

**WHEATON PARK DISTRICT  
RESOLUTION NO. 2020-05**

**A RESOLUTION APPROVING THE TERMS AND AUTHORIZING THE EXECUTION OF A LICENSE AGREEMENT  
WITH GOLFCLUBSDIRECT INC.**

WHEREAS, Wheaton Park District ("Park District") and GolfClubsDirect, Inc. ("GCD") were parties to a prior license agreement authorizing GCD to provide professional custom golf club fittings, lessons, and certain retail services for patrons of the Park District's Arrowhead Golf Club; and

WHEREAS, Park District and GCD desire to enter into a new license agreement for the period beginning January 1, 2021 and ending December 31, 2021, to authorize GCD to provide similar services at Arrowhead Golf Club;

WHEREAS, Park District and GCD have negotiated a license agreement, a copy of which is attached hereto as Exhibit A, that sets forth the parties respective duties and obligations with respect to the services to be provided by GCD at Arrowhead Golf Club ("License Agreement"); and

WHEREAS, the Park District's Board of Park Commissioners ("Park Board") has determined that it is in the best interests of the Park District and its residents to enter into the License Agreement, subject to the terms and conditions set forth therein.

**NOW THEREFORE, IT IS HEREBY RESOLVED** by the Board of Park Commissioners of the Wheaton Park District, DuPage County, Illinois, as follows:

1. The foregoing recitals to this Resolution are hereby determined to be true and correct and are hereby incorporated in and made part of this Resolution.
2. The form, terms and provisions of the proposed License Agreement attached hereto as Exhibit A are hereby in all respects approved, and the President and Secretary of the Park Board are hereby authorized and directed to execute the License Agreement in the name and on behalf of the Park District, substantially in the form as presented to this Park Board, with such modifications thereto, if any, as the President of the Park Board in consultation with the Park District's legal counsel shall approve, which approval shall be conclusively evidenced by his or her execution thereof.
3. The President and Secretary of the Park Board, the Park District's Executive Director and the Park District's attorneys are hereby authorized, empowered and directed to take all action and execute any and all documents necessary or appropriate in order to carry out the intent and effectuate the provisions and purposes of this Resolution and the License Agreement.
4. This Resolution shall be in full force and effect from and after its adoption as provided by law.

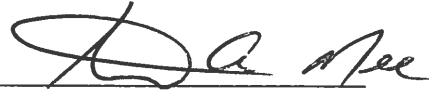
Adopted this 16<sup>th</sup> day of December, 2020 by roll call vote as follows:

AYES: Fahey, Frey, Hodgkinson, Kelly, Morrill, Vines, Mee

NAYS:  $\emptyset$

ABSENT:  $\emptyset$

ABSTAIN:  $\emptyset$



President  
Board of Park Commissioners  
Wheaton Park District

ATTEST:



Secretary  
Board of Park Commissioners  
Wheaton Park District

STATE OF ILLINOIS     )  
  )  
COUNTY OF DUPAGE    )

**SECRETARY'S CERTIFICATE**

I, Michael J. Benard, do hereby certify that I am the Secretary of the Board of Park Commissioners of the Wheaton Park District, DuPage County, Illinois and as such, I am keeper of the records, ordinances, files and seal of said Park District; and


I HERBY CERTIFY that the foregoing instrument is a true and correct copy of:

**A RESOLUTION APPROVING THE TERMS AND AUTHORIZING THE EXECUTION OF A LICENSE AGREEMENT WITH GOLFCLUBSDIRECT INC.**

adopted at a duly called regular Meeting of the Board of Park Commissioners of the Wheaton Park District held at Wheaton, Illinois, in said District at 5:00 p.m. on the 16<sup>th</sup> day of December 2020.

I do further certify that the deliberations of the Board on the adoption of said resolution were conducted openly, that the vote on the adoption of said resolution was taken openly, that said meeting was called and held at a specified time and place convenient to the public, that notice of said meeting was duly given to all of the news media requesting such notice, that an agenda for said meeting was posted as required by the Open Meetings Act and that said meeting was otherwise called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, and with the provisions of the Park District Code of the State of Illinois, as amended, and that the Board has complied with all of the provisions of said Act and said Code and with all of the procedural rules of the Board.

