

OAK HOLLOW GOLF COURSE

**PROFESSIONAL FULL GOLF SERVICES
MANAGEMENT AGREEMENT**

by and among

**THE CITY OF MCKINNEY, TEXAS,
a municipal corporation**

and

**DWW GOLF MANAGEMENT,
a Texas Limited Liability Corporation**

April _____ *01*, 2009
(the "Execution Date")

PROFESSIONAL FULL GOLF SERVICES MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this ^{1st} day of April, 2009, by and between the CITY OF MCKINNEY, a Texas municipal corporation (hereinafter "City"), and DWW Golf Management, a Texas Limited Liability Corporation (hereinafter "Manager").

WHEREAS, City desires to continue providing professional golf services for the convenience and enjoyment of the public; and

WHEREAS, City desires a professional manager capable of assuming the complete operation of Oak Hollow Golf Course and all related facilities; and

WHEREAS, Manager is engaged in professional golf management services business and is prepared, equipped and qualified to undertake such operations, and provide all services required hereunder at the Golf Course; and

WHEREAS, said Manager represents that it is capable of providing an accounting to City of all receipts and disbursements and of maintenance of the facilities and equipment, all in accordance with provisions of this Agreement as negotiated by said Manager and City; and

WHEREAS, said professional manager is needed to provide for maintenance of the course and of facilities and equipment at a service level as outlined hereunder in Exhibit A; and

WHEREAS, Manager assures City that it has developed expertise with respect to successful and efficient management and operation of golf facilities on or off of comparable sites and has inspected Oak Hollow Golf Course and related facilities; and

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATIONS

As used herein, the following words and phrases shall have the meanings set forth below:

1.01 **Director**

"Director" means the Director of Parks and Recreation of the City, and any of his/her authorized representatives.

1.02 **Business Year**

"Business Year" means a fiscal year, commencing October 1 and ending September 30.

1.03 Golf Course Premises

"Golf Course Premises" means any area where Manager's golf course management activities are carried out with regard to this Agreement. The Golf Course Premises shall include any and all buildings, improvements and landscaping on the property designated as the Oak Hollow Golf Course, as generally depicted on the site map which is part of Exhibit B, attached hereto and incorporated by reference herein for all purposes. Should Manager and City disagree regarding whether a particular site shall be considered part of the Golf Course Premises; the Director's decision shall prevail. Any final determination by the Director regarding the Golf Course Premises shall be in writing.

1.04 Gross Receipts

"Gross Receipts" means Manager's gross revenue from all Manager's sales and services made or provided in connection with Manager's operations at the Oak Hollow Golf Course, including sales and services provided by Oak Hollow Beverage, as otherwise provided under the terms and conditions of this Agreement, whether made or provided upon the basis of cash payment or on credit (whether collected or not); provided, however, there shall be excluded or deducted, as the case may be, from Gross Receipts the following:

- A. All sales taxes, and retailers' excise taxes, paid or collected by or payable by Manager, but only if such taxes are added to the selling price and separately stated from the selling price of merchandise or services, and collected from customers.
- B. All bona fide credits or refunds made by Manager to customers in regard to merchandise sold or services provided by Manager.
- C. All sums or credits received in settlement of claims for loss or damage to merchandise and assets.
- D. All fees generated through golf lessons which shall be paid directly to the professional.

1.05 Finance Director

"Director" means the Director of the City of McKinney Finance Department, and any of his/her authorized representatives.

1.06 Operating Expenses

Operating Expenses shall include all costs and expenses necessary for the operation of the golf course, including all golf course facilities, in the ordinary course of business, to include, but not be limited to, the following: the cost and fees of the Finance Director's services; insurance (100% if separate policy for City); utilities; any management fee(s); depreciation; amortization; golf rental fees and the cost of salaries, wages and benefits of the Manager. Operating Expenses shall be the sole responsibility of the Manager and determined in accordance with generally accepted accounting principles consistently applied.

1.07 Cost of Goods Sold

"Cost of Goods Sold" is as determined by generally accepted accounting principles consistently applied.

1.08 Operations

The business and commercial operations and affairs of Manager conducted in the ordinary course of business of the Golf Course and related facilities.

1.09 Operation Budget

"Operating Budget" is a schedule of all anticipated revenues and all estimated expenses for golf operations at Oak Hollow Golf Course for each fiscal year period, beginning October 1 and ending September 30, as developed by Manager.

1.10 Facility Capital Improvement

Facility Capital Improvement is any construction project which extends the useful life and/or increases the capacity of the golf course facilities. For the purpose of this Agreement, weeding and replacement or renovation of sod or grass shall not be considered a Facility Capital Improvement.

1.11 Term Clarification

In the event of any conflict in the definition or interpretation of any word, responsibility, service or schedule between this Agreement and the exhibits attached hereto, said conflict or inconsistency shall be resolved by giving precedence in the following order: first to the Agreement; then to the Exhibits to the Agreement.

**ARTICLE II
SPECIAL CONDITIONS**

2.00 Oak Hollow Golf Course Premises

A. Golf Course Ownership and Name

The Oak Hollow Golf Course consists of lands owned in fee by City. The name of the Golf Course shall remain the same unless changed by City.

B. Use of Golf Course

The Golf Course Premises, as shown on the site map which is a part of Exhibit B, shall be used only and exclusively for golf course operations and for such other, related purposes for which express approval is granted by the Director, and for no other purpose whatsoever.

- C. **Manager's Acceptance of Physical Condition**
 Manager acknowledges personal inspection of the Golf Course Premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect the operation of the Golf Course. Manager accepts the Golf Course Premises in its present physical condition and agrees to make no demand upon City for any improvements or alteration thereof.

- D. **Approval Required for Alterations**
 Any improvements, additions, alterations or changes to the Golf Course Premises shall be subject to prior written approval by the Director, securing of applicable permits and compliance with such terms and conditions as may be imposed thereon by City.

- E. **No Property Interest of Manager**
 Manager hereby acknowledges the title of City in and to the Golf Course Premises and the improvements located thereon, and covenants and agrees never to assail, contest or resist said title, nor to assert with respect thereto any property interest of Manager.

- F. **Ownership of Improvements**
 Ownership of all existing structures, and of all structures, buildings and/or improvements constructed by City or by Manager upon the Golf Course Premises and all alterations, additions or betterments thereto, shall immediately vest and be vested in City at all times during and after the term hereof. City shall retain at all times the right to possession of such structures, buildings and/or improvements.

2.01 **General Scope of Services**

Manager shall have the exclusive right, license, privilege, and duty to operate and maintain the Golf Course Premises. The scope of services required of the Manager under terms of this Agreement include:

- A. Overall Course Management in accordance with City golf policy, maintenance and operations standards.
 - 1. Pro shop operations
 - 2. Starter services
 - 3. Tee-time reservations
 - 4. Marshaling Services
 - 5. Cart rentals and operations
 - 6. Driving range operations
 - 7. Food and beverage service
 - 8. Equipment maintenance to City's and manufacturers' specifications;

- B. Create and approve Golf Course Operating Budget;

- C. Approve or disapprove any and all expenses;

- D. Collection and accounting of all revenues;
- E. Ensuring payment, processing for payment and accounting of all expenses in a timely manner;
- F. Formulation and implementation of operating programs, business plans, and budgets;
- G. Handling of personnel including employment, training, and terminations;
- H. Preparation of monthly and annual financial operating statements;
- I. Purchase, retain, repair and replace maintenance equipment to manufacturers' specifications;
- J. Maintain the Golf Course utilities and all appurtenances in conformity with City's specifications;
- K. Plan and carry out advertising and marketing program for the Golf Course;
- L. Attend to all other matters necessary or expedient for the efficient performance of the Golf Course operations; and
- M. Provide a beer and wine sales license.

Manager shall commence operations pursuant to this Agreement on April 1, 2009. After commencement of operations pursuant to this Agreement, Manager shall operate the Golf Course in accordance with the terms and conditions herein and City policies.

Manager shall conduct no other operations or activities upon the Golf Course than as are set forth herein.

