

WINTONBURY HILLS GOLF COURSE
MANAGEMENT AGREEMENT
CONTRACT # 1094

THIS AGREEMENT is made as of this 30th day of DECEMBER 2019, by and among BILLY CASPER GOLF LLC ("BCG"), a Virginia limited liability corporation, and the TOWN OF BLOOMFIELD, ("Town") a Connecticut municipal corporation having an address of 800 Bloomfield Avenue, Bloomfield, CT 06002.

WHEREAS, Town has issued a competitive RFP #1094, attached and incorporated heretofore as Appendix A, for the management of its municipal golf course and other amenities known as Wintonbury Hills Golf Course (the "Course");

WHEREAS, BCG submitted a proposal in response to the RFP, attached and incorporated heretofore as Appendix B, and was selected for contract award by the Golf Committee; and

WHEREAS, Town desires to engage BCG to manage the Course and to advise Town on various issues; and

WHEREAS, BCG will maintain a single purpose subsidiary (Wintonbury Hills Golf Management Inc. for purposes of maintaining the Course, whose sole member shall be BCG; and

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

1. **TERM OF AGREEMENT:** The term of this Agreement shall commence January 1, 2020 and shall expire on December 31, 2025. This Agreement may be extended two (2) additional five (5) year terms as follows: BCG shall indicate its desire to renew by notifying Town in writing of such desire eight (8) months prior to the end of the then current term. Thereafter, Town shall have sixty (60) days to indicate any changes in terms that it would desire in a renewal, or to express its decision not to accept a renewal. BCG will then have thirty (30) days thereafter to agree to accept the changed terms, if applicable, or to withdraw its election to renew. Town may terminate this Agreement after three (3) years, for any reason or no reason subject to the payment of the Termination Fee as provided in Paragraph 8 (D).
2. **SCOPE OF SERVICES:** BCG shall provide management services as specified in RFP #1094, attached hereto as Appendix 1. In addition to those services responsibility of providing, and the authority to provide, general operational management services for the Course, including, without limitation, the following services:
 - A. Employees. BCG shall, as a contractual expense of and subject to reimbursement by the Town, after consulting with the Town, select and employ all managerial employees within the salary/compensation ranges contained in the Annual Budget and Program (as defined in Paragraph H (2) below), and recruit and supervise all other personnel necessary to provide services at the Course as may be contemplated by the Annual Budget and Program, all of whom shall be employees of BCG. BCG shall, as an expense of the Town, pay all salaries, employment taxes, fringe benefits, workers' compensation and other insurance premiums for all employees at the Course. All employees are to wear a uniform mutually agreed upon between the Town and BCG during his/her working shift. The Town shall

have the final approval on the hiring of Key Personnel and the opportunity to provide input and feedback as it pertains to the termination of Key Personnel. Key Personnel shall be defined as the General Manager, Superintendent, and Head Chef/Cook.

- B. Merchandise. BCG shall, at the expense of the Town, obtain merchandise for the pro shop at the Course and food and beverage items, all in accordance with the Annual Budget and Program.
- C. Discounts. BCG shall make available to Town any national purchase discounts which it may obtain from vendors for products or services, which may include golf cars, maintenance equipment, golf club equipment, turf supplies, insurance coverage, and retail hard and soft goods.
- D. Supervision. BCG shall supervise and operate the Course grounds, golf operations, pro shop, practice facilities, food and beverage services, and other ancillary services at the Course. The Course shall be open for play at all times, subject to daylight and seasonality constraints, except when, in the reasonable judgment of BCG, that opening the golf Course to play will not be in the best interests of the Town.
- E. Equipment. BCG shall, pursuant to its preparation of annual operating and capital budgets as set forth in Paragraph 2(H), develop a list of required equipment and a purchase/lease schedule and maintain in good working condition and order the physical plant and equipment at the Course, including the golf course and all physical structures which are part of the Course, golf cars, and all vehicles and other maintenance equipment necessary to the maintenance and operation of the Course in the normal course of business.
- F. Consultation. BCG shall, as part of its services hereunder and without additional compensation, make its staff available to the Town upon request for consultation regarding the Course, including, but not limited to, operating procedures, agronomy, pro shop, food and beverage service, management and operation, capital improvements, driving range operation, clubhouse space utilization and: operations, golf car maintenance and management, and prices and rate structure. Upon request by the Town, BCG will arrange for inspection of the golf course by U.S.G.A agronomic staff or other qualified consultant(s) and provide the Town with complete copies of such inspection reports. BCG will abide by and implement, in a timely manner, resulting recommendations as directed by the Town, subject to the Town's prior approval of modifications to the Annual Budget and Program then in effect. The costs associated with inspection and implementation shall be an operating expense of the Course.
- G. Marketing Plan. BCG shall create, direct, and implement an annual marketing plan for the Course as part of the Annual Budget and Program. The marketing plan for the Course will include a market analysis, a summary of golf programs to include rates, membership structure (if applicable), and strategies for increasing acquisition, engagement and yield with the purpose of achieving the budgeted financial goals and other marketing-related goals for all Course departments. Marketing plan expenses shall be reflected in the annual budget.

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

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

Certain of these programs in items 6, 7 and 8 above will result in incremental charges that will a) be approved as part of the annual budgeting process and b) without markup and profit to BCG in provided on a Centralized Basis.

