

**CHARTER TOWNSHIP OF PLYMOUTH
BOARD OF TRUSTEES
SPECIAL MEETING
STUDY SESSION
JANUARY 15, 2019**

CALL TO ORDER

CHARTER TOWNSHIP OF PLYMOUTH
BOARD OF TRUSTEES
SPECIAL MEETING
STUDY SESSION
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ITEM A
ROLL CALL

CHARTER TOWNSHIP OF PLYMOUTH
BOARD OF TRUSTEES
SPECIAL MEETING
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ITEM B
APPROVAL OF AGENDA

**CHARTER TOWNSHIP OF PLYMOUTH
BOARD OF TRUSTEES SPECIAL MEETING
STUDY SESSION**

Tuesday, January 15, 2019

7:00 PM



CALL TO ORDER AT _____ P.M.

A. ROLL CALL: Kurt Heise____, Mark Clinton____, Chuck Curmi____,
Bob Doroshewitz____, Jerry Vorva____, Jack Dempsey____,
Gary Heitman_____

B. APPROVAL OF AGENDA
Tuesday, January 15, 2019

C. PUBLIC COMMENTS AND QUESTIONS (Limited to 3 minutes)

D. NEW BUSINESS

1. Update on Golf Course Management Contract, *Supervisor Kurt Heise*
2. Discussion on Township Goals for 2019

E. SUPERVISOR AND TRUSTEE COMMENTS

**F. PUBLIC COMMENTS AND QUESTIONS
(Limited to 3 Minutes)**

G. ADJOURNMENT

PLEASE TAKE NOTE: The Charter Township of Plymouth will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at all Township Meetings, to Individuals with disabilities at the Meetings/Hearings upon two weeks' notice to the Charter Township of Plymouth by writing or calling the following: Human Resource Office, 9955 N Haggerty Road, Plymouth, MI 48170. Phone number (734) 354-3202 TDD units: 1-800-649-3777 (Michigan Relay Services)

**The Public Is Invited and Encouraged To Attend All Meetings of
the Board of Trustees of the Charter Township of Plymouth.**

CHARTER TOWNSHIP OF PLYMOUTH
BOARD OF TRUSTEES
SPECIAL MEETING
STUDY SESSION
JANUARY 15, 2019

ITEM C
PUBLIC COMMENTS AND QUESTIONS
3 MINUTE LIMIT

**CHARTER TOWNSHIP OF PLYMOUTH
BOARD OF TRUSTEES
SPECIAL MEETING
STUDY SESSION
JANUARY 15, 2019**

NEW BUSINESS

**ITEM D.1
UPDATE ON GOLF COURSE MANAGEMENT
CONTRACT
SUPERVISOR KURT HEISE**



CHARTER TOWNSHIP OF PLYMOUTH REQUEST FOR BOARD ACTION

MEETING DATE: January 15, 2019

ITEM: Update and discussion regarding contract negotiations with ADM Ventures LLC, for Management of Hilltop Golf Course

PRESENTERS: Supervisor Heise, Attorney Bennett

BACKGROUND: Negotiations continue on a new management contract with ADM Ventures for the management of Hilltop Golf Course. While we are behind schedule, it is my hope to have this item before the Board at your January 22 meeting. On or before our Study Session on January 15, we will have a draft for your review and discussion.

PROPOSED MOTION: None; discussion only

MANAGEMENT AGREEMENT - HILLTOP GOLF COURSE

THIS MANAGEMENT AGREEMENT – HILLTOP GOLF COURSE ("Agreement") is made as of this ____ day of January, 2019 by and between _____, LLC ("AMV"), a Michigan limited liability company, having an address at _____ and Township of Plymouth ("Township"), a Michigan Municipal Corporation, having an address at 9955 N. Haggerty Road, Plymouth Township, Michigan 48170.

WHEREAS, Township owns certain real property commonly known as Hilltop Golf Course ("Golf Course"). The Golf Course is located within the Township. ^{NEED A LEGAL DESCRIPTION.} Golf Course is currently an 18-hole golf course, with a clubhouse, and other amenities, and the real property is located at 47000 Powell Rd., Plymouth Township, Michigan 48170.

WHEREAS, Township recognizes the benefit of engaging a third party management company to manage ~~the affairs of~~ the Golf Course, ^{FOR THE BENEFIT OF THE PUBLIC,}

WHEREAS, AMV is in the business of managing Golf Course, ^{S,}

WHEREAS, Township desires to utilize the services and experience of AMV in connection with the management and operation of the Golf Course, and AMV desires to render such services, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements of the parties contained herein, it is mutually agreed as follows:

1. AGREEMENT. Township's Request for Proposal attached at (Exhibit A) and AMV's Response to the Request for Proposal (Exhibit B) are incorporated and made a part of this Agreement hereof as if fully set forth herein.

2. DEFINITIONS. The following terms, as used in this Agreement, shall have the following meaning, unless otherwise set out in this Agreement.

A. Annual Budget and Program: Documents shared by AMV for the operation of the Golf Course to the Township as part of the Township's annual budget process, including but not limited to the following:

1. An annual operating budget, including a projection of anticipated monthly revenues and expenses and cash flows for the Golf Course for the following fiscal year, including, without limitation;

a. A reasonable contingency and anticipated working capital requirements budget for the next fiscal year;

b. A recommended capital improvements budget for the next fiscal year;

c. A general marketing and operational program with respect to the Golf Course, including, without limitation: operating policies, standards for operation and quality of service standards.

2. AMV's hours of operation of the Golf Course, clubhouses, and pro shops, menu for the food and beverage service, merchandise for the pro shop, proposal for providing lessons, and golf camp (if any).

