

**WILLOWICK GOLF COURSE
MANAGEMENT AGREEMENT**

THIS MANAGEMENT AGREEMENT ("Agreement") is made as of this 15th day of May, 2019 by and between BILLY CASPER GOLF, LLC ("BCG"), a Virginia limited liability company, having an address at 12700 Sunrise Valley Drive, Suite 300, Reston, VA 20191 and the CITY OF GARDEN GROVE ("Owner"), a California municipal corporation, having an address at 1222 Acacia Parkway, Garden Grove, CA 92840.

WHEREAS, Owner owns certain real property commonly known as Willowick Golf Course, currently an 18-hole golf course, clubhouse, driving range and other amenities located at 3017 W 5th St, Santa Ana, CA 92703 (the "Club"); and

WHEREAS, Owner recognizes the benefit of engaging a third-party management company to manage the affairs of the Club; and

WHEREAS, BCG is in the business of managing golf courses and clubs; and

WHEREAS, Owner desires to utilize the services and experience of BCG in connection with the management and operation of the Club, and BCG desires to render such services, upon the terms and conditions set forth in this Agreement; and

WHEREAS, BCG intends to form a wholly-owned single-purpose subsidiary entity registered to do business in the state of California, Willowick Golf Management, LLC, ("WWGM") for the purpose of performing some or all of the services outlined herein; and

WHEREAS, nothing in this Agreement shall be construed or interpreted to mean that BCG and WWGM are alter egos of each other; and

WHEREAS, the parties hereto acknowledge and agree that the formation and performance of WWGM shall not relieve BCG or Owner from any of their respective duties, obligations, and responsibilities set forth herein;

NOW, THEREFORE, in consideration of the covenants and agreements of the parties contained herein it is mutually agreed to as follows:

1. **DEFINITIONS.** The following terms, as used in this Agreement, shall have the following meaning, unless otherwise set out in this Agreement.
 - A. **Annual Budget and Program:** Documents presented by BCG for the operation of the Club to the Owner as part of the Owner's annual budget process, including but not limited to the following: Annual Business Plan and Operating Budget, Agronomic Plan and Marketing Plan.
 - B. **BCG:** Billy Casper Golf, LLC. a Virginia Limited Liability Company.
 - C. **Fiscal Year:** July 1st to June 30th.
 - D. **Gross Revenue:** All revenues and income of any nature derived directly or indirectly from the Club or from the use or operation thereof, including green fees, gross sales proceeds from the sale of green fees, memberships or annual passes to the Club, monthly dues from annual pass holders of the Club, rental fees for golf carts, golf clubs and other rental items, net lesson fees, range balls, food and beverage revenues (including mandatory service charges, revenue generated from space rentals and from meetings, banquets, parties, receptions, tournaments and other group gatherings) merchandise sales, and the proceeds paid for any business interruption, use, occupancy or similar insurance policy claim.

Excluded from "Gross Revenue" are any credits or refunds made to customers, guests or patrons; any sums and credits received by Owner for lost or damaged merchandise; any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, amusement taxes, tourist taxes or charges; any proceeds from the sale or other disposition of the Club, Furniture, Fixtures & Equipment (FF&E), or other capital assets; any property and/or liability insurance proceeds; any proceeds of financing or refinancing of the Club; amounts contributed by Owner pursuant to the terms of this Agreement and Income or interest derived from the Club bank account. Gross Revenues shall be determined on an accrual basis and in accordance with generally acceptable accounting principles ("GAAP").

- E. Minimum Funds Balance: The minimum dollar amount of the budget for all Operating Expenses for each month for the Club, as set forth in the Annual Budget and Program approved by the Owner. At no time shall the Minimum Funds Balance be less than Thirty thousand dollars (\$30,000).
 - F. Net Operating Income: Gross Revenue minus Operating Expenses.
 - G. Operating Expense: All of the costs attributable to the operation of the Club, including but not limited to: Base Management Fees, Incentive Management Fees, payroll, payroll taxes, benefits, all employee related costs arising out of the employee – employer relationship to include post-employment costs, insurance, supplies, marketing materials, services, utilities, merchandise, food and beverage procured for resale, maintenance and repair of equipment and buildings, service agreements, golf cart and equipment lease payments including any buyout or early termination costs related to the termination of this Agreement, and real and personal property taxes levied on the Club.
 - H. Club: 18-hole public golf course owned by the Owner and commonly known as Willowick Golf Course, which includes the clubhouse, driving range and other amenities located in Santa Ana, CA.
 - I. WWGM: Willowick Golf Management, LLC, a wholly-owned subsidiary of Billy Casper Golf, LLC registered to do business in California, formed to perform some or all of the services at the Club.
 - J. Working Capital: Funds utilized to pay Operating Expenses of the Club.
2. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon May 15, 2019 ("Effective Date"), and unless terminated as provided for herein, shall expire five (5) years from the Effective Date ("Initial Term") on June 30, 2024, and thereafter shall renew for two successive periods of three (3) years (each such period being an "Extension Term") upon written mutual agreement by Owner and BCG no later than one hundred twenty (120) days prior to the expiration date of the term immediately preceding the possible Extension Term.
3. **APPOINTMENT OF BCG AS MANAGER.** From and after the Effective Date, Owner hereby grants to BCG the right, subject to Owner's input, to supervise and direct the management and operation of the Club for and on the account of Owner. BCG hereby accepts said grant and agrees that it shall supervise and direct the management and operation of the Club, all pursuant to and in accordance with the terms of this Agreement, and Owner shall reasonably cooperate so as to permit BCG to carry out its duties hereunder.
4. **BILLY CASPER GOLF, LLC SERVICES.** Services rendered by BCG to Owner shall be as follows: Subject to the terms of this Agreement, BCG, as an independent contractor, shall have the sole and exclusive right to operate and manage the Club. Owner and BCG agree that they shall cooperate reasonably with each other to permit BCG to carry out its duties under this Agreement. BCG shall have the responsibility and authority to provide general operational management services for the Club, including, without limitation, the following services:

- A. Employees. All personnel employed at the Club shall at all times be employees of WWGM. WWGM shall, as an Operating Expense of the Club, hire, discharge, promote, supervise, direct and train all WWGM employees at the Club, fix their compensation and fringe benefits, and, generally, establish and maintain all policies relating to employment and employment benefits. Compensation of WWGM's employees shall be comparable to other municipal-owned golf courses of similar size, unless specifically approved by Owner's City Manager or designee, taking into consideration recognizable differences in scope of work and cost of living at other golf courses. The employees hired to perform the services required hereunder shall be properly qualified for their positions and duties. All employees of WWGM, other than salaried management staff, shall use a time sheet to keep track of the hours worked.

If an employee of BCG or an affiliate of BCG that is not employed at the Club is assigned temporarily or on a part-time basis to perform services at the Club, such employee's salary equal in proportion to the period of time such employee dedicates to the Club, and actual expenses incurred traveling to and from the Club, shall be an Operating Expense of the Club.

Owner shall not, without the written consent of BCG, offer employment to, hire or employ any BCG or WWGM employee or individual who has been a BCG or WWGM employee at any time during the six (6) month period prior to the proposed offer of employment or hiring by Owner. The obligations under this paragraph shall remain effective from the Effective Date through a period of one (1) year after the termination of this Agreement.

