

IN THE COUNTY COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA

CASE NO.: 2022 CC 000212
DIVISION:

THE CITY OF FLAGLER BEACH,
a Florida municipality,

Plaintiff,

vs.

FLAGLER GOLF MANAGEMENT,
LLC, a Florida limited liability company,

Defendant.

_____ /

**COMPLAINT FOR EVICTION OF NONRESIDENTIAL TENANTS, DAMAGES AND
ATTORNEYS' FEES AND COSTS**

Plaintiff, the CITY OF FLAGLER BEACH, FLORIDA ("Plaintiff" or the "City") sues
Defendant FLAGLER GOLF MANAGEMENT, LLC, a Florida limited liability company
("Defendant" or "FGM"), and alleges:

Count I – Eviction

1. Pursuant to FLA. STAT. § 83.20(3), this is an action for possession and eviction of the Defendant, a nonresidential tenant, and all other occupants from real property located in Flagler County, Florida.
2. All conditions precedent to bringing this action have been satisfied.
3. Venue is proper in the county court of Flagler County, Florida.
4. Plaintiff owns the following real property located in Flagler County, Florida: 3600 South Central Avenue, Flagler Beach, FL 32136 (the "Property").

5. Defendant has possession of the Property pursuant to a Golf Course Lease Agreement (the “Lease”), dated November 20, 2015, between the Plaintiff, as landlord, and the Defendant, as tenant. A copy of the Lease is attached hereto as **Exhibit 1**. An addendum to the Lease (the “Addendum”) was executed by both parties on April 25, 2019, and is attached hereto as **Exhibit 2**.

6. The Lease contains the following provisions relevant to this action:

- a. The term of the Lease is for 15 years. Ex. 1 at § 2.1.
- b. In addition to a base amount of rent, the Lease calls for FGM to pay the City a percentage of its gross revenues beginning on the 61st month of the term. Ex. 1 at § 3.3.
- c. Defendant has the obligation to keep true and accurate accounts, records, financial statements, books, and data in a form consistent with good accounting practices (“Records”). Ex. 1 at § 4.1. The Records must contain a breakdown of gross receipts and sales from the various activities taking place on the Property. Ex. 1 at § 4.1. These Records must be maintained for at least seven years. Ex. 1 at § 4.1.
- d. The City has the right to inspect and examine all such Records to enable the City to ascertain the revenue generated on the Property. Ex. 1 at § 4.3. FGM is required to allow the City to make its Records available to the City during normal business hours upon request. Ex. 1 at § 4.3. In addition to this obligation to allow the City to inspect the Records, FGM must provide the City with a profit and loss statement each quarter and a sales tax report each month without request. Ex. 1 at §§ 4.4, 4.5.

- e. FGM must take good care of the Property, and must maintain the Property in good order, including making all advisable repairs to the structure, sidewalks, landscaping, and parking areas appurtenant to the Property. Ex. 1 at §§ 7.1, 7.2.
 - f. FGM must comply with all laws, rules and regulations of any governmental entity with jurisdiction over FGM or the Property. Ex. 1 at § 19.1.
 - g. Notices under the Lease may be provided by certified mail at an address as either party may designate in writing or by personal service. Ex. 1 at § 16.1.
7. Since taking possession of the Property, FGM has regularly neglected to maintain or supply Records as required by the Lease.
8. In 2017, after several issues with FGM's management, the City issued a notice of a default based on failure to pay rent and failing to uphold its obligations regarding the Records. A copy of the November 17, 2017 default letter ("2017 Letter") is attached as **Exhibit 3**.
9. Specifically, the 2017 Letter alerted FGM that it had defaulted by:
- a. Failing to keep its Records in a form consistent with good accounting practices by:
 - i. Maintaining incomplete Records of the documents FGM did generate;
 - ii. Keeping the Records in a disorganized manner;
 - iii. Failing to create records consistent with good accounting practice, such as an accurate check register logging expenses incurred in operation of the golf course.
 - b. Failing to provide the City with its quarterly profit and loss statement without demand or request by the City; and
 - c. Failing to provide the City with its monthly sales tax report without demand or request by the City.

10. Despite being reminded of their obligations to keep good records in 2017, FGM did not consistently comply with the recordkeeping and reporting standards of the Lease.

11. On June 7 of 2021, the City's Finance Director notified FGM of the City's election to perform an audit as provided under the Lease ("Audit Request"). A copy of the Audit Request is attached as **Exhibit 4**. The Audit Request asked that the audit be performed "as soon as possible." Ex. 4.

12. On July 22, 2021, FGM President Tiffany McManus wrote a letter advising the City to schedule the audit with her attorney, Adam Franzen. She also stated that all future letters and notices needed to be mailed to Mr. Franzen, care of Bruce Godwin at a specific address. A copy of the July 22, 2021 letter ("FGM Notice Letter") is attached as **Exhibit 5**.

13. Until after April 1, 2022, the FGM Notice Letter was the most recent address provided to the City for notices provided to FGM under the Lease.

14. On September 13, 2021, the City sent FGM a list of documents necessary for the audit, including all bank statements, monthly sales tax reports, internal financial statements. Each of these Records were required to be kept and maintained in good order under the Lease.

15. On December 11, 2021, Mr. Franzen admitted that the business had not retained its sales tax records and that it was waiting on copies of the records to be sent from the State of Florida.

16. On December 23, 2021, Mr. Franzen admitted that FGM had not maintained accurate and up-to-date accounting information in Quickbooks and that FGM would have to generate accounting records from other information, stating by email: "Though they have a reasonable amount of information in Quickbooks, it is not complete and they will need to be updated from the banking information."

17. As of February 2, 2022, FGM still had not provided the Records necessary to perform the audit requested in June of 2021.

18. On February 3, 2022, pursuant to Section 6.2 of the Lease, the City sent FGM a notice that FGM was in default of multiple provisions of the Lease (the “Default Notice”). A copy of the Default Notice is attached hereto as **Exhibit 6**.

19. Consistent with the FGM Notice Letter, the Default Notice was sent to three individuals: President McManus, Mr. Franzen, and Bruce Godwin, who upon information and belief is an investor in the LLC.

20. The Default Notice was sent to three addresses, including the address requested by the FGM Notice Letter.

21. The Default Notice specifically stated that FGM had defaulted by:

- a. Failing allow the City to perform an audit pursuant to its Audit Request;
- b. Failing to keep true and accurate records in a form consistent with good accounting practices;
- c. Failing to keep records for the duration of the Lease as required under § 4.2;
- d. Failing to provide the City with a quarterly profit and loss statement;
- e. Failing to provide the City with its monthly sales tax reports; and
- f. Failing to comply with the Federal and State laws by using volunteer labor in a for-profit business and using a third party’s property for a driving range without permission.

22. As required, the Notice stated that FGM had thirty days to cure its defaults, and notified FGM that the issue would be considered at the March 10 meeting of the City’s Commission (the “Meeting”).

23. In the time between the Default Notice and the Meeting, FGM was in frequent communication with the City. For example:

- a. On February 17, 2022, President McManus invited the City's elected officials to the Property for food and drinks.
- b. On February 23, 2022, President McManus sent an email to City Manager William Whitson specifically requesting a meeting with the City Manager and City Attorney prior to the March 10 Meeting.
- c. On March 1, 2022, President McManus provided records purporting to respond to the June 2021 Audit Request. The records provided were basic profit and loss statements, tax documents, and bank statements. The records provided were not kept or set forth in a manner consistent with good accounting practices, and were insufficient to perform any kind of meaningful audit.
- d. On March 9, 2022, President McManus met with City Manager Whitson regarding the March 10 meeting.

24. President McManus and Mr. Godwin appeared at the Meeting on behalf of FGM and provided extensive testimony. Video of the Meeting is available at https://youtu.be/NuReve_dMSM.

25. At the Meeting, President McManus identified Mr. Godwin as the one "that's going to give all the facts." She thereafter deferred to Mr. Godwin to speak on behalf of FGM. At various times, Mr. Godwin admitted:

- a. That FGM had maintained inaccurate records.
- b. That at least some FGM records had not been preserved.
- c. That FGM had used volunteer labor as part of its for-profit business.

- d. That FGM considered its March 1, 2022 submittal to be sufficient to respond to the City's request for documents for an audit.

26. FGM did not submit any evidence that they had recovered any lost documents, changed bookkeeping practices, attempted to pay any owed wages or taxes from use of volunteer labor, or begun sending the City the documents which must be sent without request.

27. FGM failed to cure numerous defaults discussed in the Default Notice. More specifically:

- a. FGM failed to cure its default under § 4.1 of the Lease regarding inadequate bookkeeping practices, as FGM failed to establish policies for record generation and recordkeeping consistent with good accounting practices;
- b. FGM failed to cure its default under § 4.2 of the Lease regarding retention of the Records, as FGM was unable to recover records it had failed to retain and had instead attempted to generate new records which were missing significant information;
- c. FGM failed to cure its default under § 4.3 of the Lease regarding the City's right to audit, as FGM failed to provide records or access to records sufficient to perform a meaningful audit;
- d. FGM failed to cure its default under § 4.4 of the Lease regarding quarterly profit and loss statements, as FGM has failed to send its recent quarterly statements without request;
- e. FGM failed to cure its default under § 4.5 of the Lease regarding monthly sales tax reports, as FGM has continued to fail to send its reports without request; and

- f. FGM failed to cure the default under § 19.1 of the Lease regarding compliance with laws, as they failed to establish that they had rectified previous violations of federal and state laws by using volunteer labor with in-kind compensation.

28. Based on the failures listed above, on March 16, 2022, the City sent FGM a Notice of Commercial Lease Termination (“Termination Notice”) pursuant to Section 6.1 and 6.2 of the Lease. A copy of the Termination Notice is attached hereto as **Exhibit 7**.

29. Consistent with the FGM Notice Letter, the Termination Notice was sent to President McManus, Adam Franzen, and Bruce Godwin and provided FGM fourteen days to vacate the premises and deliver possession to the City.

30. The Termination Notice was sent to three addresses by certified mail, including the address requested by the FGM Notice Letter.

31. However, because the Sawyer Terrace address had a typo, the City re-mailed the Termination Notice to that address. A copy of the re-mailed notice is attached to Plaintiff’s declaratory judgment action in *Flagler Golf Management LLC v. City of Flagler Beach*, Case No. 2022-CA-000230 as Plaintiff’s Exhibit 7.

32. FGM failed to vacate the premises and deliver possession to the City within fourteen days.

33. On April 1, 2022, with FGM having failed to vacate the premises, the City sent FGM a notice of its intent to sue for eviction and damages (“Intent to Sue”). A copy of the Intent to Sue is attached hereto as **Exhibit 8**. Again, the Intent to Sue was sent to three addresses by certified mail, including the address requested by the FGM Notice Letter.

