



CITY OF BETHLEHEM

10 East Church Street, Bethlehem, Pennsylvania 18018-6025

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INTEROFFICE MEMORANDUM

To: Louise M. Kelchner, City Clerk

From: Eric R. Evans, Business Administrator

RE: Lease Agreement
Lease Name: Clubhouse Grille, LLC
Location: Bethlehem Golf Course

Date: August 2, 2018

Attached is a proposed Resolution and associated Lease Agreement for Council's consideration.

Please place this matter on City Council's agenda for review and appropriate action.

Eric R. Evans
Business Administrator

Cc: Robert J. Donchez, Mayor
William P. Leeson, Esq., City Solicitor
Lawrence Kelchner, Golf Course General Manager
Jane P. Persa, Recreation
Michael Alkhal, Director of Public Works
Mark W. Sivak, Director of Budget and Finance
George Yasso, Controller

RESOLUTION NO. 2018-_____

Authorization For Lease Agreement

BE IT RESOLVED by the Council of the City of Bethlehem that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute a Lease Agreement with the Clubhouse Grille, LLC, and such other agreements and documents as are deemed by the City Solicitor to be necessary and/or related thereto, for a restaurant at the Bethlehem Golf Club, according to the terms and conditions indicated therein and made a part hereof.

Sponsored by _____

ADOPTED by Council this _____ day of _____, 2018.

President of Council

ATTEST:

City Clerk

**LEASE AGREEMENT FOR
CITY OF BETHLEHEM
GOLF COURSE CLUBHOUSE RESTAURANT**

THIS AGREEMENT is made and entered into this _____ day of _____, 2018 between the CITY OF BETHLEHEM, a municipal corporation of the Third Class of the Commonwealth of Pennsylvania, of the County of Northampton, with its offices and principal place of business at 10 East Church Street, Bethlehem, Pennsylvania, 18018, hereinafter referred to as “City” or “Lessor”, and CLUBHOUSE GRILLE, LLC, with its offices and principal place of business at Suite 104, 3910 Adler Place, Bethlehem PA 18017, hereinafter referred to as “Lessee”.

WHEREAS, City desires to enter into a Lease Agreement for the operation of a restaurant with liquor license at the Clubhouse facility located at the City of Bethlehem’s Municipal Golf Course at Illick’s Mill Road, City of Bethlehem, Northampton County, Pennsylvania (the “Premises”); and

WHEREAS, Lessee is the current tenant operator of the restaurant under a lease scheduled to terminate December 31, 2018 and wishes to secure a new lease allowing it to continue to operate the restaurant; and

WHEREAS, the parties have agreed upon terms of this new lease to allow Lessee to continue its occupancy and operation of the restaurant;

NOW, THEREFORE, this agreement witnesseth:

1. Leased Premises. In consideration of the rents and covenants hereinafter mentioned, City does hereby rent, demise and lease unto Lessee the following parts of the City’s golf course complex, hereinafter referred to as the Leased Premises:

- (a) the entire second floor of the City's Golf Course Clubhouse;
- (b) the second story outdoor deck accessory thereto;
- (c) the existing paved area covered by the existing tent which is owned by Lessee, at maximum approximate dimensions of 95 feet x 50 feet, also referred to as the "tent area"; as that area may be enlarged in the future by the City, in its sole discretion, and
- (d) the area currently used for tables and chairs and the pergola situated west of the upper parking lot, at maximum approximate dimensions of 30 feet x 20 feet, which may be used by Lessee for food and drink service. The pergola shall remain as property of the City at termination of the Lease.

The Leased Premises (a) through (d) are to be used for the primary purpose of operating a restaurant as an accessory to a municipal golf course and for such events or occasions permitted herein considered by the City reasonably suited to maintaining the public's access and enjoyment of the public facilities.

No part of the first floor of the Golf Course Clubhouse is part of the Leased Premises. City retains exclusive possession and discretion over use of the first floor space and amenities. Lessee's access and use of the first floor space and amenities shall be pursuant to procedures and rules established by the City Golf Course Manager.

2. Lease Term. The term of this lease shall be seven (7) years, beginning on January 1, 2019 and ending December 31, 2025.

