

F. Consent Agenda - Parks and Recreation Department  
ITEM 16.



**AGENDA REPORT**  
**May 21, 2019**

**Approval, Re: Confirmation of New Members to the Board of Directors of  
Golf Brevard, Inc.**

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**SUBJECT:**

Confirmation of New Members to the Board of Directors of Golf Brevard, Inc.

**FISCAL IMPACT:**

None

**DEPT/OFFICE:**

Parks and Recreation

**REQUESTED ACTION:**

It is requested that the Board approve confirmation of three new members to the Board of Directors of Golf Brevard, Inc.

**SUMMARY EXPLANATION and BACKGROUND:**

On April 24, 2018, the Board of County Commissioners executed an agreement with Golf Brevard to operate the two County owned golf courses. Section 20.1 (a) of the Agreement states "Each member of GOLF BREVARD's board of directors shall be subject to confirmation by Brevard County County Board of County Commissioners."

One Golf Brevard Board member resigned and two members terms will expire on May 31, 2019. Golf Brevard would like confirmation to replace Rick Ostor, Gail O. Myers, and Gerald Thompson with Jeff Pearce, Jim Cravens, and Rick O'Connor. Jeff Pearce will serve a two year term ending May 31, 2021 and Jim Cravens and Rick O'Connor will serve a three-year term ending May 31, 2022.

**CLERK TO THE BOARD INSTRUCTIONS:**

Please provide a Board memo to the Parks and Recreation Director, Mary Ellen Donner.

**ATTACHMENTS:**

**Description**

- ▣ **Golf Brevard Agreement**
- ▣ **Resume - Jeff Pearce**
- ▣ **Resume - Richard O'Connor**
- ▣ **Resume - Jim Cravens**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

May 22, 2019

**MEMORANDUM**

**TO:** Mary Ellen Donner, Parks and Recreation Director

**RE:** Item F.16., Confirmation of New Members to the Board of Directors of Golf Brevard, Inc.

The Board of County Commissioners, in regular session on May 21, 2019, approved confirmation of Jeff Pearce to the Board of Directors of Golf Brevard, with term expiring May 31, 2021; Jim Cravens to the Board of Directors of Golf Brevard, Inc., with term expiring May 31, 2022; and Rick O'Connor to the Board of Directors of Golf Brevard, Inc., with term expiring May 31, 2022.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/kp



BOARD OF COUNTY COMMISSIONERS

County Manager's Office  
2725 Judge Fran Jamieson Way  
Building C, Room 301, MS# 88  
Viera, Florida 32940

## Inter-Office Memo

DATE: May 10, 2018

TO: Scott Ellis, Clerk  
Clerk to Board's Office

FROM: James P. Liesenfelt, Assistant County Manager  
County Manager's Office

SUBJECT: Fully-Executed Golf Course Properties Agreement with Golf Brevard, Inc.

The Board of County Commissioners, in regular session on April 24, 2018, executed Golf Course Properties Agreement with Golf Brevard, Inc. for operation of Spessard Holland and Habitat Golf Courses.

Attached is a Fully-Executed Agreement for inclusion in the official minutes.

Please do not hesitate to contact me if I can be of further assistance.

Attachments: (1) copy of Clerk to the Board Memorandum reflecting BOCC Approval  
(1) Fully-Executed Golf Course Properties Agreement with Golf Brevard, Inc.

cc: Matt Soss, Assistant County Attorney  
Mary Ellen Donner, Parks and Recreation Director

APR 30 2018

County Manager  
**FLORIDA'S SPACE COAST**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

April 25, 2018

MEMORANDUM

TO: Jim Liesenfelt, Assistant County Manager

RE: Item V.B., Status of County Operated Golf Courses

The Board of County Commissioners, in regular session on April 24, 2018, executed Golf Course Properties Agreement with Golf Brevard, Inc. for operation of Spessard Holland and Habitat Golf Courses; and approved Golf Brevard Board of Directors, as follows: Thomas W. Becker, William Crudo, Gail O. Myers, Rick Ostor, Steve Proctor, Gerald Thompson, and Frank Vega. Enclosed are two executed Agreements.

**Upon execution by Golf Brevard, Inc., please return a fully-executed Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Parks and Recreation Director  
Contracts Administration

## GOLF COURSE PROPERTIES AGREEMENT

(Spessard Holland and The Habitat Golf Courses)

**THIS AGREEMENT** (the “**Agreement**”) is dated this 24 day of April, 2018 (“**Effective Date**”), by and between Brevard County, a political subdivision of the State of Florida (hereinafter “**COUNTY**”), and Golf Brevard, Inc., a Florida Not for Profit Corporation (hereinafter “**GOLF BREVARD**”).

### **RECITALS:**

A. COUNTY hereby contracts with GOLF BREVARD for operation of those certain parcels of land located in Brevard Florida, commonly known as Spessard Holland Golf Course and The Habitat Golf Course, together with all improvements thereon, which are collectively identified in Exhibit A, and are collectively known as the “Golf Course Properties”, all in “as is” condition and GOLF BREVARD accepts said operation agreement subject to the terms and conditions stated herein.

B. GOLF BREVARD has knowledge, expertise and experience in managing, operating, maintaining and promoting golf clubs.

C. COUNTY hereby covenants with GOLF BREVARD and GOLF BREVARD does hereby take the Golf Course Properties under this Agreement for the term and according to the covenants and conditions set forth below.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, all of which each party agrees constitutes sufficient consideration received at or before the execution of this Agreement, the parties hereby agree as follows:

### **1. DEFINITIONS AND EXHIBITS.**

**1.1 Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below, unless the context clearly requires otherwise:

(a) “**Attorneys’ Fees**” shall mean all costs, fees and expenses, including, but not limited to, witness fees, expert fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.

(b) “**Clubhouse**” shall mean the clubhouse facilities located on the Golf Course Properties.

(c) “**Commencement Date**” shall mean September 1, 2018.

(d) “**Default Rate**” shall mean the lesser of: (i) five percent (5%), or (ii) the highest rate then allowable by Law.

(e) **"Excusable Delay"** shall mean any of the following: (i) strike, (ii) organized labor disputes, (iii) governmental preemption in connection with a national emergency, (iv) any rule, order or regulation of any governmental agency, (v) conditions of supply or demand which are affected by war or other national, state or municipal emergency, or any other cause, or (vi) any cause beyond a party's reasonable control.

(f) **"Expiration Date"** shall mean effective date of termination of this Agreement, which shall be forty nine (49) months after the Commencement Date unless extended or sooner terminated as provided in this Agreement.

(g) **"Fiduciary"** means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. *Svanoe v. Jurgens*, 144 Ill. 507, 33 N.E. 955; *Stoll v. King*, 8 How.Prac.,N.Y., 299. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. *Haluka v. Baker*, 66 Ohio App. 308, 34 N.E.2d 68, 70

(h) **"First-Class"** or **"First-Class Standard"** or **"First-Class Condition"** shall mean that the Golf Course Properties will be maintained to a standard that is expected for municipally operated golf courses. At no time are the Golf Course Properties to be maintained at a lesser standard than as set forth in **Exhibit "B"** attached hereto.

(i) **"Furniture, Fixtures and Equipment"** or **"FF&E"**, shall mean all equipment and supplies used or useful in the operation of the Golf Course Properties, including, without limitation, golf carts, mowers, sprayers, vacuums, flags, grass seed, pesticides, herbicides, maintenance and janitorial equipment and supplies, office supplies, all furniture, furnishings, fixtures, equipment, inventory and supplies necessary or appropriate for the operation of the retail and food and beverage portions of the Golf Course Properties in accordance with this Agreement, including, without limitation, shelves, racks and display cases, pro shop inventory such as golf-related clothing, equipment and supplies, food and beverage inventories, paper supplies, cleaning materials and equipment, tables, chairs, linens, uniforms, eating utensils, dishes, glassware, cookware, stoves, ovens, dishwashers, computer equipment and communication equipment.

(j) **"Hazardous Material"** shall include, but not be limited to: (i) any flammable, explosive, toxic, radioactive, biological, corrosive or otherwise hazardous chemical, substance, liquid, gas, device, form of energy, material or waste or component thereof, (ii) petroleum-based products, diesel fuel, paints, solvents, lead, radioactive materials, cyanide, biohazards, infectious or medical waste and "sharps", printing inks, acids, DDT, pesticides, ammonia compounds, and any other items which now or subsequently are found to have an adverse effect on the environment or the health and safety of persons or animals or the presence of which require investigation or remediation under any Law or governmental policy, and (iii) any item defined as a "hazardous substance", "hazardous material", "hazardous waste", "regulated substance" or "toxic substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., Hazardous Materials Transportation Act, 49 U.S.C.

§1801, et seq., Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., Clean Water Act, 33 U.S.C. §1251, et seq., Safe Drinking Water Act, 14 U.S.C. §300f, et seq., Toxic Substances Control Act, 15 U.S.C. §2601, et seq., Atomic Energy Act of 1954, 42 U.S.C. §2014 et seq., and any similar federal, state or local Laws (as hereinafter defined), and all regulations, guidelines, directives and other requirements thereunder, all as may be amended or supplemented from time to time.

(k) **“Improvement”** shall mean a valuable addition made to property or an amelioration in its condition, amounting to more than mere repairs or replacement, costing labor or capital, and intended to enhance its value, beauty, or utility or to adapt it for new or further purposes. Generally, buildings, but may also include any permanent structure or other development, such as a street, sidewalks, sewers, utilities, etc.

(l) **“Laws”** shall mean all federal, state, county, municipal and other governmental constitutions, statutes, ordinances, codes, regulations, resolutions, rules, judgments, injunctions, orders, decrees or demands of courts, administrative bodies and other authorities construing any of the foregoing, together with all permits, approvals and obligations granted to or imposed upon COUNTY, and/or GOLF BREVARD with respect to the Golf Course Properties by any governmental entity from time to time. **“Law”** shall mean the singular reference to Laws.

(m) **“Transition Funding”** shall mean those funds provided by COUNTY to GOLF BREVARD which are to be repaid by GOLF BREVARD under the terms of this Agreement.

(n) **“Agreement Year”** shall mean a period of thirteen (13) consecutive calendar months commencing on the Commencement Date and ending on the date which is thirteen (13) months thereafter, and each succeeding twelve (12) month period during the Term of this Agreement.

(o) **“Operating Agreements”** shall mean any of the following relating to the Golf Course Properties: (i) all Agreements and other similar agreements by which COUNTY or GOLF BREVARD (as applicable) has the right to use or possess, FF&E and any other equipment used in the operation of the Golf Course Properties, (ii) all service, maintenance, management, distribution, marketing, supply (including, without limitation, “open buy” contracts), franchise and/or license agreements and any other agreements relating to the operation of the Golf Course Properties, and (iii) all assignable licenses (including, without limitation, liquor licenses, if applicable) issued in connection with the Golf Course Properties.

(p) **“Pro Shop”** shall mean the retail stores located within the Golf Course Properties.

(q) **“Prohibited Use”** shall mean any use that is not a Permitted Use (as defined in Section 9.1), and, in addition to, and not in limitation of, the foregoing, lists of uses that might be considered permissible within the definition of Permitted Use but are, nonetheless, prohibited by this Agreement are provided on **Exhibit “C”** attached hereto.

(r) **"Reporting Requirements"** shall have the meaning set forth on Exhibit "D" attached hereto.

(s) **"Term"** of this Agreement shall mean a period of time: (a) commencing on the Commencement Date; and (b) continuing until midnight of the Expiration Date.

(t) **"Utilities"** shall mean electric, reuse, stormwater, potable water, sanitary sewer, CATV, phone, and internet.

(u) **"Vouchers"** shall mean any issued and outstanding certificate, coupon, comp card, promotional allowance, voucher or other writing that entitles the holder or bearer thereof to a credit (whether in a specified dollar amount or for a specified item, e.g., a meal or round of golf) to be applied against the usual charge for meals, rounds of golf and/or such other goods or services.

**1.2 Exhibits.** Each exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement, and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if such exhibit were set forth in full and at length every time it is referred to or otherwise mentioned. Any floor plan, drawing or sketch that is attached to or made a part of this Agreement is used solely for the purpose of reasonably approximately identification and location of the Property, and any markings, measurements, dimensions or notes of any kind contained therein (other than the outline of the Property for approximate identification and location of the Property) are not be considered a part of this Agreement.

## **2. REPRESENTATIONS OF GOLF BREVARD.**

**2.1 Representations of GOLF BREVARD.** GOLF BREVARD represents to COUNTY that:

(a) GOLF BREVARD is a company duly organized and validly existing, and in good standing under the laws of the State of Florida;

(b) GOLF BREVARD has full power, authority and legal right to enter into, perform and observe the provisions of this Agreement;

(c) This Agreement constitutes a valid and binding obligation of GOLF BREVARD and does not constitute a breach of or default under any other agreement to which GOLF BREVARD is a party or by which any of its assets are bound or affected; and

(d) GOLF BREVARD shall comply with all applicable Laws relating to non-discriminatory treatment of individuals in all aspects of employment, accommodation and otherwise.

(e) GOLF BREVARD's execution and delivery of this Agreement and the

performance of GOLF BREVARD's obligations hereunder are duly authorized.

**2.2 Representations of COUNTY.** COUNTY represents to GOLF BREVARD that:

(a) COUNTY is a political subdivision of the State of Florida.

(b) COUNTY has full power, authority and legal right to enter into, perform and observe the provisions of this Agreement.

### **3. TERM AND OPTION TO RENEW.**

**3.1 Length of Term.** The Term of this Agreement commences on the Commencement Date, and ends on the Expiration Date, unless extended or sooner terminated in accordance with this Agreement.

**3.2 Renewals.** It is hereby mutually agreed and understood that GOLF BREVARD may request 1 additional renewal of the Agreement for an additional 10 year term upon written notice to COUNTY, received no sooner than three hundred and sixty five (365) days prior to the date of termination of the current term, but received at least one hundred and eighty (180) days prior to the date of termination of the current term. COUNTY shall advise GOLF BREVARD of the renewal or nonrenewal of the Agreement within 45 days of receipt of GOLF BREVARD's request to renew. Subsequent to the first renewal term, GOLF BREVARD may request 2 additional renewal terms of the Agreement. These 2 renewal terms shall each be for a term of 5 years. The Agreement, if renewed, shall be renewed under the same terms and conditions as found herein unless modified by both parties. The parties agree and understand that the COUNTY is under no obligation to renew this Agreement and GOLF BREVARD is not entitled to damages for non-renewal of this Agreement. The parties agree and understand that GOLF BREVARD is under no obligation to renew this Agreement and the COUNTY is not entitled to damages for non-renewal of this Agreement, except for the payment of financial obligations found herein. Said obligations shall survive the termination or early expiration of this Agreement.

**3.3 Quiet Enjoyment.** COUNTY shall ensure that GOLF BREVARD shall and may peaceably and quietly enjoy the Golf Course Properties for the Term as against all persons claiming by, through or under COUNTY, subject, however, to the terms of this Agreement and any underlying agreements and mortgages or deeds of trust, if any.

### **4. RECORDS.**

(a) Florida Public Records Law.

(b) Pursuant to Section 119.0701, a request to inspect or copy public records relating to this Agreement must be made directly to COUNTY. If COUNTY does not possess the requested records, COUNTY shall immediately notify GOLF BREVARD of the request and GOLF BREVARD must provide the records to COUNTY or allow the records to be inspected or copied within twenty-four (24) hours (not including weekends and legal holidays)

of the request so COUNTY can comply with the requirements of Sections 119.07. GOLF BREVARD may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order AO-47, incorporated herein by this reference. A copy of AO-47 is available upon request from COUNTY's public records custodian designated below.

(c) If GOLF BREVARD fail to provide the requested public records to COUNTY within a reasonable time, GOLF BREVARD may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties. Sections 119.0701, 119.110. GOLF BREVARD' failure to comply with public records requests is considered a material breach of this Agreement and grounds for termination. GOLF BREVARD shall require any contractors with which it contracts for services to abide by the requirements of Florida's public records laws and all other provisions of this Agreement.

(d) Should COUNTY face any legal action to enforce inspection or production of the records within GOLF BREVARD's possession and control, GOLF BREVARD agrees to indemnify COUNTY for all damages and expenses, including attorney's fees and costs. GOLF BREVARD shall hire and compensate attorney(s) to represent GOLF BREVARD and COUNTY in defending such action. GOLF BREVARD shall pay all costs to defend such action and any costs and attorneys fees awarded pursuant to Section 119.12.

IF GOLF BREVARD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO GOLF BREVARD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS FOR PARKS AND RECREATION AT (321) 633-2046 OR AT MELISSA.RENNINGER@BREVARDFL.GOV.

## **5. RIGHT TO AUDIT RECORDS.**

(a) In performance of this Agreement, GOLF BREVARD shall keep books, records, and accounts of all activities related to this Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by GOLF BREVARD in conjunction with this Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of COUNTY. GOLF BREVARD shall retain all documents, books and records for a period of five (5) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and Ch. 119, Florida Statutes. All records or documents created by or provided to GOLF BREVARD by COUNTY in connection with this Agreement are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to COUNTY in a format compatible with the information technology systems of COUNTY.

(b) GOLF BREVARD shall ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement and following termination of the Agreement if GOLF BREVARD do not transfer the records to the public agency. In lieu of

retaining all public records upon termination of this Agreement, GOLF BREVARD may transfer, at no cost to COUNTY, all public records in possession of GOLF BREVARD. If GOLF BREVARD transfer all public records to COUNTY upon termination of the Agreement, GOLF BREVARD shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

(c) COUNTY shall have the right to inspect, audit, examine and copy, or to engage an independent certified public accounting firm, at the County's expense, at any time, and from time to time, during normal business hours, all files, books, records, costs and expenses maintained by GOLF BREVARD pertaining to this Agreement or services provided pursuant to this Agreement. GOLF BREVARD, shall cooperate with COUNTY and/or its independent certified public accountant in their performance of the audit. The provisions of this Section 5 shall survive the expiration date or the earlier termination of this Agreement.

## **6. TAXES, ASSESSMENTS, IMPACT FEES AND SERVICE CHARGES**

(a) **Sales and Ad Valorem Taxes.** GOLF BREVARD agrees to pay directly to the appropriate governmental taxing authority before delinquency, any and all sales and use taxes on taxable transactions and all ad valorem taxes(if any) levied or assessed against the Golf Course Properties, GOLF BREVARD's FF&E or other taxable tangible personal property on the Golf Course Properties, as well as any ad valorem taxes assessed against GOLF BREVARD's interest arising out of this Agreement or the Golf Course Properties. In the event ad valorem taxes are levied and assessed against the Golf Course Properties, GOLF BREVARD may, within 30 days of the assessment, terminate this Agreement for convenience upon 30 days' notice to the COUNTY, provided that any and all remaining funds held by GOLF BREVARD shall be remitted to COUNTY for repayment of the Transition Funding.

(b) GOLF BREVARD also agrees to pay directly to the applicable government authority all other applicable non-ad valorem assessments, special assessments, levies or taxes that may be imposed by a governmental authority upon GOLF BREVARD as a result of this Agreement, or arising out of GOLF BREVARD's use or occupancy of the Golf Course Properties under this Agreement.

