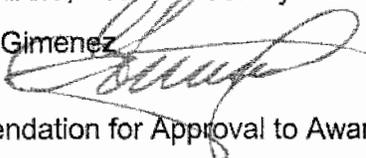


Memorandum



Date: April 3, 2012
To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners
From: Carlos A. Gimenez
Mayor 
Subject: Recommendation for Approval to Award: Palmetto Golf Course Restaurant Lease

Agenda Item No. 8(F)(8)

This item was amended at the March 13, 2012 meeting of the Internal Management and Fiscal Responsibility Committee to correct on page 4 of 44 on the agreement, under Item #11, the term of Lease Agreement, which shall end on the last day of the 36th month, and not the 60th month.

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve award of a lease agreement for the Palmetto Golf Course Restaurant to 4 on the Green, LLC.

CONTRACT NUMBER: RFP780

CONTRACT TITLE: Palmetto Golf Course Restaurant Lease

TERM: Three years with two, two-year options-to-renew

APPROVAL TO ADVERTISE: May 11, 2011

METHOD OF AWARD: Awarded to the responsive and responsible vendor whose offer results in the best value to the County. A full and open competitive Request for Proposals process was used.

PREVIOUS CONTRACT VALUE: The County currently receives \$1,000 per month in revenue through a permit agreement.

CONTRACT VALUE: \$129,000 in estimated revenue for the initial three year period*
* If the County chooses to exercise the two, two-year options-to-renew, the total contract value will be \$304,000 in estimated revenue to the County.

BACKGROUND

A Request for Proposals (RFP) was issued under full and open competition to obtain proposals from qualified firms to provide food and beverage services for the Palmetto Golf Course restaurant. Miami-Dade Parks, Recreation and Open Spaces (PROS) owns and operates the Palmetto Golf Course. The restaurant is a 1,628-square-foot facility, with maximum seating capacity for fifty persons, and additional space to store a limited number of mobile concession units. PROS will make available access to a covered patio area (approximately 1,476 square feet) for outside dining. The restaurant is currently being operated under a permit agreement.

The recommended vendor, 4 on the Green, LLC, is the sole proposer. They will operate the facility as "Sports Grill on the Green" and pay monthly rent to the County in the amount of \$2,000, in addition to 5% of monthly gross receipts. The County's negotiation team was able to increase the proposed monthly rent payment by 100% over the current revenue. County staff conducted research to determine why only one proposal was received. Other firms that initially expressed interest in this opportunity, but did not submit a proposal, had concerns about the profitability of the operation. This award recommendation is consistent with the County's goals for this project and is a viable offer for the long term lease of the property and the service to the golf course clients.

**USING/MANAGING AGENCY
 AND FUNDING SOURCE:**

Department	Estimated Revenue to the County	Funding Source	Contract Manager
Parks, Recreation and Open Spaces	\$ 129,000	N/A – Revenue-Generating	Jon Seaman
Total	\$ 129,000		

PROCUREMENT

CONTRACTING OFFICER: J.C. Romano, CPPB

VENDOR RECOMMENDED FOR AWARD:

Vendor	Address	Principal
4 on the Green, LLC (Local vendor)	24950 SW 144 Ave. Miami, FL 33032	Greene M. Labuzan IV

PERFORMANCE DATA: There are no performance issues with the recommended firm.

COMPLIANCE DATA: There are no compliance issues with the recommended firm.

VENDORS NOT RECOMMENDED: None

REVIEW COMMITTEE DATE: May 5, 2011

CONTRACT MEASURES: Not applicable – Revenue-Generating

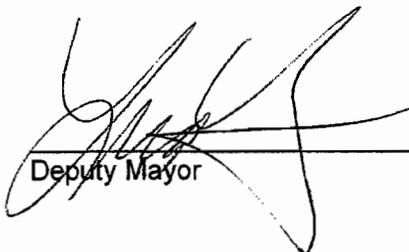
LIVING WAGE: The services being provided are not covered under the Living Wage Ordinance.

USER ACCESS PROGRAM: The User Access Program provision will not apply, as this is a revenue-generating contract.

LOCAL PREFERENCE: The Local Preference was applied in accordance with the Ordinance.

ESTIMATED COMMENCEMENT DATE: Upon approval by the Board and expiration of the mayoral veto period.

DELEGATED AUTHORITY: If this item is approved, the County Mayor or designee will have the authority to exercise, at their discretion, contract modifications, subsequent options-to-renew, and/or extensions, in accordance with the terms and conditions of the lease agreement.


 Deputy Mayor

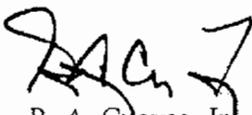


MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: April 3, 2012


FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(F)(8)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Agenda Item No. 8(F)(8)

Veto _____

4-3-12

Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT IN THE AMOUNT OF \$128,700.00 WITH 4 ON THE GREENE, L.L.C. TO LEASE AND OPERATE THE PALMETTO GOLF COURSE RESTAURANT FOR THE PARKS, RECREATION AND OPEN SPACES DEPARTMENT, AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AN AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the execution of an agreement in the amount of \$128,700.00 with 4 on the Greene, L.L.C., in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and all other rights contained therein.

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

- | | |
|-------------------------------------|----------------------|
| Joe A. Martinez, Chairman | |
| Audrey M. Edmonson, Vice Chairwoman | |
| Bruno A. Barreiro | Lynda Bell |
| Esteban L. Bovo, Jr. | Jose "Pepe" Diaz |
| Sally A. Heyman | Barbara J. Jordan |
| Jean Monestime | Dennis C. Moss |
| Rebeca Sosa | Sen. Javier D. Souto |
| Xavier L. Suarez | |

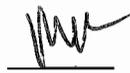
The Chairperson thereupon declared the resolution duly passed and adopted this
3rd day of April, 2012. This resolution shall become effective ten (10) days after the
date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective
only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Monica Rizo

PALMETTO GOLF COURSE RESTAURANT

Contract No. RFP780

THIS LEASE AGREEMENT made and entered into as of this _____ day of _____, 2011, by and between 4 on the Green L.L.C., a corporation organized and existing under the laws of the State of Florida, having its principal office at 24950 South West 144 Avenue, Miami, Florida 33032 (hereinafter referred to as the "Lessee"), and Miami-Dade County (the County), a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128, (herein referred to as the "Landlord"),

WITNESSETH:

WHEREAS, the County owns Palmetto Golf Course (the "Golf Course") for the use by patrons, lessees, employees and visitors, and which facilities are administered for the County by its Director of the Parks, Recreation and Open Spaces Department ("the Department"), or designee; and,

WHEREAS, the Lessee has offered to operate the Palmetto Golf Course Restaurant (the "Restaurant") in a manner that shall conform to the Scope of Services (Appendix A), Miami-Dade County's Request for Proposals (RFP) No.780 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Lease Agreement;

WHEREAS, the Lessee has submitted a written proposal dated May 30, 2011, hereinafter referred to as the "Lessee's Proposal", which is incorporated by reference herein; and

WHEREAS, the Lessee's Proposal is recommended as being in the best interest of the County, and formed the basis for award of this Lease Agreement,

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. **Definitions:** The following words and expressions used in this Lease Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:
- a) The words "Lease Agreement" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 780 and all associated addenda and attachments, the Lessee's Proposal, and all other attachments hereto and all amendments issued hereto.
 - b) The words "Lease Agreement Date" to mean the commencement date of this Lease Agreement, and shall begin on the date indicated in the first page of this Lease Agreement.
 - c) The words "Lease Agreement Year" to mean each twelve month period starting from the date on which this Lease Agreement is effective.
 - d) The words "Contract Manager" to mean the County Mayor, or the duly authorized representative designated to manage the Lease Agreement.
 - e) The word "Landlord" to mean Miami-Dade County.
 - f) The word "Lessee" to mean 4 on the Green L.L.C. and its permitted successors and assigns.
 - g) The word "Days" to mean Calendar Days.
 - h) The words "Date of Beneficial Occupancy" to mean the date on which the Lessee commences the use of any substantial portion of the Restaurant for its intended use.
 - i) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the Landlord's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the Landlord's Project Manager.
 - j) The words "Project Manager" to mean the County Mayor, or the duly authorized representative designated to manage the Project.
 - k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Lessee.
 - l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Lessee, who furnishes labor and/or materials, in connection with the Services, whether directly or indirectly, on behalf and/or under the direction of the Lessee and whether or not in privity of Lease Agreement with the Lessee.
 - m) The words "Work", "Services", or "Project" to mean all documentation and any items of any nature submitted by the Lessee to the Landlord's Project Manager for review and approval pursuant to the terms of this Lease Agreement, and all matters and things required to be done by the Lessee in accordance with the provisions of this Lease

Agreement.

2. **Use:** The County hereby grants unto the Lessee, and the Lessee hereby accepts from the County for the term, at the rate and upon the covenants and conditions as set forth, a Lease Agreement to and operate the Restaurant. Lessee shall use the Restaurant only for the use permitted. The Lessee shall not conduct any business nor provide any services nor sell any item or product without the prior written approval of Landlord, and any sales by the Lessee of services or items not specifically authorized in writing by Landlord may constitute a default. Lessee shall conduct its business at all times in accordance with this Lease Agreement.

Property Description: The Palmetto Golf Course Restaurant is located at 9300 SW 152nd Street, Miami, Florida. The restaurant is approximately 1,628 square feet.

3. **Operations:** Except when and to the extent that the Restaurant may be untreatable by reason of damage by fire or other casualty, Lessee shall continuously and uninterruptedly use, occupy and operate for purposes outlined herein all of the Restaurant other than such minor portions thereof as are reasonably required for storage and office purposes, and such storage and office space shall only be used in connection with the business conducted by Lessee in the Restaurant; and will have on the premises adequately trained uniformed personnel for efficient service to customers.
4. **Limitations on Use:**
Subject to Lessee's right to use the Restaurant for the purposes specified in this Lease Agreement, Lessee shall not suffer or permit the Restaurant or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any legal requirements or insurance requirements; (ii) cause structural injury to the Restaurant or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Restaurant; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Restaurant or the proper and economic functioning of any other common service facility or common utility of the Restaurant; (vi) impair or interfere with the physical convenience of any of the occupants of the Restaurant; or (vii) impair any of the Lessee's other obligations under this Lease Agreement.
5. **Governmental Approvals:** If any governmental license or permit shall be required for the proper and lawful conduct of Lessee's business in the Restaurant, or any part thereof, and if failure to secure such license or permit would in any way adversely affect the County, Lessee, at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by the County. Lessee shall at all times comply with the terms and conditions of each license and permit.
6. **Non-Exclusivity:** This Lease Agreement is non-exclusive in character and in no way prevents the Landlord from authorizing or offering competitive services, products or items by other vendors or others in other premises owned and operated by the Landlord or from authorizing other unrelated concession services within the Golf Course. The Lessee shall have no rights to any other location that may be made available by the Landlord.
7. **Proposal Incorporated:** The Lessee acknowledges that it has submitted to the County a proposal ("Lessee's Proposal") that was the basis for the award of this Lease Agreement and upon which the County has relied.
8. **Order of Precedence:** If there is a conflict between or among the provisions of this Lease

Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) Appendices to these terms and conditions (the Scope of Services and Price Schedule) 3) the Miami-Dade County's RFP No. 780 and any associated addenda and attachments thereof, and 4) the Lessee's Proposal.

9. **Appendices and Attachments:**

The Appendices and Attachments listed in this Paragraph and attached to this Lease Agreement are hereby incorporated in and made a part of this Lease Agreement:

Attachment A: Scope of Services

Attachment B: Palmetto Golf Course Site Map

Attachment C: Minimum Operating Standards of Food Service

10. **Nature of the Lease Agreement:**

A. This Lease Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Lease Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Lease Agreement that are not contained in this Lease Agreement, and that this Lease Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Lease Agreement shall be of no force or effect, and that this Lease Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

B. The Lessee shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

C. The Lessee acknowledges that this Lease Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Services under this Lease Agreement. All things not expressly mentioned in this Lease Agreement but necessary to carrying out its intent are required by this Lease Agreement, and the Lessee shall perform the same as though they were specifically mentioned, described and delineated.

D. The Lessee shall furnish all labor, materials, tools, supplies, and other items required to perform the Services that are necessary for the completion of this Lease Agreement. All Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.

