

SECOND AMENDMENT TO MANAGEMENT AGREEMENT

This Second Amendment (“Second Amendment”) to the Forest Hills Golf Course Management Agreement dated January 13, 2011 (the “Management Agreement”) by and between the **City of La Crosse**, Wisconsin (“**Owner**”) and **Kemper Sports Management, Inc.**, (“**KSM**”) is entered into by and between Owner and KSM as of April 9, 2018 (the Second Amendment Effective Date”).

WHEREAS, Owner and KSM entered into a five (5) year Management Agreement with respect to the operations management services provided by KSM to Owner for Forest Hills Golf Course (the “Course”) as further described in Management Agreement dated April 9, 2011.

WHEREAS, the Parties amended the Management Agreement on May 26, 2016 to extend the term for an additional two (2) years to terminate on April 9, 2018 (the “First Amendment”);

WHEREAS, the Parties desire to amend the Management Agreement further as more fully described below.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the Parties hereto agree as follows:

1. Section 2.2 is deleted in its entirety and replaced with the following:

2.2. Term. The term (“Term”) of this Agreement shall begin on April 9, 2011 (the “Commencement Date”) and shall terminate on April 9, 2028 (the “Termination Date”). KSM shall have the option to renew the Management Agreement for two (2) additional five (5) year terms upon providing not more than one hundred eighty (180) days advanced written notice to the Owner prior to the date of renewal. KSM may exercise its option to renew only if it is in compliance with all terms and conditions for the Management Agreement and any of its amendments as well as all state, federal and local laws and regulations.

2. Section 3.4.4. shall be deleted in its entirety and replaced with the following:

3.4.4. Implementation of Budget. KSM is authorized to take all action reasonably deemed necessary by KSM to implement, perform, or cause the performance of the items set forth in the Budgets. Owner acknowledges that KSM has not made any guarantee, warranty, or representation of any nature whatsoever concerning or relating to (i) the Budgets, or (ii) the amounts of Gross Revenues or Operating Expenses to be generated or incurred from the operation of the Course.

3. Section 3.5.1 shall be deleted in its entirety and replaced with the following language. Subsections 3.5.1(A)-(C) shall remain unchanged within the Management Agreement.

3.5.1. Financial Management, Accounting Records and Reporting. Unless and until Owner elects for KSM to employ an on-site accountant or bookkeeper in accordance with the Section 3.5.1, the day-to-day accounting and financial affairs of the Course shall be handled generally by KSM's home office. KSM's duties shall include: (i) maintaining all books, records, and other data associated with the financial activities of the Course, (ii) preparing all operating budgets, cash flow budgets, and other financial forecasts, and (iii) being responsible for the day-to-day financial affairs of the Course (the "Accounting Services"). All accounting records shall be maintained in a format consistent (in all material respects) with generally accepted accounting principles.

4. Section 3.13 shall be added to the Management Agreement as follows:

~~3.13. Course Improvement. Prior to August 31, 2018, KSM shall improve the Course by constructing and operating a driving range to USGA standards. The construction cost of the driving range shall not exceed one hundred eighty five thousand dollars (\$185,000.00), including soft costs. Upon completion of construction, the driving range shall be dedicated to and owned by the Owner.~~

~~3.13.1. Proof of Payment. Prior to September 1, 2018, KSM shall provide proof of construction costs and payments to Owner, in form and substance acceptable to Owner's Finance Department. The proof of costs and payments shall demonstrate that said expenditures were disbursed between the date of this Second Amendment and August 31, 2018.~~

~~3.13.2. Reimbursement through Revenue Sharing. Owner shall reimburse KSM its verified costs and payments for the construction of the driving range as calculated herein. If KSM's verified costs and payments for the construction of the driving range equal or exceed one hundred eighty five thousand dollars (\$185,000.00), then the Owner shall reimburse two hundred thousand dollars (\$200,000.00) to KSM. If the verified costs and payments for the construction of the driving range are less than one hundred eight five thousand dollars (\$185,000.00), then the Owner shall reimburse the actual verified payments to KSM, up to the maximum aggregate amount provided herein, by paying sixty-five percent (65%) of the gross driving range income. Reimbursements from Owner shall occur at least quarterly. In the event Owner elects to reimburse KSM faster than provided in this Second Amendment, then revenue sharing on the driving range shall cease.~~

~~3.13.3. Untimely Completion of Driving Range. In the event the driving range is not completed by August 31, 2018, then the Management Fee under Section 5.1 of this Management Agreement shall be reduced by twenty percent (20%).~~

3.13. Course Improvement. The Owner and KSM agree to work together on a project to improve the Course by constructing and operating a driving range with an anticipated construction start date of Summer 2018 with the goal of opening the driving range in Spring of 2019 (the "Driving Range Project"). Upon completion of the Driving Range Project, the driving range shall be dedicated to and owned by the Owner.

KSM shall be responsible for: (i) Driving range design and (ii) general oversight of construction. Owner shall be responsible for administering all aspects of the public bidding requirements of the Driving Range Project and shall contract with, and pay, any awarded bidders.

