

**SECOND AMENDMENT TO THE CONCESSION AGREEMENT BETWEEN
THE CITY OF PALOS VERDES ESTATES AND
THE PALOS VERDES GOLF CLUB**

JULY 12, 2022

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**CONCESSION AGREEMENT BETWEEN
THE CITY OF PALOS VERDES ESTATES AND
THE PALOS VERDES GOLF CLUB**

This Concession Agreement Between The City of Palos Verdes Estates and The Palos Verdes Golf Club (the “*Agreement*”) is made between the City of Palos Verdes Estates, a municipal corporation (the “City”), and Palos Verdes Golf Club, Inc., a California non-profit corporation (the “*Club*”), is hereby amended and is dated for reference this 12th day of July, 2022.

RECITALS

A. The City is the owner of certain property in Palos Verdes Estates known as the Palos Verdes Golf Club (the “*Site*”).

B. Since 1993, the Club has operated the Site pursuant to a concession agreement, which was last amended as restated on November 5, 2019, and which is scheduled to expire on December 31, 2038.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained in this Agreement, and valuable consideration the receipt and sufficiency of which is acknowledged, the parties hereby covenant, promise, and agree as follows:

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

“*30% Limitation*” has the meaning set forth in Section 22(b)(ii).

“*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.”

“Club” means the nonprofit corporation organized by persons playing golf upon the Golf Course and using the Clubhouse covered by this Agreement. The intent of the Club is to improve and maintain the services and quality of operations conducted in the Clubhouse and on the Golf Course. Designation of the Club as a nonprofit corporation in this Agreement shall not be deemed to foreclose it from changing organizational status, provided it continues to comply with all requirements of this Agreement.

“Club Improvement Fund” means the total of all Member initiation fees, plus a monthly Capital Fee charged to the Membership as determined by the Club’s Board of Directors and approved by the City.

“Clubhouse” means the structures on the Site containing the restaurant, snack bar, bar, and locker room, as well as the improvements, appurtenances, furniture, furnishings, and equipment thereof, other personal property used in and about the Premises, the parking lot adjoining the Premises, and the parks and gardens adjoining the Premises, but excluding the parks, planted areas and recreational facilities in or surrounding the golf course which are not a part of the golf course proper.

“Golf Course” means the 18-hole golf course, practice areas, and all buildings appurtenant thereto at the Site, as well as the improvements, appurtenances, furniture and equipment thereof and other personal property used in and about the golf course.

“Gross Receipts” means all money received by the Club from its operation of the Clubhouse or Golf Course, including, but not limited to, licenses, bonuses and/or rentals, if any, received from the use or operation of the Clubhouse or Golf Course. Specifically included, without limiting the generality of the foregoing, are all money, property, or other items of value

received by the Club for Member's dues, golf and green fees, golf cart rentals, and Clubhouse food and beverage sales.

Notwithstanding the foregoing, specifically excluded from "Gross Receipts" are (a) membership initiation fees or assessments levied on Members; (b) sales taxes paid by the Club and collected from its customers, to the extent that such taxes have been included in the gross sales prices; (c) to the extent they were included in gross sales, all sums disbursed for credits and refunds, and/or settlements of claims for loss or damage to merchandise; (d) workman's compensation premium refunds; (e) proceeds from the sale of merchandise by the golf pro shop; (f) proceeds from golf lessons, excluding any portion imposed for use of the Golf Course or for any other items otherwise includable within Gross Receipts; (g) Club storage fees; and (h) gratuities resulting from food or beverage sales paid to Club's employees, provided the exempted portion shall not exceed eighteen percent (18%) of the total food and beverage sales.

"Member" is a person affiliated with the Club as a Regular Member, Senior Member, Widow/Widower Member, or Honorary Member, as those terms are defined in the Club's Bylaws.

"Premises" means collectively the Clubhouse, Golf Course, and other portions of the Site which are subject to this Agreement.

"Regular Member" means a Member admitted to the Club in accordance with the provisions of Section 22 and entitled to certain rights and privileges, including voting rights, set forth in the Club's Bylaws.

"Regular Membership" depending on the context means (a) the membership interest held by a Regular Member or (b) the Regular Members as a collective body.

“Resident” means a person whose primary residence is within the City of Palos Verdes Estates, and who has provided the Club with evidence of such residency as provided in Section 22(a)(v).

“Resident Member” means a Member who is a Resident. A **“non-Resident Member”** means a Member who is not a Resident.

“Residential Property” has the meaning given in Section 22(a)(i).

“Residential Property Owner” has the meaning given in Section 22(a)(i).

2. Grant of Concession. The City does hereby grant to the Club the Golf Course and Clubhouse concessions at the Club, subject to all the terms and conditions contained in this Agreement.

3. Term of Agreement. The term of this Agreement shall commence upon execution by both parties and shall expire on December 31, 2038 unless earlier termination occurs under Section 24 of this Agreement, or, unless the Club shall, at some earlier date, default in its obligations under this Agreement. The Club shall be in default if, sixty (60) days after the mailing by the City of a written notice which delineates the breach or default, it shall fail to remedy said breach or default of its obligations under this Agreement. 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 Club shall be granted two (2) successive options to extend the Term of this Agreement, each option being for an additional ten (10) year period. The first option may be exercised not earlier than ten (10) years before the expiration date of this Agreement, nor later than one (1) year before such expiration date, by the Club giving the City

written notice of its intention to exercise the first option. The second option may be exercised not earlier than six (6) years before the expiration date of the Agreement as extended by the first option period, nor later than one (1) year before such expiration date, by the Club giving the City written notice of its intention to exercise the second option.

