Minutes – Executive Policy Committee – January 20, 2021

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – January 18, 2021

Item No. 3 Proposed Lease Agreement between Western Golf Management (Manitoba) Ltd. and the City of Winnipeg at 400 Shaftesbury Boulevard (Charleswood-Tuxedo-Westwood Ward)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the following to Council:

1. That the Proposed Terms and Conditions for a Lease Agreement, attached hereto as Schedule A, in favour of Western Golf Management (Manitoba) Ltd., at 400 Shaftesbury Boulevard, identified as "Leased Area 473,000 $\pm$ m^2 (116.9 $\pm$ acres)" on Misc. Plan No. 14231/4, be approved.

2. That the City enter into, execute and deliver a Lease Agreement with Western Golf Management (Manitoba) Ltd. and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

3. That the authority be delegated to the Chief Administrative Officer to negotiate and approve the final terms and conditions of the Lease Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. That the Proper Officers of the City be authorized to do all things necessary to complete the intent of the foregoing.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – January 18, 2021

DECISION MAKING HISTORY:

Moved by Councillor Gilroy,

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than four business days preceding the committee meeting, be considered by Committee.

Carried

Moved by Councillor Gilroy,

That the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development be concurred in and forwarded to Council.

Yea:	Bowman, Browaty, Gillingham, Gilroy, Rollins	5
Nay:		0

Carried

STANDING COMMITTEE RECOMMENDATION:

On January 18, 2021, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Proposed Lease Agreement between Western Golf Management (Manitoba) Ltd. and the City of Winnipeg at 400 Shaftesbury Boulevard

Critical Path: Standing Policy Committee on Property and Development, Heritage and Downtown Development – Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	J. Kiernan	P. Olafson, Interim CFO	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

On January 12, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown Development approved a five (5) year lease between the City of Winnipeg (the "City") and Western Golf Management (Manitoba) Ltd. ("Western Golf") for the continued use of City-owned property located at 400 Shaftesbury Boulevard, commonly known as Tuxedo Golf Course, for the purpose of operating, managing and maintaining the facility.

The current Lease Agreement will expire on February 28, 2021.

Western Golf would like to make capital improvements to the facility and has indicated an interest to enter into a new lease for another 10 years.

The Public Service has negotiated the proposed lease and Western Golf has signed the attached Proposed Terms and Conditions for a Lease Agreement.

The Recommendations require the approval of at least two-thirds of all members of Council pursuant to subsection 205(2) of The City of Winnipeg Charter.

RECOMMENDATIONS

1. That the Proposed Terms and Conditions for a Lease Agreement, attached hereto as Schedule A, in favour of Western Golf Management (Manitoba) Ltd., at 400 Shaftesbury Boulevard, identified as "Leased Area 473,000 $\pm$ m^2 (116.9 $\pm$ acres)" on Misc. Plan No. 14231/4, be approved.

2. That the City enter into, execute and deliver a Lease Agreement with Western Golf Management (Manitoba) Ltd. and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

3. That the authority be delegated to the Chief Administrative Officer to negotiate and approve the final terms and conditions of the Lease Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. That the proper officers of the City be authorized to do all things necessary to complete the intent of the foregoing.

REASON FOR THE REPORT

On January 28, 2009, Council authorized the Chief Administrative Officer ("CAO") to approve all leases of City-owned property where:

I. the value of the lease is based on market value;
II. the term of the lease is 5 years or less;
III. the lease includes cancellation clauses; and
IV. the gross value of the lease (excluding realty taxes) is $500,000 or less over the term of the lease.

The proposed lease does not comply with conditions II and IV of the CAO's delegated authority.

The Leased Area is considered to be park land based on its current "PR-2" zoning. In accordance with subsection 205(2) of The City of Winnipeg Charter, all dispositions of property used or acquired for park or cemetery purposes require the approval of at least two-thirds of all members of Council.

The proposed Lease Agreement is for an initial term of 10 years with an option to renew for a further five (5) year term. Any lease greater than five years in length is considered to be a "disposition" of land, as the long-term care, custody and control of the property is transferred to the Tenant.