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

Furthermore, the Course shall be included in BCG’s shared marketing database. This database is an aggregated customer database for all participating Courses and other BCG owned marketing efforts (such as World’s Largest Golf Outing, Buffalo Agency). Participating Courses can target customers in the database based on a variety of demographic attributes (location, age, behaviors, etc.). To participate, the Course must “share” its own database with the larger cooperative. All customer information will remain “blind” to other Courses. The Course may Opt Out of the shared marketing database by checking this box .

All advertising fees and promotional fees paid by third parties to the Course shall belong to and constitute Gross Revenues of the Course, and shall be reported to the Town on a monthly basis.

H. Accounting. BCG, inclusive of the compensation and fees payable to it under Paragraph 5, shall provide separate budgeting, bookkeeping and reporting services to the Town for the Course (it being understood that copies of all books and records shall be kept at the Course and that all books, records, software, data, programs, manuals and the like shall remain the property of the Town and shall be available for inspection by the Town at all times):

1. BCG shall prepare and deliver to the Town, in accordance with procedures and formats reasonably acceptable to the Town, on an accrual basis and generally

accepted accounting principles, regular monthly and annual operating statements which shall include, without limitation, comments regarding each monthly and annual report, copies of general ledger pages or equivalent documentation to demonstrate the number and description of all checks written for the recording period, and such other items as the Town may reasonably request. The Town shall be able to have unrestricted, but secure access to financial records on-line. All records shall be retained and made available for duration of the entire contract terms, following delivery of the annual operating statement.

Monthly operating statements shall be furnished to the Town by the 20th day following the last day of each month, and annual operating statements shall be furnished by the 45th day following the last day of each calendar year. The annual operating statement shall be audited and prepared by a certified public accountant selected by the Town, the cost of which shall be an operating expense of the Course. BCG shall certify such statements as being accurate. The BCG will cooperate with the Town on any and all requests relating to the Town's annual independent audit.

2. BCG shall prepare and deliver to the Town no later than October 15th of each year for the duration of this Agreement for the following calendar year: (a) an annual operating budget, including a comparison to the annual operating budget for the immediately preceding year and a projection of anticipated monthly revenues and expenses and cash flows for the Course for the following calendar year, including, without limitation, a reasonable contingency and anticipated working capital requirements over the Course for the year; (b) a capital improvements budget for the next five calendar years, and (c) a general marketing and operational program with respect to the Course, including, without limitation, operating policies, standards for operations and quality of service standards (collectively, the "Annual Budget and Program").

BCG and Town shall use their mutual best efforts to agree upon the Annual Budget and Program for the following year on or before each calendar year end. The Annual Budget and Program shall also include BCG proposals with respect to proposed hours of operation of the golf course, clubhouse, pro shop and driving range fee structure, restaurant, menu for the food and beverage service, merchandise for the pro shop, complimentary golf course and Course use by the Town's representatives, employee play and employee discounts, and a capital reserve in an amount not less than two percent (2%) of projected Gross Revenues from the Course (as defined in Paragraph 5C below). The Town's Town Council shall make the final determination and have the final approval of the Annual Budget and Program and any changes or amendments to the Annual Budget and Program. Each party may, from time to time, propose to the other party during the Course of the year, such changes or amendments to the Annual Budget and Program as such party may consider necessary or appropriate, and BCG and Town shall use their mutual best efforts to act upon such proposal within thirty (30) days after such proposal is made. BCG shall secure the prior written approval of the Town for: (i) expenditures in excess of one hundred ten percent (110%) of any line item in the Annual Budget and Program, and (ii) expenditures which will exceed any line item in the Annual

Budget and Program by Ten Thousand Dollars (\$10,000), except for expenditures necessary in the event of emergencies (limited to expenditures of One Thousand (\$1,000) Dollars or less) for which prompt notice will be given to the Town.

3. BCG shall establish, administer, and maintain the payroll procedure and systems for the BCG's employees at the Course and shall be responsible for the benefits to, and handling the appropriate payroll deductions for, individual employees. Benefits will be limited to vacations, sick leave, medical insurance coverage, and employee salary deferral 401(k) plan, as approved by the Town as part of the Annual Budget and Program. All persons working at the Course shall be employees of BCG, and BCG shall comply with Federal and State employment laws.

I. Town's Remittance. At the end of each calendar month, after paying the operating expenses of the Course and other expenses authorized and approved by Town, BCG shall remit directly to Town all amounts (if any) then in the Working Capital Account (as hereinafter described) in excess of the Minimum Funds Balance (as hereinafter described) by wire transfer to said account as Town may from time to time designate by written notice to BCG.

As used herein, the Minimum Funds Balance for the Course shall be One Hundred Thousand Dollars (\$100,000), or other such other amount as may be agreed to in writing by BCG and Town.

BCG shall pay all operating expenses for the Course on behalf of Town from the Working Capital Account, which expenses shall include, but not be limited to, payments of all monthly payroll and related expenses, operating expenses, management fees, incentive fees, sales, use, value-included and excise taxes on sales and rentals levied on the Course.

J. Town's Meeting. BCG shall, at least twice monthly, consult with the Town regarding the Course and its operations at a time, date and place designated by Town.

K. Limitations. BCG shall obtain Town's prior written approval for (i) contracts in excess of Ten Thousand Dollars (\$10,000), (ii) contracts in excess of twelve (12) months in duration unless the same can be terminated upon thirty (30) days written notice without cost or fee to Town, and (iii) contracts with affiliates of BCG. Affiliates means an entity having any overlap of ownership by either the current owners, officers, or individuals or future owners, officers, or individuals of BCG or an entity of which BCG owns fifty (50%) percent or more of the stock.

