

First Amendment to Glencoe Golf Club Agreement

This **FIRST AMENDMENT** is dated as of as of 15th day of June, 2017 (the "**Effective Date**") by and among the **FOREST PRESERVE DISTRICT OF COOK COUNTY**, an Illinois body politic and corporate organized and existing pursuant to 70 ILCS 810 (the "**FPD**"), the **GLENCOE GOLF CLUB**, an Illinois not-for-profit corporation (the "**GGC**"), and the **VILLAGE OF GLENCOE**, an Illinois special charter municipality (the "**Village**") (collectively, the FPD, GGC, and the Village are referred to as the "**Parties**").

In consideration of the mutual promises and undertakings herein set forth, the receipt and sufficiency are hereby acknowledged, the Parties agree as follows:

Section 1: Recitals.

A. In 1922, FPD and GGC entered into an agreement (the "**Existing Agreement**") relating to the use and operation of certain real property comprising approximately 66 acres belonging to the FPD (the "**FPD Property**") as part of a public golf course (the "**Golf Course**") to which both the FPD and the Village each contributed land. The Existing Agreement and this First Amendment are collectively referred to as the "**Agreement**."

B. The Golf Course also occupies certain real property belonging to the Village, comprising approximately 60 acres (the "**Village Property**"). The FPD Property and the Village Property are collectively referred to in this First Amendment as the "**Golf Course Property**."

C. Pursuant to the Existing Agreement, GGC constructed facilities on the Golf Course Property consisting of an eighteen hole golf course, and other facilities related to the Golf Course. The Golf Course provides a recreational amenity for all citizens of FPD.

D. In addition to making the Village Property available for the Golf Course, the Village has over the years advanced funds and provided services and monetary loans to GGC, to assist GGC meet its expenses of labor, material, and equipment for the improvement, upkeep, and maintenance of the Golf Course.

E. FPD and GGC have had numerous discussions regarding the payment that may have been due, and that should be due, from GGC to FPD for use of the FPD Property. FPD and GGC desire to enter into this First Amendment to clarify and confirm the exact amount of future payments and forgo further discussions regarding payments that may have been due to the FPD previously.

F. Specifically, the Parties confirm that, as of the Effective Date of this First Amendment, the only payments that will be required from GGC to FPD for the use of the FPD Property as described in this Agreement shall be those that are specifically set forth in Section 3 to this First Amendment.

G. As part of its commitment in the Existing Agreement to maintain the Golf Course in a "first class condition" and apply its resources "toward the improvement, upkeep and maintenance of said eighteen hole golf course and the club house and other buildings and structures," GGC desires to make structural and irrigation improvements to the Golf Course, if and when adequate funding becomes available ("**Improvements**"). Such Improvements include, without limitation, certain improvements to the club house (the "**Club House**").

Improvements") that could consist of either (i) the renovation of the existing club house building that is located on FPD Property, or (ii) the construction of a new club house building, and related improvements ("**New Club House**"), on FPD Property, both as more particularly described in Section 4 of this Agreement.

H. In order to construct the Improvements, including either of the Club House Improvements, GGC will be required to pursue long-term financing (the "**Financing**"), which Financing will require certain assurances from FPD and the Village regarding the use of the FPD Property and the Village Property, as hereinafter set forth.

I. FPD and the Village have determined that the Improvements, including the Club House Improvements, if constructed, will benefit the Golf Course and enhance the Golf Course Property.

J. The Parties have each determined that the continuation of the Existing Agreement, as modified by the terms and conditions set forth in this First Amendment, is in its best interests, and the interests of its citizens and/or members.

K. This Agreement is entered into pursuant to the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*

Section 2: Use and Operation of Golf Course Property.

A. **Golf Course Operations.** During the term of this Agreement, FPD and the Village agree that GGC shall have the continued right to operate the Golf Course on the Golf Course Property which includes conducting ancillary recreational, social, training, educational, retail, hospitality, food, beverage, and banquet uses (collectively, "**Golf Course Operations**"), or other governmental, open space, or public uses. FPD and the Village further agree that GGC shall have the right to construct the Improvements, on the Golf Course Property. The Parties agree that all costs of Financing (including without limitation all issuance costs, payments of interest, and repayment of principal)(collectively, the "**Financing Costs**") shall be part of the upkeep, maintenance, and improvement of the Golf Course and Golf Course Operations, and shall be payable solely by GGC

B. **FPD Property.** During the term of this Agreement, FPD agrees that the FPD Property shall be used only by GGC, which GGC shall use only in the manner set forth in this Agreement. FPD shall have no responsibility or liability for any non-compliance with applicable state or local laws concerning the FPD Property.