E. The Lessee acknowledges that the Landlord shall be responsible for making all policy decisions regarding the Scope of Services. The Lessee agrees to provide input on policy issues in the form of recommendations. The Lessee agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Lessee agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

11. **Term:** The County hereby grants a Lease Agreement to manage and operate for an initial term of three (3) years, the premises described in this Lease Agreement to be operated as a Restaurant. The term and commencement date of this Lease Agreement, herein referred to as the Lease Agreement Effective Date, shall begin on the date indicated in the first page of this Agreement, and shall end on the last day of the thirty sixth month.

12. **Option to Renew:** The County, at its sole option, can renew this Lease Agreement for two (2) additional terms of two (2) years each upon the same terms and conditions contained herein. The County reserves the right to exercise its option to extend this Lease Agreement for up to one hundred-eighty (180) calendar days beyond the current Lease Agreement period and will notify the Lessee in writing of the extension. This Lease Agreement may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Lessee, upon approval by the Board of County Commissioners.
13. **Security Deposit:** Prior to the start of the Lease Agreement, the Lessee shall furnish a Security Deposit in cash or cashier's check payable to the Board of County Commissioners, equal to three (3) months Guaranteed Monthly Rent or \$5,000.00 whichever is greater. Redeemable at the end of the Lease Agreement term except for such conditions pertinent thereto, additionally, if the Landlord must draw upon any amount owed to the Landlord for this Lease Agreement, Lessee hereby agrees to restore the security to its original amount within seven (7) days of receiving notice by the Landlord that the security was drawn upon. In the event the Lessee abandons its performance, the Landlord will retain the security deposit.
14. **Guaranteed Monthly Rent:** In consideration of the use of the Restaurant, Lessee does hereby covenant and agree to pay to the County without deduction or set off of any kind the sum of \$2,000.00 per month as Guaranteed Monthly Rent. Payment of the Guaranteed Monthly Rent shall commence on the Date of Beneficial Occupancy, which shall be determined by the County, based on the date on which the Lessee commences the use of any substantial portion of the Restaurant for its intended use.
- The Guaranteed Monthly Rent shall be adjusted upward at the end of each Lease Agreement Year based on the Consumer Price Index (CPI) under the City of Miami Group, for All Urban Consumers, under Other Goods and Services.
15. **Percentage of Monthly Gross Receipts – Percentage Fee:** In addition to the Guaranteed Monthly Rent, Lessee agrees to pay to the Landlord, monthly, an amount equal to 5% of monthly Gross Receipts hereinafter referred to as "Percentage Fee" within 10 days following the end of each month during the term of this Lease Agreement.
16. **Sales Tax:** The Lessee shall be liable for the prevailing State of Florida Sales and Use Tax imposed on rent (currently at the rate of 7%) on the amounts payable to the Landlord, including the Guaranteed Monthly Rent and Percentage Fee payments, under this Lease Agreement. This Sales and Use Tax shall be payable to the Landlord, when applicable rent is due. The Landlord will remit same, less authorized handling deductions, to the State.
17. **Additional Taxes:** If at any time during the term of this Lease Agreement or any renewal thereof, under the laws of the State of Florida, or any political subdivision thereof, a tax, charge, capital levy, or excise on rents (fixed minimum or additional) or percentage fees, or other tax (except income tax), however described, against the Landlord on account of the rent or percentage fees payable herein, such tax, charge, capital levy, or excise on rents or other taxes shall be deemed to constitute real estate taxes on the Restaurant and the premises for the purposes of this Paragraph.

18. **Taxes on Lessee's Personal Property:** Lessee shall be responsible for, and shall pay before delinquency, all municipal, county, or state taxes assessed against any occupancy interest or personal property of any kind, owned by or placed in, upon or about the Restaurant by Lessee.
19. **Late Payment Charge:** In the event that the Lessee fails to make any payments on time, by the due date, as required to be paid under the provisions of this Lease Agreement, a late payment charge of \$100.00 per month shall be assessed. The right of the County to require payment of such late payment charge and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the Landlord's rights to enforce other provisions herein, including termination of this Lease Agreement, or to pursue other remedies provided by law.
20. **Application of Payments:** Payments are applied to any unpaid balance in the following manner. Any accrued late fees are first deducted from the payment. The remaining payment balance is then applied proportionately to the Guaranteed Monthly Rent, then Percentage Fee, including the associated sales and use tax. Any remaining balance in the payment will be applied to any other balance due.
21. **Worthless Check or Draft:** In the event that the Lessee delivers a dishonored check or draft to the Landlord in payment of any obligation arising under this Lease Agreement, the Landlord shall incur and pay a service charge of \$10.00 or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment shall be made within not more than five (5) days from written notice of such default. Further, in such event, Landlord may require that future payments required pursuant to this Lease Agreement be made by cashier's check or other means acceptable to Landlord. A second such occurrence of dishonored check during the Lease Agreement term will be a breach of contract and, at the Landlord's option, will constitute a default allowing termination.
22. **Payment of Fees:** The Guaranteed Monthly Rent and Percentage Fee as well as other amounts payable by Lessee to the Landlord, under the terms of this Lease Agreement, shall be paid promptly when due, without notice for any reason whatsoever and without abatement. Guaranteed Monthly Rent and Percentage Fee and all other payments provided for in this Lease Agreement shall be paid or mailed to:

Miami-Dade County
Park and Recreation Department
c/o Contract Management Section
275 N.W. 2nd Street, 3rd Floor
Miami, FL 33128

(Checks shall be made payable to the "Miami-Dade County Board of County Commissioners".)

23. **Notices:** Any notices submitted or required by this Lease Agreement shall be sent by registered or certified mail (or email or fax if provided below, with a hardcopy to the address below) addressed to the parties as follows or to such other address as either party may designate in writing, and where receipt of same is acknowledged by the receiving party.
1. To the County:
 - a) To the Project Manager:

Miami-Dade County
Parks, Recreation and Open Spaces Department
275 N.W. 2nd Street, 5th Floor
Miami, Florida 33128
Attn: Director
Phone: (305) 755-7903
Fax: (305) 755-7946

and

b) To the Contract Manager:

Miami-Dade County
Internal Services Department
Procurement Management
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974
Attention: Assistant Director
Phone: (305) 375-5548
Fax: (305) 375-2316

2. To the Lessee:

4 on the Green, L.L.C.
24950 SW 144 Avenue
Miami, FL 33032
Attention: Greene Marshall Labuzan IV
(786) 556-6218
sportsgrillsfla@bellsouth.net

The Landlord may alternatively provide notice by posting written notice on or at the Restaurant. If attempted delivery of such notice by mail is thwarted by any avoidance of receipt or unavailability for receipt by the intended recipient, said notice will have the effect of being constructively received by the recipient.

24. **Interpretations:** This Lease Agreement and the Attachments hereto, and other documents specifically referred to herein, constitute the entire, fully integrated Lease Agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written Lease Agreements between the parties with respect thereto, excepting any past or contemporaneous written or verbal Agreements expressly and clearly incorporated by reference within the four corners of this Lease Agreement. This Lease Agreement may be amended only by written document, properly authorized, executed, and delivered by both parties hereto. For the County, appropriate authorization shall be construed to mean the County Mayor (or designee) or the Contract Manager (or designee) within this Lease Agreement shall have approval authority or the Board of County Commissioners (as applicable). This Lease Agreement shall be interpreted as a whole unit and paragraph headings are for convenience only the Lease Agreement shall not be construed in favor of one party or the other. All matters involving the Lease Agreement shall be governed by laws of the State of Florida.

25. Accord and Satisfaction: No payment by Lessee or receipt by Landlord of a lesser amount than any payment of Guaranteed Monthly Rent or Percentage Fee herein stipulated shall be deemed to be other than on account of the earliest stipulated Guaranteed Monthly Rent or Percentage Fee then due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment for Guaranteed Monthly Rent or Percentage Fee be deemed an accord and satisfaction. The Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Guaranteed Monthly Rent or Percentage Fee or pursue any other remedy provided in this Lease Agreement, at law or in equity. No covenant, term, or condition of this Lease Agreement shall be deemed to have been waived by Landlord, unless such waiver be in writing by Landlord, nor shall there be any accord and satisfaction unless expressed in writing and signed by both Landlord and Lessee.

26. Gross Receipts:

A. Lease Agreement Year Defined: "Lease Agreement Year" means a twelve-month period beginning on the Lease Agreement Effective Date and ending twelve months thereafter.

B. Gross Receipts Defined: "Gross Receipts" means all monthly receipts collected by the Lessee from the sale of services or merchandise by Lessee, concessionaires of Lessee and sub-Lessee(s) of Lessee, sold in, upon or from the Restaurant, including such sales as shall in good faith be credited by Lessee, its concessionaires, and sub-Lessees in the regular course of its or their business to personnel employed at the time of sale at the Restaurant, including sub-concession Agreements or contract employee payments to the Lessee and mail and telephone orders received at the Restaurant and off-premises sales; but shall not be deemed to mean or include the following: amounts credited by Lessee or its concessionaires or sub-concessionaires for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Lessee's trade fixtures, operating equipment or other property used by Lessee or its concessionaires in the operation of its business and not acquired or held by it for the purpose of sale. Sales shall be deemed to have been made when services or merchandise has been served, shipped or delivered or when charged against the purchaser on the books of Lessee, or its concessionaires, whichever of such events shall first occur.

C. Lessee's Certification of Receipts: Lessee shall submit to Landlord on or before the 10th day following the end of each month during the term of this Lease Agreement and on or before the 10th day following the expiration or earlier termination of this Lease Agreement, a written statement, signed by Lessee and certified by it to be true and correct, showing the amount of Gross Receipts during the preceding month. Lessee shall submit to Landlord on or before the 60th day following the end of each Lease Agreement year an Annual Written Statement, signed by Owner, CEO, or Financial officer of the Lessee and certified by it to be true and correct, setting forth the amount of Gross Receipts during the preceding Lease Agreement Year, which statement shall also be duly certified by an independent Certified Public Accountant. The statement referred to herein shall be in such form and style and contain such details and breakdowns as Landlord may reasonably determine or require.

D. Examination of Lessee's Books and Records: Such books and records as are necessary to determine the amount of any Percentage Fee payable to Landlord shall be subject to examination by the County or its authorized representatives at reasonable times during Lessee's business hours, at County's expense and in such manner as not to interfere unreasonably with the conduct of Lessee's business. All information obtained by the County or its authorized representatives from Lessee's books and records shall be kept confidential

by the County and all such representatives except in connection with any mortgage or assignment of this Lease Agreement for financing purposes or if subject to the requirements of Florida Public Records Act.

E. Lessee's Receipts Records: For the purpose of computing and verifying the Percentage Fee due hereunder, Lessee shall prepare and keep, for a period of not less than three (3) years following the end of each Lease Agreement Year, adequate books and records, including but not limited to those relating to inventories, purchases, and receipts of merchandise, and all sales and other pertinent transactions by Lessee. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Lease Agreement. Lessee shall record at the time of sale each receipt from sales or other transactions, whether for cash or on credit, in one or more sealed cash register or registers having a cumulative total. Lessee shall keep, for at least three (3) years following the end of each Lease Agreement Year, all pertinent original sales records, which records shall include (i) cash register tapes; (ii) serially-numbered sales slips; (iii) mail order; (iv) telephone orders; (v) settlement report sheets of transactions with subtenants, concessionaires, and licensees; (vi) records showing that merchandise returned by customers was purchased by such customers; (vii) receipts or other records of merchandise taken out on approval; (viii) income and sales tax returns; and (ix) such other records which would normally be examined and required to be kept by an independent accountant pursuant to generally accepted auditing standard in performing an audit of Lessee's Gross Receipts.

The acceptance by County of payments of Percentage Fee or reports thereon shall be without prejudice and shall in no case constitute a waiver of County's right to examination of Lessee's books and records of its Gross Receipts and inventories of merchandise.

F. Audit of Lessee's Business Affairs and Records: Landlord shall have the right to cause, upon five (5) business days' written notice to Lessee, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by Landlord, or the Audit and Management Services Department of the County. Lessee shall make all such records available for said examination at the Restaurant or at some other mutually agreeable location. If the result of such audit shall show that Lessee's statement of Gross Receipts for any period has been understated, Lessee shall pay Landlord the amount due. If such understatement is three percent (3%) or more, Lessee shall pay Landlord the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible hereunder as rent. A report of the findings of said accountant shall be binding and conclusive upon Landlord and Lessee. The furnishing by Lessee of any grossly inaccurate statement shall constitute a breach of this Lease Agreement. Any information, excluding written documents, obtained by Landlord as a result of such audit shall be held in strict confidence by Landlord except in any proceeding or action to collect the cost of such audit or deficiency, or except in connection with any mortgage or assignment of this Lease Agreement for financing purposes.

