

PLEASE RETURN FULLY EXECUTED COPY TO:

TULSA COUNTY CLERK MICHAEL WILLIS

ATTN: Georgeann Hiebert, Deputy

218 W. 6TH St. 7th Floor

TULSA, OK 74119

or by email at:

gheibert@tulsacounty.org

CMF# 20240281

GOLF PROFESSIONAL MANAGEMENT AGREEMENT

This Golf Professional Management Agreement ("Agreement") is entered into effect as of March 19, 2024 by and between the **Board of County Commissioners of Tulsa County, Oklahoma ("County")**, a Corporate and Body Politic, and **JSJ, Inc ("JSJ")**, an Oklahoma Corporation.

RECITALS

WHEREAS, County owns/operates two golf course Facilities, the first being known as the LaFortune Park Golf Course ("LaFortune"), which includes a regulation-sized 18 hole Championship golf course, and an 18-hole Par 3 lighted golf course located at 5501 S Yale, Tulsa, Oklahoma 74135, and the second being known as the South Lakes Golf Course ("South Lakes") which includes one regulation-sized 18-hole Championship golf course, located at 9253 South Elwood, Jenks, Oklahoma 74037 (collectively referred to as the "Golf Courses") including land, buildings, improvements, fixtures and clubhouses, cart barns, and driving ranges which are an integral part of such facilities and are hereafter referred to as the "Facilities"; and

WHEREAS, the County has the power and authority to establish and charge, from time to time in its sole discretion, certain fees for use of the Golf Courses, and County is required to perform daily operations, as well as the care, maintenance, upkeep and improvement, of the Golf Courses; and

WHEREAS, County desires to engage JSJ to perform professional golf, administrative and management services incidental to golf operations at the Golf Courses, as well as to acquire and sell golf merchandise from the Facilities in accordance with the terms and conditions of this Agreement (hereafter collectively the "Golf Services"); and

WHEREAS, JSJ is qualified and willing to provide such services to County.

NOW, THEREFORE, AND AN IN CONSIDERATION OF THE RECITALS above and the mutual covenants and conditions herein contained, County and JSJ agree as follows:

ARTICLE 1 - Responsibilities of JSJ

1.1 Term. The initial term of this Agreement shall be from March 18, 2024, to February 28, 2029. Thereafter, this Agreement may be extended for additional terms as agreed between the parties in writing.

1.2 Director of Golf. During the term of this Agreement, JSJ shall provide the personal services of Josh Stewart as the Director of Golf at the Golf Courses ("Golf Director"), and he shall maintain at JSJ's expense a membership in good standing with the Professional Golfers' Association of America. At all times during the term of this Agreement, either the Patrick Lane McCrate Revocable Living Trust, {hereafter referred to as "McCrate Trust"},

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OR Josh Stewart shall own at least fifty one percent (51%) of the outstanding stock of JSJ (except McCrate Trust or Stewart may own 51% of an entity that owns 100% of the outstanding stock of JSJ). If at any time the McCrate Trust, Josh Stewart, or some combination thereof shall cease to own at least fifty-one percent (51%) of the outstanding stock of JSJ, JSJ shall immediately notify County of such circumstance.

1.3 Management of Golf Courses. JSJ shall provide professional golf services, administrative and management services at the Golf Courses, including but not limited to the following:

- A. JSJ shall manage and supervise the play of golf in accordance with the rules of golf and the local course rules established by the County. The Golf Courses shall be operated and open for play on such days and hours as set by County, unless conditions are unsafe for play or likely to result in damage to the Golf Courses, or as otherwise authorized by the County's Director of Parks or his/her designee.
- B. JSJ shall collect the green fees set by the County for the Golf Courses, and issue no redeemable coupons or credits in the County's name except as specifically approved by the County, and allow no free play except as permitted by the County.
- C. JSJ shall employ, supervise and manage all golf professionals and other personnel necessary to operate the pro shops and other associated facilities. Such golf professionals shall include (i) a full-time Head professional at each Facility; (ii) five [5] assistant professionals at LaFortune, four [4] assistant professionals at South Lakes; (iii) one [1] full time golf cart mechanic; (iv) an adequate number of range attendants at LaFortune and South Lakes.
- D. JSJ shall report to the County any occurrence of injury to persons or damage to County property, and take appropriate corrective action to prevent any further injury or damage, and protect persons and properties at the Facilities, and enforce all safety rules, including, if necessary, to remove or prohibit access to the Facilities of any person who disrupts the operations of the Golf Courses, or presents a danger to persons or property at the Facilities.

