

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: September 14, 2010 ☐ Consent ☒ Regular
 ☐ Ordinance ☐ Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

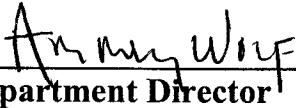

Motion and Title: Staff recommends motion to approve: a Concessionaire Service Agreement with DH2, Inc. for operation of Food and Beverage Services at Osprey Point Golf Course in South County Regional Park.

Summary: The Parks and Recreation Department desires a fixed and mobile food and beverage services concession at the Osprey Point Golf Course, located in South County Regional Park. In June 2010, PREM advertised a Request for Proposals to sell food items, beverages including beer and wine, and sundry items to the patrons at Osprey Point Golf Course from the snack bar area in the clubhouse and from mobile food and beverage service carts on the golf course. Proposals were received from two (2) respondents, DH2, Inc. and Ala Carte Golf Service, Inc. A Selection Committee, consisting of two (2) representatives from the Parks and Recreation Department and one (1) from the Property and Real Estate Management Division, reviewed the proposals on August 2, 2010 and determined that the proposal submitted by Ala Carte Golf Services was non-responsive as it failed to provide for the minimum guaranteed annual rent of \$6,000 per year as required in the RFP. The Selection Committee reviewed DH2, Inc's proposal, deemed it responsive and voted unanimously to support DH2, Inc's proposal. The initial term of the Agreement is for two (2) years commencing either the first day the Golf Course opens to the public, or thirty (30) days after the Effective Date of this Agreement, whichever occurs last. The Agreement includes three (3) extension options, each for one (1) year. The guaranteed annual rent is \$6,000, to be paid in equal monthly installments of \$500, with annual four percent (4%) increases, together with the payment of an annual "per round" fee of .20 for each round of golf played during the preceding 12 months that exceeds 60,000 rounds. DH2, Inc. has posted the required \$1,000 security deposit. The sole shareholder and principal of DH2, Inc., Todd Weiss, has executed a personal guaranty of the Concessionaire Service Agreement. **(PREM) District 5 (HJF)**

Background and Policy Issues: The RFP was advertised in the Palm Beach Post on June 20, 2010 and June 27, 2010. This RFP was also listed on PREM's webpage and the County's Channel 20 television station. The Osprey Point Golf Course is projected to be operational in early November 2010. DH2, Inc. has provided the attached Disclosure of Beneficial Interests. The Disclosure identifies Todd Weiss as holding a 100% beneficial interest in DH2, Inc.

Attachments:

1. Location Map
2. Concessionaire Service Agreement
3. Budget Availability Statement
4. Disclosure of Beneficial Interests

Recommended By:	 Department Director	8/22/10 Date
Approved By:	 County Administrator	9/7/10 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<\$0.00>	<\$5,500.00>	<\$6,220.00>	<\$520.00>	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<\$0.00>	<\$5,500.00>	<\$6,220.00>	<\$520.00>	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes ☒ No ☐

Budget Account No: Fund 1382 Dept 580 Unit 5258 Object 4732
Program _____


B. Recommended Sources of Funds/Summary of Fiscal Impact:

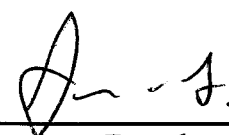
Revenue is calculated as beginning on November 1, 2010, and reflects four percent (4%) annual increases. No additional income for the \$0.20 per round fee in excess of 60,000 rounds played in the preceding 12 month period is included.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:


OFMB *8/21/10* *8/30/10*

\$500 per month 11 months
\$5,500 Year 1
\$6,220 Year 2

Contract Development and Control *9/2/10*
E Jones 9/1/10

B. Legal Sufficiency:


Assistant County Attorney *9/3/10*

This Contract complies with our contract review requirements.

Concessionaire will provide insurance certificate prior to commencement of work.

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

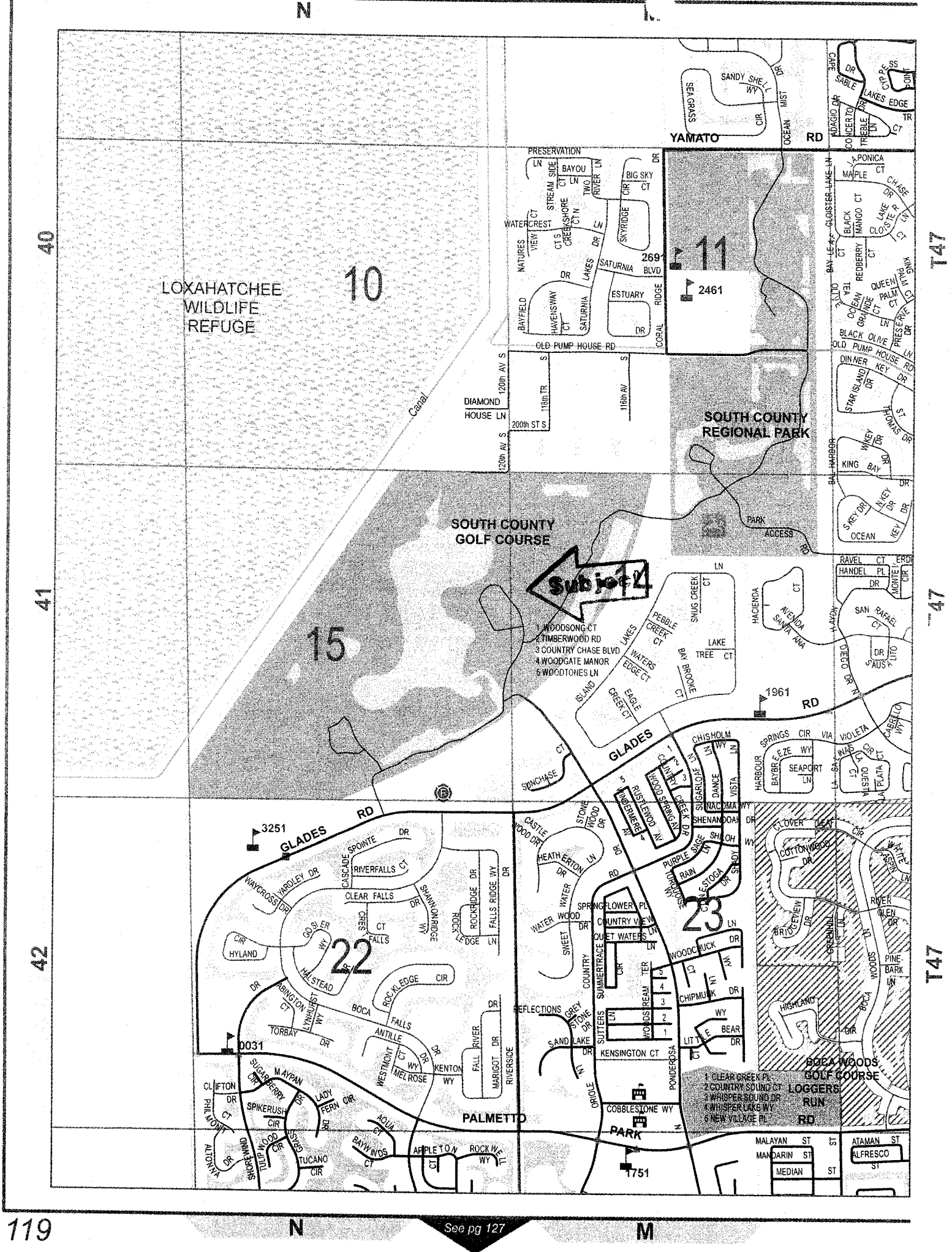


EXHIBIT "D" TO THE RFP

PALM BEACH COUNTY

CONCESSIONAIRE SERVICE AGREEMENT

between

PALM BEACH COUNTY

A POLITICAL SUBDIVISION OF THE

STATE OF FLORIDA

(County)

and

DH2 inc

(Concessionaire)

CONCESSIONAIRE SERVICE AGREEMENT

THIS CONCESSIONAIRE SERVICE AGREEMENT, hereinafter referred to as "Agreement" is made and entered into _____, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County" and DH2 Inc, a Florida Corporation, (type of entity) (EIN: # 650975783); hereinafter referred to as "Concessionaire".

WITNESSETH:

WHEREAS, County is the owner of certain real property, including the improvements located thereon, as more specifically described hereinafter and as shown in the aerial photograph attached hereto as Exhibit "A", a portion of which Concessionaire desires to use for operation of a concession; and

WHEREAS, Concessionaire has demonstrated experience as a food service concessionaire; and

WHEREAS, Concessionaire was selected through the competitive proposal process to use such property and improvements for such purposes; and

WHEREAS, Concessionaire has indicated a willingness and demonstrated the ability to properly finance, operate, and manage said activities in accordance with the terms of this Agreement; and

WHEREAS, County is willing to allow such property and improvements to be used by Concessionaire for the uses set forth herein.

NOW THEREFORE, in consideration of the rents, covenants and agreements hereinafter reserved and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I BASIC AGREEMENT PROVISIONS

Section 1.01 Licensed Area

In consideration of the rents, covenants and agreements hereafter reserved and contained on the part of the Concessionaire to be observed and performed, the County provides to the Concessionaire, and Concessionaire accepts from County, the concession areas designated as the Clubhouse Area and the Golf Course Area (collectively, the "Licensed Area") on Exhibit A-1 attached hereto and made a part hereof. The Clubhouse Area shall include approximately 183 square feet of indoor space, a walk-up customer service window, and an area for customer seating on the covered patio. The Golf Course Area shall include the 27 hole golf course, driving range, and practice areas. The Licensed Area is located within South County Regional Park, 12551 C Glades Road, Boca Raton, Florida, and is shown in the aerial photograph attached as Exhibit "A" (the "Park").

Concessionaire shall operate its concession within the boundaries of the Licensed Area as set forth herein. County reserves the right to make such amendments, changes and revisions to the configuration of the Licensed Area as County, in its sole discretion, may deem proper. Construction may at times impact the operation of this concession. The County, at its option, reserves the right to relocate Concessionaire's facilities within the Clubhouse Area into another area of similar size. In the event that Concessionaire does not agree to the relocation as provided herein, this Agreement shall be automatically terminated and the parties hereto shall be relieved of all further obligations hereunder; County shall not be liable to Concessionaire for any damages of any kind whatsoever.

Section 1.02 Parking

Vehicle parking at the Park is designated exclusively for visitors participating in recreational activities at the Park, as well as Park and concession staff, on a first-come, first-served basis.

Section 1.03 Special Activities

County may allow Osprey Point Golf Course to be used for organized golf tournaments and other events. County reserves the right to host up to four (4) outside tournaments/events per year where the tournament/event organizer may bring in donated or purchased food and beverage items from an outside source for distribution to the event participants. The Palm Beach County Parks & Recreation Department ("Department") shall provide written notice to Concessionaire at least 30 days in advance of such scheduled tournaments where food and beverage will be provided by the organizer.

Section 1.04 Length of Term and Commencement Date

The term of this Agreement shall commence upon the first day Concessionaire opens its concession for business on the Licensed Area (the "Commencement Date"), as provided for herein, and shall extend for a period of two (2) years thereafter (the "Term") unless sooner terminated pursuant to the provisions of this Agreement. The Commencement Date shall occur no later than either thirty (30) days after the date the golf course opens to the public or the Effective Date as defined in Section 18.16, whichever date occurs last.

The exact Commencement Date shall be established by written notice from Concessionaire to the County at the addresses set forth in Section 18.03(a), which notice shall be provided at least 3 business days in advance of the anticipated Commencement Date. If the Commencement Date has not occurred within thirty (30) days after the date the golf course opens to the public or the Effective Date, whichever date occurs last, the same shall be considered an Event of Default by Concessionaire under Section 13.01, and County shall have all remedies available to it under this Agreement.

Section 1.05 Option to Renew

County hereby grants to Concessionaire, provided Concessionaire is not then in default of this Agreement, the right and option to renew the Term of this Agreement for three (3) successive period(s) of one (1) year each under the same terms and conditions as this Agreement and commencing upon the expiration of the initial Term of this Agreement or any renewal thereof. Concessionaire shall exercise its option to renew, if at all, by written notice to the County received by the County no sooner than one hundred fifty (150) days but no later than ninety (90) days prior to the expiration of the initial Term of this Agreement or any renewal thereof. Failure of Concessionaire to duly and timely exercise its option to renew the Term of this Agreement shall be deemed a waiver of Concessionaire's right to said renewal option and all further renewal options.

Section 1.06 Excuse of County's Performance

Anything in this Agreement to the contrary notwithstanding, the County shall not be deemed in default with respect to failure to perform any of the terms, covenants and conditions of this Agreement if such failure to perform shall be due to any strike, lockout, civil commotion, war-like operation, natural disaster, invasion, rebellion, military power, sabotage, government regulations or controls over which County has no amendatory powers, inability to obtain any material, utilities, service or financing, through Acts of God or other cause beyond the reasonable control of the County.

