



CITY COUNCIL ACTION REPORT

June 25, 2007

TO: Phillip L. Nelson, City Manager

FROM: John M. Lamerato, Assistant City Manager/Finance & Administration
Susan A. Leirstein, Purchasing Director
Carol K. Anderson, Parks and Recreation Director
Jacob D. Pilat, Director of Golf Operations

SUBJECT: Standard Purchasing Resolution 4: Oakland County – Golf Equipment
Installment Purchase of Seventy-Four (74) Precedent Golf Cars for Sylvan Glen
Golf Course

Background

- In 2002, it was determined that Club Car Inc. was the golf car supplier who met the long term needs of the City.
- Over the last six seasons, we have concluded that the Club Car golf car has provided the City with lower operating costs by requiring less man-hours for maintenance of the fleet.
- In 2004, the formal bid process was waived in order to purchase seventy-five (75) Club Car Precedent golf cars for Sanctuary Lake Golf Course.
- With many safety and maintenance features, the Precedent golf car will be very beneficial to Sylvan Glen, given the amount of play and large outings.
- Club Car's Precedent golf car provides many features that are exclusive to the golf car industry —
 - The 48-volt IQ system allows the rider to control the speed, braking, and performance of the car.
 - The advanced battery system allows for less downtime/more rounds per charge.
 - The 360-degree bumper protects the entire car from impact.
 - The lighter weight of the vehicle improves handling, climbing, accelerating, braking, and turf compaction.

These features along with several others that are exclusive to Club Car are listed in the attached matrix.

- By standardizing on the Club Car Precedent at each facility, it will allow staff to become more familiar with one manufacturer, making daily maintenance more efficient. It will also make any major repairs and servicing of cars easier by requiring only one contact to service both sites.

June 25, 2007

To: Phillip L. Nelson, City Manager
Re: Installment Purchase of Golf Cars

Financial Considerations

- Funds are available in the 2007/08 budget for the Sylvan Glen Capital Account #788.7981.
- A five-year installment purchase agreement for seventy-four (74) Club Car Precedent 48-volt IQ electric golf cars purchased directly from the manufacturer, Club Car Inc.
- Currently, the City owns 65 DSEIQ Club Car golf cars that have a total trade-in value of \$65,000.
- The City will utilize Oakland County's cooperative bid for golf equipment at a purchase price of \$3,645.00 per car. Club Car's normal price for the Precedent vehicle is \$3,745.00, resulting in a savings of \$7,400.00 for the entire fleet.

Legal Consideration

- There are no legal considerations associated with this item.

Policy Considerations

- Purchase of these new cars will update existing fleet, ensuring the safety of customers and improve the efficiency of Golf Operations. (Goal I & II)
- Updating of our current fleet will minimize down time of cars, increasing availability of cars for large outings and regular play. (Goal II)

Options

- City management is recommending an agreement be executed for the purchase of seventy-four (74) Precedent electric golf cars less 65 trade-ins to Club Car Incorporated of Georgia for an estimated total cost of \$229,493.24, payable in increments of \$45,898.65 over five (5) years.

Approved as to Form:

Lori Grigg Bluhm, City Attorney

| Feature | Description | Benefit |
|----------------------------------|--|---|
| Powered Shield** | Rugged housing that provides complete inside and outside for the power plant/batteries. | Prevents unnecessary wear and damage to batteries and cables. |
| Ergo Seat** | Non corrosive bonded seat | Will not rot, wrinkle, or create slippery surface. |
| 360 Degree Bumpers** | Bumper that wraps around entire vehicle | Greatly reduces scratch and mar damage, and results in less cost and downtime from possible damage to body of vehicle. |
| Alumi Core Chassis** | Inside of chassis is aluminum, an automotive style frame. Outside of chassis consists of two sections of fiber-reinforced composite, bonded together to create a single solid structure. | Frame weighs less, giving double the torsional rigidity. Also rust and corrosion proof. |
| IQDM Handheld Diagnostic Tool* | Lets the owner know exactly how each car is performing. | Keeps entire fleet operating at peak capacity and profitability. |
| 4- Battery 48 Volt Power Plant** | 48 Volts requires fewer amps to product power for vehicle | More efficient, less cost to maintain, and fewer terminals to service, extended battery life and fewer batteries to replace. |
| Integrated Design** | With 40% fewer parts and components, the cars integrity has be increased and improved. | Less maintenance, and greater reliability. |
| Front Suspension* | Bearings are sealed and maintenance free, and suspension has only two simple lubrication points. | Less maintenance. |
| Pedal Group and Brake Cable** | Preset, sealed and adjustment free | Less maintenance, and consistent breaking performance. |
| Lighter Weight** | With 40% fewer parts the vehicle has become lighter | Improves handling, climbing, accelerating and even breaking. Also reduces turf compaction. |
| Raised Hip Restraint** | The hip restraint on the sides of both the driver and passenger seats have been raised 1/3 higher then the DSEIQ model. | Provides higher hip restraint on both driver and passenger sides of car, minimizing any chance of riders falling out of car. |
| Inboard Canopy Handhold ** | Handrail attached to roof of car was moved from outside to inside to assist riders in getting in and out of car | Ensures that passenger's outside arm is kept within the confines of the golf car and affords the passenger greater security around tighter turns and hill applications, as well as aiding in regress and egress of the vehicle. |
| Programmable Motor Braking* | Breaking application directed through the IQ system, allowing the owner to preset the braking system | Slows down the vehicle on severe down slopes, ensuring customer safety on hilly and uneven terrains. |

*Denotes feature exclusive to Club Car

**Denotes feature exclusive to the Club Car Precedent

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EQUIPMENT INSTALLMENT PURCHASE AGREEMENT

Purchaser: (Name and Address)

City of Troy
Sylvan Glen Golf Course
5725 Rochester Road
Troy MI 48085

Vendor: (Name and Address)

Club Car Incorporated

Pursuant to the terms of the Validation of Municipal Purchase Contracts Act (the "Act"), MSA 5.3461 et seq.; MCL 123.721 et seq., Purchaser agrees to purchase from Vendor and Vendor agrees to sell to Purchaser the Equipment described in *Schedule A*, now or hereafter attached hereto, and all replacements, repairs, restorations, modifications and improvements thereof or hereof ("Equipment") in accordance with the following terms and conditions of this Equipment Installment Purchase Agreement ("Agreement").

1. **TERM.** This Agreement will become effective upon the execution hereof by Vendor. The term of this Agreement will commence on the Commencement Date set forth in *Schedule B* attached hereto and, unless earlier terminated as expressly provided for in this Agreement will terminate on the Termination Date set forth in *Schedule B* attached hereto (the "Term").

2. **PURCHASE PAYMENTS.** Purchaser agrees to pay to Vendor the Purchase Payments, including the interest portion, in lawful money of the United States of America, equal to the amounts specified in *Schedule B*. The Purchase Payments will be payable without notice or demand at the office of Vendor (or such other place as Vendor may from time to time designate in writing), and will commence on the first Purchase Payment Date as set forth in *Schedule B* and thereafter on the subsequent dates set forth in *Schedule B*. Any payments received later than ~~ten (10)~~ ^{twenty (20)} days from the due date will bear interest at the highest lawful rate from the due date. As set forth on *Schedule B*, a portion of each Purchase Payment is paid as, and represents payment of, interest. The obligation of Purchaser to make the Purchase Payments hereunder and perform all of its other obligations hereunder will be absolute and unconditional in all events and will not be subject to any setoff, defense, counterclaim, abatement, deduction or recoupment for any reason whatsoever including, without limitation, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances. Purchaser reasonably believes that funds can be obtained sufficient to make all Purchase Payments during the Term and hereby covenants that it will do all things lawfully within its powers to obtain, maintain and properly request and pursue funds from which the Purchase Payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. Except to the extent that Purchaser may not, with regard to this Agreement, levy taxes in excess of statutory or charter limitations without the approval of its electors, the obligation of Purchaser to pay Purchase Payments hereunder shall be a full faith and credit obligation of Purchaser. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary in this Agreement, in no event shall this Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum permitted by applicable law.

