

**FOOD AND BEVERAGE FACILITY  
MANAGEMENT AGREEMENT**

THIS FOOD AND BEVERAGE MANAGEMENT AGREEMENT ("Agreement") is made and entered into this \_\_ day of \_\_\_\_\_, 2021 by and between Exeter Township ("Owner"), with its principal place of business at 4975 DeMoss Road Reading Pa. 19606, and Morningstar Golf & Hospitality, A New Jersey limited liability company ("MGH"), with its principal place of business at 59 Fox Chase Run Branchburg, NJ 08876

**PRELIMINARY STATEMENT**

A. MGH, together with its affiliates, is engaged in the management and operation of food and beverage facilities associated with F&B Facilities and country clubs.

B. Owner owns certain real property located in the Exeter Township, Berks County, Commonwealth of Pennsylvania incorporated herein by this reference, and the buildings, structures, and improvements located thereon, together commonly known as Reading Country Club, including a food and beverage facility which includes a snack bar, grille room, ballroom(s), outdoor patios and related kitchen and storage facilities, collectively the "F&B Facility"..

C. Owner desires to utilize the services and experience of MGH in connection with the management and operation of the F&B Facility, and MGH desires to render such services, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Owner and MGH hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

1.01 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

MGH – Morningstar Golf & Hospitality, Inc. or any successor to MGH's interest under this Agreement as provided in Section 8.03 of this Agreement.

Affiliate -- Any and all corporations, partnerships, trusts, and other entities directly or indirectly controlled by, controlling, or subject to direct or indirect common control of an entity or person.

Capital Improvements -- Any alteration or addition to, or rebuilding or renovation of, the F&B Facility, the cost of which is not charged to property operation and maintenance.

Commencement Date -- The date upon which MGH assumes its obligations under this Agreement to manage and operate the F&B Facility, which date shall be January 1, 2022.

Compensation -- The direct salaries and wages paid to or accruing for the benefit of any manager or other employee, together with all fringe benefits payable to or accruing for the benefit of such manager or other employee, including employer's contribution under the Federal Insurance Contributions Act ("FICA"), unemployment compensation, or other employment taxes, pension fund contributions, worker's compensation, group life and accident and health insurance premiums, profit sharing, retirement, disability and other similar benefits.

Base Year -- The twelve (12) months period commencing on January 1, 2022 and ending on December 31, 2022.

Furnishings and Equipment -- All furniture, furnishings, trade fixtures, apparatus and equipment and other personal property used in or held in storage for use in the operation of the F&B Facility, other than Operating Inventory and fixtures attached to and forming part of the Improvements.

Impositions -- All taxes, assessments, water, sewer or other similar rents, rates and charges, levies, license fees, permit fees, inspection fees and other authorization fees and charges, which at any time may be assessed, levied, confirmed or imposed on the F&B Facility or the operation of the F&B Facility.

Improvements -- The buildings, structures (surface and subsurface) and other improvements now or hereafter located on the Land.

Insurance Requirements -- All requirements of each insurance policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to the F&B Facility or the operation of the F&B Facility; this term shall not, however, include recommendations of insurance carriers.

Land -- The parcel or parcels of land comprising the F&B Facility.

Legal Requirements -- All laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives and requirements of all governments and governmental authorities, which now or hereafter may be applicable to the Premises and the operation of the Premises.

Mortgage -- A mortgage, deed of trust, or trust deed constituting a first mortgage lien on the Premises, a copy of which has been delivered to MGH.

Mortgagee -- A bank, commercial finance company, insurance company, mortgage bank, pension fund, a welfare or retirement or endowment fund, real estate investment trust, or other like institution regularly engaged in the business of making loans secured by mortgages on real property, which entity is the beneficiary under the Mortgage or the holder of any indebtedness secured by the Mortgage.

Operating Period -- The period beginning on the Commencement Date and ending on the earlier to occur of (a) the last day of the term of this Agreement, or (b) if this Agreement is terminated pursuant to Article VIII below, the effective date of such termination ("Last Operating Day").

Operating Inventory -- Consumable items used in or held in storage for use in the operation of the F&B Facility, including food and beverages, paper and plastic ware, cooking fuel, cleaning materials, and other similar items.

Operating Year -- The Operating Year shall coincide with and be identical to the calendar year, except that (a) the first Operating Year shall be the period beginning on the Commencement Date and ending on the following December 31, and (b) the last Operating Year shall be the period beginning on January 1 of such year and ending on the Last Operating Day.

Other MGH F&B Facilities and Country Clubs -- All other F&B Facilities and country clubs within the United States owned, leased and/or operated, directly or indirectly, by MGH.

Owner -- Exeter Township, PA, a government entity or any successor to Owner's interest under this Agreement as provided in Section 8.03 of this Agreement.