IMPLICATIONS OF THE RECOMMENDATIONS

The proposed lease rate includes a cap for annual realty taxes, municipal taxes, school taxes, local improvements and frontage levies to a maximum increase of 3% over the total amount levied or charged in the previous year. Any amount exceeding 3% will be the responsibility of Golf Services; realty taxes during the past five years have increased a total of 3.6% overall. The 2020 realty taxes are $74,192.

Western Golf will be investing $500,000 towards capital improvements and will be responsible for all other costs associated with the operation and maintenance of the Tuxedo Golf Course.

The Lease Agreement may be terminated upon two (2) years written notice by either party. The termination clause may be exercised if Council adopts a recommendation from the Golf Repurposing Study that proposes an alternative use for the golf course in the future.

Should the City terminate the Agreement during the initial ten (10) year term without any cause, Western Golf shall be reimbursed for their capital improvements on a straight-line basis (i.e. average annual capital improvement cost multiplied by years remaining on the lease).

HISTORY/DISCUSSION

Western Golf has maintained a lease with the City since March 1, 1996, for the purpose of operating, managing and maintaining a golf course at 400 Shaftesbury Boulevard, commonly known as Tuxedo Golf Course and identified as "Leased Area 473,000 ± m^2 (116.9 ± acres)" on Misc. Plan No. 14231/4. The leased area extends beyond the limits of the City-owned property and is authorized through two separate easement agreements with the adjacent landowners.

On May 27, 1998, Council approved the following:

I. That the Policy on Leasing City-owned land to private golf clubs be amended to provide that where it is legally possible, the clubs pay all realty taxes including local improvement levies.

II. That the Director of Property and Development Services be instructed to negotiate with private golf clubs located on City-owned land:

(a) to commence payment of realty taxes on the basis of a 20% phase in per year commencing in 1999;

(b) for a twenty-five-year term with a five-year cancellation notification clause on the 5th year of the lease.

III. That in the event a club is not prepared to agree with the signing of a new lease with the foregoing phase in of realty taxes the club be offered the option of not renewing the lease at the end of the term or alternately pay realty taxes in full immediately at the termination and commencement of a new lease.

IV. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing."

On January 12, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown Development approved a new five (5) year lease for Western Golf, at an annual lease rate of $92,474.00 plus GST and realty taxes, which will expire on February 28, 2021.

Western Golf has indicated an interest to enter into a lease for another 10-year term, with a commitment to invest $500,000 towards capital improvements work on the golf course and building improvements over the term of the lease. The Public Service recommends extending leases (or in this case, a new lease) where the City maintains a successful relationship with the existing tenant. Remarketing the golf course could result in a vacancy or a less productive tenant.

The following is a high-level summary of the negotiated terms and conditions:

1. 10-year lease term.

2. Gross rent of $173,000.00 (inclusive of base rent of $92,474.00 + estimated realty taxes of $80,526.00) plus GST, paid annually from March 1, 2021 to February 28, 2026; and

3. Gross rent of $182,000.00 (inclusive of base rent of $92,474.00 + estimated realty taxes of $89,526.00) plus GST, paid annually from March 1, 2026 to February 28, 2031.

4. Additional rent will include:

   A. 25% of the total average green fee price per paid round per year for rounds played between 26,000 and 28,000;

   B. 30% of the total average green fee price per paid round per year for rounds played between 28,000 and 30,000;

   C. 35% of the total average green fee price per paid round per year for rounds played over 30,000

5. An option to renew for a further five (5) year term on the same conditions; except rent which will be determined based on market rent but shall not be less than the rent during the final year of the previous term.

The proposed lease was circulated to City departments and no objections were received. Winnipeg Golf Services were consulted during the lease negotiations and support the signed terms and conditions.

The Risk Management Division of Corporate Finance reviewed the insurance requirements for this proposed lease and their comments have been incorporated into the terms and conditions.

It is acknowledged that no appraisal of the golf course was completed. Golf courses are not typically leased and comparable courses that are leased are owned by the City. In this regard, Winnipeg Golf Services is considered to be most knowledgeable regarding the market rent for golf courses based on their current rent roll, past marketing experiences and ongoing tenant relations. Market rent for a golf course is more dependent on the financial health of the club rather than the real estate value. Winnipeg Golf Services monitors the financial health of its tenants through annual reviews of financial statements.