3. **DELIVERY AND ACCEPTANCE.** Purchaser shall order the Equipment, cause the Equipment to be delivered and installed at the location specified on *Schedule A* ("Equipment Location") and pay any and all delivery and installation costs in connection therewith. Purchaser will accept the Equipment as soon as it has been delivered and inspected. Purchaser will evidence its acceptance of the Equipment by executing and delivering to Vendor a Delivery and Acceptance Certificate (in the form provided by Vendor) upon delivery of the Equipment.

4. **DISCLAIMER OF WARRANTIES.** Purchaser acknowledges and agrees that the Equipment is of a size, design and capacity selected by Purchaser and Purchaser takes the Equipment, subject to any warranties from Vendor and/or manufacturer. Vendor hereby assigns to Purchaser during the Term, so long as no Event of Default has occurred hereunder and is continuing, all warranties, if any, expressed or implied with respect to the Equipment, running from the

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manufacturer to Vendor and Vendor authorizes Purchaser to obtain the customary services furnished in connection with such warranties at Purchaser's expense. Purchaser's sole remedy for the breach of any such manufacturer's warranty shall be against the manufacturer of the Equipment, and not against Vendor or its assigns. Purchaser expressly acknowledges that Vendor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the manufacturer of the Equipment.

~~5. RETURN OF EQUIPMENT. Upon the expiration or earlier termination of this Agreement pursuant to the terms hereof, Purchaser shall, at its sole expense but at Vendor's option, return the Equipment to Vendor in the condition required by Section 9 hereof at any location in the continental United States designated by Vendor. delete~~

6. REPRESENTATIONS, COVENANTS AND WARRANTIES. Purchaser hereby represents, covenants and warrants to Vendor as of the date hereof and at all times during the Term that (i) Purchaser is a state or a fully constituted political subdivision thereof within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"), or its obligations hereunder constitute obligations issued on behalf of a state or a political subdivision thereof, and Purchaser shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence and this Agreement; (ii) Purchaser has full power and authority under the constitution and laws of the state in which it is located to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations hereunder; (iii) each officer of Purchaser executing this Agreement has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended by a requisite majority of the members thereof, or by other appropriate official approval; (iv) the execution, delivery and performance of this Purchase and all documents executed in connection herewith, including, without limitation, *Schedules A and B* hereto and the Delivery and Acceptance Certificate referred to in *Section 3* hereof, (this Agreement together with all such documents shall be collectively referred to herein as the "Purchase Documents") have been duly authorized by all persons, governmental bodies and agencies necessary to authorize and approve this Agreement; (v) the Agreement constitutes a legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with its terms; (vi) the execution, delivery and performance of this Agreement by Purchaser shall not (a) violate any federal, state or local law or ordinance, or any judgment, order, writ, injunction, decree, rule or regulation of any court or other governmental agency or body applicable to Purchaser; or (b) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of the Purchaser or the Equipment pursuant to any note, bond, mortgage, indenture, agreement, deed of trust, bank loan or credit agreement, lease or other obligation to which Purchaser is a party or by which it or its assets may be bound, except as herein provided; (vii) in authorizing and executing this Agreement, Purchaser has complied with all open meeting laws, public bidding requirements and other laws applicable to this Agreement and the acquisition by Purchaser of the Equipment; (viii) the Equipment is essential to the function of the Purchaser or to the service Purchaser provides to its citizens and the Purchaser has an immediate need for, and expects to make immediate use of, substantially all of the Equipment, which need is not temporary or expected to diminish in the foreseeable future; (ix) no lease, rental agreement or contract for purchase to which Purchaser has been a party at any time during the last five years has been terminated by Purchaser by an event of default, as defined hereunder (x) the Equipment will be used by Purchaser only for the purpose of performing one or more of Purchaser's governmental or proprietary functions consistent with the permissible scope of Purchaser's authority; (xi) there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting the Purchaser, nor to the best knowledge of the Purchaser is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement; (xii) no event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default, exists at the Commencement Date; (xiii) the total amount of obligations entered into by Purchaser pursuant to the Act does not exceed 1-1/4% of the taxable value of the real and personal property located within Purchaser's boundaries at the date of this Agreement; and (xiv) the useful life of the Equipment does not exceed the term of this Agreement.

