

RESOLUTION NO. R-2016-161

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, APPROVING AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE THE ATTACHED LICENSE AND MANAGEMENT SERVICES AGREEMENT BETWEEN MCCUMBER-WRIGHT VENTURE, LLC AND THE CITY OF HOLLYWOOD TO PROVIDE OPERATION AND MANAGEMENT SERVICES FOR THE HOLLYWOOD BEACH GOLF AND COUNTRY CLUB.

WHEREAS, the City is the owner of Hollywood Beach Golf and Country Club; and

WHEREAS, on June 17, 2015, the City Commission passed and adopted Resolution No. R -2015-169 which awarded the contract for Golf Course Management Services to McCumber-Wright Venture, LLC ("MWV") pursuant to RFP No. 4442-15-IS; and

WHEREAS, pursuant to Resolution Number 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, the parties fully negotiated the attached License and Management Services Agreement which provides for an initial term of ten (10) years with an option to renew for additional ten (10) year term at the sole discretion of the City contingent upon MWV providing additional capital improvements to the Licensed Premises in an amount not less than \$2,500,000.00; and

WHEREAS, in accordance with the terms and conditions of the attached Agreement, MWV will be providing capital improvements as more specifically set forth in Exhibit "B" of the Agreement in the amount of \$2,000,000.00 during the first four (4) years of the Agreement; and

WHEREAS, City Staff, the Assistant City Manager, and City Manager recommend that the City Commission approve and authorize the execution of the attached Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That it hereby approves the attached agreement between McCumber-Wright Venture, LLC and the City of Hollywood, together with such minor

modifications as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

Section 2: That this resolution shall be in full force and effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 1 day of June, 2016.



PETER BOBER, MAYOR

ATTEST:



PATRICIA A. CERNY, MMC, CITY CLERK

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



JEFFREY P. SHEFFEL, CITY ATTORNEY

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

THIS MANAGEMENT SERVICES AGREEMENT ("Agreement") is made and entered into as of this _____, day of _____, 2016 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.

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 this Agreement which was approved by the City Commission on _____, 2016 pursuant to Resolution No. 2016-____; and

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, City will 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 an 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 an existing motel and 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 Resort” 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, golf fees, motel/hotel, restaurant, food & beverage services, and sale of merchandise excluding sales tax. However, if the Gross Revenues, excluding the capital reserve surcharge, generated from the Licensed Premises exceeds \$2,400,000.00 each year, then MWV shall pay the City 10% from the Gross Revenues in excess of \$2,400,000.00 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.

2. Effective Date and Term

This Agreement shall become effective on June 1, 2016 (the "Effective Date") and shall continue for a ten year term ending on May 31, 2026. This Agreement may be renewed in the sole discretion of the City for one (1) additional ten (10) year term contingent upon MWV agreeing to the terms of said renewal and providing additional capital improvements to the licensed Premises and facilities in an amount not less than two million five hundred thousand dollars (\$2,500,000.00).

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 Construction Obligations

4.1 Golf Course Construction.

Except as provided in Paragraph 7.2.B, the City shall have no duty to make any improvement or repair to the demised premises. All costs associated with the renovation, redevelopment, repair and construction of the Licensed Premises shall be borne by MWV. MWV, at its sole responsibility and cost, shall supervise construction and the upgrading of a comprehensive golfing facility in accordance with the agreed upon, capital improvements attached as Exhibit "B" (capital improvements during first ten (10) years) which are incorporated herein by reference. It is hereby acknowledged and agreed to by MWV that the capital improvements set forth in Exhibit "B" are projected to cost an amount not less than \$2,000,000.00. All capital improvement upgrades listed in Exhibit "B" shall be completed no later than September 30, 2019, however, in the event that the appropriate agencies do not issue the permit related to the drainage permit by May 15, 2017, then the completion date for all of the capital improvements shall be September 30, 2020. If said capital improvements are not completed within the stated timeframe, the City shall pursue the Payment and Performance Bond provided by MWV and terminate this Agreement as set forth herein.

4.2 Construction Plans and Approval.

MWV will provide construction plans along with itemized construction cost for each of the capital improvement upgrades of the golf course no later than one hundred and eighty (180) days following execution of this Agreement for the City's approval, which shall not be unreasonably withheld. During the course of construction of the capital improvements, MWV shall provide City with a copy of any and all documents which set forth the actual cost for each capital improvement set forth on Exhibit "B". In the event that the final expenditures/cost of all of the capital improvements in Exhibit "B" is less than then \$2,000,000.00, then MWV shall utilize the unexpended funds for further improvements to be determined jointly by MWV and the City. City's response to the plans, including any recommendations for change, are to be submitted to MWV no later than ninety (90) days following the City's receipt of the plans. A construction timeline will be established as stated in 4.3. Any and all construction plans are subject to all applicable federal, state and local laws. Within ninety days following the completion of the capital improvements set forth in Exhibit "B", MWV shall furnish a complete set or reproducible "as built" plans (if applicable) to the City.

4.3 Construction

A. Timeline and Permits Process

Following the City's approval of the final capital improvement plan, MWV shall commence the required capital improvement upgrades based upon a timeline schedule mutually agreed upon by City and MWV. Said timeline schedule shall be agreed to in writing and made a part of this Agreement. MWV shall comply with all approved plans in all material respects unless a change order or alteration is otherwise agreed to by City. MWV shall obtain all approvals and permits required by the City which is incidental to improvement or development of real property. City shall have the right to inspect all construction for the purpose of confirming that MWV is adhering to the timeline schedule, approved plans and specifications. MWV, at its sole expense, shall comply with all development regulations of the City including, without limitation, site plan and building regulations. In the event that during construction, portions of the licensed premises necessitate closing due to the construction, MWV shall notify the City's PRCA Director and/or his/her designee fourteen (14) days prior to any construction for City approval which shall not be unreasonably withheld.