(b) Exercise of Option. Notwithstanding Subsection (a) of this Section, the right to exercise these options, or any of them, is contingent upon the Club having kept and performed, to the satisfaction of the City, the premises, covenants, conditions, and intent of this Agreement. In addition, as a portion of the review of the operations of this Agreement conducted to determine if the City will accept the Club's request to renew, the City and the Club agree to examine the then most recent concession fee receipts, and any extension shall be contingent upon modification of this Agreement as necessary to ensure that these receipts remain at no less than the receipts received during fiscal year 2017-2018 after being adjusted for inflation using the cumulative Los Angeles - Long Beach Consumer Price Index, All Urban Consumers (or any successor thereto) from June 30, 2019, to the first date of the new term or the date closest but prior thereto for which such Index is available. The failure of the Club to exercise any option by the deadline provided in subsection (a) of this Section shall result in termination of this Agreement pursuant to Section 24.

5. Payments from Clubhouse and Golf Course Operations. The Club shall pay the City in consideration for the Club's operation of the Premises a ten percent (10%) concession fee which shall be computed based on Gross Receipts as defined in Section 1 above.

6. Records and Accounting. The Club shall keep full and accurate books of account and records which shall clearly reflect and record all monies or other items of value received by

the Club. All funds due the City and all funds earmarked for specified accounts, if any, held by the City for the Club shall be delivered to the City no later than thirty (30) days after the end of the month during which they were received. In addition, the Club shall, on an annual basis, and at its own expense, submit to a full and complete audit by its then current authorized auditor. The Club specifically agrees to maintain, preserve, and protect any and all records requested by such auditor or by the City in accordance with regularly accepted accounting procedures. The City shall have the right to conduct at its own cost and expense an audit of the Club's books and records, which audit shall be conducted during normal business hours.

7. Budget: City Approval of Fees and Charges.

(a) Budget Requirements. The Club shall by November of each year, prepare and deliver to the City a comprehensive budget for the next succeeding calendar year, together with a written request for approval by the City of such budget. Said budget shall indicate estimated income by source, expenditures by major category of expense, and any and all requests for major capital expenditures or long term deferred maintenance items 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.

(b) Fees and Expenditures. No fee or charge of any kind including, without limitation, initiation fees, green fees, Member dues, and cart rental charges, but excluding restaurant and bar charges, charges for merchandise sold from the golf shop, Club storage charges and lesson fees, may be collected or imposed by the Club unless and until the City has approved said fee or charge either within the approved annual budget or as a separate item. The Club may offer financing for initiation fees at a rate of no less than three percent (3%) for

Residents and six percent (6%) for non-Residents with a term not to exceed three (3) years. No capital improvements shall be made nor shall Member or user fees or charges, other than those related to food or beverage service, golf shop merchandise, Club storage, or lessons, be changed unless said improvements and/or changes are either included with the aforementioned annual budget and approved by the City, or are separately approved by the City. The City agrees to periodically consider requests from the Club to make adjustments to new Member initiation fees. However, all requests for initiation fee increases shall be coincident with major capital improvement programs or other similar needs for capital.

(c) Fee Differential. To provide consistency with the fees charged by other recreational venues in the City, pursuant to its authority to approve fees and charges imposed by the Club, the City has required the monthly fee charged to non-Resident Members to be higher than that charged to Resident Members. The City hereby agrees that for the term of this Agreement, it shall not require the monthly fee charged to non-Resident Members to exceed the monthly fee charged to Resident Members by more than twenty five dollars (\$25.00). However, the foregoing fee differential limitation shall not apply to Members who are non-Residential Property Owners and joined the Club after December 31, 2010, regardless of whether they are Residents. Initiation fees, dues, and other charges for non-Residential Property Owners shall be set by the Club subject to approval by the City within the annual budget or as a separate item.

8. Club Improvement Fund; City Approval of Capital Expenditures.

(a) Fund Established. The primary objective of the City and the Club is to maintain and improve the physical premises, including the golf course and all other facilities on the property. . The Club agrees that it shall deposit all Member initiation fees less any referral

credit given by the Club and less \$1,000 per membership sold as provided in subparagraph 8(d), below into a "Club Improvement Fund." In addition, the Club hereby agrees to establish a monthly Capital Fee into which Members shall pay a monthly capital charge based upon the annual Club Improvement Fund budget as approved by the City and the Club. Moreover, as part of the budgeting process, together with the pending year's CIF budget, the City will be presented with an updated draft 10-year CIF replacement reserve and capital improvement forecast based upon projected revenues and updated preventive maintenance and special projects.