- B. Inventory – Merchandise and Items for Re-sale. BCG shall, as an Operating Expense of the Club, obtain merchandise for the pro shop at the Club and food and beverage items, all in accordance with the Annual Budget and Program.
- C. Supervision. BCG shall supervise and manage all day-to-day operations of the Club to include starting services, course marshals, golf pro shop, building and course maintenance, security, cart rental, driving range, food and beverage service, golf instruction, membership sales efforts, practice facilities, administration, management and other ancillary services at the Club.
- D. Equipment. BCG shall, as an Operating Expense of the Club, procure and maintain all equipment necessary and appropriate for the profitable and efficient operation of the Club, all in accordance with the Annual Budget and Program.
- E. Licenses and Permits. BCG shall, as an Operating Expense of the Club, procure and maintain all licenses and permits necessary for the operation of the Club including related to food preparation and sale of alcoholic beverages as permitted by law.
- F. Policies. BCG shall determine, establish, and implement the policies, standards, and schedules for the operation and maintenance of the Club and all matters affecting customer relations, including the management of all course reservations, tee times and tournaments.
- G. Purchasing and Procurement. BCG shall, as an Operating Expense of the Club, acquire all goods and services necessary to carry out BCG's duties and responsibilities set forth in this Paragraph 4, including operating supplies, operating equipment, and inventories as are deemed necessary by BCG and/or Owner to the normal and ordinary course of operation of the Club and to operate the Club in accordance with the Annual Budget and Program. In purchasing operating supplies, operating equipment, inventories (including merchandise to be sold in the golf shop) and services for the Club, BCG may utilize its purchasing procurement services and/or other group buying techniques involving other clubs managed by BCG, provided that the cost thereof shall be competitive. BCG may

receive and retain a minor fee or other compensation from vendors and service providers in exchange for BCG's services in making the benefit of volume purchases available to the Club or negotiating and implementing the arrangements with such vendors or providers, provided that any fee or compensation paid to BCG is separate and apart from any discounts or pricing off invoice available to the Club. **Any available discount, rebate, fee or compensation which is directly attributable to the purchases made by BCG for the operation of the Club shall be remitted directly to the Club from the vendor.**

- H. Consultation. Except as provided in Paragraph 4A pertaining to the assignment by BCG and WWGM of personnel, BCG shall, as part of its services hereunder and without additional compensation, make its staff available to Owner upon request for consultation regarding the Club, including, but not limited to capital improvements or projects which may include modifications to the vertical structures or golf course.
- I. Marketing. BCG shall create, direct, and implement an annual marketing plan for the Club as part of the Annual Budget and Program. The marketing plan for the Club will include a market analysis, a summary of golf programs to include rates, membership structure (if applicable), and strategies for increasing acquisition, engagement and yield with the purpose of achieving the budgeted financial goals and other marketing-related goals for all Club departments.

BCG shall, as an Operating Expense of the Club, as part of its standard marketing operation, obtain and manage:

1. Marketing systems, including internet (web site, e-mail, e-commerce); electronic tee sheet program (reservation system, customer database, POS); credit card processing; and branding materials (graphic design, collateral, photography);
2. Customer acquisition programs, including advertising (print, electronic, display); direct marketing (direct mail, broadcast e-mail); promotional offers; and community and vendor partnerships and sponsorships;
3. Customer retention programs, including special events and programs; promotional offers; and membership events and programs;
4. Sales programs, including outing, membership, and event sales management; and
5. Quality assurance programs, including customer surveying; 'secret shopper' on-site visits and telephone sales calls;
6. Web site development, management and hosting (via the Billy Casper Digital Network – a proprietary web hosting and content management system);
7. Social media and online reputation management (via various third party and proprietary tools);
8. Creative design services (via BCG's in-house design firm).

Certain of these programs in items 6, 7 and 8 above will result in incremental charges that will be designated as "Centralized Services" defined in paragraph 7F below. In accordance with BCG policy, these charges will a) be approved as part of the annual budgeting process and b) without markup and profit to BCG.

BCG shall coordinate and oversee all third-party contractors' work in connection with the production and implementation of these programs. BCG shall also include, as appropriate, the Club as a participant in BCG-shared marketing programs, including regional and national advertising and promotions, round sharing and referrals through the reservation system, and use of the name and mark 'Managed by Billy Casper Golf.'

Furthermore, the Club shall be included in BCG's shared marketing database. This database is an aggregated customer database for all participating clubs and other BCG owned marketing efforts (such as World's Largest Golf Outing, Women on Course, Buffalo Communications). Participating clubs can target customers in the database based on a

variety of demographic attributes (location, age, behaviors, etc.). To participate, the Club must "share" its own database with the larger cooperative. All customer information will remain "blind" to other clubs. The Club may opt out of the shared marketing database by checking this box:

All advertising fees and promotional fees paid by third parties to the Club shall belong to and constitute Gross Revenues of the Club.

- J. Accounting. BCG or WWGM, as appropriate under separate agreements, shall pay all vendors of the Club subject to the availability of funds in the Bank Account after payment of the Management Fee and, when applicable in accordance with the terms of the Agreement, the Management Incentive Fee. BCG shall provide separate budgeting, bookkeeping and reporting services to Owner for the Club. Copies of all books and records shall be kept at the Club. All books, records, software, data, programs, manuals and the like shall remain the property of Owner and BCG shall be entitled, but not obligated, to keep a copy of said books, records, software, data, programs, manuals and the like for its own records as it desires.
1. Reporting. BCG shall prepare and deliver to Owner, in accordance with BCG standard procedures and format, on an accrual basis and generally accepted accounting principles (GAAP):
 - a. Regular monthly and annual financial statements which shall include a year-to-date balance sheet, income and expense statement, and cash flow, including all itemized Operating Expenses for that month and itemized Gross Revenues for that month (itemizing each source of Gross Revenues including, without limitation, green fees, annual fees, golf cart rentals, pro shop sales, food and beverage sales, lesson fees, nonrefundable tournament rent reservations and driving range operations);
 - b. Check register or equivalent report.
 2. Upon Owner's request, BCG shall provide all accounting data and reports in electronic form. BCG shall not be responsible for the accounting or tax reporting requirements of the Owner, including but not limited to, the depreciation, amortization or addition of assets and equipment, Owner's equity, debt service principal, loan amortization, accounting treatment relating to any full or partially refundable membership initiation fees or deposits, or payment of any invoices which relate to a period prior to the Effective Date. Owner shall provide BCG opening entry data for the balance sheet within 15 days of the Effective Date.
 3. Final monthly operating statements shall be furnished to Owner by the 20th day following the last day of each month, and annual operating statements shall be furnished by the 45th day following the last day of each fiscal year. At Owner's discretion, the annual operating statement shall be audited and prepared by a certified public accountant chosen by Owner, the cost of which shall be an Operating Expense of the Club. This audit shall be performed at the Club site, and BCG shall make every reasonable effort to comply with the auditor's requests.
 4. Annual Budget and Program. BCG shall prepare and deliver to Owner no later than November 1st of each year (except for the first full or partial fiscal year when BCG shall prepare and deliver to Owner no later than thirty (30) days after the Effective Date) for the following fiscal year: (a) an Annual Operating Budget, including revenues and operating expenses and labor burden (to include rates of pay, incentive or commission structures) for each department of the Club; a

merchandise buying plan for the pro shop; a comparison to the annual operating budget for the immediately preceding year and a projection of anticipated monthly revenues and expenses and cash flows for the Club for the following fiscal year, including, without limitation, a reasonable contingency and anticipated Working Capital requirements for the Club for the year; (b) a recommended capital expenditures budget for the next fiscal year; (c) a Policies and Procedures Outline for the Club, including, without limitation, operating policies, proposed hours of operation, policies related to complimentary golf course and Club use by Owner's representatives and employees, standards for operations and quality of service standards; (d) an Agronomic Plan including staffing assumptions, chemical and fertilization applications including planned agronomic practices; (e) Marketing Plan as described in Paragraph 4G (collectively, the "Annual Budget and Program"). BCG and Owner shall use their mutual best efforts to agree upon the Annual Budget and Program for the following year on or before Fiscal Year end. **Owner shall have the final approval and final decision-making authority over the Annual Budget and Program.** Owner shall provide BCG written confirmation of its approval of the Annual Budget and Program within thirty (30) days of BCG's submission of the Annual Budget and Program to Owner. If the Owner does not provide the written approval or rejection within the aforementioned thirty (30) day period, the Annual Budget and Program shall be deemed approved.

Owner acknowledges that the financial and operational performance of the Club could be affected by circumstances or events beyond BCG and/or WWGM's control. BCG shall not be deemed to have made any guarantee, warranty, or representation with the Annual Budget and Program. Under no circumstances shall Owner have any claim or cause of action against BCG in the event that the financial goals, targets, and benchmarks established in the Annual Budget and Program are not met or achieved.

