

## **GOLF COURSE LEASE AND MANAGEMENT AGREEMENT**

THIS GOLF COURSE LEASE AND MANAGEMENT AGREEMENT (the "Lease") is entered into this \_\_\_ day of January, 2014, between the Town of Belleair, Florida, a Florida municipal corporation, whose principal office is located at 901 Ponce de Leon Blvd. Belleair, FL. ("TOB"), and Green Golf Partners, LLC, an Indiana limited liability company, with a principal address at 1001 Cartersburg Road, Danville, Indiana 46122 (the "Lessee").

WHEREAS, TOB owns a public golf course and clubhouse located at 1501 Indian Rocks Rd, Belleair, FL as further described herein (the "Premises") consisting of an 18-hole golf course, golf shop, dining and bar area, a practice facility, a parking lot, maintenance garage and other facilities connected with the golf course (collectively the "Golf Course Operations"); and

WHEREAS, Lessee has managed the Golf Course Operations for the benefit of TOB since February, 2013 pursuant to a Golf Course Operations Management Agreement between TOB and Lessee dated February \_\_\_, 2013; and

WHEREAS, TOB and Lessee now desire to enter into a lease of the Premises to provide for the long-term management of the Golf Course Operations upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, covenant and agree as follows:

### **1. DEMISE**

In consideration for the rents and all other charges and payments payable by Lessee, and for the agreements, terms and conditions to be performed by Lessee in this Lease, TOB DOES HEREBY LEASE TO LESSEE, AND LESSEE DOES HEREBY LEASE FROM TOB, the Premises upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

### **2. POSSESSION AND MANAGEMENT OF GOLF COURSE OPERATIONS**

Subject to TOB's rights of access herein, Lessee shall have exclusive use and possession of the Premises during Term (as defined in Section 3 hereof) and Lessee shall perform Management Services (as hereinafter defined in Section 8 hereof) upon the terms and conditions set forth herein. Lessee hereby accepts the Premises in its as-is condition without any improvements or alterations by TOB. Lessee shall be responsible for management of all Golf Course Operations during the Term and shall use its best efforts to fulfill its management duties and obligations under this Lease.

### **3. TERM**

The term of this Lease (the "Term") shall commence on January 1, 2014 (the "Commencement Date") and end on December 31, 2023 (the "Expiration Date"). The Term may be extended for an additional ten (10) year term based on the approval of both TOB and Lessee.

#### 4. RENT

(a) Base Rent. Lessee shall pay TOB a quarterly fee of Forty Thousand and 00/100 Dollars (\$40,000.00) (the "Quarterly Fee"). The Quarterly Fee shall be due and payable within ten (10) days of the end of each calendar quarter (i.e., on or before the 10<sup>th</sup> day of April, July, October and January) (each a "Quarterly Fee Payment Date") by check or wire transfer of immediately available U.S. funds.

(b) Additional Rent. During the Term, Lessee shall pay to TOB as additional rent ("Additional Rent"), in accordance with this Section 4(b) the following:

(i) a revenue percentage payment equal to six and one-half percent (6.5%) of Gross Revenues in excess of \$1,600,000.00 from the Golf Course Operations. The Additional Rent shall be payable by Lessee to TOB annually on or before February 15 of the calendar year following the calendar year in which the Gross Revenues were generated, by check or wire transfer of immediately available U.S. funds. By way of example only, assume that Gross Revenues during the 2014 calendar year are \$2,600,000.00. On or before February 15, 2015, Lessee shall remit to TOB \$65,000.00. In calculating Additional Rent hereunder, Lessee shall not be entitled to and shall not deduct or offset the cost of Capital Improvements (as hereinafter defined) therefrom. In the event that Lessee redeems gift certificates during the Term which were sold prior to the commencement of the Term, Lessee shall be entitled to deduct the amount redeemed from the next Additional Rent due to TOB hereunder; and

(ii) all taxes and assessments imposed by any taxing authority (other than TOB) against the Premises. TOB shall promptly provide Lessee with any tax bills upon receipt and such taxes shall be payable to the taxing authorities by Lessee within 30 days thereafter.

(iii) additional One Thousand and 00/100 Dollars (\$1,000) ("the Escrow Payment") at the time of each base rent payment that will be escrowed in the town golf fund and applied to the final quarterly payment of Lessee

Notwithstanding any other provision of this Lease to the contrary, Lessee hereby acknowledges that late payment to TOB of Quarterly Rent or Additional Rent (Quarterly Rent and Additional Rent collectively referred to hereinafter as "Rent"), or other amounts due hereunder will cause TOB to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any Rent or other sums due from Lessee are not received by TOB or by TOB's designated agent within five (5) days after their due date, then Lessee shall pay to TOB a late charge equal to ten percent (10%) of such overdue amount, plus any costs and attorneys' fees incurred by TOB by reason of Lessee's failure to pay Rent and/or other charges when due hereunder. TOB and Lessee hereby agree that such late charges represent a fair and reasonable estimate of the cost that TOB will incur by reason of Lessee's late payment and shall not be construed as a penalty. TOB's acceptance of such late charges shall not constitute a waiver of Lessee's default with respect to such overdue amount or estop TOB from exercising any of the other rights and remedies granted under this Lease.

For purposes of this Lease "Gross Revenues" shall mean gross receipts of every kind and nature from Golf Course Operations whatsoever, whether for cash, credit, gift certificates which are redeemed by Lessee during the term of this Lease (whether sold before or during the Term) or barter, including, without limitation, food and beverage sales, room and facilities rentals, meeting and event rentals or fees, banquet and special event fees, catering fees, pro shop and other merchandise sales; green fees, cart rental; driving range revenue, golf instruction fees, receipts from vending machines and proceeds of any business interruption insurance (net of reasonable costs of settling such claim with the insurance carrier), provided, however, that Gross Revenues shall not include amounts received as rebates, refunds and discounts (but not credit and card discounts paid to a credit card system) to customers in the ordinary course of business;

excise, sales, use and similar taxes collected directly from customers as a part of the purchase price of any goods or services and which are accounted for to any governmental agency or authority derived from the Golf Course Operations; tips and gratuities paid to employees in connection with the purchase of goods or services from the Golf Course Operations; or income or interest derived from cash, securities and other property of the Golf Course Operations acquired and held for investment. Any Capital Improvement (as hereinafter defined) made by Lessee during the Term may not be used to reduce the amount of Gross Revenue.

## **5. USE OF PREMISES**

(a) Permitted Use. The use of the Premises by Lessee and Lessee's agents, advisors, employees, partners, shareholders, directors, customers, invitees and independent contractors (collectively, "**Lessee's Agent**") shall be solely for the conduct of the Golf Course Operations and for no other use. Lessee shall not permit any objectionable or unpleasant odor, smoke, dust, gas, noise or vibration to emanate from or near the Premises. The Premises shall not be used to create any nuisance or trespass, for any illegal purpose, for any purpose not permitted by Laws (as hereinafter defined), or for any purpose that would invalidate the insurance or increase the premiums for insurance on the Premises.

(b) Compliance with Governmental Regulations and Private Restrictions. Lessee and Lessee's Agents shall, at Lessee's expense, faithfully observe and comply with (1) all municipal, state and federal laws, statutes, codes, rules, regulations, ordinances, requirements, and orders (collectively, "**Laws**"), now in force or which may hereafter be in force pertaining to the Premises or Lessee's use of the Premises; and (2) all recorded covenants, conditions and restrictions affecting the Premises now in force or which may hereafter be in force.

## **6. ACCEPTANCE OF PREMISES**

By its execution hereof, Lessee acknowledges that it has had the opportunity to fully inspect the Premises. By accepting TOB's delivery of the Premises, Lessee accepts the Premises as suitable for Lessee's intended use and as being in good and sanitary operating order, condition and repair, AS IS, and without representation or warranty by TOB as to the condition, use or occupancy which may be made thereof. Any exceptions to the foregoing must be by written agreement executed by TOB and Lessee.

