

**ORDINANCE 2015-14**

**AN ORDINANCE OF THE CITY OF FLAGLER BEACH,  
FLORIDA, AUTHORIZING AND APPROVING A LEASE  
AGREEMENT FOR THE GOLF COURSE PROPERTY  
LOCATED AT 3600 SOUTH CENTRAL AVENUE AND  
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the City of Flagler Beach is the owner of property located at 3600 South Central Avenue ("the Golf Course Property"); and

WHEREAS, the City and Flagler Golf Management, LLC have negotiated terms of a lease subject to agreement of all parties (the "Lease Agreement"); and

WHEREAS, the City is authorized pursuant to Section 2.10 of the Charter and the legislative grant of its home rule power to lease public lands; and

WHEREAS, the State of Florida has recognized the lease of public lands to a private entity to be a valid public purpose; and

WHEREAS, the Lease Agreement does not require or operate as an issuance of any bonds.

WHEREAS, the City finds that the lease of the Golf Course Property is a valid public purpose.


NOW THEREFORE, BE IT ENACTED by the City Commission of the City of Flagler Beach, Florida:

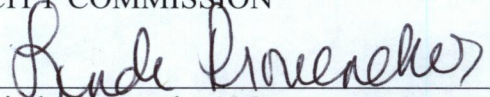
**SECTION 1.** The Lease Agreement attached hereto is hereby approved by the City Commission of the City of Flagler Beach, Florida and the Mayor is hereby authorized to execute the Lease Agreement on behalf of the City of Flagler Beach, Florida.

**SECTION 2.** This Ordinance shall become effective immediately upon its adoption as provided by law.

PASSED ON FIRST READING THIS 5<sup>th</sup> DAY OF November, 2015.

PASSED AND ADOPTED THIS 20<sup>th</sup> DAY OF November, 2015.

  
\_\_\_\_\_  
Penny Overstreet, City Clerk

CITY OF FLAGLER BEACH, FLORIDA  
CITY COMMISSION  
  
\_\_\_\_\_  
Linda Provencher, Mayor



# GOLF COURSE LEASE AGREEMENT

THIS GOLF COURSE LEASE AGREEMENT (the "Lease") is made and entered into this 20<sup>th</sup> day of November, 2015, by and between the CITY OF FLAGLER BEACH, FLORIDA, hereinafter referred to as "Lessor", and FLAGLER GOLF MANAGEMENT, LLC, hereinafter referred to as "Lessee".

## ARTICLE 1. PREMISES

1.1 PREMISES. In consideration of the Rent contemplated herein and of the covenants hereinafter contained, Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, that certain real property more particularly described in Exhibit "A," attached hereto and incorporated herein, consisting of a 9-hole golf course, cart barn and clubhouse including a restaurant with beer and wine sales, hereinafter referred to as the "Premises."

1.2 ACCEPTANCE OF PREMISES AND EQUIPMENT. The parties acknowledge and agree that Lessee accepts the Premises "as-is" and in the condition existing as of the date first written above.

## ARTICLE 2. TERM

2.1 INITIAL LEASE TERM. The initial term of this Agreement shall be for a period of fifteen (15) years commencing on the date first written above.

2.2 Lessee shall have the option to extend this Agreement for two successive ten (10) year terms upon written notification of its intent to extend this Agreement to Lessor at least twelve months prior to the expiration of this Agreement provided that Lessee's average gross revenue, excluding lessons and pro shop revenue, received by Lessee for any and all operations conducted on the Premises is at least \$200,000 per year for the five year period immediately preceeding the last day of the Initial Lease Term or the first extension term, whichever is applicable.

## ARTICLE 3. RENT

3.1 Beginning on the date of commencement the Lessee shall pay Lessor an annual base rental rate of \$2,400 payable in advance monthly installments of \$200 due on the first day of each month without invoice. The Lessee may pre-pay some or the entire annual rental rate at any time. The annual base rental rate will be increased each year during the term of this Agreement, including renewals, by three percent (3.0%). All monthly base rental payments not paid within thirty days of the date due shall incur a late penalty of five percent (5%) of the past due amount. In the event that Lessee becomes obligated to pay any real property tax levied upon the Premises pursuant to Article 18, herein, the annual base rent for the year following payment of such real property tax by Lessee shall be reduced by the amount of the real property taxes paid.

3.2 Beginning the twenty-fifth month after commencement and continuing through the sixtieth month after commencement, Lessee shall pay Lessor, as additional percentage rent, 3% of all gross revenue, excluding lessons and pro shop revenue, over and above \$100,000.00 received by Lessee for any and all operations conducted on the Premises in each twelve month period beginning on the first day of the twenty-fifth month. All such additional rent payments shall be due quarterly without invoice.

3.3 Beginning the sixty-first month after commencement and continuing until expiration of this Agreement, including any extensions thereof, Lessee shall pay Lessor, as additional rent a percentage of all gross revenue, excluding lessons and pro shop revenue, received by Lessee for any and all operations conducted on the Premises as provided below. All such additional rent payments shall be due quarterly without invoice.

