



City of Grand Island

Tuesday, March 8, 2022

Council Session

Item G-10

#2022-60 - Approving Transfer of Funds to JackRabbit Run Golf Course Operating Account

Staff Contact: Patrick Brown, Finance Director

Council Agenda Memo

From: Patrick Brown, Finance Director

Meeting: March 8, 2022

Subject: Approving Transfer of Funds to JackRabbit Run Golf Course Operating Account

Presenter(s): Patrick Brown, Finance Director

Background

On December 8, 2020, Council approved the Golf Management Contract with Landscapes Unlimited. The contract is a five year agreement to employ and be responsible for all golf course staff and manage day-to-day operations which includes property maintenance, food and beverage, marketing, payroll processing, and programming.

Discussion

Landscapes Golf Management is requesting funding of \$85,000 for the operation of the City's JackRabbit Run Golf course. The request is per the City's contract with Landscapes Golf Management, specifically sections 3, 4, and 5 in the attached contract. Also attached is the formal request for funding and projected cashflow forecasted for February and March 2022 from Landscapes Golf Management.

The City of Grand Island along with Landscapes Golf Management are co-owners of the operating account at First National Bank of Omaha.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Consent to transfer \$85,000 to the JackRabbit Run Golf course account.
2. Postpone the issue to a future meeting.
3. Take no action.

Recommendation

City Administration recommends Council consent to fund \$85,000 to the JackRabbit Run Golf course operating account per City's contract with Landscapes Golf Management.

Sample Motion

Approve to consent to fund \$85,000 to the JackRabbit Run Golf course operating account per City's contract with Landscapes Golf Management.

Operational Funding Request

To: City of Grand Island

From: Landscapes Golf Management on behalf of Jackrabbit Run Golf Course

The 2021 season at Jackrabbit Run golf course was very successful. Most importantly, we were able to assemble a reliable staff that has elevated the experience of our customers. In our first season, the business was able to exceed our budgeted levels of earnings and we are showing even more progress in 2022.

While we are very proud of our progress, we are not yet operating the business at a cash-positive level. As a result, Jackrabbit Run would like to request funding of \$85,000 to support the operational needs of the facility and to ensure timely payments to our vendors.

Most recently, our accounting team is needing to submit payment for an invoice related to storm damage. Thankfully, we are able to get reimbursed for this invoice through FEMA, however the course is not able to receive the reimbursement dollars unless this invoice is paid in full.

We greatly appreciate your attention to our request and look forward to continuing to improve the golf course operations financially and for the overall betterment of the community.

Sincerely,

Devon Kastler

Regional Operations Manager

Jackrabbit Run Golf Course
Forecasted February - March

Cash Available - FNBO x9916	51,846.43	Comment
\$50,000 Reserve per Management Contract	(50,000.00)	
Less O/S checks - FNB	(2,721.19)	
Projected Revenue - February	10,000.00	Estimate
Projected Revenue - March	<u>40,000.00</u>	Estimate
Operating Cash Balance	<u>49,125.24</u>	

Upcoming Cash Needs		Due		
February				
Check	Landscapes Golf Management	1st		Cleared
Check	IPFS Corporation (LGM)	1st		Pending 2022 Allocations
Check	UMR	1st		Cleared
Check	Ameritas	1st		O/S
Check	Mutual of Omaha	1st		Cleared
Check	Lincoln National Life	1st		Cleared
ACH	Payroll (PPE 2/6 Post 2/9)	9th		Cleared
ACH	Sales Tax - City of Grand Island	10th		O/S
Check	Blackhills Energy	14th		Cleared
ACH	Payroll (PPE 2/20 Post 2/23)	23rd	10,000.00	Estimate
ACH	First National Bank P-Card Payment	23rd	2,959.61	Actual
ACH	City of Grand Island Utilities	Various	1,500.00	Estimate
Check	Sysco	Weekly	500.00	Estimate
Check	LGM Reimbursement	Various	2,000.00	Estimate
Check	Insurance Claims	Various	500.00	Estimate
ACH	Alcohol Vendors	Weekly	500.00	Estimate
March				
Check	Landscapes Golf Management	1st	6,180.00	Actual
Check	IPFS Corporation (LGM)	1st	750.00	Estimate
Check	UMR	1st	639.71	Estimate
Check	Ameritas	1st	19.41	Estimate
Check	Mutual of Omaha	1st	114.52	Estimate
Check	Lincoln National Life	1st	153.60	Estimate
ACH	Payroll (PPE 3/06 Post 3/09)	9th	13,000.00	Estimate
ACH	Sales Tax - City of Grand Island	10th	3,000.00	Estimate
Check	Blackhills Energy	16th	270.00	Estimate
ACH	Payroll (PPE 3/20 Post 3/23)	23rd	13,000.00	Estimate
ACH	First National Bank P-Card Payment	23rd	2,000.00	Estimate
ACH	City of Grand Island Utilities	Various	2,000.00	Estimate
Check	Sysco	Weekly	1,000.00	Estimate
Check	LGM Reimbursement	Various	2,000.00	Estimate
Check	Insurance Claims	Various	1,000.00	Estimate
ACH	Alcohol Vendors	Weekly	<u>2,000.00</u>	Estimate
Cash Requirements			<u>65,086.85</u>	
Operating Cash Surplus/(Shortfall)			(15,961.61)	
Payables Allocation for Cash Position 02.15.22			0.00	
Payable Allocation			<u>53,302.18</u>	
O'Neill Wood Resources Invoice 5330 (Rcvd 02/23)			11,000.00	Will be reimbursed by FEMA, pending approval
Cash Carried Forward			<u>(80,263.79)</u>	
Date of last deposit:		2/9/2022		

