

**THIRD AMENDED AND RESTATED LEASE AGREEMENT  
HOLLYWOOD BEACH GOLF AND COUNTRY CLUB**

THIS THIRD AMENDED AND RESTATED LEASE AGREEMENT ("Amended Lease Agreement", "Amended Lease" or "Lease") is made and entered into as of this 28<sup>th</sup> day of May, 2011 by and between the CITY OF HOLLYWOOD, a municipal corporation of the State of Florida (hereinafter "City") and SOUTHERN GOLF APPRAISALS INC., a Florida corporation whose principal office is located in Hollywood, Florida (hereinafter "Southern Golf" or the "Lessee"), whose Federal I.D. number is 59-2827332.

WHEREAS, the City is the owner of the Hollywood Beach Golf and Country Club, located at 1600 Johnson Street, Hollywood, Florida (the "Golf and Country Club"); and

WHEREAS, on June 2, 1995 the City awarded an interim contract for the turnkey operation of all facilities of the Golf and Country Club, including operation of the golf course, operation of the pro shop, electric carts, locker rooms, locker rentals, valet service, restaurant, bar, lounge, pool and motel facilities to Southern Golf, pursuant to an Interim Lease Agreement between the parties; and

WHEREAS, on April 1, 1996, the City and Southern Golf, as Lessee, entered into that certain Amended and Restated Lease Agreement pursuant to which Southern Golf continued the turnkey operation of the Golf and Country Club; and

WHEREAS, on April 18, 2001, the City and Southern Golf, as Lessee, entered into that certain Second Amended and Restated Lease Agreement (the "Prior Lease Agreement") pursuant to which Southern Golf continued the turnkey operation of the Golf and Country Club; and

WHEREAS, pursuant to Section 3.2 of the Prior Lease Agreement, the City Manager and his staff and Southern Golf have tentatively agreed to exercise the mutual option by negotiating this Amended Lease Agreement in the best interests of the City and Southern Golf; and

WHEREAS, the City Manager and his staff recommend acceptance of this negotiated Amended Lease Agreement, in the City's best interest, subject to City Commission approval:

NOW, THEREFORE, in consideration of Ten (\$10.00) Dollars, the mutual promises herein and other good and valuable considerations, the City and Lessee agree as follows:

**1. Leased Property**

Commencing on the Effective Date, City will continue to lease to Lessee and Lessee hereby will continue to lease from City on the terms and conditions set forth herein the real property described as follows:

- 1.1 That parcel of land commonly known as the Hollywood Beach Golf and Country Club and described with more specificity in Exhibit A, which is attached to this Agreement and made a part of this Lease for all purposes, along with all

buildings, fixtures and other improvements located on the real property ("leased premises");

**1.2 Authorized Use of Leased Premises.**

Lessee agrees it will use the leased premises in accordance with the terms and conditions of this Agreement for the operation of a public golf course and other activities customarily associated with the operation of a public golf course, including without limitation, sale or rental of golf-related merchandise at a golf professional's shop, furnishing of lessons by a golf professional, operation of a hotel/motel and golf school or camp and/or tennis facilities or driving range, if such facilities are constructed by Lessee on the leased premises, and sale of food and beverages, including liquor sales and catering.

Lessee shall not use the leased premises for any unlawful purpose and shall comply with all valid laws, rules and regulations applicable to the leased premises and the businesses conducted by Lessee on the leased premises, and Lessee shall at all times be in compliance with the terms and conditions of this Lease Agreement.

**1.3 Cooperation with City for other uses desired by City.**

During the term of this Amended Lease Agreement, Lessee will use its best efforts and cooperate in good faith with respect to accommodating and working with the City on any City project(s) requiring use of a portion of the leased premises. If any such project(s) should interfere with Lessee's ability to operate the leased premises, or any portion thereof, for their intended purpose, the City shall fairly compensate Lessee, and the parties shall use their best efforts and cooperate in good faith to reach agreement on such compensation prior to the City's formally approving such project(s).

**2. Effective Date and Term**

**2 Lease Term**

Except as provided in Section 6 of this agreement, and for those provisions that naturally extend beyond the physical use and occupancy of the premises, this Amended Lease Agreement shall become effective on May 1, 2011 (the "Effective Date") and shall continue for a two year and one month period ending on May 31, 2013

**3. Lessor's Right to Enter Onto Leased Premises**

During the term of this Amended Lease Agreement, Lessee shall be in full control of all grounds, buildings, facilities and capital improvements covered by the Agreement. However, the City, its authorized representatives, agents and employees shall have the

right to enter upon said premises at any and all reasonable times during the term of this Agreement for the purpose of inspection to determine whether Lessee is complying with the terms and conditions thereof, or for any other purpose incidental to the rights of the City. Such reasonable access to the premises by City, its authorized representatives, agents and employees is not to hinder the normal operation of said facilities. Reasonable notice of inspections shall be given to Lessee, and Lessee's representative shall be present except in emergency situations or in order for City to inspect any alleged or reported violations hereunder or any alleged violations of law.

#### **4. Annual Rental**

##### **4.1 Annual Base Rental**

In consideration of Lessor executing this Amended Lease and granting the Lessee's rights provided in this Amended Lease, Lessee will pay to City at the address listed for City in Section 30 of this Amended Lease an annual base rent in the total annual amount per year of One Hundred Fifty Thousand (\$150,000) Dollars, exclusive of applicable sales tax, if any. The annual rental shall be payable by Lessee to City in equal monthly installments in an amount equal to the annual base rent divided by twelve (12) months (\$12,500 per month), commencing on the Effective Date and continuing monthly thereafter. All amounts due and payable by Lessee to the City pursuant to this Subsection 4.1 constitute "base rent" under this Agreement.