The Club Improvement Fund shall be used exclusively for: (i) major capital improvements to the Premises, (ii) major capital equipment purchases in accordance with the criteria set forth in this Subsection, (iii) long term deferred maintenance items, (iv) extraordinary legal fees and costs of litigation, which for purposes of this Agreement shall mean any such fees and costs in excess of the sum of Fifteen Thousand Dollars (\$15,000) in one calendar year incurred by the Club and not reimbursed or reimbursable by the Club's insurer, and (v) disbursements for operations items, durable supplies, equipment and replacements thereof, that exceed ten thousand dollars (\$10,000). Major capital equipment purchases shall be permitted from the Club Improvement Fund only if the equipment costs in excess of ten thousand dollars (\$10,000.00), which sum shall during the Term of this Agreement be adjusted as necessary to keep the purchasing power of such sum the same as in 2019 dollars. All other equipment purchases shall be deemed ordinary operation and maintenance expenses and shall not be payable from the Club Improvement Fund. Ordinary Clubhouse and Golf Course operations and maintenance are specifically excluded from authorized uses of the Club Improvement Fund, nor may the Club distribute to its Members or otherwise dissipate any of the Club Improvement Fund except as specifically authorized in this Agreement or as otherwise approved by the City. All payments, including interest, received

pursuant to Club financing agreements shall be deposited into the Club Improvement Fund. Except for extraordinary legal fees and costs, all expenditures from the Club Improvement Fund are subject to the approval of the City as set forth in Section 7. All capital improvement expenditures must meet recognized standards for capital improvements. Should the Club fail to abide by this Section, it could result, among other remedies, in the City determining that, henceforth, the Club Improvement Fund shall be held by the City rather than by the Club.

(b) Special Capital Assessment. The Club is specifically authorized, pursuant to an authorized vote of its Regular Members, to call for a special capital assessment from its Regular Members. The City agrees that such special capital assessments may be authorized whenever the Club determines there exists a need for improvements in excess of those achievable by using the Club Improvement Fund, or whenever the Club determines that, for purposes of more timely construction of needed improvements, additional capital will be required. Such special capital assessments shall be specifically excluded from Gross Receipts computations, but shall be included in the annual budget presented to the City. Any capital contributions required by the Club pursuant to this Subsection may be made refundable to the Regular Members of the Club under such terms and conditions as are approved in advance by the City Council.

(c) Improvement Fees. In making improvements on the Premises, the Club shall be obligated to pay to the City all costs incurred by the City for inspection of such improvements, provided, however that the City agrees to waive any application fees otherwise required for processing of conditional use permits, variances, or other discretionary approvals required for such improvements.

(d) Referral Credit and Marketing Expenses. For each prospective regular Member that accepts an offer of regular membership in the Club and identifies any current regular Members as the referrer for membership, the Club may award to the referring Member a referral credit in the form of one thousand dollars (\$1000.00) credit against the referring Member's membership fees. The amount of the referral credit shall be deposited into an account designated for ordinary operation and maintenance expenses from the initiation fee required to be paid by the prospective regular Member. The Club may also designate a sum of one thousand dollars (\$1000.00) per membership sold into the account designated for ordinary operation and maintenance expenses from the initiation fee required to be paid by a new incoming member for such expenses as marketing, sales commissions, and administrative expenses. The remainder of the initiation fee shall be deposited in accordance with paragraph 8(a). The Club shall establish rules, procedures and/or Bylaws to implement the Referral Credit program consistent with this Agreement.

9. Control of Member Spending Amounts. The Club may establish as a condition of membership for its Members such minimum spending amounts as the Club determines are necessary to provide for the smooth and efficient operation of the Premises. Any such amounts shall be included in the Club's budget and in the determination of Gross Receipts, but shall not be subject to City approval for modification nor shall any portion thereof be required to be allocated to the Club Improvement Fund.

10. Premises Taken "As Is".

(a) Acceptance of Premises. The Club does hereby accept the Premises and the buildings, equipment, furniture, fixtures, and property of any kind or nature covered by this

Agreement in the condition they now exist. The Club agrees it has the personal property required for operations of the Premises under the terms of this Agreement. The Club declares it has inspected said Premises, the buildings situated thereon, and all equipment, furniture, fixtures, and property of every kind and nature covered by this Agreement, and is relying solely upon such inspection, and not upon any statements or representations of the City, or its officers, agents or representatives, or any of them.

(b) City Property Defined. The Club agrees that any property of whatever nature purchased and placed in or upon the Premises by the Club, except the golf carts, inventory in the golf shop, and inventory of food and beverages in the Clubhouse, by way of additions to, or repairs, replacements or improvements, which shall in any way be used in conducting any business upon the Premises or any business incidental thereto, whether said property be affixed to the realty or not, shall immediately become the property of the City, and the Club shall at no time, without the prior written consent of the City, remove any articles of property belonging to the City, except for the purpose of repair or replacement. The exception contained in this Subsection shall not be deemed to waive the obligations of the Club upon termination of this Agreement as set forth in this Agreement.

11. Utilities. The Club shall pay when due any and all utility charges as well as any and all other charges duly assessed against the Club or the Premises by any governing jurisdiction including without limitation the City.

12. Insurance.

(a) The Club shall maintain insurance in an amount and of characteristics as follows:

(i) Commercial General Liability Insurance using Insurance Service Office “Commercial General Liability” policy form CG 00 01 0798. 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 One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate. The City and its officers, agents and employees shall be included as additional insureds in such policies, using standard ISO endorsement No. CG 2010 with an edition prior to 1992.

(ii) Workers’ Compensation using standard ISO endorsement No. CG 2011 January 1995 edition, providing statutory benefits as required by law with employer’s liability limits no less than One Million Dollars (\$1,000,000) per accident or disease.

