

**THIRD AMENDMENT TO ENGER PARK AND LESTER PARK MANAGEMENT  
AGREEMENT BETWEEN THE CITY OF DULUTH  
AND  
ANTARES GOLF, LLC, FORMERLY KNOWN AS BILLY CASPER GOLF, LLC**

This Third Amendment to the Enger Park and Lester Park Management Agreement “Agreement” is by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as “Duluth”, and ANTARES GOLF, LLC, a Virginia limited liability company, formerly known as Billy Casper Golf, LLC, herein after referred to as “Antares Golf”.

WHEREAS, the City and Antares Golf have an Agreement, and two subsequent Agreement amendments, for the operation, maintenance, and improvement of Lester Park and Enger Park golf courses;

WHEREAS, said Agreement is attached hereto and incorporated by reference into this Agreement as Exhibit A, said First Amendment to the Agreement is attached hereto and incorporated by reference into this Agreement as Exhibit B, and said Second Amendment to the Agreement is attached hereto and incorporated by reference into this Agreement as Exhibit C;

WHEREAS, the current Agreement, as amended by the First Amendment and Second Amendment to the Agreement, expires on December 31, 2021; and

WHEREAS, the parties wish to extend their Agreement for an additional one year term.

THEREFORE, Duluth and Antares Golf agree as follows:

- A. Section 4 of the Agreement shall amended Agreement will read as follows with deleted terms struck out and added terms underlined:

**4. TERM OF THE AGREEMENT.** The term of this Agreement shall commence on February 16, 2015 (“Effective Date”), and unless terminated as provided for herein, shall expire on December 31, 2022 ~~December 31, 2021~~.

B. Except as amended herein, the terms and conditions of the Agreement and the First and Second Amendments to the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date shown below:

**CITY OF DULUTH, MINNESOTA**

**ANTARES GOLF, LLC**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Name:  
Title:  
Authorized Representative

Dated: \_\_\_\_\_

Attest

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
City Auditor

Approved as to form:

\_\_\_\_\_  
City Attorney

**ENGER PARK AND LESTER PARK  
MANAGEMENT AGREEMENT**

THIS MANAGEMENT AGREEMENT ("Agreement") is made as of this \_\_\_\_ day of February, 2015 by and between BILLY CASPER GOLF, LLC ("BCG"), a Virginia limited liability company, having an address at 8300 Boone Boulevard, Suite 350, Vienna, VA 22182 and the City of Duluth, a Minnesota Municipal corporation ("Owner"), having an address at 411 West First Street, Room 322, Duluth, Minnesota 55802.

WHEREAS, Owner is a Minnesota municipal corporation located in St. Louis County and with its address at 411 West First Street; and

WHEREAS, Owner is the owner of public parks which contain public municipal golf courses commonly known as Enger Park Golf Course and Lester Park Golf Course, currently twenty-seven hole golf course(s), clubhouse, driving range and other amenities, respectively, located in Duluth, Minnesota (the "Courses"); and

WHEREAS, the Courses have, as part of the City of Duluth's recreation program, long provided excellent public recreation and benefits to the community, its citizens, residents and area visitors; and Owner wishes to continue to provide such public facilities, recreation, and services to the public; and

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

WHEREAS, Owner's Department of Public Administration issued a Request for Proposal 14-22DS, Operation, Development and Maintenance of Enger Park Golf Course and the (Optional) Operation of Lester Park Golf Course, attached to and incorporated herein as **Exhibit A**. BCG was selected as the most qualified respondent. BCG's response is attached to and incorporated herein as **Exhibit B**, and

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

WHEREAS, BCG intends to form two wholly-owned single-purpose subsidiary entities registered to do business in the state of Minnesota, Enger Park Golf Management, LLC, ("EPGM"), and Lester Park Golf Management ("LPGM") for the purpose of performing some or all of the services outlined herein; and

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

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

In the event of a conflict between this Agreement, the Request For Proposal and the BCG's response, the documents shall be deemed to be controlling in the following order: this Agreement, the Request for Proposal, BCG's response. Hereinafter, the term "Agreement" shall refer to this agreement, the Request for Proposal and the Response.

1. **DEFINITIONS.** The following terms, as used in this Agreement, shall have the following meaning, unless otherwise set out in this Agreement.

A. Annual Budget and Program: Documents presented by BCG for the operation of the Courses to the Owner as part of the Owner's annual budget process, including but not limited to the following: Annual Business Plan and Operating Budget, Agronomic Plan and Marketing Plan.

- B. BCG: Billy Casper Golf, LLC, a Virginia Limited Liability Company.
- C. BCG Capital Contribution: BCG shall deposit Two Hundred and Fifty Thousand Dollars (\$250,000) into the Capital Account for use towards the Initial Capital Improvements as defined herein. Owner and BCG's payment of such Initial Capital Improvements shall be paid in accordance with a capital improvement plan, submitted by BCG and approved by the Owner.
- D. Calendar Year: January 1<sup>st</sup> to December 31st.
- E. Capital Account: A joint bank account with Owner and BCG for the deposit of BCG's Capital Contribution and payment disbursements of the approved Initial Capital Improvements.
- F. Centralized Services: Services provided to Owner, pursuant to this contract, utilizing centralized BCG business capacities that are furnished for numerous clients on a national basis. Subject to the limitations herein and the Owner-approved Annual Budget and Program, BCG provides Centralized Services to Owner when doing so enables them to serve Owner more cost-effectively than by utilizing BCG Duluth personnel or third-party vendors.
- G. City of Duluth: The City of Duluth, Minnesota, a Minnesota municipal corporation. The City of Duluth owns both the Enger Park Golf Course and Lester Park Golf Course.
- H. Course(s): Two Public Golf Courses owned by the City of Duluth, Minnesota, commonly known as Enger Park Golf Course and Lester Park Golf Course.
- I. Enger Park Golf Course: ("EPGC")
- J. EPGM: Enger Park Golf Management LLC, a wholly owned subsidiary of Billy Casper Golf LLC, to perform some or all of the services at EPGC.
- K. Gross Revenue: All revenues and income of any nature derived directly or indirectly from the Courses or from the use or operation thereof, including green fees, gross sales proceeds from the sale of green fees, annual passes to the Courses, monthly dues from annual pass holders of the Courses, rental fees for golf carts, golf clubs and other rental items, net lesson fees, range balls, food and beverage revenues (including mandatory service charges, revenue generated from space rentals and from meetings, banquets, parties, receptions, tournaments and other group gatherings) merchandise sales, advertising revenues, and the proceeds paid for any business interruption, use, occupancy or similar insurance policy claim. Excluded from "Gross Revenue" are any credits or refunds made to customers, guests or patrons; any sums and credits received by Owner for lost or damaged merchandise; any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, amusement taxes, tourist taxes or charges; any proceeds from the sale or other disposition of the Courses, Furniture, Fixtures & Equipment (FF&E), or other capital assets; any property and/or liability insurance proceeds; any proceeds of financing or refinancing of the Courses; amounts contributed by Owner pursuant to the terms of this Agreement and Income or interest derived from the Courses bank account. Gross Revenues shall be determined on an accrual basis and in accordance with generally acceptable accounting principles ("GAAP").
- L. Initial Capital Improvements: BCG and the City shall work cooperatively to identify the Initial Capital Improvements needed during the first two (2) years of this Management Agreement to include but not limited to irrigation upgrades, development of new water capacity and storage areas for irrigation water, clubhouse upgrades, and point of sale software, computers, maintenance equipment and golf carts.

- M. Lester Park Golf Course: ("LPGC")
- N. LPGM: Lester Park Golf Management LLC, a wholly owned subsidiary of Billy Casper Golf LLC to perform some or all of the services at LPGC.
- O. Minimum Funds Balance: shall be defined as the dollar amount of the total budget for all operating expenses (as set forth in the Annual Budget and Program approved by Owner) for the month following the current month within the Term of the Agreement limited to a of \$50,000 per course.
- P. Net Operating Income: Gross Revenue from the Courses, minus all Operating Expenses which are attributable (in accordance with generally accepted accounting principles) to the use and operation of the Courses. Operating Expenses shall exclude BCG's Capital Contribution repayment of \$4,167 per month for EPGC.
- Q. Operating Expenses: The costs attributable to the operation of the Courses, including but not limited to: Base Management Fees, payroll, payroll taxes, benefits, employee related costs arising out of the employer-employee relationship, including, without limitation, salaries, fringe benefits, bonuses, recruitment, background processing, relocation costs, training, performance management, employment-related legal costs, and costs incurred in connection with governmental laws and regulations and insurance rules, including those relating to post employment costs for benefits, health insurance, cobra payments, and any payouts of unused vacation at termination of employment, insurance, supplies, marketing materials and services, IT services as defined herein, utilities, maintenance and repair, and service agreements pursuant to the approved purchasing and procurement policy/guidelines, Centralized Services, \$55,000 per year for Owner administrative costs, property taxes (limited to an amount allocable to the Courses), golf cart leases. Operating Expenses shall not include amortization, depreciation, capital expenditures, debt service, and State and Federal income taxes, BCG corporate overhead allocations, Owner distributions or overhead allocations beyond the \$55,000 per year provided for herein, or any Incentive Management Fees paid to BCG hereunder
- R. Working Capital: Funds utilized to pay operating expenses of the Courses.
2. **ADMINISTRATION.** For purposes of administering this Agreement, the City shall act through its Director of Public Administration or designee (the "Director"). BCG shall act through its Senior Vice President of Operations or designee ("Operations Manager").
3. **FORMATION OF SUBSIDIARY:** The City acknowledges and agrees that BCG shall form two wholly-owned single-purpose subsidiary entities registered to do business in the state of Minnesota, Enger Park Golf Management, LLC, ("EPGM"), and Lester Park Golf Management ("LPGM") for the purpose of performing some or all of the services outlined herein. All costs related to the formation of EPGM and LPGM shall be an operating expense of the Courses and shall not exceed two thousand dollars (\$2,000.00) total.

EPGM, LPGM and BCG are not "related parties" to the Owner.

BCG acknowledges and agrees that the formation and performance of EPGM and LPGM shall not relieve BCG from any duties, obligations, and responsibilities set forth herein. BCG shall be responsible for all actions or inactions for EPGM and LPGM.

Owner grants BCG the right to subcontract its obligations hereunder to EPGM or LPGM. The forgoing does not grant BCG, EPGM, or LPGM the authority to sign agreements on behalf of Owner or to bind Owner to any obligations except as set forth herein.

4. **TERM OF AGREEMENT.** The term of this Agreement shall commence on February 16, 2015 ("Effective Date"), and unless terminated as provided for herein, shall expire on December 31, 2020.
5. **APPOINTMENT OF BCG AS MANAGER.** BCG represents it is an experienced manager and operator of high quality golf facilities and understands City is relying on BCG's expertise in managing golf facilities in entering into this Agreement. From and after the Effective Date, Owner hereby grants to BCG the right, subject to Owner's input, to supervise and direct the management and operation of the Courses for and on the account of Owner, and BCG hereby accepts said grant and agrees that it shall supervise and direct the management and operation of the Courses to meet or exceed the performance standards in **Exhibit E**, all pursuant to and in accordance with the terms of this Agreement, and Owner shall reasonably cooperate so as to permit BCG to carry out its duties hereunder.
6. **BILLY CASPER GOLF, LLC SERVICES.** Services rendered by BCG to Owner shall be as follows: Subject to the terms of this Agreement, BCG, as an independent contractor, shall have the sole and exclusive right to operate and manage the Courses. Owner and BCG agree that they shall cooperate reasonably with each other to permit BCG to carry out its duties under this Agreement. BCG shall have the responsibility and authority to provide general operational management services for the Courses in accordance with this Agreement and subject to the City approved Annual Budget and Program and any policy and service standards stated herein and as detailed in Exhibit E- Scope of Service and Performance Measures. Such responsibility and authority shall include those listed below, as well as those services which are customarily provided for municipal golf course operations similar to that of EPGC and LPGC, whether or not those services are listed in this Agreement.
  - A. Employees. BCG shall staff the Courses with the number of employees necessary to successfully operate the business. All personnel employed at the Courses shall at all times be employees of EPGM or LPGM. EPGM and/or LPGM shall hire, promote, supervise, direct and train all employees at the Courses, fix their compensation and fringe benefits, and, generally, establish and maintain all policies relating to employment and employment benefits. Expenses for recruitment, advertising and relocation expenses for Key Personnel as approved in Annual Budget and Program, except for the time of BCG Corporate employees as set forth herein, are all operating expenses of the Courses and shall be approved as part of the Annual Budget and Program. EPGM and LPGM employee files shall always be the sole property of EPGM and LPGM. If an employee of BCG or an affiliate of BCG that is not employed at the Courses is assigned temporarily or on a part-time basis to perform services at the Courses, such employee's salary (including employee benefits and taxes) in proportion to the period of time such employee dedicates to the Courses and any expenses incurred for travel to and from the Courses shall be reimbursed to BCG by Owner, subject to prior approval and any applicable restrictions and limitations provided in the Annual Budget and Program. A schedule of customary employee expenses must be included annually with the submitted budget.
  - B. Inventory – Merchandise and Items for Re-sale. BCG shall obtain merchandise for the pro shop(s) at the Courses and food and beverage items, all in accordance with the Annual Budget and Program. All inventory shall at all times be the property of the Owner.
  - C. Supervision. BCG shall supervise and manage the Course(s) operations to include golf pro shop, maintenance, food and beverage, annual player pass program sales efforts, practice facilities, administration, and other ancillary services at the Courses.
  - D. Equipment. BCG shall, in preparation of Annual Budget and Program as set forth in Paragraph 6H, 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 Courses, including the golf course and all physical structures which are part of the

Courses, and all vehicles and other maintenance equipment necessary to the maintenance and operation of the Courses in the normal course of business.

