

AMENDMENT TO MANAGEMENT AGREEMENT

THIS FIRST AMENDMENT TO MANAGEMENT AGREEMENT is entered into on February 19, 2013 between:

- City of Ocala, a Florida municipal corporation (“City”).
- Billy Casper Golf, LLC a Virginia limited liability company (“BCG”).

WHEREAS:

- A. On July 17, 2012, City and BCG entered into a Management Agreement for BCG management of operations at the Ocala Golf Club (“Original Agreement”).
- B. BCG and City desire to amend the Original Agreement as set forth herein.

NOW THEREFORE, in consideration of the matters set forth above, which are incorporated herein by reference, the exchange of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BCG and City agree as follows:

- 1. **Deletion of Requirement for Deposit Account.** The Original Agreement is amended to remove the requirement for a Deposit Account by deleting paragraph 5 in its entirety and replacing it with the following language:
 - 5. **ACCOUNTS.** BCG shall establish the following business checking accounts for the Club: (a) an “Operating Account” and (b) an “On Site Account,” (collectively, the “Accounts”), for use in its management and operation of the Club in compliance with the Annual Budget and Program and the terms of this Paragraph 5. All revenues, receipts, and funds deposited into the Accounts from time to time by City or BCG shall be defined as and constitute “Working Capital” herein. BCG shall cause all revenues and receipts to be deposited into the Operating Account on a daily basis. BCG shall use the Operating Account to pay all expenses of the Club. BCG shall maintain in the On-Site Account an amount to be used for customary business operating expenses.

Upon cancellation or termination of this Agreement for any reason or upon the occurrence of a material default by BCG, BCG’s rights to access to the banking accounts shall be immediately revoked. Upon direction from City from time to time, BCG shall invest or deposit funds in the Accounts in accordance with City’s direction. BCG shall maintain bank accounts for OGM at a local branch agreed upon in advance by the parties, and near the Club. BCG shall establish, administer and maintain the point of sale and credit card procedures and systems for the depositing of revenues into such accounts on a daily basis and ensure the facility is PCI compliant. The City shall reimburse BCG for any costs necessary to ensure the Club and its procedures are PCI compliant. BCG shall provide the City a listing of any additional expenditure needed to ensure PCI compliance within thirty (30) days of the effective date of this Agreement.

2. **Extension of Deadline for Market analysis of Banquet Hall/Catering services.** The Original Agreement is amended to extend the timeline for completion of the market analysis of banquet hall/catering services by deleting paragraph 9.E. in its entirety and replacing it with the following language:
 9. E. Market analysis of Banquet Hall/Catering services and related recommendations shall be provided by Billy Casper Golf in the first year of operations with a complete report of findings and recommendations provided to the City no later than September 30, 2013
3. **General Maintenance Criteria.** The Original Agreement is amended to clarify expectations for compliance monitoring; set requirements for development of corrective action plan; clarify under what conditions a deficiency exists on items rated “needs improvement” and “unacceptable”; and replacing the Golf Course Operations and Maintenance evaluation form with a more comprehensive evaluation form by deleting Exhibit A “Scope of Service and Performance Measures”, Section IV “General Maintenance Criteria” in its entirety and replacing it with the following language:

I. General Maintenance Criteria

- A. Contractor shall furnish all labor, materials, supplies, and equipment to maintain the golf course, clubhouse and common areas in accordance with the parameters contained herein.
- B. Areas of maintenance include but are not limited to: maintenance of all equipment, buildings, equipment storage areas, irrigation systems, greens, tees, approaches, collars, fairways, roughs, golf cart paths, driving range, practice areas, lakes, water hazards, sand and grass bunkers, clubhouse grounds and golf course grounds along entrance roadways and right of ways. Such maintenance also includes care of all shrubs, plants, existing landscaped features and trees.
- C. Contractor shall propose and execute corrective actions in an expeditious manner to bring substandard play and amenity areas of the golf course to the standards reflected in this Agreement.
- D. Contractor shall furnish all labor and supervision required to professionally maintain and improve upon the existing course in accordance with specifications. This work force will include at a minimum, a Golf Course Superintendent who is a member of the Golf Course Superintendent’s Association of America (GCSAA) and other personnel in accordance with the approved budget.
- E. Contractor shall maintain in good repair and condition at all times the clubhouse and surrounding passageways ensuring that they are kept free of debris. The clubhouse and clubhouse restrooms shall be cleaned and restocked daily.
- F. Contractor shall perform all normal functions, which are essential to providing quality playing conditions, e.g. mowing, cup changing, tee marker management, grooming, aerification, fertilization, pest and disease treatment, etc.
- G. Contractor shall develop and perform necessary turf management programs and actions to maintain and improve playing conditions.