Section 1.07 Customer Service

Concessionaire shall place a sign provided by the Department in a location on the Licensed Area designated by County, stating:

This business occupies space owned by Palm Beach County. If any customer cannot resolve any customer complaint with the business owner, they may forward the details of their complaint, in writing, to: Palm Beach County Parks & Recreation Department, Attention: Director, Parks Financial and Support Services, John Prince Park, 2700 Sixth Avenue South, Lake Worth, FL 33461.

Concessionaire shall work diligently to resolve customer complaints regarding service or other issues.

Section 1.08 Amount of Deposit

Concessionaire, simultaneously with its execution of this Agreement, has deposited with the County the sum of One Thousand Dollars (\$1,000.00) as security for the full, faithful and timely performance of each and every term, covenant and condition to be performed by Concessionaire under this Agreement (the "Security Deposit"). The Security Deposit may be commingled with other funds of County, and County shall have no liability for the accrual or payment of any interest thereon. In the event of the failure of Concessionaire to keep and perform any of the terms, covenants and conditions of this Agreement to be kept and performed by Concessionaire, then the County, at its option, may appropriate and apply said Security Deposit, or so much thereof as County may deem necessary, to compensate the County for all loss or damage sustained or suffered by County due to such default or failure on the part of Concessionaire. In no event shall the amount of said Security Deposit be deemed to limit Concessionaire's liability under this Agreement. Should any portion of the Security Deposit be so appropriated and applied by County, then Concessionaire shall, upon the demand of County, forthwith remit to County a sufficient amount in cash to restore said Security Deposit to the original sum deposited, and Concessionaire's failure to do so within five (5) days after receipt of such demand shall constitute a default of this Agreement. Should Concessionaire comply with all of the terms, covenants and conditions of the Agreement and promptly pay all of the Guaranteed Annual Rent and Additional Rent herein provided for as it becomes due, and all other sums payable by Concessionaire to County hereunder, the said Security Deposit shall be returned in full to Concessionaire within thirty (30) days of the expiration of this Agreement, or upon the earlier termination hereof.

ARTICLE II RENT

Section 2.01 Guaranteed Annual Rent

Concessionaire shall pay to the County Guaranteed Annual Rent during the term of this Agreement in equal monthly installments, together with all applicable sales taxes thereon, on the first day of each month, in advance, without any prior demand therefore or any deduction, holdback or setoff whatsoever. The initial amount of Guaranteed Annual Rent is \$ 6,000⁰⁰_{XX}. The initial monthly installment of Guaranteed Annual Rent shall be due within fifteen (15) days after the Commencement Date. Any Guaranteed Annual Rent payment hereunder for any fractional month shall be calculated and paid on a per diem basis using a 30-day month. Guaranteed Annual Rent and Additional Rent, as hereinafter defined, shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to the Palm Beach County Parks & Recreation Department, Revenue Section, 2700 Sixth Avenue South, Lake Worth, FL 33461.

Section 2.02 Adjustment to Guaranteed Annual Rent

On each anniversary date of the Commencement Date of this Agreement or any extension thereof, the Guaranteed Annual Rent shall be adjusted by multiplying the then current Guaranteed Annual Rent by one hundred and four percent (104%).

Section 2.03 Payment of Per Round Fee

At the end of each year of the Term, Concessionaire shall pay County an annual "per round" fee of .20¢ per round ("Per Round Fee") for each round of golf played during the preceding 12 months that exceeds 60,000 rounds. County shall, within 30 days after the end of each year of the Term, provide Concessionaire with an invoice for the amount due for the Per Round Fee for the preceding year of the Term. Payment of the Per Round Fee shall be due from Concessionaire within 15 days after receipt of the invoice from County. This Section shall survive termination or expiration of this Agreement.

Section 2.04 Additional Rent

Any and all sums of money or charges required to be paid by Concessionaire under this Agreement other than the Guaranteed Annual Rent, specifically including but not limited to the Per Round Fee, shall be considered "Additional Rent", whether or not the same is specifically so designated and County shall have the same rights to enforce due and timely payment by Concessionaire of all Additional Rent as are available to County with regard to Guaranteed Annual Rent.

Section 2.05 Sales, Use and Rent, Taxes, Assessments, Ad Valorem, Non Ad Valorem Real and Personal Property Taxes

Concessionaire shall pay all sales, use or rent taxes assessed by any governmental authority against the Guaranteed Annual Rent and/or Additional Rent, if any, even if such tax is intended to be imposed against County. Concessionaire shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special and all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Clubhouse Area, Concessionaire's interest in the Licensed Area, Concessionaire's Alterations or personal property located on the Licensed Area.

Section 2.06 Unpaid Fees, Holdover

In the event Concessionaire fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Agreement within ten (10) days after same shall become due and payable, interest at the rate of one and one half percent (1.5 %) per month (or the highest rated permitted by law if lower) shall accrue against the delinquent payment(s) from the date due until the date payment is received by County. Such interest shall constitute Additional Rent. Payments received after interest has started to accrue shall be applied to the accrued interest first and then towards the delinquent rent. Notwithstanding the foregoing, County shall not be prevented from terminating this Agreement for default in the payment of rentals, fees, charges, and payments due to County pursuant to this Agreement or from enforcing any other provisions contained herein or implied by law. In the event Concessionaire shall holdover, refuse or fail to relinquish possession of the Licensed Area at the expiration or termination of this Agreement, Concessionaire shall be strictly liable to pay to County during the entire period of such holdover, double Guaranteed Annual Rent, as provided for in Chapter 83.06, Florida Statutes. In addition to the Guaranteed Annual Rent, Concessionaire shall pay all other charges or costs imposed upon Concessionaire by this Agreement, all cost of insurance for which Concessionaire would have been responsible if this Agreement had been renewed on the same terms contained herein, and all sales taxes assessed against such increased Guaranteed Annual Rent. Such tenancy shall be subject to all the other conditions, provisions and obligations of this Agreement.

Section 2.07 Accord and Satisfaction

In the event Concessionaire pays any amount that is less than the amount stipulated to be paid under this Agreement, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Agreement or under the law.

ARTICLE III

CONDITION OF LICENSED AREA, ALTERATIONS

Section 3.01 Acceptance of Licensed Area by Concessionaire

Concessionaire certifies that Concessionaire has inspected the Licensed Area and accepts same "As Is", in its existing condition, together with all defects, latent or patent, if any, and subject to all easements, encumbrances, restrictions and matters of record. Concessionaire further acknowledges that the County has made no warranties or representations of any nature whatsoever regarding the Licensed Area including, without limitation, any relating to the physical condition of the Licensed Area or any improvements or equipment located thereon, or the suitability of the Licensed Area or any improvements for Concessionaire's intended use of the Licensed Area. County shall build out the Clubhouse Area prior to the Commencement Date, which build out shall include finishing the floors and walls in the materials and colors chosen by County, and connecting the Clubhouse Area to electric and water service. County shall equip the Clubhouse Area with a refrigerated sandwich table, triple sink, and patio furniture. Concessionaire agrees to provide such other equipment and perform any and all work at its own cost and expense which is necessary to fully equip and maintain the Licensed Area for the lawful use of the Licensed Area by Concessionaire as specified in Section 4.01 of this Agreement, unless the work is the responsibility of the County as specifically provided for in Section 6.02 of this Agreement.

Section 3.02 Concessionaire's Alterations

Concessionaire shall be solely responsible for any and all improvements, repairs, alterations or other work necessary to render the Clubhouse Area suitable for Concessionaire's intended use except Clubhouse Area build-out. Concessionaire is prohibited from making or installing any improvements within the Golf Course Area. Concessionaire shall not install any permanent improvements within the Licensed Area without County's written consent. Prior to commencing any work within the Licensed Area, Concessionaire shall furnish to the Department for written and discretionary approval, plans and specifications showing equipment or utilities to be installed by Concessionaire within the Licensed Area ("Alterations"). All work performed to the Licensed Area, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of Concessionaire, and not for the benefit of County, such work being nevertheless subject to each and every provision of this Agreement. Department's approval of the plans and specifications submitted by Concessionaire in conjunction with Concessionaire's Alterations may, at Department's sole option, be contingent upon the receipt by the Department of a surety company payment and performance bond obtained by Concessionaire at its sole cost and expense. Said bond shall be issued by a surety company satisfactory to County, insuring completion of Concessionaire's Alterations free and clear of all liens, encumbrances, chattel mortgages, conditional bills of sale and other title retention or security agreements or other charges, all in accordance with the plans and specifications approved by the County. Concessionaire shall design and construct such Alterations at Concessionaire's sole cost and expense, in accordance with the requirements of this Agreement and in full compliance with applicable governmental laws, rules, orders, building codes and zoning regulations. All of Concessionaire's construction and Alterations shall be made and performed in a good and workmanlike manner and shall be diligently performed to completion strictly in accordance with the approved plans and specifications therefore.

Section 3.03 Responsibility for Alterations

All Alterations made by Concessionaire shall be maintained by Concessionaire in good working order at the sole expense of Concessionaire during the Term of this Agreement, or any extension or renewal hereof.

Section 3.04 Construction

Concessionaire shall ensure that all improvements and Alterations are constructed to completion in accordance with the approved plans thereof and that all persons or entities performing work or providing materials relating to such improvements including, without

limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials.

Section 3.05 No Liens

Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate shall not be subject to such liability. Concessionaire shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Concessionaire of this provision of this Agreement. If so requested by County, Concessionaire shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida, stating that County's interest shall not be subject to liens for improvements made by Concessionaire. In the event that a construction lien is filed against the Concessionaire's Licensed Area or other County property in connection with any work performed by or on behalf of Concessionaire, Concessionaire shall satisfy such claim, or transfer same to security, within ten (10) days from the date of filing. In the event that Concessionaire fails to satisfy or transfer such claim within said ten (10) day period, County may do so and thereafter charge Concessionaire and Concessionaire shall promptly pay to County upon demand, as Additional Rent, all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Concessionaire agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien.

ARTICLE IV

CONDUCT OF BUSINESS AND USE OF LICENSED AREA BY CONCESSIONAIRE

Section 4.01 Use

Concessionaire shall use and occupy the Licensed Area solely and exclusively for concessionaire services for sale of food and beverages as identified in Section 4.02(u) of this Agreement. Concessionaire shall not use, permit, or suffer the use of the Licensed Area for any other use, business, or purpose whatsoever without the prior written consent of County, which consent may be granted or withheld in County's sole discretion. Concessionaire acknowledges that its use of the Golf Course Area is limited to the operation of mobile beverage/snack carts throughout the Golf Course Area. Concessionaire shall comply with the Rules and Regulations set forth in Exhibit "B" as well as Palm Beach County Parks and Recreation Ordinance (Ordinance No. 2004-022) as same may be amended from time to time.

Concessionaire shall not prohibit or hinder County personnel or any law enforcement officers from performing their official duties. Concessionaire shall ensure that all persons acting on behalf of it obey instructions from County personnel. Concessionaire shall not commit or permit any reckless or dangerous conduct on the Licensed Area at any time. This includes, but is not limited to, violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance.

Section 4.02 Operation of Business

a) Concessionaire shall operate its business upon the entire Licensed Area during the Term of this Agreement with due diligence and efficiency and in a manner prudent and in accord with generally accepted business practices within the locale for Concessionaire's business.

b) Concessionaire shall operate the concession services, including the beverage/snack carts, seven (7) days a week, year round, according to the following schedules:

Clubhouse Area

Food and beverage service shall be available from 15 minutes before the first tee time until the posted time for the last cart in, which is currently scheduled to be:

January 5:40 PM	February 6:00 PM	March 6:25 PM	April 7:40 PM
May 7:55 PM	June 8:15 PM	July 8:15 PM	August 8:15 PM
September 7:40 PM	October 7:05 PM	November 6:35 PM	December 5:30 PM

Golf Course Area

The beverage/snack carts shall circulate from 2 hours after opening through 1 hour before closing, as follows:

Saturdays, Sundays, and County Holidays:	Minimum of 2 carts circulating throughout the 27 holes, provided that the number of rounds scheduled to be played exceeds 250. If the scheduled rounds do not exceed 250, then only 1 cart shall be required. Concessionaire shall assume the number of scheduled rounds exceeds 250 unless Concessionaire confirms otherwise with the Department.
All Other Days:	Minimum of 1 cart circulating throughout the 27 holes.

