North Canton City Council
Finance and Property Committee

Ordinance No. 85 - 2019

An ordinance authorizing the Mayor of the City of North Canton, upon Board of Control approval, to enter into a management agreement with North Canton Golf, LLC and Skyland Pines, Inc., ("NCG") for it to manage, under the City's direction, the day-to-day operations of what is commonly known as the Arrowhead Golf Club, which includes, but is not limited to, an 18-hole public golf course, clubhouse, banquet facilities, swimming pool, and other existing and future amenities ("Arrowhead"), as more fully described in the management agreement attached hereto and incorporate herein, and declaring the same to be an emergency.

WHEREAS, the City and NCG share the same goals and objectives of providing North Canton's residents and guests with safe, reliable, and efficient summer recreational activities, dining, and facilities appropriate for public gatherings; and

WHEREAS, the City recognizes NCG's experience and expertise in managing similar golf and event-center facilities and service, together with two decades of food-service experience in Stark and adjoining counties; and

WHEREAS, City residents and guests will derive substantial benefits from NCG's events, activities, and services together with membership discounts; and

WHEREAS, the parties' interim agreement shall expire after January 31, 2020; and

WHEREAS, time is of the essence as NCG must immediately advertise, market, and sell annual golf and pool memberships together with scheduling recreational activities, and other public and private functions such as weddings, graduations, alumni gatherings, etc., and

WHEREAS, the vast majority of revenue generated from the sale of the above-described memberships and activities is generated at the beginning of the calendar year and is utilized to sustain Arrowhead during its off-season for golf, swimming, etc., and

WHEREAS, unless the attached management agreement is implemented without delay the revenue generated to sustain Arrowhead during the off-season of its key activities is in peril as customer confidence of continued service shall be compromised; and

WHEREAS, it is the City and NCG's mutual desire that NCG manage Arrowhead in a manner that provides reasonable returns for the City's investment for a period of five years.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

Section 1. That the City of North Canton desires to enter into a management agreement with NCG for it to manage, under the City's direction, the day-to-day operations of Arrowhead Golf Club as more fully described in the management agreement attached hereto.

Section 2. That the City and NCG share the same goals and objectives of providing North Canton's residents and guests with safe, reliable, and efficient summer recreational activities, dining, and facilities appropriate for public gatherings.

Section 3. That City residents and guests will derive substantial benefits from NCG's events, activities, and services together with membership discounts.

Section 4. That the City recognizes NCG's experience and expertise in managing similar golf and event-center facilities and service, together with two decades of food-service experience in Stark and adjoining counties.

Section 5. That the parties' interim agreement shall expire after January 31, 2020, and therefore time is of the essence as NCG must immediately advertise, market, and sell annual golf and pool memberships together with scheduling recreational activities, and other public and private functions such as weddings, graduations, alumni gatherings.

Section 6. That the vast majority of revenue generated from the sale of the above-described memberships and activities is generated at the beginning of the calendar year and is utilized to sustain Arrowhead during its off-season for golf, swimming, etc.

Section 7. That unless the management agreement is implemented without delay, the revenue generated to sustain Arrowhead during the off-season of its key activities is in peril as customer confidence of continued service shall be compromised.

Section 8. That it is the City and NCG's mutual desire that NCG manage Arrowhead in a manner that provides reasonable returns for the City's investment for a period of five years.

Section 9. That the Mayor be, and is hereby authorized, upon Board of Control approval, to enter into the attached management agreement with NCG for it to manage Arrowhead and its associated facilities' day-to-day operations for a period of five years.

Section 10. That if a provision of this ordinance is or becomes illegal, invalid, or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 11. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and peace of the City of North Canton, and further necessary to continue the management agreement between the parties without a loss of service to residents and guests, and to enable NCG to immediately advertise, market, and sell annual golf and pool memberships together with scheduling recreational activities, and other public and private functions such as weddings, graduations, alumni gatherings, etc., thereby utilizing the revenue generated from annual memberships at the beginning of the year to sustain Arrowhead's continued

operation during its off-season; wherefore, provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed in Council this 13 day of January 2020

Stephan B. Wilder

Stephan B. Wilder, Mayor

Attest:

Benjamin R Young

Benjamin Young, Clerk of Council

Signed: 01/21, 2020

City of North Canton
Golf Course Management Agreement

THIS MANAGEMENT AGREEMENT ("Agreement") is made as of this 1st day of February, 2020, by and between **NORTH CANTON GOLF, LLC and SKYLAND PINES, INC.**, an Ohio corporation (collectively referred to herein as "NCG"), having an address at 4368 Dressler Road, Suite 201, Canton, Ohio 44718, and the **CITY OF NORTH CANTON** ("City"), an Ohio municipal corporation, having an address at 145 N. Main Street, North Canton, OH 44720 (the "Parties").

RECITALS

A. City owns certain real property commonly known as Arrowhead Golf Club, currently an 18-hole public golf course, clubhouse, swimming pool and other existing and future amenities, located at 1500 Rogwin Circle SW, North Canton, OH 44720 (the "Club") and further described in Exhibit "A" which is incorporated hereto as part of this Agreement; and

B. City recognizes the benefit of engaging a third-party management company to manage the affairs of the Club; and

C. NCG is in the business of managing golf courses, clubs and related banquet facilities; and

D. City desires to utilize the services and experience of NCG in connection with the management and operation of the Club, and NCG desires to render such services, upon the terms and conditions set forth in this Agreement.

In consideration of the covenants and agreements of the parties contained herein, it is mutually agreed to as follows:

1. **DEFINITIONS.** The following terms, as used in this Agreement, shall have the following meaning, unless otherwise set out in this Agreement.

A. Account. the bank account established under NCG through which all income is deposited and from which all expenses related to the Club are paid.

B. Annual Budget and Program: Documents presented by NCG for the operation of the Club to the City as part of the City's annual budget process, including but not limited to the following: Annual Business Plan and Operating Budget, Agronomic Plan and Marketing Plan.

C. NCG: North Canton Golf, LLC, an Ohio limited liability company and Skyland Pines, Inc., and Ohio corporation.

D. City: The City of North Canton, an Ohio municipal corporation.

E. Club: 18-hole public golf course, clubhouse, including banquet facilities, swimming pool, and other existing and future amenities located in North Canton, Ohio.

F. Fiscal Year: January 1st to December 31st.

G. Gross Revenue: All revenues and income of any nature derived directly or indirectly from the Club or from the use or operation thereof, including green fees, gross sales proceeds from the sale of green fees, memberships or annual passes to the Club, monthly dues from annual pass holders of the Club, rental fees for golf carts, golf clubs and other rental items, range balls, liquor, and food and beverage revenues (including mandatory service charges, revenue generated from space rentals and from meetings, banquets, parties, weddings, receptions, tournaments and other group gatherings) merchandise sales, and the proceeds paid for any business interruption, use, occupancy or similar insurance policy claim. Excluded from "Gross Revenue" are any credits or refunds made to customers, guests or patrons; any sums and credits received by City for lost or damaged merchandise; any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, amusement taxes, tourist taxes or charges; any proceeds from the sale or other disposition of the Club, Furniture, Fixtures & Equipment (FF&E), or other capital assets; any property and/or liability insurance proceeds; any proceeds of financing or refinancing of the Club; amounts contributed by City pursuant to the terms of this Agreement and income or interest derived from the Club bank account. Gross Revenues shall be determined on an accrual basis and in accordance with generally acceptable accounting principles ("GAAP").

H. Minimum Funds Balance: The minimum dollar amount of the budget for all Operating Expenses for each month for the Club, as set forth in the Annual Budget and Program approved by the City. The initial operating capital to establish the minimum Fund balance deposited by the City shall not be less than Fifty Thousand and 00/100 Dollars ($50,000.00).

I. Net Operating Income: Gross Revenue from the Club, minus all operating expenses which are attributable (in accordance with generally accepted accounting principles) to the use and operation of the Club, including, without limitation: employee costs, operating expenses, centralized

services, the Base Management Fees, expense reimbursements, all insurance costs related to the operation of the Club, personal property taxes (limited to an amount allocable to the Club), and golf cart leases and operating costs; provided, however, such expenses shall not include any charges for amortization, depreciation, capital expenditures, debt service, and State and Federal income taxes, City distributions or overhead allocations, or any Incentive Management Fees paid to NCG hereunder.

