

BILL NO. 2024-048

ORDINANCE NO. 8671

A SPECIAL ORDINANCE OF THE CITY OF NEVADA, MISSOURI, APPROVING AND AUTHORIZING THE EXECUTION OF A CONTRACT BETWEEN THE CITY OF NEVADA AND MAXIM GOLF SOLUTIONS, LLC OF HARTSBURG, MISSOURI

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEVADA, MISSOURI, THAT:

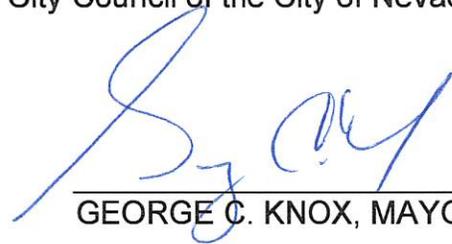
Section 1. The agreement attached hereto as Exhibit "A" and incorporated herein by reference is approved.

Section 2. The City Manager or his designee is hereby authorized and directed to execute said agreement on behalf of the City of Nevada, Missouri, and to affix the municipal seal thereto and to attest to the same.

Section 3. This ordinance shall be in full force and effect from and after its final passage.

PASSED, APPROVED AND ADOPTED, by the City Council of the City of Nevada, Missouri, this 15th day of October 2024.





GEORGE C. KNOX, MAYOR

ATTEST:



CYNTHIA DYE, CITY CLERK

AGENDA ITEM
October 1, 2023

Subject: Agreement for Management Services for the Nevada Municipal Golf Course

Department: Parks Department

Department Notes:

I am recommending that the City move forward with renewing the agreement with Maxim to operate the Frank E. Peters Municipal Golf Course. For budgetary purposes Richard also needs to know how the course will be operated next year.

There is no doubt in my mind that having Maxim operate the course has been a significant improvement over the City's operation of the facility. I applaud Richard's initiative to move in this direction a couple of years ago. While not being critical of anything that was done in the past, we have had significant positive feedback from the people who play the course about Maxim's performance in improving the course during the two years of their agreement. The condition of the greens, tee boxes and fairways have all improved significantly under Maxim's operation. The course finances have also improved during this time, as the City's operating losses have been reduced from approximately \$204,000 in 2022 to approximately \$98,000 through nine months of the current fiscal year--Richard anticipates another \$25,000 to \$35,000 in expenses for the remainder of the year. Rounds of play is another barometer that has also increased significantly, from 9,509 in 2022 to 11,782 YTD this year--a 24% increase with three months remaining. Richard also works closely with Maxim and they have been responsive in addressing concerns and providing information. Maxim operates nine other city courses in the area, and Richard said these other entities also appear to be satisfied clients.

Maxim has proposed a 5-year agreement after the initial two-year time frame, and the other cities also have 5-year agreements.

I appreciate the City's reluctance to look at longer-term contracts, but in this case I also understand Maxim's need to have a longer-term commitment from the City for their fiscal planning. Richard said Maxim has provided him with the financial information identified in the contract in a timely manner. The annual costs for each of the five years is also identified in the contract. Cancellation provisions are also included.

The proposed contract is attached.

Richard will have someone from Maxim attend the October 1 meeting to make some comments and answer questions.

Of course not all municipal conversions to a private operation are successful, but the first two years of this one have certainly been encouraging.

PERSONAL SERVICES AGREEMENT

For the Management of The Frank E. Peters Golf Course

This PERSONAL SERVICES AGREEMENT (the "Agreement") is made and entered into as of this 1st day of January, 2025, by and between the City of Nevada, MO ("Owner"), and Maxim Golf, LLC, a Missouri limited liability company in good standing, LCI 751127, ("Maxim Golf" or "Maxim").

Recitals

A. Owner desires to promote and provide for the management of Frank E. Peters Golf Course, i.e. the golf course, Owner's golf carts and assets supporting the same, the clubhouse, the pro shop, the maintenance building, the driving range and appurtenances (collectively referred to as the "Facility Tendered"). Other property adjacent to the facilities listed above are retained by the city for sole use of the city, are not tendered for management of Maxim Golf and the city retains the right of reasonable access to assets and areas not tendered across customarily used trails, roads, paths and/or reasonable access routes to utilize the same for any lawful purpose. While not needed for golf course facility tendered maintenance city equipment tendered may be temporarily used by city but returned in good condition with similar fuel.

B. Maxim Golf is a professional golf course management company whose principals have experience and expertise related to golf course management and promotion.

C. Owner desires to retain Maxim Golf to manage and operate the Facility on behalf of Owner pursuant to the terms and conditions of this Agreement.

Agreement

The parties agree as follows:

1. **TERM OF AGREEMENT.** The term of this Agreement (the 'base agreement') shall begin on 1st day of January 2025 (the "Start Date") and shall end at 11:59 p.m. on December 31, 2029.

In the event that the Owner shall, in its sole and exclusive discretion, determine not to make an appropriation of funds necessary for this Agreement, or a any subsequent proposed agreement, then this Agreement shall terminate and be null and void as of the last day of the fiscal year for which the golf course operation was funded.

