

CITY OF NANAIMO

BYLAW NO. 7113

A BYLAW TO AUTHORIZE THE LEASE AGREEMENT FOR THE
BEBAN PARK PITCH & PUTT TO DOUBLE H HOLDINGS LTD.

WHEREAS the Council wishes to enter into a lease agreement (the "Agreement") for the Beban Park Pitch & Putt to Double H Holdings for a term of thirteen years;

THEREFORE BE IT RESOLVED that the Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. This Bylaw may be cited as the "BEBAN PARK PITCH & PUTT LEASE AGREEMENT BYLAW 2010 NO. 7113".
2. The Council of the City of Nanaimo hereby authorizes the Mayor and Manager of Legislative Services to enter into the Agreement, on behalf of the City of Nanaimo, in substantially the form attached hereto as Schedule 'A', which sets out the terms and conditions of the Agreement for the land identified in the Agreement and legally described "that part of Lot 1, Sections 18, 19 and 20, Range 7, Mountain District, Plan 27441, Except Those Parts In Plans 40622 and 44255, comprising 5.87 hectares, more or less, and shown as "Lease Area" on the reference plan certified by Douglas W. Holme, B.C.L.S. on August 16, 2010, a reduced copy of which is attached to the Agreement.
3. Upon execution of the Agreement by the Mayor and Manager of Legislative Services, this Agreement shall be validly entered into as authorized by this Bylaw.

PASSED FIRST READING 2010-SEP-13
PASSED SECOND READING 2010-SEP-13
PASSED THIRD READING 2010-SEP-13
RECEIVED APPROVAL OF THE ELECTORS
BY ALTERNATIVE APPROVAL PROCESS 2010-OCT-26
ADOPTED 2010-NOV-08

J. R. RUTTAN
MAYOR

J. E. HARRISON
MANAGER
LEGISLATIVE SERVICES

SCHEDULE "A"

LAND TITLE ACT
Form C (Section 233)
Province of
British Columbia

GENERAL INSTRUMENT - PART 1 (This area for Land Title Office Use) Page 1 of 15 pages

1. Application: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
STAPLES McDANNOLD STEWART
Barristers & Solicitors
2nd Floor, 837 Burdett Avenue
Victoria, BC V8W 1B3 (250) 380-7744
File #194 498 MH/jr

Authorized Signatory
2. Parcel Identifier(s) and Legal Description(s) of Land:
(PID) (Legal Description)
000-289-078 Lot 1, Sections 18, 19, and 20, Range 7, Mountain District, Plan 27441, Except Those Parts in Plans 40622 and 44255
3. Nature of Interest*
Description Document Reference (page & paragraph) Person Entitled to Interest
Lease Entire Document
4. Terms: Part 2 of this instrument consists of (select one only)
(a) Filed Standard Charge Terms D.F. No.
(b) Express Charge Terms Annexed as Part 2
(c) Release There is no Part 2 of this instrument
A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged on the Land described in Item 2.
5. Transferor(s) (Grantor(s))*:
City of Nanaimo
6. Transferee(s) (Grantee(s))*: (Including postal address(es) and postal code(s)) *
Double H Holdings Ltd (Inc. No. BC0519137), Box 339, 7505 Forest Turn, Lantzville, BC V0R 2H0
7. Additional or Modified Terms*: N/A
8. Execution(s): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature: <hr style="width: 100%;"/>	Execution Date: <table border="1" style="margin: auto; border-collapse: collapse; width: 100px; height: 100px;"> <tr> <td style="width: 33%; text-align: center; vertical-align: middle;">Y</td> <td style="width: 33%; text-align: center; vertical-align: middle;">M</td> <td style="width: 33%; text-align: center; vertical-align: middle;">D</td> </tr> </table>	Y	M	D	Party(ies) Signature: City of Nanaimo by its authorized signatory(ies): <hr style="width: 100%;"/> Name: <hr style="width: 100%;"/> Name:
Y	M	D			

(As to all signatures)

LAND TITLE ACT
Form D

EXECUTIONS CONTINUED

Page 2

Officer Signature:	Execution Date:	Party(ies) Signature:						
_____	<table border="1"><thead><tr><th style="width: 33px;">Y</th><th style="width: 33px;">M</th><th style="width: 33px;">D</th></tr></thead><tbody><tr><td style="height: 150px;"></td><td></td><td></td></tr></tbody></table>	Y	M	D				Double H Holdings Ltd (Inc. No. BC0519137) by its authorized signatory(ies): _____ Name: _____ Name:
Y	M	D						
(As to all signatures)								

Officer Certification
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996 c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

TERMS OF INSTRUMENT, PART 2

THIS LEASE AGREEMENT made the _____ day of _____, 2010.

