

**REVISED AND RESTATED CONCESSION AGREEMENT BETWEEN THE CITY OF
PALOS VERDES ESTATES AND THE PALOS VERDES BEACH AND ATHLETIC
FOUNDATION**

This Revised and Restated Concession Agreement (the "Agreement") is entered into as of the 23rd day of June, 2020, by and between the City of Palos Verdes Estates, a municipal corporation (the "City") and the Palos Verdes Beach and Athletic Foundation, a California nonprofit mutual benefit corporation (the "Foundation"). The City and the Foundation are collectively referred to as "Parties."

RECITALS

A. The City currently owns property in Palos Verdes Estates located at 389 Paseo Del Mar, also known as Roessler Pool and depicted on the map attached hereto as Exhibit "A," together with the buildings and improvements thereon (collectively, the "Premises").

B. The Foundation has been operating the Palos Verdes Beach and Athletic Club at the Premises pursuant to a concession agreement between the City and Foundation dated July 1, 2006, as modified by the First Amendment to the Amended and Restated Concession Agreement, dated January 14, 2015, and the Second Amendment to the Revised and Restated Concession Agreement, dated June 14, 2016 (the "Existing Agreement"). The Existing Agreement will expire on June 30, 2026.

c. The Parties now desire to enter into this Revised and Restated Agreement for the operation of the Premises in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Parties covenant, promise and agree as follows.

1. Definitions. For purposes of this Agreement, the following terms shall have the definitions ascribed to them below:

a. *Capital Improvements.* “Capital Improvements” are defined as: (i) items costing more than Two Thousand Dollars (\$2,000) each and which have a useful life of at least two (2) years (e.g., computers, furniture and fixtures); and/or items which cost more than Five Thousand Dollars (\$5,000) in the aggregate and contribute to the aesthetics or longevity of the Premises (e.g., re-roofing, renovation of plumbing, major landscaping projects).

b. *The City.* “The City” means the City of Palos Verdes Estates acting by and through its City Council. All references to approval by the "City" shall be construed to mean "approval by the City Council of the City of Palos Verdes Estates" unless otherwise specified herein.

c. *The Club.* “The Club” means the club operated by the Foundation on the Premises, which shall be subject to the requirements of this Agreement.

d. *Club Improvement Fund.* “Club Improvement Fund” shall mean a specially designated, segregated administrative account maintained by the Foundation which shall contain all member initiation fees for the Palos Verdes Beach and Athletic Club and any investment income (including but not limited to interest and/or dividends) derived therefrom.

e. *The Foundation.* “The Foundation” means the Palos Verdes Beach and Athletic Foundation, a not-for-profit mutual benefit corporation organized under the laws of the State of California.

f. *Gross Receipts.* “Gross Receipts” shall mean all member’s dues, fees, guest fees, rentals, merchandise sales, food and beverage sales, or any other receipts received by the Foundation from its operation of the Premises.

g. *Non-Resident/Non-Owners.* “Non-Resident/Non-Owners” are those persons who are neither bona fide residents of the City nor owners of real property in the City.

h. *The Premises.* “The Premises” shall mean the land described on Exhibit A of this agreement, together with all buildings, structures, equipment, furniture, fixtures, and property of any kind or nature located thereon.

i. *Resident/Owners.* “Resident/Owners” are those persons who are either bona fide residents of the City or owners of real property located in the City, or who both reside in the City and own real property in the City.

2. *Concession Grant.* The City grants a concession to the Foundation for the limited purpose of maintaining and operating the Premises, subject to any encumbrances, restrictions, reservations, easements, rights or rights-of-way of record, and the terms and conditions contained herein.

3. *Term of Agreement.*

a. *Term.* This Agreement shall be effective as of June 30, 2020 (“Effective Date”), and shall expire on June 30, 2030, unless the Foundation shall, at some earlier date, default in its obligations under this Agreement. The Foundation shall be in default if it fails to remedy any breach or default of its obligations under this Agreement, for which City has given Foundation written notice delineating the breach or default, within sixty days (60) after the mailing by the City of such notice to the Foundation’s Manager. In addition, the Club shall have the right to extend the Term of this Agreement pursuant to the provisions of Section 4 of this Agreement.

