

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

This **FIFTH AMENDMENT TO THE PROFESSIONAL FULL GOLF SERVICES MANAGEMENT AGREEMENT** (this "Fifth Amendment"), is made and entered into effective as of September 5, 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Services Management Agreement, effective July 21, 2010, ("Second Amendment"), which Second Amendment terminated and superseded the First Amendment and also modified and clarified various provisions of the Management Agreement and provided one additional five-year renewal term; and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, the City and Manager entered into that certain Fourth Amendment to the Professional Full Golf Services Management Agreement, effective May 2, 2023, ("Fourth Amendment"), which Fourth Amendment temporarily suspended the operating payments Manager was otherwise contractually obligated to remit to the City during the renovation of the greens at the Golf Course, compensate the Manager on an alternative, "work performed" basis, set forth the minimum staffing levels Manager was required to maintain during the Maintenance Closure Period, and added a five (5) year extension right for the City; and

WHEREAS, the City and Manager desire to amend the Management Agreement, as previously amended by the Fourth Amendment, to revise the dates of the temporary suspension of the operating payments to the Manager due to unforeseen delays in the renovation which were not caused by Manager, 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 four (4) month period commencing on June 1, 2023, and concluding on or before September 30, 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.
- Two (2) payments of Sixty-Four Thousand and 00/100 Dollars (\$64,000.00) each (the "September Maintenance Closure Payments"), to be paid on September 15, 2023, and on October 1, 2023.

In consideration for receiving the Maintenance Closure Payments and the September 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 and the September 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 November 15, 2023.

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

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

4. 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/or the Fourth Amendment and the terms and conditions of this Fifth Amendment, the terms and conditions of this Fifth Amendment shall prevail and control.

5. The Management Agreement, Second Amendment, Third Amendment, Fourth Amendment, and this Fifth Amendment embody 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.

6. This Fifth 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 Fifth Amendment.

7. 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.

8. The Effective Date shall be September 5, 2023.

IN WITNESS WHEREOF, each of the parties hereto has caused this Fifth 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: 8.30.2023

ATTEST:

EMPRESS DRANE
City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

ACKNOWLEDGMENT

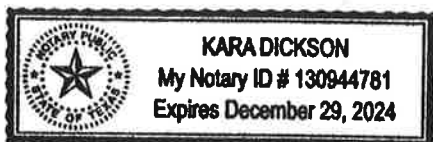
STATE OF TEXAS §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of September 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 30 day of August 2023, by DAVE WILLEY, Owner of **DWW GOLF MANAGEMENT, LLC**, a Texas limited liability corporation, on behalf of said corporation.



Kara Dickson

Notary Public, State of Texas

PREPARED IN THE OFFICES OF:

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