(c) **GOLF BREVARD's Personal Property.** As may be required, GOLF BREVARD shall file all required ad valorem tax returns for its interest and all tangible personal property of GOLF BREVARD used in the operation of the Golf Course Properties and shall obtain, evaluate and verify assessments and pay applicable tax bills. In the event COUNTY files any such returns and pays for any such taxes, COUNTY shall inform GOLF BREVARD of the amount of tangible personal property ad valorem taxes paid by COUNTY and GOLF BREVARD shall reimburse COUNTY for all amounts so paid by COUNTY within thirty (30) days after receipt from COUNTY of an invoice therefor.

(d) **Directly Assessed Fees and Service Charges.** During the Term of this Agreement, GOLF BREVARD shall be responsible for any applicable permit fees, impact fees or service charges made by any public or quasi- public authority including, but not limited to: sanitary sewer charges and water charges, all of which GOLF BREVARD agrees to pay, before delinquency, directly to the appropriate governmental taxing authority.

**7. PRORATIONS; PAYMENTS AS OF THE COMMENCEMENT DATE.**

(a) Effective on the Commencement Date, the items set forth in this Section 7 (the "Prorations") shall be prorated and adjusted between GOLF BREVARD and COUNTY effective as of 11:59 p.m. Eastern Standard Time on the day preceding the Commencement Date (the "Effective Time") and COUNTY and GOLF BREVARD shall be charged or credited for such prorations, as applicable. All liabilities accruing prior to the Effective Time shall be the responsibility of COUNTY, and all liabilities accruing on or after the Effective Time shall be the responsibility of GOLF BREVARD, except as otherwise specified below. The amounts due from each party to the other shall be netted against each other and the party with a balance owing to the other shall pay such amount. Except as otherwise expressly provided herein, all revenue and expenses of the Golf Course Properties with respect to the period prior to the Effective Time shall be for the account of COUNTY and all revenues and expenses, as provided for herein, of the Golf Course Properties with respect to the period from and after the Effective Time shall be for the account of GOLF BREVARD.

(b) All periodic charges, fees and expenses under any Operating Agreements to be assumed by GOLF BREVARD shall be apportioned between the parties as of the Effective Time. COUNTY shall receive all deposits, if any, made by COUNTY as security under any such Operating Agreements and COUNTY shall have the right to a return of any deposits in the form of letters of credit or bonds. GOLF BREVARD shall be responsible for posting any substitute deposits.

(c) All sales, revenue and excise taxes relating to Golf Course Properties operations and water and sewer payments shall be apportioned, as provided for herein, as of the Effective Time.

(d) Amounts paid or payable under telephone contracts and contracts for the supply of heat, steam, water, electric power, gas, lighting and other utilities services shall be apportioned as of the Effective Time. COUNTY shall receive all deposits, if any, made by COUNTY as security under any such public service contract(s) and COUNTY shall have the right to a return of any deposits in the form of letters of credit or bonds. GOLF BREVARD shall be responsible for posting any substitute deposits. Where possible, cutoff readings will be secured for all Utilities as of the Effective Time. To the extent that cutoff readings are not available, the costs of such Utilities shall be apportioned between the parties as of the Effective Time, on the basis of the most recent actual (not estimated) bill for such service. GOLF BREVARD shall be responsible for causing such Utilities and services to be changed to its name as of the Effective Time, and shall be liable for and shall pay all utility bills for services rendered after the Effective Time.

(e) All currently existing accounts receivable shall belong to COUNTY. GOLF BREVARD shall use reasonable efforts to assist COUNTY in collecting the same and shall promptly account for and forward to COUNTY any amounts received by GOLF BREVARD that represent COUNTY account receivables. COUNTY will provide GOLF BREVARD with a list of COUNTY's account receivables due and owing as of the Commencement Date.

(f) The parties shall apportion, as of the Effective Time, such other items as are provided for in this Agreement or as are customarily prorated and adjusted. COUNTY will reimburse GOLF BREVARD for any redemptions of gift cards, in existence prior to the Commencement Date, during the term of this Agreement. GOLF BREVARD and the COUNTY shall work collaboratively to ensure no gift cards are redeemed fraudulently.

(g) Despite the foregoing, COUNTY shall provide the proceeds from the sale of all Vouchers sold at the Golf Course Properties in 2018 but effective for 2019, to GOLF BREVARD. COUNTY will transfer to GOLF BREVARD \$40,932.33 dollars as proceeds from the sale of discount cards sold in 2018 and annual greens fees sold in 2018. GOLF BREVARD shall continue to honor discount cards sold in 2018 and annual greens fees sold in 2018 and shall have no further claim for reimbursement from the COUNTY for these items.

## **8. GOLF BREVARD'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE GOLF COURSE PROPERTIES**

**8.1 Initial Condition.** GOLF BREVARD understands and agrees that COUNTY has no obligation and has made no promise to alter, remodel, improve, repair, decorate or paint the Golf Course Properties or any part thereof.

**8.2 Obligations of GOLF BREVARD and COUNTY for Repairs, Replacements, and Maintenance.** GOLF BREVARD shall, at GOLF BREVARD's expense, keep the Golf Course Properties (including any and all Improvements, including, without limitation, the Clubhouse, all fairways, greens, tees and tee boxes, bunkers, water hazards and practice ranges) and the fixtures and appurtenances therein in good condition and repair, in a sanitary and safe condition and shall commit no waste of the Golf Course Properties. Without limiting the generality of the foregoing, GOLF BREVARD will keep in good order and repair, and maintain, repair and replace as needed: ceilings, walls, floors, plate glass and all fixtures in, on and about the Golf Course Properties, including, but not limited to, HVAC, water, plumbing, irrigation, sewer, electrical and utility and GOLF BREVARD shall be liable for any damage to such systems occurring during the Agreement Term. GOLF BREVARD shall, at its cost, repair, replace or restore any damage to the Golf Course Properties caused by GOLF BREVARD, its employees and invitees. If GOLF BREVARD fails to make repairs (including replacement) and maintain the Golf Course Properties or any part thereof in a First-Class manner and condition, COUNTY shall, upon written notice to GOLF BREVARD and an opportunity to cure for a period of thirty (30) days, have the right to make such repairs or perform such maintenance and/or replacement on behalf of GOLF BREVARD, and GOLF BREVARD shall reimburse to COUNTY the reasonable cost incurred by COUNTY in performing the same; provided, however, that if such cure cannot be reasonably accomplished within such thirty (30) days, then COUNTY shall not have the right to make such repairs or perform such maintenance and/or replacement if GOLF BREVARD has commenced the requested cure within such thirty (30) days and thereafter diligently pursues such cure to completion. GOLF BREVARD shall do, or cause to be done, all repair and maintenance work required or appropriate for all of the Golf Course Properties, including, without limitation, maintaining the interior elements including, without limitation, the FF&E, and, in furtherance thereof, shall institute and administer a preventative maintenance program

for all mechanical, electrical and plumbing systems and equipment, all of the foregoing to be consistent with the First-Class Standard. GOLF BREVARD shall also, from time to time, in accordance with the Operating Budget, make purchases of and replace such items of FF&E and operating supplies as GOLF BREVARD deems necessary for the proper operation and maintenance of the Golf Course Properties in accordance with the First-Class Standard, including, without limitation, those that may be deemed to constitute Capital Improvements. GOLF BREVARD shall be responsible for all Capital Improvements. Any structural alterations, modifications, or repairs in excess of \$12,500.00 dollars, of portions of the Golf Course Properties or new construction thereof must be approved in advance in writing by COUNTY.

**8.3 Refurbishment.** From time to time during the Term of this Agreement, GOLF BREVARD, at GOLF BREVARD's expense, may repair, replace, and refurbish any portions of the Golf Course Properties that have become worn, damaged, discolored, stained, outdated or otherwise degraded in appearance or performance, including, but not limited to, interior and exterior paint, wall coverings, floor coverings, furniture, fixtures and displays. Such work shall be done in aesthetically similar manner as the remainder of the Golf Course Properties and in accordance with the First-Class Standard. Any replacement shall be of at least the same quality as originally installed or better quality as the item replaced, and any replacement or system installation shall meet all applicable laws and building, electrical, fire prevention, or life safety code.

**8.4 Transition Funding.** COUNTY shall provide GOLF BREVARD with \$490,000.00 in transition funding. The initial portion of \$100,000.00 dollars of Transition Funding shall be remitted to GOLF BREVARD no sooner than sixty (60) days prior to effective date. The initial portion is necessary to cover initial transition expenses including, but not limited to: the searching for and hiring of a golf course general manager; hiring of an administrative assistant/bookkeeper; payment of initial insurance premiums; establishment of accounting, payroll and human resources systems. The subsequent and final payment shall be made on or before the Commencement Date. Transition Funding shall be repaid to COUNTY as provided in Section 8.9.

**8.5 Payment to Valkaria Airport and Early Termination.**

(a) GOLF BREVARD shall abide by the terms of, and be responsible for the payment of all amounts due to Valkaria Airport pursuant to the intracounty departmental agreement between Valkaria Airport and the Brevard County Parks and Recreation department dated March 3, 1992, (titled as a "lease" agreement) which is incorporated herein by reference. Such amounts shall be paid to COUNTY who will deposit the amounts received from GOLF BREVARD to the county budget account set up exclusively for use by Valkaria airport. COUNTY shall endeavor to propose a new intracounty departmental agreement between Valkaria Airport and the Brevard County Parks and Recreation department to the FAA for FAA approval on or before October 1, 2020.

(b) In the event that said payment amount for a single year increases in amount by more than the CPI, as defined in the Valkaria lease agreement, from the previous year, than, within 30 days of of said increase, this Agreement may be terminated by GOLF

BREVARD. In the event the Federal Aviation Authority provides a written opinion to COUNTY disapproving of this Agreement, than this Agreement may be terminated by BREVARD COUNTY. In either event, the terminating party shall provide thirty (30) days written notice to the other party, at which time this Agreement shall be of no further force or effect, and the rights and obligations, except for the repayment of Transition Funding and other outstanding financial obligations, of the Parties shall be canceled therewith in accordance with the termination provisions of this Agreement.

**8.6 Alterations.** GOLF BREVARD shall not make nor allow to be made any alterations, additions or Improvements to or of the Golf Course Properties or any part thereof without the express prior consent of COUNTY, which COUNTY may grant or withhold in its sole discretion. In the event COUNTY approves GOLF BREVARD' request, the work shall performed in a good, workmanlike, lawful and lien-free manner, and in compliance with all applicable Laws and this Agreement.

**8.7 Construction Liens.** In accordance with the applicable provisions of the Florida Construction Lien Law and specifically Florida Statutes, Section 713.10, no interest of COUNTY shall be subject to liens for improvements made by GOLF BREVARD or caused to be made by GOLF BREVARD hereunder. The parties acknowledge that, for the purposes of the Construction Lien Law, COUNTY hereunder is a political subdivision of the State of Florida and is not an "owner" within the meaning of section 713.01(23), Florida Statutes.

**8.8 Access and Parking.** During the Term of this Agreement, COUNTY shall provide to GOLF BREVARD, its employees, customers, patrons, suppliers, licensees and other invitees with parking and reasonable access to and from the Golf Course Properties. The County shall have the right to use the driveway accessing The Habitat as necessary.

**8.9 Repayment of Transition Funding.**

(a) GOLF BREVARD shall be responsible for repayment of the Transition Funding provided by COUNTY, except for the repayment of the initial transfer of Transition Funding in the amount of \$100,000.00 dollars. COUNTY shall not be required to provide an invoice to GOLF BREVARD for these payments. Commencing on the third (3<sup>rd</sup>) anniversary of the Commencement Date of this Agreement (September 1st, 2021), GOLF BREVARD shall remit, within 45 days of said anniversary, to the COUNTY the sum of \$130,000 and will remit the same amount on each of the next two successive anniversaries of the Commencement Date of this Agreement. The total amount to be repaid to the COUNTY is \$390,000.00.

However, in addition to and notwithstanding the repayment terms above, if on October 1st during the first two years of the Agreement, liquid cash reserves exceed \$500,000.00, any balance over \$500,000.00 will be repaid to the COUNTY. This payment shall be due without invoice from the COUNTY and within 30 days of October 1st. This obligation shall continue until the Transition Funding is repaid in full. Payments made pursuant to this paragraph shall offset the amount of initial repayment of the Transition Funding due on the third anniversary of the Commencement Date of the Agreement.

After the COUNTY has been repaid in full for the initial Transition Funding of \$390,000, it is understood by both parties to this Agreement that any and all future revenues generated by GOLF BREVARD under this Agreement shall be used by GOLF BREVARD for no other purpose than the operation and improvement of the Golf Course Properties and their facilities. However, GOLF BREVARD shall still be responsible for all duties and obligations, including financial obligations, provided for in this Agreement. The provisions of the Section 8.9 shall survive the expiration or earlier termination of this Agreement.

**8.10 Other Revenue.** Unless specified herein otherwise, any sums due to COUNTY shall be due within 30 calendar days upon receipt of invoice from COUNTY. Any sums not paid within said period shall bear interest thereafter at the Default Rate until payment is made.

**8.11 Operation until Transition.**

(a) Until the transition of the operation and maintenance responsibilities for the Golf Course Properties to GOLF BREVARD on the Commencement Date, COUNTY shall continue to operate and maintain the Golf Course Properties in a manner consistent with its current maintenance schedule. COUNTY acknowledges responsibility to show care in turning over to GOLF BREVARD infrastructure of Golf Course Properties that will sustain golf course operations.

(b) From the later of the dates that each of the Parties signed this Agreement ("Execution Date") up to and until the first date that Golf Brevard receives Transition Funding from COUNTY (the "Investigation Period") GOLF BREVARD may, at GOLF BREVARD's sole risk and expense, exercisable through GOLF BREVARD's authorized agents and employees, undertake a complete investigation of the Golf Course Properties as GOLF BREVARD deems appropriate, provided that (i) said activities shall not in any way damage the Golf Course Properties; (ii) GOLF BREVARD shall use its good faith efforts to not interfere with COUNTY's use of the Golf Course Properties; and (iii) GOLF BREVARD shall give prior notice to COUNTY before it enters upon the Golf Course Properties. GOLF BREVARD agrees to promptly repair any damage to the Golf Course Properties caused by such an inspection, and GOLF BREVARD agrees to indemnify and hold COUNTY harmless against any liabilities, claims and damages of any kind whatsoever, resulting from the activities permitted by this Section 8.11( including, without limitation, reasonable attorneys' fees and expenses incurred by COUNTY, if any), which indemnity shall survive the termination or earlier expiration of this Agreement.

(c) In the event GOLF BREVARD, in its sole discretion, is not satisfied with this results of its inspections pursuant to this Section 8.11 , then GOLF BREVARD shall have the right to cancel this Agreement by delivering to COUNTY, on or before the expiration of the Investigation Period, written notice of GOLF BREVARD's cancellation of the Agreement. If the Agreement is timely terminated, any funds provided to GOLF BREVARD by COUNTY shall be returned to COUNTY within 5 days of COUNTY's receipt of notice of cancellation of the Agreement.

(d) In the event GOLF BREVARD does not so elect to terminate this

Agreement during the Investigation Period, then GOLF BREVARD shall be deemed to have found the Golf Course Properties in condition acceptable to sustain golf course operations and to have agreed to proceed with the transaction contemplated by this Agreement.

(e) Within 5 days of the Commencement Date, BREVARD COUNTY shall provide a list of equipment and personal property present at the Golf Course Properties to GOLF BREVARD. Said equipment and personal property shall be maintained by GOLF BREVARD under the terms of this Agreement. GOLF BREVARD shall not dispose of, transfer from the Golf Course Properties, or sell COUNTY-owned personal property or equipment without written approval from the COUNTY.

## **9. OPERATING COVENANTS.**

**9.1 Permitted Use.** The Golf Course Properties shall be used solely for the operation of a public (18) hole golf courses, and ancillary retail golf Pro-Shops, Food and Beverage Services, driving ranges and such other uses and amenities that are compatible with the other like facilities including, by way of illustration, other comparable golf course properties, in a First-Class manner and in accordance with this Agreement and for no other uses or purposes (the "Permitted Use"). The Golf Course Properties shall be operated under the golf courses' current respective names and such name may not be changed without the prior written approval of COUNTY, which approval may be granted or withheld by COUNTY in COUNTY's sole and absolute discretion.

**9.2 Standards.** GOLF BREVARD shall operate and maintain the Golf Course Properties in accordance with the First-Class Standard and in accordance with the terms and conditions of the Operating Budget for each Agreement Year during the Term of this Agreement. GOLF BREVARD agree to: (i) maintain and operate the Golf Course Properties in a First Class Condition; (ii) confer with COUNTY regarding excessive complaints by COUNTY's employees, guests and invitees which come to the attention of COUNTY and if such complaints are reasonably found by COUNTY to be justified, to remedy the cause or causes of such complaints; and (iii) give due consideration to recommendations that COUNTY may make from time to time with respect to maintenance and operation of the Golf Course Properties. GOLF BREVARD shall attempt to amicably resolve all complaints, disputes or disagreements in connection with the Golf Course Properties as promptly and as reasonably possible.

**9.3 Quarterly Meetings.** Not less frequently than once each quarter commencing after the Commencement Date, a representative of COUNTY and GOLF BREVARD shall meet, at a mutually agreeable time, to discuss and coordinate the performance by COUNTY and GOLF BREVARD of their respective obligations under this Agreement, including, without limitation, GOLF BREVARD's past operating results, GOLF BREVARD's operating plans for the future and opportunities to obtain and increase profits, so that GOLF BREVARD's promotion, operation, management and maintenance of the Golf Course Properties may be conducted in an efficient and effective manner and in accordance with the terms and provisions of this Agreement. The parties may confer on all matters related to the Golf Course Properties' operation and/or GOLF BREVARD's or COUNTY's performance and compliance of its obligations under this Agreement. Meetings shall be held

at the Golf Course Properties or at such other location which is mutually agreeable to the parties. COUNTY and GOLF BREVARD shall each, from time to time, designate an authorized representative who shall be the point of contact for the other party with respect to day to day issues and questions relative to the Golf Course Properties and who shall serve as the person through whom each party shall communicate to the other party on routine matters. COUNTY's initial representative shall be the Parks and Recreation Director. GOLF BREVARD's initial representative shall be Tom Becker.

**9.4 General.** GOLF BREVARD shall arrange for, coordinate, supervise, administer and manage all activities and services required for the promotion, management, operation and maintenance of the Golf Course Properties, in accordance with the First-Class Standard and in accordance with the other requirements of this Agreement. Both GOLF BREVARD and COUNTY shall use due diligence and reasonable care and shall act at all times in good faith. Subject to the provisions of this Agreement, GOLF BREVARD shall cause the Golf Course Properties to be open for business to the public seven (7) days a week, three hundred sixty-five (365) days a year, except: (i) during such periods when opening for business is rendered impracticable as a result of casualties to the Golf Course Properties; (ii) during periods of inclement weather; and (iii) during periods when repairs or maintenance (i.e., overseeding) make it impractical or impossible for the Golf Course Properties to be open for business. GOLF BREVARD shall ensure that the Pro Shop(s) and Food and Beverage Services shall maintain hours of operation in accordance with good business practices and reasonably consistent with the hours of operation for said services at other municipal golf courses in Brevard County. All costs and expenses relating to the foregoing shall be the responsibility of GOLF BREVARD. All contracts with third parties shall be in the name of GOLF BREVARD. Notwithstanding the foregoing, all or applicable portions of the Golf Course Properties may be closed to the public during periodic special events conducted by GOLF BREVARD.