County shall notify Concessionaire, in writing, at least two (2) business days in advance of any changes to the golf course operations schedule. Concessionaire shall submit any requests for changes to the concession operations schedule to the Department, in writing, at least two (2) business days in advance, for approval prior to implementation. Concessionaire shall not implement any changes unless written approval has been received from the Department.

c) All rates for goods and services must be visibly posted in the Licensed Area at all times during operation in accordance with Article V. Concessionaire shall submit written requests for fee increases to the Department thirty (30) days prior to the proposed implementation. Department will make reasonable effort to respond in writing to the request within seven (7) days after receipt of the request.

d) County may include Concessionaire's food and beverages as part of golf packages sold by County for tournaments, leagues, and special events. County shall coordinate with Concessionaire regarding the selection, quantity, and dates needed. County shall collect the payments for any food and beverages included in the golf packages, and then reimburse Concessionaire for the sales upon receipt of an invoice from Concessionaire. County shall process the payment through its Finance Department. Without changing the contract price for the food and beverages included in the golf packages, each invoice for payment shall be subject to the Inspector General fee of 0.25%, where applicable, to defray costs of the Office of the Inspector General in accordance with Ordinance No. 2009-049, as may be amended.

e) Concessionaire may, at its option, install one vending machine at the driving range and one vending machine at each of the two public restrooms located on the golf course. Concessionaire shall coordinate with Department regarding the location and installation of the vending machines. Concessionaire shall be responsible for managing and maintaining any vending machines it installs. County shall not be responsible for any damage caused to vending machines.

f) Concessionaire shall maintain customer service as a top priority. Concessionaire shall employ a sufficient number of qualified staff to properly operate the concession. Concessionaire shall provide employees who are professional, friendly, well-dressed, and courteous to the golfers and general public. Employees shall maintain a neat appearance, exercise good public relations skills, respond to customer complaints and questions, have excellent telephone manners, speak

positively about the facility and its operations, and conduct themselves in a high standard that is acceptable to the County. Concessionaire and staff shall wear appropriate attire in accordance with the Golf Operations Standard Operating Procedures and which, in the sole determination of the County, clearly distinguishes Concession staff from County and Park staff. The Concessionaire shall also maintain a good working relationship with the golf facility management and maintenance staff. Use of profanity, alcohol, and illegal substances by Concessionaire, staff, subcontractors and agents is strictly prohibited.

g) Concessionaire shall be responsible for training all concession staff, subcontractors and agents concerning the customer service philosophies of Palm Beach County. The County's Mission Statement can be found at:

www.pbcgov.com/PubInf/Admin/Mission.htm and
www.pbcgov.com/parks/general/about_pbc.htm

h) Concessionaire shall appoint a responsible person to be a member of the Golf Facility Management Team which is currently scheduled to meet on a weekly basis. The Concessionaire's representative shall be someone who has the authority to make operational decisions on behalf of the Concessionaire.

i) Concessionaire shall provide telephone and/or cellular phone service at the Clubhouse Area during all hours of operation for emergency calls and to ensure accessibility by the public for general questions, schedules, etc.

j) Concessionaire shall, at its own expense, obtain, maintain, and comply with all licenses and permits necessary to operate the concession, including a liquor license that permits Concessionaire to sell beer and wine at the Clubhouse Area and from the beverage/snack carts for consumption at the Clubhouse Area and on the golf course. Proof of same shall be required prior to the Commencement Date and provided to the Department's Director of Parks Financial and Support Services. Concessionaire shall conduct operations in such a manner as to meet all applicable health standards and codes.

k) Concessionaire shall provide all equipment for the safe and efficient operation of the concession service and, within thirty (30) days of the Commencement Date, shall provide the Department with an inventory of all equipment provided. All equipment, installation and maintenance shall be the responsibility of the Concessionaire including the procurement and maintenance of fire prevention and fire extinguishing devices. All equipment shall be maintained in a clean and sanitary condition and maintenance practices shall meet all applicable Governmental Regulations as defined in Section 4.04 below. The County has the right but not the obligation to perform safety inspections through its Department or other departments without prior notice. Concessionaire shall immediately notify County of any possible health, safety and/or security hazards that may exist within the Licensed Area or related to any equipment so corrective actions can be determined and implemented.

l) Concessionaire shall conduct its operations and activities in a safe manner and comply with all safety and health regulations and standards imposed by Governmental Regulations, and shall ensure that all do the same. Concessionaire agrees that neither they, nor employees or any person working for or on behalf of Concessionaire shall require any personnel engaged in the performance of Concessionaire's operations to work in surroundings or under working conditions which are unsanitary, unsafe, hazardous or dangerous to his or her health or safety as determined by Governmental Regulations.

m) For payment of any customer charges, Concessionaire shall accept a minimum of two (2) of the following credit cards: Visa, MasterCard or American Express.

n) Concessionaire shall provide services to patrons in a manner consistent with the provisions of the Americans with Disabilities Act (ADA).

o) Concessionaire shall coordinate and cooperate with the County regarding special events and activities conducted in the Park and shall, upon request from the County, suspend operation of the concession when such events warrant the suspension of the operation of the concession as determined by Department.

p) Concessionaire shall not conduct special events or promotions of any kind within the Park unless prior written approval by the Department has been provided.

q) Concessionaire shall perform a background check on each employee prior to the employee beginning work at the concession. Concessionaire shall forward a copy of each background check to the Department for review prior to the employee commencing work at the concession. County reserves the right to disallow employment of any candidate or employee whose background check reveals one or more disqualifying offenses. A list of potential disqualifying offenses is available from the Department upon request. Concessionaire shall notify Department of any disqualifying offense it has knowledge of as to any of its employees during the term of this Agreement and Concessionaire shall immediately terminate employment of any and all employees whom Concessionaire discovers have committed a disqualifying offense.

r) Concessionaire may, with the approval of the County Representative identified in Article I, Section 1.08, suspend operation of the concession whenever the entire golf course is closed due to severe storms or maintenance/construction of the golf course. Reasonable effort shall be made to reopen the golf course in a timely manner following the inclement weather, maintenance, or construction. If the closure is for an extended period of time (greater than seven (7) consecutive days), County shall prorate the monthly payment of Guaranteed Annual Rent.

s) Concessionaire shall store its beverage/snack carts in the golf course cart barn located next to the clubhouse. Concessionaire may purchase fuel for its carts from County. County shall invoice Concessionaire monthly for gasoline used by Concessionaire, charging Concessionaire the same rate County paid for the fuel. If the carts are electric, they may be recharged in the cart barn at no extra cost. Concessionaire shall not be allowed to store fuel in the cart barn or in the Licensed Area.

t) Concessionaire shall keep, throughout the entire term of the Agreement or any extension thereof, all books of account and records customarily used in this type of operation, and as from time to time may be required by the County, in accordance with GAAP. Such books of accounts and records shall be retained and available for such period of time as provided herein unless otherwise approved by the County. The County, at all times, throughout the term of the Agreement or any extension thereof and for up to three (3) years following expiration, shall have the right to audit and examine during normal working hours, all such records and books of accounts relating to Concessionaire's operation, provided that Concessionaire shall not be required to retain such books of accounts and records for more than three (3) years after the end of the final year of this Agreement including any extensions thereto. Concessionaire shall arrange for the books of account and records to be brought to a location convenient to the auditors for the County in order for the County to conduct the audits and inspections. Failure of the Concessionaire to keep record of and provide the information to County as set forth herein shall be considered a default under the terms of this Agreement. The requirements set forth in this paragraph shall survive the termination or expiration of this Agreement.

u) The County entered into this Agreement with Concessionaire pursuant to County's Request for Proposals (RFP) to provide concession services at the Park. As such, the Concessionaire agrees to maintain generally the sale of the types of food and beverages, and the operation of the mobile beverage/snack carts, as submitted with the Concessionaire's response to the RFP as reflected in Exhibit "E" attached hereto and made a part hereof. Concessionaire shall

not alter its menu without first obtaining written approval from the Department's Director of Parks Financial and Support Services, at the address set forth in Article I, Section 1.08 of this Agreement. Only minor changes may be approved by the Department, and such approval shall be granted in the Department's sole and absolute discretion. Proposed changes that would alter the services so they are no longer substantially the same as those submitted with the Concessionaire's response to the RFP shall not be permitted.

Section 4.03 Waste or Nuisance

Concessionaire shall not commit or suffer to be committed any waste upon the Licensed Area, or commit or permit the maintenance or commission of any nuisance or other act or thing which may disturb the quiet enjoyment of visitors of the Park, or which may result in damage or depreciation of value of the Park or which may affect County's fee interest in the Licensed Area or which results in an unsightly condition. Concessionaire, at its sole cost and expense, will keep the Clubhouse Area free of rodents, vermin and other pests.

Section 4.04 Governmental Regulations

Concessionaire shall, at Concessionaire's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all county, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force (individually and collectively, the "Governmental Regulations"), pertaining to Concessionaire or Concessionaire's use of the Licensed Area, the equipment located on the Licensed Area, or the Licensed Area generally. Concessionaire shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Concessionaire's failure to perform its obligations in this Section. This Section shall survive termination of this Agreement.

Section 4.05 Non-Discrimination

Concessionaire shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation, gender identity or expression, or disability with respect to any activity occurring in the Licensed Area, or under this Agreement. Concessionaire warrants that its service in the Licensed Area shall be open to and benefit all visitors to the Park.

Section 4.06 Surrender of Licensed Area

Upon termination or expiration of this Agreement, Concessionaire, at its sole cost and expense, shall remove Concessionaire's personal property, removable fixtures, and equipment from the Licensed Area, and restore the Clubhouse Area to the condition it was in as of the Commencement Date. Upon surrender of the Licensed Area, title to any and all remaining improvements, Alterations, or property within the Licensed Area shall vest in County.

Section 4.07 Hazardous Substance

Concessionaire shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Concessionaire's operations, in the Licensed Area, or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, Concessionaire shall not cause or permit the Disposal of Hazardous Materials upon the Licensed Area or upon adjacent lands and shall operate and occupy the Licensed Area in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Any Disposal of a Hazardous Material, whether by Concessionaire or any third party, shall be reported to County immediately upon Concessionaire becoming aware of such Disposal. Concessionaire shall be solely responsible for the entire cost of remediation and clean up of any Hazardous Materials disposed of or discovered upon the Licensed Area, or emanating therefrom onto adjacent lands, as a result of the use and occupancy of the Licensed Area by Concessionaire, or Concessionaire's agents, licensees, invitees, subcontractors, or employees.

Concessionaire hereby agrees to indemnify, defend and hold harmless County from and against any and all claims, suits, judgments, loss, damage, fines or liability which may be incurred by County, including reasonable attorney's fees and costs, which may arise directly, indirectly or proximately as a result of any violation of the Disposal of any Hazardous Materials in violation of this provision. Concessionaire's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. While this provision establishes contractual liability of Concessionaire, it shall not be deemed to alter or diminish any statutory or common law liability of Concessionaire.

Concessionaire acknowledges that County would not have entered into this Agreement without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. This provision shall survive expiration or termination of this Agreement.

Section 4.08 Security of Licensed Area

Concessionaire acknowledges and accepts full responsibility for the security and protection of the Clubhouse Area and any inventory, equipment, or facilities now existing or hereafter placed on or installed in or upon the Clubhouse Area, and for the prevention of unauthorized access to the Clubhouse Area. Concessionaire expressly acknowledges that any security measures deemed necessary or desirable for protection of the Clubhouse Area shall be the sole responsibility of Concessionaire at no cost to County. In the event that Concessionaire chooses to install additional security systems and hardware, Concessionaire shall be required to provide County with continuous and unescorted access to the Clubhouse Area as required by Article XIV. County may implement key, card or code control measures reasonably acceptable to Concessionaire to safeguard the keys, cards or code provided pursuant to this requirement.

Notwithstanding the above, Concessionaire shall notify County of any incident resulting in loss of or damage to Licensed Area or breach of security whether or not such incident is reported to the Palm Beach County Sheriff's Office. Notification of County shall be made via telephone call to Financial and Support Services at the Department at the phone number set forth in Section 18.03.(a) of this Agreement no later than 24 hours after any such incident.

Furthermore, although a fingerprint background check is not required under the terms of the background check set forth in Section 4.02(q), County reserves the right to subject Concessionaire's and employees to fingerprint-based background checks to the extent permitted by law and to deny access rights to any Concessionaire employee in accordance with adopted laws, policies and procedures. Concessionaire shall have no recourse or claim against County for denied access rights.