It is expected that the market value of the course likely exceeds its value in use, and the highest and best use of the land will be reviewed through the Golf Repurposing Study, for which the Public Service is currently soliciting bid proposals. Should an alternate land use be proposed by the Study, the City has the right to terminate the lease with two years' notice.

From an operations perspective, it is impractical to pursue a one-year lease while the Golf Repurposing Study is underway. Depending on the outcome of the Study, it may take several years before any alternative use is active or programmed. If the lease is terminated early, the City will be responsible to partially reimburse the tenant for their capital investment as of the termination date.

The lease rate negotiated (both inclusive and exclusive of taxes) represents the most profitable lease or management agreement among the City-owned golf courses.

This report seeks approval of the proposed lease Terms and Conditions as negotiated. If the proposed Terms and Conditions are approved by at least two-thirds of all members of Council, the lease agreement will commence as negotiated on March 1, 2021.

FINANCIAL IMPACT

Financial Impact Statement

Date: December 15, 2020

Project Name:

First Year of Program 2021

Proposed Lease Agreement between Western Golf Management (Manitoba) Ltd and the City of Winnipeg at 400 Shaftesbury Blvd.

	2021	2022	2023	2024	2025
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	177,640	173,000	173,000	173,000	1,083,000
Net Cost/(Benefit)	$ (177,640)	$ (173,000)	$ (173,000)	$ (173,000)	$ (1,083,000)
Less: Existing Budget Amounts	(177,640)	(173,000)	(173,000)	(173,000)	(1,083,000)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2021 consist of gross rent of $173,000 + a one-time legal document preparation fee of $4,640. Revenue from 2022-2024 is gross rent of $173,000/annum while revenue from 2025 to 2030 is gross rent of $173,000 in 2025 plus gross rent of $182,000/annum from 2026-2030. To be conservative, for the purposes of this analysis it is assumed that no additional rent will be earned during the term of the lease.

Mike McGinn December 15, 2020

Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:

Legal Services Department (as to legal issues)
Risk Management (as to insurance requirements)
Golf Services

OURWINNIPEG POLICY ALIGNMENT

Section 01-5- Recreation
Direction 2: Work with community partners to provide services that are responsive to the community's recreation and leisure needs.

Section 03-2- Vitality
Direction 2: Deliver a Coordinated, Integrated, and Seamless Service Response to Address Community Needs and Priorities that Contribute to Building Healthy Communities

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

7.2 Increase and Preserve Tree Canopy
7.3 Preserve and Manage Parks and Natural Areas to Support Climate Change Mitigation

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Charles Osondu, Senior Leasing Officer
Date: December 18, 2020
File No: 5760-C-V3

Attachments:
Schedule A – Lease Terms and Conditions
Schedule B – Misc. Plan 14231/4
Schedule C – Maintenance Schedule Requirements
Schedule D – Winterization Requirement

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR A LEASE AT 400 SHAFTESBURY BLVD.

Landlord:	1. The City of Winnipeg ("City")
Lessee:	2. Western Golf Management (Manitoba) Ltd. (the "Lessee")
Leased Area:	3. As identified as "Leased Area" on Misc. Plan No. 14231/4 attached hereto as Schedule "B" (hereinafter called the "Leased Area").
Primary Use:	4. For the purpose of operating, managing and maintaining a golf course, including a concession area and not for any other purpose without prior written consent of the Director of Planning, Property and Development (hereinafter referred to as the "Director") or his delegate.
Term:	5. Ten (10) year term commencing March 1, 2021 and expiring on February 28, 2031.
Rent:	6. For the period March 1, 2021 to February 28, 2026, the Lessee shall pay the City an annual rent of One Hundred Seventy-Three Thousand Dollars ($173,000.00) plus GST, payable monthly in advance at the rate of Fourteen Thousand, Four Hundred and Sixteen Dollars and sixty-seven cents ($14,416.67) plus GST, on the first of every month of the period to February 28, 2026.
	7. Commencing March 1, 2026 to February 28, 2031, the Lessee shall pay to the City an annual rent of One Hundred and Eighty-Two Thousand Dollars ($182,000.00) plus GST, payable monthly in advance at the rate of Fifteen Thousand One Hundred Sixty-Six Dollars and sixty-seven cents ($15,166.67) plus GST, on the first of every month during the period commencing on March 1, 2026 to February 28, 2031.
Additional Rent:	8. The Lessee shall pay an additional rent as follows: i. 25% of the total average green fee price per paid round per year for rounds played between 26000 and 28000; ii. 30% of the total average green fee price per paid round per year for rounds played between 28000 and 30000; iii. 35% of the total average green fee price per paid round per year for rounds played over 30000
Extension Option:	9. One (1) Five (5) year option to extend at the same terms and conditions; except rent which will be determined based on market rate but shall not be less than the rent during the final year of the previous term.