IN WITNESS WHEREOF, I hereto affix my official signature and the seal of said Wheaton Park District in Wheaton, Illinois, this 16<sup>th</sup> day of December 2020.

  
\_\_\_\_\_  
Michael J. Benard  
Secretary

[SEAL]

**EXHIBIT A**

**LICENSE AGREEMENT**

## LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into this 16<sup>th</sup> day of December 2020 ("Effective Date"), by and between the Wheaton Park District, an Illinois unit of local government and body politic, 102 E. Wesley, Wheaton, Illinois 60187 ("Park District" or "District"), and GolfClubsDirect Inc., an Illinois corporation, 1310 Washington, West Chicago, Illinois 60185 ("GCD"). The Park District and GCD are hereinafter sometimes individually referred to as a "Party" and together referred to as the "Parties."

### RECITALS

A. The Park District is the owner of the Arrowhead Golf Club, located at 26W151 Butterfield Road, Wheaton, Illinois, a facility offering golf and related services to the public ("Arrowhead"), and in conjunction with such operations, desires to contract with a professional independent contractor to provide professional custom golf club fitting, lessons and high quality retail services for Arrowhead patrons.

B. GCD has represented to the Park District that GCD is an experienced golf club retailer with professional golf instructors and is capable of providing a custom club fitting performance facility, lessons and high-quality retail services for Arrowhead patrons and GCD desires to obtain a license from the Park District to operate such a facility and provide these services at Arrowhead.

C. The Park District does hereby deem it to be in the best interest of its residents to grant such license to GCD.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Park District and GCD hereby agree as follows:

1. Recitals Incorporated. The foregoing Recitals are incorporated herein by reference as though fully set forth.

2. Grant of License.

a. District hereby grants to GCD, and GCD hereby accepts and agrees to exercise, during the term of this Agreement, the right and privilege to maintain and operate a golf custom club fitting performance facility and provide lessons and high quality retail services pursuant to the terms of this Agreement ("Services"), from Arrowhead's indoor practice area, which consists of approximately 1,327 square feet (said location within Arrowhead is hereby referred to as the "Licensed Space").

b. It is also agreed that the grant of rights hereunder shall be exclusive only with respect to the Licensed Space, it being understood that the Park District shall be entitled, in its discretion, to grant to any third party whatsoever, or to exercise itself, the right to provide golf club services, lessons, or to sell golf clubs and related items elsewhere within Arrowhead.

3. License Term. The term of this Agreement shall commence on January 1, 2021 and shall, unless terminated earlier pursuant to Paragraph 19 of this Agreement, end on December 31, 2021 (the "License Term").

4. Fees and Payment. As compensation for the License, GCD shall pay to the Park District fees as follows:

a. During the License Term, GCD shall pay to the Park District an annual license fee in the total amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) ("License Fee").

b. The License Fee shall be payable in four (4) equal installments, commencing on the first day of each quarter of the License Term (i.e. January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, & October 1<sup>st</sup>).

c. GCD will pay to the Park District a late charge of \$100.00 per day for each day any portion of the License Fee remains unpaid after the due date therefore ("Late Fee"), provided, however, that this Late Fee is not intended to be a substitute for, waiver of, or limitation on, any other remedy to which the Park District may otherwise be entitled because of GCD's non-payment or late payment of all or any portion of the License Fee. GCD's duty to pay the License Fee and Late Fee shall survive termination of this Agreement.

5. Use of Premises. The Licensed Space shall be used to conduct the Services and GCD shall not use any other area within Arrowhead to conduct the Services without prior written approval of the Park District. Except as otherwise provided herein, GCD shall not use or permit the Licensed Space to be used for any other purpose, without obtaining the prior written consent of the Park District, which consent may be granted or withheld in the sole discretion of the Park District.

6. Days/Hours of Operation/Standard of Service/GCD Employees. GCD shall operate the Services during such days and times mutually agreed to by the Parties, except during certain special events as designated by the Park District or as otherwise agreed to by the Parties in writing. All items sold by GCD shall be of first class quality, and the Services provided by GCD shall be rendered professionally, courteously, and efficiently. The Park District reserves the right to prohibit the sale of any item which it deems objectionable and the Park District shall have the right to order GCD to improve the quality of the merchandise sold or the services rendered.