In the event Owner fails to approve appropriation of funds provided for in this Agreement for any year, Owner will pay Maxim Golf the applicable Monthly Management Fee for six months thereafter, provided that such six-month period remains within the term of this Agreement. In the event that the Owner shall enter into a written contract to sell the real estate upon which the Golf Course Facilities are located, Owners shall within 7 days of execution of such a contract give Maxim Golf notice of the same and the intended date of Closing and this and this Agreement shall terminate upon the Closing of the Sale. In this event Owner will pay Maxim Golf the applicable Monthly Management Fee for 3 months thereafter plus any liability for fees earned for services performed prior to termination.

In the event that a determination is made by the Owner to discontinue its ownership of the Facility, Owner agrees that it will consider sale of the Facility to Maxim Golf among its options. The preceding sentence shall not be

construed so as to create a right of first refusal or an option to purchase. Maxim Golf LLC can make a reasonable proposal to owner for the purchase of the Facility at any time.

2. SERVICES TO BE PERFORMED BY MAXIM GOLF. During the term of this Agreement, Maxim Golf shall operate and manage the Facility. The operation of the facility includes, but not be limited to, the collection and disbursement of all funds, the employment (Maxim Golf LLC, is to be the sole and only employer) of sufficient all persons needed to operate and care for the facility, the promotion and management of the golf course, the purchase and sale of food, beverages, merchandise, supplies and services, the purchase and maintenance of insurance coverage for its operations and equipment, the handling of disputes with third parties, the collection and payment of all appropriate taxes, the securing of all appropriate licenses, permits and approvals and the performance of all other day-to-day activities relative to the Facility. With respect to the operation of the Facility tendered, the parties hereto agree as follows:

a. Owner Authorization. Owner hereby grants and delegates to Maxim Golf the authority and the responsibility necessary to permit Maxim Golf to perform its duties under this Agreement as an independent contractor and agrees to take such additional steps as are necessary to evidence such delegation and authorization as are reasonably requested by Maxim Golf. Owner hereby grants to Maxim Golf the exclusive right to manage the tendered Facility according to the terms of this Agreement for the period specified above.

b. Major Activities and Decisions. From time to time, Maxim Golf shall submit to Owner or Owner's representative(s) for approval, proposals for major activities, membership or annual pass pricing, cart storage and trail fees, improvements or events, including, but not limited to, capital improvements and expenditures and the Proposed Annual Budgets (as defined in subparagraph 2(d)_below). Maxim Golf shall secure Owner's prior approval of all such major proposals. Maxim Golf shall, to the best of its ability, operate the Facility in accordance with the major policy decisions approved by Owner.

c. Operational Guidelines. Maxim Golf shall develop a set of written guidelines ("Operational Guidelines") for the Facility. The Operational Guidelines shall include information necessary for the operation of the Facility, including, but not limited to, operation and maintenance of the golf course, the maintenance facility, the clubhouse, the pro shop, the carts, and other operations of the Facility, the hours of operation and other policies relating to the operation of the Facility. Upon development of the Operational Guidelines, same shall be submitted to Owner for approval and shall become effective only upon approval by Owner, which approval shall not be unreasonably withheld or delayed. The party's local chief executive officers will meet and confer as to needed amendments and refinements of the guidelines promptly at the request of either party and the same will be expressed in writing to become effective on approval of the governing body of each entity.

d. Budget. Maxim Golf shall submit a proposed operating budget for the ensuing year (the "Proposed Annual Budget"). The Proposed Annual Budget shall specify the amount of working capital believed to be required to continue operations of the Facility for the next calendar year. Maxim will consider all major policy decisions, specify all anticipated expenses required to maintain a reasonable level of equipment, supplies and inventory and pay all projected expenses and to acquire and maintain any long-term capital improvements and equipment. Owner council will approve or reject the Proposed new Budget by December 1. If the parties are not in agreement, they agree to meet and confer promptly to the end that any final proposal may be submitted for Council approval by December 15. The Proposed Annual Budget, once approved by Owner, shall be referred to as the Annual Budget for (naming the applicable year). In the event that the Owner and Maxim Golf are unable to reach agreement regarding the Budget, then either party may notify the other of their intent to terminate and this Agreement shall

terminate on the last day of the term for which there was a budget approved by Owner. Negotiation will be by a Representative appointed by Maxim and the City Manager or his nominee.

e. Promotion of Golf Activities. Maxim Golf shall coordinate with and direct to Owner all work done in the promotion, advertisement and public relations with respect to the Facility. Maxim Golf shall coordinate the creation or modification of graphics, logos and other visual materials for letterheads, envelopes, temporary and permanent signs, brochures, information profiles, progress reports, press releases, digital media, website, and bulletins. Maxim Golf will use reasonable efforts (as limited by Annual Budgets) to assure that the Facility will be favorably presented in print and communications media. All materials or items developed pursuant to this paragraph shall be the exclusive property of Owner and shall be shown to the agent designated by Owner prior to dissemination.

