

CITY OF BETHLEHEM
INTER-DEPARTMENTAL CORRESPONDENCE

SUBJECT: Golf Course Training, Playing, Practice Facility Lease
TO: City Council
FROM: Eric Evans, Business Administrator
DATE: May 27, 2020

Attached is a proposed Lease Agreement with Art of Flight Golf, Inc. for a golf training, playing, and practicing facility at the Lower Cart Barn at the City's Municipal Golf Course.

Also attached is a resolution for Council's consideration.

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

Copies To:

By: 
Eric Evans, Business Administrator

**LEASE AGREEMENT BETWEEN
THE CITY OF BETHLEHEM AND
ART OF FLIGHT GOLF, INC.**

THIS AGREEMENT is made and entered into this ____ day of _____, 2020 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 Art of Flight Golf, Inc., with its offices and principal place of business at 400 Illick’s Mill Road, Bethlehem, PA 18017, hereinafter referred to as “Lessee.”

WHEREAS, City desires to enter into a Lease Agreement for the operation of an indoor golf instruction, technology, and fitness facility at the Lower Cart Barn 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, the parties have agreed upon terms to allow Art of Flight Golf, Inc. to take possession of the hereinafter described Leased Premises for and subject to the term, limited purpose, duties, and conditions set forth in this Lease;

NOW, THEREFORE, this agreement witnesseth:

1. Description and Use of Leased Premises.

In consideration of the rents and covenants hereinafter mentioned, City does hereby rent, demise, and lease unto Lessee the following part of the City’s Monocacy Course at the Bethlehem golf course complex, hereinafter referred to as the Leased Premises: the lower cart barn building at the Bethlehem Golf Club on Illick’s Mill Road, not including any of the exterior premises.

The Leased Premises is to be used for the primary purpose of serving as a complementary use and accessory use to the municipal golf course and, for such uses permitted

herein, considered by the City incidental and reasonably suited to maintaining the public's access and enjoyment of the public facilities, more particularly described as follows:

LESSEE will lease the lower cart barn, and provide all the work and funding to transition the barn into an indoor golf and fitness center that will provide new technology and state-of-the-art equipment for patrons to learn, play, and excel in the sport of golf. The facility will provide golf simulator rental, golf-specific training, and golf coaching. The business targets all levels of golfers to learn the sport and improve their game, with the goal to increase golf participation in our community.

2. Lease Term. The term of this Lease shall be seven (7) years commencing on September 16, 2020 and ending on September 16, 2027. Lease term years shall run annually, starting each year at the anniversary of the commencement date. The lease may commence at an earlier date upon approval of the Business Administrator.

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, no rent payments for the lesser of the first six (6) months during construction and fit out or when the facility opens for business; thereafter rent during the first year shall be \$2,500 per month;

(b) Years two through seven (2-7): annual rent shall be increased in each succeeding year by three percent (3%) over each preceding year's rate, the monthly rates, with rounding, as follows:

- Year 2: \$2,575
- Year 3: \$2,652
- Year 4: \$2,732
- Year 5: \$2,814
- Year 6: \$2,898
- Year 7: \$2,985

(c) Rent shall be payable on the first day of each month to the City of Bethlehem, 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.

Days of week: Monday through Sunday

Schedule of hours: proposed 8:00 am-9:00 pm, subject to change based on demand.

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. The security deposit shall be adjusted annually to an amount equal to two months of the current year's rent, with adjustment amounts to be delivered to the City on the anniversary date of the next rental year, so that the security deposit will always equal two months of the current year's rent.

6. Food and Beverage. Lessee shall have no rights to serve or offer for sale food or beverages, said rights reserved exclusively to the City and its restaurant tenant. This shall also preclude Lessee's providing or offering vending machine food and beverage. Lessee is permitted to make available water and sports drinks in coordination with the restaurant tenant and in deference to its rights granted under its Lease. Lessee may not take action preempting the restaurant tenant's rights. Any deviation from these terms is subject to consent of the City and the restaurant tenant.

7. Premises, Facilities and Equipment.

(a) Premises Accepted “As Is.” Lessee shall acquire possession of the lower cart barn building for its operations. Lessee accepts City’s fixtures and equipment in their “as-is” condition, the City making no warranties or representations with respect thereto.

