



Agenda Item Executive Summary

Item Name: Golf Simulator Contract Committee or Board: Village Board

BUDGET IMPACT

Amount:	<u>N/A</u>	Budgeted	<u>N/A</u>
List what fund	<u>5500-522400</u>		

EXECUTIVE SUMMARY

In October of 2015, the Village Board reviewed a presentation by staff relative to a lease agreement with a golf simulator company (Tom Newman Inc.). Staff was given direction to proceed with an agreement. The Village Attorney had drawn up a contract with the company which included the option of extending through last year. Staff continues to see a benefit of leasing the machine and would like to reach another one year agreement, with options of extending. To date the simulator has netted \$17,980. Revenues have also climbed each year, as more people get more acclimated with the service. These figures do not include the revenue made from beverages.

ATTACHMENTS (PLEASE LIST)

Memorandum, Resolution, Agreement

ACTION REQUESTED

For Discussion Only _____

Resolution X

Ordinance _____

Motion: _____

MOTION:

I move to approve Resolution 2019-_____ a resolution approving of the high definition golf simulator operating agreement between the Village of Bartlett and Tom Newman, Inc.

Staff: Scott Skrycki, Date: 10/08/2019
Assistant Village Administrator

Memorandum

To: Paula Schumacher, Village Administrator
From: Scott Skrycki, Assistant Administrator
Date: 10/8/2019
Re: Golf Simulator Contract

In October of 2015, the Village Board reviewed a presentation by staff relative to a lease agreement with a golf simulator company (Tom Newman Inc.). Staff was given direction to proceed with an agreement. The Village Attorney had drawn up a contract with the company which included the option of extending through last year. Staff continues to see a benefit of leasing the machine and would like to reach another one year agreement, with options of extending. To date the simulator has netted \$17,980. Revenues have also climbed each year, as more people get more acclimated with the service. These figures do not include the revenue made from beverages.

The hours of operation will be 9-4 Tuesday thru Sunday as well as afternoon and evening hours with appropriate reservation. The revenue sharing calls for a 60/40 split with the Village retaining 40 percent of gross profits. The machine will go up in October or November weather permitting.

Attached for your review is a resolution approving of an agreement with the between the Village of Bartlett and Tom Newman Inc.

Motion

I move to approve Resolution 2019-_____ a resolution approving of the high definition golf simulator operating agreement between the Village of Bartlett and Tom Newman, Inc.

RESOLUTION 2019 - _____

**A RESOLUTION APPROVING OF THE HIGH DEFINITION GOLF
SIMULATOR OPERATING AGREEMENT BETWEEN THE VILLAGE OF
BARTLETT AND TOM NEWMAN, INC.**

BE IT RESOLVED by the President and Board of Trustees of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, as follows:

SECTION ONE: The High Definition Golf Simulator Operating Agreement dated as of October 15, 2019, between the Village of Bartlett and Tom Newman, Inc. (the "Agreement"), copy of which is appended hereto and expressly incorporated herein by this reference, is hereby approved.

SECTION TWO: That the Village President and the Village Clerk are hereby authorized and directed to sign and attest, respectively, the Agreement on behalf of the Village of Bartlett.

SECTION THREE: SEVERABILITY. The various provisions of this Resolution are to be considered as severable, and of any part or portion of this Resolution shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.

SECTION FOUR: REPEAL OF PRIOR RESOLUTIONS. All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION FIVE: EFFECTIVE DATE. This Resolution shall be in full force and effect upon passage and approval.

ROLL CALL VOTE:

AYES:

NAYS:

ABSENT:

PASSED: October 15, 2019

APPROVED: October 15, 2019

Kevin Wallace, Village President

ATTEST:

Lorna Giles, Village Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the Village Clerk of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, and that the foregoing is a true, complete and exact copy of Resolution 2019 - _____ enacted on October 15, 2019, and approved on October 15, 2019, as the same appears from the official records of the Village of Bartlett.

