

**AMENDED AND RESTATED LICENSE AND MANAGEMENT SERVICES  
AGREEMENT FOR HOLLYWOOD BEACH GOLF AND COUNTRY CLUB**

THIS AMENDED AND RESTATED LICENSE AND MANAGEMENT SERVICES AGREEMENT FOR HOLLYWOOD BEACH GOLF AND COUNTRY CLUB ("Agreement") is made and entered into as of this \_\_\_\_, day of \_\_\_\_, 2024 ("Effective Date") by and between the CITY OF HOLLYWOOD, a municipal corporation of the State of Florida (hereinafter "City") and McCumber - Wright Venture, LLC, a Florida corporation whose principal office is located in Hollywood, Florida (hereinafter "MWV"), whose Federal I.D. number is 010619141. The City and MWV may be jointly referred to as "Parties" within this Agreement.

WHEREAS, the City is the owner of the Hollywood Beach Golf and Country Club, located at 1650 Johnson Street, Hollywood, Florida (the "Golf and Country Club"); and

WHEREAS, on June 6, 2015, the City Commission passed and adopted Resolution No. R- 2015-169 which awarded the contract for Golf Course Management Services to MWV pursuant to RFP No. 4442-15-IS; and

WHEREAS, pursuant to Resolution No. R-2015-169, the parties were authorized to negotiate an agreement embodying the terms and conditions of the RFP to be considered by the City Commission at a later date; and

WHEREAS, City staff and MWV have negotiated a prior agreement for the management and operation of the Golf and Country Club ("Prior Agreement"), which was approved by the City Commission on June 2, 2016 pursuant to Resolution R-2016-161; and

WHEREAS, pursuant to Resolution No. R-2017-216 City staff and MWV amended the Prior Agreement to incorporate a temporary Club House in Exhibit "B"; and

WHEREAS, in order to complete the renovation project of the Golf and Country Club pursuant to the General Obligation Bond ("GO Bond"), the City and MWV have closed the Golf Course in May 2024, MWV thereafter tendered possession and control of the Golf Course to the City, and the City subsequently tendered possession of the Golf Course to the City's contractors so the contractor can commence its renovation work, while at the same time the Parties desire to amend the Parties' respective performance obligations under the Prior Agreement during the construction period for the Golf Course; and

WHEREAS, the City will re-deliver possession of portions of the renovated Golf Course to MWV, so MWV can provide the services to grow-in the Golf Course; and

WHEREAS, the Parties anticipate that the Golf Course will be closed to the general public for a period of time between twelve (12) to Sixteen (16) months during the construction period and grow-in period; and

WHEREAS, City staff and MWV wish to re-negotiate certain business terms of the Prior Agreement, as amended, to address the City's GO Bond renovation project for the Golf and Country

Club, MWV's capital investment for grow-in maintenance and continued management of the Licensed Premises (hereinafter defined) post renovation and reduce those terms to writing in the form of this Agreement.

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

**1. Licensed Property**

Commencing on the Effective Date, the City will continue to license to MWV and MWV hereby will operate and manage the property 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 Agreement for all purposes, along with all buildings, fixtures and other improvements located on the real property ("Licensed Premises").

**1.2 Authorized Use of Premises.**

MWV agrees it will use the Licensed Premises in accordance with the terms and conditions of this Agreement and RFP No. 4442-15-IS for the operation of a public 18-hole 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 shop, furnishing of lessons by a golf professional, operation of restaurant, golf course and grounds maintenance, administrative functions (daily play on course, tee time reservations, etc.).

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

**1.3** The name of the Golf Course shall be "Hollywood Beach Golf and Country Club; aka- Hollywood Beach Golf Club" and such name shall not be altered, modified or changed without the prior written consent of the City.

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

During the term of this Agreement, MWV 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 Licensed Premises.

**1.5 Revenue Sharing**

City hereby acknowledges that MWV will retain all Gross Revenues derived from all sources generated from the Licensed Premises, including but not limited to, memberships, golf green and cart fees, restaurant service, banquet rentals, food and

beverage services including beverage carts(s), marketing sales, instruction, club storage, and sale of pro shop merchandise excluding sales tax. However, if the Gross Revenues, excluding the capital reserve surcharge, generated from the Licensed Premises exceeds \$2,000,000.00 each year, then MWV shall pay the City twenty percent (20%) from the Gross Revenues in excess of \$2,000,000.00 each year. Said revenue sharing payment shall be remitted to the City thirty (30) days after the annual report is received by the City pursuant to Paragraph 12 herein.