Document Preparation Fee:

10. A one-time document preparation fee in the amount of $4,640.00 plus GST payable prior to the commencement date.

Realty Taxes, etc.:

11. Lessee is responsible for all realty taxes, municipal taxes, school taxes, local improvements, frontage levies, license fees, business tax, etc. which may be charged in respect of the use and occupation of the Leased Area. Provided that, as the amount of Rent payable by the Lessee includes a component for annual realty taxes, municipal taxes, school taxes, local improvements and frontage levies to a maximum increase of 3% over the total amount levied or charged for these items for the previous year, any amount of the total of annual realty taxes, municipal taxes, school taxes, local improvements and frontage levies levied or charged exceeding a 3% increase for the total of these items over that of the previous year will be payable by Winnipeg Golf Services.

Operating Costs:

12. The Lessee shall be responsible for all costs associated with the Leased Area, including but not limited to security, garbage removal, snow removal and general maintenance of the Proposed Leased Area

Termination

13. The Lease Agreement may be terminated:

    a) Upon Two (2) years written notice by either party; or

    b) Immediately upon the Lessee being in default of the terms and conditions of the Lease Agreement provided that the City provided notice to the Lessee to remedy the default and the Lessee did not remedy said default within the notice period.

14. Upon termination or cancellation of the Lease Agreement, the Lessee shall remove its property from the Leased Area and leave same in a condition satisfactory to the Director. Should the Lessee default in so doing the City may remove the Lessee's property and restore the Leased Area at the sole risk and expense of the Lessee.

15. Notwithstanding the forfeiture or termination of this agreement in any manner herein provided for, the Lessee shall be and remain liable to the City for all payments due and obligations and liabilities incurred hereunder up to the date of such forfeitures or termination and for the fulfillment of all obligations on the part of the Lessee to be observed and performed upon or after the said termination.

Insurance:

16. The Lessee shall provide and maintain the following insurance coverage at all times for the duration of the contract:

    a) Commercial General Liability insurance including but not limited to the following provisions:

i. The City to be included as an additional insured;

ii. The policy to contain a cross-liability or severability of interest clause;

iii. Protection for claims of bodily injury and property damage, personal and advertising injury liability, liquor liability, contractual liability employees as additional insured, injury to participants and spectators, products and completed operations liability, in the inclusive amount of at least five million dollars ($5,000,000.00) per occurrence with a minimum of five million dollars ($5,000,000.00) general aggregate;

iv. Shall not contain any special limitations on the scope of coverage afforded the City, its officers, officials, employees, agents or volunteers;

v. In addition, the liability policy must be specifically endorsed to provide misapplication and drift coverage with respect to chemical and herbicide application, in the amount of at least twenty-five thousand dollars ($25,000.00).

b) A broad form property insurance policy for the full replacement cost insuring all buildings, contents, signage, equipment including golf carts and green keeping and Lessees improvements and business interruption. Such policy to include the City as a loss payable as their interest may appear;

c) An equipment breakdown insurance policy, for the full replacement cost of the facility including all boilers, pressure vessels (fired and unfired), air conditioning equipment, mechanical and electrical equipment, transformers, electrical switch gears, motors, compressors, refrigeration equipment and miscellaneous electrical apparatus owned or operated by the City, and such policy shall include the City as a Loss payable as their interests may appear;

d) If required, automobile liability insurance for owned and non-owned automobiles used for or in connection with the Lease in the amount of at least two million dollars ($2,000,000.00) to remain in place at all times during the full term of the Lease Agreement; such insurance may be met through the commercial general liability cover where applicable;

e) Subject to approval by the Director, if the Lessee performs any repair, maintenance, renovation, or construction work in/to/on/under the proposed Leased Area, the Lessee shall:

i. Provide and maintain (or ensure that the contractor provides and maintains) minimum commercial general liability and automobile liability insurance coverage in the amount of at least two million dollars ($2,000,000.00) and worker's compensation to the satisfaction of the City's Supervisor of Insurance based on the works that are taking place (and can include, but is not limited to Builder's Risk insurance and wrap up liability) for all contractors or sub-contractors hired to perform such repair work, maintenance, renovation or construction work. Such insurance to remain in place at all times during the performance of the work until total performance;

ii. File with the City a Certificate of Insurance in a form satisfactory to the City's Supervisor of Insurance at least five (5) business days prior to the commencement of any work on the Proposed Leased Area;

f) All policies shall be taken out with insurers licensed to and carrying on business in the Province of Manitoba;

g) All deductibles shall be entirely borne by the Lessee;

h) The Lessee shall not cancel, or cause any such policy or policies to lapse without a minimum thirty (30) days prior written notice to the City of Winnipeg;

i) The Lessee shall provide written notice to the City of any material changes to their policies within thirty (30) days of the change taking effect;

j) The Lessee shall file with the City an annual Certificate of Insurance in a form satisfactory to the City's Supervisor of Insurance All certificates of insurance are to be sent to:

The City of Winnipeg
Risk Management Division
3rd Floor – 185 King Street, Wpg, MB R3B 1J1
Attention: Supervisor of Insurance
Fax # 204-986-6132
Email: insurance@winnipeg.ca;

k) The City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of the Lease and for any subsequent renewals thereof, provided that the City shall give the Lessee reasonable notice and shall request reasonable change.

Assignment or Sub-let:

17. The Lessee is not to assign or sub-let or part with possession of all or any part of the Leased Area without the Lessee first obtaining the prior written consent of the Director. In such event,

the City in its sole discretion may cancel this agreement and enter into a new agreement.

18. And further the Lessee acknowledges and agrees that:

    a) Upon its making application for such consent by the City the Lessee shall pay to the City a non-refundable administrative fee of Five Hundred dollars ($500.00), plus applicable Goods and Services Tax, or such amount as may from time to time be determined by the City in its sole discretion acting reasonably.

Lessee Improvements:

19. The Lessee will not erect or permit the erection of any building or structure whatsoever on the Leased Area, without the prior written approval of the Director, which may require the Lessee to submit as-built drawings for any requested improvements to the Leased Area.

20. The Lessee agrees to commit a minimum of $500,000.00 in value towards capital improvements which shall include, but not be limited to, on course golf and facility/building improvements over the term of the lease; such improvements must be determined in consultation with the Chief Operating Officer of Golf Services and approved by the Director.

21. All Lessee improvements including but not limited to capital improvements to be performed at the sole cost, expense and effort of the Lessee, subject to prior approval by the Director.

22. All leasehold improvements upon the Leased Area shall immediately become the property of the City upon completion of construction.

23. The Lessee is advised that no permanent structures are permitted above the Public Utilities.

Development and Maintenance:

24. The development and maintenance of the Leased Area will be performed at the sole cost, expense and effort of the Lessee, including, but not limited to, obtaining all permits required to develop, occupy and utilize the Leased Area for its intended use.

25. The Lessee shall maintain the Leased Area in good and operating condition and in accordance with the attached Schedules “C” and “D”.

26. The Lessee shall maintain at its own expense the Leased Area in a safe, clean and tidy condition to the satisfaction of the City.

27. The Maintenance Coordinator of Golf Services may be on site to inspect any work pertaining to the golf course.

Repairs:

28. Lessee agrees to maintain the Leased Area in accordance with Schedules “C” and “D” and any leasehold improvements located thereon for public golf course purposes in good and operating condition to a standard at least equal to that which has existed

in recent years. Should the Lessee fail to meet such standards, then, subject to thirty (30) days written notice and specifics being provided of the Lessee's failure to meet such standards, the City shall be permitted to enter the Leased Area and complete the work that is required at the Lessee's expense. Such work will be charged to the Lessee as additional rent.