BETWEEN: CITY OF NANAIMO
455 Wallace Street,
Nanaimo, British Columbia
V9R 5J6

(the "City")

OF THE FIRST PART

AND: DOUBLE H HOLDINGS LTD (INC. NO. BC0519137)
Box 339
7505 Forest Turn
Lantzville, BC
V0R 2H0

(the "Lessee")

OF THE SECOND PART

WHEREAS:

- A. The Lessee has requested permission from the City to lease a part of certain lands owned by the City, commonly known as Beban Park, and legally described as:

P.I.D. 000-289-078
Lot 1, Sections 18, 19 and 20, Range 7, Mountain District, Plan 27441, Except Those Parts in Plans 40622 and 44255 (the "Lands").

- B. The City has obtained the approval of the electors to dispose of the Lease Area as required by the provisions of the Community Charter.

NOW THEREFORE this agreement witnesses that in consideration of the Lease Area and the mutual covenants contained in this agreement (the "Agreement"), the parties agree as follows:

1. GRANT OF LEASE

The City grants to the Lessee the right to occupy that part of the Lands comprising _____ hectares, more or less, shown as "Lease Area" on Plan EPP _____, a reduced copy of which is attached to this Agreement as Schedule "A" (the "Lease Area").

2. LEASE AREA AND STRUCTURES

The City grants the right to the Lessee to use and occupy the Lease Area. The City acknowledges and agrees that the clubhouse building presently situate on the Lease Area (the "Lessee's Structures") is owned solely by the Lessee and may be removed by the Lessee on termination of this Agreement in the manner described herein.

All other buildings, structures and improvements presently situate on the Lease Area, and any buildings, structures and improvements that the City may permit the Lessee to construct during the term of this Agreement, are and shall remain the property of the City.

3. TERM

For the term of thirteen (13) years commencing on the 15th day of November, 2010 and ending on the 31st day of October, 2023 (the "Term").

4. USE

- (a) the Lessee shall use the Lease Area for the purposes of a nine-hole pitch and putt golf course and driving range facility, and for no other purposes unless otherwise approved by the City in writing.
- (b) the use of the Lease Area by the Lessee as permitted under section 4(a) must be in accordance with the standards and specifications set out in Schedule "B" attached to this Agreement.

5. RENT

The Lessee shall pay to the City rent in accordance with Schedule "C" attached to this Agreement.

6. LESSEE'S COVENANTS

The Lessee covenants with the City:

Rent

- (a) to pay rent;

Rates

- (b) to pay all taxes, rates, duties and assessments whatsoever, whether federal, provincial, municipal or otherwise, including Harmonized Sales Tax, charged upon the Lessee or the City as a result of the Lessee's occupation or use of the Lease Area;

Utilities

- (c) to pay as they become due all utility rates in respect of the Lease Area, including water, sewer and garbage rates and charges for all gas, oil, telephone and electric light and power used on the Lease Area;

Construction

- (d) that it will not construct any buildings, structures or improvements on the Lease Area or alter any buildings, structures or improvements on the Lease Area, unless, prior to any construction or alteration, having obtained:
 - (i) the City's approval in writing to the site plan, working drawings, plans, specifications, and elevations;
 - (ii) a building permit from the City authorizing the construction of the buildings and structures set out in the permit and the plans and specifications attached to it; and
 - (iii) all required inspections.