Payables Recap	
	Amount
Past Due 61-90 days	(34.55)
Past Due 31-60 days	-
Past Due 1-30 days	2,459.02
Current - Due Next 30 days	9,851.93
Future	26,205.78
Total Payables	<u>38,482.18</u>
Amount to be distributed (per above)	<u>2,540.50</u>
Continued Carry of outstanding payables	<u>35,941.68</u>

\$38,482.18 In AP as of 2.15.22
 \$0.00 Less Payables for Cash Position 2.15.22
 \$0.00 Less Fleet Management
(\$6,180.00) Less Mgt Fee
\$21,000.00 Estimate \$3k per week in all other invoices. 12 weeks January - March
 \$53,302.18 Total Estimated

Management Agreement

This MANAGEMENT AGREEMENT ("Agreement") is made and entered into as of December 14, 2020 (the "Effective Date") by and between the City of Grand Island, a (hereinafter referred to as "Owner"), and Landscapes Golf Management, LLC a Nebraska limited liability company (hereinafter referred to as "Manager").

Recitals

Owner desires to provide for the operation and management of the clubhouse, golf course, cart facility, maintenance building and appurtenances, and any other golf course or golf related facility owned by Owner and situated on the real property located at 2800 N Shady Bend Rd, Grand Island, NE 68801, commonly known as Jackrabbit Run Golf Course (collectively referred to as the "Course").

Manager is in the business of operating and managing golf courses and has experience and expertise related to golf course operation and management.

Owner desires to retain Manager to manage and operate the Course on behalf of Owner pursuant to the terms and conditions of this Agreement.

Agreement

The parties agree as follows:

1. TERM OF AGREEMENT.

1.1. Term. The term of this Agreement will begin on the Effective Date and terminate December 13, 2025 (the "Term"), unless sooner terminated according to the terms and provisions hereof or extended by mutual written agreement of the parties.

1.2. Early Termination. The parties agree that Owner may terminate this Agreement without penalty, beginning on October 1, 2023 if Manager fails to achieve Net Operating Income showing a loss of no more than Fifty Thousand Dollars (-\$50,000) for the Owner's fiscal year ending September 30, 2023. If Owner elects to exercise the termination option provided by this section, Owner shall provide Manager with at least sixty (60) days' written notice prior to the effective date of termination.

2. SERVICES TO BE PERFORMED BY MANAGER. During the Term of this Agreement, Manager will supervise, manage, direct and operate the Course, which will include, but not be limited to, collecting and disbursing all monies, negotiating and managing leases and contracts, employing all employees, promoting and managing the Course, purchasing and selling food, beverages, merchandise, supplies and services, purchasing and maintaining

insurance coverage on behalf of the Course, handling disputes with third parties, collecting and paying all appropriate taxes and performing all other day-to-day activities relative to the Course. With respect to the operation of the Course, the parties hereto agree as follows:

2.1. Owner Authorization. Owner hereby grants and delegates to Manager the authority and the responsibility necessary to permit Manager to perform its duties under this Agreement and to do any and all acts deemed necessary or desirable for operation and maintenance of the Course and agrees to take such additional steps as are necessary to evidence such delegation and authorization as is reasonably requested by Manager. Owner hereby grants to Manager the use and occupancy of the Course during the Term of this Agreement or any renewal hereof for said purposes. Owner will not grant to any third party any rights to use or occupancy of all or any part of the Course during the Term of this Agreement without Manager's prior written consent, nor will Owner interfere with Manager's ability to perform its duties under this Agreement consistent with Manager's good faith business judgment.

2.2. Major Decisions. Manager will submit proposals to Owner for major expenditures, improvements or events that impact the Course ("Major Policy Decisions"), including, but not limited to, capital improvements and expenditures and the Annual Budgets (as defined in Subsection 2.c below). Manager will secure Owner's prior approval of all Major Policy Decisions. Manager will, to the best of its ability, operate the Course in accordance with the Major Policy Decisions approved by Owner.

2.3. Annual Budgets.

2.3.1. Not later than June 1 of each calendar year during the Term of this Agreement or any renewal hereof, Manager will submit a written business plan and a proposed operating budget (the "Proposed Annual Budget") to Owner for the upcoming fiscal year, except for the first year of this Agreement Manager will submit the Proposed Annual Budget to the Owner within ninety (90) days following the Effective Date. The Proposed Annual Budget will specify the amount of working capital required to continue operations of the Course for the upcoming fiscal year in light of all Major Policy Decisions; all anticipated expenses required to maintain a reasonable level of services, equipment, supplies and inventory; and all projected expenses for long term capital improvements and equipment. Owner acknowledges and agrees that all budgets are based solely on Manager's judgment and the facts and circumstances known by Manager at the time of preparation and Manager does not warrant or guarantee the results of operations or performance set forth in any budgets prepared for the Course.

2.3.2. Owner must approve or reject the Proposed Annual Budget within thirty (30) days of its receipt by Owner. Owner's failure to reject the Proposed Annual Budget

within such time period will be deemed an acceptance by Owner of the Proposed Annual Budget as submitted by Manager. The Proposed Annual Budget, once approved (or deemed approved) by Owner, will be referred to as the "Annual Budget." In the event Owner and Manager cannot agree on a Proposed Annual Budget, Manager will be entitled to continue operation of the Course in accordance with the Annual Budget for the prior year, subject to increases in Expenses required due to matters beyond the control of Manager, until such time as a new Proposed Annual Budget is approved by Owner.

2.4. Promotion of Golf Activities. Manager will implement a marketing plan for the Course and coordinate and direct all work done in the promotion, advertisement and public relations with respect to the Course. Manager will coordinate the creation or modification of graphics, logos and other visual materials for letterheads, envelopes, temporary and permanent signs, brochures, websites, information profiles, progress reports, press releases and bulletins. Manager may indicate on the premises and on such promotional, advertising and public relations materials that the Course is being managed by Manager.