Premises -- A collective term for Land and Improvements and Owner's interest in the Land and Improvements, and any greater estate or interest hereafter acquired, together with all entrances, exits, rights of ingress and egress, easements and appurtenances belonging or pertaining to the Premises.

## ARTICLE II

### TERM OF AGREEMENT

2.01 The Initial Term. The term of this Agreement shall commence on the Commencement Date and shall continue until December 31, 2026, unless terminated sooner as provided herein.

2.02 Option Period. Intentionally deleted.

## ARTICLE III

### OPERATING RESPONSIBILITIES

3.01 Grant to MGH. Owner grants to MGH the sole and exclusive right to manage and operate the F&B Facility pursuant to the terms of this Agreement, and MGH agrees it will manage and operate the F&B Facility in a manner comparable to and consistent with the management and operational practices of MGH at Other MGH F&B Facilities. Without in any way limiting MGH's right to manage and operate the F&B Facility in accordance with the terms of this Agreement, MGH with the input of Owner shall have the authority and responsibility to: (a) determine, establish, and implement the policies, standards, and schedules for the operation and maintenance of the F&B Facility and all matters affecting customer relations; (b) hire, train, and

supervise the Food and Beverage Manager and train and supervise all other F&B Facility employees who remain employed by the Owner; (c) supervise and direct all phases of advertising, sales, and business promotion for the F&B Facility; and (d) establish managerial accounting and payroll procedures and functions for the F&B Facility. Owner agrees it will reasonably cooperate with MGH to permit and assist MGH to carry out its duties under this agreement upon the terms and condition of this agreement.

### 3.02 Annual Plans.

3.02.1 Preparation and Approval. MGH will submit to Owner at least sixty (60) days in advance of the second Operating Year, and sixty (60) days in advance of each Operating Year thereafter, a budget (the "Annual Plan") which shall include for the ensuing year estimates covering expenditures for (i) property operation and maintenance, including F & B Facility employee compensation (ii) Capital Improvements which constitute normal repairs, replacements, and alterations, (iii) Furnishings and Equipment and Operating Inventory, and (iv) advertising, sales, and business promotion. The parties understand that, as provided in Section 10.01, budgets for Major Capital Improvements will be treated separately and will not form part of the Annual Plans. The Annual Plans shall be subject to the prior written approval of Owner, which approval shall not be unreasonably withheld. Owner agrees to examine each Annual Plan submitted by MGH, and unless found unreasonable, Owner will approve such Annual Plan. It is contemplated by the parties that the Annual Plan will be agreed upon by the parties not later than sixty (60) days following delivery of the Annual Plan by MGH to Owner. If Owner fails to either approve the Annual Plan within said 30-day period or to advise MGH of its objections to the Annual Plan within such period, then Owner shall be deemed to have approved the Annual Plan as submitted. In the event of a dispute with regard to the Annual Plan, pending the resolution of such dispute, MGH shall continue to manage and operate the F&B Facility in accordance with the standards set forth in this Agreement at a level of expenditures comparable to those of the preceding year plus up to an additional four percent (4%) of such amount, and in connection with such operations, to make such expenditures from Owner's funds as MGH reasonably deems necessary for such continued operations. In the event MGH desires to amend or revise the Annual Plan to take into consideration variables or events that did not exist, or could not be anticipated by MGH, at the time the Annual Plan was prepared. MGH shall request, in writing, an amendment to the Annual Plan and shall provide Owner with such supporting information as owner may request to substantiate MGH's request for an amended plan. The Annual Plan may not be amended without the express written consent of Owner.

Within 30 days of commencement of this Agreement, MGH shall provide to Owner a phased plan to reopen the clubhouse facilities, with timelines, operating and capital budgets, including but not limited to business plans to expand golf-focused dining, non-golf dining and events and events potentially booked and executed by third-parties. The business plan will reflect the intent that the clubhouse will fully reopen in 2022 and that currently outsourced events will be brought in-house.

3.02.2 Compliance. MGH shall comply, to the extent reasonably and commercially practicable, with the applicable Annual Plan, and shall not deviate in substantial respect from the Annual Plan; provided, however, that MGH shall be entitled to reallocate the amount budgeted with respect to any item in the Annual Plan to another budgeted item, so long as the total amount of expenditures authorized under the Annual Plan shall not be exceeded.