B. Base Management Fees: The annual payment made by the Township to AMV for management services of the Golf Course as set out in this Agreement, including the Request for Proposal and AMV's Response to the Request for Proposal. The Base Management Fees shall be a net fee and excludes expenditures for the Golf Course.

C. AMV: _____, LLC, a Michigan limited liability company.

D. Capital Improvement: the meaning ascribed in Section 10.

E. Expenditures: The process of paying for services, goods, or items incurred in the operation of the Golf Course.

X F. Fiscal Year: January 1st to December 31st.

G. Golf Course: Public Golf Course owned by the Township and commonly known as Hilltop Golf Course, which includes the clubhouses and other amenities.

H. Gross Revenue: All revenues and income of any nature derived directly or indirectly from the Golf Course or from the use or operation thereof, including green fees, gross sales proceeds from the sale of green fees, memberships or annual passes to the Golf Course, monthly dues from annual pass holders of the Golf Course, rental fees for golf carts, golf clubs and other rental items, net lesson fees, range balls, food and beverage revenues (including mandatory service charges, revenue generated from space rentals and from meetings, banquets, parties, receptions, tournaments and other group gatherings) merchandise sales, and the proceeds paid for any business interruption, use, occupancy or similar insurance policy claim. Excluded from "Gross Revenue" are any credits or refunds made to customers, guests or patrons; any sums and credits received by Township for lost or damaged merchandise; payments for Outstanding Groupons; any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, amusement taxes, tourist taxes or charges; any proceeds from the sale or other disposition of the Golf Course, Furniture, Fixtures & Equipment (FF & E), or other capital assets; any property and/or liability insurance proceeds; any proceeds of financing or refinancing of the Golf Course; amounts contributed by Township pursuant to the terms of this Agreement and Income or interest derived from the Golf Course bank accounts. Gross Revenues shall be determined on an accrual basis and in accordance with generally acceptable accounting principles ("GAAP").

I. "HGM": AMV Hilltop Golf Management, LLC, a wholly-owned subsidiary of AMV which will perform some or all of the services at Golf Course.

J. Net Operating Income: Gross Revenue from the Golf Course, minus all operating expenses which are attributable (in accordance with generally accepted accounting principles) to the use and operation of the Golf Course, including, without limitation: employee costs, operating expenses, centralized services, expense reimbursements, all insurance costs related to the operation of the Golf Course, personal property taxes (limited to an amount allocable to the Golf Course), and golf cart leases and operating costs; provided, however, such expenses shall not include any charges for amortization, depreciation, Capital Improvements incurred by Township, debt service, real estate taxes, State and Federal income taxes, or any Base Management Fee paid to AMV hereunder.

K. Operating Account: An account opened by AMV at a local financial institution approved by the Township in which any cash, checks or other negotiable instruments received by AMV on behalf of the Golf Course or the Township on behalf of the Golf Course are deposited. While AMV shall provide statements for Township review, funds from these accounts shall only be accessible by AMV.

L. Operating Expenses: The costs attributable to the operation of the Golf Course, including but not limited to: payroll, employee related costs, insurance, supplies, marketing materials, services, and vendor invoices.

M. Township: The ^{CHARTER}Township of Plymouth, a Michigan municipal corporation. The Township owns the Hilltop Golf Course.

3. TERM OF AGREEMENT: GOLF COURSE TO AMV. The term of this Agreement shall commence February 1, 2019 ("Effective Date"), and unless terminated as provided for in Section 13, shall expire five (5) years from the Effective Date ("Initial Term"), and thereafter shall automatically renew for one successive period of five (5) years (the "Extension Term") providing AMV has met all the contract terms and conditions as set out herein, unless notification is provided to the Township one hundred twenty (120) days prior to the end of the contract. Throughout the term of this Agreement, Township shall provide AMV exclusive ^{use?}possession of the Golf Course, together with the inventory and operational and maintenance equipment set forth on Exhibit C.

4. FORMATION OF SUBSIDIARIES. For operating purposes, AMV shall form a single-purpose subsidiaries, AMV Hilltop Golf Management, LLC ("HGM"), services set forth in this Agreement on behalf of AMV and establish the accounts required in the Agreement. AMV acknowledges and agrees that the formation of the subsidiary entities shall not relieve AMV from any of its duties, obligations, and responsibilities under this Agreement. [TONY – DO YOU WANT TO JUST ENTER INTO THE AGREEMENT WITH THE SUB OR DO IT THIS WAY?] ^{This is New?}

5. APPOINTMENT OF AMV AS MANAGER. AMV represents it is an experienced manager and operator of high quality golf facilities and understands that Township is relying on AMV's expertise in managing golf facilities in entering into this Agreement. From and after the Effective Date, Township hereby grants to AMV the right to supervise and direct the management and operation of the Golf Course, and AMV hereby accepts said grant and agrees

that it shall supervise and direct the management and operation of the Golf Course, all pursuant to and in accordance with the terms of this Agreement and federal, local and state laws, and Township shall reasonably cooperate so as to permit AMV to carry out its duties hereunder.

6. AMV SERVICES. Services rendered by AMV to Township shall be as follows: Subject to the terms of this Agreement, AMV, as an independent contractor, shall have the sole and exclusive right and responsibility to operate and manage the Golf Course. Township and AMV agree that they shall cooperate reasonably with each other to permit AMV to carry out its duties under this Agreement. AMV shall maintain full operations of the Golf Course during the months of April through October, and shall open the Golf Course during the remaining months of each Fiscal Year as AMV, in AMV's sole discretion, deems necessary or appropriate. AMV shall have the responsibility of providing general operational management services for the Golf Course, including, without limitation, the following services:

We'd like to have open for winter activities.