J. Operating Expenses: The costs attributable to the operation of the Club, including but not limited to: payroll, payroll taxes, benefits, employee related costs, including costs incurred by NCG to employ personnel employed at the Club, insurance, supplies, marketing materials, contract services, utilities, merchandise and food and beverage procured for resale, maintenance and repair, service agreements, and real and personal property taxes levied on the Club.

K. Operating Capital: Funds utilized to pay Operating Expenses of the Club.

2. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon February 1, 2020 ("Effective Date"), and unless terminated as provided for herein, shall expire five (5) years from the Effective Date ("Initial Term") on January 31, 2025, and thereafter shall renew, upon mutual agreement of the Parties, exercisable upon written notice to City no less than one hundred twenty (120) days prior to the expiration of the then-existing term, for up to two (2) successive periods of five (5) years each (each such period being an "Extension Term" and collectively with the Initial Term the "Term").

3. **APPOINTMENT OF NCG AS MANAGER.** From and after the Effective Date, City hereby grants to NCG the right to supervise and direct the management and operation of the Club for and on the account of City. Operation of the Club is subject to extensive City supervision.

The City retains the authority over the Club's rate setting, marketing approval, and hours of operation. City shall maintain unfettered access to the Club, shall inspect it frequently, and shall be responsible for the Club's ongoing direction and control. NCG shall provide input to the City in relation to Club management and operation, however the Club shall remain under the City's direction and control.

4. **NCG SERVICES.** Services rendered by NCG to City shall be as follows: Subject to the terms of this Agreement, NCG, as an independent contractor, shall have the sole and exclusive right to

operate and manage the Club. City and NCG agree that they shall cooperate reasonably with each other to permit NCG to carry out its duties under this Agreement. NCG shall have the responsibility and authority to provide general operational management services for the Club, including, without limitation, the following services:

A. Employees. All personnel employed at the Club shall at all times be employees of NCG or employees of a related or an affiliated company of NCG or its owner. All employees will be issued W2s. NCG shall, as an Operating Expense of the Club, hire, promote, supervise, direct and train all NCG employees at the Club, fix their compensation and fringe benefits, and, generally, establish and maintain all policies relating to employment and employment benefits. Employees wishing to participate in the benefits program shall adhere to the requirements of the NCG benefits program with respect to required contributions, deductibles and eligibility based upon position classification and employee tenure. NCG employee files shall always be the sole property of NCG. All costs of every kind and nature pertaining to all employees at the Club arising out of the employer-employee relationship, including, without limitation, salaries, fringe benefits, bonuses, recruitment, background processing, relocation costs, training, performance management, employment-related legal costs, and costs incurred in connection with governmental laws and regulations and insurance rules, including those relating to post employment costs for benefits, health insurance, cobra payments, and any payouts of unused vacation at termination of employment, shall be an Operating Expense paid from the Operating Account (as defined in Section 5 below),. If an employee of an affiliate of NCG that is not employed at the Club is assigned temporarily or on a part-time basis to perform services at the Club, such employee's salary shall be an operating expense (including employee benefits and taxes) proportional to the period of time such employee dedicates to the Club.

B. Inventory – Merchandise and items for Re-sale. NCG shall, as an Operating Expense of the Club, obtain merchandise for the pro shop at the Club and food and beverage items, all in accordance with the Annual Budget and Program.

C. Supervision. NCG shall supervise and manage the Club operations to include, but not be limited to, golf pro shop, maintenance, food and beverage, banquet center, membership sales efforts, practice facilities, administration,

and other ancillary services (such as pool, tennis and fitness, if applicable) at the Club.

D. Equipment. Except as set forth in Section 13, NCG shall, in preparation of the Annual Budget and Program as set forth in Section 4.G, develop a list of required equipment and a purchase/lease schedule and maintain in good working condition and order the real property and equipment at the Club, including the golf course and all physical structures which are part of the Club, and all vehicles and other maintenance equipment necessary to the maintenance and operation of the Club in the normal course of business. City and NCG agree that NCG will execute leases for new golf carts and mowing equipment as set forth on the Schedule attached to this Agreement. Notwithstanding any other provision in this Agreement, the City and NCG acknowledge and agree that the City is primarily responsible for all obligations under and related to the golf cart and mowing equipment agreements attached hereto and made a part hereof. The City shall indemnify and hold harmless NCG from any and all claims, damages, actions or other liability pursuant to or related to the attached agreements. Upon termination of this Agreement for any reason, the City shall assume and make all payments under the agreements.

E. Purchasing and Procurement. With respect to the duties and responsibilities of NCG as set forth in this Section 4, NCG shall arrange for the procurement, on behalf of the City and as an Operating Expense of the Club, all operating supplies, operating equipment, inventories and services as are deemed necessary by NCG to the normal and ordinary course of operation of the Club and to operate the Club in accordance with the Annual Budget and Program. In purchasing operating supplies, operating equipment, inventories (including merchandise to be sold in the shop) and services for the Club, NCG may utilize its purchasing procurement services and/or other group buying techniques involving other clubs managed by NCG. NCG may receive and retain a minor fee or other compensation from vendors and service providers in exchange for NCG's services in making the benefit of volume purchases available to the Club or negotiating and implementing the arrangements with such vendors or providers, provided that any fee or compensation paid to NCG is separate and apart from any discounts or pricing off invoice available to the Club and is approved by the City in advance. Any available discount, rebate, fee or compensation which is directly attributable to the purchases made for the operation of the Club shall be remitted directly to the Club from the vendor.

F. Marketing. NCG shall create, direct, and implement an annual marketing plan for the Club as part of the Annual Budget and Program. The marketing plan for the Club will include a market analysis, a summary of golf programs to include rates, membership structure (if applicable), and strategies for increasing acquisition, engagement and yield with the purpose of achieving the budgeted financial goals and other marketing-related goals for all Club operations.

NCG shall, as an Operating Expense of the Club, as part of its standard marketing operation, obtain and manage:

1. Marketing systems, including internet (web site, e-mail, e-commerce); electronic tee sheet program (reservation system, customer database, POS); credit card processing; and branding materials (graphic design, collateral, photography);

2. Customer acquisition programs, including advertising (print, electronic, display); direct marketing (direct mall, broadcast e-mail); promotional offers; and community and vendor partnerships and sponsorships;

3. Customer retention programs, including special events and programs; promotional offers; and membership events and programs; and

4. Sales programs, including outing, membership, and event sales management.

NCG shall coordinate and oversee all third-party contractors' work in connection with the production and implementation of these programs.

G. Accounting. NCG shall pay all vendors of the Club subject to the availability of funds in the Account after payment of the Management Fee and, when applicable in accordance with the terms of the Agreement, the Management Incentive Fee. NCG shall provide separate budgeting, bookkeeping and reporting services to City for the Club. Copies of all books and records shall be kept at the Club. All books, records, software, data, programs, manuals and the like shall remain the property of City and NCG shall be entitled, but not obligated, to keep a copy of said books, records, software, data, programs, manuals and the like for its own records as it desires.

1. Reporting. NCG shall prepare and deliver to City, in accordance with NCG standard procedures and format, regular monthly and annual financial statements which shall include an operating level balance sheet (bank account balance, inventory, accounts payable, accounts receivable if applicable, accrued payables, gift certificate balances and paid in capital from City), a profit and loss statement for the current month and year to date activity, accounts payable listing, general ledger activity and comments regarding monthly activity and variances to the Annual Budget. Upon City's request, NCG shall provide all accounting data and reports in electronic form. NCG shall not be responsible for the accounting or tax reporting requirements of the City, including but not limited to, the depreciation, amortization or addition of assets and equipment City's equity, debt service principle, loan amortization, accounting treatment relating to any full or partially refundable membership initiation fees or deposits, or payment of any invoices which relate to a period prior to the Effective Date. City shall provide NCG opening entry data for the balance sheet within 15 days of the Effective Date.

   Final monthly operating statements shall be furnished to City by the 20th day following the last day of each month, and annual operating statements shall be furnished by the 45th day following the last day of each fiscal year. At City's discretion, the annual operating statement shall be audited and prepared by a certified public accountant chosen by City, the cost of which shall be an Operating Expense of the Club. This audit shall be performed at the Club site, and NCG shall make every reasonable effort to comply with the auditor's requests.

