

## Golf Courses Operating Agreement

THIS AGREEMENT made this 31st. day of March, 2022.

BETWEEN:

**THE CITY OF REGINA**  
a municipal corporation  
("the City")

and

**WESTERN GOLF MANAGEMENT LTD.**  
a business corporation  
("the Operator")

In consideration of the mutual covenants, rights and privileges pursuant to this Agreement, the Parties agree as follows:

### Article 1. Interpretation

1.1 In this Agreement the following words shall have the meanings as set out:

**"City"** means the City of Regina or any person authorized to act on its behalf.

**"City Equipment"** means any equipment, fixtures or furniture at the Courses that is supplied by the City.

**"Clubhouse"** means the clubhouses at each of the Courses and includes the interiors, the exterior glazed surfaces, the attached deck areas and the entrances.

**"Courses"** means, the Joanne Goulet, Lakeview, Murray and Tor Hill municipal golf courses owned by the City, or any one of them should the context specifically require.

**"Fuel Tanks"** means the fuel tanks, associated equipment (such as pumps, hoses, nozzles, tanks and other hardware) located in the fenced areas of the City's Fuel Depots located at the Courses.

**"Golf Season"** means the date each Course opens and closes for the season as determined by the City.

**"Green Fees"** means any fees collected, including gift cards, by the Operator or the City for the provision of golf on the Courses and includes daily fees, punch passes and season tickets, but does not include:

- (a) driving range fees;
- (b) any amounts collected as tax; or
- (b) complimentary and promotional rounds approved by the City.

**“Operator Equipment”** means all equipment, furniture, tools and miscellaneous small wares required for the general operation of the Courses and the Premises other than the City Equipment.

**“Premises”** includes the Courses, driving ranges, practice greens, clubhouses, and the parking areas, as shown in Schedule B.

**“Proposal”** means the Operator’s response to the City’s Request for Proposal, portions of which are attached hereto as Schedule A.

**“Support Buildings”** means the following buildings:

- (a) cart storage facility at the Joanne Goulet Course;
- (b) small storage building at the Lakeview Course;
- (c) cart storage facility at the Tor Course;
- (d) cart storage facility at the Murray Course.

## **Article 2. Grant and Term**

2.1 This Agreement shall be in effect for a term of 3 years commencing March 1, 2022 and expiring February 28, 2025, unless sooner terminated as herein provided (the “Term”). This Agreement may be renewed upon mutual agreement of the parties for up to two additional years.

2.2 Subject to the terms and conditions of this Agreement, the City hereby grants to the Operator the right to the following for the Term of this Agreement, during the Golf Season unless otherwise indicated:

- (a) operate the Premises as a public golf course;
- (b) sell food and beverage items, sell or rent any golfing accessories including power carts, and operate a driving range;
- (c) retrieve golf balls from the course waterways in accordance with this Agreement and any City policies in effect or amended from time to time;
- (d) access the Fuel Tanks for the sole purpose of fuelling the equipment and vehicles the Operator uses to fulfill its obligations under this Agreement;
- (e) use the Support Buildings for the sole purpose of storage of Operator Equipment during the Golf Season and outside of the Golf Season.

- 2.3 The City shall be entitled to continue to access the premises for any reason determined by the City.
- 2.4 The City may use the Premises for any purpose for the periods during the Term that are outside of the Golf Season and any other period of the Term that the Premises are not in use by the Operator.

### **Article 3. Fees and Payments**

- 3.1 In determining the amount payable to the City pursuant to this Article:
- (a) Green Fees charged by the Operator upon credit (whether by instalment payment or otherwise) shall be treated as a sale for the full sale price at the time such sale is made no matter when payment, whether full or partial, is received;
  - (b) no deduction shall be made for discounts, uncollected or uncollectible accounts.
- 3.2 In consideration of the rights and privileges granted herein, the Operator shall, without deduction or setoff, pay to the City the following fees plus all applicable taxes (the "Fees"):
- (a) Lakeview:
    - Base fee of \$60,000 and
    - An amount equal to 40 % of the Green Fees charged during the applicable calendar year plus applicable taxes.
  - (b) Joanne Goulet:
    - (i) 80% of the total Green Fees charged at the Goulet on the first one hundred and fifty thousand dollars (\$ 150,000) of Green Fees; and
    - (ii) 90% of the total Green Fees charged at the Goulet for any Green Fees in excess of one hundred and fifty thousand dollars (\$150,000).
  - (c) Tor Hill and Murray:
    - An amount equal to 100% of the Green Fees charged during the applicable calendar year, plus applicable taxes
  - (d) If the Operator hosts a Saskatchewan Golf Association event, an amount equal to 50% of any hosting grant or other amount received in lieu of or in addition to the Green Fees, plus applicable taxes.
  - (e) A percentage of golf cart rental fees, plus applicable taxes, as follows:
    - Joanne Goulet: 5%
    - Tor Hill: 5%
    - Murray: 5%

- (f) A percentage of driving range fees, plus applicable taxes, as follows:  
 Joanne Goulet: 5%  
 Tor Hill: 5%  
 Murray: 5%
- (g) For points (e) and (f), the Operator will pay the City an additional 5% bonus in any of the six categories where the gross revenue exceeds the projected revenue as listed in the table below.