## **7. SURRENDER**

Lessee agrees that on the last day of the Term, or on the sooner termination of this Lease, Lessee shall surrender the Premises to TOB in good condition and repair (damage by acts of God, fire, and normal wear and tear excepted). Normal wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Lessee or Lessee otherwise performing all of its obligations under this Lease. On or before the expiration or sooner termination of this Lease, (i) Lessee shall remove all of Lessee's Property (as hereinafter defined) and repair any damage caused by such removal, and (ii) TOB may, by notice to Lessee given not later than ninety (90) days prior to the Expiration Date (except in the event of a termination of this Lease prior to the scheduled Expiration Date, in which event no advance notice shall be required), require Lessee at Lessee's expense to remove any or all Alterations (as defined in Section 13 hereof) and to repair any damage caused by such removal. Any of Lessee's Property (as defined in Section 16(f) hereof) not so removed by Lessee as required herein shall be deemed abandoned and may be stored, removed, and disposed of by

TOB at Lessee's expense, and Lessee waives all claims against TOB for any damages resulting from TOB's retention and disposition of such property; provided, however, that Lessee shall remain liable to TOB for all costs incurred in storing and disposing of such abandoned property of Lessee. All Alterations (except those which TOB requires Lessee to remove) shall remain on the Premises as the property of TOB.

## **8. MANAGEMENT SERVICES**

Subject to the terms of this Lease, including the restricted activities of Lessee set forth in Section 29, during the Term hereof Lessee shall have all reasonable discretion in the operation, direction, management and supervision of the Golf Course Operations. Notwithstanding the foregoing, Lessee and its employees shall perform the following management, maintenance and operational services with respect to the Golf Course Operations (collectively, "Management Services"):

- (a) Assign a full-time, on-site manager of the Golf Course Operations who will be responsible for supervising Golf Course Operations.
- (b) Recruit, hire (on Lessee's payroll), train, supervise, discipline and terminate employees and staff necessary for operation of the Golf Course Operations.
- (c) Provide operational and procedural manuals for all employees of the Golf Course Operations and create job descriptions for employees of the Golf Course Operations.
- (d) Establish fees, prices and pricing policies for all income items of the Golf Course Operations.
- (e) Supervise the day-to-day operations of the Golf Course Operations, including developing (a) a system to maximize the purchasing and mix of inventory, (b) a cash management system, (c) other accounting controls and (d) a food and beverage plan (including on-course and outing service) directed toward expanding usage of the Golf Course Operations, and performing all administrative and fiscal duties relating to the payment of all indebtedness, taxes and assessments on retail sales and other obligations due or to become due of the Golf Course Operations which accrue during the Term.
- (f) Supervise the maintenance of the golf course, the practice facility, golf shop and inventory, maintenance equipment and other aspects of the Golf Course Operations in accordance with industry standards for golf courses of comparable quality, including without limitation, grounds keeping, mowing, top dressing, watering, seeding, fertilization, aerification, disease identification, weed control, fungicides, herbicides and insecticides for tees, fairways, greens and roughs, cleaning, rubbish removal, painting and landscape maintenance.
- (g) Maintain the Golf Course Operations properties (course and course facilities, clubhouse and all operating equipment) in good order and in sanitary and safe condition consistent with the standards for a public golf course operation and shall make or cause to be made, at its sole cost and expense, all ordinary repairs thereto, subject to the provisions of Section 14 hereof. Lessee shall periodically inspect the Golf Course Operations to determine maintenance and repair need, and shall supervise all contractors performing repair, maintenance or improvement work on the Golf Course Operations.
- (h) Cause the Golf Course Operations to be maintained, operated and used in material compliance with all applicable laws, ordinances and regulations and in compliance in all material respects with all applicable contractual requirements affecting the Golf Course Operations of which Lessee has notice and control.

(i) With the prior written approval of the TOB, supervise the Capital Improvements and, to the extent applicable, cause the Capital Improvements to be completed in accordance with the requirements of this Lease.

(j) Provide quarterly written reports to the TOB setting forth (a) the prior three (3) months and year-to-date financial results of the Golf Course Operations including, without limitation, green fees, cart fees, round counts, driving range revenue, food and beverage revenue, golf shop revenue and banquet revenues; (b) reports of ongoing capital improvements, written commentary as to the performance of the operations and (c) a list of action items, if any, needing immediate management attention. Upon request by TOB Lessee's representative shall provide such reports to the TOB Town Commission (the "Commission") at a scheduled meeting of the Commission.

(k) Prepare and provide annual reports of results of operations including all revenues and all expenses appropriately categorized within sixty (60) days after the end of each calendar year and an annual report and reconciliation of movable equipment inventory which identifies all the TOB owned equipment, tools, and/or supplies made available to Lessee for its use.

(l) Establish a marketing plan for the Golf Course Operations and use its best efforts to arrange and conduct reasonable advertising and promotions of the Golf Course Operations including: (a) writing and servicing news releases to local media; (b) handling all media inquiries related to the Golf Course Operations; (c) conducting golf tournaments, exhibitions and clinics; (d) implementing appropriate coaching programs (where available space permits); (e) promoting junior golfers and league play; and (f) promoting outings and special events located at the Golf Course Operations. Any internal or external signage to be placed by Lessee shall be coordinated with TOB for appropriate wording and location prior to placement. Any signage permitted for placement by Lessee shall conform to approved TOB signage regulations.

(m) Procure and provide the TOB with certificates of insurance evidencing the insurance policies required. With respect to the required commercial general liability insurance required as provided herein, the TOB shall be named as additional insured on the certificate. Umbrella liability insurance may be used to meet the general liability coverage limit requirements. Lessee's insurance carrier of commercial general liability insurance shall be required to provide thirty (30) days prior written notice of cancellation or material change of insurance coverage to the TOB.

(n) Promptly investigate, and make a full, timely written report to the TOB (except for *de minimus* items) regarding all accidents, claims or damage relating to the ownership, operation, management and maintenance of the Golf Course Operations and the estimated cost related to any claims or damage repair. Lessee shall prepare any and all reports required by the TOB and any insurance companies in connection with any accidents, claims or damage relating to the ownership, operation, management and maintenance of the Golf Course Operations. All such reports shall be filed timely with Lessee's insurance companies as required under the terms of the applicable insurance policy which provides coverage for such accident, damage or claim. Lessee shall take no action (such as admission of liability) which would, in its reasonable judgment, prejudice the TOB or its insurance carrier in the defense of any claim.

(m) Maintain the overall condition and standards of the golf course and clubhouse in a condition equal to or better to comparable public or semi-private golf courses such as Bardmoor Country Club, but in any event of no lesser condition or quality than existing for the Premises on the Commencement Date of this Lease.

(n) Schedule days and hours of operation to maximize utilization of the Premises and revenue from Golf Course Operations and avoid to the extent possible any closures of the golf course or clubhouse for repairs or improvements during peak seasons.

## **9. CAPITAL IMPROVEMENTS**

(a) In addition to Lessee's maintenance obligations hereunder, Lessee shall, at its sole cost and expense, invest at least a total of Five Hundred Thousand Dollars (\$500,000.00) over the Term in Capital Improvements to the Premises in a manner consistent with the schedule provided in Exhibit B. For purposes of this Lease, "Capital Improvements" shall mean any labor or materials which modify the Premises or which create or modify permanent structures on the Premises, including but not limited to irrigation system upgrades; clubhouse renovation, construction or improvements; renovation, construction or improvements to storage facilities or garages; golf course renovation; and cart path and road construction or improvements.

(b) In the event that this Lease is terminated prior to the date which is five (5) years after the date on which any investment in Capital Improvements is made by Lessee, then TOB shall refund to Lessee an amount equal to (i) the amount invested in that Capital Improvement by Lessee, (ii) divided by five, and (iii) multiplied by the number of years remaining in that five year period. By way of example only, if Lessee expends \$250,000 on Capital Improvements on January 1, 2014, and this Lease is terminated at any time on or after January 1, 2019, then no refund would be due. However, if this Lease is terminated on January 1, 2018, then the TOB would be required to refund 1/5 (20%) of the amount invested by Lessee (\$50,000.00), as there would be one year of the five year period remaining. A new, distinct five year period would apply to each investment in Capital Improvements made by Lessee, beginning on the date of each investment.

(c) If there is any partial year between the date of an investment in Capital Improvements and the effective date of termination of this Lease, then the amount of the refund due for that year shall be prorated. By way of example only, if the Lease is terminated three and one-half years after the date of an investment in Capital Improvements, then the amount of the refund would be 1.5/5 (30%) of the amount invested, as there would be one and one-half years of the five year period remaining.

(d) Notwithstanding the foregoing, if this Lease continues until expiration of the initial Term expiring on December 31, 2023, then no refund of any part of the first Five Hundred Thousand Dollars (\$500,000.00) invested by Lessee in Capital Improvements shall be due from the TOB to Lessee. However, if any investment in Capital Improvements is made by Lessee which exceeds Five Hundred Thousand Dollars (\$500,000.00), and this Lease expires prior to the end of the five year period following the date of the investment (December 31, 2023 is prior to the end of the five year period), and if this Lease is not renewed by the TOB and Lessee on terms which are acceptable to both parties, then Lessee shall be entitled to a refund of a portion of that investment, to be calculated as provided in Sections 9(b) and (c) and paid as provided in Section 9(e) treating the date of expiration of this Lease as the effective date of termination.