f. Facility Personnel. Maxim Golf shall hire Facility staff, including all on-site management personnel, golf professional staff, assistant golf professional staff, golf course superintendents, food and beverage staff, house and grounds maintenance personnel, janitorial staff, and others deemed by Maxim Golf to be appropriate for the efficient operation of the Facility all to the extent authorized by the Budget for the Facility as approved by Owner; provided, however, that Owner shall have the right to approve the selection or removal of the golf course head professional, general manager and golf course superintendent, such approval not to be unreasonably withheld or delayed. Maxim Golf will provide reasonable safety training - Owner shall have the right to approve the selection or require the removal of the golf course head professional, the general manager and the golf course superintendent. Maxim will reasonably cooperate. All Facility personnel are to be employees of Maxim Golf, llc, and shall be hired by, controlled by, and be exclusively managed by and answerable to Maxim Golf, except that Maxim Golf may, in its discretion, elect to have some routine functions, such as janitorial functions, performed by independent contractors rather than employees. Maxim Golf will not prevent employment of its local personnel by Owner and will cooperate reasonably in any such effort. Before termination of the agreement, Owner shall have the right to negotiate for and offer employment to any employee of the Facility. During the term of this Agreement, Maxim Golf shall not remove or relocate the General Manager and/or the golf course superintendent of the Facility to another Facility managed by Maxim Golf without obtaining prior Owner consent.

g. Corporate Personnel Visitation and Inordinate Time Requirements. To the extent it is necessary for Maxim Golf extended service personnel, or corporate personnel to assist in the daily management of the facility, Maxim Golf shall be reimbursed up to \$600.00 per month for the reimbursement of such additional management needs. Maxim Golf shall bill these charges on an hourly rate of \$50.00 per hour plus travel expenses associated therewith for personnel with a maximum expense not to exceed \$600.00 per month for any given month. Maxim Golf shall have the right to bill the property directly for such expenses and all such expenses shall be reported in the monthly profit and loss statements as an operational expense of the property.

h. Food, Beverage and Merchandise. To the extent permitted by law, Owner shall permit the sale of food and beverages at the Facility. In addition, Maxim Golf shall purchase and sell such other food, beverage and merchandise at the Facility for such prices as Maxim Golf deems prudent.

3. REVENUES EXPENSES APPROVED CAPITAL EXPENDITURES & APPROVED RESERVES.

a. Revenues. "Revenues" shall mean all cash receipts of any kind from operation of the Facility, including, but not limited to, membership fees, green fees, cart rentals, range fees, proceeds from the sale of food, beverage and merchandise, rebates, rentals, interest income, and insurance proceeds designated for revenue losses.

Revenues shall not include fees collected for golf lessons if the fees are paid directly to the professional providing such lessons. Owner also has the right to conduct lessons, schools and other activities on the Facility and any fees paid by Owner to Maxim Golf to conduct such lessons, schools, or other activities under an agreement with Maxim Golf shall be included as "Revenues".

b. Expenses. "Expenses" shall mean all necessary, reasonable and ordinary cash expenditures authorized by the Annual Budget established by Owner and Maxim Golf and incurred in connection with the Facility, including, but not limited to:

- i. Payroll, payroll taxes, employee benefits (including, without limitation, insurance, health and welfare benefits) and unemployment insurance and taxes, and sales, rental and other taxes and governmental fees and charges assessed against the Facility or its operation;
- ii. Payments for food, beverage, merchandise and supplies;
- iii. Insurance costs for the insurance coverage specified in paragraph 13 hereof and approved in the Annual Budget for the Facility — if said insurance provides coverage for other facilities the insurance expense to be billed in annual budget will be reasonably prorated between the operations of Maxim Golf based on the budgets of the various additional facilities. By way of example, if Nevada (course #1) budget is 100, course #2 is 200 and course #3 is 200, Nevada will be allocated 20% of the insurance cost attributable to Nevada operation and #2 and #32 will each assume 40% of said policy premium.
- iv. Payments for advertising and promotion of the Facility;
- v. Acquisition costs, lease payments and debt service payments for the Facility, equipment, furniture, fixtures and other capital items as included in the Annual Budget;
- vi. License fees, dues and subscriptions;
- vii. Expenses of hiring and training personnel, except expenses of training Maxim Golf management personnel; The employees of the Owner's facility will not be utilized or "loaned to" other facilities without written consent by Owner
- viii. Costs of maintaining and improving the golf course, pro shop and other Facility assets;
- ix. Fees of outside consultants and third-party contractors retained by Maxim Golf in connection with the operation of the Facility, such as accountants, and marketing public relations consultants, if approved

in advance by Owner or Owner's representative. Each party will bear the costs of its own attorneys and tax advisors.

- x. All Management Fees (as defined in paragraph Z, below) paid to Maxim Golf in accordance with this Agreement, including the Fixed Management Fee;
- xi. Expenses associated with an annual audit of the records of Maxim Golf's accountant will be paid directly by the Owner — copies of reports will be provided to Maxim Golf. Complete financials and verification of deposits and expenditures will be provided to Owner within 15 days of the end of each month and within 30 days of the 12th month of any year's term.
- xii. Expenses not specifically authorized by the Annual Budget can only be approved by city manager in writing who will seek council resolution approving the same.

c. Approved Capital Expenditures. "Approved Capital Expenditures" shall mean all cash payments for equipment, furniture, fixtures, Facility improvements or other capital items approved by Owner, which approval may be included in an Annual Budget or independently agreed to in a written memorandum approved by the city manager.

d. Approved Reserves. "Approved Reserves" shall mean the amount of cash approved by Owner to be held by Maxim Golf for future operation of the Facility.