3.03 Responsibilities of MGH. Without in any way limiting MGH's right to manage and operate the F&B Facility in accordance with the terms of this Agreement, but subject to the Annual Plan, MGH shall, in its own name or in the name of Owner or as the agent of Owner, perform the following services, or cause the same to be performed for the F&B Facility:

(a) consummate sales contracts for booked events and social functions or other intended users of the F&B Facility;

(b) make all repairs, decorations, revisions, alterations and improvements to the F&B Facility as shall be reasonably necessary for maintenance of the F&B Facility in good order, condition and repair;

(c) incur such expenses as shall be necessary for the proper operation and maintenance of the F&B Facility, including without limitation expenses for Furnishings and Equipment and costs for Operating Inventory;

(d) maintain a level of Operating Inventory deemed appropriate by MGH for supplying the needs of the F&B Facility and its customers;

(e) apply for, and use its best effort to obtain and maintain, all licenses and permits required of MGH in connection with the operation and management of the F&B Facility; and Owner agrees to execute any and all applications and such other documents as shall be reasonably required and to otherwise cooperate, in all reasonable respects, with MGH in the application for, and obtaining and maintenance of, such licenses and permits;

(f) use its best efforts to do, or cause to be done, all such acts and things in and about the F&B Facility as shall be reasonably necessary to comply with all Insurance Requirements and Legal Requirements; and

(g) Develop, implement and supervise operating systems and procedures to maximize labor and expense efficiency and manage product cost of good sold within budgetary targets; and

(h) Develop and implement seasonal menus and food and beverage offerings to promote the F&B Facility and attract and retain customers; and

(i) Coordinate food and beverage operations with the management of the Golf Course to maximize customer service and cross-sales between the golf and food outlets; and

(j) Create and implement marketing campaigns to promote the F&B Facility in the local market, among golfers and non-golfers.

(k) Require the appointment of MGH employee qualified to be appointed "Manager" under Owners Municipal Golf Course License GR45 at all times while this agreement is in effect.

### 3.04 Personnel.

3.04.1 General. MGH shall recruit, hire (under MGH's name), train, discharge, promote and supervise the staff of the F&B Facility (either directly or through a third-party Professional Employment Organization). All employees of the F&B Facility shall be properly qualified for their positions, and the Compensation of such persons, including Compensation under section 3.04.2, below, shall be reasonable and comparable to the Compensation of employees of other comparable food and beverage Facilities. Notwithstanding that the F&B Facility employees shall be employed by MGH, the Compensation of the F&B Facility employees shall be an expense of the F&B Facility payable by Owner in accordance with this Agreement as a pass-through expense billed from MGH to Owner. MGH shall enter into a Management Agreement with the Owner providing for the appointment of an MGH employee as "Manager" as set forth in Section 3.03 (k) above. MGH shall ensure that such employee is compliant with the terms and conditions of such Management Agreement at all times.

3.04.2 Pension and Benefit Plans. Owner shall be responsible for payment or provision and administration of any pension, retirement or other employee benefits plans, if any, relating to F&B Facility employees as a pass-through expense billed from MGH to Owner.

3.04.3 Temporary Assignment of Other MGH Personnel. If MGH shall reasonably deem it advisable, and after Owner's approval, MGH may temporarily assign to the F&B Facility staff from the employees of MGH or Affiliates of MGH or from the staff of Other MGH F&B Facilities. During such time as these employees are temporarily assigned to the F&B Facility, all such employees will be paid their regular Compensation, and the pro-rata share of such employees' Compensation equal to the actual time such employees worked at the F&B Facility shall be an expense of the F&B Facility, either payable directly by Owner or in the event MGH paid such Compensation reimbursed to MGH by Owner as provided in Section 3.05 below.

3.05 Reimbursements to MGH. Subject to the Annual Plan, MGH shall be entitled to be reimbursed for all costs and expenses incurred by MGH as the result of MGH's performance under this Agreement, including without limitation (a) all costs and reasonable attorneys' fees incurred by MGH, including attorneys' fees in connection with defending any claims or actions against MGH relating to the F&B Facility.

## ARTICLE IV

### INSURANCE

#### 4.01 Coverage.

(a) Owner agrees to procure and maintain, at Owner's expense, at all times during the Operating Period, a minimum of the following insurance:

(i) insurance on the F&B Facility and contents, including without limitation the Furnishings and Equipment and Operating Inventories, against loss or damage by fire, lightning and/or any other perils insurable under the form of "all risk" coverage then available (including specifically irrigation and/or sprinkler system leakage damage, vandalism and malicious mischief, if available), in an amount equal to the full replacement value of the Improvements and contents and with no co-insurance provisions.

(ii) insurance on the F&B Facility and contents, including without limitation the Furnishings and Equipment and Operating Inventories, against loss from accidental damage to, or from the explosion of, boilers, air conditioning systems, refrigeration and heating apparatus, pressure vessels and pressure pipes installed on the F&B Facility (but such coverage shall be required only in the event that there are fired pressure vessels or boilers on the Premises), in an amount not less than one million dollars (\$1,000,000.00) with respect to any one accident and with no co-insurance provisions.

