

RESOLUTION NO.: 2018-R61  
SPONSOR: MAYOR NEUGEBAUER  
INTRODUCED: AUGUST 14, 2018 ASSIGNED TO: FINANCE

**A RESOLUTION AUTHORIZING THE CITY OF GREEN TO ENTER INTO AN ASSET PURCHASE AGREEMENT WITH RAINTREE COUNTRY CLUB, INC. AND RAINTREE GOLF, LLC. FOR THE REAL PROPERTY LOCATED AT 4340 MAYFAIR ROAD, UNIONTOWN, OHIO 44685, AND ALL PERSONAL PROPERTY SITUATED THEREON AND/OR RELATED THERETO, MAKING AN APPROPRIATION, AUTHORIZING AN ADVANCE, APPROVING TERMS FOR REPAYMENT OF ADVANCE, ~~AND DECLARING AN EMERGENCY.~~**

WHEREAS, the Administration entered into a discussion with Raintree Country Club, Inc., and Raintree Golf, LLC., the owners of the property located at 4340 Mayfair Road, Uniontown, Ohio 44685, and known as being all of Blocks A and B of Raintree Country Club Estates as recorded in Plat Cabinet H Slide 748 of Summit County Record of Plats; and

WHEREAS, the City of Green, Raintree Country Club, Inc., and Raintree Golf, LLC., have reached a tentative agreement for the purchase of the property; and

WHEREAS, the Administration desires to proceed with the purchase of the real and personal property and believes it to be in the best interest of the City to acquire this property for future use; and

WHEREAS, it is necessary to appropriate funds to pay for the cost of the purchase; and

WHEREAS, pursuant to the general laws of the State of Ohio and AOS Bulletin 1997-03 on interfund advances, it is necessary to reallocate cash from the General Fund to the Park Capital Projects Reserve Fund to provide cash flow.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, AND STATE OF OHIO, THAT:**

**SECTION ONE:**

Green City Council authorizes the Mayor to enter into the Asset Purchase Agreement, attached as Exhibit "A", and proceed with the purchase of the personal property and the real property located at 4340 Mayfair Road, Uniontown, Ohio 44685, and known as being all of Blocks A and B of Raintree Country Club Estates, less .34 acres separate parcel, as recorded in Plat Cabinet H Slide 748 of Summit County Record of Plats.

**SECTION TWO:**

Green City Council authorizes the Finance Director to appropriate Three Million Three Hundred Thousand Dollars (\$3,300,000.00), plus closing costs, in an amount to be determined at closing, to the Park Capital Land Purchase Account (Acct #402-6000-53610), from the unappropriated balance of the Park Capital Projects Reserve Fund.

**SECTION THREE:**

Green City Council approves the advance of Three Million Three Hundred Thousand Dollars (\$3,300,000.00) from the General Fund to the Park Capital Projects Reserve Fund to provide the necessary

cash flow for this purchase of land. Council further authorizes a Long-Term Repayment Schedule for the repayment of said advance, which is attached hereto and incorporated herein as Exhibit "B".

**SECTION FOUR:**

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meetings if this Council and any deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

**SECTION FIVE:**

~~Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of Green. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.~~

ADOPTED: November 13, 2018

Molly Kapelner  
Nichole Baldinger, Clerk of Council, Interim  
Molly Kapelner

Chris Humphrey  
Chris Humphrey, Council President

APPROVED: Nov. 13, 2018

Gerard M. Neugebauer  
Gerard M. Neugebauer, Mayor

COPIED  
MAY FIN LAW PLAN ENG  
SVCE FIRE PARK ZONE HR

ENACTED EFFECTIVE: Dec. 13, 2018

ON ROLL CALL: Babbitt -AYE Dyer -AYE Humphrey -NAY Shaughnessy -NAY  
Speight -AYE Yeargin -AYE Young -AYE Adopted 5-2

Suburbanite publication on Nov. 16 and Nov. 23, 2018

Molly Kapelner  
Nichole Baldinger, Clerk of Council, Interim  
Molly KAPELNER

08/07/2018 Approved as to form and content by William G. Chris Law Director, Interim