L. Standards of Operation. BCG shall, subject to the Annual Budget and Program then in effect operate the Course in a professional, competent and cost-effective manner, consistent with the Minimum Maintenance Standards attached hereto as specified in Exhibit A of RFP #1094.

M. Recording Transactions. BCG shall operate the Course so that a sales slip, invoice or non-resettable cash register receipt, serially numbered, or such other device for recording sales shall be issued with each sale/transaction, whether for cash, credit or exchange. Green fees, practice facility fees and car rentals shall be processed through the golf shop point-of-sale

system, without exception.

- N. Permits and Licenses. Unless not permitted by law, all permits and licenses relating to the Course shall belong to Town.
- O. Strategic Business Plan. BCG shall prepare and deliver to the Town, a strategic business plan, incorporating the objectives outlined in RFP #1094 by June 30, 2020. Such strategic plan should include a five year cash flow forecast.
- P. Reports and Analyses. BCG, at no additional cost, shall provide a bi-annual analysis of the Course. It shall include a comprehensive agronomical review, completed by an independent third party. In addition, BCG shall provide written monthly reports with project/program updates, Course operation (including rounds played and survey results). A written annual report shall be delivered by BCG to the Town by June 15 of every year.
- Q. Annual goals and objectives. The Town, in conjunction with BCG, shall set yearly goals and objectives, which will be reflected in the annual budget to be submitted to the Town by October 15 annually. Such goals shall include, but not be limited to, goals and benchmarks, resident days, adult and youth learn to golf programs and youth initiatives. As part of the annual goals, BCG shall recommend fees and dues for the upcoming season.
- R. IT Services. BCG shall create, direct, and implement activities IT functionality, in a safe and stable manner, for the Course. BCG shall, as an Operating Expense of the Course, obtain and manage:
 - 1. Networking infrastructure. The hardware and software resources of an entire network that enable network connectivity, communication, operations and management of a computer environment. The entire network infrastructure is interconnected, and can be used for internal communications, external communications or both. The entire network infrastructure may include routers, switches, wireless routers, cables, network operations and management software, operating systems, firewall and network security applications, network connectivity (cable, T-1 Lines, DSL, satellite, wireless, IP addressing, etc.)
 - 2. Telephone Systems. The electronic transmission of voice, fax, or other information between parties including the use of **VoIP** (voice **over Internet Protocol**) for the delivery of voice communications over the Internet. This includes voice, fax, SMS, and/or voice-messaging applications that are transported via a network.
 - 3. Hardware and Software to include the physical components that make up a computer system and then the software that runs on those physical components.
 - 4. Virus and Malware Protection software designed to prevent viruses, worms and Trojan horses from getting onto a computer as well as remove any malicious software code that has already infected a computer.
 - 5. Network Intrusion Protection software application that monitors network or system activities for malicious activities. Intrusion detection and prevention systems are primarily focused on identifying possible malicious incidents, logging

information about them, and reporting attempts.

6. Network Monitoring is the use of a system that constantly monitors the computer network for slow or failing components and notifies the network administrator (via email, SMS or other alarms) in case of outages.
 - i. PCI Compliance. BCG will review the network and work with Owner as part of the start-up and transition process in order to determine necessary steps to achieve compliance with the Payment Card Industry Data Security Standards ("PCI DSS") at the Course. PCI DSS is a set of requirements designed to ensure that all companies that process, store or transmit credit card information maintain a secure environment with focus on improving payment account security throughout the transaction process.
7. IT Service Reimbursement As part of the Annual Business Plan there shall be a monthly support fee for the remote support of the IT services as referenced. If the issue cannot be resolved remotely and requires BCG corporate based personnel to be on-site at the Course. BCG IT Services shall be paid an amount equal to One hundred dollars (\$100.00) per hour and necessary hardware upgrades/software installation without mark-up or profit to BCG.

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

3. **WORKING CAPITAL:** Town shall provide all funding of the working capital requirements of the Course as set forth in the Annual Budget and Program then in effect, which shall include providing and maintaining the Minimum Funds Balance for BCG's use in operating the Course. Throughout the term of this Agreement, Town shall provide sufficient funds for the Working Capital Account consistent with the Annual Budget and Program, subject to Town Council appropriation ; provided further that upon cancellation or termination of this Agreement for any reason or upon the occurrence of a material default by BCG, the delegation of control over such Working Capital Account to BCG shall be immediately revoked and all funds in the Working Capital Account shall be immediately transferred to an account designated by Town. All check signers shall be bonded in an amount reasonably required by Town, as approved in the Annual Budget and Program.
4. **INSURANCE:** BCG shall secure, and at all times, maintain liability, property damage, and other insurance for the Course in such amounts, with such coverage and through agents and with underwriters approved by the Town, including, but not limited to, the coverage set forth in Section 11.1 of RFP 1094 and incorporated by reference herein. The Town shall be liable for the reimbursement as part of the Annual Budget and Program of the premiums of said insurance for so long as the Town shall own the Course during the term of this Agreement. BCG shall be responsible for securing and maintaining all of the insurance policies required hereunder. BCG shall obtain competitive bids for the coverage each year. If Contractor secures such insurance as a part of any blanket policy, the premiums attributable to the Course shall be determined by making a reasonable allocation based on the relation of the amount of insurance carried for the Course to the total policy amount provided, however, that the Town shall have first approved such policies, and the blanket policies shall have dedicated coverage to the Course in the amounts set forth below. The premiums for any such policies shall be

reimbursed from the working capital to be provided by the Town pursuant to Paragraph 3 hereof and in accordance with the Annual Budget and Program, or by Town in the event there is insufficient working capital available.