4. *Option to Extend Agreement.*

a. *Option Granted.* The Foundation shall have the option to extend the term of this Agreement once for an additional ten-year (10-year) period. To exercise said option, the

Foundation shall give written notice thereof to the City of its intent to exercise such option at least six (6) months, but not more than eight (8) months, prior to the initial expiration of this Agreement.

b. Exercise of Option. The right to exercise this option is contingent upon the Foundation having kept and performed, to the satisfaction of the City, the promises, covenants, and conditions of this Agreement. If, after investigating the performance of Foundation under this Agreement, the City in its sole discretion finds the Foundation has kept and performed the promises, covenants, conditions and agreements on its part pursuant to this Agreement, the expiration date of this Agreement shall be extended to June 30, 2040.

c. Failure to Comply. Notwithstanding subsections a. and b., above, if the Foundation fails to perform any of the covenants, conditions, provisions or agreements contained in this Agreement, then, in that event, the City shall provide written notice as required under Section 3.a. above. The Foundation must cure within the time period set forth in Section 3.a. above. In the event the Foundation fails to timely cure any default, the City shall have the right to immediately terminate this Agreement.

5. Property and Inventory. Any property of any nature purchased or placed in or upon the Premises by the Foundation and used in any way in connection with the operation of the Premises pursuant to this Agreement shall immediately become the property of the City, and may not be removed by the Foundation without the prior written consent of the City, except for the purpose of repair or replacement of said property. The provisions of this section shall not apply to any inventory brought onto the Premises for the express purpose of resale.

6. Budget; City Approval of Fees, Dues and Charges

a. By May 15th of each year, the Foundation shall prepare and deliver to the City for review a comprehensive budget for the Foundation's next fiscal year. Said budget shall indicate estimated income by source, expenditures by major category of expense, and any and all requests for Capital Improvements to be funded from the Club Improvement Fund. The format of said document and the method of presentation shall be subject to approval by the City Council.

b. No fee or charge of any kind including, without limitation, initiation fees and member dues relating to the Club and fees or charges for the use of the pool or other facilities at the Premises, whether by the public or Club members, may be collected or imposed by the Foundation unless and until the City has approved said fee or charge either within the approved annual budget or as a separate item. The provisions of this subsection b. shall not apply to food and/or merchandise authorized by this Agreement to be sold by the Foundation.

c. No Capital Improvements shall be made by the Foundation unless said Improvements are approved by the City, either within the approved annual budget or as a separate item.

7. Concession Fee. By the last day of each month, the Foundation shall pay to the City ten percent (10%) of the Foundation's Gross Receipts received in the immediately preceding month (e.g. the concession fee for Gross Receipts received in March is due April 30th).

8. Books, Records and Membership Lists.

a. The Foundation shall keep full, complete and accurate books of account and records in accordance with generally accepted accounting principles which will reflect all business and monetary transactions of the Foundation. Within 30 days of the prior quarter's close, the Foundation shall provide to the City the current balance sheet and interim operating statement

for the prior quarter. Such books and records shall at all reasonable times be open to inspection by the City.

b. If any Club member fails to pay his or her dues, the Foundation shall give such member written notice of such default, and if such member fails to pay all sums due within thirty (30) days of such written notice of default, the Foundation shall terminate the membership of such member.

c. The Foundation shall keep complete and accurate membership and waiting lists (as set forth in Section 16.a., below). The Foundation shall provide to the City the current membership and waiting lists on no less than a quarterly basis. Additionally, the membership and waiting lists shall at all reasonable times be open to inspection by the City.

9. Audit. On an annual basis, the Foundation shall submit to the City a full and complete audit report prepared by the City's current auditor. The cost of the audit shall be split evenly between the City and the Foundation. The Foundation shall maintain, preserve and protect any and all records requested by its auditor or by the City in the form requested and in the manner dictated.

10. Operations. The Foundation shall operate and maintain the Premises, and every part thereof, in compliance with the conditions, restrictions and reservations by which the City holds title to the Premises, and in compliance with the rules and regulations, and any amendments thereto, promulgated by the City. To this end, the City Council shall appoint from its members a Beach and Athletic Club Liaison Committee that will meet periodically with a liaison committee to be designated by the Foundation from members of its Board of Directors.