1.4 Payment of Fees. JSJ shall pay the County the following fees:

- A. Green Fees, in the amount set by the County for the Golf Courses. Golf Director shall approve the cash register receipts.
 - 1. The Green Fees shall be remitted to the County on a daily basis, together with all receipts and reports in a form acceptable to the County to establish the number and type of rounds for which payment is being made. JSJ is responsible for collecting and remitting all sales tax directly to the Oklahoma Tax Commission.
 - 2. If for any reason the fees are not paid to the County each day (such as on weekends and Holiday's), JSJ shall pay the County the next business day in which the funds can be paid to the County.

3. JSJ shall be liable to the county for any loss that occurs in the collection or remittance of the fees.

1.4.1 Utility Fees. JSJ shall pay to the County a monthly utility allowance fee of \$250.00 per month per golf Facility to help cover cart barn and pro shop utility expenses paid by County.

1.4.2 Golf Carts. JSJ Shall provide and operate an automated golf cart rental service at all times while the Golf Courses are open for play, except where golf cart operations would damage the Golf Courses, including:

- A. Maintain in clean, safe working order a fleet of electric golf carts for rental to the public. Such fleet shall consist of at least 70 automated golf carts at LaFortune, and at least 55 electric golf carts at South Lakes.
- B. Charge a fair rental fee for the use of such electric golf carts as set at sole discretion of Tulsa County with input by the Golf Director and collect and pay all taxes and license fees required to operate an electric golf cart rental service and comply with all provisions contained therein. JSJ shall remit to the County twenty-five percent (25%) of the gross golf cart rentals which shall be remitted monthly together with receipts and such other information as may be required by the County to accurately determine the County's percentage of the gross golf cart rentals.

1.5 Pro Shop. JSJ shall provide, maintain and operate at all times the Golf Courses are open and at such other times as JSJ deems appropriate, a pro shop at each Facility for the sale or lease of golf clubs and pull carts, and the sale of golf shoes, apparel, and golf accessories in an inventory amount which is reasonable and customary at public golf courses. JSJ shall have the right to retain the revenue generated from the pro shop.

1.6 Driving Ranges. JSJ shall operate the practice driving range at each Facility at all times the Golf Courses are open, which shall include providing a minimum of 3,000 dozen new range balls annually, buckets and related supplies, as well as ball collection equipment, as necessary for operating the driving range. In addition, JSJ will provide uniforms to JSJ outside service personnel. JSJ shall initially collect all of the gross revenue generated from the driving ranges, provided, however, that JSJ shall maintain, upkeep and replace as needed, all driving range machines, including, range vehicles, pickers, range dispensing machines, ball washing machines, baskets, bag stands, and rope and club washers. JSJ shall also remit to the County an annual fee for both driving range operations the greater of: \$72,000.00, OR 20% of the gross driving range revenue as a utility and maintenance fee for mowing, irrigation, and turf maintenance of the driving ranges. The \$72,000.00 fee shall be paid in monthly installments of \$6,000.00, and if the 20% option is met, JSJ, shall pay the outstanding amount to County immediately upon conclusion of County's Fiscal Year. The \$72,000 minimum shall be prorated for any portion of the term constituting less than a calendar year. Golf Director shall have option to market range tokens in all golf tournament packages, etc., with permission of Park Director or his/her designee.