(iii) 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 Club owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described in paragraph (i) above. If the Club’s employees will use personal automobiles in any way in connection with this Agreement, the Club shall provide evidence of personal auto liability coverage for each such person in the amounts set forth in this paragraph (iii).

(iv) 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. Coverage shall be applicable to the City for injury to employees of the Club.

(b) Proof of compliance with the insurance requirements set forth in this Section, consisting of certificates of insurance evidencing all of the coverage required and an additional insured endorsement to the Club’s general liability policy, shall be provided by the Club to the City on an annual basis. The Club shall provide certified copies of insurance policies to the City at the inception of this Agreement and at any time there is a change in insurer or a substantial change in the terms of coverage.

(c) The provisions of this Section establish minimum insurance requirements to satisfy the needs of the City and are not intended to foreclose the Club from acquiring such additional amounts or types of insurance as it deems advisable. Should the Club maintain additional insurance, the Club 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 8 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 Club or for costs associated with obtaining reimbursements from the Club's insurance carrier.

(d) **Reimbursement for Replacement Value of Buildings.** Commencing on August 1, 2020, and each year thereafter throughout the term of this agreement, the Club shall reimburse the City for the actual expense of insuring the replacement value of the buildings as periodically determined by the City's insurer. The City shall on June 1 of each year submit the cost of such insurance to the Club and the Club shall reimburse the City within 30 days.

(e) **Proof of insurance.** The Club shall provide certificates of insurance to the City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with the City at all times during the term of this contract. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(f) **Duration of coverage.** The Club shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by the Club, his agents, representatives, employees or sub consultants.

(g) **Primary/non-contributing.** Coverage provided by the Club 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.

(h) **The 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 Club or the City will withhold amounts sufficient to pay premium from the Club payments. In the alternative, the City may cancel this Agreement.

(i) **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 Risk Manager.

(j) **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 Club or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. The Club 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.

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

(l) **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 Club maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Club. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(m) **Notice of cancellation.** The Club 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.²

(n) **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 also apply to any excess/umbrella liability policies.

(o) **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.

(p) **Separation of Insureds.** A severability of interests provision must apply for all additional insureds ensuring that the Club'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.

(q) **Pass Through Clause.** The Club agrees to ensure that its sub-consultants, sub-contractors, and any other party involved with the project who is brought onto or involved in the project by the Club, provide the same minimum insurance coverage and endorsements required of the Club. The Club 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 Club agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to the City for review.

(r) **The 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 The Club ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Club, the City and the Club may renegotiate the Club's compensation.

(s) **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.

(t) **Timely notice of claims.** The Club shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from the Club's performance under this agreement, and that involve or may involve coverage under any of the required liability policies.

13. Indemnification.

(a) Except as otherwise set forth in paragraph (b), below, the Club 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 ("**Liabilities**") which may be asserted against the Indemnified Parties or any of them by reason of this Agreement or the activities of the Club, or any of its officers, agents, or employees, in carrying out this Agreement, or by reason of any activity of the Club, of any of its officers, agents, employees, or guests, 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 Club, or any other person.

(b) The Club shall not be responsible for, and such indemnity shall not apply to any Liability, which results from, the sole negligence or willful misconduct of the City or its officers, agents or employees.

(c) The Parties agree to work cooperatively in the defense of any Liability brought against the Club or the City or both which arises from or is related to this Agreement, the activities of the Club or any of its officers, agents, or employees in carrying out this Agreement, or any activity of the Club, of any of its officers, agents, employees, or guests, or of any other persons, in or upon the Premises or any part thereof. In connection therewith, the City agrees it will consider any proposal for settlement of any Liability for which the Club is required to indemnify the City pursuant to the provisions of this Section 13, and if such proposal is recommended by the Club, the City will not unreasonably withhold its consent to such settlement provided that such settlement does not impose additional obligations, restrictions or monetary damages on the City.

(d) The provision by the Club of insurance pursuant to Section 12 of this Agreement shall not relieve the Club of the indemnification obligations set forth herein.

(e) Notwithstanding any provision of this Agreement to the contrary, the indemnity obligations in this Section 13 shall survive the termination of this Agreement.

(f) The City and the Club each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents, and representatives of the other, for loss of 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.

14. Premises Maintenance. The Club shall be responsible for the full and complete maintenance of the Premises, and every part thereof. In addition, the Club shall, at its own cost and expense, at all times keep and maintain all shrubs and plants around and about the Premises in a healthy and sightly condition.

15. Destruction by Fire, Earthquake, or Act of God.

(a) In the event that the structures on the Premises are damaged or destroyed by fire, earthquake or Act of God, the City shall appoint an investigatory committee consisting of three construction experts. The City will select one expert, the Club will select one expert, and the two designated experts will select a third expert. If the Club fails to notify the City of the expert it selects within 30 days of a written request from the City to designate an expert to serve on the investigatory committee, the Club shall have waived its right to designate an expert to service on the committee and the City may either designate a second expert to serve on the committee or assign the task to one expert of its selection. If two experts are selected to serve on the committee, then they shall together select a third expert; if they fail to agree on the designation of a third expert within the thirty (30) days of the date on which the second expert was selected, the City shall make the appointment of the third expert. The committee will investigate and provide information to the City on the projected cost of rebuilding and/or repairing the premises.