2. Annual Budget and Program. NCG shall prepare and deliver to City no later than November 1st of each year (except for the first full or partial fiscal year when NCG shall prepare and deliver to City no later than thirty (30) days after the Effective Date) for the following fiscal year: (a) an Annual Operating Budget, including revenues and operating expenses and labor burden (to include rates of pay, incentive or commission structures) for each operation of the Club (i.e. golf, banquet, pool, restaurant); a merchandise buying plan for the pro shop; a comparison to the annual operating budget for the immediately preceding year and a projection of anticipated monthly revenues and expenses and cash flows for the Club for the

following fiscal year, including, without limitation, a reasonable contingency and anticipated Operating Capital requirements for the Club for the year, (b) a recommended capital expenditures budget for the next fiscal year, (c) a Policies and Procedures Outline for the Club, including, without limitation, operating policies, proposed hours of operation, policies related to said golf course and Club use by City's representatives and employees, standards for operations and quality of service standards; (d) an Agronomic Plan including staffing assumptions, chemical and fertilization applications including planned agronomic practices (e) Marketing Plan as described in Section 4.F (collectively, the "Annual Budget and Program"). NCG and City shall use their mutual best efforts to agree upon the Annual Budget and Program for the following year on or before fiscal year end. City shall have the final approval and final decision-making authority over the Annual Budget and Program. City shall provide NCG written confirmation of its approval of the Annual Budget and Program upon passage by City Council of an appropriate budget ordinance.

City acknowledges that the financial and operational performance of the Club could be affected by circumstances or events beyond NCG's control. NCG shall not be deemed to have made any guarantee, warranty, or representation with the Annual Budget and Program. Under no circumstances shall City have any claim or cause of action against NCG in the event that the financial goals, targets, and benchmarks established in the Annual Budget and Program are not met or achieved.

Each party may, from time to time, propose to the other party, in writing, during the course of the year, such changes or amendments to the Annual Budget and Program as such party may consider necessary or appropriate, and NCG and City shall use their mutual best efforts to act upon such proposal within thirty (30) days after such proposal is made provided any such change or amendment shall be subject to City's prior written approval. If the City fails to provide written approval or rejection of NCG's proposed changes or amendments to the Annual Budget and Program within sixty (60) days after such proposal is made, unless subject to legislative action if required, said changes shall be deemed approved. In the event the City fails to provide

approval of the Annual Budget within the sixty (60) day period, then NCG may terminate this Agreement without notice and cure period. NCG shall be entitled to receive the amounts outlined under Section 10.B. NCG shall secure the prior approval of City for total expenditures which exceed the total expenditure amount approved in the Annual Budget and Program, however, as necessary, (i) NCG has the ability to allocate funds from individual expense line item to another expense line item within the Annual Budget and Program, and (ii) expenditures which will exceed any line item in the Annual Budget and Program by One Thousand and 00/100 Dollars ($1,000.00), so long as all such expenditures do not exceed Ten Thousand and 00/100 Dollars ($10,000.00) in the aggregate for the entire Annual Budget and Program, except for expenditures necessary in the event of emergencies for which prompt notice will be given to City.

3. Payroll and Benefits. NCG, on behalf of NCG, shall establish, administer, and maintain the payroll procedure and systems for the NCG employees at the Club and shall be responsible for overseeing the benefits to, and handling the appropriate payroll deductions for, individual employees. Benefits will be limited to vacations, sick leave, medical insurance coverage, and 401(k) plan, as approved by City pursuant to the Annual Budget and Program. All employees of the Club shall be employees of NCG, and NCG shall comply with applicable Federal and State employment laws.

4. Vendor Accounts. NCG shall coordinate with City and appropriate vendors to establish vendor accounts with appropriate credit limits applied for on behalf of and in the name of City. NCG shall act as Agent for the City with regard to payment of vendors, and City accepts full responsibility to pay all vendors who provide goods and/or services to or on behalf of the Club out of the operating expenses of the Club, if authorized by the City.

H. IT Services. NCG shall, as an Operating Expense of the Club, obtain and manage, in each case to the extent that NCG or City deems necessary, the networking infrastructure for the operation of the Club, including hardware and software resources, network intrusion protection, network monitoring, and compliance with the Payment Card Industry Data Security Standards ("PCI DSS"), the telephone system for the operation

of the Club, including voice, facsimile, SMS, and/or voice-messaging applications, and hardware and software needed for the computer system, including virus and malware protectionprovided City has final say on vendor. As part of the Annual Business Plan there shall be a monthly support fee for the remote support of the IT services as referenced. NCG shall coordinate and oversee all third-party contractors' work, if cost effective and appropriate, in connection with the implementation of these programs/services and City is not liable for cyber security breaches and/or compromised data.

I. Operating Expenses and City's Remittance.

1. Minimum Funds Balance. At the end of each calendar month, after paying the Operating Expenses of the Club, beginning with the Management Fees (including Base Management Fees and Incentive Management Fees if applicable), and other expenses authorized by City, NCG shall remit directly to City all amounts (if any) then in the Operating Account (as hereinafter described) in excess of the Minimum Funds Balance (as hereinafter described) by ACH or wire transfer or on line transfer to an account as City may from time to time designate by written notice to NCG (the "City's Remittance'). As used herein, the "Minimum Funds Balance" for the Club shall be defined as the dollar amount of the total budget for all Operating Expenses (as set forth in the Annual Budget and Program) for the month following the current month within the Term of the Agreement. At no time shall the City allow Minimum Funds Balance to be less than Fifty Thousand and 00/100 Dollars ($50,000.00).

2. Operating Expenses. NCG shall pay all reasonable Operating Expenses for the Club on behalf of City from the Account which expenses shall include, but not be limited to, Management Fees (including Base Management Fees and Incentive Management Fees), payroll, payroll taxes, benefits, employee-related costs, insurance, supplies, marketing materials, services, utilities, maintenance and repair, service agreements, and real and personal property taxes levied on the Club. NCG will collect from and remit on behalf of City, sales, use, value- included and excise taxes on sales and rentals at the Club. City is required to ensure that sufficient Operating Capital is present in the Account to enable NCG to pay, on behalf of City, all Operating Expenses. In

all events, City is responsible to pay all Operating Expenses in the event NCG is unable to pay all or any part of the Operating Expenses for any reason, excluding acts of employee dishonesty or employee theft. NCG will not pay Federal or State income taxes levied on City. Under no circumstances shall NCG be liable for Federal, State, or local taxes of any kind whatsoever levied against City or the Property in relation to Club Ownership, leasing, or operations.

3. Initial Funding. Until such time as the Annual Budget and Program are approved by City, City gives NCG approval to operate the facility in accordance with this Agreement and in NCG's best judgment after consultation with City. City shall provide initial operating capital in the amount of at least Fifty Thousand and 00/100 Dollars ($50,000.00) for operations prior to approval of the Annual Budget and Program (the "Initial Funding") and the City shall promptly review all additional funding requests needed to cover Operating Expenses of the Club within twenty (20) days of written notice by NCG. Additional funding requests in excess of the approved Annual Budget and Program shall require approval by City Council which shall not be unduly delayed. If City does not provide the necessary Operating Capital, NCG may, but shall not be responsible to, cover any or all Operating Expense City shall reimburse NCG for all such amounts paid by NCG plus pay to NCG interest on such amounts paid by NCG within five (5) days of NCG providing notice to City that NCG paid such amounts. The interest to be paid shall be the legal judgment rate of interest for the State of Ohio and shall begin as of the date NCG paid such amounts and run until City pays NCG in full. City further shall be responsible to pay all late fees, interest, and other amounts charged by vendors and other parties who supply labor, services or materials to the Club and to whom such amounts are owed.

J. City's Meeting. NCG shall regularly consult with the City or its assign regarding the Club and its operations at a reasonable time, date and place designated by City.

K. Limitations. NCG shall obtain City's prior written approval for (i) contracts in excess of Two Thousand Five Hundred and 00/100 Dollars ($2,500.00), (ii) contracts in excess of twelve (12) months in duration unless the same can be terminated

upon thirty (30) days written notice without cost or fee to City, and (iii) contracts with affiliates of NCG.

L. Assignment of Operations. Forty five (45) days after the applicable termination effective date of this Agreement, NCG, as appropriate, shall assign to City or City's designee, and City or City's designee shall accept said assignment of, all operating accounts, vendor accounts, inventory, accounts receivable, and accounts payable, which transfer shall be completed upon NCG receiving all fees due pursuant to this Agreement.