G. If Lessee fails to record, maintain, or make available sales supporting documentation as specified above, then Lessee may be deemed by the County to be in default of this Lease Agreement.

27. **New Construction:** The Landlord's approval is required prior to all construction, all installation and all use of facilities. All improvements shall become property of the Landlord. All construction shall be accomplished in accordance with the County permitting requirements.

28. **Condition of Leased Property:** Lessee hereby accepts the leased property in the condition it is in at the beginning of this Lease Agreement.
29. **Assumption, Parameters, Projections, Estimates and Explanations:** The Lessee understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the Landlord were provided to the Lessee for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the Landlord makes no representations or guarantees; and the Landlord shall not be responsible for the accuracy of the assumptions presented; and the Landlord shall not be responsible for conclusions to be drawn there from; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Lessee. The Lessee accepts all risk associated with using this information.
30. **Landlord Approval:** The Lessee agrees that it will obtain prior written approval from the Landlord in all of the following matters:
- A. Changes from originally approved specifications, pricing, activities, signage, and graphics.
 - B. Equipment Lessee plans to install requiring any building modifications.
 - C. Aesthetics of the Restaurant.
 - D. Any use of the Landlord's facilities or Restaurant's name.
 - E. Hours of Operation.
 - F. Uniforms to be used by employees shall be consistent with or better than those normally used by professionally operated Restaurants.

Should any of the above items be disapproved, Lessee may offer alternative solutions. The Landlord reserves the right with stated just cause to require the Lessee to change within a stated time any and all items contained in this paragraph it deems in need of change, despite previous approval of same.

31. **Hours of Operation:** The Restaurant shall be open for business five (5) days a week, Monday through Friday, continuously from 7:00 AM to 4:00 PM except on County designated holidays. The Lessee shall provide sufficient staff to provide outstanding service. The Landlord may require a change in hours of operation, if, in the reasonable discretion of the Landlord such a change is desirable in providing the best service to the public.
32. **Pricing:** Lessee shall maintain the pricing schedule for goods and services submitted with its Proposal, and as approved by the Landlord. If the Lessee wishes to change its standard prices for goods and services, Lessee will provide to the Landlord a schedule of such proposed changes not later than thirty (30) days prior to the intended implementation date, for approval or disapproval, at any time during the Lease Agreement term when price changes are contemplated. Pricing for special events or services shall be expeditiously approved by the Landlord.
33. **Personnel:** The Lessee shall provide Landlord with the name and telephone number of a management person of the Lessee who will be on call, at all times, for emergencies or other matters related to the operations under this Lease Agreement. The Lessee shall ensure that all its personnel performing services under this Lease Agreement are courteous and cooperative and present a neat, clean and professional appearance at all times. Failure of an employee to do so shall be grounds for the Landlord to demand his or her removal from duties in the Restaurant. The Lessee shall ensure that all employees having public contact are able

to understand and communicate in spoken English. Lessee's employees will not be considered agents of the County.

In the event the Lessee wishes to substitute personnel for the key personnel identified by the Lessee's Proposal, the Lessee must notify the Landlord in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

34. **Signs:** The nature, size, shape and installation of Lessee's business signs within the Restaurant or in, on or adjacent to the Restaurant or the Golf Course must first be approved in writing by Landlord. Said signage must also be approved by all governmental authorities having jurisdiction and must conform to the requirements set forth in the Article 7 of the Miami-Dade Home Rule Charter. All signs shall be removed by the Lessee at the termination of this Lease Agreement and any damage or unsightly condition caused to premises because of or due to said signs shall be satisfactorily corrected or repaired by the Lessee.
35. **On-Site Manager:** Throughout the term of this Lease Agreement, the Lessee shall employ a qualified full-time on-site restaurant Manager having experience in the management of this type of operation, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Lessee under this Lease Agreement and to accept service of all notices provided for herein.
36. **Quality of Lessee's Service:** The Lessee shall conduct its operations in an orderly manner and so as not to annoy, disturb, or be offensive to customers, patrons, or others in the immediate vicinity of such operations.

The Lessee shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives, and upon objection of the Landlord concerning the conduct, demeanor or appearance of any such person, Lessee shall immediately take all necessary steps to correct the cause of such objection.

Lessee shall take good care of said premises, shall use the same in a careful manner and shall, at its own cost and expense, keep, maintain, and repair and, upon the expiration of this Lease Agreement or its termination in any manner, shall deliver said premises to the Landlord in the same condition as at the commencement this Lease Agreement, with the exception of loss by fire or other casualty.

Lessee shall furnish good, prompt and efficient service, adequate to meet all reasonable demands therefore.

It is expressly understood and agreed that the said operation shall not interfere in any manner with the use of public areas or infringe upon the normal method of operations of any other parties authorized to conduct business at or near the location. The Lessee agrees that a determination by the Landlord will be accepted as final in evaluating whether its activities infringe on the rights of others and that Lessee will fully comply with any decisions on this matter.

37. **Monitoring Services:** The Landlord shall have the right, without limitation, to monitor and test the quality of services of the Lessee, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of the shopping service, closed circuit TV, and other reasonable means.

38. **Provided by County:** The County shall provide access to the following as existing. The Lessee shall pay for all cost to connect to the restaurant.
- A. Electrical as existing.
 - B. Water facilities as existing.
 - C. Sewage collection facilities as existing.
 - D. Waste collection
39. **Equipment and Service Provided by Lessee:**
The Lessee, at its sole cost, shall provide at the Restaurant:
- A. Janitorial service within the Restaurant. The Lessee shall keep the Restaurant and equipment clean at all times. If the Restaurant and equipment are not kept clean in the opinion of the Landlord, the Lessee will be so advised and if corrective action is not immediately taken, the Landlord will cause the same to be cleaned and the Lessee shall assume responsibility and liability for such cleaning.
 - B. Maintenance service to air conditioning. The Lessee shall contract a licensed air conditioning contractor to perform monthly maintenance and necessary repairs to the separate air conditioning unit servicing the Restaurant.
40. **Equipment Installed by Lessee:** The Lessee shall furnish and install all furnishings, fixtures and equipment necessary for the operation of the Restaurant. All furnishings, fixtures and equipment acquired for the Restaurant shall be of a high quality as good as or better than that found at similar facilities. The Landlord shall be afforded the opportunity to approve all furnishings, fixtures and equipment for the Restaurant.
- Any equipment, furnishings, signage and advertising installed by the Lessee shall be in compliance with Article 7 of the Home Rule Charter and in keeping with the appropriate standards of decor at the Golf Course. Following the installation of any additional equipment, furnishing and improvements which the Landlord may approve from time to time, Lessee shall provide to the Landlord a statement setting forth the cost of such equipment, furnishings or improvements and the date upon which the installation of such equipment, furnishings and improvements was completed.
- Lessee agrees that all new equipment, furnishings and improvements provided shall meet the requirements of all applicable building, fire, pollution and other related codes.
- Lessee shall not alter or modify any portion of the Golf Course, the Restaurant or the improvements constructed therein without first obtaining written approval from the Landlord.
41. **Security and Protection:** The Lessee acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property and money used in connection therewith. The Landlord makes no warranties as to any obligation to provide security for the Restaurant, outside of standard security measures supplied by the Landlord in general. Lessee may provide its own specialized security for the Restaurant, subject to the Landlord's written approval.
42. **Hurricane Preparedness:** The Lessee shall follow the County's emergency evacuation and hurricane plan as set forth for the Restaurant or the Golf Course.
43. **Maintenance Responsibilities of Lessee, Appearance of Facility:** Lessee shall, at its sole

cost and expense, keep and maintain the Restaurant in a clean and good condition. The provision of janitorial services and all interior maintenance within the Restaurant are the sole and exclusive responsibility of the Lessee. Upon failure of the Lessee to maintain the Restaurant as required in this Paragraph, Landlord may, after fifteen (15) days written notice to the Lessee, enter upon the Restaurant and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof, plus 25% for administrative costs, shall constitute Percentage Fee(s), and shall be billed to and paid by the Lessee.

44. **Utility Services:** The County has caused all necessary utility lines and services to be brought to the Restaurant. Lessee shall not place any unacceptable load or burden on the capacity of the applicable building systems and utility lines of the Golf Course as determined either by the public utility providing such service or by Landlord in the exercise of reasonable judgment. Lessee shall make all repairs caused by Lessee's negligence.
45. **Payment of Utility Services:** Lessee agrees to pay for all charges for utility service used or consumed in or upon the Restaurant including, but not limited to: electricity, gas, water and sewerage charges. To the extent that such charges are separately measured by metering or otherwise, Contractor agrees to pay the actual cost thereof, without addition or surcharge by the County.
46. **Independent Lessee Relationship:** The Lessee is, and shall be, in the performance of all work services and activities under this Lease Agreement, an independent contractor, and not an employee, agent or servant of the Landlord. All persons engaged in any of the work or services performed pursuant to this Lease Agreement shall at all times, and in all places, be subject to the Lessee's sole direction, supervision and control. The Lessee shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Lessee's relationship and the relationship of its employees to the Landlord shall be that of an independent contractor and not as employees and agents of the Landlord.

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

47. **Curtailment or Interruption of Service:** The Landlord reserves the right to interrupt, curtail or suspend the provision of any utility service to which Lessee may be entitled hereunder when necessary by reason of accident or emergency or for repairs, alterations, or improvements in the judgment of the Landlord desirable or necessary to be made, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the Landlord. The work of such repairs, alterations, or improvements shall be prosecuted with reasonable diligence. The Landlord shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Lessee or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of payment or other charges, nor damages, shall be claimed by Lessee by reason of the Landlord's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Lease Agreement or any of Lessee's obligations hereunder be affected or reduced thereby.
48. **Inspection by Landlord:** The Landlord shall have the authority to make periodic reasonable inspections of all the Restaurant, equipment, and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. The Lessee shall make any improvements in cleaning or maintenance methods reasonably required by the Landlord. Such periodic inspections may also be made at the Landlord's discretion to determine whether the Lessee is operating in compliance with the terms and

provisions of this Lease Agreement.

49. **Right of Entry:** The Landlord or any of its agents shall have the right to enter upon the Restaurant at all reasonable times, whether or not during normal business hours, to examine same and to make such repairs, alterations, replacements, or improvements in the Restaurant as the Landlord deems necessary, but the Landlord assumes no obligation to make repairs in the Restaurant other than those expressly provided for in this Lease Agreement. The Landlord agrees, however, that any such repairs, alterations, replacements, or improvements shall be made with minimum amount of inconvenience to Lessee and that the Landlord will diligently proceed therewith to completion. The Landlord or the Landlord's agents shall also have the right to enter upon the Restaurant at reasonable times to show them to actual or prospective mortgagees, tenants, or Lessees of the Restaurant. During the one hundred and eighty (180) days prior to the expiration of the term of this Lease Agreement, the Landlord may show the Restaurant to prospective tenants. If, during the last ninety (90) days of the term of this Lease Agreement, Lessee shall have removed all or substantially all of Lessee's property there from, the County may immediately enter, alter, renovate, and redecorate the Restaurant without elimination or abatement of Fee or other compensation and such action shall have no effect upon this Lease Agreement.
50. **Permits and Regulations:** Lessee covenants and agrees that Lessee will obtain any and all necessary permits and approvals and that all uses of the leased property will be in conformance with all applicable laws.
51. **Damage or Destruction of Property:** In all events, Lessee shall repair all damages to the property caused by the Lessee, its employees, agents, contractors or sub-consultants. If the Restaurant is partially damaged, but not rendered unusable for the purposes of this Lease Agreement, the same shall with due diligence be repaired by the Lessee from proceeds of the insurance coverage and/or at its own cost and expense and a pro-rata adjustment of the Guaranteed Monthly Rent payable hereunder for the period of the Lessee's business interruption, shall be made. If the damage shall be so extensive as to render such premises unusable for the purposes intended, but capable of being repaired within thirty (30) days, the damage shall be repaired with due diligence by the Lessee from the proceeds of the insurance coverage policy and/or at its own cost and expense, and for the period of Lessee's business interruption a pro-rata adjustment shall be made as to the Guaranteed Monthly Rent. In the event said premises are completely destroyed or so damaged that it will remain unusable for more than thirty (30) days, through no fault of the Lessee, its employee, agents, contractors or sub-consultants, the Lessee and the Landlord shall be under no obligation to repair and reconstruct the premises, and adjustment of the Guaranteed Monthly Rent payable hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the Lease Agreement which pertains to such destroyed property shall cease and terminate, and all adjustments which are proper including restoration of the site to a clean, neat and usable condition shall be made accordingly. However, at the option of the Landlord, and through negotiations pertaining to all matters for continuing the premises in a Lease Agreement, the Lessee may reconstruct the premises at its own cost.
52. **County's Repair, CSF Repairs, Alterations and Additions by the County:** The Landlord, as its responsibility, and at its expense (except if the damage is caused by Lessee, its employees, agents, or independent Lessees), shall make all repairs and replacements, structural and otherwise, necessary, or desirable in order to keep in good order and repair the foundations, roofs and structural soundness of floors and walls of the Common Areas of the

Golf Course, excluding the Restaurant.