11. Maintenance. The Foundation shall at all times maintain the Premises, including but not limited to the pool and all mechanical equipment relating thereto, in a condition

satisfactory to the City. The Foundation shall keep the Premises free and clear from any mechanics' liens.

12. Capital Improvements. Unless otherwise agreed in advance by the City, or as required by law, the Foundation shall be solely responsible for all costs of installation and construction of any Capital Improvement(s). The Foundation shall pay the City the cost for inspection of construction of Capital Improvements, but the City agrees to waive any fees otherwise due from the Foundation for any application for any conditional use permit, variance, or other discretionary approval processed through the City. The City shall not be responsible for oversight or construction of Capital Improvements.

13. Americans with Disabilities Act (“ADA”) Improvements.

a. ADA Improvements. The Foundation and City will work cooperatively to identify improvements to the Premises, if any, necessary to bring the Premises into compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. (the “ADA Improvements”). The list of ADA necessary improvements shall be updated annually.

b. Budget for ADA Improvements. In connection with the presentation of its budget to the City, as required by Section 6, above, the Foundation shall present a list of any outstanding ADA improvements, together with a projected budget to complete the ADA Improvements and a schedule for their completion. The Foundation agrees to budget the sum of forty thousand dollars (\$40,000) annually for the term of this Agreement, and any extension thereto, towards completion of the ADA Improvements (the “ADA Budget”). Beginning on the first anniversary of the Effective Date, the ADA Budget shall increase annually at the end of each 12-month period by any increase in the Consumer Price Index (“CPI”) as determined by the U.S. Bureau of Labor Statistics for all Urban Consumers for Los Angeles-Riverside-Orange Counties over the previous

year.

c. Completion of the ADA Improvements. The Foundation will endeavor to complete the ADA Improvements as quickly as operational and budgetary prudence dictates. The Parties agree and understand that the completion and timing of the ADA Improvements may be delayed, limited, or prevented by cost increases, or other governmental, quasi-governmental, regulatory, and/or other agencies or bodies.

d. Costs Associated with ADA Improvements. Unless otherwise agreed in advance by the City, the Foundation shall be solely responsible for all costs associated with the improvements necessary to bring the Premises into compliance with the ADA. The Foundation shall pay the City the cost for inspection of construction of ADA Improvements, but the City agrees to waive any fees otherwise due from the Foundation for any application for any conditional use permit, variance, or other discretionary approval processed through the City.

e. Nothing in this agreement shall excuse the Foundation's obligation it may otherwise have under the law. The Foundation assumes full responsibility for compliance with the ADA as partial consideration for this Agreement.

14. Club Improvement Fund. The entire initiation fee paid to the Foundation by new Club members shall be held and maintained by the Foundation in the Club Improvement Fund. Monies in the Club Improvement Fund may be utilized by the Foundation only for Capital Improvements approved by the City pursuant to the provisions of this Agreement. No expenditures shall be made from the Club Improvement Fund unless such expenditures are approved in advance and in writing by the City.

15. Membership

a. All Club membership, whether an initial offering or resale, shall first be offered to Resident/Owners of Palos Verdes Estates. Furthermore, notwithstanding any other provision of this Agreement, in no event shall the number of Non-resident/Non-Owner members exceed one hundred forty (140) without the prior approval of the City Council. The Foundation shall be responsible to determine if an individual is a "Resident/Owner" or a "Non-Resident/Non-Owner," provided, however, that the City may require the Foundation to implement specific criteria and/or procedures for such determination.

b. The Foundation agrees to terminate the membership of any individual who ceases to be a Resident/Owner and further agrees that each Resident/Owner accepted for membership shall be explicitly advised that his or her membership will terminate upon such person ceasing to be a Resident/Owner in the City of Palos Verdes Estates. Such person may apply for membership as a Non-Resident/Non-Owner if openings for such membership are then available.