C. **Village Property.** During the term of this Agreement, the Village agrees that the Village Property shall be used only by GGC, which GGC shall use only in the manner set forth in this Agreement.

D. **Village and FPD Use of Golf Course.** In the event that GGC makes any facility on the Golf Course Property available for use by the Village for banquets, events, meetings or receptions, GGC shall also make such facility available for use by FPD on the same terms and conditions as those offered to the Village.

E. **FPD Acknowledgement.** GGC agrees to recognize the unique relationship between GGC and FPD by incorporating FPD's name and logo in new signage and marketing

materials including, without limitation, the GGC Website. FPD hereby grants GGC the limited right to utilize the FPD name and logo for the sole purpose of affecting this Section 2.E.

Section 3: Financial Consideration to FPD. In consideration of the assurances by FPD regarding the continued use of the FPD Property by GGC for the Golf Course, Golf Course Operations, and the Improvements, in accordance with this Agreement, GGC shall pay to FPD as follows:

A. Initial Payment. GGC shall pay to FPD a one-time initial payment in the amount of \$50,000.00 (the "**Initial Payment**"). The Initial Payment shall be delivered to FPD within 30 days after the Effective Date of this First Amendment.

B. 2017 Installment Payment. GGC shall pay to FPD a one-time installment payment in the amount of \$31,250.00 (the "Installment Payment"). The Installment Payment shall be delivered to FPD on or before September 1, 2017.

C. Annual Payment Commencing in 2018. GGC shall pay to FPD an annual payment commencing in 2018, on the date set forth in this Section 3.C and continuing each year thereafter during the Term of this Agreement, including any extension of the Term (the "**Annual Payment**") in the amount that is equal to the greater of (1) \$62,500.00 or (2) 3.6% of the annual gross revenue generated by GGC from Golf Course Operations on the Golf Course Property during the immediately preceding year, as evidenced by an annual audit that shall be conducted and performed by an independent auditor selected and paid for by GGC (the "**GGC Annual Audit**"). GGC shall deliver a written copy of the GGC Annual Audit to FPD for review and inspection within 30 days after the GGC Annual Audit is completed and received by GGC. The Annual Payment shall be delivered to FPD concurrent with the delivery to FPD of the written copy of the GGC Annual Audit. The first Annual Payment under this Agreement shall be delivered to FPD on the date of delivery of the GGC Annual Audit for the GGC 2018 fiscal year, which delivery date is expected to occur in August, 2018, but no later than September 30, 2018. The Parties have attached an excerpt from the 2016 GGC Annual Audit (for fiscal year ending February 29, 2016) to this First Amendment as **Exhibit A** to illustrate the way in which "annual gross revenue" is to be calculated for purposes of this Agreement. The Parties acknowledge and agree that the annual gross revenue generated by GGC from Golf Course Operations on the Golf Course Property during the 2016 fiscal year as set forth in Exhibit A. was \$1,721,630.00, and that 3.6% of that amount is \$61,978.00 and that, therefore, if this First Amendment had been in effect, the Annual Payment for fiscal year 2016 would have been the higher amount of the formula, or \$62,500. Further, for purposes of this Agreement and as set forth in Exhibit A, "annual gross revenue" shall include only the revenue identified in the Statement of Cash Flows included in the GGC Annual Audit. Except as expressly provided in this Section 3.C, no further or additional accounting shall be required from GGC to FPD.

D. No Other Payments. The parties acknowledge and agree that the Initial Payment, the Installment Payment, and the Annual Payment are the only payments that are, and that will be, due and owing from GGC to FPD under the Agreement, and the only payments that are, and shall be, due from GGC to FPD in connection with the use of the FPD Property and the Golf Course Operations. Specifically, and without limitation of the foregoing, no permit or license fee, including a special use permit fee for alcohol, shall be required to be paid by GGC to FPD with respect to, or for, the Golf Course Operations, other than the special permit fee for 2017, which has been paid in full by GGC. Further, the Initial Payment, the Installment Payment, and the Annual Payment supersede and take the place of any payment that is or was

due, or may have been contemplated, under the Existing Agreement, including specifically any right by FPD to share in any profit from Golf Course Operations.