		2022	2023	2024	2025	2026
Category 1	Tor Hill Carts	388,000	405,150	425,569	447,018	469,548
Category 2	Tor Hill Range	32,500	33,718	35,417	37,202	39,077
Category 3	Murray Carts	332,000	348,617	366,188	384,644	404,029
Category 4	Murray Range	88,000	92,162	96,807	101,686	106,811
Category 5	Goulet Carts	177,000	188,442	197,939	207,915	218,394
Category 6	Goulet Range	93,500	98,906	103,891	109,127	114,627
Total	Carts	897,000	942,209	989,696	1,039,577	1,091,971
Total	Range	214,000	224,786	236,115	248,015	260,515

3.3 The Fees shall be paid to the City as follows:

- (a) Lakeview: 1 post-dated cheque dated July 15 in the amount of \$30,000 + taxes  
 Joanne Goulet: 1 post-dated cheque dated July 15 in the amount of \$150,000 + taxes  
 Tor Hill: 5 post-dated cheques dated May 15, June 15, Jul 15, August 15, and September 15 in the amount of \$240,000 each for a total of \$1,200,000 + taxes  
 Murray: 5 post-dated cheques dated May 15, June 15, Jul 15, August 15, and September 15 in the amount of \$160,000 each for a total of \$800,000 + taxes on or before July 15 of each calendar year;
- (b) the remainder of the fees for each year calculated in accordance with this Agreement, on or before November 15 of each calendar year.

3.4 Amounts owing by the City to the Operator for Green Fees paid by City of Regina gift certificates will be reconciled with the November 15th payment.

3.5 For 2022 only, the City will credit Western Golf Management for the cost of scorecards in the amount of \$5,620 plus applicable taxes and will be reconciled with the November 15th payment. In return, the City retains the advertising rights on the scorecards for 2022.

3.6 In respect of any hosted event as described in 3.2(d), the Operator shall submit a report certifying the amounts received by the Operator together with remittance of the applicable fees owing within 10 days of the event.

3.7 The Operator shall submit no later than November 15<sup>th</sup>, all reports and information required by the City to determine the amount of Fees owed to the City by the Operator. The reports and information required include, but are not limited to, credit card sales made by the Operator

for the sale of Green Fees and Passes; all City of Regina gift cards redeemed by the Operator; and any other information relevant to the determination of the amount of Green Fees owed to the City. The City shall issue an invoice to the Operator with respect to Green Fees owed and the Operator shall submit payment within 30 days of receipt of the invoice.

- 3.8 Accounts not paid as of the due date will be subject to late payment charges of 1.5% per month (18% per annum).
- 3.9 The City shall be entitled to invoice the Operator on a monthly basis, for litres of fuel the Operator removed from the Fuel Tanks. The City will calculate the price of fuel based on the current rate the City pays for such fuel including taxes and applicable fees, plus a fuel consumption charge of CDN \$ 0.0372 per litre. This fuel consumption charge shall be reviewed annually and adjusted as required to achieve cost recovery of fuel operation costs.
- 3.10 The Operator is responsible for initial payment of any premiums or transaction fees payable to credit card companies or other financial institutions for acceptance of credit cards, debit cards or other cards used for any method of payment. The City shall credit Western Golf Management in the amount of \$25,000 annually to cover the cost of credit card transaction fees for the payment of Green Fees and the Operator shall be responsible for the remainder of the premiums/transaction fees. The Operator shall provide a reconciliation of such sales and premiums in a form and manner and at such times as is satisfactory to the City. The City is not responsible for any costs related to equipment or hardware required for the purpose of accepting debit or credit card payments.
- 3.11 The Operator shall be entitled to playing privileges at no charge for 12 of the Operator's employees during each season provided that:
- (a) each entitled employee follows the procedures required by any season pass holder;
  - (b) the complement of individuals includes any Class A and Class B Canadian Professional Golf Association professionals employed by the Operator; and
  - (c) the City is provided a list of the individuals prior to the beginning of each season.