- E. Purchasing and Procurement. As an operating expense of the Courses, BCG shall procure all operating supplies, operating equipment, inventories and services as are deemed necessary to the normal and ordinary course of operation of the Courses and to operate the Courses in accordance with the Annual Budget and Program. In purchasing operating supplies, operating equipment, inventories (including merchandise to be sold in the golf shops) and services for the Courses, BCG may utilize its purchasing procurement services and/or other group buying techniques involving other clubs managed by BCG, provided that the cost thereof shall be competitive with that which would be charged by non-affiliated third party vendors in an arms-length transaction. Any available discount, rebate, fee, or value of complimentary or bonus goods and merchandise provided by vendors generated from purchases made on behalf of the Club, or compensation which is directly attributable to the purchases made by BCG for the operation of the Club shall be remitted directly to Owner from the vendor and accounted for in the operating accounts and in accordance with GAAP.
- F. Consultation. Except as provided in Paragraph 6A pertaining to the assignment by BCG of temporary or part-time BCG personnel, BCG shall, as part of its services hereunder and without additional compensation, make its staff available to Owner upon request for consultation regarding the Courses, including, but not limited to capital improvements or projects which may include modifications to the vertical structures or golf course(s).
- G. Marketing. BCG shall create, direct, and implement an annual marketing plan for the Courses as part of the Annual Budget and Program. The marketing plan for the Courses will include a market analysis, a summary of golf programs to include rates, annual player pass fees, and strategies for increasing acquisition, engagement and yield with the purpose of achieving the budgeted financial goals and other marketing-related goals for all Courses departments. BCG shall honor all existing gift certificates, multi-year memberships etc.

BCG shall 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 annual player events and programs;
4. Sales programs, including outing, annual player, 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)
9. Certain of these programs in items 6, 7 and 8 above will result in incremental charges that will be designated as "Centralized Services" defined in paragraph 10F below. In accordance with BCG policy, these charges will a) be approved as part of the annual budgeting process and b) without markup and profit to BCG.

BCG shall coordinate and oversee all third party contractors' work in connection with the production and implementation of these programs. BCG shall also include, as appropriate, the Courses 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 Courses may opt in to BCG's shared marketing database. This database is an aggregated customer database for all participating clubs and other BCG owned marketing efforts (such as World's Largest Golf Outing, Women on Course, Buffalo Communications). Participating clubs can target customers in the database based on a variety of demographic attributes (location, age, behaviors, etc.). To participate, the Courses must "share" its own database with the larger cooperative. All customer information will remain "blind" to other clubs.

BCG shall comply with all applicable federal, state and local laws, statutes, rules, regulations and ordinances ("Laws"), including, but not limited to, privacy, data protection and direct marketing Laws and Laws concerning email transmissions including but not limited to CAN-SPAM.

- H. Intellectual Property. "Work Product" shall mean the materials developed by BCG (alone and with others) for Owner in performance of this Agreement, including, without limitation, all ideas, methods, reports, marketing materials, manuals and visuals, and all data and information relating thereto. All Work Product shall be deemed to be proprietary information of Owner and shall be the sole and exclusive property of Owner. Owner acknowledges that BCG has certain proprietary software for marketing, guest segmentation, analysis, and these proprietary methods shall be the sole and exclusive property of BCG

If any Work Product incorporates, contains or uses any third party intellectual property, the BCG hereby represents and warrants that, to the knowledge of BCG, such Work Product, as used without modification, shall not infringe upon any patent, trademark, copyright or other intellectual property rights of any third party. Owner's rights are subject to any third party rights disclosed to Owner.

Owner hereby grants to BCG a non-exclusive revocable license, to use and publicly display the Owner trademarks, including Enger Park and Lester Park trademarks, solely for the purposes contemplated in this Agreement. BCG will comply with any reasonable guidelines as to appearance, presentation and style of the Owner marks as Owner may provide from time to time in writing. All goodwill arising out of BCG's use of Owner's trademarks will inure solely to the benefit of Owner.

- I. Accounting. BCG or EPGM and LPGM, as appropriate under separate agreements, shall pay all vendors of the Courses (subject to the availability of funds in accordance with the terms of the Agreement). BCG shall provide separate budgeting, bookkeeping and reporting services to Owner for the Courses. Copies of all books and records shall be kept at the Courses. All books, records, software, data, programs, manuals and the like shall remain the property of Owner. BCG shall maintain or cause EPGM and LPGM to maintain adequate books and records relating to the operation of the Courses. BCG agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, all BCG, EPGM and LPGM books, records, documents, and accounting procedures and practices relating to this Agreement are subject to examination by the Owner or the State Auditor for six (6) years from the date of termination of this Agreement. Upon five (5) business days advance notice by Owner, BCG shall provide all requested financial information.

1. Reporting. BCG shall prepare and deliver to the Owner, in accordance with BCG standard procedures and format, on an accrual basis and generally accepted



accounting principles (GAAP regular monthly and annual financial statements which shall include an operating level balance sheet (bank account balances, inventory, accounts payable, accounts receivable if applicable, accrued payables, gift certificate balances, memberships, rain checks, refunds, deposits, loyalty program liabilities and paid in capital from Owner), a profit and loss statement for the current month and year to date activity, accounts payable listing, general ledger activity and comments regarding monthly activity related to: rounds played; food and beverage sales; and pro shop sales (both numbers and dollars) with a historical comparison for each; marketing and promotions activities; non-routine expenses; capital improvement status report; insurance claims and/or litigation; safety and environmental incidents; employee training; maintenance and agronomic updates and reports; and variances to the Annual Budget, along with a comparison of the monthly budget to actual monthly financials, and year-to-date reports..

BCG shall provide to the Owner's Auditor (City Auditor) a daily sale deposit/ reconciliation report reconciling daily sales to deposits made to the Deposit Account (hereinafter defined).

BCG must submit a monthly written report to the Director including but not limited to:

- i. Rounds played (both numbers and dollars), historical comparison;
- ii. Food and beverage sales (both numbers and dollars), historical comparison;
- iii. Pro Shop sales (both numbers and dollars, historical comparison
- iv. Marketing and promotions;
- v. Non-routine expenses;
- vi. Capital improvements status report;
- vii. Insurance claims;
- viii. Litigation; and
- ix. Safety and environmental incidents

Upon Owner's request, BCG shall provide all accounting data and reports in electronic form. BCG shall not be responsible for the accounting or tax reporting requirements of the Owner, including but not limited to, the depreciation, amortization or addition of assets and equipment, owner's equity, debt service principle, loan amortization, , or payment of any invoices which relate to a period prior to the Effective Date. Owner shall provide BCG opening entry data for the balance sheet within 15 days of the Effective Date.

Final monthly operating statements shall be furnished to Owner by the 20<sup>th</sup> day following the last day of each month, and annual operating statements shall be furnished by the 45<sup>th</sup> day following the last day of each fiscal year. At Owner's discretion and BCG's expense, the annual operating statement shall be reviewed and prepared by a certified public accountant chosen by Owner. This audit shall be performed at the Courses, and BCG shall make every reasonable effort to comply with the auditor's requests.

2. Annual Budget and Program. BCG shall prepare and deliver to Owner no later than October 1<sup>st</sup> of each year (except for the first full or partial fiscal year when BCG shall prepare and deliver to Owner no later than thirty (30) days after the Effective Date) for the following fiscal year: (a) an Annual Operating Budget, including revenues and operating expenses and labor burden (to include rates of pay, incentive or commission structures) for each department of the Courses; a

merchandise buying plan for the pro shop; a comparison to the annual operating budget for the immediately preceding year and a projection of anticipated monthly revenues and expenses and cash flows for the Courses for the following calendar year, including, without limitation, a reasonable contingency and anticipated working capital requirements for the Courses for the year; (b) a recommended capital expenditures budget for the next calendar year; (c) a Policies and Procedures Outline for the Courses, including, without limitation, operating policies, proposed hours of operation, policies related to complimentary golf course and Courses use by Owner's representatives and employees, standards for operations and quality of service standards; (d) an Agronomic Plan including staffing assumptions, chemical and fertilization applications including planned agronomic practices; (e) Marketing Plan as described in Paragraph 6G (collectively, the "Annual Budget and Program") (f) Golf rates. BCG and Owner shall use their mutual best efforts to agree upon the Annual Budget and Program for the following year on or before calendar year end. **Owner shall have the final approval and final decision-making authority over the Annual Budget and Program.** Owner shall provide BCG written confirmation of its approval of the Annual Budget and Program or suggested modifications within forty-five (45) days of BCG's submission of the Annual Budget and Program to Owner. If the Owner does not provide the written confirmation or rejection within the aforementioned forty-five (45) day period, the Annual Budget and Program shall be deemed approved.

Owner acknowledges that the financial and operational performance of the Courses could be affected by extraordinary circumstances or events beyond BCG and/or EPGM and LPGM's control. BCG shall not be deemed to have made any guarantee, warranty, or representation with the Annual Budget and Program. The forgoing sentence does not in any way prevent the Owner from exercising its rights under Paragraph 13. Each party may, from time to time, propose to the other party, in writing, during the course of the year, such changes or amendments to the Annual Budget and Program as such party may consider necessary or appropriate, and BCG and Owner shall use their mutual best efforts to act upon such proposal within thirty (30) business days after such proposal is made provided any such change or amendment shall be subject to Owner's prior written approval.

BCG shall secure the prior approval of Owner for total expenditures which exceed the total expenditure amount approved in Annual Budget and Program, however, as necessary, BCG has the ability to allocate funds from individual expense line item to another expense line item within the Annual Budget and Program, so long as the line item variance does not exceed the Annual Budget for that line item by more than Ten Thousand Dollars (\$10,000), and so long as all such line item variances do not exceed Fifty Thousand Dollars (\$50,000) in the aggregate for the entire Annual Budget and Program, and does not exceed the total approved expenditure budget for the Courses without prior approval from the Owner. Exceptions include expenditures necessary in the event of emergencies for which prompt notice will be given to Owner.

3. Payroll and Benefits. BCG, on behalf of EPGM and LPGM, shall establish, administer, and maintain the payroll procedure and systems for EPGM and LPGM employees at the Courses and shall be responsible for overseeing the benefits to, and handling the appropriate payroll deductions for, individual employees. Benefits will be limited to vacations, sick leave, medical insurance coverage, and 401(k) plan, as approved by Owner pursuant to the Annual Budget and Program. All employees of the Courses shall be employees of

EPGM and/or LPGM, and EPGM and LPGM shall comply with Federal and State employment laws.

4. Vendor Accounts. BCG shall utilize existing vendor accounts which are in the name of the Owner whenever possible. If necessary, BCG shall coordinate with Owner and appropriate vendors to establish any new vendor accounts with appropriate credit limits applied for on behalf of and in the name of the Owner. BCG and/or EPGM and LPGM shall act as Agent for the Owner with regard to payment of vendors, and Owner accepts full responsibility for all vendor payments which are part of the approved Annual Budget and Program. Provided adequate funds are provided to BCG, BCG shall make all payments in a timely manner to capitalize on applicable early payment discounts. The Owner shall receive all credit for early payment discounts as if such payments were made in accordance with vendor terms. The Owner shall also receive credit for all rebates, discounts, savings provided through BCG's cooperative buying partners (BCG National Account Program).
- J. IT Services. BCG shall create, direct, and implement activities for IT functionality, in a safe and stable manner, and within Payment Card Industry Data Security Standards ("PCI DSS") Compliancy regulations for the Courses. BCG shall as an operating expense of the Courses, 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.
  7. PCI Compliance. BCG represents and warrants that for the life of the contract, the software and services used for processing transactions shall be compliant with standards established by the PCI Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>). BCG agrees to indemnify and

hold the City, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any loss of City customer and or user of the Golf Course credit card or identity information managed, retained or maintained during the term of this Agreement , including but not limited to fraudulent or unapproved use of such credit card or identity information.