- a) 1% if Lessee's gross revenue, excluding lessons and pro shop revenue, during the preceding twelve month period was less than \$200,000;
- b) 2% if Lessee's gross revenue, excluding lessons and pro shop revenue, during the preceding twelve month period was greater than \$200,000 and less than \$300,000;
- c) 3% if Lessee's gross revenue, excluding lessons and pro shop revenue, during the preceding twelve month period was greater than \$300,000 and less than \$400,000;
- d) 4% if Lessee's gross revenue, excluding lessons and pro shop revenue, during the preceding twelve month period was greater than \$400,000 and less than \$500,000; or
- e) 5% if Lessee's gross revenue, excluding lessons and pro shop revenue, during the preceding twelve month period was greater than \$500,000.

3.5 If Lessor incurs any expense or pays any monies to correct a breach of this Agreement all amounts so incurred or paid shall be considered additional rent owing by the Lessee and shall be payable by the Lessee within thirty (30) days after written notice from Lessor to Lessee; however, the Lessor shall be under no obligation or duty to incur any such expense or pay any such money.

#### **ARTICLE 4. REPORTING REQUIREMENTS**

4.1 RECORDS. Lessee shall keep true and accurate accounts, records, financial statements, books and data (hereinafter "Records") in a form consistent with good accounting practices. Such accounts, records, books and data shall, among other things contain a breakdown of gross receipts and sales from the various activities taking place on the Premises. Lessee shall require that any consignees, sub lessees, subtenants, or others ("Others") conducting any revenue producing activity on the Premises keep accurate and complete records and accounts in accordance with this Article 4.

4.2 RETENTION OF RECORDS. Lessee shall retain all its Records for not less than seven (7) calendar years following the last day of the Expiration Date for the Initial Term or, if applicable, expansion term.

4.3 RIGHT TO INSPECT AND AUDIT BY LESSOR. Lessee hereby agrees that Lessor, its employees, agents and representatives, at all reasonable times, shall have the right to inspect and examine all such records which will enable Lessor to ascertain the amount of Lessee's gross receipts and revenue generated at the Premises. Lessee shall, upon request and at no cost to Lessor, make all or any part of its records available to the Lessor during normal business hours throughout the term of this Agreement for the purposes of inspection or audit. The cost of any audit performed by Lessor shall be at Lessor's expense.

4.4 PROFIT AND LOSS STATEMENT. On quarterly basis throughout the Term hereof, Lessee shall provide to the Lessor, without request or demand, Lessee's quarterly profit and loss statement for the operation of all activities conducted on the Premises during each previous quarter.

4.5 MONTHLY SALES TAX REPORT. Lessee shall provide to Lessor a copy of each monthly sales tax report filed with the Department of Revenue within fifteen days of filing same with the Department of Revenue. Lessee shall include with such copies records to show any amount of revenue generated by the pro shop and lessons included in the sales tax report but which are excluded from the percentage rent calculations pursuant to this Agreement.

## **ARTICLE 5. USE OF PREMISES**

5.1 USE. Lessee covenants to use the Premises to operate and maintain a public golf course and club house including a restaurant with beer and wine sales. Any other use of the Premises shall require the prior written consent of Lessor.

5.2 REGULAR HOURS. Lessee shall open the Premises to the general public no fewer than 360 days per year. The Premises shall be open no earlier than one hour before sunrise on a daily basis and may remain open on a daily basis until 10:00 pm. Upon written authorization from the Lessor, Lessee may extend the hours operation for specific activities or events.

5.3 COMPLIANCE WITH LAWS. Lessee, at its own expense, shall comply with and promptly carry out all orders, requirements of conditions imposed by the ordinance, laws and regulations of all the governmental authorities having jurisdiction over the Premises, which are occasioned by or required in the conduct of Lessee's business within the Premises and obtain all licenses, permits and like required to permit Lessee to occupy and operate the Premises.

5.4 PROHIBITIONS. Lessee shall not:

- a) Permit the Premises, or any part thereof, to be used for any disorderly, unlawful or hazardous purpose;
- b) Permit the Premises to become a source of annoyance or embarrassment to Lessor;
- c) Commit or allow others to commit waste on the Premises;
- d) Erect, permit to be erected, or allow the existence of any nuisance on the Premises;
- e) Permit any trash or garbage to accumulate on or about the Premises;
- f) Allow the use of firearms or hunting on the Premises; or
- g) Conduct or permit to be conducted any sale by auction on the Premises.

5.5 LESSOR'S USE OF PREMISES. The Lessor may at Lessor's option install utilities or other public infrastructure upon the Premises provided that such use of the Premises does not interfere with the rights granted Lessee herein and such use is approved by Lessee, provided that approval shall not be unreasonably withheld. At least thirty days prior to installation of any utilities or other public infrastructure upon the Premises, Lessor shall notify Lessee in writing of its intent to install such utilities or infrastructure. If Lessee does not notify Lessor of any objection to the installation of such utilities or infrastructure in writing within thirty days of mailing or hand delivery of the notice, Lessee shall be deemed to have approved the installation.

## **ARTICLE 6. DEFAULT, EARLY TERMINATION**

6.1 EARLY TERMINATION. Lessor shall have the right to terminate this Agreement for Lessee violations, noncompliance and/or nonperformance (individually or collectively hereinafter "Default") of any provisions or part of this Agreement subject to paragraph 6.2, below.



6.2 CURE OF DEFAULT. In the event of Lessee's Default, Lessor shall notify Lessee in writing identifying the Default. Lessee shall cure the Default within thirty (30) days of said notice unless an extension of time is granted by Lessor. Should Lessee fail to comply with this requirement, Lessor, at its option, may terminate this Agreement by notifying Lessee in writing by registered or certified mail. Thereafter, Lessor shall have the right to enter and take possession of the Premises.