The Landlord reserves the right to interrupt, curtail or suspend the provision of any utility service to which Lessee may be entitled hereunder when necessary by reason of accident or emergency or for repairs, alterations, or improvements in the judgment of Landlord desirable or necessary to be made, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the Landlord. The work of such repairs, alterations, or improvements shall be prosecuted with reasonable diligence. The Landlord shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Lessee or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of Fee or other charges, nor damages, shall be claimed by Lessee by reason of the Landlord's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Lease Agreement or any of Lessee's obligations hereunder be affected or reduced thereby

Except as provided herein in this Lease Agreement, the Landlord shall have the absolute right to make reasonable repairs, alterations, and additions to any structures and facilities, including the Restaurant under this Lease Agreement, free from any and all liability to the Lessee for loss of business or damages of any nature whatsoever during the making of such repairs, alterations, and additions, except for such damage caused by the sole negligence of the Landlord and where not otherwise indemnified by the Lessee, subject to the limitations of Section 768.28, Florida Statutes. In making such repairs, alterations, and additions, the Landlord shall take such reasonable measures as are necessary to minimize interference with Lessee's operations of the Restaurant, for short term disruption of one week or less to Lessee's business where adequate accommodations can be made to minimize the inconvenience and injury to Lessee's business. If the Lessee's business is interrupted for more than one week, as a result of any of the foregoing, a pro rata adjustment of the Guaranteed Monthly Rent payable hereunder for the period of such interruption shall be made.

53. **Diminution for Landlord's Repair:** Except as elsewhere specifically provided in this Lease Agreement, there shall be no allowance to Lessee for a diminution of rental value and no liability on the part of the Landlord by reason of inconvenience, annoyance or interference with Lessee's business arising from the Landlord or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Golf Course, or in or to fixtures, appurtenances or equipment thereof, provided such work (except in case of emergency and to the extent practical) does not unreasonably interfere with Lessee's use of the Restaurant.
54. **Performance of Obligations:** Lessee covenants at all times to perform promptly all of the obligations of Lessee set forth in this Lease Agreement.
55. **Ingress and Egress:** Subject to rules and regulations, statutes and ordinances, and terms of this Lease Agreement governing the use of the Restaurant, Lessee it's agents and servants, patrons and invitees, and his suppliers of service and furnishers of materials shall have right of ingress and egress to and from the premises.
56. **Assignment, Sub-Contracting and Successors in Interest:**
- A. Lessee shall not assign, mortgage, pledge nor otherwise encumber this Lease Agreement or any portion thereof, nor any property associated with this Lease

Agreement without prior written approval of the Landlord. Unapproved assignment, mortgaging, pledging or encumbering shall be grounds for immediate termination of this Lease Agreement. It is agreed that all terms and conditions of this Lease Agreement shall extend to and be binding on assignees and other successors as may be approved by the Landlord.

- B. Lessee shall not enter into any sub-contracting Agreement for services required to be provided under this Lease Agreement without prior written approval of the Landlord. Unapproved sub-contracting shall be grounds for immediate termination of this Lease Agreement. It is agreed that all terms and conditions of this Lease Agreement shall extend to and be binding on any sub-Lessees, including percentage payments on gross receipts as defined in this Lease Agreement. Lessee shall be liable for acts and omissions by any sub-Lessee affecting this Lease Agreement. The Landlord reserves the right to directly terminate (and pursue any applicable remedy) any sub-Lessee of the Lessee for any cause for which Lessee may be terminated.

Any sub-contracting Agreement for Lease Agreement services must be made available and accounted for through the Lessee so as to provide seamless service to the public as if provided directly by the Lessee.

- C. Should the Restaurant reside in a geographic area that incorporates, becoming an independent municipality, the rights and obligations granted the Landlord under this Lease Agreement will automatically be assigned, if, and upon the Golf Course's conveyance to the municipality or may be terminated by 30 days notice by either party to the other party.

57. **Ownership of Lessee:** The ownership of the Lessee is very important to the Landlord. Therefore, the Landlord reserves the right to terminate this Lease Agreement at any time if more than 10% of the ownership of the Lessee has not been specifically approved by the Landlord. The Landlord shall reject any proposed new owner for any reason it believes is in the best interests of the public. Lessee agrees to provide on 24-hour notice to the Landlord an accurate list of all owners of the Lessee, showing the percentage of ownership of each owner, and, any change of corporate name or corporate ownership. Lessees, for which stock is listed on a major stock exchange, may be wholly or partially exempted from the list requirement of this paragraph at the discretion of the Landlord.
58. **Proprietary Information:** As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.
59. **County's Property Insurance:** Any insurance the Landlord may maintain shall not cover Lessee's improvements and betterments, contents, or other property of Lessee. Lessee shall not violate, or permit the violation of, any condition imposed by any of the Landlord's insurance policies, and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Restaurant which would increase the fire or other property or casualty insurance rate on the building or buildings in which the Restaurant is located or the property therein over the rate which would otherwise then be in effect (unless Lessee pays the resulting increased amount of premium as provided under the further terms hereof), or which would result in insurance companies of good standing refusing to insure the same or any of such property in amounts and at normal rates reasonably satisfactory to the Landlord. If, by reason of any act or omission on the part of Lessee, the rate of property insurance on the Restaurant or the Golf Course or equipment or other property of the Landlord shall be higher

than it otherwise would be, Lessee shall reimburse the Landlord, on demand, for that part of the premiums for property insurance paid by the Landlord because of such act or omission on the part of Lessee, which sum shall be deemed Percentage Fee for purposes of collection only.

60. **Indemnification and Insurance:** The Lessee shall indemnify and hold harmless the Landlord and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Landlord or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Lease Agreement by the Lessee or its employees, agents, servants, partners principals or subcontractors. The Lessee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Lessee expressly understands and agrees that any insurance protection required by this Lease Agreement or otherwise provided by the Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Landlord or its officers, employees, agents and instrumentalities as herein provided.

Upon Landlord's notification, the Lessee shall furnish to the Department of Procurement Management, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis, including Products and Completed Operations, in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage combined. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Lessee. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the

State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Lessee hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Lessee of this liability and obligation under this section or under any other section in this Agreement.

Award of this Lease Agreement is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after Landlord's notification to Lessee to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Lease Agreement, the Lessee shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the Landlord. If the Lessee fails to submit the required insurance documents in the manner prescribed in this Lease Agreement within twenty (20) calendar days after Landlord's notification to comply, the Lessee shall be in default of the contractual terms and conditions and award of the Lease Agreement will be rescinded, unless such time frame for submission has been extended by the Landlord.

The Lessee shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Lease Agreement, including any and all option years or extension periods that may be granted by the Landlord. If insurance certificates are scheduled to expire during the contractual period, the Lessee shall be responsible for submitting new or renewed insurance certificates to the Landlord at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the Landlord shall suspend the Lease Agreement until such time as the new or renewed certificates are received by the Landlord in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the Landlord may, at its sole discretion, terminate this Lease Agreement.

61. **Liability for Damage or Injury:** The Landlord shall not be liable for damage or injury which may be sustained by any party or persons at the Restaurant other than the damage or injury if and to the extent caused by the negligence or intentional actions of the Landlord, its agents and employees while in the course of County business, and as limited by Section 768.28, Florida Statutes.
62. **No Liability For Personal Property:** All personal property placed or moved in the leased property above described shall be at the risk of Lessee or the owner thereof. Landlord shall not be liable to Lessee or any third party for any damage to said personal property unless caused by or due to negligence of Landlord, Landlord's agents or employees, subject to all limitations of Florida Statutes, Section 768.28.
63. **Patent and Copyright Indemnification:**

- a) The Lessee warrants that all Work furnished hereunder, including but not limited to, wall murals, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) The Lessee shall be liable and responsible for any and all claims made against the Landlord for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any wall murals, and the like, in the course of performance or completion of, or in any way connected with, the Works, or the Landlord's continued use of the Work furnished hereunder. Accordingly, the Lessee at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the Landlord and defend any action brought against the Landlord with respect to any claim, demand, cause of action, debt, or liability.
- c) In the event any Work or anything provided to the Landlord hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Lessee shall have the obligation to, at the Landlord's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the Landlord, at the Lessee's expense, the rights provided under this Lease Agreement to use the item(s).
- d) The Lessee shall be solely responsible for determining and informing the Landlord whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Work hereunder. The Lessee shall enter into agreements with all suppliers and subcontractors at the Lessee's own risk. The Landlord may reject any Work that it believes to be the subject of any such litigation or injunction, or if, in the Landlord's judgment, use thereof would delay the Work or be unlawful.
- e) The Lessee shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

64. Manner of Performance:

A. The Lessee agrees to defend, hold harmless and indemnify the Landlord and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the Landlord, occurring on account of, arising from or in connection with the removal and replacement of any Lessee's personnel performing services hereunder at the behest of the Landlord. Removal and replacement of any Lessee's personnel as used in this Paragraph shall not require the termination and or demotion of such Lessee's personnel.

B. The Lessee agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Lessee agrees to adjust its personnel staffing levels or to replace any of its personnel if so directed upon reasonable request from the Landlord, should the Landlord make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

C. The Lessee warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses

as necessary to perform the Services described herein, in a competent and professional manner.

D. The Lessee shall at all times cooperate with the Landlord and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

E. The Lessee shall comply with all provisions of all Federal, State and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Lease Agreement.

65. Severability:

If this Lease Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Lease Agreement without affecting the binding force of this Lease Agreement as it shall remain after omitting such provision.

66. Termination by Landlord: The occurrence of any of the following may cause, this Lease Agreement to be terminated by the Landlord upon the terms and conditions also set forth below.

A. Automatic Termination upon written notice by the Landlord if any of the following occurs:

- i. Institution of proceedings in voluntary bankruptcy or reorganization by the Lessee.
- ii. Institution of proceedings in involuntary bankruptcy against the Lessee if such proceedings continue for a period of ninety (90) days.
- iii. Assignment by Lessee for the benefit of creditors.
- iv. Abandonment or discontinuation of operations for more than a 24 hour period without prior written approval from the Landlord.
- v. The discovery of any misstatement in the Lessee's Proposal leading to award of this Lease Agreement, which in the determination of the Landlord significantly affects the Lessee's qualifications to perform under the Lease Agreement
- vi. Unapproved change of ownership interest in Lessee and/or failure to submit the ownership list within 24 hours upon the request of the Landlord.
- vii. Failure to cease any activity which may cause limitation of Landlord's use of the Golf Course.
- viii. A final determination in a court of law in favor of the Landlord in litigation instituted by the Lessee against the Landlord or brought by the Landlord against Lessee.

B. Termination after seven (7) calendar days written notice by the Landlord either by posting on or at the Restaurant and by certified or registered mail to any known address of Lessee set forth in this Lease Agreement hereof for doing any of the following:

- i. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Lessee makes the required payment(s) during the seven (7) calendar day period following mailing of the written notice. Additionally, the Landlord may sue for Guaranteed Monthly Rent and Percentage Fee for the unexpired term of this Lease Agreement.
- ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice.

C. Termination after fourteen (14) days from receipt by Lessee of written notice having either been posted on or at the Restaurant or by certified or registered mail to the address of the

Lessee set forth in this Lease Agreement:

- i. Non-performance of any covenant of this Lease Agreement other than non-payment of rent or performance fees and others listed in A and B above, and failure of the Lessee to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.

D. The County may terminate this Lease Agreement for convenience after thirty (30) days written notice having either been posted on or at the Restaurant or sent by certified or registered mail to the address of the Lessee set forth in this Lease Agreement.

