

LITTLE HARBOR GOLF COURSE WAREHAM, MASSACHUSETTS

OPERATION AND MAINTENANCE AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS that this AGREEMENT is made this 1st day of June, 2022 by and between the Town of Wareham, a municipal corporation, located in Plymouth County, Massachusetts, hereinafter called the "Town", and, Sterling Golf Management, Inc. a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, with its usual place of business at 212 Kenrick Street, Newton, MA 02458, hereinafter called the "Operator".

WHEREAS, the Town is the owner of an eighteen-hole golf course known as and hereinafter called "Little Harbor Golf Course" or "Golf Course" or "Golf Course", situated on land in Wareham and generally described in Exhibit A, attached hereto and incorporated herein by reference.

Whereas, section 4-2(k) of the Town Charter gives the Town Administrator management and control of the golf course property, thus placing him in the position of manager as a matter of law;

Whereas, the Town Administrator is the Golf Course Manager, herein after referred to as, "Manager;"

WHEREAS, it is the desire and the intent of the Town and the Operator that this Agreement shall constitute a "Operation and Maintenance Agreement", and not a lease or other form of agreement, and, because the parties wish to resolve any and all questions concerning the intent and purpose of this Agreement, it is hereby stated and stipulated that the Operator is not a lessee of Little Harbor Golf Course, but in compliance with MGL Chapter 44B section 12 (b) the Operator is being hired for the purpose of the operation under the Management of the Town of Wareham through its Town Administrator/Golf Course Manager and the Little Harbor Golf Course shall operate as a public recreation facility, and further the Operator holds no property interest, or interest which is taxable, in the real estate which makes up Little Harbor Golf Course;

WHEREAS, the Operator desires to operate Little Harbor Golf Course as a public golf course facility under the Manager's direction;

NOW, THEREFORE, for the consideration set forth herein, the Town and the Operator covenant and agree:

Article 1

- 1.0 The Town hereby enters into an operation and maintenance agreement with the Operator as the sole and exclusive operator of the Little Harbor Golf Course facility under the direction and supervision of the Manager, including the pro-shop and other buildings and structures, and associated grounds and equipment for the term of three (3) years, commencing on June 1, 2022 at 12:01 a.m. and ending on December 31, 2024 at midnight. Two (2) one (1) year extensions may be granted at the discretion of the Manager.
- 1.1. The residents of the Town of Wareham and the general public shall have the right to enter upon and enjoy the Little Harbor Golf Course property subject to reasonable rules and regulations adopted, and from time to time amended, by the Manager, and subject to the operation of Little Harbor Golf Course by the Operator in accordance with this Agreement.

- 1.2. The Manager shall have the sole and exclusive authority to establish policies governing the management, maintenance and operation of the Golf Course, taking into account the interests of the Town and the patrons of the Golf Course. Such policies shall be established and amended from time to time by the Town through the Manager after consultation with the Operator.

Article 2

- 1.3. The Operator shall maintain proper books of account which show all expenditures for and receipts from the Little Harbor Golf Course. The books of account and all financial statements concerning Little Harbor Golf Course shall be kept under the direction and supervision of a Certified Public Accountant and shall be available for inspection and full audit by the Manager or his designated agents at all reasonable times. Quarterly financial statements for the Golf Course operations must be submitted to the Manager no later than thirty (30) days after the end of each quarter. Detailed accounting spreadsheet showing revenues is required.
- 1.4. The operation of the Golf Course is based upon a system in which the Town and Operator will split gross golf revenues after a revenue floor is met as more specifically outlined in Exhibit B. Said payments shall be made on the fifteenth (15th) day of each month after the floor is met. The Operator will operate and maintain the Golf Course in accordance with the specifications set forth in Exhibit C, attached hereto and incorporated herein by reference, and as directed by the Manager. All golf and facility related revenues, including, but not limited to, those received by the Operator from greens fees, member fees, gift cards, cart rentals, lost ball retrieval privileges, merchandise, food and beverage, alcoholic beverage and other miscellaneous sales, and the number of rounds played, will be fully and strictly accounted for by the Operator and reported to the Manager on a monthly basis or sooner upon request by the Manager
- 1.5. The Town intends to make the clubhouse facility available for civic, municipal and other non-golf related functions to the extent they do not interfere with the golf course operation. The Operator shall follow the Manager's directives in enforcing and reviewing guidelines, policies and fee schedules for such activities.
- 1.6. The Operator shall recommend, install and utilize, at the Operator's expense, a computerized cash register system, approved by the Manager, to record and monitor all income of the Golf Course.
- 1.7. The Operator hereby agrees and covenants with the Town that it will operate and maintain Little Harbor Golf Course in a high quality manner by providing good customer service and establishing a strong quality focus by the Operator and in specific accordance with the terms and conditions of this Agreement, follow the Manager's directives, and fully perform all obligations hereunder.