3. Rent. Lessee agrees to pay to City for the use of the Leased Premises rental in accordance with the following schedule:

- (a) First Year, 2019, base monthly rent: $\$5500 \times 12 = \$66,000.00$

(b) Years 2-7: the rent shall be increased in each succeeding year by 2 percent over each preceding year's rate, as follows:

2020: \$5610.00 monthly x 12 months = \$67,320.00
2021: \$5722.00 monthly x 12 months = \$68,666.00
2022: \$5837.00 monthly x 12 months = \$70,040.00
2023: \$5953.00 monthly x 12 months = \$71,440.00
2024: \$6072.00 monthly x 12 months = \$72,869.00
2025: \$6194.00 monthly x 12 months = \$74,327.00

(c) Rent shall be payable on the first day of each month to the City of Bethlehem, or on such other due date as the City may direct in establishing a regular payment schedule, delivered at 10 E. Church Street, Bethlehem, Pennsylvania, 18018 or, at City's request, by electronic payment.

(d) A \$100.00 penalty shall be paid by Lessee with every rent check that is received by Lessor more than ten days after the due date.

4. Hours of Operation.

The active golf period shall be the period beginning on March 15 of each year and ending on November 15 of each year, unless otherwise extended or reduced in writing by the City Golf Course General Manager. The remainder of the period of the year shall be deemed the non-peak period.

During the active golf period of the lease the restaurant business shall be open daily, including Sundays and holidays, unless otherwise directed by the City Golf Course General Manager.

Upon approval by the City Golf Course General Manager, Lessee may close the second-floor restaurant facility one (1) time per calendar month for a privately booked event which is not publicly advertised, where the public is not invited to attend and the event is not for

commercial benefit of a third party or sponsor - typical examples involving celebrations, honorary occasions and events for charity.

5. Security Deposit. At or before commencement of the lease Lessee shall furnish the City with a security deposit in the amount of two months rent, in the amount of \$11,000.00. At termination of the lease the security deposit shall be applied to satisfy arrearages and damages for which Lessee is liable under the Lease based on accounting by City to be issued to Lessee by City within 30 days of Lessee's completion of removal of its equipment and business property from the leased premises. Net proceeds of the security deposit not withheld to satisfy City's claims shall be returned to Lessee with the issuance of the accounting. Without prejudice to City's rights, the security deposit may not be used or applied by Lessee as a means to avoid or satisfy rent.

6. Food and Beverage Catering.

(a) Golf Course Outings and Tournaments, "Golf Outings".

(i) Lessee's First Option. Lessee shall have first option to cater golf related outings and tournaments at the Golf Course, and to sell and serve alcohol on the Premises. Lessee agrees that food and beverage pricing offered to tournament organizers shall not exceed that of the restaurant's regular menu pricing.

(ii) City's Right to Secure the Outing. If a golf outing organizer is unable to reach mutual agreement with the Lessee for Lessee to provide food and beverage catering at the Leased Premises for the outing, then the City by and through the City Golf Course General Manager shall have the opportunity to meet with Lessee and outing organizer in an effort to facilitate an agreement between all parties. Lessee shall cooperate in good faith to meet with the City Golf Course General Manager and/or the golf outing organizer to discuss terms for

Lessee to cater the event and to encourage the outing sponsor to use the City's facilities for the event.

(iii) Lessee Exclusive Right to Serve Alcohol. Lessee shall retain the exclusive right to sell and serve alcohol despite a golf outing organizer hiring a different caterer for food and non-alcoholic beverages. In any event, the outing organizer shall not contract with an outside catering vendor or make other arrangements for food and beverages on the Leased Premises unless all opportunities for negotiation have been exhausted and only after receiving approval from the Golf Course General Manager. Any such approval by the City Golf Course General Manager shall be issued in writing and shall include an acknowledgment and signed by the Lessee that an agreement could not be reached.

In the event that the golf outing organizer receives approval from the City Golf Course General Manager to contract with an outside catering vendor or make other arrangements for food and beverages on the Leased Premises, said approval will require the following: (1) if any alcoholic beverages are to be served then the golf outing organizer must make the necessary arrangements with Lessee so that said alcoholic beverages are sold and served by Lessee and (2) all food and beverages of any kind must be served on the Leased Premises or on the golf course for consumption by participants in the golf outing.

(iv) Use of the Tent Area. Lessee shall have non-exclusive rights of possession and control of the tent area when it is needed by City to accommodate a golf outing but Lessee will not be the caterer for food and non-alcoholic beverages. City retains the right to permit use of the area for such golf related outings. Lessee shall allow use of the tent for such outings without compensation in consideration of Lessee's retention of the exclusive right to sell and serve alcohol to the extent permissible under the golf course liquor license.