Each party may, from time to time, propose to the other party, in writing, during the course of the year, such changes or amendments to the Annual Budget and Program as such party may consider necessary or appropriate, and BCG and Owner shall use their mutual best efforts to act upon such proposal within thirty (30) days after such proposal is made provided any such change or amendment shall be subject to Owner's prior written approval. If the Owner fails to provide written approval or rejection of BCG's proposed changes or amendments to the Annual Budget and Program within thirty (30) days after such proposal is made, said changes shall be deemed approved. BCG shall secure the prior approval of Owner for total expenditures which exceed the total expenditure amount approved in the Annual Budget and Program, however, as necessary, (i) BCG has the ability to allocate funds from individual expense line item to another expense line item within the Annual Budget and Program, and (ii) expenditures which will exceed any line item in the Annual Budget and Program by Ten Thousand Dollars (\$10,000), so long as all such expenditures do not exceed Fifty Thousand Dollars (\$50,000) in the aggregate for the entire Annual Budget and Program, except for expenditures necessary in the event of emergencies for which prompt notice will be given to Owner.

5. Payroll and Benefits. BCG, on behalf of WWGM, shall establish, administer, and maintain the payroll procedure and systems for the WWGM employees at the Club and shall be responsible for overseeing the benefits to, and handling the appropriate payroll deductions for, individual employees. Benefits will be limited to vacations, sick leave, medical insurance coverage, and 401(k) plan, as approved by Owner pursuant to the Annual Budget and Program. All employees of the Club shall be employees of WWGM, and WWGM shall comply with applicable Federal and State employment laws.

6. Vendor Accounts. If necessary, BCG shall coordinate with Owner and appropriate vendors to establish any new vendor accounts with appropriate credit limits applied for on behalf of and in the name of the Owner. BCG and/or WWGM shall act as Agent for the Owner with regard to payment of vendors, and Owner accepts full responsibility to pay all vendors who provide goods and/or services to or on behalf of the Club. All such contracts, leases and financing agreements shall be approved by the Owner.
- K. IT Services. BCG shall create, direct, and implement activities IT functionality, in a safe and stable manner, for the Club. BCG shall, as an Operating Expense of the Club, obtain and manage:
1. Networking infrastructure. The hardware and software resources of an entire network that enable network connectivity, communication, operations and management of a computer environment. The entire network infrastructure is interconnected, and can be used for internal communications, external communications or both. The entire network infrastructure may include routers, switches, wireless routers, cables, network operations and management software, operating systems, firewall and network security applications, network connectivity (cable, T-1 Lines, DSL, satellite, wireless, IP addressing, etc.)
 2. Telephone Systems. The electronic transmission of voice, fax, or other information between parties including the use of **VoIP (voice over Internet Protocol)** for the delivery of voice communications over the Internet. This includes voice, fax, SMS, and/or voice-messaging applications that are transported via a network.
 3. Hardware and Software to include the physical components that make up a computer system and then the software that runs on those physical components.
 4. Virus and Malware Protection software designed to prevent viruses, worms and Trojan horses from getting onto a computer as well as remove any malicious software code that has already infected a computer.
 5. Network Intrusion Protection software application that monitors network or system activities for malicious activities. Intrusion detection and prevention systems are primarily focused on identifying possible malicious incidents, logging information about them, and reporting attempts.
 6. Network Monitoring is the use of a system that constantly monitors the computer network for slow or failing components and notifies the network administrator (via email, SMS or other alarms) in case of outages.
 - i. PCI Compliance. BCG will review the network and work with Owner as part of the start-up and transition process in order to determine necessary steps to achieve compliance with the Payment Card Industry Data Security Standards ("PCI DSS") at the Club. PCI DSS is a set of requirements designed to ensure that all companies that process, store or transmit credit card information maintain a secure environment with focus on improving payment account security throughout the transaction process.
 7. IT Service Reimbursement As part of the Annual Business Plan there shall be a monthly support fee for the remote support of the IT services as referenced. If the issue cannot be resolved remotely and requires BCG corporate based personnel to be on site at the Club BCG IT Services shall be paid an amount equal to One

hundred dollars (\$100.00) per hour and necessary hardware upgrades/software installation without mark-up or profit to BCG.

BCG shall coordinate and oversee all third-party contractors' work, if cost effective and appropriate, in connection with the implementation of these programs.

L. Operating Expenses and Owner's Remittance.

1. Minimum Funds Balance. At the end of each calendar month, after paying the Operating Expenses of the Club, beginning with the Management Fees (including Base Management Fees and Incentive Management Fees), and other expenses authorized by Owner, BCG shall remit directly to Owner all amounts (if any) then in the Operating Account (as hereinafter described) in excess of the Minimum Funds Balance (as hereinafter described) by wire transfer or on line transfer to an account as Owner may from time to time designate by written notice to BCG (the "Owner's Remittance").

As used herein, the Minimum Funds Balance for the Club shall be defined as the dollar amount of the total budget for all Operating Expenses (as set forth in the Annual Budget and Program) for the month following the current month within the Term of the Agreement. At no time shall the Minimum Funds Balance be less than Thirty thousand dollars (\$30,000).

2. Operating Expenses. BCG shall pay all Operating Expenses for the Club on behalf of Owner from the Operating Account which expenses shall include, but not be limited to, Management Fees (including Base Management Fees and Incentive Management Fees), payroll, payroll taxes, benefits, all employee related costs including post-employment costs, insurance, supplies, marketing materials, services, utilities, maintenance and repair to equipment and buildings, service agreements, golf cart and equipment lease payments including any buyout or early termination costs related to the termination of this Agreement and real and personal property taxes levied on the Club. BCG will collect from and remit on behalf of Owner, sales, use, value-included and excise taxes on sales and rentals at the Club. Owner is required to ensure that sufficient Working Capital is present in the Operating Account to enable BCG and/or WWGM to pay, on behalf of Owner, all Operating Expenses. In all events, Owner is responsible to pay all Operating Expenses in the event BCG or WWGM is unable to pay all or any part of the Operating Expenses for any reason. BCG will not pay Federal or State income taxes levied on Owner. Under no circumstances shall BCG or WWGM be liable for Federal, State, or local taxes of any kind whatsoever levied against Owner or the Club in relation to Club ownership, leasing, or operations.
3. Initial Funding. Until such time as the Annual Budget and Program are approved by Owner, Owner gives BCG approval to operate the facility in accordance with this Agreement and in BCG's best judgment after consultation with Owner. Owner shall provide initial funding in the amount of Thirty thousand dollars (\$30,000) for operations prior to approval of the Annual Budget and Program (the "Initial Funding") and shall at all times ensure that the Minimum Funds Balance is maintained in the Operating Account upon contract execution. If operating revenues are insufficient to cover expenses, upon BCG's notifying Owner of such operating revenue shortfall, Owner shall have twenty (20) days to deposit into the Operating Account the funds necessary to cover such deficits and to restore the Minimum Funds Balance. Owner further shall be responsible to pay all late fees, interest, and other amounts charged by vendors and other parties who supply labor, services or materials to the Club and to whom such amounts are owed, in

the event that BCG was unable to pay such vendors on time due to a shortfall in the Operating Account.

- M. Owner's Meeting. BCG shall, periodically, consult with the Owner regarding the Club and its operations at a reasonable time, date and place designated by Owner.
 - N. Limitations. BCG shall obtain Owner's prior written approval for (i) contracts in excess of ten thousand dollars (\$10,000), (ii) contracts in excess of twelve (12) months in duration unless the same can be terminated upon thirty (30) days written notice without cost or fee to Owner, and (iii) contracts with affiliates of BCG.
 - O. Assignment of Operations. Forty-five (45) days after the applicable termination effective date of this Agreement, BCG and/or WWGM, as appropriate, shall assign to Owner or Owner's designee, and Owner or Owner's designee shall accept said assignment of, all operating accounts, vendor accounts, inventory, accounts receivable, and accounts payable, which transfer shall be completed upon BCG and/or WWGM receiving all fees due pursuant to this Agreement.
5. **BANK ACCOUNT.** Owner will establish and maintain a bank account in Owner's name at a bank of Owner's choosing (the "Operating Account") for the purposes of accepting daily deposits of the Gross Revenues. The funds in the Operating Account, and all interest thereon, are the property of Owner. BCG shall pay the Operating Expenses of operation of the Club using the check-writing privileges and direct debit services associated with the Operating Account; provided that such expenses are included in the approved Annual Budget and Program and provided further that no payment for more than \$15,000 shall be made from the Operating Account without the express consent of the City Manager or designee except for payroll expenses. BCG and/or WWGM's payroll provider may debit the Operating Account for the regular payroll expense. Additionally, Owner shall have the right, in its sole discretion, to approve the person or persons who shall have the authority to sign checks for BCG. Owner shall provide BCG duplicate copies of all bank statements by the tenth (10th) day of the month, to the extent that statements are not directly available to BCG.
6. **DEPOSITS AND PAYMENTS.** Cash on hand for register tills, petty cash, and the change bank shall not exceed \$5,000, and shall be deposited in the on-site safe nightly. Daily deposits shall be reconciled to the Point of Sale daily transaction reports on a daily basis. The consolidated Point of Sale daily transaction reports will be made available to City Manager as requested. BCG will arrange for armored car pick-up service on a regularly scheduled basis. BCG shall be responsible for having all deposits prepared and ready for the scheduled armored car pick-up at the assigned time. Net revenue overages are deemed revenue at the end of the Fiscal Year. BCG shall be responsible for any returned checks/credit cards, unless BCG shows that it followed proper protocols in accepting the check, e.g. checking for identification. BCG shall pay all budgeted Operating Expenses (or other costs as approved in advance by City Manager) from the Operating Account. Payment of all legitimate claims shall be made in a timely manner.
7. **INSURANCE.** BCG shall secure and maintain a separate general liability, crime, D & O, and workman's compensation insurance coverage for the Club as set forth in Exhibit A, provided BCG has continued access and control of the property constituting the Club. These coverages, limits and deductibles set forth in Exhibit A are subject to change each policy year. BCG shall provide written notice to owner in the event of a coverage, limit, and/or deductible change.