6.3 NAMED MANAGER/OPERATOR CONDITION. This Agreement is conditioned upon Flagler Golf Management, LLC, and no other, being the operator of the Premises. Should said entity cease to exist, Lessor shall have the right to terminate this Agreement in its entirety by giving 10 days written notice thereof and shall thereafter have the right to enter and take possession of the Premises.

## **ARTICLE 7. UTILITIES, CARE, REPAIRS AND MAINTENANCE OF PREMISES AND EQUIPMENT**

7.1 CARE OF PREMISES AND EQUIPMENT. Lessee shall take good care of the Premises, Fixtures, Appurtenances and Equipment therein, and shall, in the use and occupancy of the Premises and Equipment, conform to all laws, orders, and regulations of the Federal, State and local governments or any other departments having jurisdiction concerning the Premises and Equipment.

7.2 FAIRWAYS AND GREENS. With specific reference to the care and maintenance of the golf course fairways and greens, Lessee shall perform the duties and conform to the standards listed on the attached Exhibit "B." In the event Lessor receives any written complaints regarding the condition of the fairways and greens, Lessor may direct such complaints to Lessee. Lessee shall review and provide a response in writing to Lessor to each complaint so directed to it. Lessee's response may provide for measures to be taken to correct the issue raised or an explanation of the condition and why no corrective measures are reasonably required.

7.3 MAINTENANCE. Lessee shall, at Lessee's own cost and expense, and at no cost or expense to Lessor, maintain said Premises and all equipment in good order, and Lessee shall make all repairs that may become advisable or necessary to said Premises and equipment, including the structures, sidewalks, landscaping, driveways or parking areas that are part of or appurtenant to said Premises.

7.4 UTILITIES. Lessee shall be responsible and pay all charges incurred for furnishing of gas, electricity, water, telephone service, garbage or refuse service and all other public utilities to said Premises during the Term of this Agreement or any renewals or extensions thereof.

## **ARTICLE 8. IMPROVEMENTS AND ALTERATIONS.**

8.1 FACILITIES. Lessee shall return the existing clubhouse to a habitable state and bring same into compliance with all applicable codes within 180 days of the date of this Agreement and shall return the golf course to a playable condition within 180 days of the date of this Agreement.

8.2 All alterations, additions, installed equipment or improvements to the clubhouse and golf course made by Lessee or any subcontractors shall become the property of Lessor upon the expiration of this Agreement.

**8.3 PRIOR WRITTEN APPROVAL REQUIRED.** All alterations and improvements shall be first approved in writing by Lessor provided, however, that such approval shall not be unreasonably withheld. If any such alterations or improvements are made by Lessee without Lessor's consent, Lessor may correct or remove them and Lessee shall be liable for any and all costs and expenses incurred by Lessor in the correction or removal of such work. All plans and specifications for any such work shall be prepared by Lessee at Lessee's expense and shall thereafter be submitted to Lessor for its review. As a further condition of Lessor's consent to Lessee making alterations or improvements to the Premises, Lessee or Lessee's contractor must evidence insurance coverage to include: (a) Worker's Compensation Coverage and (b) Comprehensive General Liability and Property Damage insurance in the amount of not less than one million dollars in aggregate. All work with respect to such alterations and additions shall be done in a good and workmanlike manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period necessarily required for such work

**8.4 STRUCTURAL STABILITY.** No alterations or improvements made by Lessee shall in any way impair the structural stability of any building or any improvement on said Premises or diminish the value of said Premises.

**8.5 FREE OF LIENS.** Lessee shall keep said Premises and every part of said Premises free and clear of any mechanic's liens or material men's liens arising out of the construction of any such alterations, improvements or repairs. If any such lien be filed on account of the actions of Lessee, Lessee shall promptly pay the same. If Lessee fails to discharge such lien within ten (10) days of its filing, then, in addition to any other right or remedy of Lessor, Lessor may, at its election, discharge the lien. Lessee shall pay on demand any amount paid by Lessor for the discharge or satisfaction of any such lien, and all attorneys' fees and other costs and expenses of Lessor incurred in defending any such action or in obtaining the discharge or such lien, together with all necessary disbursements in connection therewith. Lessee hereby recognizes that in no event shall it be deemed the agent of Lessor and no contractor of Lessee shall by virtue of its contract be entitled to assert any lien against the Premises. All alterations or additions or improvements shall become part of the realty and surrendered to Lessor upon the expiration or termination of this Agreement, unless Lessor shall at the time of its approval of such work require removal of restoration on the part of Lessee as a condition of such approval.

## **ARTICLE 9. ADDITIONAL EQUIPMENT**

9.1 Lessee, at its sole cost and expense, may acquire additional equipment for use at the Premises. Any additional equipment so acquired and used for the operation and maintenance of the Premises, shall comply with all applicable federal, State, local rules, laws and regulations; and shall be maintained by Lessee in accordance with the terms of this Agreement. All such equipment not installed and made a fixture of the clubhouse or golf course shall remain the property of Lessee upon the expiration of this Agreement.

## **ARTICLE 10. WAIVER OF DUTY TO KEEP PREMISES TENANTABLE**

10.1 Lessee hereby expressly waives the provisions of any statute or other law requiring the Lessor, or any officer, employee, director or agent of Lessor, to put or maintain said Premises in a condition fit for human occupancy and to repair all subsequent dilapidations of the Premises that render them tenantable.

