

**Cliff Drysdale Tennis  
MANAGEMENT AGREEMENT**

THIS MANAGEMENT AGREEMENT ("Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between CLIFF DRYSDALE MANAGEMENT, LLC, ("CDT"), a Florida limited liability company having an address at 625 Mission Valley Road, New Braunfels, Texas 78132, and THE CITY OF ROME, GEORGIA ("Owner"), a body politic and corporate and a municipal corporation formed under the laws of the State of Georgia, having an address P.O. Box 1433, 601 Broad Street, Rome, Georgia 30162.

WHEREAS, Owner owns certain real property commonly known as the Rome Tennis Center at Berry College, 100 Match Point Way Rome Georgia 30165 currently a 32 acre facility with hardcourt tennis courts, clubhouse, indoor covered courts, and other amenities, and the Downtown Rome Tennis and Pickleball Center, 301 West Third Street Rome Georgia 30165 with hardcourt tennis courts, dedicated pickleball courts, clubhouse, and other amenities located in Rome, Georgia (collectively, "Centers");

WHEREAS, Owner recognizes the benefit of engaging a third-party management company to manage the affairs of the Centers; and

WHEREAS, CDT is in the business of managing tennis and pickleball facilities and clubs; and

WHEREAS, Owner desires to utilize the services and experience of CDT in connection with the management and operation of the Centers, and CDT desires to render such services, upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the covenants and agreements of the parties contained herein it is mutually agreed to as follows:

1. **DEFINITIONS.** The following terms, as used in this Agreement, shall have the following meaning, unless otherwise set out in this Agreement.
  - A. Annual Budget and Program: Documents presented by CDT for the operation of the Centers to the Owner as part of the Owner's annual budget process, including but not limited to the following: Annual Business Plan and Operating Budget, Agronomic Plan, and Marketing Plan.
  - B. CDT: Cliff Drysdale Management, LLC, a Florida limited liability company.
  - C. City/Owner: The City of Rome, a Georgia municipal corporation.
  - D. Fiscal Year: The fiscal year for the City of Rome, Georgia, which begins on the first day of January and concludes on the last day of December.
  - E. Centers: Those certain tennis facilities owned by the City and commonly known as the Rome Tennis Center at Berry College and the Downtown Rome Tennis and Pickleball Center, which includes the clubhouse(s), indoor covered facility, tennis hardcourts, dedicated pickleball courts, and other amenities.
  - F. Gross Revenue: All revenues and income of any nature derived directly or indirectly from the Centers or from the use or operation thereof, including, but not necessarily limited to, court fees, gross sales proceeds from the sale of court fees, memberships or annual passes to the Center, fob sales, monthly dues from annual pass holders of the Centers, rental fees for ball machines, racquets and other rental items, net lesson fees, soft and hard goods, food and beverage revenues (including mandatory service charges, revenue generated from space rentals and from meetings, banquets, parties, receptions, tournaments and other group gatherings) merchandise sales, and the proceeds paid for any business

interruption, use, occupancy or similar insurance policy claim. Excluded from "Gross Revenue" are any credits or refunds made to customers, guests or patrons; any sums and credits received by Owner for lost or damaged merchandise; any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, amusement taxes, tourist taxes or charges; any proceeds from the sale or other disposition of the Centers, Furniture, Fixtures & Equipment (FF&E), or other capital assets; any property and/or liability insurance proceeds; any proceeds of financing or refinancing of the Centers; amounts contributed by Owner pursuant to the terms of this Agreement and Income or interest derived from the Centers bank account. Gross Revenues shall be determined on an accrual basis and in accordance with generally acceptable accounting principles ("GAAP").

- G. Initial Term: The initial term of this Agreement beginning after the Transition Period, as described in Paragraph 2 below.
  - H. Minimum Funds Balance: The minimum dollar amount of the budget for all operating expenses for each month for the Centers, as set forth in the Annual Budget and Program approved by the Owner.
  - I. Net Operating Income: Gross Revenue from the Centers, minus all operating expenses which are attributable (in accordance with generally accepted accounting principles) to the use and operation of the Centers, including, without limitation: employee costs, operating expenses, centralized services, the Base Management Fees, expense reimbursements, all insurance costs related to the operation of the Centers, personal property taxes (limited to an amount allocable to the Centers), and provided, however, such expenses shall not include any charges for amortization, depreciation, capital expenditures including capital leases, debt service, and State and Federal income taxes, Owner distributions or overhead allocations, or any Incentive Management Fees paid to CDT hereunder.
  - J. Operating Expenses: The costs attributable to the operation of the Centers, including but not limited to: Base Management Fees, payroll, payroll taxes, benefits, employee related costs, insurance, supplies, marketing materials, services, utilities, maintenance and repair, and service agreements.
  - K. Working Capital: Funds utilized to pay operating expenses of the Centers.
2. **TERM OF AGREEMENT.** This Agreement shall commence upon November 1, 2021 ("Effective Date"). The time period beginning November 1, 2021, through and including December 31, 2021, shall be known as the "Transition Period." The Initial Term of this Agreement shall begin on January 1, 2022, and unless it is otherwise terminated as provided for herein, it shall expire five (5) years thereafter. The parties may renew this Agreement for two (2) successive periods of five (5) years each upon written mutual agreement by Owner and CDT no later than ninety (90) days prior to expiration ("Extension Term").
3. **APPOINTMENT OF CDT AS MANAGER.** Beginning on January 1, 2022, Owner hereby grants to CDT the right, subject to Owner's input, to supervise and direct the management and operation of the Centers for and on the account of Owner, and CDT hereby accepts said grant and agrees that it shall supervise and direct the management and operation of the Centers, all pursuant to and in accordance with the terms of this Agreement, and Owner shall reasonably cooperate so as to permit CDT to carry out its duties hereunder.
4. **SERVICES OF CDT.** Services rendered by CDT to Owner shall be as follows: Subject to the terms of this Agreement, CDT, as an independent contractor, shall have the sole and exclusive right to operate and manage the Centers. Owner and CDT agree that they shall cooperate reasonably with each other to permit CDT to carry out its duties under this Agreement. CDT shall have the responsibility and authority to provide general operational management services for the Centers, including, without limitation, the following services:

- A. Employees. All personnel employed at the Centers shall at all times be employees of CDT. CDT shall, as an expense of the Center, hire, promote, supervise, direct, and train all CDT employees at the Centers, fix their compensation and fringe benefits, and, generally, establish and maintain all policies relating to employment and employment benefits. Employees wishing to participate in the benefits program shall adhere to the requirements of the CDT benefits program with respect to required contributions, deductibles and eligibility based upon position classification and employee tenure. CDT employee files shall always be the sole property of CDT. All costs of every kind and nature pertaining to all employees at the Centers arising out of the employer-employee relationship, including, without limitation, salaries, fringe benefits, bonuses, recruitment, background processing, relocation costs, training, performance management, and costs incurred in connection with governmental laws and regulations and insurance rules, including those relating to post employment costs for benefits, health insurance, COBRA payments, shall be an operating expense paid from the Operating Account (as defined in Paragraph 5 below). If an employee of CDT or an affiliate that is not employed at the Centers are assigned temporarily or on a part-time basis to perform services at the Centers, such employee's salary (including employee benefits and taxes) in proportion to the period of time such employee dedicates to the Centers, and actual expenses incurred traveling to and from the Centers shall be reimbursed to CDT by the Centers. After the Effective Date, upon Owner's approval, Troon shall provide to the Centers its optional corporate-based shared employee services to include a regional controller which typically replaces certain elements of the on-site Center's functions with services provided from CDT or an affiliate's corporate office to affiliated facilities on an allocated basis. If Owner elects to receive the optional shared services, the fee for such services shall be approved by Owner and included in the Annual Budget.
- B. Inventory – Merchandise and Items for Re-sale. CDT shall, at the expense of the Centers, obtain merchandise for the pro shop at the Centers and food and beverage items, all in accordance with the Annual Budget and Program.
- C. Supervision. CDT shall supervise and manage the Centers operations to include pro shop, maintenance, food and beverage, membership sales efforts, practice facilities, administration, and other ancillary services.
- D. Equipment. Except as set forth in Paragraph 13, CDT shall, in preparation of Annual Budget and Program as set forth in Paragraph 4(H), develop a list of required equipment and a purchase/lease schedule and maintain in good working condition and order the physical plant and equipment at the Centers, including the courts and all physical structures which are part of the Centers, and the vehicles and other maintenance equipment necessary to the maintenance and operation of the Centers in the normal course of business.
- E. Purchasing and Procurement. With respect to the duties and responsibilities of CDT as set forth in this Paragraph 4, CDT shall arrange for the procurement, on behalf of the Owner and as an operating expense of the Centers, all operating supplies, operating equipment, inventories and services as are deemed necessary to the normal and ordinary course of operation of the Centers and to operate the Centers in accordance with the Annual Budget and Program. In purchasing operating supplies, operating equipment, inventories (including merchandise to be sold in the pro shops) and services for the Centers, CDT may utilize its purchasing procurement services and/or other group buying techniques involving other centers managed by CDT, provided that the cost thereof shall be competitive. In such event, CDT may receive and retain a minor fee or other compensation from vendors and service providers in exchange for CDT's services in making the benefit of volume purchases available to the Centers or negotiating and implementing the arrangements with

such vendors or providers, provided that the cost shall be competitive. Any available discount, rebate, fee, or compensation which is directly attributable to the purchases made by CDT for the operation of the Centers shall be remitted directly to the Centers from the vendor.

- F. Consultation. Except as provided in Paragraph 4(A) pertaining to the assignment by CDT of temporary or part-time CDT personnel, CDT shall, as part of its services hereunder and without additional compensation, make its staff available to Owner upon request for consultation regarding the Centers, including, but not limited to capital improvements or projects which may include modifications to the vertical structures or courts.
- G. Marketing. CDT shall create, direct, and implement an annual marketing plan for the Centers as part of the Annual Budget and Program. The marketing plan for the Centers will include a market analysis, a summary of tennis programs to include rates, membership structure (if applicable), and strategies for achieving the budgeted financial goals and other marketing-related goals for all aspects of the Centers.

CDT shall, as an operating expense of the Centers, obtain and manage:

1. Marketing systems, including internet (web site, e-mail, e-commerce); electronic reservation program (customer database, POS); credit card processing; and branding materials (graphic design, collateral, photography);
2. Customer acquisition programs, including advertising (print, electronic, display); direct marketing (direct mail, broadcast e-mail); promotional offers; and community and vendor partnerships and sponsorships;
3. Customer retention programs, including special events and programs; promotional offers; and membership events and programs;
4. Sales programs, including outing, membership, and event sales management; and
5. Quality assurance programs, including customer surveying; 'secret shopper' on-site visits and telephone sales calls.

CDT shall coordinate and oversee all third-party contractors' work in connection with the production and implementation of these programs. CDT shall also include, as appropriate, the Centers as a participant in CDT-shared marketing programs, including regional and national advertising and promotions, and referrals through the reservation system, Travel and Stay promotions and use of the name and mark 'Managed by Cliff Drysdale Tennis'.

All advertising fees and promotional fees paid by third parties to the Centers shall belong to and constitute Gross Revenues (defined below) of the Centers.

- H. Accounting. CDT shall pay all vendors of the Centers (subject to the availability of funds in accordance with the terms of the Agreement). CDT shall provide separate budgeting, bookkeeping and reporting services to Owner for the Centers. Copies of all books and records shall be kept at the Centers. All books, records, software, data, programs, manuals and the like shall remain the property of Owner and CDT shall be entitled, but not obligated, to keep a copy of said books, records, software, data, programs, manuals and the like for its own records as it desires.