ARTICLE V SIGNAGE

Except for as set forth in Section 4.02, Concessionaire shall not place or permit to be placed or maintained on any exterior door, wall, window, fence, railing, dock, or tree of the Licensed Area and/or Park any sign, awning or canopy, without first obtaining County's written approval and consent through the Department, which consent may be withheld at County's sole discretion. Any such signs not approved shall be immediately removed at the sole cost and expense of Concessionaire, upon written notification thereof by County. Concessionaire further agrees that such signs, awning, canopy, decoration, lettering, or other items, as may be approved, shall be maintained in good condition and repair at all times and shall conform to the criteria

established from time to time by County for the section of the Park within which the Licensed Area is located. No advertising or any promotional items associated with the concession will be permitted within the Park or any other County facility or property without prior Department and/or County approval. Palm Beach County Ordinance, No. 2004-022, Section 21, prohibits any person from distributing, displaying or affixing any printed materials or advertisements to or within any park property.

ARTICLE VI REPAIRS AND MAINTENANCE OF LICENSED AREA

Section 6.01 Responsibility of Concessionaire

Concessionaire shall protect the County's capital investment in the Clubhouse Area through exercise of a high standard of maintenance. Proper maintenance shall include, but not be limited to, providing adequate custodial services, interior maintenance and repair, garbage and trash disposal, pest control, keeping the patio area clear of debris and stains, maintenance of the refrigerated sandwich table, and maintenance of fixtures. Concessionaire shall, at a minimum, perform the following maintenance in the Clubhouse Area on a regular and ongoing basis: a) clean interior and exterior walls, windows, doors, and surfaces; b) clean ceiling, floors, furnishings, lights, light bulbs, tubes, and concession equipment as is customary for a similar quality concession found in a public recreation facility in Palm Beach County; c) keep patio furniture clean and free of stains. Concessionaire shall maintain the Clubhouse Area and all areas within 75 feet of the Clubhouse Area in a safe, clean, sanitary condition free of litter, refuse, and debris. Concessionaire shall provide adequate refuse containers in the Clubhouse Area. Concessionaire shall regularly service all trash cans, including Park trash cans, located within the Clubhouse Area. The trash cans shall be emptied into the Park dumpster near the maintenance building on a regular basis in order to prevent the trash cans from overflowing. The Concessionaire shall not use the trash cans located outside of their designated areas to handle refuse generated by their operations. All refuse generated by the Concessionaire shall be deposited directly into the Park dumpster by concession staff.

Concessionaire shall repair all damages to Licensed Area caused by, resulting from, or in any way arising out of Concessionaire's operations or use of Licensed Area, whether such damage is caused by Concessionaire, its agents, or its invitees. Concessionaire shall maintain and repair all equipment thereon. Concessionaire shall repaint, refurnish the facilities and replace furnishing and equipment as may be deemed necessary at the reasonable discretion of the Department. The Department reserves the right to, periodically throughout the term of the Agreement, inspect or cause to be inspected the Licensed Area, identify any maintenance or repair items and report, in writing, the nature of these items and recommend corrective action. Concessionaire shall promptly repair, replace, or repaint any damaged or defaced surfaces within seventy-two (72) hours of discovery or notification by the Department. Concessionaire is to provide a proposed schedule of cleaning, maintenance and repair of facilities.

Concessionaire shall immediately notify County of any possible health, safety and/or security hazards that may exist within any area, including use by unauthorized parties, so corrective actions can be determined and implemented. Neither County nor County's agents or servants shall be liable for any damages caused by, or growing out of any defect in the Licensed Area. In no event shall County be liable for damages or injuries arising from the failure to make repairs, nor shall County be liable for damages arising from defective workmanship or materials in making such repairs. County shall have no obligation to commence repairs until fifteen (15) days after the receipt by County of written notice of the need for repairs. Concessionaire waives the provision of any law, or any right Concessionaire may have under common law, permitting Concessionaire to make repairs at County's expense.

Section 6.02 Responsibility of County

County agrees to repair and maintain in good order and condition, ordinary wear and tear excepted, the roof, the roof drains, exterior walls, the utility lines outside the Clubhouse Area (except for sewer lines clogged by grease or other Concessionaire-created problems), foundations

and structural portions of the Clubhouse Area, and the air conditioning, heating, and plumbing systems, and fire suppression system serving the Clubhouse Area. There is excepted from the preceding covenant, however: (i) repair, maintenance, or replacement of fixtures provided by Concessionaire; (ii) repair or damage caused by Concessionaire, its employees, agents, contractors, customers, licensees or invitees to the Licensed Area; (iii) maintenance, repair and replacement of any plumbing (including grease trap, if applicable), electrical, air conditioning/heating system or equipment inside the Clubhouse Area which, whether connected directly to the building's system or not, were installed by Concessionaire specifically to serve the Clubhouse Area; (iv) interior repainting and redecoration, whether or not caused by, or growing out of any breakage, leakage or defective condition of the electric wiring, air conditioning or heating pipes and equipment, closets, plumbing, appliances, sprinklers, other equipment, or other facilities serving the Clubhouse Area; (v) glass cleaning; and (vi) janitorial services for the Clubhouse Area. County shall maintain the Golf Course Area except for any damage caused by, resulting from, or in any way arising out of Concessionaire's operations or use of the Licensed Area, whether such damage is caused by Concessionaire, its agents, or its invitees.

In the event of a threat of tropical disturbance, County shall close and secure the hurricane shutters provided for the Clubhouse Area and remove the patio furniture. Concessionaire shall secure and/or remove its equipment at the direction of the Department. Concessionaire shall be responsible for any damage to its equipment or personal property. Concessionaire shall be liable to County for any damage caused to Park or any Park improvements due to failure of Concessionaire to secure or remove any equipment belonging to Concessionaire.

Except as provided in this Section, County shall not be obligated or required to make or conduct any other maintenance or repairs, and all other portions of the Clubhouse Area shall be kept in good repair and condition by Concessionaire, and at the end of the Term of this Agreement, Concessionaire shall deliver the Clubhouse Area to County in good repair and condition, reasonable wear and tear arising from Concessionaire's permitted use of the Clubhouse Area as specified herein excepted.

ARTICLE VII UTILITIES

County shall provide electric and water service to the Clubhouse Area, but Concessionaire shall be solely responsible for providing and maintaining any other utility connections, if desired, to the Clubhouse Area. Concessionaire's utility service installations must be reviewed and approved by the Department as provided for in Section 3.02, Concessionaire's Alterations, and is subject to Section 3.03, Responsibility for Alterations. Concessionaire shall promptly pay all costs and expenses related to providing any utility services ordered by Concessionaire, including, without limitation, construction costs, and shall pay directly to the utility company or the provider of such other services all charges and assessments for any utility or other services provided including, without limitation, gas and phone charges, or any other utility used or consumed on the Clubhouse Area with the exception of electric and water service. County shall pay for electric and water service used in the Licensed Area. In no event shall County be liable for an interruption or failure in the supply of any utility to the Licensed Area.

ARTICLE VIII INSURANCE

Section 8.01 Insurance Requirements

Concessionaire shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described herein. Concessionaire shall provide the County with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Concessionaire are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under the Agreement.

Section 8.02 Comprehensive General Liability Insurance

Concessionaire shall, during the entire Term hereof, keep in full force and effect Comprehensive General Liability Insurance with a minimum limit of ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) General Aggregate for bodily injury, personal injury and property damage liability; fire legal liability with a minimum limit of \$100,000, and medical payments with a minimum limit of \$5,000. The Comprehensive General Liability policy shall include, but not be limited to, providing coverage for Licensed Area/Operations, Product/Completed Operations, Contractual Liability, Personal Injury/Advertising Injury, Independent Contractors, Cross Liability and Broad Form Property Damage Liability coverages. Coverage shall be provided on a primary basis.

Section 8.03 Business Automobile Liability Insurance

Concessionaire shall, during the entire Term hereof, keep in full force and effect, Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Concessionaire does not own automobiles, Concessionaire agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. Coverage shall be provided on a primary basis.

Section 8.04 Workers' Compensation & Employers Liability

Concessionaire shall, during the entire Term hereof, keep in full force and effect, to maintain Florida Workers' Compensation Insurance & Employers Liability. Coverage shall be provided on a primary basis.

Section 8.05 Waiver by Concessionaire and Concessionaire's Insurers of Subrogation

In the event of loss or damage to the Clubhouse Area and/or any contents or Concessionaire's beverage/snack carts, the Concessionaire shall look solely to any insurance in its favor before making any claim against the County, and the Concessionaire shall obtain and deliver to the County, from the insurer under each policy of such insurance, an agreement whereby such insurer waives subrogation of any claim against the County for loss or damage within the scope of the insurance, and the Concessionaire, for itself and its insurers, waives all such insured claims against the County.

Section 8.06 Liquor Liability

Concessionaire shall maintain Liquor Liability coverage with limits of \$1,000,000 each occurrence in accordance with all of the terms and conditions set forth herein in the event a liquor license or permit is required, whether maintained or not; liquor is served with or without a charge to the general public; liquor is served as a means of generating revenue for a fund raising event; liquor is served by a third-party contracted by the insured for any of the foregoing reasons mentioned above; and/or liquor is offered for the purpose of financial gain or livelihood. Liquor also includes beer or wine. Coverage may be provided by way of the Commercial General Liability policy utilizing Liquor Liability endorsement CG 2408. Concessionaire shall provide this coverage on a primary basis for losses covered under the policy arising from Concessionaire's operations under this Agreement.

Section 8.07 Insurance Terms and Conditions

The Comprehensive General Liability policy shall name the County as an Additional Insured with a "CG 2026 - Additional Insured - Managers or Lessors of Licensed Area", or similar endorsement. Such insurance shall be issued by an insurance company licensed to do business by Florida's Department of Insurance with Florida Certificate of Authority in full force and effect. The issuing insurance company shall maintain a minimum A.M. Best financial rating of "A and A-Excellent" and shall be subject to the review and approval of the Risk Management Department of the County. A Certificate of Insurance evidencing such insurance coverage shall be provided to the County prior to the Commencement Date, such Certificate indicating at least ten (10) days prior notice of cancellation. In no event shall the limits of said insurance policies be considered as limiting the liability of Concessionaire under this Agreement. In the event that

Concessionaire fails to obtain or maintain in full force and effect any insurance coverage required to be obtained by Concessionaire under this Agreement, County may procure same from such insurance carriers as County may deem proper, and Concessionaire shall pay as Additional Rent, upon demand of County, any and all premiums, costs, charges and expenses incurred or expended by County in obtaining such insurance. Notwithstanding the foregoing, Concessionaire shall nevertheless hold County harmless from any loss or damage incurred or suffered by County from Concessionaire's failure to maintain such insurance.

Section 8.08 Fire and Allied Lines Insurance

Concessionaire shall at all times during the Term hereof, and at its sole cost and expense, maintain in full force and effect policies of insurance covering all Alterations to the Clubhouse Area made by or on behalf of Concessionaire as well as Concessionaire's fixtures, inventory and equipment located on the Licensed Area and within the Park, in an amount not less than one hundred percent (100%) of its full replacement cost, providing protection with "All-Perils" coverage as provided by the "Special-Cause of Loss Form" together with, but not limited to, insurance against wind and hail, sprinkler leakage damage, vandalism, theft and malicious mischief. The proceeds of such insurance, so long as this Agreement remains in effect, shall be used to repair or replace the Clubhouse Area, Alterations, fixtures, inventory and equipment so insured. All property, including without limitation, stock, inventory, fixtures and equipment belonging to Concessionaire or any occupant of the Clubhouse Area shall be there at the risk of Concessionaire or such other person only, and County shall not be liable for damage thereto or theft or misappropriation thereof. Additionally, the Concessionaire shall maintain Business Interruption with Extra Expense insurance providing coverage for loss of net income and all continuing expenses at a minimum limit appropriate to cover the maximum period of restoration or interruption of the Concessionaire. Concessionaire shall deliver to the County certificates of such fire insurance policies which shall contain a clause requiring the insurer to give the County thirty (30) days prior notice of cancellation of such policies.

Section 8.09 Increase in Fire and Allied Lines Insurance Premium

Concessionaire shall not keep, use, sell or offer for sale in or upon the Licensed Area any article which may be prohibited by any, condition, provision, limitation, or Special - Cause of Loss Form of the Fire and Allied Lines insurance policy. Concessionaire shall pay any increase in premiums for Fire and Allied Lines coverage insurance that may be charged during the Term of this Agreement on the amount of such insurance which may be carried by County on the Licensed Area or the Licensed Area resulting from the type of merchandise sold or rented by Concessionaire in the Licensed Area or resulting from Concessionaire's use of the Licensed Area, whether or not County has consented to the same. Concessionaire shall promptly make, at Concessionaire's cost and expense, all repairs, alterations, changes and/or improvements to Concessionaire's fixtures and equipment in the Licensed Area required by the company issuing County's fire and allied lines insurance so as to avoid the cancellation of, or the increase in premiums on said insurance.

