

BOARD OF REGENTS
EASTERN MICHIGAN UNIVERSITY

SECTION: 32

DATE:

June 19, 2012

RECOMMENDATION

ACTION REQUESTED

Termination of the July 1, 2001 Management Agreement Between Eastern Michigan University (EMU) and Eagle Crest Management Corporation and approval of revised Management Agreement between EMU and EAS.

STAFF SUMMARY

EAS is a wholly own non-profit subsidiary of Eastern Michigan University and through its subsidiary, Eagle Crest Management Corporation ("ECMC"), currently manages the University's golf club and conference center pursuant to a management agreement dated July 1, 2001 (the "Management Agreement"). The University recently entered into an agreement with MFS Ypsilanti Holdings LLC, a Georgia limited liability company for the operation and management of the University's conference center beginning July 1, 2012. EAS, as the sole shareholder of ECMC, recently approved the dissolution of ECMC effective as of June 30, 2012. The University has determined that EAS should continue to be involved in the operation and management of the University's golf course. The Board of Regents authorizes the University's President, Susan W. Martin, to take such action and execute such documents as shall be reasonably necessary to (i) terminate the Management Agreement between the University and ECMC; and (ii) to enter into a management agreement with EAS for the operation and management of the University's golf course.

FISCAL IMPLICATIONS

None.

ADMINISTRATIVE RECOMMENDATION

The proposed Board action has been reviewed and is recommended for Board approval.

Gloria A. Hage



Date

CERTIFIED RESOLUTIONS OF
EAGLE ADMINISTRATIVE SERVICES

The undersigned certifies that the following is a true and complete copy of resolutions duly adopted by the Board of Directors of Eagle Administrative Services (the "Company") on June 18th, 2012 which have not subsequently been amended or revoked:

WHEREAS, the Company through its subsidiary Eagle Crest Management Corporation ("ECMC") currently manages Eastern Michigan University's (the "University") golf club and conference center pursuant to a management agreement dated July 1, 2001 (the "Management Agreement");

WHEREAS, the University recently entered into an agreement with MFS Ypsilanti Holdings LLC, a Georgia limited liability company for the operation and management of the University's conference center beginning July 1, 2012;

WHEREAS, the Company will continue to be involved in the operation and management of the University's golf course.

NOW THEREFORE, the Company authorizes the Company's Chair of the Board of Directors, Roy Wilbanks, to take such action and execute such documents as shall be reasonably necessary to enter into the a management agreement for the operation and management of the University's golf course.

FURTHER RESOLVED, that ECMC shall be dissolved effective as of June 30, 2012.

FURTHER RESOLVED, that the Company authorized the Secretary of the Board, Floyd Clack, to take such action and execute such documents as shall be reasonably necessary to effectively dissolve ECMC.

I, Floyd Clack, Secretary of the Company, hereby certify that the foregoing resolution was duly approved by the Board at a formal meeting, at which a quorum was present on the 18th day of June, 2012.

Floyd Clack, Secretary
Eagle Administrative Services

Dated: June 18th, 2012.

**MANAGEMENT AGREEMENT
BY AND BETWEEN EASTERN MICHIGAN
UNIVERSITY AND EAGLE ADMINISTRATIVE SERVICES**

This Agreement is effective as of this 1st day of July, 2012, ("Effective Date"), by and between **EASTERN MICHIGAN UNIVERSITY**, a public body corporate established under the laws and Constitution of the State of Michigan (the "University"), and **EAGLE ADMINISTRATIVE SERVICES**, a Michigan nonprofit corporation ("EAS").

RECITALS

WHEREAS, the University is a state educational institution; and

WHEREAS, the University is committed to distinguishing itself as a comprehensive educational institution that prepares people and organizations to adapt readily to a changing world by providing an exceptional learning environment; applying new technologies to teaching, learning and research; expanding knowledge and providing leadership through research, contract learning and public service; and continually interpreting and responding to a changing regional, national and global society; and

WHEREAS, on April 17, 2012, the University entered into a Management Agreement for Eagle Crest Corporate Education Center and Banquet Facility with MFS Ypsilanti Holdings, LLC, a Georgia limited liability company (the "MFS Management Agreement") for the management of the CEC and the Banquet Facility, as those terms are described therein (the "CEC").