29. Lessee shall be responsible for all structural repairs to buildings within the Leased Area.

30. Lessee shall ensure that required repairs to irrigation equipment and related infrastructure including but not limited to sprinkler heads, piping, and pumps (hereinafter referred to as the "Irrigation System") are identified and carried out forthwith to the satisfaction of the Director. Should the Lessee fail to carry out such repairs forthwith, the City shall be permitted to enter the Leased Area and carry out such repairs at the Lessee's expense. The cost of such repairs will be charged to the Lessee as additional rent.

City's Access:

31. The City shall have the right of access to the Leased Area at any time (24 hours a day, seven days a week) by its employees or other persons acting with authorization, with or without equipment:

    a) To view the state of repair of the Leased Area, and the Lessee shall repair according to notice in writing given by the City. If the Lessee fails to repair according to the notice, the City may do such work at the sole cost and expense of the Lessee; or

    b) For the purpose of maintaining or repairing its utilities in or near to the Leased Area at any time with or without equipment, for the purpose of renewing, altering or repairing its facilities including the right to exclude all others for as long as may be necessary to carry out such work; or

    c) For any other purpose, without being responsible for any damage occasioned thereby.

32. The City reserves the right for Bell MTS Inc. and The Manitoba Hydro-Electric Board or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Leased Area for the placement, maintenance and/or repair of their equipment without the City and/or the Public Utilities being responsible for any damage occasioned thereby. For clarity, only the City may enter into easement agreements with the Public Utilities. The Lessee has no authority to enter into such agreements. The City shall be entitled to any rent or revenue from the placement of any equipment by the Public Utilities on the Leased Area.

Conditions:

33. The Lessee takes the Leased Area on an "as is" basis.

34. The Lessee shall be responsible for the evacuation of all volunteers, staff and invitees during an emergency.

35. The Lessee is to comply with all laws, by-laws and regulations of any federal, provincial or municipal or other applicable authority.

36. The Lessee shall not place any non-sponsorship or commercial signage or advertising without prior written approval of the Director.

    In the event that the Lessee wishes to pursue sponsorship opportunities, including naming rights, for the Leased Area, any improvements or proposed improvements thereon or in any other way related to the Leased Lands, the Lessee is required to comply with the City's Sponsorship Policy.

37. The Lessee shall provide, on an annual basis on the anniversary of the lease, copies of all relevant inspections/reports/etc. (i.e. boiler/elevator/furnace inspection certificates, financial statements prepared by an independent chartered professional accountant, etc.).

38. Lessee shall provide on an annual basis on the anniversary of the lease an audited financial statement prepared by an independent chartered professional accountant including but not limited to the following:

    Revenue:

    a) Green fee revenue
    b) Total rounds played
    c) Total rounds played in all member and public green fee categories
    d) Membership revenue
    e) Pro shop sales
    f) Rentals
    g) Food and beverage

    Expenses:

    a) Total expenses
    b) Cost of goods sold
    c) Maintenance costs

39. Lessee shall not file any caveat or other encumbrance against the Leased Area.

40. The Lessee acknowledges and agrees that the City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, conditions or suitability of the Leased Area for any use or purpose, nor as to any environmental conditions which may exist.

41. If in the future the City determines that the Leased Area is surplus to its needs and available for sale, the Lessee will be so advised.

42. The City and its authorized agents and employees after consultations with the Lessee as to intent shall be permitted entry to the Leased Area during:

    a) The last six (6) months of the term of this Lease for the purpose of exhibiting them to prospective Lessees;

    b) The term of this Lease for the purpose of exhibiting the Leased Area to prospective purchasers and developers.

43. The Lessee shall release, indemnify and save the City harmless from and against any and all claims for damages or injuries, including death that may arise from the use of the Leased Area by the Lessee or its invitees. This provision shall survive any termination, cancellation or expiration of this Agreement.

44. Lessee shall not release into the environment, or deposit, discharge, place or dispose of, at on, or near the Leased Area and/or adjoining City land, any dangerous goods as that term is defined in *The Dangerous Goods Handling and Transportation Act*, C.C.S.M. c. D12, as amended, replaced or substituted from time to time.

45. The Lessee shall make the facility available to the City for the hosting of international, national and local sporting events upon the receipt of 180 days' written notice. During such special events, the Lessee will be unable to use the Leased Area and will not be compensated for this loss of use, nor will the lease term be extended in any way. The City will be responsible for any repairs or damages caused by such use. The City will act in good faith to accommodate the Lessee's scheduled events with the understanding that the City will incur no additional costs to do so.