- a. BCG must attest that it is complying with the Data Security Standard annually. This involves delivering a package attached as Schedule A of three items due on or before February 1st of each year to the City Treasurer's office located at 411 W 1st St, Room 107, Duluth, MN 55802:
    - I. Self-Assessment Questionnaire (PCI-DSS SAQ D)
    - II. Regular network or web site scanning by an Approved Scanning Vendor (paid for by Owner)
    - III. Signed Attestation of Compliance
  - b. The City may at its expense request a Report on Compliance by a Qualified Security Assessor or similar PCI Security Audit performed by either City staff or a contractor selected by the City. If the aforementioned package has not been delivered by the expected due date or if the audit results in a non-compliant security status, the processing of credit cards online, over the counter and over the phone may be terminated at the discretion of the City.
8. 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 Courses BCG IT Services shall be paid an amount equal to seventy five dollars (\$75.00) 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.

K. BCG Capital Contribution.

Within 30 days after the execution of this Agreement, BCG will deposit in a separate account ("Capital Account"), jointly held by Owner and BCG \$250,000 that will be used for agreed upon Initial Capital Improvements. The BCG Capital Investment is an agreed upon financing mechanism which is amortized as part of the EPGC Base Management Fee. It is the intent of the parties that the BCG Capital Contribution be spent in the first 12 months of the Agreement. In the event this Agreement is terminated for any reason prior to the full repayment of the BCG Capital Contribution as provided in **Exhibit D**, the Owner will pay BCG the outstanding unamortized balance. Any amounts remaining in the account shall go to the Owner.

L. Operating Expenses and Owner's Remittance.

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

As used herein, the Minimum Funds Balance for the Courses shall be defined as the dollar amount of the total budget for all operating expenses (as set forth in

the Annual Budget and Program) for the month following the current month within the Term of the Agreement limited to the maximum of \$50,000 per course.

2. Operating Expenses. BCG shall pay all operating expenses for the Courses on behalf of Owner from the Operating Account BCG will collect from and remit on behalf of the owner, sales, use, value-included and excise taxes on sales and rentals at the Courses. BCG will not pay Federal or State income taxes levied on Owner. Under no circumstances shall BCG, EPGM or LPGM be liable for Federal, State, or local taxes of any kind whatsoever levied against Owner or the Property in relation to Courses ownership, leasing, or operations.
  3. Initial Funding. Until such time as the Annual Budget and Program are approved by Owner, Owner gives BCG approval to operate the facility in accordance with this Agreement. Owner shall provide initial funding in the amount of Fifty Thousand Dollars (\$50,000) for EPGC, payable from Fund 503-400-ENGR-5310, and fifty thousand dollars (\$50,000) for LPGC for operations, payable from Fund 503-400-LSTR-5310, prior to approval of the Annual Budget and Program (the "Initial Funding") and shall at all times ensure that the Minimum Funds Balance is maintained in the Operating Account upon contract execution. If operating revenues are insufficient to cover expenses, upon BCG's notifying Owner of such operating revenue shortfall, Owner shall have fifteen (15) days to deposit into the Operating Account the funds necessary to cover such deficits and to restore the Minimum Funds Balance. If Owner does not provide the necessary "Working Capital", BCG may, but shall not be responsible to, cover such operating expenses. Owner shall be liable to reimburse BCG for any such amounts paid by BCG. Owner shall be responsible for all late fees, interest, and other penalties charged by vendors and other parties to whom such amounts are owed but only to the extent that said fees are a result of insufficient funds in the operating account and where the Owner was notified of such insufficiency in accordance with this Agreement.
- M. Owner's Meeting. BCG shall, as needed, and based on the Owner's requests, (but no less than monthly), consult with the Owner regarding the Courses and its operations at a time, date and place designated by Owner.
- N. Limitations. BCG shall not execute contracts on the Owner's behalf, in the Owner's name; nor binding the Owner in any manner without the express written permission of the Owner for contracts exceeding \$5,000 or a term of twelve months. . Except as provided in the previous sentence, BCG shall not execute contracts on the Owner's behalf, in the Owner's name; nor bind the Owner in any manner without the express written permission of the Owner.
- O. Assignment of Operations. Upon a termination of this Agreement, BCG, EPGM and/or LPGM, as appropriate, shall assign to Owner's designee all operating accounts, vendor accounts, inventory, accounts receivable, and accounts payable, which transfer shall be completed upon BCG, EPGM and/or LPGM receiving all undisputed fees due pursuant to this Agreement. BCG, EPGM and LPGM shall, without additional payment by the Owner, cooperate beyond termination with Owner and any replacement manager for a reasonable period after termination (all parties hereto agree that a reasonable period is not less than two (2) weeks and not more than four (4) weeks) to facilitate the orderly transition of the management of the Courses.
- P. City Approval. BCG agrees to obtain prior approval from the Owner for changes on the following matters:
1. Changes from the approved budget except as provided for herein.

2. Modifications to any equipment, facilities, amenities on the course.
3. Any improvements to be constructed on the golf course property.
4. Changes to approved hours of daily operation
5. Any use of the Owner's name except as authorized herein.
6. The décor of the golf course, signage, on-course fixtures.
7. Changes to tee-time reservation and cart use policies.
8. Changes to fees that vary more than ten percent (10%) over those provided to and approved by the Owner in the Approved Annual Budget and Program and any amendments thereafter.

**7. ACCOUNTS.**

BCG shall establish and/or jointly establish the following business checking accounts for the Courses: (a) a "Deposit Account", jointly with Owner and BCG" (b) an "Operating Account" and (c) an "On Site Account," (collectively, the "Accounts"), for use in its management and operation of the Courses in compliance with the Annual Budget and Program and the terms of this Paragraph 7. All revenues, receipts, and funds deposited into the Accounts from time to time by Owner or BCG shall be defined as and constitute "Working Capital" herein. BCG shall cause all revenues and receipts to be deposited into the Deposit Account on a daily basis. BCG shall use the Operating Account to pay all expenses of the Courses and shall transfer funds from the Deposit Account to the Operating Account as required to pay such expenses. BCG shall maintain in the On-Site Account an amount to be used for customary business operating expenses.

Upon cancellation or termination of this Agreement for any reason or upon the occurrence of a material default by BCG, BCG's rights to access to the banking accounts shall be immediately revoked. Upon direction from Owner from time to time, BCG shall invest or deposit funds in the Accounts in accordance with Owner's direction. BCG shall maintain bank accounts for Courses at a local branch agreed upon in advance by the parties, and near the Courses.

**8. CURRENT GOLF COURSE DEBT**

- a. Both parties recognize that there is existing current Golf Course debt.
- b. Golf Cart Financing. Both parties agree that there is existing tax-exempt debt financing for Owner golf carts.
- c. BCG agrees to cooperate with the Owner to maintain this tax exemption, thus avoiding additional interest cost to the Owner. The City shall provide notice to BCG, and an opportunity to cooperate with the Owner, as to the measures that may be necessary to protect the tax exempt status of the debt financing.

- 9. INSURANCE.** BCG shall secure and maintain a separate general liability, crime, D & O, and workman's compensation insurance coverage for the Courses as set forth in **Exhibit C**, provided BCG has continued access and control of the property constituting the Courses. These coverages, limits and deductibles set forth in **Exhibit C** are with the written approval of Owner, subject to change each policy year

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

Such policies shall name BCG, EPGM and LPGM, Owner, and any applicable third parties as additional insureds under such policies. All insurance policies required hereunder shall contain a provision requiring the insurer to notify BCG, Owner and other named insureds at least thirty (30) days in advance of any cancellation or termination, except in the event of termination of this Agreement, of such policy and satisfactory waiver of subrogation provisions. BCGs secured

coverages shall not include D & O coverage for Owner. Except as provided for elsewhere in this Paragraph, BCG shall be responsible for securing and maintaining all of the insurance policies required hereunder, provided, however, that BCG shall have no obligation to pay such premiums from its own funds. BCG shall obtain competitive bids for the coverage each year. BCG contemplates that it will secure such insurance as a part of a blanket policy; the premiums attributable to the Courses shall be determined by making a reasonable allocation based on the relation of the amount of insurance carried for the Courses to the total policy amount provided for other BCG clubs in the blanket policy, and the blanket policies shall have coverage in the amounts set forth in **Exhibit C**. These coverages, limits and deductibles are subject to change each policy year. BCG shall provide written notice to owner in the event of a coverage, limit, and/or deductible change. The premiums for any and all such policies shall be paid from the Operating Account to be provided by Owner pursuant to Paragraph 7 hereof and in accordance with the Annual Budget and Program, or by Owner in the event there is insufficient working capital available.

**10. COMPENSATION AND FEES.**

- A. **Base Management Fee.** For its services hereunder, BCG shall be paid a Base Management Fee (the "Base Management Fee") of Nine Thousand One Hundred and Sixty Seven Dollars (\$9,167.00) per month for EPGC (payable from Fund 503-400-ENGR-5310), of which \$4,167.00 is for the repayment of the BCG Capital Contribution, and Five Thousand Dollars (\$5,000) per month for LPGC (payable from Fund 503-400-LSTR-5310). The Base Management Fee shall be payable on the fifth day of each month from the Operating Account. Commencing on January 1, 2016, 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.

Included in the Base Management Fee shall be the cost of BCG corporate personnel who supervise, or otherwise participate in the management, administration and operation of the Courses, but also do work for BCG and/or other golf courses managed by BCG. These persons include BCG corporate personnel responsible for: (i) the direct supervision of on-site personnel; (ii) training of on-site and supervisory managers by BCG regional staff; (iii) the coordination and supervision of routine repairs and maintenance at the Courses; (iv) overseeing inventory and supplies of the type used by the Courses; (v) marketing; (vi) administering the payroll for on-site employees, including the administration, withholding and payment of applicable worker's compensation coverage; and (vii) accounting and other services relating to the operation and administration of the Courses. Owner acknowledges that some or all such persons may be simultaneously engaged by and/or for other golf courses managed by BCG. BCG shall not be separately reimbursed for the time of its executive officers devoted to the Owner's affairs or to the other overhead expenses of BCG all of which are presumed to be included in the Management Fee

- B. **Incentive Management Fee.** In addition to the Base Management Fee, BCG shall be entitled to earn an Incentive Management Fee for each full Calendar Year during the Term. For Calendar Year 2015 and each year thereafter, BCG shall receive an amount calculated as twenty two percent (22%) of the positive Net Operating Income in excess of one dollar (\$1.00) (the "Incentive Management Fee") payable from Fund 503-400-ENGR&LSTR-5310. If in a given calendar year, BCG receives Incentive Management Fees that reach 100% of the Base Management Fee, additional Incentive Management Fees will be calculated at 15% of the positive Net Operating Income. The Incentive Management Fee earned for a calendar year shall be paid no later than March 15<sup>th</sup> of the year immediately following the calendar year for which it is calculated and in which it was earned.

All Base Management Fees and Incentive Management Fees during the term shall be paid to BCG from the Operating Account; however, any fees not payable until after the expiration or termination of this Agreement shall be paid to BCG directly.

- C. Ongoing Travel. After the Transition and Startup Travel period of 90 days - BCG's corporate based employees shall be reimbursed for all reasonable travel-related expenses, including airfare, automobile (mileage reimbursement or rental car), lodging, and meals, in connection with its services hereunder pursuant to the approved line item in the approved Annual Budget and Program, provided that any such expenses shall be appropriately allocated among other facilities benefited by such travel. BCG shall provide documentation of all expenses in a form acceptable to Owner. Such reimbursement shall not exceed ten thousand dollars (\$10,000) per Calendar Year in Year 1, and six thousand dollars (\$6,000) per each Calendar Year thereafter payable from Fund 503-400-ENGR&LSTR-5310.
- D. Transition & Start-up Travel. For transition and any changes requested by Owner, during the initial ninety (90) days of the agreement, BCG's IT, Human Resources, and Regional Support corporate based employees shall be reimbursed for all reasonable travel-related expenses, including airfare, automobile (mileage reimbursement or rental car), lodging, and meals, in connection with the start-up and transition of the Courses to BCG Operations. Such reimbursement shall not exceed two thousand dollars (\$2,000) payable from Fund 503-400-ENGR&LSTR-5310.
- E. Owner's Review. BCG's services herein shall include management and oversight of the turn-key accounting function as set forth in Paragraph 6H, and upon reasonable notice (which may be verbal) representatives of Owner shall have the right, at any time during normal business hours, to review all of BCG's books and records including the general ledger, accounts payable, income statement, balance sheet, and budget variance reports relating to the Courses including, without limitation, BCG's work papers related to BCG's preparation of operating statements. All expenses related to any such review shall be exclusively borne by Owner for purpose of this Agreement unless such review reveals an overpayment of any fees or other amounts in which case BCG shall pay for the review. Owner's exercise of its right of review or to dispute any fee or expense reimbursement claimed by BCG shall not delay payment of the undisputed portion thereof by Owner within the time frames set forth herein. However, payment by Owner of a fee or other amount hereunder shall not constitute a waiver of Owner's right to subsequently dispute the amount thereof. If any portion of the Base Management Fee or any other amount was improperly paid to BCG, BCG shall refund such improperly paid fee together with interest and late fee, calculated as one and a half percent on the past due amount per month thereon from the time when such fee was paid to BCG within five (5) business days after receipt of notice from Owner to BCG. If there is any dispute between the parties regarding whether or not any payments of the Base Management Fee or any other amount were proper, such disputes shall be resolved by a court of competent jurisdiction as set forth in Paragraph 17D.
- F. Centralized Services. BCG may cause to be furnished to the Courses certain services ("Centralized Services") which are able to be furnished in a more cost effective and efficient manner on a central or regional basis to golf facilities managed by BCG. The costs to provide such services shall be aggregated and billed to the courses by BCG rather than via a third party vendor. Centralized Services shall be approved as part of the Annual Budget and Program and as part of a separate itemized accounting of all Centralized Services embedded in the budget. Notwithstanding allowances in Section 12 for BCG to exceed expense budget limits in certain circumstances, BCG shall not under any circumstances exceed the sum total of all Centralized Services embedded in the budgeted by more than \$10,000 without prior approval of Owner. BCG represents that this reimbursement amount shall consist of an amount not exceeding the actual cost of



the services without mark-up or profit to BCG including salary and employee benefit costs, cost of equipment used in performing such services, and overhead costs of the home office or any regional or other local office providing such services.