Owner shall notify BCG in writing if Owner desires to have any property insured through BCG Master Insurance policy. The written notice must be delivered to WWGM such that it is received by BCG 30 days prior to the effective date of such coverage. Owner shall be liable for the payment of the premiums of said insurance for so long as Owner shall own the Club during the term of this Agreement. The coverage shall be terminated upon termination of the Agreement.

Such policies shall name BCG, WWGM, Owner, and any applicable third parties as additional insureds under such policies. All insurance policies required hereunder shall contain a provision requiring the insurer to notify BCG, WWGM, Owner and other named insureds at least thirty (30) days in advance of any cancellation or termination of such policy and satisfactory waiver of subrogation provisions. BCG's secured coverages shall not include D & O coverage for Owner. Except as provided for elsewhere in this Paragraph, BCG shall be responsible for securing and maintaining all of the insurance policies required hereunder, provided, however, that BCG shall have no obligation to pay such premiums from its own funds. BCG shall obtain competitive bids for the coverage each year. BCG contemplates that it will secure such insurance as a part of a blanket policy; the premiums attributable to the Club shall be determined by making a reasonable allocation based on the relation of the amount of insurance carried for the Club to the total policy amount provided for other BCG clubs in the blanket policy, and the blanket policies shall have coverage in the amounts set forth in **Exhibit A**. These coverages, limits and deductibles are subject to change each policy year. BCG shall provide written notice to Owner in the event of a coverage, limit, and/or deductible change. The premiums for any and all such policies shall be paid from the Operating Account to be provided by Owner pursuant to Paragraph 5 hereof and in accordance with the Annual Budget and Program, or by Owner in the event there is insufficient Working Capital available.

8. COMPENSATION AND FEES.

- A. Base Management Fee. For its services hereunder, BCG shall be paid a Base Management Fee (the "Base Management Fee") of Seven thousand five hundred dollars (\$7,500.00) per month. The Base Management Fee shall be payable on the fifth day of each month from the Operating Account. The Base Management Fee shall be a net fee to BCG and shall not include Club expenditures as provided for in this Paragraph 8 or any other Operating Expenses. Commencing on January 1, 2020, and for each subsequent year and possible Extension Term thereafter, the Base Management Fee shall increase by an amount equivalent to the previous year's annual Consumer Price Index for All Urban Consumers for the Los Angeles-Long Beach-Anaheim area, not to exceed three-percent (3%).
- B. Incentive Management Fee. In addition to the Base Management Fee, BCG shall be entitled to earn an Incentive Management Fee for each full Fiscal Year during the Term. For Fiscal Year 2019 and each year thereafter, BCG shall receive an amount calculated as ten percent (10%) of the positive Net Operating Income in excess of two hundred fifty thousand dollars (\$250,000) (the "Incentive Management Fee"). Notwithstanding anything to the contrary in this Paragraph 8, the Incentive Management Fee earned by BCG in any Fiscal Year shall not exceed Thirty five percent (35%) of the Base Management Fee paid to BCG for that Fiscal Year. The Incentive Management Fee earned for a Fiscal Year shall be paid no later than seventy-five (75) days after the Fiscal Year end of the Fiscal Year immediately following the Fiscal Year for which it is calculated and in which it was earned.

All Base Management Fees and Incentive Management Fees during the term shall be paid to BCG from the Operating Account as Operating Expenses. Owner shall pay directly to BCG any fees not payable until after the expiration or termination of this Agreement. Any Base Management Fee not received by the fifth (5th) day of the month, any Incentive Management Fee not received within seventy-five (75) days after the Fiscal Year end, and any other sums due under this Agreement and not paid when due (including, but not limited to reimbursement for Centralized Services as defined in Paragraph 8F below and Operating Expenses) shall be delinquent (hereafter, "Past Due Amount") and subject, without notice or demand, to late fees and interest as follows:

1. Late Fee. A late fee of Five Percent (5%) of the amount due shall be added to and shall become a part of any Past Due Amount.

2. Interest. Any Past Due Amount not received within ten (10) days of its due date shall bear interest from the date payment was due until the date paid in full at the then-current judgment rate of interest of the State of California.
 3. Collection Fees and Costs. In the event any Past Due Amount is not received within ten (10) days of its due date, Owner shall pay to BCG or WWGM, as appropriate, all costs of collection, including reasonable attorneys' fees.
- C. Start-up Travel. For changes requested by Owner, during the initial ninety (90) days of the agreement, BCG's IT, Human Resources, and Regional Support corporate based employees shall be reimbursed for all reasonable travel-related expenses, including airfare, automobile (mileage reimbursement or rental car), lodging, and meals, in connection with the start-up and transition of the Club to BCG. Such reimbursement shall not exceed six thousand dollars (\$6,000).
- D. Ongoing Travel. After the Start-up Travel period of 90 days - BCG's corporate based employees shall be reimbursed for all reasonable travel-related expenses, including airfare, automobile (mileage reimbursement or rental car), lodging, and meals, in connection with its services hereunder pursuant to the approved line item in the approved Annual Budget and Program, provided that any such expenses shall be appropriately allocated among other facilities benefited by such travel. BCG shall provide documentation of all expenses in a form acceptable to Owner. Such reimbursement shall not exceed six thousand dollars (\$6,000) per Fiscal Year.
- E. Owner's Review. BCG's services herein shall include management and oversight of the turn-key accounting function as set forth in Paragraph 4J, and upon reasonable notice (which may be verbal) representatives of Owner shall have the right, at any time during normal business hours, to review all of BCG's books and records including the general ledger, accounts payable, income statement, balance sheet, and budget variance reports relating to the Club including, without limitation, BCG's work papers related to BCG's preparation of operating statements. All expenses related to any such review shall be borne exclusively by Owner unless such review reveals an overpayment of any fees or other amounts in which case BCG shall pay for the review. Owner's exercise of its right of review or to dispute any fee or expense reimbursement claimed by BCG shall not delay payment of the undisputed portion thereof by Owner within the time frames set forth herein. Payment by Owner of a fee or other amount hereunder shall not constitute a waiver of Owner's right to subsequently dispute the amount thereof. If Owner and BCG determine that any portion of the Base Management Fee or any other amount was improperly paid to BCG, BCG shall refund such improperly paid fee together with interest thereon from the time when such fee was paid to BCG. If there is any dispute between the parties regarding whether or not any payments of the Base Management Fee or any other amount were proper, such disputes shall be resolved by a court of competent jurisdiction as set forth in Paragraph 15D.
- F. Centralized Services. BCG may cause to be furnished to the Club certain services ("Centralized Services") which, in BCG's experience, are able to be furnished in a more cost effective and efficient manner on a central or regional basis to golf facilities managed by BCG. The costs to provide such services shall be aggregated and billed to the clubs by BCG rather than via a third-party vendor. Centralized Services shall be approved as part of the Annual Budget and Program. BCG represents that this reimbursement amount shall consist of an amount not exceeding the actual cost of the services without mark-up or profit to BCG including salary and employee benefit costs, cost of equipment used in performing such services, and overhead costs of the home office or any regional or other local office providing such services.
9. **CAPITAL EXPENDITURES.** The cost of all Capital Improvements shall be deemed to include any item purchased in connection with the operation of the Club which:

- A. Has an economic useful life in excess of one (1) year, and
- B. Has a cost in excess of two thousand five hundred dollars (\$2,500).