Section 4: Club House Improvements. With respect to the Club House Improvements, the Parties acknowledge and agree as follows:

A. FPD and the Village hereby authorize GGC to undertake the Club House Improvements, and related improvements to the Golf Course. The Parties acknowledge and agree that the Club House Improvements will be undertaken only if GGC determines that adequate funding is available for the construction and maintenance of such improvements, and that GGC shall have no obligation to undertake the Club House Improvements.

B. The design, construction, and maintenance of the Club House Improvements shall be without expense to FPD.

C. In the event of construction of the New Club House, GGC shall comply with the following: (1) the New Club House shall be located within the clubhouse complex area as depicted on **Exhibit B** to this First Amendment, which is located within the FPD Property, and (2) the landscaping shall incorporate the use of native plants for up to 75% of all plantings in accordance with the list of approved plantings in **Exhibit C** to this First Amendment.

D. GGC shall be required to obtain all required permits for the New Club House from the Cook County Building Department in accordance with the County's codes. FPD agrees to cooperate with GGC in connection with the submission and processing of any applications for permits or approvals with respect to the Club House Improvements.

E. The Parties acknowledge and agree that GGC may be required to secure Financing in order to pay the costs of the Club House Improvements. GGC agrees that, in connection with such Financing or the design or construction of the Club House Improvements, it shall not permit any lien, mortgage, or other encumbrance to be recorded against the FPD Property (a "**Title Encumbrance**"). In the event that any Title Encumbrance is recorded against the FPD Property as a result of the Club House Improvements or other activities of the GGC, FPD shall notify GGC (and "**Encumbrance Notification**"), and GGC shall commence actions to discharge or otherwise release the Title Encumbrance within 45 days after receipt of the Encumbrance Notification. The discharge or release of any Title Encumbrance shall be effected without cost or expense to FPD.

Section 5: Term.

A. Initial Term. The initial term of this Agreement shall be for a period of twenty (20) years from the Effective Date (the "**Term**").

B. Mutual Extension. The Term may be extended by mutual agreement of all Parties.

C. Automatic Extension in the event of Financing. In the event that, at any time prior to the date that is seven years and six months after the Effective Date of this First Amendment (the "**Financing Contingency Date**"), Financing is secured by either GGC or the Village to enable the construction of Improvements, and GGC or the Village notifies FPD of such Financing prior to the Financing Contingency Date, then the Term of this Agreement shall automatically and without further action of the Parties, be extended to the date on which the

Financing Costs have been fully paid; provided that in no event shall the Term be extended for more than twelve (12) years without the mutual agreement of all Parties.

D. Limited Rights to Terminate.

1. By GGC. In the event that GGC has abandoned all Golf Course Operations on the FPD Property, then, and only then, shall GGC have the right, but not the obligation, to terminate this Agreement by the provision of 60 days advance written notice to the other two Parties. Upon such termination, all obligations of the Parties under this Agreement shall terminate, and the Term shall expire, except as specifically provided in Section 5.E of this First Amendment.

2. By FPD. In the event that (a) neither GGC nor the Village has notified FPD prior to the Financing Contingency Date that Financing has been secured to enable the construction of Improvements and (b) GGC has abandoned Golf Course Operations on either the FPD Property or the Village Property, then, and only then, shall FPD have the right, but not the obligation, to terminate this Agreement by the provision of 60 days advance written notice to the other two Parties. Upon such termination, all obligations of the Parties under this Agreement shall terminate, and the Term shall expire, except as specifically provided in Section 5.E of this First Amendment.

