


STATE OF ALABAMA)
 :
COUNTY OF SHELBY)


20040802000426450 Pg 1/10 38.00
Shelby Cnty Judge of Probate, AL
08/02/2004 10:33:00 FILED/CERTIFIED

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease Agreement") is made and entered into as of the 20th day of July, 2004 by and between **R.C.J. HOMEBUILDING, INC.**, an Alabama corporation ("Landlord"), and **BRUNO'S MEMORIAL CLASSIC FOUNDATION, INC.**, an Alabama nonprofit corporation ("Tenant").

RECITALS:

Contemporaneously herewith, Daniel Oak Mountain Limited Partnership, an Alabama limited partnership ("DOM") has transferred and conveyed to Landlord that certain real property (the "Premises") situated in Shelby County, Alabama which is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference.

In connection with, and in consideration of, the sale of the Premises by DOM to Landlord, Landlord has agreed to lease the Premises to Tenant on the terms and conditions set forth in this Lease Agreement.

Contemporaneously herewith, Landlord, DOM and Cahaba Title, Inc. (the "Title Company") have entered into an escrow agreement of even date herewith (the "Escrow Agreement"). Pursuant to the terms and provisions of the Escrow Agreement, DOM has deposited the sum of \$62,202.34 with the Title Company (the "Escrowed Funds"), which Escrowed Funds shall be disbursed by the Title Company in accordance with the terms and provisions of the Escrow Agreement. The parties acknowledge and agree that, if any portion of the Escrowed Funds is to be disbursed to Landlord, then such amounts disbursed to Landlord shall constitute rent under the terms and provisions of this Lease Agreement.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant do hereby agree as follows:

1. **LEASE OF PREMISES.** Landlord does hereby lease to Tenant and Tenant does hereby rent from Landlord the Premises subject to and upon the terms and conditions hereinafter set forth. As of the commencement of the Term, as hereinafter defined, the Premises consist of all of the ten (10) single-family lots (individually, a "Lot" and collectively, the "Lots") which are more particularly described in **Exhibit A** attached hereto. As provided in Paragraph 2 below, Tenant has reserved the right, in its sole and absolute discretion, to elect to terminate this Lease Agreement as to any one or more of the Lots at any time during the Term, in which event such Lots shall no longer be subject to the terms and provisions of this Lease Agreement, all references in this Lease Agreement to the "Premises" shall mean and refer only to those Lots described in **Exhibit A** hereto which are still subject to the terms and provisions of this Lease and no rent shall thereafter be due and payable by Tenant to Landlord with respect to such Lots.

2. **TERM.**

(a) The term of this Lease Agreement (the "Term") shall be for the period of time commencing on the date hereof and continuing until 11:59 p.m. Central Daylight Savings Time on June 30, 2005 (the "Expiration Date"); provided, however, that Tenant may, in its sole and absolute discretion, elect to terminate the Term of this Lease Agreement as to all or any portion of the Lots at any time prior to the Expiration Date in the manner provided in Paragraph 2(b) below.

(b) Notwithstanding anything provided herein to the contrary, Tenant shall have the right, in its sole and absolute discretion, to elect at any time during the Term to terminate this Lease Agreement as to any one or more of the Lots by providing written notice (the "Termination Notice") to Landlord and the Title Company, which Termination Notice shall specify which Lots are being released by Tenant from, and shall be considered to no longer be subject to, the terms and provisions of this Lease Agreement. In the event Tenant elects to terminate this Lease Agreement as to any one or more of the Lots, then, commencing on the first day of the immediately succeeding month following the giving of any such Termination Notice, the rent due and payable hereunder shall automatically be reduced in the manner provided in Paragraph 3(b) below. Once Tenant elects to terminate this Lease as to any Lot specified in a Termination Notice, that Lot may no longer be re-leased by Tenant and shall no longer constitute part of the Premises.

3. **RENT.**

(a) Contemporaneously herewith, Landlord has been paid the sum of \$2,188.92 as prepaid rent for the Premises for the period of time commencing on the date hereof and continuing through and including July 31, 2004. Commencing on August 1, 2004 and continuing on the first day of each month thereafter through and including June 1, 2005, Tenant shall pay to Landlord in advance monthly rent determined by multiplying \$506.53 by the number of Lots then being leased by Tenant. All rent payable hereunder by Tenant to Landlord for all periods of time commencing August 1, 2004 and continuing thereafter until the Expiration Date shall be paid solely from the Escrowed Funds and in accordance with the terms and provisions of the Escrow Agreement. In addition to the foregoing rent, on August 1, 2004, Tenant shall also pay to Landlord from the Escrowed Funds in accordance with the terms and provisions of the Escrow Agreement the one-time sum of \$6,484.50 (which amount represents homeowners' association assessments for all of the Premises for the entire Term). No other rent or other sums shall be due and payable to Landlord by Tenant for the use and occupancy of the Premises during the Term.