(iii) comprehensive public liability insurance, including without limitation bodily injury, personal injury, property damage, products liability, innkeeper's liability, contractual liability covering the provisions of this Agreement, and liquor liability, in an amount not less than five million dollars (\$5,000,000.00) single limit per occurrence. MGH shall be named as an additional insured.

(b) MGH agrees to procure and maintain, at MGH's expense, at all times during the Operating Period, a minimum of the following insurance:

- (i) worker's compensation insurance covering all F&B Facility employees (even if reimbursable by the Owner), and employer's liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) or as required by law covering all F&B Facility employees, and both such policies shall not contain a provision for participation by the insured in any loss limits.
- (ii) Comprehensive public liability insurance including without limitation bodily injury, personal injury, property damage, products liability, innkeeper's liability, contractual liability covering the provisions of this agreement, and liquor liability in an amount not less than one million dollars (\$1,000,000.) single limit per occurrence. Owner shall be named as additionally insured.

(c) If MGH does not receive a certificate of insurance from Owner's insurance carrier or broker reflecting the effective maintenance of the required policies of insurance as specified in Subsection 4.01(a) above within fifteen (15) days following the Commencement Date or at any time within ten (10) days prior to expiration of any such policy, MGH may proceed to procure insurance coverage as required in Subsection 4.01(a) with the cost of such insurance to be an expense of the F&B Facility payable by Owner.

(d) After the prior approval of Owner (which approval shall not be unreasonably withheld), MGH shall have the right to raise the minimum amount of any insurance to be maintained with respect to the F&B Facility under Subsections 4.01(a) and (b) above to make such coverage comparable to the amount of insurance carried with respect to Other MGH F&B Facilities and Country Clubs, taking into account the size, character and location of the F&B Facility. The insurance coverage shall, in any event, comply with the requirements of the Mortgage

(if any). At least sixty (60) days prior to the beginning of each Operating Year, the party procuring such insurance will submit to the other party a schedule setting forth any changes to the insurance to be maintained by the procuring party during the ensuing Operating Year in connection with the F&B Facility.

(e) The types of insurance and the coverage amounts specified in this Section 4.01 are the minimum insurance recommended by Owner and MGH in connection with the operation of the F&B Facility. Owner acknowledges and understands that MGH has made no representations or warranties that such insurance is adequate to protect Owner. If Owner believes that any such insurance is insufficient, Owner shall provide, at Owner's expense, such additional insurance as Owner deems adequate. Except in the event of negligence or malfeasance of MGH or its principals, officers, employees or agents, MGH shall not be responsible for any losses, damages, liability, or expenses that may not be covered by any of the insurance specified in this Section 4.01.

#### 4.02 Policies and Endorsements.

4.02.1 Policies. All insurance coverage provided for under Section 4.01 above shall be secured through policies issued by insurance companies of good reputation and of sound and adequate financial responsibility having a general policy holder's rating of not less than "B" and a financial rating of not less than Class "VI" in the most current edition of Best's Insurance Reports. The party procuring such insurance shall deliver to the other party certificates of insurance with respect to all of the policies of insurance so procured, and in the case of insurance about to expire, shall deliver certificates of insurance with respect to renewal policies not less than ten (10) days prior to the respective dates of expiration.

4.02.2 Endorsements. All policies of insurance provided for under this Article IV shall, to the extent obtainable, have attached an endorsement that such policy shall not be canceled or materially changed without at least sixty (60) days' prior written notice to Owner and MGH.

4.02.3 Blanket policies. Any insurance policies provided by Owner or MGH under this Article IV may be affected under policies of blanket insurance which cover other properties in addition to the F&B Facility, and in such case an allocable portion of the premiums for such blanket policies of insurance shall be charged to the F&B Facility.

4.03 Waiver of Subrogation. Neither MGH nor Owner shall assert against the other, and MGH and Owner hereby waive with respect to each other, any claims and rights of recovery for any losses, damages, liability or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property arising out of the Ownership, operation and maintenance of the F&B Facility, to the extent that the same are covered by the insurance required under this Article IV. Owner and MGH hereby grant to each other, on behalf of any insurance company providing insurance under this Agreement, a waiver of any right of subrogation which any insurer or party may acquire against the other party by virtue of payment of any loss under any insurance policy. Owner and MGH shall give notice to the insurance companies providing insurance under this Agreement of the mutual waiver of subrogation contained in this Section 4.03, and Owner and MGH shall cause each such insurance company to provide a written subrogation waiver indicating that such insurance company waives all right of



recovery by way of subrogation which such insurance company may acquire against Owner or MGH (as the case may be) and their insurance companies.

## ARTICLE V

### MANAGEMENT FEES

In addition to all costs and expenses to be reimbursed to MGH pursuant to this Agreement, Owner shall pay MGH Base and Incentive Management Fees computed and payable as follows:

5.01 Start-Up Fee. Waived

5.02 Management Fees. In consideration of MGH's services during the Operating Period, Owner shall pay to MGH a "Management Fee" of Five Thousand dollars (\$5,000) per month. The Management Fee shall be paid to MGH in accordance with Section 5.05 of this Agreement.

