board's costs pursuant to Section 18(d) 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 12(c)(i). The Board will select the arbitrator within 5 days of the notice to arbitrate and then provide the Professionals with the selected arbitrator's name, place of business or employment, and reasonably detailed resume or outline of recent professional experience. The Professionals 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 Professionals all material information about his/her credentials, possible conflicts of interest and biases. If the Professionals elect to contest the appointment, the Professionals 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 will be as determined by the arbitrator, subject always to the specific terms of this Contract.
- 34. 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 12(f)).

35. **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: Director of Legal Services

(b) In the case of a notice for the Professionals or the Directors, addressed to:

Muncie's Golf Shop Ltd.

s.22(1)



Attention: Muncie Booth

and

Monaghan Golf Inc.
7800 Vivian Drive
Vancouver, BC
V5S 2V8
Attention: Tom Monaghan

or to:

Langara Golf Course
6706 Alberta Street
Vancouver, British Columbia
V5X 4V8
Attention: Muncie Booth and Tom Monaghan

36. **Continuing effect.** This Contract will enure to the benefit of and bind the Board and its successors and assigns and the Professionals and the Directors and their respective successors and permitted assigns.

To witness this Contract each of the Board, the Directors and the Professionals have signed it as of the Contract Date.

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

Per:



General Manager

MUNCIE'S GOLF SHOP LTD.

Per:



Magnus Kennedy Booth, President

MONAGHAN'S GOLF INC.

Per:



Michael Thomas Monaghan, President

SIGNED, SEALED, AND DELIVERED)
in the presence of:)

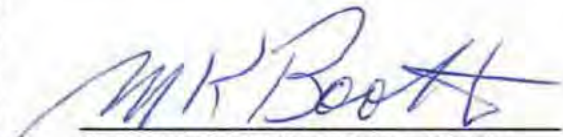
Alex Procellette)

Name)
s.22(1))

Address)

Langara Shop Manager)

Occupation)



MAGNUS KENNEDY BOOTH

SIGNED, SEALED, AND DELIVERED)
in the presence of:)

Alex Procellette)

Name)
s.22(1))

Address)

Langara Shop Manager)

Occupation)



MICHAEL THOMAS MONAGHAN

**SCHEDULE A
PROFESSIONALS' UPGRADES**

[N/A and therefore deliberately deleted]

**SCHEDULE B
DESCRIPTION OF AREAS**

[N/A and therefore deliberately deleted]