

## **AGREEMENT**

THIS AGREEMENT ("Agreement") made this \_\_\_\_, day of \_\_\_\_\_, 2019, by and between the City of Hollywood, Florida, ("City"), a municipal corporation organized and existing under the Constitution of the State of Florida and the Port Everglades Rowing Club, Inc. d/b/a Hollywood Rowing Club ("Club").

### **W I T N E S S E T H**

WHEREAS, Club desires to enter into an Agreement with the City to use the municipal property ("Property"), as more fully described in Exhibit "A", for the purpose of operating and maintaining a rowing program at Holland Park, Hollywood, Florida; and

WHEREAS, the City desires to allow Club to use the Property for the purpose of operating and maintaining a rowing program which includes the use of the permanent boathouse structure at Holland Park that was constructed by the Club; and

WHEREAS, the City and Club desire to enter into this Agreement in order to establish the terms and conditions under which the City will allow Club to occupy and manage the Property for a rowing program.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt of which is hereby acknowledged by each of the parties hereto, the parties agree as follows:

#### **1. PROPERTY DESCRIPTION**

The City shall allow Club to occupy the municipal property located at Holland Park as described more particularly in the attached Exhibit "A", subject to the terms and conditions of this Agreement.

The City shall allow Club to maintain and occupy the permanent boathouse structure found and located on the Property (the "Premises").

#### **2. TERMS AND CONDITIONS**

2.1 The City shall allow Club to manage and occupy solely for the exclusive purpose of operating and maintaining an amateur rowing program, rowing classes and activities. Any other use that Club desires to make of the Property is prohibited without the written consent of the City's Director of Parks, Recreation and Cultural Arts ("PRCA").

2.2 Parties hereto agree that Club shall pay all applicable federal, state and local taxes, (including but not limited to sales taxes, if any,) applicable to the Club's use of the Property and the Premises.

2.3 Club shall accept the Property and the Premises in its "AS IS" condition at the time of commencement of the term of this Agreement.

2.4 Club shall maintain the Property and the Premises in good condition and repair, reasonable wear and tear excepted. Club shall not be responsible for maintenance or repair of the seawall and cement boat ramps on the Property. Club will continue to maintain the rowing dock they constructed and installed on the north side of the ramp complex as shown in Exhibit "A". Club shall not be responsible for the care of the trees and the lawn on the Property including trimming, removing, replanting, mowing irrigating, fertilizing and/or resodding the same. Club shall not be responsible for landscaping the Property.

2.5 Club may construct and maintain lighting facilities serving the Premises upon obtaining written approval by the Director of PRCA, for such lighting facilities. Club shall pay all construction, maintenance and electricity costs in connection therewith.

2.6 Club shall not construct, install, maintain, or place any equipment or structure upon the Property and the Premises, except as may be agreed to by the City for the purpose of operating and maintaining an amateur rowing program. The City herewith agrees to the placement of rowing shell racks and trailers on the site for the purpose of conducting the programs of the Club.

2.7 Any equipment or structure constructed, installed, maintained, or placed upon the Property, pursuant to Paragraph 2.6, shall be removed there from by Club within forty-five (45) days of the expiration or termination of this Agreement. If Club fails to comply with this obligation, the City shall have the right to remove any such equipment or structure and the reasonable cost of such removal shall be paid upon demand by Club to the City.

2.8 Club shall designate one or more authorized representatives who shall act as the responsible party on the Property and who shall be available to the City at all times during the duration of this Agreement.

2.9 Club shall keep the Property and the Premises and the attached or immediately adjacent grounds areas in a neat, clean and sanitary condition on a regular basis for the duration of this Agreement.

2.10 Club shall be financially responsible for any and all violations of disposal procedures established by the City of Hollywood or any other governmental body having jurisdiction over the Property and the Premises.

2.11 Club shall comply with all applicable federal, state and local laws and ordinances.

2.12 Club shall not assert any control, direction or authority over any activities on the Property except as may be provided by this Agreement.

2.13 Club shall in no way interfere with or hamper access by the general public to the Property; however, Club may control access by the general public to the boathouse structure on the Premises.

2.14 Club shall immediately report to the Director of PRCA all incidents, happenings or altercations occurring on the Property or the Premises.

2.15 Club may erect appropriate signage upon the Premises after obtaining written approval by the Director of PRCA and the other relevant City departments for such signage. The City reserves the right to control the type, area, height, number or location of the signage. Club shall pay all erection and maintenance costs in connection therewith.