E. Rights Upon Termination. Upon the expiration of the Term, all Improvements on the FPD Property shall belong to FPD and all Improvements on the Village Property shall belong to the Village. All such Improvements shall be deemed to be abandoned in place by GGC. All other property, accounts, and equipment used or generated in connection with the Golf Course or Golf Course Operations shall belong to GGC; provided, however, that in the event of early termination pursuant to Section 5.D of this First Amendment, GGC shall pay to FPD the Annual Payment due and owing for the year in which such early termination occurs. Notwithstanding the expiration of the Term, GGC shall be responsible for remediating any violation of any state, federal, or local law noted with regard to Club House Improvements, or to any existing club house building that was originally constructed by either GGC or the Village (collectively, "**GGC Built Club House**") on the FPD Property, and that is identified during, or within six months after the expiration of, the Term. Alternatively, upon termination of this Agreement, in lieu of remediating pending violations concerning the Club House Improvements GGC may tear down and haul away the Club House Improvements and/or the GGC Built Club House located on FPD Property and replace the same with landscaping from the list of native plants referenced in Exhibit C..

Section 6: General Provisions.

A. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i), personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by electronic internet mail ("**e-mail**"). E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one (1) business

day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three (3) business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Glencoe
675 Village Court
Glencoe, IL 60022
Attention: Village Manager
E-Mail: pkiraly@villageofglencoe.org (or successor e-mail)

Notices and communications to FPD shall be addressed to, and delivered at, the following address:

Forest Preserve District of Cook County
69 West Washington, Suite 2060
Chicago, IL 60602
Attention: Executive Director
E-Mail: arnold.randall@cookcountyil.gov (or successor e-mail)

Notices and communications to GGC shall be addressed to, and delivered at, the following address:

Glencoe Golf Club
621 Westley Road
Glencoe, IL 60022
Attention: General Manager
E-Mail: stellan@glencoegolfclub.com (or successor e-mail)

B. Enforcement; Remedies. Any of the Parties may pursue enforcement of this Agreement in any manner authorized in law or in equity; provided, however, that none of the Parties will seek, or have the right to seek, to recover a judgment for monetary damages against the other Party or such other Party's elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. To the extent that any of the Parties seeks to enforce any provision in this Agreement relating to the recovery of funds due to such Party under this Agreement, such funds shall not be deemed "damages" pursuant to this Section.

C. Entire Agreement; Amendments. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof, and (except as provided in Section 6.D of this Agreement) all agreements entered into prior hereto with respect to the subject matter hereof are revoked and superseded by this Agreement, and no representations, warranties, inducements, or oral agreements have been made by any of the Parties except as expressly set forth herein. The recitals to this Agreement are, and shall be construed to be, an integral part of this Agreement. This Agreement may not be changed, amended, modified or rescinded except in writing, signed by all Parties hereto.

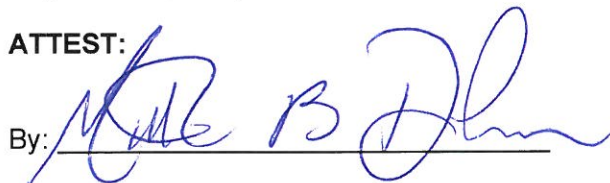
D. Existing Agreement. GGC and FPD acknowledge and agree that the Existing Agreement remains in full force and effect, except to the extent otherwise provided in, or modified by, this First Amendment. To the extent of any inconsistency between the terms of this First Amendment and the terms of the Existing Agreement, FPD and GGC acknowledge and agree that this First Amendment shall control.

E. Severability. Whenever possible each provision of this Agreement shall be construed and interpreted in such a manner as to be effective and valid under applicable law, but it is hereby expressed to be the intent of the Parties hereto that should any provision, covenant, agreement, or portion of this Agreement or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person, entity, or property shall not be impaired thereby, but such remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

F. Execution and Sunset. This First Amendment shall be effective only upon execution in the space below by each Party; provided, however that this First Amendment shall not take effect unless all Parties so execute this First Amendment prior to June 30, 2017.

IN WITNESS WHEREOF, the Parties have approved this Agreement and caused their duly authorized representatives to execute and attest this Agreement.