E. Revenue Control and Audit Defaults: The inability or failure of the Lessee to provide the Landlord with an unqualified certified statement of Gross Sales, or to strictly adhere to the revenue control procedures established in this Lease Agreement shall constitute a non-curable default and in such event the Landlord shall have the right to terminate this Lease Agreement upon seven (7) calendar days written notice to the Lessee. In addition to termination for such default, the Landlord shall be entitled to collect damages in the full amount of the payments of the security deposit required in this Lease Agreement.

F. Habitual Default: Notwithstanding the foregoing, in the event that the Lessee has repetitively defaulted or breached four (4) times within a 12 month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Lessee, regardless of whether the Lessee has cured each individual condition of breach or default as provided herein above, the Lessee may be determined by the Landlord to be an "habitual violator". At the time that such determination is made, Landlord shall issue to the Lessee a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Lessee that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach(es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this Lease Agreement. In the event of any such subsequent breach or default, Landlord may cancel this Lease Agreement upon the giving of written notice of termination to the Lessee, such cancellation to be effective upon the tenth (10th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Lessee shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Lessee shall discontinue its operations at the Restaurant, and proceed to remove all its personal property in accordance with this Lease Agreement.

In the event that the Landlord terminates this Lease Agreement by operation of any of the provisions as stated in this Lease Agreement, then in addition to other rights and remedies available to the Landlord under the law, the Landlord may accelerate the rental payments under this Lease Agreement, whereupon the entire balance owed by the Lessee under this Lease Agreement shall become immediately due and payable without further notice or demand.

67. Event of Default:

A. An Event of Default shall mean a breach of this Lease Agreement by the Lessee. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

- i. the Lessee has not delivered Work on a timely basis;

- ii. the Lessee has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
- iii. the Lessee has failed to make prompt payment to subcontractors or suppliers for any Services;
- iv. the Lessee has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Lessee's creditors, or the Lessee has taken advantage of any insolvency statute or debtor/creditor law or if the Lessee's affairs have been put in the hands of a receiver;
- v. the Lessee has failed to obtain the approval of the Landlord where required by this Lease Agreement;
- vi. the Lessee has failed to provide "adequate assurances" as required under section "B" below;
- vii. the Lessee has failed in the representation of any warranties stated herein.

B. When, in the opinion of the Landlord, reasonable grounds for uncertainty exist with respect to the Lessee's ability to perform the Services or any portion thereof, the Landlord may request that the Lessee, within the timeframe set forth in the Landlord's request, provide adequate assurances to the Landlord, in writing, of the Lessee's ability to perform in accordance with terms of this Lease Agreement. Until the Landlord receives such assurances the Landlord may request an adjustment to the compensation received by the Lessee for portions of the Services which the Lessee has not performed. In the event that the Lessee fails to provide to the Landlord the requested assurances within the prescribed time frame, the Landlord may:

- i. treat such failure as a repudiation of this Lease Agreement;
- ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

C. In the event the Landlord shall terminate this Lease Agreement for default, the Landlord or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

68. Notice of Default – Opportunity to Cure: If an Event of Default occurs, in the determination of the Landlord, the Landlord may so notify the Lessee ("Default Notice"), specifying the basis for such default, and advising the Lessee that such default must be cured immediately or this Lease Agreement with the Landlord may be terminated. Notwithstanding, the Landlord may, in its sole discretion, allow the Lessee to rectify the default to the Landlord's reasonable satisfaction within a thirty (30) day period. The Landlord may grant an additional period of such duration as the Landlord shall deem appropriate without waiver of any of the Landlord's rights hereunder, so long as the Lessee has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the Landlord prescribes. The default notice shall specify the date the Lessee shall discontinue the Services upon the Termination Date.

69. Remedies in the Event of Default: If an Event of Default occurs, the Lessee shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;

- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the Landlord for reprourement of Services, including procurement and administrative costs; and,
- c) such other direct damages.

The Lessee shall also remain liable for any liabilities and claims related to the Lessee's default. The Landlord may also bring any suit or proceeding for specific performance or for an injunction.

70. Termination and Suspension of Work:

A. The Landlord may immediately terminate this Lease Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the Landlord through fraud, misrepresentation or material misstatement.

B. The Landlord may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the Landlord and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

C. The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the Landlord through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Lessee may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

D. In the event that the Landlord exercises its right to terminate this Lease Agreement pursuant to this Paragraph the Lessee will be compensated as stated in the payment Paragraphs, herein, for the:

- i. portion of the Services completed in accordance with the Lease Agreement up to the Effective termination date; and
- ii. non-cancelable deliverables that are not capable of use except in the performance of this Lease Agreement and has been specifically developed for the sole purpose of this Lease Agreement but not incorporated in the Services.

E. All compensation pursuant to this Paragraph is subject to audit.

Following the termination of this Lease Agreement the Lessee, within fifteen (15) calendar days, or earlier if determined by the Landlord, shall forthwith remove all of its personal property not acquired under the terms of this Lease Agreement. Any personal property of Lessee not removed in accordance with this paragraph may be removed by the Landlord for storage at the cost of the Lessee or shall constitute a gratuitous transfer of title thereof to the Landlord for whatever disposition is deemed to be in the best interests of the Landlord. The Landlord shall not be liable to Lessee for the safekeeping of Lessee's personal property during or after termination of this Lease Agreement. Subject to the other provisions in this Section, the Lessee shall not remove any of the Landlord's equipment, supplies, or fixtures from the Restaurant at any time without pre-approval in writing from the Landlord. Lessee shall be liable for any expenses incurred by the Landlord in prosecuting any action against

Lessee following unapproved item removal described above. Lessee shall also be liable to the Landlord for any expenses incurred by the Landlord in replacing any items wrongfully removed by Lessee. It is the intention of the parties to this Lease Agreement that all furnishings and equipment purchased or leased by the Lessee except those permanently affixed to buildings, as defined under the laws of the State of Florida, shall be the personal property of the Lessee.

71. **Termination by Lessee:** Lessee shall have the right upon thirty (30) calendar days from receipt of written notice to the Landlord by certified or registered mail to the address set forth in this Lease Agreement to terminate this Lease Agreement at any time after the occurrence of one or more of the following events:
- A. A breach by the Landlord of any of the terms, covenants or conditions contained in this Lease Agreement and the failure of the Landlord to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail, return receipt requested, from the Lessee, of the existence of such breach.
 - B. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control, or use of the Golf Course, or any substantial part, or parts, thereof in such a manner as substantially to restrict Lessee's operations for a period of ninety (90) calendar days or more.
72. **Surrender of Restaurant:** At the expiration or earlier termination of the term of this Lease Agreement, Lessee shall peaceably surrender the Restaurant in as good a condition as the Restaurant were on the Commencement Date of this Lease Agreement, ordinary wear and tear and damage by condemnation, fire or other casualty excepted. Lessee shall deliver all keys for the Restaurant to the Landlord at the place then fixed for the payment of rent, and shall notify the Landlord in writing of all combinations of locks, safes and vaults, if any, in the Restaurant. Ordinary wear and tear shall be deemed not to include damage or injury caused by moving Lessee's property or trade fixtures into or out of the Restaurant. Lessee's obligation to observe and perform the covenants set forth in this paragraph shall survive the expiration or earlier termination of the term of this Lease Agreement.
73. **Termination of Contract:** Following the termination of this Lease Agreement the Lessee, within fifteen (15) calendar days, or earlier if determined by the Landlord, shall forthwith remove all of its personal property not acquired under the terms of this Lease Agreement. Any personal property of Lessee not removed in accordance with this paragraph may be removed by the Landlord for storage at the cost of the Lessee or shall constitute a gratuitous transfer of title thereof to the Landlord for whatever disposition is deemed to be in the best interests of the County. The Landlord shall not be liable to Lessee for the safekeeping of Lessee's personal property during or after termination of this Lease Agreement. The Landlord shall have the senior interest in the Lessee's personal property. Lessee shall not remove any equipment, supplies in bulk, or fixtures within the Restaurant at any time without pre-approval in writing from the Landlord. Lessee shall be liable to the Landlord for the fair market value of any equipment, supplies in bulk, or fixtures removed without Landlord pre-approved written permission. Lessee shall also be liable for any expenses incurred by the Landlord in prosecuting any action against Lessee following unapproved item removal described above. Lessee shall also be liable to the Landlord for any expenses incurred by the Landlord in replacing any items wrongfully removed by Lessee. It is the intention of the parties to this Lease Agreement that all furnishings and equipment purchased or leased by the Lessee except those permanently affixed to buildings, as defined under the laws of the State of Florida, shall be the personal property of the Lessee. Upon the termination of this Lease

Agreement and the removal of all personal property by Lessee, the Lessee shall deliver said premises to the Landlord in the condition set forth in this Paragraph. The Landlord reserves the right to avail itself of all remedies and procedures contained in Chapter 83 of the Florida Statutes regarding County/Tenant provisions for eviction and Chapter 51 of Florida Statutes regarding summary proceeding.

- 74. Holding Over:** If Lessee continues to use and operate the Restaurant after the expiration of the term of this Lease Agreement, or any option period, without a new Lease Agreement reduced to writing and duly executed and delivered (even if Lessee shall have paid, and Landlord shall have accepted, payment in respect to such unauthorized operations), Lessee shall be deemed to be operating and using the Restaurant only from month-to-month, subject to all covenants, conditions, and agreements of this Lease Agreement. If Lessee fails to surrender the Restaurant upon the termination of this Lease Agreement, then Lessee, in addition to any liabilities to Landlord accruing there from, shall indemnify and hold harmless the Landlord and its assigns and agents from loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding Lessee on such failure.
- 75. Mechanics', Materialmen's and Other Lien:** Lessee agrees that it will not permit any mechanic's, materialmen's or other liens to stand against the Restaurant for work or materials furnished to Lessee; it being provided, however, that Lessee shall have the right to contest the validity thereof. Lessee shall immediately pay any judgment or decree rendered against Lessee, with all proper costs and charges, and shall cause any such lien to be released off record without cost to County.
- 76. Lien:** The Landlord shall have a lien upon all personal property of the Lessee on the Restaurant to secure the payment to the Landlord of any unpaid money accruing to the Landlord under the terms of this Lease Agreement.
- 77. Limiting Legislative or Judicial Action:** In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or prohibiting the use of the Golf Course for the purposes of this Lease Agreement, this Lease Agreement will be null and void and unenforceable by any party to this Lease Agreement and the Landlord shall have no further liability under this Lease Agreement. In the event that a referendum vote of the electorate of the Landlord in any way restricts or prohibits the use of the Restaurant for the purposes of this Lease Agreement, this Lease Agreement will be null and void and unenforceable by any party to this Lease Agreement and the Landlord shall have no further liability under this Lease Agreement. If the Landlord deems the Lease Agreement null and void by function of this Paragraph, the Landlord will not be liable to the Lessee for damages arising there from and the Landlord shall have no further liability under this Lease Agreement.
- 78. Non-Discrimination:** Lessee does hereby for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, covenant and agree that:
- i. No person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said Restaurant, except as provided by law.
 - ii. In the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the ground of race, color, religion,

national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, except as provided by law.

- iii. The Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80, Non-discrimination under programs receiving Federal Assistance through the County of Health, Education and Welfare - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- iv. In the event of breach of any of the above non-discrimination covenants, the Landlord shall have the right to terminate the Lease Agreement and re-enter and repossess said Restaurant thereon and hold the same as if said Lease Agreement had never been made or issued. This provision shall not be effective, where applicable, until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appellate rights.
- v. The Lessee shall not discriminate against any employee or applicant for employment in the performance of the Lease Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment because of age, sex or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, color, religion, national origin, or ancestry.

79. Conflict of Interest:

The Lessee represents that:

A. No officer, director, employee, agent, or other consultant of the Landlord or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Lease Agreement.

B. There are no undisclosed persons or entities interested with the Lessee in this Lease Agreement. This Lease Agreement is entered into by the Lessee without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the Landlord, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

- i) is interested on behalf of or through the Lessee directly or indirectly in any manner whatsoever in the execution or the performance of this Lease Agreement, or in the services, supplies or work, to which this Lease Agreement relates or in any portion of the revenues; or
- ii) is an employee, agent, advisor, or consultant to the Lessee or to the best of the Lessee's knowledge any subcontractor or supplier to the Lessee.

C. Neither the Lessee nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Lessee shall have an interest which is in conflict with the Lessee's faithful performance of its obligation under this Lease Agreement; provided that the Landlord, in its sole discretion, may consent in writing to such a relationship, provided the Lessee provides the Landlord with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the Landlord's

best interest to consent to such relationship.

