

# City of Philadelphia



(Bill No. 090776)

## AN ORDINANCE

Authorizing the Commissioner of the Department of Parks and Recreation, on behalf of the City of Philadelphia, to enter into a License Agreement between the City of Philadelphia and Juniata Golf Foundation under which Juniata Golf Foundation would operate, manage and maintain Juniata Golf Course as a public golf course under certain terms and conditions.

### *THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

**SECTION 1.** The Commissioner of the Department of Parks and Recreation is hereby authorized to enter into a License Agreement between the City of Philadelphia as Licensor and Juniata Golf Foundation as Licensee under which Juniata Golf Foundation would operate, manage and maintain Juniata Golf Course as a public golf course, located at 1363 E. Cayuga Street.

**SECTION 2.** The License Agreement shall be for an initial term of 5 years, renewable for an additional 4 year term, at the sole option of the City.

**SECTION 3.** The License Agreement shall be substantially in the form set forth in Exhibit A to this Ordinance. The City Solicitor is authorized by this Ordinance to include in the License Agreement such terms and provisions as the City Solicitor deems necessary or appropriate to protect the interests of the City and that are consistent with the License Agreement as set forth in Exhibit A.

**SECTION 4.** The Chief Clerk of City Council is directed to keep on file and make available to the public for inspection during regular office hours the exhibit referred to in this Ordinance.

# City of Philadelphia

BILL NO. 090776 continued

Certified Copy

## EXHIBIT A

**LICENSE AND OPERATING AGREEMENT**

This **LICENSE AND OPERATING AGREEMENT** (the “**Agreement**”) is made this \_\_\_ day of January 2010, by and between **THE CITY OF PHILADELPHIA** (the “**City**”), a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, acting through the **DEPARTMENT OF PARKS AND RECREATION** (the “**Park**”), and the **JUNIATA GOLF FOUNDATION**, a Pennsylvania not-for-profit corporation, with an address at 9029 Convent Avenue, Philadelphia, Pennsylvania 19136 (the “**Foundation**”).

**BACKGROUND**

**A.** The Park has jurisdiction over that certain 18-hole public golf course commonly referred to as Juniata Golf Course, located at 1363 E. Cayuga Street in Philadelphia, Pennsylvania as more specifically identified in the Description of the Premises attached to and made part of this Agreement as **Exhibit “A”** (the “**Premises**”).

**B.** The Foundation is a non-profit corporation created for the sole purpose of operating, managing and maintaining the Premises.

**C.** The Foundation desires to operate, manage and maintain the Premises as a public golf course on a year-round basis, completely without profit to itself or its members, in accordance with this Agreement including the golf course operation responsibilities attached to this Agreement as **Exhibit “B”** (the “**Golf Course Operating Responsibilities**”).

**D.** Foundation personnel have been involved with Juniata Golf Club for over fifteen years and are uniquely qualified to operate the Premises in accordance with the terms of this Agreement. The Foundation has successfully operated the Premises for two years.

**E.** On May 20, 2009, the Fairmount Park Commission, predecessor to the Park, approved the recommendation of Fairmount Park staff to enter into an agreement with the Foundation to operate the Premises.

**F.** On \_\_\_\_\_, 2009, the Philadelphia City Council approved and the Mayor signed Ordinance No. \_\_\_\_\_, to approve entering into this agreement with the Foundation to operate the Premises.

**NOW, THEREFORE**, in consideration of the terms, covenants and conditions hereinafter set forth, with the intention of being legally bound hereby, the parties hereto agree as follows:

**ARTICLE 1**  
**BACKGROUND**

**1.01** The Background is incorporated by reference.

**ARTICLE 2**  
**LICENSE; TITLE AND CONDITION OF PREMISES; CITY OBLIGATION**

**2.01** Effective upon the Commencement Date (as defined below), the City gives the Foundation a nonexclusive, non-assignable, revocable license to enter upon the Premises for the purpose of operating, managing and maintaining the Premises as a public golf course on a year-round basis, completely without profit to itself or its members, in accordance with terms of this Agreement including the Golf Course Operation Responsibilities attached to this Agreement as **Exhibit “B”** (the “**License**”).

**2.02** The Foundation acknowledges that it has occupied the Premises and is familiar with the condition of the Premises generally. The Park will deliver possession of the Premises to the Foundation on the Commencement Date subject to the following matters to the extent that they affect the Premises or Foundation’s use of the Premises as permitted by this Agreement:

**2.03** At all times, the Premises shall be and remain owned by and titled in the City. **No legal title or any other interest in real estate is created or vested in the Foundation by anything contained in this Agreement.**

**2.04** The Foundation agrees that its exercise of the License given under this Agreement is subject to the “AS IS” condition of the Premises, including all defects latent and patent, and the City makes no representation or warranty, express or implied, in fact or in law, as to (a) the title to the Premises, (b) any encumbrances, restrictions and conditions which may affect the Premises, (c) the nature, condition or usability of the Premises, including but not limited to the suitability for use by the Foundation as contemplated by this Agreement, (d) all surface and subsurface conditions, and all things in, on, about and under the Premises, (e) all defects in the Premises, latent and patent, (f) compliance of the Premises with Applicable Law (defined below), and (g) the License given under this Agreement. The Foundation is relying on its independent investigation of ownership and condition of the Premises in accepting and exercising the License given under this Agreement. **The City disclaims any and all warranties of fitness, merchantability, suitability for intended purpose and habitability.**

**2.05** Notwithstanding any other provision of this Agreement, this Agreement does not obligate the City to appropriate or spend money for any reason whatsoever.

**ARTICLE 3**  
**TERM**

**3.01** Initial Term. The term of this Agreement shall commence on January 1, 2010 (the “**Commencement Date**”) and shall continue until December 31, 2014 (the “**Termination Date**”) unless terminated before the Termination Date in accordance with the terms of this Agreement (the “**Initial Term**”).