(e) Refunds to Lessee under this Section 9 shall be made by the TOB in six (6) equal monthly installments beginning on the first day of the calendar month following the effective date of termination of this Lease with each successive payment due on or before the first day of the five (5) immediately successive calendar months. There shall be no penalty for prepayment, and no interest shall be payable by the TOB if payments are made in a timely manner; however, interest shall accrue on all late payments at the rate of nine percent (9%) per annum.

(f) All Capital Improvements and other alterations or additions to the Premises made by Lessee shall be performed in accordance with Section 13 hereof and shall become the property of the TOB upon termination of the Lease.

## **10. EQUIPMENT AND MACHINERY AND MAINTENANCE THEREOF**

(a) Subject to Section 14 hereof and except for the Personal Property (as hereinafter defined in Section 10(b)) initially provided to Lessee under Section 10(b), Lessee must provide, install and maintain at its own cost and expense, all equipment required for the operation and maintenance of the Golf Course Operations. Lessee will be required to repair and maintain, at Lessee's own cost and expense, all equipment and furnishings according to reasonable standards. Further, Lessee will furnish, at Lessee's own cost and expense, all expendable

equipment necessary to the successful operation of the Golf Course Operations and shall replace at Lessee's own expense, any equipment which may be provided by the TOB under this Lease which has been destroyed or damaged with like equipment. Lessee will submit to TOB an annual inventory of Personal Property. Upon expiration of the Lease, Lessee shall redeliver to the TOB all of the Personal Property listed on Exhibit A, plus any items of equipment which were purchased with insurance proceeds received due to the damage, destruction or theft of items of Personal Property, in the same condition as originally delivered to Lessee, reasonable wear and tear excepted. Any other items of equipment which were purchased by Lessee shall remain the property of Lessee.

(b) The TOB hereby covenants and agrees that all of the equipment and machinery listed on Exhibit A attached hereto (collectively, the "Personal Property"), which Personal Property is owned by the TOB free and clear of any and all liens and encumbrances of any kind, is, and shall at all times during the Term, remain located at the Golf Course Operations for the unrestricted and unconditional use by Lessee and its employees, for purposes of performing Lessee's duties and obligations hereunder. From time to time during the Term, Lessee may, in its sole discretion, notify the TOB that certain pieces of Personal Property are unnecessary or obsolete in connection with the Golf Course Operations, whereupon the TOB shall use its best efforts to remove such designated pieces of Personal Property with all reasonable diligence. Such items will be deleted from the Personal Property Inventory. From time to time during the Term, Lessee may, in its sole discretion, purchase such new or used pieces of equipment and/or machinery as it deems necessary or appropriate in connection with its performance of Management Services. All pieces of equipment or machinery so purchased by Lessee during the Term shall at all times be and remain the exclusive property of Lessee.

(c) As a condition to this Lease, Lessee shall assume those certain leases for Grounds Equipment and Golf Cart Fleet between \_\_\_\_\_ as lessor and TOB as lessee dated February \_\_\_\_, 2013, and shall indemnify and hold TOB harmless from any further liability under such equipment leases except to the extent any liability is as a result of circumstances arising prior to assignment of said leases to Lessee.

(d) Any other leases for equipment necessary for the Golf Course Operations entered into by Lessee during the Term including, but not limited to golf cart fleet, grounds maintenance equipment, point of sale system and restaurant and lounge equipment shall be assignable to TOB at TOB's option upon termination of this Lease.

## **11. UTILITIES**

(a) Lessee shall pay before delinquency all charges for utilities, including electricity, gas, cable television, refuse, water/sewer, reclaimed irrigation water and telephone.

(b) Lessee will maintain the below ground level utility services to the point of services as provided by the utility during the Term.

## **12. BUDGET, BANK ACCOUNTS AND COLLECTIONS**

(a) At least sixty (60) days prior to the beginning of each calendar year during the Term, Lessee shall prepare and deliver to the TOB, a budget for the Golf Course Operations for such year containing projections and estimates of all revenues and expenses, including capital expenditures, green fees and counts, cart fees and counts, pro shop and food concessions estimates, range fees and counts, and such other budgetary items as Lessee deems necessary, all in a form reasonably acceptable to the parties.

(b) Lessee shall collect all sums due from the Golf Course Operations in the ordinary course of business, and shall deposit such sums into a bank account (the "Account") in a local financial institution. The Account shall have signatories approved by Lessee. Funds not generated from the Golf Course Operations shall not be co-mingled in the Account. All funds in the Account shall be the exclusive property of Lessee. Lessee shall keep detailed records of all bills and invoices received from the Golf Course Operations in accordance with this Lease, and shall pay all bills as and when the same become due unless contested in good faith.

### **13. ALTERATIONS AND ADDITIONS**

(a) Lessee shall not make, or permit to be made, any alteration, addition or improvement (hereinafter referred to individually as an "**Alteration**" and collectively as the "**Alterations**") to the Premises or any part thereof without the prior written consent of TOB, which consent shall not be unreasonably withheld.

(b) Any Alterations to the Premises shall be at Lessee's sole cost and expense, in compliance with all applicable Laws and all reasonable requirements requested by TOB, including, without limitation, the requirements of any insurer providing coverage for the Premises, and in accordance with plans and specifications approved in writing by TOB, and shall be constructed and installed by a contractor approved in writing by TOB.

### **14. MAINTENANCE AND REPAIRS OF PREMISES**

(a) Maintenance by Lessee. Throughout the Term, Lessee shall, at its sole expense, keep and maintain in good order and condition the Premises, the Golf Course Operations Equipment, and Lessee's Property (as defined in Section 16(f) hereof). Lessee shall not do nor shall Lessee allow Lessee's Agents to do anything to cause any damage, deterioration or unsightliness to the Premises; provided, however, the obligation to pay for replacement of the items listed in Exhibit C of major mechanical equipment or appliances shall be shared by TOB and Lessee in the following manner. The parties shall agree on the cost of replacement mid-grad commercial item and its useful life using federal tax depreciation guidelines. The Lessee's share of the cost shall be a fraction (x/y) where (x) is the remaining years of the Term, and (y) is the life of the asset. By way of example, if a \$20,000 item with 15-year life must be replaced with 6 years remaining in the Term, Lessee's share would be 6/15ths or \$8000.00.

(b) Maintenance by TOB. TOB shall repair and maintain the following items: the roof coverings (provided that Lessee installs no additional air conditioning or other equipment on the roof that damages the roof coverings, in which event Lessee shall pay all costs resulting from the presence of such additional equipment); building exterior, electrical, plumbing and sewer. TOB further agrees to repair and maintain the following items: the structural portions of the roof, the foundation, the footings, the floor slab, and the load bearing walls and exterior walls of buildings (excluding any glass and any routine maintenance, including, without limitation, any painting, sealing, patching and waterproofing of such walls). Notwithstanding anything in this Section 14 to the contrary, TOB shall have the right to either repair or to require Lessee to repair any damage to any portion of the Premises caused by or created due to any act, omission, negligence or willful misconduct of Lessee or Lessee's Agents and to restore the Premises, as applicable, to the condition existing prior to the occurrence of such damage; provided, however, that in the event TOB elects to perform such repair and restoration work, Lessee shall reimburse TOB upon demand for all costs and expenses incurred by TOB in connection therewith. TOB's obligation hereunder to repair and maintain is subject to the condition precedent that TOB shall have received written notice of the need for such repairs and maintenance and a reasonable time to perform such repair and maintenance. Lessee shall promptly report in writing to TOB any defective condition known to it which TOB is required to repair, and failure to so report such defects shall make Lessee responsible to TOB for any liability incurred by TOB by reason of such condition.

### **15. TOB'S INSURANCE**

TOB shall purchase and keep in force fire, extended coverage and "all risk" insurance covering the buildings on the Premises. Lessee shall, at its sole cost and expense, comply with any and all reasonable requirements pertaining to the Premises of any insurer necessary for the maintenance of reasonable fire and commercial general liability insurance, covering the buildings. Any policies to be maintained by TOB hereunder shall name Lessee as an additional insured.