34. On April 11, 2022, FGM filed an action for declaratory relief regarding whether they were required under the Lease to turn over possession of the Property. *See Flagler Golf Management LLC v. City of Flagler Beach*, Case No. 2022-CA-000230.

35. That FGM filed said action in response to the City's Intent to Sue shows that FGM was receiving notices sent to the addresses used by the City for notices under the Lease and that FGM does not intend to turn over possession of the Property as required.

36. Plaintiff is entitled to summary procedures provided by Chapter 51, Florida Statutes. FLA. STAT. § 83.21.

37. The Plaintiff has retained the undersigned attorney, agreed to pay said attorney a reasonable fee for services, and Plaintiff is entitled to recover those reasonable attorneys' fees and costs pursuant to the Lease and FLA. STAT. § 83.231.

WHEREFORE, Plaintiff demands judgment against the Defendant, for possession of the Property and an award of reasonable attorneys' fees, and costs against Defendant, pursuant to the Lease and FLA. STAT. § 83.231, which should be reduced to judgment.

Count II – Damages and Lien for Breach of Lease

38. The City re-alleges paragraphs 2 through 37 above as if they were fully set forth herein.

39. This is an action to recover damages, attorneys' fees and costs that do not exceed \$30,000.00.

40. FGM has breached the terms and conditions of the Lease, and the City has been damaged.

41. Because FGM has refused to give up possession of the premises after the termination of the Lease, the City is entitled to double the monthly rent. *See* FLA. STAT. § 83.06.

42. Pursuant to the Lease (Ex. 1 ¶ 15.1) and FLA. STAT. § 83.231, Plaintiff is entitled to recover its reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff demands judgment against Defendant for past due rent and late charges, including double rent and additional rents that accrue during the pendency of this action, for a landlord's lien under FLA. STAT. § 83.08, for reasonable attorneys' fees and costs, and such other relief as the Court deems appropriate.

Dated this 15th day of April 2022.

/s/ D. Andrew Smith, III

D. Andrew Smith III, Esquire

Florida Bar No. 583650

Jacob Schumer, Esquire

Florida Bar No. 111756

Patrick Brackins, Esquire

Florida Bar No. 027520

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EXHIBIT 1

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:

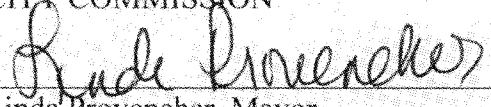
SECTION 1. The Lease Agreement attached hereto is hereby approved by the City Commission of the City of Flagler Beach, Florida and the Mayor is hereby authorized to execute the Lease Agreement on behalf of the City of Flagler Beach, Florida.

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

PASSED ON FIRST READING THIS 5th DAY OF November, 2015.

PASSED AND ADOPTED THIS 20th 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 20th 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 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*.....

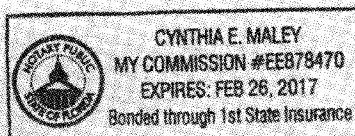
Sworn to and subscribed before me

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

A.D. 2015

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

49D



ORDINANCE 2015 34
AN ORDINANCE OF THE CITY OF
FLAGLER BEACH, FLORIDA
AUTHORIZING AND APPROVING A
LEASE AGREEMENT FOR THE GOLF
COURSE PROPERTY LOCATED AT 9600
SOUTH CENTRAL AVENUE, AND
PROVIDING FOR AN EFFECTIVE DATE.
PUBLIC HEARINGS AND FINAL
READING WILL BE HELD ON FRIDAY,
NOVEMBER 20, 2015 AT 6:00 P.M. OR
AS SOON THEREAFTER 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 32226
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 20th 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:

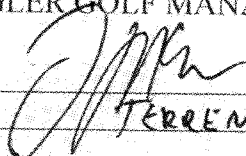
1. Within 90 days of the date of this agreement, FGM shall remove at least 95% of the existing Brazilian Peppers from the Golf Course Property.
2. The City shall pay FGM for the removal of Brazilian Peppers as follows:
 - a. \$13,230 shall be paid by the City upon execution by all parties of this Agreement;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

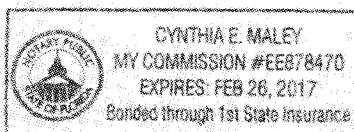
Cynthia Anderson

Sworn to and subscribed before me

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

A.D. 2015

Cynthia E. Maley



**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



EXHIBIT 2

ORDINANCE NO. 2019-07

AN ORDINANCE OF THE CITY OF FLAGLER BEACH, FLORIDA, AUTHORIZING AND APPROVING THE FIRST ADDENDUM TO THE LEASE AGREEMENT BETWEEN THE CITY OF FLAGLER BEACH AND FLAGLER GOLF MANAGEMENT, LLC 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 entered a lease for the Golf Course Property (the "Lease Agreement"); and

WHEREAS, the City and Flagler Golf Management, LLC desire to amend the terms of the Lease Agreement.

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


SECTION 1. The First Addendum to the Lease Agreement attached hereto as "Exhibit A" is hereby approved by the City Commission of the City of Flagler Beach, Florida and the Mayor is hereby authorized to execute 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 11TH DAY OF APRIL, 2019.

PASSED AND ADOPTED THIS 25th DAY OF APRIL, 2019.

CITY OF FLAGLER BEACH, FLORIDA
CITY COMMISSION


Linda Provencher, Mayor

ATTEST:


Penny Overstreet, City Clerk

FIRST ADDENDUM TO GOLF COURSE LEASE AGREEMENT

THIS FIRST ADDENDUM TO GOLF COURSE LEASE AGREEMENT is made and entered into this 25th day of APRIL, 2019, by and between the CITY OF FLAGLER BEACH, FLORIDA, hereinafter referred to as "Lessor", and FLAGLER GOLF MANAGEMENT, LLC, hereinafter referred to as "Lessee".

WHEREAS, on November 20, 2015, Lessor and Lessee entered a Golf Course Lease Agreement; and

WHEREAS, the Golf Course Lease Agreement set forth minimal standards regarding the condition of the greens and fairways; and

WHEREAS, Lessor and Lessee have had disagreements in the past regarding the conditions of the greens and fairways; and

WHEREAS, September 27, 2018, Lessor and Lessee entered a Default Cure Extension Agreement addressing the condition of the greens and fairways; and

WHEREAS, the Default Cure Extension Agreement contemplated the Lessee improving the greens and fairways from the condition in which they existed as of the date of the Default Cure Extension Agreement; and

WHEREAS, Lessee has improved the greens and fairways from the condition in which they existed as of the date of Default Cure Extension Agreement; and

WHEREAS, Lessor is satisfied with the current condition of the greens and fairways as a minimal standard to be maintained; and

WHEREAS, as contemplated in the Default Cure Extension Agreement, the Lessor and Lessee desire to amend the Golf Course Lease Agreement to include the photographs greens and fairways as supplemental documentation of the minimal standard at which the greens and fairways will be maintained.

NOW, THEREFORE, the parties hereto agree to the amendment of Section 7.2 of the Golf Course Lease as set forth herein (Note: underlined text indicates additions and ~~strikethrough~~ text indicates deletions):

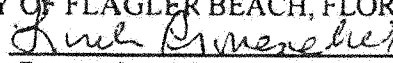
7.2 FAIRWAYS AND GREENS. With specific reference to the care and maintenance of the golf course fairways and greens, Lessee shall perform the duties and conform to the standards listed on the attached Exhibit "B." In addition, the photographs attached as Exhibit "C" are incorporated herein as a photographic representation of the minimal standard at which the greens and fairways shall be maintained and Lessee shall maintain the greens and fairways in a manner substantially similar to said photographs. In the event Lessor receives any written complaints regarding the condition of the fairways and greens, Lessor ~~may~~ shall direct such complaints to Lessee. Lessee shall review and provide a response in writing within ten (10) days to Lessor to each complaint so directed to it.

Lessee's response may shall 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.