(b) Notwithstanding anything provided in this Lease Agreement to the contrary, in the event Tenant elects to terminate this Lease Agreement as to any one or more of the Lots at any time during the Term hereof, then, commencing on the first day of the month immediately following the giving of any Termination Notice by Tenant to Landlord and the Title Company pursuant to the terms and provisions of Paragraph 2(b) above, rent under Paragraph 3(a) above for all succeeding months shall be calculated on a monthly basis and paid in advance each month in accordance with the terms and provisions of Paragraph 3(a) above. Landlord and Tenant acknowledge and agree that, pursuant to the terms and provisions of the Escrow Agreement, the Title Company shall disburse to Landlord from the Escrowed Funds to Landlord rent for the then applicable month based on the number of Lots then being leased by Tenant from Landlord.

(c) Landlord and Tenant further acknowledge and agree that, pursuant to the terms and provisions of the Escrow Agreement, to the extent Tenant elects to terminate this Lease Agreement as to any Lots, then the Escrow Agent shall pay to DOM from the Escrowed Funds an amount equal to the rent which otherwise would have been paid under this Lease Agreement had Tenant not elected to terminate this Lease Agreement as to any such Lots.

(d) To the extent Tenant elects to terminate this Lease Agreement as to any Lots, no prepaid rent shall be refundable to Tenant.

4. **USE.** The Premises shall be used by Tenant and its successors and assigns for any golf-related purposes, including, without limitation, any uses which may be necessary or required in connection with the Bruno's Memorial Classic at Greystone (the "Tournament") which involves the Professional Golf Association Champions Tour.

5. **UTILITIES.** Landlord shall have no obligation to provide any utility service of any nature with respect to the Premises. If, in connection with its use of the Premises, Tenant desires any type of utility services, then Tenant shall, at its sole cost and expense, make all arrangements for the connection of all utility services to the Premises and shall pay all costs of the same.

6. **CONDITION OF PREMISES.** Tenant acknowledges that it has been given the right to inspect to the Premises and does hereby accept the Premises in their present "AS IS" condition. Tenant acknowledges and agrees that Landlord does not have any obligation or responsibility of any nature to make any alterations, repairs or improvements to the Premises.

7. **TAXES.** Landlord shall be responsible for, and does hereby covenant and agree to pay, all real estate ad valorem taxes and assessments and all homeowner associations dues, fees and assessments levied or assessed against the Premises during the Term.

8. **ALTERATIONS.** All alterations or improvements of any nature made to the Premises by Tenant during the Term shall be removed by Tenant on or before the Expiration Date.

9. **MAINTENANCE OR REPAIRS.** Tenant shall keep the Premises in a clean, sightly and sanitary condition during the Term. LANDLORD SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSONAL PROPERTY OF TENANT OR THE TOURNAMENT (a) ARISING OUT OF OR FROM THE USE OF THE PREMISES BY TENANT OR THE TOURNAMENT, (b) CAUSED BY ANY DEFECT IN THE PREMISES OR ANY OTHER STRUCTURES OR OTHER IMPROVEMENTS THERETO, (c) CAUSED BY OR ARISING FROM ANY ACT OR OMISSION OF TENANT, THE TOURNAMENT OR ANY OF THEIR RESPECTIVE AGENTS, EMPLOYEES, LICENSEES OR INVITEES, (d) CAUSED BY ANY ACCIDENT, FIRE OR OTHER CASUALTY ON THE PREMISES, (e) WHICH MAY BE OCCASIONED BY THE FAILURE OF TENANT OR THE TOURNAMENT TO MAINTAIN THE PREMISES IN A SAFE CONDITION OR (f) WHICH MAY ARISE FROM ANY OTHER CAUSE WHATSOEVER.

10. **INSURANCE.**

(a) **Liability Insurance.** At all times during the Term of this Lease Agreement, Tenant shall, at its sole cost and expense, maintain in full force and effect for the joint benefit of Landlord and Tenant commercial general liability insurance coverage under which Landlord shall be named as an additional insured thereunder, which liability insurance coverage shall insure against liability for damage to property or bodily injury or death occurring on, in or about the Premises and any personal property situated thereon. Such insurance policy shall be maintained on the minimum basis of One Million Dollars (\$1,000,000.00) aggregate coverage. All insurance coverages required to be maintained hereunder by Tenant shall be pursuant to insurance policies which shall provide that the cancellation thereof shall require not less than thirty (30) days prior written notice to Landlord.