7. Food and Beverage on the Course.

(a) Lessee Rights: Lessee may operate a food and beverage cart on the City of Bethlehem's golf course, and if applicable, in accordance with the Liquor Code Section 406(e). Lessee's operation of a food and beverage cart on the City of Bethlehem's Golf Course is contingent upon confirmation, satisfactory to the City, that the operation of said food and beverage cart is included in Lessee's insurance coverage as required in this Lease Agreement.

(b) City Rights: City retains all rights to food and beverage concessions, including all vending machines, at its Executive (9-hole) Course and Driving Range facilities; and also for non-alcoholic drinks and vending machine snacks sold from City's pro-shop and golfer registration location at the main 18 hole course.

8. Liquor License Use and Transfer.

(a) Use: The "Municipal Golf Course" Restaurant Liquor License has been or will be transferred to Lessee in accordance with the Liquor Code. Liquor may be served on the Golf Course property only in accordance with, and subject to limitations of, the Liquor License, the PA Liquor Code, PA LCB regulations and further limiting terms of this Lease. Unless permitted by the City Golf Course General Manager, sales and service of alcohol are limited to the Leased Premises and from the beverage carts serving golfers on the course. A diagram of the Golf Course property is attached as "Exhibit A" to identify the confines of the property but shall not be construed to depict or constitute the Leased Premises. Lessee warrants full awareness of statutory and regulatory constraints on marketing and sale of liquor under the license. At no time, shall the Leased Premises be operated primarily as a "barroom".

(b) Renewal: All costs of renewing and maintaining the license, including the expense of response and defense of regulatory notices and proceedings, shall be the sole

responsibility of Lessee during the term of this Lease.

(c) Transfer of Liquor License to City: Lessee acknowledges and agrees that at the termination of this Lease and any renewal hereof the liquor license shall remain with the City at its golf course restaurant location. Lessee agrees to take all steps necessary to surrender, deliver, and transfer the license, at that time, to the City or its designee without consideration for the transfer. The license shall not be advertised, offered, sold or transferred by Lessee to a third party, location or municipality. "Third party" is intended to be construed without limitation and shall also include Lessee, its principals, owners, employees and assignees. Transfer of the license to City shall be at Lessee's expense and it shall be unencumbered by liens, pledges and security interests of any nature.

9. [reserved]

10. Facilities and Equipment.

(a) At Commencement of Lease. Lessee shall be permitted to use the existing kitchen and dining room facilities of the City. Lessee at its sole expense is responsible for cleaning, repair, maintenance and replacement. Lessee may provide replacement and additional restaurant and commercial kitchen related food and beverage preparation and service equipment to fully equip and operate the restaurant business. Lessee accepts City's furniture, fixtures, and equipment in their "as-is" condition, the City making no warranties or representations with respect thereto. All such fixtures and equipment owned by the City are identified and contained on Exhibit "B," attached. The Lessee has provided City with a list of Lessee's owned fixtures and equipment on Exhibit "C," attached.

(b) Lessee New Equipment Commitment. Lessee commits to its purchase and installation of a beer cooler and walk-in cooler. The walk-in cooler for the kitchen is to be

installed in a structural “bump out” enclosure to be paid for and constructed by City, to be completed by City on or before December 31, 2019. The parties will discuss the size of the enclosure to be constructed by City so that Lessee can purchase a walk-in cooler of suitable size. City will have sole discretion over the final size of enclosure suitable to the building and available space for a cooler enclosure. Lessee must inform City in advance of construction of any special construction specifications appropriate to a facility built to accommodate a walk-in cooler so that the “bump-out” will be suitable to installation of a walk-in cooler. City will coordinate with the electric utility to request and pay necessary expense, if any, for the utility to install electric service, and for a meter if deemed appropriate by City to supplement the project, to the exterior of the bump-out to the point of connection with structure wiring. Lessee shall remain at termination of the lease the owner of the beer and walk-in coolers. During the lease term Lessee shall be solely responsible for purchase, installation, maintenance, electricity, repairs and replacement of the coolers.