Article 3

- 3.0 The Operator shall provide as a minimum requirement for the operation and maintenance of Little Harbor Golf Course golf course supplies needed, attached hereto and incorporated herein by reference.
- 3.1 The Operator shall as a minimum requirement, observe and perform the maintenance schedule set forth in Exhibit C, attached hereto and incorporated herein by reference.
- 3.2 The Operator shall provide all materials, services and labor which are necessary to carry out maintenance, spraying and fertilizing schedules, aforesaid, at no cost to the Town. The Operator shall provide the maintenance, spraying and fertilizing which is necessary to maintain Little Harbor Golf Course Golf Course in good and proper condition, including any additional requirements or action which is necessary and desirable to meet the demands of use, weather, pests and disease.
- 3.3 The Operator shall provide operation and maintenance services to the Town in accordance with its Proposal to the Town dated April 12, 2022. Where the terms of the Operator's proposal may conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

Article 4

- 4.1 The Operator will propose reasonable fees each year for the Manager's approval. Reasonable rates will provide for an annual increase of no more than five percent (5%) (rounded to the nearest dollar). Any increase in fees exceeding five percent (5%) (rounded to the nearest dollar) will require documentation for approval by the Town. The Operator will have the discretion to offer discounted fees with promotions in connection with its plan to increase play. The Operator shall be responsible for administering all tee time policies to maximize play on the Golf Course and shall coordinate all member, league, and tournament play and instructional clinics.

Article 5

- 5.0 The Operator shall maintain insurance, as evidenced by certificates of insurance filed with the Town, at all times during the term of this Agreement, in accordance with the schedule of insurance set forth in Exhibit E.
- 5.1 The Town shall be a named insured in all policies held by the Operator. Certificates of insurance shall be from insurance companies qualified to do business under the laws of the Commonwealth of Massachusetts and in a form satisfactory to Town Counsel in his sole judgment. The Town shall receive notice of any cancellation of insurance at least ten (10) days prior to the effective date of cancellation.

5.2 It is expressly agreed that the members of the Board of Selectmen, the Manager, the Golf Course Advisory Committee and any Town employees, agents or Conservation Restriction Holder involved in the Golf Course are not personally liable in any way under this Agreement or as to any representation pertaining to this Agreement.

Article 6

6.0 The Operator shall obtain and file annually for each year of the Agreement term with the Manager, a payment and performance bond in an amount equal to 10% of the contracted amount (for example \$57,500 in year 1.) Bonds shall be obtained from a surety company qualified to do business under the laws of the Commonwealth of Massachusetts.

Article 7

7.0 The Operator hereby covenants and stipulates that no person, either directly or indirectly employed by the Operator, and no person using the Golf Course, shall be subject to any discriminatory action because of race, creed, color, sex, age, disability, national origin or ancestry, sexual orientation, genetics or military status. As the Operator is representing the Town of Wareham key staff shall complete the Conflict of Interest Law online training and present the certificate to the Manager. The Operator shall also adopt and implement a policy regarding sexual harassment which conforms to applicable federal and state laws and local by-laws.

7.1 The Operator agrees to establish, and administer in conjunction with the Town, a Little Harbor Golf Course Customer Satisfaction Policy, so that the Manager may equitably arbitrate disputes and/or disagreements between the Town of Wareham, the Operator and/or Little Harbor Golf Course clientele.

