

**Memorandum of Understanding
Regarding the Sale of Golf Direct Now Merchandise in the Arrowhead Golf Pro Shop at
the Wheaton Park District**

This Memorandum of Understanding ("Agreement") is made this 23rd day of March 2022 by and between Wheaton Park District, an Illinois park district and unit of local government ("Park District") and Golf Direct Now, a local retailer of merchandise ("GDN"). The Park District and GDN are hereinafter sometimes individually referred to as a "Party" and collectively as the "Parties."

Recitals

WHEREAS, Arrowhead Golf Club ("Arrowhead") is a facility comprised of a public golf course and clubhouse owned and operated by the Park District that includes a golf pro shop (the "Pro Shop"); and

WHEREAS, GDN is a local retailer of certain golf equipment and apparel (the "Merchandise"); and

WHEREAS, the Park District desires to sell the GDN Merchandise at the Pro Shop for a percentage of the gross proceeds; and

WHEREAS, the Pro Shop will offer space to display GDN Merchandise including golf shoes and golf clubs; and

WHEREAS, based on the foregoing, GDN desires to sell its Merchandise at the Pro Shop, wherein the Park District will receive a percentage of the gross proceeds, subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference and made a part hereof as though fully set forth in this paragraph 1, the same constituting the factual basis for this Agreement.

2. Proceeds. The Pro Shop agrees to sell GDN Merchandise that shall be subject to the approval of the Director of Golf at Arrowhead. The following discounts and prices are mutually agreed to by both parties.

- 20% of gross revenue sales for golf shoes will go to Arrowhead Golf Club.
- 20% of gross revenue sales for golf clubs will go to Arrowhead Golf Club.
- 75-80% of gross revenue sales will be paid out to GDN twice a year (August 1 and December 31), which payment shall be approved by Arrowhead Management, the Park District Finance Team, and the Park District's Executive Director.

- GDN Merchandise that is returned to the Pro Shop and refunded will be set aside for GDN and subtracted from the gross revenue pay out.

3. Responsibility of Parties. Arrowhead shall pay the tax on all purchases of GDN Merchandise. GDN assumes all risks associated with their inventory and the Park District, including Arrowhead, shall not be responsible for any lost or damaged GDN inventory. GDN agrees and acknowledges it is GDN's sole responsibility to stock their allotted space for Merchandise on a weekly basis. The Pro Shop shall assist in keeping the allotted area for GDN Merchandise clean and organized.

4. Term. The initial term of the Agreement shall be for the 2022 golf season which begins April 1, 2022 and ends December 31, 2022 (the "Initial Term"). The Initial Term may be extended, if both Parties mutually agree in writing.

5. Termination. Either party has the right to terminate this Agreement at any time by providing thirty (30) days written notice to the other party.

6. Compliance with Laws. All activities performed by the Parties pursuant to this Agreement shall be accordance with all applicable federal, state and local laws, including the ordinances and regulations of the City of Wheaton.

7. Indemnification. To the fullest extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party, its elected and appointed officers, officials, employees, volunteers and agents (collectively, the "Indemnitees"), from and against any and all claims, damages, losses and expenses, including but not limited to legal fees (attorneys' and paralegals' fees and court costs), incurred by any of the Indemnitees for injuries to persons or for damage, destruction or theft of property arising out of or resulting from any activity, act or omission of the indemnifying Party, or of any employee, agent, affiliate, vendor, co-sponsor, invitee, contractor, student or volunteer of the indemnifying Party (the indemnifying Party and each and every such other person being hereinafter individually and collectively referred to as the "Indemnitor"), but only to the extent caused in whole or in part by any wrongful or negligent act or omission of the Indemnitor. Similarly, each Party shall indemnify, defend and hold harmless the Indemnitees from and against any and all claims, damages, losses and expenses, including but not limited to legal fees (attorneys' and paralegals' fees and court costs), incurred by any of the Indemnitees by reason of the Indemnitor's breach of any of its obligations under this Agreement.

8. No Third Party Beneficiary. This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities, defenses and/or privileges of the Park District, and/or any of their respective officials, officers and/or employees, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act.

9. Choice of Law and Venue. This Agreement is governed by the laws of the State of Illinois. Any suit or action arising under this Agreement shall be commenced in the circuit courts of DuPage County, Illinois. In any suit or action arising under this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs of litigation.

10. No Waiver. Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of any Party to enforce the provisions of this Agreement, or require performance by any other Party of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of that Party to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

11. Non-Assignment. This Agreement is non-assignable in whole or in part by any of the Parties, and any assignment shall be void without prior written consent of the other Parties.

12. Entire Agreement. This Agreement contains the entire agreement between the Parties and no statement, promise or inducement, whether oral or written, made by any Party to any other Party that is not contained in this written Agreement shall be valid or binding.

13. Amendment. No amendment or modification shall be made to this Agreement unless it is in writing and signed by the Parties.

14. Headings. The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

15. Notice. All notices, demands, requests, exercises and other communications required or permitted to be given by any Party under this Agreement shall be in writing and shall be deemed given when such notice has been personally delivered, sent by email, or deposited in the United States mail, with postage thereon prepaid, addressed to the other Parties at the following addresses:

If to Park District:

Michael J. Benard
Executive Director
Wheaton Park District
102 E. Wesley St., Wheaton, IL 60187
Email: mbenard@wheatonparks.org

If to GDN

Chris Rowlan
Owner
Golf Direct Now
560 W. Roosevelt Road
West Chicago, IL 60185
Email: crowlan2000@yahoo.com

16. Severability. The invalidity of any section, paragraph or subparagraph of this Agreement shall not impair the validity of any other section, paragraph or subparagraph. If any provision of this Agreement is determined to be unenforceable, such provision shall be deemed severable and the Agreement may be enforced with such provision severed or as modified by such court.

17. Relationship of the Parties. Nothing in this Agreement shall be deemed to create any joint venture or partnership between the Parties. Neither the Park District nor GDN shall have the power to bind or obligate the other except as to the extent expressly set forth in this Agreement.

IN WITNESS WHERE OF the Parties hereto have set their respective hands and seals the day and year first above written.

WHEATON PARK DISTRICT

By: 

Michael Benard, Executive Director

GOLF DIRECT NOW

By: 

Chris Rowlan, Owner