2.02 City's Responsibilities

City shall perform the following:

- A. Administer all terms and conditions of this Agreement;
- B. Monitor standards and specifications;
- C. Review and approve or disapprove, in advance, any alterations to facilities;
- D. Set all fees;
- E. Determine, fund and implement capital improvements.

- F. Perform building maintenance to City's specifications and standards

2.03 **Term**

- A. The term of this Agreement shall be for a period of five (5) years, commencing on April 1, 2009 (the "Initial Term"), unless mutually extended by written agreement of the parties or unless sooner terminated as provided herein. At the end of the Initial Term, City shall have the option to renew and extend the Initial Term of this Agreement for an additional five (5) year term (referred to as a "Renewal Term"), such renewal being on terms acceptable to the City
- B. If the date of commencement differs from that noted above in Section 2.03, A., the parties shall immediately execute an amendment to this Agreement setting forth the date of commencement of the term.
- C. The provisions of this Section 2.03 are subject to the provisions of Section 2.20, which authorize the City to terminate this Agreement, without penalty or cause, at any time, upon thirty (30) days written notice given to Manager.

2.04 **General Management of Golf Course**

Manager recognizes that its operation hereunder is a service to users of the Golf Course and the public. Manager shall conduct its operations in a quality, efficient, courteous, and accommodating manner. The Director shall have the right to make reasonable objections to the quality and character of articles sold and services offered to the public, the prices charged and the appearance and condition of the premises utilized by Manager for its operations. Manager shall promptly discontinue or remedy any such objectionable practice upon notification by the Director.

Manager shall operate and manage the golf course, pro shop and food & beverage operations and facilities in a quality manner, comparable to similar facilities and services in the area of McKinney, Texas and its environs.

A. **Golf Professional Services – General**

Manager shall provide all golf course management and operations, including, but not limited to, the following: sell, rent, store and/or repair golf equipment; sell golf clothing and supplies; provide instructional services in the playing of golf; rent golf carts, and operate a driving range, all in accordance with its proposal and with the other provisions of this Agreement.

Manager shall be responsible for all services, equipment, supplies and personnel for the administration, staffing, operation and maintenance of the premises at the Golf Course Premises as the Director may from time to time specify for Manager's operations.

Manager shall maintain for rental an adequate and reasonable inventory of golf equipment to adequately meet the public's need therefore.

2. **Equipment Repair**

Manager shall maintain proper facilities, equipment and devices for the repair of all types of golf equipment and shall make available outsource options for the repair of the general public's equipment.

3. **Lessons**

Manager shall provide a full range of golf instruction including, but not limited to, beginners to advanced, individual and group, and all age groups. Manager shall conduct at least three junior golf programs each year.

4. **Cart Rental**

Manager shall maintain for rental an adequate number of manually-operated golf carts and shall increase the number of carts provided if necessary to reasonably meet the demands of the public patronizing the golf course.

Manager shall maintain a minimum of sixty (60) power-driven carts and shall increase the number of carts if necessary to reasonably meet the demands of the public patronizing the golf course. All of the sixty (60) required power-driven carts shall have shade tops.

Carts are available to the golf course through an agreement executed by and between the City and Textron Financial Corporation (the "Cart Agreement"), attached hereto and incorporated by reference herein for all purposes as Exhibit C. A payment amortization report, as part of Exhibit C, shows payments to be made by the City during the term of the Cart Agreement. In addition to the monthly payments provided in Section 2.10 of this Agreement, Manager shall reimburse the City for all monthly payments made by City in accordance with the Cart Agreement.

5. **Driving Range**

Manager shall be responsible for the operation of the driving range.

Manager shall also be responsible for providing maintenance of and any necessary damage repairs to the driving range facilities and equipment in accordance with standards and specifications contained in Exhibit A hereto.

6. **Starter Services**

Manager shall provide complete golf course starter services, in accordance with the prevailing rules established by the Director, including but not

limited to: controlling starting times, taking reservations for tee times, scheduling tournaments, and collecting green fees and all other applicable golf course fees.

Manager shall purchase, maintain and operate all equipment and supplies necessary for the operation of the starter system, including but not limited to: player scorecards; a cash register which shall issue a receipt and keep a permanent record for each sale and business transaction; an automated telephone tee-time reservation system for utilization at Oak Hollow Golf Course; telephones, wiring and all equipment necessary for the operation of the automated reservation system at Oak Hollow Golf Course; and a computer system.

Manager shall provide tournament scheduling services, in accordance with the prevailing rules established by the Director, including but not limited to, reserving tournament dates, processing reservation agreements, arranging for tournament assistance, collecting green fees and other fees associated with tournament play, and supplying services. Manager shall provide to the City on a monthly basis, a current schedule of all proposed tournaments to be held at Oak Hollow Golf Course, and each such request shall be subject to the written approval of the Director.

Manager shall honor all contracts for tournaments and banquets that have been approved by City and are not in conflict with previously scheduled and approved tournaments. City shall provide Manager a complete list of all contracted events thirty calendar days prior to the date set for Manager to commence performance of services hereunder.

Manager shall be fully responsible for the collection of all green fees, reservation fees, and all other monies associated with the operation of the starter system. Manager shall be solely responsible for maintaining its own bank account for the fees collected, including account reconciliations and bookkeeping related to the fee revenues. Manager shall account for and deliver to the City of McKinney all such monies due to City in accordance with provisions contained within this Agreement.

Manager shall keep complete records of account(s) with regard to all monies collected hereunder. Manager shall also be responsible for and shall keep neat, readable starting sheets. Manager shall, throughout the term of this Agreement, comply with Director's policy statement(s) regarding the collection of all fees, reporting requirements for fees collected, and the system of accountability and procedures therefor. All accounting records and starting sheets shall at all times be completely available for examination by the Director, the City Finance Director or an authorized representative.

a. **Days and Hours of Operation**

Manager shall keep the starter's office open every day, (except Christmas Day) including Sundays and holidays. The minimum hours of operation shall be from dawn to dusk, with the exception of closures required by weather conditions. Any changes in the days and hours for operation heretofore prescribed shall be subject to approval by the Director.

In regard to the Golf Course being out of operation, whenever play must be temporarily suspended on the Golf Course facility due to inclement weather conditions or course maintenance activities previously approved in writing by the Director, the decision on when to allow play to resume, and when to allow golf carts to go out on the course, will be made by Manager in accordance with City golf course policies.

b. **Starter Service Supplies/Equipment**

Manager shall purchase and maintain an adequate supply of all necessary golf starter sheets, golf pencils and an adequate number of accurate and attractive four-color golf score-cards. All of the aforementioned items shall be in form and content acceptable to the Director.

c. **Fees**

Manager shall charge and collect golf course fees according to a fee schedule approved by Resolution of the City Council. City reserves the right to keep or to change the fee schedule in its sole discretion.

B. **Merchandise**

Manager shall purchase, provide and maintain such inventory of golf merchandise as is necessary for proper service to the public. Inventory shall include, at a minimum, the following: clothing with course logos for men and women; clubs and bags; accessories such as balls, gloves, tees, etc.

Manager shall be responsible for golf ball retrieval from golf course water areas during the term of contract. The undamaged, saleable golf balls so retrieved shall be sold at Oak Hollow Pro Shop with such merchandise sales included in Manager's reporting of monthly Gross Receipts as a separate line item.

City reserves the right to prohibit the sale or rental of any item of merchandise which is deemed objectionable or beyond the scope of this Agreement, as determined by the Director in his sole discretion.

Manager shall offer for sale only goods of premium quality. For such goods, Manager shall charge fair and reasonable prices.

Manager shall set prices for services and shall be in conformance with the range of prices for the same or similar operations at similar establishments in the area of McKinney and its environs or consistent with the cost of providing services to the public.

Manager shall set prices for retail merchandise and shall be in conformance with the range of prices for the same or similar items at similar establishments in the area of McKinney and its environs or consistent with the cost of providing items for sale to the public.

When an item has a suggested retail price pre-marked and established by the manufacturer or distributor, Manager shall not charge the public a price higher than such suggested retail pre-marked price.