**3.02** Renewal Term. The City may, at its sole option, renew this Agreement to extend the term for an additional four (4) years (the “**Renewal Term**”). The City will notify the Foundation one hundred and eighty (180) days before the end of the Initial Term whether it intends to renew the License and Operation Agreement for the Renewal Term.

**3.03** The Initial Term and Renewal Term are collectively referred to herein as the “**Term**”.

**ARTICLE 4**  
**GOLF COURSE OPERATION RESPONSIBILITIES;**  
**FINANCIAL REQUIREMENTS**

**4.01** Operation of Premises.  
The Foundation, at its sole cost and expense, shall provide all personnel, equipment, materials and services required to operate, manage and maintain the Premises as a public golf course on a year-round basis in accordance with the Golf Course Operation Responsibilities set forth in **Exhibit “B”**.

**4.02** City Equipment.  
Notwithstanding the foregoing, all equipment located at the Premises as of December 31, 2009 which is owned by the City (“**City Equipment**”) shall be available to the Foundation for use at the Premises during the Term at no cost to the Foundation. The City and Foundation will update the inventory of City Equipment, prepared as of December 31, 2007, within forty-five (45) days of the Commencement Date. The Foundation will provide the appropriate insurance for such City Equipment in accordance with Article 8 (Insurance) below.

**ARTICLE 5**  
**APPROVALS; REVIEW BY CITY OR PARK**

**5.01** Approvals. Whenever the approval of the Executive Director is required under this Agreement, such approval may be given by the Executive Director of Fairmount Park or the Executive Director’s designee (the “**Executive Director**”), unless otherwise required by Applicable Laws (defined below).

**5.02** Review, approval and/or inspection by the City, the Park, and/or Executive Director (collectively referred to in this Section 5.02 as the “City”) of any plans, designs, specifications, work or other materials submitted or performed by the Foundation in connection with this Agreement, shall not constitute any representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed or approved or the work. No person or party shall rely in any way on such review or approval, and at all times the Foundation shall use its own independent judgment as to the accuracy and quality of all such matters. The City's review or approval of any work performed under this Agreement shall not constitute or be construed to constitute approval otherwise required under applicable laws by any and all City departments, boards and commissions in connection with any and all aspects of this License.

## **ARTICLE 6**

### **NO JOINT VENTURE**

**6.01** The Foundation shall not do any act nor make any representation to any person or entity that the Foundation, its agents, representatives or any entities under its control or in privity of contract with the Foundation are the principal, agent, employee, partner or joint venture partner of the City or the Park.

## **ARTICLE 7**

### **COMPLIANCE WITH APPLICABLE LAWS**

**7.01** The Foundation shall comply with all Applicable Laws in connection with this Agreement. In this Agreement, "**Applicable Laws**" means all Park rules and regulations, applicable present and future federal, state, municipal laws, ordinances, codes, rules, regulations, statutes, orders and requirements, and the requirements of all insurance underwriters, and of any board of fire underwriters having jurisdiction, including without limitation, the City of Philadelphia Home Rule Charter, the Philadelphia Code and the Americans With Disabilities Act of 1990, P.L. Section 101-336, generally codified at 42 U.S.C. §1201 *et. seq.*

**7.02** The Foundation, in its own name, shall secure, at its sole cost and expense, any and all permits, licenses, and other legal authorizations required in connection with the golf services on the Premises. This Agreement is not an approval or permit required to be given by any City department or agency under any Applicable Laws. All costs incurred by the Foundation under this Section 7.02 shall be Operating Expenses as defined herein.

## **ARTICLE 8**

### **INSURANCE**

**8.01** The Foundation shall procure and maintain, at its sole cost and expense insurance of the types and minimum limits of coverage specified below throughout the term of this Agreement. All insurance shall be procured from reputable insurers who are

acceptable to the City and authorized to do business in the Commonwealth of Pennsylvania. All insurance herein, except the Professional Liability insurance, shall be written on an “occurrence” basis and not a “claims-made” basis. All costs incurred by the Foundation under this Section shall be Operating Expenses as defined herein.

- A. Workers' Compensation and Employers' Liability
1. Workers Compensation – Statutory Limits;
  2. Employers Liability:
    - \$500,000 Each Accident - Bodily Injury by Accident;
    - \$500,000 Each Employee - Bodily Injury by Disease;
    - \$500,000 Policy limit - Bodily Injury by Disease;
  3. Other states endorsement including Pennsylvania.
- B. General Liability Insurance
1. Limits of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising injury; and \$1,000,000 products and completed operations.
  2. Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability and broad form property damage (including completed operations).
- C. Automobile Liability
1. Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage.
  2. Coverage: owned, non-owned and hired vehicles.
- D. Umbrella Liability
- Limits totaling \$5,000,000 per occurrence when combined with insurance required under the Employers Liability, General Liability and Automobile Liability coverage noted in A. through C. above.
- E. Liquor Liability (If Applicable.)
- Limit of Liability: \$2,000,000 per occurrence combined single limit for liability arising out of the manufacture, distribution, sale or service of alcoholic beverages, if applicable.
- F. All Risk Property Insurance
- Covering all improvements, betterments, equipment, trade fixtures, merchandise, business personal property and any other property in the Foundation’s care, custody and control in an amount equal to the full

replacement cost with no penalty for coinsurance, and with an endorsement naming the City as “loss payee.”