D. The provisions of this Paragraph are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Lease Agreement and those provided by statute, the stricter standard shall apply.

E. In the event Lessee has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Lessee shall promptly bring such information to the attention of the Landlord's Project Manager. Lessee shall thereafter cooperate with the Landlord's review and investigation of such information, and comply with the instructions Lessee receives from the Landlord's Project Manager in regard to remedying the situation.

80. **Press Release or Other Public Information:** Under no circumstances shall the Lessee without the express written consent of the Landlord:

A. Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the Landlord, or the Services being performed hereunder, unless the Lessee first obtains the written approval of the Landlord. Such approval may be withheld if for any reason the Landlord believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

B. Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the Landlord; and

C. Except as may be required by law, the Lessee and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Lessee or such parties has been approved or endorsed by the Landlord.

81. **No Waiver of Right to Enforce:** The waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Guaranteed Monthly Rent and Percentage Fee hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease Agreement, other than the failure of Lessee to pay the particular Guaranteed Monthly Rent and Percentage Fee so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Guaranteed Monthly Rent and Percentage Fee.
82. **Rules and Regulations:** The Lessee will observe, obey, and comply with all rules and regulations adopted by the Landlord and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Lessee's operations under this Lease Agreement. Failure to do so will constitute a breach of the Lease Agreement.
83. **Bankruptcy:** The Landlord reserves the right to terminate this Lease Agreement, if, during the term of any contract the Lessee has with the Landlord, the Lessee becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Lessee under federal bankruptcy law or any state insolvency law.

84. Authority Of The Landlord's Project Manager:

A. The Lessee hereby acknowledges that the Landlord's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Lease Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Lease Agreement; negligence, fraud or misrepresentation before or subsequent to acceptance of the Lessee's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

B. The Lessee shall be bound by all determinations or orders and shall promptly obey and follow every order of the Landlord's Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Lessee agrees with the Landlord's Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Landlord's Project Manager as soon thereafter as is practicable.

C. The Lessee must, in the final instance, seek to resolve every difference concerning the Lease Agreement with the Landlord's Project Manager. In the event that the Lessee and the Landlord's Project Manager are unable to resolve their difference, the Lessee may initiate a dispute in accordance with the procedures set forth in this Paragraph. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

D. In the event of such dispute, the parties to this Lease Agreement authorize the County Manager or designee, who may not be the Landlord's Project Manager or anyone associated with this project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Lease Agreement (including but not limited to claims in the nature of breach of the Lease Agreement, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.

E. The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Lessee's performance or any Deliverable meets the requirements of this Lease Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Lease Agreement. All such disputes shall be submitted in writing by the Lessee to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Paragraph, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Lessee. Except as such remedies may be limited or waived elsewhere in the Lease Agreement, Lessee reserves the right to pursue any remedies available under law after exhausting the provisions of this Paragraph.

85. Mutual Obligations:

A. Nothing in this Lease Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

B. In those situations where this Lease Agreement imposes an indemnity obligation on the Lessee, the Landlord may, at its expense, elect to participate in the defense if the Landlord should so choose. Furthermore, the Landlord may at its own expense defend or settle any such claims if the Lessee fails to diligently defend such claims, and thereafter seek indemnity for costs from the Lessee.

86. Rights Reserved to Landlord: All rights not specifically granted to the Lessee by this Lease Agreement are reserved to the Landlord. The designation of any particular remedy for the Landlord is without prejudice to any other relief available in law or equity, and all such relief is reserved to the Landlord.

87. Waiver: Invalidation of any portion of this Agreement shall not automatically invalidate the entire Agreement.

88. No Partnership or Agency: The County and the Lessee are independent entities and the officers, employees, and agents of one are not, and shall not represent themselves to be, officers, employees, or agents of the other. This Lease Agreement does not constitute and shall not be represented to constitute a partnership between the Landlord and the Lessee.

89. Choice of Venue and Law : Any litigation between the Landlord and the Lessee relating in any way to this Lease Agreement shall be brought and presented exclusively in a Court located in Miami-Dade County, Florida, and governed by the laws of Florida.

90. Audits: Pursuant to County Ordinance No. 03-2, the Lessee will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Lessee agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

91. Local, State and Federal Compliance Requirements:

Lessee agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Lease Agreement, including but not limited to:

A. Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

B. Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.

C. Environmental Protection Agency (EPA), as applicable to this Contract.

D. Miami-Dade County Code, Chapter 11A, Article 3. All Lessees and subcontractors performing work in connection with this Lease Agreement shall provide equal opportunity for

employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

E. "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

F. Miami-Dade County Code Section 10-38 "Debarment".

G. Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

H. Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Lease Agreement, Lessee shall not be required pursuant to this Lease Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Lessee, constitute a violation of any law or regulation to which Lessee is subject, including but not limited to laws and regulations requiring that Lessee conduct its operations in a safe and sound manner.

92. Inspector General Reviews:

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the Landlord has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the Landlord, the Lessee shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Lease Agreement for inspection and reproduction. The Landlord shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Lessee's prices and any changes thereto approved by the Landlord, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Lessee, its officers, agents, employees, sub Lessees and assignees. Nothing contained in this provision shall impair any independent right of the Landlord to conduct an audit or investigate the operations, activities and performance of the Lessee in connection with this Lease Agreement. The terms of this Paragraph shall not impose any liability on the Landlord by the Lessee or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Lessee. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Lessee, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Lessee from the Inspector General or IPSIG retained by the Inspector General, the Lessee shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Lessee's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

93. Vendor Registration and Forms/Conflict of Interest:

a) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any

contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

b) Vendor Registration

The Lessee shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, Lessee confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit**
(Section 2-8.1 of the County Code)
2. **Miami-Dade County Employment Disclosure Affidavit**
(Section 2.8-1(d)(2) of the County Code)
3. **Miami-Dade County Employment Drug-free Workplace Certification**
(Section 2-8.1.2(b) of the County Code)
4. **Miami-Dade Disability and Nondiscrimination Affidavit**
(Section 2-8.1.5 of the County Code)
5. **Miami-Dade County Debarment Disclosure Affidavit**
(Section 10.38 of the County Code)
6. **Miami-Dade County Vendor Obligation to County Affidavit**
(Section 2-8.1 of the County Code)
7. **Miami-Dade County Code of Business Ethics Affidavit**
(Section 2-8.1(f) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
8. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the County Code)
9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the County Code)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit**
(Article 8, Section 11A-60 11A-67 of the County Code)
11. **Subcontracting Practices**
(Ordinance 97-35)
12. **Subcontractor /Supplier Listing**
(Section 2-8.8 of the County Code)
13. **Environmentally Acceptable Packaging**
(Resolution R-738-92)
14. **W-9 and 8109 Forms**
(as required by the Internal Revenue Service)
15. **FEIN Number or Social Security Number**
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
 - Identification of individual account records
 - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
 - Tax reporting purposes
 - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
16. **Office of the Inspector General**
(Section 2-1076 of the County Code)
17. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.
18. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida

94. **Survival:** The parties acknowledge that any of the obligations in this Lease Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Lessee and the Landlord under this Lease Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

MIAMI-DADE COUNTY, FLORIDA

Contract No. 780

IN WITNESS WHEREOF, the parties have executed this Lease Agreement effective as of the contract date herein above set forth.

Lessee

Miami-Dade County

By: [Signature]
 Name: GRANT MARSHALL LABOVIN
 Title: MANAGING MEMBER
 Date: 12/2/11
 Attest: [Signature]
 Corporate Secretary/Notary Public

By: _____
 Name: _____
 Title: _____
 Date: _____
 Attest: _____
 Clerk of the Board

Corporate Seal/Notary Seal

Approved by County Attorney as to form and legal sufficiency



Appendix A

Scope of Services

2.1 Introduction/Background

MDPR owns and operates the Palmetto Golf Course located at 9300 SW 152nd Street, Miami Florida. As part of the clubhouse for the Palmetto Golf Course, MDPR has available a 1,628 square foot concession facility, with maximum seating capacity for fifty persons, and additional space to store a limited number of mobile concession units. The Restaurant also includes a kitchen and food preparation area. MDPR will make available to the Lessee, access to a covered patio area (approximately 1,476 sq ft) for outside dining, as shown on the attached site map (Attachment B).

2.2 Services to be Provided

The Lessee shall: a) operate the Restaurant's food and beverage services; b) market the Restaurant and the food and beverage services; c) provide food and beverage vending machine services; and d) service golf course patrons through mobile concession units, which will be used to provide basic food and beverage service on the golf course and mini golf course. No nightclub type activities will be permitted under any agreement issued as a result of this Solicitation.

A. General Services

The Lessee shall:

1. Obtain all permits/licenses that are necessary for the provision of the services as may be required by the County and State.
2. Comply with all applicable rules and regulations adopted by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Lessee's operations of the Restaurant.
3. Provide good, prompt and efficient service, adequate to meet all reasonable demands.
4. Be in full operation to provide food and beverage service no later than thirty (30) days following the execution of any agreement as a result of this solicitation. The County reserves the right to extend this time frame if necessary.
5. Market the Restaurant in order to attract business to the Palmetto Golf Course Restaurant.

B. Personnel

The Lessee shall:

1. Have a qualified full-time on-site restaurant manager, at the Restaurant, with experience in the management of this type of operation. In addition, the Lessee shall have adequate Restaurant staff in order to provide quality service. The

Lessee shall ensure that employees are distinctively uniformed or appropriately attired, so as to be distinguishable as the Lessee's employees and not as employees of the County.

2. Comply with Miami-Dade County Ordinance No. 08-07, Chapter 26, "Miami-Dade County Park and Recreation Department Rules and Regulations, Article III, The Shannon Melendi Act". The Lessee shall ensure that all Lessee's management, staff and volunteers:
 - a) Have had nationwide criminal background checks conducted by a Professional Background Screener;
 - b) Have been screened through the Florida Department of Law Enforcement Sexual Predator/Offender Database, and a check of the National Sex Offender Public Registry;
 - c) Have been verified as being United States Citizens or having legal immigrant status per Miami-Dade County Ordinance No. 08-07 prior to and throughout employment; and
 - d) Wear picture identification at all times while on County property and when in direct contact with golf patrons and the general public.
3. Retain all records demonstrating compliance with the background screening required herein for not less than three years beyond the end of the contract term. The Lessee shall provide the County with access to these records annually, or at the request of the County.

C. Operations

The Lessee shall not undertake any activity, which interferes with the operation of the golf course and mini golf course. The Lessee shall:

1. Coordinate activities with the on-site golf course manager. Typically, operations of the Restaurant can begin as early as 7:00 A.M. and close as late as 10:00 P.M. to accommodate the golf driving range.

Note: MDPH reserves the right to conduct special events and tournaments that may preclude the Lessee from operating for a limited number of days per year. A pro rata adjustment will be made to the Lessee's minimum monthly guarantee for special events. No other liability shall accrue to the County for said closure.

2. The Lessee shall submit a schedule of intended hours of operation to MDPH for approval, prior to beginning operations. The Restaurant shall operate seven days a week during specified hours of operation. The County may require changes in the hours of operation if, at the discretion of the County, such a change is desirable in providing the best service to the golf patrons and the public.
3. Provide security for the premises. The County will not accept any responsibility for the Lessee's furnishing, fixtures, equipment, soft goods, mobile concession units, or supplies.

D. Food and Beverage Services

The Lessee shall:

1. Provide a wide variety of food and beverage services in a manner that ensures a high-level of service and quality to all customers. At a minimum, food and beverage services shall be provided on a set schedule (early breakfast, lunch and dinner) during the regularly scheduled operating hours of Palmetto Golf Course. The Lessee shall provide snack type services for the balance of the operating day as approved by MDPR. Style of menu and prices are subject to approval by the MDPR. All alcoholic beverages shall be sold and distributed in individual cups, not in bottles, cans or original packages.
2. The Lessee may provide as an option, dining services after Palmetto Golf Course operating hours.
3. Provide food and beverage vending machines of a type and in locations approved by MDPR. Minimum service levels shall include an adequate number of high quality mobile concession unit(s) providing basic food/snack type and beverage services on the golf course and mini golf course to golfers, during peak hours of operation.
4. Maintain all foodservice areas and equipment in a safe manner as outlined in the Minimum Operating Standards for Foodservice (see Attachment C.)

Note: The Lessee shall not have exclusive rights to the community room for the Palmetto Golf Club. The Lessee may submit to MDPR, adequate collateral material regarding the Lessee's food and beverage service, for inclusion, as a handout, with all functions and party permits issued by the County for the community room area. Corkage fees for tournaments shall be reasonable, appropriate, and within industry standards for a municipal golf course. The fees must be approved by MDPR, and any request for changes must be made in writing.