c. In no event shall the membership of the Club exceed six hundred and seventy (670) families unless prior approval for an increase in membership is received from the City. Subject to this limitation, the Foundation shall increase the number of memberships from 630 to 650 on the Effective Date of this Agreement and at a rate of five memberships per year thereafter until a total of 670 memberships is achieved. The City Council may, in its sole discretion, determine to limit the total number of memberships to six hundred thirty (630), in which case, no memberships resigned or terminated may be sold again by the Foundation until the total number of memberships fall below five hundred thirty (630).

d. Resident/Owners have absolute priority for membership in the Club and, except as set forth herein, no Non Resident/Non Owner shall be admitted to membership if a

Resident/Owner is waiting for membership, even if the Resident/Owner is waiting for a resaleable membership.

e. In the event membership in the Club falls below five hundred (500) for a period of ninety (90) days, the Foundation and the City will meet and confer upon mutually agreeable methods or approaches to increase the total membership of the Club.

f. Membership in the Club shall not be deemed to create any legal or equity interest whatsoever in the Premises or any part thereof. Non-resaleable memberships are not transferable and, other than family memberships, are terminated when a member ceases to be a resident or property owner, or dies. Effective October 24, 2008, Resaleable Memberships shall not exceed sixty-five percent (65%) of total Club memberships; provided, that the five percent (5%) of the Resaleable Memberships made available pursuant to the September 9, 2008, City Council approval may only be sold to residents, unless otherwise approved by the City Council. Resaleable memberships are transferable in accordance with the rules and regulations approved by the City Council, which may be approved through City Council approval of the Club's by-laws.

g. The City has previously required different monthly membership dues for resident and non-resident members, and may, in its sole discretion, continue such differentiation.

16. Membership Wait List.

a. As required by Section 8.c., the Foundation shall provide to the City its waiting lists (Resident/Owner and Non-Resident/Non-Owner). The lists shall include the date upon which the person or family entered the wait list and their numerical position on the list. Any person or family on the wait list that does not accept full membership when such membership is offered to them will be placed at the bottom of the wait list, or may elect to

withdraw from the wait list and have their wait list deposit refunded minus a \$100 processing fee.

b. The Foundation may initiate an off-season annual subscription program which would increase access to the pool deck facilities in the off-season during non-peak hours (“Program”). The off-season non-peak hours begin on October 1st and end on April 30th (excluding holidays) from noon to closing. This Program would be available to those persons or families holding the first 50 places on the waiting list in chronological order. Persons or families on the waiting list electing to participate to the Program (“Participants”) would enjoy full access to the pool deck facilities including, pool, barbeques and spas and would pay the same monthly dues as regular members for the applicable months. These Participants would maintain their position on the waiting list but would not otherwise have the privileges accorded to full Members including voting rights and the right to bring guests to the Club. Participants would annually have the opportunity to renew subscriptions. When Participants convert to Members, the opportunity to participate in the Program would be offered to the next persons or families on the waiting list in chronological order up to the maximum of 50 subscriptions. Persons or families on the wait list who do not opt for the Program will not jeopardize their position on the waiting list. Participants in the program who are subsequently offered full membership and decline full membership will automatically become ineligible for the Program. Such former Participants may only subsequently become eligible for the Program based on their position on the wait list pursuant to section 16.a., above.

17. Usage of Premises. The Premises are City property both dedicated to park and recreational purposes and subject to deed restrictions relating to their use by City residents and persons who own real property within the City. The Premises may not be conducted as a private

club or solely for the benefit of members of the Foundation and the operation of the Premises in accordance with this Agreement shall not be construed as an indication that the Premises are conducted as a private club or solely for the benefit of the members of the Foundation.

18. Marketing. The Foundation, in partnership with the City, shall communicate with non-member City residents and property owners to increase awareness of the programs and opportunities offered to non-member City residents and property owners by the Club.

19. Approval of By-Laws. The Foundation will not amend or modify its By-Laws without the City's prior approval, which will not be unreasonably withheld.

20. Payment of Utility Charges. The Foundation will pay when due all charges for water, gas, electricity, telephone, or other utility charges furnished to the Foundation or used upon the Premises.