**11. CAPITAL EXPENDITURES.** The cost of all Capital Improvements shall be deemed to include any item purchased in connection with the operation of the Courses which:

- A. Has an economic useful life in excess of one (1) year, and
- B. Has a cost in excess of five thousand five hundred dollars (\$5,000). All Capital Expenditures for Capital Improvements shall be the responsibility of Owner and all decisions as to whether or not to undertake any capital improvements projects or otherwise in respect of any capital improvements shall be made by Owner in consultation with BCG.

**12. DEFAULT AND REMEDIES.**

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

- 1. Failure to timely pay BCG any undisputed fees, compensation, or reimbursement due BCG pursuant to this Agreement;
- 2. Failure to timely provide Working Capital in accordance with Paragraph 6I hereof;

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

- 1. Failure to maintain the amenities of the Courses in reasonably good condition subject to abnormal weather conditions, acts of God, or other events or conditions beyond the reasonable control of BCG;
- 2. Failure to operate the Courses in accordance with the approved Annual Budget and Program; or BCG's failure to successfully perform the Scope of Service and Performance Measures as demonstrated in **Exhibit E** of this Agreement;
- 3. Failure of BCG to perform any material obligations set forth in this Agreement;
- 4. Assignment for the benefit of its creditors, or becoming a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization;

C. Notice and Cure. When either party to this Agreement believes that the other party (the "Defaulting Party") has committed an Event of Default, it shall give written notice thereof to the Defaulting Party. The Defaulting Party shall have ten (10) calendar days from the date of the notice to cure the default unless the default is a non-monetary default and, due to extraordinary weather, growing conditions or other factors objectively beyond the reasonable expectation of the Defaulting party, requires more time to cure. In order to qualify for a longer cure period, the Defaulting Party must earnestly begin to cure within ten (10) calendar days from the date of the notice to cure and diligently pursue such cure. In no event will the Defaulting Party have more than sixty (60) days from the date of the notice in the aggregate to cure a non-monetary default.

D. Rights upon Default. If the Defaulting Party does not cure the default within the grace period provided in Paragraph 12C above, the other party may terminate this Agreement.

The termination shall be effective thirty (30) days after written notice to the Defaulting Party of its failure to cure (the "Termination Effective Date"). At any time after the Termination Effective Date and within the applicable statute of limitations, the parties may pursue all rights and remedies available in law or equity, including payment of accrued amounts pursuant to Paragraph 10 hereof. Notwithstanding any contrary provisions hereof, BCG's rights to recover damages from Owner shall be limited to the sum of (i) accrued and unpaid Base Management Fees and Incentive Management Fees as of the Termination Effective Date, and other amounts due hereunder, including all amounts to fully pay all sums due to third party vendors who provided goods or services to the Courses, along with all accrued late fees, interest; (ii) actual damages not to exceed the amount of ten thousand dollars (\$10,000); (iii) any unamortized amount of BCG's Capital Contribution, and (iv) the Cancellation Fee (defined below) as fixed, agreed liquidated damages.. Owner shall be relieved of payment for any services that gave rise to such breach. In no event will BCG or Owner be subject to any consequential, special, punitive or similar damages, each party hereby waiving any right it may have to seek or claim such damages.

**13. TERMINATION AND CANCELLATION.**

- A. Either party may terminate this Agreement upon the occurrence of an Event of Default by the other party as provided in Paragraph 12D above.
- B. Cancellation Fee; Default by Owner. In the event BCG terminates this Agreement due to the Default of Owner, and BCG not being in default, BCG shall receive from Owner, within sixty (60) days of termination, a cancellation fee (the "Cancellation Fee") of \$75,000 and any unamortized amount of BCG's capital contribution. The Cancellation Fee shall be considered liquidated damages and not a penalty, and the parties agree that such amount constitute a reasonable provision for liquidated damages. The liquidated damages provisions in this paragraph are a consequence of the fact that the amount of actual damages resulting from BCG's termination due to default by Owner is impossible to ascertain. The liquidated damages amount shall be paid within thirty (30) days of the date of receipt of the notice of cancellation. The liquidated damages amount as stated in this paragraph will constitute BCG's sole and exclusive remedy for any and all damages, costs or expenses it may have incurred arising from the cancellation of this Agreement due to Owner's default, provided however, liquidated damages shall not include the payment of undisputed Operational Expenses incurred by BCG, EPGM, or LPGM up to the date of termination in the operation of the Courses.
- C. Owner's Reserved Right of Termination for Cause. Owner shall have the right to terminate the Agreement, without the payment of a Termination Fee, Cancellation Fee, damages or other penalty, if, in any two (2) consecutive Calendar Years (commencing with the 2016 Calendar Year as the first year in any measurement period), Net Operating Income does not equal or exceed One Dollar (\$1.00) in the aggregate for both EPGC and LPGC for each of the such consecutive Calendar Years. Provided, however, for purposes of this any Owner administrative costs shall not be included in the Operating Expenses while determining the Net Operating Income for each calendar year as it pertains to this Paragraph 13C. Owner may exercise such termination right by providing written notice within thirty (30) calendar days after Owner's receipt of the final determination of Net Operating Income for the second (2nd) of such Calendar Years (either via the BCG-prepared annual operating statement in Paragraph 6H; provided, however, that the methodology for calculation of Net Operating Income shall be as defined herein and shall be consistently applied to any Calendar Years used in comparison). Failure to give such notice within such ninety (90) day period shall be deemed to be a waiver by Owner of its right to terminate based on the Calendar Years in question, but shall not be deemed to be a waiver of such right with respect to subsequent Calendar Years. In the event Owner elects to exercise it right of termination for cause,

Owner shall remit to BCG any unamortized amount of BCG's capital contribution through the date of termination.

For purposes of determining whether Net Operating Income of One Dollar (\$1.00) in the aggregate for both EPGC and LPGC has been achieved in a Calendar Year, budgeted Net Operating Income shall be subject to adjustment for force majeure events

D. Termination Fee: Owner's Termination for Convenience. After calendar year 2017, Owner may terminate the Agreement upon ninety (90) days prior written notice to BCG with payment of a Termination Fee. The Termination Fee shall be seventy-five thousand dollars (\$75,000). In the event Owner elects to exercise its right of termination for convenience, Owner shall remit to BCG any unamortized amount of BCG's capital contribution through the date of termination. The Termination Fee shall be considered liquidated damages and not a penalty, and the parties agree that such amount constitute a reasonable provision for liquidated damages. The liquidated damages amount shall be paid within thirty (30) days of the date of receipt of invoice, which will be sent to Owner upon receipt of the notice of termination. The liquidated damages amount as stated in this paragraph will constitute BCG's sole and exclusive remedy for any and all damages, costs or expenses it may have incurred arising from the cancellation of this Agreement due to Owner's default, provided however, liquidated damages shall not include the payment of undisputed Operational Expenses incurred by BCG, EPGM, or LPGM up to the date of termination in the operation of the Courses.

E. Sale Termination Fee: Sale of Courses. The parties acknowledge that the Owner is considering selling all or part of LPGC and that contingency was quantified as part of the management fee. If LPGC is sold, the portion of this Agreement pertaining to LPGC shall terminate without cost or penalty, including all fees payable to BCG for LPGC management.

In the event of a sale or transfer of EPGC to any third-party, Owner shall have the unilateral right to terminate this Agreement at any time on ninety (90) days prior written notice, subject to the provisions set forth below. In the event of such unilateral termination due to the sale or transfer of the Course and BCG not being in default under this Agreement, BCG shall continue to manage the Course until the sale of the Course as evidenced by a transfer of title. Upon sale of the Course, BCG shall be paid a Sale Termination Fee equal to fifty thousand dollars (\$50,000). Sale Termination Fee will be in addition to any Base Management Fees and Incentive Management Fees paid or owing to BCG prior to or as of the date of sale of Course. Owner's payment of the Sale Termination Fee amount as stated in this paragraph will constitute BCG's sole and exclusive remedy for any and all damages, costs or expenses it may have incurred arising from the cancellation of this Agreement due to Owner's default, provided however, liquidated damages shall not include the payment of undisputed Operational Expenses incurred by BCG, EPGM, or LPGM up to the date of termination in the operation of the Courses. In the event Owner sells or transfers EPGC, Owner shall remit to BCG any unamortized amount of BCG's capital contribution through the date of termination.

F. In the event that golf course operation is shut down and sufficient budgeted funds are not available for any new fiscal period, the Owner shall notify BCG at least 60 days in advance of such occurrence and the Agreement shall terminate on the last day of the then current fiscal period without expense or penalty to the Owner. If the Agreement terminates due to fiscal non-funding, the Owner shall pay to BCG the pro-rated Fixed Management Fee and Incentive Fee through the date of termination.

G. After notice of termination and at the Owner's request, BCG shall use its best efforts to assist in the smooth transition to another service provider.

- H. Upon the expiration of this Agreement, for any reason, all existing and any future installed fixtures, equipment, improvements and appurtenances attached to or built into the Courses in such a manner as to become part of the freehold whether or not by the expense of BCG, shall become and remain a part of and be surrendered with the Golf Course property.
- I. Any furniture, furnishings, equipment or other articles of moveable personal property owned by BCG and located on the Courses property shall be and remain the property of BCG and may be removed by it at any time during the term of this Agreement so long as BCG is not in default of any obligations under this Agreement and the same has not become part of the freehold and so long as such do not materially affect BCG's ability to use such premises and conduct its business as provided herein.
- J. Proprietary Material. Upon termination or cancellation of this Agreement, BCG's (i) proprietary software and computer programs not purchased or prepaid for by Owner relating to accounting, operations, marketing, and forecasting, (ii) operations and employee training materials and manuals of BCG and (iii) the processes related to and used by BCG in the marketing and agronomic planning shall remain the property of BCG and may be removed by BCG upon termination of this Agreement. BCG will, however, facilitate the Owner's access to all course information and data that is accessible using the proprietary material. Additionally, any actual or implied association of the Course or Facility with Billy Casper or Billy Casper Golf, LLC shall cease upon termination.

**14. USE OF COURSES.** During the term of this Agreement, the Courses shall be daily fee municipal golf courses open to the general public except as provided herein.

**15. LIQUOR LICENSE.** Subject to any relevant City of Duluth code ("Code") licensing requirements, Owner, EPGM, shall maintain at all times (except for the application period) a valid liquor license on the premises, and all of the parties hereto shall comply with all relevant Code laws regarding the use of such license.

BCG understands and acknowledges that the Laws of Minnesota for 1891, Chapter 57, Chapter XII, Section 5, prohibit the issuance of licenses for the sale of wine or spirits or malt liquors within the Lakeside neighborhood of the city of Duluth including the area of the LPGC. Notwithstanding the foregoing sentence, BCG may apply for a 3.2 percent malt liquor license for sale of on sale beverages at the LPGC until such time as the current law is changed to allow a liquor license.

**16. FORCE MAJEURE; CONDEMNATION; FIRE AND OTHER CASUALTY.** If all or any material portion of the Courses are destroyed by fire or other casualty, or taken by eminent domain, such damage, destruction, or condemnation shall not be a cause for termination hereunder by either party unless such damage or destruction results in the whole or a substantial part of the Courses being unusable for its intended purpose for a period of one year or longer or, in the case of such total or substantial damage or destruction, Owner shall decide not to (i) to rebuild the damaged portion of the club, or (ii) if Owner is still the appointed Owner, rebuild the damaged portion of the Course or Course(s), then in any such event, this Agreement shall terminate on notice from Owner to BCG of such termination and neither party shall have any further rights or obligations hereunder. Notwithstanding the foregoing, if:

- A. As a result of catastrophic damage or destruction to, or condemnation of, any material part of the Course or Course(s), or
- B. Otherwise due to catastrophic causes beyond BCG's reasonable control or planning (and so long as BCG uses all reasonable diligence to cure such inability), BCG shall be materially unable to perform its obligations hereunder in respect of the operation of the Course(s), Owner and BCG shall use their mutual best efforts to agree upon an amendment to the Annual Budget and Program, including, without limitation, the working

capital provisions thereof, to allow payment of necessary Course expenses (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 Owner notice of the occurrence of such event, BCG or Owner shall have the right to terminate this Agreement by notice to Owner of such termination and neither party shall have any further rights or obligations hereunder. In the event of a force majeure there is no Cancellation Fee or Termination Fee due to BCG.

