

CONCESSIONAIRE AGREEMENT

This Concessionaire Agreement is entered into this ____ day of _____, 2022, by and between the City of Grand Rapids, Minnesota, a municipal corporation ("City") and S. Bastian Companies, LLC on behalf of Stewart Bastian as its Corporate Officer ("Concessionaire").

RECITALS

WHEREAS, City owns Pokegama Golf Course and Clubhouse and desires to contract for concessionary services; and

WHEREAS, Concessionaire has represented that they are willing and able to provide high quality concessionaire services as contemplated by this Agreement; and

WHEREAS, City and Concessionaire wish to enter into this Agreement specifying the terms and conditions under which City will retain Concessionaire to provide concessionaire services;

NOW, THEREFORE, City and Concessionaire, for goods and valuable mutual consideration, and with the intent of being legally bound, agree as follows:

ARTICLE 1 - CONCESSIONS SERVICES

1.1 General: City hereby grants to Concessionaire the right to provide concession services as further defined in the Concession Agreement, at Pokegama Golf Course and Clubhouse, for the term of this Concessionaire Agreement. Concessionaire commits to provide concessionaire services as required by this Concessionaire Agreement for the term hereof. "Concession services" consists of Clubhouse concession services, beverage cart services and special event concession services. The concessionaire may cater private events during the term of the contract. In the event of a conflict between golf related events and private related events, golf related events shall have first priority. Further, during private events, the bar area must be open to the golfing public and they also must be allowed access to the on-sale liquor service.

1.2 Clubhouse Services: Clubhouse services shall consist of food and beverage services prepared and served within Pokegama Golf Course Clubhouse, including on-sale liquor service. Clubhouse services shall be provided on a schedule of days and hours per day as designated by City's Director of Golf. Clubhouse services shall be available on days when the golf course is open. The typical golf season runs from early April through late October but may be extended, weather permitting. If the Concessionaire wishes to apply for an off-sale liquor license and all conditions of such a license can be met, the City will not object to the license's issuance.

1.3 Beverage Carts: Concessionaire shall provide beverage service, including liquor service, from beverage carts on days and times mutually agreed between Concessionaire and City's Director of Golf. The City owns one beverage cart and will allow the Concessionaire to use said cart at no expense for as long as it is mutually agreed to by all parties.

Concessionaire shall provide liability insurance covering operation of the cart, along with liquor liability insurance covering the dispensing of beverages while using the cart. Liability coverage shall be at least \$1,500,000 combined single limit or such other amount as set forth in Minn. Stat. § 466.06, subd. 1, as may be changed from time to time, setting forth a municipality's maximum liability limit. Liquor liability coverage applicable to the cart shall be at least the minimum amounts required by statute. City shall be named as an additional insured with respect to use of the cart and copies of the policies of insurance shall be deposited with the City Clerk prior to use of the cart by Concessionaire.

1.4 Simulators: Pokegama Golf Course has two Trackman Golf Simulators (hereinafter referred to as the "Simulators") that have been installed in the clubhouse dining room as of November 2021. The City of Grand Rapids desires that the Concessionaires collect the fees for the hourly rental of both Simulators.

The Concessionaires will be responsible for staffing the operation during business hours that are mutually agreed upon by Concessionaires and PGC Director

of Golf (hereinafter referred to as the “DOG”). The Simulators’ hourly rate charge will be determined by the DOG.

In exchange for the staffing of the operation the Concessionaires will receive payment of \$15 for each hour the simulators are open for business and also keeping 2% of the simulator sales amount to help offset the credit card fees.

The DOG will monitor use of the Simulators and report any discrepancies to the Concessionaires and City Finance Department.

The Simulator rental fees, which include sales tax, minus the \$15 hourly operator fees, and the 2% credit card fees will be paid weekly to the City of Grand Rapids/Pokegama Golf Course by the Concessionaires. The City of Grand Rapids/Pokegama Golf Course will be responsible for paying sales tax collection on simulator fees. Actual daily hours of business shall be reported with the weekly summary of operations to the DOG by the Concessionaires.

The DOG and Concessionaires will work together to market the simulators with related expenses to be paid by City of Grand Rapids/Pokegama Golf Course.

1.5 Special Events: Concessionaire shall provide catering services for golf related banquets and other golf related special events at Pokegama Golf Course Clubhouse.

1.6 Standards: Concessionaire agrees to provide high quality food and beverages and diligent service and management in providing concession services under this Concessionaire Agreement, and to do those things necessary to provide good and proper service similar to that provided for the same goods and services provided under similar circumstances in the community.

1.7 Licenses Permits: Concessionaire shall be responsible to obtain and keep in force all licenses and permits necessary to lawfully provide concession services pursuant to this Concessionaire Agreement. Concessionaire shall hold a valid on-sale intoxicating liquor license for the premises as a condition of this Concessionaire Agreement.