## **1.6 Rent**

MWV shall pay to the City the first year's fixed rent of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00), which shall be paid on a monthly basis in an amount of Twelve Thousand Five Hundred and no/100 Dollars (\$12,500.00) exclusive of the rental sales tax. The first payment shall commence on the first day of the month following the first month that the Hollywood Beach Golf Club is open to the public. Beginning in year two of the term the fixed rent of \$150,000.00 will be adjusted upward by the Consumer Price Index for All Urban Consumers, All Items in the Miami-Fort Lauderdale-West Palm Beaches areas, not seasonally adjusted, using the February figures (CPI) plus applicable rental sales tax. Subsequent years thereafter, the adjusted fixed rent will be adjusted by CPI.

## **2. Effective Date and Term**

This Effective Date of Agreement shall be as noted on page 1 of this Agreement. The term of this Agreement shall commence on the date the Golf Course opens to the general public ("Commencement Date"), which the Parties anticipate to be June 1, 2025, and shall continue for a term of three (3) years from the Commencement Date ("Term"). Should the Golf Course open to the general public on any day other than the first day of the month then the rent for the first month shall be prorated by the Parties and the Term shall be enlarged and the partial first month shall be added to the three (3) year Term. This Agreement may be renewed at the sole discretion of the City for two (2) additional five (5) year terms contingent upon MWV agreeing to the terms of said renewal including review of revenue sharing, annual rent payment and capital surcharge charges as described in more detail in section 5 of this Agreement which will be initiated by MWV upon the completion of year two post re-opening of the golf course.

## **3. City's Right to Enter Onto Licensed Premises**

During the Term of this Agreement, MWV 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 MWV 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 MWV, and MWV'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. MWV'S "Grow-in" Obligations**

MWV shall be released of its duties and obligations under section 6 of the Prior Agreement as of May 6, 2024 which was the day the Parties closed the Golf Course and MWV tendered possession of the Licensed Premises to the City, for the City and the City's contractors to commence the renovation, redevelopment and construction work. During this time period the Licensed Premises are in the possession of the City or the City's Contractors, MWV shall be excused from performance under the terms of the Prior Agreement, and the City hereby waives MWV's compliance with performance of those additional duties and obligations. All said duties and obligations shall be reinstated when the City has re-tendered possession of the Golf Course to MWV which will be determined in section 2.

MWV shall undertake all necessary measures to maintain the golf course turf in optimal condition throughout the term of the grow-in period. Maintenance activities shall include, but not be limited to, regular mowing, fertilization, irrigation, pest control, aeration, and overseeding as required by industry standards and specific conditions of the turf. MWV shall ensure that all maintenance activities are performed using suitable equipment and qualified personnel, adhering to best practices in turf management specifically for growing in of new turf.

#### **4.1 Schedule of Maintenance:**

4.1.1. A detailed schedule outlining specific maintenance tasks and their frequency shall be mutually agreed upon by MWV and the City prior to the commencement of the grow-in period.

4.1.2. Any deviations from the agreed-upon schedule shall require prior written approval from the City, except in cases of emergency where immediate action is necessary to prevent damage to the turf.

#### **4.2 Quality Standards:**

4.2.1. MWV shall maintain the golf course turf to the highest industry standards, ensuring a uniform, healthy, and visually appealing appearance at all times.

4.2.2. The City reserves the right to conduct periodic inspections of the turf to assess compliance with agreed-upon quality standards. MWV shall promptly address any deficiencies identified during these inspections at no additional cost to the City.

#### **4.3 Use of Approved Equipment and Materials:**

4.3.1. MWV will provide all golf course equipment necessary to properly grow-in the turf.

4.3.2. All fertilizers, pesticides, herbicides, and other materials used during the grow-in period of the golf course turf must be approved by relevant regulatory authorities and in compliance with environmental regulations.

4.3.3. MWV shall provide documentation of the products used, including safety data

sheets and application records, upon request by the Client.

#### **4.4 Performance Guarantee:**

4.4.1. MWV warrants that all maintenance activities shall be carried out with due care and diligence, employing industry-standard practices and techniques.

4.4.2. In the event of turf damage or deterioration resulting from MWV's negligence or failure to perform the required maintenance activities, MWV shall be liable for the cost of remediation and restoration.

#### **4.5 Modification of Grow-in Terms:**

Any modifications or amendments to the terms of this Agreement shall be made in writing and signed by both parties.