A. Employees. All personnel employed at the Golf Course shall at all times be employees of HGM. AMV shall, as an expense of the Golf Course, hire, promote, supervise, direct and train all HGM employees at the Golf Course (including any training and compliance with Federal, State or local regulations and mandated training programs), fix their compensation and fringe benefits, and, generally establish and maintain all policies relating to employment and employment benefits and comply with all Federal and State laws regarding employment and/or employment benefits. AMV intends to inform all employees wishing to participate in the benefits program that they will be required to adhere to the requirements of the AMV benefits program with respect to required contributions, deductibles and eligibility based upon position classification and employee tenure. All approved costs of every kind and nature pertaining to all employees at the Golf Course arising out of the employer-employee relationship only, including, salaries, fringe benefits, bonuses, and relocation costs shall be considered an Operating Expense. Under no circumstances shall the Township be liable for claims, damages, penalties, sanctions, fines, fees, judgments, costs, injury to anyone, and/or attorney fees arising out of allegations of actions or incidents or actual actions or incidents in which HGM and/or AMV employees have engaged in criminal acts, tortious acts, intentional or otherwise, violations of civil rights, violation of any labor laws, and/or violations of any Federal, State or statute, law or ordinance. Costs incurred in connection with governmental laws and regulations and insurance rules, related to employment status only, including those relating to post employment costs for benefits, health insurance, COBRA payments, and any payouts of unused vacation at termination of employment, shall be an Operating Expense.

** INDEMNIFICATION OF TWP. ?*

For one year after the termination of this Agreement, the Township shall not offer employment to, hire, or employ AMV employees currently holding or having held for the past six (6) months, the position of Manager or any position above Manager who receives direct compensation from the AMV corporate payroll without the written consent of AMV. The obligations under this Paragraph 6A shall survive the termination of this Agreement.

← IS THIS LEGAL ?

B. Inventory — Merchandise and Items for Re-sale. AMV shall, at the expense of the Golf Course, obtain merchandise for the pro shop at the Golf Course, food and beverage items, all in accordance with the Annual Budget and Program.

C. Supervision. AMV shall supervise and manage the golf operations, golf maintenance operations, golf pro shop, and other ancillary services at the Golf Course.

D. Equipment. AMV shall maintain in good working condition and order the physical plant and equipment at the Golf Course, including the golf course and all physical structures which are part of the Golf Course, and all vehicles and other maintenance equipment necessary to the maintenance and operation of the Golf Course in the normal course of business.

E. Purchasing and Procurement. With respect to the duties and responsibilities of AMV as set forth in this Paragraph 6, AMV shall arrange (as an operating expense of the Golf Course) for the procurement of all operating supplies, operating equipment, inventories and services as are deemed necessary to the normal and ordinary course of operation of the Golf Course and to operate the Golf Course.

F. Consultation. In addition to what is just provided in Paragraph 6A pertaining to the assignment by AMV of temporary or part-time AMV personnel, AMV shall, as part of its services hereunder and without additional compensation, make its staff available to Township upon request for consultation regarding the Golf Course, including, but not limited to: operating procedures, agronomy, pro shop, food and beverage service, management and operation, capital improvements, driving range operation, clubhouse space utilization, golf cart maintenance and management, and prices and rate structure. This upper management consultation is in addition to those "employees" that are temporarily assigned to the golf course.

G. Marketing Plan. AMV shall create, direct, and implement an annual marketing plan for the Golf Course as part of the Annual Budget and Program. The marketing plan for the Golf Course will include a summary of golf programs to include rates, membership structure (if applicable), and strategies for achieving the budgeted financial goals and other marketing-related goals for the Golf Course.

AMV shall, as an operating expense of the Golf Course, obtain and manage:

1. Marketing systems, including Internet (web site, e-mail, e-commerce); electronic tee sheet program (reservation system, customer database, POS); credit card processing; and branding materials (graphic design, collateral, photography);
2. Customer acquisition programs, including advertising (print, electronic, display); direct marketing (direct mail, broadcast e-mail); promotional offers; and community and vendor partnerships and sponsorships;
3. Customer retention programs, including special events and programs; promotional offers; and membership events and programs;
4. All pricing for Golf Course rates, which shall include a ten percent (10%) discount for Township residents; and
5. Sales programs, including outing, membership, and event sales management.

All advertising fees and promotional fees paid by third parties to the Golf Course shall belong to and constitute Gross Revenues (defined above) of the Golf Course, and shall be the property of AMV.

H. Accounting. AMV shall timely pay all vendors of the Golf Course (subject to the terms of the Agreement). AMV shall provide separate budgeting, bookkeeping and reporting services to Township for the Golf Course. Copies of all books and records shall be kept at the Golf Course, unless otherwise designated by the Township, and all books, records, software, data, programs, manuals and the like shall remain the property of Township:

1. From April through October of each calendar year during this Agreement, AMV shall prepare for each Golf Course and deliver to the Township, in accordance with AMV standard procedures and format, on an accrual basis, and generally accepted accounting principles (GAAP), on behalf of HGM, regular monthly and annual financial statements which shall include an operating level balance sheet (bank account balances, inventory, accounts payable, accounts receivable if applicable, accrued payables, and gift certificate balances, a profit and loss statement for the current month and year to date activity, accounts payable listing, general ledger activity and comments regarding monthly activity and variances to the Annual Budget and Program.

Final monthly operating statements for each Golf Course shall be furnished to Township by the 20th day following the last day of each month, and annual operating statements shall be furnished by the 45th day following the last day of each fiscal year.

2. AMV shall prepare and deliver to Township no later than February 1st of each year (except for the first full or partial fiscal year when AMV shall prepare and deliver to Township no later than thirty (30) days after the Effective Date) for the following fiscal year ("Fiscal Year"), the Annual Budget and Program.

