

THIS SECOND AMENDMENT, made and entered into this ____ day of November, 2012, is to the Agreement dated May 1, 1998 by and between the City of Saint Paul, a municipal corporation, hereinafter referred to as "City" and, Thomas Annunziata, d/b/a Putt'er There, hereinafter referred to as "Putt'er There"

WHEREAS, parties entered into an Agreement whereby Putt'er There built and operated a miniature golf facility in Como Park; and

WHEREAS, the Agreement allowed for two extension periods of five years each upon parties ability to agree to fees;

Now therefore, in consideration of the mutual promises contained herein, the City and Putt'er There agree as follows:

1. **Scope of Agreement:** Putt'er There agrees during the term of this Amendment to operate the miniature golf facility in Como Park, and to renovate and expand the site prior to April of 2013. Putt'er There must submit plans for the expansion and renovation to the City for approval prior to any construction. Plans must be in sufficient detail to allow adequate staff review. All construction shall be performed by licensed and/or bonded contractors, and shall conform to the plans approved in advance by the City. At the completion of the construction, all improvements made to the site shall become the property of the City with the exception of the historic trolley car used as an office, which will remain the property of Putt'er There and which shall be removed at Putt'er There's own expense at the termination of this Amendment or any extension thereto.

2. **Term:** The term of this Amendment shall be for the period of five years, commencing on November 1, 2012 and ending on October 31, 2017. This SECOND AMENDMENT is the final extension to the Agreement for one additional five-year term.

3. **Payment:** Putt'er There shall pay the City for the right to operate on the site as follows:

YEAR	PAYMENT
2013	\$8,000.00
2014	\$9,000.00
2015	\$10,000.00
2016	\$10,000.00
2017	\$11,000.00

The annual payment shall be made in quarterly installments on June 15th, July 15th, August 15th and September 15th of each year of the Agreement.

4. **Equal Opportunity Employment:**

- A. Putt'er There will not discriminate against any employee or applicant for employment for work under this Agreement because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same.
- B. Putt'er There will not discriminate against the public in its access to and use of the facility and shall comply with all other requirements imposed pursuant to Saint Paul Legislative Code Chapter 183.

5. **Books and Records:**

- A. By April 1 each year of this Agreement, Putt'er There shall submit to the City for its approval the proposed fees it plans to charge the public for the use of the miniature golf course and operating schedule, which shall include proposed dates for opening and closing the facility as well as operating days and hours.
- B. Putt'er There shall submit to the City within ninety (90) days following the end of each year a statement of gross receipts and expenditures using industry accepted accounting procedures. The report shall contain an audited income statement that shows all revenues and expenditures for the year.
- C. Putt'er There must maintain all business records in such a manner as will readily conform to the terms of this Agreement and to make such materials available at its office at all reasonable times during this Agreement period and for six (6) years from the date of the final payment under the contract for audit or inspection by the City, the Auditor of the State of Minnesota, or other duly authorized representative.

6. **Maintenance/Cleaning:** Putt'er There shall be responsible for keeping the premises within the perimeter fencing in neat and clean condition at all times. Putt'er There is responsible for repairs to all structures within the mini golf course perimeter fencing, and for garbage collection from the site.

Twice annually, Putt'er There will schedule with the City, a walk-through inspection of the miniature golf course facility to ensure neat and clean conditions. One of these inspections shall be before the facility opens for the year to establish the condition of the facility and one inspection shall be mid-year or near the end of the season to establish anything that needs repairs or maintenance.

Prior to the beginning of the 2013 season, Putt'er There must have completed the following maintenance and repairs to the miniature golf facility:

- A. All holes in the green carpets must be repaired and the carpet must match in color and fabric.

- B. Any gaps in the carpet on any of the holes must be repaired to prevent balls becoming stuck.
- C. Concrete repair must be completed to fix any cracks or gaps, and the surface of the course must be leveled to improve water runoff and prevent standing water.
- D. Damage to wooden structures must be repaired.
- E. Landscaping, to include removal of dead shrubbery, must be performed.

Failure to complete the listed repairs or improvements will result in failure to open on time for the 2013 season. The City will accept no responsibility for claims for loss of profits or other damages if the season is delayed due to Putt'er There's failure to complete the work on time.

7. **Assignment.** Putt'er There will not assign, transfer or sublease its interest in this Agreement without the prior written consent of the City.

8. **Contacts:** The contacts for this Agreement shall be:

City:

Paul Prior
400 City Hall Annex
25 W. Fourth Street
Saint Paul, Minnesota 55102
Telephone: 1-651-266-6370
Cellular: 1-651-755-9136

Putt'er There:

Tom Annunziata
444 Chestnut Drive
New Richmond, WI 54017
Telephone: 1-715-246-3964
Cellular: 1-612-619-1800

9. **Independent Contractor:** It is agreed by the parties that, at all times and for all purposes within the scope of this Agreement, the relationship of Putt'er There to the City is that of independent contractor and not that of employee. No statement contained in this Agreement shall be construed so as to find such an employer-employee relationship between the parties, nor are they joint partners. No employee of Putt'er There is entitled to any benefits of that of a City employee nor shall any employee of Putt'er There be construed as taking specific direction from a City staff member.

10. **Hold Harmless:** Putt'er There agrees that it will defend, indemnify and hold the City harmless from all claims, judgments or suits, for costs, charges, damages, and expenses of any nature whatsoever that result from the use of the Site by Putt'er There pursuant to this agreement, except to the extent that the claims are the result of gross negligence, or willful or wanton act or omission by the City, its agents, employees or officers.

11. **Insurance:** Putt'er There shall be required to carry insurance of the kind and in the amounts shown below for the life of the contract. Insurance certificates should state that the City of Saint Paul, its employees and officials are Additional Insureds.

Public Liability Insurance

Bodily Injury \$ 500,000 each occurrence
 \$ 1,500,000 aggregate

Property Damage \$ 1,500,000 each accident
 \$ 2,000,000 aggregate

For the years 2013-2017, Putt'er There will provide insurance in an amount not less than the City's maximum liability under Minn. Stat. § 466.04

General Insurance Requirements

The policy is to be written on an occurrence basis or as acceptable to the City. Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if policy includes errors and omissions coverage.

12. **Termination.**

A. With Cause. The City reserves the right to terminate this Agreement if Putt'er There violates any of the terms or does not fulfill, in a timely and proper manner, its obligations under this Agreement. In the event that the City exercises its right to terminate under this Section, it shall submit written notice to Putt'er There of the exact nature of the breach and providing ten (10) days notice to cure.

B. In the event of termination during the months of April 1st to October 31st, City shall reimburse any pro-rata share of payments made for time subsequent to the termination, and Putt'er There shall pay any amounts still due for time up to the date of termination. At the termination of the Agreement, Putt'er There shall vacate the premises within thirty days of the date of termination and shall either leave the premises with the improvements or shall, at its own expense, return the land to its natural condition, as determined by the City.

13. **Amendments.** Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.

14. **Venue/Jurisdiction.** This Agreement shall be construed according to the laws of the State of Minnesota, and venue for any suit brought hereunder shall be the district court of Ramsey County.

IN WITNESS WHEREOF, the parties hereto have signed this agreement.

PUTT'ER THERE

CITY OF SAINT PAUL

By _____
Its:

Director of Parks and Recreation

Director of Financial Services

Approved as to form:

Assistant City Attorney