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: President

LESSOR:
CITY OF FLAGLER BEACH, FLORIDA
By: 
Linda Provencher, Mayor


Attest: 
Penny Overstreet, City Clerk

Exhibit "C" Hole 1

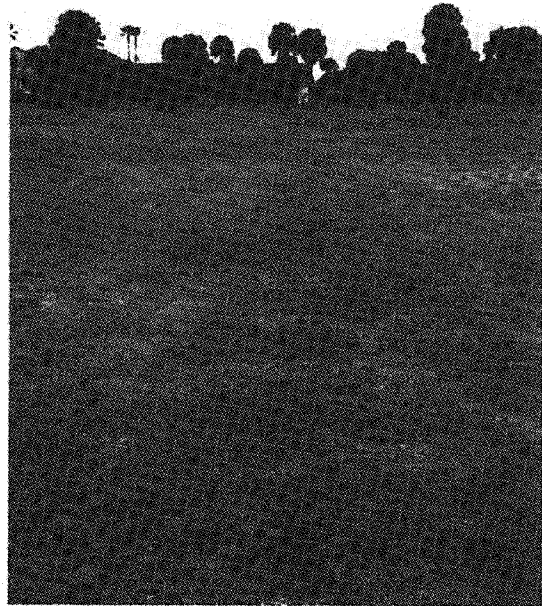




Exhibit "C" Hole 2

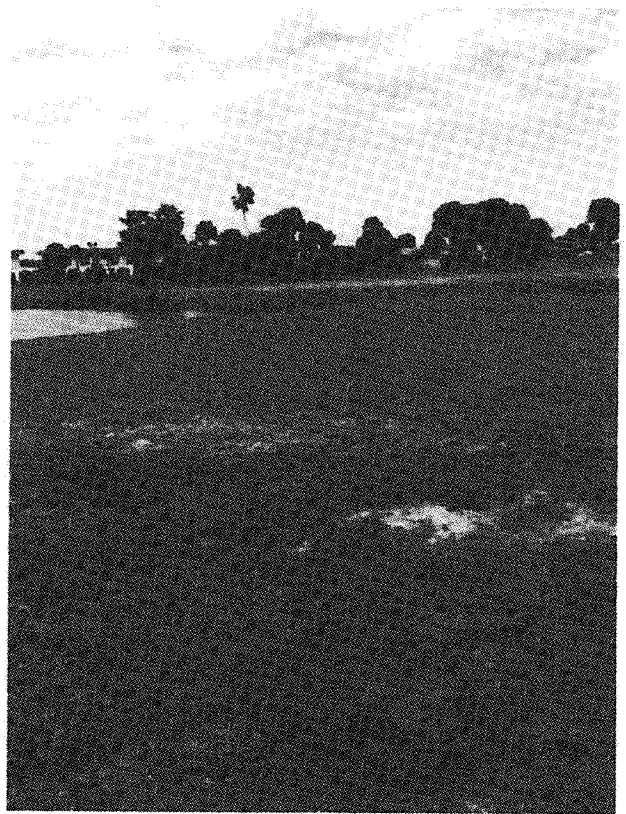


Exhibit "C" Hole 3



Exhibit "C" Hole 4

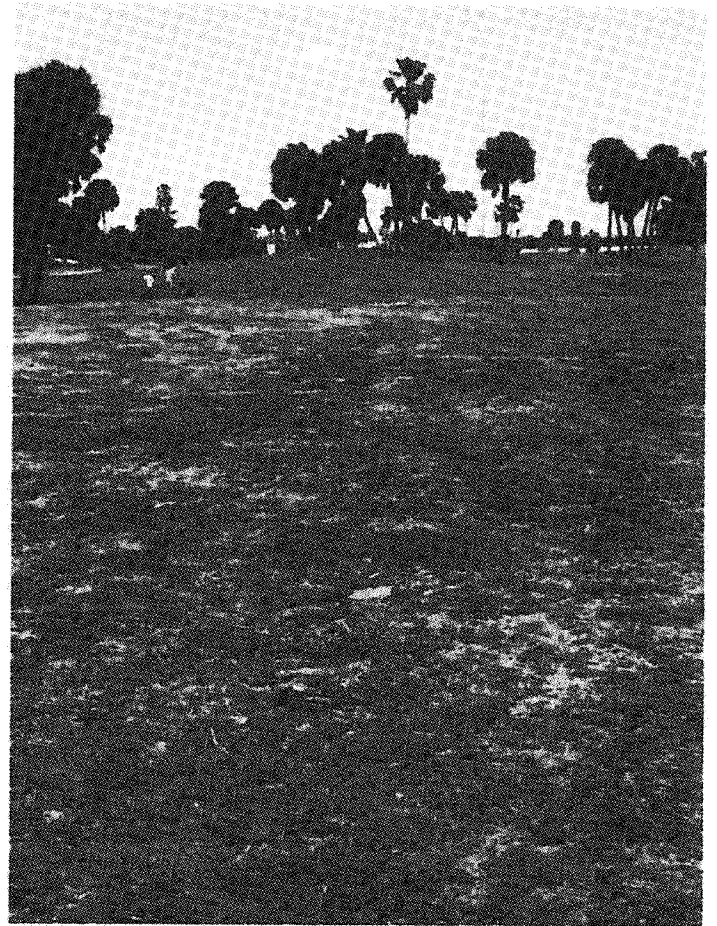


Exhibit "C" Hole 5



Exhibit "C" Hole 6

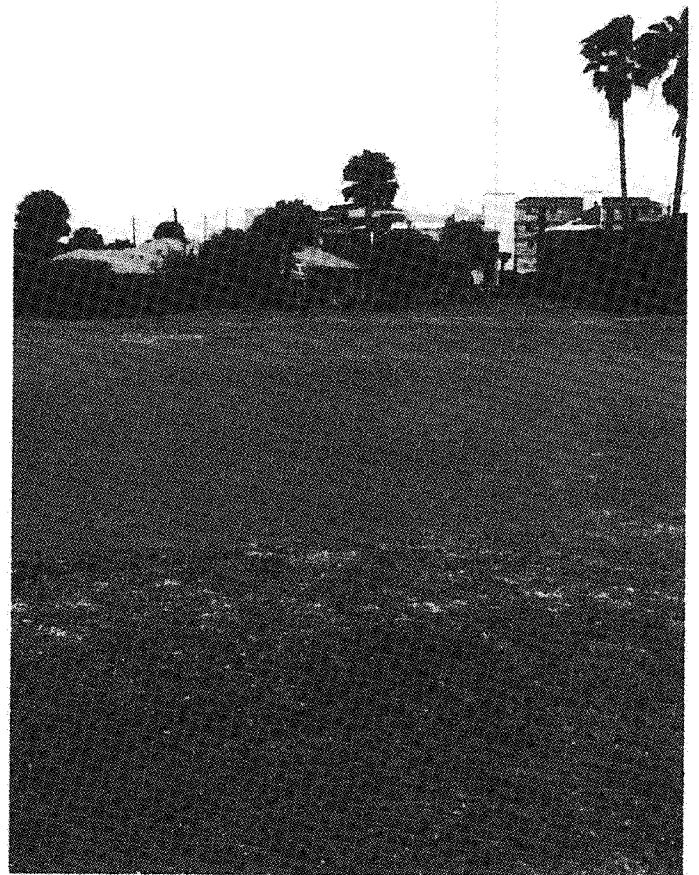
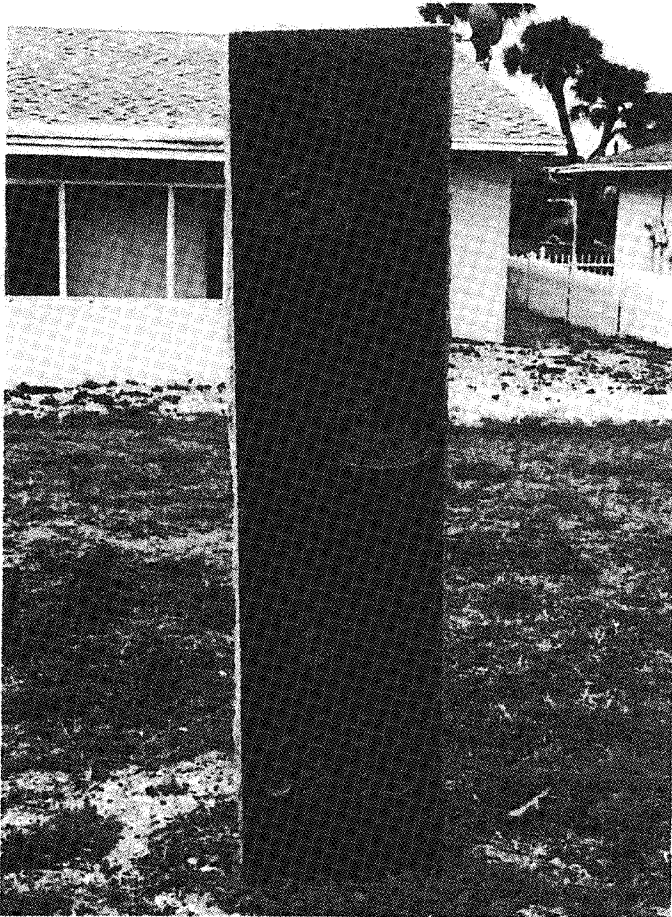
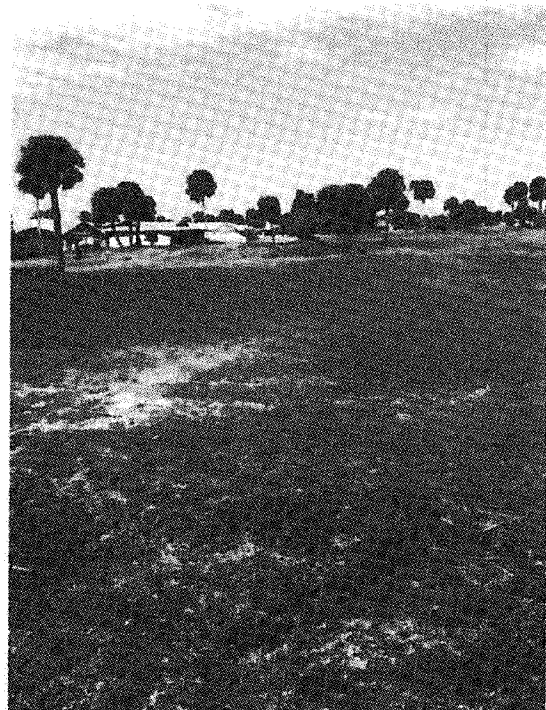
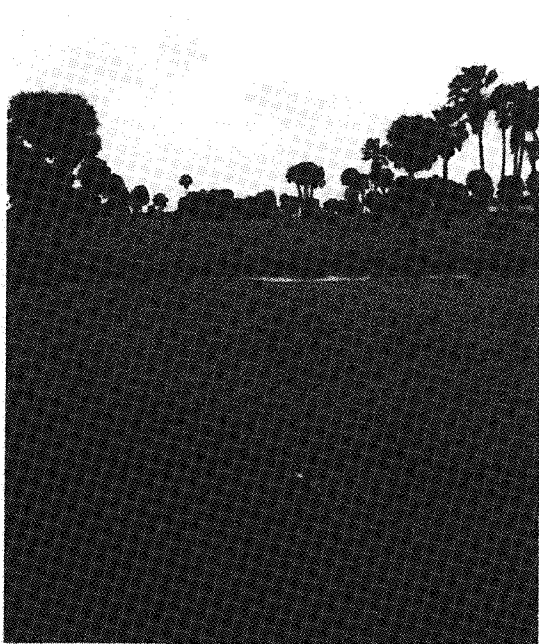
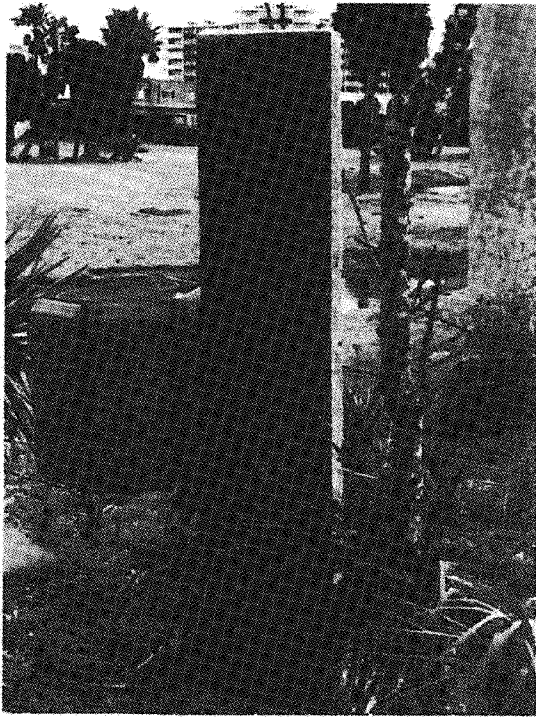