Repair

- (g) that it is the Lessee's sole responsibility to maintain and repair the Lease Area, including all buildings, structures and improvements situate thereon (collectively, the "Facility") and to keep the whole of the Facility in a safe state of repair and not to permit the same to become unsightly or unsafe in any material respect;
- (h) that the City, at any reasonable time, may enter and view the Facility for purposes of determining the Lessee's compliance with fire and safety standards established by the City of Nanaimo from time to time;
- (i) that the Lessee will keep the grounds comprising the Facility maintained and repaired where necessary, in as good a condition as presently exists at the commencement of this Agreement;

Assign or Sublet

- (j) that it will not assign nor sublet without prior written consent of the City;
- (k) that the City's consent to assignment or subletting shall not release or relieve the Lessee from its obligations to perform all the terms, covenants and conditions that this Agreement requires the Lessee to perform, and the Lessee shall pay the City's reasonable costs incurred in connection with the Lessee's request for consent;

Nuisance

- (l) that it will not carry on or do or allow to be carried on or done on the Lease Area anything that:
 - (i) may be or become a nuisance to the City or the public;
 - (ii) increases the hazard of fire or liability of any kind;
 - (iii) increases the premium rate of insurance against loss by fire or liability upon the Lease Area; or
 - (iv) invalidates any policy of insurance for the Lease Area;

Regulations

- (m) that it will:
 - (i) construct and operate the Facility only in compliance with all applicable laws, and comply promptly at its own expense with the legal requirements of all authorities, including an association of fire insurance underwriters or agents, and all notices issued under them that are served upon the City or the Lessee; and
 - (ii) indemnify and save harmless the City from all lawsuits, damages, losses, costs or expenses that the City may incur by reason of non-compliance by the Lessee with legal requirements or by reason of any defect in the Lease Area or any injury to any person or to any personal property contained on the Lease Area unless the damages, losses, costs, expenses or injuries are the result of the negligence of the City;

Insurance

- (n) that it will take out and maintain during the Term, a policy of comprehensive general liability insurance against claims for bodily injury, death or property damage arising out of the use and occupancy of the Lease Area by the Lessee in an amount of not less than FIVE MILLION (\$5,000,000.00) DOLLARS per single occurrence or such greater amount as the City may from time to time designate, naming the City as an insured party thereto and shall provide the City with a certified copy of such policy or policies;
- (o) that all policies of insurance shall contain a waiver of subrogation clause in favor of the City and shall also contain a clause requiring the insurer not to cancel or change the insurance without first giving the City thirty (30) days prior written notice;
- (p) that if the Lessee does not provide or maintain in force the insurance required by this Agreement, the City may take out the necessary insurance and pay the premium for periods of one year at a time, and the Lessee shall pay to the City as additional rent the amount of the premium immediately on demand;
- (q) that if both the City and the Lessee have claims to be indemnified under any insurance required by this Agreement, the indemnity shall be applied first to the settlement of the claim of the City and the balance, if any, to the settlement of the claim of the Lessee;

Indemnification

- (r) that it will indemnify the City from and against all lawsuits, damages, losses, costs or expenses which the City may incur by reason of the use and occupation of the Lease Area by the Lessee or the carrying on upon the Lease Area of any activity in relation to the Lessee's use of the Lease Area and in respect of any loss, damage or injury sustained by any person while on the Lease Area for the purpose of doing business with the Lessee or otherwise dealing with the Lessee;

Builders Liens

- (s) that it will indemnify the City from and against all claims for liens for wages or materials or for damage to persons or property caused during the making of or in connection with any excavation, construction, repairs, alterations, installations and additions which the Lessee may make or cause to be made on, in or to the Lease Area.

Possession

- (t) that it will at the expiration or sooner determination of this Agreement peaceably surrender and give up possession of the Lease Area without notice from the City;

Maintenance

- (u) that it will maintain the Facility at its cost, including the landscaping, at all times to the standards required by the City;

Signs

- (v) that it shall not display any sign, picture, advertisement, notice, lettering or direction on any part of the outside of the Facility without the prior written approval of the City.

7. MISCELLANEOUS COVENANTS

And it is hereby mutually agreed:

Re-Entry

- (a) that the City may re-enter and repossess the Lease Area on non-payment of rent, or non-performance of covenants;

Forfeiture

- (b) that the City by waiving or neglecting to enforce the right to forfeiture of this Agreement or the right of re-entry upon breach of any covenant, condition or agreement in it does not waive its rights upon any subsequent breach of the same or any other covenant, condition or agreement in this Agreement;

Distress

- (c) that if the City is entitled to levy distress against the goods and chattels of the Lessee, the City may use enough force necessary for that purpose and for gaining admittance to the Lease Area and the Lessee releases the City from liability for any loss or damage sustained by the Lessee as a result;