GCD shall at all times employ only those persons professionally trained to provide the Services and who are of good moral character and GCD shall not retain any employee that the Park District considers to be unfit for such employment or otherwise objectionable. All GCD

employees shall be neatly dressed at all times. Employees shall conduct themselves courteously in their relations with the public and the staff of the Wheaton Park District.

7. Security Deposit. As security for the performance of GCD's obligations under this Agreement, contemporaneous with the execution and delivery of this Agreement, GCD shall deposit (the "Security Deposit") with the Park District the sum of Two Thousand and 00/100 Dollars (\$2,000). The Park District shall not be required to keep this Security Deposit in a separate account and GCD shall not be entitled to interest thereon.

If GCD shall fully and faithfully comply with and discharge its responsibilities under all of the provisions of this Agreement, the Security Deposit or any balance thereof shall be returned to GCD at the expiration of this License. If GCD defaults under or breaches any provision of this Agreement, including without limitation those provisions relating to the payment of the License Fee, the Park District may use, apply or retain all or any part of the Security Deposit for the payment of any sum in default, or for the payment of any other amount which the Park District may spend or become obligated to spend by reason of GCD's breach or default, or to compensate the Park District for any other loss, cost, damage or expense which the Park District may incur or suffer by reason of GCD's breach or default. Said Security Deposit is not intended to be a substitute or waiver of, or limitation on any other remedy to which the Park District may otherwise be entitled because of GCD's non-payment or other default under this Agreement.

GCD understands and acknowledges that the Security Deposit does not constitute prepayment of all or any portion of the License Fee and is deposited solely as security for GCD's full and faithful performance under and compliance with the provisions of this Agreement, and GCD may not and shall not apply all or any portion of the Security Deposit, or any balance thereof, towards payment of any one or more installments of the License Fee provided for in Paragraph 4, above.

8. Reporting. GCD shall provide the Park District a certified monthly report containing such information as may be reasonably required by the Park District, including gross sales figures generated from the Services. Said reports shall be set up to include separate entries for "Performance Lab and Retail Sales," "Lessons" and "Tent Sales." All monthly reports required pursuant to this Paragraph 8 shall be submitted by GCD to the Park District on or before the fifth (5th) day of every month.

GCD shall provide to the Park District copies of all point of sale summary data and evidence of payment of sales taxes relevant to Wheaton Park District sales on a monthly basis.

9. Condition of Premises/Duty of Care, Maintenance, Repairs and Alterations.

a. GCD (i) has examined Arrowhead and the Licensed Space prior to execution of this Agreement and is satisfied with its condition; (ii) acknowledges that no representation as to the condition or repair thereof has been made by the Park District other than as expressly contained in this Agreement; (iii) acknowledges that no agreement or promise to alter, repair or improve Arrowhead or the Licensed Space, other than as expressly contained in this Agreement,

has been made by the Park District; and (iv) agrees to return to the Park District, the Licensed Space in a condition as good or better as when first used by GCD, reasonable wear and tear excepted.

b. GCD shall maintain the Licensed Space and all fixtures, equipment, machinery and other personal property located thereon and therein in a clean, neat, orderly, sanitary, pest-free and safe condition and in conformity with applicable federal, state, county and local laws, ordinances, rules and regulations. The Park District shall maintain and repair all structural and mechanical components of the building and Licensed Space, and shall supply heat and water for the Licensed Space.

c. GCD shall provide all janitorial supplies and services required to properly clean and operate the Licensed Space and the equipment and furnishings. GCD agrees to provide refuse containers, approved by the Park District. GCD shall be responsible for sanitation of garbage containers and the garbage storage areas of the Licensed Space. The Park District shall provide for hauling the garbage and refuse from the Licensed Space.

d. GCD shall not perform any repairs (other than to its own personal property) or make any installations or alterations without notification to and prior written permission from the Park District. Any equipment installation by GCD shall be in accordance with applicable building codes and any conditions imposed by the Park District. Any remodeling or repairs required as a result of the installation or removal of any equipment shall be completed only with the Park District's prior written consent and at GCD's sole cost and expense to the satisfaction of the Park District.