ATTEST:

By: 
Its: Secretary

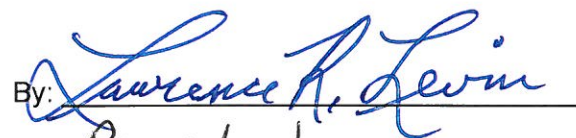
FOREST PRESERVE DISTRICT OF COOK COUNTY

By: 
Its: President

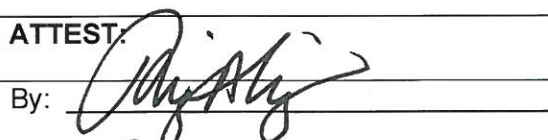
ATTEST:

By: 
Its: MANAGER/CLERK

VILLAGE OF GLENCOE

By: 
Its: President

ATTEST:

By: 
Its: CLERK

GLENCOE GOLF CLUB

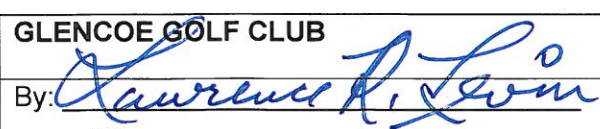
By: 
Its: Chairman

EXHIBIT A
Excerpt from 2016 GGC Annual Audit

VILLAGE OF GLENCOE, ILLINOIS

**Statement of Cash Flows - Proprietary Funds
For the Fiscal Year Ended February 29, 2016**

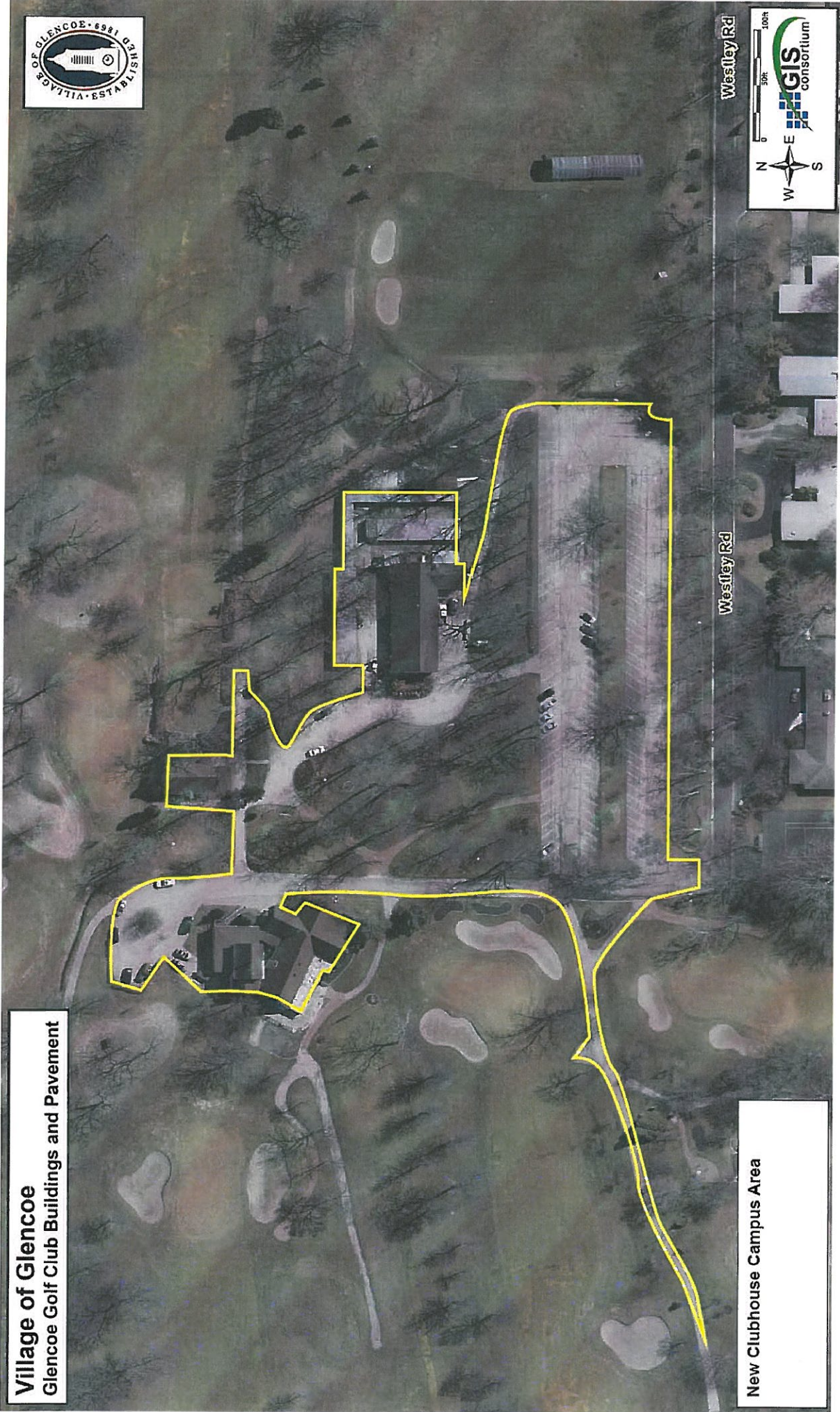
	Water	Glencoe Golf Club	Totals
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts from customers and users	\$ 1,967,793	1,721,630	3,689,423
Payments to employees	(872,455)	(695,818)	(1,568,273)
Payments to suppliers	(1,002,417)	(636,371)	(1,638,788)
	92,921	389,441	482,362
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES			
Purchase of capital assets	-	(250,904)	(250,904)
Disposal of capital assets	-	3,000	3,000
Payment on capital debt	(140,002)	-	(140,002)
Interest expense	(34,074)	-	(34,074)
	(174,076)	(247,904)	(421,980)
CASH FLOWS FROM INVESTING ACTIVITIES			
Interest received	2,947	3,413	6,360
NET CHANGE IN CASH AND CASH EQUIVALENTS	(78,208)	144,950	66,742
CASH AND CASH EQUIVALENTS - BEGINNING	1,761,500	1,351,843	3,113,343
CASH AND CASH EQUIVALENTS - ENDING	1,683,292	1,496,793	3,180,085
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES			
Operating income (loss)	(115,760)	98,575	(17,185)
Adjustments to reconcile operating income to net income to net cash provided by (used in) operating activities:			
Depreciation expense	108,417	127,149	235,566
(Increase) decrease in current assets	15,957	(10,985)	4,972
Increase (decrease) in current liabilities	84,307	174,702	259,009
NET CASH PROVIDED BY OPERATING ACTIVITIES	92,921	389,441	482,362