(b) **Indemnity.** Tenant does hereby indemnify, defend and agree to hold Landlord harmless from and against any and all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and expenses, suffered, paid or incurred by Landlord arising out of or in connection with any injury to, or the death of, any person or damage to property occurring in, on or about the Premises caused by any negligent, willful or deliberate act or omission of Tenant, its agents, employees, contractors, licensees and invitees. The indemnification obligations set forth herein are in addition to and shall not be deemed a substitute for any of the insurance required to be maintained by Tenant pursuant to Paragraph 11(a) above.

11. **CONDEMNATION.** If the Premises or any part thereof shall be taken for any public or quasi-public use under any statute or by right of eminent domain or by private purchase in lieu thereof, then this Lease Agreement shall automatically terminate as of the date that possession of the Premises is taken and neither party shall have any further rights or obligations hereunder after the date of such taking. All condemnation awards and other sums payable in connection with any such taking shall belong to and be the property of Landlord; provided, however, that if a separate award is granted to Tenant for any of Tenant's personal property situated on the Premises, then Tenant shall be entitled to that portion of the award attributable thereto so long as no portion of the award to Landlord is not reduced or prejudiced thereby.

12. **SURRENDER OF POSSESSION.** On the Expiration Date, Tenant shall remove all of Tenant's trade fixtures, furniture, furnishings, equipment, inventory and other personal property from the Premises and shall surrender the Premises to Landlord in substantially the same condition as existed as of the commencement date of the Term, reasonable wear and tear and damage by fire and casualty excepted.

13. **HOLDING OVER.** If Tenant remains in possession of the Premises after the Expiration Date, Tenant shall become a tenant at sufferance. In no event shall Tenant be deemed a tenant from month-to-month or from year-to-year and there shall be no renewal of this lease by operation of law or otherwise in the event of any such holding over by Tenant.

14. **MORTGAGES AND SUBORDINATION.** This Lease Agreement shall be superior to any and all mortgages which may encumber the Premises; provided, however, that if requested by Landlord or any of its mortgagees, Tenant agrees to subordinate its rights under this Lease

Agreement to the lien of any mortgage so long as such mortgagee enters into a non-disturbance agreement in favor of Tenant on such terms as may be reasonably required by Tenant.

15. **REPURCHASE OPTION.**

(a) In the event Tenant determines, in its sole and absolute discretion, that any one or more of the Lots may be needed or desired for use for the Tournament following the Expiration Date of this Lease Agreement, then Tenant shall have the right, at any time on or before the Expiration Date, to elect to repurchase any one or more of the Lots at the original purchase price paid by Landlord to Tenant contemporaneously herewith for the Premises (which purchase prices are set forth on a lot-by-lot basis in Addendum C to the Greystone Lot Sales Contract dated February 18, 2004 between DOM, as seller, and Landlord, as purchaser, as the same has been amended by First Amendment thereto dated May 14, 2004, by Second Amendment thereto dated June 14, 2004 and by Third Amendment thereto dated June 23, 2004 (collectively, the "Lot Sales Contract"). Landlord does hereby grant to Tenant the irrevocable and unconditional right, at the option of Tenant, to purchase (the "Repurchase Option") all or any of the Lots at the individual lot purchase prices set forth on Addendum C to the Lot Sales Contract.

(b) In order to exercise the Repurchase Option, Tenant must notify Landlord in writing of its desire to exercise the Repurchase Option no later than the Expiration Date, which notice must specify which Lots Tenant desires to repurchase (the "Repurchase Property"). In the event Tenant timely exercises the Repurchase Option, Tenant shall be deemed to have agreed to purchase the Repurchase Property on a date to be specified by Tenant (but in no event later than the Expiration Date) on the following terms: (i) the purchase price shall be determined in accordance with Paragraph 15(a) above, (ii) the Repurchase Property shall be conveyed by Landlord to Tenant by statutory warranty deed subject only to the then current year's ad valorem taxes and homeowners' association dues and assessments for the then current year and those easements, restrictions, rights-of-way, reservations and other matters of record immediately prior to the date and time of recordation of this Lease Agreement in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office") and (iii) the purchase price shall be subject to the adjustments specified in Paragraph 15(d) below. The Repurchase Option granted herein shall be superior and prior to any mortgages or other liens which may be granted or created by Landlord which subsequently encumber any of the Lots. The exercise of the Repurchase Option by Tenant shall not be construed to be an assumption by Tenant of any such mortgages, liens or other encumbrances which may encumber any of the Repurchase Property and the Repurchase Property shall be conveyed to Tenant free and clear of all mortgages, liens and encumbrances other than any such mortgages, liens and encumbrances which existed immediately prior to the recordation of this Lease in the Probate Office.