Manager shall submit a complete, written services price list, and a general list of types of merchandise to be sold, to the Director within ten (10) days after the start of Manager's operations. Thereafter and throughout the term of this Agreement, Manager shall submit written notification to the Director prior to the inception of any subsequent changes to services or prices.

Manager shall, at all time, post rates and prices for all items offered for sale and all services offered at locations designated by the Director.

C. **Golf Professional**

A "Class A: P.G.A. Professional" shall be on site full-time and shall provide lessons and perform all other, similar services in compliance with City standards and Manager's recommendations. The playing of the game of golf shall be taught only by qualified instructors whose qualifications have been approved in writing by the Director

D. **Professional Golf Course Marshal Service**

Manager shall provide Professional Golf Course Marshal Services. Manager shall submit for the Director's approval a schedule setting forth hours of operation for course marshaling. Any curtailment or decrease of this service is subject to the prior written approval of the Director.

E. **Grounds Maintenance Service**

Manager shall provide grounds maintenance services, including, but not limited to, the obligations to mow, edge, trim, overseed, fertilize, aerate, irrigate, sod, change cups, service tees, topdress, repair divots, rake traps, spray, mop, spot irrigate, syringe, and renovate turf and shrub areas designated hereunder, as well as to provide weed, disease and pest control, tree maintenance, maintenance of irrigation system including mainlines, pumps, boosters and controllers, keep swales and drain lines in good repair and to provide the necessary maintenance of any appurtenant structures and equipment. A summary of maintenance standards is attached as Exhibit A and the Manager is required to maintain the golf course and related areas at this level of quality or better. In addition, the Manager shall purchase, maintain, repair and replace all equipment, utilities and related structures in good working condition in accordance with City standards and manufacturers' recommendations.

Manager shall provide a fully qualified superintendent, as specified in Exhibit A, on the course full time.

F. **Food and Beverage Services**

1. **Sale of Food and Beverages**

Manager is hereby authorized and required to sell food and beverages, including beer and wine alcoholic beverages, upon obtaining all required permits, on the golf course and within the restaurant in accordance with its proposal and provisions of this Agreement. All such sales shall be considered gross receipts, in accordance with Section 1.04 of this Agreement. Manager shall also provide catering services for tournament events or groups utilizing the golf course. In addition, Manager shall maintain all equipment, utilities, and related structures in good working condition in accordance with City standards and manufacturers' recommendations. It is Manager's responsibility to provide a beer and wine sales license from all applicable local, state and federal government agencies.

2. **Days and Hours of Operation**

Manager shall open the restaurant for business at dawn each and every day and shall close the restaurant no sooner than the approved hour of course closure.

Manager shall provide on-course and restaurant food and beverage services.

The above days and hours of operation shall be complied with unless advance written authorization to deviate from this schedule has been obtained from the Director.

3. **Food and Beverage Products**

Manager shall provide and maintain the necessary inventory of food and beverage products required to satisfy the public demand therefor. All such products sold or kept for sale by Manager shall be quality, wholesome and pure, and shall conform to the applicable Federal, State and City food laws, ordinances and regulations in all respects. No adulterated, misbranded or impure articles shall be sold or kept for sale by Manager, and all food and beverage products kept on hand by Manager shall be stored and handled with due regard for sanitation. In the event that Manager's food and beverage products are deemed by the Director to be less than quality, wholesome and pure, Manager may be ordered to, and if so ordered shall, improve the quality of any such food or beverage product kept or offered for sale.

4. **Alcoholic Beverages License**

Manager shall meet all requirements for appropriate on-sale licenses from the Texas Department of Alcoholic Beverage Control. Manager shall be solely responsible for the payment of all costs and expenses required to maintain such license for the duration of the term of this agreement.

G. **Advertising and Promotional Materials**

1. **Advertising**

Manager shall not promulgate nor cause to be distributed any advertising or promotional materials unless prior approval thereof is obtained from Director. Said approval shall not be unreasonably withheld or delayed and shall be deemed to be given if no objection is made within thirty (30) days following the Director's receipt of the request for approval. Such materials include, but are not limited to, advertising in newspapers, magazines and trade journals, and radio and/or television commercials.

Manager shall, as a part of this Agreement, work with the Director, City officials, golf organizations and tournament promoters in promoting golf and this Golf Course.

Manager shall use its best efforts to develop and maintain cooperative working relationships with the aforesaid persons and other interested organizations in order to provide the best programs and services possible for the public.

2. **Credit in Promotional Materials**

Any advertising or promotional materials promulgated by Manager shall contain the words "The City of McKinney's Oak Hollow Golf Course" or the City's logo, unless specifically approved otherwise by the Director.

H. **Optional Services**

Manager shall have the right of first refusal to provide such optional services, if any, as may from time to time be requested by the Director. The need, demand, nature and extent of such optional service shall be determined by the Director, at his sole discretion. Notwithstanding any provision to the contrary, if, in the sole opinion of the Director, it is appropriate and in the best interests of the City to offer the right of first refusal for a particular service to some other concessionaire or person, such decision shall not be contested. Should Manager decline to provide any such service upon request by the Director, Manager acknowledges that the Director will proceed to make such other arrangements therefor as deemed by the Director to be appropriate, and Manager shall make no claim or assertion of any further right or entitlement with respect to such matters.

2.05 **Golf Course Facilities**

A. **Equipment and Improvements**

Manager accepts the golf course facilities in the condition existing when occupancy is granted by City. Manager shall maintain such facilities with all such appliances and equipment as may be necessary or convenient to Manager's operations hereunder. All equipment shall be purchased, retained, repaired and replaced by Manager.

City shall permit Manager to use whatever City-owned equipment, if any, that City may subsequently place at such facility. Maintenance of City-owned equipment shall be performed by Manager. Any such equipment used by Manager shall be taken "as is", inventoried, repaired or renovated, if necessary, and returned to City, when requested.

Any City-owned equipment which has exhausted its useful life shall be disposed of in accordance with City surplus requirements. The City shall retain proceeds of any sale. The City shall determine when equipment has exhausted its useful life.

Manager, in its sole discretion, may choose to purchase equipment to supplement or replace City-owned equipment. Manager shall be solely responsible for the safety, maintenance and repair of the equipment. Any Manager-owned equipment

may be disposed of in accordance with Manager's requirements. The Manager shall retain proceeds of any sale of Manager-owned equipment.

Manager shall make no refurbishment or alterations to the facilities, whether in whole or in part, nor construct additional improvements upon the said premises without the prior written approval of the Director. Title to such improvements shall immediately vest and be vested in City at all times during and after the term hereof.

Manager shall not execute any chattel mortgage, conditional bill of sale, financing statement, lease or security agreement pertaining to any such improvements, furniture, fixtures, fittings, or equipment in such premises without the prior written consent of the Director.

Manager hereby acknowledges the title of City in and to the Golf Course Premises and the improvements located thereon, and covenants and agrees never to assail, contest or resist said title, nor to assert with respect thereto any property interest of Manager.

Upon expiration or earlier termination of this Agreement, Manager shall surrender the golf course premises and all appurtenances to City in a good state of repair, reasonable wear and tear excepted, and Manager shall repair any damage to such golf course premises and appurtenances as necessary to the satisfaction of the Director. Manager shall be responsible for any damage caused by any risk which Manager is required to insure against pursuant to Section 2.19.

B. Maintenance and Repair

Manager shall be solely responsible for the safety, maintenance and repair of the Golf Course Premises, equipment and appurtenances thereto, in conformance with and at a service level as outlined in Exhibit A, attached hereto.

Manager shall provide and maintain in its employ a Golf Course superintendent and maintenance crew at the premises daily during normal working hours. All of Manager's maintenance personnel shall be supervised by a fully qualified Golf Course Superintendents Association of America (GCSAA) golf course superintendent as specified in Exhibit A. Manager must employ sufficient personnel to perform all work as scheduled and required by City not to exceed historically used levels. All personnel shall be clean and neat at all times and wear appropriate uniforms as approved by City.