Destruction

- (d) that if the Facility or any part of it is at any time during the Term burned down or damaged by fire, lightning, explosion, tempest, or earthquake, so as to render it unfit for the purpose of the Lessee;

- (i) the Lessee shall, within ninety (90) days after the fire, flood or other casualty advise the City in writing whether the Lessee intends to restore, repair or replace the Facility or the portion damaged. If the Lessee intends to undertake and complete restoration, repair or replacement the Lessee shall do so within one hundred eighty (180) days after the damage occurred; and
- (ii) if the Lessee elects not to undertake restoration, repair or replacement or if the Lessee, having so elected fails to commence to undertake the restoration, repair or replacement within one hundred eighty (180) days after the damage occurred, or fails to diligently carry out such restoration, repair or replacement, this Agreement shall terminate and, for the purpose of this subsection (d), if the Lessee does not advise the City concerning the Lessee's intention within ninety (90) days, the Lessee shall be deemed to have elected not to undertake restoration, repair and replacement and shall vacate the Lease Area forthwith;

Fixtures and Chattels

- (e) (i) that the Lessee may, at or prior to the expiration of the Term , take, remove and carry away from the Lease Area, the Lessee's Structure and movable business and trade fixtures and furniture and appliances provided that the Lessee shall, at its own expense, repair any damage to the Lease Area caused by such removal or by the original installation;
- (ii) that the City may require the Lessee to remove all or any part of the Lessee's Structures and chattels at the expiration of this Agreement but only upon giving to the Lessee a minimum of ninety (90) days prior written notice to remove. Such removal shall be done at the Lessee's expense and the Lessee shall at its own expense repair any damage to the Lease Area caused by such removal. If the Lessee does not remove its property forthwith after expiry of this Agreement such property shall, if the City elects, be deemed to become the City's property or if proper Notice to remove was given to the Lessee by the City, the City may remove the same at the expense of the Lessee and the cost of such removal and any necessary storage charges shall be paid by the Lessee forthwith to the City on written demand. The City shall not be responsible for any loss to such property because of such removal;

Holding Over

- (f) that if the Lessee holds over following the Term and the City accepts rent, this Agreement becomes a tenancy from month to month subject to those conditions in this Agreement applicable to a tenancy from month to month;

City's Payments

- (g) that if the City incurs any damage, loss or expense or makes any payment for which the Lessee is liable under this Agreement, then the City may add the cost or amount of the damage, loss, expense or payment to the rent and may recover it as if it were rent in arrears;

City's Repairs

(h) that:

- (i) if the Lessee fails to repair or maintain the Facility in accordance with this Agreement, the City, its agents, employees or contractors may, upon ninety-six (96) hours notice, enter the Facility and make the required repairs or do the required maintenance and recover the cost from the Lessee; and
- (ii) in making the repairs or doing the maintenance the City may bring and leave upon the Lease Area all necessary materials, tools and equipment; and
- (iii) the City will not be liable to the Lessee for any inconvenience, annoyance, loss of business or injury suffered by the Lessee by reason of the City effecting the repairs or maintenance;

Insolvency

(i) that if:

- (i) any of the goods or chattels on the Lease Area are at any time seized or taken in execution or attachment by any creditor of the Lessee or under bill of sale or conditional sale or chattel mortgage; or
- (ii) if a writ of execution issues against the goods or chattels of the Lessee; or
- (iii) if the Lessee makes any assignment for the benefit of creditors; or
- (iv) if the Lessee becomes insolvent or bankrupt; or
- (v) being an incorporated company or society if proceedings are begun to wind up the company or society; or
- (vi) if the Lease Area or any part of them becomes vacant and unoccupied for a period of one hundred eighty days (180) days or is used by any other person or persons or for any other purpose than permitted in this Agreement without the written consent of the City,

the Term shall, at the option of the City, immediately become forfeited and the City may re-enter and repossess the Lease Area;

Time

(j) that time shall be of the essence of this Agreement;

Notices

(l) that any notice required to be given under this Agreement shall be deemed to be sufficiently given:

- (i) if delivered, at the time of delivery; and

- (ii) if mailed from any government post office in the Province of British Columbia by prepaid, registered mail addressed as follows:

If to the City:

City of Nanaimo
455 Wallace Street
Nanaimo, B.C.
V9R 5J6

If to the Lessee:

Double H Holdings Ltd
Box 339
7505 Forest Turn
Lantzville, BC
V0R 2H0

or at the address a party may from time to time designate, then the notice shall be deemed to have been received forty-eight (48) hours after the time and date of mailing. If, at the time of mailing the notice the delivery of mail in the Province of British Columbia has been interrupted in whole or in part by reason of a strike, slow-down, lock-out or other labor dispute, then the notice may only be given by actual delivery of it;

Fitness of Lease Area

- (m) that the City has made no representations or warranties as to the condition, fitness or nature of the Lease Area and by executing this Agreement, the Lessee releases the City from any and all claims which the Lessee now has or may in future have in that respect;
- (n) that the Lessee admits that it has inspected the Lease Area in its present state and that it is suitable for the Lessee's purposes;

Environmental

- (o) In this Agreement "Contaminants" means any materials or structures of any kind the storage, manufacture, disposal, treatment, generation, use, transportation, remediation or release into the environment of which is prohibited, controlled, or regulated under environmental laws;
- (p) The Lessee is familiar with the Lease Area and has leased the Lease Area after examining it and the Lessee takes possession of the Land on an "as is" basis and agrees that the City has not made any representations, warranties, covenants and agreements with respect to the condition of the Lease Area, the suitability of the Lease Area for the Lessee's intended use or any use whatsoever, and in particular and without limiting the generality of the foregoing, as to the environmental condition of the Lease Area;
- (q) If the Lessee shall bring or create upon the Lease Area any Contaminants then, notwithstanding any rule of law to the contrary, such Contaminants shall be and

remain the sole and exclusive property of the Lessee and shall not become the property of the City, notwithstanding the degree of affixation of the Contaminants or the goods containing the Contaminants to the Lands and notwithstanding the expiry or earlier termination of this Agreement;

- (r) The Lessee shall indemnify and save harmless the City, its officers, employees, agents, successors and assigns from any and all liabilities, actions, damages, claims, losses, charges and expenses and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the property which may be paid by, incurred by or asserted against the City, its officers, employees, agents, successors or assigns as a direct or indirect result of the presence of any Contaminants, in or under, or the escape, seepage, leakage, spillage, discharge, emission or other release of any Contaminants from any part of the Lease Area and to the extent caused by any act or omission of the Lessee its employees, agent, contractors, invitees, Lessees, or sub-Lessees from any part of the Lease Area into the environment including, without limitation, into or upon any real property, the atmosphere or any water course or body of water;

Net Agreement

- (s) that this Agreement shall be a completely carefree net lease to the City as applicable to the Lease Area and the City shall not be responsible during the Term for any cost, charges, expenses, or outlays of any nature whatsoever in respect of the Lease Area or its contents except those mentioned in this Agreement;

Interpretation

- (t) that when the singular or neuter are used in this Agreement, they include the plural or the feminine or the masculine or the body politic or corporate where the context or the parties require;
- (u) that the headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it;
- (v) all provisions of this Agreement are to be construed as covenants and agreements as though the words importing covenants and agreements were used in each separate paragraph;
- (w) that nothing in this Agreement shall be construed as constituting the City and the Lessee as a partnership or joint venture, or as constituting either party as the agent of the other;

Binding Effect

- (x) that this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees;

Law Applicable

(y) that this Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia;