Exhibit "C" Hole 7



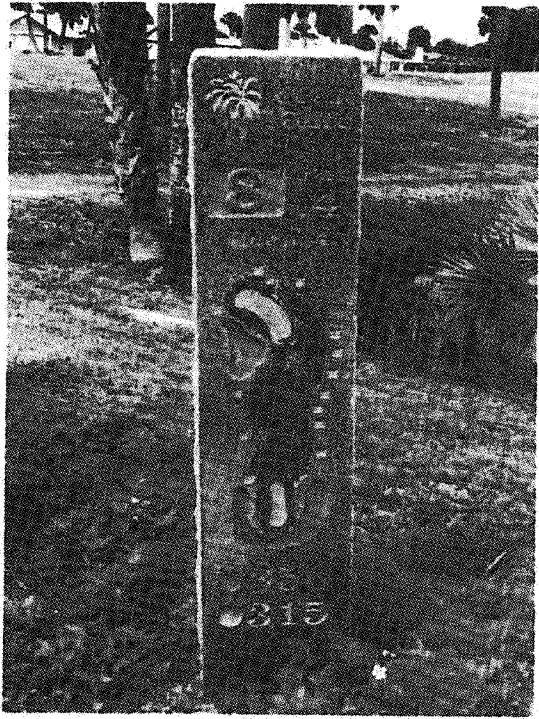
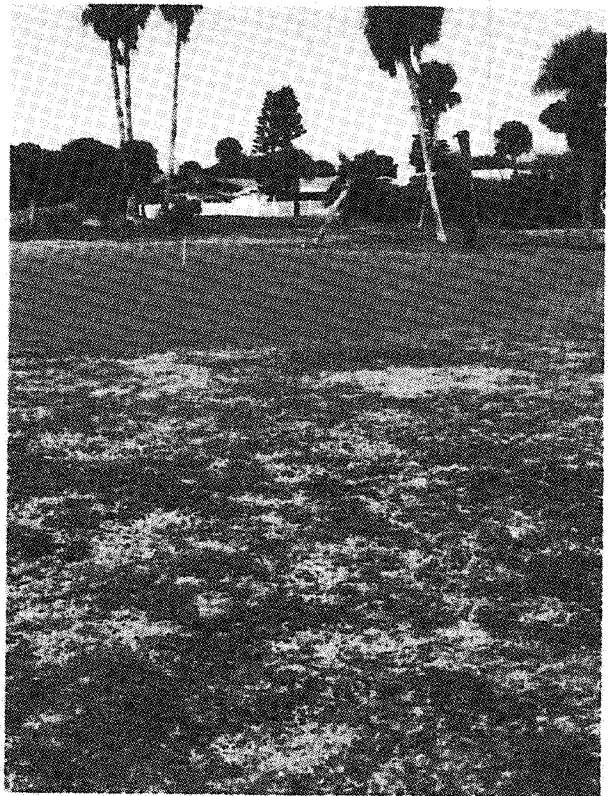
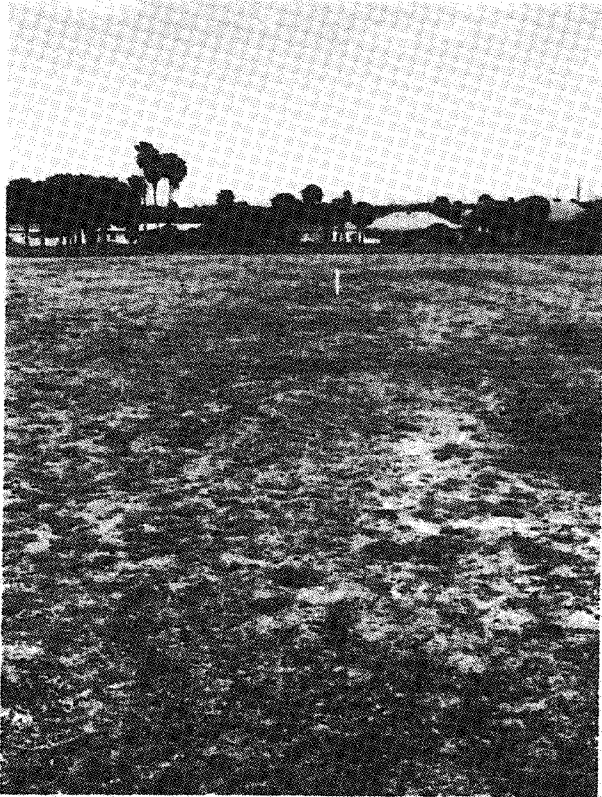
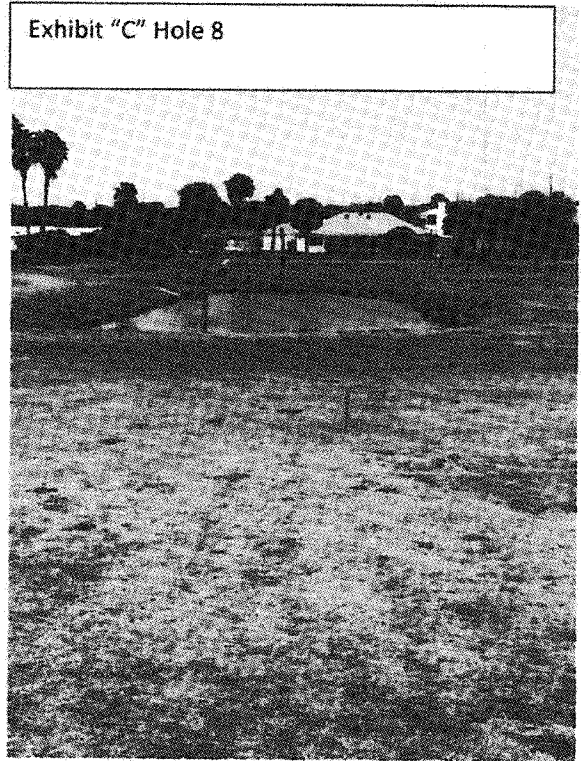


Exhibit "C" Hole 8



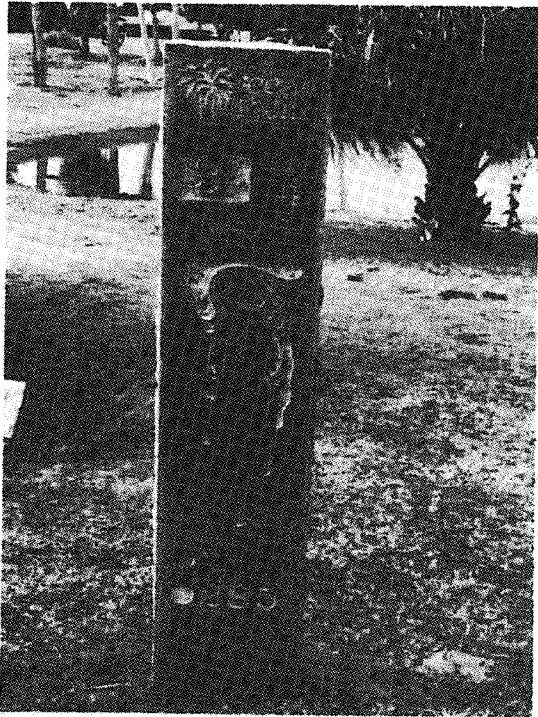
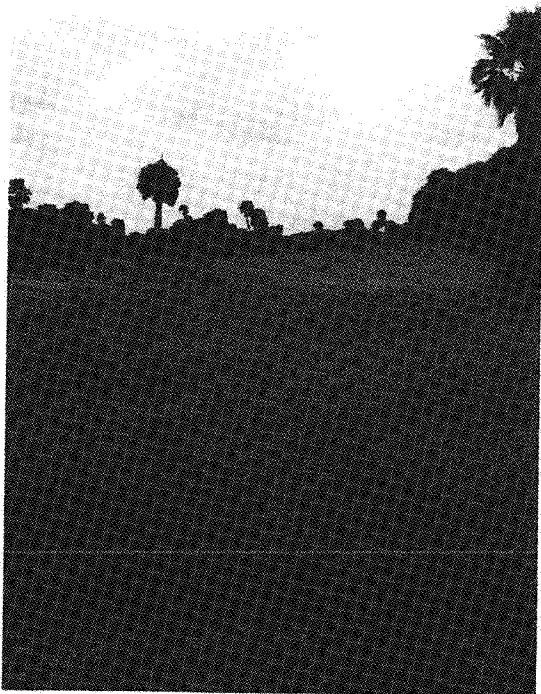
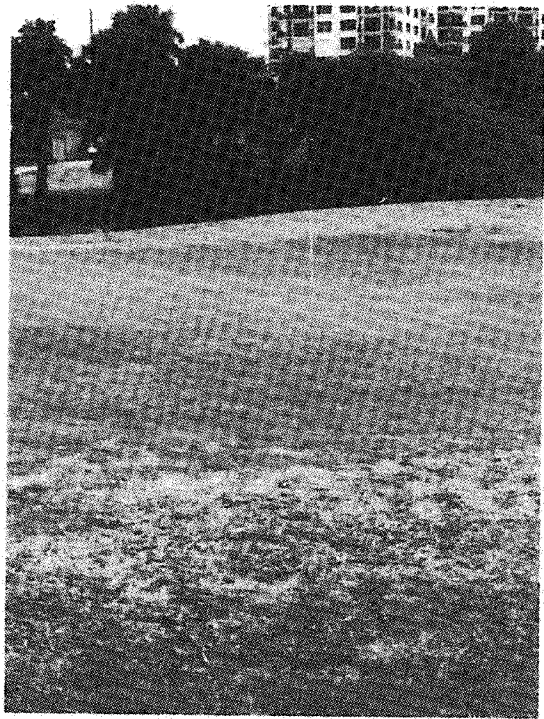


Exhibit "C" Hole 9



THE NEWS-JOURNAL

Published Daily and Sunday
Daytona Beach, Volusia County, Florida

**State of Florida,
County of Volusia**

Before the undersigned authority personally appeared

Irene Zucker

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 2325917

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

APRIL 16, 2019

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

.....*Irene Zucker*.....