5. COMPENSATION AND FEES:

- A. Management Fee. For its services herein, BCG shall be paid a monthly fee in the amount of \$8,000. Fees are net to BCG and include accounting services. The Management Fee shall be payable on the fifth day of each month from the Operating Account. The Management Fee shall be a net fee to BCG and shall not include Course expenditures or any other Operating Expenses. Commencing on January 1, 2021, and for each subsequent year and possible Extension Term thereafter, the Base Management Fee shall increase two-percent (2%) over the immediately preceding year for the term of the Agreement.
- B. Annual Incentive Fee. Town shall also pay BCG an annual incentive fee (the "Annual Incentive Fee") based upon Gross Revenues (as defined in Paragraph 5C herein in respect to each full calendar year during the term of this Agreement according to the following schedule:

<u>Annual Gross Revenues</u>	<u>Annual Incentive Fee</u>
Less than \$1,950,000	\$0
\$1,950,000 - \$2,150,000	10% of excess
\$2,150,000 or more	15% of excess

The annual incentive fee cannot exceed 35% of the annual Management Fee.

In addition to BCG incentive fees, BCG shall revise the employee evaluation process and incentive program by developing non-management staff monthly incentives. These incentives are to focus on customer service and be developed jointly between the Town and BCG. Fees are subject to modification upon mutual written approval.

- C. Gross Revenues. The term "Gross Revenues" as used herein shall include the total aggregate amount of revenue for the business done, sales made, and services performed in, on, or from the Course, both for cash and on credit (net of credit card discounts), including, without limitation, all charges for greens fees, practice range fees, membership fees, annual fees or passes, golf car, and other rentals, the gross amount received for merchandise, food and beverage, dues, the amount of gift certificates when redeemed, and the gross amount charged from all other sources and income derived from activities in, on, or from the Course less any and all actual refunds or credits for returned merchandise, exchanges, and allowances, including allowances for bad debts (provided the purchase price of the merchandise was previously included in the Course's gross sales}, and less all sums collected by the Course from the Course's customers and paid by the Course for all sales, use, value-included, and excise taxes on sales and rental where such taxes are both added to the selling price or charge, stated separately, and paid by the Course directly to taxing authorities.

As used herein, Gross Revenues from the Course shall be exclusive of security deposits (except as applied or forfeited), the value of complimentary items or services furnished to a patron in excess of the actual cash received therefore, insurance and condemnation proceeds, and proceeds and sales of equipment and property, inventory sold in a manner

other than in the ordinary business of the Course, and lessons and instruction fees not retained by the Course.

D. Interest. Any interest due to either BCG or Town pursuant to this Agreement shall accrue at a rate equal to the prime rate publicly announced by Bank of America on the date such interest began to accrue which shall be thirty (30) days after the date due. Except as otherwise specifically provided herein, interest on any payment due by either party to the other hereunder shall be payable from and after the thirtieth (30th) day after the date upon which such payment was due if such payment is not timely made.

E. Travel. BCG shall be reimbursed for reasonable and appropriate travel-related expenses, which shall be limited to automobile, lodging, and meals, in connection with its services hereunder pursuant to the approved line item in the approved Annual Budget and Program, provided that any such expenses shall be appropriately allocated among other facilities benefited by such travel. Such reimbursement shall not exceed Five Thousand Dollars (\$5,000) per calendar year.

F. Accounting. BCG's services herein shall include the turnkey accounting function as set forth in Paragraph 2H. Upon reasonable notice (which may be verbal), representatives of the Town shall have the right to review, at any time during normal business hours, all of BCG's books and records, including the general ledger, accounts payable, income statement, balance sheet, and budget variance reports relating to the Course, including, without limitation, BCG's work papers related to BCG's preparation of operating statements and calculating any Annual Incentive Fees; such an examination will include the right of the Town to request an annual financial audit performed by an independent accountant pursuant to the annual audited operating statement required in Paragraph 2H above. All expenses related to any such additional review or audit shall be exclusively borne by the Town for purposes of this Agreement unless such review reveals an overpayment of any fees or other amounts by BCG, or an underpayment to Town by BCG in which case BCG shall pay for the review. The Town's exercise of its right of review or to dispute any fee or expense reimbursement claimed by BCG shall not delay payment of the undisputed portion thereof by the Town within the time frames set forth herein. However, payment by the Town of a fee or other amount hereunder shall not constitute a waiver of Town's right to subsequently dispute the amount thereof. If the Town and BCG determine that any portion of the Base Fee or Annual Incentive Fee or any other amount was improperly paid to BCG, BCG shall refund such improperly paid fee, together with interest thereon, from the time when such fee was paid to BCG within five (5) business days after receipt of notice from Town to BCG.

6. **CAPITAL IMPROVEMENTS:** Capital improvements shall be deemed to include any item purchased in connection with the operation of the Course which, under generally accepted accounting principles consistently applied, would be a capital improvement. All costs for capital improvements, as provided for in Paragraph 2(H)(2), shall be the responsibility of the Town, and all decisions as to whether or not to undertake any capital improvement projects or otherwise in respect of any capital improvements shall be made by the Town with such consultation with BCG, as the Town may desire.