##### **4.2 Supplemental Rent**

Lessee agrees to remit to the City, as additional annual Supplemental Rent, an amount equal to ten (10%) percent of Lessee's annual Gross Revenues derived from all sources generated from the leased premises, including but not limited to, golf, hotel, and food & beverage services, excluding sales tax, in excess of two million four hundred thousand dollars (\$2,400,000). Supplemental Rent will be calculated for each of the following periods: May 1, 2011 to May 31, 2012 and June 1, 2012 to May 31, 2013. Lessee will keep accurate records of all its revenues and sales and make such records available to City for its inspection with respect to Lessee's obligation to make supplemental lease payments to City. Not later than June 1, 2012 and June 1, 2013. Lessee will provide, on an annual basis, a complete set of financial statements of its operation at the leased premises. These statements for the period ending April 30, 2012 and 2013 will be dated as of May 1, 2012 and 2013 respectively and will be audited on a cash basis by an independent Certified Public Accountant. Each statement will have an unqualified opinion as to gross revenues and operational expenses. City reserves the right to require an independent audit on a cash basis, by an auditor selected by City, of Lessee's Gross Revenues and Expenses, the reasonable cost of which, not to exceed Ten Thousand (\$10,000) Dollars per year, shall be paid for by Lessee. In the event the cost of the audit exceeds Ten Thousand (\$10,000) Dollars, the

City shall pay the amount in excess of Ten Thousand (\$10,000) Dollars. In the event City requires any such audit, Lessee's Supplemental Rent payment, if any is owed for that year, will be adjusted after the audit is completed.

#### **4.3 Total Rent**

Lessee guarantees the payment of total rent of not less than Three Hundred Twelve Thousand Five Hundred (\$312,500) Dollars for the term of this Amended Lease Agreement. This total will not be adjusted for any rent credit given for closure of the course pursuant to Section 8.1.1 hereof but will be adjusted for any rent waiver for closure of the course pursuant to Section 8.1.1 and for any rent reduction or abatement granted pursuant to Section 12 hereof.

### **5. Lessee's Obligation to Maintain Records**

Lessee must generate, maintain, and publish appropriately detailed accounting records for all aspects of the leased premises. Said records should be of the type and detail sufficient to allow for an unqualified opinion by auditors. Detailed records of all revenue must be provided to the City on a monthly basis by the 15th of each month for the preceding month. Adjustments and corrections for any month should be immediately brought to the attention of the City on a timely basis. Failure to keep and provide detailed accounting records on a regular basis will be considered a material default by Lessee. All financial records are to be made accessible to City staff, upon request, during operating business hours and at a location within the City of Hollywood.

### **6. Security for Rental Payments**

Lessee's obligation to timely pay annual base rental payments shall be secured by Lessee through an irrevocable standby Letter of Credit for the City's account. An irrevocable Letter of Credit payable to the City in the amount of \$75,000 will be maintained from May 1, 2011 to April 30, 2012 and on May 1, 2012 the Letter of Credit will be extended past the May 31, 2013 expiration of this amended lease to June 30, 2013. No later than March 1, 2013, Lessee will pay the remaining balance of the base rent due for the balance of the agreement. (3 months x \$12,500 = \$37,500). This assumes Lessee is current as of March 1, 2013; otherwise, the full amount remaining is due and callable through the Letter of Credit. A Letter of Credit shall be obtained by Lessee, from a reputable financial institution on or before the Effective Date. Notice of the intent to issue the Letter of Credit by the issuing bank will be given to the City no later than March 31, 2011.

During the term of this Amended Lease Agreement, each month's base rent is payable monthly in advance commencing with the Effective Date.

Failure of Lessee to make any monthly base rental payment to City by no later than fifteen (15) days after the due date shall be considered a material breach of this Amended Lease Agreement and, subject to the notice and cure provisions of this Amended Lease,

shall trigger City's rights to draw under the Letter of Credit in order to cure any such breach in addition to the City's other remedies under this Amended Lease Agreement.

## **7. Taxes and Utilities**

### **7.1 Applicable Taxes**

During the term hereof, Lessee shall be responsible and liable to pay for any and all federal, state and local taxes (except for ad valorem taxes), fees, assessments and charges levied as a result of use of the premises and activities covered by this Amended Lease Agreement. City represents to Lessee that the leased premises and improvements thereon are currently exempt from ad valorem taxation and City will make good faith efforts to continue to maintain the tax exempt status on the leased premises during the term of this Amended Lease Agreement. Subject to Lessee's rights to appeal the applicability or legality of same, failure of Lessee to remit such taxes when notified by any federal, state or local authority that such are overdue shall constitute a material breach of this Amended Lease Agreement for which the City may exercise any remedy available to it by law or as provided herein.

If the premises and improvements thereon are ever determined to be subject to ad valorem taxation, the parties shall automatically re-negotiate this Agreement. During such re-negotiations, this agreement will remain in full force and effect. If, after a reasonable period of re-negotiation, a dispute exists between the parties, either party may declare an impasse in writing to the other party. Upon such declaration, this agreement shall be terminated (except for those provisions that naturally extend beyond the physical use and occupancy of the premises), and the parties shall immediately commence efforts to effect a smooth but prompt vacation of the Golf Course by Southern Golf. In the event this agreement is terminated, each party shall pay 50% of the ad valorem tax due." for the last two sentences of the last paragraph of the section.