#### **4.6 Grow-in Expense:**

The Parties anticipate that the City's contractor will complete the renovation of the Golf Course in a hole-by-hole renovation and said contractor will be in a position to re-tender portions of the Golf Course to the City when the grassing procedures are completed by the City's contractor so the "Grow-In" phase of the renovation can commence. In lieu of capital improvement funding required under the First Amendment to the License and Management Services Agreement for Hollywood Beach Golf Course, MWV will accept the tender of portions of the Golf Course as those portions are completed by the City's contractor. Per the terms of the City's contract with its contractor, when the City's contractor has completed the "grassing phase" of a portion of the Golf Course, contractor shall apply for approval of its work from City's Golf Course Architect. If the City's contractor's work is preliminarily approved by the City's Golf Course Architect, then that portion of the Golf Course shall be tendered to the City and MWV. The City's contractor shall warranty its work for thirty (30) days and thereafter said contractor shall request final approval of its work from the City's Golf Course Architect. With the exception of the warranty work that may be required of, and provided by, the City's contractor, commencing on the date of the City's Golf Course Architect's preliminary approval of the contractor's work for that portion of the Golf Course, MWV will pay for all expenses associated with turf grow-in phase and golf course maintenance of the Golf Course. MWV's grow-in expenditures shall include, but are not limited to, Golf Course Superintendent and maintenance staff cost, equipment cost, herbicides, fertilizers, mowing, and other associated maintenance practices, services, costs and expenses incurred to maintain, repair or grow-in the Golf Course. MWV's shall be responsible for all costs and expenses for an eight (8) month "grow-in" period commencing on the date of the City's Golf Course Architect's approval and terminating on the eighth (8<sup>th</sup>) monthly anniversary date. As an example, if the commencement date of MWV's payment for all grow-in services started on August 1, 2024 then MWV's responsibility would terminate on March 31, 2025. MWV's responsibilities include the appropriate liability insurance, workers compensation, automobile liability, and professional liability in line with the limits stated in section 7. In the event that the Golf Course has not opened to the general public for play by the end of the eight (8) months, then MWV will continue to provide all of the grow-in services required, however the City shall assume the

responsibility to pay for all of the grow-in expenses commencing at the end of the eighth (8<sup>th</sup>) month. MWV shall invoice the City for seventy-five thousand dollars (\$75,000.00) per month and the City shall pay MWV's invoice within thirty (30) days of receipt of said invoice. The City will continue to reimburse MWV at the rate of seventy-five thousand dollars (\$75,000.00) per month until the Golf Course is open to the general public. Any partial months during the grow-in period shall be prorated by the City and MWV. The monthly grow-in expenditures incurred by MWV and thereafter reimbursed by the City shall include, but are not limited to, Golf Course Superintendent and maintenance staff cost, equipment cost, herbicides, fertilizers, mowing, and other associated maintenance practices, services, costs and expenses incurred to maintain, repair or grow-in the Golf Course until the Golf Course opens for play to the general public.

## **5. Capital Reserve Program**

### **5.1 Additional Capital Improvements**

Upon the completion of the general obligation bond improvements and re-opening of the Hollywood Beach Golf Course, and continuing each year thereafter, MWV, shall make additional capital improvements to the Leased Premises as mutually agreed upon by MWV and the City. For the purpose of this section, "Additional Capital Improvement" shall mean an improvement which has a minimum useful life expectancy of three (3) years and is not typically categorized as a maintenance or repair activity/obligation of MWV. MWV will transfer title of the existing modular building and food trailer to the City.

### **5.2 Capital Reserve Surcharge**

MWV shall be required to implement a capital surcharge program commencing no later than two (2) years after opening of the golf course and every year thereafter for the entire term of this Agreement. The capital surcharge amount will be three dollars (\$3.00) per round of golf.

### **5.3 Capital Improvement Reserve Program**

All accumulated surcharge amounts in the capital improvement fund shall be spent toward City approved capital improvements to the golf course. If the fund is not used in any particular year of the term of this Agreement, it shall be accumulated toward the succeeding year or period. Commencing on the third year of this Agreement and each year thereafter, MWV shall submit a listing of additional capital improvement recommendations to City's PRCA Director and designee for approval. The City's PRCA Director and designee shall approve or disapprove the capital improvement recommendations.

### **5.4 Deposits to Capital Improvement Reserve Fund**

All funds accumulated shall be deposited in a stand-alone interest-earning escrow account. MWV shall submit to the City a quarterly account balance statement of the stand-alone interest-earning escrow account. Fund balance at end of this Agreement shall be turned over to the City and placed in a City account established for such

purpose of future additional capital improvements for the property.

**6. Alterations and Improvements**

MWV shall not demolish, remove, alter, modify replace or add to the improvements on the Leased Premises during the term of this Agreement other than in the normal course of business or in connection with the removal of obsolete equipment or improvements unless MWV secures the prior written approval of the City, which approval may be granted or withheld in the City's sole reasonable discretion. To obtain approval of any alternation, MWV shall submit to the City PRCA Director or designee together with a statement of MWV's reasons for the alteration. Any such approved demolition, removal, alteration, modification, replacement, or addition shall be commenced and completed in accordance with all of the Sections of this Article, to the extent they apply as well as any federal, state, or local law requirements.