## **ARTICLE 11. DESTRUCTION OF PREMISES; DUTY TO REPAIR**

11.1 Should the Premises or any building or improvements on said Premises be damaged or destroyed by any cause whatsoever, Lessor may at its sole option repair the damage and restore said Premises to the same condition they were in prior to such damage or destruction or terminate this Agreement. During such repair and restoration this Agreement and all rent payments due thereunder shall be abated.

## **ARTICLE 12. INDEMNITY AND HOLD HARMLESS**

12.1 To the fullest extent permitted by law, Lessee shall indemnify, defend, and hold harmless Lessor, its governing Board, officers, directors, officials, employees, and authorized volunteers and agents, (collectively "Indemnified Parties"), from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively "Claims"), including cost of defense, settlement, arbitration, and reasonable attorneys' fees, sustained by any person or to any property in, on, or about the leased premises, resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either Party hereto, arising out of, pertaining to, or resulting from the acts or omissions of the Lessee, its officers, directors, officials, employees, volunteers, agents, contractors, invitees or guests, excepting only such injury, death, or damage, to the extent it is caused by the active negligence of an Indemnified Party. Lessee shall not be liable for any Claims arising from the sole negligence or willful misconduct of any of the Indemnified Parties. This indemnity shall not be limited by the types and amounts of insurance or self insurance maintained by the Lessee. Nothing in this Indemnity shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party. The provisions of this Indemnity shall survive the expiration or termination of the Agreement.

## **ARTICLE 13. INSURANCE**

13.1 Lessor agrees that it shall, during the full term of this Agreement and at its own expense, keep the Premises, excluding any contents, machinery equipment or personal property that is owned by Lessee, insured against loss or damage by fire or other casualty, commonly covered by standard fire and all risk coverage insurance. Valuation shall be on a replacement cost basis. Lessor and Lessee release each other, and their respective authorized representatives, from any claims for damage to the Premises caused by or resulting from risks insured against under the required insurance policy carried by the Lessor and in place at the time of any such damage.

13.2 Lessee shall maintain liability insurance covering the leased premises. Liability insurance coverage shall be not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for injury or property damage. Lessee shall name Lessor as an additional insured on Lessee's liability insurance policy and such policy shall be endorsed to show that Lessee's liability insurance policy is primary.

13.3 Lessee shall furnish a certificate substantiating the fact that Lessee has taken out the insurance herein set forth for the period covered by this Agreement with an insurance carrier(s) with an A.M. Best financial rating of not less than A- and authorized to do business in the State of Florida.

Lessee's insurance policy required by this Agreement shall maintain all insurance coverages and limits in place at all times and provide Lessor with evidence of each policy's renewal within ten (10) days after its anniversary date.

13.4 Lessee is required by this Agreement to immediately notify Lessor if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. Lessee shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement. The certificate of insurance shall be filed with Lessor not less than 10 Days prior to the date of occupancy by the Lessee. Lessor is insured for liability and shall furnish Lessee a letter confirming this upon request. Lessee and Lessor shall be solely responsible for payment of any deductible in their respective insurance or self-insurance programs, in the event of a claim.

13.5 Notification of Claim. If any claim for damages is filed with Lessee or if any lawsuit is instituted against Lessee, that arise out of or are in any way connected with Lessee's performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect Lessor, Lessee shall give prompt and timely notice thereof to Lessor. Notice shall not be considered prompt and timely if not given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

13.6 Lessee shall maintain any other insurance, including workers' compensation insurance, required by State or Federal law.

13.7 Prior to the commencement of any work to construct or repair any public building or works, Lessee shall provide to the Lessor and record in the public records of Flagler County, Florida, a payment and performance bond in accordance with Section 255.05, Florida Statutes.

#### **ARTICLE 14. ASSIGNMENT AND SUBLETTING**

14.1 Lessee shall have no right, authority or power whatsoever to assign, sublet, encumber or transfer any right, license, privilege or duty granted to or imposed upon it hereunder, without the prior written consent of Lessor.

#### **ARTICLE 15. ATTORNEY'S FEES AND COSTS**

15.1 Any party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement. The prevailing party in such action shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees incurred in bringing such action.

#### **ARTICLE 16. NOTICES**

16.1 All notices required or permitted hereunder shall be deemed to have been properly given if mailed in any United States Post Office by certified or registered mail, postage prepaid, addressed to Lessee or Lessor respectively, at the following addresses or to such other addresses as the parties hereto may designate to the other in writing from time to time:



Lessee: Flagler Golf Management, LLC  
931 Magnolia Terrace  
Flagler Beach, Florida 32136

Lessor: City Manager  
City of Flagler Beach, Florida  
105 S. Second Street  
Flagler Beach, Florida 32136

In lieu of such mailing, all notices may be served personally, and shall be effective upon such service.

#### **ARTICLE 17. FORCE MAJEURE**

17.1 Neither Lessor nor Lessee shall be deemed to be in breach of this Agreement if either is prevented from performing any of its obligations hereunder by reason of strike, boycott, labor dispute, embargo, shortage of energy or materials, act of God, act of a public enemy, act of a superior governmental authority, weather conditions, rebellion, riot, sabotage, or any other circumstance for which it is not responsible, or which is not within its control.