### **7.2 Utilities**

Lessee shall pay on a timely basis all charges for utilities, including electricity, gas, heating, cooling, telephone, water, sewer, gallonage charge on reuse water, and sanitation used by Lessee on the leased premises. In the event Lessee fails to make timely payment of such charges resulting in a lien being placed on the leased property, such event shall constitute a material default under this Lease, which shall trigger the City's rights and remedies hereunder. In addition, the City shall have the same rights to discontinue water service to the leased premises that it has with respect to its regular water and sewer customers, and Lessee waives and releases the City, its officers, employees and agents, from any and all claims for constructive, unlawful or improper eviction that it may otherwise have by reason of such discontinuance by the City; provided, however, that the City shall not discontinue water service while a good faith dispute exists regarding the

amount owed by Lessee to the City for water and sewer service, if Lessee promptly notifies the City of the existence of said dispute.

## **8. Capital Improvements**

### **8.1 Capital Improvements To Be Made by Lessee**

Lessee shall spend \$35,000 per year for mutually agreed to capital expenditures. All capital expenditures must be pre-approved in writing by the City. Any capital expenditures not pre-approved, in writing, will not be accepted as counting toward the capital commitment. On March 1, 2012 and March 1, 2013, any funds remaining in the capital commitment for that year will be spent on purchasing replacement turf maintenance equipment for the then existing fleet. The replacement equipment will be mutually agreed to by the parties.

Unless made on an emergency basis to prevent injury to person or property, Lessee will submit plans in a timely manner for any alteration or addition, , to the Director of the Department of Parks, Recreation and Cultural Arts or his or her designee for approval, provided that any denial can be appealed to the City Commission. Lessee shall not have the right to create or permit the creation of any lien attaching to City's interest in the leased premises as a result of any construction of capital improvements.

### **8.2 Capital Improvement Account Established By City For Hollywood Beach Golf and Country Club**

City also acknowledges that as owner of the leased premises it is in its long term best interest to invest in certain of the necessary infrastructure improvements at the Golf and Country Club. Accordingly, during the term of this Amended Lease Agreement, as it did under the prior Lease with Lessee, City agrees to continue to set aside each year in an account established for such purpose, an amount equal to twenty five percent (25%) of the Annual Base Rent and Annual Supplemental Rent paid by Lessee to City, not to exceed Fifty Thousand (\$50,000.00) Dollars per year, which funds shall be allocated by the City Commission, from time to time, for future repairs and improvements to the structures and infrastructure located on the leased premises.

## **9. Maintenance and Repair**

### **9.1 Lessee's Maintenance Obligations**

Lessee assumes sole responsibility for maintenance and repair of all buildings and other improvements on the leased premises and all personal property acquired under this Lease, and Lessee will maintain the leased premises in good order and in sanitary and safe condition at Lessee's sole expense. Lessee agrees it will

maintain the leased premises in conformance with the maintenance standard specified herein.

Lessee shall conduct the business of a golf course, restaurant, lounge and motel operations, and maintenance shall include all regularly scheduled maintenance consistent with standards established by the USGA for golf course operations and accepted industry standards for other related operations.

Lessee agrees to exercise reasonable care in the custody of all buildings and property of the City placed in its control in connection with this Lease and to set up such rules and regulations as are necessary for personnel under the Lessee's direction to insure a minimum of wear, tear, breakage and depreciation of all property of City. Except as provided in Section ~~8.2~~ 8.1 hereof, any capital equipment or replacement equipment deemed necessary by City and Lessee shall be purchased at the expense of Lessee.

It shall be the obligation of Lessee to maintain at its expense all grounds, including landscaping, lighting, parking lot, driveways, walkways, City swale areas, buildings, fences, pool, air conditioners, and irrigation system. The City swale area will be picked up on a daily basis by Hollywood Beach staff.

Failure of Lessee to properly maintain the leased premises after written notice and an opportunity to cure shall constitute a material breach of this Lease, entitling City to its rights and remedies hereunder.

"Maintenance." as used in this Amended Lease Agreement, shall mean the upkeep of all fixtures, furnishings and equipment, in order to preserve it in an efficient, usable, working order for the purpose that it is used and for its normal usable life expectancy. Maintenance includes, but is not necessarily limited to, periodic servicing, repairs, replacement of parts after breakdown, and such other functions as are necessary to preserve and conserve said furnishings, fixtures and equipment. Maintenance also includes the replacement of worn out, nonrepairable or obsolete furnishings, fixtures or equipment. Maintenance also constitutes maintaining the leased premises in accordance with all applicable City, County and State Code requirements for health, welfare and safety of the public. All course and tree debris, clippings and other trash will be removed from the property in a timely manner.

Maintenance as used herein shall not include major repairs to buildings due to partial or total destruction of those premises herein, to the extent such repairs are not covered by Lessee's insurance.

Lessee hereby accepts the premises in the condition they are in at the beginning of this Amended Lease and agrees to maintain said premises in the same or better condition, order and repairs as they are at the commencement of this Amended Lease, excepting only reasonable wear and tear arising thereof under this

Agreement, and to make good to City immediately upon demand any damage to water apparatus or electric lights or any fixture, appliances or appurtenances of said premises, or of the building, caused by any act or neglect of Lessee, or of any person or persons in the employ or under the control of the Lessee. In the event Lessee should neglect to maintain the leased premises. City shall have the right but not the obligation to cause repairs or corrections to be made, and any additional costs therefore shall be payable by Lessee to City as additional rent at the time the next month's rental installment becomes due.

Lessee shall at all times maintain the locker rooms, restaurant, lounge, kitchen and motel in a safe, clean and sanitary condition and shall comply with all applicable health and safety requirements for such facilities.

