

**ADDENDUM TO  
EASEMENT**

This Addendum to Easement (this “Addendum”) is attached to and made a part of the document entitled Easement dated \_\_\_\_\_, 2012, (the “Easement”), by and between CLUBCORP GOLF OF NORTH CAROLINA, L.L.C., a Delaware limited liability company (“Grantor”), and the TOWN OF NAGS HEAD, NORTH CAROLINA, a North Carolina municipal corporation (“Grantee”).

1. Conflict. In the event of conflict between the terms of this Addendum and the Easement, the terms of this Addendum shall prevail.

2. Conditions of Use. Grantee shall have the right to pile dirt and materials and to operate equipment on the surface of the Easement Area only during periods of installation, construction, repair, maintenance, alteration, replacement, relocation, rebuilding and removal of the Improvements. Grantee, at its sole cost and expense, shall secure all necessary permits, licenses and approvals from the necessary governmental authorities prior to its commencement of construction of the Improvements and shall ensure that all work performed in connection with this Easement is in compliance with all applicable governmental laws, statutes, ordinances, resolutions, rules and regulations and all present or future mortgages and all matters of record affecting the Easement. Grantee shall not use the Easement nor permit use of the Easement by any person in a manner that violates any law or regulation, may be dangerous or constitutes a public or private nuisance.

Grantee, at its sole cost and expense, shall ensure that all work performed in connection with this Easement shall be conducted so as to (a) be accomplished in an expeditious and diligent manner once the same is initiated, and avoid excessive dust and noise caused by such work, (b) minimize any interruption with the operation, maintenance and use of the golf course (the “Golf Course”) of which the Easement Area is a part, except to the extent prohibited by or unreasonable in connection with a Grantee determined emergency that endangers the public health and safety, (c) prevent injury to person or property, and (d) prevent any adverse effect on the drainage characteristics of Grantor’s property. Except to the extent prohibited or unreasonable in the event of an emergency, Grantee shall notify Grantor prior to performing any work on the Easement Area if such activity will interfere with Golf Course play, and shall make reasonable efforts to coordinate such work with Grantor to reasonably restrict work to days, times, and areas of the Golf Course when or where the Golf Course play is at low usage. In addition, a time frame for construction and restoration shall be agreed to by Grantor and Grantee in advance of any work, except in the event of an emergency. Grantee shall, at its sole cost and expense, provide or cause to be provided temporary bridges, crosswalks and other means of access as may be necessary to minimize the interruption of usage of the Golf Course by the members and guests of the Golf Course. Grantee and/or all persons under contract with Grantee shall exercise all necessary precautions to prevent injury as a result of any open trench and/or construction, maintenance, and/or repair of the Improvements, including, but not limited to, the use of barricades. Upon Grantor’s determination that Grantee’s use of the Easement is negatively impacting the operation of the Golf Course, Grantee shall reasonably coordinate with Grantor to take additional measures to lessen such impact. In the event any work and restoration is not completed within the agreed time period, as extended for weather delays, and Golf Course play during Grantor’s regular hours of operation can not take place as a result of any work and/or restoration continuing beyond such agreed upon time period, Grantee shall reimburse Grantor upon demand for its loss of revenues as reasonably evidenced by Grantor.

Grantee shall place no structures, improvements or landscaping within the Easement Area that could interfere with Golf Course play without the prior written consent of Grantor. Grantee shall not remove or damage any trees within the Easement Area or on Grantor's adjacent property without the prior written approval of Grantor.

Grantee shall stay within the limits of the Easement Area. Grantee shall have the rights of ingress and egress onto the Easement Area only at locations specified by Grantor; no trespassing, ingress or egress is otherwise allowed on Grantor's adjacent property.

Grantee shall promptly remove and properly dispose of trash and debris on Grantor's property attributable to Grantee's use of the Easement. Grantee shall not bury any trash or waste material of any kind on the Easement Area.

Grantee shall not permit any lien to be filed or otherwise imposed on the Easement Area or any part of Grantor's adjacent property in connection with or arising out of Grantee's use of the Easement. If any such lien is filed, Grantee shall (i) cause such lien to be released, discharged or otherwise settled so as not to encumber any portion of Grantor's property within ten (10) days after filing; (ii) cooperate with Grantor in any action to remove such lien and (iii) to the extent permitted by the laws and constitution of the State of North Carolina, indemnify, defend and hold Grantor harmless from any such lien.

No portion of the Improvements may cross any in-bounds portion of the Golf Course except as expressly permitted by this Easement.

Grantee shall not permit its use of the Easement Area or Grantor's adjacent property as a result of the use of the Easement or the presence of the Improvements on the Easement Area to cause any new areas of erosion or to accelerate the rate of erosion in areas where erosion was already occurring naturally.

3. Underground Improvements. Grantee, on behalf of itself, its officers, agents, employees, contractors, suppliers, and all other persons under contract with Grantee (each individually referred to herein as, a "Grantee Party" and collectively as, "Grantee Parties"), does further hereby covenant and agree that all Improvements shall be maintained and kept underground and shall be buried at least twenty-four inches (24") below the surface grade of the Easement Area; Grantee shall make reasonable efforts to coordinate with Grantor regarding the location of any portion of the Improvements less than twenty-four inches (24") below the surface grade of the Easement Area, at the surface or above ground (including without limitation surface manholes and vent pipes) to minimize any interference with Golf Course play. Grantee shall provide Grantor with "as-built" drawings of the Improvements located within the Easement Area and all modifications thereof.