All Capital Expenditures for Capital Improvements shall be the responsibility of Owner and all decisions as to whether or not to undertake any capital improvements projects or otherwise in respect of any capital improvements shall be made by Owner in consultation with BCG.

10. DEFAULT AND REMEDIES.

- A. Owner Default. The following shall constitute an event of default ("Event of Default") by Owner under this Agreement:
 - 1. Failure to timely pay BCG any fees, compensation, or reimbursement due BCG pursuant to this Agreement;
 - 2. Failure to timely provide Initial Funding, Minimum Funds Balance, and/or Working Capital;
 - 3. Failure by Owner to perform any material obligation set out in this Agreement, including, but not limited to, failing to consult with BCG regarding budgets or capital improvements and failing to cooperate in good faith with BCG regarding budgets or capital improvements;
 - 4. Assignment by Owner for the benefit of its creditors, or becoming a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization; or
 - 5. Interference or lack of cooperation by Owner which hinders or renders BCG and/or WWGM unable to fulfill its obligations under this Agreement as objectively determined by BCG.
- B. BCG Default. The following shall constitute an event of default ("Event of Default") by BCG under this Agreement:
 - 1. Failure to maintain the amenities of the Club in an objectively reasonably good condition, not including failures resulting from abnormal weather conditions, acts of God, or other events or conditions beyond the reasonable control of BCG;
 - 2. Failure to operate the Club in accordance with the approved Annual Budget and Program;
 - 3. Failure of BCG to perform any material obligations set forth in this Agreement; or
 - 4. Assignment for the benefit of its creditors, or becoming a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization.
- C. Notice and Cure. When either party to this Agreement believes that the other party (the "Defaulting Party") has committed an Event of Default, it shall give written notice thereof to the Defaulting Party. The written notice must clearly state that it is a notice of default and provide a detailed description of the alleged default. The written notice will not be deemed a proper notice until sufficient detail to clearly and fully inform the Defaulting Party of the alleged default is provided. The Defaulting Party shall have ten (10) calendar days from the date of the proper notice to cure the default unless the default is a non-monetary default and, due to

weather, growing conditions or other factors beyond the reasonable control of the Defaulting party, requires more time to cure. In order to qualify for a longer cure period, the Defaulting Party must earnestly begin to cure within thirty (30) calendar days from the date of the notice to cure and diligently pursue such cure. In no event will the Defaulting Party have more than sixty (60) days from the date of the notice in the aggregate to cure a non-monetary default. Notwithstanding anything to the contrary, neither Owner nor BCG shall be entitled to any further notice and cure period for a default in the event (i) that same default occurs more than two (2) times in any twelve (12) month period and (ii) two (2) previous proper notices and cure periods were provided to the Defaulting Party for that same default.

- D. Rights upon Default. If the Defaulting Party does not cure the default within the grace period provided in Paragraph 10C above, the party complaining of the default (the "Complaining Party") may terminate this Agreement. To terminate this Agreement for default, the Complaining Party must issue a written notice of termination to the Defaulting Party clearly stating the basis for the termination and the Defaulting Party's failure to cure the alleged default (the "Default Termination Notice"). The termination shall be effective thirty (30) days after the date of the Default Termination Notice, provided such notice was properly delivered (the "Default Termination Effective Date"). At any time after the Default Termination Effective Date and within the applicable statute of limitations, the parties may pursue all rights and remedies available in law or equity, including payment of accrued amounts pursuant to Paragraph 8 hereof. Notwithstanding any contrary provisions herein, BCG's rights to recover damages from Owner shall be limited to the sum of (i) accrued and unpaid Base Management Fees and Incentive Management Fees as of the applicable termination effective date, and other amounts due hereunder, including, if applicable, all amounts to fully pay all sums due to third party vendors who provided goods or services to the Club, along with all accrued late fees, interest, and any attorney's fees and costs incurred in collecting or attempting to collect such unpaid amounts; (ii) actual damages for damages sustained prior to the applicable termination effective date; and (iii) the Cancellation Fee, Termination Fee or Sale Termination Fee, if applicable (defined below) as fixed, agreed liquidated damages and not as a penalty (it being agreed by the parties that BCG's damages would be extremely difficult to measure and that the Cancellation Fee, Termination Fee and Sale Termination Fee have been agreed upon, after negotiations, as a reasonable estimate of such damages). The parties also agree that notwithstanding any contrary provision hereof, Owner's damages shall be limited as provided in Paragraph 15A, if any be proven. In no event will BCG or Owner be subject to any consequential, special, punitive or similar damages, each party hereby waiving any right it may have to seek or claim such damages.

11. TERMINATION AND CANCELLATION.

- A. Either party may terminate this Agreement upon the occurrence of an Event of Default by the other party as provided in Paragraph 10D above. In the event Owner terminates this Agreement based on an alleged Event of Default and it is later determined that no Event of Default occurred or that the termination was improper for any reason, the termination for default shall be deemed a termination for Owner's convenience.
- B. Cancellation Fee; Default by Owner. In the event BCG terminates this Agreement due to the default of Owner and BCG is not in default, Owner shall pay to BCG, within forty-five (45) days of the Default Termination Effective Date, a cancellation fee based on the year in which termination occurs (the "Cancellation Fee"). The Cancellation Fee will be in addition to any Base Management Fees and Incentive Management Fees paid or owing to BCG prior to the Default Termination Effective Date.

The Cancellation Fee shall be calculated as: the amount determined by taking the sum of the Base Management Fee and the Incentive Management Fee for the prior Fiscal Year, then multiplying that quantity times the remaining years (including fractional years) in the Initial Term of the Agreement, and then multiplying that second quantity times seventy-five

percent (75%). The above formula will apply during any Extension Term based upon the remaining years in the Extension Term. Provided, however, the Cancellation Fee pursuant to this Paragraph 11B shall not be more than One hundred thousand dollars (\$100,000). The parties agree that the Cancellation Fee is not duplicative of any other damages which BCG may recover in the event of a default by Owner.

- C. Owner's Reserved Right of Termination For Cause. **Owner shall have the right to terminate the Agreement, without the payment of a Termination Fee or Cancellation Fee,** if, in any two (2) consecutive Fiscal Years (commencing with the 2019-2020 Fiscal Year as the first year in any measurement period), Net Operating Income does not equal or exceed Two hundred thousand dollars (\$200,000) for each of the such consecutive Fiscal Years. Owner may exercise such termination right by providing written notice to BCG within thirty (30) calendar days after Owner's receipt of the final determination of Net Operating Income for the second (2nd) of such Fiscal Years (either via the BCG-prepared annual operating statement in Paragraph 4J; provided, however, that the methodology for calculation of Net Operating Income shall be as defined herein and shall be consistently applied to any Fiscal Years used in comparison). Failure to give such notice within such thirty (30) day period shall be deemed to be a waiver by Owner of its right to terminate based on the Fiscal Years in question, but shall not be deemed to be a waiver of such right with respect to subsequent Fiscal Years. Should Owner elect to terminate this Agreement based on this Paragraph 11C, said termination will be effective thirty (30) calendar days after the date of the written notice, provided such notice was properly delivered.

In the event Owner elects to exercise its right of termination for cause, BCG shall have the right, but not the obligation, to nullify such termination by paying to Owner, within thirty (30) calendar days of BCG's receipt of Owner's termination notice, the aggregate amount by which actual Net Operating Income for the applicable Fiscal Years was less than seventy-five percent (75%) of budgeted Net Operating Income for such Fiscal Years (the "Cure Amount").

For purposes of determining whether seventy-five percent (75%) of budgeted Net Operating Income has been achieved in a Fiscal Year, budgeted Net Operating Income shall be subject to adjustment for force majeure events or expenses that are agreed upon by Owner and BCG not to be within the control of BCG (i.e. utility rates, real estate taxes, irrigation water charges, insurance premiums or extraordinary items).