#### 9.2 Structural Repairs, Improvements, Capital Equipment, and Personal Property

Lessee will assume responsibility for the first Five Hundred (\$500.00) Dollars for each necessary structural repair, improvement and fixture to the leased premises and buildings thereon. City agrees that it will assume responsibility for any amounts in excess of Five Hundred (\$500.00) Dollars per necessary structural repair, improvement and fixture. City acknowledges that Lessee has met its obligations under the Prior Lease Agreement with respect to the capital improvements that were made in the initial lease period thereunder. In addition, City acknowledges Lessee has invested the amount necessary to reasonably re-equip the motel, restaurant, kitchen and lounge.

Within thirty (30) days after the Effective Date, attached hereto and incorporated herein as Exhibit C will be a complete revised inventory list prepared by the City and Lessee of City's and Lessee's respective personal property and assets located on the leased premises. Upon expiration of this Amended Lease, Lessor shall retain ownership and possession of all equipment, property, and fixtures on the site.

### 10. Insurance Requirements

The Lessee shall, on or before the Effective Date, continue to maintain or obtain all insurance required under this section and furnish proof of such insurance to the Risk Manager of the City. To the extent the required certificates of insurance were provided to City under the Prior Lease Agreement, this provision is deemed satisfied for so long as said certificates are still in force and effect.

All insurance certificates shall contain a provision that coverage afforded under these policies will not be cancelled until at least thirty (30) days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida and shall have adequate policyholders and financial ratings in the latest ratings of A.M. Best and be part of the Florida Insurance Guarantee Association Act.

Insurance shall be in force for the full life of this Amended Lease Agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Amended Lease Agreement, the Lessee shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewal or replacement certificate of insurance as proof that equal and like coverage for the balance of the period of the Contract and extension thereunder is in effect. The Lessee shall not continue to operate the facility pursuant to this Amended Lease Agreement unless all required insurance remains in full force and effect.

#### REQUIRED INSURANCE

1. Commercial General Liability to cover liability for bodily injury and property damage. Exposures to be covered are: Premises, operations, products/completed operations including restaurant liability and contractual. Coverage must be written on an occurrence basis, with no less than the following limits of liability:
  - A. Bodily Injury
    1. Each Occurrence \$ 1,000,000
    2. Annual Aggregate \$ 2,000,000
  - B. Property Damage
    1. Each Occurrence \$ 200,000
    2. Annual Aggregate \$ 2,000,000
  - C. Personal Injury  
Annual Aggregate \$ 1,000,000
  - D. Products – Comp/Operations \$1,000,000
2. Comprehensive Automobile Liability for all vehicles used in the performance of this Contract owned, non-owned, and hired vehicles:
  - A. Combined, Single Limit \$ 1,000,000
3. Liquor Liability
  - A. Each Occurrence \$ 1,000,000
4. Umbrella Insurance to be with limits of not less than One Million (\$1,000,000.00) Dollars excess of the required insurance for Commercial General Liability Insurance, Liquor Liability Insurance and Comprehensive Automobile Liability Insurance above.

5. The City of Hollywood must be named as an additional insured for the Comprehensive Automobile Liability Insurance, Commercial General Liability Insurance, Liquor Liability Insurance and Umbrella Liability Insurance coverage.
6. Workers' Compensation Insurance shall be maintained during the life of this Contract to comply with statutory limits for all employees and in the case any work is sublet, the Lessee shall require any subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the Lessee. The Lessee and its subcontractors shall maintain during the life of this policy Employer's Liability Insurance. The following must be maintained:
 

A. Workers' Compensation	Statutory
B. Employer's Liability	\$100,000 Bodily Injury by Accident
	\$ 500,000 Bodily Injury by Policy
	\$ 100,000 Bodily Injury by Each Employee
7. Business Interruption Insurance to be sufficient to cover a business interruption lasting three (3) months.
8. Personal Property Contents Insurance to cover all personal property and contents of the buildings located on the leased premises.

The City reserves the right to require any other insurance coverages it deems necessary depending upon the exposures.

#### 11. **Indemnification**

Except as otherwise provided herein, the Lessee agrees to indemnify and hold harmless and defend the City, its officers, agents and employees against any loss, damage or expense (including all costs and reasonable attorneys' fees) suffered by City from (a) any claim, demand, judgment, decree, or cause of action of any kind or nature arising out of any error, omission, or negligent act of Lessee, its agents, servants, employees or contractors in the performance of services under this Agreement (b) any breach of the Amended Lease Agreement, (c) any inaccuracy in or breach of any of the representations, warranties or covenants made by the Lessee herein, (d) any claims, suits, actions, damages or causes of action arising during the term of this contract for any personal injury, loss of life or damage to property sustained by reason or as a result of performance of this Contract by the Lessee and the Lessee's agents, employees, contractors, invitees, and all other persons, and (e) any claims, suits, actions, damages or causes of action for any personal injury, loss of life or damage to property sustained by reason or as a result of the presence of the Lessee and/or the Lessee agents, employees, Contractors, invitees, and all other persons on the property. These provisions shall survive the expiration or earlier termination of this Amended Lease Agreement. Nothing

in this Contact shall be construed to affect in any way the City's sovereign immunity and its rights, privileges, and immunities as set forth in Florida Statutes §768.28.

