

#12

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 _____ **DAY OF** _____, 2019.

PASSED AND ADOPTED THIS _____ **DAY OF** _____, 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 _____ day of _____, 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 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.

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"



Exhibit "C"



Exhibit "C"



ORDINANCE 2019-XXXX

AN ORDINANCE OF THE CITY OF FLAGLER
BEACH, FLORIDA, RELATING TO THE
PROTECTION OF GOPHER TORTOISES;
CREATING REGULATIONS RELATED TO THE
PROTECTION OF GOPHER TORTOISES DURING
DEVELOPMENT ACTIVITIES; PROVIDING FOR
CODIFICATION, SEVERABILITY, AND
PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the State of Florida has designated the gopher tortoise as a threatened species; and

WHEREAS, the Florida Fish and Wildlife Commission is primarily charged with the adoption and enforcement of programs and regulations to protect the gopher tortoise; and

WHEREAS, the City Commission finds that gopher tortoise takes occur with the City of Flagler Beach, however, due to the failure of property owners to observe and participate in the programs and regulations adopted by the Florida Fish and Wildlife Commission; and

WHEREAS, the City Commission finds that all lands within the jurisdictional boundaries of the City of Flagler Beach are potential gopher tortoise habitats; and

WHEREAS, the City Commission finds it appropriate and necessary to adopt this Ordinance to promote and assist the enforcement by the Florida Fish and Wildlife Commission of the programs and regulations adopted by it to protect the gopher tortoise.

NOW THEREFORE, be it ordained by the City Commission of the City of Flagler Beach, Florida as follows:

SECTION 1. That Appendix "A", "Land Development Regulations," Article IV, "Environmental and Cultural Resource Protection," is hereby amended as follows (note: underlined text indicated additions, ~~strikethrough~~ text indicates deletions, and elipses (***) indicates text that remains unchanged and is not reprinted here):

Sec. 4.08.1. - Purpose and applicability.

(A) The purpose of this division is to protect the threatened gopher tortoise (Gopherus polyphemus) and gopher tortoise burrows, while recognizing the rights of property owners to use their lands in a manner consistent with the rules, policies and guidelines of the Florida Fish and Wildlife Conservation Commission (FWC) and the city.

(B) All lands within the jurisdictional boundaries of the city are potential habitat for the gopher tortoise and Sections 4.08.1-4.08.7 shall apply to all properties within the City of Flagler Beach.

Sec. 4.08.2. - General prohibitions.

Unless otherwise authorized by this division, no person shall cause, suffer, permit or allow:

(A) The take, attempt to take, pursuit, hunt, harassment, capture, possession, sale or transport of any gopher tortoise or parts thereof or their eggs, or the molestation, damage or destruction of a gopher tortoise burrow, except as authorized by a permit from the FWC or when complying with FWC approved guidelines for specific actions which may impact gopher tortoises and their burrows.

(B) As required by FWC, construction activity or other disturbance within 25 feet from the opening of any potentially occupied gopher tortoise burrow without first obtaining a valid permit from the FWC or an affirmation that no such permit is necessary.

Sec. 4.08.3. - General exemptions.

(A) Agricultural, silvicultural, wildlife management and linear utility right-of-way vegetation maintenance activities which impact gopher tortoises or their burrows are exempt from this division if they are conducted in accordance with Appendix 1 of the FWC Gopher Tortoise Permitting Guidelines (April 2008 - revised April 2009, and subsequent amendments) and with other applicable FWC rules and policies found at <http://myfwc.com/GopherTortoise>.

(B) Routine yard and vegetation maintenance and landscaping activities that do not take gopher tortoises or collapse their burrows are exempt from this division.

Sec. 4.08.4. - Standards for review.

Applicants for commercial site developments, residential subdivisions, residential building permits, or tree removal permits who have not obtained an FWC permit must, prior to obtaining any permits for grading, clearing, or construction, provide to the city a burrow survey, conducted by an authorized gopher tortoise agent permitted by FWC. If a gopher tortoise burrow is located on-site during the burrow survey the applicant must either protect the burrow consistent with FWC rules, the FWC Gopher Tortoise Management Plan (September 2007 and subsequent amendments) and the FWC Gopher Tortoise Permitting Guidelines (April 2008 - revised April 2009 and subsequent amendments) and section 72-1141 of this division or obtain a permit from FWC if avoidance is not possible.

Sec. 4.08.5. - Standards for gopher tortoise protection during development activities.