Lorna Giles, Village Clerk

HIGH DEFINITION GOLF SIMULATOR OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") is made and entered into as of the 15th day of October, 2019, by and between the VILLAGE OF BARTLETT (the "Village"), an Illinois municipal corporation of Cook, DuPage and Kane Counties, Illinois, and home rule of government, with its principal place of business at 228 South Main Street, Bartlett, Illinois, 60103, and TOM NEWMAN, INC. ("Newman"), an Illinois corporation, with its mailing address at 569 Beaconsfield Avenue, Naperville, Illinois, 60565.

RECITALS:

A. The Village desires to allow Newman to install, maintain and manage one (1) High Definition "Full Swing" Golf Simulator as specified on Exhibit A (the "Facilities") in the bar room of the Bartlett Hills Golf Course Clubhouse for the 2019-2020 winter/spring season.

B. Newman desires to install, maintain and manage the Facilities at the Bartlett Hills Golf Course Clubhouse for the 2019-2020 winter/spring season.

C. The Village is willing to grant Newman a non-exclusive license to use the Licensed Space (hereinafter defined) and manage to install, operate, maintain and manage the Facilities during the term of the Agreement, and any extended term of the Agreement.

NOW, THEREFORE, in consideration of the premises, terms and obligations stated herein, the Village and Newman agree as follows:

1. **Recitals:** The foregoing Recitals are incorporated herein as substantive provisions of this Agreement.

2. **Term of Agreement:** This Agreement shall commence on October 15, 2019, and shall terminate on March 31, 2020, unless otherwise provided for by this Agreement. The Village may renew this Agreement for up to two (2), one (1) year extensions, for the 2020-2021 and 2021-2020 winter/spring season, upon the same terms and conditions as set forth herein or as may be subsequently modified by the parties. Newman may set up the Facilities for the 2019-2020 winter/spring season after the Commencement Date; and may set up the Facilities, if the Agreement is renewed by the Village for the 2020-2021 winter/spring season, between October 15, 2020 and March 31, 2021; and if renewed for a third winter/spring season by the Village, between October 15, 2021 and March 31, 2022.

3. **Facilities:** Newman is hereby granted non-exclusive license and access to the bar room of the Bartlett Hills Golf Club Clubhouse for the term of this Agreement for all purposes associated with this Agreement. Newman shall obtain written approval from the Village for any modifications to the Clubhouse required for Newman's

operation. Newman shall install, set up and make the Simulator operational along the west wall of the bar room of the Bartlett Hills Clubhouse in the location depicted on the bar room floor plan attached hereto as Exhibit B (the "Licensed Space").

4. **License Fee and Commission:** The High Definition "Full Swing" Golf Simulator will be rented to customers on an hourly rate basis. Schedule C attached hereto is the agreed rental rate schedule. The Village will collect the rental fee from the customer at the time of use. Newman and the Village agree to a sixty/forty per cent (60%/40%) split, respectively, sharing of Gross Rental Revenues, with 60% of Gross Rental Revenues paid to Newman and 40% of Gross Rental Revenues retained by the Village. Gross Rental Revenues are the fees paid and collected for the use of the Simulator per Schedule C, and do not include fees paid to Village golf professionals or equipment or food or beverage or any other sales made by the Village at the same time as or related to a rental of the Simulator. Newman's gross Simulator rental sales percentage will be paid on or before the 15th of the following month throughout the first operating season, and through each successive operating season if renewed by the Village.

5. **Hours of Operation:** The parties agree that Newman will be available to service the Simulator, as necessary, during normal Hours of Operation, but otherwise Newman will not have employees present at the Licensed Space except by appointment and with written notice to the Village of such appointments that are outside of normal business works. For purposes of this Agreement, the Village's normal business hours are as follows: 9:00 a.m. to 4:00 p.m., Tuesday through Sunday during winter season open dates (October 15, 2019 through March 31, 2020; and October 15, 2020 through March 31, 2021 for 2020-2021 if renewed; and October 15, 2021 through March 31, 2022 for 2021-2022, if renewed, and additional hours by appointment). Hours by appointment shall be confined to 8:00 a.m. to 9:00 p.m., and Newman shall provide the Village with written notice of such appointments outside of normal business hours, and of extended hours for special events, as may be required by the Village. Newman and Village staff shall meet at least monthly during the winter season to coordinate the daily schedules.