Purchaser shall deliver to Vendor an opinion of Purchaser's counsel in form and substance attached hereto or as otherwise acceptable to Vendor.

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7. **TITLE TO EQUIPMENT; SECURITY INTEREST.** Upon acceptance of the Equipment by Purchaser hereunder, title to the Equipment will vest in Purchaser subject to Vendor's rights under this Agreement; provided, however, that upon the occurrence of an Event of Default hereunder, and as long as such Event of Default is continuing, title will immediately vest in Vendor or its assignee without any action by Purchaser and Purchaser shall immediately surrender possession of the Equipment to Vendor or its assignee in the manner set forth in *Section 5* hereof. Purchaser grants to Vendor a continuing, first priority security interest under the Uniform Commercial Code in the Equipment, the proceeds thereof and all additions, attachments, repairs, replacements, substitutions and modifications thereto and proceeds thereof made pursuant to *Section 9*, in order to secure Purchaser's payment of all Purchase Payments due during the Term and the performance of all other obligations herein to be performed by Purchaser. Purchaser will join with Vendor in executing such financing statements or other documents and will perform such acts as Vendor may request to establish and maintain a valid first lien and perfected security interest in the Equipment. Purchaser authorizes Vendor to file a financing statement describing the Equipment and covering assets of Purchaser other than the Equipment described herein. Purchaser authorizes Vendor to complete the description of the Equipment on *Schedule A* when additional information, such as models and serial numbers, becomes available.

8. **USE; REPAIRS.** Purchaser will use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment. Purchaser shall comply with all laws, ordinances, insurance policies and regulations relating to the possession, use, operation or maintenance of the Equipment. Purchaser, at its expense, will keep the Equipment in good working order and repair and furnish all parts, mechanisms and devices required therefor.

9. **ALTERATIONS.** Purchaser will not make any alterations, additions or improvements to the Equipment without Vendor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment.

10. **LOCATION; INSPECTION.** The Equipment will not be removed from or, if the Equipment consists of rolling stock, its permanent base will not be changed from the Equipment Location without Vendor's prior written consent, which will not be unreasonably withheld. Vendor will be entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operation.

11. **LIENS AND TAXES.** Purchaser shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Agreement. Purchaser shall pay, when due, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by Vendor's income. If Purchaser fails to pay said charges, or taxes when due, or to provide the insurance required by *Section 14* hereof, Vendor may, but need not, pay said charges or taxes or purchase such insurance and, in such event, Purchaser shall reimburse Vendor therefore on demand, with interest at the maximum rate permitted by law from the date of such payment by Vendor to the date of reimbursement by Purchaser.

12. **RISK OF LOSS; DAMAGE; DESTRUCTION.** Purchaser assumes all risk of loss of or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Purchaser of the obligation to make Purchase Payments or to perform any other obligation under this Purchase. In the event of damage to any item of Equipment, Purchaser will immediately place the same in good repair with the proceeds of any insurance recovery applied to the cost of such repair. If Vendor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, Purchaser, at the option of Vendor, will either (a) replace the same with like equipment in good repair, or (b) on the next Purchase Payment Date, pay Vendor: (i) all amounts then owed by Purchaser to Vendor under this Agreement, including the Purchase Payment due on such date, and (ii) an amount equal to the applicable Concluding Payment set forth in *Schedule B* opposite such Purchase Payment Date. In the event that Purchaser is obligated to make such payment pursuant to subparagraph (b) above with respect to less than all of the Equipment, Vendor will provide Purchaser with the pro rata amount of the Purchase Payment and the Concluding Payment to be made by Purchaser with respect to the Equipment which has suffered the event of loss.

