

11-1705
(Do Not Write Above This Line)

A RESOLUTION BY
FINANCE/EXECUTIVE COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA, TO ENTER INTO A SECOND AMENDMENT TO THE LEASE/MANAGEMENT TO RENEWAL AGREEMENT WITH AMERICAN GOLF CORPORATION TO MODIFY VARIOUS OPERATIONAL AND FINANCIAL PROVISIONS CONTAINED IN THE AGREEMENT; AND FOR OTHER PURPOSES.

ADOPTED BY
DEC 05 2011
COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1ST ADOPT 2ND READ & REFER
- PERSONAL PAPER REFER

Date Referred _____
Referred To: _____
Date Referred _____
Referred To: _____
Date Referred _____
Referred To: _____

First Reading
Committee _____
Date _____
Chair _____
Referred To _____

Committee <u>Finance/Exec</u> Date <u>11-30-11</u> Chair <u>Robbman</u> Action <u>(Fav, Adv, Hold (See rev. side))</u> Other _____ Members <u>[Signature]</u> Refer To _____	Committee _____ Date _____ Chair _____ Action <u>(Fav, Adv, Hold (See rev. side))</u> Other _____ Members _____ Refer To _____
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Committee _____ Date _____ Chair _____ Action <u>(Fav, Adv, Hold (See rev. side))</u> Other _____ Members _____ Refer To _____	Committee _____ Date _____ Chair _____ Action <u>(Fav, Adv, Hold (See rev. side))</u> Other _____ Members _____ Refer To _____
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FINAL COUNCIL ACTION
 2ND 1ST & 2ND 3RD
 Readings
 Consent V Vote RC Vote

CERTIFIED
DEC 05 2011
ATLANTA CITY COUNCIL PRESIDENT
[Signature]

CERTIFIED
DEC 05 2011
[Signature]
MUNICIPAL CLERK

MAYOR'S ACTION
APPROVED
DEC 05 2011
[Signature]
MAYOR

CITY COUNCIL
ATLANTA, GEORGIA

11- R -1705

**A RESOLUTION BY
FINANCE/EXECUTIVE COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA, TO ENTER INTO AN AMENDMENT NO.2 AGREEMENT, WITH AMERICAN GOLF CORPORATION, FOR FC-2565-85, THE OPERATION AND THE MANAGEMENT OF THE CITY OF ATLANTA 18-HOLE GOLF COURSES; ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (“City”) Department of Parks, Recreation and Cultural Affairs (“DPRCA”) owns various 18 Hole Golf Courses through the City, to wit: Bobby Jones in Atlanta Memorial Park, Browns Mill in Browns Mill Park, North Fulton in Chastain Park, Alfred “Tup” Holmes in Adams Park, (the “18 Hole Courses”) and the 9 Hole Golf Course at Candler Park; and

WHEREAS, in 1986 the City entered into a contractual agreement for FC-2565-85, Operation and Management of the City’s Golf Courses (the “Agreement”) with American Golf Corporation (“AGC”) pursuant to Ordinance 86-O-0145; and

WHEREAS, the Atlanta City Council adopted Ordinance 06-O-0705 on May 1, 2006, and the Mayor approved the same on May 8, 2006 which authorized the City to enter into a Renewal Agreement with AGC for the Operation and Management of the City’s 18 Hole Course and the 9 Hole Candler Park Course; and

WHEREAS, the term of the Agreement is for a period of twenty (20) years with one (1), ten (10) year renewal option; and

WHEREAS, in the course of implementing the Agreement, the parties have determined that changes to various operational and financial provisions contained in the Agreement are warranted and appropriate; and

WHEREAS, the Commissioner of DPRCA and the Chief Procurement Officer have determined that it is in the best interest of the City to, and have recommended that the City, enter into a Second Amendment to the Agreement with the terms and conditions described in Exhibit A attached.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor, on behalf of the City, is hereby authorized to enter into a Second Amendment (the “Second Amendment”) to the Agreement with AGC with the terms and conditions described in Exhibit A attached.

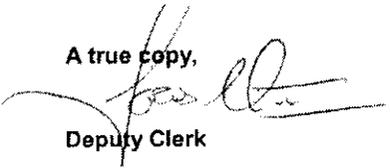
BE IT FURTHER RESOLVED, that the City Attorney is hereby directed to prepare the Amendment for execution by the Mayor.



BE IT FURTHER RESOLVED, that all terms of the Agreement not modified by the Amendment shall remain unchanged.

BE IT FINALLY RESOLVED, that the Second Amendment will not become binding upon the City, and the City will incur no liability under it until it has been approved by the City Attorney, or her designee, as to form, executed by the Mayor, attested to by the Municipal Clerk and delivered to AGC.