## 17. INDEMNIFICATION AND LIABILITY.

### A. Indemnity.

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

proceedings to defend any indemnified claim, or to enforce the indemnity, or. All indemnification obligations under this Agreement shall survive the expiration or any termination of this Agreement.

- B. Consistent with the agreed upon Annual Budget, it is understood and agreed that Owner is responsible for the payment of all fees, expenses, indemnities and reimbursements due hereunder or otherwise in connection with services performed by BCG, EPGM and/or LPGM pertaining to the Courses, including management and payment of employees, and neither BCG, EPGM nor LPGM shall have any liability or responsibility of any kind whatsoever with respect thereto or with respect to any other amounts payable to, or in respect of, BCG, EPGM or LPGM in connection with this engagement or any other services performed by BCG, EPGM and/or LPGM. All Operating Expenses, including but not limited to employee-related costs (e.g. salaries, wages, payroll taxes, insurance premiums, 401k funding, payments under COBRA, FMLA, employment-related administrative and legal claims or lawsuits), insurance premiums, taxes, vendor invoices, and all other costs associated with the Course(s) are solely the responsibility of Owner, whether incurred before, during, or after the term of this Agreement; and Owner shall fully indemnify BCG for all losses, including legal fees and costs, in accordance with the terms of Paragraph 17A above Courses. All Operating Expenses are the responsibility of Owner.
- C. Legal Actions. Legal counsel for BCG and Owner shall cooperate in the defense or prosecution of any action pertaining to the Course(s). BCG shall not institute or defend any legal action or retain counsel affecting the Course(s) without Owner's consent. BCG shall forward all legal notices or notices of a financial nature which relate to the Course(s), to Owner at the address listed under Paragraph 19J. BCG shall advise and assist Owner in instituting or defending, as the case may be, in the name of Course, Owner, and/or BCG, but in any event expressly as a Course expense, all actions arising out of the operation of the Course and not attributable to the negligence of BCG, and any and all legal actions or proceedings to collect charges, third party payments, rents, or other incomes for BCG, Owner, or the Course, or to lawfully evict or dispossess tenants or other persons in possession there under, or to lawfully cancel, modify, or terminate any lease, license, or concession agreement in the event of default thereof, or to defend any action brought against Owner, unless otherwise directed by the Owner. BCG shall assist Owner to take the acts necessary to protect or litigate to a final decision in any appropriate court or forum, as a Course expense, and any violation, order, rule, or regulation affecting the Course.
- D. Choice of Law and Venue. Whereas BCG's principal place of business is in the Commonwealth of Virginia, and the Facility is located in state of Minnesota, the parties agree that this Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. The parties also agree that any dispute between them in any way arising out of or pertaining to this Agreement shall be exclusively brought in the jurisdictional courts for Duluth Minnesota. The parties agree to submit to the jurisdiction of those courts.
- E. Liability of BCG and Owner.
1. Other persons. BCG shall not be responsible for the acts or omissions of any of Owner's other contractors or any subcontractor, or any employees of Owner, or any persons representing Owner performing any services for or in connection with the Course(s), or any consultants or other persons engaged by Owner with respect thereto, unless and only to the extent BCG is supervising, or should be supervising the same, and BCG shall be responsible only for the performance of BCG's obligations hereunder in accordance with the terms hereof.

18. **CONFIDENTIALITY.**

- A. To the extent allowed by law, including the Minnesota Data Practices Act, work performed by BCG and its agents or assigns pursuant to this Agreement (including, without limitation, any correspondence, analysis, reports and related materials prepared), constitutes confidential and privileged work product, and BCG's communications thereon with Owner or their respective employees or counsel or other professionals retained by Owner (each a "Owner Person") constitute confidential and privileged communications which are intended to have the full protections of the work product doctrine, proprietary business privilege, attorney-client privilege and all other applicable privileges. Accordingly, BCG agrees that it will not provide such oral or written reports or other work product or disclose such communications to any person other than Owner, except as may be otherwise requested by Owner.
- B. BCG agrees that all information, not publicly available, which is received by it from Owner in connection with this engagement, will be treated confidentially by BCG, except as required by process of law or as otherwise requested by Owner. In the event BCG is required to disclose any of such information pursuant to process of law, BCG agrees to provide Owner with prompt notice so that Owner may seek appropriate remedies, including a protective order. In any event, BCG and its agents, representatives, and employees will furnish only that portion of the information that is legally required to be disclosed.
- C. Owner shall retain exclusive rights to ownership of all work output hereunder and Owner shall own the customer database and all data on the Courses point-of-sale system related to operation of the Courses during BCG's operation of the Courses. Work output includes reports issued pursuant to this Agreement, but excludes, among other things, all working papers of BCG, any correspondence, memoranda, calculations, processes, notes, etc. that BCG may have used in the development of the reports above or such working papers or in the performance of any work covered by an authorization under this Agreement. .

**19. 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 including but not limited to the mutual termination of this Agreement with the intent to develop a new agreement.
- D. Compliance with Laws. BCG shall, at all times, operate, use, and conduct the business of the Course(s) in a lawful manner and in full compliance with all applicable governmental laws, ordinances, rules and regulations, and maintain all licenses and permits relating to the Courses, with Owner's full cooperation, in full force and effect and cooperate and endeavor to obtain all licenses and permits first required after the commencement of the term of this Agreement required in connection with the management, use, and operation of the Courses.
- E. Environmental Laws. Owner represents to BCG, to the best of Owner's knowledge, 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(s) in

violation of any Environmental Law (as defined below), nor except as expressly disclosed and described by Owner to BCG have the Course(s) been used at any time by any person as a landfill or a disposal site for hazardous materials or for garbage, waste or refuse of any kind. Owner also represents, to the best of Owner's knowledge, that there are no underground storage tanks of any nature on the Courses grounds (fuel, propane, gas etc.). Owner does not have any knowledge of asbestos-containing products within the Courses grounds.

BCG agrees to perform all services contracted hereunder in compliance with Environmental Laws. 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 Courses, or any licenses and permits of any governmental authorities, from time to time applicable to the Courses or any part thereof regarding hazardous materials.

- F. Binding. All of the terms and provisions of this Agreement shall be binding and inure to the benefit of the parties and their respective permitted successors and assigns. This Agreement is solely for the benefit of the parties hereto and not for the benefit of any third party.
- G. Assignment Except for its assignment to EPGM and LPGM, BCG shall not assign or transfer this Agreement without Owner's prior written consent, which shall not be provided without approval by the City Council.
- H. Subordination and Estoppel. This Agreement shall be subject and subordinate at all times to the lien of any municipal bond(s), mortgage (or any such instrument providing a security interest) which may now exist or may hereafter be executed in any amount for which the Courses or any portion thereof is specified as security. Owner agrees to use its commercially reasonable best efforts to obtain from Lender and or Bond holder a non-disturbance agreement in Bond holder or Lender's standard form reasonably acceptable to BCG.

Within ten (10) days of any such written request which Owner may make from time to time, BCG shall execute and deliver to Owner a statement in a form reasonably satisfactory to Owner 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 Management Fee and Incentive Management Fee have been paid, the fact that there are no current defaults under this Agreement by Owner or BCG, except as specified in BCG's statement, and such other matters reasonably requested by Owner.

- I. Right to Pledge. Any provision herein contained to the contrary notwithstanding, Owner 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 Courses, by way of mortgage, bond interests 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 reconstruction of the Course(s), clubhouse and improvements thereon, as well as loans, bonds for working capital provided that the Owner shall, upon execution of any such mortgage, bond or security agreement, promptly deliver a true copy of such mortgage, bond or security agreement to BCG. The mortgagee, bond holder(s) or other secured party, and their respective assigns, may enforce such mortgage or security agreement



and may acquire title to the Course(s) and Owner'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, bond holder 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(s), free and clear of this Agreement. The mortgagee, bond holder or secured party or its assigns and any independent contractor to the mortgagee, bond holder or secured party shall be liable to perform the obligations of Owner hereunder only during the period such person has title to the Course(s) and Owner'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 to be given under this Agreement shall be in writing, shall be given only in accordance with the provisions of the Paragraph \_\_\_\_\_ shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered, (i) upon receipt when hand delivered (or refused) during normal business hours, (ii) upon the third (3<sup>rd</sup>) business day after delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery), or (iii) one (1) business day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that the sending party receives a confirmation of actual delivery from the courier).

In the case of BCG:

Billy Casper Golf, LLC.  
8300 Boone Blvd., Suite 350  
Vienna, VA 22182  
Attention: Legal Department  
Telephone: 703.761.1444  
Facsimile: 703.893.3504

With copy to:

Moore & Lee, LLP  
1650 Tysons Boulevard, Suite 1450  
McLean, Virginia 22102  
Attn: Charlie C.H. Lee  
Telephone: (703) 506-2050  
Facsimile: (703) 506-2050

In the case of Owner:

City of Duluth Minnesota  
Attn: Director of Public Administration  
411 West First Street, Room 322  
Duluth, Minnesota, 55802 Zip  
Telephone: 218.730.5319  
Facsimile:

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

- K. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.
- L. Invalidity. If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid or unenforceable under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, invalid or unenforceable, but the remainder of such provision, and this Agreement shall not be invalidated or rendered unenforceable thereby, and shall be given full force and effect so far as possible.
- M. No Waiver. The failure or delay of either party at any time to require performance by the other party of any provision of this Agreement shall not affect the right of such party to subsequently require performance of that provision or to exercise any right, power or remedy hereunder. Waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. 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 Owner is that of an independent contractor.
- O. No Exclusive Remedy. No remedy herein conferred upon either party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.
- P. Authority. Each party hereby represents to the other party that it has the right, power, authority, and financial ability to enter into this Agreement and to perform its obligations under this Agreement, and that it is not restricted by contract or otherwise from entering into and performing this Agreement.
- Q. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, collectively and separately, shall constitute on and the same agreement.
- R. Exhibits. All Exhibits attached to this Agreement are incorporated herein by reference. The Exhibits are as follows:  
a. *Exhibit A* – Request for Proposal  
b. *Exhibit B* – BCG Response  
c. *Exhibit C* – Insurance Schedule  
d. *Exhibit D* – Amortization Schedule for Initial Capital Investment  
e. *Exhibit E* - Performance Standards

(SIGNATURE PAGE FOLLOWS)

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

**CITY OF DULUTH**

By: [Signature]  
Its Mayor

Attest:

By: [Signature]  
City Clerk  
Date: 2/12/15

Countersigned:

[Signature]  
City Auditor

Approved as to form:

[Signature]  
City Attorney

**BILLY CASPER GOLF, LLC**

By: [Signature]  
R. Joseph Goodrich, Executive Vice President

Date: 2-10-15

By: [Signature]  
R. Alexander Elmore, President

Date: 2-10-15

**EXHIBIT A**  
**RFP**

**EXHIBIT B  
BCG RESPONSE**

CERTIFIED COPY OF RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

RESOLUTION 15-0077

ADOPTED: FEBRUARY 9, 2015

RESOLVED, that the proper city officials are hereby authorized to enter into a five-year management agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 15-0209-06, with Billy Casper Golf for the operation, maintenance and improvement of Enger Park and Lester Park golf courses with a base monthly management fee of \$14,167 (\$9,167 for Enger and \$5,000 for Lester), including a two percent annual increase each year; in addition, Billy Casper Golf shall receive an annual incentive calculated as 22 percent of the positive net operating income (as defined in the agreement) in excess of \$1; payable from Fund 503-400-ENGR and LSTR-5310 (golf fund, parks and recreation department, Enger and Lester park golf courses, contract services).

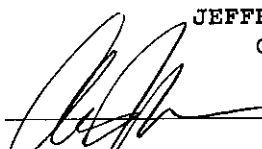
Resolution 15-0077 was unanimously adopted.