5. **ACCOUNT.** NCG shall establish the following business checking account for the Club: an "Operating Account", for use in its management and operation of the Club. NCG shall be authorized to access and use the Account in compliance with the Annual Budget and Program and the terms of this Agreement. All revenues, receipts, and funds deposited into the Account by City, and NCG shall be defined as and constitute Operating Capital herein. NCG shall cause all revenues and receipts to be deposited into the Account on a daily basis. NCG shall use the Account to pay all expenses and costs, including but not limited to Operating Expenses of the Club. Nothing in this Agreement shall be construed to require NCG to provide any Operating Capital or any sums into the Account out of its own funds.

Upon cancellation or termination of this Agreement for any reason, NCG shall continue to have the right to access and use the Account to satisfy all Operating Expenses, starting with the Base Management Fee and Incentive Management Fee, incurred through the applicable termination effective date, as well as all applicable fees, including any Cancellation Fee, Termination Fee or Sale Termination Fee. NCG's right to access and use the Account shall continue for forty-five days after the applicable termination effective date, at which time NCG's and NCG's rights to access and use the Account shall be immediately revoked and all funds in the Account shall be immediately paid over to City. The City shall pay all reasonable Operating Expenses incurred by NCG during the term of this Agreement after the transfer of funds to the City. Upon direction from City from time to time, NCG shall invest or deposit funds in the Account in accordance with City's direction provided that the City's direction is compliant with the Annual Budget and Program and the terms of this Agreement and does not prohibit or impede NCG's ability to pay all Operating Expenses and applicable fees. NCG shall establish, administer and maintain the point of sale and credit card procedures and systems for the depositing of revenues into such Account on a daily basis.

6. **INSURANCE.** At all times during the term of this Agreement or any subsequent extensions, NCG shall maintain insurance coverage as

follows: A. Property damage in the sum of $2,000,000.00; B. Comprehensive coverage in the sum of $2,000,000.00; C. $1,000,000.00 per occurrence; D. Workers' Compensation and Unemployment Insurance as required by law. NCG shall provide City with Certificates of Insurance for the coverage as outlined herein. These coverages, limits and deductibles cannot change without prior written authorization from the City. NCG shall notify City of all equipment and vehicle schedules for commercial property insurance which is maintained by City. City shall be named as an additional insured on NCG's property and liability insurance policies. Any third-party performing work or providing services to the Club at NCG's or City's direction shall provide a certificate of insurance for commercial liability insurance with limits satisfactory to City before work or services commence.

Such policies shall name City, and any applicable third parties as additional insureds under such policies. All insurance policies required hereunder shall contain a provision requiring the insurer to notify City and other named insureds at least thirty (30) days in advance of any cancellation or termination of such policy and satisfactory waiver of subrogation provisions. Except as provided for elsewhere in this Section, NCG shall be responsible for securing and maintaining all the insurance policies required hereunder.

7. **COMPENSATION AND FEES.**

A. Base Management Fee. For its services hereunder, NCG shall be paid a Base Management Fee (the "Base Management Fee") of Six Thousand and 00/100 Dollars ($6,000.00) per month. The Base Management Fee shall be payable on the fifteenth (15th) day of each month from the Account. The Base Management Fee shall be a net fee to NCG and shall not include Club expenditures as provided for in this Section 7 or any other Operating Expenses. The City agrees that NCG shall be entitled to reimbursement from the Account for any monthly Base Management Fees NCG has not taken or that NCG has allowed to be used to pay Operating Expenses during the interim Memorandum Agreement dated May 23, 2019, as amended or extended. Any increase to the Base Management fee shall be upon mutual agreement of the parties.

B. Incentive Management Fee. In addition to the Base Management Fee, NCG shall be entitled to earn an Incentive Management Fee for each full Fiscal Year during the Term. For Fiscal Year 2020 and each year thereafter, NCG shall receive an amount that is fifty percent (50%) of the Net Operating Income (the "Incentive Management Fee"). The Incentive Management Fee earned for a Fiscal Year shall be paid

no later than sixty (60) days after the commencement of the Fiscal Year immediately following the Fiscal Year for which it is calculated and in which it was earned.

All Base Management Fees and Incentive Management Fees during the term shall be paid to NCG from the Account as Operating Expenses. City shall pay directly to NCG any fees not payable until after the expiration or termination of this Agreement. Any Base Management Fee shall be paid by the fifteenth (15th) day of the month, any incentive Management Fee shall be paid within sixty (60) days after the Fiscal Year-end, and any other sums due under this Agreement being paid as soon as practicable upon an invoice being received by City.

C. City's Review. NCG's services herein shall include management and oversight of the turnkey accounting function as set forth in Section 4.G, and upon reasonable notice (which may be verbal) representatives of City shall have the right, at any time during normal business hours to review all of NCG's books and records including the general ledger, accounts payable, income statement, balance sheet, and budget variance reports relating to the Club including, without limitation, NCG's work papers related to NCG's preparation of operating statements. The Finance Director of City shall have online access to the Account to review balances and transactions. All expenses related to any such review shall be borne exclusively by City unless such review reveals an overpayment of any fees or other amounts in which case NCG shall pay for the review. City's exercise of its right of review or to dispute any fee or expense reimbursement claimed by NCG shall not delay payment of the undisputed portion thereof by City within the time frames set forth herein. Payment by City of a fee or other amount hereunder shall not constitute a waiver of City's right to subsequently dispute the amount thereof. If City and NCG determine that any portion of the Base Management Fee or any other amount was improperly paid to NCG, NCG shall refund such improperly paid fee. If there is any dispute between the parties regarding whether or not any payments of the Base Management Fee or any other amount were proper, such disputes shall be resolved by a court of competent Jurisdiction as set forth in Section 14.D.

D. Centralized Services. NCG may cause to be furnished to the Club certain services ("Centralized Services") which, in NCG's experience, are able to be furnished in a more cost effective and efficient manner on a central or regional basis to golf facilities managed by NCG. The costs to provide such services shall be

aggregated and billed by NCG rather than via a third-party vendor. Centralized Services shall be approved as part of the Annual Budget and Program. NCG represents that this reimbursement amount shall consist of an amount not exceeding the actual cost of the services without mark-up or profit to NCG including salary and employee benefit costs, cost of equipment used in performing such services, and overhead costs of the home office or any regional or other local office providing such services.

8. **CAPITAL EXPENDITURES.** The cost of all Capital Improvements shall be deemed to include any item purchased in connection with the operation of the Club which:

A. Has an economic useful life in excess of one (1) year, and

B. Has a cost in excess of Two Thousand and 00/100 Dollars ($2,000.00),

All Capital Expenditures for Capital Improvements shall be the responsibility of City and all decisions as to whether or not to undertake any capital improvements projects or otherwise in respect of any capital improvements shall be made by City in consultation with NCG. The City agrees that the golf carts and mowing equipment leases are capital expenditures approved by the City wherein future golf cart and moving equipment leases require City's prior written approval.

The City and NCG shall work together to prioritize the capital needs for the Club and establish reasonable capital expenditures. In addition to the capital expenditures contained in this provision, the City and NCG acknowledge that additional capital expenditures may arise to maintain the Club and Golf Course in a reasonable condition.

The City has caused to be conducted through Environmental Design Group a comprehensive evaluation and appraisal of the condition of the Club, grounds and certain equipment on the Golf Course. The City agrees over the term of this Agreement and any extensions to provide funding to restore the Club to good condition and agrees to expend its Net Profit under the Incentive Management Fee Schedule (Exhibit B) over the next five (5) years.

9. **DEFAULT AND REMEDIES.**

A. City Default. The following shall constitute an event of default ("Event of Default") by City under this Agreement:

1. Failure to timely pay NCG any fees, compensation, or reimbursement due NCG pursuant to this Agreement;

2. Failure to timely provide Initial Funding, Minimum Funds Balance, and/or Operating Capital;

3. Failure by City to perform any material obligation set out in this Agreement, including, but not limited to, failing to consult with NCG regarding budgets or capital improvements and failing to cooperate in good faith with NCG regarding budgets or capital improvements;

4. Assignment by City for the benefit of its creditors, or becoming a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization; or

5. Interference or lack of cooperation by City which hinders or renders NCG unable to fulfill its obligations under this Agreement as objectively determined by NCG.