5.03 Incentive Fees. Owner shall also pay to MGH an Incentive Fee equal to: ten percent (10%) of Gross Revenues, as defined below, in excess of \$500,000 per year (beginning January 1, 2022) plus, if applicable, twenty percent (20%) of Gross Revenues in excess of one million dollars (\$1,000,000) per year. Incentive fees that will result in a net operating loss are exempt. The Incentive Fee shall be paid to MGH in accordance with Section 5.05 of this Agreement.

5.04 Gross Revenues and Net Operating Income Defined. "Gross Revenues" means all money received as a result of the sale of goods and services in connection with the F&B Facility, determined on an accrual basis in accordance with generally accepted accounting principles consistently applied. Gross revenues shall include all receipts from the sale of food, beverages, alcoholic beverages, room rental fees, service charges and other charges billed to customers for use of the F&B Facility and vending sales (or, if applicable, receipts from vending or catering companies); and proceeds from business interruption insurance. Gross Revenues shall not include the following:

- (a) Cash refunds or credits allowed on returns by customers;
- (b) Sales taxes, excise taxes, gross receipts taxes and other similar taxes now or later imposed upon the sale of food, beverages or services and paid to the appropriate taxing authority, whether added to or included in the selling price;
- (c) The amount of any gratuities paid or given by customers to F&B Facility employees;
- (f) Gross receipts received by licensees or concessionaires, except to the extent any portion of such receipts is received by the F&B Facility;

(g) Proceeds of insurance other than business interruption insurance or similar types of insurance; and

Net Operating Income Defined. "Net Operating Income" means:

- (a) the sum of "Gross Revenues" for the F&B Facility, less
- (b) the sum of all operating expenses for the F&B Facility, determined on an accrual basis in accordance with generally accepted accounting principals consistently applied, and subject to the qualifications set forth below in this Section 5.04.

Operating expenses shall include costs of purchasing operating inventory; Management Fees, compensation and expenses of employees directly employed at the F&B Facility; advertising and promotion; any real and personal property taxes; assessments against the Land and Improvements; repairs; and all other expenses relating to the operation of the F&B Facility that would be expenses in accordance with generally accepted accounting principles except as provided in the next paragraph.

Operating expenses shall not include principal and interest payments on any promissory note or other debt instrument or any payments under a deed of trust or mortgage; refunds of membership initiation deposits or bonds; ground lease or real property lease expenses; depreciation; amortization; income taxes paid or payable by Owner on the income from the F&B Facility; uninsured losses; payments or deductible amounts or self-insurance or self-assumption amounts with regard to insurance policies and costs associated with the entity constituting Owner as opposed to the operation of the F&B Facility.

5.05 Payment Schedule. If the Commencement Date does not fall on the first day of the month, then the Management Fee or the Interim Management Fee for the first partial month of the Operating Period shall be the pro-rata portion of the applicable Management Fee and such amount shall be payable on the Commencement Date. Commencing with the first full month of the Operating Period, the Management Fee shall be payable monthly in advance on the first day of the month for which it pertains. Reimbursed expenses and pass-through costs shall be billed bi-weekly and are due within ten (10) business days. Incentive Fees shall be calculated upon closing of the financial records for the applicable fiscal year and paid to MGH within thirty (30) days following the final accounting. Any Management Fees and Incentive Fees owing as of the termination of this Agreement shall be payable upon expiration or termination of this Agreement and a pro rated Incentive Fee shall be calculated and paid based upon trailing 12-month Gross Revenues.

## ARTICLE VI

### ACCOUNTS; WORKING FUNDS; RECORDS AND REPORTS

6.01 Bank Accounts. Owner shall establish bank accounts for the F&B Facility at a banking institution or institutions (which banking institution or institutions shall have branches

located in close proximity to the F&B Facility), such accounts to be in Owner's name (the "F&B Facility Accounts"). MGH will deposit in such Accounts all monies furnished by Owner as working funds under Section 6.03 of this Agreement and all monies received from the operation of the F&B Facility, and will disburse those monies for the purposes set forth in Section 6.02. Notwithstanding the provisions of the foregoing sentence, MGH shall be entitled to maintain funds in reasonable amounts in "cash register banks" or in petty cash funds at the F&B Facility.