- H. Contractor is responsible for the expeditious repair of any damage to City property that is caused by the Contractor or by and through the Contractor's negligence. Any needed repairs shall restore the damaged area/facility to the original condition or better.
- I. Contractor shall regularly evaluate the course and make recommendations for capital improvements.
- J. To obtain maximum performance, the Contractor shall supplement trained maintenance personnel with professional turf consultants, entomologist, certified plant biologist, and such other professional specialists as are necessary to support the on-site staff. At a minimum of once per quarter, or more as required by substandard course conditions, the Contractor's Director of Agronomy shall review the entire golf course to personally assess turf conditions and make formal recommendations for corrections, treatments or improvements as needed. Advance notification of these scheduled visits shall be provided to the City of Ocala.
- K. The Contractor shall incorporate its full service golf course maintenance program based upon generally accepted southeastern turf management principles and standards
- L. The Contractor shall guarantee that the on-site superintendent assigned to Ocala Golf Club will have the educational background and experience necessary to provide ongoing maintenance programs, which shall fulfill the terms and conditions of this agreement. The Contractor's on-site superintendent must have at least three (3) years supervisory experience in golf course maintenance in warm season turf grass environments.
- M. In particular, the Contractor shall retain personnel approved as a Certified Pest Control Operator licensed by the Florida Department of Agriculture and Consumer Services. Application of such pesticides on the premises of the City's golf course shall be performed by or under the supervision of such licensed Certified Pest Control Operator. Applications must follow label guidelines, directions and restrictions. The Contractor shall maintain completed documentation of all pesticide, herbicide and fertilizer applications and storage, in accordance with prevailing regulations and laws. The Contractor shall have and practice an Integrated Pest Management (IPM) Program at the golf course.
- N. Within six (6) months of the start of the contract, Contractor shall enroll the Ocala Golf Club in the Audubon International Cooperative Sanctuary Golf Program. The City shall be responsible for all registration and membership fees. The Contractor is expected to actively and consistently pursue Audubon certification and achieve such designation before the start of any optional contract renewal period.
- O. In the event of a natural disaster, such as a hurricane, tornado, etc. the City may issue written authorization to the Contractor to allow overtime as approved by the City to repair the golf course. The City shall pay the cost of said overtime and the cost of unusual golf course repairs caused by the natural disaster.
- P. A written golf course evaluation report will be issued monthly by the Golf Course Superintendent under the direction of Contractor and delivered to the City.
- Q. The Recreation and Parks Director, or designee, shall on a frequent basis but no less than annually, review contractor's performance and/or inspect some or all of the golf courses

operations, facilities or equipment for purposes of ensuring Contractor's compliance with the Agreement and the scope of services and performance standards. In conducting such inspection and evaluation, the City representative shall complete applicable portions of the Golf Course Operations and Maintenance Standards Evaluation Form (Attached) which may be revised from time to time to capture pertinent compliance information and provide necessary feedback to Contractor, and shall promptly thereafter provide Contractor a copy of the completed form or applicable portion. The City representative shall act reasonably and in good faith in making the determination of whether the Contractor has met the standards identified in the scope of services for the applicable areas being evaluated. Both parties shall have the opportunity to provide feedback before a final rating on specified performance issues is provided; however, the City shall make the final determination as to whether performance standards were satisfied and as to what rating is assigned.

- R. The City shall rate compliance of contract terms, golf course operations and maintenance components as "Acceptable," "Needs Improvement," or "Unacceptable." The Director's or Designee's rating of contract requirement and/or "Area" as "Unacceptable" for any single evaluation or "Needs Improvement" for two consecutive evaluations shall, upon Contractor's receipt of the Golf Course Operations and Maintenance Standards Evaluation Form, constitute a Notice of Golf Course Deficiency with respect to the deficient item(s).
- S. Within one (1) week after receipt of the Golf Course Operations and Maintenance Standards Form, the City representative and the Contractor representative shall meet to review any deficiency item(s), and shall prepare a corrective action plan outlining what action the contractor intends to take to correct the deficiency item(s), and the time schedule for completion of corrective action. The proposed corrective action and the time schedule shall be approved by the Director or Designee. When a deficient item has been satisfactorily corrected, the Contractor shall notify the City representative.
- T. If the Contractor fails to take action to correct any deficiency item(s) within timeframes approved in a corrective action plan, a vendor complaint shall be submitted to the City Contract Manager notifying them that the Contractor is in material breach of their contract, which may result in contract termination. In addition, any failure to achieve an overall rating of "Acceptable" in any "Area" for any four (4) months within any single operating year, or any three (3) consecutive months, will be considered as a material breach of the contract, which may result in contract termination. Any delay or failure on City's part in enforcing any right or remedy related to Contractor's breach shall not constitute a waiver of such right or remedy if the deficiency continues and until such time as the deficiency is corrected.
- U. The following items shall be considered exclusions for the purpose of determining whether an outstanding deficiency item has been timely corrected:
 - 1) Any outstanding deficiency item that the Contractor is diligently and timely correcting in accordance with the time schedule jointly agreed to by the City and the Contractor in a corrective action plan;
 - 2) Any deficiency item in which the correction is considered a Capital Improvement but only if and to the extent Contractor, in light of its expertise and experience as a manager of first class golf courses, could not have taken reasonable measures to