46. The Lessee shall not discriminate against or deny admission to any person seeking admission to the Lessee's facilities within the terms hereinbefore defined by reason only of the race, nationality, religion, colour, sex, age, marital status, family status, physical or mental handicap, or ethnic or national origin of any such person.

47. Notwithstanding anything to the contrary contained in this Agreement, if either party hereto is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of a force majeure event, including, but not limited to: strikes; walkouts; labour troubles; industrial disturbances; inability to procure materials or services; failures, fluctuations or non-availability of electric power, heat, light, ventilation or air-conditioning; governmental laws,

regulations or controls; riots; civil commotions; insurrections; sabotage; terrorism; invasion; rebellion; military or usurped power; war or warlike operations; blockades; epidemics; washouts; nuclear and radiation activity or fallout; explosions; natural disasters; Acts of God; or other reason whether of a similar nature or not which is not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such term, covenant or act shall be excused for the period of the delay and the party so delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay. The provisions of this section shall not operate to excuse Lessee from the payment of Rent/Fees in the amounts and at the times specified in this Agreement nor shall they apply so as to extend the period of time for the Lessee to complete Lessee's work or to extend the fixturing period, if any, nor shall they entitle the Lessee to compensation for any inconvenience, nuisance or discomfort thereby occasioned. The parties agree that the party claiming the benefit of a force majeure event shall inform the other party in writing promptly on learning of such delay and shall, where possible, use commercially reasonable efforts to mitigate the effect of such delay.

48. Should the City terminate the Agreement during the initial ten (10) year term without any cause, the Lessee shall be compensated by an amount equivalent to (A) less [(A) divided by (B) times (C)] where:

    A. Equals the capital cost incurred by the Lessee, in a calendar year, for investments made pursuant to the terms of this Agreement;

    B. Equals (A) divided by the number of years (i.e.: golf seasons) remaining in the term of this Agreement inclusive of the year in which the capital investment was made; and

    C. Equals the number of years elapsed since the capital investment was made.

49. Further to clause 48 above, the Chief Operating Officer of Winnipeg Golf Services will monitor the capital investment projects and associated costs undertaken by the Lessee to ensure that projects are completed and to establish a value for the compensation, should the lease be cancelled early. The Chief Operating Officer of Winnipeg Golf Services, in consultation with the Lessee, will determine the value of each project and should an agreement on the value for each project not be reached, the City shall have the right to engage a third party to determine the value of each project.

50. If any controversy shall occur between the Parties hereto relating to the interpretation or implementation of any of the provisions of

this Agreement, the Parties agree to use reasonable efforts to resolve the controversy as between them. Should the Parties be unable to resolve the dispute or controversy after having exercised their best efforts to do so, the Parties may agree to have a single mediator appointed in order to assist in the resolution of same pursuant to a procedure to be determined by the Parties or, in default of such agreement, as determined by the mediator. If, in the course of mediation, it is apparent that the dispute or controversy will not be resolved by mediation, then such dispute shall be resolved by arbitration to be conducted by a single arbitrator. The arbitrator shall be selected by the Parties and, in default of such agreement, such arbitrator to be appointed by a Judge of the Court of Queen's Bench in Manitoba upon the application of either of the Parties. The arbitration shall proceed in accordance with the provisions of *The Arbitration Act*, C.C.S.M. c. A120. The decision of the arbitrator shall be final and binding and no appeal shall lie therefrom.

Other

51. The Lessee shall enter into a formal agreement with the City embodying the foregoing Proposed Terms and Conditions and such other terms and conditions as the City Solicitor/Director of Legal Services deems necessary and, in a form, satisfactory to the City Solicitor/Director of Legal Services.

52. **All terms and conditions contained herein, are subject to the approval of Council, or its delegated authority, and are not binding until such time as those approvals are obtained.**

[EXECUTION PAGE FOLLOWS]

Western Golf Management (Manitoba) Ltd., hereby agrees to enter into a lease agreement with The City of Winnipeg for the use of the property identified as “Leased Area” on the attached Misc. Plan No. 14231/4 and in accordance with the proposed terms and conditions as outlined herein.