6.02 Expenditures. From the F&B Facility Accounts (or, if appropriate, from "cash register banks" or petty cash funds available at the F&B Facility or credit cards received from MGH through Owner), subject to Owner's approval and signature, MGH shall review and approve invoices in connection with the operation, maintenance, repair, and improvement of the F&B Facility and related facilities and MGH's performance under this Agreement, including without limitation the following:

- (a) the Compensation and expenses of the employees of the F&B Facility;
- (b) all costs and expenditures incurred or made in connection with the items described in Section 3.03 and all other expenditures which MGH is permitted or required to make under any other provision of this Agreement;
- (c) reimbursements and other amounts due to MGH and Affiliates of MGH under Section 3.05 or under any other provision of this Agreement;
- (d) premiums for any insurance maintained by Owner or MGH in accordance with the provisions of Article IV; and
- (e) the Management Fees, computed in accordance with the provisions of Article V.

MGH shall then submit such approved invoices to Owner for payment from the F&B Facility Accounts by Owner's staff or financial processing personnel.

6.03 Working Fund Requirements. Within five (5) days after MGH's request, Owner shall provide funds, to be deposited in the F&B Facility Accounts, sufficient at all times to assure the uninterrupted and efficient operation of the F&B Facility, including without limitation sufficient funds to pay all of the items described in Section 6.02 of this Agreement. If MGH is unable to perform any of its agreements or covenants under this Agreement because of the failure on the part of Owner to provide the funds pursuant to Section 6.03, such failure of performance on the part of MGH shall not be deemed a default on the part of MGH and shall not give rise to any right of termination, damages or any other remedy against MGH.

6.04 Books and Records. Owner and MGH shall keep full and accurate books of account and such other records as are necessary to reflect the results of the operation of the F&B Facility. For this purpose, Owner and MGH agrees it will make available the other, or the others's representatives, all books and records in Owner's or MGH possession relating to the F&B Facility, including contract documents, invoices and construction records.

6.05 Reports to MGH. Owner will deliver to MGH the following statements (in current standard reporting format utilized by Owner):

(a) within twenty (20) days after the end of each calendar month, a profit and loss statement showing the results of operation of the F&B Facility for such month and for the year to date; and

(b) within sixty (60) days after the end of each Operating Year, a profit and loss statement showing the results of operation of the F&B Facility for such year.

6.06 Payroll. The parties acknowledge that the payroll and related costs of the F&B Facility employees is a pass-through expense to the Owner. Prior to the date of a payroll payment, Owner will be notified by MGH of the amount of the payroll payment. On the date of the payroll payment, MGH will automatically withdraw the amount of the payroll payment from the F&B Facility Accounts.

## ARTICLE VII

### TERMINATION RIGHTS

7.01 Termination by Owner. Owner shall have the right to terminate this Agreement upon the occurrence of any one of the following events:

(a) MGH fails to distribute funds to Owner in accordance with Section 6.02 of this Agreement, and such failure shall continue for a period of ten (10) days after written notice by Owner requesting such funds; or

(b) MGH fails to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by MGH, and such default continues for a period of forty-five (45) days after written notice of such default by Owner to MGH; or

(c) (i) MGH applies for or consents to the appointment of a receiver, trustee or liquidator of MGH or of all or a substantial part of its assets; (ii) MGH files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors; (iii) MGH files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding, or insolvency proceeding filed against MGH; (iv) MGH admits in writing its inability to pay its debts as they come due; (v) MGH makes a general assignment for the benefit of creditors; or (vi) an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating MGH a bankrupt or insolvent or approving a petition seeking reorganization of MGH or appointing a receiver, trustee or liquidator of MGH or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) consecutive days.

(d) Owner may terminate this Agreement for convenience at Owner's sole and absolute discretion upon thirty (30) day's written notice to MGH and upon payment to MGH of a early termination fee equal to the Management Fee multiplied six (6) months (the "Early

Termination Fee”) plus payment of all reimbursable expenses incurred by MGH (including F&B Facility payroll and related costs) through the Final Operating Day.

Owner's right to terminate this Agreement pursuant to Section 7.01 (a) or (b) shall be exercised upon written notice to MGH given at any time after the applicable grace period has expired. Owner's termination notice shall specify the effective date of such termination.

7.02 Termination by MGH. MGH shall have the right to terminate this Agreement upon the occurrence of any one of the following events:

(a) Owner fails to provide funds to be deposited in the F&B Facility Accounts in accordance with the Section 6.03 of this Agreement, and such failure shall continue for a period of ten (10) days after written notice by MGH requesting that such funds be so provided; or

(b) Owner fails to keep, observe, or perform any other material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by Owner, and such default continues for a period of forty-five (45) days after notice of such default by MGH to Owner.

MGH's right to terminate this Agreement pursuant to this Section 7.02 shall be exercised upon written notice to Owner given at any time after the applicable grace period has expired. MGH's termination notice shall specify the effective date of such termination.

7.03 Intentionally Deleted

7.04 Intentionally Deleted

7.05 Effect of Termination. The termination of this Agreement under the provisions of this Article VII shall not affect the rights of the terminating party with respect to any damages it has suffered as a result of any breach of this Agreement, nor shall it affect the rights of either party with respect to any liability or claims accrued, or arising out of events occurring, prior to the date of termination.