AMV shall establish, administer, and maintain the payroll procedure and systems for the AMV employees at the Golf Course and shall be responsible for overseeing the benefits to and handling the appropriate payroll deductions for, individual employees. Benefits will be limited to vacations, sick leave, medical insurance coverage, and 401(k) plan, and be presented in the Annual Budget and Program. All employees of the Golf Course shall be employees of AMV, and AMV shall comply with Federal and State employment and employment benefit laws.

3. AMV's services herein shall include management and oversight of the turn-key accounting function as set forth in this Paragraph H, and upon reasonable notice (which may be verbal) representatives of Township shall have the right, at any time during normal business hours, to review all of HGM's books and records including the general ledger, accounts payable, income statement, balance sheet, and budget variance reports relating to the Golf Course including, without limitation, work papers related to the preparation of operating statements. All expenses related to any such review shall be exclusively borne by Township for purpose of this Agreement. Payment by Township of a fee or other amount hereunder shall not constitute a waiver of Township's right to subsequently dispute the amount thereof. If Township and AMV determine that any fee

amount was improperly paid to AMV, AMV shall refund such improperly paid fee, within ten (10) business days after receipt of notice from Township to AMV. If there is any dispute between the parties regarding whether or not any payments of the fees or any other amount were proper, such disputes shall be resolved by a court of competent jurisdiction in the State of Michigan.

I. Operating Expenses and Township's Remittance. Notwithstanding the reporting requirements set forth in this Agreement, Township and AMV acknowledge and agree that AMV shall be responsible for, and shall retain authority over, all operational and financial aspect of the Golf Course. Except as specifically set forth in this Agreement and the payment of the Base Management Fee, AMV shall operate the Golf Course at AMV's sole cost and expense, and Township shall not be responsible to fund any operational losses associated with AMV's operation of the Golf Course.

J. Owner's Meeting. AMV shall, periodically, consult with the Township regarding the Golf Course and its operations at a time, date and place designated by Township.

K. Assignment of Operations. Upon a termination of this Agreement, AMV and/or HGM shall assign to Township's designee all deposit accounts, operating accounts, on-site accounts, vendor accounts, and inventory, accounts receivable, and accounts payable. AMV and/or HGM shall, without additional payment by the Township, cooperate beyond termination with Township and any replacement manager for a reasonable period after termination (and not less than two (2) weeks) to facilitate the orderly transition of the management of the Golf Course.

7. ACCOUNTS. AMV shall establish the Operating Account for the Golf Course for use in its management and operation of the Golf Course in compliance with the terms of this Agreement. AMV shall cause all revenues and receipts to be deposited into the Operating Account on a daily basis. AMV shall use the Operating Account to pay all expenses of the Golf Course. Upon cancellation or termination of this Agreement for any reason, AMV shall reconcile the Operating Account and process any remaining funds in accordance with the terms of this Agreement. AMV shall establish, administer and maintain the point of sale and credit card procedures and systems for the depositing of revenues into such accounts on a daily basis.

8. INSURANCE REQUIREMENTS. AMV shall carry general liability insurance, automobile insurance, workers compensation, liquor liability, herbicide and pesticide insurance and employers' liability insurance for any actions, claims, liability or damages caused to others arising out of the performance of this Agreement in amounts approved by the Township and as set forth in Exhibit D. Township shall be named as an additional insured on the general liability and automobile liability policies using the following wording: "Township of Plymouth, all elected and appointed officials, all employees and volunteers, those working as agents or on behalf of the Township, boards, commissions and/or authorities, or board members, employees, and volunteers with respect to duties relating to the Golf Course" on ISO form B or broader. Township shall be notified of any cancellation of that insurance within 30 days. The cancellation clause shall read: "Should any of the above-described policies be canceled before the expiration date thereof, the issuing company will provide 30 days written notice to the additional insured."

Cancellation or lapse of the insurance shall be considered a material breach of this contract and the contract shall become null and void unless the Contractor immediately provides proof of renewal of continuous coverage to the Township. All insurance carriers shall be licensed and admitted to do business in the State of Michigan and acceptable to the Township. Proof of insurance meeting these requirements shall be provided to the Township before execution of this contract. AMV shall furnish three (3) complete copies of the acceptable Certificates of Insurance. If any of the policies expire during the term of the Agreement, AMV shall deliver renewal certificates and/or policies to ~~Township, Risk Management Department~~, at least ten (10) days prior to the expiration date. The premiums and deductibles shall be paid from the operating accounts or any account established under this Agreement and shall not be paid directly by the Township. Township, at Township's sole cost and expense, shall maintain property insurance upon all buildings and building improvements at the Golf Course, including, those perils generally covered on a "Causes of Loss-Special Form," including fire and extended coverage, windstorm, vandalism, malicious mischief, sprinkler leakage, water damage, accidental collapse, flood, and earthquake, in an amount equal to at least ninety percent (90%) of the full replacement cost with an Increased Cost of Construction Endorsement.

TOWNSHIP
SUPERVISOR

9. COMPENSATION AND FEES. For its services hereunder, AMV shall be paid Base Management Fee (the "Base Management Fee") of Seventy Thousand and 00/100 Dollars (\$70,000) for Golf Course. The Base Management Fees shall be payable on February 15 of each Fiscal Year ("Due Date") directly by the Township to AMV. The Base Management Fees shall be a net fee to AMV and shall not include expenditures for the Golf Course as provided for in this Paragraph 9.A. Commencing on January 1, 2020, and for each subsequent year and possible Extension Term thereafter, the Base Management Fees shall be adjusted by the lesser of 3% or the percentage change in the Consumer Price Index (for the Metropolitan Detroit/Ann Arbor area), as published by the U.S. Bureau of Labor Standards, or its successor index ("CPI") for the month of December immediately preceding the commencement of such calendar year for the term of the Agreement. At the end of each Fiscal Year, AMV shall complete an accounting of the financial performance of such Fiscal Year, and AMV and Township shall equally share any Net Operating Income earned by the operation of the Golf Course during such Fiscal Year. The Township's share of the Net Operating Income (the "Township's Fee Share") shall be paid to AMV on or before February 15 of each Fiscal Year.