## **16. LESSEE'S INSURANCE**

(a) Throughout the Term, Lessee shall obtain for the benefit of TOB, at Lessee's sole cost and expense, keep in full force and effect and provide to TOB evidencing the following insurance policy coverages in no less than the minimum coverage limits listed below naming TOB as an additional insured. The insurance companies providing coverage must be authorized to conduct business in Florida and have a B+: VI or better rating in the current edition of Best's Key Rating Guide.

(b) Worker's Compensation Insurance. Worker's Compensation Insurance, including Employer's Liability at a minimum limit of One Million Dollars (\$1,000,000.00) for all personnel employed by Lessee. Such insurance shall be in strict accordance with the requirements of the most current and applicable State Worker's Compensation Insurance Laws in effect from time to time.

(c) Comprehensive General Liability Insurance. Comprehensive or Commercial General Liability Insurance on an "occurrence" basis, with reasonably acceptable deductible, with a combined single limit for bodily injury and property damage of Two Million Dollars (\$2,000,000.00), or a limit carried, whichever is greater, covering operations, independent contractors, products and completed operations, contractual liability, broad form property damage, personal injury and explosion, collapse and underground hazards (X, C, U). Liquor law liability insurance shall also be maintained by Lessee in reasonable amounts. The limit of liability of the insurance coverage specified in this Section may be provided by any combination of primary and excess liability insurance policies.

(d) Automobile Liability Insurance. Owned, hired and non-owned automobile liability insurance covering all use of all automobiles, trucks and other motor vehicles (including golf carts and other motorized golf course equipment unless liability shall be insured under (b) above), utilized in connection with the Golf Course Operations with a combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000.00), or limit carried, whichever is greater.

(e) Comprehensive Dishonesty, Destruction and Disappearance (3-D Bond). A 3-D Bond, or equivalent, in an amount not less than Two Hundred Thousand Dollars (\$200,000.00), or limit carried, whichever is greater, from a surety or insurance company authorized to conduct business in the State of Florida and acceptable to the TOB covering as a minimum Depositor's Forgery and all employees who may handle funds or property in connection with the Golf Course Operations.

(f) Personal Property Insurance. Lessee shall maintain in full force and effect on all of its personal property, furniture, furnishings, trade or business fixtures and equipment (collectively, "**Lessee's Property**") on the Premises, a policy or policies of fire and extended coverage insurance with standard coverage endorsement to the extent of the full replacement cost thereof. No such policy shall contain a deductible greater than two thousand five hundred dollars (\$2,500.00). During the Term, the proceeds from any such policy or policies of insurance shall be used for the repair or replacement of the fixtures and equipment so insured. TOB shall have no interest in the insurance upon Lessee's equipment and fixtures and will sign all documents reasonably necessary in connection with the settlement of any claim or loss by Lessee. TOB will not carry insurance on Lessee's possessions.

(g) Evidence of Coverage. Lessee shall deliver to TOB certificates of insurance and true and complete copies of any and all endorsements required herein for all insurance required to be maintained by Lessee hereunder at the time of execution of this Lease by Lessee. Lessee shall, at least thirty (30) days prior to expiration of each policy, furnish TOB with certificates of renewal thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days prior written notice to TOB and the other parties named as additional insureds as required in this Lease (except for cancellation for nonpayment of premium, in which event cancellation shall not take effect until at least ten (10) days' notice has been given to TOB).

## **17. INDEMNIFICATION**

(a) Of TOB. Lessee shall defend, protect, indemnify and hold harmless TOB and TOB's Agents against and from any and all claims, suits, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees, costs and disbursements) arising from (1) the use of the Premises by Lessee or Lessee's Agents, or from any activity done, permitted or suffered by Lessee or Lessee's Agents in or about the Premises, (2) any act, neglect, fault, willful misconduct or omission of Lessee or Lessee's Agents, or from any breach or default in the terms of this Lease by Lessee or Lessee's Agents, and (3) any action or proceeding brought on account of any matter in items (1) or (2). If any action or proceeding is brought against TOB by reason of any such claim, upon notice from TOB, Lessee shall defend the same at Lessee's expense by counsel reasonably satisfactory to TOB. As a material part of the consideration to TOB, Lessee hereby releases TOB and TOB's Agents from responsibility for, waives its entire claim of recovery for and assumes all risk of (i) damage to property or injury to persons in or about the Premises from any cause whatsoever (except to the extent caused by the sole active negligence or willful misconduct of TOB or TOB's Agents or by the failure of TOB to observe any of the terms and conditions of this Lease), or (ii) loss resulting from business interruption or loss of income at the Premises. The obligations of Lessee under this Section 17 shall survive any termination of this Lease.

(b) Of Lessee. Consistent with and subject to the monetary limitations set forth in section 768.28, Florida Statutes, which governs any waiver of sovereign immunity, TOB shall defend, protect, indemnify and hold harmless Lessee and Lessee's Agents against and from any and all claims, suits, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees, costs and disbursements) arising from (1) the use of the Premises by TOB or TOB's Agents, or from any activity done, permitted or suffered by TOB or TOB's Agents in or about the Premises, (2) any act, neglect, fault, willful misconduct or omission of TOB or TOB's Agents, or from any breach or default in the terms of this Lease by TOB or TOB's Agents, and (3) any action or proceeding brought on account of any matter in items (1) or (2). If any action or proceeding is brought against Lessee by reason of any such claim, upon notice from Lessee, TOB shall defend the same at TOB's expense by counsel reasonably satisfactory to Lessee. As a material part of the consideration to Lessee, TOB hereby releases Lessee and Lessee's Agents from responsibility for, waives its entire claim of recovery for and assumes all risk of (i) damage to property or injury to persons in or about the Premises from any cause whatsoever (except to the extent caused by the sole active negligence or willful misconduct of Lessee or Lessee's Agents or by the failure of Lessee to observe any of the terms and conditions of this Lease), or (ii) loss resulting from business interruption or loss of income at the Premises. The obligations of TOB under this Section 17 shall survive any termination of this Lease.

(c) No Impairment of Insurance. The foregoing indemnity shall not relieve any insurance carrier of its obligations under any policies required to be carried by either party pursuant to this Lease, to the extent that such policies cover the peril or occurrence that results in the claim that is subject to the foregoing indemnity.

## **18. FREE FROM LIENS**

Lessee shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Lessee. In the event that Lessee shall not, within ten (10) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, TOB

shall have in addition to all other remedies provided herein and by law the right but not the obligation to cause same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by TOB and all expenses incurred by it in connection therewith (including, without limitation, attorneys' fees) shall be payable to TOB by Lessee upon demand. TOB shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that TOB shall deem proper for the protection of TOB, the Premises, from mechanics' and materialmen's liens. Lessee shall give to TOB at least five (5) business days' prior written notice of commencement of any repair or construction on the Premises.

## **19. ENTRY BY TOB**

Lessee shall permit TOB and TOB's Agents to enter into and upon the Premises at all reasonable times, upon reasonable notice (except in the case of an emergency, for which no notice shall be required), and subject to Lessee's reasonable security arrangements, for the purpose of inspecting the same or showing the Premises to prospective purchasers, lenders or lessees or to provide services, alter, improve, maintain and repair the Premises as required or permitted of TOB under the terms hereof, or for any other business purpose, without any rebate of Rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the Premises thereby occasioned (except for actual damages resulting from the sole active negligence or willful misconduct of TOB or TOB's Agents or prospective purchasers, lenders or lessees). No such entry shall be construed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction or constructive eviction of Lessee from the Premises.

## **20. ASSIGNMENT AND SUBLETTING**

(a) Lessee shall not voluntarily or by operation of law, (1) mortgage, pledge, hypothecate or encumber this Lease or any interest herein, (2) assign or transfer this Lease or any interest herein, sublease the Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees and invitees of Lessee excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of TOB, which consent shall not be unreasonably withheld.