prevent or mitigate the deficiency item from occurring;

- 3) Any deficiency item that Contractor is unable to correct because of the occurrence of a "Force Majeure Event", but only to the extent the Contractor, in light of its expertise and experience as a manager of first class golf courses, could not have taken reasonable measures to prevent or mitigate the Force Majeure Event;
- 4) Any deficiency item that Contractor is unable to correct due to City's failure to provide sufficient funds to effect such correction.

- V. **Emergency Maintenance.** In the event that the City at any time determines that any portion of the golf course is in immediate jeopardy of sustaining some type of serious harm due to a maintenance failure on the part of the Contractor, and the Contractor is unable to immediately respond, the City may utilize their own work force or contracted services to go on the golf course and perform such tasks as are necessary to prevent such serious harm from taking place. The cost of such preventative maintenance incurred by the City shall be itemized by the City and submitted to the Contractor to be accounted for as a course expense (to the extent that it meets the definition of an operating expense).
- W. **Inclement Weather.** During periods of severe inclement weather conditions, Contractor will provide sufficient personnel on a twenty-four (24) hour call basis for the purpose of sandbagging, keeping drains clear, and/or any other tasks required to minimize damage to the Golf Course's improvements and facilities. These emergency services are provided on a pre-approved basis by the City and payable as an expense of the City.
- X. **Course Temporarily Out of Play.** Whenever play must be temporarily suspended on the golf course due to inclement weather or other conditions, the decision of when to allow play to resume, and when to allow carts to go out on the course, will be made by the Contractor.
- Y. **Course Closure.** In the event that the Golf Course is not playable for a period of seven (7) consecutive days, for any reason, including acts of nature or vandalism, the City may declare, for purpose of maintenance, that an emergency condition exists on such Golf Course(s), except for seasonal closures which have already been taken into account in determining the annual fee for maintenance services. The City and the Contractor will then jointly determine what changes in the normal level of maintenance staffing and services, if any, may be necessary, including additional hours of labor and/or materials.
- Z. **Equipment.** The City shall own all equipment needed for course operations and maintenance and Contractor shall ensure that City equipment is utilized in accordance with industry standards and manufacturer's recommends and that equipment will be properly maintained.
- AA. **Regulatory Compliance.** Maintenance facilities shall conform with all regulatory compliances and requirements as set forth by the American National Standards Institute (ANSI) and the Occupational Safety and Health Administration (OSHA). Contractor shall be responsible for maintaining a clean appearance inside and out of building.

BB. **Vandalism.** Contractor shall repair and/or replace, at the City's cost, property owned by the City, whether real or personal, which is lost, or damaged, or destroyed through vandalism. Contractor shall ensure that proper and necessary forms are completed and submitted to the City to document such damage for insurance and/or replacement purposes.

CC. **Hazardous Substances.** Contractor represents and warrants that all maintenance services provided, the methods of application to be used, and the products to be used will not violate any federal, state, or local environmental laws, statues, ordinances, codes, rules, regulations, orders, decrees, or similar authoritative pronouncements. For purposes of this Agreement "Hazardous Substances" shall have the meaning ascribed in and shall include those substances listed in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq, and the regulations promulgated thereunder and includes oil and oil waste as those terms are defined in the Clean Water Act, 33 U.S.C. §1251 et seq. and the regulations promulgated thereunder, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., as amended from time to time, and shall include any other elements or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (The "EPA") and the list of toxic pollutants designated by Congress or the EPA or defined by any other federal, state, local or quasi-governmental statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, now existing or at any time hereafter in effect.

DD. **Material Safety Data Sheets.** MSDS sheets for all products will be the responsibility of the Contractor. Two (2) books will be kept current one located at the clubhouse and the other will be located at the maintenance shop.