1. Reporting. CDT shall prepare and deliver to the Owner, in accordance with CDT standard procedures and format, on an accrual basis and generally accepted accounting principles (GAAP), regular monthly and annual financial statements which shall include an operating level balance sheet (bank account balances, inventory, accounts payable, accounts receivable if applicable, accrued payables, gift certificate balances and paid in capital from Owner), a profit and loss statement for the current month and year to date activity, accounts payable listing, general

ledger activity and comments regarding monthly activity and variances to the Annual Budget. Upon Owner's request, CDT shall provide all accounting data and reports in electronic form. CDT shall not be responsible for the accounting or tax reporting requirements of the Owner, including but not limited to, the depreciation, amortization or addition of assets and equipment, owner's equity, debt service principle, loan amortization, accounting treatment relating to any full or partially refundable membership initiation fees or deposits, or payment of any invoices which relate to a period prior to the Effective Date. Owner shall provide CDT opening entry data for the balance sheet within fifteen (15) days of the Effective Date.

Final monthly operating statements shall be furnished to Owner by the 20<sup>th</sup> day following the last day of each month, and annual operating statements shall be furnished by the 45<sup>th</sup> day following the last day of each Fiscal Year. At Owner's discretion, the annual operating statement shall be audited and prepared by a certified public accountant chosen by Owner, the cost of which shall be an operating expense of the Centers. This audit shall be performed at the Centers site, and CDT shall make every reasonable effort to comply with the auditor's requests.

2. Annual Budget and Program. CDT shall prepare and deliver to Owner no later than November 1<sup>st</sup> of each year (except for the first full or partial Fiscal Year when CDT shall prepare and deliver to Owner no later than thirty (30) days after the Effective Date) for the following Fiscal Year: (a) an Annual Operating Budget, including revenues and operating expenses and labor burden (to include rates of pay, incentive or commission structures) for each department of the Centers; a merchandise buying plan for the pro shops; a comparison to the annual operating budget for the immediately preceding year and a projection of anticipated monthly revenues and expenses and cash flows for the Centers for the following Fiscal Year, including, without limitation, a reasonable contingency and anticipated working capital requirements for the Centers for the year; (b) a recommended capital expenditures budget for the next Fiscal Year; (c) a Policies and Procedures Outline for the Centers, including, without limitation, operating policies, proposed hours of operation, policies related to complimentary court use by Owner's representatives and employees, standards for operations and quality of service standards; (d) an Agronomic Plan including staffing assumptions, chemical and fertilization applications including planned agronomic practices; (e) Marketing Plan as described in Paragraph 4(G) (collectively, the "Annual Budget and Program"). CDT and Owner shall use their mutual best efforts to agree upon the Annual Budget and Program for the following year on or before Fiscal Year end. **Owner shall have the final approval and final decision-making authority over the Annual Budget and Program.** Owner shall provide CDT written confirmation of its approval of the Annual Budget and Program within thirty (30) days of CDT's submission of the Annual Budget and Program to Owner. If the Owner does not provide the written confirmation or rejection within the aforementioned thirty (30) day period, the Annual Budget and Program shall be deemed approved.

Owner acknowledges that the financial and operational performance of the Centers could be affected by circumstances or events beyond CDT's control. CDT shall not be deemed to have made any guarantee, warranty, or representation with the Annual Budget and Program. Under no circumstances shall Owner have any claim or cause of action against CDT in the event that the financial goals, targets, and benchmarks established in the Annual Budget and Program are not met or achieved.

Each party may, from time to time, propose to the other party, in writing, during the course of the year, such changes or amendments to the Annual Budget and Program as such party may consider necessary or appropriate, and CDT and Owner

shall use their mutual best efforts to act upon such proposal within thirty (30) days after such proposal is made provided any such change or amendment shall be subject to Owner's prior written approval. If the Owner fails to provide written confirmation or rejection of CDT's proposed changes or amendments to the Annual Budget and Program within thirty (30) days after such proposal is made, said changes shall be deemed approved. CDT shall secure the prior approval of Owner for total expenditures which exceed the total expenditure amount approved in Annual Budget and Program, however, as necessary, CDT has the ability to allocate funds from individual expense line item to another expense line item within the Annual Budget and Program, and (ii) expenditures which will exceed any line item in the Annual Budget and Program by Ten Thousand Dollars (\$10,000), so long as all such expenditures do not exceed Fifty Thousand Dollars (\$50,000) in the aggregate for the entire Annual Budget and Program, except for expenditures necessary in the event of emergencies for which prompt notice will be given to Owner.

3. Payroll and Benefits. CDT, shall establish, administer, and maintain the payroll procedure and systems for the employees at the Centers and shall be responsible for overseeing the benefits to, and handling the appropriate payroll deductions for, individual employees. Benefits will be limited to vacations, sick leave, medical insurance coverage, and 401(k) plan, as approved by Owner pursuant to the Annual Budget and Program. All employees of the Centers shall be employees of CDT, and CDT will comply with all state and federal employment laws.
  4. Vendor Accounts. CDT shall utilize existing vendor accounts which are in the name of the Owner whenever possible. If necessary, CDT shall coordinate with Owner and appropriate vendors to establish any new vendor accounts with appropriate credit limits applied for on behalf of and in the name of the Owner. CDT shall act as Agent for the Owner with regard to payment of vendors, and Owner accepts full responsibility for all vendor payments which are part of the approved Annual Budget and Program.
- I. IT Services. CDT shall create, direct, and implement activities to ensure IT functionality, in a safe and stable manner, for the Centers. CDT shall, as an operating expense of the Centers, obtain and manage: telephone systems, computers and laptops and printers. With the exception of telephones, existing computer equipment will remain at the centers and become property of CDT (said computer equipment expressly being part of the consideration under this Agreement). The City will separate the Centers from the City network, which will require new telephone systems for the Centers.
1. Networking infrastructure. The hardware and software resources of an entire network that enable network connectivity, communication, operations and management of a computer environment. The entire network infrastructure is interconnected, and can be used for internal communications, external communications or both. The entire network infrastructure may include routers, switches, wireless routers, cables, network operations and management software, operating systems, firewall and network security applications, network connectivity (cable, T-1 Lines, DSL, satellite, wireless, IP addressing, etc.)
  2. Telephone Systems. The electronic transmission of voice, fax, or other information between parties including the use of **VoIP** (voice **over Internet Protocol**) for the delivery of voice communications over the Internet. This includes voice, fax, SMS, and/or voice-messaging applications that are transported via a network.
  3. Hardware and Software to include the physical components that make up a computer system and then the software that runs on those physical components.