2.5. Course Personnel.

2.5.1. Manager will, in its sole discretion and at the expense of the Owner, employ the Course personnel. Such personnel will include a general manager responsible for the day-to-day operation and management of the Course, maintenance personnel to professionally maintain the Course, other on-site management personnel, staff, and others deemed by Manager to be appropriate for the efficient operation of the Course. Such personnel will be hired, employed, evaluated, promoted and terminated by Manager, except that Manager may, in its sole discretion, elect to have some routine or specialty functions performed by independent contractors and engage such contractors for that purpose as an Expense of the Course. In no event shall any employees employed by Manager at the Course be considered employees of the Owner, nor shall any of Manager's employees be eligible for any benefits or pay from the Owner. At all times, Manager shall provide the Owner with the names and current telephone numbers (business, cell phone, and home number, if applicable) of the general manager and golf course superintendent.

2.5.2. Manager shall make a good faith effort to interview and employ any employee who is currently employed by Owner at the Course and who is displaced as a result of this Agreement, but Manager shall not be obligated to offer employment to any such employees. Manager shall employ qualified personnel with skills and certifications appropriate to the position to which they are appointed. Manager shall comply with all federal, state and local laws and regulations pertaining to

equal employment opportunity, Americans with Disabilities Act, and prohibition of unlawful discrimination in all hiring and employment decisions. Manager shall also have in place policies that prohibit any form of unlawful harassment and policies promoting a drug-free workplace, including reasonable drug testing policies.

2.6. Food, Beverage and Merchandise.

- 2.6.1. Owner will permit the sale of beer, wine and liquor at the Course. Manager will cause the general manager of the Course to apply for and obtain necessary city, county and/or state liquor licenses, as applicable, and all other permits, licenses and approvals required for operation of the Course; provided, however, that Owner retains the right, for good cause shown, to decline to have the general manager as the individual designated on the liquor license or to terminate such designation. It is understood that Manager cannot guarantee factors outside of its control that may prohibit the timely issuance of the liquor licenses or other licenses, permits or approvals. Owner and Manager will cooperate with the general manager in obtaining such licenses, permits and approvals, and if required by applicable city, county or state law, Owner will hold such licenses, permits and approvals in accordance therewith. Manager will pay all applicable Course licenses and permit fees when due as an Expense of the Course. Any monetary penalties imposed against the Course or the Owner for license violations will be Manager's responsibility and will be paid by Manager from its own funds to the extent the license violation was the result of Manager's negligence (i.e., failure to train or failure to supervise Manager's employees at the Course).
- 2.6.2. Manager will purchase and sell such other food, beverage and merchandise at the Course for such prices as Manager deems prudent. This includes beverage cart services on the Course and an adequate supply and variety of quality pro shop inventory for resale in the pro shop. The hours of operation for the beverage cart, food services and pro shop shall be determined by Manager, in its reasonable discretion. Manager will remit all sales tax collected on Course sales as and when due.

2.7. Maintenance Services.

- 2.7.1. Manager shall maintain the course, grounds and landscaping within the boundaries of the Course. Manager shall also maintain the parking area in a good and usable condition, including sanitation, pot hole repairs, and signage but excluding Capital Improvements. All costs for maintenance shall be an Expense of the Course.

- 2.7.2. As an Expense of the Course, Manager shall be responsible for the maintenance and repair, and for purchasing all supplies, parts, and equipment for all buildings, structures, fixtures, and Owner-owned equipment, which may now or hereafter exist on or in the Course, inclusive but not limited to the maintenance of the landscaping, irrigation system, maintenance buildings, grounds, cart paths, and course turf, excluding Capital Improvements.
- 2.7.3. Manager shall exercise general supervision over and shall be responsible for the proper use, care, and maintenance of all Owner-owned equipment used for Course operations, inclusive of but not limited to golf carts, mowers, utility vehicles, sand rakes, aerators, tractors, power equipment, etc. Manager shall keep a log of repairs to equipment, which shall be available for the Owner to review at any time. If equipment becomes inoperable, inefficient, or unsafe, the Manager will immediately provide Owner written notice. The decision to replace equipment is solely at the Owner's discretion. Equipment and parts damaged by the gross negligence of Manager or Manager's employees or agents shall be repaired or replaced by Manager at Manager's sole expense.
- 2.7.4. Manager shall be responsible for the maintenance and repair of the water well and sanitary sewer system. Any maintenance or repair cost in excess of \$5,000 in a fiscal year shall require the prior written approval of Owner's City Administrator. Costs of maintenance and repairs shall be an Expense of the Course.

2.8. General Operations.

- 2.8.1. Manager agrees to enforce all rules and regulations adopted by the Owner covering the conduct of the public and services offered in the use of the Course as it relates to the performance of services under this Agreement.
- 2.8.2. Owner, in consultation with Manager, shall determine and set the green fees, including golf membership fees Manager shall charge and shall provide a schedule of such fees in writing to Manager. Any changes to the fee schedule are subject to prior written approval of the Owner. All tournament fees, fees for rental of golf carts, driving range fees, golf clubs, and golf bags shall be set by Manager, and shall be comparative and competitive with other quality public golf courses in Grand Island, Nebraska. Manager shall honor all pre-existing, pre-paid golf memberships. At no time shall fees be greater than the Owner approved rates as established by resolution.
- 2.8.3. Manager shall coordinate with existing leagues and associations to host tournaments at the Course, and shall seek out new leagues, and associations in an effort to increase the number of tournaments scheduled at the Course. Manager

shall support the leagues, tournaments, and associations while maintaining a fair and equitable tee sheet. Manager shall consummate arrangements for tournaments with golf associations and leagues, as well as concessionaires, licensees, or other group event users of the Course.