Section 8.10 Continuous Coverage

The required insurance coverage(s) shall be a continuous condition precedent to the continued use of the Licensed Area by the Concessionaire. This Agreement shall terminate immediately upon expiration, cancellation or non-renewal of the required insurance(s). Failure by the Concessionaire to forward a current or updated certificate of insurance to the designated County representative prior to or upon the expiration date of the certificate on file with the County may result in termination of this Agreement.

ARTICLE IX INDEMNIFICATION AND DISCLAIMER OF LIABILITY

Section 9.01 Indemnification

Concessionaire shall indemnify, defend and save harmless the County from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this

Agreement for any personal injury, loss of life, environmental contamination, and/or damage to property sustained in or about the Licensed Area by reason, during, or as a result of the use and occupancy of the Licensed Area by the Concessionaire, its agents, employees, licensees, and invitees, and the general public, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim at trial or on appeal. In the event County shall be made a party to any litigation commenced against Concessionaire or by Concessionaire against any third party, then Concessionaire shall protect and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Concessionaire recognizes the broad nature of this indemnification provision and specifically acknowledges that County would not have entered into this Agreement without Concessionaire's agreement to indemnify County and further acknowledges the receipt of good and valuable separate consideration provided by County in support hereof in accordance with the laws of the State of Florida. This provision shall survive expiration or termination of this Agreement.

Section 9.02 DISCLAIMER OF LIABILITY

COUNTY HEREBY DISCLAIMS, AND CONCESSIONAIRE HEREBY RELEASES COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY CONCESSIONAIRE, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS AGREEMENT OR ANY EXTENSION THEREOF INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF THE CONCESSIONAIRE OR CONCESSIONAIRE'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE LICENSED AREA, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO CONCESSIONAIRE'S USE OF THE LICENSED AREA PURSUANT TO THIS AGREEMENT.

ARTICLE X DESTRUCTION OF LICENSED AREA

Section 10.01 Total or Partial Destruction

In the event the Park or the Licensed Area shall be damaged or injured by fire, the elements, unavoidable accident or other casualty, without the fault of Concessionaire, during the Term of this Agreement or any extension thereof, but the Clubhouse Area is not thereby rendered inaccessible or untenable in whole or in part, then the County shall, at its own expense, cause such damage to be repaired, and the Guaranteed Annual Rent and other charges payable by Concessionaire hereunder shall not be abated. If by reason of such occurrence, the Clubhouse Area shall be rendered untenable only in part, County shall, at its own expense, cause the damage to be repaired, and the Guaranteed Annual Rent meanwhile shall be abated proportionately as to the portion of the Clubhouse Area rendered untenable. If the Clubhouse Area shall be rendered wholly untenable by reason of such occurrence, the County may, at its option, cause such damage to be repaired at County's expense, and the Guaranteed Annual Rent meanwhile shall be abated in whole until completion of such repairs. County shall notify Concessionaire in writing whether County intends to repair the Clubhouse Area. If County elects not to perform such repairs, County and Concessionaire shall then each have the right to terminate this Agreement, with each party's right to be exercised, if at all, by notice in writing delivered to the other party within forty-five (45) days after County's election not to repair the Clubhouse Area. In the event either party exercises its aforesaid termination right, this Agreement and the tenancy hereby created shall

cease as of the date of said occurrence and the parties hereto shall be relieved of all further obligations hereunder. In no event shall County be responsible for repair of Concessionaire's equipment, trade fixtures and/or Concessionaire's Alterations.

Section 10.02 Damage Near End of Term

If the Clubhouse Area is destroyed or damaged during the last ten (10) months of the Term of this Agreement or any renewal thereof and the estimated cost of repair exceeds ten percent (10%) of the Guaranteed Annual Rent then remaining to be paid by Concessionaire for the balance of the Term, County may, at its option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Concessionaire of its election to do so within thirty (30) days after the date of occurrence of such damage and the parties hereto shall be relieved of all further obligations hereunder.

Section 10.03 Reconstruction of Alterations

Concessionaire, at its sole cost and expense, shall be responsible for the repair and restoration of Concessionaire's Alterations and the replacement of its stock in trade, trade fixtures, furniture, furnishings and equipment. Concessionaire shall commence the installation of fixtures, equipment, and merchandise promptly upon delivery to it of possession of the Licensed Area and shall diligently prosecute such installation to completion.

Section 10.04 Insurance Proceeds to County

County's obligation to restore the Clubhouse Area as required under this Article X is expressly contingent upon County's receipt of, and limited to the extent of, any insurance proceeds received by County relating to the Clubhouse Area.

ARTICLE XI ASSIGNMENT AND SUBLETTING

Section 11.01 Consent Required

Concessionaire may not assign, mortgage, pledge or encumber this Agreement, in whole or in part, nor sublet or rent all or any portion of the Licensed Area, nor enter into any management licensing or similar agreement without the prior written consent of County in each instance, which may be granted or withheld at County's sole and absolute discretion. The consent by County to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. If this Agreement is assigned, or if the Licensed Area or any part thereof is sublet or occupied by any party other than Concessionaire and Concessionaire is in default under its obligations under this Agreement, County may collect rent from the assignee, sub-contractor or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, sub-contractor, or occupancy as Concessionaire, or a release from the further performance by Concessionaire of the covenants on the part of Concessionaire herein contained. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary. Notwithstanding any assignment or sublease, Concessionaire shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions hereof or any rents or other sums to be paid hereunder. Concessionaire acknowledges and agrees that any and all right and interest of the County in and to the Licensed Area, and all right and interest of the County in this Agreement, may be conveyed, assigned or encumbered at the sole discretion of the County at any time.

Section 11.02 Significant Change of Ownership

If Concessionaire is a corporation (other than one whose shares are regularly and publicly traded on a recognized stock exchange), partnership, limited liability company, or other business entity, Concessionaire represents that the ownership and power to control such entity belongs to and is vested in the person or persons executing this Agreement and/or as disclosed to County prior to executing this Agreement. If there shall occur any changes of ownership of and/or

control of Concessionaire, whether such change of ownership is by sale, assignment, bequest, inheritance, operation of law or otherwise, without the prior written consent of the County, then County shall have the option to terminate this Agreement upon thirty (30) days notice to Concessionaire.

ARTICLE XII RULES AND REGULATIONS

The rules and regulations appended to this Agreement as Exhibit "B" are hereby made a part of this Agreement, and Concessionaire agrees to comply with and abide by same. Concessionaire's failure to keep and observe said rules and regulations shall constitute a default under the terms and conditions of this Agreement. County reserves the right from time to time to amend and supplement the rules and regulations, and to impose additional rules and regulations. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to the Concessionaire. Concessionaire agrees to comply with all additional and supplemental rules and regulations upon notice of same from County.

ARTICLE XIII DEFAULT

Section 13.01 Default by Concessionaire

The occurrence of any one or more of the events set forth below in (a) to (k), inclusive (any of which is referred to hereinafter as an "Event of Default"), shall constitute an Event of Default by Concessionaire under this Agreement:

- a) Concessionaire fails to open its concession for business on the Licensed Area within thirty (30) days after the date the golf course opens to the public or the Effective Date, whichever date occurs last, as set forth in Section 1.04.
- b) Concessionaire fails to pay any one or more of said monthly installments of Guaranteed Annual Rent, or any other sums due hereunder as Additional Rent, as and when the same become due, without any prior demand.
- c) Concessionaire ceases to fully conduct its business as specified herein for a period of five (5) consecutive business days as determined by the County.
- d) A petition in bankruptcy under any present or future bankruptcy laws (including but not limited to reorganization proceedings) is filed by or against the Concessionaire and such petition is not dismissed within thirty (30) days from the filing thereof, or in the event Concessionaire is adjudged bankrupt.
- e) An assignment for the benefit of creditors is made by Concessionaire.
- f) An appointment, by any court, of a receiver or other court officer of Concessionaire's property and such receivership is not dismissed within thirty (30) days from such appointment.
- g) Concessionaire's estate is taken by execution, attachment or process of law or subjected to any bankruptcy proceeding.
- h) Concessionaire removes, attempts to remove, or permits to be removed from the Licensed Area, except as required herein or upon County's approved assignment or subletting or in the usual course of trade, the goods, furniture, effects or other property of the Concessionaire brought thereon.
- i) Concessionaire vacates the Licensed Area or abandons the possession thereof before the expiration of the Term of this Agreement and without the written consent of the County, or uses the same for purposes other than the purposes for which the same are hereby licensed, or ceases to use the Licensed Area for the purposes herein contained.
- j) An execution or other legal process is levied upon the goods, furniture, effects or other property of Concessionaire brought on the Licensed Area, or upon the interest of Concessionaire in this Agreement, and the same is not satisfied or dismissed within ten (10) days from such levy.
- k) Concessionaire violates any other term, condition or covenant herein on the part of Concessionaire to be performed or complied with, and Concessionaire fails to

commence and proceed with diligence and dispatch to remedy the same within ten (10) days after written notice thereof, is given by County to Concessionaire.

If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to pursue such remedies as may be available to County under the law, including, without limitation, the right to give Concessionaire notice that County intends to terminate this Agreement upon a specified date not less than three (3) days after the date notice is received by Concessionaire, in which event this Agreement shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Agreement. If, however, the default is cured within the three (3) day period and the County is so notified, this Agreement will continue. Concessionaire shall not be allowed more than two (2) notices and cure periods in any given year of the Term, and no more than five (5) notices and cure periods during the entire Term of this Agreement, for Events of Default related to payment of Guaranteed Annual Rent and/or Additional Rent.

Section 13.02 Default by County

County shall not be in default unless County fails to perform its obligations hereunder within the time specified and if none, within a reasonable time, but in no event later than thirty (30) days after written notice by Concessionaire to County, specifying how County has failed to perform such obligations; provided, however, that if the nature of County's obligations is such that more than thirty (30) days are required for performance, then County shall not be in default if County commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

ARTICLE XIV ACCESS BY COUNTY

County or County's agents shall have the right to enter the Clubhouse Area, at reasonable times, to examine the same and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable. Concessionaire must provide the County with access to the Clubhouse Area within two (2) business days after the County's request for access. The Guaranteed Annual Rent and/or Additional Rent and other charges herein reserved and imposed shall not be abated while said repairs, alterations, improvements, or additions are being made. During the six (6) months prior to the expiration of the initial Term of this Agreement or any renewal thereof, County may exhibit the Clubhouse Area to prospective Concessionaires, and place upon the Clubhouse Area the usual notice "To Let" or similar notice, in a location that does not obscure Concessionaire's sign, which notices Concessionaire shall permit to remain thereon without molestation. If Concessionaire shall not be personally present to open and permit entry into the Clubhouse Area, at any time, when for any reason entry therein shall be necessary, County or County's agents may enter the same without in any manner affecting the obligations and covenants of this Agreement. County shall have immediate access in the event of an emergency. Any such entry shall be calculated to minimize interference with or disruption of Concessionaire's operations within the Clubhouse Area. Nothing herein contained, however, shall be deemed or construed to impose upon the County any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the Licensed Area or any part thereof, except as otherwise herein specifically provided.

ARTICLE XV ANNUAL BUDGETARY FUNDING/CANCELLATION

This Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners. Notwithstanding anything in this Agreement to the contrary, upon expiration of the initial Term of the Agreement, County shall have the right to cancel this Agreement for any reason upon ninety (90) days prior written notice to Concessionaire, whereupon the parties shall be relieved of all further obligation hereunder.

ARTICLE XVI QUIET ENJOYMENT

Upon payment by the Concessionaire of the Guaranteed Annual Rent, Additional Rent and other charges herein provided, and upon the observance and performance of all the covenants, terms and obligations on Concessionaire's part to be observed and performed, Concessionaire shall peaceably and quietly hold and enjoy the Clubhouse Area for the Term hereby demised without hindrance or interruption by County or any other person or persons lawfully or equitably claiming by, through or under the County, subject, nevertheless, to the terms and conditions of this Agreement.

ARTICLE XVII GUARANTY

The payment of all rents and charges, and the performance of all covenants, terms and obligations of Concessionaire, required by this Agreement are guaranteed pursuant to that Guaranty Agreement, a copy of which is attached hereto as Exhibit "C" and made a part hereof.

ARTICLE XVIII MISCELLANEOUS

Section 18.01 Entire Agreement

This Agreement and any Exhibits attached hereto constitute all agreements, conditions and understandings between County and Concessionaire concerning the Licensed Area and supersedes all other negotiations, representations, or agreement, written or oral, relating to this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or Concessionaire unless reduced to writing and signed by them.

Section 18.02 Amendments

This Agreement may be modified and amended only by written instrument executed by the parties hereto.