In regard to emergency services, Manager will provide City with the names and telephone numbers of at least two (2) qualified persons who can be called by City representatives when emergency maintenance conditions occur during hours when Manager's normal work force is not present. City shall call for such assistance only in the event of a genuine and substantial emergency.

Manager shall purchase and maintain all necessary supplies, equipment and material of good quality and sufficient number to fulfill the requirements of this Agreement and to accomplish an acceptable and professional level of maintenance. Supplies and materials shall include, but not be limited to:

All necessary gas, oil and spare parts for all equipment;

- All necessary seed, fertilizers, fungicides, insecticides, herbicides, for greens;
- Parts necessary for the repair and maintenance of all irrigation systems, and appurtenant equipment;
- Tee towels, soap, ball washers, putting green cups and flags, benches, trap rakes, tee markers, tee mats, trash receptacles, trash receptacle liners, cleat brushes, and all other pertinent golf course equipment;
- Materials for the installation and maintenance of drains;
- Silica sand for all greens traps and an acceptable substitute for fairway traps on an as-needed basis as determined by the Director.

Manager shall maintain and operate the premises in a clean, safe, wholesome, and sanitary condition, free of trash, garbage, or obstructions of any kind, and in compliance with any and all applicable present and future laws, general rules and regulations of any governmental authority in force now or at anytime during the term of this Agreement relating to sanitation, public health, safety, or welfare.

Manager shall perform acceptable housekeeping and maintain and repair all improvements on the premises. All such maintenance, repairs and replacements shall be of quality equal to or better than the original in materials and workmanship. Manager shall perform proper and timely maintenance.

Manager shall remedy without delay any defective, dangerous, or unsanitary conditions. Manager shall correct such situation within twenty-four (24) hours of notice of same.

The Director may, at any time, without notice, enter upon the golf course premises, to determine if repairs, housekeeping and maintenance satisfactory to City are being performed.

Regularly scheduled inspections of the premises and Manager's operations authorized herein shall be made by City. The written report of such inspections shall be recorded, retained for reference, and forwarded to Manager.

The Manager or his representative shall meet with the Director or his representative once every four (4) weeks and at such other times as may be

required by City to Manager's performance under this Agreement and to discuss any problems or other matters as determined by City.

Manager shall supply its own janitorial service, including window washing and refuse containers, and shall keep the premises used and occupied by it in a neat, clean, and sanitary condition at all times. Manager shall be further responsible for cleaning and maintaining public restrooms. Restroom maintenance will consist of one complete and thorough cleaning prior to opening each day and a restroom inspection every three (3) hours minimum, with restroom supply restocking and necessary cleaning performed as needed.

Manager shall maintain the golf course driving range, in accordance with provisions listed in Section 2.04(A)(5) of this Agreement.

C. **Garbage and Utilities**

Manager shall provide a complete and proper arrangement for the adequate sanitary handling and disposal away from Oak Hollow Golf Course and all related facilities of all trash, dry and wet garbage, and other refuse resulting from, or in any way associated with, Manager's use of the premises.

To the extent feasible and practical, the Manager shall establish and implement a program for the recycling of waste materials accumulated upon the premises, to include food and beverage concession materials and landscape debris.

Manager shall reimburse City for payment of all electrical power, gas, water, sewer, and telephone services provided to the golf course premises and any and all connection fees and other charges associated therewith.

The Manager shall explore and take advantage of any rate savings options offered by the City's chosen utility providers, and implement resource conservation practices related to its operations hereunder where practical.

2.06 **Manager's Personnel**

Manager shall employ a full-time, GCSAA qualified superintendent, as stated in Exhibit A, on site, within 45 days of the date of execution of this Agreement and shall continuously employ such a GCSAA qualified superintendent on site during term of this Agreement. Failure to employ and retain such a qualified superintendent as specified herein shall be cause for default under Section 2.20 of this Agreement.

Manager's activities and operations at Oak Hollow Golf Course shall be supervised by one or more active, qualified, competent, and experienced employee(s) of Manager, not younger than 21 years of age. A general manager shall be on site full time during golf course operations; Manager may designate either the P.G.A. Class-A Professional or the Superintendent as duly authorized to act for Manager in all aspects of its day-to-day operations. Manager shall notify Director when Manager is absent, and who shall act in Manager's absence.

Manager's personnel shall at all times while on duty at Oak Hollow Golf Course be clean and neatly groomed, courteous, efficient, and attired in a suitable uniform as approved by the Director. Manager's personnel shall perform its operations authorized hereunder in a business-like manner, without rudeness or discourtesy to any person, or use of profanity.

Manager shall at all times maintain a high standard of services to the public, to the satisfaction of the Director who shall be the sole judge of the adequacy thereof. Upon written notice by the Director that the conduct of any of Manager's personnel at Oak Hollow Golf Course is detrimental to the best interests of the public, or to City, Manager shall, within twenty-four (24) hours thereafter, furnish evidence satisfactory to the Director of correction of such deficiency.

2.07 Staffing and Hours of Operation

Manager shall staff its operation with personnel to conduct all operations authorized hereunder, in sufficient number to meet public demand for prompt, courteous, and efficient service.

2.08 Notice of Personnel Changes

Manager shall, in writing, inform the Director of the full name and specific assignment of each of its key personnel used in performance of this Agreement. Manager shall thereafter notify the Director, in writing, within forty-eight (48) hours following any such key personnel changes. Manager shall provide, to the Director, a monthly report of all personnel changes.

2.09 Operating Budget

Manager is solely responsible for the formulation and implementation of operating programs, business plans, and Operating Budgets for the Golf Course. It is the Manager's responsibility to monitor its adherence to the Operating Budget on an ongoing basis. Any expenditure included in the Operating Budget shall be considered an Operating Expense, for which Manager assumes sole and full responsibility.

2.10 Operating Payments

Manager shall remit to the City a monthly payment of eight (8%) percent of the monthly Gross Receipts, as defined in Section 1.04, each month of the term. Payments will commence on the 15th of the month following the first month of operation, and thereafter not later than the 15th calendar day of each succeeding calendar month throughout the term of this Agreement. Sums paid hereunder are subject to reconciliation and adjustment as provided in Section 2.14 hereto. In addition, Manager shall reimburse the City for all monthly payments made by City in accordance with the Cart Agreement, as described in Section 2.04(A)(4).

In the event of any extension of this Agreement pursuant to subparagraph D of Section 2.02, Manager shall continue to pay City the operating payment pursuant to the terms of this Agreement for such extension period, unless otherwise agreed to by City and Manager.

Manager shall submit all such payments at the Office of the Director. Any payment made by check shall be payable to the order of the City of McKinney.

2.11 **Security Deposit**

Within ten (10) days after execution of this Agreement, Manager shall deposit with City the sum of Ten Thousand and no/100ths Dollars (\$10,000.00), either by cash or cashier's check payable to the City of McKinney, as a security deposit for the faithful performance by Manager of the provisions of this Agreement.

City is authorized to use the security deposit, or any portion of it, to cure any default of Manager or to compensate City for any damage sustained by City resulting from Manager's default.

Manager shall immediately on demand pay to City a sum equal to the portion of the security deposit expended or applied by City as provided in this Section 2.12 so as to maintain the security deposit in the amount initially deposited with City at all times during the term of this Agreement, or any extension thereof.

If there is neither default nor damage to the facility or property at the expiration or termination of the term of this Agreement, or any extension thereof, City shall return the security deposit to Manager.

City's obligations with respect to the security deposit are those of a debtor and not a trustee. City shall deposit such security deposit in an interest-bearing account and the interest earned thereon shall be the property of City and shall be used by City for management and promotion of the Oak Hollow Golf Course facility. City shall not be required to pay Manager any interest on such security deposit.

The provisions of this section are not deemed liquidated damages.