Approved February 9, 2015

DON NESS, Mayor

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the ninth day of February, 2015, with the original in my custody as city clerk of said city and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 12th day of February, 2015.

by  JEFFREY J. COX  
City Clerk  
Assistant  
CITY OF DULUTH, MINNESOTA

22404

City of Duluth - Enger Park

Amortization Schedule

Exhibit D

Date	Payment	Principal	Interest	Total Interest	Balance
10/1/2017	\$4,604.13	\$4,166.68	\$437.45	\$19,785.79	\$127,067.75
11/1/2017	\$4,604.13	\$4,164.57	\$423.56	\$20,219.35	\$122,887.18
12/1/2017	\$4,604.13	\$4,164.51	\$409.62	\$20,628.98	\$118,682.67
1/1/2018	\$4,604.13	\$4,208.49	\$385.64	\$21,024.62	\$114,484.18
2/1/2018	\$4,604.13	\$4,222.52	\$381.61	\$21,408.23	\$110,281.66
3/1/2018	\$4,604.13	\$4,236.59	\$367.54	\$21,773.77	\$106,025.07
4/1/2018	\$4,604.13	\$4,250.71	\$353.42	\$22,127.19	\$101,774.36
5/1/2018	\$4,604.13	\$4,264.88	\$339.25	\$22,466.44	\$97,508.48
6/1/2018	\$4,604.13	\$4,278.10	\$325.03	\$22,781.47	\$93,230.38
7/1/2018	\$4,604.13	\$4,283.36	\$310.77	\$23,102.24	\$88,937.01
8/1/2018	\$4,604.13	\$4,307.67	\$286.46	\$23,388.69	\$84,628.34
9/1/2018	\$4,604.13	\$4,322.03	\$262.10	\$23,680.79	\$80,307.31
10/1/2018	\$4,604.13	\$4,336.44	\$237.69	\$23,948.48	\$75,970.87
11/1/2018	\$4,604.13	\$4,350.89	\$253.24	\$24,201.72	\$71,619.97
12/1/2018	\$4,604.13	\$4,365.40	\$238.73	\$24,440.45	\$67,254.58
1/1/2019	\$4,604.13	\$4,379.95	\$224.18	\$24,664.63	\$62,874.63
2/1/2019	\$4,604.13	\$4,394.55	\$209.58	\$24,874.21	\$58,480.08
3/1/2019	\$4,604.13	\$4,409.20	\$194.93	\$25,068.15	\$54,070.88
4/1/2019	\$4,604.13	\$4,423.89	\$180.24	\$25,248.38	\$49,646.99
5/1/2019	\$4,604.13	\$4,438.64	\$165.49	\$25,414.87	\$45,208.35
6/1/2019	\$4,604.13	\$4,453.44	\$150.69	\$25,565.57	\$40,754.91
7/1/2019	\$4,604.13	\$4,468.28	\$135.85	\$25,701.42	\$36,288.63
8/1/2019	\$4,604.13	\$4,483.18	\$120.96	\$25,822.37	\$31,803.46
9/1/2019	\$4,604.13	\$4,498.12	\$106.01	\$25,928.39	\$27,305.34
10/1/2019	\$4,604.13	\$4,513.11	\$91.02	\$26,018.40	\$22,782.22
11/1/2019	\$4,604.13	\$4,528.16	\$75.97	\$26,095.38	\$18,284.07
12/1/2019	\$4,604.13	\$4,543.25	\$60.88	\$26,156.26	\$13,720.82
1/1/2020	\$4,604.13	\$4,558.39	\$45.74	\$26,201.99	\$9,162.42
2/1/2020	\$4,604.13	\$4,573.59	\$30.54	\$26,232.53	\$4,588.83
3/1/2020	\$4,604.13	\$4,588.83	\$15.30	\$26,247.83	\$0.00

Date	Payment	Principal	Interest	Total Interest	Balance
4/1/2015	\$4,604.13	\$3,770.80	\$833.33	\$833.33	\$246,228.20
5/1/2015	\$4,604.13	\$3,783.37	\$820.76	\$1,654.10	\$242,445.84
6/1/2015	\$4,604.13	\$3,795.98	\$808.15	\$2,462.25	\$238,649.86
7/1/2015	\$4,604.13	\$3,808.63	\$795.50	\$3,257.75	\$234,841.23
8/1/2015	\$4,604.13	\$3,821.33	\$782.80	\$4,040.55	\$231,018.90
9/1/2015	\$4,604.13	\$3,834.06	\$770.07	\$4,810.62	\$227,185.84
10/1/2015	\$4,604.13	\$3,846.84	\$757.29	\$5,567.91	\$223,338.99
11/1/2015	\$4,604.13	\$3,859.67	\$744.46	\$6,312.37	\$219,479.33
12/1/2015	\$4,604.13	\$3,872.53	\$731.60	\$7,043.97	\$215,606.79
1/1/2016	\$4,604.13	\$3,885.44	\$718.69	\$7,762.66	\$211,721.35
2/1/2016	\$4,604.13	\$3,898.38	\$705.74	\$8,468.39	\$207,822.96
3/1/2016	\$4,604.13	\$3,911.39	\$692.74	\$9,161.14	\$203,911.57
4/1/2016	\$4,604.13	\$3,924.43	\$679.71	\$9,840.84	\$199,987.15
5/1/2016	\$4,604.13	\$3,937.51	\$666.62	\$10,507.47	\$196,049.64
6/1/2016	\$4,604.13	\$3,950.63	\$653.50	\$11,160.97	\$192,089.01
7/1/2016	\$4,604.13	\$3,963.80	\$640.33	\$11,801.30	\$188,135.21
8/1/2016	\$4,604.13	\$3,977.01	\$627.12	\$12,428.41	\$184,158.19
9/1/2016	\$4,604.13	\$3,990.27	\$613.86	\$13,042.27	\$180,167.92
10/1/2016	\$4,604.13	\$4,003.57	\$600.56	\$13,642.83	\$176,164.35
11/1/2016	\$4,604.13	\$4,016.92	\$587.21	\$14,230.05	\$172,147.44
12/1/2016	\$4,604.13	\$4,030.31	\$573.82	\$14,803.87	\$168,117.13
1/1/2017	\$4,604.13	\$4,043.74	\$560.39	\$15,364.26	\$164,073.39
2/1/2017	\$4,604.13	\$4,057.22	\$546.91	\$15,911.17	\$160,016.17
3/1/2017	\$4,604.13	\$4,070.74	\$533.39	\$16,444.56	\$155,945.43
4/1/2017	\$4,604.13	\$4,084.31	\$519.82	\$16,964.38	\$151,861.12
5/1/2017	\$4,604.13	\$4,097.93	\$506.20	\$17,470.58	\$147,763.19
6/1/2017	\$4,604.13	\$4,111.59	\$492.54	\$17,963.13	\$143,651.60
7/1/2017	\$4,604.13	\$4,125.29	\$478.84	\$18,441.97	\$139,526.31
8/1/2017	\$4,604.13	\$4,139.04	\$465.09	\$18,907.05	\$135,387.27
9/1/2017	\$4,604.13	\$4,152.84	\$451.29	\$19,358.34	\$131,234.43

EXHIBIT E  
SCOPE OF SERVICE AND PERFORMANCE MEASURES

**A. Transition Services**

1. BCG shall work closely with the Owner, and any existing contractors of Owner to successfully transition the management, operation and maintenance of the golf course.
2. BCG shall provide corporate resources as necessary to ensure that transition of services is handled in a professional and courteous manner and with as little disruption as possible to customers. It is the Owner's desire, that transition be seamless and to the extent possible, invisible other than notable improvements to services and facilities.
3. BCG understands that the Owner has in place certain agreements, obligations and commitments that will need to be accommodated by BCG. These may include gift cards and rain checks, rental agreements, equipment agreements, etc. During the transition period, BCG shall evaluate these commitments and obligations and shall ensure that the annual budget accounts for Owner's commitment to same.
4. To the extent the software is compatible, BCG shall ensure that all player information and statistical data is transferred to the new Point of Sale system from the existing software provider.

**B. Personnel**

1. BCG shall provide and maintain a sufficient number of both BCG regional and corporate level personnel as well as on-site operations personnel as described in the agreement and per the approved budget at all times to accomplish, on schedule, all work under this contract and shall make seasonal or other required labor adjustments to meet services standards.
2. BCG shall provide appropriate supervision and competent management level staff of all of BCG's working personnel at the golf course seven (7) days a week.
3. BCG shall provide the Owner with names and telephone numbers of key Golf Course staff who can be called by the Owner or its representatives at any time that a critical or emergency situation occurs during hours when BCG's normal work force is not present. Such employees will have full power and authority to take all actions on behalf of BCG required to address the emergency or said critical situation.
4. BCG shall employ qualified personnel with skills and certifications appropriate to the position to which they are appointed. All employees shall be indoctrinated and trained in the schedules, philosophies, customer service and public relations concerns of BCG. BCG's personnel shall conduct all work operations while dealing with the public in a courteous manner. Maintenance employees shall be trained in the proper industry methods of cleaning, handling and operation of golf course maintenance equipment and supplies. Subject to approval in the Annual Budget and Program, management level staff shall participate in continuing education to maintain certifications and to keep abreast of issues and trends of the industry.



5. BCG's maintenance employees shall wear a BCG approved uniform and identification badge. Such uniforms shall identify employees as employees of BCG and or LPGA and EPGA. The logo, seal, or name of the Owner shall not be used without permission of the Owner. BCG's clubhouse and outside services staff shall wear clothing appropriate for a golf setting and in keeping with the professional image that both BCG and Owner desire to present to the public.

### **C. Operations**

BCG shall provide a professionally operated golf course in a manner that is consistent with other comparable quality municipally owned golf facilities and to achieve the performance and service goals of the Owner golf program. Services to be provided for a full-service golf operation, minimally include:

1. Tee Time Management and Reservations. BCG shall manage the tee-sheet to ensure that to the extent possible and within BCG's control tee-times are on schedule and that golf is available from sunrise to sunset. Patrons must be able to make tee times by telephone, in person, or on-line. Any change to tee-time reservation policies shall require prior approval of the Owner. This includes changes to policies related to walk-ons, partial rounds, advance tee-times, etc. The tee sheet reservation system must accurately capture and maintain customer data, play statistics.
2. Point of Sale System. BCG shall utilize a point of sale system that accurately records and tracks all cash and credit transaction data, maintains accurate perpetual inventory of golf merchandise, and allows for gift cards, account book and loyalty programs management. The point of sale system used must integrate with an accounting package for daily download and tracking of revenue and inventory activity.
3. Collection of Fees. Patrons must be able to pay by cash or major credit cards (Visa and MasterCard minimally). BCG agrees to set all fees so that any credit card charges are incorporated-into and not in-addition-to rates publicized.
4. Starter and Marshall/Pace of Play. Subject to the approval of the Annual Budget and Program, guest assistance shall be provided on the course to manage pace of play, and through the starter to maintain accurate starting times and maximize enjoyment of all golfers. BCG shall ensure that all personnel are trained on the pace of play expectations and work closely to ensure successful management of same.
5. Bag, Cart and Equipment Services. Owner shall provide an adequate fleet of golf carts, hand and/or walking carts which shall be kept clean and maintained to provide a quality riding experience for customers. Carts shall be prepared with score cards, writing utensils, and sand. Hand/Walking carts shall be provided and available for rent as well. Carts that are in need of repair shall be repaired and returned to service in an expeditious manner. All carts shall be properly stored in a secure area over night. Any change to policies regarding use of carts (i.e. mandatory carts) require prior approval by the Owner.
6. Merchandise Sales. BCG shall procure in accordance with the Annual Budget and Program offer for sale high quality, competitively priced golf retail merchandise at The

Courses. An adequate supply and variety of inventory for resale in the pro-shop shall be provided at all times. Retail merchandise shall be displayed in such a manner as to maximize exposure and sales. Product shall be rotated to provide a fresh variety and perspective.

7. Learning Programs/Lessons. BCG shall offer at competitive prices, golf lessons and beginner programs designed to advance and grow the sport and to help patrons improve their game. Development programs designed specifically for underrepresented demographics are highly encouraged. BCG understands that the Owner has an ongoing relationship with area high schools and within reason shall accommodate the provision of golf in support of high school golf programs.
8. Outings, Leagues, Tournaments and Associations. BCG shall administer existing leagues and seek out and develop new leagues. BCG shall support the leagues, tournaments and associations while maintaining a fair and equitable tee sheet.
9. Practice Facilities. BCG shall operate the driving range and the other practice facilities at the Courses with emphasis on convenience and quality.
10. Food and Beverage. BCG shall provide food and beverage services at the clubhouse snack bar(s) at the Courses and on the course through a beverage cart. All food and beverage equipment shall be maintained in a sanitary condition. The Owner expects that BCG will improve upon current food and beverage offerings. BCG shall be responsible for processing all paperwork and coordinating all processes required to obtain food and beverage permits and licenses.
11. Marketing, Public Relations and Advertising. BCG shall analyze and use customer data to develop specific marketing programs that maximize tee sheet utilization an enhancement of rounds, revenue and cash flow. BCG shall prepare a marketing plan with emphasis on growth in rounds and rounds related revenue. BCG shall engage local media for promotional opportunities and shall network with organizations in the community to broaden the exposure of the courses. BCG shall prepare high quality marketing materials to ensure a high quality image for the Courses. The City of Duluth or Course trademarks shall not be used in any advertising or promotional materials without the Owner's approval. BCG shall perform independent evaluations of the competitive market to establish the most advantageous positioning of the Courses in the local market. Through this market analysis, BCG shall make recommendations on rates and membership program price points. All rates shall be approved by the Owner. BCG shall maintain an active on-line presence including a website that is kept current and contains pertinent information and a regular social media presence (facebook; twitter; etc.). BCG shall utilize broadcast emails and direct mailings that are targeted to address the specific user's golfing habits.
12. High Quality Customer Service. All employees of BCG shall be provided with BCG's ACE the GUEST Experience Training program and shall ensure that the principles outlined therein are incorporated at all levels of operation. Subject to the approval of the Annual Budget and Program, BCG shall conduct regular Mystery Shopping by professional, independent evaluators. Results and feedback shall be reviewed with staff and City representatives. Contractor shall ensure that a system of feedback and

communication is provided to allow the customer to comment on services provided. Minimally this shall include a toll-free Guest Comment Line; web site based feedback forms; on-site comment cards; and periodic guest surveys. Contractor shall ensure that the customer receives a timely appropriate response to feedback provided.