**7. Maintenance, Repair and Operation of Licensed Premises**

**7.1 MWV's Maintenance Obligations**

MWV assumes sole responsibility for maintenance and repair of all buildings in their current condition as of the Commencement Date of this Agreement, and other improvements on the Licensed Premises and all personal property acquired under this Agreement, and MWV will maintain the Licensed Premises in good order and in sanitary and safe condition at MWV's sole expense. MWV agrees it will maintain the Licensed Premises in conformance with the maintenance standard specified herein.

MWV shall conduct the business of a golf course, restaurant, pro shop, facility 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.

MWV agrees to exercise reasonable care in the custody of all buildings and property of the City placed in its control in connection with this Agreement and to set up such rules and regulations as are necessary for personnel under MWV's direction to insure a minimum of wear, tear, breakage, and depreciation of all property of City.

It shall be the obligation of MWV to maintain at its expense all grounds, including but not limited to, landscaping, tree trimming, lighting, parking lot, driveways, walkways, cart paths, City swale areas (which includes mowing, edging and landscape maintenance), aquatic maintenance, buildings, fences, signage, air conditioners, and irrigation pump and system. The City will be responsible for de-littering and emptying of trash receptacles on the City swale area.

Failure of MWV to properly maintain the Licensed Premises after written notice and an opportunity to cure shall constitute a material breach of this Agreement, entitling City to its rights and remedies hereunder.

"Maintenance." as used in this 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, non-repairable or obsolete furnishings, fixtures, or equipment. Maintenance also constitutes maintaining the Licensed 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 Licensed Premises herein to the extent such repairs are not covered by MWV's insurance.

MWV hereby accepts the Licensed Premises in the condition as of the Commencement Date and agrees to maintain said Licensed Premises in the same or better condition, order and repairs as they are at the commencement of this Agreement, 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 MWV, or of any person or persons in the employ or under the control of MWV. In the event MWV should neglect to maintain the Licensed 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 MWV to City.

MWV shall at all times maintain the pro shop, offices, restaurant, restrooms, kitchen, cart barn, and maintenance area in a safe, clean and sanitary condition and shall comply with all applicable health and safety requirements for such facilities.

## **7.2 Personal Property and Structural Repairs**

7.2.1. Within forty-five (45) days after the Commencement Date, MWV shall provide to the City a complete inventory list of MWV's respective personal property, and assets located on the Licensed Premises which will upon review will be agreed upon by the City and such inventory list will be attached to and incorporated herein as Exhibit "B". Upon expiration of this Agreement, City shall retain ownership and possession of all capital improvements, equipment, property, and fixtures on the site and MWV will remove all personal property listed on the inventory list.

7.2.2 MWV will assume responsibility for each necessary structural repair (except as set forth herein), improvement and fixture to the Licensed Premises and buildings thereon. MWV's responsibility and obligation for structural repairs to the Licensed Premises and buildings shall be twenty thousand (\$20,000) dollars annually. For purposes of this Paragraph, structural repairs shall mean any part, material or assembly of a building or structure which affects the safety of such building or structure and/or which supports any dead or designed live load and the

removal of which part, material or assembly could cause, or be expected to cause, all or any portion to collapse or fail. Additionally, sewer, plumbing, air conditioning, gas and electrical systems are to be included under structural repairs.

In the event, that it is determined by the City that building or structure is deemed unsafe and needs to be demolished, then the City shall bear the cost for such demolition.

## **8. Insurance Requirements**

MWV shall before the Effective Date of this Agreement, obtain all insurance required under this section and in accordance with RFP No. 4442-15-IS and furnish proof of such insurance, including the Certificate of Insurance and certified copy of the insurance policy to the Department of Parks, Recreation and Cultural Arts to be reviewed by the City's Risk Management Office. The insurance policy shall not contain any exceptions that would exclude coverage for risks that can be directly or reasonably related to the scope of goods or services to be provided under this Agreement. A violation of this requirement at any time during the term of this Agreement, or any extension thereof: shall be grounds for the immediate termination of this Agreement. In order to show that this requirement has been met, MWV must submit a signed statement from the insurance agency of record that the full policy contains no such exception.

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 AM. Best and be part of the Florida Insurance Guarantee Association Act.