- G. Boiler and Machinery Insurance (If Applicable)  
Against loss or damage from explosion, erupting, collapsing, exploding or mechanical breakdown of boilers or pressure vessels and all equipment parts thereof and appurtenances attached hereto the extent applicable to the Premises.
- H. The Foundation shall cause the City, its officials, officers, employees and agents, to be named additional insureds on all policies required under this Agreement except the Workers Compensation and Employers’ Liability and Professional Liability insurance. The Foundation shall cause such policies to include an endorsement stating that the coverage afforded the additional insureds is primary to any other coverage available to them.
- I. The Foundation shall cause original certificates of insurance to be delivered to the City’s Risk Manager at: City of Philadelphia, Division of Risk Management, One Benjamin Franklin Parkway – 14<sup>th</sup> Floor, 1515 Arch Street, Philadelphia, PA 19102, within ten (10) days after the execution date of this Agreement and at least ten (10) days before the beginning of the Renewal Term. The Foundation shall cause the actual endorsement adding the City as an additional insured to be also submitted to the City’s Risk Manager at the above address.
- J. The insurance requirements set forth are not intended to modify, limit or reduce the Foundation’s indemnifications of the City under this Agreement.

## **ARTICLE 9**

### **INDEMNIFICATION**

**9.01** Foundation Has Exclusive Care Custody and Control of Premises.  
Throughout the Term of this Agreement, subject only to City’s title to the Premises, the Foundation has exclusive care, custody, and control of the Premises. From and after the Commencement Date, the Foundation is fully and solely responsible for the condition, improvement, maintenance, repair, operation, and management of and to the Premises, and all Alterations (defined below) on the Premises.

**9.02** (a) The Foundation shall indemnify, defend, and hold harmless the Park and the City, their officials, directors, commissioners, officers, employees, agents, successors and assigns (collectively, the “**Indemnitees**”) from and against any and all losses, claims, suits, actions, damages, expenses (including but not limited to attorneys’ and experts’ fees and litigation costs), and liabilities, including but not limited to those in connection with loss of life, bodily and personal injury, or damage to property (real or



personal, and regardless of ownership), which occur or arise, in whole or in part, as a result of or in connection with (a) any work or thing done, or any violation of Applicable Laws, in, on or about the Premises or any part of the Premises or in connection with this Agreement, (b) any act or omission of the Foundation, or any of its officers, employees, agents, contractors, servants, licensees, or invitees, or anyone for whom the Foundation is legally responsible, (c) the use, non-use, possession, occupancy, operation, maintenance, or management of the Premises or any part of the Premises by the Foundation or any of its officers, employees, agents, contractors, servants, licensees, or invitees, or anyone for whom the Foundation is legally responsible, (d) the exercise of any right and/or performance of any obligation by the Foundation under or pursuant to this Agreement, (e) the condition of the Premises or any parts of the Premises, (f) any accident, injury, or damage to any person or property occurring in, on, or about the Premises or any part of the Premises, and (g) any failure on the part of the Foundation to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in this Agreement on the Foundation's part to be kept; provided, however, that the Foundation shall not be obligated to indemnify the Indemnitees for any losses, claims, suits, actions, damages, expenses, or liabilities caused exclusively by the gross negligence or willful misconduct of the Indemnitees or any of them.

(b) If any action or proceeding is brought against the Indemnitees relating to any matter for which the Foundation has indemnified the Indemnitees, then, upon written notice from the Indemnitees, or any of them, the Foundation shall, at its sole cost and expense, resist or defend such action or proceeding by counsel approved by the City Solicitor in writing; provided that no approval of counsel shall be required in each and every instance where the claim is resisted or defended by counsel of an insurance carrier obligated to so resist or defend such claim; and provided also that the City and the Park may engage at their expense their own counsel to participate in the defense of any such claim. Without limiting the generality of Section 20.07, the provisions of this Section shall survive the expiration or termination of this Agreement.

## **ARTICLE 10**

### **RELEASE**

**10.01** In consideration of the rights granted by the City and the Park to the Foundation under this Agreement, the Foundation does hereby remise, quitclaim, release and forever discharge, and by these presents does for the Foundation's successors and assigns, and the Foundation's agents, employees, contractors, subcontractors, officers and directors, and any person claiming under or through any of them (each a "**Releasor**"; collectively, the "**Releasors**"), hereby remise, quitclaim, release and forever discharge the City and the Park, and their respective officials, employees, agents and representatives (acting officially or otherwise) (each a "**Releasee**"; collectively, the "**Releasees**") from any and all, and all manner of, actions and causes of action, suits, claims and demands whatsoever at law or in equity which any or all of the Releasors may have against any or all of the Releasees relating in any way whatsoever to any condition on the Premises, the entry onto the Premises by, or the presence on the Premises of, any

of the Releasers, or relating in any way to the exercise of any rights in connection with the work by the Foundation, or the performance of any obligations under this Agreement by the Foundation. The Foundation voluntarily assumes all risks of loss, damage or injury, including death, that may be sustained by the Foundation, its agents, employees, contractors, subcontractors, officers and directors, while in, on, or about the Premises relating in anyway whatsoever to the Premises.

### **ARTICLE 11** **WAIVER OF LIENS**

**11.01 Waivers of Mechanics' Liens.** The Foundation waives its right to have filed against the Premises any mechanics' or materialman's lien. In addition, where the estimated cost of any maintenance or repair related to this Agreement is Fifteen Thousand Dollars (\$15,000.00) or more, each contract entered into by the Foundation for such maintenance or repair must obligate the contractor to submit to the City a waiver of mechanics' lien before the date that the contractor begins work under the contract. Each waiver of mechanics' lien required by the City must be in a form acceptable to the City.

**11.02 No Consent by City to Mechanics' or Materialman's Lien.** Nothing contained in this Agreement may be construed in any way as constituting the consent or request of the City, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific Alteration, Maintenance, Repair or other work to the Premises or any part of the Premises. Nothing contained in this Agreement may be construed in any way as giving the Foundation any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the interest of the City in the Premises or any part of the Premises. The Foundation and all of its contractors are notified by this Section 11.02 that the City expressly does not consent to the filing of any lien against the interest of the City in the Premises or any part of the Premises.

