

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this 30th day of August, 2022 by the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, a political subdivision of the State of Florida and between the VALKARIA AIRPORT, a County Airport, hereinafter referred to as "Airport", and the DEPARTMENT OF PARKS AND RECREATION, an organizational Division of Brevard County, hereinafter referred to as "Tenant".

WITNESSETH:

WHEREAS, the United States of America, by Quit-Claim Deed, dated, September 8, 1958, granted to Brevard County, acting by and through its Board of County Commissioners, 631.65 acres, more or less, which lands are known as the Valkaria Airport; and

WHEREAS, the Brevard County Board of County Commissioners has made improvements to the approximately 211.11 acres of the said Airport by the development of the Valkaria Golf Course; and

WHEREAS, the development of the said 211.111 acres as a County Golf Course will directly and indirectly benefit the Airport property; and

WHEREAS, the Property will be used solely as a golf course; and

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

WHEREAS, Paragraph 6 of the Quit-Claim Deed of September 8, 1958, provided that the Valkaria Airport shall not be used for any purpose other than airport purposes without written consent of the Administrator of the Federal Aviation Agency, which consent shall be granted after the Administrator finds that such property can be so used for other than airport purposes without materially and adversely affecting the development, improvement, operation or maintenance of the Airport; and

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

NOW, THEREFORE, the parties hereby agree as follows:

1. TERM.

The initial term of this agreement shall be ten years. Upon mutual written agreement of both parties, and concurrence from the FAA, this agreement may be extended for an additional period of ten years.

2. PROPERTY.

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

3. PURPOSE.

The Tenant shall utilize the land Leased from the Airport as a Golf Course and related recreational facilities open to all persons.

4. RENTAL.

The Tenant hereby agrees to pay to the Airport, as required herein, the total annual sum of \$130,000.00 in monthly installments of \$10,833.33 due and payable in advance on the third day of each month commencing on the effective date of this agreement.

Beginning March 1st, 2023 and each year thereafter, the Base Rent will be increased by 2% annually or by the Consumer Price Index for All Urban Consumers (CPI-U) utilizing the previous calendar years 12-month CPI average, whichever amount is higher.

The golf course property will be appraised every ten (10) years and the Base Rent amount will be adjusted to equal 8% of the property's Fair Market Value, as established by the latest available appraisal, which shall be reviewed for federal grant assurance consistency and approved by the Federal Aviation Administration.

5. FAIR MARKET VALUE.

Lease payments shall be based upon fair market value of the property as described above and as determined by a current appraisal of the value of the property.

6. DELINQUENCIES.

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

7. NO LIENS CREATED.

Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other whomsoever, shall be bound by this provision of the Lease. Should any such lien be filed, the Tenant shall discharge the same within thirty (30) days thereafter by paying the same or by filing a bond, or otherwise, as permitted by law. The Tenant shall not be deemed to be the agent of the Airport so as to confer upon a laborer bestowing labor upon the Leased premises, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Leased premises, a mechanic's lien upon the Airport's estate under the provisions of Chapter 713, Florida Statutes, 1975, and any subsequent revisions of that law.

8. LEASEHOLD INTEREST.

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

9. SUBORDINATION.

This Lease Agreement shall be subordinate to the provisions of any existing or future Agreement between the County and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for development of the Valkaria Airport. Except to the extent required for the performance of the obligations of Tenant in this Lease, nothing contained in this Agreement shall grant to Tenant any rights whatsoever in the airspace above the premises other than those rights which are subject to Federal Aviation Administration orders, regulations or advisory circulars currently or subsequently effective. Compatible with all requirements under 14 CFR part 77. The Tenant expressly acknowledges it is leasing property that is an airport.

10. NONDISCRIMINATION.

The Tenant for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

- a) That no person of the ground of race, color or national origin shall be excluded from participation or denied the benefits of, or be otherwise subject to discrimination in the use of the facility, Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation, Subtitle A, Office of the Secretary Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended. Tenant shall operate the facility in accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 u.s.c.794) and will assure that no qualified handicapped person shall, solely by reason of such person's handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment.
- b) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination.
- c) That the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of

Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

- d) That in the event of breach of any of the above nondiscrimination covenants, Airport Owner shall have the right to terminate the Lease and to re-enter and as if said Lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

11. PROPERTY RIGHTS RESERVED.

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

This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the Airport Owner acquired the subject property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the Lease of said lands from the Airport Owner, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by the Airport Owner pertaining to the Valkaria Airport.

Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this agreement are non-exclusive and the Lessor herein reserves the right to grant similar privileges to another Lessee or other Lessees on other parts of the airport.

12. DEFAULT.

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

13. AMENDMENT.

This agreement may only be modified by written agreement of both parties.

14. TERMINATION.

Either may terminate this agreement with or without cause upon six (6) months written notice to the other party. Upon termination or cancellation of this agreement, and provided all monies due to the AIRPORT have been paid, the Tenant shall have the right to remove all temporary buildings, machinery and equipment which it has installed or placed in the real property, with the exception of the fixed utilities. Tenant agrees to repair any damage occasioned by reason of such removal or because of its occupancy. In the event the Tenant fails to remove its property or to repair any damage done to real property, the airport reserves the right to remove and store all such property at the risk and expense of the Tenant and to make repairs as the Airport deems necessary to restore the real property with the cost of repairs to be paid by the Tenant.

15. MAINTENANCE AND REPAIRS.

The Tenant will be solely responsible for the maintenance, repair, and upkeep of the Leased property. Tenant shall, at Tenant 's expense, keep the Golf Course Properties (including any and all Improvements, including, without limitation, the Clubhouse, all fairways, greens, tees and tee boxes, bunkers, water hazards and practice ranges) and the fixtures and appurtenances therein in good condition and repair, in a sanitary and safe condition and shall commit no waste of the Golf Course Properties. Without limiting the generality of the foregoing, Tenant will keep in good order and repair, and maintain, repair and replace as needed: ceilings, walls, floors, plate glass and all fixtures in, on and about the Golf Course Properties, including, but not limited to, HVAC, water, plumbing, irrigation, sewer, electrical and utility and Tenant shall be liable for any damage to such systems occurring during the Agreement Term Tenant shall, at its cost, repair, replace or restore any damage to the Golf Course Property caused by Tenant, its employees and invitees. If Tenant fails to make repairs (including replacement) and maintain the Golf Course Properties or any part thereof in a First-Class manner and condition, AIRPORT shall, upon written notice to Tenant and an opportunity to cure for a period of thirty (30) days, have the right to make such repairs or perform such maintenance and/or replacement on behalf of Tenant, and Tenant shall reimburse to AIRPORT the cost incurred by AIRPORT in performing the same; provided, however, that if such cure cannot be reasonably accomplished within such thirty (30) days, then AIRPORT shall not have the right to make such repairs or perform such maintenance and/or replacement if Tenant has commenced the requested cure within such thirty (30) days and thereafter diligently pursues such cure to completion. Tenant shall do, or cause to be done, all repair and maintenance work required or appropriate for all of the Golf Course Property including, without limitation, maintaining the interior elements including, without limitation, the FF&E, and, in furtherance thereof, shall institute and administer a preventative maintenance program for all mechanical, electrical and plumbing systems and equipment, all of the foregoing to be consistent with the First-Class Standard. Tenant shall also, from time to time, in accordance with the Operating Budget, make purchases of and replace such items of FF&E and operating supplies as Tenant deems necessary for the proper operation and maintenance of the Golf Course Property in accordance with the First-Class Standard, including, without limitation, those that may be deemed to constitute Capital Improvements. Tenant shall be responsible for all Capital Improvements. Any

structural alterations, modifications, or repairs in excess of \$25,000.00 dollars, of portions of the Golf Course Property or new construction thereof must be approved in advance in writing by AIRPORT.

16. DAMAGE OR DESTRUCTION TO LEASED PREMISES.

Except as otherwise provided in this Lease, if the premises or any part of them (including any Leasehold improvements), shall be damaged or destroyed. Tenant shall promptly repair or replace the same. Any other terms or provisions of this Lease agreement pertaining to repair, alteration, construction or reconstruction by Tenant shall be binding upon Tenant in repairing or reconstructing the Leased premises under the terms and provisions of this Lease. If such a substantial portion of the Leased premises is destroyed so that Airport and Tenant mutually agree that Tenant cannot reasonably continue to utilize the Leased premises until the same are repaired or replaced, then Tenant may elect to either repair or replace the same in which event the rent shall be abated until such time as Tenant can reasonably resume operation of its business, and the term shall be extended for a period equal to the rent abatement period. The rent abatement period shall not exceed 4 months.