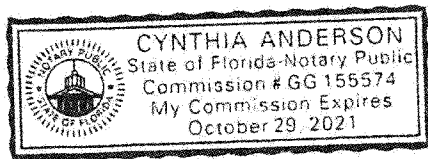
Sworn to and subscribed before me

This 16TH of **APRIL**

A.D. 2019

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

49D



The City of Flagler Beach proposes to
adopt the following ordinance:
ORDINANCE NO. 2019-07
AN ORDINANCE OF THE CITY OF
FLAGLER BEACH, FLORIDA,
AUTHORIZING AND APPROVING THE
FIRST ADDENDUM TO THE LEASE
AGREEMENT BETWEEN THE CITY OF
FLAGLER BEACH AND FLAGLER GOLF
MANAGEMENT, LLC FOR THE GOLF
COURSE PROPERTY LOCATED AT 3600
SOUTH CENTRAL AVENUE AND
PROVIDING FOR AN EFFECTIVE DATE.
Public Hearings will be conducted to
consider the ordinance as follows:
City Commission:
Second Reading: April 25, 2019 @ 6:00
p.m. or soon thereafter
The public hearings 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 request will be
heard at 6:00 PM, or as soon thereafter
as possible, in the City Commission
Chambers located at 105 South Second
Street, Flagler Beach, Florida.
If a person decides to appeal any
decision made with respect to any
matter considered at the above
referenced hearings, he/she will need a
record of the proceedings. For such
purposes, it may be necessary to ensure
that a verbatim record of the
proceedings is made, which record
includes the testimony and evidence
upon which the appeal is to be based.
In accordance with the Americans with
Disabilities Act, persons needing
assistance to participate in any of these
proceedings should contact the City
Clerk's Office at 386-517-2000 Ext. 233
at least 48 hours prior to the meeting
L2325917 Apr. 16, 2019 JJ

EXHIBIT 3



SHEPARD, SMITH, KOHLMYER & HAND, P.A.
ATTORNEYS & COUNSELORS AT LAW
SHEPARDFIRM.COM

November 17, 2017

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

Terrence McManus
224 Datura Street
Suite 409
West Palm Beach, FL 33401

Re: Notice of Default of Golf Course Lease Agreement and Request to Cure

Dear Mr. McManus:

Pursuant to Section 6.2 of the Golf Course Lease Agreement (the "Lease") between Flagler Golf Management, LLC ("Flagler Golf Management") and the City of Flagler Beach (the "City"), you are hereby notified that Flagler Golf Management is in default of the Lease.

Section 4.1 of the Lease requires Flagler Golf Management to maintain "true and accurate accounts, records, financial statements, books and data (hereinafter "Records") *in a form consistent with good accounting practices.*" The Lease further requires in Section 4.3 that "Lessor [the City], 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." Flagler Golf Management has not maintained its records in a form consistent with good accounting practices. Specifically, Flagler Golf Management has failed to keep an accurate and up to date check register logging expenses incurred in operation of the golf course. In addition, the financial records provided to the City upon requests to inspect have been disorganized, incomplete, and not consistent with good accounting practices. The failure to keep accurate, timely financial records consistent with good accounting practices has impaired the City's ability to exercise its rights granted by the Lease. The City has, on multiple occasions, requested more organized and more detailed accounting records be kept and provided to the City. To date, these requests have been unheeded.

Pursuant to Sections 4.4 and 4.5 of the Lease, Flagler Golf Management is required to provide the City with a profit and loss statement on a quarterly basis and a copy of its sales tax report filed with the Department of Revenue on a monthly basis within fifteen days of filing said report with the State. Neither report has been submitted to the City in a manner consistent with the Lease.

toll free 866.247.3008 office 407.622.1772 fax 407.622.1884

2600 WATLAND CENTER PKWY STE 100 - WATLAND, FL 32751

Flagler Golf Management has failed to pay rent in the months of November and December 2016 and January, February, March, July, August, September and October 2017. To date, the City has received payment of \$600.00 toward the base rent amount for the period of November 1, 2016 to October 31, 2017 of \$2,645.04, the remainder of which is now overdue with penalties as per the Lease. Additionally, Flagler Golf Management is in arrears on its water bill in the amount of \$1,023.16 in violation of Section 7.4 of the Lease.

Pursuant to Section 6.2 of the Lease, if the above described defaults are not cured within thirty (30) days of the date of this letter, the City may, at its option, consider termination of the Lease. The City hopes that by bringing these matters to your attention you and it can work together to resolve these issues.

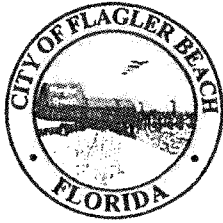
Very truly yours,



D. Andrew Smith, III

cc: Larry Newsom; Penny Overstreet; City Commission

EXHIBIT 4



City of Flagler Beach

P.O. Box 70 • 105 South 2nd Street
Flagler Beach, Florida 32126

Phone (386) 517-2000 • Fax (386) 517-2008

June 7, 2021

CERTIFIED MAIL

RECEIPT NO.: 7012 2920 0001 1319 5610, 7012 2920 0001 1319 5634

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

Terrence McManus
224 Datura Street
Suite 409
West Palm Beach, FL 33401

Re: Notice of Exercise of Right to Audit Records

Dear Mr. McManus:

Pursuant to Section 4.3 of the Lease Agreement between Flagler Golf Management and the City of Flagler Beach, which provides:

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.

The City hereby exercises its right to perform an audit of the financial books and records related to golf course operations. Please contact the undersigned to make arrange a date, time, and location for the records to be made available for audit. The City desires to conduct this audit as soon as possible with the least amount of inconvenience to you. I look forward to hearing from you at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'K Doyle', written over the printed name.

Kathleen Doyle
City of Flagler Beach
Finance Director

Copy: City Manager
City Attorney

EXHIBIT 5

Flagler Golf Management, LLC

d/b/a Ocean Palm Golf Club

3600 S Central Ave.

Flagler Beach, FL 32136

(561) 234-0598

July 22, 2021

VIA CERTIFIED MAIL

VIA EMAIL: wwhitson@cityofflaglerbeach.com

ATTENTION: William R. Whitson, City Manager

Flagler Beach City Commission

105 S. 2nd Street

Flagler Beach, FL 32136

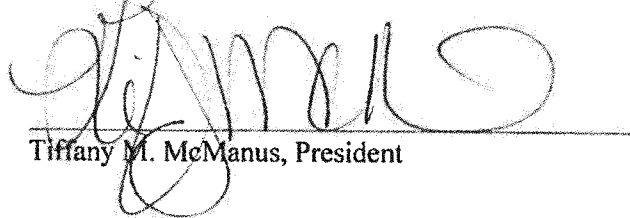
RE: Notice

Dear Mr. Whitson:

This letter is to notify you that all future letters, notices, etc., need to be mailed to my attorney, Adam Franzen, Esq., c/o Bruce Godwin, 1001 Yamato Road, Suite 302, Boca Raton, FL 33431, phone number (561) 953-1200.

I have received your letter dated, July 12, 2021. Please schedule the audit with my attorney.

Flagler Golf Management, LLC



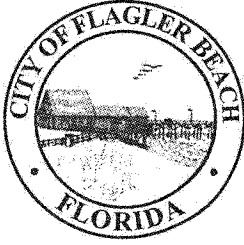
Tiffany M. McManus, President

cc:

Drew Smith, City Attorney: dsmith@shepardfirm.com

Kathleen Doyle, Finance Director: kdoyle@cityofflaglerbeach.com

EXHIBIT 6



City of Flagler Beach

P.O. Box 70 • 105 South 2nd Street
Flagler Beach, Florida 32126

Phone (386) 517-2000 • Fax (386) 517-2008

February 3, 2022

Flagler Golf Management, LLC
attn: Tiffany McManus
2531 Sawyer Terrace
Wellington, FL 33414

Flagler Golf Management, LLC
c/o Adam Franzen, Esq.
1136 S.E. 3rd Avenue
Suite 200
Fort Lauderdale, FL 33316-1124

Flagler Golf Management, LLC
c/o Bruce Godwin
1001 Yamato Road
Suite 302
Boca Raton, FL 33431

Certified Mail Article No.'s:
7017 0190 0001 0002 5065
7017 0190 0001 0002 5072
7017 0190 0001 0002 5089

RE: LEASE AGREEMENT WITH THE CITY OF FLAGLER BEACH

To Whom It May Concern:

Pursuant to Article 6 of the Lease Agreement between the City of Flagler Beach and Flagler Golf Management, LLC, this letter is to advise you of multiple defaults in the performance of Flagler Golf Management's duties under the Lease. As City Manager, I have reviewed the Lease, inquired with several City staff, and personally observed the operations occurring at the golf course. I have also sent staff on several occasions to observe the operations and report back to me. I am disappointed to have to write this letter but, unfortunately, it appears necessary and below I

have detailed each instance in which it is apparent to me that you are in breach of your obligations to the City of Flagler Beach.

RECORDKEEPING, REPORTING, and AUDIT

In June of 2021, the Finance Director for the City notified you of the City's request and intent to audit your financial records related to the operation of the golf course. In July of 2021, you acknowledged receipt of the audit request and advised the City to schedule the audit with your attorney. In September of 2021, your attorney began corresponding with the City Attorney regarding the conduct of the audit. The correspondence between the attorneys is attached. On September 13, 2021, you were notified of the records requested by the accounting firm selected by the City to perform the audit. On November 8, 2021, you advised through your attorney that many of the documents requested by the auditing firm were "in place" and the City Attorney was advised that you expected to be able to schedule the audit over the next two or three weeks. On December 5, 2021, the City Attorney was advised that you had most of the records "to proceed with the audit" and your attorney requested potential dates for the audit. The City Attorney advised on December 8, 2021 that the auditing firm had availability the next week and extended an invitation for you to supply the records available electronically. On December 11, 2021, you advised through your attorney that the bank statements could be supplied electronically but that you were still waiting to receive from the State copies of the sales tax reports you had filed and that you did not know when those documents would become available. On December 14, 2021, as promised by your attorney, the bank statements were provided. In addition, on that same date, you advised through your attorney that you hoped the records requested from the State would be arriving shortly and that you had "part of the QB done but it is the last part to be finalized." On December 16, 2021 you supplied through your attorney the copies of the sales and use tax returns you had obtained from the State. On December 21, 2021, the City Attorney requested an update on when the remaining accounting records requested by the auditing firm would be available. The City Attorney was advised as follows: "The client has advised that there is no pro shop or lesson revenue that is collected and/or excluded from the revenue. As the company operates on a cash basis they used the bank statements deposits (excluding loans) to calculate the total sales. Though they have a reasonable amount of information in Quickbooks, it is not complete and they will need to be updated from the banking information." On December 29, 2021, the City Attorney inquired as to when the Quickbooks information would be available and inquired if you were in possession of a check register that could be reviewed in the audit. There has been no further communication between the attorneys since that date. In January 2022, the City provided the records you had supplied to your attorney to the auditors in an effort to at least commence the process. The City was advised by the auditors that the records supplied were not sufficient for the conduct of the audit. The correspondence from the auditors is attached.