### **ARTICLE 12** **INSPECTION**

**12.01** At all times, the City and/or the Park reserves the right to enter the Premises by an authorized officer, employee, or agent of the City and/or the Park for the purpose of inspecting the Premises.

### **ARTICLE 13** **[INTENTIONALLY DELETED]**

### **ARTICLE 14** **DEFAULT**

**14.01 Default.** Notwithstanding Article 13 above, if the Foundation commits one or more of the following Events of Default, and such Event of Default continues for fifteen (15) days after written notice thereof from the City to the Foundation (or if such Event of Default cannot be cured with due diligence within said fifteen (15) day period, then within a reasonable period of time agreed to by the City and the Foundation in writing, but in no event longer than forty-five (45) days), then and in that event, the City may immediately terminate this Agreement and all of the rights and interests of the Foundation under this Agreement shall cease and expire and the Foundation shall quit and surrender the Premises to the City and the City may, in any manner permitted by law, re-enter the Premises and take possession and use thereof and to exercise any and all other rights or remedies available in this Agreement, at law or in equity.

**14.02 Events of Default.** The Foundation will commit an “**Event of Default**” under this Agreement if:

- (a) Foundation fails to strictly comply with any applicable provisions of this Agreement regarding use of the Premises.
- (b) The Foundation either
  1. files, or has filed against it, a petition under any federal or state statute of bankruptcy or for arrangement, composition, reorganization or other relief concerning its indebtedness,
  2. makes an assignment for the benefit of creditors,
  3. is adjudicated bankrupt or declared insolvent by the decree of a court of competent jurisdiction,
  4. initiates any proceedings for, or consents to, the appointment of a receiver or similar official of its assets, or if any such proceeding is initiated against it, and any such proceeding or receivership continues unstayed and in effect for a period of sixty (60) days, or
  5. admits in writing its inability to pay its debts generally as they become due, or
  6. takes any action in contemplation of any of the foregoing;
- (c) The Foundation at any time fails to strictly comply with Applicable Laws in any respect;
- (d) If the Foundation’s status as a non-profit corporation under Section 501(c)(3) of the United States Internal Revenue Code is revoked.

**14.03** The rights and remedies of the City, whether provided at law or in equity, or by this Agreement, shall be cumulative, and the exercise by the City of any one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any default or breach by the Foundation unless otherwise expressly provided herein.

## ARTICLE 15

**PROHIBITION ON WASTE AND DAMAGE**

**15.01** The Foundation shall not cause any waste, damage or injury to the Premises, and shall immediately repair, at its sole cost and expense, any injury or damage to the Premises arising from the Foundation's use thereof or caused by or under the Foundation, its agents, employees, contractors, subcontractors, officers, invitees and permitted successors and assigns.

**ARTICLE 16**  
**SURRENDER OF PREMISES**

**16.01** Foundation Must Surrender Premises. On the last date of the Term, or upon the earlier termination of this Agreement, the Foundation must promptly remove its personal property and surrender and deliver up the Premises to the possession and use of the City without objection or delay, in good order, condition and repair, free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances and broom clean.

**16.02** Foundation Must Remove Improvements.

(a) Upon the Notice of Termination of this Agreement, the City may designate in writing to the Foundation those improvements or Alterations (defined below) installed or constructed by the Foundation that the Foundation must remove from the Premises (“**Designated Improvements**”), and the Foundation must then promptly remove those Designated Improvements.

(b) The Foundation may not make any claim against the City for the Foundation’s costs or expenses relating to removal of any Designated Improvements, and the Foundation must promptly repair all damage to the Premises caused by the Foundation’s removal of the Designated Improvements.

(c) If the Foundation fails to remove any of its personal property or any of the Designated Improvements (1) on or before ninety (90) days from the expiration or termination of this Agreement, or (2) ninety (90) days from the date the City designates the removal of Designated Improvements, whichever is later, then the City may do any or all of the following:

1. deem the personal property and the Designated Improvements to have been abandoned by the Foundation;
2. retain the personal property and Designated Improvements as the City’s own property;
3. dispose of some or all of the Foundation’s personal property and Designated Improvements without accountability to the Foundation, in such manner as the City may see fit, including but not limited to selling such property and Designated Improvements and

retaining the proceeds or demolishing and removing such property and Designated Improvements.

(d) Notwithstanding anything contained in this Section 16 to the contrary, if under 16.02(c) above the City elects to remove the Foundation's personal property or the Designated Improvements from the Premises, all such costs of removal shall be borne solely by the City and the City's right to retain any such Designated Improvements shall be its sole remedy under this Section 16.02.

**16.03** City Not Responsible for Loss or Damage to Property. The City will not be responsible for any loss or damage occurring to any property owned by the Foundation.

## **ARTICLE 17** **NOTICE**

**17.01** Any notice, demand, request, consent or waiver to be given in accordance with this Agreement shall be in writing and shall be sent by United States certified mail, postage prepaid, return receipt requested, hand delivery by courier service with receipt obtained or overnight mail through a nationally recognized courier providing receipted proof of delivery, addressed to the following parties:

If to the City:	Executive Director Fairmount Park One Parkway, 10 <sup>th</sup> Floor 1515 Arch Street Philadelphia, PA 19102
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with a copy to:	Divisional Deputy City Solicitor, Real Estate and Economic Development City of Philadelphia Law Department One Parkway, 17 <sup>th</sup> Floor 1515 Arch Street Philadelphia, PA 19102-1595
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If to Foundation:	Executive Director Juniata Golf Foundation 9029 Convent Avenue Philadelphia, PA 19136
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or to such other address as the party to receive the notice, demand, request, consent or waiver may hereafter designate by written notice to the other party.