Except as otherwise provided herein, Lessee shall indemnify and save harmless the City from suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury or property damage arising from or out of any occurrence in, upon, at or from the demised premises or the occupancy or use by Lessee of said premises or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, employees, servants, invitees, licensees or concessionaires. Lessee shall store its property in and shall occupy the demised premises at its own risk, and release the City, to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury or property damage. City shall not be responsible or liable at any time for any loss or damage to Lessee's merchandise or equipment, fixtures or other personal property of Lessee or to Lessee's business. City shall not be responsible or liable to Lessee or to those claiming by, through or under Lessee for any loss or damage to either the person or property of Lessee that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining premises.

To the extent permitted by law, City shall indemnify and save harmless Lessee from suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury or property damage arising from or out of any occurrence in, upon, at or from the demised premises occasioned wholly or in part by City's or its employees', agents' or contractors' acts, omissions or negligence.

## **12. Damage and Restoration**

If the leased premises, including the buildings and/or grounds thereof are damaged or destroyed by storm, fire, lightning, earthquake, hurricane or other similar casualty, the City shall, within a reasonable time but not longer than sixty (60) days after such damage or destruction, fund the City's portion and authorize Lessee, as set forth herein, to commence to repair, reconstruct, restore or replace (hereinafter "Restoration or Replacement") City's buildings and grounds thereof and Lessee shall prosecute the same diligently to completion within a reasonable amount of time. Lessee agrees to fund the costs of Restoration or Replacement up to a maximum of Twenty Thousand (\$20,000) Dollars and City agrees that it will contribute any proceeds from FEMA claims and insurance claims and the greater of Three Hundred Thousand (\$300,000) Dollars or the amount of money then remaining on deposit in the account established pursuant to Section 8.2 hereof, for the leased premises for any required Restoration or Replacement. In the event such funding from Lessee and City is insufficient to cure such casualty occurrence, then the City, acting through the City Commission, will have the option to fund such Restoration and Repairs from other legally available revenue sources. Thereafter, if the City and Lessee in good faith mutually determine that it is not financially feasible to repair or restore the damage, this Amended Lease Agreement will be terminated within thirty days (30) days of such determination. If this Amended Lease Agreement is not terminated, but the premises are rendered partially unusable by such damage or destruction, Lessee's rental obligation will be reduced or abated by the City

Commission for such period of time as approved by the City Commission, but for no longer than the restoration period. Any such abatement granted shall be reduced or offset by any insurance proceeds received by the Lessee.

It is understood by Lessee that the City has no obligation and Lessee has no right hereunder to seek any rental abatement from severe rainstorms or flooding problems that are not atypical to South Florida and to Hollywood in particular.

**13. Lessee's General Obligations to Perform**

Greens fees, cart fees, related charges, package rates, promotional rates, tournament rates and membership charges shall be set by Lessee and shall be set at levels competitive with other publicly owned and professionally managed courses in the South Florida area. Lessee shall maintain written rules and regulations concerning the use of the golf course, clubhouse and related facilities and City acknowledges that such written rules and regulations have been submitted to City's Contract Administrator. Amendments to such rules and regulations shall not be effective until approved by City's Contract Administrator, which approval will not be unreasonably withheld. Any and all stationery, score cards, signs identifying the premises subject to this Lease shall clearly identify said premises as the Hollywood Beach Golf and Country Club.

Lessee shall provide sufficient and competent employees to professionally and properly manage and operate said golf course, including a PGA or USGA certified golf pro on premises at all times and all related facilities, including maintenance, and shall be obligated to pay all salaries for such employees, including the withholding of payroll and social security taxes, as may be applicable.

Lessee shall be obligated to secure and pay for all Federal, State and local licenses and permits and pay all sales and excise taxes required for the operation of any food or beverage concession and equipment sale or rental.

Lessee shall at all times hereunder provide and maintain a fleet of at least 75 golf rental carts for use by golfers. Golf carts must be new or in "like new" condition.

Lessee agrees to conduct an advertising and promotion program, at its sole expense, in connection with promoting and increasing business at the leased facilities. Advertising shall include the continuance of telephone directory advertisements, tourist trade journals and advertising in such other media as determined by Lessee, which is in Lessee's judgment, the best designed to attract and promote additional business to the leased premises.

Lessee shall at all times hereunder stock and display a reasonable supply sufficient to satisfy demand of golf equipment, supplies and apparel, which shall be offered for sale to the public, and particularly to the patrons of the golf course, at competitive prices comparable with the prices charged for equipment, supplies, and apparel at other public golf courses in the area.

Lessee agrees to keep the premises and facilities open to all persons, regardless of sex, race, color, creed, or national origin.

The Lessee and Lessee's on site golf professional shall use their best efforts to promote and stage golf tournaments, golf camps and golf schools, all of which shall be open to the public, with the rates for same established by Lessee.

Lessee shall not permit any intoxicated person or persons to remain upon the premises or to allow profane, indecent language, or improper, boisterous, or loud conduct to take place in or about the premises. Upon notice from the City, Lessee shall promptly attempt to correct such problems.

The Lessee shall conduct the business of a restaurant, bar, lounge, and motel. All service charges, room rates, catering rates, package rates, etc. shall be set by Lessee and shall be competitive with those fees charged at other public golf courses in Broward County for similar services.

Except for events beyond Lessee's control, the Lessee shall be required to keep the golf course, locker rooms, lounge, pro shop, restaurant, motel and related facilities open to the public seven days a week during such hours as is required to adequately serve public demand, but at a minimum, the golf course, pro shop, locker rooms and lounge shall be open daily from sunrise to sunset.

The Lessee shall not rent, sell, lease or offer any space for storage of any article or articles whatsoever, with or upon the premises other than Lessee's own equipment, the rental of equipment, lockers, and bulk storage of golf clubs and bags, without the prior written consent of the City. Lessee understands that this Amended Lease Agreement does not allow Lessee to subcontract out or assign any of Lessee's responsibilities hereunder without the prior approval of the City Commission, which consent shall not be unreasonably withheld as it relates to subcontracting out for operation of the restaurant, lounge, bar and motel.