e. In the event GCD hires any contractors for any alterations or repairs made to the Licensed Space or for the installation of any equipment, GCD shall require said contractors to purchase and maintain insurance of the types and amounts specified in Exhibit B, attached to and incorporated as part this Agreement. GCD shall also require said contractors to name the Park District as an additional insured and indemnify the Park District in accordance with Exhibit B, to provide sworn affidavits and waivers of lien for any work performed on the Licensed Space, and to comply with any other requirements specified by the Park District.

f. All improvements, fixtures and personal property located in, on or affixed to the Licensed Space prior to GCD's first entrance therein, are and shall remain the property of the Park District. Alterations, improvements and fixtures made or installed by GCD shall become the property of the Park District at the end of the License Term, unless Park District requires GCD to remove same. GCD shall be responsible for and shall pay to the Park District promptly upon demand, the full cost of any restoration or repair to Arrowhead and the Licensed Space, which results from the removal of such alterations, improvements and/or fixtures.

g. GCD and the Park District shall, at dates and times agreed upon in advance by both Parties, conduct periodic inspections of the Licensed Space to ensure conformity with all applicable federal, state, county, and local laws, ordinances, rules, and regulations and this



Agreement, to identify any deficiencies therein, and to coordinate remedial actions and responsibilities as necessary between the Parties.

h. GCD shall permit inspection of the Licensed Space by authorized representatives of state, county or local departments having jurisdiction over GCD's operations or the Services; shall promptly and fully comply with any recommendations or requirements of same; and shall be solely responsible for any fines or citations issued in connection therewith.

10. Access, Inspection. The Park District reserves the right to enter upon the Licensed Space at any reasonable time to insure compliance by GCD with the covenants of this Agreement, and to do any and all work of any nature which it deems necessary for the preservation, maintenance and operation of the Licensed Space or other portions of Arrowhead affected by GCD's operations. GCD shall be liable for all expenses incurred by the Park District, including hourly labor charges, for work done to preserve and maintain the Licensed Space or other affected portions of Arrowhead when such work is required as a result of GCD's negligence or non-compliance with its obligations under this Agreement.

Park District also reserves the right to evaluate the services of GCD and its performance under this Agreement, generally, and in the event such services or performance are not in conformity with the requirements of this Agreement as determined by the Park District, to terminate the License in accordance with Paragraph 19, below. The foregoing rights of the Park District are not intended to create and shall not be construed as creating or imposing any affirmative obligation on the part of the Park District to inspect, maintain or repair the Licensed Space or any other portions of Arrowhead, nor any liability on the part of the Park District for its failure to make any such inspections or repairs or to perform any maintenance function required otherwise to be performed by GCD under this Agreement.

11. Keys. The Park District shall retain keys to Arrowhead and the Licensed Space, and shall provide GCD with duplicate keys thereto. GCD shall not change the locks.

12. Independent Contractor Relationship.

a. It is understood, acknowledged, and agreed by the Parties that the relationship of GCD to the Park District arising out of this Agreement shall be that of an independent contractor. GCD has sole and exclusive rights and responsibilities with respect to and control over (i) the means and methods by which it conducts the Services under this Agreement; (ii) its employees, including without limitation their terms of employment, working conditions, compensation and discipline; (iii) the terms under which it contracts with third parties. Neither GCD nor any employee or agent of GCD is an employee or agent of the Park District and therefore is not entitled to any benefits provided by the Park District to its employees. GCD has no authority to employ/retain any person as an employee, agent, or independent contractor for or on behalf of the Park District for any purpose. Neither GCD nor any person engaging in any work or services related to the License at the request, or with the actual or implied consent, of GCD may represent himself to others as an employee of the Park District. Should any person indicate

to GCD or any employee or agent of GCD, by written or oral communication, course of dealing, or otherwise, that such person believes GCD or any employee or agent of GCD to be either an employee or agent of the Park District, GCD shall immediately notify the Park District in writing of such contact and shall use its best efforts to correct such belief. GCD shall not include the words "Wheaton Park District" or variations thereof on any checks, drafts, notes, invoices or in the letterhead of any stationary of GCD. However, for the sole purpose of delivery of supplies, GCD shall be allowed to use the names of Arrowhead as a reference to location only.

b. Prior to commencing the Services, GCD shall provide the Park District with a complete list of the names and addresses of vendors from whom GCD will be purchasing goods and/or services in connection with the Services. GCD understands and acknowledges that the purpose of such list is to enable the Park District, if it chooses, to notify the vendors of the independent relationship of GCD and to advise them that GCD and not the Park District is solely responsible for the payment of goods or services purchased from such vendors.