4. Restoration. Within ten (10) days after substantial completion of any construction, modification, maintenance or repair work by or on behalf of Grantee in connection with the Easement, or as otherwise agreed to by Grantor with respect to any particular work performed in connection with the Easement, Grantee shall restore, at its sole cost and expense, the surface of the Easement Area, including without limitation turf, ground cover, plantings, irrigation lines, tee boxes, cart paths and sidewalks, to as near as practicable the condition found prior to each such operation. Any damage done to the turf areas of the Easement Area shall be repaired using sod of the same type as the grass damaged. Grantee further agrees if such repairs and restoration are not completed within ten (10) days after the completion of such work, Grantor may give Grantee written notice of breach. If, at the end of ten (10) days after such written notice is given, Grantee has not commenced the repairs and restoration or does not diligently pursue the repairs and restoration to completion, Grantor will have the right to make the repairs and

restoration without any further notice to Grantee, and Grantee will be liable to Grantor for the full cost of such reasonably necessary work performed, provided written documentation of the cost of such work is provided to Grantee, plus a reasonable administrative fee or service charge imposed by Grantor.

5. Environmental. Grantee shall not, and shall not permit any Grantee Party to, transport, locate, generate, manufacture, install, use or dispose on or about the Easement Area any Hazardous Substances (hereinafter defined), except in accordance with applicable Environmental Laws (hereinafter defined). Further, Grantee shall not cause or permit any Hazardous Substances to be disposed of on or about the Easement Area or to contaminate or be released or discharged into the environment, the soil, the atmosphere, any water course or any ground water on the Easement Area. For purposes of this Easement, "Hazardous Substances" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixture that is defined in, included under or regulated by any local, state or federal law, rule, ordinance or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act, the Marine Protection Research and Sanctuaries Act, the Occupational Safety and Health Act, the Superfund Amendments and Reauthorization Act of 1986, and all other superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws").

6. Insurance. It is understood and agreed that Grantee is insured for general liability through the North Carolina League of Municipalities. This provision does not and shall not abrogate Grantee's contractual obligations and duties under this Agreement, and Grantor reserves all rights and remedies available under the North Carolina Tort Claims Act. Grantor acknowledges that the work performed in connection with this Easement will not be performed by Grantee but will be performed by an independent contractor retained by Grantee to provide services under this Easement. Grantee further agrees that any independent contractor retained by Grantee to perform construction, modification, maintenance or repair work under this Easement, including without limitation the initial work as set forth in the immediately preceding sentence, will be responsible for its negligent and intentional acts and omissions and will be required to maintain at all times during which work is performed under the Easement, and upon request to provide evidence of insurance coverage consistent with standard Grantee procedures and requirements so long as those requirements meet or exceed the following insurance requirements (unless higher limits are required by law, in which case the higher limit shall be required):

- Commercial general liability coverage of \$1,000,000 each occurrence;
- Automobile liability coverage of \$1,000,000 combined single limit;
- Worker's compensation and employers' liability coverage of \$500,000 per accident; and

Additionally, the general contractor retained by Grantee to perform construction, modification, maintenance or repair work under this Easement, including without limitation the initial work, will be responsible for its negligent and intentional acts and omissions the negligent and intentional acts and omissions of its subcontracts and, in addition to the coverage set forth above, will be required to maintain at all times during which work is performed under the Easement, and upon request to provide evidence of, excess/umbrella liability coverage of at least \$1,000,000 each occurrence and annual aggregate.

7. Indemnification. To the extent permitted by the North Carolina Constitution, the laws of the State of North Carolina, and other applicable law, Grantee hereby agrees that it will indemnify, defend and hold harmless Grantor and Grantor's officers, directors, members, managers, partners, shareholders, employees, agents, contractors and any affiliates or subsidiaries of the foregoing (each

individually a “Grantor Party” and collectively referred to as, “Grantor Parties”) from and against any and all expenses, suits, actions, judgments or claims brought or made on account of any injuries or damages received or sustained by any person or persons or property, arising out of, occasioned by or in connection with Grantee’s use of the Easement Property or any work performed thereon. In addition to and not in limitation of the immediately preceding sentence, Grantee, for and on behalf of Grantee and Grantee’s successors and assigns, does hereby irrevocably release, acquit, and forever discharge Grantor and the Grantor Parties of and from any and all liabilities, claims, demands, damages, causes of action, expenses, costs, attorneys fees and compensations of whatsoever kind resulting from the flight of errant golf balls.

8. Property Title. This Easement does not convey any fee simple interest or any other right or interest in or to the Easement Area except for the limited rights and purposes specifically granted herein, and this Easement covers no property other than the Easement Area. The Easement herein given to Grantee is subject to all encumbrances, conditions and reservations upon or under which Grantor holds the Easement Area. Grantee shall coordinate with any holder of any other easement on or adjacent to Grantor’s property ensure that such easement is not interfered with or otherwise violated.