### 3. CONTRACT TERM

3.1 This Agreement shall be for a term of ten years beginning July 31, 2019 and ending July 30, 2029. The Agreement may be renewed for one additional five year term upon written mutual agreement of the parties. If either party intends not to renew then the non-renewing party shall give 90 days prior written notice of its intent not to renew.

3.2 This Agreement shall continue in effect for the duration of the term described in Paragraph 3.1 hereto, provided however, that the parties hereto may terminate this Agreement "with or without cause" on 90 days written notice. The City shall also have the termination right contained in Section 8.2 hereof. The City shall not be liable to Club for any losses incurred by reasons of such termination. If the City terminates the agreement without cause then the City shall pay the Club the associated straight line depreciation value of the dock (see Exhibit B. HRC Floating Dock - Straight Line Depreciation 2019) from the year of termination to the conclusion of the agreement. If the Club terminates the agreement for any reason, the City is not responsible for any repayment.

3.3 On or before the expiration of termination of this Agreement, Club shall return and otherwise yield the Property and the Premises to the City in good condition and repair, reasonable wear and tear excepted.

3.4 Club shall not remain in possession of the Property and the Premises, including the permanent boathouse structure, or any other property provided by the City or Club after the expiration of the term of this Agreement nor shall Club have any right or privileges based upon this Agreement at any future point in time.

3.5 The parties agree that there may be a future project that involves construction of a new boat house in Holland Park. Should this project come to fruition, the parties agree to amend this Agreement as necessary to address the new facilities.

#### 4. COMPENSATION

In lieu of annual rent the Club installed and paid for a new 20'X16' dock with two 8'X60' decks for Holland Park. The cost to build the dock was \$55,215.00. Installation cost was \$15,850.00.

#### 5. INDEMNIFICATION

Club hereby agrees to indemnify and hold harmless and defend the City, its officers, agents and employees against any loss, damage or expense (including all costs) 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 Club, its agents, servants, or employees, in the performance of services under this Agreement, (b) any breach or misconduct by Club, its agents, servants or employees of this Contract, (c) any inaccuracy in or breach of any of the representations, warranties or covenants made Club herein and (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 Club and Club's agents, employees, invitees, and all other persons, 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 Club and Club's agents, employees, invitees, and all other persons. Such obligation to indemnify and hold harmless shall continue notwithstanding any negligence or comparative negligence on the part of the City relating to such loss or damage and shall include all costs, expenses and liabilities incurred by the City in connection with any such claim, suit, action or cause of action, including the investigation thereof and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof. The Club acknowledges and agrees that City would not enter into this Agreement without this indemnification of City by Club, and that City's entering into this Agreement shall constitute good and sufficient consideration for this indemnification. 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 rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Florida Statutes 768.28.

#### 6. LIABILITY INSURANCE

6.1 Club shall maintain, at its sole expense during the term of this Agreement, public liability insurance covering the Property and the Premises and the resultant uses thereof, including products liability, naming the City as an additional insured, in an amount no less than \$1,000,000 bodily injury liability, \$1,000,000 personal injury liability and \$500,000 property damage liability, for each occurrence.

6.2 Club shall pay the premiums for the public liability insurance prior to the commencement of the term of this Agreement.

6.3 Club shall furnish and deliver to the Director of PRCA of the City a certificate or certificates of insurance evidencing the existence of public liability insurance in the minimum amounts described in Paragraph 6.1 hereto. Each certificate shall provide that the City shall receive not less than 30 days written notice of cancellation, expiration or termination of public liability insurance. Notice of cancellation, expiration or termination of insurance shall not be effective against the City unless such notice is received by the City in the manner provided for in Paragraph 9.9 hereto.

## 7. EVENTS OF DEFAULT, TERMINATION OF AGREEMENT AND REMEDIES

7.1 The following shall constitute events of default:

- (a) Any material misrepresentation, written or oral, made by Club to the City.
- (b) Failure by Club to timely perform and/or observe any or all of the covenants, rules regulations, guidelines or terms and conditions of this Agreement.

7.2 The occurrence of any event of default may, at the sole option of the City, work an immediate and automatic forfeiture of any rights conferred by this Agreement and, thereupon, the City and its agents shall have the right to enter the Property and the Premises and remove all persons therefrom, forcibly or otherwise.