2.8.4. Manager shall take all reasonable actions to protect the safety of all employees, customers, and Owner's representatives. Manager shall comply with all safety and environmental regulations of federal, state, and local governmental agencies, and applicable federal occupational, health, and safety laws and regulations. Manager shall correct any unsafe conditions to the Course as an Expense of the Course, or notify the Owner of any potentially unsafe conditions, as well as any potentially unsafe practices occurring thereon. Manager shall cooperate fully with the Owner in the investigation of any accidental injury or death occurring at the Course and shall submit within twenty-four (24) hours to the Owner an accident report.

2.8.5. Manager shall be responsible for securing necessary contracts or other appropriate agreements to acquire electricity, water, sewer, solid waste, and other utility services necessary for the normal operations of the Course. Furthermore, the Manager shall be responsible to consummate arrangements with concessionaires, licensees, etc. that may be associated with the Course. All leases, contracts, purchases, and other agreements relating to the operation and maintenance of the Course entered into during the Term shall be entered into by the Owner as the contracting party and managed by Manager.

2.9. Additional Duties and Responsibilities of Manager.

2.9.1. Manager shall not make substantial alterations, additions, changes, or revisions to the Course without prior written consent of the Owner.

2.9.2. Manager shall, as part of its services hereunder and without additional compensation, make its staff available to Owner upon request for consultation regarding the Course, including, but not limited to business operations, marketing and promotions, additional equipment, repairs, Capital Improvements or projects, which may include modifications to structures or the course.

2.9.3. Manager shall provide assistance and consulting services to the Owner in the transition of management and operations of the Course if a new operating entity (Manager) is selected or if the Owner assumes operations of the Course.

3. REVENUES; EXPENSES; RESERVES. During the Term of this Agreement or any renewal hereof, Manager will cause all Revenues and Approved Reserves to be deposited and held in

the Course Accounts (as hereafter defined) and will pay Expenses out of the Course Accounts.

- 3.1. Revenues. “Revenues” means all revenues and receipts of any nature derived directly or indirectly from the Course or from the use or operation thereof, including Operating Revenues and Other Revenues. “Operating Revenues” is defined as revenue from green fees; cart rentals; range fees; membership dues, fees and assessments (but excluding capital improvement fees); membership passes; food, beverage and merchandise sales; rebates; purchase discounts; rentals; and lesson fees (unless such fees are paid directly to the professional providing such lessons in accordance with the agreement between Manager and such professional). “Other Revenues” is defined as proceeds from the sale of assets; capital improvement fees; interest income; Advances (defined below); insurance proceeds; and any other revenue or receipts not included in Operating Revenues.
- 3.2. Expenses. “Expenses” means all expenditures or disbursements made or expenses incurred in connection with operation of or for the benefit of the Course, including Operating Expenses and Other Expenses. “Operating Expenses” is defined as payroll and all other employee-related expenses; taxes; governmental fees and charges; utilities; food, beverage and merchandise cost of goods; maintenance expenses; repair costs (excluding capital repairs); supplies; inventory; insurance premiums and deductibles; marketing and advertising materials and expenses; licenses and permits; dues and subscriptions; finance charges; operating leases; professional fees; vendor and independent contractor invoices; Management Fees (defined below); and Manager’s travel and other out-of-pocket expenses directly related to operation of the Course. “Other Expenses” is defined as debt payments (principal and interest); capital leases; financing or refinancing costs; capital expenditures (including Approved Capital Expenditures); and any other expenditures or disbursements not included in Operating Expenses. Expenses will not include salaries and other compensation of executive officers and corporate staff of the Manager or Manager’s company overhead.
- 3.3. Approved Capital Expenditures. “Approved Capital Expenditures” means all expenditures for equipment, furniture, fixtures, Course improvements, and other capital items approved by Owner, which approval may be included in an Annual Budget or other separate form of approval. In the event of an emergency, Manager is also authorized to make an otherwise unapproved capital expenditure in order to prevent loss or damage. Manager will notify Owner immediately of such expenditure.
- 3.4. Approved Reserves. “Approved Reserves” means the amount of cash approved by Owner to be held by Manager in the Course Accounts for future operation of the Course, but in no event will the amount be less than Fifty Thousand Dollars (\$50,000).

4. ADVANCES FROM OWNER. If, at any time prior to the effective date of termination or expiration of this Agreement, the Revenues from the operation of the Course are not sufficient to pay the Expenses as they become due, Owner must immediately advance to the Course Accounts the amount of cash necessary to meet such obligations (such amount being referred to as an "Advance"). Owner acknowledges that Manager will not be obligated to advance any of its own funds to, or for the account of, the Owner or incur any liability, unless the Owner has furnished Manager with funds necessary for the full discharge thereof.
5. ACCOUNTS. Manager will maintain one or more separate accounts in the name of Owner (collectively referred to as "Course Accounts") at one or more commercial banks. Owner and Manager agree that the City Finance Director or other Owner designee, as well as individuals designated by Manager and approved by Owner, will be signatories on the Course Accounts and that Owner will not change the signatories of the Course Accounts or close the Course Accounts without the prior written consent of Manager. All Revenues and Approved Reserves will be deposited by Manager and held in the Course Accounts, and Manager will pay Expenses from Course Accounts. Manager will account to Owner for Course Accounts in accordance with this Agreement. Manager will not commingle Revenues and Approved Reserves with other money or accounts, and will not take any money or property from the Course Accounts or from the Course except to pay Expenses as set forth in this Agreement. Manager will not purchase goods or services from an entity affiliated with Manager unless such purchase is on terms reasonably competitive with terms available from non-affiliated sources.
6. MANAGEMENT FEES. In exchange for services rendered by Manager under this Agreement, Manager will be paid from Course Accounts: (a) all Expenses paid by Manager from Manager's accounts and not Course Accounts in connection with the operation of the Course; and (b) a Base Management Fee. If, on any date, the Course Accounts contain insufficient funds to pay Manager the foregoing amounts owing, the Owner must immediately make an Advance to cover the shortfall. If Owner fails to make such Advance prior to the date any such amounts are owing to Manager, the amount owed to Manager will bear interest at the rate of one percent (1%) per month until paid in full.
 - 6.1. Base Management Fee. The "Base Management Fee" will be Six Thousand Dollars (\$6,000) per month (as adjusted annually, the "Minimum Base Fee"). Manager will be paid the Minimum Base Fee on the first day of each month of the Term and any renewal hereof. Beginning on January 1, 2022 and on January 1st of each year thereafter, the Minimum Base Fee will increase by three percent (3%) per year. On the first anniversary of the Effective Date and on each anniversary thereafter during the Term, the parties will calculate a variable rate equivalent to 10% of the monthly Operating Revenues ("Variable Base Fee") for the preceding twelve (12) months. If the Variable Base Fee for the preceding twelve (12) months is greater than the Minimum Base Fee over the same time period, Manager will be paid the difference within thirty (30) days.