#### **Article 4. Accounting and Record Keeping**

- 4.1 The Operator acknowledges that the City shall have the right to prescribe or approve Green Fee gathering and cash control procedures and the right to investigate any irregularities in such procedures.
- 4.2 The Operator agrees and covenants to:
- (a) produce and to make accessible at all times, financial records of the operation of the Premises through the accessing of data from the cash register and related equipment. The City reserves the right to the collection of this data at any time, provided that this

action does not disturb day to day operations;

- (b) give a strict accounting to the City of all Green Fees, driving range fees, tournament fees and cart fees.
- 4.3 The Operator will make every reasonable effort to ensure that the information collected by the cash registers, or any other system used for this purpose, is accurate and complete. Any sales information collected by the City from the cash registers that does not relate to Green Fees, driving range fees, tournament fees or cart fees shall be kept confidential.
- 4.4 On the Tuesday of each week during the Golf Season, the Operator shall submit the daily cash till records certifying the following information for the preceding Monday to Sunday period:
- (a) the Green Fees charged;
  - (b) the number of seasonal and punch-card golf passes sold;
  - (c) the number of seasonal and punch-card golf passes used;
  - (d) the driving range fees charged;
  - (e) any tournament fees due; and
  - (f) any cart fees charged.
- 4.5 Any errors or omissions found in the daily cash till records shall be remedied by the Operator no later than the following Tuesday.
- 4.6 The Operator shall annually produce correct statements of all revenues and expenditures derived by the Operator from its use and occupation of the Premises herein during the term of this Agreement, and submit such statements, which will include a review engagement report, a balance sheet and a statement of revenue and expenditure, prepared by an accountant, and delivered not later than 60 days after December 31 for each year that this Agreement is in effect.
- 4.7 Notwithstanding section 4.6, the City may at its discretion, request that the Operator have audited statements produced and provide those to the City. If the audited statements show a discrepancy of over 5% from the previous statements provided hereunder, the Operator shall bear all costs of the audit. If the discrepancy is less than or equal to 5%, the City shall bear the costs of the audit.

#### **Article 5. Green Fees**

- 5.1 The City shall establish the Green Fees to be charged at each of the Courses and the Operator shall collect Green Fees in accordance with the rate schedule established by the

City.

- 5.2 Notwithstanding section 5.1 and subject to change by City Council the City hereby grants the Operator the right to negotiate green fees for tournament play, pre-season sales for passes for regular play and special promotions; provided however, that where the Operator negotiates a green fee less than the rates as approved by City Council the full value of the green fees based on the approved rate schedule will be included in the determination of Green Fees.
- 5.3 The Operator shall maintain an inventory of seasonal golf passes and punch card passes which are printed and provided by the City, provide for the sale of these passes and accept responsibility for all passes while in the Operator's possession.
- 5.4 The Operator shall accept debit cards and credit cards for payment of all fees and charges including purchase of any items from the pro-shop or food services. No premium is to be charged to customers using debit cards or credit cards.
- 5.5 At the Lakeview, the City shall supply the Operator with cash registers and related software to be used only for the collection, recording, and reporting of Green Fees.

#### **Article 6. City's Covenants**

- 6.1 The City shall:
  - (a) allow tournaments in accordance with the approved City policy in effect at the time;
  - (b) pay all water, sewage, electricity and natural gas charges;
  - (c) provide the repair or replacement for any structural or mechanical deficiencies in City Equipment;
  - (d) provide a burglar alarm and monitoring service or other security measures for the Premises as the City deems necessary;
  - (e) provide on-course maintenance of all course features including turf grass, trees and shrubs, pathways, structures, furniture, fixtures, and litter collection and disposal in accordance with established City standards and policies;
  - (g) establish operating seasons and hours of operation;
  - (h) establish general operating policies;
  - (i) control problem wildlife as reasonably possible in accordance with established City standards and policies. The Operator shall contact the City to notify of any concerns with problem wildlife.

## **Article 7. Operator's Covenants**

- 7.1 The Operator acknowledges and agrees that the licence is for the sole purpose of carrying out a portion of golf course operations on behalf of the City and for no other purpose.
- 7.2 The Operator is responsible for the entire operation and management of the Premises including:
- (a) equipment rentals;
  - (b) driving range services;
  - (c) golf lessons;
  - (d) food and beverage services;
  - (e) fee collection;
  - (f) sales;
  - (g) janitorial services, including the supplies used in the delivery of those services, at the Clubhouses;
  - (h) general customer information about golf course services, programs, lessons and course marshals;
  - (i) supervising and controlling play on the Courses;
  - (j) managing group bookings and tournaments;
  - (k) developing and implementing marketing, advertising and promotional plans;
  - (l) maintaining good customer relations;
  - (m) addressing and managing customer concerns, suggestions, and complaints concerning the entire operation of the Courses;
  - (n) services and systems for booking tee-off times;
  - (o) enforcing all City policies regarding the operation of the Courses;
  - (p) ensuring all divers are qualified in the choice of equipment used in the retrieval of golf balls, and scheduling all retrieval operations to reflect customer and maintenance needs;



- (q) developing for City approval, policies, procedures, processes and systems related to course operations areas such as booking of tee times, tournament play, club play, program planning and course marshal responsibilities and duties;
- (r) collecting required information as defined by the City on the use of the Courses, including the amount of play by green fee players and those using passes. The information shall include but not be limited to the type of usage, time of day and day of the week and be provided to the City in electronic format on a weekly basis. The City shall notify the Operator by March 1 of each year, the information requirements for that year.