(c) In the event Tenant fails to timely exercise the Repurchase Option as provided above, then (i) the Repurchase Option shall automatically expire, terminate, be deemed null and void and of no further force or effect and (ii) Tenant covenants and agrees to execute a release in form reasonably acceptable to Landlord or its successors and assigns acknowledging that the Repurchase Option has been terminated and releasing any further rights or interests which Tenant may have in and to the Premises.

(d) To the extent Tenant timely exercises the Repurchase Option in the manner set forth above in this Paragraph 15, then at the closing of the Repurchase Property, Landlord shall assign to Tenant unencumbered title to Lot Sewer Capacity, as defined in the Lot Sales Contract, for the number of lots which comprise the Repurchase Property. The purchase price payable by Tenant for the Repurchase Property (as calculated under Paragraph 15(a) above) shall be increased by the sum of (i) \$4,314.75 for each lot being repurchased by Tenant as part of the Repurchase Property and (ii) all monthly Demand Charges, as defined in the Lot Sales Contract, paid by Landlord after the date of this Lease Agreement until the closing of the Repurchase Option for those lots being repurchased by Tenant as part of the Repurchase Property. In addition, at the closing of the purchase and sale of the Repurchase Property, real estate ad valorem taxes and homeowner association annual assessments for those lots comprising the Repurchase Property shall be prorated. Tenant shall, at its sole cost and expense, be obligated to obtain an owner's title insurance policy with respect to the Repurchase Property, pay all recording costs and expenses for recording the deed to the Repurchase Property and all other normal and customary closing costs related to the purchase of the Repurchase Property pursuant to the Repurchase Option.

(e) All of the terms and provisions of this Paragraph 15 shall be and are covenants running with the land, shall be binding upon and inure to the benefit of all present and future owners of the Premises and their respective heirs, executors, administrators, personal representatives, successors and assigns and may be enforced by an action for specific performance. In the event either Landlord or Tenant fails to timely and promptly perform all of its respective obligations set forth in this Paragraph 15 with respect to the exercise of the Repurchase Option by Tenant, the defaulting party shall pay to the non-defaulting party any and all costs and expenses incurred by the non-defaulting party in enforcing the terms and provisions of this Paragraph 15 including, without limitation, reasonable attorneys' fees and expenses and court costs.

16. **MISCELLANEOUS.** This Lease Agreement constitutes the sole agreement and understanding between Landlord and Tenant concerning the Premises and supersedes in its entirety any and all prior oral or written understandings or agreements between Landlord and Tenant with respect to the use and occupancy of the Premises. There are no other covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as set forth in this Lease Agreement. No alteration, amendment, change or addition to this Lease Agreement shall be binding upon the parties hereto unless the same is set forth in a written instrument signed by both Landlord and Tenant. This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and assigns. Tenant acknowledges that neither Landlord nor Landlord's agents, employees or contractors have made any representations or promises with respect to the Premises or this Lease Agreement except as expressly set forth in this Lease Agreement. The failure by Landlord to insist in any instance on strict performance of any covenant or condition hereof or to exercise any option contained herein shall not be construed a waiver of such covenant, condition or option in any other instance. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business or otherwise as a joint venture or a member of any joint enterprise with Tenant as a result of Landlord entering into this Lease

Agreement with Tenant. Any notice, demand, requirement or other instrument which may be or is required to be given under this Lease Agreement shall be delivered personally or sent by either United States Certified Mail, postage prepaid or by expedited (overnight, next day delivery) delivery service and shall be addressed as follows: (a) if to Landlord, at the address set forth in Paragraph 3 above and (b) if to Tenant, at either the address set forth below Tenant's signature to this Lease Agreement or to the address of the Premises. All notices shall be effective upon delivery unless delivery is refused or cannot be made, in which event notice shall be deemed effective upon mailing or deposit with any overnight, next day delivery service. The captions and headings used in this Lease Agreement are used solely as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any of the terms and provisions of this Lease Agreement.

If any term, covenant or condition of this Lease Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Lease Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law. Tenant agrees not to record this Lease Agreement. The laws of the State of Alabama shall govern the validity, performance and enforcement of this Lease Agreement. Time is of the essence in the payment and performance by Landlord and Tenant of their respective obligations hereunder.

IN WITNESS WHEREOF, Tenant and Landlord have executed this Lease Agreement on the day and year first above written.