1.7 Golf Tournaments, Lessons and Promotions. JSJ shall promote, advertise and hold golf tournaments for both public and private groups (ten percent of the gross revenue of said tournaments shall be remitted to County); shall offer instructional golf clinics and lessons as demand requires; shall support national and local golf associations and groups; shall encourage suggestions for the improvement of the Golf Courses and cooperate with the County in making any such improvements; and shall promote, encourage and support the furtherance of golf in the Tulsa Community. JSJ shall pay to County ten (10) percent of revenue (in addition to standard green fees collected by JSJ on behalf of County) generated from said tournaments, but not from promotional events. run by JSJ. Promotional events shall include (but not necessarily limited to, subject to County discretion) professional exhibitions, professional and/or collegiate matches, and camps.

1.7A County events. County reserves and retains the right to promote tournaments and special events at LaFortune, South Lakes, and the Facilities. County Events include, but are not limited to: tournaments and economic development opportunities. County Events shall have priority scheduling over JSJ's scheduled events. County shall provide reasonable notice to JSJ of any County Events. Green/ range fees, staffing, compensation and the scope of services to be provided to County by JSJ in support of County Events shall be agreed by a separate written agreement between the parties. County may collect all revenue from such County Events.

1.8 Rental Equipment. JSJ shall maintain rental golf clubs at both Facilities. JSJ shall provide complete club sets, and complete iron sets for the Par 3 Golf Course, and junior sets both at LaFortune and at South Lakes. JSJ shall retain all revenue generated from rental of golf clubs to the general public.

1.9 Performance Criteria. JSJ shall comply with each item of the Performance Criteria set forth in Exhibit A attached hereto.

1.10 Financial Ability to Perform. JSJ agrees that upon request by County, it shall furnish such credit and financial references and/or statements of financial conditions as County may reasonably require to evidence the ability of JSJ to fulfill the duties set out in this Agreement. Such information shall be held by County as confidential information and shall not be released or made available to anyone without the prior written consent of JSJ. The parties further agree and understand that this provision on confidentiality is subject to the Oklahoma Open Records Act and to the extent that this provision regarding confidentiality would be in conflict with the provisions of the Act nor or hereinafter enacted or interpreted by any court of competent Jurisdiction or the opinion of the Oklahoma Attorney General or of the Tulsa County District Attorney's Office, the Oklahoma Open Records Act shall control and all such records shall be made available to the public without the written consent of JSJ.

1.11 Taxes. JSJ shall collect and pay all sales taxes related to the revenues it retains, and pay all income, employment and other taxes and assessments imposed on the operation or use of the facilities and all federal, state and local income taxes imposed on

JSJ. JSJ shall indemnify and defend County for all costs, expenses or liabilities incurred by County in connection with the foregoing.

1.12 Fiduciary. JSJ shall act as a fiduciary in collecting, safeguarding and remitting monies (including) fees and applicable taxes) owed to County.

1.13 Records and Reports. JSJ shall keep accurate and complete business and financial records in accordance with generally accepted accounting principles. Such records shall include, but not be limited to, receipts, invoices, statements, bills, notices, bank statements, work papers, cash register summary and detail transaction records, and the like to accurately and completely reflect all revenues and expenses, including the rounds of golf played each day, and the fees and taxes collected and remitted. JSJ shall retain all such records for a minimum of three (3) years. JSJ shall send to County quarterly financial reports produced from JSJ's regularly used accounting software. **Additionally,** County reserves the right to request and inspect any of JSJ's business and financial records.

JSJ shall provide daily reports to County Director of Parks & Recreation Department. The daily report shall be in a form approved by County and shall reflect:

- A. Number of rounds of golf played by category of fee (adult, senior, junior, weekday, weekend, twilight, discount, etc.)
- B. Total amount of green fees and applicable taxes received.

1.14 Inspections. JSJ shall establish a ticketing and cash register receipt procedure subject to the approval of County for the receipt of all golf course green fees. JSJ shall keep such books, records and accounts for the receipt of these fees and shall be available for inspection by County during regular business hours at LaFortune Park and South Lakes.