WHEREAS, the University has developed an eighteen hole, championship golf course and clubhouse on approximately 136 acres of land which is more particularly described in the attached Exhibit A (the "Golf Course Property"). The Golf Course Property is owned by the Charter Township of Ypsilanti, Michigan (the "Township") and leased to the University under a 99 year ground lease executed on September 26, 1986 (the "Ground Lease").

WHEREAS, the Golf Course Property includes a two-story clubhouse (the "Golf Clubhouse"). The lower (basement) level contains furnaces, storage areas, refrigerators and other support facilities. The first floor contains a grill, pro shop, locker rooms, restrooms, patio, hallways and other facilities related to operations. The second (upper) floor contains a kitchen, two connected dining rooms, patio, restrooms, hallways and related facilities that are all available to host banquets (some, but not all, associated with golf outings), smaller weddings, conferences and other events at which food and beverage are served, although the kitchen and related facilities are also used to support the grill operations on the first floor as well as for occasional food service for golf related events on the Golf Course; and

WHEREAS, the Golf Course Property (including the University's leasehold interest therein), together with the golf course itself, the practice ranges, tees and greens, the maintenance facilities and the following areas of the Golf Clubhouse: complete lower level, complete first floor (including the grill, pro shop, locker rooms, restrooms, hallways and related areas) and any parts of the second floor that are not included in the Banquet Facility (as defined in the MFS Management Agreement), shall hereinafter be referred to as the "Golf Course;" and

WHEREAS, EAS is a Michigan nonprofit corporation and wholly-owned subsidiary of the University, organized to provide management of certain entrepreneurial activities for the benefit of the University; and

WHEREAS, EAS has professional management experience and capabilities necessary for appropriate and cost-effective management of entrepreneurial activities; and

WHEREAS, EAS' offices are located at the CEC; and

WHEREAS, the University has issued bonds to secure debt incurred in connection with the Golf Course. The current bonds are scheduled to mature in 2014.

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained herein, the sufficiency of which consideration is hereby acknowledged, the parties agree as follows:

I. MANAGEMENT RESPONSIBILITIES OF EAS

1.1 General Responsibilities. EAS shall provide professional management services as specified in this Article I. EAS shall at all times endeavor to enhance the value of assets managed by EAS on behalf of the University and shall not negligently or intentionally cause any devaluation of such assets.

1.2 The CEC. EAS shall act as the University's agent with respect to the MFS Management Agreement, will provide on-site oversight with respect to the MFS Management Agreement and will provide the University with prompt written notice of any potential violations of the MFS Management Agreement as a result of actions taken by any of MFS Ypsilanti Holdings, LLC's directors, officers, employees, consultants, agents and representatives.

1.3 The Golf Course. EAS shall provide professional management services for the Golf Course.

1.4 Scope of Management Services. Management services shall include, but are not limited to:

- a. Supervision of day-to-day operations of the Golf Course, including hiring, training, evaluating, disciplining and terminating personnel;
- b. Benefits administration;
- c. All financial services, including accounts payable, accounts receivable, payroll, purchasing of goods and services, tax information and budgeting;
- d. Housekeeping and maintenance;
- e. Routine and annual maintenance and enhancement of the Golf Course;

- f. Greens fees, cart rentals, driving range fees, and all other services typically associated with golf club operations; and
- g. Marketing and sales, including the coordination of such efforts as provided for in the MFS Management Agreement.

1.5 Receipt and Disbursement of Revenues and Expenses. EAS shall deposit Golf Course operating revenue and working capital advances into designated bank accounts and shall disburse funds, including ordinary operating expenditures, from such accounts, all in accordance with Sections 3.1 and 3.2 below.

1.6 Additional Covenants and Agreements. EAS agrees to be bound by and maintain the University's compliance with any agreements entered into by the University with third parties, including the Second Amended and Restated Joint Operating Agreement dated April 18, 2012 by and between MFS Ypsilanti Holdings, LLC and the University (the "Second Amended Joint Operating Agreement"), the Management Agreement for Eagle Crest Corporate Education Center and Banquet Facility entered into by an between MFS Ypsilanti Holdings, LLC and the University (the "MFS Management Agreement") and the Ground Lease dated as of April 8, 1990 by and between Ypsilanti Township, as landlord, and the University, as tenant (the "Ground Lease").