Insurance shall be in force for the full life of this Agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Lease Agreement, MWV 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 Agreement and extension thereunder is in effect. MWV shall not continue to operate the facility pursuant to this 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:

<b>A.</b>	Bodily Injury	
	Each Occurrence	\$1,000,000
	Annual Aggregate	\$2,000,000
<b>B.</b>	Personal Injury	\$1,000,000

C. Products - Comp/Operations \$1,000,000

D. Damages to Licensed Premises \$1,000,000

2. Comprehensive Automobile Liability for all vehicles used in the performance of this Contract owned, non-owned, and hired vehicles:

Combined, Single Limit \$500,000

3. Liquor Liability

Each Occurrence \$1,000,000

4. Pollution Insurance

The minimum limits of liability shall be \$1,000,000 each Claim. If coverage is provided on a claims-made basis, an extended claims reporting period of four (4) years will be required. The City of Hollywood shall be named as Additional Insured.

5. Professional Liability Insurance - Prior to commencing any capital improvements on the Licensed Premises, MWV shall cause any architects or engineers to maintain Architects and Engineers Errors and Omissions Liability Insurance specific to the capital improvements that shall be obtained. If coverage is provided on a "Claims Made" basis, the policy shall provide for the reporting of claims for a period of two (2) years following the completion of all construction activities. The minimum limits acceptable shall be \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate.

6. The City of Hollywood must be named as an additional insured for the Comprehensive Automobile Liability Insurance, Commercial General Liability Insurance, and Liquor Liability Insurance.

7. 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, MWV 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 MWV. MWV and its subcontractors shall maintain during the life of this policy Employer's Liability Insurance. The following limits must be maintained:

A. Compensation – Statutory

B. Employer's Liability

Bodily Injury by Accident	\$100,000
Bodily Injury by Policy	\$500,000
Bodily Injury by Each Employee	\$100,000

8. Business Interruption Insurance to be sufficient to cover a business interruption lasting four (4) months.
9. Personal Property Contents Insurance to cover all personal property and contents of the buildings located on the Licensed Premises.
10. Prior to the commencement of work governed by this contract, MWV shall obtain the insurance set forth herein and as set forth in RFP-4442-15-IS. Coverage shall be maintained throughout the life of the agreement.

Coverage shall be provided by a company, or companies authorized to transact business in the State of Florida and the company must maintain a minimum rating of A-, V11, as assigned by the AM. Best Company.

The policy(s) must be endorsed to provide the City with thirty (30) days' notice of cancellation and/or restriction.

If applicable, any sub-contractor(s) used by MWV shall supply such similar insurance required of MWV. Such certificate shall name the City as additional insured.

The City reserves the right to require any other insurance coverage(s) it deems necessary depending upon the exposures.

## **9. Indemnification**

Except as otherwise provided herein, MWV shall 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 MWV, its agents, servants, employees or contractors in the performance of services under this Agreement (b) any breach of the Agreement, (c) any inaccuracy in or breach of any of the representations, warranties or covenants made by the MWV herein, (d) any claims, suits, actions, damages or causes of action arising during the term of this Agreement for any personal injury, loss of life or damage to property sustained by reason or as a result of performance of this Agreement by the MWV and MWV'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 MWV and/or MWV's agents, employees, contractors, invitees, and all other persons on the property. These provisions shall survive the expiration or earlier termination of this Agreement. Nothing in this Agreement shall be construed to affect in any way the City's sovereign immunity and its rights, privileges, and immunities as set forth in Section 768.28, Florida Statutes.

Except as otherwise provided herein, MWV 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 MWV of said premises or any part

thereof (or occasioned wholly or in part by any act or omission of MWV , its agents, contractors, employees, servants, invitees, licensees or concessionaires. MWV 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 MWV's merchandise or equipment, fixtures or other personal property of MWV or to MWV's business. City shall not be responsible or liable to MWV or to those claiming by, through or under MWV for any loss or damage to either the person or property of MWV 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 MWV 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.

#### **10. Damage and Restoration**

In the event of any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Golf Course Area during the License term or any holdover thereafter, MWV shall immediately notify City and shall at MWV's sole expense, clean and restore the Golf Course Area to the satisfaction of the City and any governmental body or court having jurisdiction of the matter.

If the Licensed 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 MWV, as set forth herein, to commence to repair, reconstruct, restore or replace (hereinafter "Restoration or Replacement") City's buildings and grounds thereof and MWV shall prosecute the same diligently to completion within a reasonable amount of time. MWV agrees to fund the costs of Restoration or Replacement up to a maximum of twenty-five thousand (\$25,000) dollars and City agrees that it will contribute any proceeds from FEMA claims and insurance claims for the Licensed Premises for any required Restoration or Replacement.

In the event such funding from MWV 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 MWV in good faith mutually determine that it is not financially feasible to repair or restore the damage, this Agreement will be terminated within thirty days (30) days of such determination. It is understood by MWV that the City has no obligation and MWV has no right hereunder to seek any financial abatement from severe rainstorms or flooding problems.