(b) Lessee’s Improvements. Lessee may construct its improvements and install its equipment according to its reasonable and typical operational needs in relation to its proposal dated November 20th, 2019. City retains the right to refuse permission for improvements by Lessee that City deems unsuitable, in violation of the proposal, unsafe or overly burdensome on the existing structure, risking excessive wear and tear.

(c) Rest Rooms. Lessee commits to rehabilitating the rest room as a condition to City’s agreement to this Lease, at Lessee’s expense. The parties shall meet and discuss to establish the appropriate scale and details for the rehabilitation. The work shall be done according to plans and specifications by Lessee satisfactory to the City. Lessee shall make the building’s rest room facilities available to golf course patrons at all times when both the golf course pro shop and the golf course are open.

(d) No Compensation for Improvements. City shall owe no compensation to Lessee for any improvements or permanent fixtures installed by Lessee and no compensation is owed at the end of the Lease for same. The permanent improvements and fixtures shall transfer to City’s ownership upon completion and City’s acceptance, except for removable fixtures and equipment Lessee elects to remove, subject to City’s first option to purchase under paragraph 15, or which its lender or secured party has a right to remove under a security agreement for removable fixtures and equipment.

8. City’s Commitment to Improvements. City commits to making no improvements of the facilities to accommodate Lessee’s operation except: City will repair roof leaks as needed.

9. Utilities and Trash Removal.

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

(b) Trash. Lessee shall be responsible for and pay for the cost of trash receptacles and trash removal for its business. Lessee shall also be responsible for regularly inspecting the immediate vicinity of the exterior of the cart barn for cleaning up trash and debris attributable to Lessee's operations, customers and employees.

(c) Snow. City shall maintain the exterior premises for the purpose of snow and ice removal or treatment. City reserves sole discretion over the timing of snow and ice removal or treatment due to the challenge of allocating limited public resources and the priority of clearing snow from streets and other public places. City shall owe no compensation to Lessee due to business interruption for delayed snow and ice removal or treatment.

10. Parking Spaces. City commits no designated parking spaces to Lessee's employees or customers. The main parking lot shall be available to Lessee's employee and customer use without extra charge.

11. 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. The City Golf Course General Manager, in his or her sole discretion, may prohibit Lessee use or activity as unlawful or unsuitable to use of the Premises, without recourse

to Lessee. (b) Signs. 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. City will allow posting of signage on existing sign support structure which, in the opinion of the Golf Course General Manager, does not unduly distract from or interfere with primary signage for the golf course and restaurant.

(c) Events. Lessee may not host events where attendance exceeds code limitations on occupancy or in any way use the exterior grounds, which are not part of the leased premises without express permission of the City Golf Course General Manager. Lessee may host workshops or other events supporting the purpose of the Lease using grounds exterior to the leased premises with permission of the City Golf Course General Manager who shall have the authority to designate the space and other appropriate terms and conditions of the usage, and to terminate such usage.

12. Licensing and Inspections. Lessee shall, at its sole cost and expense, procure and maintain all City, County, state and federal governmental inspections, licenses, permits and employee certifications required for the operation of the Lessee's business.

13. 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 and heating systems, 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 fulfill its 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, landscaping, hardscaping, and parking area in good order and repair.

14. 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.

15. 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. The

preceding shall not be applied to supersede financing security agreements on removable fixtures and equipment enforceable by a bank or lending institution which has financed fixtures or equipment installed by Lessee. Notwithstanding, no bank, lender, person or organization shall acquire rights to file, enter or record with federal, state, county, or local agencies or offices a lien, mortgage, security agreement or encumbrance of any type or form against or impairing City owned land, structures or improvements. Any attempt to do so by a bank, lending institution, person or organization, or Lessee's consent to same shall be void, unenforceable and a breach of this agreement.

16. 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 reopens 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.

17. 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, bodily injury, products liability, the condition of the Leased Premises, and for its negligence in causing bodily injury or damage or destruction of the Leased Premises, in an amount not less than One Million Dollars (\$1,000,000.00) property damage liability, not less than One Million Dollars (\$1,000,000.00) per person bodily injury liability, and not less than 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.