(b) Without limiting the other transaction(s) that may constitute or result in an assignment of this Lease, each of the following shall be deemed to be an assignment under this Lease: (1) the merger or consolidation of Lessee with or into another entity, whether or not Lessee is the surviving entity, except a merger of Lessee into a wholly-owned subsidiary to effect a reincorporation in another state; (2) a transfer, issuance, or dilution of greater than fifty percent (50%) of the ownership or beneficial interests (whether stock, partnership interest, membership interest or otherwise) in Lessee, either in a single transaction or a series of transactions (whether related or unrelated), such that the ultimate owners or holders (whether direct or indirect) of such interests on the date of this Lease cease to own more than fifty percent (50%) of the ownership or beneficial interest in Lessee; (3) the commencement of liquidation proceedings or the dissolution of Lessee (whether or not in connection with liquidation proceedings); (4) the conversion or change of Lessee into another type of entity (e.g., the conversion of a corporation into a limited liability company); (5) the reorganization or restructuring of Lessee, including, without limitation, by a spin-off or split-off; and (6) the change in the identity of such number of "controlling persons" as, under the organizational documents of Lessee, is the minimum number of persons required to approve any act involving the management or operation of the business of Lessee. For purposes of this Section the term "controlling persons" means the members or managers of Lessee, or other persons having equivalent control over said approval if another entity, and (B) the term "organizational documents" means the articles of organization or certificate of formation and operating agreement of Lessee or equivalent documents governing Lessee's organization and governance if Lessee is another entity.

## **21. LESSEE'S DEFAULT**

The occurrence of any one of the following events shall constitute a default on the part of Lessee ("**Default**"):

(a) The vacation or abandonment of the Premises by Lessee for a period of ten (10) consecutive days or any vacation or abandonment of the Premises by Lessee which would cause any insurance policy to be invalidated or otherwise lapse in each of the foregoing cases irrespective of whether or not Lessee is then in monetary default under this Lease. Lessee agrees to notice and service of notice as provided for in this Lease and waives any right to any other or further notice or service of notice which Lessee may have under any statute or law now or hereafter in effect;

(b) Failure to pay any installment of Rent or any other monies due and payable hereunder, said failure continuing for a period of ten (10) business days after the same is due;

(c) A general assignment by Lessee or any guarantor or surety of Lessee's obligations hereunder for the benefit of creditors;

(d) The filing of a voluntary petition in bankruptcy by Lessee the filing by Lessee of a voluntary petition for an arrangement, the filing by or against Lessee of a petition, voluntary or involuntary, for reorganization, or the filing of an involuntary petition by the creditors of Lessee, said involuntary petition remaining undischarged for a period of sixty (60) days;

(e) Receivership, attachment, or other judicial seizure of substantially all of Lessee's assets on the Premises, such attachment or other seizure remaining undismissed or undischarged for a period of sixty (60) days after the levy thereof,

(f) An assignment or sublease, or attempted assignment or sublease, of this Lease or the Premises by Lessee unless such assignment or sublease is expressly conditioned upon Lessee having received TOB's consent thereto;

(g) Failure in the performance of any of Lessee's covenants, agreements or obligations hereunder (except those failures specified in the subsections of this Section \_\_\_, which shall be governed by the notice and cure periods set forth in such other subsections), which failure continues for thirty (30) days after written notice thereof from TOB to Lessee, provided that, if Lessee has exercised reasonable diligence to cure such failure and such failure cannot be cured within such thirty (30) day period despite reasonable diligence, Lessee shall not be in default under this subsection so long as Lessee thereafter diligently and continuously prosecutes the cure to completion and actually completes such cure within sixty (60) days after the giving of the aforesaid written notice;

(h) Any insurance required to be maintained by Lessee pursuant to this Lease shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease;

(i) Any failure by Lessee to discharge any lien or encumbrance placed on the Premises or any part thereof in violation of this Lease within ten (10) business days after the date such lien or encumbrance is filed or recorded against the Premises or any part thereof;

(j) Any failure by Lessee to immediately remove, abate or remedy any Hazardous Materials (as defined in Section 26 hereof) located in, on or about the Premises in connection with any failure by Lessee to comply with Lessee's obligations under Section 26; and

(k) Any representation of Lessee herein or in any financial statement or other materials provided by Lessee or any guarantor of Lessee's obligations under this Lease shall prove to be untrue or inaccurate in any material respect, or any such financial statements or other materials shall have omitted any material fact.

## **22. TOB'S REMEDIES**

(a) Termination. In the event of any Default by Lessee, then in addition to any other remedies available to TOB at law or in equity and under this Lease, TOB may terminate this Lease immediately and all rights of Lessee hereunder by giving written notice to Lessee of such intention to terminate. If TOB shall elect to so terminate this Lease then TOB may recover from Lessee:

(1) the worth at the time of award of any unpaid Rent and any other sums due and payable which have been earned at the time of such termination; plus

(2) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable which would have been earned after termination until the time of award exceeds the amount of such rental loss Lessee proves could have been reasonably avoided; plus

(3) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; plus

(4) any other amount necessary to compensate TOB for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course would be likely to result therefrom, including, without limitation, any costs or expenses incurred by TOB (1) in retaking possession of the Premises; or (2) in maintaining, repairing, preserving, restoring, replacing, cleaning, altering, remodeling or rehabilitating the Premises; plus

(5) such reasonable attorneys' fees and expenses incurred by TOB as a result of a Default, and costs in the event suit is filed by TOB to enforce such remedy; and plus

(6) at TOB's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

(b) Re-entry. In the event of any Default by Lessee, TOB shall also have the right, with or without terminating this Lease, in compliance with applicable Laws, to re-enter the Premises, by force if necessary, and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Lessee.

(c) Termination. No re-entry or taking of possession of the Premises by TOB pursuant to this Section 22 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Lessee or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by TOB because of any Default by Lessee, TOB may at any time after such reletting elect to terminate this Lease for any such Default.

(d) Cumulative Remedies. The remedies herein provided are not exclusive and TOB shall have any and all other remedies provided herein or by law or in equity.

(e) No Surrender. No act or conduct of TOB, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be or constitute an acceptance of the surrender of the Premises by Lessee prior to the expiration of the Term, and such acceptance by TOB of surrender by Lessee shall only flow from and must be evidenced by a written acknowledgment of acceptance of surrender signed by TOB. The surrender of this Lease by Lessee, voluntarily or otherwise, shall not work a merger unless TOB elects in writing that such merger take place, but shall operate as an assignment to TOB of any and all existing subleases, or TOB may, at its option, elect in writing to treat such surrender as a merger terminating Lessee's estate under this Lease, and thereupon TOB may terminate any or all such subleases by notifying the sublessee of its election so to do within five (5) business days after such surrender.

### **23. TOB'S RIGHT TO PERFORM LESSEE'S OBLIGATIONS**

(a) Without limiting the rights and remedies of TOB contained in Section 22 above, if Lessee shall be in Default in the performance of any of the terms, provisions, covenants or conditions to be performed or complied with by Lessee pursuant to this Lease, then TOB may at TOB's option, without any obligation to do so, and without notice to Lessee perform any such term, provision, covenant, or condition, or make any such payment and TOB by reason of so doing shall not be liable or responsible for any loss or damage thereby sustained by Lessee or anyone holding under or through Lessee or any of Lessee's Agents.

(b) Without limiting the rights of TOB under Section 23(a) above, TOB shall have the right at TOB's option, without any obligation to do so, to perform any of Lessee's covenants or obligations under this Lease without notice to Lessee in the case of an emergency, as determined by TOB in its sole and absolute judgment, or if TOB otherwise determines in its sole discretion that such performance is necessary or desirable for the proper management and operation of the Premises.

(c) If TOB performs any of Lessee's obligations hereunder in accordance with this Section 23, the full amount of the cost and expense incurred or the payment so made or the amount of the loss so sustained shall immediately be owing by Lessee to TOB, and Lessee shall promptly pay to TOB upon demand, as Additional Rent, the full amount thereof with interest thereon from the date of payment by TOB at the lower of (i) nine percent (9%) per annum, or (ii) the highest rate permitted by applicable law.

### **24. TOB'S DEFAULT**

The occurrence of any one of the following events shall constitute a default on the part of TOB ("TOB Default"):

(a) A general assignment by TOB or any guarantor or surety of TOB's obligations hereunder for the benefit of creditors;

(b) The filing of a voluntary petition in bankruptcy by TOB the filing by TOB of a voluntary petition for an arrangement, the filing by or against TOB of a petition, voluntary or involuntary, for reorganization, or the filing of an involuntary petition by the creditors of TOB, said involuntary petition remaining undischarged for a period of sixty (60) days;

(c) Receivership, attachment, or other judicial seizure of substantially all of TOB's assets on the Premises, such attachment or other seizure remaining undismitted or undischarged for a period of sixty (60) days after the levy thereof,

(d) Failure in the performance of any of TOB's covenants, agreements or obligations hereunder (except those failures specified in the subsections of this Section \_\_\_\_, which shall be governed by the notice and cure periods set forth in such other subsections), which failure continues for thirty (30) days after written notice thereof from Lessee to TOB, provided that, if TOB has exercised reasonable diligence to cure such failure and such failure cannot be cured within such thirty (30) day period despite reasonable diligence, TOB shall not be in default under this subsection so long as TOB thereafter diligently and continuously prosecutes the cure to completion and actually completes such cure within sixty (60) days after the giving of the aforesaid written notice;

(e) Any insurance required to be maintained by TOB pursuant to this Lease shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease; and

(f) Any representation of TOB herein or in any materials provided by TOB or any guarantor of TOB's obligations under this Lease shall prove to be untrue or inaccurate in any material respect, or any such financial statements or other materials shall have omitted any material fact.