7.06 Remedies Cumulative. Neither the right of termination, nor the right to sue for damages, nor any other remedy available to a party under this Agreement shall be exclusive of any other remedy given under this Agreement or now or hereafter existing at law or in equity.

7.07 Indemnification re Future Business. Owner shall indemnify and hold harmless MGH and its Owners, officers, directors, and employees from all costs, expenses, claims, damages, and liabilities arising or resulting from the failure or inability of MGH to provide F & B facility services under the terms of its agreement entered into with third parties by reason of Owner's termination of this agreement under Section 7.01(c) above, provided that such agreements were entered into prior to the date of Owner's termination notice.

## ARTICLE VIII

### TITLE MATTERS; ASSIGNMENT

8.01 Title to F&B Facility. Owner covenants that, subject to the terms and conditions of this Article VIII, throughout the term of this Agreement it will maintain full Ownership in the fee interest in the Premises and good title to the Furnishings and Equipment and all other personal property necessary for the operation and maintenance of the F&B Facility. MGH shall not acquire title to any Equipment and shall not do or suffer to be done any act that causes a lien to be placed on any item of furnishings or equipment.

## ARTICLE IX

### DAMAGE OR DESTRUCTION; EMINENT DOMAIN

9.01 Damage or Destruction. Should the F&B Facility be destroyed or substantially damaged by fire or other casualty, Owner, by written notice to MGH given within sixty (60) days following the occurrence of such event, shall have the right to terminate this Agreement on the basis that Owner does not choose to rebuild or restore the F&B Facility, and in such event neither party shall have any further obligation to the other party under this Agreement, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. For the purpose of this Section 9.01, the F&B Facility shall be deemed to have been substantially damaged if the estimated length of time required to restore the F&B Facility substantially to its condition and character just prior to the occurrence of such casualty shall be in excess of six (6) months. If this Agreement is not terminated in the event of damage to the F&B Facility, either because (i) the damage does not amount to substantial damage as described above, or (ii) notwithstanding destruction of or substantial damage to the F&B Facility, Owner elects to restore the F&B Facility, then Owner shall proceed with all due diligence to commence and complete restoration of the F&B Facility to its condition and character just prior to the occurrence of such casualty.

## ARTICLE X

### MAJOR CAPITAL IMPROVEMENTS

10.01 Major Capital Improvements. Any Capital Improvement involving an addition to the F&B Facility or renovation or refurbishing designed to substantially upgrade or change the nature or image of the F&B Facility shall be deemed to be a "Major Capital Improvement." Any Major Capital Improvement project is in Owner's sole control and discretion, and all costs and expenses of any Major Capital Improvement shall be paid solely by Owner. The parties acknowledge and agree that this Agreement imposes no responsibilities or obligations on the part of MGH with respect to any aspect of a Major Capital Improvement project, including design, construction, or supervision. In the event Owner desires MGH to be involved in any

capacity in a Major Capital Improvement project, the parties will enter into a separate agreement setting forth the terms and conditions of such involvement.

## ARTICLE XI

### GENERAL PROVISIONS

11.01 Purchases by MGH. In connection with any purchases made by MGH or an Affiliate of MGH for the account of Owner, it is understood that MGH or such Affiliate may perform services as a representative of the manufacturer to secure the benefits of lower costs, and that any resulting savings shall be passed on to Owner, including representatives' fees. In addition, all trade discounts, rebates and refunds pertaining directly to purchases for the F&B Facility (but excluding refunds and rebates received by MGH in connection with purchasing or leasing related to all Other MGH F&B Facilities and Country Clubs) shall accrue to the benefit of Owner.

11.02 Purchases from MGH Affiliates. If any purchases of goods or services for the F&B Facility are made from or through an Affiliate of MGH, the charges to the F&B Facility for such goods or services shall be on the same terms as those made to Other MGH F&B Facilities and Country Clubs, and such charges shall not exceed the market prices for such goods and services.

#### 11.03 Indemnities.

11.03.1 MGH's Indemnity. MGH agrees to indemnify and hold harmless Owner and Owner's officers, directors, and employees from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, attorneys' fees, costs, and expenses:

(a) which result from any act or omission constituting gross negligence or willful misconduct by MGH or any officer, employee or agent of MGH in connection with MGH's performance under this Agreement; or

(b) which result from any action taken by MGH relating to the F&B Facility (i) that is expressly prohibited by this Agreement, or (ii) that is not within the scope of MGH's duties under this Agreement, or (iii) that is not within MGH's delegated authority under this Agreement; or

(c) which result from MGH's breach of the covenant contained in Section 3.10 of this Agreement.