E. Improvement, Maintenance and Repairs

The County will provide the Restaurant in as-is condition. The Restaurant shall be kept pristine at all times, which may require repainting of walls, refurbishing of furniture and floors, and other minor improvements and/or repairs by the Lessee.

The Lessee shall:

1. Maintain interior areas, wall to wall and ceiling to floor, of said premises in the same condition, order and repair as at the commencement date, or better, excepting only reasonable wear and tear arising from the use to provide the services herein.
2. Perform initial and ongoing improvements or repairs to the Restaurant, if any, in compliance with the South Florida Building Code, with all necessary permits and approvals. The Lessee shall obtain permit and MDPR approval, prior to starting said improvements or repairs, and upon the Notice to Proceed issued by the County. Lessee shall bear all costs associated with improvements or repairs. All improvements shall become the property of the County at the end of the contract period.
3. Provide all furnishings, fixtures, equipment, soft goods, mobile concession units, and food and beverage vending machines, at its own expense to fulfill the requirements

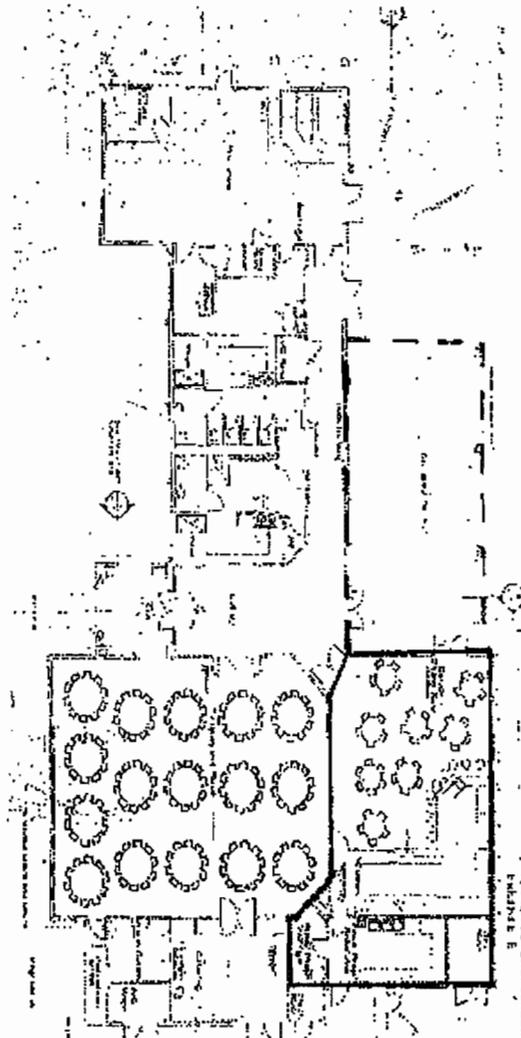
herein. All furnishings equipment, etc., furnished by Lessee, shall be of good quality and suitable for its purpose.

Note: The County has a limited amount of furnishings (table and chairs) and kitchen equipment that is available for use by the Lessee at the Restaurant.

F. Additional Services

The County, at its sole discretion, may allow the Lessee to provide additional services and/or use additional or substitute space within the Golf Course, upon such terms as the parties may agree. Any additional services must be associated with, and be incidental to, normal food and beverage service. However, any right to additional services and space by Lessee are subordinate to the County's right to provide the additional service or use additional space itself and the County's right to contract with others.

ATTACHMENT B



Attachment C

Minimum Operating Standards for Foodservice

FOOD HANDLING AND PRODUCTION

Contract Officer or Park/Facility Manager

- May direct the Foodservice Contractor to improve the quality of his offerings and the method in which they are produced, held, and served.
- At all times the Contract Officer and/or the Facility or Park Manager shall have access to all foodservice facilities and areas.

Foodservice Employee Hygiene

- Employees with boils, infected wounds, respiratory infections, or other communicable diseases shall be prohibited in areas where there is a likelihood of transmission of disease to patrons or to other employees.
- Employees shall be prohibited from smoking or using other tobacco products in any form while in food production or service areas.
- Employees shall thoroughly wash their hands and exposed portions of their arms with soap and warm water before starting work, during work, or as often as necessary to keep them clean, especially after smoking, eating, drinking, or using the restroom.
- Employees shall keep their fingernails clean and trimmed.
- Employees will consume food only in designated areas.
- Employees will wear hairnets or hats to keep hair from contaminating food.
- Uniforms shall be kept clean. One contact with soiled clothing is enough to start the contamination cycle: from clothing to hands to food.
- Employees who may come into contact with food shall use disposable latex or plastic food handler's gloves. They are to be changed after each task with hand washing and sanitizing in between glove changes.

Minimum Purchase Specifications

- All meats, meat products, poultry, poultry products, and fish must be U.S. Government inspected.
- Beef, lamb, and veal shall be U.S.D.A. Grade Choice or better.
- Pork shall be U.S. No. 1.
- Poultry shall be U.S. Government Grade A.
- Fresh fish and seafood shall be top grade; frozen fish and seafood shall be a nationally distributed brand, packed under continuous inspection of the U.S.D.A.
- Dairy products:

- o Eggs- fresh U.S.D.A. or state graded "A".
- o Butter- U.S.D.A. Grade "A" (92) score.
- o Cheese- U.S.D.A. Grade "A" for all graded cheese.
- o Milk and milk products- U.S.D.A. Grade "A".

- Fresh fruits and vegetables- U.S.D.A. fancy to U.S.D.A. Number "1" shall be used for all graded fresh vegetables and fruit as a minimum specification.
- Dry stored items and canned goods- Grade "A" fancy.
- Frozen fruits and vegetables. U.S.D.A. Grade "A".

Cross-Contamination Prevention of Food¹

- Raw meats, fish, and poultry shall be prepared in separate areas from produce or cooked and ready-to-eat foods. (If space is unavailable, these items shall be prepared at different times.)
- Specific equipment shall be assigned (cutting boards, utensils, and containers) to each type of food product.
- After each task, all work surfaces, equipment, and utensils used shall be cleaned and sanitized.
- Cloths or towels used for wiping spills shall not be used for any other purpose.
- All transportation of food will be made in enclosed containers.

Thawing of Food²

- Foodservice Contractor shall utilize only the following procedures (one or more) to thaw food. Any other means will be unacceptable.
 - o In a refrigerator at a temperature of 41°F (5°C) or lower.
 - o Submerged under actively running potable water at a temperature of 70°F (21°C) or lower.
 - o In a microwave oven.
 - o As part of a cooking procedure, given the product meets the required minimum internal cooking temperature.

Cooking of Food³

- Prior to cooking, food will be handled properly.
- Minimum internal cooking standards shall be reached and held for the specified amount of time per food product. (All thermometers utilized shall be properly calibrated.)
 - o Poultry- 165°F (74°C) for 15 seconds.
 - o Stuffing, Stuffed Meats, Casseroles and dishes that combine raw and cooked food- 165°F (74°C) for 15 seconds.
 - o Pork- 145°F (63°C) for 15 seconds.
 - o Ground or Flaked Meats- 155°F (68°C) for 15 seconds.
 - o Beef or Pork Roasts- 145°F (63°C) for 3 minutes.
 - o Beef Steak, Veal, Lamb, or Commercially Raised Game Animals- 145°F (63°C) for 15 seconds.
 - o Fish or Food Containing Fish- 145°F (63°C) for 15 seconds.
 - o Shell Eggs (for immediate service)- 145°F (63°C) for 15 seconds.

¹ National Restaurant Association. ServeSafe® Essentials. U.S.A. 1999.

² *ibid.*

³ *ibid.*

Cooling of Food⁴

- Food that will not be served immediately shall be cooled as quickly as possible. The Foodservice Contractor shall utilize only the below means to cool food; any other means will be unacceptable.
 - o One stage method- cool hot cooked food from 140°F to 41°F (60°C to 5°C) within four hours.
 - o Two stage method- cool hot cooked food from 140°F to 70°F (60°C to 21°C) within two hours, and then to 41°F (5°C) or lower in additional four hours (total cooling time of six hours).
- Food that cannot cool within the aforementioned time parameters shall be discarded, without exception.

Food Time and Temperature Control⁵

- Thermometers shall be available in areas where needed and employees shall be trained to use them properly.
- Time and temperature controls shall be built into each recipe.
- Only freshly prepared products shall be served. Cook, hold and cool (if necessary). No leftovers will be used.
- Food will be discarded if it spends more than four hours total in the temperature danger zone, which is defined as 41°F to 140°F (5°C to 60°C).

Food Packaging

- Foodservice Contractor shall comply with Department policy prohibiting the use the below items:
 - o Straws
 - o Glass Bottles
 - o Metal Cans
 - o Glass Containers

Contractor shall adhere to a Hazard Analysis Critical Control Point plan (HACCP), which is outlined in subsequent *Sanitation and Food Safety* section. The Contract Officer must approve this HACCP plan.

SANITATION AND FOOD SAFETY

Upon receipt, the Foodservice Contractor shall make available all health department inspections to the Contract Officer and or Park/Facility Manager.

All foodservice employees shall possess current food handlers' certification from the governing local or state jurisdiction.

All foodservice managers shall possess a valid National Restaurant Association ServSafe® certification.

Foodservice Contractor will implement a physical plant cleaning schedule for all outlets operated. This plan must be submitted to and approved by the Contract Officer.

⁴ Ibid.

⁵ Ibid.

HACCP Plan ⁶

Although HACCP plans currently are not mandated by every health department, many are beginning to require them. Therefore, the Foodservice Contractor shall create and codify a HACCP plan. This plan will describe the procedures to be followed in order to:

- Identify foods and procedures most likely to cause foodborne illness.
- Develop procedures that will reduce the risk of a foodborne illness outbreak.
- Monitor procedures to keep food safe.
- Verify that the food served will be consistently safe.

B. Plan Principles

The plan created, written, and strictly followed by the Foodservice Contractor shall consist of the seven basic HACCP principles.

- Conduct a Hazard Analysis.
- Determine Critical Control Points.
- Establish Critical Limits.
- Monitor Critical Control Points (regularly).
- Perform Corrective Action (as necessary).
- Verify Procedures (regularly).
- Establish Record-Keeping and Documentation Procedures (on-going).

C. Plan Implementation

Once the HACCP plan has been submitted and approved by the Contract Officer, the Foodservice Contractor will implement it.

Logbooks shall be created and consistently used to regularly document activities. Examples of records include time-temperature logs, procedures for taking temperatures, standard operating procedures, calibration records, corrective actions, monitoring schedules, employee hand washing, and product specifications.

Contract Officer and/or Park/Facility Manager shall have full access to these logbooks.

CUSTOMER STANDARDS AND PROCEDURES

In addition to service standards agreed to by the Foodservice Contractor (Second Amendment to License and Concession Agreement dated 4 March 1986 section 6 titled Service Standards), the Foodservice Contractor will:

- Regularly conduct quarterly customer service seminars with all foodservice employees.
- Recognize and accommodate the needs and preferences of a diverse customer base by providing through varied menu choices.
- Ensure customers will be greeted with a courteous greeting and thanked for each sale.

⁶ Ibid.

- Provide sufficient resources to insure that no wait in line is longer than 5 minutes from the time of entry until an order is taken and not more than 4 minutes from the placing of an order for the delivery of food.
- Develop a marketing plan with monthly promotions and submit to Contract Officer in advance.

PREVENTIVE MAINTENANCE PROGRAMS

Foodservice Contractor will provide and pay for routine maintenance and repairs for all Contractor-owned equipment.

Client will provide and pay for routine maintenance and repairs for all foodservice equipment.

Equipment Records

- For each piece of equipment, the Foodservice Contractor shall prepare and maintain equipment records as part of the preventive maintenance program. Records may be prepared and maintained either manually or electronically (computerized).
- Contract Officer shall have full access to these equipment records.
- The equipment record shall be the comprehensive record of history for each piece of equipment.
 - The initial step in this preventive maintenance program will be to comprehensively inventory all foodservice equipment.
 - Each piece of equipment shall have an equipment record filled out completely.
 - These records shall be regularly maintained
- The following items shall be included on the equipment record card for each piece of equipment.
 - Maintenance Service Log number.
 - Maintenance Service Log location.
 - Equipment type.
 - Inventory number.
 - Date purchased.
 - Date installed.
 - Manufacturer.
 - Model number.
 - Serial number.
 - New/used at date of purchase.
 - Company/person purchased from.
 - Utility information.
 - Standard warranty information.
 - Safety requirements.
 - Additional warranty/service contract information.
 - Services and parts manual location.
 - Preventive maintenance information location.
 - Replacement parts log.
 - Additional information/comments.