7.3 No remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, at law, in equity or by statute, existing now or hereafter; no delay or omission to exercise any right to power accruing upon any event of default shall impair any such right or power nor shall it be construed to be a waiver of any events of default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

## 8. SPECIAL CONDITIONS

8.1 It is understood and agreed between the parties hereto the TIME IS OF THE ESSENCE in this Agreement and this applies to all terms and conditions contained herein.

8.2 This Agreement may be terminated without notice in the event of threat to the public health or the public safety as may be determined in the sole discretion of federal, state or local officials charged with making such determinations. The City shall not be liable to Club for any losses incurred by reason of such termination.

8.3 Club shall not assign its rights under this Agreement without the prior written consent of the City. The City reserves the right to assign all or any part of its interest hereunder.

8.4 Club agrees that nothing herein contained is intended or should be construed as in any way creating or establishing the relationship of partners or joint ventures between the City and Club, or as constituting Club or any of its officers, agents, representatives as employees of the City, and that Club shall not represent to any third parties that such is the case.

8.5 Club recognizes that the premises are a public facility and the admittance to or use of it shall not be devised on the basis of race, sex, religion, handicap or national origin.

## 9. MISCELLANEOUS CONDITIONS

9.1 This Agreement shall constitute the entire Agreement among the parties, and no warranties, inducements, considerations, promises, or other references shall be implied or impressed upon the Agreement that are not expressly addressed herein.

9.2 This Agreement is comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effects.

9.3 No member of the governing body of the City, or other unit of government, and no other officer, employee, or agent of the City or other unit of government who exercises any decision-making authority with regard to this Agreement shall have any personal financial interest, direct or indirect, in this Agreement.

9.4 This Agreement shall be construed and enforced in accordance with, and all actions arising hereunder shall be governed by the laws of the State of Florida. Any action, whether at law or in equity, shall be commenced and maintained and venue shall properly be in Broward County, Florida.

9.5 Any headings of this Agreement are for convenience of reference only and do not define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any persons or person or entity in accordance with the terms of this Agreement.

9.6 If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable to any extent whatever. The invalidity of any one or more

phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portion of this Agreement or any part thereof.

9.7 No changes, amendments, modification, cancellation or discharge of this Agreement, or any part hereof, shall be valid unless in writing and signed by the parties hereto, or their respective successors and assigns.

9.8 All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferee and assigns.

9.9 Any and all notices given or required under this Agreement shall be in writing and may be delivered in person or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

IF TO CLUB:                      President  
                                        Hollywood Rowing Club  
                                        P.O. Box 222545  
                                        Hollywood, FL 33022

IF TO CITY:                      Director, Parks Recreation and Cultural Arts  
                                        1405 S. 28 Avenue  
                                        Hollywood, Florida 33020

WITH COPIES TO:              City Manager  
                                        2600 Hollywood Boulevard, Rm. 419  
                                        Hollywood, FL 33020

                                        City Attorney  
                                        2600 Hollywood Blvd., Rm. 407  
                                        Hollywood, FL 33020

Notices mailed in accordance with this section shall be deemed effective upon mailing. Notices delivered personally shall be deemed effective on receipt.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of this first date written above.

**CITY OF HOLLYWOOD**

ATTEST:

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

By: \_\_\_\_\_  
PATRICIA A. CERNY, MMC  
CITY CLERK

By: \_\_\_\_\_  
JOSH LEVY, MAYOR

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY for the use and reliance  
of the City of Hollywood, Florida, only.

\_\_\_\_\_  
DOUGLAS GONZALES, CITY ATTORNEY

**PORT EVERGLADES ROWING CLUB, INC.  
d/b/a HOLLYWOOD ROWING CLUB**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



## **EXHIBIT A**

### **HOLLAND PARK**

All of Blocks 55, 56, 57 and a portion of Block 59, all of Blocks 121 and 122 "HOLLYWOOD CENTRAL BEACH" according to the plat thereof as recorded in Plat Book 4, page 20A of the Public Records of Broward County, Florida.

#### **TOGETHER WITH:**

Lots 15 thru 28, Block 84, and all of Block 85 "HOLLYWOOD LAKES SECTION" according to the plat thereof as recorded in Plat Book 1, Page 32 of the Public Records of Broward County, Florida.

#### **TOGETHER WITH:**

All streets and alley right-of-way lying within the above described lands.