B. NCG Default. The following shall constitute an event of default ("Event of Default") by NCG under this Agreement:

1. Failure to maintain the amenities of the Club in a reasonably good condition, as objectively determined by City, not including failures resulting from abnormal weather conditions, acts of God, or other events or conditions beyond the reasonable control of NCG, including without limitation, any deferred maintenance or deficiencies in the amenities that occurred prior to the execution of this Agreement;

2. Failure to operate the Club in accordance with the approved Annual Budget and Program;

3. Failure by NCG to perform any material obligation set out in this Agreement, including, but not limited to, failing to consult with City regarding budgets or capital improvements and failing to cooperate in good faith with City regarding budgets or capital improvements;; or

4. Assignment for the benefit of its creditors, or becoming a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization.

5. Interference or lack of cooperation by NCG which hinders or renders City unable to fulfill its obligations under this Agreement as objectively determined by City.

C. Notice and Cure. When either party to this Agreement believes that the other party (the "Defaulting Party") has committed an Event of Default, it shall give written notice thereof to the Defaulting Party. The written notice must clearly state that it is a Notice of Default and provide a detailed description of the alleged default. The written notice will not be deemed a proper notice until sufficient detail to clearly and fully inform the Defaulting Party of the alleged default is provided. The Defaulting Party shall have ten (10) calendar days from the date of the proper notice to cure the default unless the default is a non-monetary default and, due to weather, growing conditions or other factors beyond the reasonable control of the Defaulting Party requires more time to cure. In order to qualify for a longer cure period, the Defaulting Party must provide notice of its intent to cure the default within the ten (10) calendar days from the date of receiving the notice to cure and earnestly begin to cure within thirty (30) calendar days from the date of the notice to cure and diligently pursue such cure. In no event will the Defaulting Party have more than sixty (60) days from the date of the notice in the aggregate to cure a non-monetary default. Notwithstanding anything to the contrary, neither City nor NCG shall be entitled to any further notice and cure period for a default in the event (i) that same default occurs more than two (2) times in any twelve (12)-month period.

D. Rights upon Default. If the Defaulting Party does not cure the default within the grace period provided in Section 9.C above, the party complaining of the default (the "Complaining Party") may terminate this Agreement. To terminate this Agreement for default, the Complaining Party must issue a written notice of termination to the Defaulting Party clearly stating the basis for the termination and the Defaulting Party's failure to cure the alleged default (the "Default Termination Notice"). The termination shall be effective thirty (30) days after the date of the Default Termination Notice, provided such notice is properly delivered by certified mail or by overnight mail (the "Default Termination Effective Date"). At any time after the Default Termination Effective Date and within the applicable statute of limitations, the parties may pursue all rights and remedies available in law or equity, including payment of accrued amounts pursuant to Section 7 hereof. Notwithstanding any contrary provisions herein, NCG's rights to recover damages from

City shall be limited to the sum of (i) accrued and unpaid Base Management Fees and Incentive Management Fees as of the applicable termination effective date,; (ii) actual damages for damages sustained prior to the applicable termination effective date; and (iii) the Cancellation Fee. The parties also agree that notwithstanding any contrary provision hereof, City's damages shall be limited to the aggregate amount of Base Management Fees and Incentive Management Fees paid by City to NCG as of the date of termination of this Agreement, if any be proven. In no event will NCG or City be subject to any consequential, special, punitive or similar damages, each party hereby waiving any right it may have to seek or claim such damages.

10. TERMINATION AND CANCELLATION.

A. Termination. Either party may terminate this Agreement upon the occurrence of an Event of Default by the other party as provided in Section 9.D above. In the event City terminates this Agreement based on an alleged Event of Default and it is later determined that no Event of Default occurred or that the termination was improper for any reason, the termination for default shall be deemed a termination for City's convenience.

B. Cancellation Fee; Default by City. In the event NCG terminates this Agreement due to the default of City and NCG is not in default, City shall pay to NCG, within forty five (45) days of the Default Termination Effective Date, a cancellation fee based on the year in which termination occurs (the "Cancellation Fee"). The Cancellation Fee will be in addition to any Base Management Fees and incentive Management Fees paid or owing to NCG prior to the Default Termination Effective Date. The Cancellation Fee shall be equal to the annual Base Management Fee of the past year prior to termination. The parties agree that the Cancellation Fee is not duplicative of any other damages which NCG may recover in the event of a default by City.

C. NCG Performance. City shall have the right to terminate the Agreement, without the payment of a Termination Fee or Cancellation Fee, if, in any two (2) consecutive Fiscal Years (commencing with the 2021 Fiscal Year as the first year in any measurement period), the Club does not achieve a positive Net Operating Income for each of the such consecutive Fiscal Years. City may exercise such termination right by providing written notice to NCG within ninety (90) calendar days after City's receipt of the final determination of Net Operating Income for the second (2nd) of such Fiscal Years (via the NCG-prepared

annual operating statement in Section 4.G). Failure to give such notice within such ninety (90)-day period shall be deemed to be a waiver by City of its right to terminate based on the Fiscal Years in question, but shall not be deemed to be a waiver of such right with respect to subsequent Fiscal Years. Should City elect to terminate this Agreement based on this Section 10.C, said termination will be effective sixty (60) calendar days after the date of the written notice, provided such notice is properly delivered.

For purposes of determining if the positive Net Operating Income has been achieved in a Fiscal Year, Net Operating Income shall be subject to adjustment for force majeure events or expenses that are agreed upon by City and NCG not to be within the control of NCG (i.e. utility rates, real estate taxes, irrigation water charges, insurance premiums or extraordinary items).

D. No Waiver. By terminating this Agreement in accordance with this Section 10, neither party shall be deemed to have waived any action it might have, in law or equity, by reason of a breath of or default under this Agreement.

E. Proprietary Material. Upon termination or cancellation of this Agreement, for any reason or under any circumstances, NCG's (i) proprietary software and computer programs relating to accounting, operations, marketing, and forecasting, (ii) operations and employee training materials and manuals of NCG and (iii) the information and processes related to and used by NCG in the marketing and agronomic plan shall remain the sole property of NCG and shall be removed by NCG upon termination of this Agreement. All data, including but not limited to, events, leagues, bookings, and reservations shall remain the sole property of City and shall be provided in a format including digital commutable file comma delimited text.

F. Transition. Provided that City and NCG have received, in full, payment of all fees due to them pursuant to this Agreement, including but not limited to all Base Management Fees, Incentive Management Fees, Cancellation Fee, Termination Fee and/or Sale Termination Fee, NCG shall, without additional payment by the City, cooperate beyond the applicable termination effective date with City and any replacement manager for a reasonable period after the applicable termination effective date (all parties hereto agree that a reasonable period is not less than two (2) weeks and not more than four (4) weeks) to facilitate the orderly transition of the management of the Club.

11. **USE OF CLUB.** During the term of this Agreement, the Club shall be a public facility unless otherwise provided and agreed to in the Annual Budget and Program.

12. **LIQUOR LICENSE.** Subject to any relevant Ohio Alcoholic Beverage Control ("ABC") licensing requirements, City or NCG shall maintain at all times (except for the application period) a valid liquor license on the premises, and all of the parties hereto shall comply with all relevant ABC laws regarding the use of such license. In the event of an authorized and proper termination of this Agreement by the City, NCG shall transfer the liquor license to any succeeding operator as instructed by City.

13. **FORCE MAJEURE; CONDEMNATION; FIRE AND OTHER CASUALTY.** If all or any portion of the Club is destroyed by fire, flood, high winds, or other casualty, or taken by eminent domain, such damage, destruction, or condemnation shall not be a cause for termination hereunder by either party unless such damage or destruction results in the whole or a substantial part of the Club being unusable for its intended purpose for a period of one year or longer, then in any such event, this Agreement shall terminate on written notice from City to NCG of such termination and neither party shall have any further rights or obligations hereunder. Notwithstanding the foregoing, if:

A. As a result of any damage or destruction to, or condemnation of, any part of the Club, or

B. Otherwise due to causes beyond NCO's reasonable control (and so long as NCO uses all reasonable diligence to cure such inability), NCG shall be unable to perform its obligations hereunder in respect of the operation of the Club, City and NCG shall use their mutual reasonable efforts to agree upon an amendment to the Annual Budget and Program, including, without limitation, the Operating Capital provisions thereof, to allow payment of necessary Club expenses (including, without limitation, Club employee expenses) until such damage or destruction is repaired or such inability is cured and, if the parties are unable to agree on such an amendment within thirty (30) business days after NCG shall have given City notice of the occurrence of such event, NCG shall have the right to terminate this Agreement by notice to City of such termination and neither party shall have any further rights or obligations hereunder. In the event of a force majeure there is no Cancellation Fee or Termination Fee due to NCG.