- D. Termination Fee: Owner's Termination for Convenience. After the first six (6) months of the Agreement, Owner may terminate the Agreement upon sixty (60) days prior written notice to BCG and payment of a Termination Fee. The termination shall be effective sixty (60) days after the date of the written notice, provided such notice was properly delivered (the "Convenience Termination Effective Date"). The Termination Fee must be paid to BCG within 45 days of the Convenience Termination Effective Date. The Termination Fee will be in addition to any Base Management Fees and Incentive Management Fees paid or owing to BCG prior to the Convenience Termination Effective Date.

The Termination Fee shall be calculated as: the amount determined by taking the sum of the Base Management Fee and the Incentive Management Fee for the prior Fiscal Year, then multiplying that quantity times the remaining years (including fractional years) in the Initial Term of the Agreement, and then multiplying that second quantity times twenty-five percent (25%).

- E. Sale Termination Fee: Sale of Club. In the event of a sale or transfer of the Club to any third-party, Owner shall have the unilateral right to terminate this Agreement at any time on ninety (90) days prior written notice, subject to the provisions set forth below (the "Sale Termination Effective Date"). In the event of such unilateral termination due to the sale or transfer of the Club and BCG not being in default under this Agreement, BCG shall continue

to manage the Club until the sale of the Club as evidenced by a transfer of title. Upon sale of the Club, BCG shall be paid a Sale Termination Fee equal to twenty-five percent (35%) of remaining Base Management Fees in the Initial Term of the Agreement. The above formula will apply during any Extension Term based upon the remaining years in the Extension Term. Sale Termination Fee will be in addition to any Base Management Fees and Incentive Management Fees paid or owing to BCG prior to or as of the date of sale of Club. However, if BCG is retained by the new owner under similar terms and conditions of this Agreement acceptable to BCG, no Sale Termination Fee shall be paid to BCG.

- F. **No Waiver.** By terminating this Agreement in accordance with this Paragraph 11, neither party shall be deemed to have waived any action it might have, in law or equity, by reason of a breach of or default under this Agreement.
 - G. **Proprietary Material.** Upon termination or cancellation of this Agreement, for any reason or under any circumstances, BCG's (i) proprietary software and computer programs relating to accounting, operations, marketing, and forecasting, (ii) operations and employee training materials and manuals of BCG and (iii) the information and processes related to and used by BCG in the marketing and agronomic plan shall remain the sole property of BCG and shall be removed by BCG upon termination of this Agreement. Additionally, any actual or implied association of the Club or Facility with Billy Casper or Billy Casper Golf, LLC shall cease upon termination.
 - H. **Transition.** Provided that BCG and WWGM have received, in full, payment of all fees due to them pursuant to this Agreement, including but not limited to all Base Management Fees, Incentive Management Fees, Cancellation Fee, Termination Fee and/or Sale Termination Fee, BCG and WWGM shall, without additional payment by the Owner, cooperate beyond the applicable termination effective date with Owner and any replacement manager for a reasonable period after the applicable termination effective date (all parties hereto agree that a reasonable period is not less than two (2) weeks and not more than four (4) weeks) to facilitate the orderly transition of the management of the Club.
- 12. USE OF CLUB.** During the term of this Agreement, the Club shall be a private or semi-private facility unless otherwise provided and agreed to in the Annual Budget and Program.
- 13. LIQUOR LICENSE.** Subject to any relevant California Alcoholic Beverage Control ("ABC") licensing requirements, WWGM shall apply and maintain at all times (except for the application period) a valid liquor license on the premises, and all of the parties hereto shall comply with all relevant ABC laws regarding the use of such license.
- 14. FORCE MAJEURE; CONDEMNATION; FIRE AND OTHER CASUALTY.** If all or any portion of the Club is destroyed by fire, flood, high winds, or other casualty, or taken by eminent domain, such damage, destruction, or condemnation shall not be a cause for termination hereunder by either party unless such damage or destruction results in the whole or a substantial part of the Club being unusable for its intended purpose for a period of one year or longer or, in the case of such total or substantial damage or destruction, Owner shall decide not to rebuild the damaged portion of the Club, then in any such event, this Agreement shall terminate on written notice from Owner to BCG of such termination and neither party shall have any further rights or obligations hereunder. Notwithstanding the foregoing, if:
- A. As a result of any damage or destruction to, or condemnation of, any part of the Club, or
 - B. Otherwise due to causes beyond BCG's reasonable control (and so long as BCG uses all reasonable diligence to cure such inability), BCG shall be unable to perform its obligations hereunder in respect of the operation of the Club, Owner and BCG shall use their mutual best efforts to agree upon an amendment to the Annual Budget and Program, including, without limitation, the working capital provisions thereof, to allow payment of necessary

Club expenses (including, without limitation, Club employee expenses) until such damage or destruction is repaired or such inability is cured and, if the parties are unable to agree on such an amendment within twenty (20) business days after BCG shall have given Owner notice of the occurrence of such event, BCG shall have the right to terminate this Agreement by notice to Owner of such termination and neither party shall have any further rights or obligations hereunder. In the event of a force majeure there is no Cancellation Fee or Termination Fee due to BCG.

15. INDEMNIFICATION AND LIABILITY.

A. Indemnity.

1. To the fullest extent permitted by law, BCG will defend, indemnify and hold Owner harmless from and against any claims, losses, expenses, costs, suits, actions, proceedings, demands or liabilities that are asserted against, or sustained or incurred by Owner, including reasonable attorney's fees, solely because of BCG's breach of this Agreement or because of actions, omissions, or regulatory violations arising solely from BCG's and/or WWGM's negligence, fraud, or willful misconduct.
2. To the fullest extent permitted by law, Owner will defend, indemnify, and hold BCG and/or WWGM harmless, from and against any and all liability, loss, cost, damage, penalties, claims, causes of action, proceedings and expense, including without limitation, court costs and reasonable attorneys' fees, incurred by BCG and/or WWGM or imposed on BCG or WWGM by any person whomsoever, related to the performance of the duties under this Agreement, except for any such liability arising out of BCG's and/or WWGM's negligent or wrongful acts or omissions.
3. Owner will defend, indemnify, and hold BCG and/or WWGM harmless, from and against any and all liability, loss, cost, damage, penalties, claims, causes of action, proceedings and expense, including without limitation, court costs and reasonable attorneys' fees, incurred by BCG or WWGM or imposed on BCG or WWGM by any person whomsoever, in any way related to any claims by any employee, independent contractor, vendor, party to a contract for services to Owner, investor, customer, patron, or resident for actions related to the Club that arose prior to the Effective Date of this Agreement.
4. To the fullest extent permitted by law, Owner will defend, indemnify and hold BCG and/or WWGM harmless from and against, any and all liability, loss, cost, damage, penalties, claims, causes of action, proceedings and expense, including without limitation, court costs and reasonable attorneys' fees, incurred by BCG or WWGM or imposed on BCG or WWGM by any person whomsoever, in any way related to any environmental claims pertaining to the Club or this Agreement.
5. To the fullest extent permitted by law, Owner will defend, indemnify and hold BCG and/or WWGM harmless from and against, any and all liability, loss, cost, damage, penalties, claims, causes of action, proceedings and expense, including without limitation, court costs and reasonable attorneys' fees, incurred by BCG or WWGM or imposed on BCG or WWGM by any person whomsoever, in any way related to late payments or lack of payments to vendors or other payees who supply labor, services or materials to the Club who have not been timely paid or paid at all for reasons outside of BCG's control resulting in late fees or any other penalties against BCG or WWGM or any other facilities BCG owns or manages.
6. Recovery upon an indemnity contained in this Agreement shall be reduced dollar-for-dollar by any applicable insurance collected by the party demanding indemnification. The scope of all indemnities contained in this Agreement includes

any and all costs and expenses, including reasonable attorney fees and costs, properly incurred in connection with any proceedings to defend any indemnified claim, or to enforce the indemnity, or both, provided, however, that BCG's liability under all indemnities shall be limited as set forth in Paragraph 15B. All indemnification obligations under this Agreement shall survive the expiration or any termination of this Agreement.