## **25. LESSEE'S REMEDIES**

(a) Termination. In the event of any Default by TOB, then in addition to any other remedies available to Lessee at law or in equity and under this Lease, Lessee may terminate this Lease immediately and all rights of TOB hereunder by giving written notice to TOB of such intention to terminate. If Lessee shall elect to so terminate this Lease then Lessee may recover from TOB:

(1) any amounts necessary to compensate Lessee for all the detriment proximately caused by TOB's failure to perform its obligations under this Lease or which in the ordinary course would be likely to result therefrom, including, without limitation, any costs or expenses incurred by Lessee in maintaining, repairing, preserving, restoring, replacing, cleaning, altering, remodeling or rehabilitating the Premises; plus

(2) such reasonable attorneys' fees and expenses incurred by Lessee as a result of a TOB Default, and costs in the event suit is filed by Lessee to enforce such remedy; and plus

(6) at Lessee's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

(b) Cumulative Remedies. The remedies herein provided are not exclusive and Lessee shall have any and all other remedies provided herein or by law or in equity.

## **26. LESSEE'S RIGHT TO PERFORM LESSEE'S OBLIGATIONS**

(a) Without limiting the rights and remedies of Lessee contained in Section 25 above, if TOB shall be in TOB Default in the performance of any of the terms, provisions, covenants or conditions to be performed or complied with by TOB pursuant to this Lease, then Lessee may at Lessee's option, without any obligation to do so, and without notice to TOB perform any such term, provision, covenant, or condition, or make any such payment and Lessee by reason of so doing shall not be liable or responsible for any loss or damage thereby sustained by TOB or anyone holding under or through TOB or any of TOB's Agents.

(c) Without limiting the rights of Lessee under Section 26(a) above, Lessee shall have the right at Lessee's option, without any obligation to do so, to perform any of TOB's covenants or obligations under this Lease without notice to TOB in the case of an emergency, as determined by Lessee in its sole and absolute judgment, or if Lessee otherwise determines in its sole discretion that such performance is necessary or desirable for the proper management and operation of the Premises.

(d) If Lessee performs any of TOB's obligations hereunder in accordance with this Section 26, the full amount of the cost and expense incurred or the payment so made or the amount of the loss so sustained shall immediately be owing by TOB to Lessee, and TOB shall promptly pay to Lessee upon demand, the full amount thereof with interest thereon from the date of payment by Lessee at the lower of (i) nine percent (9%) per annum, or (ii) the highest rate permitted by applicable law.

## **27. ATTORNEY'S FEES**

(e) If either party hereto fails to perform any of its obligations under this Lease or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such

attorneys' fees obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment.

(f) Without limiting the generality of Section 27(a) above, if TOB utilizes the services of an attorney for the purpose of collecting any Rent due and unpaid by Lessee or in connection with any other breach of this Lease by Lessee, Lessee agrees to pay TOB actual attorneys' fees and expenses as determined by TOB for such services, regardless of the fact that no legal action may be commenced or filed by TOB.

(g) Without limiting the generality of Section 27(a) above, if Lessee utilizes the services of an attorney in connection with any other breach of this Lease by TOB, TOB agrees to pay Lessee actual attorneys' fees and expenses as determined by Lessee for such services, regardless of the fact that no legal action may be commenced or filed by Lessee.

## 28. TAXES

Lessee shall be liable for and shall pay directly to the taxing authority, prior to delinquency, all taxes levied against Lessee's Property.

## 29. ENVIRONMENTAL COVENANTS

(a) As used in this Lease, the term "**Hazardous Materials**" means (i) any substance or material that is included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "pollutant," "contaminant," "hazardous waste," or "solid waste" in any Environmental Law; (ii) petroleum or petroleum derivatives, including crude oil or any fraction thereof, all forms of natural gas, and petroleum products or by-products or waste; (iii) polychlorinated biphenyls (PCB's); (iv) asbestos and asbestos containing materials (whether friable or non-friable); (v) lead and lead based paint or other lead containing materials (whether friable or non-friable); (vi) urea formaldehyde; (vii) microbiological pollutants; (viii) batteries or liquid solvents or similar chemicals; (ix) radon gas; and (x) mildew, fungus, mold, bacteria and/or other organic spore material.

(b) As used in this Lease, the term "**Environmental Laws**" means all statutes, terms, conditions, limitations, restrictions, standards, prohibitions, obligations, schedules, plans and timetables that are contained in or promulgated pursuant to any federal, state or local laws (including rules, regulations, ordinances, codes, judgments, orders, decrees, contracts, permits, stipulations, injunctions, the common law, court opinions, and demand or notice letters issued, entered, promulgated or approved thereunder), relating to pollution or the protection of the environment, including laws relating to emissions, discharges, releases or threatened releases of Hazardous Materials into ambient air, surface water, ground water or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials including but not limited to the: Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601 et seq.; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901 et seq.; Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.; Toxic Substances Control Act, 15 U.S.C. 2601 et seq.; Clean Air Act, 42 U.S.C. 7401 et seq.; and the Safe Drinking Water Act, 42 U.S.C. § 300f et seq. "Environmental Laws" shall include any statutory or common law that has developed or develops in the future regarding mold, fungus, microbiological pollutants, mildew, bacteria and/or other organic spore material. "Environmental Law" shall not include laws relating to industrial hygiene or worker safety, except to the extent that such laws address asbestos and asbestos containing materials (whether friable or non-friable) or lead and lead based paint or other lead containing materials.

(c) During its use and occupancy of the Premises, Lessee will not permit Hazardous Materials to be present on or about the Premises except for normal quantities of fuels, insecticides, fertilizers and other landscaped chemicals relating to golf course grounds maintenance, batteries installed in equipment actively used

in Golf Course Operations, cleaning and other business supplies customarily used and stored in connection with the Golf Course Operations and will comply with all Environmental Laws relating to the use, storage or disposal of any such Hazardous Materials.

(d) If Lessee's use of Hazardous Materials on or about the Premises results in a release, discharge or disposal of Hazardous Materials on, in, at, under, or emanating from, the Premises or the property in which the Premises are located, Lessee agrees to investigate, clean up, remove or remediate such Hazardous Materials in full compliance with (a) the requirements of (i) all Environmental Laws and (ii) any governmental agency or authority responsible for the enforcement of any Environmental Laws; and (b) any additional requirements of TOB that are necessary, in TOB's reasonable discretion, to protect the value of the Premises or the property in which the Premises are located. TOB shall also have the right, but not the obligation, to take whatever action with respect to any such Hazardous Materials that it deems necessary, in TOB's reasonable discretion, to protect the value of the Premises or the property in which the Premises are located. All costs and expenses paid or incurred by TOB in the exercise of such right shall be payable by Lessee promptly upon demand.

(e) Upon reasonable notice to Lessee, TOB may inspect the Premises for the purpose of determining whether there exists on the Premises any Hazardous Materials or other condition or activity that is in violation of the requirements of this Lease or of any Environmental Laws. The right granted to TOB herein to perform inspections shall not create a duty on TOB's part to inspect the Premises, or liability on the part of TOB for Lessee's use, storage or disposal of Hazardous Materials, it being understood that Lessee shall be solely responsible for all liability in connection therewith.

(f) Lessee shall surrender the Premises to TOB upon the expiration or earlier termination of this Lease free of Hazardous Materials (subject to Section 29(c)) and in a condition which complies with all Environmental Laws and any additional requirements of TOB that are reasonably necessary to protect the value of the Premises. Lessee's obligations and liabilities pursuant to this Section 29 shall be in addition to any other surrender requirements in this Lease and shall survive the expiration or earlier termination of this Lease. If it is reasonably determined by TOB that the condition of all or any portion of the Premises is not in compliance with the provisions of this Lease with respect to Hazardous Materials, debris, or waste, including, without limitation, all Environmental Laws, at the expiration or earlier termination of this Lease, then at TOB's sole option, TOB may require Lessee to hold over possession of the Premises until Lessee can surrender the Premises to TOB in the condition in which the Premises existed as of the Commencement Date. The burden of proof hereunder shall be upon Lessee. For purposes hereof, the term "normal wear and tear" shall not include any deterioration in the condition or diminution of the value of any portion of the Premises in any manner whatsoever related to directly, or indirectly, Hazardous Materials.