(b) In the event that the structures on the Premises are damaged or destroyed by fire, earthquake or Act of God to the extent as determined by the City Council, the cost of rebuilding and/or repairing exceeds the sum total amount of any insurance proceeds and any cash held in deposit or reserve by the Club (including any amounts held in the Club

Improvement Fund), then the City may within one hundred twenty (120) days of such event terminate this Agreement by providing written notice thereof to the Club.

(c) In the event of such termination, all furniture, fixtures, deposits, inventory, accumulated funds in the Club Improvement Fund or in the Initiation Fees Special Fund (less any amounts due to Members for reimbursement for assessments or loans), and any and all other money, equipment and property of the Club, including, without limitation, proceeds received from any insurance policies held by the Club, but excluding golf shop inventory and golf carts, 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, it shall assign to the Club the proceeds of any insurance which the City holds on the Premises and the Club shall rebuild and reconstruct the Premises and resume operations therein as expeditiously as possible.

16. Anti-Assignment It is hereby understood and agreed that the Club may not assign or hypothecate any part of this Agreement, or enter into any agreement or other instrument whatsoever affecting the Premises without the prior written consent of the City in its sole and absolute discretion, 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 shall apply not only to the Club but to any and all assignees and to anyone who may in any manner acquire any interest in the Club or in this Agreement. The granting, giving and waiving of any one or

more consents shall not render unnecessary, nor be deemed to be or operate as a waiver of the necessity for any subsequent consents.

17. Covenant of Performance.

(a) Investments in Infrastructure and Facilities. The Club commits to presenting demonstrable progress toward the implementation of Infrastructure and Facility improvements.

(i) The Club will endeavor to make significant capital investments in its infrastructure and facilities to enhance revenue streams to the City. In addition to providing optimal financial returns to the City, the investments will also best position the Club competitively within the club marketplace and increase the Club's appeal to PVE residents. Over the 20-year term of this Agreement, the Club intends to (i) invest in ADA improvements throughout the facility; (ii) partner with West Basin Municipal Water District and California Water Service to work toward completion of the recycled water pipeline project; (iii) invest in esthetic enhancements to the ballroom and special event areas, thus enhancing ROI opportunities on special events; (iv) invest in infrastructure and esthetic enhancements in the member and public dining areas to enhance the experience of PVE constituent and member dining; (v) invest in kitchen infrastructure and equipment to increase that department's efficiency, output, and consistency; (vi) invest in ongoing golf course design improvements to continue to elevate the golfing experience; (vii) invest in updated locker room facilities to enhance the club experience, member retention, and new member attraction; (viii)

invest in broader physical fitness facilities to increasingly appeal to a wider range of potential members; (ix) consistently strive for innovative approaches toward facility experiences to keep up with demand for Club improvements and amenities.

(ii) The Club shall meet regularly, but not later than once every two years, with City representatives to present progress on and to discuss updated plans toward the completion of Infrastructure and Facility improvements.

(b) Termination for Specified Causes. The Club covenants that if the concession fee required by this Agreement, or any part thereof, shall be unpaid when due, or if the Club shall fail to perform any of the covenants, conditions, provisions or agreements contained in this Agreement, or if any petition in bankruptcy or insolvency is filed by or against the Club under Chapter XI of the Bankruptcy Act or under any legislation designed to give relief to debtors, or if any assignment shall be made of the Club's property for the benefit of creditors, or if a trustee in bankruptcy or a receiver of any property of the Club shall be appointed in any suit or proceedings by or against the Club, or if the Club should dissolve for any reason, then in any of the said events, the City may terminate this Agreement and recover and resume possession of the Premises, by force or otherwise, without being liable therefore.

(c) Unlawful Detainer. In the event the Club shall hold the Premises, or any part thereof, for one day after the happening of any of the events in Subsection (a) of this Section, it shall be deemed guilty of unlawful detainer of the Premises under the statutes of the State of California, and shall be subject to eviction and removal with or without process of law.

(d) Attorneys Fees. The Club further covenants and agrees to pay to the City all costs and reasonable attorney's fees which the City may be required to incur in enforcing any of the rights or remedies given it by the terms or provisions of this Section.

18. Time of the Essence. Time is of the essence of this Agreement and of every covenant of the Club.

19. Agreement Binding on Heirs and Assigns. Each and all of the terms, conditions, covenants and obligations hereof shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the parties hereto and all persons holding under or through them or any of them. The Club's covenants hereunder, including those against assignment, are continuing and binding without exception on all who take or acquire any interest hereunder. Without limitation or qualifying any of the foregoing provisions of this Agreement, every person taking any interest hereunder by, through, or under the Club shall by virtue of the taking or acceptance of such interest and without further act be deemed to have become bound hereunder and to have assumed and agreed to perform all of the covenants and obligations of the Club hereunder to the same extent as though such assignee had personally executed this Agreement.

20. Food and Drink. The City agrees that the Club shall be the only person, firm, or corporation, except for the City, that shall have the right to serve food or drink upon the Golf Course or within the Clubhouse. The Club shall have the discretion to allow certain large, charitable events to provide donated product provided there is the opportunity for the Club to directly benefit financially, and provided it makes the most economic or budgetary sense for the Club..

21. Preferences for Clubhouse Use.

(a) Use by City-based Organizations. The Club shall give reasonable preference over any other reservations for the use of the Clubhouse or Golf Course or any part thereof to organizations that are City-based. The City shall maintain a list of said “City-based” organizations and shall be the sole source for the definition thereof. Said preferences shall consist of offering Club facilities to City-based organizations, for purposes of scheduling events, a minimum of one month earlier than the facilities are made available to other organizations.