14. INDEMNIFICATION AND LIABILITY.

A. Indemnity.

1. To the fullest extent permitted by law, NCG will defend, indemnify and hold City harmless from and against any claims, losses, expenses, costs, suits, actions, proceedings, demands or liabilities that are asserted against, or sustained or incurred by City solely because of NCG's breach of this Agreement or because of legal actions or regulatory violations arising solely from NCG's gross negligence, fraud, or willful misconduct.

2. To the fullest extent permitted by law, City will defend, indemnify, and hold NCG harmless, from and against any and all liability, loss, cost, damage, penalties, claims, causes of action, proceedings and expense incurred by NCG or imposed on NCG by any person whomsoever, related to the performance of the duties under this Agreement.

3. To the fullest extent permitted by law, City will defend, indemnify, and hold NCG harmless, from and against any and all liability, loss, cost, damage, penalties, claims, causes of action, proceedings and expense incurred by NCG or imposed on NCG by any person whomsoever, in any way related to any claims by any employee, independent contractor, vendor, party to a contract for services to City, investor, customer, patron, or resident for actions related to the Club that arose prior to the Effective Date of this Agreement.

4. To the fullest extent permitted by law, only as it relates to City actions, City will defend, indemnify and hold NCG harmless from and against, any and all liability, loss, cost, damage, penalties, claims, causes of action, proceedings and expense, including without limitation, court costs and reasonable attorneys' fees, incurred by NCG or imposed on NCG by any person whomsoever, in any way related to any environmental claims pertaining to the Club or this Agreement.

5. To the fullest extent permitted by law, only if Operating Expense funds are not available, City will defend, indemnify and hold NCG harmless from and against, any and all liability, loss, cost, damage, penalties, claims, causes of action, proceedings and expense, including without limitation, court costs and reasonable attorneys' fees, incurred by NCG or imposed

on NCG by any person whomsoever, in any way related to late payments or lack of payments to vendors or other payees who supply labor, services or materials to the Club who have not been timely paid or paid at all for reasons outside of NCG's control resulting in late fees or any other penalties against NCG or any other facilities NCG owns or manages.

6. Recovery upon an indemnity contained in this Agreement shall be reduced dollar-for-dollar by any applicable insurance collected by the party demanding indemnification. The scope of all indemnities contained in this Agreement includes any and all costs and expenses, including reasonable attorney fees and costs, properly incurred in connection with any proceedings to defend any indemnified claim, or to enforce the indemnity, or both, provided, however, that NCG's liability under all indemnities shall be limited as set forth in Section 14.C, All indemnification obligations under this Agreement shall survive the expiration or any termination of this Agreement.

B. It is expressly understood and agreed that NCG is to pay from the amounts in the Account derived from income deposited into the Account from operations by NCG and from contributions made by the City, including the original minimum contribution and other monthly minimum contributions required under this Agreement, all fees, expenses, indemnities and reimbursements due hereunder or otherwise in connection with services performed by NCG pertaining to the Club, including management and payment of employees, All Operating Expenses, including but not limited to employee-related costs (e.g. salaries, wages, payroll taxes, insurance premiums, 401k funding, payments under COBRA, FMLA, employment-related administrative and legal claims or lawsuits), insurance premiums, taxes, vendor invoices, and all other costs associated with the Club are to be paid by NCG from the Account.

C. Legal Actions. Legal counsel for NCG and City shall cooperate in the defense or prosecution of any action pertaining to the Club. NCG shall not institute or defend any legal action or retain counsel affecting the Club without City's consent. NCG shall forward all legal notices or notices of a financial nature which relate to the Club, to City at the address listed under Section 16.J. NCG shall advise and assist City in instituting or defending, as the case may be, in the name of Club, City, and/or NCG, but in any event expressly as a Club expense, all actions arising out of the operation of the Club and

not attributable to the negligence of NCG, and any and all legal actions or proceedings to collect charges, third party payments, rents, or other incomes for NCG, City, or the Club, or to lawfully evict or dispossess tenants or other persons in possession there under, or to lawfully cancel, modify, or terminate any lease, license, or concession agreement in the event of default thereof, or to defend any action brought against City, unless otherwise directed by the City. NCG shall assist City to take the acts necessary to protect or litigate to a final decision in any appropriate court or forum, as a Club expense, and any violation, order, rule, or regulation affecting the Club.

D. Choice of Law and Venue. The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The parties also agree that any dispute between them in any way arising out of or pertaining to this Agreement shall be exclusively brought in the Court of Common Pleas for Stark County, Ohio. The parties agree to submit to the jurisdiction of those courts.

E. Liability of NCG and City. NCG shall not be responsible for the acts or omissions of any of City's other contractors or any subcontractor, or any employees of City, or any persons representing City performing any services for or in connection with the Club, or any consultants or other persons engaged by City with respect thereto, unless and only to the extent NCG is supervising, or should be supervising the same, and NCG shall be responsible only for the performance of NCG's obligations hereunder in accordance with the terms hereof.

15. **CONFIDENTIALITY.**

A. Work performed by NCG and its agents or assigns pursuant to this Agreement (including, without limitation, any correspondence, analysis, reports and related materials prepared), constitutes confidential and privileged work product, and NCG's communications thereon with City or their respective employees or counsel or other professionals retained by City (each a "City Person") constitute confidential and privileged communications which are intended to have the full protections of the work product doctrine, proprietary business privilege, attorney-client privilege and all other applicable privileges. Accordingly, NCG agrees that it will not provide such oral or written reports or other work product or disclose such communications to any person other than City, except as may be otherwise requested by City.

B. NCG agrees that all information, not publicly available, which is received by it from City in connection with this engagement, will be treated confidentially by NCG, except as required by process of law or as otherwise requested by City. In the event NCG is required to disclose any such information pursuant to process of law, NCG agrees to provide City with prompt notice so that City may seek appropriate remedies, including a protective order. In any event, NCG and its agents, representatives, and employees will furnish only that portion of the information that is legally required to be disclosed.

C. City shall retain exclusive rights to ownership of all work output hereunder. Work output includes reports issued pursuant to this Agreement, but excludes, among other things, all working papers of NCG, any correspondence, memoranda, calculations, processes, notes, etc. that NCG may have used in the development of the reports above or such working papers or in the performance of any work covered by an authorization under this Agreement.

16. **GENERAL PROVISIONS.**

A. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings, and representations (if any) made by and between such parties.

B. Written Amendments. The provisions of this Agreement may only be amended or supplemented in a writing signed by both parties.

C. Further Amendments. The parties hereby agree from time to time to execute and deliver such further instruments and documents, and do all such other acts and things, which may be convenient or necessary to more effectively and completely, carry out the intentions of the Agreement.

D. Compliance with Laws. NCG shall, at all times, operate, use, and conduct the business of the Club in a lawful manner and in full compliance with all applicable governmental laws, ordinances, rules and regulations, and maintain all licenses and permits relating to the Club, with City's full cooperation, in full force and effect and cooperate and endeavor to obtain all licenses and permits first required after the commencement of the term of this Agreement required in connection with the management, use, and operation of the Club.

E. Environmental Laws. City represents to NCG that no hazardous materials have been released into the environment or have been deposited, spilled, discharged, placed or disposed of at or within the Club in violation of any Environmental Law (as defined below), nor except as expressly disclosed and described by City to NCG has the Club been used at any time by any person as a landfill or a disposal site for hazardous materials or for garbage, waste or refuse of any kind. City also represents, to the best of City's knowledge, that there are no underground storage tanks of any nature on the Club (fuel, propane, gas etc.). City does not have any knowledge of asbestos-containing products within the Club.

For the purposes of this Agreement, "Environmental Law' shall mean: All applicable Federal, State, county or local (or other political subdivision thereof) laws, statutes, codes, acts, ordinances, orders, rules, regulations, directives, judgments, decrees, injunctions, directions, permits, licenses, authorizations, decisions and determinations issued, adopted or enacted by any judicial, legislative, regulatory, administrative or executive body of any governmental or quasi- governmental authority, department, branch, division, agency or entity exercising functions of or pertaining to any government having jurisdiction affecting the Club, or any licenses and permits of any governmental authorities, from time to time applicable to the Club or any part thereof regarding hazardous materials,

F. Binding. All of the terms and provisions of this Agreement shall be binding and inure to the benefit of the parties and their respective permitted successors and assigns. This Agreement is solely for the benefit of the parties hereto and not for the benefit of any third Party,

G. Assignment. NCG may not assign or transfer this Agreement and/or may not delegate its duties and obligations under this Agreement to NCG's Subsidiary without express written authorization by City.