It is expressly understood and agreed that Owner is solely responsible for the payment of all fees, expenses, indemnities and reimbursements due hereunder or otherwise in connection with services performed by BCG and/or WWGM pertaining to the Club, including all Operating Expenses, and neither BCG nor WWGM shall have any liability or responsibility of any kind whatsoever with respect thereto or with respect to any other amounts payable to, or in respect of, BCG or WWGM in connection with this engagement or any other services performed by BCG and/or WWGM hereunder.

- B. Legal Actions. Legal counsel for BCG and Owner shall cooperate in the defense or prosecution of any action pertaining to the Club. BCG shall not institute or defend any legal action or retain counsel affecting the Club without Owner's consent. BCG shall forward all legal notices or notices of a financial nature which relate to the Club, to Owner at the address listed under Paragraph 16H. BCG shall advise and assist Owner in instituting or defending, as the case may be, in the name of Club, Owner, and/or BCG, but in any event expressly as a Club expense, all actions arising out of the operation of the Club and not attributable to the negligence of BCG, and any and all legal actions or proceedings to collect charges, third party payments, rents, or other incomes for BCG, Owner, or the Club, or to lawfully evict or dispossess tenants or other persons in possession there under, or to lawfully cancel, modify, or terminate any lease, license, or concession agreement in the event of default thereof, or to defend any action brought against Owner, unless otherwise directed by the Owner. BCG shall assist Owner to take the acts necessary to protect or litigate to a final decision in any appropriate court or forum, as a Club expense, and any violation, order, rule, or regulation affecting the Club.
- C. Choice of Law and Venue. Whereas BCG's principal place of business is in the Commonwealth of Virginia, and the Club is located in California, the parties agree that this Agreement shall be governed by and construed in accordance with the laws of California. The parties also agree that any dispute between them in any way arising out of or pertaining to this Agreement shall be exclusively brought in the Circuit Court for Orange County, California or in the United States District Court for the Central District of California. The parties agree to submit to the jurisdiction of those courts.
- D. Liability of BCG and Owner.
1. Other persons. BCG shall not be responsible for the acts or omissions of any of Owner's other contractors or any subcontractor, or any employees of Owner, or any persons representing Owner performing any services for or in connection with the Club, or any consultants or other persons engaged by Owner with respect thereto, unless and only to the extent BCG is supervising, or should be supervising the same, and BCG shall be responsible only for the performance of BCG's obligations hereunder in accordance with the terms hereof.

15. CONFIDENTIALITY.

- A. Work performed by BCG and its agents or assigns pursuant to this Agreement (including, without limitation, any correspondence, analysis, reports and related materials prepared), constitutes confidential and privileged work product, and BCG's communications thereon with Owner or their respective employees or counsel or other professionals retained by

Owner (each an "Owner Person") constitute confidential and privileged communications which are intended to have the full protections of the work product doctrine, proprietary business privilege, attorney-client privilege and all other applicable privileges. Accordingly, BCG agrees that it will not provide such oral or written reports or other work product or disclose such communications to any person other than Owner, except as may be otherwise requested by Owner.

- B. BCG agrees that all information, not publicly available, which is received by it from Owner in connection with this engagement, will be treated confidentially by BCG, except as required by process of law or as otherwise requested by Owner. In the event BCG is required to disclose any of such information pursuant to process of law, BCG agrees to provide Owner with prompt notice so that Owner may seek appropriate remedies, including a protective order. In any event, BCG and its agents, representatives, and employees will furnish only that portion of the information that is legally required to be disclosed.
- C. Owner shall retain exclusive rights to ownership of all work output hereunder. Work output includes reports issued pursuant to this Agreement, but excludes, among other things, all working papers of BCG, any correspondence, memoranda, calculations, processes, notes, etc. that BCG may have used in the development of the reports above or such working papers or in the performance of any work covered by an authorization under this Agreement.

16. GENERAL PROVISIONS.

- A. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings, and representations (if any) made by and between such parties.
- B. Written Amendments. The provisions of this Agreement may only be amended or supplemented in a writing signed by both parties.
- C. Further Amendments. The parties hereby agree from time to time to execute and deliver such further instruments and documents, and do all such other acts and things, which may be convenient or necessary to more effectively and completely, carry out the intentions of the Agreement.
- D. Compliance with Laws. BCG shall, at all times, operate, use, and conduct the business of the Club in a lawful manner and in full compliance with all applicable governmental laws, ordinances, rules and regulations, and maintain all licenses and permits relating to the Club, with Owner's full cooperation, in full force and effect and cooperate and endeavor to obtain all licenses and permits first required after the commencement of the term of this Agreement required in connection with the management, use, and operation of the Club.
- E. Environmental Laws. Owner represents to BCG that no hazardous materials have been released into the environment, or have been deposited, spilled, discharged, placed or disposed of at or within the Club in violation of any Environmental Law (as defined below), nor except as expressly disclosed and described by Owner to BCG has the Club been used at any time by any person as a landfill or a disposal site for hazardous materials or for garbage, waste or refuse of any kind. Owner also represents, to the best of Owner's knowledge, that there are no underground storage tanks of any nature on the Club (fuel, propane, gas etc.). Owner does not have any knowledge of asbestos-containing products within the Club.

For the purposes of this Agreement, "Environmental Law" shall mean: All applicable Federal, State, county or local (or other political subdivision thereof) laws, statutes, codes,

acts, ordinances, orders, rules, regulations, directives, judgments, decrees, injunctions, directions, permits, licenses, authorizations, decisions and determinations issued, adopted or enacted by any judicial, legislative, regulatory, administrative or executive body of any governmental or quasi-governmental authority, department, branch, division, agency or entity exercising functions of or pertaining to any government having jurisdiction affecting the Club, or any licenses and permits of any governmental authorities, from time to time applicable to the Club or any part thereof regarding hazardous materials.

- F. Binding. All of the terms and provisions of this Agreement shall be binding and inure to the benefit of the parties and their respective permitted successors and assigns. This Agreement is solely for the benefit of the parties hereto and not for the benefit of any third party.
- G. Assignment. BCG may assign or transfer this Agreement and/or may delegate its duties and obligations under this Agreement to BCG's Subsidiary.
- H. Notices. All notices, requests, consents and other communications required or permitted to be given under this Agreement shall be in writing; shall be given only by hand delivery during normal business hours, first-class registered or certified mail, postage prepaid, return receipt requested, or overnight delivery service with FedEx or United Parcel Service; and shall be addressed to the parties in the manner set forth below. All notices shall be conclusively deemed to have been properly delivered, (i) upon receipt when hand delivered successfully during normal business hours, (ii) upon the third (3rd) business day after delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery or to prove an address change occurred without proper notice), or (ii) one (1) business day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that the sending party receives a confirmation of actual delivery from the courier).

In the case of BCG:

Billy Casper Golf, LLC.
12700 Sunrise Valley Drive, Suite 300
Reston, VA 20191
Attention: Legal Department
Telephone: 703.761.1444
Facsimile: 703.893.3504

With copy to:

Moore & Lee, LLP
1751 Pinnacle Drive, Suite 1100
McLean, Virginia 22102
Attn: Charlie C.H. Lee or Kristen Bennett
Telephone: (703) 506-2050
Facsimile: (703) 506-2051

In the case of Owner:

City of Garden Grove
Attention: City Manager
1222 Acacia Parkway
Garden Grove, CA 92840
Telephone: 714-741-5100

Facsimile: 714-741-5044

or to such other address as either party may designate by written notice complying with the terms of this Paragraph.

- K. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.
- L. Invalidity. If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid or unenforceable under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, invalid or unenforceable, but the remainder of such provision, and this Agreement shall not be invalidated or rendered unenforceable thereby, and shall be given full force and effect so far as possible.
- M. No Waiver. The failure or delay of either party at any time to require performance by the other party of any provision of this Agreement shall not affect the right of such party to subsequently require performance of that provision or to exercise any right, power or remedy hereunder. Waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement.
- N. No Partnership. Nothing in this Agreement shall be construed to create a partnership or joint venture between the parties. The parties acknowledge that the relationship of BCG to Owner is that of an independent contractor.
- O. No Exclusive Remedy. No remedy herein conferred upon either party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.
- P. Authority. Each party hereby represents to the other party that it has the right, power, authority, and financial ability to enter into this Agreement and to perform its obligations under this Agreement, and that it is not restricted by contract or otherwise from entering into and performing this Agreement.
- Q. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, collectively and separately, shall constitute on and the same agreement.