#### **ARTICLE 18. TAXES AND OTHER FEES**

18.1 Lessee shall, at Lessee's sole cost and expense, timely pay any and all taxes, permit, license or registration fees, and any other charge or assessment for which Lessee is responsible, or which may be charged or assessed against Lessee, the Premises, or any property of Lessee thereon, whether real or personal or in any way otherwise related to this Agreement. Lessee shall be responsible for and pay any sales tax due on any and all rent payments due pursuant to this Agreement.

#### **ARTICLE 19. MISCELLANEOUS**

19.1 COMPLIANCE WITH ALL LAWS, RULES AND REGULATIONS. Lessee shall comply with all applicable laws and regulations of any governmental entity with jurisdiction over Lessee, the Premises, or the operations conducted upon the Premises.

19.2 NO WAIVER OF RIGHTS. The failure of either party to insist on strict performance of any terms, covenants or conditions hereto, or to exercise any option herein contained, shall not be construed as a waiver of such term, covenant, condition, or option in any instance; now or in the future.

19.3 LESSOR'S RIGHT OF ENTRY. During the Term of this Agreement, Lessor, its officers, agents, employees, contractors, and subcontractors shall have the right, without limitation or cost, to enter upon the Premises for any lawful purpose, including the purpose of: inspecting the Premises and/or Equipment; making any repairs or alterations necessary for the preservation and safety of the Premises; and for determining whether Lessee is complying with its obligations hereunder. Such entry by Lessor shall not be deemed to excuse Lessee's performance of any promise, term, condition, or covenant required of it by this Agreement, and shall not be deemed to constitute waiver thereof by Lessor. Lessor reserves the right to possess, and Lessee shall provide Lessor, copies of all keys to all gates, buildings and structures on the Premises.

19.4 RELATIONSHIP OF PARTIES. It is understood and agreed that the relationship of the parties hereto is strictly that of Landlord and Tenant, that this Agreement is entered into on arms-length basis, and in no manner shall this Agreement be construed as granting an ownership right to Lessor in Lessee's business. It is further understood and agreed that this Agreement is not intended, nor shall it be construed, as creating a joint venture or other business relationship between Lessor and Lessee other than is expressly provided in this Agreement.

19.5 WAIVER OF JURY TRIAL. Lessor and Lessee hereby knowingly and voluntarily waive trial by jury in any action whatsoever brought by Lessor or Lessee to construe or enforce this Agreement. The foregoing waiver is a material inducement to the willingness of Lessor and Lessee to enter this Agreement.

19.6 SIGNS. All signs, emblems or advertising of any kind or character (hereinafter "Signs"), at or on the Premises must be in compliance with all applicable ordinances, rules and regulations.

19.7 QUIET ENJOYMENT. Lessor covenants that if and so long as Lessee pays the Rent, and any additional Rent as herein provided, and performs the covenants hereof, Lessee shall peacefully and quietly have, hold, and enjoy the Premises for the Term hereof mentioned subject to the provisions of this Agreement.

19.8 AGREEMENT CONSTRUCTION. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. It is agreed and acknowledged by the parties hereto that the provision of the Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of the Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

19.9 AUTHORITY FOR AGREEMENT. Lessee warrants and represents that Lessee has the right, power, and legal capacity to enter into and perform its obligations under this Agreement, and no additional approvals or consents of any person or entity are necessary in connection therewith. The execution, delivery, and performance of this Agreement by the undersigned Lessee has been duly authorized by all necessary corporate or other applicable action and this Agreement constitutes a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms.

19.10 TIME OF THE ESSENCE. Time is of the essence in the performance of this Agreement.

19.11 ENTIRE AGREEMENT. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written are merged herein. This Agreement may be amended only by written instrument duly executed by the parties.

19.12 AMENDMENTS. This Agreement shall not be amended, changed, or modified except in writing executed by Lessor and Lessee. Lessor shall not have waived or released any of its rights hereunder unless in writing and executed by Lessor.

19.13 BINDING EFFECT. Except as expressly provided herein, this Agreement shall be binding upon the parties hereto, their respective heirs, personal representatives, successors, and assigns, and all of the terms covenants, and provisions herein shall inure to the benefit of their respective heirs, personal representatives, successors, and assigns.

19.14 INDEPENDENT COVENANTS. Each covenant, agreement, obligation, or other provision of this Agreement to be performed by Lessee are separate and independent covenants of Lessee and are not depended on any other provision of this Agreement.

19.15 SEVERABILITY. In the event any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected, and any provision found to be invalid shall remain unenforceable to the extent permitted by law. The parties agree that in the event two different interpretations may be given to any provision hereunder, one of which will render the provision unenforceable, and one which will render the provision enforceable, the interpretation rendering the provision enforceable shall be adopted.

19.16 GOVERNING LAW; VENUE. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. Venue for any action or suit brought in connection herewith shall be commenced only in the court of appropriate jurisdiction located in Flagler County, Florida.

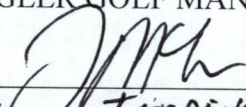
19.17 RADON GAS. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Health Department.