## **ARTICLE 18** **ALTERATIONS**

**18.01** As used in this Agreement, the words “**Alteration**” and “**Alterations**” mean any and all work in, on, or to the Premises or any part of the Premises that is capital in nature, including but not limited to construction, changes, additions, renovations, and replacements upon, in, or to capital elements of the Premises or any part of the Premises and other work typically characterized as capital in nature and/or any work that: (i) in any way alters the interior or exterior appearance of the Premises; (ii) costs in excess of two thousand five hundred dollars (\$2,500) (See Exhibit B A (4) (b)) (or such higher dollar threshold as the Executive Director may stipulate in writing from time to time); or (iii) changes the structure of the Premises or any of its systems. Alteration and Alterations include but are not limited to all changes to the structure, supporting walls, foundation, roof, windows, and building systems of the Premises or any part of the Premises.

**18.02** Approval Required. The Foundation must not make or cause any Alterations to the Premises without the written approval of the Executive Director, and any other approvals as required under Applicable Law. The Foundation must submit to the Executive Director detailed plans, specifications, timeline and budget for any proposed Alterations or Improvements and any and all additional information as requested by the Executive Director. The Executive Director’s approval of any Alterations may be conditioned upon a requirement that the Foundation provide the City with a performance and payment bond satisfactory to the City of Philadelphia Law Department in all respects and upon other requirements the City or the Park deems reasonably necessary or prudent.

**ARTICLE 19**  
**BOOKS AND RECORDS; AUDIT;**  
**ANNUAL REPORTS; CORPORATE DOCUMENTS**

**19.01** Books and Records. The Foundation must keep complete and accurate books of accounts, financial records, and other records within the City of Philadelphia relating to the Foundation’s use and occupancy of the Premises (collectively, “**Books and Records**”). The Foundation must maintain its Books and Records in accordance with generally accepted accounting principles consistently applied.

**19.02** City May Audit. The City, or its duly authorized representatives, may inspect and audit all of the Foundation’s Books and Records and the Foundation’s affairs at all reasonable times at the Premises, the City’s offices, or other place the City may reasonably require.

**19.03** Annual Financial Reports. Each year within one hundred and twenty (120) days of its fiscal year end, the Foundation shall submit to the Executive Director (1) the Foundation’s most recent audited annual financial statements, and (2) the Foundation’s most recently filed tax returns. The Foundation must also promptly submit to the City all supplemental reports, documents, records, and other information that the

City may reasonably require (collectively referred to as “**Annual Financial Reports**”) that relate to the operation of the Premises.

**19.04 Foundation’s Corporate Documents.** The Foundation warrants that copies of its Corporate Documents are attached as **Exhibit “D”** to this Agreement and that such copies are true, correct, complete and current as of the Commencement Date. The Foundation warrants that, as of the Commencement Date, its officers and directors are those individuals identified in “**D**”, having the addresses set forth opposite their respective names. The Foundation shall notify the Executive Director promptly of any change in the Foundation’s officers, directors, Articles of Incorporation or Bylaws.

## **ARTICLE 20** **MISCELLANEOUS**

**20.01 Assignment.** The Foundation shall not transfer, assign, hypothecate, or sublicense all or any part of its interest under this Agreement without the prior written consent of the City, which consent shall be given in the City's sole discretion. Subject to the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**20.02 Non-Discrimination.**

(a) This Agreement is entered into under the terms of the Philadelphia Home Rule Charter and, in its performance, the Foundation shall not discriminate nor permit discrimination against any person because of race, color, religion, sex, sexual orientation or national origin. Without limiting the generality of Article 14 of this Agreement, the Foundation's noncompliance with the provisions of this Section 20.02 shall constitute a substantial breach of this Agreement entitling the City to take appropriate action to enforce compliance, including without limitation, at the City's sole option, termination of this Agreement and/or pursuit of such other remedies as may be provided in this Agreement, at law or in equity.

(b) In accordance with Chapter 17-400 of The Philadelphia Code, the Foundation agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment, on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the generality of Article 14 of this Agreement, a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available at law or in equity.

(c) The Foundation agrees to include Paragraphs (a) and (b) of this Section 20.02, with appropriate adjustments for the identity of the parties, in all contracts which are entered into for work to be performed pursuant to this Agreement.

(d) The Foundation further agrees to cooperate with the Commission on Human Relations of the City in any manner which such Commission deems reasonable and necessary to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall, without limiting the generality of Article 14 of this Agreement, constitute a substantial breach of this Agreement, entitling the City to all rights and remedies provided in this Agreement or otherwise available at law or in equity.

**20.04 Certificate of Non-Indebtedness.** The Foundation hereby certifies and represents to the City that the Foundation and the Foundation's parent company (ies), if any, are not currently indebted to the City, and will not during the term of this Agreement be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. The Foundation shall require all contractors and subcontractors performing work on the Premises during the term of this Agreement, to certify that they are not currently indebted to the City and shall not be indebted to the City during the term of this Agreement for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Any breach or failure to conform to the aforesaid certifications shall constitute a default by the Foundation and entitle the City to exercise any rights or remedies available to it under this Agreement or otherwise available at law or in equity.

**20.05 No Third Party Rights.** The provisions of this Agreement shall not be construed for the benefit of any third party.

**20.06 Severability.** If any term, covenant or condition of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid, or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to parties or circumstances other than those to which the Agreement was held invalid or unenforceable, shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**20.07 Survival.** Any and all provisions set forth in this Agreement which, by its nature or their nature, would reasonably be expected to be performed after the expiration or earlier termination of this Agreement shall survive and be enforceable after the expiration or earlier termination of this Agreement. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Agreement, shall survive any expiration or earlier termination of this Agreement.