II. ASSET MANAGEMENT

2.1 All liquid University assets assigned to the Golf Course will be assigned to EAS for custody in a University designated bank account for use in managing the Golf Course. EAS may make all payments on behalf of the Golf Course in order to effectively operate, maintain and improve these facilities, but only if each such payment is consistent with the terms of the Annual Business Plan or is otherwise approved by the University. Improvements to properties assigned to EAS shall be consistent with the improvements noted in the University's capital or facilities plans and the Annual Business Plan.

2.2 The bank account(s) established and utilized by the University for operations of the Golf Course and the bank account(s) or other investment accounts established by EAS for the Golf Course operational/maintenance reserves and endowment reserves will bear the name of the University. Signatories on such accounts will be as follows:

- a. Two signatures by the appropriate EAS management personnel and/or officers. If any checks drawn against this account are in excess of Ten Thousand Dollars (\$10,000.00), one of the signatures must be by the Executive Director.

2.3 EAS will provide a periodic report of all revenue, expense, fund/reserve balances, endowment fund transfers, aging accounts receivable schedule, and bank statement reconciliations. Such report shall be provided annually unless the University advises EAS in writing that the reports should be provided more frequently. In the event that there are any Net Proceeds (as defined below) arising out of the operation of the Golf Course, such Net Proceeds shall be allocated by the University as follows:

- a. First, Three Hundred Thirty Thousand and 00/100 (\$330,000.00) Dollars annually with respect to payment of the current bonded indebtedness of the Golf Course;
- b. Second, to an operating and/or capital improvement reserve fund to be maintained in an account in the name of the University but dedicated and restricted to operating expenses and/or capital improvements for, or asset enhancement of, the Golf Course.

2.4 The term “Net Proceeds” means the net profit derived from the operation of the Golf Course during the applicable fiscal year, determined on a cash basis, after paying all expenses related to the salaries, costs and expenses incurred in the management of the Golf Course that are payable during the fiscal year.

2.5 The University shall maintain, repair and replace assets according to standards established by the University’s physical plant, including: the exterior windows; the heating, ventilation and air conditioning equipment; and the electrical and plumbing systems. Based upon the mutual determination by the University and EAS that such repairs are necessary in order to alleviate any revenue stream interruptions, the University’s obligation to make such repairs shall be effective at such time as notice is given by EAS of the need for such repair.

2.6 All assets of the Golf Course remain assets of the University. These assets include, but are not limited to, physical property, cash, inventory, accounts receivable, etc. Likewise, all third party liabilities (other than EAS’s payroll and other internal obligations) remain those of the University, including but not limited to accounts payable, long term debt, equipment loans, etc. All assets and liabilities must be recorded on the University’s balance sheet. All revenue/expenses and fund balances must be reflected on the University’s income statement. EAS will assist to affect this outcome annually or the parties will work together to simplify the reporting process so as not to be unduly burdensome on EAS. Future property assets acquired by EAS on behalf of University shall be processed (tagged) within the University’s Fixed Asset System. Disposal (sale or abandonment) of any assets of the Golf Course must be liquidated in accordance with University policy.

III. EAS REPORTING RESPONSIBILITIES

3.1 External Audit. On an annual basis, EAS shall retain a firm of certified public accountants to perform an audit of EAS’s books, records and accounts. The certified public accountants must be approved by the University. The audit shall be conducted and reported separately from any audit performed for the University. Copies of all final reports, including the financial statements, opinion letter, management letter, internal control letter, and other documents prepared by the auditor, shall be furnished to the University Board of Regents no later than ninety (90) days after the end of the applicable fiscal year.

3.2 Access to Records. EAS agrees that its books, corporate records and accounts shall be made available upon request by the University at all reasonable times for inspection, audit and evaluation by the University. The University may specify additional financial information which EAS shall submit to the University on a periodic basis.