B. Fast Tracking Permits and Approvals

The parties agree that, to the extent not otherwise prohibited by the Florida Building Code or other applicable law, City will "Fast Track Permits and Approvals" subject to approval by the city commission, if applicable.

4.4 MWV's Assurance of Completion

Prior to commencement of construction, MWV shall furnish City suitable evidence of money available, in an amount of not less than two million dollars (\$2,000,000.00) in order to complete the required capital improvements. MWV presently intends to expend such funds in the approximate amounts and for the categories as set forth in Exhibit "B" and made a part thereof for all purposes. Such evidence shall take the form of the following:

- (a) A payment and performance bond covering the \$2,000,000.00 for the capital improvements which includes the provisions of a labor and material bond supplied by MWV's contractor or contractors, and providing that said bonds are issued jointly to MWV and City as obliges; and
- (b) A Loan Commitment or Lender's Set Aside Letter, in an amount not less than two million dollars (\$2,000,000.00).

All bonds must be issued by a company qualified to do business in the State of Florida. The bond shall be in effect until all capital improvements are completed. If

renewal of the bond is required, MWV shall be responsible for renewing the bond and submitting any and all renewal documentation to the City.

5. Capital Reserve Program

5.1 Additional Capital Improvements

Upon the completion of the Capital Improvements set forth in Exhibit “B” and pursuant to the construction timeline, and continuing each year thereafter, MWV, at its sole cost shall and in addition to the capital improvements listed in Exhibit “B”, make additional capital improvements to the 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 a maintenance or repair activity/obligation of MWV.

5.2 Capital Reserve Surcharge

MWV shall be required to implement a capital surcharge program commencing no later than November 15, 2019 and every year thereafter for the entire term of agreement. The capital surcharge amount will be two dollars (\$2.00) per golf round during the months April through October and four dollars (\$4.00) per golf round during the months November through March.

5.3 Capital Improvement Reserve Program

All accumulated surcharge amounts in the capital improvement fund shall be spent toward MWV’s additional capital improvements to the premises. 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 fourth year of this Agreement and each year thereafter, MWV shall submit a listing of additional capital improvement recommendations to City’s PRCA Director and/or his/her designee for approval of the additional capital improvements describing in reasonable detail the elements and cost of MWV’s additional capital improvement work to be performed. The City’s PRCA Director and/or his/her designee shall approve or disapprove the additional capital improvement program. Upon approval of MWV’s additional work, MWV shall commence construction thereof and diligently prosecute MWV’s additional work to completion during said year. To the extent MWV and City fail to reach agreement with respect to such additional capital improvement programs, it is agreed that in resolving any dispute, improvement to the grounds shall take precedence over improvements to physical structures unless there is a more imminent need for the improvements to the physical structures. Any and all plans are contingent upon MWV obtaining any and all applicable federal, state and local approvals and permits.

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 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 his/her 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 on the effective 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, 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.

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, pool, air conditioners, and irrigation 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 premises herein to the extent such repairs are not covered by MWV's insurance.

MWV hereby accepts the premises in the condition they are in at the beginning of this Agreement and agrees to maintain said 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, 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.

7.2 Personal Property and Structural Repairs

- A. Within forty-five (45) days after the Effective 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 "C". 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.

- B.** 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 A.M. 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:

A.	Bodily Injury	
	Each Occurrence	\$1,000,000
	Annual Aggregate	\$2,000,000
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
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3. Liquor Liability

Each Occurrence	\$1,000,000
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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. Workers' 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 A.M. 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. 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/or his/her designee. Amendments to such rules and regulations shall not be effective until approved by the City's PRCA Director and/or his/her 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 Resort.

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 majority of the time.

- 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 70 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 facilities.
- 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 and MWV'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 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 restaurant, bar, lounge, and motel. All service charges, room rates, catering rates, package rates, etc. shall be set by MWV 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, 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.
- 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, lounge, bar and motel.

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 and telephone service 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 \$100,000.00.

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 of ten 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.

The parties hereby acknowledge that in the event that there is a need to expand or relocate the reclaimed water pond as part of the planned capital improvement relating to drainage

listed in Exhibit "B", the parties may explore the availability of grant opportunities relating to such matter.

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 property, 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 MVW'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 facilities. 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 his/her 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 authorizes Josh McCumber, as MWV's Representative hereunder and as the person in charge of MWV's day to day operations of the licensed remises.

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-IS 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. 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 and Country Club
1650 Johnson Street
Hollywood, FL 33020

with a copy to:

Jeremy B. Shir, 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:

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

PATRICIA A. CERNY, MMC CITY
CLERK

BY: _____
PETER BOBER, MAYOR

AP

APPROVED:

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

MIRTHA DZIEDZIC, INTERIM DIRECTOR OF
THE DEPARTMENT OF FINANCIAL
SERVICES

JEFFREY P. SHEFFEL CITY ATTORNEY

McCumber-Wright Venture, LLC

By: _____
Signature

Print Name: _____

Title: _____

EXHIBIT "A"
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, 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”
MWV Capital Improvement Plan

First 10 Years - \$2 Million

1. Correct drainage on east side of property: holes 1, 2, 3, 4, 5, 12, 13 and 14
 - Lake excavation
 - Earth work
 - Grading and shaping
 - New irrigation
 - Grassing
 - Tee construction
 - Greens and bunker construction
 - Cart paths

2. Hollywood Beach Design, Engineering and Environmental costs:
 - Not to exceed \$210,000.00

EXHIBIT "C"
PERSONAL PROPERTY INVENTORY PURSUANT TO PARAGRAPH 7