**D. General Maintenance Criteria**

1. BCG shall, schedule adequate labor and procure, materials, supplies, and equipment to maintain the golf course, clubhouse and common areas in accordance with the Annual Budget and Program and the parameters contained herein.
2. Areas of maintenance include but are not limited to: maintenance of all equipment, buildings, equipment storage areas, irrigation systems, greens, tees, approaches, collars, fairways, roughs, golf cart paths, driving range, practice areas, lakes, water hazards, clubhouse grounds and golf course grounds along entrance roadways and right of ways. Such maintenance also includes care of all shrubs, plants, existing landscaped features and trees pursuant to the Annual Budget and Program.
3. BCG shall propose and upon approval of the expenditure in the Annual Budget and Program execute corrective actions in an expeditious manner to bring substandard play and amenity areas of the golf course to the standards reflected in this Agreement.
4. BCG shall furnish all labor and supervision required to professionally maintain and improve upon the existing course in accordance with specifications and the approved budget.
5. BCG shall maintain in good repair and condition at all times the clubhouse and surrounding passageways ensuring that they are kept free of debris. The clubhouse and clubhouse restrooms shall be cleaned and restocked daily.
6. BCG shall perform all normal functions, which are essential to providing quality playing conditions, e.g. mowing, cup changing, tee marker management, grooming, aerification, fertilization, pest and disease treatment, etc.
7. BCG shall develop and perform necessary turf management programs approved in the Annual Budget and Program to maintain and improve playing conditions.
8. BCG is responsible for the expeditious repair of any damage to Owner property that is caused by and through BCG's gross negligence or willful misconduct. Any needed repairs shall restore the damaged area/facility to the original condition or better.
9. BCG shall regularly evaluate the course and make recommendations for capital improvements.

To obtain maximum performance, BCG shall supplement trained maintenance personnel with professional turf consultants, entomologist, certified plant biologist, and such other professional specialists as are necessary to support the on-site staff. In the event such professional specialists are unaffiliated with BCG, such expense shall be pre-approved by Owner.

10. BCG shall incorporate its full service golf course maintenance program based upon generally accepted turf management principles and standards
11. BCG shall guarantee that the on-site BCG staff assigned to Courses will have the educational background and experience necessary to provide ongoing maintenance programs, which shall fulfill the terms and conditions of this agreement.
12. BCG shall have and practice an Integrated Pest Management (IPM) Program at the golf course. Applications must follow label guidelines, directions and restrictions. BCG shall maintain completed documentation of all pesticide, herbicide and fertilizer applications and storage, in accordance with prevailing regulations and laws.
13. The Director, or designee, reserves the right to inspect some or all of the golf courses for purposes of ensuring BCG's compliance with the scope of services. In conducting such inspection and evaluation, the Owner representative shall complete applicable portions of the Golf Course Operations and Maintenance Standards Form (Attached), and shall promptly thereafter provide BCG a copy of the completed form or applicable portion. The Owner representative shall act reasonably and in good faith in making the determination of whether BCG has met the standards identified in the scope of services for the applicable areas being evaluated.
14. The golf course operations and maintenance components shall be rated as "Acceptable," "Needs Improvement," or "Unacceptable." The Director's or Designee's rating of an item as "Unacceptable" or "Needs Improvement" shall, upon BCG's receipt of the Golf Course Operations and Maintenance Standards Form, constitute a Notice of Golf Course Deficiency with respect to the deficient item(s).
15. Within one (1) month after receipt of the Golf Course Operations and Maintenance Standards Form, the Owner representative and the golf course superintendent shall meet to review the deficiency item(s), including the corrective actions the superintendent intends to take to correct the deficiency item(s), and the time schedule for completion of corrective action. The proposed corrective action and the time schedule shall be approved by the Director or Designee. When a deficient item has been satisfactorily corrected, the superintendent of the golf course shall notify the Owner representative.

**E. Emergency Maintenance.**

In the event that the Owner at any time determines that any portion of the golf course is in immediate jeopardy of sustaining some type of serious harm due to a maintenance failure on the part of BCG, and BCG is unable to immediately respond, the Owner may utilize their own work force or contracted services to go on the golf course and perform such tasks as are necessary to prevent such serious harm from taking place. The cost of such preventative maintenance incurred by the Owner shall be itemized by the Owner and submitted to BCG to be accounted for as a course expense (to the expense that it meets the definition of an operating expense).

**F. Inclement Weather.**

During periods of severe inclement weather conditions, BCG will provide sufficient personnel on a twenty-four (24) hour call basis for the purpose of sandbagging, keeping drains clear, and/or any other tasks required to minimize damage to the Golf Course's improvements and facilities. These emergency services are provided on a pre-approved basis by the Owner and payable as an expense of the Owner.

**G. Course Temporarily Out of Play.**

Whenever play must be temporarily suspended on the golf course due to inclement weather or other conditions, the decision of when to allow play to resume, and when to allow carts to go out on the course, will be made by BCG.

**H. Course Closure.**

In the event that the Golf Course is not playable for a period of seven (7) consecutive days, for any reason, including acts of nature or vandalism, the Owner may declare, for purpose of maintenance, that an emergency condition exists on such Golf Course(s), except for seasonal closures which have already been taken into account in determining the annual fee for maintenance services. The Owner and BCG will then jointly determine what changes in the normal level of maintenance staffing and services, if any, may be necessary, including additional hours of labor and/or materials.

**I. Equipment.**

The Owner shall own all equipment needed for course operations and maintenance and BCG shall ensure that Owner equipment is utilized in accordance with industry standards and manufacturer's recommends and that equipment will be properly maintained.

**J. Minimum Grounds Maintenance Standards**

The maintenance practices included in this section are intended to be an overall outline for the agronomic, horticultural, and recurring service practices of BCG's golf course maintenance operations. While the guidelines are detailed, they are intended to be only minimum rules of operation. **BCG's primary responsibility is for ensuring the integrity of the golf course.** Variances from the guidelines will be necessary at times to allow for adjustments resulting in climatic conditions, pest infestations, golf course traffic, tournaments and other unforeseen problems.

**K. Irrigation Guidelines:**

1. BCG shall be responsible for irrigating the Golf Course in the manner required to maintain the Golf Course. The Owner shall furnish an adequate quantity and quality of irrigation water with which to irrigate the Golf Course. Provided however, BCG shall not assume responsibility for any failure of the irrigation systems or irrigation pumps unless said failure is due to the gross negligence of BCG.
2. The irrigation systems will be repaired and maintained on a regular basis by qualified BCG staff. This includes adjusting irrigation head heights, nozzles, spray patterns, sequence, grouping and timing and replacement and elimination as necessary.

3. Application - All turf and landscape areas shall be irrigated. Irrigation should be utilized along with natural rainfall to provide water as necessary for optimum growth conditions while at the same time conserving water use when possible and avoiding over watering. BCG shall ensure that the application of irrigation shall be properly balanced to ensure the most efficient and effective use of the irrigation system.
4. Controllers - Irrigation controllers shall be checked and maintained on a regular basis to ensure proper operation and protection which will include insuring that all connections for grounding controllers are clean and clear of pest and pest mounds, and all surge protection devices are in place and functional.
5. Changes - Changes to irrigation system must be clearly noted on schematic and approved in advance by the Owner representative.

**L. Integrated Pest Management Guidelines:**

1. The goal is to have the Courses as weed and insect free as possible and to prevent any damaging outbreaks of pests. BCG's approach to the control of damaging pests and weeds will include curative and preventative types of control measures using the most appropriate products available and as set forth in the Annual Budget and Program.
2. BCG will be responsible for the implementation of an integrated pest management (IPM) program for all playing areas of the courses including roughs via regular monitoring, problem and potential problem identification, preventative measures, diagnosis and treatment. All greens will be inspected daily for the presence of damaging pests, insects or fungus.

**M. Other Maintenance/Service:**

1. BCG will be responsible for regularly and properly moving the cups and tee markers and repairing ball marks. In addition, all trash will be regularly removed, divot buckets will be filled and the ball washers checked for clean towel and soap solution.
2. Trash and Debris. During the course of the day, any trash, organic and non-organic and/or tree debris on the golf courses will be picked up.
3. Deep Rough/Natural Areas. BCG will maintain the natural areas within the boundaries of the play areas.
4. Cart Paths. All golf cart paths will be kept clean of cut grass and shall be edged regularly during the active growing season and as needed the balance of the year. BCG will be responsible for pruning any plant material and clearing debris that obstructs the cart paths throughout the golf course. Standing water problems on cart paths, to the extent such expense can be incorporated as part of the approved Annual Budget and Program will be promptly corrected by BCG.

**N. Buildings:**

1. BCG will maintain the buildings on the golf courses in a good, operable and sanitary order. Any required repairs, replacement, rebuilding and restoration would be brought to the attention of the Facility Manager immediately.

2. BCG shall provide routine janitorial services in accordance with the minimum maintenance standards and the approved Annual Budget and Program.
3. BCG shall not make any changes to the building without the prior written consent of the Owner.
4. BCG shall provide routine systems preventative maintenance services in accordance with the minimum maintenance standards and the Annual Budget and Program.
5. The Owner may conduct facility audits on a periodically and will submit their findings with recommended repairs and changes to BCG. Within the scope of this contract, BCG shall make the necessary repairs or implement recommended changes in a timely fashion.
6. Equipment - The air compressor, fuel tanks, and wash down system shall be maintained on a regular basis. Wells on the fuel tank should be checked on a monthly basis and a report should be filed. Fuel tanks shall be repainted as needed to comply with regulations. Fuel tanks should be visually inspected on a weekly basis for damage, leaks and rust. These inspections should be logged and any necessary repairs made.
7. Facility - Equipment shall be parked inside wherever possible; facility shall be properly secured at the end of the day. Surrounding areas shall be kept in a neat and sanitary condition.
8. BCG shall make repairs to the facility or equipment which is caused by the gross negligence or willful misconduct of BCG's staff and agents.

**GOLF COURSE MAINTENANCE STANDARDS REVIEW**

DATE: \_\_\_\_\_

SUPERINTENDENT: \_\_\_\_\_

AUDITORS: \_\_\_\_\_

<u>AREA</u>	<u>UNACCEPTABLE</u>	<u>NEEDS IMPROVEMENT</u>	<u>ACCEPTABLE</u>
Greens			
Fairways & Roughs			
Driving Range			
Maintenance Records & Schedules			
Lakes & Other Water Bodies			
Maintenance Employees			
Maintenance Shop & equipment			
Traffic Control			
Clubhouse/Entryway			
Rest Rooms			
<b>OVERALL COURSE OPERATIONS</b>			

Please provide written detail for any area that is checked with unacceptable and/or needs improvement below.

---



---



---



---



---



---



---



---



---



---



## **MAINTENANCE STANDARDS CRITERIA**

### **GREENS**

BCG shall maintain greens so as to have: 1) Smooth, uniform, turf, firm but not hard, well-defined, consistent, of suitable speed for the location, 2) Cups placed in accordance with USGA recommendations, 3) Flags stand up straight, 4) Cups, poles and flags are uniform, clean and in good repair, and 5) Pin placement indicators uniform and properly used only where necessary.

### **FAIRWAYS AND ROUGHS**

BCG shall maintain fairways so as to have: 1) Smooth, uniform turf cover, properly mowed and trimmed, clean, firm but not hard, well defined, that properly supports the ball for play.

BCG shall maintain the roughs so as to have: 1) Properly mowed and trimmed, clean and adequately uniform for play, 2) distinct in height from fairways, and 3) quality of mowing/trimming around trees,.

### **SAND TRAPS**

BCG shall maintain sand traps so as to have: 1) sand surface is uniform and smooth, sand is adequate depth for play, 2) no weeds or debris in traps, 3) rakes adequate in number and condition, properly placed, and 4) as necessary, edge traps to always maintain a neat lip.

### **TEES**

BCG shall maintain tees so as to have: 1) tees smooth, maximum turf coverage, leveled, firm but not hard, clean, properly directed, with amenities trash cans, signs tee markers, monuments, ball washers, towels, sand and seed containers, as appropriate in good condition and repair, consistent and uniform.

### **DRIVING RANGE**

BCG shall maintain driving range so as to have manicured and clean appearance. The range landing area shall have turf clean and mowed per fairway maintenance section of audit.