TENANT:

**BRUNO'S MEMORIAL CLASSIC
FOUNDATION, INC.,** an Alabama nonprofit
corporation

By: _____

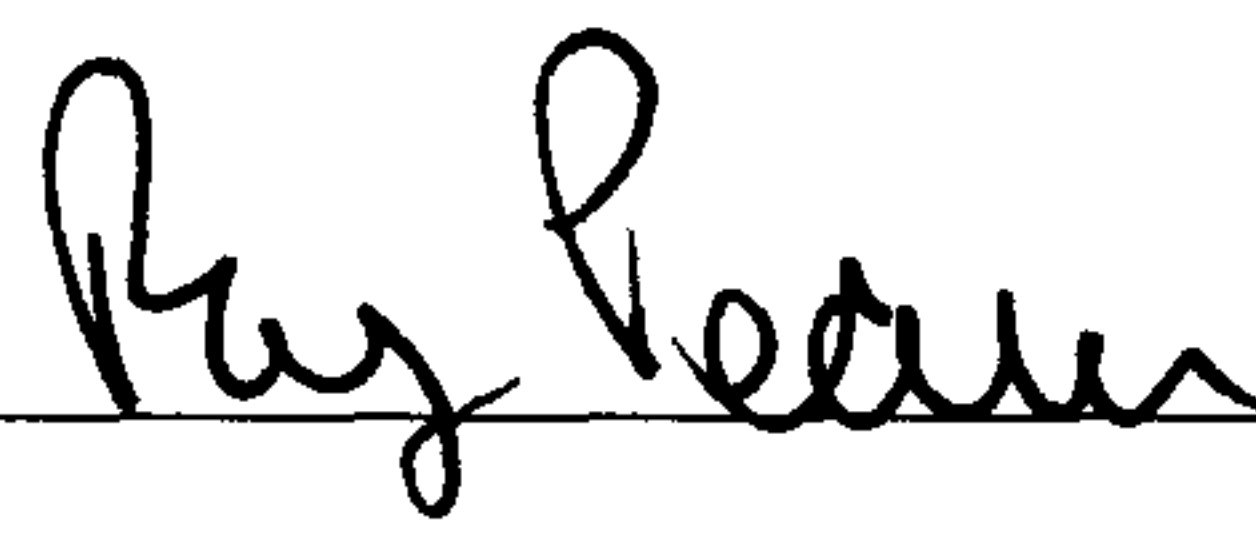
Its: _____

Address: _____

100 Grandview Parkway, Suite 110
Birmingham, Alabama 35243

LANDLORD:

R.C.J. HOMEBUILDING, INC., an Alabama corporation


By: 
Its: _____

Address: P.O. Box 381074
Birmingham, Alabama 35238

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that John Marovich, whose name as Tournament Director/Vice President of Bruno's Memorial Classic Foundation, Inc. an Alabama nonprofit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of such corporation.

Given under my hand and official seal this the 2 day of July, 2004.


Notary Public
My Commission Expires: _____

[NOTARIAL SEAL]

**NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Mar 10, 2007
BONDED THRU NOTARY PUBLIC UNDERWRITERS**

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that
Ray Pearce, whose name as President
R.C.J. Homebuilding, Inc., an Alabama corporation, is signed to the foregoing instrument, and
who is known to me, acknowledged before me on this day that, being informed of the contents of
said instrument, he, as such officer and with full authority, executed the same voluntarily for and
as the act of such corporation.

Given under my hand and official seal this the 23rd day of June, 2004.

Chris Tortorelli
Notary Public
My Commission Expires: March 3, 2008

[NOTARIAL SEAL]

This instrument prepared by and
upon recording should be returned to:

Stephen R. Monk, Esq.
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203

EXHIBIT A

Legal Description of Leased Lots

Lot	57	6 th sector	M.B. 17 Pg. 54
Lot	1	6 th Sector	phase 1 M.B. 33 Pg. 57
Lot	2	6 th Sector	phase 1 M.B. 33 Pg. 57
Lot	3	6 th Sector	phase 1 M.B. 33 Pg. 57
Lot	4	6 th Sector	phase 1 M.B. 33 Pg. 57
Lot	5	6 th Sector	phase 1 M.B. 33 Pg. 57
Lot	6	6 th Sector	phase 1 M.B. 33 Pg. 57
Lot	7	6 th Sector	phase 1 M.B. 33 Pg. 57
Lot	8	6 th Sector	phase 1 M.B. 33 Pg. 57
Lot	9	6 th Sector	phase 1 M.B. 33 Pg. 57