**20.08 No Prohibited Gifts to City Officials.**



(a) Pursuant to Executive Order 002-04, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment or loan from any of the following sources:

(1) A person seeking to obtain business from, or who has financial relations with, the City;

(2) A person whose operations or activities are regulated or inspected by any City agency;

(3) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;

(4) A person seeking legislative or administrative action by the City; or

(5) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

(b) The Foundation understands and agrees offering anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order shall be a default of this Agreement.

**20.09 Amendment.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by the City and the Foundation.

**20.10 Entire Agreement.** This Agreement sets forth all of the promises, agreements, conditions and understandings by and between the City and the Foundation with respect to the Premises. There are no promises, agreements, conditions or understandings by and between the City and the Foundation with respect to the Premises other than those set forth in this Agreement.

**20.11 Governing Law; Venue.** This Agreement is made in Philadelphia, Pennsylvania, and shall be governed, construed and decided by the laws of the Commonwealth of Pennsylvania. Any proceeding instituted in connection with this Agreement shall be brought exclusively in the Court of Common Pleas of Philadelphia County.

**20.12 Headings; Section Numbers.** The headings and section references in this Agreement are for convenience only and are not a part of this Agreement. The headings and section references do not in any way define, limit, describe or amplify the provisions of this Agreement or the scope or intent thereof.

**20.13 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

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

**THE CITY OF PHILADELPHIA through its DEPARTMENT OF PARKS AND RECREATION**

APPROVED AS TO FORM:  
Shelley R. Smith, City Solicitor

Per: \_\_\_\_\_

By: \_\_\_\_\_  
Mark A. Focht, FASLA  
Executive Director  
Fairmount Park

**JUNIATA GOLF FOUNDATION**

By: \_\_\_\_\_  
Daniel Snyder  
President  
Juniata Golf Foundation

By: \_\_\_\_\_  
Robert J. Wheeler  
Executive Director  
Juniata Golf Foundation

**EXHIBIT “A”****DESCRIPTION OF THE PREMISES**

That certain golf course commonly known as “Juniata Golf Course”, located in the Juniata section of the City of Philadelphia in Tacony Creek Park, and bounded on the north and west by Tacony/Frankford Creek, on the south by Cayuga Street, and on the east by Castor Avenue, and all appurtenances thereto and improvements now or hereafter located thereon, including, without limitation, (a) a certain stone ruin, located south of the second (2<sup>nd</sup>) green, and (b) approximately fifty (50) parking spaces, located off Cayuga Street at the first (1<sup>st</sup>) tee.

**EXHIBIT “B”****GOLF COURSE OPERATION RESPONSIBILITIES**

During the term of this Agreement, the Foundation shall operate, manage, supervise, secure, promote, market, maintain, repair and replace the Premises in a reasonably professional manner consistent with comparable municipal golf courses located in the greater Philadelphia metropolitan tri-state area, subject to the terms and conditions of the Agreement (collectively, the "**Foundation's Responsibilities**"). Foundation's Responsibilities shall include, without limitation, the following:

**A. Financial Requirements; Annual Plan and Annual Budget.**

## (1) Definitions.

(a) “**Golf Operating Escrow Account**” shall mean that certain escrow account established and maintained by the Foundation with a local commercial bank or other third party approved by the Executive Director. The Foundation shall cause the Golf Operating Escrow Account to be in the names of both the Park and the Foundation. The Foundation shall have the right to write checks on the Golf Operating Escrow Account for the purpose of paying Operating Expenses.

(b) “**Golf Facility Capital Escrow Account**” shall mean that certain escrow account established and maintained by the Foundation with a local commercial bank or other third party approved by the Executive Director. The Foundation shall cause the Golf Facility Capital Escrow Account to be in the names of both the Park and the Foundation. The Foundation shall have the right to write checks on the Golf Facility Capital Escrow Account for the purpose of paying Capital Expenditures approved by the Executive Director.

(c) “**Capital Expenditures**” shall mean all equipment, machinery, and building systems and all construction, improvements, repairs or replacements, that are typically characterized as capital in nature under generally accepted accounting principles, which have a useful life of at least five years, which cost at least \$2,500 and which become the property of the City upon acquisition, installation, or completion, or upon the termination of this Agreement.

(d) “**Escrow Agent**” shall mean the local commercial bank or other third party approved by the Executive Director to administer the Golf Operating Escrow Account and the Golf Facility Capital Escrow Account.

(e) “**Gross Revenues**” shall mean all revenue, income and/or receipts derived by the Foundation from all sources whatsoever for all business conducted on or at the Premises, including, but not limited to, greens fees, cart rentals, and food, beverage and merchandise sales, whether such revenue, income or receipts are

evidenced by cash, check, credit (as of the date of sale), charge accounts, exchange or otherwise.

(f) **“Operating Expenses”** shall mean all actual, reasonable and documented costs, fees, salaries, disbursements and expenses paid approved in the Annual Budget by the Executive Director for the operation, management, maintenance, security, promotion and repair of the Premises.

(2) Within thirty (30) days after the commencement date, and annually by December 1 thereafter, the Foundation shall submit to the Executive Director for approval, a proposed annual business plan (the **“Annual Plan”**) and annual operating budget (the **“Annual Budget”**), which details staffing levels and management fees, a proposed schedule of golf rates and fees, a proposed maintenance plan and the involvement of the neighborhood golf programs, and shall include the estimated revenues and operation expenses for the ensuing fiscal year. The Annual Plan shall describe the Foundation's major management goals and intended actions for the ensuing fiscal year, in reasonable detail, with reference to the Annual Budget, so as to enable Executive Director to evaluate the Foundation's proposed actions with respect to the Premises during that time period. Executive Director's approval of the Annual Plan and Annual Budget shall not be unreasonably withheld. Once approved by the Executive Director, each Annual Plan and Annual Budget shall be incorporated by reference into this Agreement.