All Base Management Fees during the term shall be paid to AMV directly by Township:

A. Late Fee: If payment is not received within thirty (30) days of the due date as set out above, a late fee of Three Percent (3%) of the amount due shall be added and shall become a part of any Past Due Amount.

B. Interest: Any Past Due Amount not received within ten (10) days of its due date shall bear interest; from the date payment was due until the date paid, at the then-current judgment rate, along with all costs of collection, including reasonable attorneys' fees.

10. CAPITAL EXPENDITURES. "Capital Improvements" shall be deemed to include any item purchased in connection with the operation of the Golf Course which:

- A. has an economic useful life in excess of one (1) year, and
- B. has a cost in excess of Two Thousand and 00/100 Dollars (\$2,000).

As part of the Township's annual budget process, AMV will propose Capital Improvements required for the successful upkeep and long term operation of the Golf Course. During the first Fiscal Year of this Agreement (and first Fiscal Year only), AMV will undertake to complete, at AMV's sole cost and expense, Capital Improvements up to \$20,000 in cost and expense ("AMV's Initial Capital Improvements"). All Capital Improvements in addition to AMV's Initial Capital Improvements shall be both (i) approved by Township, in its sole and absolute discretion, in consultation with AMV, and (b) paid for by Township as Township's sole cost and expense, and not from AMV's operation of the Golf Course.

11. DEFAULT AND REMEDIES.

A. Township Default. The following shall constitute an event of default ("Event of Default") by Township under this Agreement:

- 1. Failure to pay AMV any fees, compensation, or reimbursement due AMV pursuant to this Agreement;
- 2. Failure by Township to perform any term or condition set out in this Agreement;
- 3. Assignment by Township for the benefit of its creditors, or becoming a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization.

B. AMV Default. The following shall constitute an event of default ("Event of Default") by AMV under this Agreement:

- 1. Failure to maintain the amenities of the Golf Course in reasonably good condition, as determined by the Township, subject to abnormal weather conditions, acts of God, or other events or conditions beyond the reasonable control of AMV, as long as AMV restores the amenity for its intended use within a reasonable time after the event;
- 2. Failure of AMV to perform any term or condition set forth in this Agreement; or
- 3. Assignment for the benefit of its creditors, or becoming a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization.

C. Notice and Cure. When either party to this Agreement believes that the other party (the "Defaulting Party") has committed an Event of Default, it shall give written notice thereof to the Defaulting Party, and the Defaulting Party shall have ten (10) days from the date of delinquency in the event of a payment default, or such longer period for non-monetary defaults

(not to exceed an aggregate period of thirty (30) days unless AMV or Township, as applicable, has begun to cure within the thirty (30) day period and is diligently pursuing such cure) as shall be reasonably necessary due to weather, growing conditions, or other factors beyond the reasonable control of the Defaulting Party, within which to cure the default, but in no event will the Defaulting Party have more than sixty (60) days in the aggregate to cure such default. Notwithstanding anything to the contrary, neither Township nor AMV shall be entitled to any notice and cure period for a default that occurs more than two (2) times in any twelve (12) month period.

D. Rights upon Default. If the Defaulting Party does not cure the default within the grace period provided in Paragraph 11 above, the other party may terminate this Agreement on thirty (30) days written notice to the other party and pursue all rights and remedies available in law or equity.

12. OUTSTANDING Groupon CERTIFICATES. Township and AMV acknowledge that, prior to the execution of this Agreement, Township has offered pre-purchased discounted golf rounds such as GroupGolfer, Groupons for discounted play at the Golf Course ("Outstanding Groupons and GroupGolfer"). AMV shall honor any Outstanding Pre-purchased discounted golf rounds when properly submitted by a customer, and Township shall reimburse AMV for the lost revenue related to the customer's use of the Groupon, on a monthly basis, within ten (10) days of written notice with appropriate evidence from AMV. WE HAVE DISCUSSED TERMINATING ALL Groupon' ROUNDS AS OF A DATE CERTAIN.

13. TERMINATION AND CANCELLATION.

A. Termination for Cause. Either party may terminate this Agreement upon the occurrence of an Event of Default by the other party as provided in Section 11 above.

B. Termination without Cause. AMV may terminate this Agreement for any reason at the end of the then current Fiscal Year, by written notice to the Township on or before September 30 of such Fiscal Year.

C. Sale Termination Fee; Sale of Golf Course. In the event of a sale or transfer of the Golf Course to an unaffiliated third-party, Township shall have the unilateral right to terminate this Agreement at any time on ninety (90) days prior written notice. In the event of such unilateral termination due to the sale or transfer of the Golf Course and AMV not being in default under this Agreement, AMV shall continue to manage the Golf Course until the sale of the Golf Course is consummated as evidenced by a transfer of title, and AMV shall retain all previously received Base Management Fees in full. ?

D. Proprietary Material. Upon termination or cancellation of this Agreement, for any reason or under any circumstances, AMV's (i) proprietary software and computer programs relating to accounting, operations, marketing, and forecasting, (ii) operations and employee training materials and manuals of AMV and (iii) the information and processes related to and used by AMV in the marketing and agronomic plan shall remain the sole property of AMV and shall be removed by AMV upon termination of this Agreement. Additionally, any actual or implied association of the Golf Course or Facility with AMV shall cease upon termination.