13. **PERSONAL PROPERTY.** The Equipment is and will remain personal property and will not be deemed to be affixed or attached to real estate or any building thereon. If requested by Vendor, Purchaser will, at Purchaser's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

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Vendor may request and Purchaser shall supply

14. **INSURANCE.** At its own expense, Purchaser shall maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and any other risks reasonably required by Vendor in an amount at least equal to the then applicable Concluding Payment of the Equipment, (b) liability insurance that protects Vendor from liability in all events in form and amount satisfactory to Vendor, and (c) workers' compensation coverage as required by the laws of the state; provided that, with Vendor's prior written consent, Purchaser may self-insure against the risks described in clauses (a) and (b). All insurance proceeds from casualty losses shall be payable as hereinafter provided. Upon acceptance of the Equipment and upon each insurance renewal date, ~~Purchaser will deliver to Vendor~~ a certificate evidencing such insurance. In the event of any loss, damage, injury or accident involving the Equipment, Purchaser will promptly provide Vendor with written notice thereof and make available to Vendor all information and documentation relating thereto and shall permit Vendor to participate and cooperate with Purchaser in making any claim for insurance in respect thereof.

All such casualty and liability insurance shall be with insurers that are acceptable to Vendor, shall name Purchaser as named insured and Vendor and Assignee, or their assigns as additional named insureds and shall contain a provision to the effect that such insurance shall not be cancelled or modified materially without first giving written notice thereof to Vendor and Assignee at least thirty days in advance of such cancellation or modification. All such casualty insurance shall contain a provision making any losses payable to Purchaser and Vendor, as their respective interests may appear. The Purchaser may provide required insurance as part of "blanket" coverage maintained on its other assets. Required insurance coverage may also be provided in whole or in part by self-insurance, with written consent of the Vendor, which shall not be unreasonably withheld. If such consent is given, Purchaser will furnish Vendor with a letter or certificate of self-insurance specifying the type and extent coverage. The proceeds of any such policies will be payable to Purchaser and Vendor or its assigns as their interests may appear. In the event that Purchaser has been permitted to self-insure, Purchaser will furnish Vendor with a letter or certificate to such effect.

15. **RELEASE AND INDEMNIFICATION.** To the extent permitted by law, Purchaser shall indemnify, protect and hold harmless Vendor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith (including, without limitation, counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement, (b) the ownership of any item of the Equipment, (c) the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment, ^{or} (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury or death to any person, ~~or (e) the breach of any covenant herein or any material misrepresentation contained herein.~~ The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Term for any reason. ~~delete.~~

16. **ASSIGNMENT BY PURCHASER.** Without Vendor's prior written consent, Purchaser will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Purchase or the Equipment or any interest in this Purchase or the Equipment or (ii) sublet or lend the Equipment or permit it to be used by anyone other than Purchaser or Purchaser's employees.