Section 18.03 Notices

A. Notices Required by Agreement

All notices, consents, approvals, and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service (provided in each case a receipt is obtained), or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5 P.M. on a business day and on the next business day if transmitted after 5 P.M. or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to the County at:

Parks & Recreation Department
Attn: Director, Parks Financial and Support Services
John Prince Park
2700 Sixth Avenue South
Lake Worth, FL 33461
Telephone 561-966-6650
Fax 561-242-6930

with a copy to:

Palm Beach County
Property and Real Estate Management Division
Attn: Director
2633 Vista Parkway
West Palm Beach, FL 33411-5605
Telephone 561-233-0217
Fax 561-233-0210
and a copy to:

Palm Beach County Attorney's Office
Attn: Real Estate Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
Telephone 561-355-2225
Fax 561-355-4398

(b) If to Concessionaire at:

9858 Glds Rd #119
Boca Raton, FL 33434
Telephone 561-302-1441
Fax _____

Any party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

Section 18.04 Disclosure of Beneficial Interests

Concessionaire represents that simultaneously with Concessionaire's execution of this Agreement, Concessionaire has executed and delivered to County the Disclosure of Beneficial Interests attached hereto as Exhibit "D" (the "Disclosure"), disclosing the name and address of every person or entity having a five percent (5%) or greater beneficial interest in the ownership of the Concessionaire. Concessionaire warrants that in the event there are any changes to the names and addresses of the persons or entities having a five percent (5%) or greater beneficial interest in the ownership of the Concessionaire after the date of execution of the Disclosure and prior to the Effective Date of the Agreement, Concessionaire shall immediately, and in every instance, provide written notification of such change to the County pursuant to Section 18.03 of this Agreement.

Section 18.05 Severability

If any term of this Agreement or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 18.06 Broker's Commission

Concessionaire represents and warrants that Concessionaire has not dealt with any real estate salesperson, agent, finder or broker in connection with this Agreement and further agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Concessionaire. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

Section 18.07 Recording

Concessionaire shall not record this Agreement, or any memorandum or short form thereof, in the public records of Palm Beach County. Any such recording shall constitute a default hereunder and shall result in immediate termination of this Agreement.

Section 18.08 Waiver of Jury Trial

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN CONNECTION WITH THIS AGREEMENT OR CONCESSIONAIRE'S USE AND OCCUPANCY OF THE LICENSED AREA.

Section 18.09 Governing Law and Venue

This Agreement shall be governed by and interpreted according to the laws of the State of Florida. Venue shall be in a State Court of competent jurisdiction in Palm Beach County, Florida.

Section 18.10 Radon

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

Section 18.11 Time of Essence

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

Section 18.12 Waiver, Accord and Satisfaction

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver. The waiver by County of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by County to or of any act by Concessionaire requiring County's consent to or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by Concessionaire. No re-entry by County subsequent to an act of default by Concessionaire shall bar the recovery of rents or damages for the default of any of the terms, conditions or covenants on the part of Concessionaire herein contained. The receipt of rent after default or condition broken, or delay on the part of County to enforce any right hereunder, shall not be deemed a waiver of any default by Concessionaire of any term, covenant or condition of this Agreement, or a waiver of the right of the County to terminate this Agreement or re-enter the Licensed Area or to re-let same, unless the payment received is for the full amount of rent, penalties, interest, and other amounts past due and non-payment of the same was the sole act of default.

Section 18.13 Construction

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 18.14 Incorporation by Reference

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

Section 18.15 Survival

Except as otherwise permitted herein, Concessionaire shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Concessionaire hereunder arising prior to the date of such termination.

Section 18.16 Effective Date of Agreement

This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners (the "Effective Date").

Section 18.17 Successors

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and permitted assigns of the said parties; and if there shall be more than one Concessionaire, they shall be bound jointly and severally by the terms, covenants and agreements herein. In the event County sells its interest in the Licensed Area and the purchaser assumes County's obligations and covenants, County shall thereupon be relieved of all further obligations hereunder.

Section 18.18 Public Entity Crimes

As provided in Section 287.131-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Concessionaire certified that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes. Concessionaire also certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder have not been suspended from doing business with Palm Beach County.

Section 18.19 Non-Discrimination

Concessionaire for itself, its successors in interest and assigns, does hereby covenant and agree that no person on the grounds of race, religion, color, national origin, ancestry, sex, age, marital status, sexual orientation, gender identity or expression, or disability shall be excluded from participation in or denied the use of the Licensed Area.

Section 18.20 Independent Contractor Relationship

The Concessionaire is, and shall be, in the performance of all work, services, and activities under this Agreement, an Independent Contractor and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Concessionaire's sole direction, supervision, and control. The Concessionaire shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Concessionaire's relationship, and the relationship of its employees, to the County shall be that of an Independent Contractor and not as employees or agents of the County.

The Concessionaire does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Agreement.

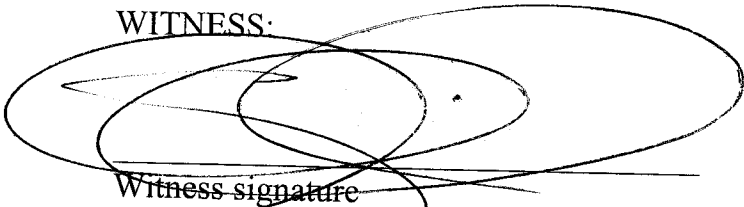
Section 18.21 Palm Beach County Office of the Inspector General

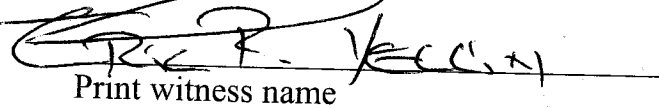
Pursuant to Ordinance No. 2009-049, Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All parties doing business with the County shall fully cooperate with the Inspector General. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate,

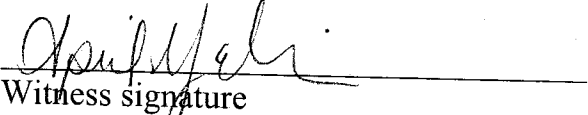
monitor, and inspect the activities of Concessionaire, its officers, agents, employees, and lobbyists in order to ensure compliance with service agreement specifications and to detect waste, corruption and fraud. Where applicable, the cost of the Office of the Inspector General shall be incorporated into the contract price of all contracts and shall be one quarter (1/4) of one (1) percent of the contract price.

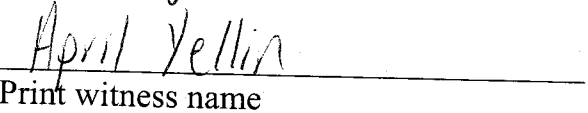
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

WITNESS:


Witness signature


Print witness name


Witness signature


Print witness name

WITNESS:

Witness signature

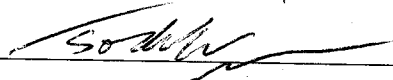
Print witness name

Witness signature

Print witness name

CONCESSIONAIRE:

DAZ Inc a Florida Corporation

By: 

Title: Pres

By: _____

Title: _____

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

COUNTY:

PALM BEACH COUNTY,
a political subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Assistant County Attorney

By: Reh Amy Wolf
Department Director

EXHIBIT "A"
TO THE CONCESSIONAIRE SERVICE AGREEMENT

"The Park"

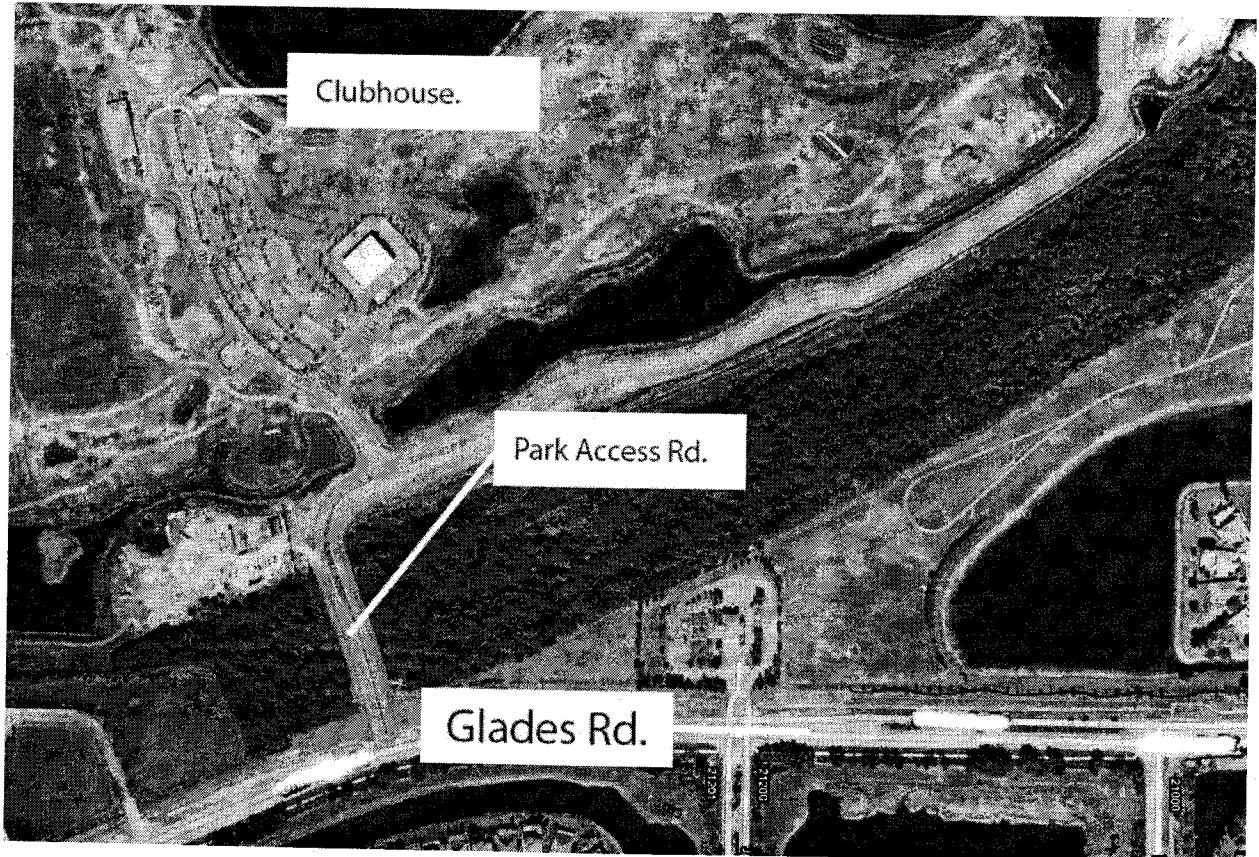


EXHIBIT A-1
TO THE CONCESSIONAIRE SERVICE AGREEMENT

“Licensed Area”