(g) Lessee shall indemnify and hold harmless TOB from and against any and all claims, damages, fines, judgments, penalties, costs, losses (including, without limitation, loss in value of the Premises or the property in which the Premises is located, damages due to loss or restriction of rentable or usable space, and damages due to any adverse impact on marketing of the space and any and all sums paid for settlement of claims), liabilities and expenses (including, without limitation, attorneys', consultants', and experts' fees) incurred by TOB during or after the term of this Lease and attributable to (i) any Hazardous Materials placed on or about the Premises by Lessee or Lessee's Agents, or resulting from the action or inaction of Lessee or Lessee's Agents, or (ii) Lessee's breach of any provision of this Section 29, unless such claims, damages, fines, judgments, penalties, costs, losses (including, without limitation, loss in value of the Premises or the property in which the Premises is located, damages due to loss or restriction of rentable or usable space, and damages due to any adverse impact on marketing of the space and any and all sums paid for settlement of claims), liabilities and expenses (including, without limitation, attorneys', consultants', and experts' fees) are incurred as a result of the acts or negligence of TOB or TOB Agents. This indemnification includes, without limitation, any and all costs incurred by TOB due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision.

The provisions of this Section 29 shall survive the expiration or earlier termination of this Lease.

### **30. REPRESENTATION AND WARRANTIES OF TOB**

TOB represents and warrants to Lessee the following:

(a) TOB is the sole owner of the entire fee simple interest in the Premises subject to all covenants and restrictions of record.

(b) TOB has full power and authority to enter into and perform in accordance with the terms and provisions of this Lease.

(c) There are no actions, suits or proceedings pending or to the best of TOB's knowledge threatened against TOB or the Golf Course Operations that might materially and adversely affect the Golf Course Operations.

(d) The consummation of the transactions contemplated hereby and performance of this Lease has not and will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws, trust indenture or other contract, agreement or instrument to which TOB is a party or by which TOB or any assets of the Golf Course Operations may be bound or affected.

(e) TOB is not in default of the performance or observance of its obligations under any mortgage or other loan documents or other contracts in connection with the Golf Course Operations.

(f) Since December 1, 2013, to the knowledge of TOB, there has been no change in the business, prospects, conditions (financial or otherwise) or results of operations of the Golf Course Operations which could reasonably be expected to have a material adverse effect thereon.

(g) No tax liens have been filed against the Premises, Golf Course Operations or any portion thereof and no claims are being asserted with respect to any such taxes.

(h) No information, exhibit or report furnished by TOB to Lessee in connection with the negotiation of, or compliance with, this Lease contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

(i) TOB has complied in all material respects with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof, having jurisdiction over the conduct or the ownership of the Golf Course Operations.

### **31. REPRESENTATIONS AND WARRANTIES OF LESSEE**

Lessee represents and warrants to TOB the following:

(a) Lessee is a limited liability company organized, validly existing and in good standing in the State of Indiana, and has full power and authority to enter into and perform in accordance with the terms and provisions of this Lease.

(b) Execution of this Lease by Lessee will not result in any breach of the terms or conditions of, or constitute a default under any contract or instrument under which Lessee is a party or is obligated.

(c) Since December 1, 2013, there has been no change in the business, prospects, conditions (financial or otherwise) or results of operations of Lessee which could reasonably be expected to have a material adverse effect thereon.

(d) Lessee has filed all United States federal tax returns and all other tax returns which are required to be filed with respect to its business and has paid all taxes due pursuant to said returns or pursuant to any assessment received by Lessee, except such taxes, if any, as are being contested in good faith. No tax liens have been filed against Lessee and no claims are being asserted with respect to any such taxes.

(e) No information, exhibit or report furnished by Lessee to TOB in connection with the negotiation of, or compliance with, this Lease contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

(f) Lessee has not (1) made a general assignment for the benefit of creditors, (2) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (3) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (4) suffered the attachment or other judicial seizure of all or substantially all of its assets, (5) admitted in writing its inability to pay its debts as they come due, or (6) made an offer of settlement, extension or composition to its creditors generally.

### **32. RESTRICTED ACTIVITIES OF LESSEE**

Without the prior written consent of TOB, which consent may be granted or withheld in TOB's sole discretion, Lessee shall not do, or cause or permit to be done, any of the following throughout the Term.

(a) Borrow or lend money, or enter into any other agreement (except as may be specifically provided for elsewhere in agreement) in the name of TOB.

(b) Except for the lease of golf carts and contracts for any Capital Improvements, enter into any agreement relating, directly or indirectly, to the Golf Course Operations which cannot be terminated without penalty upon not more than ninety (90) days prior notice (oral or written).

(c) Assign, transfer, pledge, compromise or release any of the claims of or debts due TOB, except upon payment in full (or, except as expressly provided to the contrary in this Lease), arbitrate or consent to the arbitration or settlement of any claim of or against TOB or any other dispute or controversy involving TOB.

(d) Make, execute or deliver in the name of TOB, or with respect to any of the assets of TOB, any assignment for the benefit of creditors or any bond, confession of judgment, chattel mortgage, security instrument, deed, guarantee, indemnity bond or surety bond.

(e) Lease, sell, transfer, assign, convey, pledge, encumber, mortgage, hypothecate or otherwise dispose of any TOB owned equipment and supplies of the Golf Course Operations or enter into any agreement for such purpose.

(f) In the name of or on behalf of TOB, endorse any note, or become a surety, guarantor, or accommodation party to any obligation.

(g) Violate any material provision of any applicable federal, state or local law, rule, regulation or order, including, without limitation, those governing the storage, handling and release of fertilizers, pesticides, and fuel.

(h) Commence or maintain in the name of or on behalf of TOB any action or proceeding, whether judicial, administrative or otherwise.

(i) Hire, employ or retain, or contract to hire, employ or retain any other person or entity other than employees and individuals who are independent contractors of Lessee (unless approved in writing by TOB) to manage the day to day operation of the Golf Course Operations.

(j) Offer or sell equity memberships, refundable memberships, or memberships with a term in excess of twelve (12) months.

(k) All trade names, trademarks, logos, emblems and similar identifying matters related to or used in connection with the Golf Course Operations shall be the sole and exclusive property of TOB, and all matters relating to their use shall be subject to TOB's approval in its sole judgment. If any design, device, material or process covered by letters, patent, copyright or trademark is used by the contractor in connection with any improvements made with respect to the Golf Course Operations, it shall provide for such use by legal agreement with the owner of the patent, copyright or trademark or a duly authorized licensee of such owner.

### **33. STORM WATER SYSTEMS.**

Lessee shall not alter, damage or interfere with any storm water management infrastructure located on the Premises. During the Term TOB and its agents shall have right of access to the Premises to maintain, repair and improve any natural or manmade, surface or underground storm water systems provided such work does not unreasonably interfere with the Golf Course Operations.

### **34. CONSENT TO LAND USE RESTRICTIONS.**

Lessee acknowledges that TOB intends to impose permanent or extended land use restrictions on the Premises through deed restrictions or grant of a conservation easement whereby the Premises will be restricted to recreational/open space use only. TOB represents that such restrictions shall not interfere with the Golf Course Operations. Lessee hereby acknowledges such plans, consents to their implementation and agrees to not interfere with their implementation.

### **35. EARLY TERMINATION**

(a) TOB or Lessee may terminate this Lease upon five (5) days written notice to the other if: (a) all of the Golf Course Operations shall be taken in condemnation proceedings; (b) part of the Golf Course Operations is taken or condemned by governmental action and the operation of the Golf Course Operations becomes unreasonable or imprudent in the sole judgment of Lessee; (c) all or any material part of the Golf Course Operations is sold, transferred or otherwise conveyed by TOB; or (d) all or any material part of the Golf Course Operations shall be damaged or destroyed by any cause.

(b) In the event this Lease is terminated due to the sale, transfer or conveyance of the Golf Course Operations by TOB to Lessee or a third party prior to the end of the Term, Lessee shall be entitled to an early termination fee according in an amount equal to one and one-half (1.5) times the average audited net income from the Golf Course Operations as reported by Lessee for the calendar year preceding the year of the sale, transfer or conveyance of the Golf Course Operations; provided however, in the event of early termination in the first year of the Term, the Early Termination Fee shall be \$160,000.