The notes to the financial statements are an integral part of this statement.

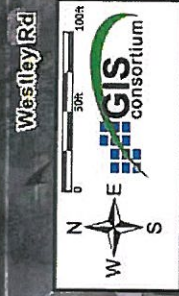
EXHIBIT B
Depiction of Clubhouse Complex Area



Village of Glencoe
Glencoe Golf Club Buildings and Pavement



New Clubhouse Campus Area



Westley Rd

Westley Rd

EXHIBIT C
FPD List of Approved Plantings

Mesic Prairie (open sun)

SCIENTIFIC NAME	COMMON NAME
Grasses:	
<i>Andropogon gerardii</i>	Big bluestem
<i>Andropogon scoparius</i>	Little bluestem
<i>Elymus canadensis</i>	Canada wild-rye
<i>Panicum virgatum</i>	Switch grass
<i>Sporobolus heterolepis</i>	Prairie dropseed
Forbs:	
<i>Aster laevis</i>	Smooth blue aster
<i>Monarda fistulosa</i>	Wild bergamot
<i>Penstemon digitalis</i>	Foxglove beard-tongue
<i>Petalostemum purpurea</i>	purple prairie clover
<i>Ratibida pinnata</i>	Yellow coneflower
<i>Rudbeckia subtomentosa</i>	Sweet black-eyed susan
<i>Silphium integrifolium</i>	Rosinweed
<i>Solidago rigida</i>	stiff goldenrod

Woodland (shady)

SCIENTIFIC NAME	COMMON NAME
<i>Anemonella thalictroides</i>	Rue anemone
<i>Aquilegia canadensis</i>	Columbine
<i>Athyrium filix-femina</i>	Lady fern
<i>Carex pensylvanica</i>	Common oak sedge
<i>Carex rosea</i>	Rosy Sedge
<i>Festuca obtusa</i>	Nodding fescue
<i>Geranium maculatum</i>	Wild geranium
<i>Helianthus strumosus</i>	Pale-leaved sunflower
<i>Hystrix patula</i>	Bottle-brush grass
<i>Mertensia virginiana</i>	Virginia Bluebells
<i>Onoclea sensibilis</i>	Sensitive fern
<i>Phlox divaricata</i>	Woodland phlox
<i>Solidago flexicaulis</i>	Zigzag goldenrod
<i>Trillium grandiflora</i>	Large-flowered trillium
<i>Trillium recurvatum</i>	Red trillium