(c) City’s Commitment to Improvements. In addition to the “bump out” enclosure in (b) preceding, City also commits at its expense to install new windows in the Clubhouse restaurant area on or before December 31, 2019. City further commits at its expense to construct a permanent pavilion in the leased area currently used for Lessee’s tent on or before December 31, 2019. The commitments for the windows and pavilion are subject to approval of this lease by City Council and inclusion in the City’s budget for the intended year to do the work. The request to Council for funding approval shall be made by the City Administration for the applicable budget year but Council shall retain lawful discretion to fund or not fund the improvements. If Council rejects a request for funding the request shall be renewed the following budget year and so forth until funded. Council’s denial of funding preventing City’s

improvements shall not constitute breach under this lease or entitle Lessee to any relief from City.

City retains the right to direct Lessee to permanently remove its tent from the leased tent area so that City can construct the permanent pavilion. The parties shall cooperate to schedule tent removal and pavilion construction to minimize interference with event scheduling at the tent area. City reserves final discretion over scheduling to resolve any differences on scheduling of the pavilion construction. After the pavilion is completed and available for use, Lessee shall be responsible to collect from each event sponsor using the pavilion, and shall deliver to City, a non-refundable deposit of \$100, by check payable to the City of Bethlehem, for each private event conducted by Lessee making use of the permanent pavilion. The deposits shall not be waivable or refundable without express permission of the City Golf Course General Manager. This non-refundable deposit obligation shall not apply to use of the pavilion for golf outings.

(d) At Termination of Lease. No less than sixty (60) days before termination of the Lease, unless Lessee intends to relocate to a new location at the conclusion of the Lease, Lessee shall grant to City the first option to purchase Lessee's fixtures and equipment at a proposed appraised fair market value in its used condition. Lessee shall produce a fair market value appraisal of each item separately supporting its offer. City may accept the offer or submit a counter within thirty (30) days of Lessee's offer by written or electronic communication to Lessee. City shall be allowed to secure its own inspection and appraisal of the fixtures and equipment to assess Lessee's proposal and support a counter offer for some or all of the items. City shall have the right to limit purchase to only such items where City meets Lessee's demand. If City does not meet Lessee's offer or the parties fail to reach agreement on City's purchase, Lessee at its cost shall have its fixtures and equipment not purchased by City removed by the

Lease termination date.

11. Utilities and Trash Removal.

(a) Utilities. Lessee shall pay the cost of utilities including electricity, air conditioning, television cable, telephone and internet service to the restaurant. City will provide and pay for heat, water and sewer service.

(b) Trash. Lessee shall be responsible for and pay for the cost of trash receptacles and trash removal for the restaurant business. Lessee shall also be responsible for regularly inspecting the immediate vicinity of the exterior of the restaurant, pergola area, patio deck and tent area and for cleaning up trash and debris attributable to restaurant operations, customers and restaurant employees.

12. Parking Spaces. Lessee's employees shall have the non-exclusive use of two (2) reserved parking spaces in the upper level restaurant parking area. Lessor shall maintain the parking lot and all access from Illick's Mill Road, including snow removal. Lessor reserves sole discretion over the timing of snow removal due to the challenge of allocating limited public resources and the priority of clearing snow from streets and other public places.

13. Prohibited Uses.

(a) General. Lessee shall not use or occupy, nor permit the Leased Premises or any part thereof to be used or occupied, for any unlawful business, use, or purpose, deemed disreputable or hazardous, nor for any purpose or in any manner which is in violation of any present or future governmental laws or regulations. Gambling shall not be permitted on the Leased Premises unless approved in writing by the City Golf Course General Manager, who, in his or her sole discretion, may reject the activity as unlawful or unsuitable to use of the Premises, without recourse to Lessee.

(b) Tent Area.

(i) The tent area shall be used primarily for golf related outings to complement the golf course.

(ii) The parties agree that limited non-golf related use of the tent area would serve the purposes of sustaining economic viability of the golf course restaurant franchise and making the facilities available to members of the public whose purpose is not golf related but desire access to enjoy use of the public facilities. Lessee may use the tent area for privately booked events which are not publicly advertised, where the public is not invited to attend, the event is not for commercial benefit of a third party or sponsor and where attendance is less than 150 people - typical examples involving celebrations, honorary occasions and events for charity.

(iii) For events sponsored by Lessee where attendance will exceed 150 people Lessee may not host or conduct an event under authority of the Lease. Any such event shall be subject to Lessee securing separate permission from Lessor through the City's established procedures and requirements, as revised from time to time, including the requirement of a Use Permit approved by City Council. Such event also shall be subject to the requirements of City Article 941, (a), (3), (A) (B) (C) (E) and (F) which are incorporated by reference as if fully set forth herein.