MGH's indemnity obligations under this Section 11.03.1 shall not apply to any acts or omissions taken (or in the case of omissions, not taken) either at the direction of Owner or with the express approval of Owner.

11.03.2 Owner's Indemnity. Owner agrees to indemnify and hold harmless MGH and its owners, directors, employees and agents from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, attorneys' fees, costs, and expenses:

(a) which result from any act or omission by MGH in connection with the management and operation of the F&B Facility that is expressly authorized by this Agreement, or that was either at the direction of Owner or with the approval of Owner; unless such act or omission constitutes gross negligence or willful misconduct (and was neither at the direction of Owner nor with the approval of Owner) in which event MGH shall not be indemnified under this Section 11.03.2; or

(b) which results from any act or omission constituting gross negligence or willful misconduct by Owner or any officer, director, employee, or agent of Owner.

11.04 Intentionally deleted.

11.05 Intentionally deleted.

11.06 Notices. All notices, demands, requests, consents, approvals, replies and other communications ("Notices") required or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; or (c) by deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective five (5) business days after deposit with the Postal Service. Notice by overnight express delivery service shall be deemed effective one (1) business day after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery.

For purposes of Notices hereunder, the address of Owner shall be:

Exeter Township  
4975 DeMoss Road  
Reading, Pa 19606

Attention: Township Manager

For purposes of Notices hereunder, the address of MGH shall be:

Matthew Galvin  
President  
Morningstar Golf & Hospitality, LLC  
59 Fox Chase Run  
Branchburg, NJ 08876

Each party shall have the right to designate a different address within the United States of America by the giving of notice in conformity with this Section 11.06.



11.07 No Partnership or Joint Venture. Nothing contained in this Agreement shall be construed to be or create a partnership or joint venture between Owner and its successors and assigns, on the one part, and MGH and its successors and assigns, on the other part.

11.08 Modification and Changes. This Agreement may be amended or modified only by a writing signed by both parties.

11.09 Understandings and Agreements. This Agreement constitutes all of the understandings and agreements of whatever nature or kind existing between the parties with respect to MGH's management and operation of the F&B Facility.

11.10 Headings. The Article, Section and Subsection headings contained in this Agreement are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

11.11 Consents. Each party agrees that it will not unreasonably withhold any consent or approval requested by the other party pursuant to the terms of the Agreement, and that any such consent or approval shall not be unreasonably delayed or qualified. Similarly, each party agrees that any provision of this Agreement which permits such party to make requests of the other party shall not be construed to permit the making of unreasonable requests.

11.12 Survival of Covenants. Any covenant, term or provision of this Agreement which in order to be effective must survive the termination of this Agreement shall survive any such termination.

11.13 Third Parties. None of the obligations under this Agreement of either party shall run to or be enforceable by any party other than the party to this Agreement or by a party deriving rights under this Agreement as a result of an assignment permitted pursuant to the terms of this Agreement.

11.14 Waivers. No failure by MGH or Owner to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach of this Agreement shall constitute a waiver of any such breach or any subsequent breach of the same covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement and no breach of this Agreement shall be waived, altered or modified except by a written instrument. A waiver of any breach of this Agreement shall only affect this Agreement to the extent of the specific waiver, and all covenants, agreements, terms and conditions of this Agreement shall continue in full force and effect.

11.15 Applicable Law. This Agreement shall be construed and interpreted in accordance with, and shall be governed by, the laws of the Commonwealth of Pennsylvania.

11.16 No Presumption Regarding Drafter. Owner and MGH acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between Owner and MGH, and that this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem either Owner or MGH to be the drafter of this Agreement, and therefore no

presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

11.17 Enforceability of Any Provision. If any term, condition, covenant, or obligation of this Agreement shall be determined to be unenforceable, invalid, or void, such determination shall not affect, impair, invalidate, or render unenforceable any other term, condition, covenant, or obligation of this Agreement.

11.18 United States Currency. All amounts payable pursuant to this Agreement shall be paid in lawful money of the United States of America.

11.19 Counterparts. This Agreement and any amendment may be executed in counterparts, and upon all counterparts being so executed each such counterpart shall be considered as an original of this Agreement or any amendment and all counterparts shall be considered together as one agreement.

11.20 Attorneys' Fees. In the event of a dispute involving the non-performance by a party hereto of its obligations under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all other expenses reasonably incurred in connection with such dispute, whether or not litigation is commenced, in addition to all other relief to which the party is entitled. If the successful party recovers judgment in any legal action or proceeding, the attorneys' fees and all other expenses of litigation shall be included in and made a part of any such judgment.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the day and year first written above.

"OWNER"

Exeter Township  
By: Jeff Burtlett  
Its: Township Manager

"MGH"

By: \_\_\_\_\_  
Its: \_\_\_\_\_