**9.5 Rules and Regulations.** GOLF BREVARD shall comply with all applicable Federal, State and County rules, laws, Best Management Practices for Golf Course Maintenance Departments as published by the State of Florida, Department of Environmental Protection, and ordinances.

**9.6 Management; Personnel.** GOLF BREVARD shall select, employ, train, pay, discharge and supervise such persons as may be necessary to enable GOLF BREVARD to satisfy GOLF BREVARD's obligations under this Agreement.

**9.7 Operating Contracts and Membership Agreements.** Contemporaneously with the execution of this Agreement and effective as of the Commencement Date, GOLF BREVARD shall, at no cost or expense to COUNTY, assume all Operating Agreements and membership agreements set forth in Exhibit "E" attached hereto, provided that any such assumption shall be in writing and otherwise in a form and content reasonably acceptable to GOLF BREVARD and the third-party. Notwithstanding the foregoing, in the event that any Operating Agreement, by its terms, is not assignable, in the event that third-party consent is required in connection with the assignment of any Operating Agreement, or in the event that any fee is payable in connection with the assignment of any Operating Agreement, COUNTY, at COUNTY's sole cost and expense, shall be responsible

for securing such assignment right, securing such third-party consent, or paying any such fee. If COUNTY is unsuccessful in securing such assignment right and/or securing such third-party consent, then as to an Operating Agreement that cannot be assigned in accordance with this Section: (i) as between COUNTY and GOLF BREVARD, GOLF BREVARD shall be responsible for the satisfaction of COUNTY's non-monetary obligations existing in such non-assigned Operating Agreement; and (ii) GOLF BREVARD shall pay to COUNTY, upon request for reimbursement, all sums paid by COUNTY to a third party under such non-assigned Operating Agreement provided, however, that GOLF BREVARD shall not be responsible for additional sums that become due and payable under a non-assigned Operating Agreement due to the actions of COUNTY or anyone for whom COUNTY is legally responsible (e.g. a COUNTY-caused default of the non-assigned Operating Agreement or a COUNTY-executed amendment of the non-assigned Operating Agreement). County shall authorize Golf Brevard to begin renegotiation of existing contracts pertaining to the Golf Course Properties that may extend beyond the inception date of this agreement to ensure a smooth transition to Golf Brevard operations.

**9.8 Utilities.** GOLF BREVARD is responsible for payment of all Utilities. GOLF BREVARD shall pay all bills for Utilities services rendered to it on or before the date due in accordance with the payment instructions contained in such bills; provided, however, that if any Utilities are furnished to GOLF BREVARD through COUNTY's meters, GOLF BREVARD shall reimburse COUNTY for the cost of such Utilities upon demand. This Agreement shall be subordinate to any easements that COUNTY may elect to grant to Utility providers to provide service to the Golf Course Properties or other lands owned by COUNTY or its affiliates surrounding the Golf Course Properties and GOLF BREVARD's consent shall not be required for the granting thereof; provided, however, that no such easements shall materially or adversely impact GOLF BREVARD and/or GOLF BREVARD's rights under this Agreement.

**9.9 Food and Beverage Operations.** GOLF BREVARD shall perform all the food and beverage operations at the Golf Course Properties, including Food and Beverage Services/Concessions ("Food and Beverage Services") and banquet/catering services. GOLF BREVARD shall develop the food and beverage offerings and all menus to be used by GOLF BREVARD in the Food and Beverage Services as well as the catering operations. GOLF BREVARD shall ensure that the Food and Beverage Services are maintained and operated in accordance with the First-Class Standard. GOLF BREVARD reserves the right to operate the Food and Beverage Services directly or to engage a contractor under the supervision of the General Manager. Any contractor shall be required to adhere to the terms and conditions of this Agreement.

**9.10 Pro Shop Operations.** GOLF BREVARD shall develop an inventory list of offerings to be sold from the Pro Shops and shall insure that the Pro Shops are maintained and operated in good First-Class condition. GOLF BREVARD shall remove and withdraw from sale any goods or services which may be found objectionable (as determined in COUNTY's sole and absolute discretion) following receipt of notification from COUNTY. At commencement of the Agreement, COUNTY shall conduct an audit of the wholesale cost of the Pro Shop inventory. GOLF BREVARD reserves the right to reject any items deemed to be damaged, of poor quality or otherwise considered to be unsaleable. GOLF BREVARD shall

pay COUNTY the total wholesale cost of the accepted inventory within thirty (30) days of receipt of an invoice from COUNTY. Upon termination of the Agreement, GOLF BREVARD shall conduct an audit of the wholesale cost of the Pro Shop inventory. The COUNTY reserves the right to reject any items deemed to be damaged, of poor quality or otherwise considered to be unsaleable. COUNTY shall pay GOLF BREVARD the total wholesale cost of such accepted inventory within thirty (30) days of receipt of an invoice from GOLF BREVARD.

**9.11 Golf Course Properties Play Operations.** GOLF BREVARD shall perform all operations relating to golf play and tee time reservations at the Golf Course Properties, including but not limited to, the sale of tee times and memberships.

**9.12 Advertising and Promotion.** The Golf Course Properties shall be promoted, marketed and advertised by GOLF BREVARD. The County will continue to maintain a link to the Golf Course Properties' website on the County's website.

**9.13 Community Outreach.** GOLF BREVARD agree to establish and maintain programs to improve the conditions and operation of the Golf Course Properties. To this end, GOLF BREVARD agree as promptly as possible:

(a) To provide access to the Golf Course Properties for charitable events and assist in providing such events on reasonable terms and conditions;

(b) To establish and document a program for the physical improvement of the Golf Course Properties;

(c) To establish and document a comprehensive program to teach and make the game of golf available to the citizens of the Brevard County area, including working with public and private schools to advance their opportunity to play;

(d) To establish and publicly post rules and regulations regarding the use and operation of the Golf Course Properties, including such matters as starting methods, starting times, use of carts, trespassing, vandalism, green fees, rain delays and rainouts, group functions, charity events, hours of operation, etc; and

(e) In order to develop interest in competitive golf in the Brevard County area, to establish a program for both team and individual competition between and among men and women at the junior, adult and senior levels.

**9.14 Other Obligations of GOLF BREVARD.** Subject to any restrictions or limitations set forth elsewhere in this Agreement, GOLF BREVARD shall also perform or cause to be performed all tasks which may be reasonably and commercially necessary or appropriate in connection with the operation, management, promotion, maintenance, repair and upkeep of the Golf Course Properties. In performing such tasks, GOLF BREVARD shall, at a minimum, do the following:

(a) Advise COUNTY in writing of any discovery by GOLF BREVARD of any Hazardous Materials in, on or about the Golf Course Properties at levels in violation of

applicable laws, and promptly following such discovery jointly determine with COUNTY the actions which should be taken to ensure that the presence of such Hazardous Materials in, on or about the Golf Course Properties will not constitute a violation of any Laws, and upon approval by COUNTY of any actions recommended by GOLF BREVARD promptly take, or cause to be taken, such actions.

(b) Notify COUNTY of any claims received by GOLF BREVARD regarding the Golf Course Properties, with respect to which GOLF BREVARD will reasonably cooperate with COUNTY in its preparation, submission and processing of such claims.

(c) With respect to any construction work done by or under GOLF BREVARD's supervision, obtain all warranties provided by, and lien waivers from, laborers, materialmen and contractors in connection with any work done on, or goods or materials incorporated into, the Golf Course Properties, or any part thereof, and do such other acts as may be necessary or appropriate to preserve and maintain the Golf Course Properties free and clear of any new liens.

(d) GOLF BREVARD shall interview and implement its own hiring process to employ the employees at the Golf Course Properties and for GOLF BREVARD's food and beverage operations to incorporate GOLF BREVARD's own training module.

**9.15 Restrictions.** Without the prior written consent of COUNTY, which consent shall not be unreasonably withheld, GOLF BREVARD shall not do, or cause or permit to be done, any of the following throughout the Term of this Agreement:

(a) Retain any entity to manage the day to day operation of the Golf Course Properties, food and beverage operations excepted.

(b) Except as provided herein, GOLF BREVARD shall not illegally or improperly transport, use, store, maintain, generate, manufacture, handle, dispose, discharge, spill or leak any Hazardous Materials, or permit GOLF BREVARD's employees, agents, contractors, or other occupants of the Golf Course Properties to engage in such activities on or about the Property. GOLF BREVARD shall indemnify, defend and hold COUNTY harmless from any and all liability, claims costs, fines, fees, actions, or sanction arising from or in connection with GOLF BREVARD's use or misuse, handling or mishandling, storage, spillage, discharge, seepage into water bodies or the groundwater supply, or release into the atmosphere of any hazardous materials, toxic substances, pollutants, or contaminants, whether solid, liquid or gas. GOLF BREVARD shall take all reasonable precautions and safety measures, in accordance with current technology, to prevent the release of hazardous materials, toxic substances, pollutants, and contaminants under GOLF BREVARD's control. In the event GOLF BREVARD learns of the discharge upon the Golf Course Properties of any hazardous materials, pollutant or contaminant under GOLF BREVARD's control, GOLF BREVARD shall undertake to contain, remove, and abate the discharge. This indemnification obligation shall survive the expiration or termination of this Agreement. GOLF BREVARD shall not be responsible for any Hazardous Materials: (i) present on the Golf Course Properties prior to the date hereof, or (ii) which becomes present on the Golf Course Properties after termination of this Agreement and all extensions hereof; provided, however, GOLF BREVARD shall

immediately notify COUNTY of any notice received by GOLF BREVARD from any governmental authority of any actual or threatened violation of any applicable laws, regulation or ordinances governing the use, storage or disposal of any Hazardous Materials and shall respond to such notice and correct or contest any alleged violation.

**9.16 Entry and Inspection by COUNTY.** GOLF BREVARD agrees that COUNTY shall have the right to enter the Golf Course Properties during normal working hours to inspect the same, to exercise COUNTY's rights under this Agreement, to show the Golf Course Properties to prospective purchasers or other entities, and to post appropriate or lawful notices.

**9.17 Fiduciary Duty of GOLF BREVARD.**

(a) **Fiduciary Duty.** GOLF BREVARD shall have a fiduciary duty to COUNTY with regard to the operation of the two county golf courses.

(b) **Duty to Report.** As part of the fiduciary duty, GOLF BREVARD shall report to COUNTY any operational problems or issues which result or may result in a shortfall of funds to operate either of the golf courses and which cause or may cause Brevard Golf to request additional funding from COUNTY.

**10: RECORDS, REPORTS, FISCAL MATTERS**

**10.1 Financial Reports.** GOLF BREVARD shall deliver a monthly report to COUNTY no later than thirty (30) days after the end of each one (1) month period commencing on the Commencement Date. In addition, GOLF BREVARD shall deliver an annual report to COUNTY no later than sixty (60) days after the end of each Agreement Year, summarizing all operations of the Golf Course Properties and containing all of the Reporting Requirements set forth on **Exhibit "D"** attached hereto. Furthermore during the Term or and Extended Term of this Agreement, COUNTY or its agent may inspect and review the books and records of GOLF BREVARD at the Golf Course Properties.

**11. COMPLIANCE WITH REQUIREMENTS**

**11.1 Compliance with Law.** GOLF BREVARD shall not cause the violation of any Law.

**11.2 Permits and Licenses.** GOLF BREVARD shall apply for, process, take all necessary steps to procure and maintain (and renew as necessary), all permits and licenses required for the operation, management and maintenance of the Golf Course Properties, including, without limitation, occupational and liquor licenses, all of which licenses shall be duly valid and in effect as of the Commencement Date and at all times during the Term of this Agreement. GOLF BREVARD shall expend GOLF BREVARD's commercially reasonable efforts to insure that all permits and licenses required for the operation, management and maintenance of the Golf Course Properties, and its related facilities, are not violated by any action or omission by GOLF BREVARD in the course of GOLF BREVARD's performance of its obligations hereunder.

## 12. INSURANCE

**12.1 Insurance To Be Maintained By GOLF BREVARD.** Except as provided for in Section 12.1(c), GOLF BREVARD, throughout the Term of this Agreement, and anyone performing services under a contract, either oral or written, throughout the performance of its services pursuant to this Agreement, shall obtain and maintain in full force and affect the following types and amounts of insurance coverage at GOLF BREVARD's expense:

(a) **Commercial General Liability Insurance.** A policy of Commercial General Liability Insurance, insuring GOLF BREVARD against liability for bodily injury, property damage (including loss of use of property) and personal injury, including contractual liability, and Errors and Omissions. The initial amount of such insurance shall be One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) in the aggregate, and Ten Million Dollars (\$10,000,000) umbrella coverage. The liability insurance obtained by GOLF BREVARD under this Section shall insure GOLF BREVARD's indemnification and other obligations to COUNTY. The amount and coverage of such insurance shall not limit GOLF BREVARD's liability nor relieve GOLF BREVARD of any other obligation under this Agreement.

(b) **Pollution Liability Insurance.** Pollution Liability Insurance for damage, injury or loss arising out of the the application, storage, or use of pesticides, herbicides and other hazardous substances with a \$1,000,000 combined single limit for each occurrence.

(c) **Property Damage Insurance.** COUNTY shall be responsible for covering loss of or damage to the COUNTY-owned Property, COUNTY-owned Improvements, and COUNTY-owned Furniture, COUNTY-owned Fixtures and COUNTY-owned Equipment, in the amount of their replacement value with such endorsements and deductibles as COUNTY shall determine from time to time. Neither GOLF BREVARD nor COUNTY shall not do or permit anything to be done which shall invalidate any such insurance. COUNTY shall be entitled to all insurance proceeds. If GOLF BREVARD owns, brings, acquires, or uses any assets, other than County-owned assets, than GOLF BREVARD shall be responsible for providing adequate insurance for such assets.

(d) **Workers' Compensation Insurance.** Workers' Compensation Insurance (including Employer's Liability Insurance) in the statutory amount covering all employees of GOLF BREVARD employed or performing services at the Golf Course Properties, in order to provide the statutory benefits required by the laws of Florida.

(e) **Dram Shop Insurance.** A policy providing Dram Shop Insurance coverage with policy limits and deductible equal to those hereinabove specified in subsection 12.1(a) with respect to liability insurance, covering the full amount of potential liability from time to time provided or imposed upon the sellers of alcoholic beverages under the laws of the State of Florida and fully protecting both GOLF BREVARD and COUNTY (and if such insurance providing protection for the following is available, at COUNTY's option,

COUNTY's other Affiliates, and the officers, directors, agents and assigns of each of them) in connection with any such sales (or other offering) of alcoholic beverages.

(f) **Business Interruption Insurance.** Business Interruption Insurance, providing in the event of damage or destruction of the Golf Course Properties an amount sufficient to sustain GOLF BREVARD for a period of not less than one (1) year for: (i) the net profit that would have been realized had GOLF BREVARD's business continued; and (ii) such fixed charges and expenses as must necessarily continue during a total or partial suspension of business to the extent to which they would have been incurred had no business interruption occurred, including, but not limited to, interest on indebtedness of GOLF BREVARD, salaries of executives, foremen, and other employees under contract, charges under non-cancelable contracts, charges for advertising, legal or other professional services, taxes and rents that may still continue, trade association dues, insurance premiums, and depreciation.

(g) **Automobile Liability Insurance.** Automobile Liability Insurance, on all owned, non-owned, and hired vehicles, with a combined single limit per occurrence of not less than One Million Dollars (\$1,000,000).

(h) **Personal Property Insurance.** Personal Property Insurance covering all personal property and fixtures from time to time in, on or at the Golf Course Properties, in an amount not less than 100% of the full replacement cost, without deduction for depreciation, providing protection against events protected under "All Risk Coverage," as well as against sprinkler damage, vandalism and malicious mischief. Any proceeds from the Personal Property Insurance shall be used for the repair or replacement of the property damaged or destroyed. If the Golf Course Properties is not repaired or restored following damage or destruction in accordance with other provisions herein, COUNTY shall receive any proceeds from the Personal Property Insurance allocable to the personal property and fixtures within the Golf Course Properties (including, without limitation, the improvements and FF&E).

**12.2 Hold Harmless.** COUNTY shall be held harmless against any and all claims for bodily injury, sickness, disease, death, personal injury, damage to property or loss of use of any property or assets resulting therefrom, arising out of or resulting from the performance of the products or from the services for which COUNTY is contracting hereunder.

(a) GOLF BREVARD agrees to indemnify COUNTY and pay the cost of COUNTY's legal defenses, including fees of attorneys as may be selected by COUNTY, for all claims described in the hold harmless clause herein. Such payment on behalf of COUNTY shall be in addition to any and all other legal remedies available to COUNTY and shall not be considered to be COUNTY's exclusive remedy.

(b) It is agreed by the parties hereto that specific consideration has been received by GOLF BREVARD under this Agreement for this hold harmless/indemnification provision.

**12.3 Deductible.** In the event that COUNTY shall become entitled to the

proceeds of any Policy pursuant to the terms of this Agreement, then, upon demand from COUNTY, GOLF BREVARD shall remit to COUNTY the amount of the deductible applicable to the Policy under which proceeds were received, for the type of claim made and paid upon, and which deductible was relied upon by insurer in calculating the award of proceeds paid under the Policy. The provisions of this Section shall survive the Expiration Date or any earlier termination of this Agreement.

**12.4 Certificates of Insurance.** GOLF BREVARD shall have five (5) days to provide certificates of insurance to COUNTY issued by companies and carriers approved by the County and demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under this Agreement. The certificates of insurance shall indicate that the policies have been endorsed to cover COUNTY as an additional insured and loss payee (a waiver of subrogation in lieu of additional insured status on the workers compensation policy is acceptable) and that these policies may not be canceled or modified without thirty (30) days prior written notice to COUNTY.

- (a) The insurance coverage enumerated above constitutes the minimum requirements and shall in no way lessen or limit the liability of GOLF BREVARD under the terms of the Agreement.
- (b) GOLF BREVARD shall require all sub-contractors to secure appropriate insurance coverage for the work being performed, in such limits as provided for herein.

### **13. ASSIGNMENT AND SUBLETTING**

(a) GOLF BREVARD may not, without the prior written consent of COUNTY which consent may be withheld in COUNTY's sole discretion, assign, transfer, sell, convey, mortgage, pledge, hypothecate or encumber this Agreement, or any interest therein, nor sublet the Golf Course Properties or any part thereof, or permit the use of the Golf Course Properties by any third-party. Food and Beverage Services are excepted from the sublet restrictions.

### **14. EXCUSABLE DELAY**

(a) If, by reason of an Excusable Delay, COUNTY or GOLF BREVARD is unable to perform or is delayed in performing any of its obligations under this Agreement, other than financial obligations, or is unable to supply or is delayed in supplying any service which such party is obligated to supply, then such party shall, for the period of any delay in the performance of any of its obligations, have no liability in connection with that inability and this Agreement and the other party's obligation to perform all of its obligations under this Agreement shall in no way be affected, impaired or excused.