4. Virus and Malware Protection software designed to prevent viruses, worms and Trojan horses from getting onto a computer as well as remove any malicious software code that has already infected a computer.
5. Network Intrusion Protection software application that monitors network or system activities for malicious activities. Intrusion detection and prevention systems are primarily focused on identifying possible malicious incidents, logging information about them, and reporting attempts.
6. Network Monitoring is the use of a system that constantly monitors the computer network for slow or failing components and notifies the network administrator (via email, SMS or other alarms) in case of outages.
7. PCI Compliance. CDT will review the network and work with Owner as part of the start-up and transition process in order to determine necessary steps to achieve compliance with the Payment Card Industry Data Security Standards ("PCI DSS") at the Centers. PCI DSS is a set of requirements designed to ensure that all companies that process, store or transmit credit card information maintain a secure environment with focus on improving payment account security throughout the transaction process.

CDT shall coordinate and oversee all third-party contractors' work, if cost effective and appropriate, in connection with the implementation of these programs.

J. Operating Expenses and Owner's Remittance.

1. Minimum Funds Balance. At the end of each calendar month, after paying the operating expenses of the Centers and other expenses authorized by Owner, Owner may request in writing remittance of any funds in excess (if any) of the Minimum Funds Balance. If such request is made, CDT shall remit directly to Owner all amounts (if any) then in the Operating Account (as hereinafter described) in excess of the Minimum Funds Balance (as hereinafter described) by wire transfer or on-line transfer to said account as Owner may from time to time designate by written notice to CDT (the "Owner's Remittance").

As used herein, the Minimum Funds Balance for the Centers shall be defined as the dollar amount of the total budget for all operating expenses (as set forth in the Annual Budget and Program) for the month following the current month within the Term of the Agreement. At no time shall the Minimum Funds Balance be less than fifty thousand dollars (\$50,000).

2. Operating Expenses. CDT shall pay all operating expenses for the Centers on behalf of Owner from the Operating Account which expenses shall include, but not be limited to, payments of all monthly payroll and related expenses, operating expenses, Management Fees (including Base Management Fees and Incentive Management Fees), real and personal property taxes levied on the Centers. CDT will collect from and remit on behalf of the owner, sales, use, value-included and excise taxes on sales and rentals at the Centers. CDT will not pay federal or state income taxes levied on Owner. Under no circumstances shall CDT be liable for federal, state, or local taxes of any kind whatsoever levied against Owner or the Property in relation to Centers ownership, leasing, or operations.

- K. Owner's Meeting. CDT shall, periodically, consult with the Owner and the Rome Tennis Steering Committee, which consists of the City Manager, a member of the Berry College Board of Trustees, President of Berry College, Chief Financial Officer for Berry College, Board member of Coosa Valley Tennis Association, Director of Rome Sports, and Director

of Rome Tourism, regarding the Centers and its operations at a time, date, and place designated by Owner.

- L. Limitations. CDT shall obtain Owner's prior written approval for (i) contracts in excess of ten thousand dollars (\$10,000), (ii) contracts in excess of twelve (12) months in duration unless the same can be terminated upon thirty (30) days written notice without cost or fee to Owner, and (iii) contracts with affiliates of CDT.
- M. Assignment of Operations. Upon a termination of this Agreement, CDT, as appropriate, shall assign to Owner's designee all operating accounts, vendor accounts, inventory, accounts receivable, and accounts payable, which transfer shall be completed upon CDT receiving all fees due pursuant to this Agreement. CDT shall, without additional payment by the Owner, cooperate beyond termination with Owner and any replacement manager for a reasonable period after termination (all parties hereto agree that a reasonable period is not less than two (2) weeks and not more than four (4) weeks) to facilitate the orderly transition of the management of the Centers.
- N. Standard for Services Provided by CDT. CDT will perform all these services described in this Paragraph 4 in a workmanlike manner and in conformance with established best practices for CDT's industry.
- O. Transition Period and Commencement of Services. It is the intention of CDT and Owner that the services described in this Paragraph 4 shall commence on January 1, 2022. During the Transition Period commencing on November 1, 2021, CDT and Owner will work cooperatively for an orderly transition of the management and supervision of the Centers to CDT.

5. **ACCOUNTS.** CDT shall establish the following business checking accounts for the Centers by January 1, 2022: (a) an "Operating Account" and (b) an "On Site Account," (collectively, the "Accounts"), for use in its management and operation of the Centers. CDT shall be authorized to access and use the Accounts in compliance with the Annual Budget and Program and the terms of this Agreement. All revenues, receipts, and funds deposited into the Accounts from time to time by Owner, CDT shall be defined as and constitute "Working Capital" herein. CDT shall cause all revenues and receipts to be deposited into the Operating Account on a daily basis. CDT shall use the Operating Account to pay all expenses of the Centers. CDT shall maintain in the On-Site Account an amount to be used for minor Centers expenses.

Upon cancellation or termination of this Agreement for any reason, CDT shall continue to have the right to access and use the Accounts to satisfy all Operating Expenses incurred through the final effective date of termination after all of the notice and cure periods described herein have expired. Forty-five (45) days after the final effective date of termination after all of the notice and cure periods described herein have expired, CDT rights to access and use the Accounts shall be immediately revoked and all funds in the Accounts shall be immediately paid over to Owner. Upon direction from Owner from time to time, CDT shall invest or deposit funds in the Accounts in accordance with Owner's direction provided that the Owner's direction is compliant with the Annual Budget and Program and the terms of this Agreement. CDT shall establish, administer, and maintain the point of sale and credit card procedures and systems for the depositing of revenues into such accounts on a daily basis.