14. USE OF GOLF COURSE. During the term of this Agreement, the Golf Course shall be a public facility unless otherwise provided and agreed to in the Annual Budget and Program.

15. LIQUOR LICENSE. Subject to any relevant Michigan Liquor Control Act licensing requirements, Township may take all necessary actions to see that the Golf Course liquor license is available for use by HGM. HGM shall comply with all relevant Michigan Liquor Control Act laws regarding the use of such license. The transfer of the Golf Course liquor license to HGM shall be approved in the Annual Budget and Program, and the Township shall pay and satisfy any and all obligations and expenses arising or payable in connection with the transference, issuance, maintenance, renewal, existence, ownership or possession of the liquor license, including, without limitation, all fees payable to the State of Michigan in connection therewith. At termination of the Agreement or at the discretion of the Township, the liquor license shall be transferred by HGM either back to the Township or to another entity named by the Township.

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16. FORCE MAJEURE; CONDEMNATION; FIRE AND OTHER CASUALTY. If a portion of the Golf Course is destroyed or damaged by fire or other casualty or, otherwise due to causes beyond AMV's reasonable control and AMV shall be unable to perform its obligations hereunder in respect of the operation of the Golf Course, Township and AMV shall use their mutual best efforts to agree upon an amendment to the Annual Budget and Program, including, without limitation, the working capital provisions thereof, to allow payment of necessary Golf Course expenses that are not covered by Township's and/or AMV's insurance until such damage or destruction is repaired or such inability is cured, as long as AMV uses all reasonable diligence to cure such inability. If the parties are unable to agree on such an amendment within twenty (20) business days after AMV shall have given Township notice of the occurrence of such event, AMV shall have the right to terminate this Agreement by notice to Township of such termination and neither party shall have any further rights or obligations hereunder.

17. INDEMNIFICATION AND LIABILITY.

A. Legal Actions. Legal counsel for AMV and Township shall cooperate in the defense or prosecution of any action affecting the Golf Course. AMV shall not institute or defend any legal action or retain counsel affecting the Golf Course without Township's consent. AMV shall forward all legal notices or notices of a financial nature which relate to the Golf Course to Township at the address listed under Paragraph 19.1. AMV shall advise and assist Township in instituting or defending, as the case may be, in the name of Golf Course, Township, and/or AMV. AMV shall assist Township to take the acts necessary to protect or litigate to a final decision in any appropriate court or forum, as a Golf Course expense, and any violation, order, rule, or regulation affecting the Golf Course.

B. Choice of Law and Venue. Whereas AMV's principal place of business is in the State of Michigan, and the Golf Course is located in Michigan, the parties agree that this Agreement shall be governed by and construed in accordance with the laws of Michigan, which shall be the exclusive courts of jurisdiction and venue for any litigation, special proceeding or other proceeding between the parties that may be brought, or arise out of, or in connection with, or by reason of this Agreement.

CHARTER

C. Indemnification and Hold Harmless. To the fullest extent permitted by law, AMV agrees to defend, pay on behalf of, indemnify, and hold harmless the Township of Plymouth, its elected and appointed officials, employees and volunteers and others working on behalf of the Township of Plymouth or against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the Township of Plymouth, its elected and appointed officials, employees, volunteers or others working on behalf of the Township of Plymouth, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with the execution of activities by AMV as outlined in this Agreement or as relating to or resulting from those activities. Provided however, AMV's indemnity herein shall exclude court costs, reasonable attorney's fees, expenses, penalties, judgments and all other costs caused by, relating to, or resulting from or out of or in connection with the gross negligence or willful misconduct of the Township of Plymouth, its elected and appointed officials, employees, and volunteers and others working on behalf of the Township of Plymouth.

18. CONFIDENTIALITY.

A. AMV recognizes that it is managing Golf Course owned by a governmental entity. As such, records of a governmental entity must be released under both the Federal and the Michigan Freedom of Information Act ("FOIA") unless specifically exempted. Therefore, work performed by AMV and its agents or assigns pursuant to this Agreement, including, but not limited to, any correspondence, analysis, reports and related materials prepared, constitutes property of the Township and may be subject to release to the public under FOIA. The Township has adopted a FOIA policy which sets out procedures for receipt and review of FOIA requests. Requests are required to be answered within 5 days of receipt unless the Township requests a 5 day extension. AMV shall comply with that policy.

B. AMV agrees that all information kept in the ordinary course of business of AMV is a public record. In the event the Township receives a FOIA request, AMV shall be required to disclose such information to the Township for a determination, at the sole discretion of the Township, as to whether or not that information is exempt from disclosure. Township agrees to give AMV a copy of the FOIA request upon receipt by the Township. Unless AMV obtains an injunctive order from a court of competent jurisdiction within the times limits for response, the Township shall release the information requested unless the Township determines that it is exempt from disclosure under FOIA.

C. Township shall retain exclusive rights to Ownership of all work output hereunder. Work output includes reports issued pursuant to this Agreement.

19. GENERAL PROVISIONS.

A. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings, and representations (if any) made by and between such parties.

B. Written Amendments. The provisions of this Agreement may only be amended or supplemented in a writing signed by both parties.

C. Further Amendments. The parties hereby agree from time to time to execute and deliver such further instruments and documents, and do all such other acts and things, which may be convenient or necessary to more effectively and completely, carry out the intentions of the Agreement.