### **15. DEFAULT AND REMEDIES.**

**15.1 Default by GOLF BREVARD.** The following shall be events of default by GOLF BREVARD hereunder:

- (a) In the event that any monetary amounts owed by GOLF BREVARD hereunder, are not paid within five (5) business days after receipt of written notice of default from COUNTY that the same are due; or
- (b) except as otherwise provided for in this Section 15, in the event GOLF BREVARD fails to comply with a term, provision or covenant of this Agreement and such failure is not cured within fifteen (15) days after receipt of written notice from COUNTY advising GOLF BREVARD of such default; or
- (c) To the extent permitted by applicable law, any petition is filed by or against GOLF BREVARD under any section or chapter of the Federal Bankruptcy Act as amended; (and with respect to an involuntary petition, GOLF BREVARD shall not have discharged or caused same to be discharged within thirty (30) days from the date of filing or such petition); or creditors; or
- (d) In the event GOLF BREVARD becomes insolvent or makes a transfer in fraud; or
- (e) In the event GOLF BREVARD makes an assignment for the benefit of creditors; or
- (f) In the event a receiver is appointed for a substantial part of all of the assets of GOLF BREVARD and said receiver is not discharged within thirty (30) days after the date of appointment thereof; or
- (g) In the event any representation or warranty made by GOLF BREVARD under this Agreement shall prove to be false, untrue or misleading in any material respect; or
- (h) GOLF BREVARD fails to comply with the terms of the operating covenant contained in Section 9 of this Agreement, uses the Golf Course Properties for other than the Permitted Use and/or operates the Golf Course Properties under a name other than the Permitted Name, and such failure is not cured within thirty (30) days after receipt of written notice from COUNTY advising GOLF BREVARD of such default; or
- (i) In the event GOLF BREVARD engages any entity other than GOLF BREVARD to manage and/or operate the Golf Course Properties; or
- (j) fails to sustain its business model by its inability to a) reverse existing trends in rounds played or b) increase revenue per round played, or c) initiate alternate income sources to meet golf course funding requirements or d) provide a reasonable and verifiable repayment plan to COUNTY; or
- (k) defaults on any required payment to COUNTY; or
- (l) requires additional funds from COUNTY for any reason; or

(m) fails to obtain COUNTY's confirmation of a board of directors member or fails to remove a director upon request for removal by a super-majority vote of the County Commission.

**15.2 Remedies of COUNTY.** Upon the occurrence of a default by GOLF BREVARD under this Agreement and the expiration of any applicable cure period set forth herein, COUNTY may pursue any one or more of the following remedies, separately or concurrently or in any combination:

(a) Terminate this Agreement, in which event GOLF BREVARD shall immediately surrender the Golf Course Properties to COUNTY, but if GOLF BREVARD shall fail to do so, COUNTY may, without further notice and without prejudice to any other remedy COUNTY may have for possession under this Agreement, enter upon the Golf Course Properties, refuse to repair and maintain any mechanical or electrical system or disconnect any such services to the Golf Course Properties and expel or remove GOLF BREVARD and its personal property without being liable to prosecution or any claim for damages therefore and without said entry affecting COUNTY's right to thereafter exercise any other remedy set forth herein.

(b) Enter the Golf Course Properties and relet the Golf Course Properties, and receive the rental therefore, and GOLF BREVARD shall pay to COUNTY, on demand, at the office of COUNTY any deficiency that may arise in the event of such reletting;

(c) As agent of GOLF BREVARD, do whatever GOLF BREVARD is obligated to do by provisions of this Agreement and enter the Golf Course Properties, without being liable to prosecution or any claims for damage therefore, in order to accomplish this purpose.

(d) With or without terminating this Agreement, COUNTY may bring an action against GOLF BREVARD to recover from GOLF BREVARD all actual damages suffered, incurred or sustained by COUNTY as a result of, by reason of or in connection with such default but COUNTY may not recover punitive damages, speculative damages or consequential damages.

(e) Pursuit by COUNTY of any of the foregoing causes of action shall not constitute an election of remedies. No termination of this Agreement by lapse of time or otherwise shall affect COUNTY's right to collect monetary obligations for the period prior to the termination hereof.

**15.3 Default by COUNTY.** The occurrence of any one of the following events shall constitute a default by COUNTY under this Agreement:

(a) If COUNTY shall fail to fully and completely perform its duties and obligations under this Agreement and such failure is not cured within thirty (30) days after receipt of written notice from GOLF BREVARD advising COUNTY of such default (provided, if the nature of COUNTY's failure is such that more time is reasonably required in order to cure, COUNTY shall not be in default if COUNTY commences to cure within such

period and thereafter diligently seeks to cure such failure to completion within ninety (90) days following notice thereof); or

(b) If any representation or warranty made by COUNTY under this Agreement shall prove to be intentionally false, untrue or misleading in any respect; or

(c) In the event COUNTY becomes insolvent or makes a transfer in fraud of creditors; or

(d) In the event COUNTY makes an assignment for the benefit of creditors; or

(e) In the event, a receiver is appointed for a substantial part or all of the assets of COUNTY and said receiver is not discharged within thirty (30) days after the date of appointment thereof.

**15.4 Remedy of GOLF BREVARD.** Upon the occurrence of a default by COUNTY under this Agreement, GOLF BREVARD may solely pursue the following remedy:

(a) GOLF BREVARD may terminate this Agreement by giving COUNTY written notice of such termination, in which event this Agreement shall terminate at the time designated by GOLF BREVARD in its notice of termination to COUNTY or thirty (30) days after the date of the termination notice whichever occurs first.

**15.5 Attorneys' Fees.** In the event of any litigation or arbitration between the parties relating to this Agreement and/or the Golf Course Properties (including pretrial, trial, appellate, administrative, bankruptcy or insolvency proceedings), each party shall bear its own attorneys' fees and costs, including appellate fees and costs. The termination of this Agreement by either GOLF BREVARD or COUNTY by reason of default by another party shall not relieve the parties of any of obligations theretofore accrued under this Agreement prior to the effective date of such termination.

**15.6 Abandonment.** In the event of abandonment of the Golf Course Properties, any personal property belonging to GOLF BREVARD and left on the Golf Course Properties shall be deemed to be abandoned, at the option of COUNTY, and the rights conferred upon COUNTY by this Agreement with regard to the disposition of said personal property shall remain in full force and effect.

**15.7 GOLF BREVARD's Obligations.** Upon the expiration or earlier termination of this Agreement, GOLF BREVARD shall promptly:

(a) peaceably and quietly surrender and deliver to COUNTY the Golf Course Properties in good condition and repair and in the same condition as found on the Commencement Date, reasonable wear and tear excepted, and free and clear of all liens, encumbrances and subtenancies, and title to the Improvements and the FF&E shall vest in COUNTY, without further act of either party and shall be free and clear of all liens. If requested to do so by COUNTY, GOLF BREVARD shall promptly thereafter execute and

deliver to COUNTY such deed or bill of sale as COUNTY may reasonably request, provided they contain no covenant, warranty, representation or other liability of GOLF BREVARD except as otherwise provided herein. COUNTY may require GOLF BREVARD to remove all or a portion of the FF&E at GOLF BREVARD's expense and GOLF BREVARD shall repair any damage to the Golf Course Properties resulting from such removal;

(b) deliver to COUNTY or such other person or entity as COUNTY shall designate, all materials, supplies, equipment, keys, contracts, documents, files, books and records pertaining to this Agreement and the management, operation and maintenance of the Golf Course Properties;

(c) at COUNTY's request, assign all existing contracts relating to the management, operation and maintenance of the Golf Course Properties to COUNTY or such other person or entity as COUNTY shall designate (provided, however, that COUNTY shall have the right, but shall not be obligated to, accept any contract which was entered into in violation of the terms of this Agreement);

(d) furnish all such information, take all such other action and cooperate with COUNTY as COUNTY shall reasonably require in order to effectuate an orderly and systematic termination of GOLF BREVARD's services, duties, obligations and activities hereunder;

(e) to the extent legally transferable, surrender and transfer and/or assign to COUNTY or any person or entity designated by COUNTY, all of GOLF BREVARD's right, title and interest in and to all licenses, permits and other authorizations used by GOLF BREVARD in operating and/or managing the Golf Course Properties;

(f) at GOLF BREVARD's sole cost, conduct an inventory of the supplies, inventory and Furniture, Fixtures and Equipment and deliver a list of such inventory to COUNTY; and

(g) within thirty (30) days after the expiration or termination of this Agreement, cause to be furnished to COUNTY a report similar in form and content to GOLF BREVARD's monthly reports covering the period from the last previous monthly report to the date of expiration or termination of this Agreement.

**15.8 Survival.** The provisions of this Section 15 shall survive any termination of this Agreement.

## **16. DAMAGE BY CASUALTY AND CONDEMNATION**

**16.1 Damage by Casualty.** In the event the Clubhouse or any other material portion of the Golf Course Properties is damaged by fire or other casualty, and insurance coverage for the Golf Course Properties is sufficient to repair such damage, COUNTY shall forthwith repair the damage, provided the repairs can be made within two hundred seventy (270) days from the date of casualty and provided COUNTY receives insurance proceeds for the Golf Course Properties adequate to pay for the cost of the repairs. During the period of

repair, this Agreement shall remain in full force and effect. If COUNTY determines that the repairs cannot be made within the two hundred seventy (270) day period, or if insurance proceeds are not available to cover the cost of said repairs, COUNTY shall have the option either (1) to repair or restore such damage, this Agreement continuing in full force and effect, or (2) give notice to GOLF BREVARD at any time within ninety (90) days after the date of the casualty terminating this Agreement. In the event of the giving of such notice this Agreement shall expire and all interest of GOLF BREVARD in the Golf Course Properties shall terminate on the date so specified in such notice and other sums shall be paid up to the date of such termination. Notwithstanding anything to the contrary, COUNTY shall not be required to repair any injury or damage by fire or other casualty, or to make repairs or replacements of any paneling, decorations, partitions, railings, ceilings, floor coverings, office fixtures or any other property installed in the Clubhouse by GOLF BREVARD. In the event that COUNTY elects to repair or restore the damage to the Golf Course Properties and such repairs or restoration are not completed within two hundred seventy (270) days from the date of casualty, GOLF BREVARD may, at its option, cancel this Agreement by giving notice to COUNTY at any time within thirty (30) days after the expiration of such two hundred seventy (270) days. Notwithstanding the forgoing, if any damage renders more than thirty percent (30%) of the Clubhouse unuseable, COUNTY shall, with reasonable promptness after receipt of written notice from GOLF BREVARD of the occurrence of such damage, but no more than ninety (90) days thereafter, estimate the length of time that will be required to substantially complete the repair and restoration of such damage and shall by written notice advise GOLF BREVARD of such estimate. If such estimate is that the amount of time required to substantially complete the repair and restoration will exceed two hundred seventy (270) days from the occurrence of such damage, then GOLF BREVARD shall have the right to terminate this Agreement upon giving notice to COUNTY at any time within thirty (30) days after COUNTY gives GOLF BREVARD the notice containing said estimate. In all events, even in the event COUNTY elects not to repair or replace the portion of the Golf Course Properties damaged, COUNTY shall be entitled to the proceeds of all insurance claims.

**16.2 Condemnation.** If all or a material portion of the Clubhouse or other part of the Golf Course Properties, or access thereto (notwithstanding the fact that the Golf Course Properties may not be affected by such taking or appropriation) shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, COUNTY shall have the right at its option, to terminate this Agreement, and COUNTY shall be entitled to any and all income, rent, awards, or any interest therein whatsoever that may be paid or made in connection with such public or quasi-public use or purpose and GOLF BREVARD shall have no claim against COUNTY or the condemning authority for the value of any un-expired term of this Agreement. GOLF BREVARD may, however, in a separate, subsequent proceeding make a claim for trade fixtures installed in the Golf Course Properties, at GOLF BREVARD' expense, GOLF BREVARD's moving costs and GOLF BREVARD's Attorneys' Fees. If only a part of the Clubhouse or other part of the Golf Course Properties shall be so taken or appropriated, and COUNTY does not terminate this Agreement in accordance with the foregoing, then this Agreement shall continue in full force and effect. GOLF BREVARD may terminate this Agreement by reason of taking or an appropriation under eminent domain authority only if such taking or appropriation shall be of such extent and nature as to substantially handicap, impede or impair GOLF BREVARD' use of the Golf Course Properties for the purposes set forth herein.

## 17. SPECIAL COVENANTS AND CONDITIONS.

**17.1 Use of Trade Names/Marks and Symbols.** The Golf Course Properties shall be known by such trade name and/or trademark or logo as may from time to time be determined by COUNTY. All names, logos and designs used at the Golf Course Properties shall be the exclusive property of COUNTY. However, during the Term of this Agreement, GOLF BREVARD shall have a non-exclusive license to use the Golf Course Properties names and logos in connection with the operation of the Golf Course Properties. Any software data analysis system developed by GOLF BREVARD shall be the exclusive property of GOLF BREVARD.

### 17.2 Promotional Rights; Advertising.

(a) **Advertising.** All advertisements and promotional materials, and all regional and national media, shall be in good taste and reflective of the high standards associated with the profession of golf and Brevard County. GOLF BREVARD shall remove and withdraw from circulation any advertisements or promotions which may be found objectionable (as determined in COUNTY's sole and absolute discretion) following receipt of notification from COUNTY.

(b) **Prohibited Uses.** GOLF BREVARD agrees that it shall not do any of the following at any time during the Term of this Agreement

(i) Use any of COUNTY-Owned Names as its own trademark or service mark;

(ii) Sell, or distribute for free, any literature, merchandise, memorabilia, souvenirs or other items which refer to or depict the Golf Course Properties and/or any of COUNTY-Owned Names, which may be found objectionable by COUNTY (as determined in COUNTY's sole and absolute discretion) following receipt of notification from COUNTY.

(iii) Construct or install any fencing within or around the Golf Course Properties;

(iv) Utilize any portion of the Golf Course Properties for any marketing, promotional or advertising purpose that benefits or promotes any person, entity or location other than the Golf Course Properties, without COUNTY's prior written consent, including without limitation, the sale or distribution of materials, merchandise and/or admission media, which consent may be withheld or granted in COUNTY's sole and absolute discretion.

(v) Allow any golf carts not owned or leased by GOLF BREVARD or COUNTY, that have been modified or have been manufactured for any purpose other than use on a golf course to be driven, or used on any part of the Golf Course Properties. GOLF BREVARD, at its discretion, may allow privately owned golf carts which meet specifications to be used on the Courses for a fee. GOLF BREVARD shall be responsible for any damage done to the Golf Course Properties caused by golf carts.

**17.3 COUNTY-Owned Names Logoed Products.** Some of the merchandise for sale in the Pro Shop may include merchandise that contains COUNTY-Owned Names (hereinafter, "Logoed Merchandise"). GOLF BREVARD shall be permitted to sell Logoed Merchandise only within the Pro Shops, unless expressly approved by COUNTY.

**18. MISCELLANEOUS.**

**18.1 Notices.** All notices and demands that may be or are required to be given by either party to the other shall be in writing. Any written notice to COUNTY or GOLF BREVARD shall be deemed delivered (whether or not received) when mailed by certified or registered mail, postage prepaid, return receipt requested, and deposited in the United States Mail or delivered personally or by national courier service that provides receipt for delivery. Any written notice not so mailed shall be deemed to have been received upon its actual receipt, with the sender of the notice bearing the burden of proving receipt. Notices to GOLF BREVARD may be addressed to Thomas W. Becker, 735 N Hwy A1A, Apt 405, Indialantic, FL 32903, or to such other place as GOLF BREVARD may from time to time designate in a notice to the other parties. All notices and demands to COUNTY shall be sent as above-required to the Parks and Recreation Director, 2725 Judge Fran Jamieson Way, Bldg B, Viera, FL 32940, or to such other person or place as COUNTY may from time to time designate in a notice to the other parties. Attorneys for the parties are authorized to deliver notices.

**18.2 Successors and Assigns.** The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heir's successors, executors, administrators and assigns of the parties hereto.

**18.3 Severability.** If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws (the deletion of which would not adversely affect the receipt of any material benefit or substantially increase the burden of any part hereto) effective during this Term, then and in that event, it is the intention of the parties that the remainder of this Agreement, and the Term covered thereby, shall not be affected. All rights, powers, and privileges conferred by this Agreement upon the parties shall be cumulative but not restricted to those given by law.

**18.4 Time of Essence.** Time is of the essence of this Agreement and each and all of its provisions.

**18.5 Applicable Law.** This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Florida.

**18.6 Entire Agreement and Modification.** This Agreement contains the entire agreement of the parties, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this instrument shall be of any force or effect. No amendment, modification or variation of this Agreement or any of its terms or provisions shall be effective, binding or valid unless and until it is reduced to writing and executed by the parties. No failure of COUNTY to exercise any power given COUNTY by this instrument, or to insist upon strict compliance by GOLF BREVARD of any obligations

hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of COUNTY's right to demand exact compliance with the terms of this Agreement.

**18.7 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

**18.8 Venue and Waiver of Jury Trial.** The venue of any suit or proceeding brought for the enforcement of or otherwise with respect to this Agreement shall always be lodged in the State Courts of the Eighteenth Judicial Circuit in and for Brevard County, Florida; or if the Circuit Court does not have jurisdiction, then before the United States District Court for the Middle District of Florida; or if neither of such courts shall have jurisdiction, then before any other court sitting in Brevard County, Florida, having subject matter jurisdiction, regardless of whether, under any applicable principle of law, venue may also be properly lodged in the courts of any other federal, state or county jurisdiction. To the extent permitted by law, IN THE INTEREST OF OBTAINING A SPEEDIER AND LESS COSTLY HEARING OF ANY DISPUTE, COUNTY AND GOLF BREVARD HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PREMISES OR THE PROPERTY.

**18.9 Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present a health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**18.10 Disaster Assistance.** COUNTY will provide necessary advice and available logistical assistance in support of recovery operations from a named storm or hurricane.

**18.11 Relationship between Parties.** Nothing herein shall be deemed to create any joint venture or principal-agent relationship between the parties, and neither part is authorized to, and neither party shall act toward third parties or the public in any manner which would indicate any such relationship with the other. GOLF BREVARD is an independent contractor in terms of managing and operating the Golf Course Properties.

## **19. INTERPRETATION AND CONSTRUCTION**

**19.1 Recitals.** The recitals at the beginning of this Agreement are true and correct and are hereby incorporated in and made a part of this Agreement.

**19.2 Interpretation.** Except as otherwise expressly provided in this Agreement, the following rules of interpretation shall apply:

- (a) the singular includes the plural and the plural includes the singular;

(b) the word "or" is not exclusive and the words "includes" and "including" are not limiting;

(c) a reference in this Agreement to a section or an exhibit shall mean and refer to the section of or exhibit to, this Agreement;

(d) a reference to a section in this Agreement shall, unless the context clearly indicates to the contrary, refer to all subparts or subcomponents of such section;

(e) words such as "hereunder", "hereto", "hereof" and "herein" and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular clause hereof;

(f) capitalized terms used in this Agreement shall have the meaning ascribed to them at the point where defined, irrespective of where their use occurs, with the same effect as if the definitions of said terms were set forth in full and at length every time such terms are used;

(g) the words "COUNTY" and "GOLF BREVARD" as used herein shall include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter;

(h) the term "business day" or "business days" as used in this Agreement, and except as modified by the rules and regulations from time to time adopted by COUNTY, shall exclude Saturdays, Sundays and all holidays for federal banks in Brevard County, Florida; and

(i) the headings of the sections of this Agreement, and the numbering or position thereof, are for convenience only in identifying and indexing the various provisions of this Agreement, and shall not in any way be deemed to affect the construction or interpretation of any provision of this Agreement.