Golf Course Area



Clubhouse Area

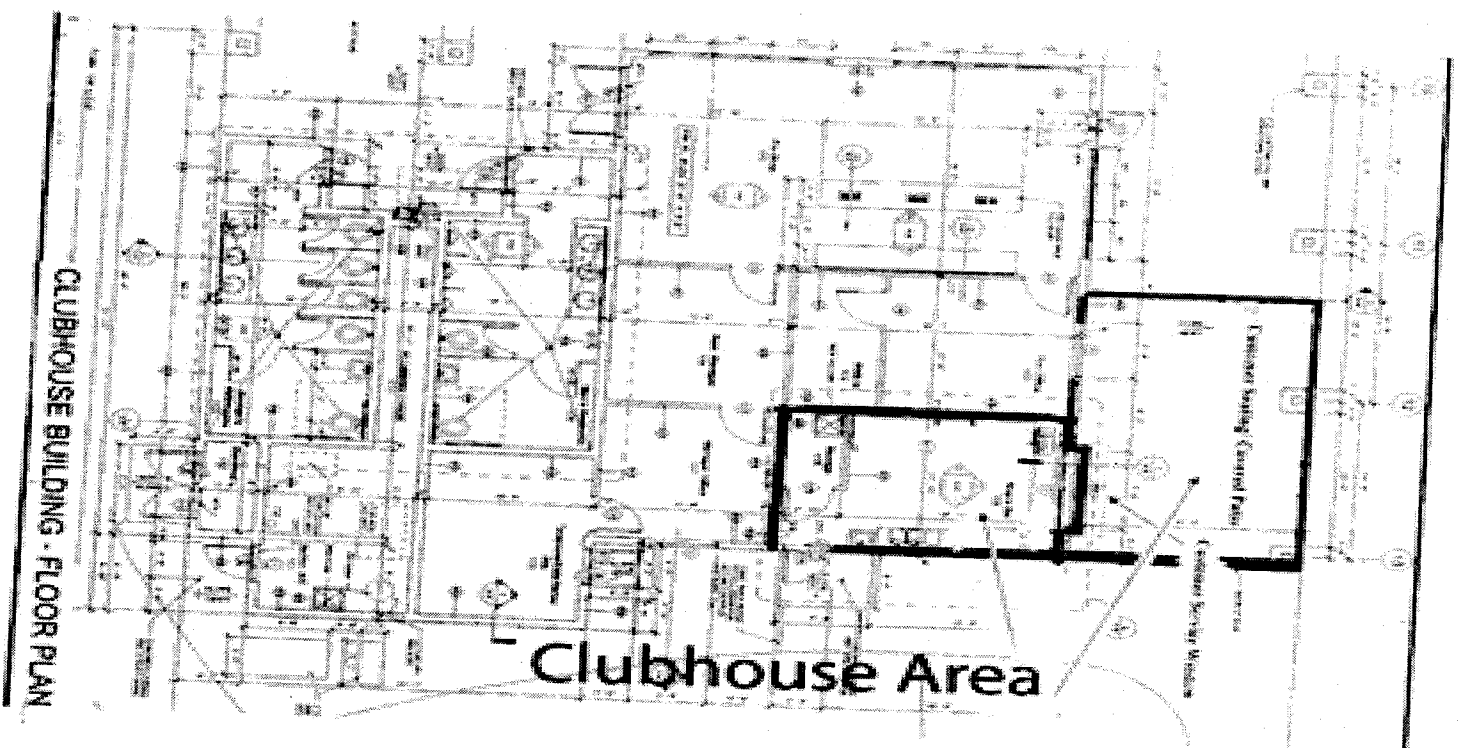


EXHIBIT "B"
TO THE CONCESSIONAIRE SERVICE AGREEMENT

RULES AND REGULATIONS

1. The sidewalks, entrances and passages surrounding the Clubhouse Area shall not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the Clubhouse Area demised to Concessionaire or occupant.
2. No awnings or other projections shall be attached to the outside walls or windows of the Clubhouse Area.
3. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Clubhouse Area.
4. The water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, acids, or other substances shall be thrown therein. Concessionaire shall not bring or keep, or permit to be brought or kept, any inflammable, combustible or explosive fluid, material, chemical or substance in or about the Licensed Area.
5. No animals (except for guide dogs for the blind or service dogs for the physically impaired) of any kind shall be brought into or kept in or about the Licensed Area. Concessionaire shall not cause or permit any unusual or objectionable odors to emanate from the Licensed Area.
6. No space in the Licensed Area shall be used for manufacturing, or for the storage or sale of merchandise, goods or property of any kind, at auction, without the prior consent of the County.
7. Concessionaire shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with visitors of the golf course, whether by the use of any musical instrument, radio, television set, or other audio device, musical noise, whistling, singing, or in any other way. Nothing shall be thrown out of any doors or windows.
8. No additional locks or bolts of any kind shall be placed upon any of the doors or windows, nor shall any changes be made in locks or the mechanism thereof. Concessionaire must, upon the termination of its tenancy, restore or return to the County all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by Concessionaire.
9. The County shall have the right to prohibit any advertising in or around the Park by the Concessionaire or any Service Provider which, in the County's opinion, tends to impair the reputation or desirability of the Park, and upon notice from the County, the Concessionaire or Service Provider shall refrain from or discontinue such advertising.
10. Concessionaire, before closing and leaving the Clubhouse Area, shall ensure that all doors are locked and all windows are closed.
11. The Clubhouse Area shall not be used, or permitted to be used, for lodging or sleeping, or for any immoral or illegal purpose.
12. There shall not be used in the Licensed Area, either by Concessionaire or occupants or by their agents or contractors, in the delivery, shipping or receipts of merchandise, freight or other matter, any hand trucks or other means of conveyance except those equipped with rubber tires, rubber side guards and such other safeguards as the County may require.
13. Concessionaire shall train its employees in golf etiquette and they shall provide services at all times using proper golf etiquette and in accordance with the Golf Operations Standard Operating Procedures.
14. Concessionaire shall use only recyclable, compostable, or biodegradable packaging, cups, and plates to distribute food and beverages.

EXHIBIT "C"
TO THE CONCESSIONAIRE SERVICE AGREEMENT

GUARANTY AGREEMENT

THIS IS A GUARANTY AGREEMENT made and executed on July 28, 2010 by the undersigned (hereinafter called the "Guarantor").

WITNESSETH

WHEREAS, DH2 inc (herein called "Concessionaire") and PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida (herein called the "County") have entered into a certain Concessionaire Service Agreement, dated _____ (R200 _____) (herein called the "Agreement"); and

WHEREAS, in order to induce the County to enter into the Agreement, the undersigned Guarantor has agreed to guarantee the payment of all rents and charges, and the performance of all of Concessionaire's obligations, under the Agreement.

NOW, THEREFORE, in consideration of the execution and delivery of the Agreement by the County, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

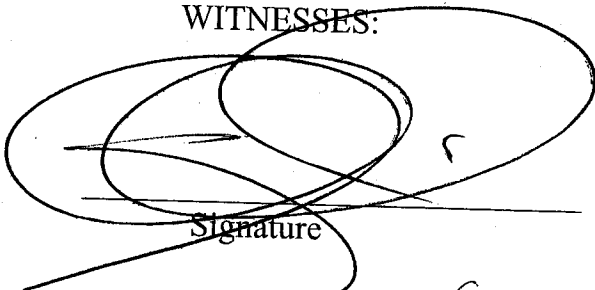
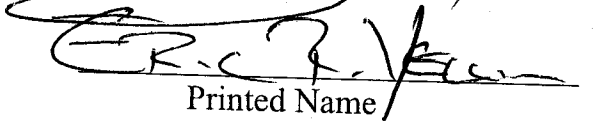
1. The undersigned Guarantor does hereby guarantee to the County the due and punctual payment of all Guaranteed Annual Rent, Additional Rent and other sums due and payable under the Agreement, and each and every installment thereof, as well as the full and prompt and complete performance by the Concessionaire of each and every covenant, condition, provision and obligation of the Concessionaire in the Agreement for the full Term of the Agreement and any extension thereof, as permitted by the Agreement, with no less force and effect than if the undersigned were named as the Concessionaire in the Agreement and the undersigned, will forthwith on demand pay all amounts at any time in arrears, and will make good any and all defaults occurring under the Agreement.
2. This Guaranty Agreement shall be an absolute, continuing, irrevocable, unconditional, and unlimited guaranty of payment, and the County shall not be required to take any proceedings against the Concessionaire, or give any notice to the undersigned before the County has the right to demand payment or performance by the undersigned upon default by the Concessionaire. This Guaranty Agreement and the liability of the undersigned hereunder shall in no way be impaired or affected by any assignment which may be made of the Agreement, or any subletting thereunder, or by any extension(s) of the payment of any rental or any other sums provided to be paid by Concessionaire, or by any forbearance or delay in enforcing any of the terms, conditions, covenants or provisions of the Agreement or any amendment, modification or revision of the Agreement.
3. No action or proceeding brought or instituted under this Guaranty Agreement against the undersigned, and no recovery had in pursuance thereof shall be a bar or defense to any further action or proceeding which may be brought under this Guaranty Agreement by reason of any further default or defaults of Concessionaire.
4. The liability of the Guarantor shall not be deemed to be waived, released, discharged, impaired or affected by reason of the release or discharge of the Concessionaire by any creditors, receivership, bankruptcy (or reorganization proceedings under the Bankruptcy Act) or other proceedings, or the rejection or disaffirmance of the Agreement in any proceedings.
5. There shall be no modification of the provisions of this Guaranty Agreement unless the same is in writing and signed by the undersigned and the County.


6. All of the terms, agreements and conditions of this Guaranty Agreement shall extend to and be binding upon the undersigned, their heirs, personal representatives, administrators, and assigns, and shall inure to the benefit of the County, its successors, and assigns, and to any future owner of the fee of the Licensed Area referred to in the Agreement. Terms not defined herein shall have the same meaning as in the Agreement.

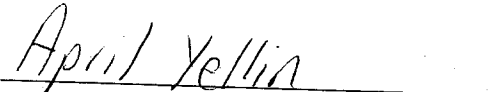
IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of:


WITNESSES:



Signature

Printed Name


Signature



Printed Name

GUARANTOR:


Signature


Printed Name

SPOUSE OF GUARANTOR (if any):


Signature

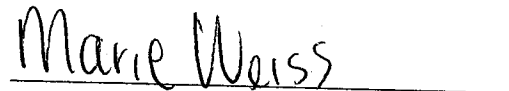

Printed Name

EXHIBIT "D"
TO THE CONCESSIONAIRE SERVICE AGREEMENT

CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY
DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared Todd
M Weiss, hereinafter referred to as "Affiant", who being by me first duly
sworn, under oath, deposes and states as follows:

1. Affiant is the president (position - i.e. president, partner,
trustee) of DH Z (name and type of entity - i.e. ABC
Corporation, XYZ Limited Partnership), (the "Concessionaire") which entity is providing
concession services on the real property legally described on or depicted in the attached Exhibit
"A" (the "Licensed Area").

2. Affiant's address is: 21186 La Vista Cir, Boca Raton, FL
33428

3. Attached hereto, and made a part hereof, as Exhibit "B" is a complete listing of the
names and addresses of every person or entity having a five percent (5%) or greater beneficial
interest in the concessionaire and the percentage interest of each such person or entity.

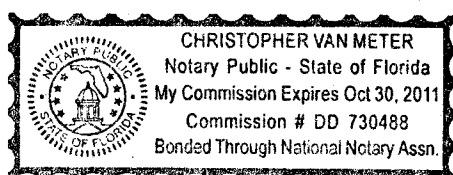
4. Affiant further states that Affiant is familiar with the nature of an oath and with the
penalties provided by the laws of the State of Florida for falsely swearing to statements under
oath.

5. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit
and to the best of Affiant's knowledge and belief it is true, correct, and complete, and will be
relied upon by Palm Beach County relating to its entering into a Concessionaire Service
Agreement for the Licensed Area.

FURTHER AFFIANT SAYETH NAUGHT.

Todd Weiss [Signature], Affiant
(Print Affiant Name)

The foregoing instrument was sworn to, subscribed and acknowledged before me this 13
day of July, 2010, by Todd M Weiss
[] who is personally known to me or [x] who has produced [Signature]
FL# WZ00813692700 as identification and who did take an oath.



Notary Public [Signature]
Christopher Van Meter
(Print Notary Name)

NOTARY PUBLIC
State of Florida at Large
My Commission Expires: 10/30/2011

EXHIBIT "A"
TO CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

LICENSED AREA

Located at Osprey Point Golf Course, South County Regional Park
Golf Course Area



Clubhouse Area

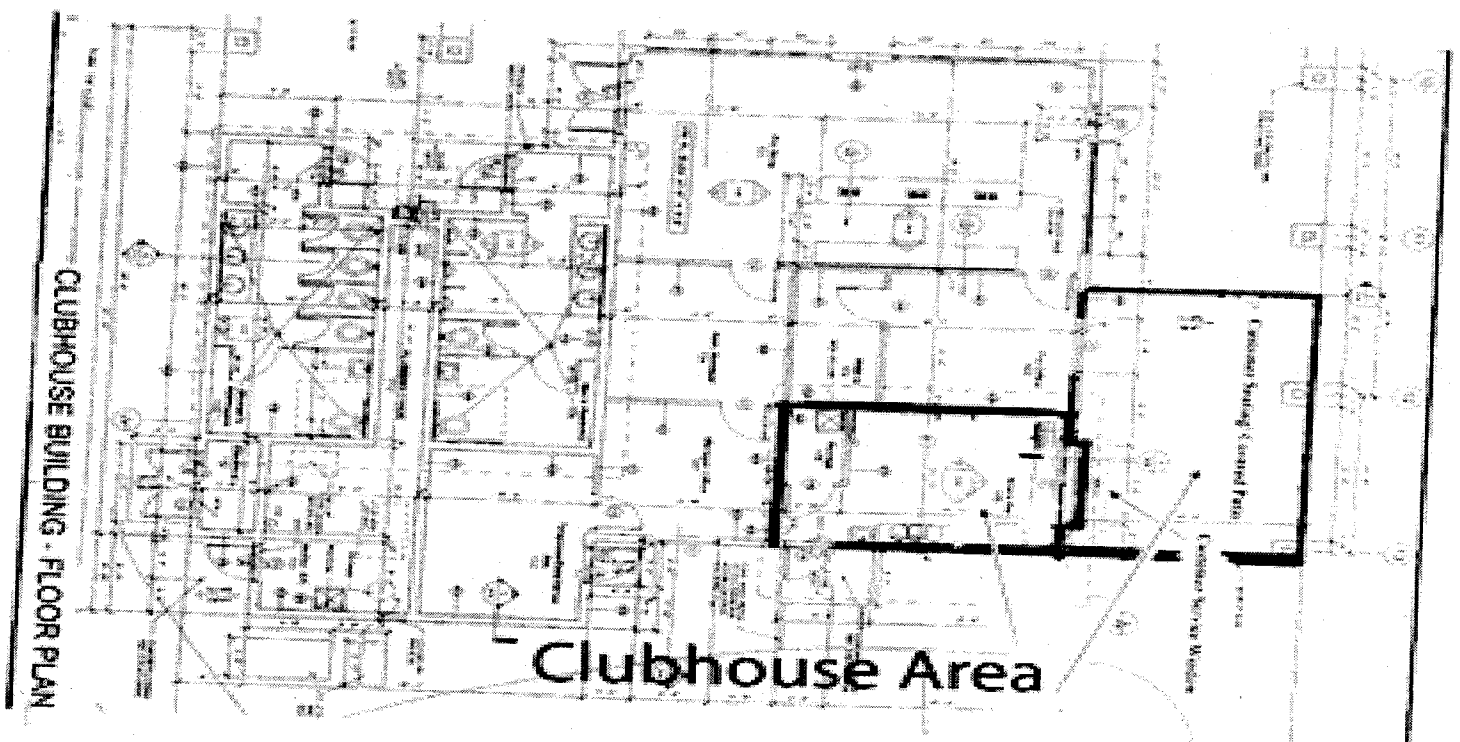


EXHIBIT "B"
TO CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

SCHEDULE TO BENEFICIAL INTERESTS

Concessionaire is only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. Concessionaire must identify individual interest holders. If, by way of example, Concessionaire is wholly or partially owned by another entity, such as a corporation, Concessionaire must identify such other entity, its address and percentage interest, as well as such information for the individual interest holders of such other entity.