D. Compliance with Laws. AMV shall, at all times, operate, use, and conduct the business of the Golf Course in a lawful manner and in full compliance with all applicable governmental laws, ordinances, rules and regulations, and maintain all licenses and permits relating to the Golf Course, with Township's full cooperation, in full force and effect and cooperate and endeavor to obtain all licenses and permits first required after the commencement of the term of this Agreement required in connection with the management, use, and operation of the Golf Course.

E. Environmental Laws. Township represents to AMV, to the best of Township's knowledge, that no hazardous materials have been released into the environment, or have been deposited, spilled, discharged, placed or disposed of at or within the Golf Course in violation of any Environmental Law (as defined below). Township also represents to the best of Township's knowledge that there are no underground storage tanks of any nature on the Golf Course (fuel, propane, gas, etc.). Township does not have any knowledge of asbestos-containing products within the Golf Course.

For the purposes of this Agreement, "Environmental Law" shall mean: All applicable Federal, State, county or local (or other political subdivision thereof) laws, statutes, codes, acts, ordinances, orders, rules, regulations, directives, judgments, decrees, injunctions, directions, permits, licenses, authorizations, decisions and determinations issued, adopted or enacted by any judicial, legislative, regulatory, administrative or executive body of any governmental or quasi-governmental authority, department, branch, division, agency or entity exercising functions of or pertaining to any government having jurisdiction affecting the Golf Course, or any licenses and permits of any governmental authorities, from time to time applicable to the Golf Course or any part thereof regarding hazardous materials.

Unless AMV is responsible for the environmental hazard or condition and/or remediation, Township hereby agrees to indemnify and defend AMV from, and agrees to hold AMV harmless against any and all liability, loss, cost, damage, penalties, claims, causes of action, proceedings and expense, including without limitation, court costs and reasonable attorneys' fees, incurred by AMV or imposed on AMV by any person whomsoever, caused by, relating to or resulting from or out of or in connection with environmental claims under this Agreement. If AMV is responsible for the environmental hazard or condition, AMV hereby agrees to indemnify and defend Township from, and agrees to hold Township harmless against any and all liability, loss, cost, damage, penalties, claims, causes of action, proceedings and expense, including without limitation, court costs and reasonable attorneys' fees, incurred by Township or imposed on Township by any person whomsoever, caused by, relating to or resulting from or out of or in

connections with environmental claims under this Agreement. The provisions of this Paragraph shall survive the expiration or any termination of this Agreement.

F. Binding. All of the terms and provisions of this Agreement shall be binding and inure to the benefit of the parties and their respective permitted successors and assigns. This Agreement is solely for the benefit of the parties hereto and not for the benefit of any third party.

G. Assignment. This Agreement is non-assignable except as otherwise set out herein. AMV may assign or transfer this Agreement and/or may delegate its duties and obligations under this Agreement to AMV's Subsidiaries (HGM) with Township's consent or any future or subsequent assignments, provided that: (i) AMV's Subsidiary is a Michigan limited liability company or a limited liability company domiciled in another state but registered to do business in Michigan; (ii) written notice thereof is given to Township at least sixty (60) days prior to the effective date of such assignment or delegation, together with evidence reasonably satisfactory to Township that the assignment or delegation complies with the terms of this Paragraph; (iii) copies of the final executed assignment or delegation documents are given to Township within ten (10) days thereof; (iv) any delegation of duties and obligations to AMV's Subsidiary shall not, in any respect, release or relieve AMV of any of its duties, obligations, or responsibilities, under this Agreement. Even if these conditions are met, the Township shall still retain the right to refuse to consent to the assignment of this Agreement or delegation of any duties or obligations under this Agreement if it is in the Township's best interest.

H. Governmental Immunity. By entering into this Agreement, Township in no way gives up its right to claim governmental immunity or any other defense provided to governmental entities under Federal or State law, on behalf of itself, all elected and appointed officials, all employees and volunteers, those working as agents or on behalf of the Township, boards, commissions and/or authorities, or board members, employees, and volunteers.

I. Notices. All notices, requests, consents and other communications required or permitted to be given under this Agreement shall be in writing, shall be given only in accordance with the provisions of the Paragraph 19.1 shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered, (i) upon receipt when hand delivered (or refused) during normal business hours, (ii) upon the third (e) business day after delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery), or (iii) one (1) business day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that the sending party receives a confirmation of actual delivery from the courier).

In the case of AMV:

_____, LLC.

Attention: Anthony D. Moscone

Telephone: (248) _____
 Facsimile: (248) _____

With copy to:

Dykema Gossett PLLC
 39577 Woodward Ave., Ste. 300
 Bloomfield Hills, MI 48304
 Attention: Kyle R. Hauberg
 Telephone: (248) 203-0871
 Facsimile: (855) 245-0199

In the case of Township:

Township of Plymouth

Attn: Township Manager. — SUPERVISOR
 9955 N. Haggerty Road
 Plymouth, MI 48170
 Telephone: (248) _____
 Facsimile: (248) _____

With a copy to:

~~Township of Troy~~ — CHARTER TOWNSHIP OF PLYMOUTH
 Attn: Township Attorney
 9955 N. Haggerty Road
 Plymouth, MI 48170
 Telephone: (248) _____
 Facsimile: (248) _____

or to such other address as either party may designate by notice complying with the terms of this subparagraph.

J. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

K. Invalidity. If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid or unenforceable under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, invalid or unenforceable, but the remainder of such provision, and this Agreement shall not be invalidated or rendered unenforceable thereby, and shall be given full force and effect so far as possible.

L. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, collectively and separately, shall constitute on and the same agreement.

M. No Waiver. Except as otherwise provided, the failure or delay of either party at any time to require performance by the other party of any provision of this Agreement shall not affect the right of such party to subsequently require performance of that provision or to exercise any right, power or remedy hereunder. Waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on either party in any event shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances, except as otherwise herein provided.