(b) Use by City Property Owners and/or Residents. The Club agrees that the Premises, being the property of the City of Palos Verdes Estates and dedicated to park and recreational purposes, must at all reasonable times be available to the property owners and/or residents of the City of Palos Verdes Estates, and may not be conducted as a private club or solely for the benefit of Members of the Club. The Club may reasonably limit access to and permitted uses of the Premises, including the Golf Course, as may be necessary to assure the safety of its Members, employees, and the general public.

(c) Use by City. The Club shall, on mutually agreed dates, reserve Club facilities for the use of the City. Food, beverage, and personnel costs, if any, shall be provided by the Club to the City “at direct cost” and exclusive of any overhead charges of any kind. Moneys received by the Club from these events will be exempted from Gross Receipts in determining the concession fee.

22. Regular Membership.

As provided in the Club’s Bylaws, there is one class of membership with voting rights – Regular Membership. Regular Membership consists of two groups—Residential Property Owners and non-Residential Property Owners. The membership requirements for the two groups are described in Subsections (a) and (b) below. Based on the City’s desire to impose some limitation on the percentage of Regular Members who do not own Residential Property, the parties agree the total number of Regular Members who are non-Residential Property Owners shall not exceed thirty percent (30%) of the maximum allowable number of Regular Members as further specified in Subsection (b)(ii) below.

(a) Residential Property Owners.

(i) There shall be one Regular Membership in the Club permitted for each residential building site or residential dwelling unit (such as a condominium) within the boundaries of that area commonly known as ‘Palos Verdes Estates’ as set forth in that certain Grant Deed dated June 14, 1940, recorded in Book 17615, page 163 of the Books and Records of the County of Los Angeles (*i.e.*, within the boundaries of the incorporated City of Palos Verdes Estates, of Tracts 6881 and 9302 of Los Angeles County) (“**Residential Property**”). Irrespective of whether legal title to a Residential Property is vested in two or more persons, only one Regular Membership is allocated to a Residential Property.

Except as set forth in Sections 22(a)(ii)-(iii) and 22(b), no person shall be accepted as a Regular Member, or permitted to remain as a Regular Member, unless that person can demonstrate, to the satisfaction of the Club and City, if required, that the person is the owner of Residential Property (“**Residential Property Owner**”). A person shall be considered a

Residential Property Owner only if the person is: (A) the sole holder of the fee interest in Residential Property or a fee interest in Residential Property with only a spouse holding any other interest in the Property; (B) the spouse of the sole holder of the fee interest in Residential Property, provided the Club is given satisfactory evidence the owner of the Residential Property has consented to transfer his/her right to membership as established in this Agreement to the spouse; (C) the holder of no less than a fifty-percent (50%) fee interest in Residential Property with any other person(s) who is not a spouse, provided the Club is provided satisfactory evidence that any owner of the Residential Property not related by marriage has consented to the person being deemed the owner of the Residential Property for purposes of Club membership; or (D) the trustor or beneficiary of a trust that is the owner of Residential Property, provided the Club is provided satisfactory evidence the person is deemed the owner of the Residential Property for purposes of Club membership by every other person with an interest in the trust.

(ii) Pre-June 1988 Exception: Notwithstanding the provisions of paragraph (i) above, any Regular Member who was a Regular Member before June 1, 1988, and has consistently retained that Regular Membership in accordance with the Club's Bylaws since that time, may retain his or her Regular Membership regardless of whether he or she owns Residential Property or is a Resident.

(iii) June 1988-July 1993 Exception: Notwithstanding the provisions of paragraph (i), any Regular Member who joined the Club on or after June 1, 1988, and before July 1, 1993, and has consistently retained that Regular Membership in accordance with the Club's Bylaws since that time, may retain his or her Regular Membership in the Club regardless of whether he or she

owns Residential Property, but only if he or she remains a Resident. If he or she changes residency to a locale other than the City, he or she shall cease to be a Regular Member effective as of the date of residency change, unless he or she is at such time and thereafter remains a Residential Property Owner, in which case, he or she may retain his or her Regular Membership.

(iv) Confirmation of Status. At least once every two years, the Club shall confirm the eligibility status of Regular Members who hold Regular Membership pursuant to Section 22(a). Upon completion of this confirmation process as set forth in Subsections (A) and (B) below, the Club shall take such steps as may be necessary to assure compliance with this Agreement.

(A) Confirmation of Ownership. For each Regular Member required to own Residential Property (*i.e.*, those Regular Members who either joined the Club between June 1, 1988, and July 1, 1993 and are no longer Residents, or joined the Club after July 1, 1993), the Club shall require the Member to provide the Club with a copy of the most recent property tax bill for such Residential Property, provided, however, that the Regular Member may redact the amount of tax due shown on such bill.

(B) Confirmation of Residency. For each Regular Member required to reside in the City (*i.e.*, those Regular Members who joined the Club between June 1, 1988 and July 1, 1993 and no longer own Residential Property), the Club shall require the Member to provide the Club with a copy of the following items, each of which shall reflect the Regular Member's name and a corresponding address within the City: (1) valid California driver's license; (2) car registration; (3) telephone bill; (4) gas bill; and (5) electric bill. The

Club may accept fewer than all of the items specified if it has conducted a good-faith examination and is satisfied the Regular Member is unable to provide all such documentation and resides within the City.