(SIGNATURE PAGE FOLLOWS)


IN WITNESS WHEREOF, the parties executed this Agreement as of the date first above written.

CITY OF GARDEN GROVE

By: 
Scott C. Stiles, City Manager

Date: 4/16/19

Attest: 
City Clerk

Approved as to form: 
City Attorney

BILLY CASPER GOLF, LLC

By: 
R. Joseph Goodrich, Executive Vice President

Date: 4-4-19

By: 
R. Alexander Elmore, President

Date: 4-4-19

**EXHIBIT A
INSURANCE SCHEDULE**

Billy Casper Golf Management, Inc.

Schedule of Insurance

January 1, 2019 - January 1, 2020

Property - ACE American Insurance Company (Venture)
Policy #MAU D38116654 003

Coverage	Limits	Deductibles
Building	\$25,000,000	\$10,000
Personal Property	Included	\$10,000
Carts & Equipment	Included	\$1,000
Business Income/Extra Expense	Included	0 Hour Waiting Period
Automatic Coverage/Newly Acquired Locations	\$5,000,000	\$100,000
Service Interruption	\$5,000,000	24 Hour Waiting Period
Boiler & Machinery	\$25,000,000	\$100,000
Damage to Golf Course - Tees, Greens, Bunkers, Putting Surfaces, Practice Driving Ranges, Private Roadways (specified perils only)	\$2,500,000 Per Location	Varies based on location and cause of loss.
Landscaping	\$5,000 Per Tree/Shrub/Plant \$250,000 Per Occurrence Including Debris Removal	Varies based on location and cause of loss.
Damage to Dams, Dikes and Retaining Walls for Property Damage	Included in Real and Personal Property	\$100,000
Named Windstorm	\$25,000,000	Tier 1: 5% of TV subject to \$500,000 Minimum Tier 2: 2% of TV subject to \$250,000 Minimum Hail: \$100,000 per occurrence
Earthquake	All Other Zones: \$5,000,000 Occurrence/Aggregate CA, HI and AK Only: \$2,500,000 Occurrence/Aggregate	All Other Zones: \$100,000 CA, HI and AK Only: 5% of TV subject to \$500,000 Minimum Pacific Northwest & New Madrid: 3% of TV subject to \$100,000 Minimum
Flood	All Other Flood Zones: \$5,000,000 Occurrence/Aggregate Flood Zones A and V: \$2,500,000 Occurrence/Aggregate	All Other Flood Zones: \$100,000 Flood Zones A and V: NFIP Max Limit plus \$100,000 for BI Named Windstorm: 5% of TV subject to \$500,000 Minimum
Flood - Tees, Greens, Fairways & Bunkers	\$1,000,000	\$25,000

Excess Property - Great American Insurance Company (RT Specialty)
Policy #CFP 2982512 00

Building	\$75,000,000 excess of \$25,000,000	Per Primary Coverage
Personal Property	Included	Per Primary Coverage
Business Income/Extra Expense (Including Rental Value)	Included	Per Primary Coverage

Wind Deductible Buyback - Landmark American Insurance Company (RT Specialty)
Policy #LHT902898

Real Property, Personal Property, and BI	TBD	TBD
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General Liability - Great Northern Insurance Company (Venture)
Policy #3594-17-30

Combined Total Aggregate	\$20,000,000	\$0
Aggregate Limit Per Location	\$2,000,000	\$0
Products - Completed Operations Aggregate	\$2,000,000	\$0
Each Occurrence	\$1,000,000	\$0
Personal & Advertising Injury Liability	\$1,000,000	\$0
Damage to Premises Rented by You	\$1,000,000	\$0
Medical Expenses	\$2,500	\$0
Liquor Liability	\$1,000,000 Each Incident \$2,000,000 Aggregate	\$1,000
Employee Benefits Liability	\$1,000,000 Each Claim \$1,000,000 Aggregate	\$1,000
		12/01/04 Retrospective Date

ADS Auto Liability - Great Northern Insurance Company (Venture)
Policy #7021-59-85

Auto Liability	\$1,000,000	\$0
Uninsured Motorists	\$1,000,000	\$0
Underinsured Motorists	\$1,000,000	\$0
Medical Payments	\$10,000 ADS \$5,000 OH	\$0
Comprehensive Physical Damage	Actual Cash Value	\$500
Collision Physical Damage	Actual Cash Value	\$500
Towing	\$50	\$0
Rental Reimbursement	\$50/day for 30 Days	\$0
Hired Car Physical Damage	Actual Cash Value	\$500
Garagekeepers	\$1,000,000 Each Location	\$500 each auto, \$2,500 max any one event

HI Auto Liability - Federal Insurance Company (Venture)		
Policy # 70215986		
Auto Liability	\$1,000,000	\$0
Uninsured Motorists	\$1,000,000	\$0
Underinsured Motorists	\$1,000,000	\$0
Comprehensive Physical Damage	Actual Cash Value	\$500
Collision Physical Damage	Actual Cash Value	\$500
Workers Compensation - Federal Insurance Company (Venture)		
Policy # 7171-55-40		
Workers Compensation	Statutory	\$0
Employers Liability:		
Bodily Injury by Accident - Each Accident	\$1,000,000	\$0
Bodily Injury by Disease - Policy Limit	\$1,000,000	\$0
Bodily Injury by Disease - Each Employee	\$1,000,000	\$0
Umbrella Liability - ACE Property and Casualty Insurance Company		
Policy # M00798137 004		
Per Occurrence Limit	Per Terms of Management Agreement	
Aggregate Limit	Per Terms of Management Agreement	
Products - Completed Operations Aggregate		
Excess Liability - The American Insurance Company (Fireman's Fund)		
Policy # SH00049089410		
Per Occurrence Limit	Per Terms of Management Agreement	
Aggregate Limit	Per Terms of Management Agreement	
Pollution Legal Liability - Transhore Specialty Insurance Company		
Policy # 000899308		
Policy Aggregate Limit	\$16,000,000	
A - Third Party: Each Incident/Aggregate	\$2,000,000	\$25,000
B - First Party Remediation Expenses: Each Incident/Aggregate	\$2,000,000	\$25,000
C - Emergency Response: Each Incident/Aggregate	\$2,000,000	\$25,000
D - Business Interruption	\$2,000,000/365 Days	3 Days
E - Contingent Business Interruption	\$2,000,000/365 Days	3 Days
F - Disinfection Event Expenses: Each Incident/Aggregate	\$2,000,000	\$25,000
G - Evacuation Expenses: Each Incident/Aggregate	\$2,000,000	\$25,000
Executive Liability (D&O/EPL/FID) - Federal Insurance Company (Chubb)		
Policy # 8248-9115		
Directors & Officers	\$5,000,000	\$50,000 Self Insured Retention for Clauses B and C
Employment Practices Liability	\$5,000,000	\$150,000 First Party \$150,000 Third Party \$200,000 California
Fiduciary Liability	\$5,000,000	\$0
Professional Liability/Cyber - National Union Fire Insurance Company (AIG)		
Policy # 06-162-61-21		
Prof Liability, Media Content, Security & Privacy Liability, Cyber Extortion	\$3,000,000	\$100,000
Regulatory Action	\$3,000,000	\$100,000
Event Management	\$3,000,000	\$100,000
Reputation Guard	\$50,000	\$0
Crime - Great American Insurance Company		
Policy # SAA E426271 00 00		
Employee Theft	\$3,000,000	\$15,000
Premises	\$3,000,000	\$15,000
In Transit	\$3,000,000	\$15,000
Forgery	\$3,000,000	\$15,000
Money Orders & Counterfeit Fraud	\$3,000,000	\$1,000
Credit Card Fraud	\$3,000,000	\$15,000
Funds Transfer Fraud	\$3,000,000	\$15,000
Computer Fraud	\$3,000,000	\$15,000
Client	\$3,000,000	\$15,000
Expense	\$15,000	\$0
Social Engineering Fraud	\$250,000	\$50,000
Special Crime (Kidnap & Ransom) - National Union Fire Insurance Company (AIG)		
Policy # 15-516-464 - 3-year term		
Each Insured Event	\$2,000,000 max; limits vary based on event	\$0
*Directors & Officers coverage applies to BCG only - Clients are not covered by this D&O policy		
NOTE: This is a summary of your program only. For detailed explanation of terms and conditions, please contact USI Insurance Services		