William G. Chris

**AGREEMENT OF ASSET SALE AND PURCHASE**

THIS AGREEMENT OF SALE AND PURCHASE ("Agreement"), dated this 24<sup>th</sup> day of June, 2018 ("Effective Date"), by and between The City of Green (hereinafter "Buyer") P.O. Box 278, Green, OH 44232-0278 and Raintree Country Club, Inc. and Raintree Golf LLC, doing business as Raintree Country Club (hereinafter collectively "Sellers") 4340 Mayfair Road, Uniontown, Ohio 44685, each of whom shall sometimes separately be referred to herein as a "Party" and both of whom shall sometimes collectively be referred to herein as the "Parties," and constitutes a binding asset sale and purchase agreement between Buyer and Sellers.

Sellers desires to sell and assign the Property (as defined herein) to Buyer, and Buyer desires to purchase the Property from Sellers, all upon and subject to the terms and conditions set forth below.

FOR VALUABLE CONSIDERATION RECEIVED, the Parties mutually agree as follows:

**ARTICLE 1  
DEFINITIONS**

1.1 Definitions. In addition to those terms defined elsewhere in this Agreement, the following terms have the meanings set forth below:

"Closing Date" means November 1, 2018 (or, if applicable, such other date mutually agreed to in writing by the Parties).

"Escrow Agent" shall mean AMS Title Agency Inc., located at 229 South Chestnut Street, Ravenna, Ohio 44266; Attention: Amy Nichols; Phone (330) 298-1070; Facsimile: (330)-298-1071.

"Improvements" means all buildings, structures, fixtures and other improvements now or hereafter located on, over, and under the Land including, without limitation, the clubhouse, the golf course, and all other buildings on the Land.

"Land" means that certain tract or parcel or those certain tracts or parcels of real property located at 4340 Mayfair Road, Uniontown, Ohio 44685 County of Summit, State of Ohio, the description of which is set forth on Exhibit "A" attached hereto and incorporated herein by reference.

**ARTICLE 2  
PURCHASE, PURCHASE PRICE AND PAYMENT**

2.1. Purchase and Sale of Assets. Sellers shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase, acquire and assume from Sellers, the following assets and property (collectively, the "Property"):

2.2 Real Property. The Land and the Improvements together with (a) all easements, rights-of-way, development rights, entitlements, air rights and appurtenances relating or appertaining to the Land and/or the Improvements, (b) all water wells, streams, creeks, ponds, lakes or other bodies of water in, on or under the Land, (c) all sewer, septic and waste disposal rights and interests applicable or appurtenant to and/or used in connection with the operation of the Improvements, and (d) all minerals, oil, gas and other hydrocarbons located in, on or under the Land, together with all rights to surface or subsurface entry, free and clear of any and all liens, liabilities, encumbrances, exceptions and claims (collectively the "Real Property").

2.3 Personal Property. All equipment, machinery, tools, appliances, furnishings, fixtures, supplies, and other items of tangible personal property located on the Land, in the Improvements, or used in connection with the business, including, but not limited to, the personal property set forth in Exhibit B, attached hereto and incorporated herein.

2.4 Assumed Contracts. All of Sellers' right, title and interest in those Contracts relating to the operation, maintenance and/or management of the Property which Buyer expressly agrees to assume in writing ("Assumed Contracts"). Buyer, in its sole and absolute discretion, shall determine which Contracts are to be included in the Assumed Contracts. Buyer hereby agrees to assume and complete the current lease for any and all golf carts being leased by Sellers.

2.5 Permits, Intangibles, Tradenames. All of Sellers' right, title and interest in, all permits and licenses, including Liquor License. All intangible personal property, including, but not limited to email addresses and websites. All rights of Sellers in and to the name "Raintree Country Club" and any and all derivatives and forms thereof, together with all trademarks, service marks and logos of "Raintree Country Club."

2.6 Books and Records. All books, records, and financial documents relating to the business of owning, operating, maintaining and/or managing the Real Property.

2.7 Purchase Price. The purchase price for the Property ("Purchase Price") shall be Three Million and Three Hundred Thousand Dollars (\$3,300,000.00). The Purchase Price shall be paid by Buyer to Sellers as follows: by wire transfer to Escrow Agent. Upon receipt of the wire transfer by Escrow Agent, Escrow Agent shall disburse the money and any other title items that need to be cleared to complete this Agreement to Huntington Bank.