4. ADVANCES FROM OWNER. If at any time the Net Cash Flow from the operation of the Facility is not sufficient to meet the Approved Capital Expenditures or Expenses as they become due, Owner shall advance, unless such advance is prohibited by law, to Maxim Golf the amount of cash necessary to meet such obligations (such amount being referred to as an "Advance").

5a. ACCOUNTS. All Revenues, Advances and Approved Reserves shall be held by Maxim Golf for Owner, in an account designated as such and sufficient to protect Owner's interest in such funds, subject to such funds being disbursed for Expenses and Approved Capital Expenditures. Maxim Golf shall maintain one or more separate accounts so designated (collectively referred to as "Facility Accounts"), which shall, whenever possible, include interest bearing accounts, at one or more commercial banks in Missouri, each approved in advance by Owner, for the receipt of Revenues, Advances and Approved Reserves and for the payment of Approved Capital Expenditures Expenses and Approved Reserves. Maxim Golf agrees that Owner shall have two designated signatories on such accounts (who will provide Maxim Golf reasonable notice of and account for any transactions conducted by them with respect to the accounts) and that Owner may have access to such accounts via the internet or other methods so that Owner may, without notice, review transaction activity on the accounts. Any check or other order to pay, written for more than \$ 10,000 (Ten Thousand Dollars) will require a third signature by one of the Owner's designated signers. Maxim Golf shall account to Owner and pay all payments due to Owner from Facility Accounts in accordance with this Agreement. Maxim Golf shall not commingle Revenues, Advances and Approved Reserves with other money or accounts, and shall not take any money or property from the Facility Accounts or from the Facility, except to make payments for Approved Capital Expenditures and Expenses as set

forth in this Agreement. Maxim Golf shall not purchase goods or services from an entity affiliated with Maxim Golf unless such purchase is on terms reasonably competitive with terms available from non-affiliated sources. Maxim Golf shall comply with requirements, if any, which may become applicable to it regarding purchase of equipment, materials and services.

5b. Bonds. Both parties will require that any person authorized by said party to have access to said accounts will be bonded in an amount reasonably approximating the sums under said authorized employee will have access to at any one time. Position bonds are to be preferred to the end that changes in personnel may simply be accommodated as to bonding.

6. EMPLOYEES. All employees of the Facility shall be employees of Maxim Golf.

7. MANAGEMENT FEES. In exchange for services rendered by Maxim Golf under this Agreement, Maxim Golf shall be (1) reimbursed from Facility Account for all direct and indirect authorized expenses reasonably paid and connected with the operation of the Facility, (2) paid from Facility Account a Fixed Management Fee as described in subparagraph 7.a. hereinafter, and (3) subject to the terms and conditions of subparagraph 7.b. below, paid from Facility Accounts a Contingent Management Fee, if earned. If on any date when any of the foregoing amounts is owing to Maxim Golf the Facility Accounts contain insufficient funds to pay Maxim Golf the amounts owing, Owner, unless prohibited by law or regulation or account principals, shall immediately make a disbursement to Maxim Golf to cover the shortfall.

a. Fixed Management Fee. A "Fixed Management Fee" shall be paid to Maxim Golf for each month this Agreement is in effect in the applicable amount described in subparagraph 7.c. (Schedule of Fixed and Contingent Management Fees). For any partial month, the Fixed Management Fee shall be prorated. The Fixed Management Fee shall be due and payable on the first day of each month for the upcoming month of services.

b. Contingent Management Fee. A "Contingent Management Fee" shall accrue and be payable to Maxim Golf for distribution in toto to its Nevada employees at the end of the first (1st) month following a year in which Revenues equal or exceed the Revenues Base set forth in subparagraph 7.c. (Schedule of Fixed and Contingent Management Fees), provided, however, that no such Fee shall be due and owing unless and until the Owner has received the audited financial statements referenced in paragraph 9 hereof and as hereinafter provided. Within thirty (30) days of receipt of the unaudited annual financial statements for the Facility that are in form and substance satisfactory to the Owner, said Owner will make a provisional payment of the Contingent Management Fee equal to seventy five percent (75%) of the Contingent Management Fee as calculated based upon the unaudited financial statements. Upon receipt of the audited financial statements for the Facility, the Contingent Management Fee will be recalculated based upon the audited financial statements, and the balance paid or refunded as the case may be. If the Owner does not exercise its option to conduct an audit of the Facility annual financial statements, then the balance of the Contingent Management Fee shall be paid on or before September 1 of the following year. The amount of the Contingent Management Fee shall be determined by multiplying the Contingent Management Fee Percent set forth in subparagraph 7.c. by the amount by which Revenues for such year exceeds the Revenues Base for the applicable year as set for the in subparagraph 7.c. For purposes of determining the Contingent Management Fee, "Revenues" shall mean the total sum of all Revenues generated by the operation of the Facility as specifically defined by Section 3(a). However, Revenue for purposes of this paragraph shall not include interest, proceeds from the sale of major assets, insurance proceeds, developer subsidies, advances and draws on letters of credit or other revenues not attributable to the operation of the Facility.