7.2. Without limiting the generality of section 7.1, the Operator shall provide, at its own cost and expense:

- (a) all equipment, tools, cleaning supplies and miscellaneous smallwares required in general operation of the Premises that are not supplied by the City;
- (b) all management and labour required to meet its obligations under this Agreement. Any Key Individuals as identified in the Operator's Proposal shall not be substituted without valid reasons, to be provided to the City in writing along with notice of the change. Such management and labour shall include, but not be limited to, the following:
  - i. a sufficient number of capable employees to enable the Operator to properly, adequately and safely perform its obligations under this Agreement;
  - ii. all persons handling Green Fees shall be bondable;
  - iii. a member of the Canadian Professional Golf Association for each course for all times that the course shall be open for play. The professional shall be available to teach classes and will take advance reservations for the classes;
  - iv. personnel to ensure orderly starts at the first tee;
  - v. a starter and a marshal, at such times as the course is booked for more than 80% of the available times for more than a three hour period;
  - vi. a representative available in the golf off-season to handle golf operation issues including tournament bookings;
- (c) all telephones, including the tee time booking line and a separate line for the Operator's business activities;
- (d) cash register, register tapes, technical equipment, ribbons, paper and maintenance

required for the operation of the cash register, and any other devices, systems, software or equipment used or required for the collection of green fee and pass fee sales information, including telephones and telephone modems;

- (e) the production and supply of all golf course score cards, starter sheets, and tournament booking sheets;
- (f) installation and maintenance of signs which show charges for rentals or merchandise sales, food and beverage prices and green fees and pass fees;
- (g) any additional storage required including off season storage and ensure that any goods stored within City facilities are insured appropriately. The City shall not be held liable or responsible by the Operator for loss of or damage to any property of the Operator stored in the clubhouses regardless of the cause of any such loss or damage;
- (h) supply of sufficient number of power carts to meet customer demand.

7.3 Without limiting the generality of sections 7.1 or 7.2, the Operator shall:

- (a) perform all services required pursuant to this agreement in a proper and professional manner consistent with the standard of a professional and prudent golf course operator;
- (b) ensure that all golfers are given a receipt or proof of purchase as deemed necessary by the City and advise all golfers that such proof must be retained and made available upon request for the duration of the round to which the proof pertains;
- (b) enforce discipline and proper etiquette on the course including dress code;
- (c) ensure that all employees or contractors of the Operator exhibit the highest degree of professionalism and customer service when dealing with the public, and that such employees receive adequate customer service training;
- (d) not discriminate against any patron on the basis of any ground described in *The Saskatchewan Human Rights Code*;
- (e) prohibit golfers from playing the course when heavy rainfall or frost conditions render the course unfit for play in accordance with the directions of the City in such regard;
- (f) ensure there is a minimum of one AED certified staff present during operating hours, develop an AED policy and procedure manual for Operator staff, ensure all Operator staff are familiar with the location of AEDs and the Operator's procedure manual, perform monthly checks on AED units as prescribed by the manufacturer and/or Saskatchewan Health Authority to ensure optimal operation and immediately advise the City of any issues with AED units or if maintenance is required for an AED unit;

- (g) at all times comply with any security procedures as determined by the City;
  - (h) when requested by the City, provide the City with a written evaluation of the course operation in order to provide guidance in respect of service improvements. The evaluation shall include course maintenance and improvements, and Premises operation and repairs.
- 7.4 If the Operator uses subcontractors in the performance of any part of this Agreement the Operator shall be fully responsible to the City for the acts and omissions of its subcontractors and shall enter into written agreements with all subcontractors requiring them to comply with all applicable terms and conditions of this Agreement.

### **Article 8. Cleaning of Premises**

- 8.1 The Operator shall be responsible for the cleaning all areas of the Clubhouses, areas immediately surrounding the Clubhouses such as decks and doorways and any other areas as agreed to in writing by the Parties.
- 8.2 Without limiting the generality of section 8.1, the Operator shall be responsible for the following services:
- (a) litter pick up in areas immediately surrounding Clubhouses and driving ranges;
  - (b) keep outside entrances and exits clean;
  - (c) check washrooms frequently, replace toilet paper, paper towels and liquid hand soap, and wipe glass mirrors and counter areas as needed;
  - (d) spot clean high traffic areas as necessary;
  - (e) clean up accidents, spills or dirt build-up that occurs in and around the Clubhouses during the day;
  - (f) respond more frequently to problem areas and in a timely manner to areas of special concern such as customer complaints and unsightly spots or stains;
  - (g) regularly scheduled cleaning of the facilities;
  - (h) compliance with the City's requirements for cleaning in response to Covid-19 provided by the City to the Operator at any time during the term;
  - (h) any other standards or specifications provided by the City to the Operator during the term of the Agreement.