### **PERIMETER AREAS AROUND TEES**

BCG shall maintain so that the perimeter areas around tees are: 1) uniformly and smoothly turfed, 2) benches, club washers, bag stands are clean, in good repair and properly located for the tee positions, 3) cart path is clean and properly edged, 4) curbing or ropes/stakes are clean and properly placed as necessary; and 5) no identifiable traffic pattern into tee.

**FIRST AMENDMENT TO ENGER PARK AND LESTER PARK MANAGEMENT AGREEMENT  
BETWEEN THE CITY OF DULUTH AND BILLY CASPER GOLF, LLC**

This First Amendment to the Enger Park and Lester Park Management Agreement "Agreement" is by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "Duluth", and the Billy Casper Golf, LLC, a Virginia limited liability company, herein after referred to as "BCG".

WHEREAS, in February 2015 Duluth and BCG entered into an Agreement for the operation, maintenance, and improvement of Lester Park and Enger Park golf courses; and

WHEREAS, in May 2015 the Minnesota legislature enacted legislation granting the city of Duluth the authority to issue an on-sale intoxicating liquor license for the Lester Park golf course and the Duluth City Council accepted the special legislation on June 15, 2015; and

WHEREAS, Duluth and BCG agree to amend Section 15 of the Agreement as stated below.

THEREFORE, Duluth and BCG agree as follows:

To amend Section 15 of the Agreement by deleting the paragraph referring to the liquor prohibition in the Lakeside neighborhood of the city of Duluth and adding language allowing Lester Park Golf Management to utilize the city's liquor license for the Lester Park golf course. The amended Agreement will read as follows with deleted terms struck out and added terms underlined:

**15. LIQUOR LICENSE.** Subject to any relevant City of Duluth code ("Code") licensing requirements, Owner, EPGM, shall maintain at all times (except for the application period) a valid liquor license on the premises, and all of the parties hereto shall comply with all relevant Code laws regarding the use of such license. ~~BCG understands and acknowledges that the Laws of Minnesota for 1891, Chapter 57, Chapter XII, Section 5, prohibit the issuance of licenses for the sale of wine or spirits or malt liquors within the Lakeside neighborhood of the city of~~

~~Duluth including the area of the LPGC. Notwithstanding the foregoing sentence, BCG may apply for a 3.2 percent malt liquor license for sale of on-sale beverages at the LPGC until such time as the current law is changed to allow a liquor license.~~

LPGM may be permitted to use the City's liquor license privileges by requesting use of such license. LPGM shall comply with all state and local laws relating to the service of alcohol, and obtain the appropriate amount of Liquor Liability insurance naming the city of Duluth as an additional insured. LPGM shall defend and indemnify the City on any claims related to the sale of intoxicating liquor at the LPGC.

Except as amended herein, the terms and conditions of the Agreement remain in full force and effect.

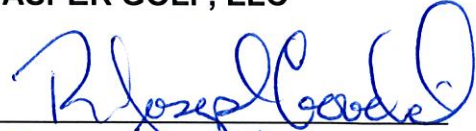
IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date

shown below:

**CITY OF DULUTH, MINNESOTA**

**BILLY CASPER GOLF, LLC**


By:   
Mayor

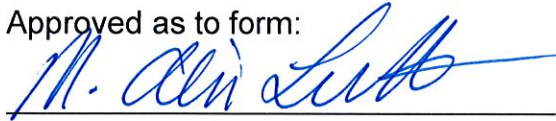
By:   
Dated: 7/20/2015

Attest  
  
City Clerk

By:   
Dated: 7/20/2015

Date: 7/23/15

Countersigned:  
  
City Auditor

Approved as to form:  
  
City Attorney



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/22/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Commercial Lines - (202) 783-5810 Wells Fargo Insurance Services USA, Inc. 1750 H. Street NW, Suite 200 Washington DC 20006	<b>CONTACT NAME:</b> _____		
	<b>PHONE (A/C, No, Ext):</b> _____	<b>FAX (A/C, No):</b> _____	
<b>INSURED</b> Lester Park Golf Management, LLC 12700 Sunrise Valley Dr STE 300 Reston, VA 20191	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> Great Northern Insurance Company		20303
	<b>INSURER B:</b> National Union Fire Ins. Co. of Pittsburgh, PA		19445
	<b>INSURER C:</b>		
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:** 9255089                      **REVISION NUMBER:** See below


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____			3594-17-30	1/1/15	1/1/16	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 15,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$      RETENTION \$			BE028430416	1/1/15	1/1/16	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N <input type="checkbox"/> N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Liquor Liability			3594-17-30	1/1/15	1/1/16	\$1,000,000 Per Occ \$2,000,000 Per Agg

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Duluth, City Clerk's Office is included as an additional insured with respect to General Liability and Liquor Liability, as required by written contract, subject to policy terms and conditions.

RE: City Liquor License for Lester Park Golf Course, located at 1860 Lester River Road, Duluth, MN 55804

<b>CERTIFICATE HOLDER</b>  City of Duluth City Clerk's Office 330 City Hall / 411 West First Street Duluth, MN 55802-1189	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

The ACORD name and logo are registered marks of ACORD

© 1988-2014 ACORD CORPORATION. All rights reserved.

ACORD 25 (2014/01)

22404-01

(This certificate replaces certificate# 9250715 issued on 6/19/2015)

**SECOND AMENDMENT TO ENGER PARK AND LESTER PARK MANAGEMENT  
AGREEMENT BETWEEN THE CITY OF DULUTH AND ANTARES GOLF, LLC**

THIS SECOND AMENDMENT to the Enger Park and Lester Park Management Agreement, effective as of the date of attestation by the City Clerk (“Effective Date”), is by and between ANTARES GOLF, LLC, (“Antares”), formerly known as BILLY CASPER GOLF, LLC, a Virginia limited liability company, having an address of 12700 Sunrise Valley Drive, Reston, Virginia 20191 and the City of Duluth, (“City”), a Minnesota municipal corporation having an address of Ground Floor City Hall, 411 West First Street, Duluth, Minnesota 55802, (hereinafter referred to collectively as the “Parties”).

**WHEREAS**, City is the owner of two municipal golf courses commonly known as Enger Park Golf Course (“EPGC”) and Lester Park Golf Course (“LPGC”), currently twenty-seven hole golf course(s), driving range and other amenities located in Duluth, Minnesota (together the “Courses”); and

**WHEREAS**, the Parties entered into a Management Agreement effective February 16, 2015 to manage and operate the Courses; and

**WHEREAS**, the Parties executed the First Amendment to the Management Agreement effective July 23, 2015 (the Management Agreement and First Amendment hereinafter the “Agreement”); and

**WHEREAS**, on April 6, 2020, Billy Casper Golf, LLC, changed its name to Antares Golf, LLC, by filing a Certificate of Amendment with the State of Virginia, with no other changes to the company structure; and

**WHEREAS**, City desires to keep EPGC open for the 2020 golf season and close LPGC for the 2020 golf season; and

**WHEREAS**, City desires to have the golf course proper at LPGC maintained in 2020 at the minimum extent necessary to have the ability to reopen LPGC for the 2021 golf season; and

**WHEREAS**, City desires to continue to utilize Antares in connection with the management and operation of EPGC and the basic maintenance of the golf course at LPGC; and

**WHEREAS**, Antares desires to render such services, upon the terms and conditions set forth in the Agreement as amended herein; and

**WHEREAS**, City and Antares desire to amend the Agreement as specified below.

**NOW, THEREFORE**, in consideration for the covenants and agreements of the Parties contained herein, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed to amend the Agreement as follows:

1. All references to Billy Casper Golf, LLC and to BCG shall be revised to Antares Golf, LLC and Antares, respectively.
2. Section 4 of the Agreement, entitled "Term of Agreement", shall be deleted in its entirety and replaced with the following:
  4. **TERM OF AGREEMENT.** The term of this Agreement shall commence on February 16, 2015 ("Effective Date"), and unless terminated as provided for herein, shall expire on December 31, 2021.
3. Section 6 of the Agreement, entitled "Billy Casper Golf, LLC Services", shall remain unchanged regarding the scope of services to be provided by Antares with respect to EPGC. Paragraphs A, C, D, F, H, I, M, N, O and P of Section 6 shall remain unchanged regarding the scope of services to be provided by Antares with respect to LPGC. The services provided in Paragraphs B, E, G, J, K, and L shall be deleted regarding services to be provided by Antares with respect to LPGC. Additionally, Section 6 shall be amended to add Paragraph Q with respect to LPGC as follows:

Q. Basic maintenance operations for LPGC.

Antares agrees to:

1. Employ and supervise necessary personnel for the maintenance of the golf course to include the administration and maintenance of payroll procedures and systems
2. Mow greens up to twice per week as needed
3. Mow tees and fairways up to once per week as needed
4. Mow rough two to three times per month
5. Irrigate turf as needed to maintain greens surfaces, tees and fairways
6. Provide routine upkeep and maintenance of mowing equipment and irrigation system as needed
7. Apply essential chemical and fertilizer applications to avoid large-scale turf loss as needed
8. Provide workman's compensation insurance coverage
9. Provide monthly accounting reports for all costs incurred
10. Antares shall receive Owner approval for any cost incurred in excess of one-thousand dollars (\$1,000).
11. Antares shall receive Owner approval for any variance from the revised 2020 LPGC budget greater than ten percent (10%) of monthly budget.

Should the scope of work at LPGC return to the terms of the Agreement for Calendar Year 2021, then Section 6 is hereby amended in its entirety for Calendar year 2021 to be as set forth in the Agreement.

4. Beginning January 1, 2020, Section 10 A of the Agreement, entitled "Compensation and Fees", shall be amended in its entirety as follows:

**10. COMPENSATION AND FEES.**

A. Base Management Fee. For its services hereunder for January 1, 2020, to April 30, 2020, Antares shall be paid a Base Management Fee (the "Base Management Fee") of Eleven Thousand and Forty One Dollars (\$11,041) per month and any other fees associated with the repayment of the Initial Capital Investment per Exhibit D. The Base Management Fee for May 1, 2020 to December 31, 2020 shall be Five Thousand Five Hundred and Twenty Dollars (\$5,520) per month. The Base Management Fee for Calendar Year 2021 shall be dependent on the scope of work at LPGC and EPGC as follows:

1. Should the scope of work return to the terms of the Agreement for Calendar Year 2021 at EPGC and LPGC, the Base Management Fee shall be Eleven Thousand Two Hundred and Sixty One Dollars (\$11,262) per month.
2. Should the scope of work remain as amended herein for 2021 (to include basic maintenance services for LPGC and full service operation of EPGC), the Base Management Fee shall be Six Thousand Six Hundred and Sixty-Seven Dollars (\$6,667) per month;
3. Should the City permanently close LPGC at the conclusion of calendar year 2020 and Antares shall not provide any basic maintenance services, the Base Management Fee shall be Six Thousand Six Hundred and Sixty Seven Dollars (\$6,667) per month for full service operation of EPGC as outlined in the Agreement.

The Base Management Fee shall be payable on the fifth day of each month from the Operating Account.

Included in the Base Management Fee shall be the cost of Antares corporate personnel who supervise, or otherwise participate in the management, administration and operation of the Courses, but also do work for Antares and/or other golf courses managed by Antares. These persons include Antares corporate personnel responsible for: (i) the direct supervision of on-site personnel; (ii) training of on-site and supervisory managers by Antares regional staff; (iii) the coordination and supervision of routine repairs and maintenance at the Courses; (iv) overseeing inventory and supplies of the type used by the Courses; (v) marketing; (vi) administering the payroll for on-site employees, including the administration, withholding and payment of applicable worker's compensation coverage; and (vii) accounting and other services relating to the operation and administration of the Courses. Owner acknowledges that some or all such persons may be



simultaneously engaged by and/or for other golf courses managed by Antares. Antares shall not be separately reimbursed for the time of its executive officers devoted to the Owner's affairs or to the other overhead expenses of Antares all of which are presumed to be included in the Management Fee.

5. Section 13 D entitled "Termination Fee: Owner's Termination for Convenience" shall be deleted in its entirety.

6. Section 19 J entitled "Notices" is amended to revise the addresses of Antares and the City as follows:

In the case of Antares: Antares Golf, LLC, 12700 Sunrise Valley Drive, Reston, Virginia 20191

In the case of the City: City of Duluth, Ground Floor City Hall, 411 West First Street, Duluth, MN 55802 Attn: Parks Division

7. Except as provided in this Second Amendment, all other terms and provisions of the Agreement shall remain in full force and effect.

**(SIGNATURE PAGE FOLLOWS)**

IN WITNESS WHEREOF, the parties executed this Amendment to be effective as of April 30, 2020.

**CITY OF DULUTH**

**ANTARES GOLF, LLC**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
R. Alexander Elmore, President

Attest:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Michael K. Cutler, Sr Vice President

Date: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
City Auditor

Approved as to form:

\_\_\_\_\_  
City Attorney