Signed in the City of Winnipeg, in the Province of Manitoba, this 24th Day of November, 2020

Original documents signed by the Tenant

Per: _____

Name: Harry Brotchie, President of Lakeland Golf Management Inc.

Please provide the following Lessee contact information:

Contact Person:

Daytime: _____ Phone No.:_____

After Hours: _____ Phone No.:_____

Fax No.: _____

E-mail Address: _____

SCHEDULE B



LEASED AREA: 473,000± m² (116.9± acres)
490 SHAFTESBURY BOULEVARD - MARYMOUND
2299 GRANT AVENUE - CMU

Date: 2020-MAR-03
District: ASBA
File: Not Available
Scale: 1:4000
Requested by: COs
Drawn by: IP
Reference Dwg No.:
Misc. Plan No. 14231/3
Plan No. 39581 & 40711
2017-108 Site Survey for Evidence Archive at WDPS.pdf

NOTE: Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.

AERIAL (2018) METRIC

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SERVICES

MISC. PLAN NO. 14231/4

SCHEDULE C

Activity	Minimum Requirements
1. Mowing Cycles:	
a) Greens	Daily
b) Tees	3 times per week
c) Fairways	3 times per week
d) Primary Rough	Twice per week
e) Secondary Rough	Twice per week
f) Trimmer Mowing	Twice per week
2. Tee Maintenance:	
a) Changing Tee Markers	Daily
b) Collect Garbage	As required
c) Fill Ball Washers	Weekly
d) Aeration	Seasonally
e) Topdressing	As required
f) Seeding	Bi-weekly
g) Fertilizing	Monthly
3. Green Maintenance	
a) Changing holes	Daily
b) Aeration	Seasonally

c) Topdressing	As required
d) Seeding	Monthly
e) Fertilizing	Bi-weekly
f) Fungicide Application	As required
4. Fairway, Grounds Maintenance	
a) Seeding	Monthly or as required
b) Fertilizing	Monthly or as required
c) Litter pick up	Weekly or as required
5. Watering Cycles	
a) Greens	Min. of 2`` per week or as required
b) Tees	Min. of 1 ½`` per week or as required
c) Fairways	Min of 1 ½ `` per week or as required
d) Trees	As required
e) Shrub, Flower beds, etc.	Weekly or as required
6. Bunker Maintenance	
a) Bunker Maintenance (i.e. edging, weeding, add sand, etc.)	Monthly
g) Sand Bunkers	Groomed weekly
7. Assorted Tasks	
a) Flower Bed Maintenance	As required

b) Irrigation Maintenance	As required
c) Washrooms (Course or Clubhouse)	Daily
d) Leaf Blowing	As required
e) Parking Lot Maintenance	As required
f) Pathway Maintenance	As required
g) Equipment Servicing	Daily
h) Equipment Maintenance (Spring or Fall)	As required
i) Markers, Signs, Benches, etc.	As required
j) Tree Pruning	As required
k) Soil Testing	As required
8. General Activities	
a) Ordering of Parts, Supplies and Materials	As required
b) Irrigation System (Startup/Shutdown)	Spring and Fall
c) Inventory Checks (Spring/Fall)	Twice per season
d) Equipment Storage (End Season	Once
e) Record Keeping (of all maintenance Activities)	Daily
f) Timekeeping	Daily
g) Staff Scheduling	Weekly
h) Capital Projects	Seasonally
i) Building Maintenance (cleaning, painting, etc.)	As required

SCHEDULE D

Winterization Requirements

The following activities are performed at the end of the golf season in preparation for winter:

i) Winterization of the Irrigation System for the Golf Course

Winterization of the irrigation system normally occurs in mid-October before frost appears on a regular basis. This will involve the use of an air compressor in order to force pressurized air through the system so as to remove all possible water in the lines. This includes the securing of the pump. The pump should be stored in a secure facility for the winter months and should be serviced as required.

ii) Application of Winter Chemicals

The spreading of a dry chemical mix of fertilizers and fungicides on the greens is an important work activity which normally requires two applications immediately before snowfall. Once the greens are treated, no golfer should be allowed on the greens for the balance of the season.

iii) Green Cover

Greens covers are preferred, but at a minimum, snow fencing should be placed around each green and/or tree branches or brush should be placed on each green to trap and retain an insulation blanket of snow.