

**THIRD AMENDMENT TO MUNICIPAL GOLF COURSE AND
AMENITIES MANAGEMENT AGREEMENT BETWEEN
ANTATARES GOLF, LLC AND CITY OF FERNANDINA BEACH, FLORIDA**

This THIRD AMENDMENT to the Municipal Golf course and Amenities Management Agreement ("Amendment") is made the _____ day of January 2021 by and between ANTARES GOLF, LLC f/k/a BILLY CASPER GOLF, LLC ("ANTARES") and the City of Fernandina Beach, a Florida municipal corporation ("City").

WITNESSETH:

WHEREAS, on December 13, 2010, the City and Antares entered into a 5-year management agreement for management of the City's municipal golf course ("Agreement"),

WHEREAS, ON February 17, 2015 the City Commission approved a First Amendment extending the term of the Agreement an additional five (5) years ("First Extension Term") and providing that Antares would invest Fifty-Thousand Dollars (\$50,000.00) of its own money to renovate Greens;

WHEREAS, on June 16, 2015, both parties agreed to amend Section 11 "Insurance" to clarify insurance requirements under the Agreement;

WHEREAS, the First Extension Term of the Agreement expires on December 12, 2020; and

WHEREAS, the parties wish to extend the Agreement for a period of sixty (60) days;

WHEREAS, all other terms and conditions of the Agreement shall remain unchanged except as specifically modified herein;

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

1. The parties mutually agree to extend the Agreement through December 31, 2025 ("First Extension Term") after which it will automatically renew for two (2) additional five (5) year terms on each anniversary date of the Agreement, unless either party gives Notice of its desire not to renew at least one hundred twenty (120) days in advance of the anniversary date.
2. **Amend Section 1 -" Definitions" as follows.**
 - A. **Add "Net Operating Income"**: Gross Revenue from the Club, minus all operating expenses which are attributable (in accordance with generally accepted accounting principles) to the use and operation of the Club, including, without limitation: employee costs, operating expenses, centralized services, the Base Management Fees, expense reimbursements, all insurance costs related to the operation of the Club, personal property taxes (limited to an amount allocable to the Club), golf cart and other operating leases and operating costs, and interest payments; provided, however, such expenses shall not include any charges for depreciation, capital expenditures, capital leases, Bad Debt, State and Federal income taxes, City distributions or overhead allocations, or any Incentive Management Fees paid to ANTARES hereunder.

3. **Amend Section 18A-1 “Duties of City” as follows.** The City shall pay ANTARES a Fixed Management Fee of Eighty-Four Thousand Dollars (\$84,000.00) annually, divided into twelve equal monthly installments of Seven Thousand Dollars (\$7,000.00), commencing with February 1, 2021.
4. **Amend Section 18A-2 “Duties of City” as follows.** Beginning in Fiscal Year 2021, The City shall pay ANTARES an Incentive Management Fee equal to Twenty-Five Percent (25%) of the total Fiscal Year Net Operating Income, as defined in the Agreement, above One Dollar (\$1.00) for the first year and increasing by Twenty-Five Thousand Dollars (\$25,000.00) for each subsequent year of the First Extension Term.
ANTARES will contribute Twenty-Five Percent (25%) of all received Incentive Management Fees towards Capital Expenditures defined by City and ANTARES, payable by April 1st of each subsequent year.
5. **Amend Section 25 “Default and Remedies” as follows.**

- A. **Add Section 25E – “Termination for Convenience”** – After June 30, 2022, City may terminate the Agreement upon One Hundred Eighty (180) days prior written Notice to ANTARES and payment of a Termination Fee. The Termination Fee shall be calculated as Fifty Percent (50%) of the current annual Base Management Fee and shall be waived in the final year of the First Extension Term.
- B. **Add Section 25F – “City’s Reserved Right of Termination for Cause”.**

- i. City shall have the right to terminate the Agreement, without the payment of a Termination Fee, Cancellation Fee, or other penalty, if, in any Fiscal Years (commencing with the 2022 Fiscal Year as the first year in any measurement period), Net Operating Income does not equal or exceed Eighty percent (80%) of budgeted Net Operating Income. City may exercise such termination right by providing written Notice within thirty (30) calendar days after City's receipt of the final determination of Net Operating Income for such Fiscal Year provided, however, that the methodology for calculation of Net Operating Income shall be as defined herein and shall be consistently applied to any Fiscal Years used in comparison). Failure to give such notice within a thirty (30) day period shall be deemed to be a waiver by City of its right to terminate based on the applicable Fiscal Year, but shall not be deemed to be a waiver of such right with respect to subsequent Fiscal Years.

In the event City elects to exercise its performance termination right, ANTARES shall have the right, but not the obligation, to nullify such termination by paying to City, within sixty (60) calendar days of ANTARES’ receipt of City’s Termination Notice, the aggregate amount by which actual Net Operating Income for the applicable Fiscal Year was less than the Net Operating Income Threshold as defined above for such Fiscal Years (the “Cure Amount”).

For purposes of determining when the Net Operating Income Threshold has been achieved in any Fiscal Year, the Net Operating Income Threshold shall be subject to adjustment for force majeure events or expenses that are agreed upon by City and ANTARES not to be within the control of ANTARES.

- ii. City shall have the right to terminate the Agreement, without the payment of a Termination Fee, Cancellation Fee, or other penalty, if, in any Fiscal Years (commencing with the 2022 Fiscal Year as the first year in any measurement period), the “Overall Score” of the Quality Control Scorecard (“Scorecard”), as detailed in **Exhibit “B”** is below the established quarterly minimum

requirement in two successive quarters.

6. All other terms and provisions of the Agreement and Exhibits not amended by this Third Amendment shall remain in full force and effect.

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

CITY OF FERNANDINA BEACH

By: _____
Dale Martin, City Manager

ANTARES GOLF, LLC

By: _____
Alex Elmore, President

ATTEST:

By: _____
Caroline Best, City Clerk

APPROVED TO AS FORM AND LEGALITY:

By: _____
Tammi E. Bach, City Attorney