Upon reasonable written notice from City, Lessee shall make available to City, Lessee's monthly and annual gross revenue and expense reports from operations of the leased premises, and copies of any assignments or subcontracts (executed or proposed).

Lessee shall be solely responsible for and shall pay all applicable charges, including required deposits, for gas, electricity, water, sewer, irrigation and telephone service necessary to carry on its operation under this Amended Lease Agreement.

Lessee shall provide the City on a quarterly basis a list of the current fees, rates, and prices in effect at the leased premises.

**14. Minority and Women Business Enterprise Participation**

It is the desire of the City of Hollywood to increase the participation of Minority and Women Business Enterprises (M/WBE's) in its procurements. While the City does not have a preference or set aside program for M/WBE's in place, it is committed to a policy of equitable participation for these firms. Lessee acknowledges City's policy and will use its best efforts to assist City consistent with the City's policy and Lessee's sound business judgment.

**15. Reclaimed Water Requirements**

Lessee agrees to purchase reclaimed water from the City, when available, for irrigation purposes. The annual average daily flow reserved capacity for the Hollywood Beach Golf and Country Club Golf Course is 213,000 gallons per day. Cost for reclaimed water is estimated at \$.100 cents per 1000 gallons. This gallonage charge will be Lessee's only charge for reclaimed water. In the event Lessee requests reclaimed water flow in excess of the reserved capacity, City, upon consideration of other commitments and operational requirements, shall provide the excess reclaimed water flow free of charge, if available. Lessee shall have no obligation to accept the reserved capacity of reclaimed water, but it shall be provided as set forth herein and Lessee shall pay the applicable charges regardless of whether or not Lessee takes reclaimed water when available.

Lessee agrees to allow City to maintain on the Hollywood Beach Golf and Country Club Golf Course property, facilities including holding pond, reclaimed water meter station, or transmission system that the City may deem necessary to be maintained for the purpose of providing reclaimed water. Such facilities are a part of the City facilities to be operated and maintained by the City. City designed the reclaimed water system so that the existing well water system will continue to be available as a back-up system in emergency situations. Lessee hereby grants to City necessary access to these facilities for operation and maintenance purposes. Lessee agrees to maintain irrigation system downstream of the point of connection to City facilities to enable acceptance of the reclaimed water reserved capacity. Lessee agrees to abide by the requirements of parts I and III of Rule 62-610, Florida Administrative Code, as amended, pertaining to the land application of reclaimed water for irrigation purposes.

**16. Termination for Abandonment or Default by Lessee or City: City and Lessee's Rights and Remedies**

If Lessee shall abandon or vacate the premises before the end of the term of this Amended Lease Agreement, or shall suffer the rent to be in arrears, or is otherwise in material default of this Amended Lease Agreement, without curing said payment default within fifteen ( 15) days of written notice of such payment default or said non-monetary default is not cured within thirty (30) days written notice of such non-monetary default; the City may, at its option, forthwith exercise its rights and remedies hereunder, including applying the Lessee's Letter of Credit to cure such monetary defaults and/or termination of this Amended Lease Agreement. if sufficient funds are not available from such sources to cure Lessee's default(s); and in the event of any such termination by City, the City may enter said premises as the agent of Lessee, by legal process or otherwise, without being

liable in any way therefore and relet the premises with or without any furniture that may be therein, as the agent of Lessee, at such price and upon such terms and for such duration of time as the City may determine, and receive the rent therefore, applying the same to the payment of the rent due by these presents, and if the full rental herein provided shall not be realized by City over and above the expenses to City in such reletting, the said Lessee shall pay any deficiency. Lessee agrees to pay the cost of collection, including the City's attorney's fee on any part of said rental that must be collected by suit or other legal action upon default by Lessee that Lessee does not cure, including any costs or fees incurred by City to recover possession of the leased premises. Notwithstanding the foregoing, any notice of default in the payment of rent may be worded so as to comply with the requirements of Florida Statutes, Section 83.20(2), and if so worded, shall serve as a notice under said statute; provided, however, that under no circumstance shall Lessee be given less than 15 days' notice in writing.

To the extent permitted by law, the non-prevailing party shall be responsible for all court costs and attorney's fees incurred by the prevailing party in any legal action brought to enforce this Amended Lease Agreement. The acceptance of all or part of a monthly consideration by City for any period or periods after a default in the faithful performance of any of the terms, covenants and conditions contained in this Amended Lease Agreement shall not be deemed a waiver of any right existing in City to cancel this Amended Lease Agreement on account of such default. Any waiver by City or Lessee of a default on the part of the other party shall not be construed as, or constitute a waiver of, any subsequent default of the same or any other term, covenant and condition herein contained to be kept and performed by either party.

In the event this Amended Lease Agreement is breached and uncured by Lessee and therefore terminated other than by mutual agreement prior to its normal expiration date, the City may apply any remaining funds from the Lessee's Letter of Credit being held by City against any outstanding rental obligations of Lessee. Lessee may seek to recover from City all of its capital contributions and supplemental capital contributions and its expenses and lost profits in the event Lessee terminates for cause or City improperly terminates this Amended Lease Agreement. Upon termination of this Lease for cause, the City will diligently pursue the obtaining of a new operator to take over operation of the leased facilities. As provided in Section 9.2, all improvements made by Lessee to the leased premises and all equipment purchased by Lessee shall become the property of the City with no liability to City based on termination for cause of this Amended Lease Agreement.