17. INDEMNIFICATION.

The Tenant shall indemnify the Airport and hold the Airport harmless for any and all liability, claims, damages, expenses (including attorney's fees and costs for trial or appeal), proceedings and causes of action of every kind and nature arising out of or connected with the use, maintenance, operation or control of the subject property by the Tenant. The Airport shall likewise indemnify and hold the Tenant harmless for all liability, claims, damages, expenses (including attorney's fees and costs for trial or appeal), proceedings and causes of action of every kind and nature arising out of the Airport's sole negligence as owner of the subject property. The Airport and Tenant rely on sovereign immunity F.S. 768.28.

18. ABANDONMENT OF PROPERTY BY TENANT.

In case the Tenant shall abandon said real property, or any part thereof, during the continuance of this Agreement, the Airport may, at its option, without notice, relet said real property or any part thereof, on such terms and for such rent as it may deem expedient or proper. Such reletting shall not operate as a waiver of any right whatsoever which the Airport would otherwise have to hold the Tenant responsible for the rent above reserved.

19. INSPECTION.

During the term of this Agreement, the Airport shall have the right to enter the Golf Course Properties to inspect the same, to exercise COUNTY's rights under this Agreement, to show the Golf Course Properties to prospective purchasers or other entities, and to post appropriate or lawful notices.

20. ALTERATIONS.

Tenant shall not make nor allow to be made any alterations, additions or Improvements to or of the Golf Course Property or any part thereof in excess of \$25,000 without the express prior consent of the Airport, which Airport may grant or withhold in its sole discretion. In the event the Airport approves the Tenant's request, the work shall be performed in a good, workmanlike, lawful and lien-free manner, and in compliance with all applicable Laws and this Agreement.

The Tenant shall indemnify and save harmless the Airport against all claims by any person, firm, or corporation. Alterations may be subject to review through 14 CFR part 77.

21. TAXES.

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

22. EXCLUSIVE USE.

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

23. SUBLEASE.

The Tenant is hereby prohibited from assigning or subleasing any rights provided in this agreement without the written consent of the Airport. Food and beverage services are exempt from the sublease restrictions.

24. AGREEMENT OF THE COUNTY WITH THE UNITED STATES OF AMERICA.

The terms and conditions hereof shall not be construed to prevent the County from making commitments it desires to the Federal Government or to the State of Florida to qualify for the expenditure of State or Federal funds upon said airport property.

25. NATIONAL EMERGENCY.

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

26. NOTICES.

Whenever any notice or payment is required by this Agreement to be made, given or transmitted to the parties hereto, such notice or payment shall be addressed to: The Airport Manager, Valkaria Airport, 1 Pilots' Place Malabar, Florida 32950 and The Director of Parks and Recreation Department, 2725 Judge Fran Jamieson Way. Viera, FL 32940

27. WAIVER OF TERMS.

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

28. CONDEMNATION.

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

29. SEVERABILITY.

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

30. ASSIGNS AND SUCCESSORS.

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

31. LEASE RESTRICTIONS.

The Tenant hereby agrees to abide with all elements as contained in the Airport Rules and Regulations and Minimum Standards for Valkaria Airport as attached hereto as Attachment B and hereby made a part hereof.

32. PERFORMANCE GUARANTEE SPECIAL CONDITIONS

- a) The Airport may take back the land and terminate this Lease if the TENANT fails to perform under the terms of this agreement. The airport must first give the Tenant written notice of the breach. If the breach is not cured within the 30 days, the airport may terminate the Lease, in its sole discretion and require the Tenant and any sub lessee to vacate the property within 30 days. The Airport reserves any right under the law to enforce this contract and terms of removal of any Tenant and sublessee, including but not limited evictions or injunctive relief.
- b) The Airport reserves unto itself, its successors, and assigns for the use and benefit of the public, a right to flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described together with the right to cause in said airspace

such noise as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.