13. No Liability of the Park District. The Park District is not responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including without limitation GCD's employees, or for any damage to, destruction, theft or misappropriation of any property, relating in any way, directly or indirectly, to the License or GCD's Services pursuant to this Agreement. The Park District is not liable for acts or omissions of GCD or any of GCD's employees, contractors' agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent, of GCD.

14. Indemnification of the Park District. To the fullest extent permitted by law, GCD shall protect, defend, indemnify, and hold harmless the Park District, its park commissioners, officers, employees, agents and volunteers ("Indemnified Parties") from and against any and all liability, loss, damage, cost or expense, including court costs and reasonable attorneys' fees, which any of the Indemnified Parties or entity may sustain, incur or be required to pay for injuries to, or deaths of persons, or damage to or destruction of property directly or indirectly arising out of or connected with or incident to the granting of the License or the operation of the Services and the activities contemplated by this Agreement, except that GCD shall have no liability for damages or the costs incident thereof caused solely by the negligent or intentional wrongful act of the Indemnified Parties. GCD shall similarly protect, defend, indemnify and save harmless the Indemnified Parties from and against any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of GCD's breach of any of its obligations under, or GCD's default of, any provision of this Agreement. Nothing contained herein shall be construed as, nor shall operate as, a limitation or waiver by any of the Indemnified Parties, and its agents, of the defenses and immunities afforded under the Local Governmental and Governmental Employees Tort Immunity Act.

15. Insurance. In furtherance and not in limitation of its foregoing indemnification obligation, GCD shall obtain and maintain at all times during the License Term insurance coverage written for not less than the amounts specified, and under all the other terms and

conditions set forth in Exhibit A, attached to and incorporated as part of this Agreement, and shall name the Indemnified Parties as additional insureds with respect to all such coverages.

16. Compliance with Laws. GCD shall comply fully and cause its employees to comply fully with all federal, state, county and local laws, rules and regulations applicable to its operation of the Services and performance of its obligations under this Agreement, and shall obtain at its own cost and expense, or, when applicable, shall reimburse the Park District for acquiring, all permits and licenses which may be required in order for GCD to conduct its duties under this Agreement, including without limitation the following:

a. GCD shall comply and cause its employees to comply with the Title VII of the federal Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Illinois Human Rights Act and the Americans with Disabilities Act and with all applicable rules and regulations promulgated thereunder, and GCD represents, certifies and agrees that no person shall be denied or refused service or other full or equal use of GCD's Services, nor denied employment opportunities by GCD, on the basis of race, creed, color, religion, sex, national origin or ancestry, citizenship status, age, physical or mental handicap unrelated to ability, marital status, unfavorable discharge from military service, association with a person with a disability, or other basis prohibited by applicable law. GCD certifies that it currently has in place, and shall maintain in place during the License Term, a written sexual harassment policy as required under the Illinois Human Rights Act.

b. GCD certifies that no official, employee or agent of the Park District has been employed or retained to solicit or aid in the procuring of this Agreement, or will be employed or otherwise benefit from this Agreement.

c. GCD certifies that neither it nor any of its officers or directors have been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or made an admission to guilt of such conduct which is a matter of record but has not been prosecuted for such conduct.

d. GCD certifies that neither it nor any of its officers or directors have been convicted of a violation of either Section 33E-3 or Section 33E-4 of the Illinois Criminal Code, pertaining to bid rigging or bid rotating.

e. GCD shall not employ in the operation of the Services, any individual who is not professionally trained, lacks any required licenses or certifications, or is otherwise unfit to provide the Services to the general public. GCD shall provide to Park District criminal background checks of all employees of GCD hired to provide the Services. Said background checks shall be obtained at GCD's expense.