6. **INSURANCE.** CDT shall, as an operating expense (excluding the D & O coverage described below), secure and maintain the following insurance coverages for the duration of this Agreement:
- General Liability Coverage.
  - Auto Liability Coverage
  - Crime or Employee Dishonesty Coverage.



- Directors & Officers (D & O)—Coverage for Directors and Officers of CDT only.
- Workers' Compensation Coverage, which shall meet the requirements of the Georgia Workers' Compensation Act, O.C.G.A. §§ 34-9-1, et seq., and the Rules and Regulations of the Georgia State Board of Workers' Compensation.
- Employment Practices Liability Coverage, either as a stand-alone policy or an endorsement to one of the policies listed above.

All the insurance coverages described herein must be issued by insurers licensed to do business in the State of Georgia, and each insurer must be rated at least A- by A.M. Best. The coverages, limits, and deductibles shall be further described in **Exhibit A** to this Agreement. CDT shall provide written notice to Owner in the event of a coverage, limit, and/or deductible change.

All such policies, except for the D & O policy, shall name Owner as an additional insured. All insurance policies required hereunder shall contain a provision or endorsement requiring the insurer to notify Owner at least thirty (30) days in advance of any cancellation or termination of such policy and satisfactory waiver of subrogation provisions

At the beginning of each Fiscal Year, CDT or its insurers will provide Owner with certificates of insurance, or other proof of insurance coverage as Owner may reasonably find acceptable, demonstrating that CDT has the insurance coverages as described in this Paragraph 6.

## 7. **COMPENSATION AND FEES.**

- A. Base Management Fee. For its services hereunder, CDT shall be paid a Base Management Fee (the "Base Management Fee") of \$10,000 per month once the Initial Term commences. The Base Management Fee shall be payable on the fifth day of each month from the Operating Account. The Base Management Fee shall be a net fee to CDT and shall not include the Centers' expenditures as provided for in this Paragraph 7 or any other Operating Expenses. The City would anticipate renegotiating the Base Management Fee following the initial contract year.
- B. Compensation During Transition Period. During the Transition Period, the City will not pay CDT the Base Management Fee. During the Transition Period, the City will pay all reasonable expenses directly associated with transitioning to CDT's management of the Centers, which will commence on January 1, 2022, and any of CDT's payroll expenses associated with said transition.
- C. Incentive Management Fee. In addition to the Base Management Fee, CDT shall be entitled to earn an Incentive Management Fee for each full Calendar Year during the Term. For Calendar Year 2022 and each year thereafter, CDT shall receive an amount calculated as three percent (3%) of the positive Net Operating Income (the "Incentive Management Fee").

All Base Management Fees and Incentive Management Fees during the term shall be paid to CDT from the Operating Account. Owner shall pay directly to CDT any fees not payable until after the expiration or termination of this Agreement. Any Base Management Fee not received by the 10th of the month, any Incentive Management Fee not received by the 15th of March following the year in which it was earned, and any other sums due under this Agreement and not paid when due (including, but not limited to reimbursement for Centralized Services as defined in Paragraph 7(C) below and Operating expenses as described in Section I) shall be delinquent (hereafter, "Past Due Amount"), without notice or demand.

- D. Owner's Review. CDT services herein shall include management and oversight of the turn-key accounting function as set forth in Paragraph 4(H), and upon reasonable notice (which may be verbal) representatives of Owner shall have the right, at any time during normal

business hours, to review all of CDT books and records including the general ledger, accounts payable, income statement, balance sheet, and budget variance reports relating to the Centers including, without limitation, CDT work papers related to CDT preparation of operating statements. All expenses related to any such review shall be exclusively borne by Owner for purpose of this Agreement unless such review reveals an overpayment of any fees or other amounts in which case CDT shall pay for the review. Owner's exercise of its right of review or to dispute any fee or expense reimbursement claimed by CDT shall not delay payment of the undisputed portion thereof by Owner within the time frames set forth herein. However, payment by Owner of a fee or other amount hereunder shall not constitute a waiver of Owner's right to subsequently dispute the amount thereof. If Owner and CDT determine that any portion of the Base Management Fee or any other amount was improperly paid to CDT, CDT shall refund such improperly paid fee together with interest thereon from the time when such fee was paid to CDT within five (5) business days after receipt of notice from Owner to CDT. If there is any dispute between the parties regarding whether or not any payments of the Base Management Fee or any other amount were proper, such disputes shall be resolved by a court of competent jurisdiction as set forth in Paragraph 14(B).

- E. Centralized Services. CDT shall cause to be furnished to the Centers certain services ("Centralized Services") which are able to be furnished in a more cost effective and efficient manner on a central or regional basis to tennis facilities managed by CDT. The costs to provide such services shall be aggregated and billed to the centers by CDT rather than via a third-party vendor. Centralized Services shall be approved as part of the Annual Budget and Program. CDT represents that this reimbursement amount shall consist of an amount not exceeding the actual cost of the services without mark-up or profit to CDT including salary and employee benefit costs, cost of equipment used in performing such services, and overhead costs of the home office or any regional or other local office providing such services.

**8. CAPITAL EXPENDITURES.** The cost of all Capital Improvements shall be deemed to include any item purchased in connection with the operation of the Centers which:

- A. Has an economic useful life in excess of one (1) year, and
- B. Has a cost in excess of five thousand dollars (\$5,000). All Capital Expenditures for Capital Improvements shall be the responsibility of Owner and all decisions as to whether or not to undertake any capital improvements projects or otherwise in respect of any capital improvements shall be made by Owner in consultation with CDT.
- C. Notwithstanding anything in the foregoing, CDT agrees to fund Capital Improvements at the Centers in the amount of Ten Thousand dollars (\$10,000) for the initial 2022 year with an annual increase of the regional Consumer Price Index ("CPI") or three percent (3%), whichever is lower, for the Term of the Agreement, and any subsequent Extension Term. In the event of termination of this Agreement by Owner, for any reason whatsoever (except in the event of breach of the Agreement on the part of CDT) prior to the expiration of the Initial Term or Extension Term (if applicable), Owner shall fully reimburse CDT for all Capital Improvement funds provided to the Centers by CDT under this paragraph, without interest, within ten (10) days of the delivery of any termination notice.