21. Insurance

a. The Foundation shall procure and maintain at its own expense insurance in an amount and of characteristics as follows:

(1) Commercial General Liability Insurance using Insurance Service Office "Commercial General Liability" policy form CG 00 01 07 98. Defense costs must be paid in addition to limits. There shall be no cross-liability exclusion for claims or suits by one insured against another. Limits are to be determined by the City, but in no event shall be less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) aggregate. Such insurance shall specifically insure performance by the Foundation of the indemnity set forth in Section 22, below, and shall specifically name the City and its officers, agents and employees as additional insureds, and shall provide that it shall not be canceled or modified without at least thirty days prior written notice to the City.

(2) Workers' Compensation providing statutory benefits as required by law with liability limits no less than One Million Dollars (\$1,000,000) per accident or disease.

(3) Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are to be determined by the City, but in no event shall be less than One Million Dollars (\$1,000,000) per accident. If the Foundation owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described in subsection (1) above. If the Foundation's employees will use personal automobiles in any way in connection with this Agreement, the Foundation shall provide evidence of personal auto liability coverage for each such person in the amounts set forth in this section.

(4) Property insurance. Upon commencement of construction of the Foundation's improvements and betterments, or installation of equipment, with approval of City, the Foundation shall obtain and maintain insurance on Foundation's improvements and betterments. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy.

(5) Commercial property insurance covering the Premises, fixtures, equipment, building, all property situated in, on, or constituting a part of the Premises and any improvements. Coverage shall be at least as broad as the Insurance Services Offices broad causes of loss form CP 10 20, and approved of in writing by the City. Coverage shall be sufficient to insure 100% of the replacement value and there shall be no coinsurance provisions. The policy shall include an inflation guard endorsement, 100% rents/income coverage, contents coverage, coverage for personal property of others, ordinance or law and increased cost of construction coverage. The City shall be included as an insured and as loss payee on any such insurance. The

City shall not be liable for any business income or other consequential loss sustained by lessee. The City shall not be liable for any loss of lessee's personal property even if such loss is caused by negligence of City, City's employees or agents.

(6) Boiler and machinery insurance with limits of not less than actual replacement cost for all property and improvements, encompassing explosion and breakdown. The Foundation shall obtain and deliver to the City, along with copies of all policies of insurance required here, a joint loss endorsement for property and boiler and machinery policies. The City is to be added as insured to boiler and machinery coverage. Lessee also agrees to provide builder's all-risk insurance using an inland marine form during the period of any major alteration or improvement, using the broadest form available. The City shall be named as loss payee under all first party coverages.

(7) Commercial Pollution Legal Liability with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

(8) Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverage. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum Twenty-five Thousand Dollars (\$25,000) self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another.

b. Additional insured status. General liability policies shall provide, or be endorsed to provide, that the City and its officers, officials, employees, agents, and volunteers

shall be additional insureds under such policies. This provision shall include endorsement covering liabilities arising out of the Foundation's "operations" of the Premises. This provision shall also apply to any excess/umbrella liability policies.

c. The provisions of this Section 21 establish minimum insurance requirements to satisfy the needs of the City and are not intended to foreclose the Foundation from acquiring such additional amounts or types of insurance as it deems advisable. Should the Foundation maintain additional insurance, the Foundation agrees to place into the Club Improvement Fund any and all monies received from its insurance carrier which represent repayments for furniture, fixtures, or real property damaged due to fire, earthquake, or any other insured event. Such monies may thereafter be spent in accordance with the provisions of Section 21 of this Agreement, provided, however, that the City may reimburse itself from such monies for any monies expended by the City for its direct costs in defending itself or the Foundation or for costs associated with obtaining reimbursements from the Foundation's insurance carrier.

d. Primary/noncontributing. Coverages provided by Foundation shall be primary and any insurance or self-insurance procured or maintained by the City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

e. City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any

premium paid by the City will be promptly reimbursed by the Foundation or the City will withhold amounts sufficient to pay premium from the Foundation payments. In the alternative, the City may cancel this Agreement.

f. Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's City Manager.

g. Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow the Foundation or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. The Foundation hereby waives its own right of recovery against the City, and shall require similar written express waivers and insurance clauses from each of its sub consultants.