(c) Lessee may not park or store trailers, mobile equipment and personal property on the Premises, including a food truck-trailer unless approved by the City Golf Course General Manager. Unauthorized storage and parking of such items, deemed the presence of the item more than one day before or after it is to be used for an event, is deemed unsightly and undesirable by the City and shall be subject to assessment by the City of a daily penalty of \$100 per day for each day Lessee is in violation of the restrictions; said penalty to constitute extra rent

payable with the next regular rent payment due under this Lease. This restriction does not apply to equipment and supplies needed for normal restaurant operations stored with the permission of the City Golf Course General Manager.

(d) Lessee may not post advertising or promotional signs anywhere on the golf course or on the exterior of the Leased Premises without express permission of the City Golf Course General Manager. This rule does not prohibit placement of sponsor signs on the golf course in conjunction with golf outings; but such signs shall be removed as soon as practicable after the outing.

14. Licensing and Inspections. Lessee shall, at its sole cost and expense, procure and maintain all state and local governmental inspections, licenses, permits and employee certifications required for the operation of the restaurant and liquor service business, to include designated employee ServSafe and RAMP certifications.

15. Maintenance and Repairs.

(a) By Lessee: Lessee shall, during the term of this Lease and any extension thereof, at Lessee's sole expense, keep the interior of the Leased Premises in as good order and repair as it is at the time of the commencement of this Lease, reasonable wear and tear excepted. Lessee shall maintain the Leased Premises and keep the Leased Premises in a clean and sanitary condition, free of rubbish or other obstructions.

Lessee shall maintain in good working order and make necessary or ordinary non-capital repairs to all plumbing, air-conditioning, toilet facilities and other equipment and fixtures within the Leased Premises. If any such repairs become necessary because of the failure of Lessee to maintain in good working order such items, the cost of all repairs of whatever nature to said items shall be borne by Lessee. If any such repairs become necessary because of the failure

of Lessor to provide sufficient heat or to fulfill its other independent obligations under this Lease, the cost of such repairs shall be borne by Lessor.

(b) By Lessor: The City, during the term of this Lease and any extension thereof, shall keep the structural supports, exterior walls, gutters, roof of the building and parking area in good order and repair.

16. Condition of Premises; End of Lease Term. At the expiration of the term of this Lease or any extension thereof, Lessee shall surrender the Leased Premises in as good condition as it was at the commencement hereof, reasonable use and wear and damages by the elements excepted.

17. No Alterations Without Prior Written Approval of City. No alteration, addition, or improvement to the Leased Premises shall be made by Lessee without the prior written consent of the City. In the event Lessee makes any capital improvement to the Leased Premises with the approval of the City, the cost of such improvements shall be the sole expense of Lessee. Any such alteration, addition, or improvement to the Leased Premises shall become the property of the City upon the expiration or other sooner termination of this Lease. Any fixtures, furnishings or equipment purchased by Lessee not permanently affixed or intended to be permanently affixed to the Leased Premises and utilized in connection with Lessee's business may be removed by Lessee upon the termination of this Lease, subject to City's first option to purchase. The removal of same shall be Lessee's sole cost and expense and Lessee shall be responsible for restoring any damage to the Leased Premises caused by the removal of same.

18. Damage to Leased Premises by Fire. In the case of damage by fire or any other casualty to the building in which the Leased Premises is located, when not caused by Lessee's carelessness, use or operations, if the damage is so extensive as to amount practically to the total

destruction of the Leased Premises or of such building, this Lease shall terminate, and the rent shall be apportioned to the time of the damage. In such cases where the Leased Premises is damaged by fire or other casualty not caused by Lessee's carelessness, use or operations, the cost of restoring the Leased Premises shall be borne by the City and such repairs shall be made within a reasonable period of time. In the event it is necessary for the Leased Premises to be closed during any period following such damage for the purposes of making repairs, rent shall be abated and the then-current term of this Lease extended for the period of time involved in effecting such repairs and until the Leased Premises reopen for business. The City shall have the right, at all reasonable times, to go upon the property and inspect the same in order to determine Lessee's compliance with this Lease.