1.15 Security Systems. County shall provide a security system at each Facility to protect against theft, vandalism or other damages. County currently owns the security system in use at LaFortune and South Lakes, and JSJ shall not remove or alter such system without the prior written consent of County. JSJ shall reimburse the County for one half of the County's Security System's annual monitoring fee for existing security system, not to exceed \$1,174.98 per Fiscal Year. JSJ will pay for the cost of any additional security systems deemed necessary by JSJ.

1.16 Non-Discrimination. JSJ shall not discriminate, either in its business and employment practices or in allowing access to the Facilities or against any person on the basis of race, age, creed, color, sex, religion, national origin or handicap.

1.17 Business Interruption. If during the term of this Agreement, the operation of either the LaFortune Park or South Lakes golf facilities (courses and/or structures) is substantially interrupted by the action of County for a period of time greater than is reasonably necessary for minor repairs, refurbishing, reconstruction, remodeling or other

public purpose and such interruption substantially and materially affects the overall operations JSJ, the parties may, by mutual agreement in writing, making such temporary adjustments as are necessary to the conditions and covenants of this Agreement. JSJ shall give County a sixty (60) day written notice of the substantial and material disruptions that are necessary to the individual LaFortune Park and South Lakes golf facilities and request an adjustment. If County does not act upon such request within the sixty (60) day period, then JSJ may, upon sixty (60) days written notice by certified mail, terminate this Agreement. Upon a termination, the parties shall have no further obligation to the other, provided JSJ shall be entitled to its portion of any fees not yet distributed to County.

1.18 Comply with All Laws. JSJ shall comply with all applicable laws, rules, regulations, ordinances, codes, permits, licenses, fee schedules, and authorized directives from the County's Director of Park and Recreation or his/her designee, including but not limited to all applicable provisions of the Americans with Disabilities Act.

ARTICLE II Responsibilities of County

2.1 Appointment as Special Agent. County hereby appoints JSJ as a special agent-in fact for the sole purpose of collecting, segregating, safeguarding, accounting for and remitting to County the fees set forth in Sections 1.3, 1.4.2 and 1.6 above, together with all sales, use and other taxes applicable hereto.

2.2 Exclusive Rights. County grants to JSJ the exclusive rights at the facilities to (i) rent automated golf carts, (ii) operate the pro shops, (iii) operate the driving ranges, (iv) conduct private golf lessons, and (v) conduct golf tournaments, clinics and other recreational golf services.

2.3 Maintenance of Golf Courses. County or its designee shall be responsible for the care, upkeep and maintenance of the Golf Courses, and JSJ shall have no responsibility to water, fertilize, mow or care for the grass, trees and other landscaping on the Golf Courses or driving ranges.

2.4 Taxes. JSJ shall pay and be solely responsible for all tax liability arising from any and all activities and sales held at the Facilities. JSJ shall send to County annual tax reports.

ARTICLE III JSJ is an Independent Contractor

3.1 In the performance of the services, duties or obligations required of JSJ under this Agreement, mutually understood and agreed that JSJ and its golf professionals (including but not limited to the Golf Director), employees, subcontractor, or agents, shall at all times be acting as independent contractors of County and shall be solely responsible for the services provided under this Agreement. JSJ shall not in any way be considered an affiliate of County, nor shall this Agreement be deemed to create a partnership or joint venture or any similar arrangement.

3.2 Neither JSJ nor any of its employees, subcontractors or agents shall be deemed employees of County for any purpose whatsoever, and none shall be eligible to participate in any benefit program provided by County for its employees. JSJ shall be exclusively responsible for the payment of all employee wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, insurance premiums, continued education courses, materials or related expenses on behalf of its employees, subcontractors, and agents. JSJ shall indemnify hold harmless and provide County with a defense against any and all claims that County is responsible for the payment or filing of any of the foregoing payments, withholdings, contributions, taxes, fees and documents and returns, including but not limited to social security taxes and employer income tax withholding obligations.

3.3 JSJ shall have complete discretion and control over the method and manner in which services are rendered hereunder, and County shall neither have nor exercise nay control or direction over the method by which JSJ performs its work and functions. The sole interest of County is to engage the professional golf, administrative, and management services incidental to golf operations at the Golf Courses according to the general performance standards set forth in this Agreement and the rules and regulations governing the use of County's property.