### **Article 9. Maintenance of Premises**

- 9.1 Except as otherwise identified as an Operator responsibility under this Agreement, the City shall be responsible for the maintenance and repair of all Premises and City Equipment.
- 9.2 The Operator shall inform the City immediately of any maintenance or repairs required to the Premises or City Equipment.
- 9.3 The Operator shall be responsible for the maintenance and repair of all Operator Equipment.

#### **Article 10. Waste Disposal, Garbage and Litter**

- 10.1 The Operator shall:
  - (a) dispose of grease in the container provided;
  - (b) not discharge any grease into the drains;
  - (c) not dispose of bones or other coarse materials down the sink traps or other drains;
  - (d) remove all garbage from the Premises to the garbage pick-up station as designated by the City; and
  - (e) pack all garbage to ensure it does not leak.
- 10.2 The City shall remove all garbage from the pick-up station as designated in or at the golf Courses and arrange for its transporting to the landfill site.

#### **Article 11. Furnishings and Equipment**

- 11.1 The Operator understands that the City has prepared an estimated inventory of City Equipment which may not reflect actual equipment to be supplied by the City. The Parties agree that within 3 months of the start of the Term they will create an inventory of City Equipment and Operator Equipment. The City may but shall not be obligated to supply any equipment that was on the estimated inventory list but not included in the actual inventory list. The Operator shall supply all equipment required to perform its duties that is not supplied by the City.
- 11.2 During the term of the Agreement should it be necessary to determine who owns equipment that is not listed on an inventory the Parties agree to use best efforts to search their records to determine who owns the disputed equipment. Should no information be available, the City shall be entitled to make the final determination as to whether it owns a particular piece of equipment found at the Premises.
- 11.3 The City owns and shall be responsible to provide and maintain the City Equipment.
- 11.4 The Operator shall provide and maintain all Operator Equipment.
- 11.5 The City shall provide, install, inspect and maintain all fire extinguishers and fire suppression

systems in the Premises.

- 11.6 The City shall own, maintain, promote and be the primary contact for the Saskatchewan Health Authority regarding AED units.
- 11.5 The Operator shall use the City Equipment per standards as set forth in the Manufacturer's Equipment Standards and Specification Manuals (where available) or instructions as supplied by the City. The City reserves the right to add, delete, substitute or alter any manual from time to time. The Operator may propose changes to any manual. Any incidental costs associated with using the equipment shall be the responsibility of the Operator.
- 11.6 The Operator shall replace or repair, to the satisfaction of the City, any City Equipment that is damaged or destroyed because of improper use or because of negligence by any officer, servant, agent or other person under the control or supervision of the Operator.
- 11.7 No City Equipment may be removed from the Premises at any time for any reason whatsoever except with the prior written permission of the City.

#### **Article 12. Improvements**

- 12.1 The Operator agrees not to alter, add to or in any way vary the Premises or make any alterations or installations without having first obtained the consent in writing of the City, at its sole discretion, providing that any such alterations or additions shall be made at the sole cost and expense of the Operator. Any such alterations or additions shall be made in accordance with all applicable laws and City specifications and accrue to the ownership of the City upon expiration or termination of the Agreement.
- 12.2 Notwithstanding section 12.1, the Operator shall not:
  - (a) install or cause to be installed on the Premises any coin-operated machines, including vending machines, or machines providing services or entertainment, without the prior consent of the City; and
  - (b) erect, install, inscribe, paint, or affix any signs, lettering, graphics, or logos upon the Premises without obtaining the prior consent of the City;

which consent shall not be unreasonably withheld.

#### **Article 13. Environmental Policies**

- 13.1 The Operator shall conform to any environmental policies or recycling programs adopted by the federal or provincial governments or the City prior to or during the term of the Agreement, and shall not use or purchase any items which produce chlorofluorocarbons in their production, sale, or disposal. The City will not reimburse the Operator for any costs associated with conforming to any such policies or programs.

## **Article 14. Health and Safety**

- 14.1 The Operator shall conform and enforce any applicable health and safety laws, orders, requirements, policies or guidance (the “Public Health Requirements”) issued in relation to Covid-19 adopted by the federal or provincial governments or the City prior to or during the term of the Agreement. This includes, but is not limited to, policies related to proof of vaccination for Operator staff and patrons of the facility, cleaning protocols and masking protocols. The City will not reimburse the Operator for any costs associated with conforming to and enforcing any such policies.
- 14.2 The cleanliness of the Premises and other sanitary standards shall be in accordance with the requirements of the Saskatchewan Health Authority, Environmental Health Department; the officers or agents of which shall be permitted at any time to inspect the Premises or any portion or anything in connection and any reports generated must be provided to the City within two business days of the Operator receiving the report. Reports shall be forwarded by email to 6thFloorAdmin@regina.ca. Any failed inspections must be reported to the City immediately.
- 14.3 The Operator shall ensure that all employees working in a concession area obtain as a requirement of employment an approved “Certificate of Attendance” for the “Basic Food Service Sanitation Course” which is offered through the Saskatchewan Health Authority.