**9. DEFAULT AND REMEDIES.**

- A. Owner Default. The following shall constitute an event of default ("Event of Default") by Owner under this Agreement:
  - 1. Failure to timely pay CDT any fees, compensation, or reimbursement due CDT pursuant to this Agreement;

2. Failure to timely provide Minimum Funds Balance and/or Working Capital;
  3. Failure by Owner to perform any material obligation set out in this Agreement, such as, but not limited to, failing to consult with CDT regarding budgets or capital improvements;
  4. Interference or lack of cooperation by Owner which renders CDT unable to fulfill its obligations under this Agreement as objectively determined by CDT.
- B. CDT Default. The following shall constitute an event of default ("Event of Default") by CDT under this Agreement:
1. Failure to maintain the amenities of the Centers in reasonably good condition, not including failures resulting from acts of God (such as wildfires, windstorms, snowstorms, earthquakes, or other similar disruptive natural events), events of war or terrorism, acts of property destruction or vandalism, supply chain disruptions, or other similar events or conditions beyond the reasonable control of CDT;
  2. Failure to operate the Centers in accordance with the approved Annual Budget and Program;
  3. Failure of CDT to perform any material obligations set forth in this Agreement;
  4. Failure to CDT to procure and maintain insurance as provided in this Agreement;
  5. Assignment for the benefit of CDT's creditors, or becoming a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization; or
  6. Interference or lack of cooperation by CDT which renders Owner unable to fulfill its obligations under this Agreement as objectively determined by Owner.
- C. Notice and Cure. When either party to this Agreement believes that the other party (the "Defaulting Party") has committed an Event of Default, it shall give written notice thereof to the Defaulting Party. The Defaulting Party shall have ten (10) calendar days from the date of the notice to cure the default unless, due to acts of God (such as wildfires, windstorms, snowstorms, earthquakes, or other similar disruptive natural events), events of war or terrorism, supply chain disruptions, or other similar events or conditions beyond the reasonable control of the Defaulting party, the Defaulting Party requires more time to cure. In order to qualify for a longer cure period, the Defaulting Party must earnestly begin to cure within thirty (30) calendar days from the date of the notice to cure and diligently pursue such cure. In no event will the Defaulting Party have more than sixty (60) days from the date of the notice in the aggregate to cure a non-monetary default. Notwithstanding anything in this Agreement to the contrary, neither Owner nor CDT shall be entitled to any notice and cure period for the same, or a similar, default that occurs more than two (2) times in any twelve (12) month period.
- D. Rights upon Default. If the Defaulting Party does not cure a default within the grace period provided in Paragraph 9(C) above, the other party may terminate this Agreement. The termination shall be effective thirty (30) days after written notice to the Defaulting Party of its failure to cure (the "Termination Effective Date"). At any time after the Termination Effective Date and within the applicable statute of limitations, the parties may pursue all rights and remedies available in law or equity, including payment of accrued amounts pursuant to Paragraph 7 hereof. Notwithstanding any contrary provisions hereof, CDT's rights to recover damages from Owner shall be limited to the sum of (i) accrued and unpaid Base Management

Fees and Incentive Management Fees as of the Termination Effective Date, and other amounts due under the terms of this Agreement; and (ii) actual damages not to exceed the amount of one hundred thousand dollars (\$100,000). In no event will CDT or Owner be subject to any consequential, special, punitive, or similar damages, each party hereby waiving any right it may have to seek or claim such damages.

**10. TERMINATION AND CANCELLATION.**

- A. Termination for Event of Default. Either party may terminate this Agreement upon the occurrence of an Event of Default by the other party as provided in Paragraph 9(D) above.
- B. O.C.G.A. § 36-30-13 Termination.
  - 1. At least ninety (90) days before the close of the then-current Fiscal Year, Owner may provide written notice to CDT of its intent to terminate this Agreement effective on the beginning of Owner's next Fiscal Year.
  - 2. Upon written notice to CDT, this Agreement will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy Owner's obligations under this Agreement.
- C. General Right of Termination. During the Initial Term or any Extension Term, either party may terminate this Agreement for any reason by providing written notice to the other party of its intent to terminate this Agreement at least one-hundred and eighty (180) days prior to the date of termination.
- F. No Waiver. By terminating this Agreement in accordance with this Paragraph 10, neither party shall be deemed to have waived any action it might have, in law or equity, by reason of a breach of or default under this Agreement.
- G. Performance After Notice of Termination. If either party provides notice to the other of its intention to terminate this Agreement as set forth in Paragraph 10(B)(1) or (C), then the parties shall continue their usual and regular performance under this Agreement until the Agreement terminates, unless otherwise agreed by the parties in a separate writing executed with the same level of formality under this Agreement.

**11. USE OF CENTERS.** During the term of this Agreement, the Centers shall be public facilities unless otherwise provided and agreed to in the Annual Budget and Program.

**12. ALCOHOL LICENSES.** Subject to any relevant licensing requirements under the Georgia Alcoholic Beverage Code, O.C.G.A. §§ 3-1-1, et seq., the Rules and Regulations of the Georgia Department of Revenue, and the Code of the City of Rome, Georgia, CDT shall apply for, acquire, and maintain valid beer, wine, and liquor licenses as necessary for the various Centers, and CDT shall comply with all relevant state and local laws regarding the use of such licenses. CDT may use an affiliated entity to apply for the liquor license.