The correspondence between the attorneys speaks volumes to me. While it appears your attorney was making his best efforts to help your cause, it equally appears you did not have and

have not kept or maintained accounting records in a manner consistent with the Lease. Section 4.1 of the Lease requires: "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." Had this provision been observed, the records requested by the City for the conduct of its audit would have been available promptly upon the City's request to conduct an audit. Had Section 4.1 been complied with, there would be no discussion of having to update or recreate bookkeeping records that have not been kept contemporaneously with the actual transactions. Based on this interaction it is clear to me that you have not been keeping true and accurate accounts, records, financial statements, books or data in a form consistent with good accounting practices. This is extremely concerning to me as the very object of the lease payments are based on knowing the cash-flow of the business and the percentage of sales. First, as the operator of the golf course owned by the City you represent this City, how you conduct your business reflects on this City. Failing to keep proper financial records shows a complete disregard for your obligations to the City, for the community you serve, and, frankly, your own business operation. Even more troubling to me is the fact that you were reminded of your obligations under Section 4.1 and advised at that time you were not keeping your books in accordance with good accounting in a default letter sent to you in November of 2017. From my observations and upon discussion with the Finance Director, it appears your bookkeeping and reporting got worse not better after the 2017 default letter. This is a direct violation of the lease and failure of your lease terms.

In addition to the failure to properly conduct your financial record keeping, it is obvious from the correspondence between the attorneys that you are also in breach of Section 4.2 of the Lease. That Section requires you to keep all of the records identified in Section 4.1 throughout the term of the Lease and through the seventh year after the end of the Lease. Similarly, Section 19.18 requires you to maintain essentially all of your records associated with the golf course operation. Nevertheless, the small number of documents you have provided to this point was obtained from other sources, not maintained by you. This is a violation of your obligations under the Lease.

Section 4.4. of the Lease requires you to provide the City each quarter with a profit and loss statement. This profit and loss statement is supposed to be provided without request or demand. From what I have learned in my review it appears that when this profit and loss statement has been provided, it has rarely been provided without the City having to remind you of your obligation. For that reason, in the November 2017 default letter you were formally reminded of the requirement. Still, the profit and loss statements have not been provided routinely and regularly, without demand, as required. In fact, the City has not received one since 2020. This is a clear default of your obligations under the Lease.

Section 4.5 of the Lease requires you to provide to the City without request the sales tax report filed with the State. Based on my review, it does not appear that you have ever complied with that requirement. As with the profit and loss statements, if the City obtained it, it was only after request. City staff should not have to take time away from their day to day duties and we should definitely not have to pay the City Attorney to hound you for records you have a duty to supply. Even after the City Attorney advised your attorney in November 2021 of the requirement to provide these reports to the City monthly, you still have not done so. This all falls woefully short of your duties under the Lease and, like the default under Section 4.4., you were put on notice in November 2017 that you were in default of that requirement.

All of the defaults discussed so far lead us to your default under Section 4.3, the City's right to conduct an audit. As you are aware, this provision is important in no small part due to the fact that a portion of your payment obligation is revenue percentage rent. The City must be able to ensure that it is being fairly dealt with. Based on the apparent state of financial records, I am not even sure you are aware of precisely how much revenue the golf course generates. Had the City insisted on strict compliance with the audit requirements and simply advised you of a date and time to have the records available at the golf course for review by the auditors, I am confident it would have been a complete waste of everyone's time. Here, now over six months since the request to audit was first made, you have not advised that you are ready to produce the records requested for the audit. Your failure to keep and maintain records as required has resulted in the complete frustration of your obligation and the City's right to audit your financial records. This is unacceptable.

FAILURE TO OPERATE THE RESTAURANT

Pursuant to Section 5.1 of the Lease, you have committed to operate a golf course, club house, and restaurant. It has come to my attention that the restaurant has been closed for two years. You have not notified the City of this closure nor have you made any request to be relieved of your duty to operate a restaurant at the facility. The failure to operate the restaurant is a breach of your agreement to the City.

CARE AND MAINTENANCE OF THE PROPERTY

Section 7.1 of the Lease requires you to "take good care of the Premises, Fixtures, Appurtenances and Equipment therein . . ." Section 7.2 requires you to "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." The condition of the property is embarrassing. Simple tasks like cleaning up litter and dead vegetation are not being performed. The overall appearance reflects a business owner that does not take pride in ownership. This community deserves better with regard to the conditions of public property and the Lease requires better. Section 5.4 of the Lease prohibits you from allowing the course to become a source of embarrassment to the City. Your inattentiveness to the property has done exactly that. In addition, there is still the outstanding issue regarding the invoice for repairs to the cart barn

performed by the City as a result of your failure to conduct proper maintenance which has neither been paid, negotiated, or refused.

COMPLIANCE WITH LAWS

Based on information received by the City, it appears you are staffing the golf course in part with volunteer labor. I believe that such use of volunteers by a for profit business may be a violation of labor laws and, potentially, tax codes. If the information and reports I have received are true and if, indeed, that activity violates labor laws or tax codes, that is a violation of law and a breach of your duties under the Lease.

Additionally, as you are aware, there is a 2.9 acre parcel located approximately where you are operating a driving range that the City does not own and, for which reason, is not included in the Leased Premises. The owner of this property has complained to the City regarding the golf balls being struck onto the 2.9 acre parcel. The City does not and cannot authorize your use of that property and any conduct by you or your patrons beyond the bounds of the Leased Premises is a trespass on someone else's property.

Finally, in reviewing the financial records that have been supplied to the City, I note that the Flagler Golf Management, LLC received a Paycheck Protection Program loan. While there is no wrongdoing in the receipt of those funds, the records received by the City thus far also do not allow us to ensure that those proceeds were for the purposes allowed. The City has no role in the enforcement of the Paycheck Protection Program but I must advise you that if we find any reason to question the use of those funds or other grants or loans received, I believe it my duty to report any such concerns to appropriate the governmental agencies.

OPPORTUNITY TO CURE AND HEARING BY CITY COMMISSION

To the extent that any of the above defaults are curable, the City demands they be cured within thirty (30) days of the date of this letter in accordance with Section 6.2 of the Lease. Given the apparent disorganized state of your records, I do not know if some of these defaults are curable. Please be advised that falsification of records (especially any data reported to taxing authorities) is a potential crime. Furthermore, as you have previously been put on notice of the same record keeping and record reporting defaults and failed to cure them, I believe the City Commission has the right to terminate the Lease. I do not state that as a threat, but rather as an effort to help you understand the severity of the situation and give you fair notice of the jeopardy you have created for yourself.

In order to ensure that you have a fair opportunity to present your side of the conversation to the City Commission, I will schedule a hearing at the regular Commission meeting to be held on March 10th at 5:30 pm in the Commission Chambers at Flagler Beach City Hall, 105 S. Second Street, Flagler Beach, Florida 32136. At that hearing, you will have the opportunity to present any evidence, testimony, or argument you wish regarding this matter to the City Commission. If you disagree with my determination that any of the above are a default under the lease, you may present

that to the City Commission at the hearing. If you believe you have cured all defaults described in this letter, you may present that evidence to the City Commission at the hearing. Ultimately, the City Commission must make the final decision as to how to address these defaults. I believe that given the history of the operation and the nature of some of the defaults, the City Commission has the right under the Lease to terminate the Lease and I encourage you to come to that hearing prepared to explain why they should not. To the extent you have a sincere desire to continue operating the golf course, I hope you will come prepared to offer a plan to ensure that this conversation will never happen again.

If you would like to discuss any of the matters contained in this letter, I will be happy to have a meeting with you. If you would like to do so, please have your attorney contact the City Attorney to coordinate a time that works for your schedule prior to the hearing on March 10, 2022 at 5:30 pm.

I hope these matters can be resolved in an expeditious manner, however, that will require a genuine commitment by you.

Sincerely,



William R. Whitson, City
Manager

Encs.

Copy: Mayor & City Commission
City Attorney
City Clerk
Finance Dept.

Drew Smith

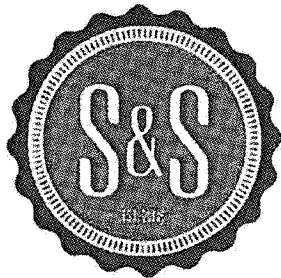
From: Drew Smith
Sent: Monday, October 11, 2021 4:56 PM
To: THE FRANZEN FIRM
Subject: RE: FW: Flagler Golf Management, LLC-Audit

That works. I've got it on my calendar.

Thanks!

Drew

D. ANDREW SMITH, III | ATTORNEY AT LAW
BOARD CERTIFIED - CITY, COUNTY & LOCAL GOVERNMENT LAW



SHEPARD, SMITH,
KOHLMYER & HAND, P.A.
2300 MAITLAND CENTER PKWY, STE 100
MAITLAND, FL 32751
TOLL FREE: 866.247.3008
OFFICE: 407.622.1772
FAX: 407.622.1884
SHEPARDFIRM.COM



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From: THE FRANZEN FIRM <adamgfranzen@gmail.com>
Sent: Monday, October 11, 2021 4:50 PM
To: Drew Smith <dsmith@shepardfirm.com>
Subject: Re: FW: Flagler Golf Management, LLC-Audit

Hi Drew:

I have been a little bit jammed up, due to my father's death.
To that extent, let's talk next Tuesday. October 19 at 1 pm.
Let me know if that works?
Thanks,

Adam

On Wed, Oct 6, 2021 at 12:40 PM Drew Smith <dsmith@shepardfirm.com> wrote:

Adam:

If I received a response from you to the email below, I must have missed it. Do you have any time in the next week or so to discuss?

Thanks.

Drew

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From: Drew Smith

Sent: Monday, September 13, 2021 11:00 AM

To: THE FRANZEN FIRM <adamgfranzen@gmail.com>

Subject: RE: Flagler Golf Management, LLC-Audit

Thanks, Adam. The finance director has let the City's accounting firm know and they have asked me to communicate to you the items they see as necessary for the audit. I have pasted the list below. The time period they have given me for these would be 10/1/19 – 3/31/21.

- full access to all bank statements,
- monthly sales tax reports filed with the Department of Revenue,
- internal financial statements including all GL details, and
- all supporting schedules/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.

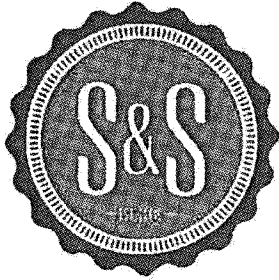
When you have had an opportunity to discuss with your client, maybe you and I can set up a time to discuss any issues or concerns on your end. I'm booked pretty tight this week but could squeeze in a phone call and next week is fairly open for me.

Thanks, again.

Drew

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From: THE FRANZEN FIRM <adamgfranz@gmail.com>

Sent: Wednesday, September 8, 2021 8:59 AM

To: Drew Smith <dsmith@shepardfirm.com>

Subject: Flagler Golf Management, LLC-Audit

Hi Drew:

It was nice speaking with you yesterday. Please provide me available dates and times that are convenient for you to perform your audit of my client, Flagler Gof Management, LLC..