**19.3 Construction of Agreement.** This Agreement has been negotiated at "arm's length" by and between COUNTY and GOLF BREVARD, each having an opportunity to be represented by legal counsel of its choice and to negotiate the form and substance of this Agreement; and, therefore, in construing the provisions of this Agreement, no party shall be deemed disproportionately responsible for draftsmanship. No inference shall be drawn from the addition, deletion or modification of any language contained in any prior draft of this Agreement. This Agreement shall create the relationship of COUNTY and GOLF BREVARD.

## **20. CONFIRMATION AND REMOVAL OF THE BOARD OF DIRECTORS OF GOLF BREVARD**

### **20.1 Confirmation and Removal of Board of Directors.**

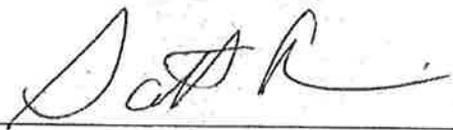
(a) Each member of GOLF BREVARD's board of directors shall be subject to confirmation by Brevard County County Board of County Commissioners.

(b) A super majority of the Brevard County Board of County Commissioners shall have the ability to remove any member of GOLF BREVARD's board of directors.

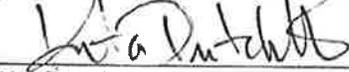
WHEREFORE, COUNTY and GOLF BREVARD have caused this Agreement to be executed, sealed and delivered as of the day and year written below.

ATTEST:

COUNTY:

  
\_\_\_\_\_  
Scott Ellis, Brevard County Clerk of Court

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

By:   
\_\_\_\_\_  
Rita Pritchett, Chair

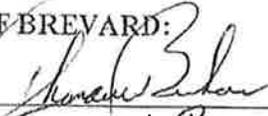
Date: April 24, 2018

Date: April 24, 2018

WITNESSES:

GOLF BREVARD:

  
\_\_\_\_\_  
Print Name: Jay Roth  
  
\_\_\_\_\_  
Print Name: Sally Lewis

By:   
\_\_\_\_\_  
Print: THOMAS W. BECKER  
Title: INTERIM CHAIR

Date: MAY 10, 2018

REVIEWED  
For Legal Form and Content  


(CORPORATE SEAL)

List of Exhibits

Exhibit A	Real Property Descriptions
Exhibit B	Golf Course Maintenance Standards
Exhibit C	Prohibited Uses
Exhibit D	Reporting Requirements
Exhibit E	Operating Agreements
Exhibit F	Habitat Lease
Exhibit G	St. John's Permit

## EXHIBIT "A"

### LEGAL DESCRIPTIONS

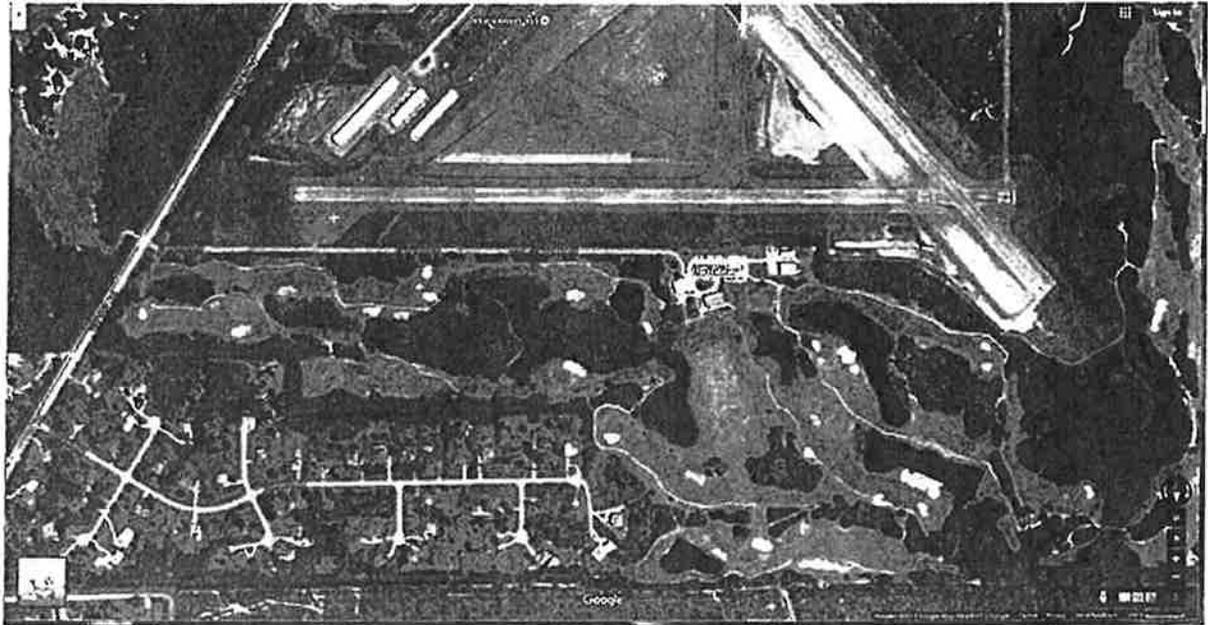
#### THE HABITAT LEGAL DESCRIPTION

Part of Sections 17 and 18, Township 29 South, Range 38 East, Brevard County, Florida, being more particularly described as follows:

Beginning at the Southeast corner of Section 18, Township 29 South, Range 38 East, Brevard County, Florida; thence S 88° 43' 10" W along the south line of the Southeast ¼ of Section 18 a distance of 960.90 feet to the Southeast corner of Pomello Ranch, Unit Three, as recorded in Plat Book 28, Page 13, Public Records of Brevard County, Florida; thence N 0° 02' 57" East a distance of 40.00 feet; thence N 88° 43' 10"

East a distance of 140.00 feet; thence N 40° 17' 42" East a distance of 294.01 feet; thence N 0° 2' 57" East a distance of 215.00 feet; thence N 52° 32' 21" West a distance of 415.35 feet to the east line of aforesaid Pomello Ranch, Unit Three; thence N 0° 02' 57" East a distance of 255.09 feet to the Northeast corner of said plat of Pomello Ranch, Unit Three; thence S 88° 43' 10" West along the north line of Pomello Ranch, Unit Three and Pomello Ranch, Unit Two, for a distance of 1601.38 feet; thence N 0° 02' 30" East a distance of 330.00 feet; thence S 88° 43' 10" West a distance of 1115.44 feet to the easterly R/W line of Valkaria Road; thence N 30° 27' 26" East along said easterly R/W line a distance of 694.66 feet; thence East a distance of 4287.79 feet; thence S 42° 30' 00" East a distance of 900.00 feet; thence N 47° 30' 00" East a distance of 540.00 feet; thence N 8° 58' 06" East a distance of 849.11 feet; thence N 25° 56' 32" West a distance of 411.46 feet; thence North a distance of 280.00 feet; thence N 21° 04' 04" East a distance of 581.93 feet; thence S 89° 47' 56" East a distance of 525.00 feet to the east line of property described in O.R.B. 171, Page 493; thence S 0° 13' 56" East along said east line a distance of 2230.52 feet; thence S 0° 05' 27" East a distance of 1345.23 feet to the Southeast corner of the Southwest ¼ of aforesaid Section 17, Township 29 South, Range 38 East, thence N 89° 49' 54" West a distance of 2668.09 feet to the P.O.B. Contains 211.111 Acres more or less.

The Habitat Golf Course



**SPESSARD HOLLAND GOLF COURSE LEGAL DESCRIPTION**

A parcel of land in Section 17, Township 28 South, Range 38 East, Brevard County, Florida more particularly described as follows:

All of Government Lot 5 of said Section 17, lying southerly of the right of way of Oak Street (100' right of way) and westerly of the right of way of S.R. A1a (100' right of way) as presently located and excepting therefrom lands described in Plat Book 24, Page 63 of the Public Records of Brevard County, Florida.

Also

Government Lot 6 of said Section 17 lying westerly of the right of way of S.R. A1A (100' right of way) except the area encompassed by the Fire Department and the Substation.



## **EXHIBIT "B"**

### **GOLF COURSE MAINTENANCE STANDARDS**

#### **GOLF COURSE MAINTENANCE**

Golf Brevard will maintain the Spessard Holland Golf Course and the Habitat Golf Course in accordance with the current edition of Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses as prescribed by the Department of Environmental Protection.

The golf courses will have soil testing performed annually.

Golf Brevard will comply with all terms and conditions of the St. John's River Management Water District Consumptive Use Permit Number 20-009-1764-5, including but not limited to, the monthly water testing at the Habitat Golf Course. The St. John's River Water District Consumptive Use Permit is attached as Exhibit "G".

Greens will be aerified and verticut. Top dressing will be applied following aerification. Fairways and tees will be aerified.

Tees, fairways and roughs will be fertilized.

Integrated Pest Management methods and techniques will be followed on all courses.

Lakes and drainage will be maintained by Golf Brevard and the lakes will be aesthetically pleasing and environmentally sound.

All chemicals, pesticide, fertilizer, and fuel storage must meet OSHA and Florida statutes.

#### **LANDSCAPE MAINTENANCE**

All landscape beds and lawn areas around the clubhouse and property will be maintained in a first class standard.

A tree plan needs to be in place, which encompasses tree maintenance (trimming, pruning, watering, fertilizing, pesticides, etc.), placement (now and in future) and replacement of dead trees.

Landscape materials will be designed and installed to support both sun and/or shade as the areas present themselves.

All cart paths will be clean, well defined, and in good repair.

All driveways and parking lots will be maintained in good condition by Golf Brevard.

Course amenities will be replaced or repaired on an as needed basis.

### **BUILDING MAINTENANCE**

All buildings, exterior and interior, will be well-maintained, clean, orderly, properly lighted and in good condition.

The heating, ventilating and air conditioning (HVAC) system will be inspected.

All buildings will be properly secured and security systems in existing buildings will be operational and maintained.

## **EXHIBIT "C"**

### **PROHIBITED USES**

1. The term Prohibited Use shall include, without limitation, the following:
  - (a) adult entertainment uses (as such term is defined in the Brevard County Zoning Code), and any uses that include any exhibition of nude or partially dressed persons, the sale or rental of "X-Rated" or adult movies, magazines, media items or materials;
  - (b) the retail or wholesale sale of any goods or services other than the sale of golf related products from the golf Pro Shop or the sale of food and beverages in the Clubhouse; and
  - (c) any other use that COUNTY reasonably believes is inconsistent with the character and use of Golf Course Properties.
  
2. General Rules For Golf Club Management and Operation
  - (a) Maintenance, repair and construction activities (including, without limitation, Golf Course Properties maintenance) shall be performed in accordance with any and all applicable noise ordinances.

## EXHIBIT "D"

### REPORTING REQUIREMENTS

The monthly and annual reports required to be given by GOLF BREVARD to COUNTY shall each contain the following information:

#### Monthly & Annual Reports:

(i) A profit and loss statement, balance sheet, cash flow statement, and budget variance report showing the results of operation of the Golf Course Properties for such month and for the Agreement Year to date, which statement shall include sufficient detail to reflect all Gross Revenues and Golf Course Properties Expenses, and which shall further breakdown revenues and expenses between the golf courses, restaurants, pro shop sales, rentals and lessons, and other categories as appropriate and/or as reasonably required by COUNTY.

- (ii) Total Rounds Report with comparison to prior year
- (iii) Course Maintenance Schedules
- (iv) Update on Current Conditions
- (v) Rate Schedule for each player category
- (vi) Capital Projects Update

The monthly financial information included as part of those reports shall be unaudited and unreviewed; the annual financial information included as part of the annual report shall be audited by an independent certified public accountant selected by COUNTY.

**EXHIBIT "E"**

**LIST OF EXISTING OPERATING AGREEMENTS**

1. Agreement between GolfNOW, LLC and Brevard County dated 7/28/17.



**Exhibit "E"**

**Order Form**

This Order Form, together with the Standard Terms and Conditions attached hereto and incorporated herein by reference, shall constitute a binding legal agreement (this "Agreement"), between GolfNow, LLC ("GolfNow") and Brevard County ("Course" - Legal Entity Name) (individually, a "Party" and collectively, the "Parties"), and is made and entered into as of the last date of the last signature written below (the "Effective Date"), and shall govern GolfNow's provision of software, marketing, and/or technology services for Course's golf courses listed below.

<b>GolfNow:</b> GolfNow, LLC 7580 Golf Channel Drive Orlando, FL 32819	<b>Course (Legal Entity Name):</b> Brevard County <b>Course (Legal Entity Address):</b> 2725 Judge Fran Jamieson Way Viera, FL 32940
	<b>Course's Golf Courses:</b> The Habitat Spessard Holland Savannahs

<b>Prepared By:</b> Kelly McArdle	<b>Course Contact Name:</b> Larry Wojciechowski
<b>Phone:</b> 407-494-9634	<b>Course Contact Phone:</b> 3216332046
<b>Email:</b> kelly.mcardle@golfchannel.com	<b>Course Email:</b> larry.wojciechowski@brevardparks.com

**TERM AND RENEWALS:** The Initial Term of this Agreement shall be Two (2) Years from the Effective Date and shall be non-cancellable except as provided herein. **UPON EXPIRATION OF THE INITIAL TERM, THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE (1) YEAR TERMS UNLESS OTHERWISE TERMINATED BY EITHER PARTY IN WRITING AT LEAST THIRTY (30) DAYS PRIOR TO ANY RENEWAL TERM.**

DISTRIBUTION		PAYMENT
GolfNow Marketplace		See Specific Payment Terms Below
GolfNow Booking Engine		
GolfNow Mail		
Facebook Booking Engine		
PREMIUM OFFERINGS		PAYMENT
Website Development and Hosting		See Specific Payment Terms Below
GolfNow Premium Marketing Platform		
TECHNOLOGY		PAYMENT
G1 Operating System		See Specific Payment Terms Below
SERVICES		SERVICE OPTIONS
GolfNow Answers	Answers - Staff-on-Demand	See Specific Payment Terms Below
GolfNow Plus	Plus - Full Service	
[SELECT SERVICE]	[SELECT SERVICE OPTIONS]	
[SELECT SERVICE]	[SELECT SERVICE OPTIONS]	
HARDWARE		QUANTITY
[SELECT ITEM]	[Quantity]	N/A
ONLINE MARKETING		ACKNOWLEDGED
Does Course agree to grant GolfNow permission to purchase keywords in search engine marketing that include Course's name, or any other trade name, trademark or other intellectual property belonging to Course?		YES
MILITARY TEE TIMES		ACKNOWLEDGED
Does Course agree to grant GolfNow permission to add Course Inventory to MilitaryTeeTimes.com at a fifteen percent (15%) discount relative to all Inventory released and posted on golfnow.com?		NO



**Order Form**

"GOTTA PLAY" TECHNOLOGY	ACKNOWLEDGED
<p>Does Course agree to grant GolfNow permission to use GolfNow's "Gotta Play" Technology with the Trade Times provided under this agreement?</p> <p>By selecting "Yes", Course agrees to the following terms:</p> <ul style="list-style-type: none"> <li>GolfNow's "Gotta Play" Technology will populate pre-paid Trade Time(s) at a mutually agreed upon discount rate when any tee time is selected by a user. Course and GolfNow shall also mutually agree upon the time window from which a "Gotta Play" round can be sold.</li> <li>All rounds made available on GolfNow (including Course rounds and Trade Times) within the agreed upon time window will be subject to the "Gotta Play" discount. Total "Gotta Play" rounds sold in a given day may not exceed the agreed upon payment as defined in this Agreement. All rounds purchased with the "Gotta Play" discount shall be due exclusively to GolfNow for its own benefit.</li> <li>Any rate/offer that is made available by Course within the mutually agreed upon "Gotta Play" time window may be sold as a "Gotta Play" round with the mutually agreed upon discount rate. By way of example, if Course adds a "meal and range balls included" offer to a round during the agreed upon time window, this package will be subject to the "Gotta Play" rate discount, all sales shall be due exclusively to GolfNow, and Course will honor, in full, all aspects of the package.</li> <li>For the avoidance of doubt, Course acknowledges and agrees that "Gotta Play" rounds (including rounds with additional offerings) will be paid in full online to GolfNow for its own benefit with \$0 due at Course.</li> <li>"Gotta Play" rounds will also be available on Course's website.</li> </ul>	<p style="text-align: center;">NO</p>

**TOTAL PAYMENT(s):** Three (3) Trade Times per day, per golf course

Trade Times: A single 'Trade Time' is defined as four (4) individual 18-hole rounds (with cart) made available for sale by GolfNow for its own benefit. Each Trade Time shall be made available for sale beginning on the first day of the month and will be made available on subsequent days throughout the month until a maximum of thirty (30) Trade Times (or 120 individual 18-hole trade rounds) have been sold each month.

The tee times of the individual 18-hole rounds provided as Trade Times shall be mutually agreed upon within the time period beginning thirty (30) minutes after Course opening and ending four and one half (4.5) hours prior to dusk. GolfNow shall have the ability to sell Trade Times at a price that is at the discretion of GolfNow (except where mutually agreed upon). Trade Times shall be available for purchase on Course's website, golfnow.com and GolfNow's network of partner websites.

Agreed to and Accepted

Course Signature: Mary Ellen Downer Printed Name: MARY ELLEN DOWNER Date: 7/27/17  
DocuSigned by:

GolfNow Signature: Jerramy Hainline Printed Name: Jerramy Hainline Date: 7/28/2017  
53768463D6CE4B8...



## Standard Terms and Conditions

"GolfNow" shall mean GolfNow, LLC and GolfNow G1, LLC collectively. Course shall mean the legal entity listed as "Course" on the included Order Form. The Parties acknowledge and agree that except as otherwise provided herein, the Standard Terms and Conditions and any applicable Addendum shall be updated and amended from time to time by GolfNow in its sole discretion. Course's use of the Services and Software hereunder shall be subject at all times to the then current Standard Terms and Conditions and/or applicable Addendum. Should the Standard Terms and Conditions and/or applicable Addendum be amended, GolfNow shall provide Course with at least sixty (60) days' prior written notice of such change and Course shall have the option to terminate this Agreement within thirty (30) days of receipt of such notice.

- 1. GolfNow Services.** GolfNow shall provide GolfNow's Tee Time Marketing and Technology Services (the "Services") for the purpose of marketing, promoting and selling Course tee times and/or enhancing Course's technology. GolfNow shall provide access to Course tee times to any of its branded websites, partner or affiliated websites, or any other distribution channel. GolfNow shall apply the latest version of the GolfNow Services to the marketing and administration of Course tee times. GolfNow shall notify Course in advance in writing of any GolfNow Services updates, and will provide appropriate training and/or materials to Course concerning all updates. Course shall provide GolfNow with access to all of the internal and external systems (including third party systems licensed to Course) necessary for GolfNow to provide the Services. Course shall honor all tee times reserved through GolfNow's distribution channels and shall treat all golfers originating from GolfNow with proper courtesy and respect. Course shall make every effort to maintain its inventory in the most up-to-date manner possible, with proper communication to GolfNow regarding changes in availability, course conditions, etc. The Parties shall work cooperatively to minimize double-bookings, cancellations and the like.
- 2. GolfNow Software.** GolfNow grants Course a limited, non-exclusive, non-transferable license to utilize the software as set forth on the included Order Form (the "Software"). Course may use the Software for the purpose of managing and marketing Course's golf course properties and shall not sell, sublicense, lend, or otherwise transfer the Software to others. Neither Course, nor any third party working with or on behalf of Course, may reverse engineer, decompile, disassemble, or customize the Software including but not limited to, creating any software interface with the Software for the purpose of selling or marketing tee times through the Internet or any Internet site, without the express knowledge and written agreement of GolfNow. Course understands and acknowledges that all third party vendors must have a written agreement with GolfNow in order to create any interface with the Software.
- 3. GolfNow-Owned Hardware.** To the extent that GolfNow has provided Course with any hardware, all such hardware shall remain GolfNow's property and shall be returned by Course to GolfNow within fourteen (14) days upon the earlier of: (i) termination of this Agreement due to breach; or (ii) expiration of the Term.
- 4. Fees and Pricing.** Course's payment to GolfNow shall be the "Total Payment" amount set forth on the Order Form attached hereto. Course shall have the option of selecting one of the 'Flexible Payment Options' outlined within Exhibit A. If Course elects to charge an online fee for rounds booked on its website, GolfNow shall retain One Dollar and Twenty-Four Cents per round (\$1.24/round), and remit the remainder to Course. If applicable, Course shall have the right to approve the price and amount of all non-Trade Time Inventory offered in the GolfNow network. GolfNow shall receive tee times and rates equal to or better than those offered by Course to any third party distribution service.