#### **11. MWV's General Obligations to Perform**

**11.1** Greens fees, cart fees, related charges, package rates, promotional rates, tournament rates and membership charges shall be set by MWV and shall be set at levels

competitive with other publicly owned and professionally managed courses in the South Florida area. City of Hollywood residents shall receive: (a) 50% discount on annual membership dues or (b) 25% discount to the public base rate green fee during the six-month period November 1 through April 30 and 20% discount to the public base rate green fee during the six-month period May 1 through October 31. TO obtain either discount City of Hollywood residents must present valid proof of residency satisfactory to MWV. To be clear either of these discounts do not apply to cart fees sometimes called daily access fees. MWV shall submit seasonal rates to the City for approval and the City's approval will not be unreasonably or untimely withheld. MWV 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 the City's PRCA Director and designee. Amendments to such rules and regulations shall not be effective until approved by the City's PRCA Director and designee, which approval will not be unreasonably withheld. Any and all stationery, score cards, signs identifying the premises subject to this Agreement shall clearly identify said premises as the Hollywood Beach Golf and Country Club; aka - Hollywood Beach Golf Club.

- 11.2** MWV shall provide sufficient and competent employees to professionally and properly manage and operate said premises, including 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. Maintenance personnel shall be supervised by MWV's golf course superintendent, who will be a full-time and on-site Class "A" GCSAA (Golf Course Superintendents Association of America) superintendent with a minimum of five (5) years' experience in a warm season environment. A PGA or USGA certified pro shall be on premises a minimum of 40 hours per week. A Food and Beverage Manager with a minimum of three (3) years' experience operating a restaurant shall be on premises a minimum of 40 hours per week. And a General Manager with a minimum of five (5) years' experience in golf and food and beverage experience shall be on premises a minimum of 40 hours per week.
- 11.3** MWV 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
- 11.4** MWV shall at all times hereunder provide and maintain a fleet of at least 72 golf rental carts for use by golfers. Golf carts must be new or in "like new" fully operational condition.
- 11.5** MWV shall at all times provide and maintain a fully operational golf course maintenance equipment fleet to maintain the golf course at the agreed upon maintenance standards.
- 11.6** MWV agrees to conduct an advertising and promotion program, at its sole expense, in connection with promoting and increasing business at the Licensed Premises.
- 11.7** MWV 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.

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

**11.9** MWV 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 MWV.

**11.10** MWV 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, MWV shall promptly attempt to correct such problems.

**11.11** MWV shall conduct the business of a golf course, pro shop, restaurant with bar, catering rates, etc. shall be set by MWV and approved by the PRCA Director or designee and shall be competitive with those fees charged at other public golf courses in South Florida for similar services.

**11.12** Except for events beyond MWV's control, MWV shall be required to keep the golf course, pro shop, restaurant, restrooms, kitchen 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, restrooms and restaurant shall be open daily from sunrise to sunset, coinciding with golf course hours.

**11.13** MWV shall not rent, sell, lease or offer any space for storage of any article or articles whatsoever, with or upon the premises other than MWV's own equipment, the rental of equipment, lockers, and bulk storage of golf clubs and bags, without the prior written consent of the City. MWV understands that this Agreement does not allow MWV to subcontract out or assign any of MWV'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.

**11.14** Upon reasonable written notice from City, MWV shall make available to City, MWV'S monthly and annual gross revenue and expense reports from operations of the Licensed Premises, and copies of any assignments or subcontracts (executed or proposed).

**11.15** MWV shall be solely responsible for and shall pay all applicable charges, including required deposits, for gas, electricity, water, sewer, irrigation, communication and internet services necessary to carry on its operation under this Agreement.

**11.16** MWV shall provide the City on a seasonal basis a list of the current fees, rates, and prices in effect at the Licensed Premises.

**11.17** Thirty (30) days prior to the commencement of the Capital Reserve Surcharge, MWV shall provide a fidelity bond guaranteeing the City the faithful collection, accounting, and remittance of all surcharge monies due to the City collected as set forth in the Agreement. The coverage shall include employee dishonesty, forgery or alteration and theft disappearance and destruction. The fidelity bond shall have a \$130,000.00 limit and a \$13,000 per loss limit. Said fidelity bond shall be for the term of this Agreement.