If the Variable Base Fee for the preceding twelve (12) months is less than the Minimum Base Fee, Manager will not be entitled to any additional Base Management Fees for the preceding year.

7. ACCOUNTING. Manager will maintain books and records relating to the business activities of the Course in accordance with generally accepted accounting principles and separate from its other books and records. Manager will prepare an opening balance sheet listing assets and liabilities used or incurred in the operation of the Course. Thereafter, Manager will have monthly financial statements prepared which will include unaudited balance sheets and income statements (each month's records will be referred to separately as the "Monthly Financial Statements") prepared as if the operation of the Course is a business entity separate from Manager and Owner. Manager will deliver a copy of the preceding month's Monthly Financial Statements within thirty (30) days after the end of that month, except where circumstances beyond the reasonable control of Manager delay delivery of such statements. In addition, Manager will deliver to Owner, not later than March 1st of each calendar year during the Term of this Agreement or any renewal thereof, a copy of yearend financial statements for the Course for the preceding calendar year. At any time during the Term of this Agreement, upon two (2) business days advanced notice and during normal business hours of operation, and for twelve (12) months after the Term of this Agreement, Owner will be entitled to inspect the books and records of the Course, and Owner may conduct an audit of the Course, all Monthly Financial Statements and all annual financial statements, provided that any expense incurred by Owner in conducting an inspection or audit will be borne by Owner. The accounting services to be provided by Manager under this Agreement do not include preparation of state or federal income tax filings or audited financial statements, but Manager will provide the balance sheets, income statements and depreciation schedules necessary for a third party to prepare income tax filings. Further, Manager will prepare sales and use tax returns and personal property tax returns for the Course.

8. DEFAULT.

8.1. Events of Default. Any one or more of the following events will, unless cured within the specified cure period, constitute an event of default of this Agreement ("Default"):

8.1.1. Either party's failure to timely pay any sums payable pursuant to this Agreement when and as the same become due, including Owner's failure to timely make Advances as required by Section 4, which non-payment remains uncured for a period of five (5) days after written notice thereof from the other party to the defaulting party;

8.1.2. A discontinuance by either party of its business, filing of a bankruptcy petition, or any other action relating to the insolvency of either party; or

- 8.1.3. A material breach of any material term or provision of this Agreement by either party, which remains uncured sixty (60) days after written notice thereof from the other party to the defaulting party or such longer period of time as may be reasonably required to cure such breach, provided that the defaulting party promptly commences to remedy such breach within the sixty (60) day cure period and thereafter continues diligently to complete such cure.
- 8.2. Owner's Remedies. In the event of a Default by Manager, Owner may terminate this Agreement upon expiration of the specified cure period by delivering to Manager written notice of its election to terminate the Agreement, provided that Manager has not timely cured the Default. In such event, Owner will pay Manager all amounts owed to Manager prior to submitting written notification of termination.
- 8.3. Manager's Remedies. In the event of Default by Owner, Manager may terminate this Agreement upon expiration of the specified cure period by delivering to Owner written notice of its election to terminate the Agreement. In such event, Owner will pay to Manager due to Manager to the date of termination. In such event, Owner will pay to Manager an amount equal to the total unpaid Management Fees that Manager would have earned had the Agreement remained in effect until the end of the Term.
- 8.4. Remedies Not Exclusive. No remedy granted to Owner or Manager is intended to be exclusive of any other remedy provided herein or by law, but each will be cumulative and will be in addition to every other remedy given herein or existing at law or in equity, subject to Section 23 below.
9. TERMINATION OR EXPIRATION OF AGREEMENT. Upon termination or expiration of this Agreement, the parties will take the following actions no later than the effective date of such termination or expiration:
- 9.1. Transfer of Course and Property. Manager will vacate and surrender the Course to Owner and transfer to Owner possession of all property belonging to the Course or Owner, including, but not limited to, cash in the Course Accounts; accounts receivable and other receivables; inventories of merchandise, food, beverages and supplies; equipment, furniture and fixtures; prepaid accounts and deposits; contract rights; trade names; licenses and permits; and Course books and records (collectively, the "Property").
- 9.2. Liabilities to be Assumed. Owner will assume and agree in writing to indemnify Manager against all obligations and liabilities relating to the Course, other than contingent tort liabilities which result from the intentional wrongdoing or gross negligence of Manager. Liabilities which Owner assumes, or against which Owner must

indemnify Manager, will include all debts and other contractual obligations arising out of the operation of the Course.