(3) The Foundation shall not be deemed to have made any guarantee, warranty or representation whatsoever in connection with the Annual Plan and Budget, and the Park acknowledges that the Annual Plan and Budget and all revenue and expense estimates furnished pursuant to this Agreement are intended only to be reasonable estimates. The Foundation may reallocate up to ten percent (10%) of any amount budgeted with respect to any one (1) item in the Annual Budget to another item budgeted therein provided that the aggregate expenditures in the Annual Budget are unaffected. Unbudgeted minor expenditures unforeseen at the time of preparation of the Annual Budget, and reasonably deemed necessary by the Foundation in the exercise of its sound business judgment may be made without the Executive Director's authorization except that unbudgeted expenditures aggregating more than the lesser of five percent (5%) of that month's budget or Two Thousand and no/Dollars (\$2,000.00) in any thirty (30) day period may not be made without the Executive Director's prior written approval.

In the absence of written direction or policies of the Park, the Foundation shall exercise reasonable business judgment in its management activities, subject to the terms and provisions of the Agreement.

(4) **Golf Operating Escrow Account.**

(a) The Foundation shall, on a daily basis (or as soon as possible thereafter, subject to the Foundation's reasonable judgment with making night

deposits) without deduction, setoff or counterclaim, deposit in the Golf Operating Escrow Account, the Gross Revenues for the Premises.

(b) The Foundation may make expenditures for Operating Expenses from the Golf Operating Escrow Account, however, any and all expenditures from the Golf Operating Escrow Account which exceed Operating Expenses or are not identified as an Operating Expense in the Annual Budget, shall require the prior written approval of the Executive Director. Such approval by the Executive Director shall not be unreasonably withheld.

(5) Golf Facility Capital Escrow Account

(a) The Foundation shall be required to make deposits and/or account for the value of donated services or grants equaling a minimum of 5% of annual Gross Revenues annually into a Golf Facility Capital Escrow Account. The Foundation shall be responsible to fund and implement all capital improvements from the Golf Facility Capital Escrow Account.

(b) The Foundation must not make any capital improvements costing more than \$2,500 without the approval of the Executive director and other approvals required under Applicable Laws. The Foundation must submit to the Executive Director detailed plans, specifications, timeline and budget for the proposed capital improvements and any and all additional information as requested by the Executive Director. The Executive Director's approval of any capital improvements may be conditioned upon a requirement that the Foundation provide the City with a performance and payment bond satisfactory to the City in all respects and upon other requirements the City deems prudent to protect the interests of the City.

(c) All capital improvements performed on the Premises shall upon completion become the property of the City.

(d) Upon termination of the Agreement and payment of all accrued and upon capital expenditures, the Foundation shall direct the Escrow Agent to pay the City all money remaining in the Golf Facility Capital Escrow Account.

**B. Course Operations and Services.** The Foundation shall operate, manage, supervise and conduct the day-to-day public golf operations at the Premises from dawn till dusk year-round except when weather conditions would preclude the reasonable use of the course in accordance with the terms of the Agreement, including, without limitation:

(1) Club House: Operation of the club house, including, without limitation, such activities as scheduling tee times, renting golf carts, golf equipment, and making course reservations.

(2) Pro Shop: Operation of pro shop, including such activities as ordering and stocking merchandise such as golf apparel, golf clubs, balls, tees and other equipment attractive to golfers, displaying, pricing and selling merchandise, cleaning and repairing of golf clubs and other golf equipment and providing other services customarily available at a golf pro shop.

(3) Staffing: Employment, training and management of courteous and professional personnel necessary for the safe and efficient operation of the Course.

(4) Third Party Vendors: Entering into all necessary and prudent contracts with third parties for the safe and efficient operation and management of the Premises, including, without limitation, for (a) the furnishing of electric, gas, water, steam, heating, ventilation, air conditioning, telephone and data lines, cable television and other utilities, (b) food and beverage sales and catering, (c) merchandising, promotion and marketing, (d) removal of trash, debris, refuse, snow and ice, (e) pest and rodent control, and (f) repair, maintenance and management of the Premises, the improvements now or hereafter located thereon and equipment used in connection therewith.

(5) Golf Rates and Fees: The Foundation shall maintain the schedule of greens, cart and permit rates and fees, as set forth in **Exhibit “C”** to this Agreement. No changes shall be made to any rates and/or fees, provided in **Exhibit “C”** without the written approval of the Executive Director. Notwithstanding the foregoing, Foundation reserves the right to offer from time to time in its sound business judgment temporary specials and discounts relating to golf rates, cart and permit fees in an effort to attract the maximum number of patrons to the Premises.

(6) Miscellaneous: Operation of maintenance facilities, parking lot, security services, and the opening and closing of the Premises.

**C. Facility Maintenance; Landscaping; Utilities; Waste Removal.**

(1) The Foundation shall, at its sole cost and expense, promptly maintain and operate the Premises in a good and safe condition and in a professional manner consistent with comparable municipal golf courses located in the greater Philadelphia metropolitan tri-state area. Without limiting the Foundation’s maintenance obligations, the Foundation shall maintain and repair the Premises, the interior and exterior of all structures on the Premises, building systems, utility systems and connections, sewer systems and connections, equipment, fencing, lighting, sidewalks, cart paths, parking lots, vaults, gutters, curbs, and fixtures. The Foundation shall permit the Park and its representatives to enter and inspect the Premises to determine whether the Foundation is meeting its maintenance obligations under the Agreement.

(2) The Foundation shall provide all maintenance and staffing of the Premises and throughout the Term, shall promptly perform all necessary and desirable tree removal, pruning, landscaping, maintenance, snow and ice removal, and all general

grounds maintenance on the grounds of the Premises. The Foundation shall provide adequate numbers of annual and seasonal staff in order to maintain the Premises in accordance with the Agreement and the standards set by the United States Golf Association (USGA) for turf management and golf course maintenance.