7.2 The Operator agrees to establish, and administer in conjunction with the Town, a marketing plan for Little Harbor Golf Course. The policy and the plan shall be developed by October 1, 2022 and shall be reviewed annually by the Manager and the Operator. The Operator agrees to establish an ongoing seasonal advertising campaign to promote and attract new customers and to maintain the Golf Course Web site.

7.3 During the term of this Agreement, at the reasonable request of the Manager, meetings between the Manager and the Operator shall be held to review the services performed by the Operator and any other related issues. The meetings shall be held as needed and shall be attended by the Operator's Chief Operation's Person and other key staff as appropriate or as the Manager shall require.

Article 8

8.0 The Operator shall not be responsible for the payment of taxes assessed or due on the personal property owned by the Town or in which the Operator has no equity interest which is associated with or a part of the Golf Course facility operation.

- 8.1 The Operator does not have any interest in the real property involved with or a part of the Golf Course facility and, therefore, no real estate taxes shall be due on any of the real property which makes up the Golf Course facility.
- 8.2 The Operator shall certify, under the penalties of perjury, that to the best of its knowledge and belief, all employee withholding tax returns and all state tax returns have been duly filed, and all taxes have been paid as required by law.
- 8.3 The Town will snowplow the Golf Course driveways and parking areas and sidewalks as needed.
- 8.4 The Operator agrees that it will pay for the cost of all necessary heat, utilities, water and electricity for the pro shop and maintenance facilities.
- 8.5 The Operator covenants and agrees with the Town as follows:
 - 8.5.1 To take good care of the premises and keep them in good repair, free from filth, danger, fire or any nuisance, and return the same, at the termination hereof, in as good condition as received by or put by the Operator, usual wear and use, destruction by fire not caused by the negligence of the Operator, and providential destruction excepted.
 - 8.5.2 To make no alteration in the premises without the consent of the Manager in writing, except ordinary repairs as aforesaid; to permit the Manager or his agents to enter at all reasonable times to view the premises and make such repairs and alterations as the Manager may deem necessary and proper; to not use the premises or permit the use thereof in such manner as to make void or increase the rate of insurance thereon; and to comply with the By-laws of the Town and the laws of the Commonwealth and save harmless the Town for, or on account of, all charges or damages for non-observance thereof.
 - 8.5.3 Not to put upon or permit or allow to be put upon any part of the premises any signs, billboards or advertisements without the prior permission of the Manager.
 - 8.5.4 If any of the golf course buildings shall, without fault of the Town, the Operator or its servants, employees or guests, be destroyed or be so damaged as to become inoperable by fire or providential means, then, if the Manager shall, by writing, deliver to the Operator within sixty (60) days after such damage or destruction, notice to elect to rebuild or repair, this Agreement shall remain in force and the Town, at its option, may rebuild or repair said premises within a reasonable time after such election, putting the premises in "as good" condition as they were at the time of destruction or damage and for that purpose may enter said premises; but, if the Town does not elect as aforesaid to rebuild and repair, then there shall be a mutually agreed upon adjustment in the terms of this Agreement, up

to and including the right to terminate the operation of said building without further liability to the Operator. In the event of an adjustment other than termination, the adjustment shall cover the period beginning with the date of such loss.

8.5.5 Operator shall consult with Manager before undertaking any procurements subject to MGL Chapter 30B, and obtain appropriate authorization.

8.5.6 At the expiration of the term hereby created, or if there is a default in payment after the same is due or upon the breach of any of the covenants and agreements herein contained, the Town or its agents shall have the right to enter and take over the operation of the premises and the Operator agrees to deliver same without process of law, and this Agreement shall terminate. The Operator shall be liable for any loss or damage to the Town for its failure to comply with the terms hereof.