**11.18** MWV shall provide a performance bond or irrevocable letter of credit guaranteeing the successful performance of the Agreement including all aspects of operations and maintenance shall be provided to the City before operations begin. The bond or letter of credit amount shall be in the amount of \$150,000.00

## **12. MWV's Obligation to Maintain Records**

MWV must generate, maintain, and publish appropriately detailed accounting records for all aspects of the Licensed Premises. Said records should be of the type and detail sufficient to allow for an unqualified opinion by auditors. Failure to keep and provide detailed accounting records on a regular basis will be considered a material default by MWV. 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

At MWV's expense, within one hundred and twenty (120) days after the end of each Year of this Agreement, MWV shall prepare and deliver or cause to be prepared and delivered to the City an annual audited financial statement for Hollywood Beach Golf and Country Club certified to be correct by MWV and prepared by a certified public accountant in accordance with consistent practices governing cash receipts, which shall at a minimum contain a statement of the Gross Revenues and Expenses. At all reasonable times the City shall be given access to MWV's business records to allow the City to audit the annual statement.

If MWV shall fail to prepare and deliver or cause to be prepared and delivered any of the above records and statements and such failure continues after thirty (30) days written notice by the City to MWV, the City may cause an audit to be made of all books, records and accounts of business operations conducted in, on or from the Licensed Premises and for such delinquent accounting period and may prepare the statement or statements which MWV shall have failed to prepare and deliver. Said audit or audits shall be in addition to any other audits required herein and MWV shall pay on demand all expenses of any audit contemplated by this Paragraph.

## **13. Reclaimed Water Requirements**

MWV shall 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. MWV hereby agrees to pay a monthly fee, rate and/or charge for reclaimed water supply services as set by City Ordinance which may be changed from time to time but which is currently the sum often

cents (\$.10) per one thousand (1,000) gallons. CITY shall set the same fees, rates, and charges for all reclaimed water users. Such fees, rates and charges shall be adopted or amended by resolution and/or ordinance of the City's Commission. City shall hold public hearings on adjustments to the rates and charges in the manner provided by law. This gallonage charge along with Utility Tax will be MWV's only charge for reclaimed water. In the event MWV requests reclaimed water flow in excess of the reserved capacity, City, upon consideration of other commitments and operational requirements (including limited storage capability), shall provide the excess reclaimed water flow at no charge, if available. MWV shall have no obligation to accept the reserved capacity of reclaimed water, but it shall be provided as set forth herein and MWV shall pay the applicable charges regardless of whether or not MWV takes reclaimed water when available.

MWV 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. MWV hereby grants to City necessary access to these facilities for operation and maintenance purposes. MWV agrees to maintain irrigation system downstream of the point of connection to City facilities to enable acceptance of the reclaimed water reserved capacity. MWV 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.

#### **14. Taxes and Utilities**

##### **14.1 Applicable Taxes**

During the term hereof MWV shall be responsible and liable to timely pay and discharge, before any fine, penalty, interest or cost may be added, any and all federal state and local taxes, personal property taxes, all ad valorem real property taxes (if applicable), fees, assessments and charges levied as a result of use of the premises and activities covered by this Agreement. City represents to MWV that the Licensed 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 Licensed Premises during the term of this Agreement. Subject to MWV's rights to appeal the applicability or legality of same, failure of MWV to remit such taxes when notified by any federal state or local authority that such are overdue shall constitute a material breach of this 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, then MWV shall be responsible and liable to pay such ad valorem taxes.

##### **14.2 Utilities**

MWV 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 MWV on the leased premises. In the event MWV fails to make timely payment of such charges resulting in a lien being placed on the Licensed Premises, such event shall constitute a material default under this Agreement 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 Licensed Premises that it has with respect to its regular water and sewer customers, and MWV 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 MWV to the City for water and sewer service, if MWV promptly notifies the City of the existence of said dispute.

## **15. Termination**

**15.1** The City may terminate this Agreement with cause in the event of default by MWV, provided that City notifies MWV in writing of the default and MWV fails to cure the event of default within 45 days of City's notice in accordance with Paragraph 16 below.

**15.2** MWV may terminate this Agreement in the event of breach or default by the City, provided that MWV notifies City in writing of the breach or default and City fails to cure the breach or default within ninety (90) days of MWV's notice.

## **16. Event of Default**

An Event of Default shall mean a breach of this Agreement by MWV. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:

1. MWV has not delivered/performed all aspects of this Agreement on a timely basis;
2. MWV has refused or failed, except in any case for which an extension of time is provided, to supply enough properly skilled personnel;
3. MWV has failed to make prompt payment to subcontractors or suppliers for any services;
4. MWV has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of MWV's creditors, or MWV has taken advantage of any insolvency statute or debtor/creditor law or if MWV's affairs have been put in the hands of a receiver;
5. MWV has failed to obtain the approval of the City where required by this Agreement; and
6. MWV has failed in the representation of any warranties stated herein.