Maintenance Service Log

- The purpose of this Log shall be to record all service performed for each piece of equipment.
- Foodservice Contractor shall maintain and update (as needed) this detailed specific record of service performed on each piece of equipment.

- Information contained within this Maintenance Service Log shall include:
 - o Extent and frequency of repair.
 - o Evaluation of preventive maintenance costs (parts and labor).
 - o Adjustment of preventive maintenance schedules respective of cost impact.
 - o Parts and labor costs to assist in developing financial projections.
 - o Information to determine equipment depreciation and replacement costs (to make decisions on whether to repair or buy new).

Memorandum



Date: August 22, 2011

To: Amos Roundtree, CPPO, CPM
Division Director
Department of Procurement Management

From: J.C. Romano, CPPB
Procurement Contracting Officer
Chairperson, Evaluation/Selection Committee

Subject: Report of Evaluation/Selection Committee for RFP No. 780, Palmetto Golf Course Restaurant.

The County issued a solicitation to obtain proposals from qualified firms to provide food and beverage services for the Palmetto Golf Course restaurant.

The Evaluation/Selection Committee has completed the evaluation of the single proposal submitted in response to the solicitation following the guidelines published in the solicitation.

Committee meeting dates:

July 25, 2011 (kick-off meeting)
July 27, 2011 (evaluation and scoring meeting)

Verification of compliance with contract measures:

Not applicable since the Review Committee did not assign any contract measures to this solicitation.

Verification of compliance with minimum qualification requirements:

The solicitation did not have any minimum qualification requirements.

Local Certified Service-Disabled Veteran's Business Enterprise Preference:

Veteran's Preference was considered in accordance with the applicable ordinance. None of the proposers qualified for the preference.

Summary of scores:

The Evaluation/Selection Committee decided not to hold oral presentations. The price proposal was reviewed for the single proposer after the review and scoring of technical proposals.

The final scores are as follows:

Proposer	Technical Score	Price Score	Total Combined Score	Price/Cost Submitted
	<i>(max. 400)</i>	<i>(max. 100)</i>	<i>(max. 500)</i>	
1. 4 on the Greene L.L.C.	381	69	450	\$12,000 YR/5%

Local Preference:

Local Preference was considered in accordance with applicable ordinance, but did not affect the outcome as there was only one proposer.

Negotiations:

The Evaluation/Selection Committee recommends that the County enter into negotiations with the highest ranked proposer, 4 on the Greene, L.L.C. The following individuals will participate in the negotiations:

J.C. Romano, Procurement Contracting Officer II, DPM
Alan Weitzel, Regional Manager, Park and Recreation
Brian Cullen, PFM4, Park and Recreation

Consensus Statement:

The Evaluation/Selection Committee recommends 4 on the Green L.L.C. for the following reasons. 1) The firm has relevant experience in providing restaurant operations, including the current operation of the Palmetto Golf Course restaurant. 2) The firm's operation plan was detailed and appropriately addressed the critical aspects of running a restaurant. 3) The firm's financial approach is in line with the industry standards and their pro-forma was thoroughly planned.

Copies of the score sheets are attached for each Evaluation/Selection Committee member, as well as a composite score sheet.

Approved

Amos Roundtree
Division Director

AR

Date

Not Approved

Amos Roundtree
Division Director

Date

RFP NO. 780
PALMETTO GOLF COURSE RESTAURANT LEASE

EVALUATION OF PROPOSALS

COMPOSITE

SELECTION CRITERIA ↓	PROPOSERS →	Maximum Points Per Member	Maximum Total Points (<u>5</u> members)	4 ON THE GREENE L.L.C.
Proposer's relevant experience, qualifications, and past performance		25	125	122
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		20	100	90
Proposer's approach to providing the services requested in this Solicitation		35	175	169
Total Technical Points <i>(Total of technical rows)</i>		80	400	381
Price and Financial Criteria				
Proposer's Financial Information, Guaranteed Monthly Rent and Percentage of Monthly Gross Receipts		20	100	69
Total Technical and Price Points <i>(Total of Technical & Price rows above)</i>		100	500	450
Ranking				

SIGNATURE:

J. C. Romano

Chairperson

M. Carballera

Reviewed By

PRINT NAME:

J. C. Romano

Maria Carballera

DATE:

8/17/11

8/22/2011

RFP NO. 780

PALMETTO GOLF COURSE RESTAURANT LEASE

EVALUATION OF PROPOSALS

ALAN WEITZEL (MDPR)

SELECTION CRITERIA ↓	PROPOSERS →	Maximum Points	4 ON THE GREENE L.L.C.
Proposer's relevant experience, qualifications, and past performance		25	23
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		20	17
Proposer's approach to providing the services requested in this Solicitation		35	30
Total Technical Points <i>(Total of technical rows above)</i>		80	70
Financial Criteria			
Proposer's Financial Information, Guaranteed Monthly Rent and Percentage of Monthly Gross Receipts		20	14
Total Technical and Price Points <i>(Total of Technical & Price rows above)</i>		100	84

RFP NO. 780

PALMETTO GOLF COURSE RESTAURANT LEASE

EVALUATION OF PROPOSALS

BRIAN CULLEN (MDPR)

SELECTION CRITERIA ↓	PROPOSERS →	Maximum Points	4 ON THE GREENE L.L.C.
Proposer's relevant experience, qualifications, and past performance		25	25
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		20	20
Proposer's approach to providing the services requested in this Solicitation		35	35
Total Technical Points <i>(Total of technical rows above)</i>		80	80
<u>Financial Criteria</u>			
Proposer's Financial Information, Guaranteed Monthly Rent and Percentage of Monthly Gross Receipts		20	10
Total Technical and Price Points <i>(Total of Technical & Price rows above)</i>		100	90

RFP NO. 780

PALMETTO GOLF COURSE RESTAURANT LEASE

EVALUATION OF PROPOSALS

PHILLIP ROSE (SEAPORT)

SELECTION CRITERIA ↓	PROPOSERS →	Maximum Points	4 ON THE GREENE L.L.C.
Proposer's relevant experience, qualifications, and past performance		25	25
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		20	15
Proposer's approach to providing the services requested in this Solicitation		35	35
Total Technical Points <i>(Total of technical rows above)</i>		80	75
Financial Criteria			
Proposer's Financial Information, Guaranteed Monthly Rent and Percentage of Monthly Gross Receipts		20	15
Total Technical and Price Points <i>(Total of Technical & Price rows above)</i>		100	90

RFP NO. 780

PALMETTO GOLF COURSE RESTAURANT LEASE

EVALUATION OF PROPOSALS

SARAH ABATE (MDAD)

SELECTION CRITERIA ↓	PROPOSERS →	Maximum Points	4 ON THE GREENE L.L.C.
Proposer's relevant experience, qualifications, and past performance		25	25
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		20	20
Proposer's approach to providing the services requested in this Solicitation		35	35
Total Technical Points <i>(Total of technical rows above)</i>		80	80
Financial Criteria			
Proposer's Financial Information, Guaranteed Monthly Rent and Percentage of Monthly Gross Receipts		20	15
Total Technical and Price Points <i>(Total of Technical & Price rows above)</i>		100	95

RFP NO. 780

PALMETTO GOLF COURSE RESTAURANT LEASE

EVALUATION OF PROPOSALS

VICTORIA JOHNSON (GSA)

SELECTION CRITERIA ↓	PROPOSERS →	Maximum Points	4 ON THE GREENE L.L.C.
Proposer's relevant experience, qualifications, and past performance		25	24
Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors		20	18
Proposer's approach to providing the services requested in this Solicitation		35	34
Total Technical Points <i>(Total of technical rows above)</i>		80	76
<u>Financial Criteria</u>			
Proposer's Financial Information, Guaranteed Monthly Rent and Percentage of Monthly Gross Receipts		20	15
Total Technical and Price Points <i>(Total of Technical & Price rows above)</i>		100	91

Memorandum



Date: June 27, 2011
To: Those Listed Below
From: Allna T. Hudak
County Manager
Subject: Appointment of Evaluation/Selection Committee for the Miami-Dade Park and Recreation Department Request for Proposals for Palmetto Golf Course Restaurant Lease - RFP No. 780

In accordance with Administrative Order 3-34, I am hereby appointing those listed below as the Selection Committee for the Miami-Dade Park and Recreation Department Request for Proposals for Palmetto Golf Course Restaurant Lease - RFP No. 780:

Selection Committee

J. C. Romano, DPM, Non-Voting Chairperson
Alan Weltzel, MDP
Brian Cullen, MDP
Phillip Rose, SP
Sarah Abate, MDAD
Juan Silva, GSA
Victoria Johnson, GSA (Alternate)

Technical Advisors (Non-Voting)

Bill Solomon, MDP

The Selection Committee will meet to review written or printed material regarding the qualifications of each of the certified firms as it relates to the requirements defined in the advertised document. If required, the Selection Committee will select several candidate firms meeting the published criteria to make oral presentations to the full Selection Committee at a properly noticed public hearing.

Each Selection Committee member shall be responsible for evaluating, rating and ranking the proposals, based on the criteria and procedure contained in the advertised document. The Evaluation/Selection Committee will first evaluate and rank responsive proposals on the Technical (Quality) criteria. If responsive proposers are invited to make oral presentations, the Committee may re-rate and re-rank the proposals based upon the written documents combined with the oral presentation. You may utilize staff of the issuing department and the using agency to conduct a preliminary review of the proposals for responsiveness to the technical requirements. All requests for specific determinations shall be made in writing to the County Attorney's Office.

You are directed to assist me in the selection process considering the factors delineated in the advertised document. These factors may include methodology and management approach, qualifications and experience of principals and staff, financial stability, proposer's past performance of similar scope and size, proposer's detailed plans to meet the objectives of each task, activity, etc., pursuant to any schedule, proposer's previous County experience, history and experience of the firm or individual(s), understanding of the project and the County's objectives, responsiveness to the established requirements, and cost/revenue (normally separate and sealed). When the document requires the proposer to provide cost/revenue in a separate sealed envelope, cost/revenue will be considered separately and after the other criteria have been evaluated.

**Selection Committee
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If you are unable to participate in the selection process, contact this office through Small Business Development (SBD) by memorandum documenting the reason why you cannot participate. Only in cases of dire urgency may you be excused from participation.

The alternate committee member will serve only in the event of an approved substitution. No substitution of committee members shall be allowed after the first official meeting of the committee. The Department of Procurement Management's (DPM) RFP Unit may substitute the chairperson to ensure the appropriate level of staffing expertise as deemed necessary to accommodate the needs of this solicitation.

Following the oral presentation, or upon completion of the review process, the Committee shall prepare and submit a memorandum to include a narrative of the evaluation and justification of the top recommended firm(s) based upon the reasoning and mathematical formula, if utilized, and attach supporting documentation and a summary sheet which MUST include the following information:

- Name of firm(s)
- Quality Rating Score
- Price
- Adjusted Score (if applicable)
- Committee's Overall Ranking

This report should be submitted to me through DPM for review and consideration for further recommendation to the Board of County Commissioners.

As a matter of administrative policy and to maintain a fair and impartial process, all individuals appointed to the Selection Committee (including the Chairperson) and staff are instructed to refrain from discussing the solicitation with prospective lobbyists and/or consultants. Committee members are reminded that in accordance with the Code of Silence Ordinance 98-106, they are prohibited from having any communication with potential respondents and/or their representatives. Violation of this policy could lead to termination of County service.

All questions must be directed to the staff contact person(s) designated by the issuing department.

- c: Miriam Singer, Director, DPM
- Jack Kardys, Director, MDPR
- Jose Abreu, Director, MDAD
- Wendi Norris, Director, GSA
- Bill Johnson, Director, SP
- Kathleen Woods-Richardson, Director, SWM
- Penelope Townsley, Director, SBD

Selection Committee

- J. C. Romano, DPM, Non-Voting Chairperson
- Alan Weitzel, MDPR
- Brian Cullen, MDPR
- Phillip Rose, SP
- Sarah Abate, MDAD
- Juan Silva, GSA
- Victoria Johnson, GSA (Alternate)

Technical Advisors (Non-Voting)

- Bill Solomon, MDPR