17. Real Estate/Leasehold/Sales Taxes. GCD shall be responsible to pay any and all federal, state and local real estate, leasehold, sales, or other tax, which may be assessed against

all or any portion of Arrowhead solely as the result of GCD's operation of the Services or the grant of the License to GCD.

18. No Lease. The Licensed Space is not leased to GCD, it is a licensee and not a lessee thereof, and its continued use of the Licensed Space is specifically subject to the terms of this Agreement.

19. Termination.

a. This Agreement and the License granted hereunder may be terminated prior to its expiration under any of the following circumstances:

i. In the event GCD shall breach or be in default, under any of the provisions of this Agreement (with the exception of Paragraph 15 or subparagraphs 16b, 16c, 16d), the Park District may terminate this Agreement and License if GCD shall not have cured (or commenced to cure in the event such breach or default is of a nature that it cannot be cured within five days) such default within five (5) days after the Park District shall have notified GCD thereof in writing; provided, however, that if GCD shall have breached or been in default under the same or any other provision of this Agreement on a previous occasion, the Park District may terminate the Agreement and License immediately without affording GCD an opportunity to cure the breach or default, upon written notice to GCD. The Park District shall have the right to suspend GCD's License during a cure period.

ii. In the event GCD shall breach or be in default under Paragraph 15 or subparagraphs 16b, 16c, 16d, 16f or 16g of this Agreement, the Park District may terminate the License immediately upon written notice to GCD or, in the case of Paragraph 15, may suspend the license until such insurance coverages are obtained, without affording GCD an opportunity to cure the breach or default.

iii. In the event GCD shall have (1) filed a voluntary petition in bankruptcy or made an assignment for benefit of creditors; (2) consented to the appointment of a receiver or trustee of all or part of his property; or (3) an involuntary petition in bankruptcy shall have been filed in regard to GCD and the same shall not have been dismissed within ten (10) days of such filing, the Agreement and License shall automatically terminate.

iv. In the event the Park District discontinues the operation of Arrowhead for any reason whatsoever, the License shall automatically terminate. In the event the Park District suspends the operation of Arrowhead for any reason the License shall automatically be suspended for the same period.

v. In the event the Licensed Space is rendered unusable by reason of fire or other casualty, the Park District may terminate this Agreement or elect to repair. If the Park District elects to repair, this Agreement shall remain in effect, provided that if the Park District does not

complete such repairs within thirty (30) days from the date of the occurrence of the casualty, GCD shall have the option to terminate this Agreement.

vi. In the event the Park District shall fail to perform any of its material obligations under this Agreement, GCD may terminate this Agreement and License if the Park District shall not have cured (or commenced to cure in the event such failure is of such a nature that it cannot be cured within five days) such failure within five (5) days after GCD shall have notified the Park District thereof in writing.

vii. Upon thirty days prior written notice delivered by the Park District to GCD, for the Park District's convenience.

b. In the event of termination under this Paragraph 19, all rights of GCD and obligations of the Park District shall cease upon the effective date of the termination. The Park District's right to collect sums due from GCD under this Agreement and remedies for breach of this Agreement and GCD's obligations to make such payments and compensate the Park District for such breach shall survive and continue after termination of this Agreement and License.

c. Upon termination of this License and Agreement for any reason including but not limited to the end of the License Term as defined in Paragraph 3 of this Agreement, GCD shall restore the Licensed Space to a clean, neat and orderly condition, with all equipment and materials not belonging to the Park District removed and all restoration required by Paragraph 9 of this Agreement completed and all garbage removed. The Licensed Space shall be fully restored upon termination to a condition as good or better as when first occupied by GCD, reasonable wear and tear excepted.

20. Notices. All notices required or permitted to be given under this Agreement shall be deemed given when such notice is deposited in the United States mail, with postage thereof prepaid, addressed to the other Party at the following addresses:

If to the Park District: Wheaton Park District  
102 E. Wesley  
Wheaton, Illinois 60187  
Attention: Executive Director

If to GCD: Golf Direct Now  
1310 Washington Street  
West Chicago, IL 60185  
Attention: Chris Rowlan

21. No Waiver. The waiver by the Park District of any breach or default under any provisions of this Agreement shall not be deemed to constitute a waiver of such provision for any subsequent breach or default of the same or any other provision. The acceptance of any

payment by the Park District shall not be deemed to constitute a waiver of any prior occurring breach or default by GCD of any provision of this Agreement regardless of the knowledge of the Park District of such breach or default at the time of its acceptance of such payment.