6. **Pricing:** Rental rates shall be as per Schedule C, unless changed by mutual consent of the parties.

7. **Termination:** This Agreement may be terminated by either party at any time on five (5) days' notice to the other party for cause. For purposes of this Agreement, "cause" is defined as each and every violation or breach by either party of any material term, condition or provision of this Agreement. Upon receipt of such notice the party receiving the notice shall have five (5) days from receipt of the notice to cure such violation or breach. The Village may terminate this Agreement without cause upon thirty (30) days' prior written notice. Upon expiration or termination of this Agreement, Newman shall quit and respectfully remove the High Definition "Full Swing" Golf Simulator from the Facility and return the room to the condition it was prior to the execution of this Agreement.

8. **Indemnification:** Newman shall indemnify, defend and hold harmless the Village, its officers, elected officials, employees, volunteers and agents against any and all claims, damages, losses and expenses, and suits of any manner which might arise as the result of its activities, including, but not limited to, legal fees (attorney and paralegal fees and court costs), arising from or in any way connected with: (a) the conduct or management of the Facilities or of any business or activity therein, or any work or thing whatsoever done, or condition created in or about the premises during the term of this Agreement; (b) any act, omission, wrongful act or negligence of Newman; (c) any accident, injury, or damage whatsoever occurring in or at the Licensed Space regardless of whether or not it is caused in part by a party indemnified hereunder and at the Bartlett Hills Golf Course arising out of Newman's used said property; such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. Newman shall similarly protect, indemnify, and hold and safe harmless the Village, its officers, elected officials, employees, volunteers and agents from and against any and all claims, costs, causes, actions and expenses, including but not limited to, legal fees incurred by reason of Newman's breach of any of its obligations under, or Newman's default of, any provision of this Agreement.

9. **Insurance:** Newman's shall obtain insurance of the types and in the amounts listed below:

A. **Commercial General and Umbrella Liability Insurance:** Newman's shall maintain commercial general liability ("CGL") commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to the Facilities and the Licensed Space described herein. CGL insurance shall be written on Insurance Services Office ("ISO") occurrence form CG000101093, or a substitute form providing equivalent coverage, and shall cover liability arising from the premises, operations, independent contractors, products-completed operations, personal injury, and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The Village, and its officers, elected officials, employees, volunteers and agents (collectively the "Owner") shall be included as an insured under the CGL, using ISO additional insured endorsement CG20 11 or a substitute providing equivalent coverage, and under the commercial umbrella. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Owner.

B. **Workers' Compensation Insurance:** Newman shall maintain workers' compensation and employers' liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by disease. If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 11 under the Commercial General and Umbrella Liability Insurance required in this Agreement, Newman waives all rights against the Village and its officers, elected officials, employees, volunteers and agents for recovery of damages arising out of, or incident to Newman's use of the premises.

C. General Insurance Provisions:

- i. Certificates of Insurance: Prior to installation, Newman shall furnish the Owner with certificates of insurance and applicable policy endorsements, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to Owner prior to the cancellation or material change of any insurance referred to herein. Written notice in Owner shall be by certified mail, return receipt requested.

Failure of Owner to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Newman's obligation to maintain such insurance.

Owner shall have the right, but not the obligation, to prohibit Newman's from installing said simulators until such certificates or other evidence of insurance has been placed in complete compliance with these requirements is received and approved by Owner. Failure to maintain the required insurance may result in termination of this Agreement at Owner's option. Newman shall provide certified copies of all insurance policies required above within 10 days of Owners' written request for said copies.

- ii. Acceptability of Insurers:

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems unacceptable.

- iii. Cross-Liability Coverage:

If Newman's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

- iv. Deductibles and Self Insured Retentions:

Any deductibles or self-insured retentions must be declared to the Owner. At the option of the Owner, Newman may be required to eliminate such deductibles or self-insured retentions as respects the Owner, its officers, elected officials, employees, volunteers and agents, or to procure a bond guaranteeing payment of losses and other related costs, including but not limited to investigations, claim administration and defense expenses.