h. Enforcement of contract provisions (non estoppel). The Foundation acknowledges and agrees that any actual or alleged failure on the part of the City to inform the Foundation of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

i. Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific

reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Foundation maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Foundation. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

j. Notice of cancellation. The Foundation agrees to oblige its insurance agent or broker and insurers to provide to the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. Proof of such obligation shall be in the form of a special endorsement.

k. Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to the City and approved of in writing.

l. Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that the Foundation's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

m. Pass Through Clause. The Foundation agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by the Foundation, provide the same minimum insurance coverage and endorsements required of Foundation. The Foundation agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. The Foundation agrees that upon

request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to the City for review.

n. City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Foundation ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Foundation, the City and Foundation may renegotiate the Foundation's compensation.

o. Self-insured retentions. Any self-insured retentions must be declared to and approved by The City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

p. Timely notice of claims. The Foundation shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from the Foundation's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

q. Foundation's personal property, fixtures, equipment, inventory and vehicles are not insured by the City against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause.

22. Indemnification

a. Except as otherwise set forth in Subsection b., below, the Foundation agrees to indemnify, defend and hold harmless the City and its officers, agents and employees ("Indemnified Parties") from and against any liabilities, damages, expenses (including reasonable attorneys' fees and expenses), liens, and claims of any nature whatsoever (collectively,

“Liabilities”) which may be asserted against the Indemnified Parties or any of them by reason of this Agreement or the activities of the Foundation, or any of its officers, agents, or employees, in carrying out this Agreement, or by reason of any activity of the Foundation, of any of its officers, agents, employees, or invitees, or of any other persons, in or upon the Premises or any part thereof, including, without limitation, any loss, damage or injury arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to any personal property belonging to the City, the Foundation, or any other person.

b. The Foundation shall not be responsible to indemnify and hold City harmless as required by subsection a., above, for any Liabilities which result from the sole negligence or willful misconduct of the City or its officers, agents or employees.

c. The provision by the Foundation of insurance pursuant to Section 21 of this Agreement shall not relieve the Foundation of the obligations set forth in this Section 22.

d. Notwithstanding any provision of this Agreement to the contrary, the obligations in this Section 22 shall survive the termination of this Agreement.

23. Mutual Waiver of Rights. The City and the Foundation each waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss or damage to such waiving party or its property or the property of others under its control, to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damage.

24. Non-Assignability. The Foundation shall not assign or hypothecate this Agreement or any interest created hereby, nor any rights or privileges herein, nor shall it enter into any agreement allowing the operation by another person of the concession granted herein on the Premises nor any portion thereof without the prior written consent of the City, and any attempt

so to do shall be void and confer no rights on any third party and shall be cause for termination of this Agreement by the City at its option. This provision against assignment and hypothecation shall be deemed to be a continuing covenant and apply not only to the Foundation, but to any and all assignees and mortgagees of the Premises and to any who may in any manner acquire any interest therein.

25. Waiver not Continuing. No waiver of any breach, default or term hereof shall constitute a waiver of any other breach, default or term hereof, whether of the same of any other covenant or condition.

26. Relationship Between the Parties. The relationship between the Parties hereto is solely that of owner and concessionaire. Nothing in this Agreement shall be construed as effecting or constituting a partnership, joint venture or other association between the Parties, nor as creating a leasehold interest of any kind in the Premises. The Parties declare that it is not their intention in any respect to form a partnership, joint venture or other association between themselves. The Foundation shall have no right to obligate the City in any manner or way whatsoever, nor shall the Foundation be deemed a tenant of City's for any purpose.

27. Surrender of Premises.

a. The Foundations acknowledges that its right to occupy the Premises is for the sole purpose of carrying out its obligations and rights as a concessionaire under this Agreement. Upon the expiration or termination of this Agreement, the Foundation shall immediately and peaceably surrender and deliver up to the City or its designated agent the Premises, together with any property or inventory thereon, in good condition.

b. If the Foundation fails to perform any of the covenants, conditions, provisions or agreements herein contained, or if the Foundation for any reason be dissolved, or if

a voluntary or involuntary petition for bankruptcy or insolvency is filed by or against the Foundation, then in that event the City may recover and resume possession of the Premises, by force or otherwise, without being liable therefor.

c. In the event the Foundation holds the Premises, or any part thereof, for any one day after the happening of any of the events described above in this Section, it shall be deemed an unlawful detainer of said Premises, and the Foundation shall be subject to eviction and removal with or without process of law.