Termination

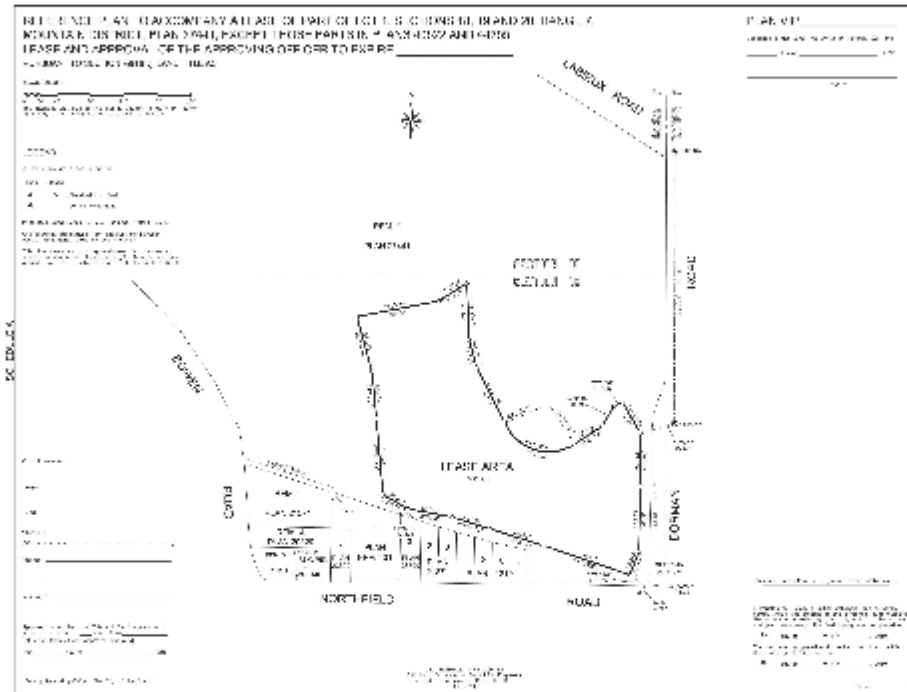
(z) that this Agreement may be terminated at any time by written agreement of the parties.

IN WITNESS the parties have signed and sealed this Agreement on the _____ day of _____, 2010.

CITY OF NANAIMO)
 by its authorized signatory(ies):)
)
)
 _____)
 General Manager, Community Safety and Development)
 Ted Swabey)
)
)
 _____)
 Director of Legislative Services,)
 Name:)

DOUBLE H HOLDINGS LTD.)
 by its authorized signatory(ies):)
)
)
 _____)
)
)
 _____)
)

SCHEDULE "A" LEASE AREA PLAN



SCHEDULE "B"

STANDARDS AND SPECIFICATIONS

1. The Facility shall consist of:
 - (a) A nine hole pitch and putt golf course, driving range and practice facility;
 - (b) An underground sprinkler system for all fairways and greens, and the driving range;
 - (c) A driving range with a minimum of twenty (20) stalls, and safety netting surrounding the driving range satisfactory to the City; and
 - (d) Public washroom facilities.
2. The Facility must be open from 8:00 am to dusk, seven (7) days per week, year-round, with the exception of Christmas Day, unless weather conditions otherwise necessitate closure.
3. The Facility must be maintained to the standard of a well-groomed public golf course and driving range. Such maintenance includes watering and irrigation of the golf course, maintaining the height of the grass within the greens at a level of one-quarter inch (1/4") and the fairways at a level of five-eighths inches (5/8"). The driving range safety netting must be maintained in good repair.

SCHEDULE "C"

RENT

1. Base Rent shall be Thirty-Five Thousand Two Hundred Dollars (\$35,200.00) per year, payable in monthly installments of Two Thousand Nine Hundred Thirty-Three Dollars and Thirty-Three Cents (\$2,933.33), in advance on the first day of each month during the Term.
2. The Lessee shall pay additional rent equal to ten (10%) percent of the Lessee's gross revenue in excess of Three Hundred Fifty-Two Thousand Dollars (\$352,000.00) from the Facility for each lease year during the Term. A "lease year" is defined as the period commencing November 1 in one calendar year, and ending on October 31 in the next. Such additional rent shall be paid to the City within ninety (90) days of the end of each lease year.
3. Along with additional rent payable under section 2, the Lessee shall provide to the City within ninety (90) days of the end of each lease year a statement of reconciliation setting out the Lessee's gross revenue for the lease year. "Gross revenue" is defined as all revenue collected by the Lessee in connection with the operation of the Facility including, without limitation, revenues from green fees, passes, club rentals, and range ball rentals.
4. The City may, at its own expense, audit the financial records of the Lessee for the purposes of verifying the reconciliation statement referred to in section 3, and the Lessee shall provide the City with complete access to the Lessee's financial records upon request.
5. The City will conduct a review of the Base Rent every three (3) lease years during the Term. Base Rent for the three (3) lease years following each such rent review shall be equal to the current market rental value of the Lease Area current use as determined through the rent review. Any dispute as to the market value established during a rent review shall be submitted for determination in accordance with the Commercial Arbitration Act (British Columbia).