

**FIRST AMENDMENT TO FOOD AND BEVERAGE SERVICES AGREEMENT
BETWEEN CITY OF LAKE WORTH AND E.R. BRADLEYS TRIPLE CROWN CLUB
L.W., LLC, D/B/A E.R. BRADLEY'S LAGOON SALOON**

THIS FIRST AMENDMENT ("Amendment") is made this 23 day of August, 2016, between the City of Lake Worth, Florida, a municipal corporation (the "CITY"), and E.R. Bradley's Triple Crown Club L.W., LLC, d/b/a E.R. Bradley's Lagoon Saloon, a Florida corporation (the "TENANT").

RECITALS

WHEREAS, on October 2, 2013, the CITY and TENANT entered into a Food and Beverage Services Agreement for the lease of certain space located at the Lake Worth Municipal Golf Course and to engage the TENANT to operate a full scale restaurant at the Municipal Golf Course Lagoon Bar & Grill restaurant and banquet space and food and beverage services at the golf course concession (the "Services Agreement");

WHEREAS, the CITY and TENANT desire to amend the Services Agreement to address changes to the terms and conditions of the Agreement; and,

WHEREAS, the CITY finds amending the Services Agreement as set forth herein serves a valid public purpose.

NOW THEREFORE, the CITY and TENANT, in consideration of the mutual promises herein contained and contained in the Services Agreement, the sufficiency of which is hereby acknowledged by both parties, agree to amend the Services Agreement as follows:

1. Section 2 of the Services Agreement, entitled "TERM", is deleted and replaced with the following:

The term of this Services Agreement shall be for a period of ten (10) years commencing from August 3, 2016 through August 3, 2026 (the "Lease Term"), with option for an additional renewal period subject to the written agreement of the CITY and TENANT. The CITY, however, may terminate the Services Agreement subject to the provisions of Section 11 of this Services Agreement.

2. Section 7 of the Services Agreement, entitled "FEE" is amended as follows:

Subsection 7.1 is deleted and replaced with the following:

7.1 For use of the CITY's facilities and other services to be provided under this Services Agreement, the TENANT will pay rent to the CITY in the amount of \$4,500 (Four Thousand Five Hundred Dollars) (in U.S. Currency) per month ("Base Rent") commencing Sept 1, 2016 (the "Rent Commencement Date"). Should the CITY require additional services not included in this Services Agreement and/or referenced in Exhibit A, fees and payments for such services will be set forth in a separate Additional Services Addendum, as authorized by the CITY prior to any such additional services being performed by the TENANT.


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Base Rent shall be payable in monthly installments, in advance, beginning on the Rent Commencement Date, and continuing on the first day of every calendar month thereafter during the Lease Term. The Base Rent shall increase each year of the Lease Term based on annual changes in the CIP for Palm Beach County. However, regardless of the annual changes in the CIP for Palm Beach County, the Base Rent shall increase two percent (2%) each year for the first five (5) years of the Lease Term. Other than the annual changes in the CIP for Palm Beach County, the Base Rent shall not increase during years six (6) through ten (10) of the Lease Term. The term "Rent" when used in this Services Agreement shall include Base Rent and all forms of additional rent. All Rent shall be paid to CITY without demand, setoff, or deduction whatsoever, except as specifically provided in this Services Agreement, at CITY's Notice Address, or at such other place at the CITY shall designate in writing to the TENANT. TENANT's obligations to pay Rent are covenants independent of the CITY's obligations under this Services Agreement.

In addition, TENANT shall pay monthly to CITY any sales, use, or other tax (excluding state and federal income tax), including property taxes as set forth in Section 37, now or hereafter imposed on any Rent or additional rent due under this Services Agreement.

Unless otherwise expressly provided, all monetary obligations of TENANT to CITY under this Service Agreement, of any nature, other than Base Rent, shall be denominated as additional Rent. Except as otherwise provided, all additional rent payments are due within thirty (30) days after receipt of an approved invoice from the CITY.