3.3 Request for Special Audit. If the University at any time determines that a special or immediate audit of the operations or accounts of EAS is necessary to determine compliance with this Agreement, the University shall have the right to perform or cause to be performed such an audit, at the University's expense. EAS agrees that its employees and agents will cooperate to the fullest extent possible and shall furnish any records maintained by EAS upon the request of such auditors.

3.4 Annual Business Plan. EAS shall submit, not less than sixty (60) days prior to the commencement of each fiscal year (each fiscal year beginning on July 1, unless otherwise determined by the University), a proposed operating and capital improvement budget for the upcoming year (the "Annual Business Plan"). The Annual Business Plan shall include such detail as the University may reasonably request, but at a minimum shall reflect the following:

- a. An Operating Budget for the Golf Course, including (i) an estimated profit and loss statement, (ii) a schedule of revenues, (iii) miscellaneous income, (iv) a schedule of special repairs, maintenance and operating expenses, and (v) the compensation of management personnel (broken down by position).
- b. A Capital Improvement Budget for the Golf Course, which shall reflect proposed capital improvements and the estimated costs of same.
- c. A Sales and Marketing Plan for the Golf Course which shall reflect (i) prior consultation with the Joint Oversight Committee as defined in the EMU/MFS Management Agreement and (ii) Three (3%) Percent of the Gross Revenues of the Golf Course for the upcoming year to be contributed to marketing of the Golf Course.
- d. An Organizational Structure Plan showing projected EAS personnel by position (with the names of the management personnel).

4.5 Deficits. If the Annual Business Plan shows a negative cash flow, the University will be responsible for contributing the resulting shortfall as and when needed to maintain the operation of the Golf Course in accordance with the Annual Business Plan.

4.6 Operations. Upon approval of the Annual Business Plan, EAS shall manage, operate, and maintain the Golf Course in accordance with the Annual Business Plan and adhere thereto, absent changes that make it impracticable to do so. Any changes that make it impracticable for EAS to adhere to the Annual Business Plan shall be reported to the University as soon as practical after they arise.

4.7 Discounts. EAS is vested with the discretion to discount published rates for the Golf Course in a manner that will optimize overall business performance; provided, that any standard discounts offered to students, faculty, staff or alumni of the University shall be subject to the approval of the University; and provided further, that any discounts given shall comply with the terms of the Second Amended Joint Operating Agreement.

4.8 Annual Report. EAS shall provide an annual report to the University within thirty (30) days of the close of each fiscal year, comparing operations, performance and capital improvements during such fiscal year to the Annual Business Plan. The annual report shall include a separate comparison of Annual Business Plan accomplishments relative to goals.

IV. REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Representations, Warranties and Covenants of the University. In addition to those representations, warranties, and covenants contained in other provisions of this Agreement, the University hereby represents warrants and covenants the following:

- a. Due Organization. The University is a Michigan public body corporate and institutional of higher education organized and established pursuant to Article VIII, Section 6 of the Michigan Constitution of 1963, and an organization in good standing under the laws of the State of Michigan with the requisite corporate power and authority to own, operate, lease and utilize its assets, properties and business.
- b. No Other Agreements. This Agreement shall be the exclusive agreement for the provision of management services as to those assets, facilities and programs described herein.
- c. Power and Authority. The execution, delivery and performance of this Agreement are within its corporate powers, have been duly authorized by all necessary corporate action and are not in contravention of any of the terms of its articles of incorporation or bylaws or any contract or undertaking to which it is a party or which it or its property may be bound or affected.

4.2 Representations and Warranties of EAS. In addition to those representations, warranties and covenants contained in other provisions of this Agreement, EAS hereby represents warrants and covenants the following:

- a. Due Incorporation and Organization. EAS is a Michigan nonprofit corporation duly organized, existing and in good standing under the laws of the State of Michigan with the requisite power and authority to own, operate, lease and utilize its assets, properties and business.
- b. Absence of Undisclosed Liabilities. Except to the extent reflected and reserved in the current financial statements, EAS has no known liabilities, obligations, or debts of any nature, whether accrued, absolute, contingent, or otherwise.
- c. Amendments to Articles of Incorporation and Bylaws. EAS will not amend or otherwise alter its Articles of Incorporation or Bylaws, in any way that would materially alter its ability to perform the professional management services required by this Agreement without prior consent of

the University Board of Regents, which consent shall not be unreasonably withheld.