22. Entire Agreement, Modifications. This Agreement contains all of the terms and conditions agreed on by the Parties with respect to the subject matter hereof, and no other alleged communications or agreements among the Parties, written or otherwise, shall vary the terms hereof. Any modifications of this Agreement and the License granted herein must be in writing signed by all Parties and dated on or subsequent to the date hereof.

23. 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 Court of DuPage County, Illinois. In any suit or action arising under this Agreement, the Park District, if the prevailing party in such suit or action, shall be entitled to an award of reasonable attorneys' fees and costs of litigation.

24. License Non-Transferable. GCD shall have no authority or power to sell, transfer or assign this Agreement or the License, or any interest therein, nor any power or authority to permit any other person or entity to have any interest in or use any part of the Licensed Space for any purposes whatsoever without the prior written consent of the Park District, it being the intention of this Agreement to grant the License solely to GCD and neither directly nor indirectly to any other person or entity.

25. Counterparts. This Agreement may be signed upon any number of counterparts with the same effect as if the signatures to each were upon the same agreement.

26. 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.

27. 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.

IN WITNESS WHEREOF, the authorized representatives of the Parties hereto have executed this Agreement as set forth below.

WHEATON PARK DISTRICT

By: 

Its: Executive Director

GOLFCLUBSDIRECT INC

By: 

Its: President

## EXHIBIT A

### **INSURANCE AND INDEMNIFICATION REQUIREMENTS**

GCD, and any contractor performing services on GCD's behalf (collectively and individually referred to below as "GCD"), shall obtain and maintain at all times during the License Term insurance coverage written for not less than the amounts specified, and under all the other terms and conditions set forth below.

#### **I. Insurance**

##### **A. Commercial General and Umbrella Liability Insurance**

GCD shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$3,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or at the Park District's sole option on a more current ISO form or a substitute form providing at least equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Park District shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing at least equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Park District. If the additional insured have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the GCD's liability under this insurance policy shall not be reduced by the existence of such other insurance.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

##### **B. Business Auto and Umbrella Liability Insurance**

GCD shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing at least equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage at least equivalent to that provided in the 1990 and later editions of CA 00 01.

## C. Workers Compensation Insurance

GCD shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Park District has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 or a substitute endorsement acceptable to the Park District under the Commercial General and Umbrella Liability Insurance required in this Agreement, GCD waives all rights against the Park District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the GCD's work.

## D. General Insurance Provisions

### 1. Evidence of Insurance

Prior to beginning work, GCD shall furnish the Park District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, and such other evidence of insurance as shall be requested by the Park District, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to the Park District prior to the cancellation or material change of any insurance referred to therein. Written notice to the Park District shall be by certified mail, return receipt requested. Failure of the Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Park District to identify a deficiency from evidence that is provided shall not be construed as a waiver of GCD's obligation to maintain such insurance.

The Park District shall have the right, but not the obligation, of prohibiting GCD or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Park District.

Failure to maintain the required insurance may result in termination of this Agreement at the Park District's option. With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to the Park District whenever requested. GCD shall provide certified copies of all insurance policies required above within 10 days of the Park District's written request for said copies.

### 2. Acceptability of Insurers



For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Park District has the right to reject insurance written by an insurer it deems unacceptable.

### 3. Cross-Liability Coverage

If GCD's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

### 4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Park District. At the option of the Park District, GCD may be asked to eliminate such deductibles or self-insured retentions as respects the Park District, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

### 5. Subcontractors

GCD shall cause each subcontractor employed by GCD to purchase and maintain insurance of the type specified above. When requested by the Park District, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

## II. Indemnification

To the fullest extent permitted by law, the GCD shall indemnify and hold harmless the Park District and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the GCD's obligations pursuant to this Agreement, including but not limited to arising out of or resulting from any release or spill of hazardous material caused by GCD, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission, by GCD, any contractor, any subcontractor, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. GCD shall similarly protect, indemnify and hold and save harmless the Park District's officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of breach of any of their obligations under, or default of, any provision of the Agreement.