

**FOURTH AMENDMENT TO THE PROFESSIONAL
FULL GOLF SERVICES MANAGEMENT AGREEMENT**

This **FOURTH AMENDMENT TO THE PROFESSIONAL FULL GOLF SERVICES MANAGEMENT AGREEMENT** (this "Fourth Amendment"), is made and entered into effective as of May 2, 2023 (the "Effective Date"), by and between the **CITY OF MCKINNEY**, a Texas municipal corporation (hereinafter "City") and **DWW GOLF MANAGEMENT LLC**, a Texas limited liability corporation (hereinafter "Manager").

WHEREAS, the Professional Full Golf Services Management Agreement (the "Management Agreement") was entered into effective April 1, 2009 by and between the City and Manager, providing for professional golf services and management of the Oak Hollow Golf Course ("Golf Course"); and

WHEREAS, the City and Manager entered into that certain First Amendment to the Professional Full Golf Services Management Agreement, effective January 19, 2010, ("First Amendment") to add a "clubhouse construction fee" to assist with the construction of a new clubhouse; and

WHEREAS, the City and Manager entered into that certain Second Amendment to the Professional Full Golf Services Management Agreement, effective July 21, 2010, ("Second Amendment"), which Second Amendment terminated and superseded the First Amendment and also modified and clarified various provisions of the Management Agreement and provided one additional five-year renewal term; and

WHEREAS, the City and Manager entered into that certain Third Amendment to the Professional Full Golf Services Management Agreement, effective April 1, 2019, ("Third Amendment"), which Third Amendment clarified various provisions of the Management Agreement; and

WHEREAS, starting on June 1, 2023, the City will begin updating and renovating the greens, tee boxes, restrooms and other facilities located at the Golf Course, resulting in a large portion of the Golf Course being temporarily closed for an estimated three (3) months resulting in a reduction in revenue the Manager will receive during said temporary closure period; and

WHEREAS, the City and Manager desire to amend the Management Agreement, as previously amended by the Third Amendment, to temporarily suspend the operating payments Manager is otherwise contractually obligated to remit to the City, compensate the Manager on an alternative, "work performed" basis, set forth the minimum staffing levels Manager is required to maintain during the Maintenance Closure Period, and add a five (5) year extension right for the City for the period beginning April 1, 2024 and terminating on March 31, 2029, as further set forth and explained herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, City and Manager hereby agree to amend, modify and supplement the Management Agreement as follows:

1. Section 2.10, "Operating Payments," as set forth in the Management Agreement is hereby deleted in its entirety and replaced with a new Section 2.10 that is also entitled "Operating Payments" to read as follows:

"Section 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, **plus** \$2.00 for every 9-hole and 18-hole round of golf played at the golf course, 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, **plus** the actual internal cost incurred by City in excess of \$8,000.00 per calendar year in performing Manager's maintenance obligations under this Agreement.

In the event of any extension of this Agreement pursuant to Section 2.03, Manager shall continue to pay City the operating payments 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.

Notwithstanding the foregoing, for the three (3) month period commencing on June 1, 2023, and concluding on September 1, 2023, during which a portion of the Golf Course Premises will be closed for capital maintenance and renovations (the "Maintenance Closure Period"), Manager shall not remit to the City any operating payments based on Gross Receipts as described hereinabove, except as otherwise provided for herein. In lieu of operating payments and to account for the anticipated reduction in Golf Course revenues during the Maintenance Closure Period, Manager shall not collect any revenues or Gross Receipts at the Golf

Course, and Manager shall receive from the City six (6) payments of Seventy-One Thousand Seven Hundred Fifty and 00/100 Dollars (\$71,750.00) each (the "Maintenance Closure Payments"), to be paid on the first and fifteenth of each month, with the first payment occurring on June 15, 2023 and the last payment occurring on September 1, 2023. In consideration for receiving the Maintenance Closure Payments, Manager agrees to collect and remit to the City at the end of each month during the Maintenance Closure Period all driving range fees collected during the preceding month.

In further consideration for receiving the Maintenance Closure Payments, Manager shall have at least sixteen (16) employees working at the Golf Course during the Maintenance Closure Period ("Minimum Staffing Levels"), serving the following facilities during the days and times below:

Clubhouse:

(8:00 a.m. - 8:00 p.m.). [7 days a week]

Driving Range:

(8:00 a.m. - 8:00 p.m.). [7 days a week]

Golf Course Maintenance:

(6:00 a.m. – 6:00 p.m.) [Monday - Friday]

Should Manager fail to maintain the Minimum Staffing Levels working at the Golf Course during the entirety of the Maintenance Closure Period, the City may withhold a Maintenance Closure Payment(s) and retains all rights and remedies provided to it under this Agreement and allowed by law, including termination."

Upon the cessation of the Maintenance Closure Period, the operating payments under the first paragraph of this Section 2.10 shall recommence and continue with the first payment being due on October 15, 2023.

2. Section 2.03.A, "Term," as set forth in the Management Agreement is hereby deleted in its entirety and replaced with a new Section 2.03.A that is also entitled "Term" to read as follows:

“A. The initial term of this Agreement was for a period of five (5) years, which commenced on April 1, 2009 (the "Initial Term") and terminated on March 31, 2014. At the end of the Initial Term, two (2) allowable five (5) year extensions were executed (referred to as the first and second "Renewal Term"), the first beginning on April 1, 2014 and terminating on March 31, 2019, and the second beginning on April 1, 2019 and which terminates on March 30, 2024. So long as Manager's performance is acceptable to City and Manager is in full compliance hereunder, City, in its sole discretion, shall have the option to renew this Agreement for an additional five (5) year term (referred to as the third "Renewal Term") beginning April 1, 2024 and terminating on March 30, 2029, such renewal being on terms acceptable to the City.”

3. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Management Agreement.

4. Except to the extent the Management Agreement, the Second Amendment, and the Third Amendment are modified by this Fourth Amendment, the remaining terms and conditions of the Management Agreement shall remain unmodified and in full force and effect.

5. In the event of any conflict between the terms and conditions of the Management Agreement and/or the Second Amendment and/or the Third Amendment and the terms and conditions of this Fourth Amendment, the terms and conditions of this Fourth Amendment shall prevail and control.

6. The Management Agreement, Second Amendment, Third Amendment, and this Fourth Amendment embodies the entire understanding between the parties hereto with respect to its subject matter and can be changed only as set forth in the Management Agreement.

7. This Fourth Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same Fourth Amendment.

8. All other provisions, terms and sections of the Agreement shall remain in full force and effect, and this Amendment to the Agreement shall in no way release, affect or impair any other provision or responsibility contained in the Agreement.

9. The Effective Date shall be May 2, 2023.

IN WITNESS WHEREOF, each of the parties hereto has caused this Fourth Amendment to the Agreement to be executed by its undersigned duly authorized representative, in multiple copies, each of equal dignity, as of the date hereinabove first mentioned.

CITY OF MCKINNEY, TEXAS,
a Texas municipal corporation

By: _____
PAUL G. GRIMES
City Manager

Date: _____

DWW GOLF MANAGEMENT LLC,
a Texas limited liability corporation

By: _____
DAVE WILLEY

Date: _____

ATTEST:

EMPRESS DRANE
City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of May 2023 by PAUL G. GRIMES, City Manager of the **CITY OF MCKINNEY, TEXAS** a Texas municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of May 2023, by DAVE WILLEY, Owner of **DWW GOLF MANAGEMENT, LLC**, a Texas limited liability corporation, on behalf of said corporation.

Notary Public, State of Texas

PREPARED IN THE OFFICES OF:

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