10. **Compliance with Laws:** Newman agrees to fully comply with all applicable Federal, State and Local laws and regulations, and with all agency rules and regulations applicable to the operation and use of the Facility, including, but not limited to, all applicable codes, laws, ordinances, and regulations of the Village of Bartlett, the County of Cook, the State of Illinois, and the United States. Newman shall, at its sole cost and obligation, be responsible for obtaining all permits required to operate the Simulator and other components of the Facilities.

11. **Waiver:** Failure or delay on the part of either party to exercise any right, power, privilege or remedy under this Agreement shall not constitute a waiver thereof. No modification or waiver by either party of any provision shall be deemed to have been made unless made in writing and signed by both parties.

12. **Severability.** The provisions of this Agreement shall be severable and the invalidity of any provision, or portion thereof, shall not affect the enforceability of the remaining provisions.

13. **Authorized Signatures/Effectiveness:** The persons signing this Agreement shall have all legal authority and power in their respective capacities to bind Newman and the Village, and this Agreement shall not be effective until fully executed and delivered to all parties.

14. **Entire Agreement and Amendments:** This Agreement constitutes the entire understanding between the parties and supersedes all previous agreements or negotiations, whether written or oral, and shall not be modified or amended except by written agreement duly executed by and delivered to all parties.

15. **Notices:** All notices shall be in writing and shall be given by certified mail, return receipt requested, postage prepaid, to the parties at the respective addresses set forth below or at such other address as the parties may formally designate, in writing, from time to time:

Village of Bartlett
228 South Main Street
Bartlett, Illinois, 60103
Attention: Paula Schumacher,
Village Administrator

Tom Newman, Inc.
569 Beaconsfield Avenue
Naperville, Illinois, 60565
Attention: Tom Newman

With a copy to:
Bryan E. Mraz
Bryan E. Mraz & Associates, P.C.
111 East Irving Park Road
Roselle, Illinois, 60172

16. **Assignment:** This Agreement shall not be assigned without the express written consent of the non-assigning party.

17. **Time:** Time is of the essence for all matters concerning this Agreement.

18. **Jurisdiction:** This Agreement shall be governed by the laws of the State of Illinois. Venue for all actions hereunder shall be the Circuit Court of Cook County, Illinois. Any and all actions brought on behalf of Newman under this Agreement shall be commenced within one (1) year of conduct or actions giving rise to the action.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized signatories

VILLAGE OF BARTLETT

TOM NEWMAN, INC.

By: _____
Kevin Wallace, Village
President

Name: _____
Title: _____

Attest:

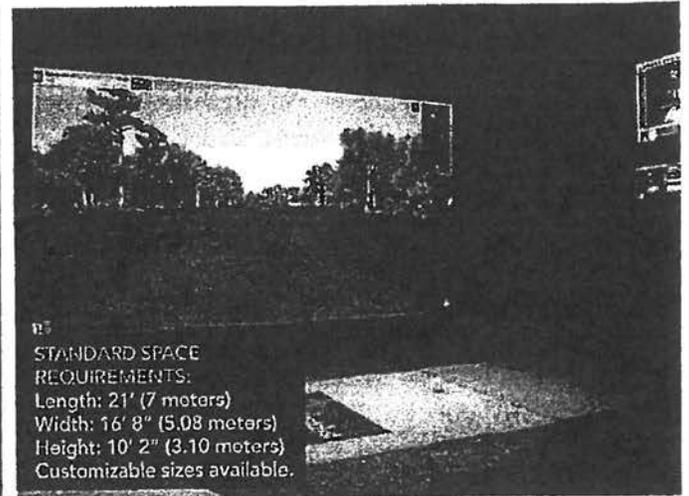
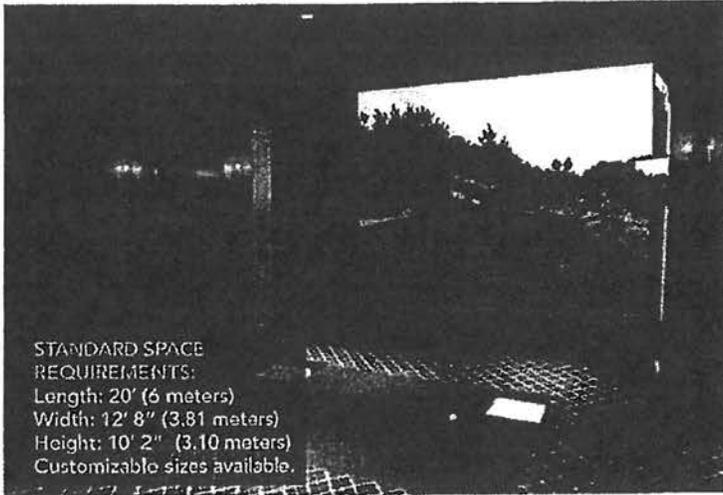
Lorna Giles, Village Clerk