17. **ASSIGNMENT BY VENDOR.** Vendor may assign its rights, title and interest in and to the Purchase Documents, the Equipment and/or grant or assign a security interest in this Agreement and the Equipment, in whole or in part, and Purchaser's rights will be subordinated thereto. Any such assignees shall have all of the rights of Vendor under this Agreement. Subject to the foregoing, this Agreement inures to the benefit of and is binding upon the successors and assigns of the parties hereto. Purchaser covenants and agrees not to assert against the assignee any claims or defenses by way of abatement, setoff, counterclaim, recoupment or the like which Purchaser may have against Vendor. Upon assignment of Vendor's interests herein, Vendor will cause written notice of such assignment to be sent to Purchaser which will be sufficient if it discloses the name of the assignee and address to which further payments hereunder should be made. No further action will be required by Vendor or by Purchaser to evidence the assignment, but Purchaser will acknowledge such assignments in writing if so requested. Purchaser shall retain all notices of assignment and maintain a book-entry record which identifies each owner of Vendor's interest in the Purchase. Upon Purchaser's receipt of written notice of Vendor's assignment of all or any part of its interest in the Purchase, Purchaser agrees to attorn to and recognize any such assignee as the owner of Vendor's interest in this Purchase, and

Purchaser shall thereafter make such payments, including without limitation such Purchase Payments, as are indicated in the

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notice of assignment, to such assignee. Purchaser waives and will not assert against any assignee of Vendor any claims, counterclaims, claims in recoupment, abatement, reduction, defenses, or set-offs for breach of warranty or for any other reason which Purchaser could assert against Vendor, except defenses which cannot be waived under the Uniform Commercial Code.

18. EVENT OF DEFAULT. The term "Event of Default," as used herein, means the occurrence of any one or more of the following events: (i) Purchaser fails to make any Purchase Payment (or any other payment) as it becomes due in accordance with the terms of this Agreement, and any such failure continues for ten (10) days after the due date thereof; (ii) Purchaser fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure is not cured within twenty (20) days after written notice thereof by Vendor; (iii) the discovery by Vendor that any statement, representation, or warranty made by Purchaser in this Agreement or in any writing ever delivered by Purchaser pursuant hereto or in connection herewith was false, misleading, or erroneous in any material respect; (iv) Purchaser becomes insolvent, or is unable to pay its debts as they become due, or makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of Purchaser or of any of its assets, or a petition for relief is filed by Purchaser under any bankruptcy, insolvency, reorganization or similar laws, or a petition in, or a proceeding under, any bankruptcy, insolvency, reorganization or similar laws is filed or instituted against Purchaser and is not dismissed or fully stayed within twenty (20) days after the filing or institution thereof; (v) Purchaser fails to make any payment when due or fails to perform or observe any covenant, condition, or agreement to be performed by it under any other agreement or obligation with Vendor or an affiliate of Vendor and any applicable grace period or notice with respect thereto shall have elapsed or been given; or (vi) an attachment, levy or execution is threatened or levied upon or against the Equipment.

19. REMEDIES. Upon the occurrence of any Event of Default, and as long as such Event of Default is continuing, Vendor may, at its option, exercise any one or more of the following remedies: (i) by written notice to Purchaser, declare an amount equal to all Purchase Payments and all other amounts then due under the Agreement, and the Concluding Payment due on the next Purchase Payment Date, to be immediately due and payable, whereupon the same shall become immediately due and payable; (ii) by written notice to Purchaser, request Purchaser to (and Purchaser agrees that it will), at Purchaser's expense, promptly return the Equipment to Vendor in the manner set forth in Section 5 hereof, or Vendor, or its assigns, at its option, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same, without liability for such entry or for damage to property or otherwise, (iii) sell or lease the Equipment or sublease it for the account of Purchaser, holding Purchaser liable for all Purchase Payments and other payments due to the effective date of such selling, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, Purchaser or subPurchaser pursuant to such sale, lease or sublease and the amounts otherwise payable by Purchaser hereunder; and (iv) exercise any other right, remedy or privilege which may be available to it under applicable laws of the state where the Equipment is then located or any other applicable law or proceed by appropriate court action to enforce the terms of this Agreement or to recover damages for the breach of this Agreement or to rescind this Agreement as to any or all of the Equipment. In addition, Purchaser will remain liable for all covenants and indemnities under this Agreement and for all legal fees and other costs and expenses, including court costs, incurred by Vendor with respect to the enforcement of any of the remedies listed above or any other remedy available to Vendor. Vendor may sell the Equipment without giving any warranties as to the Equipment and may disclaim any warranties of title, possession, quiet enjoyment, or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Equipment.

unless otherwise set out herein. reasonable.