3.4 Neither JSJ nor its employees, subcontractors or agents shall have any authority, whether express or apparent, to negotiate or enter into any contract or agreement on behalf of County, other otherwise obligate County in any manner. To the extent JSJ or its employees, subcontractors or agents enter into any contracts or agreements, it will be solely on behalf of JSJ, unless said services materially affect the quantity and/or quality of services contracted with or on behalf of the County.

3.5 Nothing herein shall limit or prevent JSJ or Golf Director from providing either the same or different services being provided hereunder to other golf facilities or entities.

ARTICLE IV Insurance, Bond and Indemnification Hold Harmless

4.1 Insurance. During the term of this Agreement, JSJ shall maintain, at its sole expense, insurance policies underwritten by an insurance company authorized to do business in Oklahoma, in such form and with such endorsements as shall protect the County against any and all damages, liabilities, losses, claims, and expenses hereunder, including coverage in the sum of not less than \$50,000 for property damage, \$100,000 for any single person injured, and \$1,000,000 for multiple persons injured in any one accident, and provide worker's compensation and employer's liability insurance in at least compliance and naming the County as an additional insured and loss payee.

4.2 Bond. JSJ shall provide to the County a Fidelity Bond in the amount of \$50,000 in form and substance satisfactory to the County. Said Fidelity Bond shall remain in full force and effect during the term of this Agreement and any extension thereof.

4.3 Indemnification. JSJ shall forever defend, indemnify and hold County and its officer, employees, agents and representatives harmless from any and all liability which might be asserted against County and its officers, employees, agents and representatives, including any and all costs, expenses and damages which might be sustained by it (such as attorney's fees, court costs and expert witness fees) by virtue of, arising out of or in connection with the services of JSJ under this Agreement or any breach by JSJ of any obligation imposed on JSJ under this Agreement.

4.4 The indemnification obligations started herein shall survive the termination and/or expiration of this Agreement.

4.5 Hold Harmless. JSJ Inc. and the McCrate Trust release Tulsa County from any liability to JSJ Inc. and the McCrate Trust, and JSJ Inc. and the McCrate Trust will defend, indemnify and hold Tulsa County harmless from and against and identifiable Claims, by whomever brought, based on personal injury or death, whenever occurring, suffered or incurred by Tulsa County arising from or related in any way in performance of the Work hereunder, regardless of how such personal injury or death is caused and even if caused by the negligence, whether sole or concurrent or active or passive, or other legal fault, including strict liability of Tulsa County.

ARTICLE V Term of Agreement and Termination of Agreement

5.1 Term. Subject to the provisions for termination as set forth below, the term of this Agreement shall be as set forth in paragraph 1.1.

5.2 Termination. This Agreement shall terminate:

- A. Automatically at the end of the Term, unless the Term is extended as agreed in writing between the parties.
- B. At any time County has not appropriated sufficient funds for the performance of golf course operations and maintenance, which shall automatically and without further notice by County cause this Agreement to terminate as of the end of the fiscal year in which County has appropriated funds. There is no requirement that County appropriate or fund all or any portion of the expenses necessary to maintain the golf course or otherwise; or
- C. Whenever County and JSJ shall mutually agree to the termination in writing; or
- D. Except as provided for elsewhere in this Agreement, whenever either party upon the default by the other party of any term, covenant or condition of this Agreement, where such default continues for a period of thirty (30) days after the defaulting party received written notice thereof from the other party specifying the existence of such default; or
- E. Upon the application by JSJ for, or consent to, the appointment of a receiver, trustee, liquidator, custodian or similar official of all or a substantial part of its assets, or if JSJ becomes insolvent, or files a voluntary petition for bankruptcy, or is adjudicated as bankrupt or insolvent, or JSJ makes a general assignment for the benefit of creditors, or if JSJ is unable or claims to be unable to pay its debts as

they become due, or JSJ fails to be a corporation in good standing under Oklahoma law.