- d. No Merger, Conveyance of Substantial Assets or Dissolution. During the term of this Agreement, EAS will not merge with any other corporation or convey any substantial part of its assets to any other corporation, partnership, or other entity without the consent of the University Board of Regents.
- e. Power and Authority. The execution, delivery and performance of this Agreement are within its corporate powers, have been duly authorized by all necessary corporate action and are not in contravention of any of the terms of its Articles of Incorporation or Bylaws or any contract or undertaking to which it is a party or which it or its property may be bound or affected.

V. TERM AND TERMINATION

5.1 Term. The term of this Agreement (the "Term") shall commence on July 1, 2012 and shall remain in effect for five (5) years thereafter (being six Fiscal Years inasmuch as the first and last Fiscal Years are partial calendar years). The Term shall automatically be extended for one (1) additional period of five (5) years unless terminated in accordance with Section 6.2.

5.2 Termination. This Agreement may be terminated as follows:

- a. At any time by the mutual written consent of the parties.
- b. By the University or EAS, with or without cause, by providing notice of the intent to terminate at least three hundred sixty (360) days before the end of the initial term.
- c. By the University in the event EAS fails to perform any of the terms, conditions, or covenants of this Agreement for more than thirty (30) days after written notice of such default is mailed to EAS, provided however, that should any default occur which cannot reasonably be corrected within a thirty (30) day period, EAS shall have such additional time to correct said default as may be reasonably required so long as EAS promptly initiates and expeditiously carries out appropriate action to correct such default.
- d. By the University, effective immediately, if EAS shall (i) become insolvent or file any other debtor proceedings; (ii) take or have taken against itself in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of EAS's property or (iii) make an assignment for the benefit of creditors.

- e. By the University, effective immediately, if EAS breaches a representation or warranty contained in Section 5.2.

5.3 Transfer of Assets Upon Termination. Upon termination, all monies and other things of value received by or being held by EAS for the benefit of the University or any of its constituent parts, shall immediately be transferred to the University or its designee.

VI. INDEMNIFICATION AND INSURANCE

6.1 Indemnification by the University. The University agrees to indemnify, save, and hold harmless EAS, its Board members, officers, employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorneys' fees incurred as a result of property damage or physical injury (including death) caused by any negligent act or omission by the University or its employees, relating to the provisions of the Agreement.

6.2 Indemnification by EAS. EAS agrees to indemnify, save, and hold harmless the University, its Regents, Board members, officers, employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorneys' fees, incurred as a result of property damage or physical injury (including death) caused by any negligent act or omission by EAS or its employees, agents or subcontractors, relating to the provisions of the Agreement.

6.3 Insurance Coverage. Each party agrees to maintain comprehensive general liability insurance, directors and officers insurance and such other insurance coverage as may be necessary or appropriate for liabilities which may arise in connection with their operations, in amounts acceptable to each party, either through commercial insurance or a reasonable self-insurance mechanism. Evidence of the insurance required by this Section will be reasonably provided to the other party upon request. Each party agrees to name the other party as an additional insured party in its commercial or self insurance.

VII. MISCELLANEOUS PROVISIONS

7.1 Independent Contractors. In performing their respective responsibilities under this Agreement, the parties shall at all times be deemed and regarded as independent contractors. The employees of one party to this Agreement shall not be deemed the employees of any other party. Such other party shall neither exercise nor have any control over the mode and manner in which such employees perform services. Each party shall, on behalf of its employees who provide services under this Agreement, (i) pay or cause to be paid, all compensation and fringe benefits of such employees; (ii) withhold or cause to be withheld, all applicable federal, state and local taxes including F.I.C.A.; (iii) make or cause to be made, any and all required payments relating to such employees, including any unemployment compensation fund payments; and (iv) maintain or cause to be maintained, workers' compensation fund insurance, as required under Michigan law. Additionally, EAS agrees that it will require any contractors or subcontractors who provide services on behalf of EAS to agree to perform the obligations set forth in clauses (i) through (iv) on their own behalf and on behalf of their employees, if any. Upon request, each

party shall provide the other with satisfactory evidence of compliance with the requirements of this Section.