N. No Partnership. Nothing in this Agreement shall be construed to create a partnership or joint venture between the parties. The parties acknowledge that the relationship of AMV to Township is that of an independent contractor.

O. No Exclusive Remedy. No remedy herein conferred upon either party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

P. Authority. Each party hereby represents to the other party that it has the right, power, authority, and financial ability to enter into this Agreement and to perform its obligations under this Agreement, and that it is not restricted by contract or otherwise from entering into and performing this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement as of the date first above written.

AVM:

_____ **LLC**

Name: Anthony D. Moscone, Manager

TOWNSHIP:

TOWNSHIP OF PLYMOUTH

BY: _____

Name: _____

Title: _____

RESOLUTION NUMBER: _____

APPROVED AS TO FORM AND LEGALITY:

BY: _____
Name, title

ATTEST: _____
Name, title

**CHARTER TOWNSHIP OF PLYMOUTH
BOARD OF TRUSTEES
SPECIAL MEETING
STUDY SESSION
JANUARY 15, 2019**

NEW BUSINESS

**ITEM D.2
DISCUSSION ON TOWNSHIP GOALS FOR
2019**



CHARTER TOWNSHIP OF PLYMOUTH REQUEST FOR BOARD ACTION

MEETING DATE: January 15, 2019

ITEM: Goal Setting Discussion for 2019

PRESENTERS: Supervisor Heise

BACKGROUND: Attached is a list of proposed goals for the Township in 2019. I'd appreciate your comments and discussion on January 15.

PROPOSED MOTION: None, Discussion Only

GOAL-SETTING MEETING 2019

1. PUBLIC SAFETY – *police, fire, dispatch*

10-year Capital Improvement Plan for Police and Fire

Apply for new NFPA Insurance rating

Shared Police services with City of Plymouth

Future of Emergency Transport service – public, private or hybrid

Update Criminal Codes

Recreational Marijuana Legalization Compliance

Compliance with Michigan Fireworks Laws

2. INFRASTRUCTURE - *water, sewer, roads, sidewalks*

Township-wide sidewalk installation program

Capital Asset Management program across all departments

LED lighting at major use buildings – Fire, DPW, Parks, Police

Create separate Building maintenance funds for Public Safety, General Gov., DPW

Plymouth Road/Hines/Haggerty Corridor improvements and accessibility with County

DDA Plan to submit to State of Michigan

SAW Grant-related infrastructure compliance

Clean-up/Fix-up Ann Arbor Road Rail Overpass

Replace/repair worn-out and damaged neighborhood street signs with County

Implement and follow through on SAD projects for 2019/20

3. FISCAL INTEGRITY - *budgets, audits, finance, taxes, personnel*

OPEB Compliance under new State Law

Reduce water billing labor specialization risk.

Aggressively monitor and review 35th District Court Budgets & Financing

Settle labor contracts at total costs (wages + benefits) below 2018 calendar year CPI.

Reduce retiree health insurance costs. (Make Township the insurer of last resort by requiring insurance at the new employer and the spouse's employer).

Redesign water bill to show historical consumption. Benchmark other communities for ideas to improve water bill content.

Review policy for personal use of Township vehicles.

Conduct training for employees and others in "completed staff work" and presentations.

Increase collection rate for transports, emergency recovery and Hazmat.

Develop new formula for determining joint Dispatch cost-sharing with City of Plymouth

Improved performance-based review of non-union employees

Privatization/Contracting out of various services

Implement customer satisfaction surveys – online and attached to emails

2-year budget starting with 2020/21

Review fees for employee investment plans

4. QUALITY OF LIFE – *parks, heritage, culture, recreation, accessibility*

Future of Hilltop Golf Course; review and possible implementation of Master Plan

Creation of "Good Neighbor Districts" based on voting precincts

Pursue joint recreation opportunities and promotion with City and/or PARC

Improvements to DTE service and reliability

Art Exhibits at Township Hall and other locations

Reduce Hilltop Golf Course 2019 operating loss by 50% vs. 2018.

Reduce Township Park operating expense - especially sprayscape water expense.

Creation of Historic District Ordinance

Increase walking/running/biking options in the township

County-funded projects for parks

Implement clothing (textiles) curbside recycling turnkey program at no cost to Township.

Township-based 501(c)(3) for recreation and civic events

Implement a residential tree planting promotion at no cost to Township.

Salem Springs Project Citizens Advisory Committee

Increased cooperation and coordination with Plymouth Community Council on Aging (PCCA)

Privatize parks maintenance and groundskeeping services

Sustain Senior Bus Service; improve value of service, financials and operating plan

5. ECONOMIC DEVELOPMENT - *Increase tax base, jobs, community brand*

Promote Five Mile (MITC), Plymouth/Haggerty Corridors

Annual Economic Update Report from relevant staff

Repurpose former K-Mart property and Steak & Ale sites – Ann Arbor Road

Promote international investment in Township

CHARTER TOWNSHIP OF PLYMOUTH
BOARD OF TRUSTEES
SPECIAL MEETING
STUDY SESSION
JANUARY 15, 2019

ITEM E
SUPERVISOR AND TRUSTEE COMMENTS

**CHARTER TOWNSHIP OF PLYMOUTH
BOARD OF TRUSTEES
SPECIAL MEETING
STUDY SESSION
JANUARY 15, 2019**

**ITEM F
PUBLIC COMMENTS AND QUESTIONS
3 MINUTE LIMIT**

CHARTER TOWNSHIP OF PLYMOUTH
BOARD OF TRUSTEES
SPECIAL MEETING
STUDY SESSION
JANUARY 15, 2019

ITEM G
ADJOURNMENT