20. TAX ASSUMPTION; COVENANTS. Purchaser hereby covenants with respect to this Agreement that (i) neither the payment of the Purchase Payments hereunder nor any portion thereof is secured by any interest in property used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code) or in payments with respect to such property or is derived from payments with respect to property, or borrowed money, used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code); (ii) no portion of the Equipment will be used directly or indirectly in any trade or business carried on by any non-exempt person (within the meaning of Section 103 of the Code); (iii) it will not take any action or permit or suffer any action to be taken or condition to exist if the result of such action or condition would be to cause its obligation to make Purchase Payments to be guaranteed, directly or indirectly, in whole or in part, by the United States or by any agency or instrumentality thereof; (iv) it will neither take any action (including, without limitation,

entering into any lease, sublease, output contract, management contract, take-or-pay contract or other arrangement) nor omit to take any action

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if the result of such action or omission would be to cause the interest portion of each Purchase Payment to become includable in the income of Vendor for purposes of federal, state or local income tax; (v) it will provide (or cause to be provided) to Vendor such other information as Vendor may reasonably request from Purchaser to enable Vendor to fulfill tax filing, audit and litigation obligations, including, but not limited to, federal and state income tax filing obligations; (vi) it will timely file a statement with respect to this Agreement in the form required by Section 149(e) of the Internal Revenue Code of 1986, as amended (the if required
"Code"); and (vii) neither take any action or omit to take any action if the result of such action or omission would be to cause this Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Code. If this Agreement is accompanied by an Escrow Agreement, Purchaser will execute and deliver to Vendor an Arbitrage Certificate (in the form provided by Vendor).

If Vendor receives notice, in any form, from the Internal Revenue Service or it is determined based on an opinion of independent tax counsel selected by Vendor and approved by Purchaser, which approval shall not be unreasonably withheld, that the interest portion of any Purchase Payment is includable in the income of Vendor for purposes of federal, state or local income tax, Purchaser, at its option, shall either (i) pay the Concluding Payment as provided in Section 19 hereof and terminate the Agreement or (ii) within 30 days after notice from Vendor, pay Vendor an amount which will restore to Vendor its after-tax yield as contemplated by this transaction from the date that the interest portion became taxable through the date of such additional rental payment and will further pay additional rent to Vendor on each succeeding Purchase Payment Date in such amount as will maintain Vendor's after-tax yield as contemplated by this transaction.

21. NOTICES. All notices to be given under this Agreement shall be made in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to mailing.

22. SECTION HEADINGS. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

23. GOVERNING LAW. This Agreement shall be construed in accordance with, and governed by, the laws of the state of Michigan.

24. DELIVERY OF RELATED DOCUMENTS. Purchaser will execute or provide, as requested by Vendor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Agreement.

25. ENTIRE AGREEMENT; WAIVER. The Purchase Documents constitute the entire agreement between the parties with respect to the purchase of the Equipment and shall not be contradicted by any oral representations made prior to, contemporaneously with or subsequent to the date hereof nor do any oral agreements presently exist between the parties which have not been reduced to writing. This Agreement shall not be modified, amended, altered, or changed except with the written consent of Purchaser and Vendor. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement. The waiver by Vendor of any breach by Purchaser of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Purchase Date: _____