19. Insurance. The City shall keep the building containing the Leased Premises insured against loss or damage by fire or other casualty. Lessee shall bear the risk of loss by fire, theft, or other casualty of any of its business equipment or fixtures, inventory, or business-personal property, or personal or other contents brought upon the Leased Premises. Lessee shall procure and maintain a policy of tenant's liability insurance against public liability arising from the operation of the business, products liability, liquor liability, the condition of the Leased Premises, and for its negligence in causing damage or destruction of the Leased Premises, in an amount not less than One Million Dollars (\$1,000,000.00) per person, and One Million Dollars (\$1,000,000.00) per occurrence. The City, its officers and employees, shall be named as an additional insured on such policy or policies of insurance and Lessee shall provide the City with a certificate satisfactory to the City evidencing such insurance.

20. Assignment of Lease or Control of Business Prohibited.

(a) No Assignment of Lease: Lessee shall neither assign nor encumber this

Lease. Neither shall Lessee sublet nor grant possession or control of the Leased Premises, or any part thereof, to third parties, without the prior written consent of the City, which consent may be given or withheld in the City's sole discretion without recourse to Lessee.

(b) No Transfer of Ownership or Control: City agrees to this long-term Lease in consideration of its familiarity with the principal owner of Lessee (Todd Donnelly), his ongoing control and operation of the restaurant and the established brand name of the Clubhouse Grille. Lessee hereby warrants that for the duration of the Lease that Todd Donnelly will continue to be the majority owner and maintain control over operation of the Lessee and restaurant operations. City does not accept the same risk of a long-term lease where a substituted, new or successor owner or transferee replaces the current ownership and control of Lessee's restaurant operation. Therefore, prohibited assignment shall also include sale, transfer, assignment, pledge or encumbrance, with or without consideration, of majority ownership of Lessee to a third party, or a pledge, lien or imposition of any form of encumbrance in favor of a lender, granted either voluntarily by Lessee or arising from its default on contractual or debt obligations, resulting in substituted ownership or control of Lessee or its operation of the golf course restaurant, or resulting in actual or attempted substitution of a new Lessee. Upon such prohibited assignment or Mr. Donnelly's withdrawal from majority ownership and control of Lessee for any reason, City reserves the right at any time to continue the Lease, to require amended terms or to terminate the Lease without recourse to Lessee, its transferees, heirs, successors, assigns, creditors and lenders or another third party.

21. Indemnity. Each party shall indemnify the other, and hold the other harmless against all costs, expense, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including reasonable counsel fees, arising out of the negligence of the party, its

employees and contractors, or arising from any violation of or default in performance under this Lease, which causes or results in harm or damages to a third party or member of the public with exception that the commitment herein shall not be interpreted or enforced against the City or its officials and employees with respect to any matter or liability for which the City enjoys the immunities and protections of the Pennsylvania Political Subdivisions Tort Claims Act at 42 Pa.C.S §§ 8541-8564, said immunities and protections being expressly reserved.

22. Default by Lessee. If Lessee shall fail to pay rent, or any other sum including, but not limited to, any debt, tax or utility owed to the City of Bethlehem or any of its agencies when due, or shall remove or attempt to remove from the Leased Premises during the term of this Lease, or any extension thereof, or shall break or evade or attempt to break or evade any of the covenants or restrictions set forth in this Lease, and said condition of default shall continue for ten days following written notice thereof from Lessor to Lessee, Lessor, in addition to all other remedies provided by law, may:

- (a) declare immediately due and payable and in arrears (i.e. accelerate) payment of the entire unpaid balance of the rent for the unexpired portion of the current term hereof, together with all other charges and expenses agreed herein to be paid by Lessee, together with any and all consequential damages caused by Lessee's default; and may
- (b) terminate this Lease; and may
- (c) pursue the Confession of Judgment actions allowed under this Lease.

23. Compliance with Law. The Lessee shall comply with all Ordinances, policies, rules and regulations of the City of Bethlehem and with all state and federal laws, rules and regulations pertaining to the above described Premises and uses thereof. The Lessor shall have

the authority to enforce the ordinances of the City and laws of the Commonwealth of Pennsylvania on the Premises during the term of this Lease.

24. Removal of Goods. Any business property or equipment removed from the Leased Premises either before or after the expiration of this Lease while any overdue portion of the said rent remains unpaid shall remain liable to distress for such rent for the period of thirty (30) days after removal of such business property or equipment, the same as though they remained on the Leased Premises.

25. Assignment for Benefit of Creditors. If Lessee shall be sold out at a Sheriff's or Constable's Sale, or make any assignment for the benefit of creditors, or commit any act of bankruptcy whatsoever, then the rent for the balance of the current term shall at once become due and payable, as if by the terms of this Lease it were all payable in advance and may be collected by distress or otherwise, and shall be paid in full from the proceedings of any such assignment, sale or bankruptcy proceedings, any law, usage or custom to the contrary notwithstanding.