Very truly yours,

Adam Franzen, Esq.
Law Offices of Adam Franzen, LLC
1136 Southeast Third Avenue
Fort Lauderdale, FL 33316
Tel: 954-462-5790
Fax: 954-734-8615
adamgfranz@gmail.com

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--

Very truly yours,

Adam Franzen, Esq.
Law Offices of Adam Franzen, LLC
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Drew Smith

From: Drew Smith
Sent: Wednesday, November 3, 2021 2:45 PM
To: THE FRANZEN FIRM
Subject: Ocean Palm Golf Course
Attachments: Golf Course Add'l rent 04-30-2021.pdf; Golf Course Add'l rent 01-31-2021.pdf; Golf Course Roof.pdf

Adam:

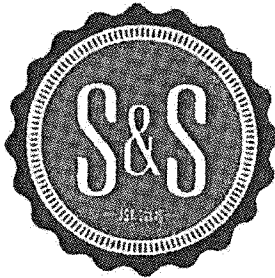
I'm following up on our conversation a couple weeks ago. Attached are the 3 outstanding invoices we discussed, two for additional rent payments as provided in the lease and one for the repairs to the car barn. In addition, as we discussed the City has not been receiving on a monthly basis a copy of the sales tax report filed by the course with the State. That report is required to be provided to the City as part of the lease in order for the City to calculate any additional rent due based on sales.

Have you had an opportunity to discuss with your client the documents the City has requested to perform its audit?

Thank you.

Drew

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Drew Smith

From: THE FRANZEN FIRM <adamgfranzen@gmail.com>
Sent: Monday, November 8, 2021 5:39 PM
To: Drew Smith
Subject: Fwd: Ocean Palm Golf Course

Hello Drew,

I spoke with my client and they have a lot of the documents in place. I expect by the end of this week to confirm and then we should be able to set up a time for the audit over the next 2 or 3 weeks subject to availability and mutual agreement of the parties. We will also at that time discuss the roofing issue. I have instructed the client to pay the 2 smaller invoices in question.

We will communicate again at weeks end.

Thank you,

Very truly yours,

Adam Franzen, Esq.
Law Offices of Adam Franzen, LLC
1136 Southeast Third Avenue
Fort Lauderdale, FL 33316
Tel: 954-462-5790
Fax: 954-734-8615
adamgfranzen@gmail.com

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Drew Smith

From: Drew Smith
Sent: Monday, December 13, 2021 9:47 AM
To: THE FRANZEN FIRM
Subject: RE: Response to Drew Smith <dsmith@shepardfirm.com>

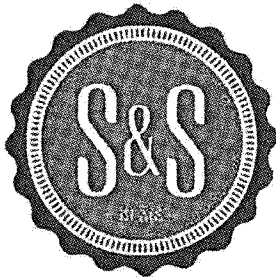
Adam:

If you will send what documents you have, now, I'll go ahead and start getting those to the City while you work on getting the rest.

Thanks.

Drew

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From: THE FRANZEN FIRM <adamgfranzen@gmail.com>
Sent: Saturday, December 11, 2021 12:58 PM
To: Drew Smith <dsmith@shepardfirm.com>
Subject: Fwd: Response to Drew Smith <dsmith@shepardfirm.com>

Hi Drew:

We can supply the Banks statements in PDF form on Monday or Tuesday. We have communicated with the State of Florida but have no confirmation but we might get those documents by

early next week also as we were to receive by now per the State. We can start with that and see what the auditors think.

Let me know your thoughts.

Very truly yours,

Adam Franzen, Esq.
Law Offices of Adam Franzen, LLC
1136 Southeast Third Avenue
Fort Lauderdale, FL 33316
Tel: 954-462-5790
Fax: 954-734-8615
adamgfranzen@gmail.com

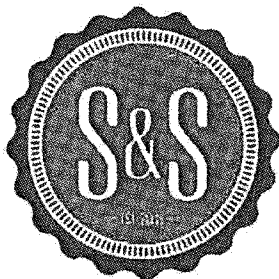
Thanks, Adam.

The firm that will be conducting the audit has advised that they will have availability next week. Do you think it is possible that the documents might be ready by the end of this week? Would it be possible to provide the documents in .pdf format via email rather than producing hard copies at the golf course? It seems like that might be easier for everybody.

Drew

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From: THE FRANZEN FIRM <adamgfranzen@gmail.com>
Sent: Sunday, December 5, 2021 5:34 PM
To: Drew Smith <dsmith@shepardfirm.com>
Subject: Fwd: Response to Drew Smith <dsmith@shepardfirm.com>

Hi Drew,

Please find attached copies of two invoices you had forwarded that you showed as outstanding. We have sent under separate cover a copy of those invoices together with the corresponding checks. The 3rd invoice regarding the roof we would like to discuss at a later date. We have most of the records to proceed with the audit but await certain copies requested from the State of Florida which should arrive next week. Please advise potential dates to conduct the audit.

We would also like to advise that the November monthly payment for the annual lease has been paid but was paid at the old rate of 247.63 which is 6.71 short and that shortfall is being processed. The December payments is now being processed in the correct amount of 254.34.

Look forward to hearing from you.

Very truly yours,

Adam Franzen, Esq.
Law Offices of Adam Franzen, LLC
1136 Southeast Third Avenue
Fort Lauderdale, FL 33316
Tel: 954-462-5790
Fax: 954-734-8615
adamgfranz@gmail.com

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--

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•

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Very truly yours,

Adam Franzen, Esq.
Law Offices of Adam Franzen, LLC

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Tel: 954-462-5790
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Drew Smith

From: THE FRANZEN FIRM <adamgfranzen@gmail.com>
Sent: Tuesday, December 14, 2021 3:13 PM
To: Drew Smith
Subject: Fwd: Bank Documents from October 1 2019 to March 31 2021. for Drew Smith <dsmith@shepardfirm.com>
Attachments: Flagler Golf Management Chase Bank Account January 8 2021 to March 31 2021.pdf; SunTrust Bank Flagler Golf Management LLC October 1 2019 to Feb 28 2021 v3.pdf

Hi Drew;

Please find attached the bank statements from SunTrust commencing in October 2019 as requested. That bank was used until February 2021 and Chase was established in January 2021. We are working on the State of Florida documents now and hope to submit shortly. We have part of the QB done but it is the last piece to be finalized.

Very truly yours,

Adam Franzen, Esq.
Law Offices of Adam Franzen, LLC
1136 Southeast Third Avenue
Fort Lauderdale, FL 33316
Tel: 954-462-5790
Fax: 954-734-8615
adamgfranzen@gmail.com

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Drew Smith

From: Drew Smith
Sent: Tuesday, December 21, 2021 12:11 PM
To: THE FRANZEN FIRM
Subject: RE: Florida Sales and Use Returns

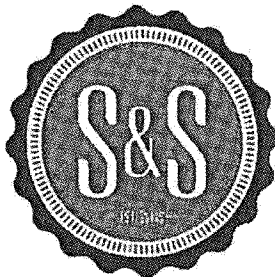
Thanks, Adam. I think that leaves us with the following requests from the auditors:

- internal financial statements including all GL details, and
- all supporting schedules/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.

Any sense of when those might be available?

Drew

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From: THE FRANZEN FIRM <adamgfranzen@gmail.com>
Sent: Thursday, December 16, 2021 12:26 PM
To: Drew Smith <dsmith@shepardfirm.com>
Subject: Fwd: Florida Sales and Use Returns

Drew:

This is the Florida Sales and Use returns for Flagler Beach.

Very truly yours,

Adam Franzen, Esq.
Law Offices of Adam Franzen, LLC
1136 Southeast Third Avenue
Fort Lauderdale, FL 33316
Tel: 954-462-5790
Fax: 954-734-8615
adamgfranz@gmail.com

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Drew Smith

From: Drew Smith
Sent: Wednesday, December 29, 2021 11:43 AM
To: THE FRANZEN FIRM
Subject: RE:

Thanks. When do you think the quickbooks records may be available? Is there a check register that can be reviewed?

Drew

D. ANDREW SMITH, III | ATTORNEY AT LAW
BOARD CERTIFIED - CITY, COUNTY & LOCAL GOVERNMENT LAW



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From: THE FRANZEN FIRM <adamgfranz@gmail.com>
Sent: Thursday, December 23, 2021 3:03 PM
To: Drew Smith <dsmith@shepardfirm.com>
Subject:

Hi Drew:

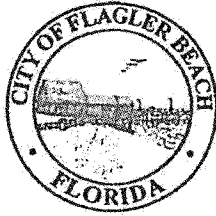
The client has advised that there is no pro shop or lesson revenue that is collected and/or excluded from the revenue. As the company operates on a cash basis they used the bank statements deposits (excluding loans) to calculate the total sales. Though they have a reasonable amount of information in Quickbooks, it is not complete and they will need to be updated from the banking information.

Very truly yours,

Adam Franzen, Esq.

Law Offices of Adam Franzen, LLC
1136 Southeast Third Avenue
Fort Lauderdale, FL 33316
Tel: 954-462-5790
Fax: 954-734-8615
adamgfranzen@gmail.com

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City of Flagler Beach

P.O. Box 70 • 105 South 2nd Street
Flagler Beach, Florida 32126

Phone (386) 517-2000 • Fax (386) 517-2008

June 7, 2021

CERTIFIED MAIL

RECEIPT NO.: 7012 2920 0001 1319 5610, 7012 2920 0001 1319 5634

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

Terrence McManus
224 Datura Street
Suite 409
West Palm Beach, FL 33401

Re: Notice of Exercise of Right to Audit Records

Dear Mr. McManus:

Pursuant to Section 4.3 of the Lease Agreement between Flagler Golf Management and the City of Flagler Beach, which provides:

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.

The City hereby exercises its right to perform an audit of the financial books and records related to golf course operations. Please contact the undersigned to make arrange a date, time, and location for the records to be made available for audit. The City desires to conduct this audit as soon as possible with the least amount of inconvenience to you. I look forward to hearing from you at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'K Doyle', written over the printed name.