**13. FORCE MAJEURE; CONDEMNATION; FIRE AND OTHER CASUALTY.** If all or any portion of the Centers are destroyed by fire or other casualty, or taken by eminent domain, such damage, destruction, or condemnation shall not be a cause for termination hereunder by either party unless such damage or destruction results in the whole or a substantial part of the Centers being unusable for its intended purpose for a period of one year or longer or, in the case of such total or substantial damage or destruction, If Owner shall decide not to rebuild the damaged portion of the Centers, then this Agreement shall terminate upon formal written notice from Owner to CDT of such termination and neither party shall have any further rights or obligations hereunder. Notwithstanding the foregoing, if:

- A. As a result of any damage or destruction to, or condemnation of, any part of the Centers, or
- B. Otherwise due to causes beyond CDT's reasonable control (and so long as CDT uses all reasonable diligence to cure such inability), CDT shall be unable to perform its obligations hereunder in respect of the operation of the Centers,

Owner and CDT shall use their mutual best efforts to agree upon an amendment to the Annual Budget and Program, including, without limitation, the working capital provisions thereof, to allow payment of necessary Centers expenses (including, without limitation, Centers employee expenses) until such damage or destruction is repaired or such inability is cured and, if the parties are unable to agree on such an amendment within twenty (20) business days after CDT shall have given Owner notice of the occurrence of such event, CDT shall have the right to terminate this Agreement by notice to Owner of such termination and neither party shall have any further rights or obligations hereunder.

#### **14. INDEMNIFICATION AND LIABILITY.**

- A. Indemnity.
  - 1. To the fullest extent permitted by Georgia law, CDT will defend, indemnify, and hold Owner harmless from and against any claims, losses, expenses, costs, suits, actions, proceedings, demands, or liabilities that are asserted against, or sustained or incurred by Owner because of CDT's material breach of this Agreement or because of legal actions or regulatory violations arising from CDT's negligence, fraud, or willful misconduct.
  - 2. To the fullest extent permitted by Georgia law, including the Constitution of the State of Georgia, Owner will defend, indemnify, and hold CDT harmless, from and against any claims, losses, expenses, costs, suits, actions, proceedings, demands, or liabilities that are asserted against, or sustained or incurred by CDT because of Owner's material breach of this Agreement or because of legal actions or regulatory violations arising from Owner's negligence, fraud, or willful misconduct.
  - 3. Any Party seeking indemnification under this provision ("Indemnified Party") must provide written notice to the other party ("Indemnifying Party") within sixty (60) days that the party becomes aware, or reasonably should have become aware by using reasonable diligence, of any claims, losses, expenses, costs, suits, actions, proceedings, demands, or liabilities subject to this indemnification provision. Failure of the Indemnified Party to timely provide written notice under this provision will preclude indemnification by the Indemnifying Party.
  - 4. If the Indemnified Party is Owner, then CDT will make no admissions of liability nor settle the matter on behalf of Owner without prior approval of the Owner's governing authority, the Rome City Commission.
  - 5. As of January 1, 2022, it is understood by both parties that CDT is the employer of all personnel at the Centers while performing under this Agreement, and any claims or allegations by any such personnel regarding violations of the Americans with Disabilities Act, as amended; Title VII of the Civil Rights Act of 1964, as amended; the Family and Medical Leave Act; the Consolidated Omnibus Budget Reconciliation Act; the Fair Labor Standards Act; the Age Discrimination in Employment Act, 42 U.S.C. §§ 1981-1986; the Employment Retirement Income Security Act of 1974, as amended; the National Labor Relations Act of 1935, as amended, or any other similar federal or state labor and employment law, shall be the sole responsibility of CDT, and CDT shall defend and hold Owner harmless from any such claims or allegations.

- B. Choice of Law and Venue. Any action seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement may be brought in the Superior Court of Floyd County, Georgia, or if federal jurisdiction is applicable, in the United States District Court, Northern District of Georgia, Rome Division, and each party hereto hereby consents to the jurisdiction and venue of such courts and the appropriate appellate courts therefrom in any such action and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the personal jurisdiction and venue of such court and to any claim of inconvenient forum. This Agreement shall be governed by, construed under, enforced, and interpreted in accordance with, the laws of the State of Georgia, without regard to the conflicts-of-law rules of any state.

**15. CONFIDENTIALITY.**

- A. The parties understand and acknowledge that Owner is a local government entity in Georgia that is subject to the Georgia Open Records Act, O.C.G.A. §§ 50-18-17, et seq., and that nothing contained in this Agreement shall be construed to conflict with Owner's obligations under that act. To the extent that Owner receives a request under the Georgia Open Records Act for any records or documents related to the operation of the Centers, CDT shall assist Owner by locating and supplying responsive records to Owner.
- B. The parties understand and agree that all information, not otherwise publicly available, which is received by one party from the other party in connection with this engagement, will be treated confidentially, except as required by process of law or as otherwise requested by Owner. In the event either party is required to disclose any of such information pursuant to a subpoena, non-party request for production of documents, an order of a court or administrative tribunal, or other similar process of law, each party agrees to provide the other with prompt notice so that the party receiving notice may seek appropriate remedies, including quashal or a protective order. Nothing contained herein shall be construed to require either party to subject itself to sanctions or contempt of court for failing to respond to a lawful subpoena, non-party request for production of documents, an order of a court or administrative tribunal, or other similar process of law.
- C. Owner shall retain exclusive rights to ownership of all work output hereunder. Work output includes reports issued pursuant to this Agreement, but excludes, among other things, all working papers of CDT, any correspondence, memoranda, calculations, processes, notes, etc. that CDT may have used in the development of the reports above or such working papers or in the performance of any work covered by an authorization under this Agreement.

**16. GENERAL PROVISIONS.**

- A. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings, and representations (if any) made by and between such parties.
- B. Written Amendments. The provisions of this Agreement may only be amended or supplemented in a writing signed by both parties with the same level of formality as this Agreement.
- C. Compliance with Laws. CDT shall, at all times, operate, use, and conduct the business of the Centers in a lawful manner and in full compliance with all applicable governmental laws, ordinances, rules and regulations, and maintain all licenses and permits relating to the Centers, with Owner's full cooperation, in full force and effect and cooperate and endeavor to obtain all licenses and permits first required after the commencement of the term of this

Agreement required in connection with the management, use, and operation of the Centers.