Simulators for Your Home or Office

THE CHAMPION SERIES | 3 MODELS

The Original Champion & The Elite Champion

The Widescreen Champion - 210" Screen!



THE ORIGINAL CHAMPION

Starting at \$45,900

- Compact Depth Enclosure
- High Definition Projector
- E6 with Range + 15 Courses
- Ion-Vision Technology
- Quiet Hitting Screen
- Professional-Grade Hitting Mat
- Infrared Tracking System
- LCD Touchscreen
- Durable Carpet Interior
- Powerful Gaming Computer
- Online Tournaments
- Complete Design & Training

THE ELITE CHAMPION

Starting at \$55,900

All of the features of the Original Champion **Plus**



Upgraded High Definition Projector



16:9 CinemaQuality Motorized Drop Down Screen

93 Courses

Entire Library of 93 Championship Courses

THE WIDESCREEN CHAMPION

Starting at \$65,900

All of the features of the Original Champion **Plus**



High End Home Theater Projector



210" Widescreen Simulator

93 Courses

Entire Library of 93 Championship Courses

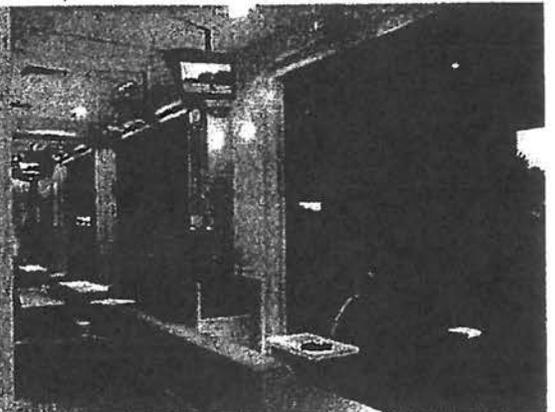


Simulators for Your Business

THE SPORTSMAN

The smallest standard footprint in the industry

- Full Depth Enclosure
- Infrared Tracking System
- Ion-Vision Technology
- E6 with Range + 30 courses
- High Definition Projector
- Quiet Hitting Screen
- Durable Carpet Interior
- Professional-Grade Hitting Mat
- LCD Touchscreen
- Powerful Gaming Computer
- Online Tournaments
- Complete Design and Training