2.12 **Records and Reports**

Manager shall prepare and maintain an adequate set of records, in detail and methodology satisfactory to the Director and the City Finance Director, documenting all Gross Receipts, as defined in Section 1.04, and operating expenses pursuant to this Agreement. Such method shall include the keeping of the following records:

- A. Regular books of accounting, such as general ledgers;
- B. Cash receipts and cash disbursements journals, including any supporting and underlying documents such as invoices, vouchers, checks, tickets, bank statements, etc.;

- C. State and Federal income tax returns and sales tax returns and checks and other documents proving payment of sums shown, which City shall keep in confidence to the extent allowed by law;
- D. Cash register tapes (Daily tapes may be separate but shall be retained so that from day to day the sales can be identified) and golf starter sheets.

Manager shall record all sales by means of cash registers which publicly display the amount of each sale and automatically issue a customer's pre-numbered receipt or verify the amount recorded on a slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which continuously accumulate and which cannot, in any case, be reset and, in addition thereto, a tape located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record. In the event of a technical or electrical failure of the cash registers, Manager shall record by hand all collections and issue a sequentially pre-numbered customer's receipt in like manner. Under no circumstances shall Manager conduct sales which are not recorded or for which customer receipts are not issued.

- E. Any other reporting records that the Director deems necessary for proper reporting of receipts and disbursements.

If at any time the Director or the City Finance Director deems Manager's accounting practices or procedures inadequate or not in accordance with City procedures, Manager shall make requested adjustments to its practices and procedures.

Concurrent with submittal of the monthly Operating Payment, Manager shall submit to the Director a written report, in a format and in detail satisfactory to the Director, of all Manager's gross receipts from all operations at Oak Hollow Golf Course during the preceding calendar month. Such report shall include, without limitation, a daily breakdown of such gross receipts.

- F. Preparation of operating budgets.
- G. Preparation of reports with respect to all financial aspects of the Golf Course, such as payroll data, cash receipts, accounts receivable, budget reports and detailed profit center information;
- H. Maintenance of accounting records and preparation of annual financial statements of the Golf Course and related facilities in accordance with generally accepted accounting principles, consistently applied, including all footnotes and disclosures required by the City's Finance Director.

2.13 **Financial Statement and Miscellaneous Reports**

In addition to such other reports as may be required by this Agreement, Manager shall submit the following reports to City:

A. **Financial Statement**

Within forty-five (45) days following the last day of this Agreement, or at any early termination of this Agreement prior to the end of the term, Manager shall submit a financial statement covering all business transacted by it at Oak Hollow Golf Course and related facilities during such period, and all Gross Receipts, commissions and other income derived by Manager therefrom.

Such financial statement shall be compiled by an independent certified public accountant, and shall be in a format, and in detail, satisfactory to the Director.

Such accounting shall include a balance sheet, income statement, statement of cash flows, and all applicable footnotes.

B. **Miscellaneous Reports**

Any other financial or statistical reports reasonably requested by the Director from time to time during the term hereof shall be provided by the Manager, without cost to the City, within a reasonable period of time.

2.14 **Reconciliation of Operating Payments**

Manager is required to provide the City with a monthly report concurrently with its Operating Payment. The City will reconcile this report with starter sheets and other source documents to determine if all gross receipts have been included in the report. If an error is found, the City will contact the Manager immediately. The resulting difference will either be added to or subtracted from the subsequent month's Operating Payment from the Manager to the City.

2.15 **Retention of Records**

Manager shall retain all its books and records of account consistent with the City's record retention policy and in no event less than two (2) calendar years following the last day of the term of this Agreement, or any extension thereof. Such books and records of account shall show all Manager's gross receipts, commissions, and other income derived from its operations, pursuant to this Agreement, all deductions therefrom, supporting documents, and all other information required by this Agreement.

Manager shall retain such books and records of account, and such reports and records as may be required of it, or requested by City, pursuant to this Agreement, at a location within the City of McKinney, and shall keep and maintain the same in accordance with generally accepted accounting principles.

2.16 Audit and Access to Manager's Records

Upon written notification by City, Manager shall make all of its financial records available to City at the business office of Manager including, but not limited to, general ledger, original entry journals, cancelled checks, invoices, bank statements, federal and state payroll and income tax filings and financial statements. Manager shall provide such access to its records for City's purposes in verifying information submitted by Manager in any report or financial statement required or requested of Manager pursuant to this Agreement, and for City's purposes in verifying Manager's compliance with the terms of this Agreement, but for no other purpose.

Further, at any time within two (2) calendar years following the last day of the term hereof, upon written notification to Manager, City may, at its sole cost and expense, inspect, audit, and copy Manager's books, records of account, and supporting documentation relating to Manager's operations at Oak Hollow Golf Course and related facilities. City, its agents, or Finance Director may inspect, audit, and copy such books, records of account, and supporting documentation for City's purposes.

If any such inspection and audit establish that additional Operating Payment funds are due to City, Manager shall pay the same within thirty (30) days following demand therefor from City with interest from the date such amount was due City, but not paid, at an annual rate of ten percent (10%) per annum. In the event of a discrepancy of more than three percent (3%) between Manager's gross receipts, commissions, or other income as established by such inspection and audit, and such gross receipts, commission, or other income as reported by Manager pursuant to any financial reports submitted by Manager to City, Manager shall, upon demand, reimburse City for all its costs in connection with such inspection, audit, and copying.

2.17 Permits and Licenses

Manager shall obtain and maintain in full force and effect throughout the term of this Agreement any and all applicable permits and business licenses which may be required by any law, including administrative regulations and local ordinances, for the conduct of Manager's operations hereunder.

Within ten (10) calendar days following award of this Agreement, Manager shall furnish the Director with copies of all such permits and licenses.

2.18 Insurance Requirements

Before awarding this Agreement, the Manager shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the state of Texas and acceptable to the City of McKinney. Within ten (10) calendar days following award of this Agreement, the Manager shall furnish to the Director certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, deductibles, expiration dates and

compliance with all applicable required provisions. Certificates shall reference the project/contract number and be addressed as follows:

City of McKinney
c/o EBIX BPO
212 Kent St.
Portland, MI 48875-0257
Or email to: certsonly@pericullum.com

Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per location basis.

Liquor Liability Insurance, with minimum limits of \$1,000,000 per occurrence, either endorsed onto the above policy or written on a "stand alone" basis.

Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$1,000,000.

Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.

Employee Dishonesty Insurance including Third Party Fidelity Coverage, with minimum limits of \$50,000 as respects coverage for the City of McKinney.

With reference to the foregoing required insurance, the Manager shall have applicable insurance policies endorsed as follows:

A waiver of subrogation in favor of City of McKinney, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.

The City of McKinney, its officials, employees, officers, agents and volunteers shall be named as additional insureds on the Commercial General Liability policy (and Liquor Liability if provided on a separate policy) by using endorsement CG2026 or broader .

All insurance policies shall be endorsed to the effect that City of McKinney will receive at least thirty (30) days notice prior to cancellation, non-renewal, termination, or material change of the policies. However, ten (10) days' advance written notice of cancellation is permitted for non-payment of premium.

All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

2.19 Early Termination of Agreement

- A. Except as otherwise provided, if Manager defaults in the performance of any promise, term, condition, or covenant required of it herein, and fails to cure such default within ten (10) calendar days following notice thereof from the Director, unless a longer cure period is approved in writing by Director, this Agreement shall terminate: provided, however, the Director shall be authorized to immediately terminate this Agreement, without serving such notice of default to Manager, upon the happening of any of the following events:
1. The failure of Manager to maintain in full force and effect all forms of insurance required hereunder.
 2. The failure of Manager to maintain in full force and effect any permit, license, or PGA, Class A, Golf Pro rating required hereunder.
 3. Any sale, transfer, or assignment by Manager of any right, license, privilege, or duty granted to or imposed upon it hereunder.
 3. A major breach of service including, but not limited to, insufficient hours of operation or health or safety violations which cause or may cause closure of all or any part thereof of the Golf Course Premises.
 4. Failure to employ as a permanent, full time, on site member of staff a GCSAA qualified superintendent within 45 days of the date of execution of this Agreement.
- B. If, in the event Manager cannot or does not operate the golf course and related facilities in accordance with the terms and conditions stated herein, and the Director terminates this Agreement, the Director may take immediate possession of the Golf Course Premises and operate the facilities in any manner deemed appropriate by the Director for City's benefit and the public's best interests, without any liability therefore to Manager.