**17. Removal of Lessee's Property (Upon Termination)**

Upon early termination of this Amended Lease Agreement for cause, Lessee shall remove its equipment and furnishings which belong to Lessee and do not otherwise become the property of the City from the premises within thirty (30) days of the termination of this Amended Lease Agreement. However, Lessee's failure to remove its personal property within the period stated shall automatically be deemed an abandonment by Lessee of said equipment and shall become the property of City, or at the City's

option, removed and stored at Lessee's expense. Any capital improvements made by Lessee shall remain the City's property according to the provisions of this Amended Lease Agreement.

**18. Successors and Assigns**

The City and the Lessee each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Amended Lease Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all terms and conditions herein. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the City and the Lessee.

**19. Applicable Law/Venue**

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the parties' rights under this Agreement shall be held in Broward County Circuit Court. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**20. Discrimination**

The Lessee warrants, represents and covenants that it does not and will not unlawfully discriminate in its hiring practices.

**21. Enforcement Costs**

Except as otherwise expressly provided herein, in any legal action or other proceeding brought for the enforcement of the parties' rights hereunder, to the extent permitted by law, the successful or prevailing party shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any relief to which such party or parties may be entitled.

**22. Authority to Practice**

The City and Lessee hereby represent and warrant to each other that they each have and will continue to maintain, during the term of this Amended Lease Agreement, all licenses, permits and approvals required in order to conduct business and carry out their respective obligations hereunder and that each of them will at all times conduct their respective business activities in a professional, lawful and reputable manner. Proof of

such licenses and approvals shall be submitted to Lessee's and City's representatives upon request.

**23. Contract Administrator**

The City hereby designates the City's Director of Parks, Recreation and Cultural Arts, and/or his designee, as the City's Contract Administrator/Representative for purposes of administering this Amended Lease Agreement and Lessee's compliance with same and for communicating with the Lessee's representative, David Lottes.

**23. Severability**

If any term or provision of this Amended Lease Agreement, or the application thereof to my persons or circumstances, shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Amended Lease Agreement, or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Amended Lease agreement shall be deemed valid and enforceable to the maximum extent permitted by law.

**25. Debt**

The Lessee represents warrants and covenants that it will not and shall not pledge the City's credit or make it liable or a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The Lessee further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

**26. Contingent Fees**

The Lessee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Lessee, to solicit to secure this Amended Lease Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Lessee, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. Violation of this article shall constitute a material default by Lessee entitling City to its rights and remedies hereunder.

**27. Personnel**

The Lessee represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Amended Lease Agreement. Such personnel shall not be employees of or have any contractual relationship with the City, nor shall such personnel be entitled to benefits of the City including, but not limited to, pension, health and workers' compensation benefits.

All of the services required hereunder shall be performed by the Lessee or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted by law to perform such services. The Lessee represents, covenants and warrants that all services shall be performed by skilled and competent, full time on site management and operations personnel to the highest professional standards in the applicable field.

The Lessee hereby authorizes Dave Lottes or his authorized designee as Lessee's Representative hereunder and as the person in charge of Lessee's day to day operations of the leased premises.

Any changes or substitutions in the Lessee's representative(s) must be made known to the City's Administrator(s) and written approval must be granted by the City's Administrator(s) before said change or substitution can become effective.

**28. Surrender of License**

Lessee agrees to surrender and assign any state liquor licenses or other licenses for sale of alcoholic beverages to the City immediately upon termination for cause by City, pursuant to Section 16 hereof upon expiration or early termination of this Lease.

**29. Entirety of Contractual Agreement**

The City and the Lessee agree that this Amended Lease Agreement, together with the Exhibits hereto, which are hereby incorporated herein, sets forth the entire Amended Lease Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties. In the event of any conflict or inconsistency between this Amended Lease Agreement and the provisions in the incorporated Exhibits, the terms of this Amended Lease Agreement shall supersede and prevail over the terms in the Exhibits. Upon the Effective Date, this Amended Lease Agreement shall supersede the Prior Lease Agreement, which shall be deemed to have automatically expired.

**30. Notice**

All notices required in this Contract shall be sent by certified mail, return receipt requested, or by facsimile followed by next day hand delivery and if sent to the City shall be mailed to:

City Manager  
City of Hollywood  
2600 Hollywood Boulevard  
Hollywood, FL, 33020,

with a copy to the City Attorney at the same address,

and if sent to the Lessee shall be sent by certified mail, return receipt requested, or by facsimile followed by next day hand delivery to:

Southern Golf Appraisals, Inc.  
Hollywood Beach Golf and Country Club  
1600 Johnson Street  
Hollywood, FL 33020

and copy to:

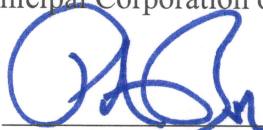
Alan B. Koslow, Esq.  
Becker & Poliakoff, P.A.  
3111 Stirling Road  
Fort Lauderdale, FL 33312.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals the day and year first above written.

ATTEST:

  
PATRICIA A. CERNY, MMC  
CITY CLERK

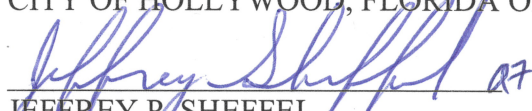
CITY OF HOLLYWOOD, FLORIDA,  
a Municipal Corporation of the State of Florida

BY:   
PETER BOBER, MAYOR

APPROVED:

  
MATTHEW LALLA  
DIRECTOR OF FINANCIAL  
SERVICES

APPROVED AS TO FORM & LEGALITY  
FOR THE USE AND RELIANCE OF THE  
CITY OF HOLLYWOOD, FLORIDA ONLY.