2.8 Closing Deposit. The Purchase Price shall be paid by Buyer to Escrow Agent and distributed by Escrow Agent to Sellers on the Closing.

### **ARTICLE 3 ESCROW**

3.1 Escrow. Buyer shall open the Escrow with Escrow Agent within ten (10) days following the date of Sellers' and Buyer's execution of this Agreement by depositing with Escrow Agent a fully executed counterpart original of this Agreement.

### **ARTICLE 4 INVESTIGATION PERIOD; VOLUNTARY TERMINATION; TITLE**

4.1 Investigation Period; Sellers' Deliveries. During the period commencing upon the Effective Date and terminating at 11:59 p.m. the date that is sixty (60) days following the date Buyer has received all the Due Diligence Materials and the Phase I Report (the "Investigation Period"), Buyer shall have the right to conduct and complete an investigation of all matters pertaining to the Property. Sellers agree to pay for a basic title guarantee. Additionally, any and all title insurance premiums above or in addition to the basic title guarantee shall be split in equal amounts between Buyer and Sellers.

4.2 Inspection. During the Investigation Period, Buyer shall have the right, at Buyer's expense, to make any and all necessary inspections of the Property. Buyer may cause an environmental consultant to prepare and deliver to Buyer a current Phase I Environmental Investigation Report covering the Real Property. Seller will furnish all prior Phase I Reports to Buyer. In the event Buyer disapproves or finds unacceptable, in Buyer's sole and absolute discretion, any matters reviewed by Buyer during the Investigation Period, Buyer may elect to terminate this Agreement.

4.3 Due Diligence Materials. Not later than ten (10) days after the Effective Date, Sellers shall deliver, or cause to be delivered, to Buyer true, correct and complete copies of all the Due Diligence Materials, as listed on Exhibit C.

### **ARTICLE 5 SELLERS' REPRESENTATIONS, WARRANTIES, AND COVENANTS**

Sellers makes the following representations, warranties and covenants.

5.1 Organization, Power and Authority. Raintree Country Club, Inc. is a for profit Corporation, duly organized and validly existing under the laws of the State of Ohio. Raintree Golf LLC is a Limited Liability Company, duly organized and validly existing under the laws of the State of Ohio. Sellers have all requisite power and authority to execute this Agreement.

5.2 Title. Seller has good and marketable title to all the Property, free and clear of any liens, mortgages, pledges, security interests, and other encumbrances of any kind.

5.3 Litigation and Condemnation. Sellers are not aware of, any pending or threatened claims or investigations against or affecting the Property other than those set forth in *Health and Wellness Lifestyle Clubs, LLC v. Raintree Golf LLC, et al.* (U.S. Dist. Court, N.D. of Ohio, Case NO. 5:17-cv-02189).

5.4 Operations. Sellers shall operate and manage the Property in accordance with its customary practices. Sellers shall not remove any items of Personal Property from the Real Property nor shall Sellers sell or otherwise dispose of any of the Property, other than in the ordinary course of business. Sellers shall use commercially reasonable efforts to preserve any existing relationships with vendors and others, as well as their goodwill.

5.5 Contracts and Purchases. During the period from Effective Date through Closing, Sellers shall not enter into, or renew, extend, amend, modify, or terminate any Contracts relating to the Property without the prior written approval of Buyer, subject to the exceptions explicitly set forth herein. Sellers shall not make any purchases or agreements to purchase any property or assets in excess of One Thousand Dollars (\$1,000.00.) without the approval of Buyer in each instance. Sellers shall be permitted to hold outings, wedding banquets, and other events which Sellers would host in the normal course and scope of business. Any amounts due on these events which occurred prior to Closing but were not received till after closing shall be paid to Sellers by Buyer. Any and all amounts due for events which are booked prior to Closing but are scheduled for after Closing will be paid exclusively to Buyer. Prior to Closing, Sellers shall be permitted to book outings, weddings, banquets and other events for dates occurring after Closing. Sellers shall give Buyer advance notice of booking any events to occur after Closing.

5.6 Insurance. Sellers shall keep in effect through the Closing all policies of insurance relating to the Property or the operation thereof.