c. Schedule of Fixed and Contingent Management Fees.

| Year | Fixed Monthly Fee | Contingent Management Fee Percentage | Revenues Base |
|------|-------------------|--------------------------------------|---------------|
| 2025 | \$3,600 | 10% | \$355,000 |
| 2026 | \$3,750 | 10% | \$365,000 |
| 2027 | \$3,900 | 10% | \$375,000 |
| 2028 | \$4,050 | 10% | \$385,000 |
| 2029 | \$4,200 | 10% | \$395,000 |

Example: If Revenues for Owner equals \$370,000 in Year 2025, then the Contingent Management Fee would be computed as follows: (Example Revenue Base) \$ 355,000 (\$ 15,000 times 10% or a contingent management fee of \$ 1,500).

If additional one-year terms are hereafter agreed to and the additional Agreement is terminated prior to the end of any year, for purposes of determining the Contingent Management Fee the dollar amount of Revenue Base for that year set forth above shall be adjusted downward, based upon reasonable proration, as determined by utilizing the monthly average of the preceding two years. If Revenues for any year are less than Adjusted Revenues Base, Owner may, in Owner's sole discretion, consent to the payment of all or any portion of the Contingent Management Fee for that period.

8. ACCOUNTING. Maxim Golf shall maintain books and records relating to the business activities of the Facility separate from its other books and records. Maxim Golf shall prepare an opening balance sheet listing assets and liabilities used or incurred in the operation of the Facility. The initial balance sheet will be subject to approval of the City Treasurer. Thereafter, Maxim Golf shall have monthly financial statements prepared which shall include unaudited balance sheets and income statements (each month's records shall be referred to separately as the "Monthly Financial Statements") prepared as if the operation of the Facility is a business entity separate from Maxim Golf and Owner. Maxim Golf shall deliver a copy of each month's Monthly Financial Statements by the twentieth day of the following month except where circumstances beyond the reasonable control of Maxim Golf delay delivery of such statements. Owner agrees that if the deadline set forth in the preceding sentence is impractical or impossible for Maxim Golf to meet, Owner shall modify such requirements. In addition, Maxim Golf shall deliver to Owner, not later than January 30th of each year during the term of this Agreement, a copy of year-end financial statements for the Facility for the preceding year prepared in accordance with General Accepted Accounting Principles. At any time during the term of this Agreement and for three (3) years thereafter, Owner shall be entitled to inspect and make copies of the books and records of the Facility maintained by Maxim Golf, and Owner may conduct a separate audit of the Facility and/or include the Facility within the audit of Owner conducted by Owners independent auditors, all Monthly Financial Statements and all annual financial statements. As a Facility Expense, Maxim Golf shall comply with Owner's audit recommendations. Additionally, at the request of the Owner, Maxim Golf will provide any and all supporting documentation that substantiates the monthly/annual Financial Statements.

9. OWNER'S OPTION TO TERMINATE. At any time during the term of this Agreement, Owner shall have the option of terminating this Agreement upon the occurrence of an event of Default, as defined in subparagraph 9.a., below. At any time during this Agreement, Maxim Golf shall have the option of terminating this Agreement for cause upon the occurrence of a material breach by Owner of any material term or provision of

this Agreement, which breach remains uncured following notice and opportunity to cure as provided elsewhere in this Agreement.

a. Events of Default. Any one or more of the following events shall, unless cured in accordance with paragraph 10.b below, constitute a default of this Agreement by Maxim Golf ("Default"):

- i. Any breach by Maxim Golf or Owner of the obligations under the terms of paragraphs 2 through 5 of this Agreement;
- ii. A discontinuance by Maxim Golf or Owner of its business or abandonment of its activities at the Facility;
- iii. A material breach by Maxim Golf or Owner of any material term or provision of this Agreement; or
- iv. The filing of a voluntary or involuntary action by Maxim Golf, Owner or its creditors seeking to declare it as bankrupt.

b. Cure. Maxim Golf shall have thirty (30) days after receipt of written notice from Owner specifying the nature of its Default under paragraph 9.a, above within which to cure such Default, or such longer period of time as may be reasonably required to cure such Default, provided that Maxim Golf promptly commences the remedying of such Default and is continuing diligently to complete such cure. Owner shall have thirty (30) days after receipt of written notice from Maxim Golf specifying the nature of its Default under paragraph 10a, above within which to cure such Default, or such longer period of time as may be reasonably required to cure such Default, provided that Owner promptly commences the remedying of such Default and is continuing diligently to complete such cure, and provided further that Maxim Golf will not discontinue performing services under this Agreement in the event that Owner disputes, in good faith, that it is in default until the parties have resolved the dispute.