84 The following are minimum standards necessary to protect gopher tortoise burrows
85 that have been designated for preservation from damage during development activities:

86 (A) *Protection of gopher tortoises and their burrows.* Prior to the commencement
87 of construction of a development, the applicant shall clearly mark such gopher
88 tortoise burrows designated for preservation that are in proximity of any area
89 where land clearing equipment is to be operated. In addition, prior to any
90 clearing of improved, vacant or unimproved land, the developer shall construct a
91 temporary barrier at the edge of construction, but not less than 25 feet from the
92 entrance of a gopher tortoise burrow designated for preservation, to prevent
93 physical damage from heavy equipment and other activities incidental to
94 development and to prevent the resident gopher tortoise from entering the
95 construction site. Required barriers should not confine the gopher tortoise and
96 shall be subject to inspection by the city as a condition of the permit approval
97 and prior to any permitted clearing. The temporary barriers shall be consistent
98 with the FWC guidelines and shall exclude gopher tortoises from the
99 construction area, and:

100 (1) Constructed to be a height so that the barrier can be seen by operators of
101 trucks and other equipment;

102 (2) Constructed as a condition of the issuance of tree removal permit, building
103 permit, or any other development permit and prior to any construction or
104 other development activities;

105 (3) Maintained in place throughout the construction; and

106 (4) Removed from the site at the end of the construction, unless otherwise
107 stipulated in the approved FWC or city permit.

108 (B) *Gopher tortoises and burrows damaged during construction.* If construction
109 activity results in the take of a gopher tortoise, or if construction activity for
110 which a FWC permit was not otherwise required results in the take of a gopher
111 tortoise burrow designated for preservation, as described in FWC Rule 68A-
112 27.004, Florida Administrative Code and Appendix 1 of the FWC Gopher
113 Tortoise Permitting Guidelines (April 2008 - Revised September 2008 and
114 subsequent amendments):

115 (1) The applicant shall immediately notify FWC.

116 (2) If required or authorized by FWC, the applicant will be required to excavate
117 the damaged burrow per FWC guidelines to determine if a gopher tortoise
118 or any commensal species have been entombed. If required or authorized by
119 FWC, any protected commensals found in the burrow must be relocated
120 consistent with the requirements of the FWC Gopher Tortoise Permitting
121 Guidelines (April 2008 - revised April 2009 and subsequent amendments).

122 **Sec. 4.08.6. - Penalty.**

123 Violations of this division shall be punishable as provided in Chapter 162, Florida
124 Statutes, FWC policies and guidelines and any other applicable state laws including
125 Chapter 379, Florida Statutes.

126 **Sec. 4.08.7. - Relation to Florida Administrative Code.**

127 (A) It is the intent of the city that this division be consistent with, and in furtherance
128 of, the provisions of Chapter 68A-27 of the Florida Administrative Code
129 (F.A.C.), the FWC Gopher Tortoise Management Plan (September 2007 and
130 subsequent amendments) and the FWC Gopher Tortoise Permitting Guidelines
131 (April 2008 - revised April 2009 and subsequent amendments) and that it satisfy
132 any obligation the city may have under these provisions to prevent harm to
133 gopher tortoises by its election to adopt this regulation.

134 (B) Nothing in this division shall be construed to authorize or license any act
135 prohibited by the Florida Administrative Code or to impose requirements or
136 conditions that are inconsistent with those in the FWC rules, the FWC Gopher
137 Tortoise Management Plan (September 2007 and subsequent amendments) and
138 the FWC Gopher Tortoise Permitting Guidelines (April 2008 - revised
139 September 2008 and subsequent amendments), or an FWC permit.

140 **SECTION 2.** This Ordinance shall be incorporated into the Flagler Beach
141 City Code. Any section, paragraph number, letter and/or any heading may be changed
142 or modified as necessary to effectuate the foregoing. Grammatical, typographical and
143 similar or like errors may be corrected, and additions, alterations, and omissions not
144 affecting the construction or meaning of this ordinance or the City Code may be
145 freely made.

146 **SECTION 3.** If any Section or portion of a Section of this Ordinance proves
147 to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair
148 the validity, force, or effect of any other Section or part of this Ordinance.
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150 **SECTION 4.** All Ordinances or parts of Ordinances in conflict with any of
151 the provisions of this Ordinance are hereby repealed.
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153 **SECTION 5.** This Ordinance shall become effective immediately upon its
154 passage and adoption as provided by law.
155

156 PASSED ON FIRST READING THIS _____ DAY OF _____, 2019.
157

158 PASSED AND ADOPTED THIS _____ DAY OF _____, 2019.
159

160 CITY OF FLAGLER BEACH, FLORIDA
161 CITY COMMISSION
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165 _____
166 Linda Provencher, Mayor

166 ATTEST:
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