- 9.3. Payment. All sums owed by either party to the other pursuant to this Agreement will be paid within thirty (30) days of the effective date of termination or expiration of this Agreement.
- 9.4. Employees. Unless specifically agreed to in writing by Manager, for a period of one (1) year after termination of this Agreement, Owner hereby agrees, warrants and represents that Owner will not employ any general manager, golf professional, golf course superintendent, or food and beverage manager who was employed by Manager as an employee of the Course at any time during the Term of this Agreement, unless such employee was a current employee of the Course immediately prior to the Effective Date.
- 9.5. Survivability. The provisions of this Section 9 will survive the termination or expiration of this Agreement.

10. INDEMNITY.

- 10.1. Obligations of the Course. All obligations and costs to defend all disputed claims arising out of or resulting from Manager's activities conducted in connection with or incidental to this Agreement will be paid as an Expense of the Course. Manager will keep Owner advised of any such matters.
- 10.2. Indemnification by Manager. Manager will indemnify, hold harmless and defend Owner, its members, managers, officers, directors, agents, authorized representatives and employees, from and against all liability for any and all claims, liens, suits, fines, losses, demands or actions for damages, injuries (including death) to persons, property damage (including loss of use), and expenses, including court costs and reasonable attorneys' fees and other reasonable costs, arising out of or resulting from the breach of any representation or warranty by Manager, or from Manager's intentional misconduct or gross negligence in operating the Course.
- 10.3. Indemnification by Owner. Owner will indemnify, hold harmless and defend Manager, its members, managers, officers, agents, authorized agents, and employees, from and against all liabilities for any and all claims, liens, suits, fines, losses, demands or actions for damages, injuries (including death) to persons, property damage (including loss of use), and expenses, including court costs and attorneys' and consultants' fees and other reasonable costs, arising out of, involving, or resulting from the operation of the Course by Manager (excluding intentional malfeasance or gross negligence by Manager), the breach of any representation or warranty by Owner, any act, omission or neglect of Owner, its agents, contractors, employees or invitees, or a Default by Owner,

or arising out of, involving, or resulting from all liabilities and obligations transferred, assumed or to be assumed by Owner in accordance with Section 9 of this Agreement.

10.4. Limitation of Liability. Notwithstanding anything contained herein to the contrary, the liability of Manager hereunder will be limited to the amount of Management Fees paid hereunder, and in no event will any other assets of Manager or any constituent member or other affiliate of Manager be subject to any claim arising out of or in connection with this Agreement.

10.5. Notice of Claims. Manager and Owner will provide each other with prompt written notice of any event covered by the indemnity provisions of this Agreement and in the event a claim or action is filed, each party may employ attorneys of its own choosing to appear and defend the claim or action on its behalf. Failure to provide such notice, however, will not limit any party's indemnity obligations hereunder.

11. INSURANCE. As an Expense of the Course, Manager will obtain insurance of the types and in the amounts set forth below from an underwriter(s) licensed to do business in the state in which the Course is located. Manager will furnish certificates of insurance to Owner evidencing the required insurance on or before the Effective Date or the Insurance Coverage Date (defined below), as applicable, and thereafter will furnish new certificates upon request.

11.1. Type and Amount of Insurance. The type and minimum amount of insurance to be obtained by Manager in the name of and/or on behalf of the Course will be:

11.1.1. Worker's Compensation in the minimum amount required by law and Employer's Liability with limits not less than \$100,000/\$500,000/\$100,000, with a waiver of subrogation in favor of Owner and the policy endorsed to name Owner as an alternate employer.

11.1.2. Commercial General Liability to include coverage for the following: (a) Premises/Operations; (b) Independent Contractors; (c) Personal Injury; (d) Liquor Liability; and (e) Products/Completed Operations. Such coverage must be maintained in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Manager will be named as an additional insured on a primary and non-contributory basis, and the policy will have a waiver of subrogation in favor of Manager.

11.1.3. Crime/Employee Dishonesty Insurance covering all employees and officers having access to money collected in an amount sufficient to protect against loss of the largest dollar amount in the control or possession of an employee at any given time, but in no event less than \$25,000 per occurrence.

11.1.4. Property Insurance on special form, replacement cost and agreed amount basis on all real and personal property and contractors and maintenance equipment. Such coverage will also include equipment breakdown, including spoilage.

11.1.5. Comprehensive Automobile Liability to include coverage for the following: (a) Owned/Leased Automobiles; (b) Non-owned Automobiles; and (c) Hired Cars. Such coverage must be maintained in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage, with Manager named as an additional insured.

11.1.6. Commercial Umbrella Liability with no less than \$5,000,000 limit.

11.1.7. Additional Insurance Requirements. With respect to the above-described insurance, the policies shall provide for thirty (30) days' written notice of any material change, termination or cancellation to Owner. Further, the policies procured in the name of and/or on behalf of the Course will provide primary and non-contributory coverage for all losses and damages covered thereby.

11.2. Insurance Coverage Date. Manager's obligation to procure the insurance coverages required by Sections 11.1.2., 11.1.4, 11.1.5. and 11.1.6. shall not become effective until the later of the following to occur: (i) 30 days following the Effective Date, or (ii) within 21 days following Manager's receipt from Owner of all information reasonably requested by Manager related to the Course's insurance coverage and loss history prior to the Effective Date (the "Insurance Coverage Date"). Prior to the Insurance Coverage Date, Owner will be responsible for providing the coverages required by Sections 11.1.2., 11.1.4., 11.1.5, and 11.1.6. and Manager shall have no obligation to ensure the adequacy of such coverage.

11.3. Covenant of Cooperation. Manager will provide Owner with prompt written notice of any material damage, loss or injuries suffered at the Course, significant complaints, whether written or otherwise, about the Course or its management, and actual or anticipated disputes with or claims by third parties, including, but not limited to, adjacent landowners. Manager further covenants to cooperate with Owner in resolving any such complaints, disputes or claims and Owner covenants to cooperate with Manager in resolving any such complaints, disputes or claims.