4. **Maintenance of Buildings and Equipment.** The Original Agreement is amended to clarify responsibilities in terms of repairs and maintenance of buildings by deleting Exhibit A "Scope of Service and Performance Measures", Section V "Minimum Grounds Maintenance Standards", paragraph K "Buildings" in its entirety and replacing it with the following language:

K. Buildings and Equipment:

1. The contractor shall ensure that all buildings are maintained in good, operable and sanitary condition. All costs for such repairs, replacements, rebuilding and restoration will be the responsibility of the City. Responsibility for coordinating the maintenance of the buildings at the golf course shall be the Contractor's and shall be accounted for and managed as follows:


a. Routine repairs that do not meet the definition of a Capital Expenditure as defined in paragraph 8 of the Management Agreement, including plumbing and electrical, touch up painting, maintenance of grease traps, cooking appliances, safety equipment (including fire extinguishers, alarm systems, exit lighting, etc.) carpet cleaning/floor waxing, cleaning windows inside and out, exterior pressure washing, light fixtures, monthly pest

control services, monthly HVAC preventative services, and comparable maintenance services shall be coordinated by Contractor; accounted for as an operating expense by Contractor; and does not require advance notice to the City. Contractor is encouraged to keep a dialogue open with City to determine whether City's facilities maintenance staff could more economically and efficiently provide any of the routine services either in-house or through other City contracts to minimize financial impact of same.

- b. Plumbing and electrical upgrades, HVAC system upgrades, structural, roof systems, capital improvements, parking lot surfaces, and termite inspections and related treatments and comparable maintenance services that do meet the definition of a Capital Expenditure as defined in paragraph 8 of the Management Agreement shall be brought to the attention of the City of Ocala in writing (mail, email or facsimile is acceptable). Said repairs/upgrades shall require advance approval by the City; and shall be accounted for by City. The Contractor shall coordinate said work in accordance with plans approved in writing by the City.
2. Contractor shall provide routine janitorial services as needed to maintain a high quality facility both inside and outside in accordance with the minimum maintenance standards.
 3. Contractor shall not make any changes to the buildings without the prior consent of the City.
 4. Contractor shall provide routine systems preventative maintenance services in accordance with the minimum maintenance standards.
 5. Contractor shall keep the maintenance facilities in a safe, sanitary and orderly manner. This shall include routine inspections and repair as needed of the air compressor, fuel tanks (maintenance and clubhouse), and wash down systems. Reports of monthly inspections of this equipment shall be included in the required monthly maintenance report. Monthly fuel tank inspections shall include checking the integrity of the roof, tank coating, secondary containment, vent line (for installation of vent caps), as well as checking for liquid accumulation, proper volume, drain valve leaks (must be lockable and secured when not in use) and ensure that containment area is free of dirt and debris. Wells on the fuel tank should be checked on a monthly basis. Fuel tanks shall be repainted as needed to comply with regulations. These inspections should be logged and any necessary repairs made and brought to the attention of the City.
 6. Maintenance equipment shall be parked inside wherever possible and the maintenance facility shall be properly secured at the end of the day. All maintenance gates, cables, etc. throughout the perimeter of the course shall be secured at the end of the day.
5. **Effect of Amendment.** In the event of any inconsistency between this Amendment and the provisions of the Original Agreement, this Amendment shall govern. Except in the event of any such inconsistency or as expressly set forth herein, the Original Agreement is not amended or modified. Any references in the Original Agreement or herein to "this Agreement," or similar terms shall be deemed to refer to the Original Agreement as amended hereby.


IN WITNESS WHEREOF, the parties hereto have hereunto executed this instrument for the purpose herein expressed, the day and year above written.

City of Ocala, a Florida municipal corporation



Mary S. Rich
President, Ocala City Council

Billy Casper Golf, LLC:

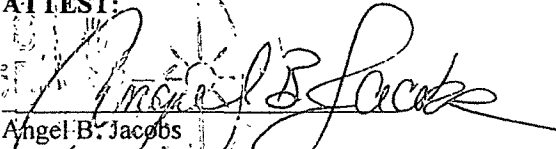
By: 

R. Joseph Goodrich, Executive Vice President

By: 

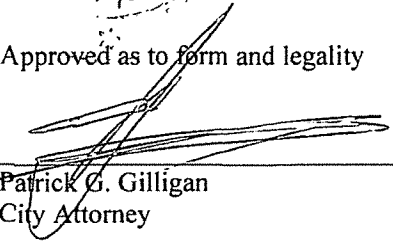
R. Alexander Elmore, Chief Operating Officer

ATTEST:



Angel B. Jacobs
City Clerk

Approved as to form and legality



Patrick G. Gilligan
City Attorney

ACCEPTED BY CITY COUNCIL

February 19, 2013

DATE

OFFICE OF THE CITY CLERK