BCG shall make no structural changes to the golf course design, bunkering or tees, or addition of trees without the prior written approval of a golf course architect approved by the Town.

7. DEFAULT AND REMEDIES:

A. Town's Default. The following shall constitute an event of default ("Event of Default") by the Town under this Agreement:

1. Failure to timely pay BCG any fees, compensation, or reimbursement due BCG pursuant to this Agreement, unless said amounts are under legitimate dispute;
2. Failure to timely provide working capital in accordance with Paragraph 3 hereof; or
3. Breach of the Town of any material provision of this Agreement, such as, but not limited to, failing to consult with BCG regarding budgets or capital improvements.

B. BCG's Default. The following shall constitute an event of default ("Event of Default") by BCG under this Agreement:

1. Failure to staff, operate and maintain the Course in accordance with provisions of this Agreement, subject to extraordinary weather conditions, acts of God, or other events or conditions beyond the reasonable control of BCG;
2. Breach by BCG of any material provision of this Agreement; or
3. BCG makes an assignment for the benefit of its creditors, or becomes a party for more than thirty (30) days, to any voluntary or involuntary insolvency proceedings, bankruptcy proceedings or reorganization.

C. Notice of Default. When either party to this Agreement believes that the other party (the "Defaulting Party") has committed an Event of Default, it shall give written notice thereof to the Defaulting Party, and the Defaulting Party shall have ten (10) days in the event of a payment default, or such longer period (not to exceed a period of fifteen (15) days unless the Defaulting Party has begun to cure within the fifteen (15) day period and is diligently pursuing such cure) as shall be reasonably necessary due to weather, growing conditions, or other such factors beyond the reasonable control of the Defaulting Party, within which to cure the default.

Notwithstanding the aforementioned notice provisions, neither party shall be obligated to provide notice of default more than twice within any twelve (12) month period, before proceeding to pursue its rights and remedies resulting from such act or default.

D. Remedy. If the Defaulting Party does not cure the default within the grace period provided in Paragraph 7C above, the other party may terminate this Agreement on fifteen (15) days written notice to the other party and pursue all rights and remedies available in law or equity, including payment of accrued amounts pursuant to Paragraph 5 hereof, subject to legitimate offsets. Without limiting its rights, Town may upon BCG's uncured default retain a substitute operator, and provided that Town has diligently pursued retaining a substitute operator, BCG shall be responsible for any additional costs actually incurred by Town for a period not to exceed ninety (90) days.

8. TERMINATION AND CANCELLATION:

- A. Automatic Termination: This Agreement shall automatically terminate upon expiration of the term of the Agreement unless extended by both parties as defined in Paragraph 1.
- B. Right to Terminate: The Town shall have the right to Terminate this Agreement, without cost or penalty, with ninety (90) days written notice, should BCG merge, dissolve or cease to be the controlling entity of any successor company.
- C. Event of Default. Either party may terminate this Agreement upon the occurrence of an Event of Default by the other party after giving notice as provided in Paragraph 7 above and the failure to cure within the applicable cure period, if any.
- D. Cancellation Fee. In the event BCG terminates this Agreement due to the default of Town, and BCG not being in default, BCG shall receive from Town, within ten (10) days of termination, a cancellation fee (the "Cancellation Fee") based on the year in which termination occurs. The Cancellation Fee shall be deemed to be a payment to BCG in lieu of liquidated damages, and shall be BCG's sole and exclusive remedy for recovery against Town.

The Cancellation Fee shall be calculated as: the amount determined by taking the sum of the Base Fee and the Annual Incentive Fee for the prior calendar year, then multiplying that quantity times the remaining years (including fractional years) in the Initial Term of the Agreement, and then multiplying that second quantity times fifty percent (50%). The above formula will apply during the renewal term based upon the remaining years in the renewal term.

- E. Termination Fee. In the event of either a sale or transfer of the Course, or in the event Town desires to terminate the Agreement not related to a sale or transfer of the Course, Town shall have the unilateral right to terminate this Agreement at any time on sixty (60) days prior written notice and, subject to the provisions set forth below. In the event of either such unilateral termination, and BCG not being in default under this Agreement, if such termination is effective on a day prior to the third anniversary of this Agreement, the Town shall pay to BCG within ten (10) days of such termination, the following termination fee (the "Termination Fee") based on the year in which the termination occurs. In no event shall the Town pay a Termination Fee if the Town terminates this Agreement on or after its third anniversary.

The Termination Fee shall be calculated as: the amount determined by taking the sum of the Base Fee and Annual Incentive Fee for the prior calendar year, then multiplying that quantity times the remaining years (including fractional years) in the Initial Term of the Agreement, and then multiplying that second quantity times fifty percent (50%). The above formula will apply during the renewal term based upon the remaining years in the renewal term. Notwithstanding anything to the contrary contained herein, any Termination Fee payable hereunder shall not be less than One Hundred Thousand Dollars (\$100,000). Provided, however, in the event of sale or transfer of the Course, wherein the buyer or transferee has assumed the obligations of Town hereunder, or has executed a contract to

retain BCG to manage the Course on substantially the same terms and conditions contained herein, then no Termination Fee shall be payable to BCG by the Town.

F. **No Waiver.** By terminating this Agreement in accordance with this Paragraph 8, neither party shall be deemed to have waived any action it might have, in law or equity, by reason of a breach of or default under this Agreement.

