

**PROTEST OF DETERMINATION THAT PROPERTY
IS NOT USED FOR A PUBLIC PURPOSE**

The City of Mitchell Recreation Corp. and City of Mitchell respectfully submit this protest of the determination that PID: 0010279652 is not used for a public purpose. PID: 0010279652, valued at \$125,245 consists of a golf course and pro-shop/restaurant. 77-202(1)(b) provides that property of a governmental subdivision, to the extent used by a governmental subdivision for a public purpose, is exempt from tax. Subsection (ii) of that statute states that a public purpose means the use of the property (A) to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes.

Golf is clearly considered as recreational and therefore, a public purpose. The golf course itself (fairways, greens, etc.) do not appear to have a taxable value, however the pro-shop does and Mr. Simpson, on behalf of the Scotts Bluff County Assessor's office has advised that the "clubhouse is taxable, not the course."

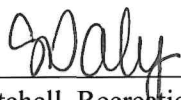
The clubhouse/pro-shop is an essential part of the recreational aspect of the golf course. Without it, the holes and remainder of the course cannot be used to generate income. Additionally, 77-202(ii)(A) advises "to provide public services with or without cost to the recipient." Implicit in providing a recreational opportunity at a cost, is the pro-shop where the green fees and cart rentals are collected and provided. The pro-shop is recreational and an indispensable part of the golf course.

Admittedly, the pro-shop building does have a restaurant attached to it and the whole building is leased to a third party. The pro-shop makes up approximately 20% of the building.

77-202 further provides that "public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose." In this case, the property is leased for public purpose at fair market value, so it is still eligible for the exemption. The lease is attached and is considered fair market value for the location. The location is outside of Mitchell- a small community- and sees minimal traffic. Prior to the current tenant, the City struggled to keep a tenant in the location, which indicates a fair market lease value.

The City respectfully submits this protest of determination that property is not used for a public purpose and asks the Board of Equalization to reconsider their determination.

Dated: 4-1-25

Signed: 
City of Mitchell, Recreation Corp.
City of Mitchell, Nebraska

AGREEMENT

This Agreement is made on October 8, 2024, by and between the CITY OF MITCHELL, hereinafter referred to as the "City," and Ricardo Ayala, hereinafter known as "Ayala."

WHEREAS the City currently owns a golf course clubhouse facility at 20548 Highway 29; and,

WHEREAS the City desires to provide for the use and management of the golf course clubhouse facility and collection of receipts from the golf course operation.

NOW THEREFORE, in consideration of the promises and covenants set forth herein, and for other good and valuable consideration, the City and Ayala hereby agree as follows:

1. Ayala shall be provided with use of the clubhouse building and the restaurant and bar fixtures and equipment as set forth on Exhibit A, which may be amended by the City from time to time.

2. Ayala shall provide sufficient staff and employees to collect fees for the City for use of the golf course, driving range, and golf carts. Ayala shall conduct golf tournaments, private golf outings, and any other events that would produce income for the golf course on a schedule to be agreed upon.

3. Ayala shall provide sufficient staff and employees and shall provide and pay for all inventory, food, alcohol, and other products necessary for the operation of the restaurant.

4. City shall pay Ayala 15% of the green fees collected and 10% of the cart rental fees collected per month. The City shall also provide for Ayala's use of

golf course clubhouse facility and all equipment and fixtures in the facility for operation of a restaurant and bar.

5. Ayala shall be entitled to all profits generated by the Restaurant and the sale of alcohol.

6. In consideration for use of the facilities and equipment, Ayala shall pay a monthly rental fee of \$500 to the City, due and payable on the tenth (10th) day of each month, beginning November 10, 2024.

7. The term of this Agreement shall run from October 31, 2024 through October 31, 2027. The parties agree to discuss renewal of the Agreement for additional three (3) year terms in advance of the herein described termination date.

8. The following terms and conditions shall apply to Ayala's use of the clubhouse, restaurant, and bar facilities.

- a. Ayala agrees to clean and maintain all equipment currently owned by the Recreation Corporation or City according to manufacturer's recommendations. Cleaning and maintaining hereunder shall include paying for any cleaning services and sewer and grease trap cleaning. Any equipment damaged or destroyed will be repaired or replaced at Ayala's expense.
- b. Ayala shall comply with all applicable federal, state, and local laws and regulations concerning operation of the restaurant and bar facility.
- c. Ayala shall maintain complete and accurate records relating to management and operation of the clubhouse facility concerning collection of receipts for use of the golf course, driving range, golf carts, and memberships. Ayala shall turn over to the City

Treasurer, on a weekly basis, reports and receipts from the golf course.

- d. Ayala shall process all credit card transactions through his credit card processing system. Ayala shall complete, maintain, and keep accurate records and account for all charges attributable to Ayala, the restaurant, and bar versus those attributable to the City, clubhouse, and golf course. All charges attributable to the clubhouse, golf course, or otherwise belonging to the City shall be forwarded to the City on a monthly basis. All charges attributable to the restaurant, bar, or otherwise belonging to Ayala shall remain with Ayala. Ayala shall prorate all credit card financing charges between the parties and charge the City monthly for their share of such financing charges. Ayala shall submit to the City a statement showing all transactions processed and the division of such on a weekly basis.
- e. Ayala shall obtain a manager's liquor license for sale of controlled beverages and shall maintain this license in their name during the term of the contract.
- f. Ayala acknowledges that it is critical to the City that adequate service levels are provided for patrons of the golf course. During all times when the golf course may reasonably be expected to be used, Ayala shall have staff working at the golf course with sufficient knowledge of the operation and use of the golf course amenities. Ayala shall obtain the City's consent prior to hiring a marshal.