A true copy,



Deputy Clerk

ADOPTED by the Atlanta City Council
APPROVED by Mayor Kasim Reed

DEC 05, 2011
DEC 12, 2011



STATE OF GEORGIA

COUNTY OF FULTON

**SECOND AMENDMENT TO
LEASE/MANAGEMENT RENEWAL AGREEMENT**

THIS SECOND AMENDMENT TO LEASE/MANAGEMENT RENEWAL AGREEMENT (this "**Second Amendment**") is made this ____ day of November, 2011 (the "**Effective Date**") by and between the City of Atlanta, a municipal corporation of the State of Georgia, hereinafter referred to as the "City" and American Golf Corporation, hereinafter referred to as "Contractor".

RECITALS

A. Whereas, City and Contractor entered into that certain Lease/Management Renewal Agreement dated as of May 1, 2006 for the management and operation of Bobby Jones Golf Course, Browns Mill Golf Course, North Fulton Golf Course, Alfred "Tup" Homes Golf Course, and Candler Park Golf Course (the "**Agreement**").

B. Whereas, City and Contractor are in agreement that certain amount is due and owing to Contractor for the operation and maintenance of Candler Park Golf Course (the "**Candler Course**") in accordance with Section 7 of the Agreement; and

C. Whereas, City and Contractor are also in agreement that certain areas of Bobby Jones Golf Course (the "**Bobby Jones**") is required to be deleted from the Leased Premises (as defined in Section 1.1 of the Agreement) of Bobby Jones in order to accommodate the construction of a public project undertaken jointly by the City and PATH Foundation, consisting of a 12-foot wide concrete multi-use trail (the "**PATH Trail**").

D. Whereas, City and Contractor desire to amend the Agreement for purposes of the matters set forth in Recitals B and C.

E. Now, Therefore, in consideration of the mutual, covenants and conditions, and promises contained herein, the parties hereto agree to amend the Agreement as follows:

1. **Candler Park Operating Costs and Expenses**

1.01 The parties hereby acknowledge and agree that Exhibit A, attached hereto and incorporated by reference herein, sets forth a true and correct itemized schedule of the costs and expenses derived from the operation and maintenance of Candler Course covering the period from June 1, 2006 through August 31, 2011 (the "**Operating Expenses**"). The parties further

agree that Exhibit A sets forth a true and correct reconciliation of the Operating Expenses less certain reimbursements received by Contractor from the City for the Operating Expenses.

1.02 City agrees that the outstanding balance of One Hundred Sixty Thousand, Eight Hundred Twenty-Five and 81/100 Dollars (\$160,825.81), representing the portion of the Operating Expenses that has not yet been reimbursed by the City, is owing to Contractor (the “**Outstanding Amount**”) and agrees to reimburse Contractor for the Outstanding Amount in the form of abatement to the Annual Minimum Rent (as defined in Section 3 of the Agreement) due to City from Contractor.

1.03 The total amount of Annual Minimum Rent abatement shall be equivalent to the Outstanding Amount. The Annual Minimum Rent shall be abated in equal monthly amount of Four Thousand Four Hundred Sixty-Seven and 38/100 Dollars (\$4,467.38) for thirty-five (35) consecutive months, commencing December 2011, and a final abatement in the thirty-sixth (36th) month in November 2014 in the amount of Four Thousand Four Hundred Sixty-Seven and 51/100 Dollars (\$4,467.51).

1.04 Upon conclusion of the thirty-six (36) consecutive months of abatement to Annual Minimum Rent, Contractor shall resume payment of the full amount of Annual Minimum Rent due to City pursuant to the terms of the Agreement, except as otherwise provided in the Agreement and this First Amendment.

1.05 The Candler Course Costs and Expenses (as defined in Section 7.3 of the Agreement) incurred on or after September 1, 2011 shall be invoiced and remitted in accordance with Section 7.3 of the Agreement. In the event the Candler Course Costs and Expenses exceed its revenue during the previous month and the City has not remitted payment to Contractor within forty-five (45) days of receiving Contractor’s bill, Contractor shall deduct the amount owed for the Candler Course Costs and Expenses from the next scheduled payment of the Annual Minimum Rent due to the City.

2. **Amendment to the Boundaries for the Bobby Jones Premises**

2.01 At the request of the City, certain portions of Bobby Jones, described as “**Excluded Premises**” and depicted in Exhibit B attached hereto and incorporated by reference herein, has been released by Contractor as the Leased Premises for Bobby Jones as of February 20, 2010 (the “**Effective Exclusion Date**”) to accommodate the construction of the PATH Trail.

2.02 The parties agree that the geographical boundaries and description of the Leased Premises for Bobby Jones are hereby amended to delete the Excluded Premises. As of the Effective Exclusion Date, Contractor shall be relieved from all obligations with respect to the Excluded Area, including, without limitation, responsibility to perform or manage any services, maintenance, alterations, improvements or repairs with respect to the Excluded Premises, and Contractor’s obligations set forth in Section 20 of the Agreement.