Kathleen Doyle
City of Flagler Beach
Finance Director

Copy: City Manager
City Attorney

Flagler Golf Management, LLC

d/b/a Ocean Palm Golf Club
3600 S Central Ave.
Flagler Beach, FL 32136
(561) 234-0598

July 22, 2021

VIA CERTIFIED MAIL

VIA EMAIL: wwhitson@cityofflaglerbeach.com

ATTENTION: William R. Whitson, City Manager

Flagler Beach City Commission

105 S. 2nd Street

Flagler Beach, FL 32136

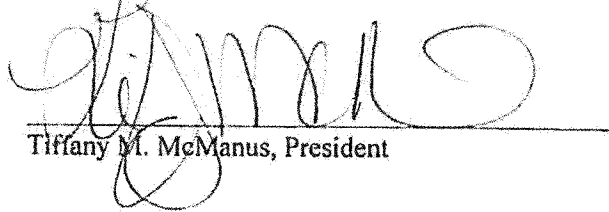
RE: Notice

Dear Mr. Whitson:

This letter is to notify you that all future letters, notices, etc., need to be mailed to my attorney, Adam Franzen, Esq., c/o Bruce Godwin, 1001 Yamato Road, Suite 302, Boca Raton, FL 33431, phone number (561) 953-1200.

I have received your letter dated, July 12, 2021. Please schedule the audit with my attorney.

Flagler Golf Management, LLC

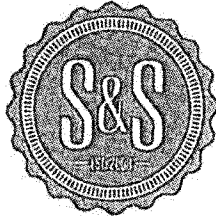


Tiffany M. McManus, President

cc:

Drew Smith, City Attorney: dsmith@shepardfirm.com

Kathleen Doyle, Finance Director: kdoyle@cityofflaglerbeach.com



SHEPARD, SMITH, KOHLMYER & HAND, P.A.
ATTORNEYS & COUNSELORS AT LAW
SHEPARDFIRM.COM

November 17, 2017

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

Terrence McManus
224 Datura Street
Suite 409
West Palm Beach, FL 33401

Re: Notice of Default of Golf Course Lease Agreement and Request to Cure

Dear Mr. McManus:

Pursuant to Section 6.2 of the Golf Course Lease Agreement (the "Lease") between Flagler Golf Management, LLC ("Flagler Golf Management") and the City of Flagler Beach (the "City"), you are hereby notified that Flagler Golf Management is in default of the Lease.

Section 4.1 of the Lease requires Flagler Golf Management to maintain "true and accurate accounts, records, financial statements, books and data (hereinafter "Records") *in a form consistent with good accounting practices.*" The Lease further requires in Section 4.3 that "Lessor [the City], 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." Flagler Golf Management has not maintained its records in a form consistent with good accounting practices. Specifically, Flagler Golf Management has failed to keep an accurate and up to date check register logging expenses incurred in operation of the golf course. In addition, the financial records provided to the City upon requests to inspect have been disorganized, incomplete, and not consistent with good accounting practices. The failure to keep accurate, timely financial records consistent with good accounting practices has impaired the City's ability to exercise its rights granted by the Lease. The City has, on multiple occasions, requested more organized and more detailed accounting records be kept and provided to the City. To date, these requests have been unheeded.

Pursuant to Sections 4.4 and 4.5 of the Lease, Flagler Golf Management is required to provide the City with a profit and loss statement on a quarterly basis and a copy of its sales tax report filed with the Department of Revenue on a monthly basis within fifteen days of filing said report with the State. Neither report has been submitted to the City in a manner consistent with the Lease.

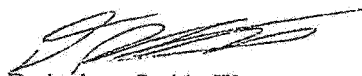
toll free 866.247.3008 office 407.622.1772 fax 407.622.1884

2500 MAHON ROAD, SUITE 100, WEST PALM BEACH, FL 33411

Flagler Golf Management has failed to pay rent in the months of November and December 2016 and January, February, March, July, August, September and October 2017. To date, the City has received payment of \$600.00 toward the base rent amount for the period of November 1, 2016 to October 31, 2017 of \$2,645.04, the remainder of which is now overdue with penalties as per the Lease. Additionally, Flagler Golf Management is in arrears on its water bill in the amount of \$1,023.16 in violation of Section 7.4 of the Lease.

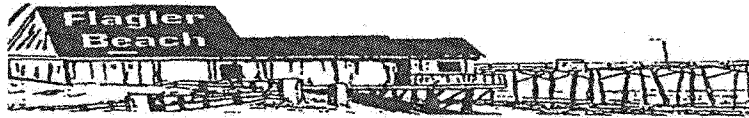
Pursuant to Section 6.2 of the Lease, if the above described defaults are not cured within thirty (30) days of the date of this letter, the City may, at its option, consider termination of the Lease. The City hopes that by bringing these matters to your attention you and it can work together to resolve these issues.

Very truly yours,



D. Andrew Smith, III

cc: Larry Newsom; Penny Overstreet; City Commission



CITY OF FLAGLER BEACH
105 S 2ND STREET
FLAGLER BEACH, FL 32136

(386) 517-2000

FLAGLER GOLF MANAGEMENT
105 S NARCISSUS AVE, SUITE 508
WEST PALM BEACH, FL 33401

INVOICE

Customer ID: 0126
Invoice Number: 0000001699
Service Date: 01/01/2020
Invoice Date: 05/19/2021
Due Date: 06/18/2021

Property Address:

Quantity	Description	Unit Price	Amount
1	CART HOUSE ROOF REPAIRS	18,566.00	18,566.00

PER LEASE, REIMBURSEMENT TO CITY FOR ROOF REPAIRS TO CART HOUSE.

Total Invoice: 18,566.00
Credits Applied: 0.00
Payments Applied: 0.00
Invoice Balance: 18,566.00

Remit payment to:

CITY OF FLAGLER BEACH
105 S 2ND STREET
FLAGLER BEACH, FL 32136

(386) 517-2000

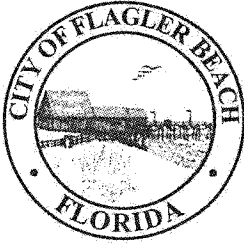
FLAGLER GOLF MANAGEMENT
105 S NARCISSUS AVE, SUITE 508
WEST PALM BEACH, FL 33401

Customer ID: 0126
Invoice Number: 0000001699
Service Date: 01/01/2020
Invoice Date: 05/19/2021
Due Date: 06/18/2021
Total Invoice: 18,566.00

Property Address:

INVOICE

EXHIBIT 7



City of Flagler Beach

P.O. Box 70 • 105 South 2nd Street
Flagler Beach, Florida 32126

Phone (386) 517-2000 • Fax (386) 517-2008

March 16, 2022

Flagler Golf Management, LLC
Attn: Tiffany McManus
2561 Sawyer Terrace
Wellington, FL 33414

Flagler Golf Management, LLC
c/o Adam Franzen, Esq.
1136 S.E. 3rd Avenue
Suite 200
Fort Lauderdale, FL 33316-1124

Flagler Golf Management, LLC
c/o Bruce Godwin
1001 Yamato Road
Suite 302
Boca Raton, FL 33431

Certified Mail Receipt No's:

7017 0190 0001 0002 5133

7017 0190 0001 0002 5126

7017 0190 0001 0002 5119

NOTICE OF COMMERCIAL LEASE TERMINATION

To Whom It May Concern:

You are hereby advised that on March 10, 2022, following a public hearing (the "Hearing"), and pursuant to Sections 6.1 and 6.2 of the Golf Course Lease Agreement, as amended (together with all amendments thereto, the "Lease"), the City Commission of the City of Flagler Beach (the "Commission") unanimously voted to terminate the Lease. As set forth on the record at the Hearing, and following service of the February 3, 2022 notice of default with an opportunity to cure, the Commission found that Flagler Golf Management, LLC is in default of and has failed to cure violations of the following Articles of the Lease:

Article 4.1 through 4.5;

Article 6.2; and

Article 19.1.

Accordingly, the Lease has been terminated and this decision is final. Flagler Golf Management, LLC shall promptly vacate the premises, as defined in Article 1.1 and 1.2 of the Lease. **Failure to vacate the premises and deliver possession of same to the City of Flagler Beach within fourteen (14) days from the date of this notice, and in good condition, shall result in an immediate action for eviction, damages, and attorney's fees and costs, pursuant to the terms of the Lease and Sections 51.011 and 83.001 – 83.251, *Florida Statutes*.**

Please contact me at (386) 517-2000, ext. 222, to facilitate the transfer of keys to the premises and properly transfer management and security of the property to the City.

Sincerely,


William R. Whitson, City Manager

EXHIBIT 8



SHEPARD, SMITH, KOHLMYER & HAND, P.A.
ATTORNEYS & COUNSELORS AT LAW
SHEPARDFIRM.COM

April 1, 2022

Flagler Golf Management, LLC
Attn: Tiffany McManus
2531 Sawyer Terrace
Wellington, FL 33414

Flagler Golf Management, LLC
c/o Adam Franzen, Esq.
1136 S.E. 3rd Avenue
Suite 200
Fort Lauderdale, FL 33316-1124

Flagler Golf Management, LLC
c/o Bruce Godwin
1001 Yamato Road
Suite 302
Boca Raton, FL 33431

Certified Mail Receipt No's.:

7010 0290 0001 9483 1487
7010 0290 0001 9483 1494
7010 0290 0001 9483 1500

Re: Notice of Intent to Sue for Eviction, Damages, and Attorneys' Fees and Costs

To Whom It May Concern:

This firm has the privilege of representing the City of Flagler Beach (the "City"). On or about March 16, 2022, Flagler Golf Management, LLC was notified via certified mail (the "Notice") that the City has terminated the Golf Course Lease Agreement, as amended, due to Flagler Golf Management, LLC's default thereof and failure to cure. The City's decision was made at a public hearing, which the principals of Flagler Golf Management, LLC attended and participated in. The Notice provided Flagler Golf Management, LLC with fourteen (14) days to vacate the premises and deliver possession of same to the City.

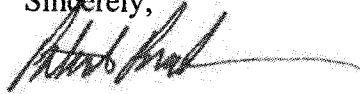
toll free 866.247.3008 office 407.622.1772 fax 407.622.1884

2300 MAITLAND CENTER PKWY, STE. 100 - MAITLAND, FL 32751

Flagler Golf Management, LLC has failed to vacate the premises and deliver possession of same to the City. Accordingly, please accept this notice as the City's intent to sue for eviction, damages, and attorneys' fees and costs. Please note that pursuant to Section 83.06, *Florida Statutes*, the City's lawsuit will seek double the monthly rent for the length of time Flagler Golf Management, LLC remains in unlawful possession of the premises.

Please govern yourself accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick Brackins', with a long horizontal flourish extending to the right.

Patrick Brackins

cc: Tiffany McManus, 2531 Sawyer Terrace, Wellington, FL 33414
Adam Franzen, Esquire, 1136 S.E. 3rd Avenue, Ste. 200, Fort Lauderdale, FL 33316-1124
Bruce Godwin, 1001 Yamato Road, Ste. 302, Boca Raton, FL 33431