Ayala shall operate the clubhouse on the following schedule:

March, April, October, November 1st-19th:	9:00 a.m. to dusk
May, June, July, August:	7:00 a.m. to dusk
September:	8:00 a.m. to dusk

Ayala is not required to open the bar or restaurant on Mondays. Nothing shall prohibit Ayala from keeping the clubhouse and restaurant and bar open to the general public at other times. During the above-referenced times, Ayala shall maintain adequate staffing to be able to provide service to golf course patrons and to the general public in a timely and reasonable manner.

- g. From November 20 to the end of February, the golf course will not be open unless the temperature exceeds 49 degrees. In the event the golf course is open, Ayala shall have staff working at the golf course with sufficient knowledge of the operation and use of the golf course amenities. The City shall communicate with Ayala as to the days the golf course is expected to be open during this time period. During this time period, Ayala may open and close the restaurant at their discretion, provided that they shall on at least a weekly basis post on the clubhouse door the times the restaurant will be open.
- h. Ayala must provide a monthly schedule of events and obtain prior approval from the City Administrator and City Clerk before holding any private event or party at the restaurant and bar or otherwise opening the restaurant and bar to anyone other than the general public. The City may terminate this Agreement upon a violation of this provision.

i. Ayala may make improvements to the building after written advance approval from the City Administrator. Ayala must submit a project description and budget for approval by the City Administrator before beginning any improvements.

6. Ayala acts as an independent contractor in performing its duties pursuant to this Agreement. No employee, officer, or agent of Ayala shall represent that they are an employee or agent of the City.

7. Ayala shall procure and maintain for the duration of this Agreement insurance against all claims for injuries to persons or damage to property, which may arise from, or in conjunction with, the performance of this Agreement by Ayala, and their agents, representatives, employees or subcontractors. Ayala shall provide liability insurance in an amount of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury, personal injury and property damage. The City shall approve the insurance coverage. Proof of insurance shall be provided to the City Clerk annually.

8. Ayala shall provide workers' compensation insurance for their employees. Proof of insurance shall be provided to the City Clerk annually.

9. With reference to insurance the following provisions shall apply.

a. General Liability:

1) The City, its officers, officials, employees and volunteers are to be covered as additional insured's with respect to: liability arising out of activities performed by or on behalf of Ayala, including the insured's general supervision of Ayala; products and completed operations of Ayala; premises owned, occupied or used by Ayala;

automobiles owned, leased, hired or borrowed by Ayala; and liquor liability.

- 2) Ayala's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of Ayala's insurance and shall not contribute with or to it.
- 3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, or volunteers.
- 4) Ayala's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of insurer's liability.

b. Workers Compensation:

Ayala shall furnish the City with certificates of insurance and with original endorsements for each insurance policy signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required policies at any time.

10. Ayala shall post a cash deposit in the amount of Five Hundred Dollars (\$500.00) on or before the effective date. The deposit shall guarantee successful performance of this Agreement and return of the premises and equipment in good condition at the end of the term of this Agreement. In addition to the cash deposit, Ayala shall obtain a Fidelity Dishonesty bond covering Ayala and their employees

concerning the funds and cash that Ayala or their employees will handle that belong to the City. This bond shall be furnished on the effective date of this Agreement.

11. Either party shall be considered in default if it fails to comply with any of the requirements of this Agreement. The parties shall be entitled to avail themselves of any remedy available in the State of Nebraska for any default or other failure to perform that is not specifically provided for in this Agreement. Without limiting the foregoing, if a party is in default, the other party may terminate this agreement if the defaulting party does not cure the default within 30 days after the terminating party provides written notice of the default to the defaulting party.

12. The parties desire to resolve disputes short of litigation, if possible, Therefore, before commencing legal action, the parties shall attempt to negotiate a solution, and if unsuccessful, consider other means of resolving the dispute without litigation.

13. The parties represent that each of them has lawfully entered into this Agreement, having complied with all relevant statutes, ordinances, resolution, by-laws, and other legal requirements applicable to their operation.

14. This agreement shall be interpreted pursuant to the laws of the State of Nebraska.

15. Time shall be of the essence of this agreement.

16. The invalidity of any portion of this agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders.

17. No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement.

18. Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing shall not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same.

19. No waiver of any breach of any provision of this Agreement will be deemed a waiver of any other breach of this Agreement. No extension of time for performance of any act will be deemed an extension of time for any other act.

20. This Agreement shall be binding upon the heirs, successors, administrators and assignees of each of the parties hereto. Neither party shall transfer or assign any of its rights, duties or obligations set forth in this Agreement to a third party without the prior written consent of the other party.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

Signed and entered into this 8th day of October, 2024.

CITY OF MITCHELL,

By: Paul Murrell
Paul Murrell, Mayor

ATTEST:

Ronda Hrasky
Ronda Hrasky, City Clerk

Signed and entered into this 10 day of October, 2024.

Ricardo Ayala
Ricardo Ayala