26. Confession of Judgment for Liquidated Damages and Losses.

LESSEE HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OR THE PROTHONOTARY OF THE COURT OF COMMON PLEAS IN NORTHAMPTON COUNTY, THE COMMONWEALTH OF PENNSYLVANIA, TO APPEAR AT ANY TIME FOR LESSEE AFTER A DEFAULT UNDER THIS LEASE AND UPON COMPLAINT FILED, CONFESS OR ENTER JUDGMENT AGAINST LESSEE FOR THE ENTIRE PRINCIPAL BALANCE OF THIS LEASE AND ALL ACCRUED INTEREST, LATE CHARGES AND ANY AND ALL AMOUNTS EXPENDED OR ADVANCED BY CITY RELATING TO THE LEASE AND ANY COLLATERAL SECURING THIS LEASE, TOGETHER WITH COSTS OF SUIT, AND AN ATTORNEY'S COMMISSION OF FIVE PERCENT (5%) OF THE UNPAID PRINCIPAL BALANCE AND ACCRUED AND ACCRUING INTEREST AT FIVE PERCENT PER ANNUM (5% ANNUALLY) BUT IN ANY EVENT NOT LESS THAN ONE THOUSAND DOLLARS (\$1000.00) ON WHICH JUDGMENT OR JUDGMENTS ONE OR MORE EXECUTIONS MAY ISSUE IMMEDIATELY; AND FOR SO DOING, THIS LEASE OR A COPY OF THIS LEASE

VERIFIED BY AFFIDAVIT SHALL BE SUFFICIENT WARRANT. THE AUTHORITY GRANTED IN THIS LEASE TO CONFESS JUDGMENT AGAINST LESSEE SHALL NOT BE EXHAUSTED BY ANY EXERCISE OF THAT AUTHORITY BUT SHALL CONTINUE FROM TIME TO TIME AND AT ALL TIMES UNTIL PAYMENT IN FULL OF ALL AMOUNTS DUE UNDER THIS LEASE. LESSEE HEREBY WAIVES ANY RIGHT IT MAY HAVE TO NOTICE OR TO A HEARING IN CONNECTION WITH ANY SUCH CONFESSION OF JUDGMENT AND STATES THAT EITHER A REPRESENTATIVE OF CITY SPECIFICALLY CALLED THIS CONFESSION OF JUDGMENT PROVISION TO LESSEE 'S ATTENTION OR LESSEE HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL. LESSEE HEREBY ACKNOWLEDGES AND AGREES THAT ITS REASONABLE EXPECTATION WITH RESPECT TO THE AUTHORIZATION GRANTED PURSUANT TO ANY WARRANT OF ATTORNEY OR POWER OF ATTORNEY HEREUNDER, IS THAT CITY OR ITS ATTORNEY MAY CONFESS JUDGMENT AS SET FORTH HEREIN, SEEK TO FORECLOSE ON COLLATERAL AND TAKE ALL OTHER ACTIONS WITH RESPECT TO THE EXERCISE OF CITY'S RIGHTS HEREUNDER. LESSEE HEREBY WAIVES ALL OTHER DUTIES OF CITY THAT MAY ARISE UNDER 20 Pa. C.S.A. §5601.3(b). LESSEE HEREBY REMISES, RELEASES, AND FOREVER DISCHARGES, AND WAIVES ALL CLAIMS, CAUSES OF ACTION AND ANY OTHER RIGHTS AGAINST, CITY AND ITS LEGAL REPRESENTATIVES, AGENTS, EMPLOYEES, SERVANTS, SUCCESSORS IN INTEREST, AND ASSIGNS OF AND FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES, FEES, AND COSTS, SUMS OF MONEY, RIGHTS, CAUSES OF ACTION, OBLIGATIONS AND LIABILITIES OF ANY KIND OR NATURE WHATSOEVER INCLUDING ATTORNEYS' FEES, ARISING UNDER OR RELATING TO ANY DUTIES OF AN AGENT UNDER 20 Pa. C.S.A. §5601.3 OR OTHERWISE UNDER PENNSYLVANIA LAW.