12. OWNER'S REPRESENTATIONS AND WARRANTIES. To induce Manager to enter into this Agreement, Owner makes the following representations and warranties to Manager:

12.1. Each of the Recitals set forth in this Agreement is true and correct.

- 12.2. Owner is the lessee the Course pursuant to a Lease Agreement with the Lessor Hall County Airport Authority.
- 12.3. Owner has power and authority and all legal rights to enter into and perform this Agreement. The individual executing this Agreement on behalf of Owner has the authority to do so and to so legally bind the Owner. This Agreement, when duly authorized, executed and delivered by the parties hereto, will create a valid and binding obligation on the part of Owner, enforceable against Owner in accordance with its terms.
- 12.4. Except as previously disclosed in writing to Manager, there are no actions, suits or proceedings pending or, to the knowledge of Owner, threatened against Owner or affecting Owner, the Course or any of Owner's assets, properties or rights, at law or in equity, by or before any court, arbitrator, administrative or governmental body or other person. Except as previously disclosed in writing to Manager, Owner is not in violation or default with respect to any applicable law or regulation which affects the Course or the condition (financial or otherwise) of the Owner and the Course fully complies with all applicable federal, state and local laws, ordinances, regulations, orders and directives.
- 12.5. Except as provided herein, Owner has not granted to any person or entity not a party to this Agreement any rights of use or occupancy of the Course, or any part or portion thereof, including but not limited to any leasehold rights or interests.
- 12.6. The Course is adequate and in sufficiently good condition for Manager to operate a golf course, pro shop, clubhouse and other services contemplated by the terms of this Agreement. The Course has all water and utility hook-ups necessary to operate the golf course, pro shop, clubhouse and other services contemplated by the terms of this Agreement.
13. MANAGER'S REPRESENTATIONS AND WARRANTIES. To induce Owner to enter into this Agreement, Manager makes the following representations and warranties to Owner:
- 13.1. Each of the Recitals set forth in this Agreement is true and correct.
- 13.2. Manager is a duly organized and validly existing limited liability company in good standing under the laws of the State of Nebraska and is duly qualified to do business in the state in which the Course is located.
- 13.3. Manager has the full power and authority and all legal rights to enter into and perform this Agreement and any other agreement referred to herein and contemplated by this Agreement. The individual executing this Agreement on behalf of Manager has the authority to do so and to so legally bind the Manager. This Agreement, when duly authorized, executed and delivered by the parties hereto, will create a valid and binding

obligation on the part of Manager, enforceable against Manager in accordance with its terms.

- 13.4. During the Term and any renewal thereof, Manager shall not own nor contract to manage or operate a public or daily fee golf course located within 30 miles of the Course.

14. ENVIRONMENTAL INDEMNITY. Owner agrees to indemnify, defend and hold harmless Manager from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Term of this Agreement or in connection with the presence or suspected presence of Hazardous Substance (as defined below) in or on the Course, unless the Hazardous Substance is present solely as the result of the gross negligence or willful misconduct of Manager or Manager's employees. Without limitation of the foregoing, this indemnification will include any and all costs incurred between investigation of the site through the time of completion of any clean-up, removal or restoration mandated by a federal, state or local agency or political subdivision, unless the Hazardous Substance is present solely as a result of the gross negligence or willful misconduct of Manager or Manager's employees. This indemnification will specifically include any and all costs due to Hazardous Substance which flows, diffuses, migrates or percolates into, onto or under the Course after the Agreement Term commences. As used herein, "Hazardous Substance" means any substance which is toxic, ignitable, reactive or corrosive and/or which is regulated by any local government, the state in which the Course is located or the United States Government. "Hazardous Substance" includes any and all material or substances which are defined as "hazardous waste," "extremely hazardous waste," or "hazardous substance," pursuant to state, federal or local governmental law and includes, but is not limited to, asbestos, radon, PCBs and petroleum and petroleum-containing products. This provision will survive the termination of this Agreement.
15. RELATIONSHIP OF THE PARTIES. The relationship between Owner and Manager will be and at all times remains that of owner and independent contractor, respectively. Neither Owner nor Manager will be construed or held to be a partner, limited partner, associate or agent of the other, or be joint venturers with one another. Neither Owner nor Manager will be authorized by the other to contract any debt, liability or obligation for or on behalf of the other except as specifically provided for herein.
16. NOTICES. Except as otherwise specifically provided herein, any and all notices required or permitted under this Agreement must be in writing and will be deemed delivered (i) upon personal delivery, (ii) upon mailing thereof when properly addressed and deposited in the United State Mail, first class postage prepaid, registered or certified mail, return receipt requested, (ii) when properly addressed upon deposit with Federal Express, Express Mail or other trackable overnight courier service, or (iv) when sent by email if receipt of the email

content can be confirmed, with time of receipt being the uniform time the email enters the information processing system that the recipient has designated or uses for the purpose of receiving email. Notices will be properly addressed if addressed to the parties as follows:

If to Owner: City of Grand Island
Attn: City Administrator
P.O. Box 1968
Grand Island, NE 68802

If to Manager: Landscapes Golf Management,
LLC
Attn: Tom Everett, Manager
1201 Aries Drive
Lincoln, NE 68512

The addresses for notices may be changed by written notice given to the other party as provided above.