Article 9

9.0 The premises are to be used as a public golf course facility and for no other purpose, without the written consent of the Manager. The Operator will not use the premises to carry on, or permit upon said premises any offensive, noisy or dangerous trade, business, manufacture or occupation, or any nuisance or anything against public policy nor permit any auction sales to be held or conducted in or on said premises, or use or allow the same to be used for any illegal purpose, and the Operator agrees that nothing in violation of any present or future Federal, State or Municipal Law or Ordinance shall be done, maintained or permitted in or upon the premises or any part thereof. The Operator shall pay for all labor performed and materials used by or furnished to the Operator or any Contractor employed by the Operator, and shall hold the Town and the premises harmless and free from any lien or claim therefore. All alterations, repairs, additions or improvements shall, unless otherwise provided by written agreement, become the property of the Town and shall remain upon and be surrendered with the premises upon the expiration of the Agreement or any sooner termination thereof.

9.1 The Operator agrees to hold the Town free and harmless from any liens, judgments or encumbrances created or suffered by the Operator and from any and all liability, penalties, losses, damages, costs and expenses, causes of action, claims or judgments arising from injury during said term to persons or property of any nature occasioned by any act or acts, omission or omissions of the Operator, or of its employees, agents or servants, or Contractors, and also against all legal costs and charges including counsel fees, reasonably incurred in and about such matters, and the defense of any action arising out of the same, or in discharging the premises or any part thereof from any and all liens that may be placed thereon for charges incurred by the Operator.

9.2 The Operator will not commit or suffer to be committed upon the premises any waste, injury or damage. The Manager or his authorized agents shall have the right to enter upon the premises at any reasonable time during this Agreement to ensure that the terms thereof are being observed by the Operator, and, in the event any repairs are needed and not made by the Operator after thirty (30) days written notice to the Operator of the need for such repair, or

after seven (7) days written notice in the case of a safety issue, the Town may, at its option, make such repairs at the Operator's expense. Nothing herein shall relieve the Operator from the obligation of making such repairs.

- 9.3 The Town, upon application of the Operator and proper approval, shall issue any and all licenses and permits required to operate the Little Harbor Golf Course facility. The Operator shall be subject to the same rules, regulations and procedures with respect to said licenses and permits as are generally applied to all applicants. Upon the termination of the Agreement or default by the Operator, the Operator agrees to assign all permits and licenses received from the Town, back to the Town within five (5) days of termination or default date.
- 9.4 The Operator shall not cause and shall not permit the storage, use or discharge of any oil or other hazardous substance at Little Harbor Golf Course except commercially reasonable amounts used in the ordinary course of the golf course and clubhouse operations and used and stored in compliance with legal and regulatory requirements.
- 9.5 The rights and obligations under this Agreement cannot be assigned or sublet without the written consent of the Town. The officers, directors, and stockholders of the corporation are as shown on Exhibit G, attached hereto and made a part hereof by reference.
- 9.6 The Operator acknowledges that if the Manager provides any certain equipment for use at Little Harbor Golf Course, such equipment will be inventoried according to type, location and condition and the Operator hereby agrees and covenants that it will maintain said equipment in good working order and in "as good" condition throughout the term of this Agreement as at its inception with the exception of normal wear and tear.
- 9.7 Said equipment shall remain the property of the Town and shall be accounted for by the Operator by annual inventory which shall describe said equipment by type, location and condition and be submitted to the Town annually on the anniversary of the date of execution of this Agreement, and upon final expiration or termination of this Agreement.
- 9.8 All equipment provided by the Operator shall be properly stored and maintained at the Little Harbor Golf Course and shall remain the property of the Operator.
- 9.9 In the event of any deficiencies or violations of this Agreement, a thirty (30) day written notice will be given to the Operator by the Manager to correct such deficiencies or violations. In the event that the Operator fails to correct such deficiencies or violations within the thirty (30) day period, to the reasonable satisfaction of the Town, the Town may terminate this Agreement and hold the Operator liable for its reasonable costs related to such termination. 16.2 Upon seven (7) days written notice to the Operator, the Town may terminate this Agreement in the event of the Operator's breach or nonperformance of any of its obligations relating to the providing of insurance.
- 9.10 If the Operator becomes insolvent, bankrupt or is not paying its debts, it shall be grounds for termination. In case of termination of the Agreement, the Manager may, at his election (but under no obligation to do so), assume and become liable for the obligations, commitments and unsettled claims the Operator has previously undertaken and incurred in good faith in