8. Grantor’s Rights. Grantor reserves and retains the rights to (a) grant other rights and easements across, over or under the Easement Area to such other persons and entities as Grantor deems proper; provided, however, that such other grant does not unreasonably interfere with the use of the Easement by Grantee for the purpose set forth herein, and (b) use the land within the Easement Area for any purpose consistent with the rights herein conveyed to Grantee. This Easement is further subject to golf related operations and activities conducted at, from or in the vicinity of the Golf Course, including without limitation: (a) retrieval of golf balls, including the right to enter on nonenclosed or nonbarricaded portions of the Easement Area for that purpose; (b) free and unobstructed flight of golf balls over, across or upon the Easement Tract; (c) play of golf, including the doing of every act necessary and incident to the playing of golf; (d) creation of noise which may occur from early morning to late evening related to the normal maintenance and operation of the Golf Course and other recreational activities on Grantor’s property; and (e) overspray of herbicides, fungicides, pesticides, fertilizers and water over portions of the Easement Area.

9. Notice. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) hand delivered, or (ii) sent by certified mail, return receipt requested, postage prepaid, addressed as shown below, or to such other address as the party concerned may substitute by written notice to the other. All notices hand delivered shall be deemed received on the date of delivery. All notices forwarded by mail shall be deemed received on a date three days (excluding Sundays and holidays) immediately following the date of deposit in the U.S. mail; provided, however, the return receipt indicating the date upon which all notices were received shall be prima facie evidence that such notices were received on the date on the return receipt.

**If to Grantor:**

CLUBCORP GOLF OF NORTH CAROLINA, L.L.C..  
Nags Head Golf Club  
5615 South Seachase Drive  
Nags Head, NC 27959  
Attention: General Manager

**With a copy to:**

CLUBCORP GOLF OF NORTH CAROLINA, L.L.C..  
Nags Head Golf Club  
3030 LBJ Freeway, Suite 600  
Dallas, Texas 75234  
Attn: General Counsel

**If to Grantee:**

TOWN OF NAGS HEAD, NORTH CAROLINA  
P.O. Box 310  
Nags Head, NC 27959  
Attn: Town Manager

**With a copy to:**

John D. Leidy, Town Attorney  
Hornthal, Riley, Ellis & Maland, LLP  
301 E. Main St.  
Elizabeth City, NC 27909

The addresses and addressees may be changed by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes. No notice to either party hereto shall be deemed given or received unless the entity noted "With a copy to" is simultaneously delivered notice in the same manner as any notice given to either party hereto.

10. **Enforcement.** This Easement may be enforced by any proceedings at law or in equity against any person or entity violating or attempting to violate any part of this Easement either to restrain or enjoin violations or to recover damages. Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, and the enforcing party shall be entitled to relief by way of injunction as well as any other remedy either at law or in equity. The rights, powers and remedies provided herein shall be cumulative and not restrictive of other remedies at law or in equity, and the exercise of any particular right, power or remedy shall not be deemed an election of remedies or to preclude resort to other rights, powers or remedies. No delay or failure to invoke any available right, power or remedy in respect to a breach of this Easement shall be held to be a waiver of (or estop a party from asserting) any right, power or remedy available upon the recurrence or continuance of said breach or the occurrence of a different breach. The obligations of Grantee set forth herein shall survive any termination of this Easement.

11. **Entire Agreement.** This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect except a subsequent modification in writing, signed by the party to be charged.

12. **Assignment.** Grantee may not assign this Easement without the prior written consent of Grantor.

13. **Severability.** Invalidation of any one or more of the provisions hereof, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect.

14. **Execution By Grantee.** Grantee joins in the execution of this Easement to evidence its agreement to the exceptions, reservations, restrictions, conditions and provisions hereinabove set out, which shall be binding upon Grantee, its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Easement effective as of the day and year first above written.

(SIGNATURES ON FOLLOWING PAGES)

GRANTOR:  
CLUBCORP GOLF OF NORTH CAROLINA, L.L.C,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_

State of \_\_\_\_\_, County or City of \_\_\_\_\_

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_ (name), \_\_\_\_\_ (title) of CLUBCORP GOLF OF NORTH CAROLINA, L.L.C., a Delaware limited liability company.

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

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Typed or printed name of Notary Public

My commission expires: \_\_\_\_\_

(AFFIX NOTARY SEAL)

GRANTEE:  
TOWN OF NAGS HEAD, NORTH CAROLINA

By: \_\_\_\_\_  
Robert O. Oakes, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Carolyn F. Morris, Town Clerk

[AFFIX SEAL]

STATE OF NORTH CAROLINA, COUNTY OF DARE

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that Robert O. Oakes, Jr. personally came before me this day and acknowledged that he is Mayor of The Town of Nags Head, a North Carolina municipal corporation, and that by authority duly given and as the act of the town, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by Carolyn F. Morris, its Town Clerk. Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Typed or printed name of Notary Public

My Commission Expires: \_\_\_\_\_

AFFIX NOTARY SEAL - STAMP