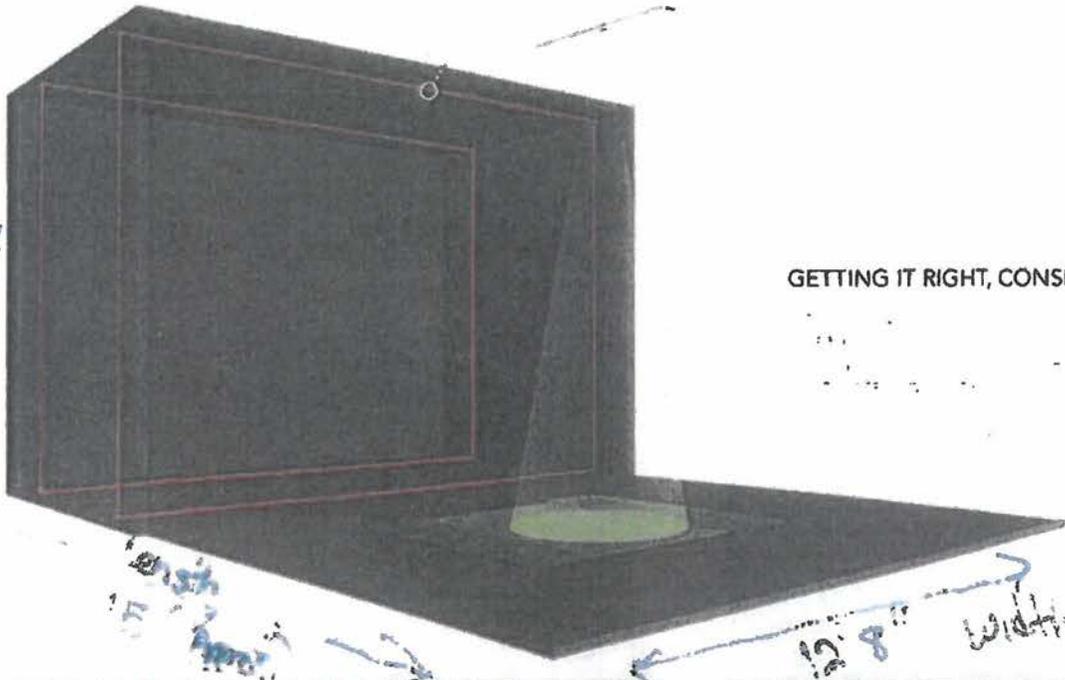


Dual Tracking Technology:

A Revolution in Golf Club and Ball Flight Accuracy

Only Full Swing Golf Combines Two Tracking Technologies:

Infrared Light Waves
High Speed Camera



GETTING IT RIGHT, CONSISTENTLY.

INFRARED LIGHT WAVES



Superior Speed and Trajectory Measurement

At the speed of light, Full Swing Golf's infrared tracking system actually measures the golf ball's speed, launch angle and direction instantly.

No other measurement device or technology can measure these ball flight characteristics more accurately or rapidly... period.



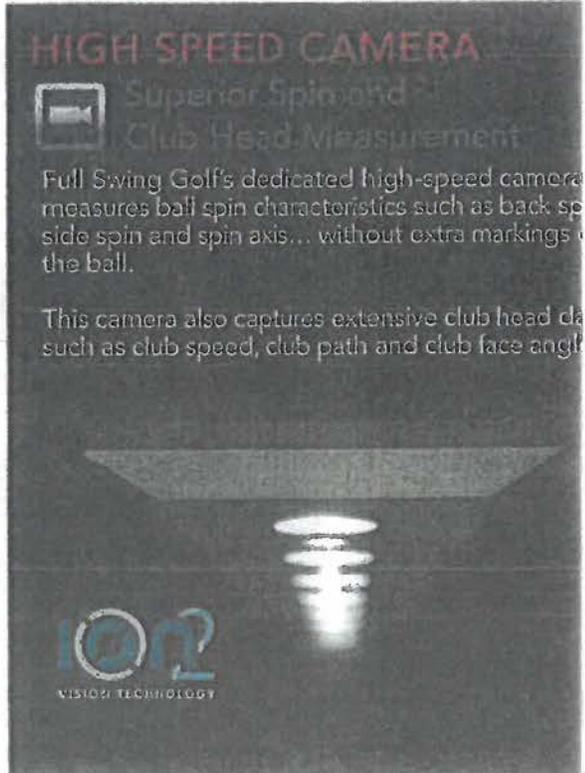
HIGH SPEED CAMERA



Superior Spin and Club Head Measurement

Full Swing Golf's dedicated high-speed camera measures ball spin characteristics such as back spin, side spin and spin axis... without extra markings on the ball.

This camera also captures extensive club head data such as club speed, club path and club face angle.



THE REALITY OF VIRTUALITY

We take ball flight very seriously at Full Swing Golf, so we go to great lengths to understand golf ball and club physics. Combining infrared light and high speed camera technologies allows us to measure the interactivity between ball and club like nobody else in the industry.