3.13.1. KSM Payment. KSM shall commit to funding up to \$160,000 of the total costs of the Driving Range Project ("Total Project Committed Amount"), which costs shall include all "hard" costs, including without limitation, labor and material (collectively, the "Hard Costs") as well as all "soft" costs, including without limitation, design fees, permitting fees and KSM project management fees (collectively, the "Soft Costs"). Within ten (10) days prior to the beginning of public bidding for the Driving Range Project, KSM shall transfer an amount equal to \$160,000 less the Soft Costs incurred by KSM as of such date (the "Construction Costs Contributed Amount") to an account designated by Owner to be used by Owner to pay construction costs to awarded bidder(s) on the Driving Range Project (the "Construction Costs"). In the event that the aggregate total of the bids made by the lowest responsible bidder(s) exceeds the Construction Costs Contributed Amount, then either party may elect to not proceed with the Driving Range Project. In such event, or if the Driving Range Project does not otherwise proceed for reasons not reasonably attributable to KSM, then Owner shall promptly reimburse KSM for all documented Soft Costs incurred by KSM in connection with the Driving Range Project.

3.13.2. Reimbursement through Revenue Sharing. Owner shall reimburse KSM in an amount equal to the sum of the Construction Costs Contributed Amount and the amount of KSM's verified costs and payments for Soft Costs, up to a cap equal to 10% of the total Construction Costs (the "Soft Costs Reimbursement Cap"), plus eight percent (8%) (the "KSM Reimbursement Amount"). Notwithstanding the foregoing, for purposes of calculation of the KSM Reimbursement Amount, the Soft Costs Reimbursement Cap shall be increased as necessary to include any Soft Costs incurred for unforeseen circumstances not reasonably within the control of KSM.

For example, if the Construction Costs Contributed Amount equal \$150,000 and the Soft Costs are \$10,000, then the KSM Reimbursement Amount would be \$172,800 (i.e., [(\$150,000 + \$10,000) x .08].

The Owner shall make quarterly payments to KSM, up to the KSM Reimbursement Amount, by paying sixty-five percent (65%) of the gross driving range revenue for each calendar quarter during the Term until such time as the KSM Reimbursement Amount is paid in full, provided, however, that any remaining unpaid amount due to KSM shall be paid as a lump sum within thirty (30) days following the earlier to occur of (i) termination or expiration of the Agreement for any reason, and (ii) April 1, 2028. The Owner may elect to reimburse KSM faster than provided above, and, in any event, upon repayment in full to KSM of the KSM Reimbursement Amount, the revenue sharing on the driving range shall cease.

3.13.3. Public Bidding Laws. At all times, a full “open book process” shall be maintained in the construction and improvement of the driving range, including, without limitation, compliance with payment and performance bond requirements, payment of prevailing wages if required by law, and compliance with the Wisconsin public bidding law and other applicable laws. The driving range work shall be publicly bid by the Owner in accordance with § 62.15, Wis. Stat., and all bids shall be opened in public at City Hall. All change orders are subject to approval of Owner’s Board of Public Works.

5. Sections 5.1 and 5.1.2 shall be deleted in their entirety and replaced with the following:

5.1. Management Fee. Owner shall pay KSM an annual fee of Ninety Thousand Dollars (\$90,000.00) (the “Management Fee”), which fee shall be paid in equal monthly installments in advance, no later than the first day of each calendar month. (Such Management Fee shall be prorated for any partial calendar month occurring during the Term.) The Management Fee shall be increased each year on the anniversary of the Commencement Date by one and one-half percent (1.5%) or the Consumer Price Index (CPI) used by Owner, whichever is less. Payment of the Management Fee may be made directly from the Operating Expense Account.

6. Section 5.2 shall be deleted in its entirety.

7. Section 7.1(H) shall be added to the Management Agreement to read as follows:

(H) Owner may amend its requirements for insurance upon sixty (60) days written notice. KSM shall procure updated insurance to comply with the new requirements of Owner. KSM may appeal any requirement to amend the insurance coverage to Owner who may, in its sole discretion, agree to waive such changes. The expenses of all such insurance shall continue to be Operating Expenses.

8. Except as provided in this Second Amendment, all other terms and conditions of the Management Agreement shall remain unchanged. Capitalized terms not defined herein shall have the same meaning as set forth in the Management Agreement.

9. This Second Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed one and the same Second Amendment. Facsimile or scanned and emailed signature shall be as effective as an original signature.

10. Should any provision of this Second Amendment require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all parties hereto have equally participated in the preparation of this Second Amendment and that legal counsel was consulted by each party before the execution of this Second Amendment.

11. The Parties represent and warrant to each other that the signatories to the Second Amendment have the authority to sign and bind their organization to the agreement.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the Second Amendment Effective Date.

KEMPER SPORTS MANAGEMENT, INC.

CITY OF LA CROSSE

By: _____

Steven K. Skinner
Chief Executive Officer

By: _____

Name: Timothy Kabat
Title: Mayor

Attest: _____

Name: Teri Lehrke
Title: City Clerk