5.7 Permits. Sellers shall maintain all permits including the Liquor License, entitlements, and tradenames in full force and effect and shall not take any action which will invalidate such.

5.8 Audit of Books and Records. Buyer shall conduct an audit and review of Sellers' Books and Records, including, but not limited to, all internal financial and accounting records. Sellers shall make all such documents available to Buyer and Buyer's representatives. The audit and review conducted by Buyer and/or Buyer's representatives will be performed at Buyer's expense.

5.9 Termination of Employees and Independent Contractors. Seller shall terminate all existing employees and independent contractors as of the Closing and each such employee and independent contractor shall have received all wages, salary, and any other benefits to which

such is entitled, as of and through the date of the Closing. Buyer shall have the right but not the obligation to offer interviews to any of Sellers' current employees.

5.10 Compliance with Laws. Sellers have complied, and are currently in compliance with, all federal, state and local laws, regulations and ordinances applicable to ownership and operation of the Real Property.

## **ARTICLE 6 BUYER'S COVENANTS**

Buyer makes the following representations and warranties.

6.1 Organization, Power and Authority. Buyer is a Political Subdivision of the State of Ohio and is authorized to do business in the State and County where the Real Property is located. Buyer has all requisite power and authority to execute this Agreement.

6.2 Approvals. This Agreement is contingent upon the written approval of the Green City Counsel.

## **ARTICLE 7 COSTS, EXPENSES, FEES AND PRORATIONS**

7.1 Sellers. Sellers shall pay (a) all recording costs and documentary transfer taxes, deed stamps and other costs payable in connection with the recordation of Seller's Deed and the conveyance of the Real Property; (b) the cost of the Title Policy (including any binders or endorsements to the Title Policy reasonably requested by Buyer; and (c) Sellers' attorney's fees.

7.2 Buyer. Buyer shall pay (a) Escrow Agent's fees and costs for the Escrow; and (b) Buyer's attorney's fees.

7.3 Real Property Taxes. All general and special real estate taxes and assessments based on the regular tax bill for the current fiscal year (or, if such tax bill has not been issued as of the date of Closing, the regular tax bill for the fiscal year preceding the current fiscal year) shall be prorated between the Parties at the Closing.

7.4 Sales Taxes. Sellers shall bear, be responsible for and shall pay for, all sales and use taxes arising out of the sale and transfer by Sellers to Buyer of the Property.

7.5 Utility Charges. All utility charges applicable to the Real Property shall be prorated between Sellers and Buyer as of the Closing.

7.6 Other Payables and Receivables. All account payables relating to the operation of the Property prior to the Closing shall remain the obligation of Sellers. All account receivables relating to the operation of the Property prior to the Closing shall be assigned to Buyer.

7.8 Buyer's Representative. Buyer shall have the right, by an independent accounting firm and/or such other representative as may be designated, to make any investigations with respect to the Property and the Books and Records, relating to the operation of the Property as Buyer may deem necessary.

## ARTICLE 8 ACTIONS TO BE TAKEN AT THE CLOSING

In connection with the Closing, Escrow Agent shall take the following actions:

8.1 Recording. Escrow Agent shall cause Seller's Deed for the Real Property to be recorded in the Official Records of Summit County, Ohio, and obtain a conformed copy thereof.

8.2 Title Policy. Escrow Agent shall direct Title Insurer to issue the Title Policy to Buyer.

8.3 Distribution of Funds. Escrow Agent shall disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price to Sellers promptly upon the Closing

8.4 Distribution of Seller's Deed and Documents. Disburse to the Parties an executed original conformed copy of Seller's Deed and any other documents deposited into Escrow necessary to effectuate this Agreement.

8.5 Conditions to Closing. Closing is conditioned upon the warranties, representations, and conditions as set forth herein. If Buyer determines, in its sole and absolute discretion, any of said warranties, representations, or conditions have not been met at any time up until closing, Buyer may elect to terminate this Agreement. Additionally, after the Investigation Period up until closing, if Buyer, in its sole and absolute discretion, finds there to be any issues related to the inspection of the Due Diligence Materials, Buyer may elect to terminate this Agreement.