1.8 Employees: All persons retained to provide concession services pursuant to this Concessionaire Agreement shall be employees of Concessionaire and not of City. Concessionaire shall provide City with a copy of a Minnesota workers' compensation policy evidencing coverage for all of Concessionaire's employees. Concessionaire shall deduct all legally required payroll deductions and remit same according to law.

ARTICLE 2 - FEE, BOND

2.1 Fee: Concessionaire shall pay to City, as consideration for the right to provide concession services pursuant to this Agreement, the amount of Eighteen Thousand Dollars (\$ 18,000) per year or \$2,000 per month payable in the months of April, May, June, July, August, September, October, November, and December. Rent fees for each month will be due the 1st of each month.

In addition to the annual fee outlined in the previous paragraph, beginning in the calendar year 2013, Concessionaire will also pay to the City a Franchise Fee consisting of 2% of the annual total gross sales in excess of \$400,000 as reported on the Concessionaire's Minnesota State Sales Tax returns each year. The annual payment date for the franchise fee would be due two quarters after the applicable taxable year.

2.2 Golfing Privileges: The Concessionaires, limited to Stewart, Janelle, Annika and Natalie Bastian may golf at the Pokegama Golf Course at no cost. This is agreed to, in part, to assist the Concessionaires in becoming as visible to the golfing community as possible.

2.3 Surety Bond: Concessionaire shall furnish to City a surety bond, letter of credit or cash deposit in the amount of Five Thousand Dollars (\$5,000.00) in order to assure compliance with the provisions of this Agreement by no later than January 1, 2021. If Concessionaire fails to comply with the provisions of this Concessionaire

Agreement, City shall be entitled, without further notice to Concessionaire, to call upon said surety bond, letter of credit or cash deposit to satisfy Concessionaire's obligations hereunder. Any surety bond or letter of credit furnished by Concessionaire shall state on its face that it shall remain in effect for the term of this Concessionaire Agreement and any renewal thereof. If Concessionaire furnishes a cash deposit, said deposit shall be held by City for the term of this Concessionaire Agreement unless earlier called upon by City to satisfy Concessionaire's obligations hereunder. It is further agreed that such cash deposit, surety bond or letter of credit will be released when this Concessionaire Agreement is no longer in effect, following the taking of an inventory and a determination by the City that the premises and any of City's equipment therein is returned to City in a condition acceptable to City.

ARTICLE 3 - UTILITIES

3.1 Concessionaire and City Responsibilities:

Concessionaire shall be solely responsible for all costs related to phone and internet services which are independent of the golf course operations.

The Concessionaire shall pay for all utility costs, including natural gas and electricity, associated with the food preparation and bar service areas, which will be metered separately from the common areas and the golf shop. In addition, Concessionaire agrees to pay twenty-five percent (25%) of the utility bills for the remaining portions of the building for the months of April through October of each year.

The Concessionaire will be responsible for all of the of garbage picked up at the Clubhouse including recyclables. Thus, the City will have no responsibility for garbage or recycled goods services.

Concessionaire will be solely responsible for one-hundred percent (100%) of the cable television charges. Pay per view and any additional premium channel charges will also be at Concessionaire's sole expense.

ARTICLE 4 - EQUIPMENT

4.1 Concessionaire.

Concessionaire will have the opportunity to use the existing restaurant equipment and beverage cart (as specified in paragraph 1.3 above) owned by the Pokegama Golf Course existing as of the date of this agreement. Concessionaire will be responsible for the acquisition of any additional equipment deemed necessary for the food and beverage operation. Concessionaire will be responsible for all repairs, maintenance and replacement of any equipment, including that owned by the City. The City will retain ownership of its equipment and will remove the equipment at the request of

Concessionaire and will be responsible for the disposal or sale of said equipment.

All equipment, supplies and small wares, including glassware, flatware and serving items, purchased by the Concessionaire will be the sole responsibility of Concessionaire.

Concessionaire agrees to be fully responsible for the costs and safe-keeping of all consumables used in the execution of the restaurant/bar operations, including cleaning and cooking supplies.

4.2 City. City will provide a walk-in cooler/freezer for use by the Concessionaire and will be responsible for any repairs necessary for the cooler/freezer. City will not be responsible for any inventory losses resulting from the malfunction of the cooler. In the case of malfunction the City will repair or replace the cooler within a reasonable time and Concessionaire agrees to be fully responsible for any inventory losses that may have occurred as a result of said malfunction.

Concessionaire will provide the consumables and equipment necessary for the daily maintenance of the main floor and basement restrooms, including toilet paper and hand towels.

4.3 Snow Removal. City will be responsible for snow removal from the parking lot as well as the abutting County Road. Concessionaire agrees to remove the snow from the sidewalks and pedestrian walkways in a timely fashion.

ARTICLE 5 - MAINTENANCE, SECURITY

5.1 Maintenance: Concessionaire agrees to maintain and operate their business in compliance with all laws and regulations, including standards set by OSHA and the State Fire Marshall. Concessionaire shall be responsible for the daily cleaning and maintenance of the interior/exterior food service areas, including the kitchen, bar, main floor restrooms and exterior garbage collection area. Concessionaire shall also be responsible for daily cleaning of all public access basement areas.