2.20 City Right to Terminate Agreement

Notwithstanding any provision herein to the contrary, including the period of the term set forth in Section 2.03, if the City determines it to be in the best interests of the City to terminate this Agreement, the City may, acting through the Director, terminate this Agreement and the term thereof, without penalty or cause, in the City's sole discretion upon thirty (30) days' written notice of intent to terminate given to Manager. Notwithstanding any provision of this Agreement to the contrary, in the event funds for the golf course are not approved by the City

Council for the next fiscal year, the City retains the right to terminate this Agreement at the expiration of each City budget period (September 30) during the term of this Agreement, even without prior notice.

Should Manager fail, after ten (10) days' notice from City of the need thereof, to perform its obligations required hereunder, City may, but shall not be obligated to, (in addition to all other available remedies) exercise its right to terminate this Agreement as provided hereinafter and enter upon the premises and perform Manager's said failed obligations, using any equipment or materials on the premises suitable for such purposes. Manager shall forthwith, on demand, reimburse City for its costs so incurred, including direct and indirect overhead costs as determined by the Director.

2.21 Operator's Non-Compliance and Liquidated Damages

- A. If the Director determines that there are deficiencies in Manager's performance of the Golf Course operations authorized and required herein, the Director will provide, as specified in Section 2.19 herein, a written notice to the Manager to correct said deficiencies within specified time frames.
- B. In the event that Manager fails to correct the deficiencies within the prescribed time frames the Director may, at his option: (1) use the Contract Security provided for herein in Section 2.11; (2) exercise its rights of entry pursuant to Section 2.20 herein; and (3) in the event the security deposit is insufficient to cover the City's damages, assess liquidated damages as provided in subsection C herein.
- C. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Manager to comply with the obligations for golf course operations and maintenance herein required, authorized, and specified in Section 2.04. The parties hereby agree that under the circumstances a reasonable estimate of such damage is \$100 per day for each day the deficiencies exist, and that Manager shall be liable to City for liquidated damages in said amount in the event the security deposit is insufficient to cover said damages.

2.22 Golf Course Evaluation Report

- A. City and Manager agree that the overall condition and playability of the golf course, the quality of service provided by Manager, and the condition of the buildings thereon is of primary importance to both parties. As this Agreement specifies the standards of performance deemed necessary for proper maintenance and services, City and Manager will develop a Golf Course Evaluation Report to document Manager's performance pursuant to those standards.
- B. City Golf Course Evaluation Report will be completed by an authorized representative(s) of the Director after an inspection of the Golf Course by City's representative(s)/. City shall make every reasonable effort to conduct such

inspections on a regular basis, and Manager or his authorized representative will be invited to participate in the inspection tour of the premises.

- C. The Director reserves the right to modify, update, and/or amend the general content and format of the Golf Course Evaluation Report forms in order to provide for a suitable instrument for the documentation of Manager's performance.

2.23 **Director's Inspection**

Manager shall provide golf cart(s) for inspection of the golf course by the Director and the City Recreation and Park Commission, or a committee thereof. The inspection shall occur not less than bi-annually or more frequently than monthly. The inspection shall also cover Manager's pro shop and food and beverage area and shall include a briefing on golf course operations by Manager.

2.24 **Nonassignability**

Manager shall have no right, authority, or power whatsoever to sell, assign, or transfer any right, license, privilege, or duty granted to or imposed upon it hereunder. Such right, license, privilege, and duty are granted and imposed solely and personally to and upon Manager, and any such sale, assignment, or transfer shall result in immediate termination hereof.

2.25 **Conflict of Interest**

Manager represents that neither it nor any of its officers, partners or employees have a financial interest in the subject matter of this Agreement, other than the right to receive payment from City for the services performed.

No director or officer of Manager shall have any interest in any concession activities at the Golf Course or its related facilities or in any contract involving the Golf Course without prior approval by the Director.

ARTICLE III: GENERAL CONDITIONS

3.01 **Authority of the Director**

The Director shall administer this agreement on behalf of City.

Unless otherwise provided herein, or required by applicable law, the Director shall be vested with all rights, powers, and duties of City hereunder.

With respect to matters hereunder subject to the approval, satisfaction, or discretion of City or the Director, the decision of the Director in such matters shall be final.

3.02 **Consent**

Whenever the consent or approval of either City or Manager is required or authorized hereunder, such consent or approval shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

3.03 Time of the Essence

Time is of the essence in the performance of this Agreement.

3.04 Independent Contractor

- A. It is understood and agreed that Manager (including manager's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Manager's assigned personnel shall not be entitled to any benefits payable to employees of City. As an independent contractor, Manager hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. It is further understood and agreed by the parties hereto that Manager in the performance of its obligation hereunder is subject to the control or direction of City as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by Manager for accomplishing the results.
- C. If in the performance of this agreement, any third persons are employed by Manager, such person shall be entirely and exclusively under the employment, direction, supervision, and control of Manager. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Manager.
- D. It is further understood and agreed that as an independent contractor and not an employee of City, neither the Manager nor Manager's assigned personnel shall have any entitlement as a City employee, right to act on behalf of City in any capacity whatsoever as agent, nor to bind City to any obligation whatsoever.
- E. It is further understood and agreed that Manager must issue W-2 and 941 Forms, or any other required federal or state documentation, for income and employment tax purposes, for all of manager's assigned personnel under the terms and conditions of this agreement.

3.05 Indemnification of City

The Manager shall indemnify, defend, and hold harmless, protect and defend the City, its officers, agents, employees, and representatives from any and all claims, losses, liabilities, or damages, demands, costs and expenses, including payment of reasonable attorneys' fees, that occur or are alleged to have occurred in whole or in part as a result of the negligence or fault of

Manager, its employees, agents, representatives, and consultants, whether such claims, losses, liabilities, damages, costs, and expenses are caused in part by an individual or entity indemnified under this Agreement. Manager's indemnification obligation shall not include indemnification for an indemnitee's own negligence nor shall it include the duty to defend for concurrent negligence claims against both Manager and the City.

3.06 Release of Liability

City shall not be liable for, and is hereby released from, any and all liability to Manager, Manager's insurance carrier, or to any person claiming under or through Manager for any loss or damage whatsoever to the property or effects of Manager resulting from the discharge of water, or other substance, from pipes, sprinklers, conduits, containers, appurtenances thereof or fixtures thereto, or from any damage resulting from the discharge or failure of electric current, regardless of cause or origin, except that which is caused by the act of negligence of City, its officers, employees, or agents.

Further, Manager shall be solely responsible for the safety and security of property, equipment, supplies, merchandise, and commodities used or offered for sale by Manager at Oak Hollow Golf Course and related facilities. City shall have no liability or responsibility whatsoever, and Manager shall make no claim against City, with respect to such matters.

3.07 Signs

Manager shall place no sign, emblem, or advertising, of any kind or character, at or on the Golf Course without the advance written approval of the Director.

3.08 Notices

Any notice, demand, request, consent, or approval, that either party may or is required to give the other, shall be in writing and shall be either personally delivered, sent by certified mail, return receipt requested or sent by prepaid first class mail addressed as follows:

To Manager:	DWW Golf Management LLC 3005 N. McDonald McKinney, Texas 75098 And 706 Nickelville Lane Wylie, Texas 75098
To City:	City of McKinney 1550 S. College, P.O. Box 517 McKinney, Texas 75070 Attention: Parks and Recreation Director
With Copy To:	Mark S. Houser City Attorney City of McKinney

222 N. Tennessee, P.O. Box 517
McKinney, Texas 75070

3.09 Golf Course Promotion

Manager agrees to advertise and promote the facilities operated by the Manager to foster a favorable business environment, stimulate patronage, and support City efforts to maximize use of the Golf Course.

In furtherance of this purpose, Manager agrees to advertise in the Department of Parks and Recreation newsletter no fewer than two (2) times during the term of this Agreement and once every three (3) months in the event this Agreement is extended, and to participate in other promotional events of the Department as requested by the Director.