28. Attorneys' Fees. If either Party brings any action or proceeding to enforce, protect, or establish any right or remedy under this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees.

29. Continuing Covenants. Each and every term, condition, covenant and obligation hereof shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the Parties and all persons holding under or through them or any of them. All the Foundation's covenants hereunder, including those against assignment and subletting, are continuing and binding without exception on all who take or acquire any interest hereunder. Without limiting or qualifying any of the foregoing provisions, every person taking any interest hereunder, by, through or under the Foundation shall by virtue of taking or acceptance of such interest and without further act be deemed to have become bound hereunder not only by privity of estate, but of contract, and to have assumed and agreed to perform all of the covenants and obligations of the Foundation hereunder to the same extent as though such assignee had personally executed this Agreement.

30. Destruction by Fire, Earthquake, or Act of God. In the event that the structures on the Premises or any of them are destroyed to the extent that, in the opinion of the City, rebuilding

or repair is not economically feasible, then the City may within one hundred eighty (180) days after such event terminate this Agreement by providing notice thereof to the Foundation. In the event of such termination, all furniture, fixtures, deposits, inventory, accumulated funds in the Club Improvement Fund, and any and all other money, equipment and property of the Foundation, including, without limitation, proceeds received from any insurance policies held by the Foundation, shall immediately become the property of the City. Any necessary or appropriate payments shall thenceforth be made by, and at the sole option of, the City. If the City does not terminate this Agreement within the time specified, then it shall assign to the Foundation the proceeds of any insurance which the City holds on the Premises, and the Foundation shall rebuild and reconstruct the Premises and resume operations therein as expeditiously as possible.

31. Notice. Notice shall be given by personal delivery or by depositing the notice in the U.S. Mail, postage prepaid, addressed as follows:

If to the Foundation:

Palos Verdes Beach and Athletic Foundation
Attention: Manager
P.O. Box 158
Palos Verdes Estates, California 90274

If to the City:

The City of Palos Verdes Estates
Attention: City Manager
340 Palos Verdes Drive West
Palos Verdes Estates, California 90274


Notice shall be deemed given on the day of receipt, if personally served, or on the fifth (5th) day following deposit in the mail, if served by mail.

This Agreement is executed at Palos Verdes Estates, California, on the dates hereafter set forth.

[SIGNATURES ON THE FOLLOWING PAGE]

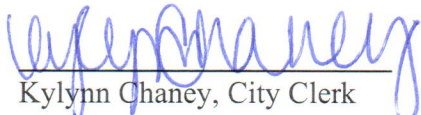
CITY OF PALOS VERDES ESTATES
a Municipal Corporation

Date: June 23, 2020

By: 
David McGowan, Mayor

ATTEST:

APPROVED AS TO FORM


Klynn Chaney, City Clerk


Christi Hogin, City Attorney

PALOS VERDES BEACH & ATHLETIC
FOUNDATION, a California Nonprofit
Mutual Benefit Corporation

Date: _____

By: _____

Its: _____


Date: _____

By: _____

Its: _____

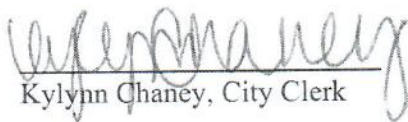
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By: 
David McGowan, Mayor

ATTEST:

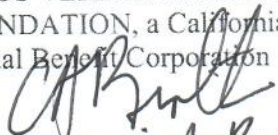
APPROVED AS TO FORM


Kylynn Chaney, City Clerk

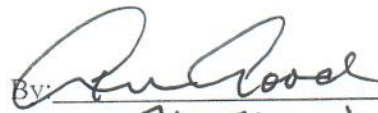

Christi Hogin, City Attorney

PALOS VERDES BEACH & ATHLETIC
FOUNDATION, a California Nonprofit
Mutual Benefit Corporation

Date: 7-8-20

By: 
Its: Craig A. Brothers
President

Date: 7-8-20

By: 
Its: TIMOTHY J. GOOD
VICE-PRESIDENT