Course acknowledges and agrees that Course's payment to GolfNow is a material element of this Agreement. Due to this material element, in the event that Course does not comply with the payment requirements hereunder or otherwise breaches the terms of this Agreement (each a "Non-Compliance Event"), Course shall be required to pay GolfNow a fee of Two Hundred Fifty Dollars (\$250.00) per golf course per month for each month after the first instance of any Non-Compliance Event through either: (i) the cure of the Non-Compliance Event; or (ii) the end of the current Term, whichever is shorter.

**5. Term and Termination.** The initial term of this Agreement, along with any applicable Renewal Term, shall be for the period of time as set forth on the attached Order Form (the "Term"), and shall be non-cancellable except as provided herein. Either Party may immediately terminate this Agreement in the event that the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days' written notice of such breach. Upon termination of this Agreement, Course shall delete and return all Software (including all copies), and sign a statement certifying same.

**6. Support and Training.** GolfNow shall provide Course appropriate levels of training (including access to remote training and on-line resources). Additional in-person training may be provided for an additional fee. Telephone and email support shall be provided to Course during normal business hours through GolfNow's published phone numbers and email addresses.

**7. Data Security.** Industry standards have been set by the Payment Card Industry Data Security Standards ("PCI Standards") for protection of customer information. GolfNow and Course both represent and warrant that they will comply with PCI Standards during the entire Term of this Agreement and thereafter with respect to customer data accumulated during the Term, and further agree to adhere to all other applicable standards, laws, rules, and regulations for protection of customer data to which they have access during the entire Term of this Agreement. GolfNow agrees that it will use systems, tools and security and take commercially reasonable steps to ensure Course customer data hosted by GolfNow is not accessed, redistributed, duplicated, or modified. GolfNow shall be free to provide certain required levels of access to contracted third party vendors that may need access to such data in order to provide services.

**8. Privacy Policies and Terms of Use.** Course will at all times during the Term: (a) maintain a privacy policy and terms of use that are consistent with applicable laws and industry best practices (as determined by reference to the practices of other consumer-oriented websites and the promulgations of applicable industry standards bodies); (b) make such policy and terms of use easily accessible to end users; and (c) comply with such policy and terms of use. GolfNow will maintain a separate privacy policy and terms of use on all modules and booking engines that are hosted on Course's website(s) that pertain solely to the collection and processing of any customer data through these modules and/or booking engines, but not to any other component or function of Course's website(s).

**9. Limited Warranties and Remedies.** Both Parties represent and warrant that: (a) they have the authority to enter into this Agreement and that their signatories are duly authorized and empowered to sign this Agreement on their behalf; and (b) they will comply with all applicable laws, ordinances, statutes, regulations and rules, and that they have the power to settle fully and completely all claims, causes of action, demands, charges and liabilities arising out of or relating to this Agreement. Course represents and warrants to GolfNow that any intellectual property provided to GolfNow by Course (including without limitation, any photographs, drawings, or works of art) do not violate the rights of any third party. Course agrees to indemnify GolfNow for any



## Standard Terms and Conditions

alleged or actual breach of this warranty. GolfNow will provide the Services and the Software in a professional and workmanlike manner and free from any unreasonable defects, and GolfNow will use all reasonable means to fix any defect in the Software or Services that may arise. GolfNow will provide Course with training on how to use the Software and Services and provide support as needed by Course. GolfNow shall notify Course in advance of any Software or Service updates and will provide appropriate training and/or materials to Course concerning all updates. Course and its authorized users shall use the Software and Services only in accordance with this Agreement. Aside from these warranties, THE GOLFNOW SOFTWARE AND SERVICES ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. With respect to malfunctioning Software, GolfNow's entire liability and Course's exclusive remedy shall be the repair/replacement of the Software.

10. **Limitation of Liability.** EXCEPT FOR THIRD PARTY LIABILITIES, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES BASED ON LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION OR LOSS OF DATA), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE CAUSE OR THE FORM OF ACTION (WHETHER BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE).

11. **Ownership of Property and Data.** All personally-identifiable customer information supplied to GolfNow by Course (e.g., through the GolfNow booking engine or through the Software) remains the sole property of Course, cannot be copied, sold or reused by GolfNow, and will be treated as confidential business information with at least the same degree of care as GolfNow's own confidential business information. All non-personally identifiable customer information supplied to GolfNow by Course (e.g., anonymous survey results, general usage data), as well as all customer data obtained independently by GolfNow (e.g., through an end-user booking a tee time at golfnow.com or other affiliated websites) shall be GolfNow's sole property, but may be shared with Course should the Parties agree and obtain end-user consent for such an arrangement. Course acknowledges and agrees that GolfNow's sharing of personally identifiable customer information shall at all times be governed by the terms of GolfNow's then current privacy policy and terms of use. The following shall remain the sole and exclusive property of GolfNow: (a) the GolfNow Software and Services (including any of GolfNow's enhancements or upgrades thereto), and all other software and materials developed, conceived, originated, prepared, generated or furnished by GolfNow under this Agreement; and (b) all copyrights, trademarks, patents, trade secrets and any other intellectual property and proprietary rights in and to the foregoing.

12. **Dispute Resolution.** This Agreement shall be governed, interpreted and construed under the laws of the United States and the State of Florida without regard to any conflict of law principles. The Parties shall act in good faith and use commercially reasonable efforts to promptly resolve any claim, dispute, controversy or disagreement (each a "Dispute") between the Parties under or related to this Agreement. Any Dispute arising out of this Agreement which cannot be resolved by the Parties shall be governed exclusively by binding arbitration initiated and conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, conducted in the Orlando, Florida, metropolitan area. The arbitrator shall have the power to

award reasonable attorneys' fees and costs to the prevailing Party in any arbitration, and either Party shall have the right to take appropriate action to enforce any arbitration award in any court having jurisdiction over the applicable Party.

13. **Traffic Assignment.** In the event that GolfNow is providing Website Hosting/Development and/or Mobile Website Hosting/Development for Course, Course hereby assigns such traffic numbers to GolfNow for comScore traffic reporting or other applicable reporting services. Course agrees to execute any and all documentation necessary to effectuate such traffic assignment to GolfNow.

14. **Binding Nature; Assignment.** This Agreement shall be binding upon GolfNow and Course, and their respective successors and assigns; provided, however, that neither Party shall assign this Agreement or any of its rights or obligations hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, without Course's consent, GolfNow may assign all or part of its rights and obligations under this Agreement to: (i) any of its divisions, affiliates or subsidiaries; (ii) its parent company; or (iii) any of its parent company's divisions, affiliates, or subsidiaries. A sale of substantially all of the stock or assets of a Party, or the reorganization or merger of a Party, shall not constitute an assignment of this Agreement. Any assignment or transfer in violation of this Section shall be void and of no force or effect. Any subcontractors retained by GolfNow to perform certain obligations hereunder shall be bound by and their actions are governed by this Agreement as if GolfNow itself was performing such obligations.

15. **Confidentiality.** This Agreement and its terms and conditions are confidential and shall not be disclosed by any Party without the prior written consent of the other Party, except: (a) to a Party's affiliates and its and their respective officers, directors, employees, representatives, agents and advisors; or (b) as required by applicable law, rule, regulation, judicial or governmental order, subpoena or other legal process, or at the request of any governmental or regulatory agency or authority having or asserting jurisdiction. Each Party will cause its affiliates and their respective officers, directors, employees, representatives, agents and advisors to comply with the provisions of this Section 15.

16. **Miscellaneous.** This Agreement shall constitute the entire understanding of the Parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, written or oral, relating thereto - between Course and GolfNow. The Parties acknowledge and represent that they have carefully read and fully understand all of the terms and conditions set forth in this Agreement. The Parties further acknowledge and represent that they enter into this Agreement freely, knowingly and without coercion and based on their own judgment and investigation of this matter, and not in reliance upon any representations or promises made by any Party, its attorneys, or its agents. The Parties hereby acknowledge and agree that GolfNow is an independent contractor and not an employee, agent, joint venturer or partner of Course or any of its affiliates. Nothing in this Agreement shall be interpreted or construed as creating or establishing a joint venture, partnership, employment, or agency relationship among any of the Parties as a result of this Agreement. The headings in this Agreement are intended for convenience of reference and shall not affect its interpretation. None of the Parties shall have any power to obligate or right to bind any other Party. This Agreement may be executed in one or more counterparts, with electronic exchange of signatures (e.g., pdf and DocuSign) sufficient to bind the Parties. Notices of either Party as required herein shall be sent to the addresses provided in the attached Order Form.



## Standard Terms and Conditions

### EXHIBIT A – FLEXIBLE PAYMENT OPTIONS

#### BARTER

##### *Standard*

- GolfNow takes the risk of selling daily foursomes
- Time of foursome mutually agreed upon
- Price of foursome controlled by GolfNow
- Newly designed course booking engine included

##### *Jointly Managed*

- GolfNow and Course determine mutually agreeable price floor for daily foursome
- Monthly utilization for daily foursome is also mutually agreed upon
- Newly designed course booking engine required

##### *Course Controlled*

- GolfNow provides Course with tool to manage the sale of barter
- Course controls sale of all barter rounds (price and time) to achieve the equivalent of one foursome daily, X number of monthly playable days
- Monthly cash reconciliation required

#### LINEAR COMMISSION

- GolfNow and Course determine mutually agreeable per round commission %
- Commission % prepaid at point-of-purchase by golfer; balance paid at check-in
- Rate parity required
- Inventory requirements also exist

#### CASH

- Calculated at value of one foursome daily, X daily APR, X number of monthly playable days
- Newly designed course booking engine included

## EXHIBIT "F"

### HABITAT LEASE

#### LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this 3rd day of March 1981, by the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, a political subdivision of the State of Florida and between the VALKARIA AIRPORT, a County Airport, hereinafter referred to as "Airport", and the DEPARTMENT OF PARKS AND RECREATION, an organizational division of Brevard County, hereinafter referred to as "Tenant",

#### W I T N E S S E T H :

WHEREAS, the United States of America, by Quit-Claim Deed, dated, September 8, 1978, granted to Brevard County, acting by and through its Board of County Commissioners, 512.05 acres, more or less, which lands are known as the Valkaria Airport; and

WHEREAS, the Brevard County Board of County Commissioners has made improvements to the approximately 187 acres of the said Airport by the development of the Valkaria Golf Course; and

WHEREAS, the development of the said 187 acres as a County Golf Course will directly and indirectly benefit the Airport property; and

WHEREAS, the Valkaria Golf Course is a public recreation facility open to any person who wishes to utilize the facilities without exception or qualification; and

WHEREAS, Paragraph 5 of the Quit-Claim Deed of September 8, 1978, provided that the Valkaria Airport shall not be used for any purpose other than Airport purposes without written consent of the Administrator of the Federal Aviation Agency, which consent shall be granted after the Administrator finds that such property can be so used for other than airport purposes without materially and adversely affecting the development, improvement, operation or maintenance of the Airport; and

WHEREAS, in view of the foregoing, the Airport Fund shall be paid for the use of the airport property for use as a recreational facility.

NOW, THEREFORE, the parties hereby agree as follows:

1. **TERM.** The term of this Agreement shall be for a period of thirty (30) years from March 3, 1981 to March 3, 2011. The Tenant shall have the right to extend the lease an additional thirty (30) years, upon execution of a letter of concurrence, or letter of no objection from the FAA, its successors or assigns.

2. PROPERTY. The property subject to this Agreement shall be the property described in Exhibit "A".

3. PURPOSE. The Tenant shall utilize the land leased from the Airport as the Valkaria Golf Course and related recreational facilities open to all persons.

4. RENTAL. The Tenant hereby agrees to pay to the Airport, as required herein, the total annual sum of \$49,100 in monthly installments of \$4,108.33 due and payable in advance on the third day of each month commencing on the effective date of this agreement. The annual rental fee may be adjusted based on the Consumer Price Index (CPI) published by the Federal Government with the base figure established as of the date of this agreement. The Airport will compare the base price index on a yearly basis, and the annual fee payments shall be increased (or decreased) in the same proportion as said price index at the commencement of this agreement. In no event, however, shall the rental fee decrease below the original sum of \$49,100 that was charged on the effective date of this agreement. The Tenant may make payments of rent on an annual or semi annual basis at his discretion.

5. FAIR MARKET VALUE. Lease payments shall be based upon a percentage rate of TEN PERCENT (10%) of the fair market value of the property as described above and as determined by an appraisal of the value of the property.

6. DELINQUENCIES. Payments required shall be considered due (in part thirty (30) days after the date they are due and payable). A service charge at the applicable prime rate per annum from the date due and payable until paid shall be assessed the Tenant for such delinquencies.

7. NO LIENS CREATED. Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other party in and to the property covered by this Lease, and that no third person shall ever be entitled to any lien, directly or indirectly derived through or under the other party, or its agents or servants, or on account of any act or omission of any other party. All persons contracting with the Tenant, or furnishing materials or labor to the Tenant, or to its agents or servants, as well as all persons

whereupon, shall be bound by this provision of the lease. Should any such lien be filed, the Tenant shall discharge the same within thirty (30) days thereafter by paying the same or by filing a bond, or otherwise, as permitted by law. The Tenant shall not be deemed to be the agent of the Airport as to confer upon a laborer bestowing labor upon the leased premises, or upon a materialman who furnishes material incorporated in the construction of improvements upon the leased premises, a mechanic's lien upon the Airport's estate under the provisions of Chapter 213, Florida Statutes, 1975, and any subsequent revisions of that law.

6. LEASEHOLD INTEREST. Tenant may, from time to time, pledge its leasehold interest as security for a bona fide loan or loans from reputable established lenders or lending institutions, such pledges to be subject to the approval of the Airport. The Tenant shall not subordinate the Airport's interest in the premises to any such security holder under any circumstances whatsoever.

9. SUBORDINATION. This Lease Agreement shall be subordinate to the provisions of any existing or future Agreement between the County and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for development of the Volusia Airport. Except to the extent required for the performance of the obligations of Tenant in this lease, nothing contained in this Agreement shall grant to Tenant any rights whatsoever in the airspace above the premises other than those rights which are subject to Federal Aviation Administration orders, regulations or advisory circulars currently or subsequently effective.

10. NONDISCRIMINATION. Tenant does hereby agree and covenant:

a) that no person on the ground of race, color or national origin shall be excluded from participation or denied the benefits of, or be otherwise subject to discrimination in the use of the facility.

b) that in the construction of any improvement on, over or under the premises and the furnishing of labor, services or materials in connection therewith, no persons on the ground of race, color, or national origin shall be excluded from participation in, or otherwise be subject to discrimination by Tenant.

c) Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation, subtitle A, Office of the Secretary Part 71, Non-discrimination in Federally assisted programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended.

d) Tenant shall operate the facility in accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and will assure that no qualified handicapped person shall, solely by reason of such person's handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment.

11. PROPERTY REMAINS AIRPORT'S. Title to any building, structure or other improvement of a permanent character constructed, erected, or installed upon the premises by Tenant as permitted by this lease shall forthwith vest in the Airport subject to the leasehold estate and options to renew granted to the Tenant under the terms of this lease. Tenant shall not remove such improvements from the premises nor materially modify, waste, or destroy such improvements without the prior written consent of the Airport, which consent shall not be unreasonably withheld. Upon the expiration or sooner termination of this lease and all extensions thereof, the Airport's title to such improvements shall be free and clear of all claims to or against such improvements by Tenant, any mortgages of Tenant, or any third person claiming under Tenant. Tenant shall defend and indemnify Airport against all liability and loss arising from such claims.

12. DEFAULT. Payments in arrears, in full or part, more than ninety (90) days shall constitute a default and shall be sufficient cause for Airport to terminate this Agreement.

13. MAINTENANCE AND REPAIRS. The Tenant will be solely responsible for the maintenance, repair, and upkeep of the leased property.

14. DAMAGE OR DESTRUCTION TO LEASED PREMISES. Except as otherwise provided in this lease, if the premises or any part of them (including any leasehold improvements), shall be damaged or destroyed, Tenant shall promptly repair or replace the same. Any other terms or provisions of this Lease Agreement pertaining to repair, alteration,

construction or reconstruction by Tenant shall be binding upon Tenant in repairing or reconstructing the leased premises under the terms and provisions of this lease. If such a substantial portion of the leased premises is destroyed so that Airport and tenant mutually agree that Tenant cannot reasonably continue to utilize the leased premises until the same are repaired or replaced, then Tenant may elect to either repair or replace the same in which event the term shall be abated until such time as Tenant can reasonably resume operation of its business, and the term shall be extended for a period equal to the rent abatement period.

14. INDEMNIFICATION. The Tenant shall indemnify the Airport and hold the Airport harmless for any and all liability, claims, damages, expenses (including attorney's fees and costs for trial or appeal), proceedings and causes of action of every kind and nature arising out of or connected with the use, maintenance, operation or control of the subject property by the Tenant. The Airport shall likewise indemnify and hold the Tenant harmless for all liability, claims, damages, expenses (including attorney's fees and costs for trial or appeal), proceedings and causes of action of every kind and nature arising out of the Airport's sole negligence as owner of the subject property. The Airport and Tenant rely on sovereign immunity U.S. 749.10.

15. RELETTING OF PROPERTY BY TENANT. In case the Tenant shall abandon said real property, or any part thereof, during the continuance of this agreement, the Airport may, at its option, without notice, relet said real property or any part thereof, on such terms and for such rent as it may deem expedient or proper. Such reletting shall not operate as a waiver of any right whatsoever which the Airport would otherwise have to hold the Tenant responsible for the rent above reserved. In case said real property or any part thereof shall be relet, as aforesaid, the Airport shall collect the rent therefor from the person or persons to whom the same shall be relet, after paying the expenses of such reletting and collection apply whatever remains of the amount received on account of the rent due or to become due from said tenant under this agreement.

17. TERMINATION. Upon termination or cancellation of this Agreement and provided all monies due the Airport have been paid, the Tenant shall have the right to remove all temporary buildings,

machinery, and equipment which it has installed or placed in the real property, with the exception of fixed utilities. Tenant agrees to repair any damage occasioned by reason of such removal or because of its occupancy. In the event the Tenant fails to remove its property or to repair any damage done to real property, the Airport reserves the right to remove and store all such property left at the risk and expense of Tenant and to make repairs as the Airport deems necessary to restore the real property with the cost of the repairs to be paid by the Tenant.

18. INSPECTION. During the term of this Agreement, the Airport shall have the right to inspect said real property in person, or by agent, at any and all reasonable times.