Resolution # _____

PURCHASER: ~~Eastern Michigan University, MI.~~
City of Troy

VENDOR: ~~Spartan Distributors, Inc.~~
Club Car Inc

By: _____
Louise Schilling
Mayor

By: _____

By: _____
Copy Tonni Bartholomew, MMC

Title: _____
City Clerk

Title: _____

Date: _____

Date: _____

ASSIGNMENT

For value received, Vendor does hereby sell, assign, and transfer unto CitiCapital Commercial Corporation ("Assignee"), whose address is 300 East Carpenter Freeway, Irving, TX 75062, all of its rights under this Agreement, including all right, title, and interest in and to this Agreement, including all monies due and to become due under, and all right, title, interest and remedies (but not its duties or obligations) in and under the Agreement and the Equipment therein described, and we authorize Assignee to do every act and thing in our name or otherwise which Assignee may deem advisable to enforce the terms of said Agreement. Purchaser hereby acknowledges the Assignment of same. Vendor further warrants and agrees that: Vendor's title to the Equipment is absolute, subject only to Purchaser's interest; amounts shown in the Agreement are owing by Purchaser, who has no right of set-off or counterclaim against Vendor; the Agreement constitutes the entire agreement between Vendor and Purchaser and that the Agreement is valid and enforceable; neither Purchaser nor Vendor are in default under the Agreement; all sales, transfer, franchise or similar taxes (excluding only taxes levied in connection with net income) in connection with the acquisition of the Equipment have been or will be paid, and all such taxes due with respect to the execution of this Agreement have been paid; Vendor has not advanced and will not advance any payment to Purchaser; all parties to the Agreement have legal capacity to contract; the Purchaser received possession or will receive possession of the Equipment in accordance with the agreed upon delivery schedule of the Equipment; a properly perfected lien giving a first priority position to Assignee has been placed on all of the Equipment or will be placed on all of the Equipment prior to delivery to Purchaser, subject to no lien, encumbrance or claim adverse to Assignee. Vendor hereby covenants and agrees that if any payment required to be paid by Purchaser with respect to the Equipment is less than the payment specified in the Agreement because of set-off, liquidated damages or any other counterclaim or defense, in each case arising out of Vendor's failure to perform its obligations under the Agreement, Vendor will pay to Assignee (or its assignee) within thirty (30) days after such payment is due, in immediately available funds, an amount equal to the payment due, increased by an amount which will restore to Assignee its after-tax yield as contemplated by this transaction, less the amount, if any, which Assignee (or its assignee) has received. Vendor agrees to indemnify and hold Assignee harmless from and against any and all expenses, losses or damages, suffered or incurred by Assignee as a result of the failure of Vendor to perform its obligations under this Agreement, or as a result of the failure of any representation, warranty or covenant made herein by Vendor, including but not limited to all expenses and legal fees incurred in answering or defending any claim or action against Assignee or Vendor with respect thereto, or in enforcing any rights Assignee may have against Vendor under this Agreement.

except as set out in the Agreement between the Vendor and Purchaser

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ASSIGNEE MAKES NO REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, QUALITY, DURABILITY, VALUE, DESIGN, OPERATION, SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, OR AS TO ANY OBLIGATION BASED ON STRICT LIABILITY IN TORT OR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO. RISKS INCIDENT THERETO ARE TO BE BORNE BY PURCHASER AND, IN NO EVENT SHALL ASSIGNEE BE LIABLE FOR ACTUAL, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES OF OR TO PURCHASER OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE EQUIPMENT, THE MAINTENANCE THEREOF OR OF ANY SERVICES PROVIDED HEREIN. PURCHASER MAY HAVE RIGHTS BETWEEN ITSELF AND VENDOR AND/OR THE MANUFACTURER OF THE EQUIPMENT AND IS ADVISED TO CONTACT THE MANUFACTURER OF THE EQUIPMENT FOR A DESCRIPTION OF ANY SUCH RIGHTS.

Vendor: Club Car Inc
By: _____
Its: _____
Date: _____

CITICAPITALCOMMERCIAL CORPORATION
By: _____
Its: _____
Date: _____

ACKNOWLEDGED BY
Resolution # _____
Purchaser: City of Troy
By: _____
Louise Schilling
Its: Mayor
Date: _____

By: _____
Tonni L Bartholomew MMC
Title: City Clerk
Date: _____