(3) The Foundation shall pay all costs for utilities and utility service used in or provided to the Premises. The Foundation shall arrange to be billed directly by utility providers, and the Foundation shall pay all utilities bills before delinquency. The Foundation shall pay all interest, penalties, and other costs and charges imposed or that accrue in connection with any late payment by the Foundation.

(4) The Foundation shall, at its sole cost and expense, promptly clean-up and remove all waste, garbage, refuse, rubbish, organic debris, and litter from the Premises and the area within fifty (50) feet of the Premises. The Foundation shall provide adequate waste and recycling receptacles throughout the Premises for use by patrons and shall comply with all Applicable Laws regarding recycling. The Foundation shall keep the parking lots and driveways clean, neat, and free of leaves, litter and debris. The Foundation shall keep all signs and structures in good condition and free of graffiti at all times.

(5) The Foundation shall, at its sole cost and expense, thoroughly and promptly maintain the perimeter of the Premises, including weekly grass mowing and prompt removal of all litter, debris and fallen leaves, tree pruning, clearing of invasive plant growth, and sidewalk maintenance and repair. The Foundation also shall promptly remove, repair or replace fencing where necessary. The Foundation shall promptly remove snow and ice from hard surfaces and put down salt, sand, or other substance to reduce the likelihood of people slipping. Without limiting the Foundation's responsibility for maintaining, repairing, and keeping all hard surfaces in the Premises clean and clear, the Foundation shall maintain, repair, and keep clean and clear the, driveways, parking lots, and perimeter sidewalks of the Premises.

**D. Tree Maintenance.**

(1) The Foundation shall maintain, enhance and expand existing planting areas for flowers, flowering shrubs, and trees, at strategic locations throughout the Premises, such as the entrances to the Premises, around the clubhouses, along the Premises' perimeter, and at the tee boxes.

(2) Notwithstanding Section D(1) above, the Foundation shall not cut down or remove any trees in or from the Premises without prior approval of the Executive Director and the Foundation shall adhere to all standards established by the International Society of Arboriculture (ISA) concerning infestation control and treatment and general tree trimming practices.

**E. Publicizing the Premises.**



(1) The Foundation shall not place, erect, hang, paint, post, tack, or permit any sign in, on, or about the Premises without the prior approval of the Executive Director and in compliance with Applicable Law. The Foundation understands and acknowledges that any and all signs on, near, or related to the Premises shall comply with the specifications established by the Fairmount Park Sign Program as it is amended from time to time.

(2) The Foundation shall include in its stationary letterhead and all print, broadcast and electronic publicity and advertising materials an easily legible statement that reads: **“Juniata Golf Course is part of the Fairmount Park system operated by the Juniata Golf Foundation in partnership with the Department of Parks and Recreation.”**

(3) At all times during the Term, the Foundation must maintain prominent, clearly legible signs at the driveway entrances to the Premises that identify the Premises and contain the Fairmount Park logo (equal to 50% of the Foundation’s logo and any other wording thereon) and the following inscription (in lettering at least 50% of the size of all other lettering):

**Juniata Golf Course  
In Fairmount Park**

Or such other wording as the Executive Director approves in advance. The entrance sign must be approved in advance by the City and must comply in all respects with Fairmount Park regulations and policies regarding signs.

**F. Community Relations.**

(1) The Foundation understands and acknowledges and agrees that the Premises is an integral part of the surrounding community and that the Foundation shall work diligently and in good faith to establish and maintain a good relationship with the residents surrounding the Premises and to ensure consideration of their concerns about golf course operation and maintenance.

(2) The Foundation shall diligently and in good faith work with the Park staff to address maintenance issues and work with area residents to address residents’ concerns, including errant golf balls. The Foundation shall employ preventative maintenance techniques to prevent golfed balls from traveling outside of the Premises, such as, without limitation, redirecting tees as needed, providing additional plantings, and installing protective netting.

(3) The Foundation shall in good faith reach out to the communities surrounding the Premises regarding employment opportunities and neighborhood golf programs.

(4) The Foundation shall provide youth and junior programs at the Premises, including but not limited to First Tee, high school play, Department of Parks and Recreation programs, parochial leagues and junior camps.

**G. Board Representation.** The Foundation shall appoint a Department of Parks and Recreation Commissioner or employee identified by the Executive Director as an ex-officio member of the Foundation's Board of Directors. The ex-officio board member will have the same voting rights as other members of the Foundation's Board of Directors.

**EXHIBIT “C”**

**RATES AND FEES\***

<b>JUNIATA</b>	
<b>Weekdays</b>	
Monday thru Friday	\$20 / \$30
Twilight	\$15 / \$25
Early Bird/Super Twilight	\$15 / \$20
Junior & Senior	\$15 / \$20
<b>Weekends /Holidays</b>	
Saturday & Sunday	\$25 / \$35
Twilight	\$20 / \$30
Early Bird/Super Twilight	
<b>9 HOLE RATES</b>	
<b>Weekdays</b>	
Monday thru Friday	\$15 / \$20
<b>Weekends /Holidays</b>	
Saturday & Sunday	\$20 / \$25

\*Subject to change each season

**EXHIBIT "D"**

**FOUNDATION'S CORPORATE DOCUMENTS**

# City of Philadelphia

BILL NO. 090776 continued

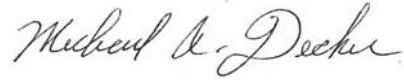
Certified Copy

# City of Philadelphia

BILL NO. 090776 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 3, 2009. The Bill was Signed by the Mayor on December 16, 2009.



Michael A. Decker  
Chief Clerk of the City Council