### **36. INSPECTIONS/REVIEW PROCEDURES**

(a) TOB reserves the right to enter upon and inspect the Golf Course Operations at any time during normal business hours. From time to time during the Term, TOB may retain, at its sole cost and expense, a golf course consultant to evaluate the playing conditions of the golf course. TOB shall notify Lessee in writing with reasonable particularity and specificity of all reasonable deficiencies in the playing conditions of the golf courses as determined by such consultant. Within thirty (30) days of its receipt of such written notice from TOB, Lessee shall commence corrective action thereto and thereafter Lessee shall diligently, and to the extent practicable, continuously pursue such corrective action until such deficiency or deficiencies are substantially cured.

(b) Lessee shall keep full and adequate books of account and such other records reflecting the operations of the Golf Course Operations, showing accurately and completely all Gross Revenues and expenses from the Golf Course Operations. Lessee shall preserve all such books and records for at least three (3) years after the later of the date of completion of this Lease or the date of final payment under this Lease. Such books and records shall be kept in accordance with generally accepted accounting principles consistently applied (except for the use of the cash method) as approved by TOB. Lessee shall make all books and records related to the Lease available for review and audit by TOB. Lessee shall permit TOB and its authorized agents to inspect the books and records pertaining to the Golf Course Operations at Lessee's principal office during normal business hours upon forty-eight (48) hours prior written notice to Lessee. Lessee agrees to cooperate fully with any audit and to provide full access to all relevant materials.

(c) Within sixty (60) days after the close of each calendar year, TOB shall have the right to cause its independent public accountants to review Lessee's determination of the Gross Revenues of the Golf Course Operations for such calendar year (the "Annual Revenues"). In the event that TOB's accountants propose an adjustment to the Annual Revenues, TOB and Lessee shall attempt to amicably resolve any such proposals within thirty (30) days. If the parties cannot resolve their differences within such period, the parties shall submit the dispute to a national recognized accounting firm mutually selected by the parties to determine the Annual Revenues. The decision of such accounting firm shall be binding on the parties and the costs of such firm shall be equally split between the parties.

### **37. SUCCESSORS**

This Lease shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

### **38. NOTICES**

All notices under this Lease shall be in writing and shall be deemed received upon personal delivery thereof, twenty-four (24) hours after overnight courier (fare prepaid) or legible facsimile transmission with overnight courier follow-up, or forty-eight (48) hours after deposit in the United States mail, certified or registered mail, return receipt requested, to the parties as follows:

The TOB:

TOB:  
901 Ponce de Leon Blvd.  
Belleair, FL 33756-1096  
Attn: Town Manager

With a copy to Lessee:

Green Golf Partners  
1001 Cartersburg Road  
Danville, Indiana 46122  
Attn: Thomas H. Rodems

### **39. PRE-EXISTING ENVIRONMENTAL HAZARDS**

TOB shall be responsible for any pre-existing environmental hazards on the Premises and facilities of the Golf Course Operations.

**40. ENTIRE AGREEMENT**

This Lease, including the Exhibits and any Addenda attached hereto, which are hereby incorporated herein by this reference, contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein or therein, shall be of any force and effect. If there is more than one Lessee, the obligations hereunder imposed shall be joint and several.

**41. INTEREST**

Any installment of Rent and any other sum due from Lessee under this Lease which is not received by TOB within ten (10) days from when the same is due shall bear interest from the date such payment was originally due under this Lease until paid at the greater of (a) an annual rate equal to the maximum rate of interest permitted by law, or (b) nine percent (9%) per annum. Payment of such interest shall not excuse or cure any Default by Lessee. In addition, Lessee shall pay all costs and attorneys' fees incurred by TOB in collection of such amounts.

**42. GOVERNING LAW; CONSTRUCTION**

This Lease shall be construed and interpreted in accordance with the laws of state in which the Premises is located. The parties acknowledge and agree that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Lease, including the Exhibits and any Addenda attached hereto. All captions in this Lease are for reference only and shall not be used in the interpretation of this Lease. Whenever required by the context of this Lease, the singular shall include the plural, the masculine shall include the feminine, and vice versa. If any provision of this Lease shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect.

**43. RECORDATION**

Neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Lessee or by anyone acting through, under or on behalf of Lessee, and the recording thereof in violation of this provision shall make this Lease null and void at TOB's election.

**44. FORCE MAJEURE**

Lessee's obligations hereunder shall be subject to any acts of God, governmental restrictions or guidelines, strikes, labor disturbances, shortages of materials and supplies, fire and casualty and for any other causes or events whatsoever beyond Lessee's reasonable

control. In the event of any such event of force majeure extending beyond a period of thirty (30) consecutive days, (a) Lessee shall have the right to appropriately modify and amend its fiscal projections and budget for the calendar year during which such event of force majeure occurs to reflect such event, (b) TOB's right to terminate this Lease due to default of Lessee shall be in abeyance to the extent that Lessee's default or inability to perform was directly caused by such acts or events beyond Lessee's reasonable control, and (c) the Quarterly Fee shall be reduced by the number of days during any calendar quarter for which the Golf Course Operations are not in operation due to a force majeure that exceeds thirty (30) days. By way of example only, assume that a hurricane occurs on January 15 causing closure of the Golf Course Operations for 65 days. In such case, the Quarterly Fee will be reduced by the product of (i) the Quarterly Fee, and (ii) a fraction, the numerator of which is 35 (the number of days of closure of the Golf Course Operations in excess of 30) and the denominator of which is the total number of days during the calendar quarter at issue.

#### **45. LIQUOR LICENSE**

Lessee shall be responsible for the timely application for an appropriate liquor license and any fees related thereto during the Term. Lessee shall prepare all documentation relating thereto and shall pay all fees associated with such liquor license. During the Term, Lessee shall maintain liquor law liability insurance at its sole cost and expense. In the event that Lessee has applied for, but has not yet been granted, a liquor license at the time this Lease becomes effective, TOB will retain management of all sales of beer, wine or liquor on or about the Golf Course Operations until such time as a liquor license is issued to Lessee. During this period, TOB will purchase all alcoholic beverages to be sold on or about the Golf Course Operations, and Lessee shall account for all sales of alcoholic beverages separately from other fees and sales of the Golf Course Operations and shall reimburse TOB for the cost of merchandise and all applicable taxes. Lessee will reimburse TOB for the cost of maintaining liquor law liability insurance until such time as Lessee receives a liquor license.

#### **46. INVALIDITY**

Whenever possible, each provision of this Lease shall be interpreted in such manner as to be valid under applicable law, but if any provision of this Lease shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of the prohibition or invalidation, but shall not invalidate the remainder of such provision of the remaining provisions of this Lease.

#### **47. HEADINGS**

The headings in this Lease are solely for convenience of reference and shall not be given any effect in the construction or interpretation of this Lease.

#### **48. RESOLUTION OF DISPUTES**

(a) If a dispute arises from or related to the Lease or the breach thereof, and the dispute cannot be settled through direct discussions, the parties agree to attempt first to settle the dispute by mediation administered by the American Arbitration Associations (the "AAA") under its Commercial Mediation Procedures before resorting to arbitration.

(b) The parties further agree that any unresolved controversy or claim arising out a or relating to this Lease, or breach thereof shall be settle by arbitration administered by the AAA in accordance with its Commercial Arbitration Rules before and arbitrator from the National Golf Industry Panel.

(c) Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(d) Each party shall bear its own costs and fees for such mediation and arbitration.

#### **49. INTELLECTUAL PROPERTY**

During the Term, Lessee shall have all of right, title and interest in the names “\_\_\_\_\_”, and any variations thereof, trademarks, service marks and applications therefor (collectively, the “Tradenname”) and all of TOB’s right, title and interest in all intellectual property (other than the Tradename), including all payment intangibles, copyrights, copyright applications, trade names, trademarks, brand names, software, service marks, customer lists, goodwill, and all licenses, permits, agreements of any kind or nature pursuant to which TOB possesses, uses or has authority to possess or use property (whether tangible or intangible) of others or others possess, use or have authority to possess or use property (whether tangible or intangible) of TOB, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the date first above written.

\_\_\_\_\_  
Matthew McIntee  
President  
Green Golf Partners

\_\_\_\_\_  
Micah Maxwell  
Town Manager  
Town of Belleair, FL

**Exhibit A**

Personal Property

(List to be attached)