19. ALTERATIONS. The Tenant is hereby granted the right to make reasonable alterations to the leased property hereunder as from time to time it shall desire to make, provided however that all such alterations shall be at the expense of the Tenant, and shall be made only after written approval therefore has been obtained from the Airport and provided further that as a condition precedent to the making of such alterations, the Tenant shall indemnify and save harmless the Airport against all claims by any person, firm, or corporation.

20. TAXES. The Tenant shall pay all ad valorem taxes levied or assessed against the premises by the appropriate governmental authorities, if applicable, together with all ad valorem taxes levied against any stock or merchandise, furniture, furnishings, equipment, and other property located in, on or upon the premises.

21. EXCLUSIVE USE. This Agreement shall in no way convey the exclusive use of any part of the Airport, except as described herein and shall not be construed as providing any special privilege for any public portion of the Airport. The Airport reserves the right to lease to other parties any portion of the Airport property not described in Exhibit A for any purpose deemed suitable for the Airport by the Airport.

22. ASSIGNMENT. The Tenant is hereby prohibited from assigning or subleasing any rights provided in this Agreement without the written consent of the Airport.

23. AGREEMENT OF THE COUNTY WITH THE UNITED STATES OF AMERICA. The terms and conditions hereof shall not be construed to prevent the County from making commitments in excess to the Federal Government or to the State of Florida to qualify for the expenditure of State or Federal funds upon said airport property.

24. NATIONAL EMERGENCY. During any national emergency declared by the President or by the Congress, the United States shall have the right to take exclusive or non-exclusive control and possession of the above mentioned real property, or of such portion thereof as it may desire, rent to be abated accordingly in proportion to said emergency.

25. NOTICE. Whenever any notice or payment is required by this Agreement to be made, given or transmitted to the parties hereto, such notice or payment shall be addressed to: The Airport Manager, Valparaiso Airport, 2865 Greenbrooks Street, Palm Bay, Florida 32925 and The Director of Parks and Recreation Department, 1715 St. Johns Street, Melbourne, Florida 32940.

26. WALIVER OF DEFENSE. The waiver by the Airport or the Tenant of any breach of the terms, covenants, or conditions herein contained shall not be deemed a waiver of a subsequent breach.

27. CONDEMNATION. If it be in the interest of the public, the County shall have the right to condemn said devised premises even though it is itself a part to said Agreement for said real property.

28. SEVERABILITY. It is the intention of both of the parties hereto that the provisions of this Agreement shall be severable in respect to a declaration of invalidity of any provisions hereof.

29. ASSIGNS AND SUCCESSORS. Except as herein otherwise provided, the covenants and conditions shall be binding upon and inure to the benefit of the successors of the parties hereto.

30. LEASE RESTRICTIONS. The Tenant hereby agrees to abide with all elements as contained in the Lease Restrictions for Valparaiso Airport as attached hereto as Exhibit B and hereby made a part hereof where applicable.

31. SPECIAL CONDITIONS

a) This Agreement may be terminated by the Airport in the event of a material default by Tenant. The Airport shall first notify the Tenant in writing of said material default, giving Tenant thirty (30) days from receipt of said notice to cure the default. In the event the default is not cured, the Airport may terminate this Agreement and evict said Tenant and all rights of said Tenant hereunder shall be forfeited.

b) The Airport reserves unto itself, its successors, and assigns for the use and benefit of the public, a right to flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described together with the right to cause in said airspace such noise as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operation of the airport.

c) The Tenant shall restrict the height of structures, objects or natural growth and other obstructions to such a height so as to comply with Federal Aviation Regulation, Part 77.

d) The Tenant shall not use the said 197 acres for any use which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard. Clear zones shall remain clear of any permanent structures and golf course activity.

Prior to any construction, a Notice of Proposed Construction, Federal Aviation Administration (FAA) Form 7460-1, should be submitted to and approved by the FAA if it falls within the requirements of FAA Part 77.13.

e) The Tenant agrees that the facility to be operated by it will not be operated in such a manner as to constitute a nuisance or a hazard and that, in connection with the operation of the facility, the Tenant will observe and comply with all applicable laws, ordinances, orders and regulations prescribed by lawful authority having jurisdiction over the facility.

f) The Tenant agrees, at its sole cost and expense, to maintain all of the improvements including the golf course and clubhouse in a

good state of repair and to keep the premises in a clean neat and orderly condition.

g) The Tenant shall be responsible for electricity, lights, water, sewer, heat, janitor service or any other utility or service consumed in connection with the occupancy by the golf course.

h) The Tenant agrees hereby to indemnify and save the FAA and the Airport harmless from any and all actions, demands, liabilities, claims, losses or litigation arising out of or connected with the Tenant which results from any alleged act or negligence of the Tenant or any condition existing on the premises.

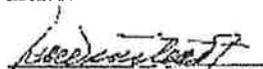
i) The Tenant shall not assign or sublet any right or interest hereunder without the prior written consent of the FAA.

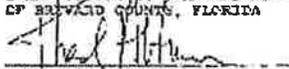
j) If any portion, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

32. RETROACTIVE DATE. The effective date of this Agreement shall be March 1, 1992 and all terms and conditions stated herein shall apply as of that date.

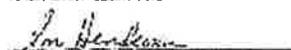
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

ATTEST:

  
R. S. NINSTEAD, JR., CLERK

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
  
BRAD ALTMAN, CHAIRMAN

VALERIE AIRPORT

  
RON HENDERSON, MANAGER

DEPARTMENT OF PARKS AND RECREATION

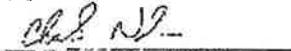
  
CHARLES NELSON, DIRECTOR

EXHIBIT A

LEGAL DESCRIPTION OF VALKARIA GOLF COURSE SITE:

Part of Sections 17 and 18, Township 29 South, Range 38 East, Brevard County, Florida, being more particularly described as follows: Beginning at the Southeast corner of Section 13, Township 29 South, Range 38 East, Brevard County, Florida; thence S 69°41'10" W along the north line of the southeast 1/4 of Sec 18 a dist. of 960.80 ft. to the Southeast corner of Penello Ranch, Unit Three, as recorded in Plat Book 38, Page 15, Public Records of Brevard County, Florida; thence N 0°02'57" E a dist. of 40.00 ft.; thence N 88°43'10" E a dist. of 140.80 ft.; thence N 43°17'42" E a dist. of 294.02 ft.; thence N 0°02'57" E a dist. of 215.00 ft.; thence W 52°32'21" W a dist. of 419.35 ft. to the east line of aforesaid Penello Ranch, Unit Three; thence N 0°02'57" E a dist. of 255.09 ft. to the Northeast corner of said plat of Penello Ranch, Unit Three; thence S 88°43'10" W along the north line of Penello Ranch, Unit Three and Penello Ranch, Unit Two, for a dist. of 1631.58 ft.; thence N 0°02'30" E a dist. of 318.00 ft.; thence S 89°43'13" W a dist. of 1115.44 ft. to the easterly R/W line of Valkaria Road; thence N 10°22'28" E along said westerly R/W line a dist. of 894.65 ft.; thence East a dist. of 4287.79 ft.; thence S 42°30'00" E a dist. of 500.38 ft.; thence N 47°30'00" E a dist. of 540.00 ft.; thence N 8°58'05" E a dist. of 849.11 ft.; thence N 28°56'27" W a dist. of 411.46 ft.; thence North a dist. of 230.03 ft.; thence N 21°04'00" E a dist. of 581.93 ft.; thence S 69°47'48" E a dist. of 525.03 ft. to the east line of property described in O.R.B. 17) Pg. 493; thence E 0°13'28" E along said east line a dist. of 2230.58 ft.; thence S 0°05'27" E a dist. of 1345.23 ft. to the Southeast corner of the Southwest 1/4 of aforesaid Sec. 17, Township 29 South, Range 38 East; thence N 88°43'14" W a dist. of 2956.22 ft. to the T.C.E.

Contains 211.111 Acres more or less.

EXHIBIT "G"



St. Johns River Water Management District

John L. Turner III, Executive Director

4049 Reid Street • PO Box 1429 • Palatka, FL 32178-1429 • (386) 329-4500  
On the Internet at florida.water.com.

April 11, 2012

Brevard County Board of County Commissioners  
2725 Judge Fran Jamieson Way Bldg A  
Melbourne, FL 32940

SUBJECT: Consumptive Use Permit Number 20-009-1764 5  
Habitat Golf Course

Dear Sir/Madam:

Enclosed is your permit as authorized by the St. Johns River Water Management District on April 11, 2012.

Please be advised that the period of time within which a third party may request an administrative hearing on this permit may not have expired by the date of issuance. A potential petitioner has twenty-six (26) days from the date on which the actual notice is deposited in the mail, or twenty-one (21) days from publication of this notice when actual notice is not provided, within which to file a petition for an administrative hearing pursuant to Sections 120.568 and 120.57, Florida Statutes. Receipt of such a petition by the District may result in this permit becoming null and void.

Permit issuance does not relieve you from the responsibility of obtaining permits from any federal, state and/or local agencies asserting concurrent jurisdiction over this work.

The enclosed permit is a legal document and should be kept with your other important records. Please read the permit and conditions carefully since the referenced conditions may require submittal of additional information. All information submitted as compliance with permit conditions must be submitted to the nearest District Service Center and should include the above referenced permit number.

Sincerely,

Victor Castro, Director  
Bureau of Regulatory Support

APR 11 2012 11:07 AM  
APR 15 2012 11:07 AM

Enclosures: Permit, Conditions for Issuance

cc: District Permit File

Agent: Alex Romanoff  
The Habitat Golf Course  
3591 Fairgreen St  
Valkearia, FL 32950

GOVERNING BOARD

Lee Daniels, Chairman KISSIMEE	John A. Vance, Vice Chairman ORLANDO	Douglas E. Bourgeois, Secretary DEERFIELD BEACH	Miriam H. Ghaffar, Treasurer VALVERDE
Glenn Deas ORLANDO	Richard G. Hartman GAINESVILLE	George W. Robbins VALVERDE	Fred N. Tullata, Jr. DEERFIELD BEACH
			W. Leonard Wood VALVERDE

PERMIT NO. 20-009-1764-5  
PROJECT NAME: Habitat Golf Course

DATE ISSUED: April 11, 2012

**A PERMIT AUTHORIZING:**

The District authorizes, as limited by the attached conditions, the continued use of 94.0 million gallons per year (mgy) (0.2575 million gallons per day (mgd) average) of surface water from the on-site stormwater management system and 60.0 mgy (0.1644 mgd average) of groundwater from the surficial and Floridan aquifers as a backup source when surface water is not available for irrigation of 92.0 acres of golf course turf and urban landscape; and 2.7 mgy (0.0074 mgd average) of groundwater from the surficial aquifer for domestic use.

**LOCATION:**

Site: Habitat Golf Course  
Brevard County

Section(s) 17, 18 Township(s): 29S Range(s): 38E

**ISSUED TO:**

Brevard County Board of County Commissioners  
2725 Judge Fran Jamieson Way Bldg A  
Melbourne, FL 32940

Permittee agrees to hold and save the St. Johns River Water Management District and its successors harmless from any and all damages, claims, or liabilities which may arise from permit issuance. Said application, including all maps and specifications attached thereto, is by reference made a part hereof.

This permit does not convey to permittee any property rights nor any rights or privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation or requirement affecting the rights of other bodies or agencies. All structures and works installed by permittee hereunder shall remain the property of the permittee.

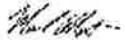
This permit may be revoked, modified or transferred at any time pursuant to the appropriate provisions of Chapter 373, Florida Statutes and 40C-1, Florida Administrative Code.

**PERMIT IS CONDITIONED UPON:**

See conditions on attached "Exhibit A", dated April 11, 2012

**AUTHORIZED BY:** St Johns River Water Management District  
Division of Regulatory Services

By:

  
\_\_\_\_\_  
Michael A. Register  
Director, Division of Regulatory Services

**"EXHIBIT A"**  
**CONDITIONS FOR ISSUANCE OF PERMIT NUMBER 1764**  
**Brevard County Board of County Commissioners**  
**DATED APRIL 11, 2012**

1. District authorized staff, upon proper identification, will have permission to enter, inspect, and observe permitted and related facilities in order to determine compliance with the approved plans, specifications, and conditions of this permit.
2. Nothing in this permit should be construed to limit the authority of the St. Johns River Water Management District to declare a water shortage and issue orders pursuant to Section 373.175, Florida Statutes, or to formulate a plan for implementation during periods of water shortage, pursuant to Section 373.246, Florida Statutes. In the event a water shortage is declared by the District Governing Board, the permittee must adhere to the water shortage restrictions as specified by the District, even though the specified water shortage restrictions may be inconsistent with the terms and conditions of this permit.
3. Prior to the construction, modification, or abandonment of a well, the permittee must obtain a Water Well Construction Permit from the St. Johns River Water Management District, or the appropriate local government pursuant to Chapter 40C-3, Florida Administrative Code. Construction, modification, or abandonment of a well will require modification of the consumptive use permit when such construction, modification, or abandonment is other than that specified and described on the consumptive use permit application form.
4. Leaking or inoperative well casings, valves, or controls must be repaired or replaced as required to eliminate the leak or make the system fully operational.
5. Legal uses of water existing at the time of permit application may not be significantly adversely impacted by the consumptive use. If unanticipated significant adverse impacts occur, the District shall revoke the permit in whole or in part to curtail or abate the adverse impacts, unless the impacts can be mitigated by the permittee.
6. Off-site legal uses existing at the time of permit application may not be significantly adversely impacted as a result of the consumptive use. If unanticipated significant adverse impacts occur, the District shall revoke the permit in whole or in part to curtail or abate the adverse impacts, unless the impacts can be mitigated by the permittee.
7. The District must be notified, in writing, within 30 days of any sale, conveyance, or other transfer of a well or facility from which the permitted consumptive use is made or within 30 days of any transfer of ownership or control of the real property at which the permitted consumptive use is located. All transfers of ownership or transfers of permits are subject to the provisions of section 40C-1.612.
8. A District issued identification tag shall be prominently displayed at each withdrawal site by permanently affixing such tag to the pump, headgate, valve, or other withdrawal facility as provided by Section 40C-2.401, Florida Administrative Code. Permittee shall notify the District in the event that a replacement tag is needed.
9. All submittals made to demonstrate compliance with this permit must include the CUP number 1764 plainly labeled on the submittal.
10. This permit shall expire on February 14, 2022.
11. The annual surface water withdrawals from the on-site stormwater management system for irrigation of 92.0 acres of golf course turf and urban landscape is 94.0 million gallons (0.2575 million gallons per day (mgd) average). Additional surface water from the

on-site stormwater management system can be used when available. All available surface water must be utilized prior to using groundwater from the Floridan aquifer.

12. Maximum annual groundwater withdrawals using well A (District ID 5040), well C (District ID 5042), well D (District ID 5043), and well E (District ID 5044) to be used as a backup source for irrigation of golf course turf and urban landscape must not exceed 60.00 million gallons (0.1644 mgd). All available surface water must be used prior to using groundwater and the annual groundwater withdrawal shall be less than this except during a two-in-ten year drought.
13. Maximum annual groundwater withdrawals from the surficial aquifer using well F (District ID 5045) for domestic use must not exceed 2.7 million gallons (0.0074 mgd average).
14. Well A (District ID 5040) and well E (District ID 5044) are not authorized for use until the permittee submits documentation to the District that Lake C is connected to Lake D and that the invert elevations of the connection will allow water to flow into Lake D if the wells are operated within the range of the authorized augmentation elevations.
15. Well B (District ID 5041) is not authorized for use. The permittee must cap and render inoperable, or abandon by a licensed water well contractor, well B (District ID 5041) within 3 months of permit issuance. Documentation that well B has been capped or abandoned must be submitted to the District before May 31, 2012.
16. Well A (District ID 5040), well C (District ID 5042), well D (District ID 5043), well E (District ID 5044), and well F (District ID 5045) and pump G (District ID 1188), pump H (District ID 38591), and pump I (District ID 38592), as listed on the permit application, must be equipped with totalizing flowmeters within 30 days of the permit issuance. The flowmeters must maintain 95% accuracy and be verifiable.
17. Total withdrawals from well A (District ID 5040), well C (District ID 5042), well D (District ID 5043), well E (District ID 5044), and well F (District ID 5045) and pump G (District ID 1188), pump H (District ID 38591), and pump I (District ID 38592), must be recorded continuously, totaled monthly, and reported to the District at least every six months for the duration of this permit using District Form No. EN-50. The reporting dates each year will be as follows:

Reporting Period	Report Due Date
January - June	July 31
July - December	January 31
18. The permittee must maintain all flowmeters. In case of failure or breakdown of any meter, the District must be notified in writing within 5 days of its discovery. A defective meter must be repaired or replaced within 30 days of its discovery.
19. The permittee must maintain a staff gauge in Lake D which provides surface water elevations in NGVD. Records must be kept of lake levels on a daily basis and submitted to the District on an annual basis. The records must be tabulated for one-year periods ending June 30th of each year and submitted to the District in acceptable electronic format.
20. The permittee must install and maintain an automatic mechanical or float regulation device on well A (District ID 5040), well C (District ID 5042), well D (District ID 5043), and well E (District ID 5044) to allow supplementation of the stormwater system when surface water elevation, as measured at the staff gauge in Lake D, reaches 18.50 feet NGVD, and must cease when the water level reaches 19.00 feet NGVD. If problems with off-site seepage or discharges result from maintaining the pond level at the permitted reference elevation

range, the permittee must reduce the level so that it does not contribute to off-site seepage or discharge.

21. If chemicals are to be injected into the irrigation system, the permittee shall install and maintain a backflow prevention device on all wells or surface pumps that are connected to the irrigation system.
22. The permittee shall use the lowest quality water source, such as reclaimed water, surface/storm water, or alternative water supply, to supply the needs of the project when deemed feasible pursuant to District rules and applicable state law.
23. All irrigation shall be in conformity with the requirements set forth in subsection 40C-2.042(1), F.A.C.
24. The permittee must implement the Water Conservation Plan submitted to the District on May 12, 2010 and the additional water conservation measures detailed in the correspondence submitted to the District on October 21, 2011, in accordance with the schedule contained therein.
25. The permittee must use a five year data record of staff gauge readings of Lake D and the groundwater withdrawal records to prepare a summary report to either support the existing authorized augmentation elevations and that the existing groundwater backup allocation is necessary or to support modification of the augmentation elevations and groundwater backup allocation. The report must also contain the status of the progress to raise sprinkler heads that are currently set below grade as described in the Irrigation System Audit dated April 26, 2005. The summary report must be submitted to the District on or before May 31, 2017.
26. The permittee must perform a feasibility study to determine if the western stormwater system can be used as an irrigation source by transferring stormwater from one interconnected system to the other via pump without impacting wetlands. The feasibility study must be submitted to the District on or before May 31, 2017.
27. The permittee's use of water as authorized by this permit shall not cause an interference with an existing legal use of water as defined in District rules. If interference occurs, the District may revoke the permit in whole or in part to abate the adverse impact unless otherwise mitigated by the permittee. In those cases where other permit holders are identified by the District as also contributing to the interference, the permittee may choose to mitigate in a cooperative effort with these other permittees. The permittee shall submit a mitigation plan to the District, and obtain District approval, prior to implementing any mitigation.
28. The permittee's consumptive use shall not adversely impact wetlands, lakes, and spring flows or contribute to a violation of minimum flows and levels adopted in Chapter 40C-8, F.A.C., except as authorized by a SJRWMD-approved minimum flow or level (MFL) recovery strategy. If unanticipated significant adverse impacts occur, the SJRWMD shall revoke the permit in whole or in part to curtail or abate the adverse impacts, unless the impacts are mitigated by the permittee pursuant to a District-approved plan.