3.10 Notice of Claims and Suit

City and Manager shall each give the other prompt and timely written notice of any personal injury or accident and of any lawsuit coming to its knowledge, when either such claim or lawsuit arises out of or is in any way connected with the construction or operations of Manager hereunder, the construction or operation of Oak Hollow Golf Course and related facilities by City which in any way, directly or indirectly, contingently or otherwise, might reasonably affect the parties' relationship under this Agreement.

Such notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of such claim by an officer, agent, or employee of either party, and, if given within ten (10) calendar days following the date of service of process upon either party with respect to any such lawsuit.

3.11 Employee Parking

Vehicular and equipment parking by Manager, its officers, agents, employees, licensees, suppliers, or subcontractors shall be restricted to such areas at Oak Hollow Golf Course and related facilities as are designated by the Director.

3.12 Applicable Law

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Texas, and shall be deemed to have been made, and shall be performed, in the State of Texas. Venue shall be in Collin County, Texas.

3.13 Nondiscrimination Clause

Manager shall not discriminate in the provision of services because of color, race, creed, national origin, religion, sex, sexual orientation, age, or physical or mental handicap in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d), the American with Disabilities Act (42 U.S.C. Section 12131 et seq.), and all other applicable laws and regulations requiring no discrimination.

3.14 **Equal Opportunity/Minority/Women Business Enterprise Participation Requirements**

The City of McKinney is an Equal Opportunity Employer. Manager shall comply with Federal, State, and City Equal Employment opportunity requirements.

3.15 **Equal Employment Opportunity**

Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, in violation of the law. Manager shall take affirmative action, as necessary, to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, in violation of the law. Such action shall include but not be limited to the following: Employment, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3.16 **Compliance**

Manager shall comply with all applicable federal, state, and City statutes, ordinances, regulations, directives, and laws and this Agreement shall be deemed to be executed and performed wholly within Collin County, State of Texas and construed with and governed by the laws of the State of Texas.

3.17 **No Warranty Regarding Golf Course**

City does not warrant that Oak Hollow Golf Course will continue to be used as a golf course during the term of this Agreement. In the event that such use is terminated, Manager shall neither claim, nor be entitled to any damages whatsoever from City.

3.18 **Entire Agreement**

This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

3.19 **Nonwaiver of Rights**

No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions, herein contained, to be performed, kept, and observed by the other party.

3.20 **Force Majeure**

The City shall not be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strike, boycott, labor dispute, embargo, or shortage of energy or materials. Neither City nor Manager shall be deemed in violation of this Agreement if either is prevented from performing any of its obligations hereunder by reason of acts of God, acts of a public enemy, acts of superior governmental authority, weather conditions, riot, rebellion, sabotage, or any other circumstances for which it is not responsible or which are not reasonably within its control.

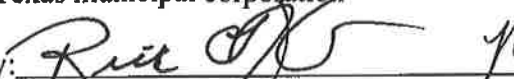
3.21 **Headlines**

The headings of the articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope of intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof

[Signatures on following page]


IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CITY OF MCKINNEY
a Texas municipal corporation

By: 
FRANK RAGAN, CITY MANAGER
by Rick Chaffin, Assistant City
Manager and authorized signatory

Date: 4.28.09

DWW GOLF MANAGEMENT
a Texas limited liability corporation

By: 
DAVE WILLEY, Owner

Date: April 1, 2009



(SEAL)

ATTEST:


SANDY HART, TRMC, MMC

City Secretary
LINCOLN THOMPSON
Deputy City Secretary

APPROVED AS TO FORM:

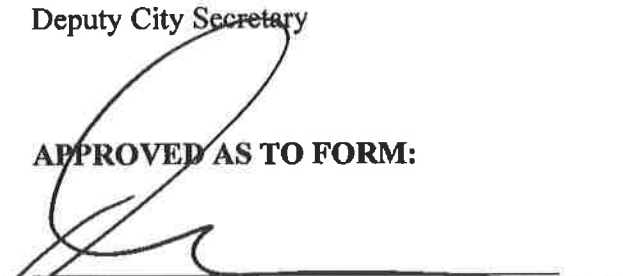

MARK S. HOUSER
City Attorney

EXHIBIT "A": Golf Course Maintenance Standards

Exhibit A
Golf Course Maintenance Standards
Oak Hollow Golf Course

General

The Manager shall operate the Golf Course Premises in accordance with first class standards of service comparable to other competing municipal golf courses in the McKinney/Allen/Frisco area.

The Manager shall provide an on-site, full-time maintenance supervisor who shall be a graduate of an accredited college or university in the field of agronomy or a graduate in an allied field with golf course maintenance experience or an individual with extensive golf course operational experience. He will be a Golf Course Superintendents Association of America (GCSAA) certified superintendent. Manager will submit a resume for the on-site maintenance supervisor to the City for its review each time a change in supervisors is proposed. At least one full-time crewmember shall have a current pesticide applicator's license.

The Manager shall be responsible for the performance of sub-contractors working under its direction. The Manager shall perform a weekly inspection of the Golf Course Premises; submit to the City Parks Board a monthly maintenance report, and advance seasonal work schedule; and hold monthly meetings with the Director to monitor performance and resolve issue. City representative shall have unlimited access to inspect Golf Course Premises and facilities at any time and to order corrective measures in accordance with the specifications. In the event the Manager fails to make repairs or keep Golf Course Premises in safe and sanitary condition, City reserves the right to enter the Golf Course Premises for purposes of making emergency repairs and to charge cost of said repairs to the Manager. The Manager shall maintain all easements on the golf course and shall not obstruct their use.

Section I: Greens, Practice Putting Greens and Nurseries

1. Mowing – As needed to an average height of one-fourth inch (1/4") to eleven-sixty-fourths inch (11/64").
2. Change cup locations on all greens and practice putting greens as needed.
3. Repair ball marks, divots, or any other damaged turf on all greens and practice putting greens as needed
4. Aerify all greens, practice putting greens and nurseries as needed
5. Top dress all greens, practice putting greens and nurseries after aerification and additionally as needed to maintain a smooth putting surface.

6. Light vertical mowing of all greens, practice putting greens and nurseries shall be performed as needed to control mat and thatch build up and Poa Anua seed production.

During germination period, cup shall be changed frequently. First mowing shall be at 5/16" reducing to normal cutting heights gradually.

A preventative program of fungicide applications shall be maintained starting two (2) days after overseeding.

1. Spiking of all greens, practice greens and nurseries shall be performed as needed.
2. Fertilization – All greens, practice greens, and nurseries shall be fertilized as needed.
3. Fungicide – All greens, practice greens and nurseries shall have appropriate fungicide applications at a preventative rate.
4. Pre-emergent chemicals shall be used in the appropriate amounts and appropriate times to prevent intrusion into the greens, weeds difficult to eradicate such as Poa Anua, goosegrass, crabgrass, etc.
5. Weed control – All greens, practice greens and nurseries shall be maintained free of foreign grasses and weeds such as common Bermuda, 419 (Tifway) and other foreign grasses, even if it is necessary to remove them by hand.
6. Insecticide – All greens, practice greens and nurseries shall be treated on a preventive basis.

Section II – Tees – All Areas used for Tee Surface

1. Mowing – All tees shall be mowed at a height of seven-sixteenths inch (7/16") to three-quarters inch (3/4").
2. Top dressing – All tees shall be top dressed weekly to fill divots, and level tee surface.
3. Seeding – All tee area shall be over seeded on off season.
4. Set-up – Tee markers and all tee equipment shall be moved as needed.
5. Weed Control – Tees shall be kept weed free to an extent of at least ninety percent (90%) of the area by the proper application of herbicides.
6. Vertical Mowing – All tees shall be severely vertically mowed as necessary to control mat or thatch build up.
7. Aerification – All tees shall be aerified as needed.

Section III – Fairways - All Areas of Play Except Greens, Tees and Natural Growth Areas

1. Mowing – All fairways shall be mowed twice a week at a height of one-half inch (1/2") to three-quarters inch (3/4") during the growing season and as needed for the balance of the year. Contour mowing as specified by the architect in the original plans shall be maintained.