9. **USE OF COURSE:** During the term of this Agreement and subject to the provisions of this Agreement, the Course shall be open to the public and operated on a daily fee basis unless otherwise provided and agreed to in the Annual Budget and Program.

- A. **Logs.** BCG shall keep a monthly log of all play on the golf course including all electronic data related to total rounds, rounds by category, revenue per round, capacity utilization data, customer database information, and other empirical metrics. The log shall be subject to review by the Town.
- B. **Town of Bloomfield Resident Play.** During designated hours of the week or on designated days per week, or as otherwise provided from time to time in the Annual Budget and Program, BCG shall make available golf course tee times at discounted rates and/or golf course access on a preferred basis ("Resident Play") to Town of Bloomfield residents having valid identification.
- C. **Community Relations.** BCG shall make the golf course available for community relations golf tournaments of a commercially-reasonable basis, according to the Annual Budget and Program approved by Town (including limiting the number of participants and types of activities in the Town's discretion).

10. **LIQUOR LICENSE:** Subject to any relevant Connecticut Alcoholic Beverage Control ("ABC") licensing requirements, Town or BCG shall use its best efforts to maintain at all times (except for the application period) a valid alcoholic beverage license, the type of which shall be solely determined by the Town, on the premises, and BCG shall comply with all relevant liquor control regulations/laws regarding the use of such license. BCG shall indemnify and hold Town harmless for its failure to comply with liquor control regulations/laws.

11. **FORCE MAJEURE; FIRE AND OTHER CASUALTY:** If all or any portion of the Course is destroyed by fire or other casualty, such damage and destruction shall not be a cause for termination hereunder by either party unless such damage or destruction results in the whole or a substantial part of Course being unusable for its intended purpose for a period of one (1) year or longer or, in the case of such total or substantial damage or destruction the Town shall decide not to rebuild the damaged portion of Course, then in either such event, this Agreement shall terminate with respect to Course on notice from the Town to BCG of such termination and neither party shall have any further rights or obligations hereunder. Notwithstanding the foregoing, if: as a result of any damage or destruction to any part of the Course; or otherwise due to causes (other than strikes within BCG's control) beyond BCG's reasonable control (and so long as BCG uses all reasonable diligence to cure such inability), BCG shall be unable to perform its obligations hereunder with respect to the operation of Course, Town and BCG shall use their mutual best efforts to agree upon an amendment to the Annual Budget and Program, including, without limitation, the working capital provisions thereof, to allow payment of necessary expenses for the Course (including, without limitation, Course employee expenses) until such damage or destruction is repaired or such inability is cured and, if the parties are unable to agree on such an amendment within twenty

(20) business days after BCG shall have given Town notice of the occurrence of such event, BCG and the Town shall each have the right to terminate this Agreement with respect to the damaged Course by notice of such termination to the other party and neither party shall have any further rights or obligations hereunder. In the event of such occurrence, there is no Cancellation Fee or Termination Fee due to BCG.

12. **INDEMNIFICATION AND LIABILITY:**

- A. Legal Actions. Legal counsel for BCG and Town shall cooperate in the defense or prosecution of any action affecting the Course. BCG shall not institute or defend any legal action or retain counsel affecting the Course without Town's prior written consent. BCG shall immediately forward all legal notices to Town or notices of a financial nature which relate to the Course, at the address listed under Paragraph 13. BCG shall advise and assist Town in instituting or defending, as the case may be, in the name of Course, the Town and/or BCG, but in any event as an expense of the Course, all actions arising out of the operation of the Course, and any and all legal actions or proceedings to collect charges, third party payments, rents, or other incomes for BCG, Town or the Course, or to lawfully evict or dispossess tenants or other persons in possession thereunder, or to lawfully cancel, modify or terminate any lease, license, or concession agreement in the event of breach of default thereof, or to defend any action brought against Town, unless otherwise directed by the Town. BCG shall assist Town to take the acts necessary to protect or litigate to a final decision in any appropriate court or forum, as a Course expense, and any violation, order, rule, or regulation affecting the Course. All expenses arising out of claims, actions or damages attributable to the gross negligence or breach of this Agreement by BCG shall be paid by BCG and shall not be an expense of the Course. Provided any legal dispute is not due to any direct conduct or action by the Town, the Town shall not be involved with any legal dispute between BCG and its employees; and BCG shall indemnify and defend the Town from costs or liability (including interest, costs and reasonable attorney's fees) in connection with any dispute between BCG and its employees.
- B. Choice of Law and Venue. BCG's principal place of business is in the Commonwealth of Virginia, and the Course is located in the State of Connecticut, BCG hereby irrevocably submits to the jurisdiction of the Superior Court of the State of Connecticut (Hartford Judicial District). The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut which shall be the exclusive court of jurisdiction and venue for any litigation, arbitration, special proceeding or other proceeding between the parties that may be brought, or arise out of, or in connection with, or by reason of this Agreement.
- C. Liability of BCG and Town.
 1. Other Persons. BCG shall not be responsible for the acts or omissions of any of the Town's other contractors or any subcontractor, or any employees of the Town, or any persons representing Town performing any services for, or in connection with, the Course, or any consultants or other persons engaged by the Town with respect thereto, unless and only to the extent BCG is supervising the same, and BCG shall be responsible only for the performance of BCG's obligations hereunder in accordance with the terms hereof.
 2. Non-recourse. In the event that BCG makes any claim against Course and the

Town, BCG's recourse shall be limited to the Town's interest in the Course, and BCG shall have no recourse against members, managers, employees, and taxpayers of the Town.