7.2 Entire Agreement. This Agreement and any other agreement referred to herein constitute the entire agreement between the parties with respect to this subject matter, and supersedes any and all other written or oral agreements relating to this subject matter.

7.3 Amendment and Waiver. Notwithstanding Section 8.2, this Agreement may be amended upon the prior written consent of the parties.

7.4 Limitation on Liability. The parties hereto understand and agree that this Agreement in no manner alters or modifies the limitations on liability extended to the State of Michigan, Eastern Michigan University, and its officials and employees, by state and federal statute or regulations. Any provisions of this agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified to limit any liability of the State of Michigan and Eastern Michigan University as specified herein.

7.5 Nondiscrimination. The parties agree that, in the performance of this Agreement, they shall not discriminate on the basis of gender, race, color, religion, marital status, creed, sexual orientation, gender identity or expression, disability, age, national or ethnic origin, political belief or handicapping condition.

7.6 Resolution of Disputes. The parties shall in good faith seek to resolve all disputes arising from or related to the interpretation and enforcement of this Agreement amicably by consultation among themselves. If the parties cannot resolve the dispute amicably, then either party may request a resolution of the dispute by negotiation between the Chairperson of the Board of Regents of the University and the Chairperson of EAS's Board.

7.7 Cooperation on Due Diligence. The University and EAS agree to cooperate fully with each other and their respective counsel in providing access to any information and to any of its advisers and consultants which may be sought for purposes of investigation and due diligence with respect to the completion and confirmation of all or any part of this Agreement and the transactions contemplated herein and no party shall withhold any information or access so requested unless restrained by applicable law.

7.8 Notices. Any notice which is required or desired to be given hereunder shall be deemed to be sufficiently given if personally delivered or sent by certified or registered mail, postage prepaid, return receipt requested and addressed as follows:

If to the University, to:

President
Eastern Michigan University
202 Welch Hall
Ypsilanti, Michigan 48197

If to EAS, to:

Executive Director
Eagle Administrative Services
11 Welch Hall
Ypsilanti, Michigan 48197

7.9 Assignment. This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns. This Agreement shall not be assigned or assignable by either party without the prior written consent of the other party.

7.10 Governing Law. This Agreement shall be governed by the laws of the State of Michigan as to interpretation, construction and performance.

7.11 Compliance with Laws. EAS agrees to fully observe and comply with all applicable federal, state and local laws, rules, licenses, regulations, orders, and applicable reporting requirements pertaining to the management of University assets under this Agreement. EAS shall conduct its business in such a manner as to not cause a violation of Michigan liquor laws and regulations concerning the University's liquor license. In furtherance thereof, the net profits, before taxes, realized from the sale of alcoholic beverage, shall not exceed ten percent (10%) of the gross sales of alcoholic beverages realized by EAS pursuant to the provision of food and beverage services hereunder. To the extent such net profits do exceed such gross sales in a given fiscal year; such excess profits shall be paid over to the licensee, the University.

7.12 Trade Names. The University authorizes EAS to use the University's name, symbols, and trade marks in seeking support for the University. Such use must adhere to the University's style and standards guide and be consistent with University image initiatives.

7.13 Captions. The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit or describe the scope or intent of this Agreement or any of its provisions. Any reference in this Agreement to a Section shall be to a Section in this Agreement unless the context provides otherwise.

7.14 Use of Fixtures and Equipment. EAS shall have access to and the use of such fixtures and equipment owned by the University as shall be available from time to time and reasonable and necessary for the provision of food and beverage services, audio-visual services, and business center operations, hereunder. The University shall retain control over and responsibility for such fixtures and equipment except for damages caused by the negligence of intentional acts of EAS.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have hereunto placed their signatures on the day and date first set forth above.

EASTERN MICHIGAN UNIVERSITY

By: _____

Title: _____

Date: _____

EAGLE ADMINISTRATIVE SERVICES

By: _____

Title: _____

Date: _____

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