- c) The Tenant shall restrict the height of structures, objects of natural growth and other obstructions to such a height so as to comply with Federal Aviation Regulation, Part 77 or as directed by the Airport.
- d) The Tenant shall not use the said 211.111 acres for any use which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard. Clear zones shall remain clear of any permanent structures and golf course activity.
- e) Tenant is expressly prohibited from interfering with the landing and taking off of aircraft, of interfering with navigational aids/communications equipment, prohibits activities with potential to attract wildlife, etc.). The Tenant expressly acknowledges the Leased property is used as an airport.
- f) Prior to any construction, a Notice of Proposed Construction, Federal Aviation Administration (FAA) Form 7460-1, should be submitted to and approved by the FAA if it falls within the requirements of FAR Part 77.13.
- g) Tenant shall provide any information requested by the Airport required to comply with this section and prior to any construction. Tenant shall not begin any construction until express consent is given by the airport in order to comply with any local, state, or federal laws and permitting requirements. The Tenant shall adhere to the rules and regulations of the Airport, minimum standards, and all local ordinances, building codes, fire codes or as otherwise required by law.
- h) The Tenant agrees, at its sole cost and expense to maintain all of the improvements including the golf course and clubhouse in good state of repair and to keep the premises in a clean, neat, and orderly condition. Nothing in this clause shall constitute a waiver of any sovereign immunity or protections under 768.28 Florida Statutes.
- i) The Tenant shall be responsible for electricity, lights, water, sewer, heat, janitor service or any other utility or service consumed in connection with the occupancy by the golf course.
- j) The Tenant agrees hereby to indemnify and hold the FAA and the Airport harmless from any and all actions, demands, liabilities, claims, losses or litigation arising out of or connected with the Tenant which results from any alleged act or negligence of the Tenant or any condition existing on the premises. Nothing in this clause or agreement shall constitute a waiver of any sovereign immunity or protections under 768.28 Florida Statutes.

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

33. ADDITIONAL FAA REQUIREMENTS.

Compatible with airport operations Airport must meet all requirements under 14 CFR Part 77, which prohibits Tenant from interfering with the, landing and taking off of aircraft of interfering with navigational aids/communications equipment, prohibits activities with potential to attract wildlife, etc.). The Tenant explicitly acknowledges that the Tenant is leasing property used as an airport.

34. EFFECTIVE DATE.

The effective date of this Agreement shall be October 01, 2022 and all terms and conditions stated herein shall apply as of that date.

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

ATTEST

BREVARD COUNTY BOARD OF COUNTY
COMMISSIONERS

Rachel M. Sadoff, Clerk

Kristine Zonka, Chair
As approved by the Board on 8/30/2022

Reviewed for Legal Form and Content

Brevard County Valkaria Airport

Justin Caron, Assistant County Attorney

Brevard County Parks and Recreation

Stephen Borowski, Airport Manager

Mary Ellen Donner, Director

EXHIBIT A

LEGAL DESCRIPTION OF VALKARIA AIRPORT GOLF COURSE SITE:

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

Beginning at the Southeast corner of Section 18, Township 29 south, Range 38 East, Brevard County, Florida; thence S 88°43' 10" w along the south line of the Southeast 1/4 of Sec 18 a distance of 960.90 ft. to the Southeast corner of Pomella Ranch, Unit Three, as recorded in Plat Book 28, Page 13, Public Records of Brevard County, Florida; thence N 0°02' 57" East a distance of 40.00 ft.; thence N 88°43' 10"

East a distance of 140.00 ft.; thence N 40°17' 42" East a distance of 294.01 ft.; thence N 0°02' 57" East a distance of 215.00 ft.; thence N 52°32'21" West a dist. of 415.35 ft. to the east line of aforesaid Pomella Ranch, Unit Three; thence N 0°02' 57" East of distance of 255.09 ft. to the Northeast corner of said plat of Pomello Ranch, Unit Three; thence S 88°43'10" West along the north line of Pomello Ranch, Unit Three and Pomello Ranch, Unit Two, for a dist. of 1601.38 ft.; thence N 0°02'30" East a distance. of 330.00 ft.; thence S 88°43'10" West a distance of 1115.44 ft. to the easterly R/W line of Valkaria Road; thence N 30°27' 26" East along said easterly R/W line a dist. of 694.66 ft.; thence East a dist. of 4287.79 ft.; thence S 42°30'00" East a distance of 900.00 ft.; thence N 47°30'00" East a distance of 540.00 ft.; thence N 8°58'06" East a distance of 849.11 ft.; thence N 25°56'32" West a distance of 411.46 ft.; thence North a distance of 280.00 ft.; thence N 21°04'04" East a distance of 581.93 ft.; thence S 89°47'56" East a distance of 525.00 ft. to the east line of property described in O.R.B. 171 Pg. 493; thence s 0°13' 56" East along said east line a dist. of 2230.52 ft.; thence s 0°05'27" East a distance of 1345.23 ft. to the Southeast corner of the Southwest 1/4 of aforesaid Sec. 17, Township 29 South, Range 38 East; thence N 89°49' 54" West a distance of 2668.09 ft. to the P.O.B. Contains 211.111 Acres more or less.