## **Article 15. Compliance with Applicable Laws**

- 15.1 The Operator shall comply with all applicable Federal and Provincial Statutes, Regulations, Codes and Rules and with all applicable Bylaws and policies of the City.
- 15.2 Without limiting the generality of the foregoing, the Operator shall comply at all times with *The Saskatchewan Employment Act* and the regulations thereunder, including, but not limited to *The Occupational Health and Safety Regulations, 2020* and *The Workers Compensation Act, 2013*. The Operator shall submit evidence of compliance with workers’ compensation legislation including registration and payments due thereunder upon the request of the City at any time during the term of the Agreement.
- 15.2 The Operator shall take precautions to prevent fire occurring in or about the Premises, and shall observe and comply with all laws and regulations in force respecting fires at the said Premises, and with all instructions given from time to time by the City of Regina Fire Department with respect to fires and extinguishing of fires.
- 15.3 The Operator shall be solely responsible for the operation of any licensed lounge or area and comply with all provincial laws and regulations respecting the purchase and sale of liquor in the Province of Saskatchewan.

## **Article 16. Hours of Operation**

- 16.1 In general, the golf season will not start before April 1 nor extend after November 1. The Operator will be responsible for informing the City as to the intended dates of occupancy. The City shall be responsible for informing the Operator as to when the Premises are available for use.
- 16.2 The Operator shall make the facilities of the clubhouse and all services to be provided available to the public from dawn to dusk daily during the golf season, or for such hours as the City and the Operator may otherwise determine.
- 16.3 The Operator shall lock and unlock the main gates to the golf course at the end and start of each day that the golf course is fit for play unless alternate arrangements are mutually agreed to.

### **Article 17. Marketing and Advertising**

- 17.1 The Operator shall have the right to enter into its own advertising and product sponsorship arrangements subject to the relevant portions of the City's advertising policy attached as Schedule C, and subject to any exclusive marketing or supply agreements the City may have with third parties. All advertising for benches and sign boards, both inside and outside the clubhouses, are the responsibility of the Operator.
- 17.2 The Operator is responsible for all Course advertising including but not limited to yellow pages, various ads and brochures and a website.
- 17.3 (1) The Operator shall, when requested by the City, provide the City with information on any promotional plans and programs being conducted by the Operator with respect to the Courses, including details of specific advertising activities and course outlines.
- (2) The plan shall detail any involvement by the City with respect to any special waiver of fees or requirement for complimentary usage of the Courses, with such involvement subject to the approval of the City.
- (3) The Operator shall, when requested by the City, provide the City with a report detailing the completed promotion and program plans including relevant statistical information.
- 17.4 The Operator agrees to co-operate with the City in the development and delivery of programs intended to promote golf to youth.
- 17.5 The City will provide the Operator with a golf course logo for use by the Operator in relation to its obligations under this Agreement.

### **Article 18. Insurance and Indemnity**

- 18.1 The Operator shall obtain and maintain, for the duration of this Agreement and for six months

thereafter:

- (a) \$5,000,000 General Liability Insurance which policy includes Public Liability and Property Damage;
  - (b) \$2,000,000 Tenant's Legal Liability Insurance;
  - (c) \$1,000,000 Automobile Liability Insurance on all vehicles owned, operated or licensed in the name of the Operator;
  - (d) if alcohol is served at the premises, general liability insurance in the amount of not less than \$5,000,000 per occurrence. The Certificate of Insurance must specify either that the policy covers Host Liquor Liability or that Host Liquor Liability is not excluded.
- 18.2 The Operator will ensure that the policies of insurance required pursuant to this Agreement contain an endorsement requiring the insurer to give the City 30 days advance notice in writing of material change, cancellation or intent to lapse.
- 18.3 Insurance provided under this Agreement shall contain a statement whereby the insurer waives all rights to subrogation against any party named or contemplated as an insured party in all required policies.
- 18.4 The City shall be named as an additional insured on all policies of insurance with respect to the Operator's activities as they relate to this Agreement.
- 18.5 The Operator shall provide the City with proof of the insurance required by this Agreement prior to initial execution of this Agreement and upon each renewal of the insurance policy, in a form satisfactory to the City's Risk Manager.
- 18.6 The Operator shall indemnify and save harmless the City, its employees and agents from and against any and all claims, demands, actions and costs whatsoever that may arise out of the Operator's performance of this Agreement, or by reason of any matter or thing done, permitted or omitted to be done, by the Operator, its agents or employees.
- 18.7 The City shall indemnify and save harmless the Operator, its employees and agents from and against any and all claims, demands, actions and costs whatsoever that may arise out of the City's performance of this Agreement, or by reason of any matter or thing done, permitted or omitted to be done, by the City, its agents or employees.