  
JEFFREY P. SHEFFEL  
CITY ATTORNEY

THIRD AMENDED AND RESTATED LEASE AGREEMENT  
HOLLYWOOD BEACH GOLF AND COUNTRY CLUB

LESSEE:  
SOUTHERN GOLF APPRAISALS, INC.

BY: \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TYPED NAME

BY: \_\_\_\_\_  
BY ITS VICE PRESIDENT

\_\_\_\_\_  
TYPED NAME

\_\_\_\_\_  
AS TO LESSEE

Hollywood Beach Turf Equipment	10-Dec Hours	Year
Toro Greens Aerator		
Graden verticutter		1995
25 Gal. Elect. Spray tank	150	
20 Gal. Elect. Spray tank		
Massey Ferg 240 tractor		
Stihl stick edger	4006	
Stihl stick edger		
Stihl weed eater		
Stihl chain saw 14"		
Stihl chain saw 19"		
Jacobsen 5 gang 6 blade		
Jacobsen 5 gang 6 blade		1995
Pull groomer brush		1990
Terra topper top dresser		
Gandy walk fertilizer spr.		2000
Lesco walk fertilizer spr.		
Gandy drop spreader		
Ryan Trac aire fwy. Aerifier		
Aerway fairway aerifier		1995
Jacobsen GK IV		1995
Jacobsen GK IV	3968	
Jacobsen GK IV w/ groomers	6765	
Jacobsen GK IV	2598	
Jacobsen GK IV	6089	
Jacobsen GK IV verticutter	4293	
Jacobsen 135 Fwy. 5 reel	4880	
Jacobsen 3400 Fwy. 5 reel	1290	
Jacobsen Tri-King 1900	4468	
72" Jacobsen Turf cat	6000	
Smithco trap rake	2973	1995
Salsco turf roller w/ trailer	4000	1995
4 wheel Cushman		1995
4 wheel Cushman w/ spray tank	4000	
Bush Bandit tree chipper	3177	
Jac 4 wheel cart		1993
Turf Vac		
Toro Trap rake		1995-97
Ford 2910 tractor	5049	

Hollywood Beach Turf Equipment	10-Dec Hours	Year
Ford 3910 tractor	7129	
Ford loader backhoe	4519	
Chevy 3500 2 ton truck		1977/ 1980's
Meter Matic topdresser	57300	
Meter Matic topdresser		1995
Power trim edger		1999

**LEGAL DESCRIPTION OF THE  
HOLLYWOOD COUNTRY CLUB GOLF COURSE**

Block 95, less the North 55 feet, less the West 70 feet and less the South 20 feet thereof, "Town of Hollywood" as recorded in Plat Book 1, Page 21 of the Public Records of Broward County, Florida

and

that parcel of land called "Golf Course" shown on the plat of "Hollywood Lakes Section" as recorded in Plat Book 1, Page 32 of the Public Records of Broward County, Florida, less the South 20 feet, less the East 20 feet and less that portion lying within 55 feet of the North line of Section 14, Township 51 South, Range 42 East

less

beginning at a point marking the intersection of the westerly right-of-way of N. 14th Avenue with the northerly right-of-way of Polk Street, thence northerly along the West right-of-way of N. 14th Avenue, a distance of 78.8 feet; thence southwesterly a distance of 130.7 feet to a point on the northerly right-of-way of Polk Street; thence Easterly along the northerly right-of-way of Polk Street, a distance of 104.4 feet to the point of beginning.

A.K.A. John B. Kooser Memorial Park

Exhibit A



# CITY of HOLLYWOOD, FLORIDA

## Department of Parks, Recreation and Cultural Arts

1405 South 28th Avenue • P.O. Box 229045 • Hollywood, Florida 33022-9045

Phone (954) 921-3404 • Fax (954) 921-3572 • [www.hollywoodfl.org](http://www.hollywoodfl.org)

**Chuck Ellis**  
Director

July 21, 2011

Dave Lottes, Vice President  
Southern Golf Appraisals  
1600 Johnson Street  
Hollywood, FL 33020

Dear Dave:

A search of our records indicates there is no personal property or portable asset belonging to the City of Hollywood at the Hollywood Beach Golf and Country Club. It is therefore assumed that all personal property and portable assets on the leased premises are the property and responsibility of Southern Golf Appraisals, Inc.

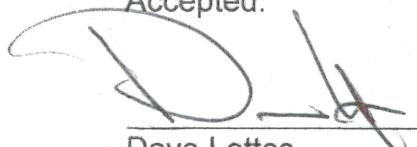
This letter will satisfy the requirements of an inventory as outlined in Section 9.2 of the Agreement dated May 28, 2011

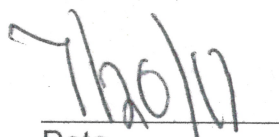
Please sign and date below to indicate your acceptance of this term.

Sincerely,

  
Jack Mathison  
Assistant Director

Accepted:

  
\_\_\_\_\_  
Dave Lottes  
Vice President, SGA

  
\_\_\_\_\_  
Date

C: Alan Fallik, Deputy City Attorney  
Chuck Ellis, Director  
David Vazquez, Assistant Parks and Athletics Manager

### EXHIBIT "C"

**Our Mission:** We are dedicated to providing municipal services for our diverse community in an atmosphere of cooperation, courtesy and respect.  
We do this by ensuring all who live, work and play in the City of Hollywood enjoy a high quality of life.



"An Equal Opportunity and Service Provider Agency"