NAME

ADDRESS

**PERCENTAGE
OF INTEREST**

~~NONE~~

Todd Weiss

21186 Lakota Cir. Se. Palm Fl 33428

100%

BUDGET AVAILABILITY STATEMENT

REQUEST DATE: August 6, 2010

REQUESTED BY: Richard Bogatin PHONE: 561-233-0214
FAX: 561 233-0210

PROJECT TITLE: Osprey Point Golf Course RFP food and beverage service Concessionaire
RFP No. 2010-102-RCB

PROJECT NO.: 2010-5.009

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures					
Operating Costs					
External Revenues	<u><\$0></u>	<u><\$5,500.00></u>	<u><\$6,220.00></u>	<u><\$520.00></u>	
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<u><\$0></u>	<u><\$5,500.00></u>	<u><\$6,220.00></u>	<u><\$520.00></u>	

**** By signing this BAS your department agrees to these staff costs and your account will be charged upon receipt of this BAS by FD&O. Unless there is a change in the scope of work, no additional staff charges will be billed.**

***Revenue is calculated as beginning on November 1, 2010, and reflects a four percent (4%) annual increases. No additional income for the .20 per round fee in excess of 60,000 rounds played in the preceding 12 month period is included.

BUDGET ACCOUNT NUMBER

FUND: 1382

DEPT: 580

UNIT: 5258

OBJ: 4732

SUB OBJ:

IS ITEM INCLUDED IN CURRENT BUDGET: YES X NO

IDENTIFY FUNDING SOURCE FOR EACH ACCOUNT: (check all that apply)
 ~ Ad Valorem (source/type)

~ Ad Valorem (source/type: _____)

~ Non-Ad Valorem (source/type: _____)

~ Grant (source/type: _____)

~ Park Improvement Fund (source/type: _____)

~ General Fund _____

~ Operating Budget _____

~ Federal/Davis Bacon _____

SUBJECT TO IG FEE? 9 YES 9 NO

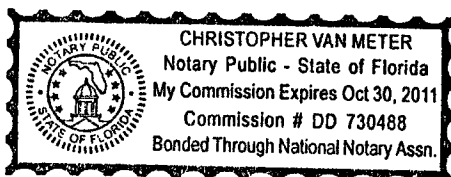
Department: PARKS & RECREATION

BAS APPROVED BY: [Signature] DATE: 8/6/10

ENCUMBRANCE NUMBER:

C:\Documents and Settings\pconnell\Local Settings\Temporary Internet Files\Content.Outlook\31UBS8AA\BAS revenue_expense 8 3 11 REV 1.docx

100# N 200613642700 as identification and who did take an oath.



Notary Public

(Print Notary Name)

NOTARY PUBLIC

State of Florida at Large

My Commission Expires: 10/30/2011

EXHIBIT "A"
TO CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

LICENSED AREA

Located at Osprey Point Golf Course, South County Regional Park
Golf Course Area



Clubhouse Area

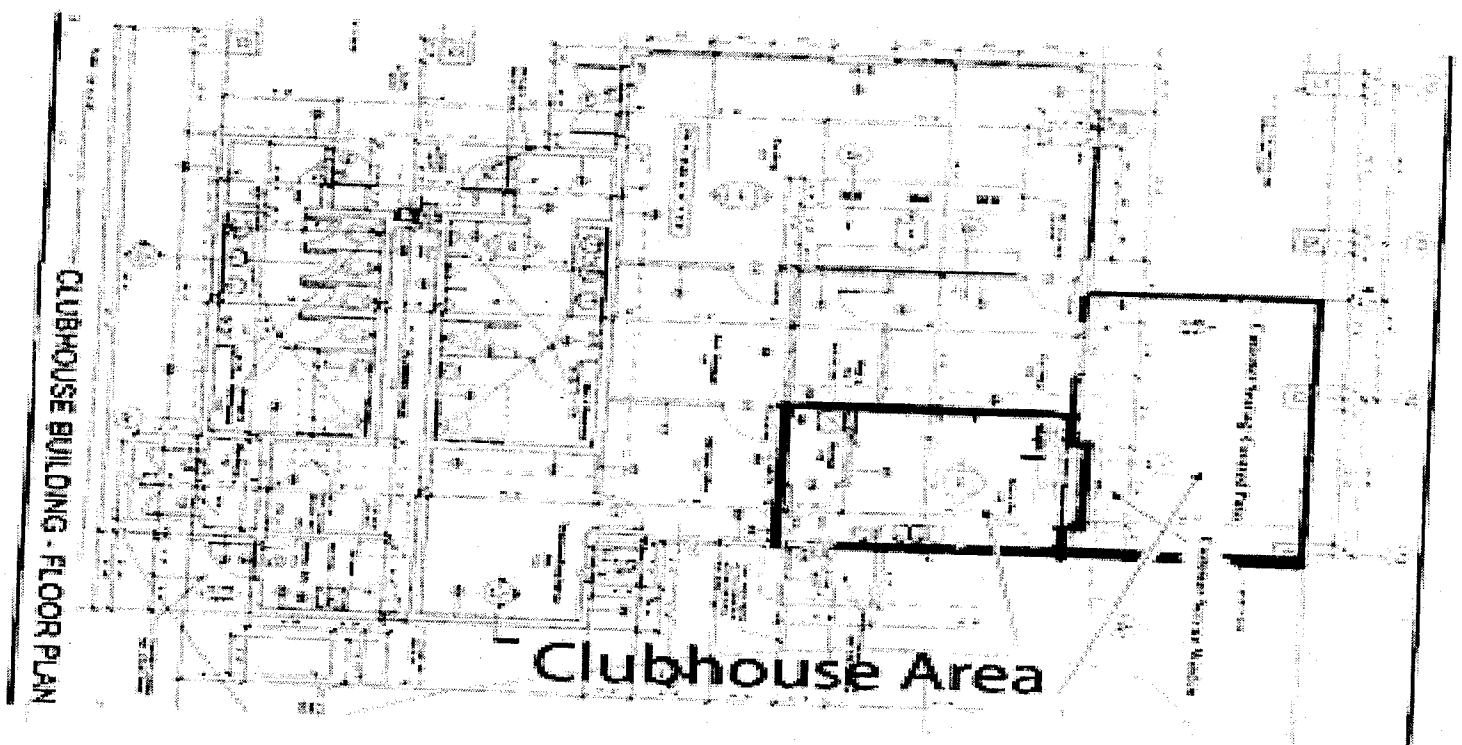


EXHIBIT "B"
TO CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

SCHEDULE TO BENEFICIAL INTERESTS

Concessionaire is only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. Concessionaire must identify individual interest holders. If, by way of example, Concessionaire is wholly or partially owned by another entity, such as a corporation, Concessionaire must identify such other entity, its address and percentage interest, as well as such information for the individual interest holders of such other entity.



NAME

ADDRESS

**PERCENTAGE
OF INTEREST**

NONE

Todd Weiss 21186 Lavalisa Cir Bonita Park FL 33428 100%

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Detail by Entity Name					
<u>Florida Profit Corporation</u>					
DH2, INC.					
<u>Filing Information</u>					
Document Number P00000007714					
FEI/EIN Number 650975783					
Date Filed 01/24/2000					
State FL					
Status ACTIVE					
<u>Principal Address</u>					
8111 GOLF COURSE ROAD BOCA RATON FL 33434					
Changed 09/23/2009					
<u>Mailing Address</u>					
9858 GLADES ROAD #119 BOCA RATON FL 33434					
Changed 03/10/2010					
<u>Registered Agent Name & Address</u>					
WEISS, TODD 22191 POWERLINE ROAD SUITE 1A BOCA RATON FL 33433					
Address Changed: 01/16/2002					
<u>Officer/Director Detail</u>					
Name & Address					
Title PRES					
WEISS, TODD 201 WEST CAMINO REAL BOCA RATON FL 33432					
<u>Annual Reports</u>					
Report Year Filed Date					
2009 06/17/2009					
2009 09/23/2009					
2010 03/10/2010					

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01/24/2000 -- Domestic Profit	View image in PDF format

Note: This is not official record. See documents if question or conflict.

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**THE MAIN STREET AMERICA GROUP**

NGM Insurance Company • Old Dominion Insurance Company
Main Street America Assurance Company • MSA Insurance Company
Information Systems and Services Corporation

PREMIUM SUMMARY

Date Prepared: 07/23/2010	Quote#: 815405
Named Insured: DH2, Inc. Osprey Golf Course	Agent Name: PLASTRIDGE AGENCY INC PA BC GR
Policy Type: FL BusinessOwners	Effective Date: 07/26/2010

Policy level coverages:

Coverage	Limit / Exposure	Deductible	Premium
General Liability - Combined Single Limit - each occurrence/aggregate	\$1,000,000/ \$2,000,000		Included
Hired and Non-Owned Auto	\$500,000		Included
Liquor Liability			\$300.00
Policy Level Totals:			\$300.00

Location:1, Description:12551 C GladesRd, State:FL

Coverage	Limit	Deductible	Premium
Commercial Guard Plus			\$200.00
Personal Property	\$12,500	\$500	\$451.00
Wind and Hail % Deductible	\$12,500	2%	Included
AI Managers or Lessors of Premises			\$26.00
Business Income & Extra Expense	6 Months		Included
Location-1 Total:			\$677.00

Subtotal	\$977.00
Balance to minimum	\$23.00
Policy Fee	\$35.00
Fees and Surcharges	\$5.04
Surplus Lines Tax	\$51.75
Florida Assessment	\$24.84
Grand Total (Full Annual Premium)	\$1,116.63

The quotation is based on the information provided and is subject to underwriting approval by the company and your agent's authority to bind coverage on behalf of the company. The premium quoted is valid for 30 days from the date of this proposal.

POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

Please note that coverage for acts of terrorism is included in your commercial insurance policy. The Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIA), extended the provisions of the Act to 2014. As defined in Section 102(1) of the Act, the term "act of terrorism" means any act that is certified by the U.S. secretary of the treasury-in concurrence with the U.S. secretary of state and U.S. attorney general-to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property or infrastructure; to have resulted in damage within the U.S., or outside the U.S. in the case of certain air carriers or vessels or the premises of a U.S. mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the U.S. or to influence the policy or affect the conduct of the U.S. government by coercion. The portion of your annual premium that is attributable to coverage for acts of terrorism is \$00.00, and does not include any charges for the portion of losses covered by the United States government under the Act.

LIMITATION ON PAYMENT OF TERRORISM LOSSES

You should know that where coverage is provided by this policy for losses resulting from certified acts of terrorism, such losses may be partially reimbursed by the U.S. government under a formula established by TRIA. However, your policy may contain other exclusions that might affect your coverage, such as for nuclear events. Under the formula, the U.S. government generally reimburses 85 percent of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. TRIA, as amended, contains a \$100 billion cap that limits U.S. government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced. In such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.