Making available golfing to the public is an expensive endeavor for a municipality. Should the city council of the city of Nevada determine by unanimous vote that the city for financial reasons occasioned by compelling circumstances or emergency must shut down the course, it will give Maxim 60 days notice and may terminate this agreement without the consent of Maxim. If the city chooses to exercise this option, Owner shall pay Maxim Golf 3 month's of the Fixed Management Fee after closing of the golf course.

c. Exercise of Termination Option. In the event of a Default, the Owner may terminate this Agreement upon expiration of the cure period described in subparagraph 9.b above by giving Maxim Golf written notice of its election to terminate this Agreement, provided that Maxim Golf has not timely cured the Default. Should Termination Option be exercised, Owner would pay to Maxim Golf the Management Fee and Contingent Fee through the date of termination and reimburse Maxim Golf for all expenses authorized under the terms of this Agreement incurred through the date of termination. For purposes of this paragraph, the date of termination is the date specified by Owner in its notice to Maxim Golf. In the event of a Default by Owner, Maxim Golf may terminate this Agreement upon expiration of the cure period described in subparagraph 10.b above by giving Owner written notice of its election to terminate this Agreement, provided that Owner has not timely cured the Default, or is not diligently attempting to cure said default.

10. OPTION OF EARLY TERMINATION. Owner shall have the option to terminate this Agreement if any of the following occur without Owner approval: (1) Maxim Golf or substantially all of its assets are sold without Owner's prior consent; (2) Maxim Golfs management team or executive officers significantly change;

(3) there is a change in control of Maxim Golf or Owner finds reasonable evidence of fraud or defalcation of its funds or assets by employees or agents of Maxim Golf (4) Maxim Golf managing member declines to reasonably promptly meet and confer to address issues of concern with Owner's representative. Owner may exercise the option for a period of six (6) months after advising Maxim that termination is being considered. Unless otherwise agreed by the parties, the effective date of termination shall be thirty (30) days from the date Owner gives notice to Maxim Golf except in the event of for evidence of theft or defalcation, in which Owner's Notice and termination may be immediate. Early Termination shall not absolve the parties from any obligations of accounting and reimbursements for operations occurring prior to termination.

11. TRANSFER UPON TERMINATION. Upon termination of this Agreement, for any reason, Maxim Golf shall immediately transfer and assign to Owner any and all interest of Maxim Golf in the Facility, including the assets set forth in subparagraph 11.a. below, and Owner shall assume and agree in writing to indemnify Maxim Golf against all liabilities set forth in subparagraph 12.b. below, and any existing obligations and liabilities relating to the Facility authorized by the Annual Budget or approved by Owner. However, Owner shall have no obligation to indemnify Maxim Golf for tort liabilities or other claims against Maxim Golf that result from the negligence, intentional malfeasance, gross negligence or other misconduct of Maxim Golf or its agents.

a. Assets to be Transferred. Assets to be transferred and assigned to Owner shall include, but not be limited to, all of Maxim Golf's right, title and interest in and to any of the following arising out of activities of the Facility or purchased by Maxim Golf from Advances from Owner or Revenues of the Facility (other than insurance proceeds relating to liabilities not required to be assumed by Owner, which proceeds will be assigned by Owner to Maxim Golf):

- i. Cash in all Facility Accounts which may be subject to freeze by owner pending transfer; provided that Owner agrees to pay all outstanding invoices of approved purchases as provided by the Approved Budget and this Agreement.
- ii. Accounts receivable which will be promptly on request revealed;
- iii. Other receivables. which will be promptly on request revealed;
- iv. Inventories of merchandise, food, beverages and supplies; which will be inventoried at Owner's pleasure before or after notice of termination;
- v. All equipment, furniture and fixtures;
- vi. Prepaid accounts and deposits;
- vii. Contract rights;
- viii. Trade names;
- ix. Books and records relating to the Facility; which are subject to inspection by Owner at any time, before or after notice of termination.

x. Goodwill; and

xi. Operational guidelines and procedures,

b. Liabilities to be Assumed. Owner is to assume all liabilities and debts and other contractual obligations authorized by Owner arising out of the operation of the Facility. Provided however, Owner shall have no obligation to assume claims upon which Maxim Golf has denied liability. Owner will not be obligated to indemnify Maxim Golf for a debt or contractual obligation incurred by Maxim Golf that was not authorized under the terms of this Agreement. Owner shall have no obligation as to obligations covered by Maxim Golf's or Owner's insurance coverages and shall have no responsibility as to unresolved tort liability of Maxim Golf.

c. Closing. The rights and responsibility of management of the Facility shall transfer to Owner on the effective date of any termination of this Agreement unless the parties agree otherwise.

12. Independent Contractor. The parties agree that Maxim Golf is not an agent or employee of Owner, and all activities of Maxim Golf relating to the Facility shall be in Maxim Golf's capacity as independent contractor to Owner.