## ARTICLE 9 INDEMNIFICATION

9.1 Indemnification by Sellers. Sellers hereby agree to and shall indemnify, defend and hold harmless Buyer, and its affiliates, and each of their respective members, partners, officers, directors, shareholders, trustees, beneficiaries, employees, agents, representatives, successors and assigns (the "Indemnitees"), from and against any and all claims, suits, causes of action and other legal proceedings and from all liabilities, arising therefrom, arising out of or relating to Sellers' previous ownership, management and/or operation of the Property. The rights and obligations under this section shall survive the Closing indefinitely.



**ARTICLE 10  
MISCELLANEOUS**

10.1 Assignment. No assignment of this Agreement or Buyer's rights or obligations hereunder shall be made by Buyer without first having obtained Sellers' written approval.

10.2 Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail in accordance with the following:

If to Sellers Thomas Sicuro  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
FAX: ( ) \_\_\_\_\_

With copy to: JIM EVANS  
4057 W. Maple Ave NW  
Suite 116  
Crofton Ohio 44718  
Attn: \_\_\_\_\_  
FAX: (330) 491-2262

If to Buyer: William Ches  
low Director  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
FAX: ( ) \_\_\_\_\_

With copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
FAX: ( ) \_\_\_\_\_

10.3 Entire Agreement. This Agreement constitutes the entire contract between the Parties with respect to the subject matter covered by this Agreement. This Agreement may not be amended, changed or modified except by a writing duly executed by all Parties hereto.

10.4 Severability. If any provision of this Agreement, or any portion of any such provision, is held to be unenforceable or invalid, the remaining provisions and portions shall nevertheless be carried into effect.

10.5 Remedies. The Parties shall not be deemed to waive any of their rights or remedies under this Agreement, unless such waiver is in writing and signed by the Party to be bound.

10.6 Headings. The headings contained in this Agreement are for convenience only and are not a part of this Agreement.

10.7 Governing Law and Adjudication. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio.

10.8 Survival. Except as otherwise provided in this Agreement to the contrary, the covenants and obligations of the Parties to this Agreement shall survive the Closing indefinitely.

10.9 Time is of the Essence. Time is of the essence for the performance of each and every obligation hereunder.

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

SELLERS:

RAINTREE COUNTRY CLUB INC.

By: [Signature]  
Name: JOHN RAINIERI  
Title: Owner

RAINTREE GOLF LLC

By: [Signature]  
Name: JOHN RAINIERI  
Title: Owner

BUYER:

THE CITY OF GREEN

By: [Signature]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF LAND:**

Known as being all of Blocks A and B of Raintree Country Club Estates as recorded in Plat  
Cabinet H Slide 748 of Summit County Record of Plats.

28-11029 GR-00023-01-006

20-1130 GR-0023-01-006.001

*less 34 are separate parcel.*

*W60*

*Grand In Trust*

**EXHIBIT B**

**LIST OF PERSONAL PROPERTY:**

- Lawn Mowers and other Maintenance Equipment
- Clubhouse Inventory (merchandise, food, apparel, memorabilia, equipment)
- Furniture, Decorations, Supplies

[illegible]

**EXHIBIT C**

**LIST OF DUE DILIGENCE MATERIALS:**

- All financial documents, including but not limited to, accounting records, tax records, and business records (income statements, balance sheets, etc.)
- All present contracts and agreements entered into with customers, vendors, members, suppliers, etc.
- All records of inspections, surveys, investigations, etc. conducted by any private or public entity
- All documents pertaining to utilities and other fixed expenses
- All documents and records relating to the Real Property including, but not limited to, any easements, covenants, leases, etc.

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2018-R61  
"Exhibit B"  
08/14/2018

**CITY OF GREEN**  
**Advance Repayment Schedule**  
**Raintree Land Purchase**

Total Advance Due: \$3,300,000.00	Advance Out: Parks Capital Projects Reserve Fund	Advance In: General Fund	Repayment Year(s):	Repayment Amount(s):
			2019	\$ 600,000.00
			2020	\$ 600,000.00
			2021	\$ 600,000.00
			2022	\$ 600,000.00
			2023	\$ 600,000.00
			2024	<u>\$ 300,000.00</u>
			Total:	<u>\$3,300,000.00</u>