#### **Article 19. Performance Security**

- 19.1 The Operator shall provide the City with performance security covering all Courses in the amount of \$150,000 (the "Performance Security").
- 19.2 The Performance Security shall be in the form of a cheque certified by the bank upon



which it is drawn, an irrevocable bank letter of credit, or a performance bond signed and sealed by the operator's surety from a surety company authorized by law to carry out business in the province of Saskatchewan and approved by the City. Such a deposit will be retained until completion of the contract to the satisfaction of the City.

- 19.3 The performance bond and irrevocable letter of credit must either automatically renew or be valid for the term of the contract in the amount specified, such that continuous coverage is provided throughout the term of the contract. No interest will be paid by the City.
- 19.4 The Performance Security shall be used as security for the performance of the Operator for all obligations under this Agreement, whether expressly stated as "covenants" or otherwise. The intention of the Parties is that recourse may be made against the Performance Security in the event that any cost has been or may be incurred by the City on account of any act or omission of the Operator or upon expiration or termination or imminent expiration or termination of this Agreement by whatever means.
- 19.5 The City may apply the Performance Security in order to perform work or observe undertakings not properly performed or observed by the Operator pursuant hereto.
- 19.6 If this Agreement continues in force subsequent to any claim against the Performance Security, the Performance Security shall be supplemented or replaced by the Operator, such that the amount required pursuant to section 19.1 remains in place to secure continued performance of work and observance of terms hereunder by the Operator and the requirements stated above with respect to the form and content of the Performance Security shall apply to any supplementary or replacement Performance Security.

## **Article 20. Termination**

- 20.1 (1) Notwithstanding subsection (3), if any portion of the amounts owing pursuant to this Agreement are unpaid for more than 30 days after becoming due, whether formally demanded by the City or not, the City may give notice in writing requiring the Operator to remedy any such default within 10 days or such longer period of time as the City may deem warranted. If the Operator does not remedy such default within the time prescribed by the City, the City may, by notice in writing, terminate this Agreement and any rights and privileges of the Operator hereunder, and on the day of such notice of termination, this Agreement will terminate, together with such rights and privileges, whether or not the City or its agent has re-entered the Premises, and the Operator will have no claim against the City for any losses or damages due to such termination.
- (2) The City shall not be deemed to have waived its right to enforce payment pursuant to subsection (1) if the City does not immediately give notice to the Operator of the default. So long as the Operator has failed to remit the amounts required and those amounts have been outstanding for more than 30 days, the City may give notice pursuant to subsection (1) at any time until the amounts owing have been remitted.

- (3) The City may, prior to the expiration of the term, terminate this Agreement immediately if:
- (a) the Operator disbands, dissolves or is wound up;
  - (b) the Operator is adjudged bankrupt or insolvent, or a Receiver is appointed with respect to the Operator's assets or if a general assignment be made in favour of creditors of the Operator;
  - (c) the Operator is in default of its obligations under the Agreement and the default is not remedied within 30 days from the date the Operator receives notice of default under the Agreement, provided that if the breach is of such a nature that it could not be remedied by the Operator within the 30 days acting reasonably and promptly and provided such delay is not the result of financial inability of the Operator, then the period for remedy of the breach may be equitably extended by the City; or
  - (d) notwithstanding subsection (c), the Operator commits and, after written notice to remedy, repeats any breach whatever of this Agreement, whether such breach be substantial or otherwise.
- 20.3 The City may enter and secure the Premises on the effective date of termination or sooner if the City, acting reasonably, has cause to believe the Premises or City Equipment have been or will be subject to damage, destruction or waste.
- 20.4 (1) Upon expiration or termination of this Agreement, and unless the City otherwise directs, the Operator shall remove from the Premises, within one month, all of its equipment and supplies and the Operator shall leave the Premises in a condition satisfactory to the City. The Operator agrees to use its best efforts to ensure a smooth transition of information between the Operator and the City, including tournament booking information.
- (2) If the Operator fails to comply with these provisions, the City may have such equipment and supplies removed and disposed of, and the Premises restored to a condition satisfactory to the City, all at the expense of the Operator and charge the cost thereof to the Operator and such costs will constitute a debt due and owing to the City.
- 20.5 Termination of this Agreement shall in no way prejudice the City's right to recover unpaid monies, or any right of action by the City with respect to a breach of any covenant or agreement herein contained.

### **Article 21. Damage to or Destruction of Premises**

- 21.1 If, during the term of this Agreement, the Premises or any part thereof are partially or totally damaged or destroyed by any cause whatsoever, and if the City, after prior consultation with

the Operator, is of the opinion that the Premises should be closed to the public as a result of such damage or destruction, then the City upon notice in writing to the Operator may direct that the Operator immediately close the Premises in accordance with the City's instructions and the Operator shall comply with any such direction. The Premises shall remain closed until the City, after consultation with the Operator, decides that the Premises should be re-opened. If the City decides that the Premises should be re-opened, then the City upon seven days notice in writing to the Operator may direct that the Operator re-open the Premises in accordance with the City's instructions and the Operator shall comply with any such direction.