H. Subordination and Estoppel. This Agreement shall be subject and subordinate at all times to the lien of any mortgage (or any such instrument providing a security interest) which may now exist or may hereafter be executed in any amount for which the Club or any portion thereof is specified as security. City agrees to use its commercially reasonable best efforts to obtain from Lender a non-disturbance agreement in Lender's standard form reasonably acceptable to NCG.

Within ten (10) days of any such written request which City may make from time to time, NCG shall execute and deliver to City a statement in a form reasonably satisfactory to City certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modification), the date to which the Base Management Fee and Incentive Management Fee have been paid, the fact that there are no current defaults under this Agreement by City or NCG, except as specified in NCG's statement, and such other matters reasonably requested by City.

I. Right to Pledge. Any provision herein contained to the contrary notwithstanding, City shall have the right to assign all or any portion of its right, tide and interest in, to and under this Agreement and in and to the Club, by way of mortgage or security agreement, in order to secure the repayment of construction and/or permanent loans made for the purpose of financing all or any portion of its costs relating to the acquisition of the Club and the construction of the golf course, clubhouse and improvements thereon, as well as loans for Operating Capital provided that the City shall, upon execution of any such mortgage or security agreement, promptly deliver a true copy of such mortgage or security agreement to NCG. The mortgagee or other secured party, and their respective assigns, may enforce such mortgage or security agreement and may acquire title to the Club and City's interest under this Agreement in any lawful way, and may take possession of the encumbered assets, or cause any person having the relationship of an independent contractor to the mortgagee or secured party to take possession of the encumbered assets, and upon foreclosure thereof (or in the event of any sale thereof in lieu of foreclosure) may without further consent of NCG sell and assign the Club, free and clear of this Agreement. The mortgagee or secured party or its assigns and any independent contractor to the mortgagee or secured party shall be liable to perform the obligations of City hereunder only during the period such person has title to the Club and City's interest hereunder and this Agreement is in effect but in no event shall such person have any responsibility or liability for the payment of the Termination Fee or the Cancellation Fee.

J. Notices. All notices, requests, consents and other communications required or permitted to be given under this Agreement shall be in writing; shall be given only by hand delivery during normal business hours, first-class registered or certified mad, postage prepaid, return receipt requested, or overnight delivery service with FedEx or United Parcel Service; and shall be addressed to the parties in the manner set

forth below. All notices shall be conclusively deemed to have been properly delivered, (i) upon receipt when hand delivered successfully during normal business hours, (ii) upon the third (3rd) business day after delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery or to prove an address change occurred without proper notice), or (ii) one (1) business day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that the sending party receives a confirmation of actual delivery from the courier).

In the case of NCG:

North Canton Golf, LLC c/o Steve DiPietro
4368 Dressler Road, Suite 201
Canton, Ohio 44718
Telephone: _____
Facsimile: _____
With copy to:

Krugliak, Wilkins, Griffiths
& Dougherty Co., L.P.A.
c/o Terry A. Moore, Esq.
4775 Munson Street NW
Canton, OH 44718
Telephone: (330) 497-0700
Facsimile: (330) 497-4020

In the case of City:

City of North Canton
Attn: Director of Administration
145 N. Main Street
North Canton, Ohio 44720
Telephone: 330-499-8223
Facsimile: 330-305-0603

or to such other address as either party may designate by written notice complying with the terms of this Section.

K. Headings. The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

L. Invalidity. If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid or unenforceable under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, invalid or unenforceable, but the remainder of such provision, and this Agreement shall not be invalidated or rendered unenforceable thereby, and shall be given full force and effect so far as possible.

M. No Waiver. The failure or delay of either party at any time to require performance by the other party of any provision of this Agreement shall not affect the right of such party to subsequently require performance of that provision or to exercise any right, power or remedy hereunder. Waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement.

N. No Partnership. Nothing in this Agreement shall be construed to create a partnership or joint venture between the parties. The parties acknowledge that the relationship of NCG to City is that of an independent contractor.

O. No Exclusive Remedy. No remedy herein conferred upon either party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity,

P. Authority. Each party hereby represents to the other party that it has the right, power, authority, and financial ability to enter into this Agreement and to perform its obligations under this Agreement, and that it is not restricted by contract or otherwise from entering into and performing this Agreement.

Q. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, collectively and separately, shall constitute one and the same agreement

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.
SIGNATURES ARE ON THE FOLLOWING PAGES.

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

CITY OF NORTH CANTON

By: Stephan B. Wilder
Stephan B. Wilder
Its: Mayor

STATE OF OHIO }
} ss
COUNTY OF STARK}

Before me, a Notary Public in and for said County and State, personally appeared the City of North Canton, Ohio, by and through its Mayor, Stephan B. Wilder, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of him individually and as such representative of the City of North Canton.

NOTARIAL SEAL STATE OF OHIO

TIMOTHY L. FOX
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 O.R.C.

T. L. F.

My Commission ~~Expires~~ does not expire.

Finance Director's Certificate.

I certify that the amount required to meet the Golf Course Management Agreement has been lawfully appropriated, authorized, or directed for such purpose and is in the treasury or in the process of collection to the credit of the General Fund, free from any obligation or certification outstanding.

Jina E. Alaback

Jina E. Alaback, Director of Finance

1-28-2020
Date

As to form and content.

T. L. F.

Timothy L. Fox, Director of Law

NORTH CANTON GOLF, LLC

By: _____
Steve DiPietro
Its: Managing Member

STATE OF OHIO }
} ss
COUNTY OF STARK}

Before me, a Notary Public in and for said County and State, personally appeared North Canton Golf, LLC, by and through its Managing Member, Steven DiPietro, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of him individually and as such representative of North Canton Golf, LLC.

_____

My Commission Expires: April 5, 2022

SKYLAND PINES, INC.

By: _____
Steven DiPietro, President

Its: President

KATHRYN BORESH
NOTARY PUBLIC
STATE OF OHIO
My Commission Expires
April 5, 2022

STATE OF OHIO }
} ss
COUNTY OF STARK}

Before me, a Notary Public in and for said County and State, personally appeared Skyland Pines, Inc., by and through its President, Steven DiPietro, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of him individually and as such representative of Steven DiPietro, Inc.

_____

My Commission Expires: April 5, 2022

Exhibit A
Arrowhead Golf Course Description

Parcel No. 1:
Situated in the City of North Canton, County of Stark and State of Ohio:

Known as and being Out Lot 213 in the City of North Canton, Ohio.

FORMERLY KNOWN AS:
Known as and being part of the southeast quarter of Section 18, Township 11 (Plain) and Range #8, described as follows: Beginning for the same at a stone at the southwest corner of said quarter section; thence north 5° 10' east along said section line 2075.1 feet to a point in the wet line of said quarter; thence south 83° 40' east along the south line of a tract of land now or formerly owned by Anna Gill as described in Deed recorded in Vol. 479, Page 368 of the Deed Records of Stark County, Ohio, 949 feet to an iron pin at the northwest corner of a tract of land deeded to Stella Strausser by deed recorded n Vol. 575, Page 310 of the Deed Records of Stark County, Ohio; thence south 5° 10' west along the wet line of said Strausser Tract 2075.1 feet to an iron pin in the south line of said quarter; thence north 83° 40' west along the south line of said quarter 949 feet to the place of beginning containing 45.208 acres of land, more or less.

Former Conveyance: Volume 1694, Page 335, Stark County Recorder's Office

Parcel No. 2:
Situated in the City of North Canton, County of Stark and State of Ohio:

Known as and being Out Lot 112 in the City of North Canton, Ohio.

FORMERLY KNOWN AS:
Also the following described premises situated in Plain Township, County of Stark and State of Ohio: Known as and being part of the southeast quarter of Section 18, Township 11 (Plain) and Range #8, described as follows: Beginning at the northwest corner of said quarter section; thence south 83° 40' east 95.5 feet to an iron pin; thence south 5° 10' west 590 feet to an iron pin; thence westwardly parallel to the north line 95.5 feet to the west line of said quarter; thence north 5° 10' east along said quarter section line 590 feet to the Place of Beginning containing 1.064 acres f land more or less.