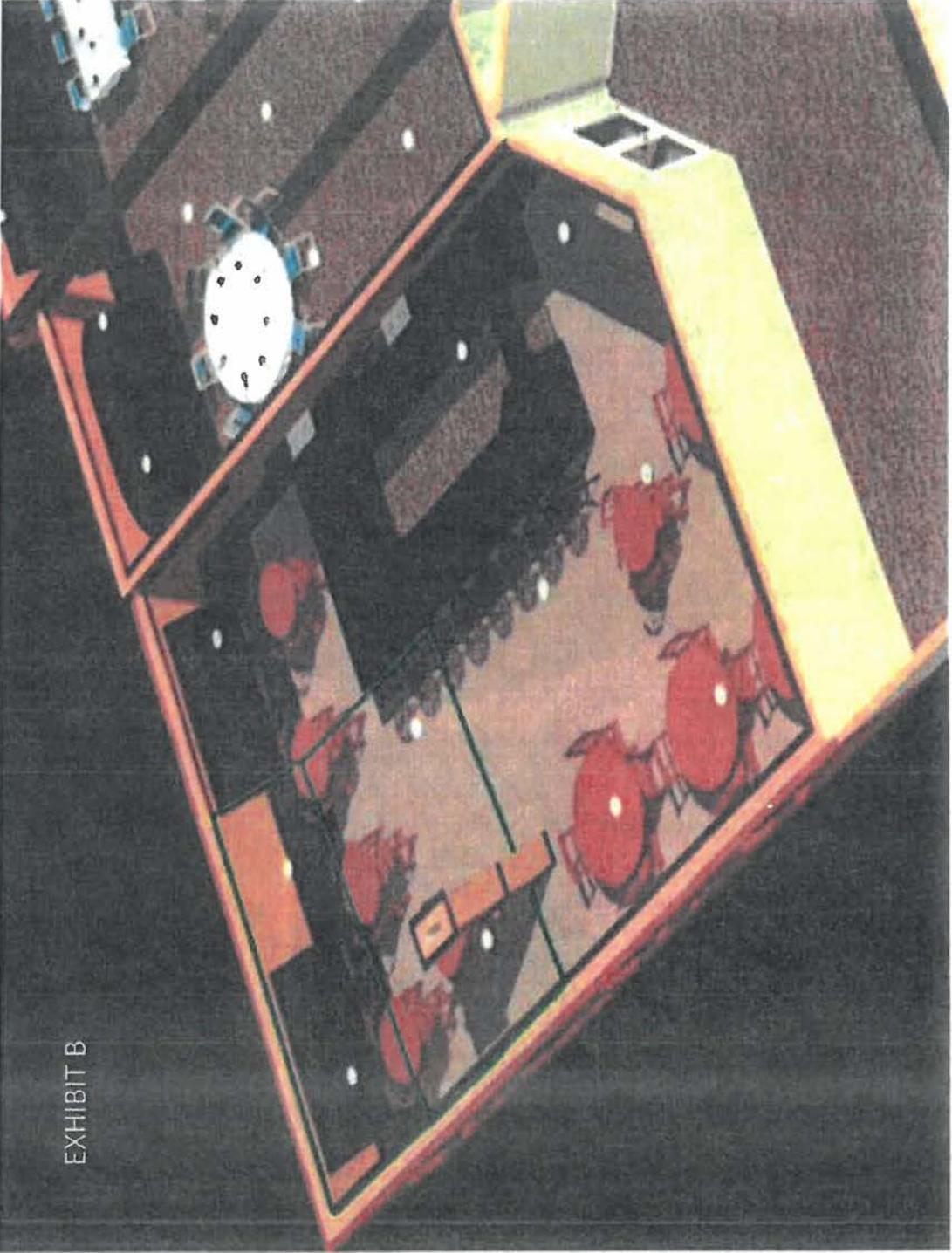


EXHIBIT B

Schedule C

2019/2022 Simulator Rates

Seniors \$25 per hour

Non-senior \$30 per hour