19.18 RECORDS. Pursuant to Section 119.0701, Florida Statutes, Lessee agrees to comply with Chapter 119, Florida Statutes, with regard to retention and public access to records. Specifically, Lessee agrees to 1) keep and maintain public records that ordinarily and necessarily would be required by the Lessor in order to the provide the services contemplated in this Agreement; 2) provide the public with access to public records on the same terms and conditions that the Lessor would provide the records and at a cost that does not exceed the cost provided by law; 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and 4) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Lessor in a format that is compatible with the information technology systems of the public agency.

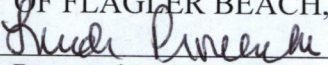


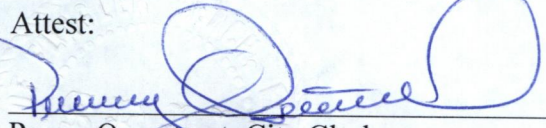
WHEREFORE, the parties hereto have hereunto set their hands on the date and year first above written.

LESSEE:  
FLAGLER GOLF MANAGEMENT, LLC

By:   
Print: TERRENCE McMANUS  
Its: MGR

LESSOR:  
CITY OF FLAGLER BEACH, FLORIDA

By:   
Linda Provencher, Mayor

Attest:   
Penny Overstreet, City Clerk

## EXHIBIT "A"

A PORTION OF SECTIONS 29 AND 30 TOWNSHIP 12 SOUTH, RANGE 32 EAST, FLAGLER COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: FROM THE SOUTHEAST CORNER OF LOT 31, OCEAN PALM SUBDIVISION, RECORDED IN MAP BOOK 5, PAGE 70, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, AS THE POINT OF BEGINNING, RUN ALONG THE BOUNDARY OF SAID OCEAN PALM SUBDIVISION, SOUTH 88 DEGREES 22 MINUTES 14 SECONDS WEST A DISTANCE OF 676.36 FEET; THENCE SOUTH 20 DEGREES 17 MINUTES 35 SECONDS EAST A DISTANCE OF 1032.06 FEET; THENCE SOUTH 23 DEGREES 41 MINUTES 30 SECONDS EAST A DISTANCE OF 720.11 FEET; THENCE DEPARTING SAID BOUNDARY, RUN SOUTH 16 DEGREES 35 MINUTES 48 SECONDS EAST A DISTANCE OF 163.31 FEET; THENCE SOUTH 23 DEGREES 40 MINUTES 41 SECONDS EAST A DISTANCE OF 190.01 FEET; THENCE SOUTH 66 DEGREES 20 MINUTES 13 SECONDS WEST A DISTANCE OF 79.93 FEET; THENCE SOUTH 23 DEGREES 43 MINUTES 08 SECONDS EAST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF OCEAN PALM DRIVE, A 50 FOOT RIGHT-OF-WAY, A DISTANCE OF 254.37 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE, RUN ALONG THE BOUNDARY OF OCEAN PALM VILLA II, RECORDED IN MAP BOOK 11, PAGE 27, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, NORTH 88 DEGREES 26 MINUTES 53 SECONDS EAST A DISTANCE OF 464.85 FEET; THENCE SOUTH 21 DEGREES 50 MINUTES 13 SECONDS EAST A DISTANCE OF 29.89 FEET THENCE ALONG THE BOUNDARY OF OCEAN PALM VILLA III, RECORDED IN MAP BOOK 16, PAGE 1, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA AND THE EXTENSION THEREOF, NORTH 88 DEGREES 26 MINUTES 53 SECONDS EAST A DISTANCE OF 164.59 FEET; THENCE NORTH 75 DEGREES 47 MINUTES 32 SECONDS EAST A DISTANCE OF 128.87 FEET; THENCE DEPARTING SAID BOUNDARY, RUN ALONG THE BOUNDARY OF PALM HAVEN SUBDIVISION, RECORDED IN MAP BOOK 27, PAGE 27, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, NORTH 21 DEGREES 48 MINUTES 08 SECONDS WEST A DISTANCE OF 1059.90 FEET; THENCE RUN NORTH 68 DEGREES 11 MINUTES 52 SECONDS EAST A DISTANCE OF 100.00 FEET TO THE WESTERLY R/W LINE OF SOUTH CENTRAL AVENUE, A 50' R/W; THENCE NORTH 21 DEGREES 48 MINUTES 08 SECONDS WEST ALONG SAID R/W LINE A DISTANCE OF 300.00 FEET; THENCE DEPARTING SAID R/W LINE, RUN SOUTH 68 DEGREES 11 MINUTES 52 SECONDS WEST A DISTANCE OF 100.00 FEET; THENCE NORTH 21 DEGREES 48 MINUTES 08 SECONDS WEST A DISTANCE OF 1032.43 FEET TO THE POINT OF BEGINNING.

### **LESS AND EXCEPT THE FOLLOWING:**

A PORTION OF SECTION 29 AND 30, TOWNSHIP 12 SOUTH, RANGE 32 EAST, FLAGLER COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: FROM THE NORTHEAST CORNER OF PALM HAVEN SUBDIVISION, AS RECORDED IN MAP BOOK 27, PAGE

27, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING ON THE WESTERLY RIGHT-OF-WAY LINE OF SOUTH CENTRAL AVENUE, A 50 FOOT RIGHT-OF-WAY, RUN NORTH 21 DEGREES 48 MINUTES 08 SECONDS WEST ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 130.00 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID RIGHT-OF-WAY LINE, RUN SOUTH 68 DEGREES 11 MINUTES 52 SECONDS WEST, A DISTANCE OF 86.00 FEET; THENCE SOUTH 59 DEGREES 08 MINUTES 59 SECONDS WEST, A DISTANCE OF 109.23 FEET; THENCE SOUTH 02 DEGREES 29 MINUTES 39 SECONDS EAST, A DISTANCE OF 400.00 FEET; THENCE SOUTH 87 DEGREES 30 MINUTES 21 SECONDS WEST, A DISTANCE OF 220.00 FEET; THENCE NORTH 02 DEGREES 29 MINUTES 39 SECONDS WEST, A DISTANCE OF 495.00 FEET; THENCE NORTH 68 DEGREES 11 MINUTES 52 SECONDS EAST, A DISTANCE OF 240.09 FEET; THENCE SOUTH 21 DEGREES 48 MINUTES 08 SECONDS EAST, OF DISTANCE OF 105.22 FEET; THENCE SOUTH 21 DEGREES 48 MINUTES 08 SECONDS EAST, A DISTANCE OF 105.22 THENCE NORTH 68 DEGREES 11 MINUTES 52 SECONDS EAST, A DISTANCE OF 130.00 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF SAID SOUTH CENTRAL AVENUE; THENCE SOUTH 21 DEGREES 48 MINUTES 08 SECONDS EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

**TOGETHER WITH:**

THOSE RIGHTS APPURTENANT THERETO AS SET FORTH IN THAT CERTAIN EASEMENT RECORDED IN OFFICIAL RECORDS BOOK 649, AT PAGE 897, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.



## **EXHIBIT "B"**

**The LESSEE shall maintain the entire property in a standard that is "reasonably acceptable" for a value oriented, public, recreational golf and clubhouse facility. Should a dispute arise out of what is deemed "reasonably acceptable" a special committee may be formed, consisting of 3-7 members of FGM, the City of Flagler Beach, and the general public.**

**THE NEWS-JOURNAL**

Published Daily and Sunday  
Daytona Beach, Volusia County, Florida

**State of Florida,  
County of Volusia**

Before the undersigned authority personally appeared

**Cynthia Anderson**

who, on oath says that she is .....

**LEGAL COORDINATOR**

of The News-Journal, a daily and Sunday newspaper,  
published at Daytona Beach in Volusia County, Florida; the  
attached copy of advertisement, being a  
.....

**PUBLIC NOTICE**

**L 2166079**

in the Court,  
was published in said newspaper in the issues.....

**NOVEMBER 10, 2015**

Affiant further says that The News-Journal is a newspaper  
published at Daytona Beach, in said Volusia County, Florida,  
and that the said newspaper has heretofore been continuously  
published in said Volusia County, Florida, each day and  
Sunday and has been entered as second-class mail matter at  
the post office in Daytona Beach, in said Volusia County,  
Florida, for a period of one year next preceding the first  
publication of the attached copy of advertisement; and affiant  
further says that he has neither paid nor promised any person,  
firm or corporation any discount, rebate, commission or  
refund for the purpose of securing this advertisement for  
publication in the said newspaper

.....*Cynthia Anderson*.....

Sworn to and subscribed before me

This **10TH** of **NOVEMBER**

A.D. 2015

-----  
*Cynthia E. Maley*  
-----

49D



ORDINANCE 2015-14  
AN ORDINANCE OF THE CITY OF  
FLAGLER BEACH, FLORIDA,  
AUTHORIZING AND APPROVING A  
LEASE AGREEMENT FOR THE GOLF  
COURSE PROPERTY LOCATED AT 3600  
SOUTH CENTRAL AVENUE AND  
PROVIDING FOR AN EFFECTIVE DATE.  
PUBLIC HEARING'S AND FINAL  
READING WILL BE HELD ON FRIDAY,  
NOVEMBER 20, 2015 AT 6:00 P.M., OR  
AS SOON THERE AFTER AS POSSIBLE,  
IN THE CITY COMMISSION CHAMBERS,  
105 S. 2ND ST., FLAGLER BEACH, FL.  
THIS PUBLIC HEARING MAY BE  
CONTINUED TO A FUTURE DATE OR  
DATES. THE TIMES AND DATES OF  
ANY CONTINUANCES OF A PUBLIC  
HEARING SHALL BE ANNOUNCED  
DURING THE PUBLIC HEARING  
WITHOUT ANY FURTHER PUBLISHED  
NOTICE. THE ORDINANCE MAY BE  
VIEWED AT THE ABOVE LOCATION.  
INTERESTED PARTIES MAY APPEAR AT  
THE MEETING AND BE HEARD WITH  
RESPECT TO THE PROPOSED  
ORDINANCE.  
CITY OF FLAGLER BEACH  
P.O. BOX 70, 105 S. 2ND STREET  
FLAGLER BEACH, FL 32136  
PHONE (386) 517-2000  
FAX (386) 517-2008  
L2166079, Nov. 10, 2015. It



## BRAZILIAN PEPPER REMOVAL AGREEMENT

THIS BRAZILIAN PEPPER REMOVAL AGREEMENT (the "Lease") is made and entered into this 20<sup>th</sup> day of November, 2015, by and between the CITY OF FLAGLER BEACH, FLORIDA, hereinafter referred to as the "City", and FLAGLER GOLF MANAGEMENT, LLC, hereinafter referred to as "FGM."