(b) Non-Residential Property Owners.

(i) Admission. Subject to the 30% Limitation set forth in Subsection (ii) and the maximum number of Regular Members set forth in Subsection (c), the Club may admit non-Residential Property Owners to Regular Membership provided there are no Residential Property Owners on the Waiting List who are willing to accept Regular Membership.

(ii) 30% Limitation. The parties agree the total number of Regular Members who are non-Residential Property Owners shall not exceed thirty percent (30%) of the maximum allowable number of Regular Members as specified in this Agreement (the “*30% Limitation*”). At all times, applicants for membership who are Residential Property Owners and fulfill all other requirements shall have priority for membership over non-Residential Property Owners.

(iii) Priority for Former Members. Any Regular Member who joined the Club after June 1, 1988 and ceases to be eligible for Regular Membership based on the requirements set forth in Section 22(a) (“*Former Member*”) may apply to be re-admitted as a non-Residential Property Owner Regular Member, and will receive the first membership opening available to non-Residential Property Owners, provided the application for readmission is received within sixty (60) days from the termination of membership and the terminated

membership had been consistently maintained for a period of no less than fifteen (15) years (exclusive of any period of inactive or absentee status). The Former Member under these circumstances shall receive credit for the then current Regular Member initiation fee and will pay, in addition, a fee established from time to time by the Board, for non-Residential Property Owners.

(iv) If at any time the Club is not at its authorized maximum Regular Membership and has achieved the 30% Limitation, an additional five percent of non-Residential Property Owners may become eligible for Regular Membership (“the 35% Limitation”). The 35% Limitation shall be authorized after activation of the following: 1) mailing of an invitation to apply for Regular Membership to property owners who acquired an ownership interest in property in the City within six months of the mailing; 2) mailing of an invitation to apply for Regular Membership to all Residential Property Owners; 3) a social media campaign to encourage residents and property owners to apply for Regular Membership; and 4) passage of four months from the date of the mailings.

(c) Membership Number. The Club shall make a reasonable offer to retain a Regular Membership of not less than five hundred (500). The maximum number of Regular Members shall be six hundred (600.). At all times, subject only to the maximum number of Regular Members, applications from Residential Property Owners who meet all applicable requirements shall be accepted within a reasonable period of time, not to exceed twenty-four (24) months, provided, however, the City shall not require the Club to accept new Regular Members when the Club is at its authorized maximum Regular Membership. When the Club is at its

maximum Regular Membership, it shall continue to accept applications from Residential Property Owners and shall place those applicants on the Waiting List. The positions on the Waiting List shall be in the order of the date of application, subject in all cases to the priority of Residential Property Owners over non-Residential Property Owners.

(d) Other Membership Categories. In addition to the category of Regular Membership specifically referenced in this Agreement, the following categories are provided:

(i) Clubhouse Associate – A “Clubhouse Associate Membership” shall have access only to Clubhouse facilities. A Clubhouse Member shall have no golfing privileges other than those available to the general public. The benefits and obligations of a Clubhouse Membership shall be specified in the rules and regulations issued by the Club, subject to the approval of the City. There is no limit on the number of Clubhouse Memberships and membership shall not be limited to person who are Residents or Residential Property Owners of the City.

(ii) Honorary Membership – Honorary Membership, either for life or for a term of years, may be awarded only by a unanimous vote of the Board in recognition of any contributions or service to the Club or to the game of golf in general. Honorary Members will not be required to pay membership fees, dues or minimums, or be liable for assessments, but except for voting and serving as an officer or director, shall have all rights and privileges of Regular Members.

(iii) Senior Membership – Senior Membership is at the discretion of the Board, in accordance with rules and procedures as established by the Club. Senior Members shall be responsible for payment of one-half (1/2) the

annual membership fees and one-half (1/2) the monthly Capital Fee. Any current assessment balance shall be paid within 30 days of acceptance as a Senior Member. Senior Members are prohibited from Using the Golf Course on weekends or holidays and do have voting privileges.

(iv) Widow/Widower Associate Membership – The surviving spouse of a Regular-Family Membership may apply in writing to the Committee for reclassification of their Regular-Family Membership to a Widow/Widower Associate Membership within 6 months of the death of the member's spouse. Membership obligations and privileges are those as specified in the Club's Membership Handbook.

(v) Junior Executive Membership - A Junior Executive Member (JEM) is available for residents between the ages of 25 and 45, and for non-residents between the ages of 25 and 40. JEMs shall enjoy all of the rights and privileges of Regular Members, including full access to Club facilities and golf privileges, and shall be responsible to pay all fees, dues charges and minimums, and monthly Capital Fees except that JEMs are only required to pay for one-half of the new Member initiation cost upon joining. The JEM does not have the right to vote in Club matters and the JEM must have paid the entire cost of the then-applicable initiation fee prior to acceptance for Regular Membership. JEM Members in good standing under the age of 35 as of the Effective date of the Second Amendment to the Agreement may continue to pay half dues **until the age of 35** and will be bound by any existing Club financing agreements for the duration

of their JEM membership. The Club shall establish rules, procedures and bylaws to implement the Junior Executive Membership consistent with this Agreement.