13. INSURANCE. The City desires to have Maxim Golf procure insurance on the Facility's behalf. The expense of such coverage will be an expense of the Facility, and Maxim Golf shall obtain insurance of the types and in the amounts set forth below from an underwriter(s) licensed to do business in the State of Missouri. Maxim Golf shall furnish to Owner certificates of insurance or copies of policies, evidencing the required insurance, on or before April 1, 2023, and thereafter shall furnish new certificates upon request and in any event before the original expires. These policies will be procured by and issued in the name of Maxim Golf, llc and shall conform to the provision as to type and amount stated below.

a. Type and Amount of Insurance.

Maxim Golf will purchase, provide, certify to owner and maintain and certify maintenance of the insurance coverages - the types and amounts of which will be as follows:

Worker's Compensation and Employer's Liability or reasonably acceptable alternative as provided by law.

The Limits for the Employer's Liability shall be not less than:

| | |
|---------------------------|---------------------------|
| Bodily Injury by Accident | \$1,000,000 Each Accident |
| Bodily Injury by Disease | \$1,000,000 Policy Limit |
| Bodily Injury by Disease | \$1,000,000 Each Employee |

Commercial General Liability Policy with a Combined Single Limit of \$2,000,000.00/\$4,000,000.00 including (but not limited to) Premises/Operation, Independent Contractors, Personal Injury, and Products/Completed Operation.

Commercial crime coverage to include:

| | | |
|---------------------------------------|-----------|---------------|
| Forgery or alteration | \$25,000 | \$ 1,000 ded. |
| Theft, Disappearance & Destruction | \$15,000 | \$100 ded. |
| Medical Expense (any 1 ind.) | \$10,000 | |
| Employee Dishonest-Per Loss | \$300,000 | \$10,000 ded. |

Comprehensive Automobile Liability (or its equivalent) to include coverage for:

- a) Owned/Leased Automobiles
- b) Non-owned Automobiles
- c) Hired Cars

Limits of \$1 000,000.00 Liability for Bodily Injury and/or Property Damage.

Excess Liability for general and automobile liability purposes in the amount of \$10,000,0

b. Additional Insurance, Requirements. With respect to the above-described insurance, Maxim Golf agrees to:

1. Have Owner named as an insured as its interest may appear.
2. Provide for thirty days written notice of cancellation, termination or any material change to the insurance.
3. All of the above stated limits shall apply separately to each location managed by Maxim Golf.

14. COVENANT OF COOPERATION - INSPECTIONS. Maxim Golf and Owner shall share and provide prompt written notice of any material injuries suffered at the Facility, significant complaints in reference to service or conditions, whether written or otherwise, about the Facility or its management, and actual or anticipated disputes with or claims by third parties, including, but not limited to, any customers, attending entities and adjacent landowners. Maxim Golf further covenants to cooperate with Owner in resolving any such complaints, disputes or claims and Owner covenants to cooperate with Maxim Golf in resolving any such complaints, disputes or claims. Owner may inspect the premises at any reasonable time with or without notice and Maxim Golf will responsibly respond to Owner's suggestions for improvements.

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

- a. Each of the Recitals set forth in this Agreement is true and correct.
- b. Owner is a home rule charter municipality of Missouri.

16. MAXIM GOLF'S REPRESENTATION AND WARRANTIES. To induce Owner to enter into this Agreement, Maxim Golf makes the following representations and warranties to Owner:

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

b. Maxim Golf is a duly organized and validly existing company in good standing under the laws of the State of Missouri.

c. During the term of this Agreement, Maxim Golf will use all reasonable care to prevent the introduction of any hazardous substances into the Facility, whether contained in barrels, tanks, equipment (movable or fixed) or other containers deposited or located in land, water, sumps or any other part of the Facility or incorporated into any structure on the Facility. Maxim Golf will hold owner harmless from and indemnify owner for any damages and expenses which owner may incur as a result of Maxim Golf's failure to comply with this warranty. Owner acknowledges that some substances necessary for performance of this Agreement may be deemed "hazardous." Owner agrees that this paragraph shall not apply to such necessary substances, provided that Maxim Golf uses all care necessary in the handling and use of such substances.

17. RELATIONSHIP OF THE PARTIES. The relationship between Owner and Maxim Golf shall be and at all times remain that of owner and independent contractor, respectively. Neither Owner nor Maxim Golf shall 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 Maxim Golf shall be authorized by the other to contract any debt, liability or obligation for or on behalf of the other.

18. CONFIDENTIALITY - AVAILABILITY OF AND OBLIGATION TO TENDER EXPERTISE.

a. Each party agrees that each party will provide and make available its knowledge, expertise and advice concerning marketing, managing, equipment use, equipment care, equipment maintenance, financial models, membership retention and other relevant expertise. Except as expressly allowed herein, the receiving party will hold in confidence and not use or disclose any Proprietary Information of the disclosing party, shall take reasonable protective measures to insure same (and at least the same measures it takes for its own Proprietary Information) and shall similarly bind its employees, however the parties recognize that Owner is subject to the Missouri Sunshine law and regulations and must comply therewith. Nothing herein shall prevent Maxim Golf Employees from disclosing Facility performance data to Frank E. Peters Golf Course's authorized representatives upon request as determined from time to time by Owner's authorized representative. Neither party will, unless lawfully required to do so, reveal such information to competitors of the other party. Neither party shall be obligated under this section with respect to information the receiving party can document which:

- i. is or has become readily publicly available without restriction through no fault of the receiving party or its employees or agents; or
- ii. is received without restriction from a third party lawfully in possession of such information and lawfully empowered to disclose such information; or
- iii. was rightfully in the possession of the receiving party without restriction prior to its disclosure by the other party; or
- iv. was independently developed by employees or consultants of the receiving party without access to such Proprietary Information; or v. is required to be disclosed by law.

b. If either party breaches any of its obligations with respect to confidentiality, or if such a breach is likely to occur, the other party shall be entitled to equitable relief, including specific performance or an injunction, in addition to any other rights or remedies, including money damages, provided by law.

c. The obligation to keep this information confidential shall continue indefinitely during and following the termination of the term of this Agreement.