Lessee also shall produce proof of Workers' Compensation insurance or proof of no employees for which such insurance is otherwise statutorily required.

Compliant certificates for the preceding required insurance shall be produced to the City Solicitor and Golf Course General Manager no less than ten (10) days before the start day of the Lease and annually no later than each term renewal anniversary date.

18. 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 or 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(s) of Lessee and their ongoing control and operation of Lessee's operations. Lessee hereby warrants that, for the duration of the Lease,

they will continue to be the majority owners and maintain control over operation of the Lessee and its 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 operations. 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 operations or resulting in actual or attempted substitution of a new Lessee. Upon such prohibited assignment or owners' 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, conservators, creditors and lenders, or another third party.

19. Indemnity. Each party shall indemnify the other, and hold the other harmless against all costs, expenses, 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 the 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.

20. 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 exercise one or all of these remedies:

(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 Confession of Judgment actions allowed under this Lease; and may

(d) declare forfeiture of the security deposit.

21. 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.

22. Real Estate Taxes. City may suspend this Lease upon receipt of notification of revocation, or a taxing body's filing of proceedings to revoke, the real estate tax exemption on the Leased Premises. Such event shall be deemed a force majeure with the legal effect of preventing the parties' continuing performance of their obligations under the Lease. Upon such notice of imposition of tax to City and suspension of the Lease, the parties shall then in good

faith proceed as follows:

(a) To keep the Lease in force, within thirty (30) days of suspension, Lessee may agree in writing, acceptable in form and terms to City, to pay increased rent in the full amount of all assessed real estate taxes on all affected parcels or affected portions thereof for the term of any retroactive assessment plus for the duration of the term remaining under the Lease in equal, prorated monthly installments or in a single installment annually when and as invoiced by City, payable within thirty (30) days of the invoice date, or payable on terms as the parties may otherwise agree, and in amounts adjusted for and including annual tax increases, if any; or,

(b) If Lessee refuses or fails to agree to pay the increased rent required to keep the Lease in force, the Lease thereupon shall be deemed terminated. Accrued financial liabilities shall be reconciled to the date of suspension and satisfied by the parties. Lessee may remove and take possession of its removable fixtures and equipment as permitted under the Lease upon termination. City shall owe no compensation to Lessee as a result of suspension or termination so that City shall not be liable to Lessee for economic loss of revenue, profit, revenue expectancy, expenses, or consequential damages of any type or calculated basis.

(c) City at its discretion may assert a legal challenge to the assessment of real estate tax to restore the real estate tax exemption if, in City's sole judgment, City has grounds to challenge with a reasonable chance to prevail. City shall have no duty to accommodate a demand by Lessee to pursue a legal challenge to the assessment. If City prevails in a challenge and recovers tax real estate tax payments from the taxing agencies, City will refund the recovered funds to the extent recovered, less any arrearages and default amounts due under the Lease.

23. 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.

24. 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.

25. 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.

26. 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 20 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.

27. 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.

28. 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:

Business Administrator
City of Bethlehem
10 East Church Street
Bethlehem, Pennsylvania, 18018.

Lessee hereby designates Lessee's address as:

Art of Flight Golf, Inc.
400 Illick's Mill Rd
Bethlehem, PA 18107

29. Records. Throughout the term of this Lease or any extension thereof, Lessee shall maintain financial accounting records in accordance with generally accepted accounting principles for review by any taxing agency, including City, to the extent such agencies may demand and or review such records under law or ordinance.

30. 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.

31. 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:

ART OF FLIGHT GOLF, INC.

By: _____ (Seal)
-----, Managing Officer

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: _____

Eric Evans, Business Administrator

RESOLUTION NO. 2020-____

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 Art of Flight, Golf, Inc., and such other agreements and documents as are deemed by the City Solicitor to be necessary and/or related thereto, for the operation of an indoor golf instruction, technology, and fitness facility, according to the terms and conditions indicated therein and made a part hereof.

Sponsored by _____

ADOPTED by Council this ____ day of _____, 2020.

President of Council

ATTEST:

City Clerk