2. Aerification – All fairways shall be aerified a minimum of once per year. Aerification holes shall not exceed a spacing of eight inches (8”) on center or be of a diameter of less than one-half inch (½”).
3. Fertilization – All fairways shall be fertilized two (2) times a year.
4. Vertical Mowing – All fairways will be severely vertically mowed as necessary to control mat or thatch build up at least yearly.
5. Weed Control – Fairways shall be kept weed free to an extent of at least ninety percent (90%) of the area by the proper application of herbicides.
6. Pest Control on Fairways/Driving Range – The fairways and the driving range shall be checked daily for any pest infestation, gophers, and other burrowing animals which will affect the playing surface or the ongoing health of the turf grass. Any pest problem recognized as such shall be dealt with as soon as possible.

Section IV – Roughs – Including Slopes of Tees and all General Play Areas Beyond the Limits of the Fairways and the Slopes of the Greens.

1. Mowing – All roughs shall be mowed one – two times per week at one and one-half inches (1 1/2”) to two and one-half inches (2 1/2”).
2. Fertilization – A minimum of thirty feet (30’) wide strip of rough (from the edges of the tees, fairways, and the slopes of the greens) shall receive the same March fertilization as the fairways.
3. Weed Control – Roughs shall be kept weed free to an extent of at least fifty percent (50%) of the area by the proper application of herbicides.

Section V – Areas of Limited Maintenance

All limited maintenance areas shall be mowed a minimum of four (4) times a year to an approximate height of six inches (6”) by means of a “brush-hog” or other acceptable mower. Sections of these areas which may receive special landscaping (wild flowers, ornamental grasses, etc.) would be an exception to the above mowing requirements.

Section VI – Winter Overseeding

Each fall, all tees shall be dethatched and overseeded with perennial rye grass seed at an appropriate rate to produce an even stand of grass during the winter months.

Section VII – Planters – All Areas Planted with Ornamental Plants, Not Intended for Golf Play and Having a Definable Border

1. Clean up – All planters shall be maintained free of trash and debris such as paper, drinking cans, bottles, fallen limbs and leaves.
2. Weed Control – All planters shall be maintained free of weeds or grass whether by mechanical or chemical means.

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3. Trimming – The plant material (trees, shrubbery and ground covering) in planters shall be trimmed for protection from wind, insect damage, and for appearance.

Section VIII – Trees – All Trees Within the Property Lines of the Golf Course

1. Stake – All trees shall be staked as necessary to protect and establish sufficient size to stand unassisted.
2. Pruning – All trees shall be pruned for protection from wind and pests as well as for appearance. Proper pruning techniques shall be approved by the City.
3. Irrigation – All trees shall be watered to provide adequate moisture for proper growth.
4. Mowing – Mechanical removal of grass shall not be accomplished within one foot (1') of the trunk.
5. Removal and Replacement – All damaged trees, for whatever cause, shall be removed and replaced by the Manager within fourteen (14) days unless determined differently by the City.

Section IX – Irrigation – All Equipment Required to Irrigate All Areas of the Golf Course

1. Manager shall bear all costs for the maintenance of the computerized irrigation systems on the course (including greens, tees, fairways, planters, flower beds, etc.).
2. Maintenance means the cleaning, adjusting, repair, and replacement of all components of the pumping and irrigation systems downstream of the pump control panels and the main spring control panels.
3. The maintenance will include but not be limited to gate valves, lateral irrigation lines, automatic valves, irrigation controllers, wiring from controllers to valves, controller transformers, sprinkler heads and quick coupler valves.
4. The superintendent shall be responsible for weed and fungus control in golf course lakes.
5. All irrigated areas maintained in Bermuda grasses of the golf course shall be irrigated within the limits of irrigation system and water supply.

Section X – All Potable Waterlines on the Course

1. All potable waterlines serving drinking fountains, quick coupes, faucets, etc. on the course itself shall be the responsibility of the Manager.
2. All indoor plumbing found in the maintenance shop will be the maintenance responsibility of the Manager.

Section XI – Fences – All Fence Blocks, Chain Link, or Barbed Wire on or Within the Boundaries of the Golf Course.

1. Repair all broken or damaged fencing on a weekly basis.

2. Replace all fences as needed within thirty (30) calendar days of determined replacement needed as determined by the City.
3. Immediately repair or replace all fences, gates, and locking devices needed for protection of the golf course or equipment.

Section XII – All Buildings (except Clubhouse) within the Boundaries of the Golf Course

1. Maintain and repair all structural areas and fixtures of all buildings as needed to insure proper function and appearance including, but not limited to:
 - Air conditioning units, power tools, appliances, hardware, building structures and fixtures;
 - Painting, carpentry, plumbing and electrical repairs;
 - Porches, walks, parking areas, delivery areas and entries.
2. Course rest rooms – All course rest rooms shall be maintained daily to provide clean and sanitary facilities for the users and employees of the course. Soap, towels, toilet paper, etc., shall be provided in adequate quantity at all times. Portable facilities shall be maintained similarly.
3. Surrounding areas shall be maintained free of weeds, brush, disorganized junk or broken-down equipment, trash piles, etc. “Housekeeping” duties shall be assigned to all maintenance crewmembers and shall be performed daily.
4. An annual inspection of all buildings will be performed by the Building Superintendent or his designated representative. The Manager will be responsible to correct and/or make the required building repairs as per the recommendations of the Building Superintendent.

Section XIII – Cart Paths

Maintain all cart paths in a smooth condition and repair promptly as needed.

Section XIV – Edging

All sidewalks, patios, and concrete cart paths must be kept edged. Edging around valve boxes, meter boxes, backflow preventers, etc., shall be done as needed to insure that there is no obstruction of play or maintenance from growth around these items.

Section XV – Sand Bunkers

All sand bunkers shall be edged as necessary to maintain a neat lip, raked daily and filled with fresh sand as needed.

Section XVI – Wetlands, Lakes and Bridges

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1. All areas that are designated wetlands shall be maintained in their natural condition. Exotic weed species such as tamarisk, pampas grass, grant reed, and castor bean shall be removed.
2. Manager will be responsible for maintaining all lakes and bridges in a safe and sanitary manner and in good appearance.

Section XVII – Color Areas

Various planting areas throughout course shall be cultivated, weeded and pruned on a regular basis with at least two replanting programs for annuals scheduled each year.

Section XVIII – Non-horticultural Maintenance Related to Play on the Course

1. Manager shall be responsible for the maintenance of all tee markers, cups, flags, ball washers, trap rakes, yardage signs, and benches on the course. Maintenance shall include repairing, painting, replacing, furnishing towels, and otherwise keeping these amenities in a good condition that is conducive to player enjoyment of and respect for the course.
2. The ball washers located around the course shall be serviced Monday, Wednesday, Friday, Saturday and Sunday. The towels for the ball washers shall be changed on the same schedule with clean towels furnished as needed.
3. The superintendent shall have the responsibility to mark temporary hazards, out-of-bounds area, and other course hazards.

Section XIX – Other General Obligations

1. Construction and Remodeling – Any change in the physical characteristics of any area of the golf course such as addition or removal of sand bunkers, addition or removal of any hazards (water, trees or native vegetation), regrading involving movement of soil exceeding twenty (20) cubic yards in any single area, or the modification of any portion of the golf course or the buildings must be approved by the City.
2. Programs – All programs for fertilization, chemicals, and top dressing formulations must be reviewed and approved by the City prior to the application or use on the golf course.
3. Soil testing with adequate analysis shall be conducted at least once per year.
4. Crews – A full maintenance crew shall be on duty at the course daily under the supervision of an on-duty superintendent.
5. Trash and debris removal will be at Manager's expense.

EXHIBIT "B": SITE MAP OF OAK HOLLOW GOLF COURSE



OAK HOLLOW GOLF COURSE



**EXHIBIT "C": MUNICIPAL AGREEMENT by and between THE CITY OF
MCKINNEY AND TEXTRON FINANCIAL CORPORATION**