- E. Binding. All of the terms and provisions of this Agreement shall be binding and inure to the benefit of the parties and their respective permitted successors and assigns. This Agreement is solely for the benefit of the parties hereto and not for the benefit of any third party.
- F. Assignment. CDT may assign or transfer this Agreement and/or may delegate its duties and obligations under this Agreement to CDT Subsidiary, but only with the written permission of Owner.
- G. Notices. All notices, requests, consents and other communications required or permitted to be given under this Agreement shall be in writing, shall be given only in accordance with the provisions of this Paragraph 16(G), shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered, (i) upon receipt when hand delivered (or refused) during normal business hours, (ii) upon the third (3<sup>rd</sup>) business day after delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery), or (iii) one (1) business day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that the sending party receives a confirmation of actual delivery from the courier).

In the case of CDT:

Cliff Drysdale Management, LLC  
625 Mission Valley Rd.  
New Braunfels, Texas 78132  
Attention: Don Henderson, President  
Telephone: 305-987-7671  
Email: d.henderson@cliffdrysdale.com

With copy to:

Troon Golf, LLC  
15044 N. Scottsdale Road, Suite 300  
Scottsdale, AZ 85254  
Attention: Jeff Hansen, EVP & General Counsel  
Telephone: 480-477-0439  
Email: jhansen@troon.com

In the case of Owner:

City of Rome, Georgia  
601 Broad Street  
Rome, Georgia 30162  
Attention: Sammy Rich  
Telephone: 706-291-8853  
Facsimile: 706-234-3574

With a copy to:

J. Anderson Davis, Rome City Attorney  
P.O. Box 5007  
615 West First Street

Rome, Georgia 30162  
Telephone: 706-291-8853

or to such other address as either party may designate by notice complying with the terms of this Paragraph.

- K. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.
- L. Invalidity. If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid or unenforceable under applicable law or regulation or by a final decision of a court or tribunal with appropriate jurisdiction, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, invalid, or unenforceable, but the remainder of such provision, and this Agreement shall not be invalidated or rendered unenforceable thereby, and shall be given full force and effect so far as possible, unless the invalid or unenforceable parts of this Agreement render the core purpose of this Agreement, as described in the recitals hereto, invalid or unenforceable.
- M. No Waiver. The failure or delay of either party at any time to require performance by the other party of any provision of this Agreement shall not affect the right of such party to subsequently require performance of that provision or to exercise any right, power or remedy hereunder. Waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement.
- N. No Partnership. Nothing in this Agreement shall be construed to create a partnership or joint venture between the parties. The parties acknowledge that the relationship of CDT to Owner is that of an independent contractor.
- O. No Exclusive Remedy. No remedy herein conferred upon either party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.
- P. Authority. Each party shall ensure that the person(s) signing below have the authority to bind their respective party to this Agreement.
- Q. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, collectively and separately, shall constitute one and the same agreement.

**(SIGNATURE PAGE FOLLOWS)**



IN WITNESS WHEREOF, the parties executed this Agreement as of the date first above written.

**CITY OF ROME, GEORGIA**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CLIFF DRYSDALE MANAGEMENT, LLC**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A INSURANCE SCHEDULE**

### **I. Liability Insurance.**

A. Commercial general liability insurance against claims for bodily injury, death, property damage and sexual abuse and molestation occurring on, in or about the Facility; Employee Benefits Liability insurance with a combined single limit for each occurrence involving personal injury, death or property damage (including any loss of use resulting therefrom) in an amount not less than that generally provided with respect to the Centers, but in no event shall the limits of such coverage be less than One Million Dollars (\$1,000,000) per location and per single occurrence and Two Million Dollars (\$2,000,000) in the aggregate per location. For the avoidance of doubt, this policy shall be a location based policy.

B. Liquor liability insurance having coverage terms at least as broad as those found in standard ISO forms. Such policy shall have an aggregate limit of at least One Million Dollars (\$1,000,000) per single occurrence and in the aggregate. Troon shall be entitled, from time to time, to designate such higher limits as it deems reasonably necessary (or as required under any loan and/or plan documents). In the event that Troon, or Troon's Affiliate, holds the liquor license for the Facility, Troon shall be the named insured (and Owner shall be an additional insured) with respect to the foregoing insurance coverage.

C. Automobile liability insurance on vehicles operated in conjunction with the Facility against claims for damages on owned vehicles, non-owned vehicles, and uninsured motorist coverage (where required by statute), with a combined single limit for each occurrence involving personal injury, death or property damage (including any loss of use resulting therefrom) in an amount not less than that generally provided with respect to the Centers but in no event shall the limits of such coverage be less than One Million Dollars (\$1,000,000) per occurrence.

D. Umbrella liability insurance with limits of not less than Ten Million Dollars (\$10,000,000) per single occurrence and in the aggregate.

E. Pollution insurance policy (including, but not limited to Herbicide and Pesticide coverage) with a limit of not less than One Million Dollars (\$1,000,000) per single occurrence, including coverage for on-site and off-site clean up as well as third party coverage for on-site and off-site third party claims for bodily injury and property damage.

F. Privacy liability insurance covering employee and member/guest data at the Centers with limits as determined by Troon and Owner. This coverage does not apply to computers at facilities not on the Troon network or networks managed by Troon.

### **II. Workers Compensation and Employer's Liability (provided that Troon employs the employees).**

A. Workers' compensation and Employer's liability insurance as may be required under applicable laws covering all of Troon and its Affiliates' employees employed at the Facility.

B. Comprehensive crime insurance covering Troon employee theft and dishonesty with a limit of at least One Million Dollars (\$1,000,000) per occurrence.

C. Employment practices liability insurance covering Troon employees with a limit of at least One Million Dollars (\$1,000,000) per occurrence.