connection with said work. Should the Manager so elect, the Operator shall execute and deliver an assignment of its contractual rights as the Town may require, for the purpose of fully vesting in the Town the rights and benefits of the Operator under such obligations or commitments. In the event of a termination under this paragraph or the preceding paragraph, the Operator shall not be entitled to any costs of termination or lost profits and the Town reserves the right to pursue any and all remedies available at law or in equity.

9.11 This Agreement may be terminated by either party by written notice to the other party on or before September 1 of any year. Such termination would be effective on December 31 of the year in which such notice of termination is given.

9.12 The performance of this Agreement shall be subject to the provisions of the following documents, all of which are either attached hereto or are incorporated herein by reference as though an integral part of this Agreement. Where there is any inconsistency between the terms of the Agreement documents, they shall take precedence in the order most favorable to the Town:

- 9.12.1 Any modification, including Change Orders, duly delivered after execution of the Agreement.
- 9.12.2 This Agreement and the Exhibits thereto.
- 9.12.3 Notice of Award.
- 9.12.4 Performance Bond.
- 9.12.5 Certificates of Insurance.
- 9.12.6 Operator's Proposal.
- 9.12.7 Request for Proposals.
- 9.12.8 Addenda to Request for Proposals.
- 9.12.9 Advertisements for Request for Proposals.

Article 10.

10.1 No consent or waiver, express or implied by either party, to or of any breach of this Agreement or any terms, conditions or promises herein contained, or any covenant, condition or duty of the other shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty of this Agreement.

10.2 Any and all notices, or other communication required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt request, by registered or certified mail or by other reputable delivery service, to the parties at the following addresses, or such other address as may be furnished from time to time in writing hereafter by one party to the other party:

- 10.2.1 For the Operator: Sterling Golf Management, Inc. 212 Kenrick Street, Newton, MA 02458
- 10.2.2 For the Manager: Town of Wareham, Administration Office, 54 Marion Rd, Wareham, MA 02571

10.3 If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity,

legality and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

10.4 The Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the Operator submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.


10.5 This Agreement, including all documents incorporated herein by reference constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations, representations, whether written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

IN WITNESS THEREOF, the parties execute this Agreement in triplicate on the day and year first set forth above.

Sterling Golf Management, Inc., Operator

Town of Wareham

By:


Kevin Osgood, president


Derek D. Sullivan

Town Administrator/Golf Course Manager

Approved as to form:


Town Counsel

EXHIBIT A

Background and Link to Boundary Survey

As referred to in the RFP.

EXHIBIT B

Price

| Year | Golf Revenue* | Food, Beverage and Bar |
|------|---|--|
| 1 | 50% Split of Total Golf Revenues after \$575,000 | 5% of Gross Revenues |
| 2 | 50% Split of Total Golf Revenues after \$635,000 | 5% of Gross Revenues unless a different amount is mutually agreed upon |
| 3 | 50% Split of Total Golf Revenues after \$670,000 | 5% of Gross Revenues unless a different amount is mutually agreed upon |
| 4** | 50% Split of Total Golf Revenues after a mutually agreed upon percentage increase of the prior year's amount. | 5% of Gross Revenues unless a different amount is mutually agreed upon |
| 5** | 50% Split of Total Golf Revenues after a mutually agreed upon percentage increase of the prior year's amount. | 5% of Gross Revenues unless a different amount is mutually agreed upon |

*Golf revenue is described in Article 2.2 as all golf related gross revenues, including, but not limited to, those received by the Operator from things such as but limited to greens fees, member fees, gift cards, cart rentals, and lost ball retrieval privileges.

**Optional Years

EXHIBIT C

Maintenance and Performance

As referred to in the RFP.

EXHIBIT D

EXHIBIT E

Insurance Requirements

As proposed in the RFP.