17. GENERAL TERMS.

- 17.1. Further Acts. Each party to this Agreement agrees to execute and deliver all documents and instruments and to perform all further acts and to take any and all further steps that may be reasonably necessary to carry out the provisions of this Agreement and the transactions contemplated herein.
- 17.2. Section Headings. The various section, subsection, paragraph, subparagraph and clause headings in this Agreement are for convenience and reference only and in no way define, limit, extend or interpret the scope or interpretation of this Agreement or of any particular section, subsection, paragraph, subparagraph and clause contained herein.
- 17.3. Interpretation. Unless the context requires otherwise, words used in the singular number include the plural and vice-versa.
- 17.4. Amendments and Waivers. This Agreement can be modified only by written instrument executed by the parties hereto. Any waiver of any provision of this Agreement must be made in writing executed by the party who could demand fulfillment of such waived provision.
- 17.5. Dispute Resolution.
- 17.5.1. Owner and Manager are fully committed to working with each other so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Owner and Manager will first attempt to resolve such disputes or

disagreements through discussions between senior representatives of Owner and Manager. Upon the request of either party, such representatives will meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the senior representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

17.5.2. If a meeting between the senior representatives does not result in a resolution satisfactory to both parties, Owner and Manager agree that the parties will attempt to resolve their dispute through use of a mediator. If the parties are unable to successfully resolve their dispute through mediation or cannot agree upon a mediator then either party may commence an action in the Nebraska state courts.

- 17.6. Waiver of Consequential Damages. Notwithstanding anything herein to the contrary, neither Owner nor Manager will be liable to the other for any special, consequential or exemplary damages or losses of any kind, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including, but not limited to, losses of use, profits, business, reputation, or financing.
- 17.7. Assignment. Neither party can assign this Agreement or its rights, duties and obligations hereunder without the prior written consent of the other party, which consent must not be unreasonably withheld.
- 17.8. Successors and Assigns. This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective permitted successors and assigns.
- 17.9. Governing Law. This Agreement will be construed under and in accordance with the laws of the State of Nebraska.
- 17.10. Counterparts; Electronic Signatures. This Agreement and all amendments and supplements to it may be executed by the parties in separate counterparts and by facsimile transmission or electronic transmission in PDF format, each of which when so executed and delivered shall be an original, and all such counterparts and facsimile or electronic copies shall together constitute one and the same instrument.
- 17.11. Severability. Should one or more of the provisions of this Agreement be determined to be illegal or unenforceable, the other provisions nonetheless will remain in full force and effect. The illegal or unenforceable provision or provisions will be deemed amended to conform to applicable laws so as to be valid and enforceable if such an amendment would not materially alter the intention of the parties.

- 17.12. Entire Agreement. This Agreement (together with any attached exhibits) constitutes the entire agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior agreements, arrangements, understandings, restrictions, representations or warranties, whether oral or written, between the parties relating to the subject matter of this Agreement.
- 17.13. Outside Businesses. Nothing contained in this Agreement will be construed to restrict or prevent, in any manner, any party or any party's affiliates, parent companies, or representatives or principals from engaging in any other businesses or investments, nor will Owner or Manager have any right to share or participate in any such other businesses or investments.
- 17.14. Approvals. Any consent or approval referred to herein (by whatever words used) of either party must not be unreasonably withheld, delayed or conditioned, and neither party may seek or obtain any payment as a condition therefor. In the event that either party refuses to give its consent or approval to any request by the other, such refusing party must indicate by written notice to the other the reason for such refusal.
- 17.15. No Third-Party Beneficiaries. Nothing herein contained will be deemed to establish any rights of third parties against the parties hereto, it being the intent that the rights and obligations set forth herein are those of the parties hereto alone, with no third party beneficiary rights intended.
- 17.16. Survival. All covenants, agreements, representations, and warranties made herein will survive the execution and delivery of (i) this Agreement, and (ii) all other documents and instruments to be executed and delivered in accordance herewith, and will continue in full force and effect during the Term of this Agreement.
- 17.17. Force Majeure. The provisions of this Section 17.17. will be applicable if there occurs during the Term any (i) strikes, lockouts, or labor disputes, (ii) inability to obtain materials or reasonable substitutes therefore, (iii) acts of God, governmental restrictions, regulations, or controls, enemy or hostile governmental action, civil commotion, fire, or other casualty, or (iv) other conditions similar to those enumerated in this section beyond the reasonable control of the party obligated to perform. If either party, as a result of any of the above-described events, fails punctually to perform any obligation on its part to be performed under this Agreement (an "Unavoidable Delay"), then, upon written notice to the other, within thirty (30) days of such Unavoidable Delay, such failure will be excused and not be a breach of this Agreement by the party claiming the Unavoidable Delay, but only to the extent occasioned by such Unavoidable Delay. If any right or option of either party to take any action under or with respect to the Term is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time or such named date will be deemed to

be extended or delayed, as the case may be, upon written notice, as provided above, for a time equal to the period of the Unavoidable Delay. Notwithstanding anything contained herein to the contrary, the provisions of this section will not be applicable to either party's obligation to pay any sums, monies, costs, charges, or expenses required to be paid pursuant to the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date set forth above.

City of Grand Island, a Municipal Corporation and Political Subdivision of the State of Nebraska

By: Roger G. Steele 1/8/2021
Roger G. Steele, Mayor

[Attest]
RaNaee Edwards
RaNaee Edwards, City Clerk

LANDSCAPES GOLF MANAGEMENT,
LLC, a Nebraska limited liability company

By: Tom Everett
Tom Everett, Manager

Approved by Stacy Nonhof
Stacy Nonhof
Interim City Attorney

RESOLUTION 2022-60

WHEREAS, on December 8, 2020, by Resolution 2020-314, the City of Grand Island approved a contract with Landscapes Unlimited to manage the day to day operations of the JackRabbit Run Municipal Golf Course; and

WHEREAS, Landscapes Golf Management has requested \$85,000 for operating JackRabbit Run Municipal Golf Course; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the \$85,000 funding request by Landscapes Golf Management is hereby approved.

BE IT FURTHER RESOLVED, that the mayor is hereby authorized and directed to execute such agreements on behalf of the City Of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2022

Roger Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 4, 2022	☐ City Attorney