3. Section 11 of the Services Agreement, entitled "TERMINATION OF AGREEMENT" is amended as follows:

Subsections 11.1 and 11.2 are deleted and replaced with the following:

11.2 If the City Manager or designee deems that the TENANT is in default of any material term of this Services Agreement, including without limitation, for failure to supply an adequate working force or service of proper quality; for failure to pay Rent or other costs; for failure to satisfactorily perform the services specified in this Service Agreement; or, for failure to maintain all required licenses and/or insurance, the City Manager or designee may give written notice to the TENANT specifying default(s) to be remedied within thirty (30) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the TENANT does not remedy the default(s) within thirty (30) days or promptly commence steps to remedy the default(s) to the reasonable satisfaction of the City Manager or designee, the CITY may: (A) remedy the default and charge the TENANT all reasonable costs and expense associated with such remedy including, without limitation, the CITY's reasonable attorney's fees related to or arising from such remedy and/or the CITY may withhold any money due or which may become due to the TENANT under this Services Agreement; and/or, (B) the CITY may elect to terminate this Service Agreement.

4. Section 18 of the Services Agreement, entitled "CONTRACT ALTERATIONS" is amended as follows:


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Subsection 18.1 is deleted and replaced with the following:

18.1 The TENANT and CITY's Golf Course Managers with the concurrence of the CITY Manager may agree in writing to minor revisions to this Services Agreement; however, any changes to the Rent or Lease Term (including any renewals) require CITY Commission approval.

5. Section 19 of the Services Agreement, entitled "ASSIGNMENT" is amended as follows:

Subsection 19.1 is deleted and replaced with the following:

19.1 Nothing under this Service Agreement shall be construed to give any rights or benefits to any party other than the CITY and the TENANT. All duties and responsibilities under this Service Agreement shall be for the sole and exclusive benefit of the CITY and the TENANT, and not for the benefit of any other party. The TENANT shall not hereafter assign any right or interest in this Service Agreement, and shall not delegate any duty owed, without the CITY's prior written consent. For purposes of this Assignment provision, an assignment occurs if Mitchell Reale hereafter sells, transfers or assigns his interest in E.R. Bradley's Triple Crown Club LW, LLC. Notwithstanding the foregoing, the CITY acknowledges that the TENANT may perform its obligations and responsibilities under this Services Agreement as E.R. Bradley's Triple Crown Club LW, LLC, d/b/a Beach Club. Changes to the TENANT's fictitious registration name shall not trigger this Assignment provision.

The remainder of Section 19 (subsections 19.2 and 19.3) remains the same.

6. Section 24 of the Services Agreement, entitled "NOTICES" is amended for notices to be sent to the TENANT as follows:

E.R. BRADLEY'S TRIPLE CROWN CLUB L.W., LLC d/b/a BEACH CLUB
c/o Mitchell Reale
2154 Chagall Circle
West Palm Beach, FL 33409

7. Section 26 of the Services Agreement, entitled "PERMITS AND LICENSES" is amended as follows:

Subsections 26.1 and 26.2 are deleted and replaced with the following:

26.1 TENANT shall maintain all required licenses and permits required for its services under this Services Agreement, including without limitation, a current permit/license for a concession operation and/or restaurant establishment operated by TENANT. The permit/license of any concession operation and/or restaurant establishment must be with the State of Florida Department of Business and Professional Regulation. A copy of the current permit/license for the concession type operation or food service establishment shall be provided to the CITY upon request and posted in accordance with any applicable laws. Failure to maintain current licenses and permits as require shall result in immediate cancellation, or suspension of service, as provided herein and/or termination of this Services Agreement by the CITY.


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26.2 CITY shall be named as a PARTNER on the TENANTS retail beverage sales license, # BEV6013294, as required by the State of Florida, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco and maintain the same for the Lease Term. TENANT shall be responsible for all costs and expenses associated with renewing the CITY's retail beverage sales license.

8. A new Section 43 is added to the Services Agreement as follows:

43. PUBLIC RECORDS: Effective July 1, 2016, pursuant to section 119.0701, Florida Statutes, the TENANT shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the service.
- (b) Upon request from the CITY's custodian of public records or designee, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the TENANT does not transfer the records to the CITY.
- (d) Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of the TENANT or keep and maintain public records required by the CITY to perform the service. If the TENANT transfers all public records to the CITY upon completion of the Agreement, the TENANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the VENDOR keeps and maintains public records upon completion of the Agreement, the TENANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records or designee, in a format that is compatible with the information technology systems of the CITY.

IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION DEBBIE ANDREA, (561) 586-1660 OR DANDREA@LAKEWORTH.ORG OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH, FL 33460.

9. Exhibit "A" to the Services Agreement is amended as follows:

- A. The existing provision entitled "UTILITIES" shall be deleted and replaced with the following provision:


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UTILITIES

Upon the CITY's execution of this First Amendment, the CITY shall be solely responsible for only the following utility costs associated with the TENANT's operations at the Premises: telephone, electricity, water, and sewer.

- B. The existing provision entitled "PEST CONTROL" shall be deleted and replaced with the following provision:**

PEST CONTROL

The TENANT shall be responsible for the cost of pest control/exterminating services, including but not limited to such services on, in and around the restaurant and concession areas which are subject to this Services Agreement and the remaining Clubhouse area including the Proshop. All pest control/exterminating services shall be on a regular basis.

- C. A new provision entitled "GENERAL MAINTENANCE AND REPAIRS OF PREMISES" shall be added to the Scope of Services as follows:**

GENERAL MAINTENANCE AND REPAIRS OF PREMISES

The CITY shall repair and maintain in good order and condition, ordinary wear and tear excepted, only the roof, the outside walls (excluding any storefronts), the structural portions of the Premises (exclusive of any structural elements constructed by TENANT), and the HVAC system. However, TENANT shall pay the cost of any such repairs or maintenance resulting from acts or omissions of TENANT, its employees, agents, or contractors.

Except to the extent the CITY is obligated to repair and maintain the Premises as provided under the Lease, TENANT shall, at its sole cost, repair, replace, and maintain the Premises (including, but not limited to the walls, storefronts, ceilings, and floors in the Premises and electrical, plumbing (including grease traps), mechanical, fire protection, life safety, sprinklers, and all equipment servicing the Premises), in a clean, attractive, first-class condition. All replacements shall be of equal quality and class to the original items replaced. TENANT shall not commit or allow to be committed any waste on any portion of the Premises.

10. COUNTERPARTS: This First Amendment to the Services Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed original of this First Amendment.

11. ENTIRE AGREEMENT: This First Amendment is intended to amend the Services Agreement as specified herein and shall take precedence over the Services Agreement. All other terms of the Services Agreement that are not amended by this First Amendment shall remain in full force and effect. No other agreements, statement, or promise relating to the subject matter of this First Amendment and the Services Agreement which are not contained herein or therein shall be valid or binding.


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IN WITNESS WHEREOF the parties hereto have made and executed this First Amendment to the Services Agreement on the day and year first above written.

Witnesses (two for each):

Melissa Goye
Signature

Melissa Goye
Print Name

Deborah M. Andreea
Signature

Deborah M. Andreea
Print Name

CITY OF LAKE WORTH, FLORIDA

By: Pam Triolo
Pam Triolo, Mayor

ATTEST:

Pamela J. Lopez
Pamela J. Lopez, City Clerk



Approved as to form and legal sufficiency:

Glen J. Torcivia FOR
Glen J. Torcivia, City Attorney

Witnesses (two):

Jenna Bergin
Signature

Jenna Bergin
Print Name

Breanna McDaniel
Signature

Breanna McDaniel
Print Name

TENANT: TRIPLE CROWN CLUB L.W., LLC,
d/b/a/ E.R. BRADLEY'S LAGOON SALOON

By: Mitchell Reale
Print Name: Mitchell Reale
Title: MANAGING MEMBER

STATE OF FLORIDA)
COUNTY OF Palm Beach) ss

The foregoing instrument was acknowledged before me this 19th day of July, 2016, by Mitchell Reale, as the Managing member (title) of Triple Crown Club L.W., LLC, and who is personally known to me or who has produced the following FDC as identification.



SARA MURPHY
MY COMMISSION # FF 039528
EXPIRES: July 24, 2017
Bonded Thru Budget Notary Services

Notary Public

Sara Murphy
Print name: Sara Murphy
My commission expires: 7/24/17

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