D. Indemnity. BCG will defend, indemnify and hold Town, its taxpayers, elected and appointed officials and their respective officers, directors, employees and agents harmless from and against any claims, losses, expenses, costs, suits, actions, proceedings, demands or liabilities that are asserted against, or sustained or incurred by Town because of BCG's breach of this Agreement, material misrepresentation by BCG, or because of legal actions or regulatory violations arising from BCG's negligence, fraud, or willful misconduct. Further, BCG will defend, at its own expense, any actions brought directly against BCG as a result of negligence, fraud, willful misconduct or breach of this Agreement in managing and/or operating the Course. Recovery upon an indemnity contained in this Agreement shall be reduced dollar-for-dollar by any applicable insurance collected by either Town or BCG, and any damages, claim or award paid in excess of insurance proceeds actually received shall be deemed to be an Operating Expense. The scope of the foregoing indemnities includes any and all costs and expenses properly incurred in connection with any proceedings to defend, any indemnified claim, or to enforce the indemnity, or both. The obligations under this Paragraph 12D shall survive the termination of this Agreement.

Except as may otherwise be provided for in the preceding paragraph, each party hereby agrees to indemnify and defend the other party from, and agrees to hold the other party harmless against, any and all liability, loss, cost, damage, penalties, claims, causes of action, proceedings and expense, including without limitation, court costs and reasonable attorneys' fees, incurred by the other party or imposed on the other party by any person whomsoever, caused by, relating to or resulting from or out of or in connection with any default by the other party under this Agreement, the enforcement of any of the other party's remedies under this Agreement, any representation or warranties contained herein being or becoming untrue, or the negligence or willful misconduct of the other party or any of its partners, employees, contractors, servants, agents or legal representatives. The provisions of this Paragraph shall survive the expiration or any termination of this Agreement.

13. GENERAL PROVISIONS:

A. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings, and representations (if any) made by and between such parties.

B. Written Amendments. The provisions of this Agreement may only be amended or supplemented in a writing signed by both parties.

C. Further Amendments. The parties hereby agree from time to time to execute and deliver such further instruments and documents, and do all such other acts and things, which may be convenient or necessary to more effectively and completely, carry out the intentions of the Agreement.

D. Compliance with Laws. BCG shall, at all times, operate, use, and conduct the business of the Course in a lawful manner and in full compliance with all applicable governmental laws, ordinances, rules and regulations, including the American with

Disabilities Act of 1990, the Town's Affirmative Action Policy, and maintain all licenses and permits relating to the Course, with Town's full cooperation, in full force and effect and cooperate and obtain all licenses and permits first required after the commencement of the term of this Agreement required in connection with the management, use, and operation of the Course.

E. Environmental Laws. Town represents to BCG that no hazardous materials have been released into the environment, or have been deposited, spilled, discharged, placed or disposed of at or within the Course in violation of any Environmental Law (as defined below}, nor except as expressly disclosed and described by Town to BCG has the Course been used at any time by any person as a landfill or a disposal site for hazardous materials or for garbage, waste or refuse of any kind. Town also represents that it is unaware of any underground storage tanks of any nature on the Course (fuel, propane, gas etc.). Town does not have any knowledge of asbestos-containing products within the Course.

BCG shall, during the Term(s) of this Agreement, shall strictly comply with all Environmental Laws (as defined below) and shall indemnify and hold the Town harmless for all losses and expenses resulting from its failure to so comply.

For the purposes of this Agreement, "Environmental Law" shall mean: All applicable Federal, State, county or local (or other political subdivision thereof) laws, statutes, codes, acts, ordinances, orders, rules, regulations, directives, judgments, decrees, injunctions, directions, permits, licenses, authorizations, decisions and determinations issued, adopted or enacted by any judicial, legislative, regulatory, administrative or executive body of any governmental or quasi-governmental authority, department, branch, division, agency or entity exercising functions of or pertaining to any government having jurisdiction affecting the Course, or any licenses and permits of any governmental authorities, from time to time applicable to the Course or any part thereof regarding hazardous materials. BCG will, during the term of the Agreement, indemnify Town for violations and losses pertaining to environmental laws in connection with BCG's operation of the Course as set forth herein.

F. Binding. All of the terms and provisions of this Agreement shall be binding and inure to the benefit of the parties and their respective permitted successors and assigns. This Agreement is solely for the benefit of the parties hereto and not for the benefit of any third party.

G. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party, otherwise than provided for herein. BCG may assign or transfer this Agreement and/or may delegate its duties and obligations under this Agreement to a BCG subsidiary other than WHGM (as previously provided for herein) only with Town's prior written consent, provided that: (i) BCG's Subsidiary is a Connecticut corporation, or a corporation incorporated in another state but registered and authorized to do business in the State of Connecticut; (ii) written notice thereof is given to Town at least twenty (20) days prior to the effective date of such assignment or delegation, together with evidence reasonably satisfactory to Town that the assignment or delegation complies with the terms of this Paragraph; (iii) copies of the final executed assignment or delegation documents are given to Town within ten (10) days thereof; (iv) any delegation of duties and obligations to BCG's Subsidiary shall not, in any respect, release or relieve BCG of any of its duties, obligations, or responsibilities,

under this Agreement. Approval of such assignment is in the sole discretion of Town.