City shall be responsible for the maintenance of the building exterior, parking lot, all interior fixtures and furniture, the building's plumbing, heating and electrical systems, outside patio furniture, outside patio, exterior walls, foundation, grounds, and the sprinkler systems.

5.2 Security: During the operating season, Concessionaire shall be responsible to secure the premises at the close of each business day by locking all doors and windows. Personal property of Concessionaire kept on the golf course premises or in the Clubhouse are kept there at the risk of Concessionaire and City shall not be liable for any damages, loss or theft thereof. The City shall furnish burglar and fire alarm systems as well as video surveillance systems of both the interior and exterior of the clubhouse, parking lot, and park areas.

ARTICLES 6 - INDEMNITY, INSURANCE

6.1 Indemnity: Concessionaire agrees well and truly to perform and faithfully observe and comply with all the conditions, regulations and provisions prescribed herein, and to indemnify, save and keep harmless and defend City, its

officers, agents and employees of and from any liability, lien, judgment, costs, damages and expenses of whatsoever kind which may in any way be suffered by City or its officers, agents, or employees by reason of or in consequence of the operation of the concession services herein provided for on account of any act or thing done or suffered or omitted to be done under the authority or supposed authority of such grant. This indemnification provision is also applicable to Concessionaire's use of the cart as provided in Section 1.3 of this Concessionaire Agreement.

6.2 Liability Insurance: Concessionaire shall provide general liability insurance for the involved premises and liquor liability insurance for any liquor or liquor related concessions for which liquor liability insurance is generally obtained. General liability coverage amounts shall be at least \$1,500,000 combined single limit or such other amount as set forth in Minn. Stat. § 466.04, subd. 1, as may be changed from time to time, setting forth a municipality's maximum liability limit. Liquor liability coverage amounts for bodily injury, property damage and loss of means of support shall be at least in the minimum amount required by statute. The insurance policies shall name the City as an additional insured. Copies of said policies shall be deposited with the City Clerk prior to commencement of the term of this Agreement.

ARTICLE 7 - TAXES

7.1 Sales Tax: Concessionaire shall be exclusively responsible to timely remit sales taxes based on concessions services provided by Concessionaire pursuant to this Concessionaire Agreement.

ARTICLE 8 - TERMS, CANCELLATION

8.1 Term: The term of this Agreement shall be from November 22, 2021 through December 31, 2024.

8.2 Cancellation: This Agreement shall be subject to cancellation during the term hereof in the event of the happening of any one or more of the following:

- (a) Mutual agreement of City and Concessionaire;

- (b) At the option of City if Concessionaire is adjudicated bankrupt, is in receivership, has made an assignment for the benefit of creditors, or because Concessionaire's financial condition is such that Concessionaire is unable to continue to satisfactory operation;
- (c) Failure of Concessionaire to reasonably perform, keep and observe any of the provisions of this Concessionaire Agreement and the failure of Concessionaire to correct any default or breach thereof within a time specified by City.

8.3 Sale: Should Concessionaire sell the business to a third party during the term of this contract, this contract shall be subject to renegotiation or cancellation.

8.4 Removal: Upon expiration or cancellation of this Agreement, Concessionaire shall remove all goods, chattels and fixtures belonging to Concessionaire and shall leave the premises in the condition in which they were received. In the event said goods, chattels and fixtures are not removed within 14 days from termination of this Agreement, the Concessionaire shall be deemed to have abandoned the same to City.

ARTICLE 9 - GENERAL

9.1 Independent Contractor: Concessionaire is deemed an independent contractor for purposes of this Agreement, and any and all persons employed by Concessionaire in the performance of any work or services required or provided for in this Agreement shall not be considered employees of City for any purpose whatsoever, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit and any and all such claims shall be the sole obligation and responsibility of Concessionaire.

9.2 No Subcontract, Assignment: No portion of this Agreement may be assigned or subcontracted by Concessionaire to any other party without prior written consent of City.

9.3 Governing Law: This Concessionaire Agreement shall be governed by the laws of the State of Minnesota.

9.4 Waivers: The waiver by City or by Concessionaire of any breach of any term, covenant or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

9.5 Notices: Where referred to in this Concessionaire Agreement, notice to City of Concessionaire, respectively shall be addressed as follows:

To City: City of Grand Rapids c/o
Director of Golf Course
Pokegama Golf Course
3910 Golf Course Road
Grand Rapids, MN 55744

To Concessionaire: S. Bastian Companies, LLC on behalf of
Stewart Bastian as its Corporate Officer
("Concessionaire").

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date first written above.

CITY OF GRAND RAPIDS

By: _____
Dale Christy, Mayor

ATTEST: _____
Thomas Pagel,
Its City Administrator

By: _____

S. Bastian Companies, LLC

Stewart Bastian, Corporate Officer