(e) **Inactive Status** – A Regular Member may apply in writing to the Club’s membership committee (“Committee”) to be placed on Inactive status. IF the Regular Member’s application is approved by the Committee and the Board, the Regular Member will be placed on Inactive status. Inactive status must continue for a minimum of 12 months. A person on Inactive status must pay a monthly fee as established by the Board, which fee may be modified from time to time. No other fees, dues, assessments, or minimums will be charged while the person is on Inactive status. A person on Inactive status has no benefits or privileges to the Premises or activities, other than those afforded the general public. Reinstatement from Inactive status shall be in accordance with the rules and regulations established by the Club. If a person requesting to be reinstated as a Regular Member while on Inactive status is approved by the Committee, the application will receive the first available Regular Membership.

(f) **Waiting List**. The Club shall maintain a Waiting List and shall admit new Members pursuant to the Club’s Bylaws, Sections IV.4 and IV.9, as may be amended from time to time.

23. **Board of Directors**. The Club may establish criteria for membership on its Board of Directors, subject to the following requirements: The Club shall undertake its best efforts to determine whether any person appointed or elected to the Board of Directors is a Resident or a non-Resident. Notwithstanding any provision of the Club’s Bylaws to the contrary, (i) the percentage of non-Residents serving on the Board of Directors shall be the same as or less than the percentage of Regular Members of the Club who are either non-Residents or non-Residential

Property Owners, and (ii) important policy matters acted upon by the Board shall require that a majority of three (3) of the five (5) Board members required for a quorum be Residents.

24. Termination.

(a) Covenants Upon Termination. In the event of the termination of this Agreement and irrespective of the cause therefore, the Club agrees peaceably to surrender and turn over to the City the Premises and every part thereof, all of the deposits then held by the Club, including but not limited to, the Club Improvement Fund, together with all furniture, fixtures, equipment and inventory of personal property, including, but not limited to, all supplies of food and drink, but excluding golf shop inventory and golf carts, its liquor license, any other licenses required by law in connection with the operation of the Premises to the extent that same are legally transferable, and any and all policies of insurance held by it in connection with the operation of the Premises. The City agrees that any funds received and any insurance proceeds received (collectively the "*capital improvement funds*") shall be expended as soon as practicable for improvement of the Premises. The City further agrees that in such event it shall consider recommendations of the Club as to the specific nature of the improvements which should be made and that it will in no event expend such capital improvement funds for other than improvement of the Premises.

(b) Re-establishment of a Golf Club. Upon termination of this Agreement, the City agrees to give highest priority to attempting to re-establish a golf club for operation of the Premises or parts thereof, and in such circumstance that the then existing Regular Members of the Club will receive absolute priority in membership to the re-formed club. Should such a

new club be formed, all remaining capital improvement funds shall be returned to the re-formed club.

24. Amendments. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the Parties hereto with the same formality as this Agreement. The Club shall provide written notice to the City within forty-five (45) days of any approved amendment, alteration, or modification to the Club's Bylaws.

25. Inspection. The Club agrees that at all times when the Premises are open for operation, it will permit the City or any designated representative of the City to inspect the Premises or any part thereof. In addition, the Club shall send to the City a copy of the minutes of each meeting of the Club's Board of Directors, Membership Committee and Finance Committee, within 10 days of the approval following approval of such minutes by such body, any revisions to the Club Bylaws, and any correspondence with Members regarding financial issues.

26. Rules and Regulations. The Club agrees that it shall operate and maintain the Golf Course and Clubhouse and every part thereof, in compliance with this Agreement and with the Rules and Regulations of the Palos Verdes Golf Club, including the schedule of fees and charges approved by the City, and shall enforce said Rules and Regulations.

27. Relationship of the Parties. The relationship of the parties hereto is solely that of owner and concessionaire, and nothing in this Agreement shall be construed as effecting or constituting a partnership between the parties hereto, and the parties hereto expressly declare that it is not their intention in any respect to conduct a business upon the said Premises, and the Club shall have no right or ability to obligate the City in any manner or way whatsoever.

29. Interpretation. In the event of any conflict between this Agreement and any other agreement between the Parties or the Club Bylaws, the terms of this Agreement shall prevail.

30. 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 Club:

Palos Verdes Golf Club
Attention: General Manager
3301 Via Campesina
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 second day following deposit in the mail, if served by mail.

Executed at Palos Verdes Estates, California.

CITY OF PALOS VERDES ESTATES, a

Municipal Corporation

By:

Name: Victoria Lozzi

Title: Mayor

ATTEST:

Kylynn Chaney, City Clerk

APPROVED AS TO FORM:

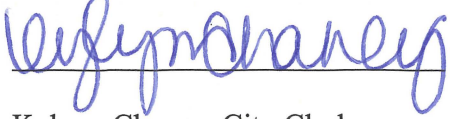
Trevor Rusin, Interim City Attorney

PALOS VERDES GOLF CLUB, INC., a Nonprofit Corporation

By:  _____

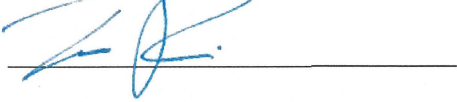
David Klein, President, Board of Directors

ATTEST:



Kylynn Chaney, City Clerk

APPROVED AS TO FORM:



Trevor Rusin, Interim City Attorney

PALOS VERDES GOLF CLUB, INC., a Nonprofit Corporation

By: _____

David Klein, President, Board of Directors