27. Confession of Judgment in Ejectment and to Relinquish Possession.

IN THE EVENT OF DEFAULT BY LESSEE HEREUNDER, AND TERMINATION OF THIS LEASE BY LESSOR UNDER PARAGRAPH 23 ABOVE, OR UPON THE EXPIRATION OF THIS LEASE, LESSOR MAY CAUSE JUDGMENT IN EJECTMENT TO BE ENTERED AGAINST LESSEE FOR POSSESSION OF THE LEASED PREMISES, AND FOR THAT PURPOSE, LESSEE DOES HEREBY AUTHORIZE AND EMPOWER LESSOR, OR ANY PROTHONOTARY, CLERK OF COURT OR ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR LESSEE AND CONFESS JUDGMENT AGAINST LESSEE IN EJECTMENT FOR POSSESSION OF THE LEASED PREMISES, AND LESSEE AGREES THAT A WRIT OF POSSESSION PURSUANT THERETO MAY ISSUE FORTHWITH. LESSEE FURTHER AGREES THAT, IF FOR ANY REASON WHATSOEVER AFTER THE COMMENCEMENT OF SAID ACTION, THE SAME SHALL BE TERMINATED AND POSSESSION OF THE LEASED PREMISES SHALL REMAIN IN OR BE RESTORED TO LESSEE, LESSOR SHALL HAVE THE RIGHT, AT ANY SUBSEQUENT TIME WHEN

OCCASION SHALL ARISE, TO CAUSE THE ENTRY OF SUCCESSIVE JUDGMENTS BY CONFESSION IN EJECTMENT FOR POSSESSION OF THE LEASED PREMISES. LESSEE AGREES THAT THIS LEASE OR A TRUE AND CORRECT COPY THEREOF SHALL BE SUFFICIENT AUTHORIZATION AND WARRANT TO CONFESS JUDGMENT AND FOR THE ISSUANCE OF A WRIT OF POSSESSION PURSUANT THERETO. LESSEE HEREBY WAIVES ANY AND ALL NOTICES REQUIRED BY ANY ACT OF ASSEMBLY CONCERNING NOTICES TO QUIT, TO RELINQUISH POSSESSION AND VACATE THE PREMISES.

28. Non-Waiver by the City. The acceptance by the City of any late rent at any time after the same shall become due or City's failure, delay, silence or inaction to enforce any of the rights or the penalties granted under this Lease shall not in any way be asserted or enforceable by Lessee against City as a waiver of the right to enforce the Lease and any of its terms and remedies.

29. Notices. Any notice under this Lease must be in writing and must be sent by first class mail or delivered to the address of the party to whom the notice is to be given, as designated by such party in writing. The City hereby designates the City's address as:

Director of Bureau of Recreation
City of Bethlehem
10 East Church Street
Bethlehem, Pennsylvania, 18018.

Lessee hereby designates Lessee's address as:

Clubhouse Grille, LLC
Attn: Mr. Todd Donnelly
3910 Adler Place, Suite 104
Bethlehem, PA 18017.

30. Records. Throughout the term of this Lease or any extension thereof, Lessee shall maintain financial accounting records in accordance with generally accepted accounting principles and available at all reasonable times to Lessor for inspection, review and audit.

31. “As Is” Condition. The Leased Premises are leased to Lessee in their as-is condition, Lessor making no warranties whatsoever regarding the same.

32. City Council Approval. The lease is subject to approval by resolution adopted by Bethlehem City Council. It is not valid or enforceable absent such approval notwithstanding execution by a party or by the parties before Council’s approval.

33. Entire Agreement. This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application thereof, to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to the persons or circumstances other than those as to

which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the extent permitted by law.

IN WITNESS WHEREOF, the parties aforesaid have hereunto set their hands and seals on the day and year first above written.

WITNESS:

LESSEE:
CLUBHOUSE GRILLE, LLC

By: _____ (Seal)
Todd Donnelly, Managing Member

ATTEST:

CITY OF BETHLEHEM

George Yasso, Controller

By: _____ (Seal)City
Robert J. Donchez, Mayor

I certify that the within Lease Agreement is needed, necessary and appropriate.

By: _____
Jane Persa, Director COB Bureau of Recreation

EXHIBIT A

OVERHEAD VIEW DEPICTING GOLF COURSE PROPERTY



EXHIBIT B

CITY OF BETHLEHEM FIXTURES AND EQUIPMENT LIST
MUNICIPAL GOLF COURSE RESTAURANT

EXHIBIT C

LESSEE'S FIXTURES AND EQUIPMENT LIST
MUNICIPAL GOLF COURSE RESTAURANT