If MWV shall abandon or vacate the premises before the end of the term of this

Agreement, or is in material default of this Agreement, and the material default is not cured within forty-five (45) days written notice of such default and MWV shall provide City within the 45 day cure period with documentation for remedying the default; the City may, at its option, forthwith exercise its rights and remedies hereunder, including applying the Payment and Performance Bond(s) or MWV's Letter of Credit cure such defaults and/or termination of this Agreement. If sufficient funds are not available from such sources to cure MWV's default(s); and in the event of any such termination by City, the City may enter said premises as the agent of MWV, by legal process or otherwise, without being liable in any way therefore and re-license the premises with or without any furniture that may be therein, as the agent of MWV, and if the full compensation herein provided shall not be realized by City over and above the expenses to City in such re-licensing, MWV shall pay any deficiency. MWV agrees to pay the cost of collection, including the City's attorney's fee for any legal action upon default by MWV that MWV does not cure, including any costs or fees incurred by City to recover possession of the Licensed Premises.

Any waiver by City or MWV of an event of default on the part of the other party shall not be construed as, or constitute a waiver of; any subsequent event of 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 Agreement is breached and uncured by MWV and therefore terminated other than by mutual agreement prior to its normal expiration date, the City may apply any remaining funds from MWV's Letter of Credit or the Payment and Performance Bond(s) being held by City against any outstanding capital improvement obligations of MWV or the maintenance and operation obligations of MWV for the Licensed Premises. Upon termination of this Agreement for cause, the City will diligently pursue the obtaining of a new operator to take over operation of the Licensed Premises. As provided in this Agreement, all improvements made by MWV to the Licensed Premises and all equipment purchased by MWV shall become the property of the City with no liability to City based on termination of this Agreement.

**17. Removal of MWV's Property Upon Termination**

Upon early termination of this Agreement for cause, MWV shall remove its equipment and furnishings which belong to MWV and do not otherwise become the property of the City from the premises within thirty (30) days of the termination of this Agreement. However, MWV's failure to remove its personal property within the period stated shall automatically be deemed abandonment by MWV of said equipment and shall become the property of City, or at the City's option, removed and stored at MWV's expense. Any capital improvements made by MWV shall remain the City's property according to the provisions of this Agreement.

**18. Successors and Assigns**

The City and MWV each bind itself and its partners, successors, executors, administrators and assigns to the other party of this 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 MWV.

**19. Applicable 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**

MWV 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 MWV hereby represent and warrant to each other that they each have and will continue to maintain, during the term of this 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 MWV'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 designee, as the City's Contract Administrator/Representative for purposes of administering this Agreement and MWV's compliance with same and for communicating with MWV's representative, Josh McCumber.

**24. Severability**

If any term or provision of this 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 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 Agreement shall be deemed valid and enforceable to the maximum extent permitted by law.

**25. Debt**

MWV 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. MWV further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

**26. Contingent Fees**

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

**27. Personnel**

MWV represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this 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 MWV 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. MWV 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.

MWV hereby designates, appoints and authorizes Josh McCumber to be MWV's Representative hereunder and as the person in charge of MWV's day to day operations of the Licensed Premises.

Any changes or substitutions in MWV'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. Entirety of Contractual Agreement**

The City and MWV agree that this Agreement, together with the Exhibits hereto, which are hereby incorporated herein, and RFP No. 4442-15-1S sets forth the entire 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. The Recitals are true and correct and

incorporated herein by this reference. In the event of any conflict or inconsistency between this Agreement and the provisions in the incorporated Exhibits, the terms of this Agreement shall supersede and prevail over the terms in the Exhibits.

**29. Notice**

All notices required in this Agreement shall be sent by certified mail, return receipt requested, or by facsimile/email 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 MWV shall be sent by certified mail, return receipt requested, or by facsimile/email followed by next day hand delivery to:

Hollywood Beach Golf Club  
1650 Johnson Street  
Hollywood, FL 33020  
with a copy to:

Frederick J. Mills, Esquire  
Morrison & Mills PA  
1200 W. Platt Street, Suite 100  
Tampa, Florida 33606  
[Mills@MorrisonandMills.com](mailto:Mills@MorrisonandMills.com)

IN WITNESS WHEREOF, the Parties have made and executed this Second Amendment to the License and Management Services Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2024 under the following signatures.

CITY OF HOLLYWOOD, FLORIDA,  
a municipal corporation of the State of  
Florida

ATTEST:

\_\_\_\_\_  
CITY CLERK

BY: \_\_\_\_\_  
MAYOR

APPROVED AS TO FORM.

\_\_\_\_\_  
CITY ATTORNEY

McCumber-Wright Venture, LLC

By: \_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_ \_\_, 2024

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE HOLLYWOOD B E A C H 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, 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 "B"**

**PERSONAL PROPERTY INVENTORY PURSUANT TO PARAGRAPH 7.2**