H. Subordination and Estoppel. This Agreement shall be subject and subordinate at all times to the lien of any mortgage (or any such instrument providing a security interest) which may now exist or may hereafter be executed in any amount for which the Course or any portion thereof is specified as security. Town agrees to use its reasonable best efforts to obtain from Lender a non-disturbance agreement in Lender's standard form reasonably acceptable to BCG.

Within ten (10) days of any such written request which Town may make from time to time, BCG shall execute and deliver to Town a statement in a form reasonably satisfactory to Town certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modification), the date to which the Base Fee and Annual Incentive Fee have been paid, the fact that there are no current defaults under this Agreement by Town, except as specified in BCG's statement, and such other matters reasonably requested by Town.

I. Right to Mortgage. Any provision herein contained to the contrary notwithstanding, Town shall have the right to assign all or any portion of its right, title and interest in, to and under this Agreement and in and to the Course, by way of mortgage or security agreement, in order to secure the repayment of construction and/or permanent loans made for the purpose of financing all or any portion of its costs relating to the acquisition of the Course and the construction of the golf Course, clubhouse and improvements thereon, as well as loans for working capital provided that the Town shall, upon execution of any such mortgage or security agreement, promptly deliver a true copy of such mortgage or security agreement to BCG. The mortgagee or other secured party, and their respective assigns, may enforce such mortgage or security agreement and may acquire title to the Course and Town's interest under this Agreement in any lawful way, and may take possession of the encumbered assets, or cause any person having the relationship of an independent contractor to the mortgagee or secured party to take possession of the encumbered assets, and upon foreclosure thereof (or in the event of any sale thereof in lieu of foreclosure) may without further consent of BCG sell and assign the Course, free and clear of this Agreement. The mortgagee or secured party or its assigns and any independent contractor to the mortgagee or secured party shall be liable to perform the obligations of Town hereunder only during the period such person has title to the Course and Town's interest hereunder and this Agreement is in effect but in no event shall such person have any responsibility or liability for the payment of the Termination Fee or the Cancellation Fee.

J. Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given: (i) when delivered, if hand delivered, (ii) two (2) business days after deposit with a reputable overnight courier marked for "next business day" delivery, or (iii) upon receipt, if sent by facsimile, provided that an original thereof is thereafter sent in the manner provided above, and shall be addressed as follows:

In the case of BCG:

Billy Casper Golf Management, Inc.
12700 Sunrise Valley Drive, Suite 300

Reston, Virginia 20191
Attention: Legal Department
Telephone: 703-761-1444
Facsimile: 703-893-3504

with copy to:

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

In the case of the Town:

Town of Bloomfield
800 Bloomfield Ave
Bloomfield, Connecticut 06002
Attention: Town Manager
Telephone: 860-769-3504
Facsimile: 860-769-3598

with a copy to:

Marc N. Needelman, Esq.
800 Cottage Grove Road, Suite 313
Bloomfield, Connecticut 06002
Telephone: 860-242-7174
Facsimile: 860-242-8291

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

- K. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.
- L. Invalidity. If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid or unenforceable under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, invalid or unenforceable, but the remainder of such provision, and this Agreement shall not be invalidated or rendered unenforceable thereby, and shall be given full force and effect so far as possible.
- M. No Waiver. The failure or delay of either party at any time to require performance by the other party of any provision of this Agreement shall not affect the right of such party to subsequently require performance of that provision or to exercise any right, power or remedy hereunder. Waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of

such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on either party in any event shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances, except as otherwise herein provided.

- N. No Partnership. Nothing in this Agreement shall be construed to create a partnership or joint venture between the parties. The parties acknowledge that the relationship of BCG to Town is that of an independent contractor.
- O. No Exclusive Remedy. No remedy herein conferred upon either party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.
- P. Authority. Each party hereby represents to the other party that it has the right, power, authority, and financial ability to enter into this Agreement and to perform its obligations under this Agreement, and that it is not restricted by contract or otherwise from entering into and performing this Agreement.
- Q. Attorneys' Fees. If any legal action, work or other proceeding is undertaken for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action, work, or proceeding, in addition to any other relief to which it or they may be entitled.

If a party to this Agreement becomes a party to any litigation concerning this Agreement or its subject matter solely by reason of any act or omission of the other party or its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to the other party for all expenses, including reasonable attorneys' fees and court costs, incurred in the litigation.

- R. Order of Construction. This Agreement includes several Appendices including the Request for Proposal (Appendix A) and BCG's Proposal dated May 24, 2019 (Appendix B) which are made a part hereof. In the event of a conflict or variance between or among this Agreement, and the Appendices, the provisions of this Agreement shall control, followed by Appendix A as the second priority, and Appendix B as the third priority.

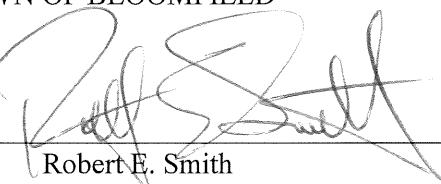
IN WITNESS WHEREOF, the parties executed this Agreement effective as of the date first above written.

WITNESS

SL. R. Horne

TOWN OF BLOOMFIELD

By



Robert E. Smith
Town Manager

WITNESS

BILLY CASPER GOLF, LLC

By



Michael K. Cutler
Senior Vice President

WITNESS

Elmore

BILLY CASPER GOLF, LLC

By



R. Alexander Elmore, IV
President