- F. Upon a change in ownership requiring notice as described in Section 1.2, County may terminate the Agreement in writing, effective within 10 days after providing notice as described in Section 6.1.
- G. Upon the death or disability of Josh Stewart (or an approved successor), such that he can no longer fulfill his obligations as Golf Director, County may terminate the Agreement in writing, effective within 10 days after providing notice as described in Section 6.1.

5.3 Return of Facilities. Within ten (10) days of the termination or expiration of this Agreement, JSJ shall remove its property and return the Facilities to County in the same or better condition than received by JSJ, reasonable wear and use excepted. If this Agreement terminates for cause, County shall have the right, but not the obligation, to purchase from JSJ any and all items of improvements, equipment, machinery, or other assets useful in the operation of the Facilities at fair market value as determined by an independent appraisal paid for by County. In such circumstances, County shall provide JSJ written notice specifying which items it elects to purchase.

ARTICLE VI NOTICES

6.1 Notices or communications required or permitted to be given under this Agreement shall be given in writing and delivered in person or by regular first-class mail, or electronic means, at the address shown below, unless a party otherwise designates in writing. Notices or communications shall be deemed effective when received.

JSJ Inc.:

Timothy M. McCrate, Successor
Trustee
c/o Paul Wilkening, Esq.
2642 East 21st Street
Suite 250
Tulsa, OK 74114
Telephone: (918) 779-7049
Facsimile: (918) 949-0068
Email: pwilkening@sbcglobal.net

County:

Chairman, Board of County Commissioners of
Tulsa County, Oklahoma
218 W. 6th St., 9th floor
Tulsa, OK 74119
Telephone: (918) 596-5010
Facsimile: (918) 596-4647
Email: email of the current Chairman, as
available by public record.

ARTICLE VII Miscellaneous

7.1 Title to the Golf Courses and the Facilities remains in the County and not JSJ. JSJ retains title to, and risk of loss, all items of personal property, equipment, improvements, and inventory products and supplies owned by JSJ. County shall have no obligation or liability for damages or theft to JSJ property, except for the negligence or willful

misconduct of County or items employees JSJ shall have no obligation or liability for damages or theft to the Facilities or equipment, fixtures or improvements owned by the County, except for the negligence or willful misconduct of JSJ or its employees, subcontractors or agents.

7.2 This Agreement has been made and executed in, and shall be construed and enforced according to, the laws of the State of Oklahoma, without regard to conflict of law statutes.

7.3 The obligations of JSJ under this Agreement are personal and may not be assigned, delegated, transferred, nor subject to involuntary alienation, assignment or transfer, without the express written consent of County. County shall have the right to assign this Agreement and to delegate all rights, duties and obligations hereunder, whether in whole or in part, to any affiliate, successor, trust or other entity.

7.4 JSJ shall not misuse, sublease, remove or otherwise dispose of any portion of the Facilities, nor create nor allow any lien, claim or encumbrance upon the Facilities.

7.5 This Agreement and the Request for Proposal and the Response to the Request for Proposal attached constitutes the entire agreement between the parties and supersedes all previous agreements and understandings. All prior agreements between the parties are hereby terminated.

7.6 This Agreement is between JSJ and County and creates no right in or duties to any other person. No person is or shall be deemed a third-party beneficiary of this Agreement.

7.7 The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, nor be construed to be, a waiver of any subsequent or other breach hereof.

7.8 If any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal or unenforceable for any reason or in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as is such provision had never been contained herein.

7.9 This Agreement may be amended only by a written instrument signed by both parties.


IN WITNESS HEREOF, the parties have executed this Agreement, effective as written above.

[signatures on following page]

JSJ Inc.:

County:

Timothy M. McCrate, Successor
Trustee



Chairman, Board of County Commissioners of
Tulsa County, Oklahoma

APPROVED AS TO FORM/ LEGALITY



ASSISTANT DISTRICT ATTORNEY

Andrew C. Mihelich

Attest: 

Michael Willis, County Clerk