2.03 Pursuant to that certain letter agreement dated August 26, 2009 (the "Letter Agreement"), the parties hereby agree that Contractor is due from City the amounts of One Hundred Thousand and 00/100 Dollars (\$100,000.00) and Twenty-Six Thousand Four Hundred Ninety-Eight and 00/100 Dollars (\$26,498.00) in accordance with Sections 4 and 7, respectively, of the Letter Agreement. City agrees to reimburse the sum of One Hundred Twenty-Six Thousand Four Hundred Ninety-Eight and 00/100 Dollars (\$126,498.00) to Contractor in the form of abatement to the Annual Minimum Rent. Notwithstanding the abatement of Annual Minimum Rent described in Section 1 hereto, the Annual Minimum Rent shall be further abated in equal monthly amount of Ten Thousand Five Hundred Forty-One and 50/100 Dollars (\$10,541.50) for twelve (12) consecutive months, commencing December 2011 and ending in the twelfth (12th) month in November 2012.

2.04 City or its designee hereby agrees to maintain, at its sole cost and expense, the PATH Trail and the netting system installed to minimize potential errant golf balls from Bobby Jones onto the PATH Trail (the "**Netting**"). In the event the City or its designee fails to maintain the PATH Trail or Netting after written notice by AGC, and AGC, in its reasonable discretion, deems such failure to have created a material safety hazard related to Bobby Jones or errant golf balls leaving Bobby Jones onto the PATH Trail, AGC may, but is not obligated, to perform all reasonable safety repairs and deduct those costs from the Annual Minimum Rent due to the City.

2.05 Notwithstanding Section 2.03, neither Contractor nor any of its owners, partners, agents, officers, directors or employees shall be liable for any injury, loss or damage to persons or property, sustained by any licensee, invitee, guest, occupant or user of the PATH Trail.

3. **Agreement in Full Force.** Except as amended herein, all other terms, covenants and conditions of the Agreement shall remain in full force and effect. The term "Agreement" where used in the Agreement shall hereinafter refer to the Agreement, as amended by this First Amendment. In addition, capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

4. **Counterparts.** This First Amendment may be executed simultaneously in counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

[Signatures appear on next page]

City and Contractor have executed this First Amendment as of the Effective Date.

CONTRACTOR:

ATTEST:
Sworn to and subscribed
Before me this _____ day
of _____, 2011.

AMERICAN GOLF CORPORATION,
a California corporation

Notary Public

By: _____

Name: _____

Position: _____

ATTEST:

CITY OF ATLANTA:

Municipal Clerk (Seal)

Mayor

RECOMMENDED:

Commissioner,
Department of Parks, Recreation,
and Cultural Affairs

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

Chief Procurement Officer

RCS# 1601
12/05/11
4:55 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

CONSENT AGENDA SECTION I OF 12/5/2011
ALL ITEMS EXCEPT 11-O-1768, 11-R-1723
ADOPT

YEAS: 12
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 4
EXCUSED: 0
ABSENT 0

Y Smith	Y Archibong	Y Moore	NV Bond
NV Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	NV Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

		12-05-11
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 11-O-1646	42. 11-R-1733	76. 11-R-1753
2. 11-O-1682	43. 11-R-1734	77. 11-R-1754
3. 11-O-1631	44. 11-R-1735	78. 11-R-1755
4. 11-O-1639	45. 11-R-1736	79. 11-R-1756
5. 11-O-1640	46. 11-R-1737	
6. 11-O-1766	47. 11-R-1738	
7. 11-O-1511	48. 11-R-1739	
8. 11-O-1656	49. 11-R-1774	
9. 11-O-1657	50. 11-R-1705	
10. 11-O-1658	51. 11-R-1706	
11. 11-O-1767	52. 11-R-1708	
12. 11-O-1773	53. 11-R-1709	
13. 11-O-1775	54. 11-R-1710	
14. 11-O-1777	55. 11-R-1711	
15. 10-O-0934	56. 11-R-1721	
16. 10-O-0898	57. 11-R-1778	
17. 11-O-1411	58. 11-R-1691	
18. 11-O-1412	59. 11-R-1692	
19. 11-O-1629	60. 11-R-1693	
20. 11-O-1769	61. 11-R-1779	
21. 11-R-1696	62. 11-R-1780	
22. 11-R-1697	63. 11-R-1740	
23. 11-R-1698	64. 11-R-1741	
24. 11-R-1699	65. 11-R-1742	
25. 11-R-1700	66. 11-R-1743	
26. 11-R-1701	67. 11-R-1744	
27. 11-R-1702	68. 11-R-1745	
28. 11-R-1703	69. 11-R-1746	
29. 11-R-1720	70. 11-R-1747	
30. 11-R-1786	71. 11-R-1748	
31. 11-R-1787	72. 11-R-1749	
32. 11-R-1788	73. 11-R-1750	
33. 11-R-1510	74. 11-R-1751	
34. 11-R-1722	75. 11-R-1752	
35. 11-R-1725		
36. 11-R-1726		
37. 11-R-1727		
38. 11-R-1728		
39. 11-R-1730		
40. 11-R-1731		
41. 11-R-1732		