## Notice Of Rights

1. A person whose substantial interests are or may be affected has the right to request an administrative hearing by filing a written petition with the St. Johns River Water Management District (District). Pursuant to Chapter 28-106 and Rule 40C-1.1007, Florida Administrative Code, the petition must be filed (received) either by delivery at the office of the District Clerk at District Headquarters, P. O. Box 1429, Palatka Florida 32178-1429 (4049 Reid St., Palatka, FL 32177) or by e-mail with the District Clerk at [Clerk@sjwmd.com](mailto:Clerk@sjwmd.com), within twenty-six (26) days of the District depositing the notice of intended District decision in the mail (for those persons to whom the District mails actual notice), within twenty-one (21) days of the District emailing the notice of intended District decision (for those persons to whom the District emails actual notice), or within twenty-one (21) days of newspaper publication of the notice of intended District decision (for those persons to whom the District does not mail or email actual notice). A petition must comply with Sections 120.54(5)(b)4. and 120.569(2)(c), Florida Statutes, and Chapter 28-106, Florida Administrative Code. The District will not accept a petition sent by facsimile (fax), as explained in paragraph no. 5 below.
2. If the District takes action that substantially differs from the notice of intended District decision, a person whose substantial interests are or may be affected has the right to request an administrative hearing by filing a written petition with the District, but this request for administrative hearing shall only address the substantial deviation. Pursuant to Chapter 28-106 and Rule 40C-1.1007, Florida Administrative Code, the petition must be filed (received) at the office of the District Clerk at the mail/street address or email address described in paragraph no. 1 above, within twenty-six (26) days of the District depositing notice of final District decision in the mail (for those persons to whom the District mails actual notice), within twenty-one (21) days of the District emailing the notice of final District decision (for those persons to whom the District emails actual notice), or within twenty-one (21) days of newspaper publication of the notice of final District decision (for those persons to whom the District does not mail or email actual notice). A petition must comply with Sections 120.54(5)(b)4. and 120.569(2)(c), Florida Statutes, and Chapter 28-106, Florida Administrative Code.
3. Please be advised that if you wish to dispute this intended District decision, mediation may be available and that choosing mediation does not affect your right to an administrative hearing. If you wish to request mediation, you must do so in a timely-filed petition. If all parties, including the District, agree in the details of the mediation procedure, in writing, within 10 days after the time period stated in the announcement for election of an administrative remedy under Sections 120.569 and 120.57, Florida Statutes, the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, shall be tolled to allow mediation of the disputed intended District decision. The mediation must be concluded within 60 days of the date of the parties' written agreement, or such other timeframe agreed to by the parties in writing. Any mediation agreement must include provisions for selecting a mediator, a statement that each party shall be responsible for paying its pro-rata share of the costs and fees associated with mediation, and the mediating parties' understanding regarding the confidentiality of discussions and documents introduced during mediation. If mediation results in settlement of the administrative dispute, the District will enter a final order consistent with the settlement agreement. If mediation terminates without settlement of the dispute, the District will notify all the parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Florida Statutes, is resumed. Even if a party chooses not to engage in formal mediation, or if formal mediation does not result in a settlement agreement, the District will remain willing to engage in informal settlement discussions.

4. A person whose substantial interests are or may be affected has the right to an informal administrative hearing pursuant to Sections 120.569 and 120.57(2), Florida Statutes, where no material facts are in dispute. A petition for an informal hearing must also comply with the requirements set forth in Rule 28-106.301, Florida Administrative Code.
5. A petition for an administrative hearing is deemed filed upon receipt of the complete petition by the District Clerk at the District Headquarters in Palatka, Florida during the District's regular business hours. The District's regular business hours are 8:00 a.m. - 5:00 p.m., excluding weekends and District holidays. Petitions received by the District Clerk after the District's regular business hours shall be deemed filed as of 8:00 a.m. on the District's next regular business day. The District's acceptance of petitions filed by e-mail is subject to certain conditions set forth in the District's Statement of Agency Organization and Operation (issued pursuant to Rule 28-101.001, Florida Administrative Code), which is available for viewing at [floridaswater.com](http://floridaswater.com). These conditions include, but are not limited to, the petition being in the form of a PDF or TIFF file and being capable of being stored and printed by the District. Further, pursuant to the District's Statement of Agency Organization and Operation, attempting to file a petition by facsimile is prohibited and shall not constitute filing.
6. Failure to file a petition for an administrative hearing within the requisite timeframe shall constitute a waiver of the right to an administrative hearing. (Rule 28-106.111, Florida Administrative Code).
7. The right to an administrative hearing and the relevant procedures to be followed are governed by Chapter 120, Florida Statutes, Chapter 28-106, Florida Administrative Code, and Rule 40C-1.1007, Florida Administrative Code. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means the District's final action may be different from the position taken by it in this notice. A person whose substantial interests are or may be affected by the District's final action has the right to become a party to the proceeding, in accordance with the requirements set forth above.
8. Pursuant to Section 120.68, Florida Statutes, a party to the proceeding before the District who is adversely affected by final District action may seek review of the action in the District Court of Appeal by filing a notice of appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, within 30 days of the rendering of the final District action.
9. A District action is considered rendered, as referred to in paragraph no. 8 above, after it is signed on behalf of the District and filed by the District Clerk.
10. Failure to observe the relevant timeframes for filing a petition for judicial review as described in paragraph no. 8 above will result in waiver of that right to review.

NOR.Intended Decision.DQC.001  
Revised 12.7.11

**Notice Of Rights**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Notice of Rights has been sent by U.S. Mail to:

Brevard County Board of County Commissioners  
2725 Judge Fran Jamieson Way Bldg A  
Melbourne, FL 32940

At 4:00 p.m. this 13th day of April, 2012.



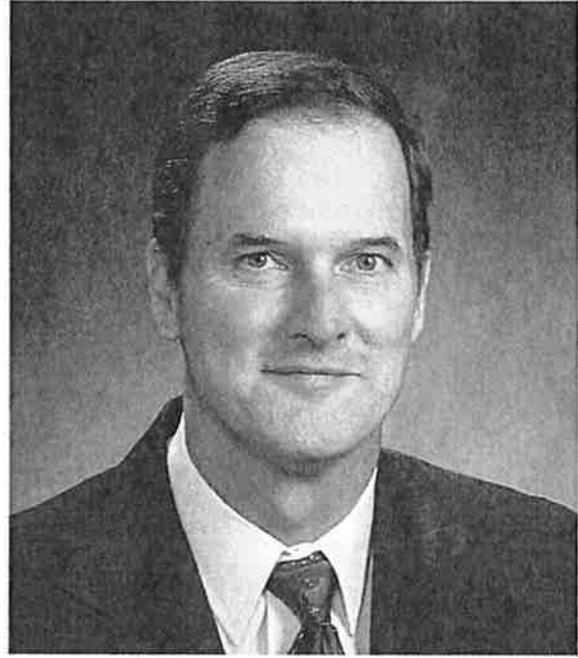
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Victor Castro, Director  
Bureau of Regulatory Support  
St. Johns River Water Management District  
4049 Reid Street  
Palatka, FL 32177  
(386) 329-4570  
Permit Number: 1764



# Executive Biography

JEFF PEARCE  
VICE PRESIDENT AND  
GENERAL MANAGER – AVIONICS  
ELECTRONIC SYSTEMS



Jeff Pearce is vice president and general manager of the Avionics business unit within Harris Corporation's Electronic Systems segment. Electronic Systems covers an extensive portfolio of solutions in electronic warfare, avionics (including carriage and release systems), wireless solutions, C4I systems, and mission networks.

Pearce is responsible for the Harris' Avionics business, which includes the F-35, F-18, carriage and release systems and airborne antennas.

Prior to this, Pearce was director of the Avionics business area for the company's former Government Communications Systems Defense business unit.

Previously, he was director of engineering for the Aerospace Systems business area, which designed and

manufactured electronic subsystems and structures for aircraft, missiles and spacecraft. Major technologies and products within this area included fiber optic networks, cockpit digital maps and displays, airborne and satellite data links, antennas, precision deployable structures, space electronics and advanced packaging.

Pearce also served as director of Advance Programs for Aerospace Systems.

Since joining Harris Corporation, he has held positions of increasing responsibility including chief engineer, director of Space Systems and engineering manager positions for a variety of systems and multidisciplinary design engineering departments. In those positions, he was responsible for the development of staff, technology, processes and tools.

Harris Corporation is a leading technology innovator, solving customers' toughest mission-critical challenges by providing solutions that connect, inform and protect. Harris supports government and commercial customers in more than 100 countries and has approximately \$6 billion in annual revenue. The company is organized into three business segments: Communication Systems, Space and Intelligence Systems and Electronic Systems. Learn more at [harris.com](http://harris.com).

Jeff Pearce resides at 160 Salmon Dr. NE, Palm Bay, FL 32907 where he has lived for 33 years. He holds bachelors and masters degrees in electrical engineering from the University of Central Florida.

Jeff worked for Harris Corporation for 41 years, retiring last year as Vice President/General Manager of Avionics—a \$500 million segment of the company employing 1,200 people with locations in Palm Bay, Amityville, NY and Brighton, UK. He reported to the President of the Electronic Systems Segment of Harris, who reported to the Harris CEO.

Prior to his retirement, Jeff was responsible for executing government contracts ranging in size from several million to hundreds of millions of dollars. Three directors reported directly to Jeff, each director managing approximately 20 program managers. Jeff was responsible for the success of all the programs.

Jeff and his wife, Kathy, will be moving to 3572 Durksly Drive in Melbourne before the end of June, 2019.

Jeff's email address is [jpearce4@cfl.rr.com](mailto:jpearce4@cfl.rr.com) ; his phone number is 321-243-1571.



## RICHARD A. O'CONNOR

22 Cove Rd. Melbourne Beach, FL 32951

Mobile: 313-727-3696

Email: roconnor2020@icloud.com

### Summary

**2010 to present:** O'Connor is the Managing Member of various companies investing in residential and commercial real estate. These transactions have included providing equity, construction loan, end-loan and other financing to owners/developers of real property owned for investment and future appreciation purposes. Investment types include residential, multi-family, office, industrial, retail (primarily 100k to 400k SF Open Air Shopping Centers) and mixed-use properties.

**1981 to 2009:** O'Connor is a retired (2009) Deloitte Consulting, LLC Principal and Deloitte & Touche, LLC Partner ("Deloitte"). Deloitte is the largest professional services network in the world by revenue and number of professionals (286,000 professionals worldwide). Deloitte provides audit, consulting, financial advisory, risk management, tax, and related services to select clients. Mr. O'Connor spent twenty-seven (27) years at Deloitte in various roles.

He was a founding member of Deloitte's middle-market (up to \$5 billion in revenues) Management Solutions & Services consulting practice and served on its National Management Committee.

O'Connor also served as a founding member of the Firm's Value Based Billing (VBB) council managing an approximately \$200 million portfolio of contingent fee projects for Deloitte Consulting.

O'Connor served as the National Managing Director of Deloitte's Supply Chain Practice and was its representative on the Global Supply Chain Management Committee. He successfully launched Deloitte's Public Sector Supply Chain Practice. During his tenure as National Managing Director, O'Connor was also the prime mover of the Firm's Global Manufacturing Supply Chain Benchmarking Study involving 30 countries and 1000 participating companies worldwide.

O'Connor led Deloitte's relationship worldwide with ERP manufacturing software vendor QAD.

He was the founder and Managing Director of the Great Lakes Management Solutions & Services practice and predecessors for 17 years. As such he served as a Member of the Michigan Practice Management Committee (multi-functional operating committee). Prior to that he was an Audit Partner.





## **Board Experience**

Rose Hill Center, Inc. is one of the nation's leading non-profit residential mental health treatment facilities located in Holly, Michigan. It offers comprehensive psychiatric treatment and residential rehabilitation services for adults, 18 and over. Its mission is to provide highly effective therapeutic services for adults with mental illness so they can learn to manage their symptoms, achieve their highest level of independence, and go on to lead rewarding lives.

url: [www.rosehillcenter.org](http://www.rosehillcenter.org)

**January 2018 to present:** Rose Hill Foundation, Inc. (approx. \$16MM asset portfolio); Board Member, Investment Committee Member and Finance and Audit Committee Member.

**January 2010 to December 2018:** Rose Hill Center, Inc. Board Member, Finance and Audit Committee Member.

## **Representative Clients**

United States Postal Service, Pratt & Whitney Canada, Volkswagen of America; Pulte Homes; Hayes-Lemmerz; NACCO, Federal General Services Administration, Lear, Solvay Engineered Polymers, Linen's N Things.

## **Professional Affiliations / Education**

O'Connor is a Chartered Financial Analyst (CFA). He received his MBA (1981) and BS (1979) from Michigan State University, East Lansing, MI

## **Interests and Activities**

### **Golf**

Active Member of Spessard Holland Men's Golf Association (SHMGA) and served as Treasurer for four years from January 2014 to December 2018.

### **Travel**

Paris, France (Note: will be out of the country June 2 to July 4, 2019); Bali, Indonesia (2017); Barcelona, Spain (2016); Budapest, Hungary (2015); Hawaii, USA (2014); China, Tibet Nepal (2012); British Columbia, Canada (wilderness canoe trip down the Stikine 2011); National Park Tour - Yellowstone, Yosemite, Sequoia (2010).

## **JIM CRAVENS**

3499 Imperata Drive, Rockledge, FL 32955 Cell: 312-927-4651 [rjamescravens@gmail.com](mailto:rjamescravens@gmail.com)

### **CORPORATE EXECUTIVE**

Trusted advisor and proven contributor to the C-Suite and senior leadership teams, both as a consensus builder and leader of strategic talent management, organizational change, and operational effectiveness initiatives. Enhances management decision-making through application of a legal background (5 years as a corporate attorney with major law firm), extensive international experience (two expatriate assignments in Asia), and demonstrated success in global senior HR, communications and corporate services roles with large multinationals. Retired in 2017 to pursue philanthropic and personal interests.

### **PROFESSIONAL EXPERIENCE**

#### **INFORMATION SERVICES GROUP** Stamford, CT 2014-2017

Information Services Group (ISG) (NASDAQ: III) is a leading technology insights, market intelligence and advisory services company, serving more than 500 clients around the world to help them achieve operational excellence. ISG supports private and public sector organizations to transform and optimize their operational environments through research, benchmarking, consulting and managed services, with a focus on information technology, business process transformation, program management services and enterprise resource planning. Based in Stamford, Conn., the company has annual revenues in excess of \$200 million and approximately 1,100 employees operating across 23 countries.

##### **Executive Vice President & Chief Human Resources and Communications Officer**

Reporting directly to the CEO and serving as a member of the Executive Board, led global HR and corporate communications initiatives with a focus on talent management, organizational design and executive compensation.

- Implemented restructuring of HR, IT and Finance organizations to streamline support operations.
- Launched training and recruiting initiative in connection with increased focus on cloud, automation and digitization consulting practice.

#### **VISION CRITICAL** New York, New York 2012-2013

Vision Critical is the world's leading provider of insight communities, currently supporting over 650 brands worldwide. Vision Critical's 700 employees build software and provide comprehensive services that empower organizations to engage groups of customers and stakeholders on a continuous basis for the express purpose of extracting and managing insight to drive better, faster decisions.

##### **Executive Vice President, Global Human Resources**

Reporting directly to the CEO and serving as a member of the Executive Committee, led global HR and talent initiatives with a focus on talent management, organizational design and executive compensation

- Implemented company's first talent review process to address current talent inventory, future talent requirements, and the identification of high potentials.
- Launched, documented and communicated annual incentive program aligning individual rewards with business strategy.

#### **KINETIC CONCEPTS, INC.** San Antonio, TX 2004 – 2010

A publicly-traded \$2 billion, 7,000-employee global medical technology company that designs, develops, manufactures and markets innovative medical devices. The company operates across 22 countries.

##### **SVP, Global Human Resources and Corporate Communications**

Led human resources, corporate communications and corporate services (risk management, real estate, travel and facilities). Reported to CEO, member of Executive Committee. Directed a 110-person staff.

- Key contributor to an executive team that drove a high-growth culture, with organic revenue tripling from \$600 million to \$1.8 billion over six years.
- Optimized a global organizational structure for shared services that included HR, IT, Finance and Corporate Services, reducing annual shared service spend by over \$50 million.
- Championed and implemented Workday global HR data system utilizing software as a service (SaaS). Provided truly global, real-time data management solution while reducing dependence on in-house IT resources.
- Opened a 300-employee, state-of-the-art manufacturing facility in Ireland resulting in significant improvements in productivity, quality and costs.
- Launched a comprehensive company-wide succession planning initiative resulting in improved tracking and career management of the top 250 senior executives in the organization.

## **NIELSEN**

1995 – 2004

One of the world's leading media and information companies with 35,000 employees and annual revenues exceeding \$5 billion.

**VVP, Chief Human Resources Officer - ACNielsen** New York, NY 2001 – 2004

- Launched a global client service upgrade that improved customer loyalty by instituting a comprehensive account executive training initiative.
- Initiated functional succession planning process, resulting in cross-group and cross-border talent transfers in Finance, HR and IT.

**Vice President, Global Human Resources** Stamford, CT 1999 – 2001

Led all HR initiatives relating to ACNielsen's internet, media and entertainment businesses.

- Rolled out internet audience measurement service, including recruitment and hiring of 100 employees in 21 countries over 15 months and the design of pre-IPO stock option and sales incentive plans.

**Chief Human Resources Officer, Asia Pacific** Hong Kong 1997 – 1999

Member of Asia Pacific Executive Committee overseeing 5,000 employees in 14 countries,

- Spearheaded a successful transition from dysfunctional, unprofitable, and siloed country-level organizations to a unified and highly profitable regional structure.

**Chief Regional Counsel, Asia Pacific** Schaumburg, IL 1997

**Assistant General Counsel** Schaumburg, IL 1995 – 1997

## **SIDLEY AUSTIN**

Chicago, IL

1990 – 1995

A premier global law firm with more than 1,400 attorneys.

**Corporate Attorney**

Specialized in mergers, acquisitions and public debt and equity offerings, including initial public offerings.

- Posted on 10-month secondment to Sumitomo Corporation's Corporate Legal Department in Tokyo.

**JAPANESE MINISTRY OF EDUCATION**

1985 – 1986

**English Teaching Consultant - Ibaraki Prefecture, Japan**

Taught English in Japanese public high schools and conducted seminars for Japanese high school English teachers.

**EDUCATION / AFFILIATIONS**

**JD University of Chicago Law School, Chicago, IL** 1990  
- Focus on corporate and securities law and business planning.

**Stanford University Inter-University Center for Advanced Japanese Language Studies, Yokohama, Japan.** 1987-1988

10-month advanced intensive Japanese language program focused on law, business and Japanese culture.

**BA English Literature / History Kenyon College, Gambier, OH** 1985  
- *Magna cum laude* Phi Beta Kappa.

**Member, Board of Directors, YMCA of Greater San Antonio, TX (2006-2010):**  
Chairman of the YMCA's annual Y Partners campaign, raising more than \$1 million.