19. GOVERNANCE. The parties agree to attempt informal dispute resolution before proceeding with further action. Specifically, should either party believe that a dispute has risen, then that party shall meet and confer with a designated representative of the other party.

20. NOTICES. Except as otherwise specifically provided herein, any and all notices required or permitted under this Agreement shall be in writing and shall be deemed delivered upon personal delivery or upon mailing thereof when properly addressed and deposited in the United States Mail, first-class postage prepaid, registered or certified mail, return receipt requested, or when properly addressed upon deposit with Federal Express, Express Mail or other overnight courier service. Notices shall be properly addressed if addressed to the parties as follows:

If to Owner: Agent for City of Nevada - Frank E. Peters Golf Course
Attn: City Manager, City Hall, Nevada, Missouri.
110 S Ash Street
Nevada, MO 64772

If to Maxim Golf: Bryan Minnis
President and managing member
Maxim Golf, LLC
1189 N 400 Road
Baldwin City, KS 66006
The addresses for notices may be changed by written notice given to the other party as provided above.

21. FURTHER ACTS AND COMPETITION. 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. During the term of this Agreement Maxim Golf will not directly or indirectly invest in nor provide services, whether or not for fees or other consideration, to another entity that has one or more golf courses any part of which is located within 25 miles of Frank E. Peters Golf Course unless agreed upon by Maxim Golf and Owner.

22. SECTION HEADINGS. The section headings in this Agreement are for convenience of reference only and shall in no way define, limit, extend or interpret the scope of this Agreement or of any particular section contained herein.

23. INTERPRETATION. Unless the context requires otherwise, words used in the singular number shall include the plural and vice-versa; words used in the masculine shall include the feminine and vice-versa.

24. AMENDMENTS AND WAIVERS. This Agreement shall be modified only by written instrument executed by the parties hereto. Any waiver of any provision of this Agreement shall be made in writing executed by the party who could demand fulfillment of such waived provision.

25. ASSIGNMENT. This Agreement shall not be assigned by Maxim Golf without the express written consent of Owner.

26. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

27. GOVERNING LAW. This Agreement shall be construed under and in accordance with the laws of the State of Missouri.

28. COUNTERPARTS. This Agreement and all amendments and supplements to it may be executed in counterparts and all such counterparts shall constitute one agreement binding on both of the parties.

29. SEVERABILITY. Should one or more of the provisions of this Agreement be determined to be illegal or unenforceable, the other provisions nonetheless shall remain in full force and effect. The illegal or unenforceable provision or provisions shall 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.

30. MUTUAL WAIVER OF SUBROGATION RIGHTS - EACH PARTY MUST OBTAIN ITS INSURANCE COMPANY'S CONSENT. As part of the consideration for this Agreement, each of the parties hereto does hereby release the other party from all liability for damage due to any act or neglect of the other occasioned to property owned by the parties that is or might be incident to or the result of a fire or other casualty against loss for which either of the parties is now carrying or hereafter may carry insurance. The parties hereto further covenant that any insurance that they obtain on their respective properties shall contain an appropriate provision whereby the insurance company or companies consent to the mutual release of liability contained in this paragraph.

31. OBLIGATION TO REPAIR-MAINTENANCE. Owner shall have the obligation to make repairs to structures by reason of insured losses. Maxim Golf will maintain structures in a clean, reasonably safe condition appropriate for public use and access. In the event of a loss to the clubhouse or other structure that renders the structure unfit for occupancy or use and Maxim finds it impossible to perform the agreement as reasonably anticipated, or conduct its business with historically consistent income, either party may within 30 days of the loss terminate this agreement (as provided in this agreement) from the date of damage and neither will have any other claim against the other occasioned by said loss.

32. COMPLIANCE WITH ALL STATE AND FEDERAL LAW AND REGULATIONS. Maxim Golf, llc will in the performance of this agreement at all time comply with all applicable federal and state laws and regulations the code of the city of Nevada, Missouri, and will indemnify and hold Owner harmless from any losses or expenditures when incurred by reason of its failure so to do.

33. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Owner:
City of Nevada, MO.

By: SEAL

CITY MGR

Mayor ATTEST:

Anthony Rose

City Clerk



Maxim Golf:
Maxim Golf, LLC.

By:

Bryan Minnis

Bryan Minnis, CEO
and Managing Member
1189 N 400 Road
Baldwin City, KS 66006