#### **Article 22. Notices**

- 22.1 Any notice required or permitted to be given by either party to the other under the terms of this Agreement shall be deemed to have been duly given to the other party if in writing and delivered personally to such party or if mailed by postage prepaid, registered mail, and addressed as follows:

The City:                      City of Regina  
   Director of Community Services  
   6<sup>th</sup> Floor City Hall, P.O. Box 1790  
   2476 Victoria Avenue  
   Regina, Saskatchewan S4P 3C8

The Operator:                Western Golf Management Ltd.  
   47 Highland Park Drive  
   Winnipeg, Manitoba R2E 0H4

- 22.2 In this paragraph, "business day" means any day except a Saturday, Sunday or a Statutory Holiday. The designated individual or address of either party to receive notices may be changed from time to time to any other individual or address in Saskatchewan by notice in writing to the other party. All notices sent by prepaid registered mail shall be deemed to be received by the addressee on the fourth business day following the mailing thereof in any post office in Canada, except in the case of a postal strike, in which event any notice shall be given by telegram or by personal delivery, as the case may be.

#### **Article 23. Independent Contractor**

- 23.1 The Operator's performance of the Agreement does not create an employee/employer relationship between the Operator and the City; the Operator and the City are independent and each of them shall not state, imply or knowingly permit anyone to infer that or any other relationship exists between them without the other party's prior written consent.
- 23.2 The Operator and anyone the Operator employs or allows to perform any part of the services are not and will not ever be considered employees of the City within the meaning of *The Saskatchewan Employment Act* (or otherwise) or entitled to any of the benefits of an employee of the City as a result of their performance of any part of the services.

- 23.3 The Operator shall be solely responsible for the health and safety of its employees, or any other volunteer, agent or contractor of the Operator including, but not limited to all requirements of *The Occupational Health and Safety Regulations* and shall provide appropriate protective equipment, precautions and training as required.

#### **Article 24. Force Majeure**

- 24.1 Subject to the provisions of this Agreement, if either Party to this Agreement is unable to observe or perform any of the covenants or obligations herein imposed upon it and such inability shall have been caused by force majeure, as hereinafter defined, such inability shall be deemed not to be a breach of such covenants or obligations and such covenants and obligations shall be suspended during the continuance of any such inability so caused except the obligation of a Party hereto to make payment of any amounts then owing hereunder.
- 24.2 For the purposes of this Agreement, the term “force majeure” shall mean any acts of God, lightning, earthquakes, storms, pandemics, strikes, lockouts or other industrial disturbances, acts of Canada’s enemies, sabotage, explosions, intervention of a federal, provincial or municipal government or from any of their agencies or boards, the order or direction of any court or any other cause, whether the kind hereinafter enumerated or otherwise, not within the reasonable control of the Party claiming suspension, and which, by the exercise of due diligence, such Party could not have prevented or overcome and without limiting the generality of the foregoing does not include a situation arising out of the financial circumstances of the Operator or its ability to recruit and supply appropriate staff.

#### **Article 25. General**

- 25.1 Unless a waiver be given in writing by the City, the failure of the City to insist upon strict observance or performance of any of the covenants and provisions of this Agreement shall be deemed not to be a waiver of any rights or remedies of the City nor constitute a waiver of any subsequent breach of terms hereof by the Operator and all rights and remedies of the City pursuant to the terms of this Agreement or otherwise available by law may be exercised or enforced by the City either concurrently or successively.
- 25.3 The Operator shall not assign, sell, sublet, mortgage, or encumber this Agreement or the Premises or any part thereof.
- 25.4 This Agreement is governed by the laws of the Province of Saskatchewan.
- 25.5 No implied terms or obligations of any kind on behalf of the City shall arise from anything in this Agreement or any improvements effected by the Operator, and the express covenants and agreements herein contained and made by the City are the only covenants and agreements upon which any rights against the City are to be founded. Any changes to the Agreement shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment.

- 25.6 If any section or part thereof shall be found void or unenforceable by any Court competent jurisdiction, such finding shall not affect the validity of any other clause or part of this Agreement.
- 25.7 Any ambiguity, conflict or inconsistency between or among the documents comprising the Agreement will be resolved by giving precedence to the express terms of the documents in the order in which they appear, so that the body of the Agreement shall take precedence over the Schedules.
- 25.8 This Contract may be executed in counterparts and such counterparts together shall constitute a single instrument. Delivery of an executed counterpart of this Contract by electronic means, including, without limitation, by facsimile transmission or by electronic delivery in portable document format (".pdf"), shall be equally effective as delivery of a manually executed counterpart hereof.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written below.

(seal)

Acting City Clerk

THE CITY OF REGINA

March 31, 2022

date

WESTERN GOLF MANAGEMENT LTD.

(seal)

signature

printed name

date



## **SCHEDULE A OPERATOR PROPOSAL**

**Schedule A has been removed in full**