

RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 114-11

Passed December 12, 2011

12/7/11-gmk
(Finance & Property)

Ordinance No. 114-11

An ordinance authorizing the Mayor of the City of North Canton to enter into an Addendum to the Lease by and between the City of North Canton ("City") and R & S Golf Properties, Inc., an Ohio corporation and Robert C. Purcell and David Scott DeMuesy as individuals ("Lessee") executed on December 22, 2008, for the premises known as The Fairways fna Arrowhead Country Club, and declaring the same to be an emergency.

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

Section 1. That the Mayor of the City of North Canton, be, and is hereby authorized to enter into an Addendum to the Lease by and between the Lessor and the Lessee, executed on December 22, 2008, for the premises known as The Fairways fna Arrowhead Country Club.

Section 2. That a copy of said Addendum to Lease is attached hereto and incorporated herein as if fully rewritten herein.

Section 3. That if a provision of this ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 4. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and peace of the City of North Canton and further necessary for the timely effectiveness of the Addendum to the Lease; wherefore, provided it receives the affirmative vote of six (6) or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

North Canton, OH
Passed: 12/12/11


MAYOR

SIGNED: 12/12, 2011

ATTEST:


CLERK OF COUNCIL

ADDENDUM

This Addendum is made as of this 12th day of, December 2011, between the City of North Canton, Ohio, a political subdivision of the State of Ohio ("Lessor" or the "City") and R&S Golf Properties, Inc., an Ohio Corporation and Robert C. Purcell and David Scott DeMuesy as individuals. R&S, Purcell, and DeMuesy are collectively referred to as the "Lessee". Lessor and Lessee are collectively referred to as the "Parties".

WHEREFORE, the Parties have entered into a Lease Agreement as of the 22nd day of December 2008 (the "Lease"), a copy of which is attached hereto as **Exhibit A**, and is incorporated herein by reference; and

WHEREFORE, the Parties wish to amend portions of the Lease and reaffirm portions of the Lease as described herein.

THEREFORE, the Parties hereby amend and reaffirm the Lease as follows:

1. Lessor and Lessee agree that "Article III. TERM" of the Lease is hereby rewritten as follows:

3.1 Term, Options and Holding Over.

3.1.1 *The Term ("Term") of this Lease and Lessee's right of possession hereunder, shall be for a period of three (3) years, commencing on January 1, 2009, (the "Commencement Date") and shall expire on December 31, 2011 ("**Original Term**").*

3.1.2 *If Lessee meets the **Benchmark** set forth in 4.1.1 below for **Original Term** (2009 to 2011), the Term shall be extended for an additional period of three years (2012 to 2014), **Option 1**, subject to the City's right to earlier terminate the Lease by written notice on or before June 1 of any year of the **Option 1** extended term, with such termination effective on July 31 of the year notice is provided.*

3.1.3 *If Lessee meets the **Benchmark** set forth in 4.1.1 below for **Option 1** (2012 to 2014), the Term shall be extended for an additional period of three years (2015 to 2017), **Option 2**, unless Lessee gives written notice of intention to not renew on or before June 1, 2014.*

3.1.4 *If Lessee meets the **Benchmark** set forth in 4.1.1 below for **Option 2**, (2015 to 2017), the Term shall be extended for an additional period of five years (2018 to 2022), **Option 3**, unless Lessee gives written notice of intention to not renew on or before June 1, 2017.*

3.1.5 *If Lessee fails to meet the **Benchmark** set forth in 4.1.1 below in any year of the Term, City may give written notice of intention to terminate the Lease by*

June 1 of the year following such failure with such termination being effective on July 31 of the year notice is provided.

3.1.6 Should Lessee hold over after the expiration of the Term of this Lease without the express consent of the City, such holding over shall be deemed to be on a month-to-month basis as a rental fee equal to one hundred fifty percent (150%) of the rental fee as was applicable to Lessee's operations for the last Business Year of the Term hereof prorated to reflect such month-to-month operation and otherwise subject to all of the Terms and Conditions of this Lease.

3.1.7 Lessee shall have the option to purchase the Golf Course Premises for a mutually agreed upon amount not less than the appraised value of the Golf Course Premises provided Lessee exercises such option by the earlier of thirty days following any termination of the Lease pursuant to this Article III or December 31, 2014. The Parties agree to meet and discuss in good faith the possibility of the City holding a note for purchase in the event that Lessee exercises its option to purchase the Golf Course Premises."

2. Lessee has due and owing to Lessor an amount equal to approximately \$16,089, representing property tax amounts not paid to Lessor by Lessee (the "Property Tax Liability"), although such amounts are owed to Lessor by Lessee. Provided this Addendum is executed by Lessee by December 12, 2011, and is not subsequently revoked before execution by Lessor, Lessee is released from the Property Tax Liability.

3. The Parties agree to meet and discuss in good faith apportionment of obligations between the Parties regarding maintenance and repair of capital assets located on the Golf Course Premises.

4. Lessee and Lessor affirm their respective rights and obligations under the Lease, as amended by this Addendum. Lessor revokes its notice of breach issued on June 3, 2011 and its termination notice issued on July 13, 2011.

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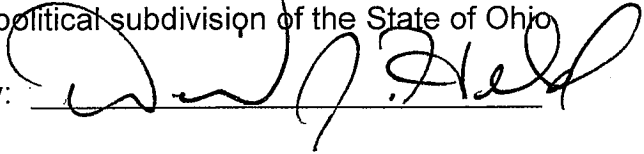
IN WITNESS WHEREOF, the Parties hereto have duly executed this Lease as of the day and year first above written.

“LESSOR”

CITY OF NORTH CANTON

a political subdivision of the State of Ohio

By: _____



David Held its Mayor

“LESSEE”

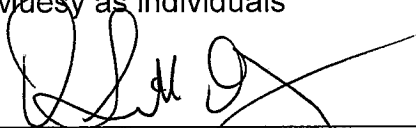
R & S GOLF PROPERTIES, INC.

an Ohio corporation,

By: _____

Title: _____

and Robert C. Purcell and David Scott DeMuesy as individuals



David Scott DeMuesy



Robert C. Purcell

APPROVED AS TO FORM AND SUFFICIENCY

Director of Law

Hans A. Nilges

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