**WHEREAS**, the City owns certain property located at 3600 South Central Avenue consisting of a former golf course (the "Golf Course Property"); and

**WHEREAS**, the City and FGM have entered into a Lease Agreement for the Golf Course Property pursuant to which FGM shall restore the Golf Course Property to playable condition and continue to operate same; and

**WHEREAS**, the Golf Course Property has a significant Brazilian Pepper infestation; and

**WHEREAS**, the City has budgeted \$14,700 in its 2015/2016 annual budget for continued Brazilian Pepper removal on the Golf Course Property; and

**WHEREAS**, the cost of eradication of the Brazilian Pepper infestation on the Golf Course Property is expected to exceed \$30,000; and

**WHEREAS**, FGM has offered to complete the eradication of the Brazilian Pepper infestation in exchange for payment of \$14,700 from the City.

**NOW THEREFORE**, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which hereby acknowledged, the parties hereto agree as follows:

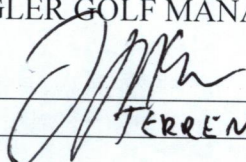
1. Within 90 days of the date of this agreement, FGM shall remove at least 95% of the existing Brazilian Peppers from the Golf Course Property.
2. The City shall pay FGM for the removal of Brazilian Peppers as follows:
  - a. \$13,230 shall be paid by the City upon execution by all parties of this Agreement;
  - b. \$1,470 shall be paid by the City upon completion and approval by the City of the Brazilian Pepper removal conducted by FGM.

**WHEREFORE**, the parties hereto have hereunto set their hands on the date and year first above written.

FLAGLER GOLF MANAGEMENT, LLC

By:

Print:

  
TERRENCE McMANIS



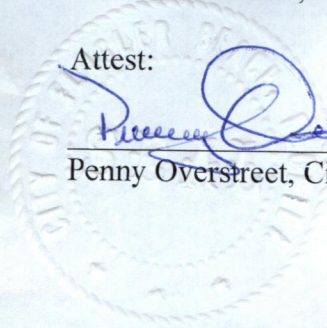
Its: MGR

CITY OF FLAGLER BEACH, FLORIDA

By: Linda Provencher  
Linda Provencher, Mayor

Attest:

Penny Overstreet  
Penny Overstreet, City Clerk



**THE NEWS-JOURNAL**

Published Daily and Sunday  
Daytona Beach, Volusia County, Florida

**State of Florida,  
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Before the undersigned authority personally appeared

**Cynthia Anderson**

who, on oath says that she is .....

**LEGAL COORDINATOR**

of The News-Journal, a daily and Sunday newspaper,  
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attached copy of advertisement, being a  
.....

**PUBLIC NOTICE**

**L 2138070**

in the Court,  
was published in said newspaper in the issues.....

**MAY 28, JUNE 4, 2015**

Affiant further says that The News-Journal is a newspaper  
published at Daytona Beach, in said Volusia County, Florida,  
and that the said newspaper has heretofore been continuously  
published in said Volusia County, Florida, each day and  
Sunday and has been entered as second-class mail matter at  
the post office in Daytona Beach, in said Volusia County,  
Florida, for a period of one year next preceding the first  
publication of the attached copy of advertisement; and affiant  
further says that he has neither paid nor promised any person,  
firm or corporation any discount, rebate, commission or  
refund for the purpose of securing this advertisement for  
publication in the said newspaper

*Cynthia Anderson*.....

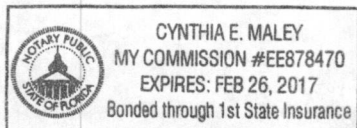
Sworn to and subscribed before me

This **4TH** of **JUNE**

A.D. 2015

*Cynthia E. Maley*

49D



0002138070

**NOTICE OF INTENT TO ENTER INTO A  
COMPREHENSIVE AGREEMENT FOR THE PUBLIC-  
PRIVATE DEVELOPMENT OF REAL PROPERTY  
LOCATED AT 3600 SOUTH CENTRAL AVENUE  
WITHIN THE CITY OF FLAGLER BEACH**

Pursuant to Fla. Stat. 287.05712, the City of Flagler Beach hereby gives notice that it has received unsolicited proposals from private entities to enter into a comprehensive agreement with the City for the public-private development and management of a new golf course at the location of **3600 South Central Avenue** within the City of Flagler Beach.

The City of Flagler Beach hereby invites additional proposals from any and all qualified entities who are willing to enter into a public-private partnership to transform said property into an executive 9-hole golf course and then to manage the golf course once completed.

Proposals will be accepted until 5:00 p.m. on June 19, 2015. In hearing from those interested, the City would like each entity's proposal to address the following:

- VISION FOR THE EXECUTIVE GOLF COURSE
- LONG TERM LEASE ACCEPTANCE
- FINANCIAL QUALIFICATIONS
- BUSINESS AND EXPERIENCE QUALIFICATIONS
- REFERENCES
- BUSINESS PLAN WITH TIMELINE
- FINANCIAL PLAN
- STAFFING AND EQUIPMENT
- INDICATED YOUR WILLINGNESS TO COMPLY WITH THE CITY'S STORMWATER REQUIREMENT
- BENEFITS TO THE CITY OF FLAGLER BEACH

Proposals received after 5:00PM on the 19th day of June 2015 will not be considered.

Publish Date: May 28, 2015

For more information, please contact, Robert Smith, Public Works Director at (386) 517- 2000 ext. 243 (office) or cellular (386) 931-6743