Former Conveyance: Volume 1694, Page 335, Stark County Recorder's Office

EXCEPTING FROM OUT LOT 112, THE FOLLOWING DESCRIBED PREMISES:

Situated in the City of North Canton, County of Stark and State of Ohio:
Known as and being part of Out Lot 112 more fully bounded and described as follows, to wit:

Beginning at a 1" iron pipe found at the northwest corner of North Canton Lot 2483, said 1" iron pipe also being the northeast corner of said Out Lot 112 and the True Place of Beginning for the tract of land herein described;

1) Thence S. 05° 15' 00" W. coincident with the westerly line of said Lot 2483 a distance of 461.43 feet to a ½" rebar set;

2) Thence N. 84° 41' 00" W. a distance of 95.50 feet to a ½" rebar set on the easterly line of Lot 4751 in the City of North Canton;

3) Thence N. 05° 15' 00" E. coincident with the easterly line of said Lot 4751 and the easterly line of Lots 4356, 4355, 4354 and 4353 in the City of North canton, a distance of 461.47 feet to a stone found on the southerly line of Lot 4352 in the City of North Canton;

4) Thence S. 84° 39' 30" E. coincident with the southerly line of said Lot 4352 a distance of 95.50 feet to a 1" iron pipe found and the True Place of Beginning.

The above-described tract of land encloses and comprises part of a tract of land that was conveyed to the Arrowhead County Club by a deed recorded in Volume 1694, Page 335 of the Stark County Deed Records and contains 1.012 acres as surveyed by Gary L. Toussant P.S. #6332 of Hammontree & Associates, Limited, Engineers & Surveyors of North Canton, Ohio in October 1983.

The basis of bearings for this description is N. 05° 15' E., the west line of Landsdowne as recorded in Plat Book 32, Page 73 of the Stark County Plat Records.

Former Conveyance: Official Records Volume 182, Page 18, Stark County Recorder's Office.

Parcel No. 3:

Situated in the City of North Canton, County of Stark and State of Ohio:

Known as and being Out Lot 143 in the City of North Canton, Ohio.

FORMERLY KNOWN AS:
And known as and being part of the southeast quarter of Section Eighteen (18), Township Eleven (11), and Range Eight (8), described as follows: Beginning for the same at a stone at the southeast corner of said Quarter; thence north 83° 40' west along the south line of said quarter seventeen hundred thirty-five and four tenths (1735.4) feet to an iron pin, said pin being nine hundred forty-nine (949) feet east of the southwest corner of said quarter; thence North 5° 10' east and parallel to the west line of said quarter tow thousand seventy-five and one-tenth (2075.1) fee to an iron pin in the south line of a tract of land now or formerly owned by Anna Gill as described in a deed recorded in Vol. 479, Page 363 of the Stark County, Ohio Deed Records; thence south 83° 40' east parallel to and five hundred ninety (590) feet south of the north line of said quarter, one thousand sixty-eight (1068) feet to a stake six

hundred sixty (660) feet west of the east line of said quarter, and the southeast corner of said Gill tract; thence south 5° west and parallel to the east line of said quarter one thousand ten and five tenths (1010.5) feet to an iron pin at the southwest corner of a 12.25 acre tract heretofore sold to Lucy W. Bonnet, recorded in Vol. 515, Page 355 of the Stark County Deed Records; thence north 83° 40' west twenty (20) feet to a stake; thence south 5° west and parallel to the east line of said quarter five hundred fifteen (515) feet to a stake; thence south 83° 40' east and parallel to the north line of said quarter and along the south line of a 8.036 acre tract heretofore sold to C. Kolp, recorded in Vol. 477, Page 49, of the Stark County Deed Records, six hundred eighty (680) feet to an iron pin in the east line of said quarter; thence south 5° west five hundred fifty-one (551) feet to the Place of Beginning, and containing 59.17 acres of land more or less. Subject however, to a strip twenty (20) feet wide along the east lines of the above-described premises and along the south line of an 8.036 acre tract now or formerly owned by C. Kolp for road purposes as described and created in a deed from said Grantor, Susan S. Gaskins to Chas. A. Kolp and Celestia C. Kolp, and recorded in Vol. 477, Page 49 of the Stark County Deed Records, to which reference is hereby made, and said Grantor hereby grants and conveys to said Grantee, its successors and assigns, all right, title and interest in said twenty (20) foot strip for road purposes, which said Grantor has, and the right to use the same jointly with others to said Grantee, its successors and assigns forever. Said Grantor also grants and conveys to Grantee, its successors and assigns, all right, title and interest which said Grantor has to the use of a road twenty (20) feet wide running eastwardly from the above-described premises to the Canton-Akron Road, which road is more fully described in a deed from Charles A. Kolp and Celestia C., his wife, to Lucia W. Bonnot, and recorded in Vol. 515, Page 355, of the Stark County Deed Records to which reference is hereby made. Said Grantor also reserves a strip twenty (20) feet wide along the entire south side of the above-described premises for road purposes to be used jointly by the Grantors and their successors in title to a 46 acre tract of land lying immediately west of the above-described premises, and Grantee, its successors and assigns in title to the above-described premises. The above-described premises, exclusive of roads, contain 57.363 acres of land.
Former Conveyance: Volume 1777, Page 127, Stark County Recorder's Office.

Parcel No. 4:
Situated in the City of North Canton, County of Stark and State of Ohio:

Known as and being part of City of North Canton Lot 2484 more fully bounded and described as follows, to-wit:

Beginning at a 1" iron pipe found at the southwest corner of City of North Canton Lot 2483, said 1" iron pipe also being on the east line of Out Lot 112 in the City of North Canton and the True Place of Beginning of the tract of land herein described;

1) Thence N. 62° 05' 50" E. coincident with the south line of said Lot 2483 a distance of 45.00 feet to a ½" rebar set;

2) Thence S. 14° 43' 26" E. a distance of 109.27 feet to a ½" rebar set on the north line of Out Lot 213 in the City of North Canton;

3) Thence N. 84° 41' 00" W. coincident with the north line of said Out Lot 213 a distance of 75.00 feet to a ¾" iron pipe found at the southeast corner of said Out Lot 112;

4) Thence N. 05° 15' 00" E. coincident with the east line of said Out Lot 112 a distance of 78.00 feet to a 1" pipe found and the True Place of Beginning.

The above-described tract of land encloses and comprises part of a tract of land that was conveyed to R. and E. Weidner by a deed recorded in Volume4297, Page 477 of the Stark County Deed Records and contains 0.122 of an acre as surveyed by Gary L. Toussant, P.S. #6332 of Hammontree and Associates, Limited, Engineers and Surveyors of North Canton, Ohio in January of 1983.

The basis of bearings for this description is N. 05° 15' 00" E., the west line of Lot 2484 from Plat Book 32, Page 73 of the Stark County Plat Records.

Former Conveyance: Official Records Volume 77, Page 615, Stark County Recorder's Office.

Parcel No. 5:
Situated in the City of North Canton< County of Stark and State of Ohio, and being part of Lot 2483 more fully bounded and described as follows, to wit:

Beginning at a 1" iron pipe found a the Northwest corner of the North Canton Lot 2484, said 1" iron pipe also being on the east line of Out Lot 112 in the City of North Canton and the True Place of Beginning for the tract of land herein described.
1) Thence N. 01° 15' 00" E. coincident with the east line of said Out Lot 112 a distance of 50.00 feet to a ½" rebar set;

2) Thence S. 50° 46' 20" E. a distance of 45.43 feet to a ½" rebar found on the northerly line of said Lot 2484;

3) Thence S. 62° 05' 50" W. coincident with the northerly line of said Lot 2484 a distance of 45.00 feet to a 1" iron pipe found and the True Place of Beginning;

The above-described tract of land encloses and comprises part of a tract of land that was conveyed to M.L. & G. Cross by a deed recorded in Volume 4115. Page 450 of the Stark County Deed Records and contains 0.022 acres as surveyed by Gary L. Toussant, P.S. #6332 of Hammontree & Associates, Limited, Engineers & Surveyors of North Canton, Ohio, in October 1983.

The basis of bearings for this description is N. 05° 15' E., the west line of Landsdowne from Plat Book 32, Page 723 of the Stark County Plat Records.

Former Conveyance: Official Records Volume 166, Page 2, Stark County Recorder's Office.