

MANATEE COUNTY GOVERNMENT SOURCE SELECTION AND AWARD

SUBJECT Golf Course Food Concessions	DATE POSTED July 1, 2009
PURCHASING REPRESENTATIVE Frank Lambertson	DATE CONTRACT SHALL BE AWARDED July 1, 2009
DEPARTMENT Financial Management Department	CONSEQUENCES IF DEFERRED N/A
SOURCE AWARD Sunrise Sunset Concessions	AUTHORIZED BY DATE Rob Cuthbert / July 1, 2009

ACTION DESIRED

Authorization to award and execute agreement for Golf Course Food Concessions to Sunrise Sunset Concession of Snook Haven LLC, Nokomis, FL for a period of five (5) years commencing July 1, 2009 and termination June 30, 2014. This is a revenue generating agreement.

ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy.)

Ordinance 08-43, Manatee County Purchase Code Section 2-26-42 / BCC Summer Recess

BACKGROUND/DISCUSSION

- Parks and Recreation Department requires Golf Course Food Concessions at both the Manatee County Golf Course and the Buffalo Creek Golf Course.
- 1/14/09 – 6/16/09 the appropriate proposal procedures were followed. The Request for Proposal was broadcast via Onvia DemandStar to 176 firms, and 80 members of the Manatee County Chamber of Commerce (Catering and Restaurants) were contacted via email were considered capable of providing this type of service. Three (3) firms downloaded the Request for Proposal and three (3) firms's submitted a proposal. Although notified, no Manatee County firms chose to respond.
- The Selection Committee consisted of:

Cindy Turner, Director, Parks and Recreation Department
Gary MacDougall, Parks and Recreation Department
Frank Lambertson, Financial Management Department
- See Page 2

SUMMARY

Authorization to award to Sunrise Sunset Concessions

ATTACHMENTS: (List in order as attached) N/A	INSTRUCTIONS TO BOARD RECORDS: N/A
COST Revenue Generating	SOURCE (ACCT# & NAME) N/A
COMMENTS N/A	AMT./REQ. OF RECURRING COSTS (ATTACH FISCAL IMPACT STATEMENT) N/A

- A mandatory site visit was held on Tuesday on May 5, 2009.
- Three proposals were received on May 19, 2009 from the following firms:

BMG Café Inc., Largo, FL
Orange Blossom Catering, St. Petersburg, FL
Sunrise Sunset Concessions, Nokomis, FL
- The Selection Committee convened and heard oral presentations on June 16, 2009 and ranked the firms as follows for the purpose of negotiating a contract with the top ranked firm.
- Ranked #1, Sunrise Sunset Concessions, Nokomis, FL – The proposer offers a proposal that best meets the overall needs of the County. Of particular importance is the firm's: concession capital improvements planned at both golf courses over the term of the agreement totaling \$50,000; higher revenue share to the County 10% of gross sales under \$25,000 and 12% over \$25,000 then the other proposers; over 10 years of successful management in Sarasota County at Lido and Siesta Key Beach concessions, and management of the Snook Haven Inn restaurant; provided creative ideas on how to generate increased revenue and redesign of the concession area to be more appealing to the public; and demonstrated a willingness to work with the County golf course staff.
- Ranked #2, Orange Blossom Catering, St. Petersburg, FL – The proposer submitted an informative proposal describing the offered services. While the proposer has experience managing the County's concessions for the past fourteen (14) years, County golf course staff had become dissatisfied with the proposer's performance; and the firm offered a lesser revenue share 5% of net sales under \$30,000 and 10% net sales over \$30,000 and therefore the firm was ranked second by the Selection Committee.
- Ranked #3, BMG Café Inc., Largo, FL – The proposer submitted a satisfactory proposal however was ranked third due to lesser experience in managing facilities similar in size to the County's and proposed a revenue share with the County 5% of gross sales over \$20,000 and 12% of gross sales over \$20,000 which was lesser than the top ranked firm.
- The Parks and Recreation Department will manage this project.
- Estimated annual revenue is \$35,000 to \$40,000.

LICENSE AGREEMENT

Between

MANATEE COUNTY

And

SUNRISE-SUNSET CONCESSION, LLC

For

GOLF COURSE CONCESSION SERVICES TO BE PROVIDED AT
MANATEE COUNTY GOLF COURSE and BUFFALO CREEK GOLF COURSE

This is a License Agreement, made and entered into by and between MANATEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," and

Sunrise Sunset Concession of Snook Haven LLC, a Florida Limited Liability Company, hereinafter referred to as "LICENSEE."

RECITALS:

WHEREAS, the COUNTY desires to enhance the comfort and enjoyment of its residents and visitors to Manatee County in their use of its Golf Courses; and

WHEREAS, the COUNTY has duly advertised for proposals (RFP #09-0045FL) and received offers to furnish and provide food concession services; and

WHEREAS, the offer of Sunrise Sunset Concession of Snook Haven LLC, was determined to be best offer;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants, provisions, terms, promises, and conditions contained herein, the parties hereto agree as follows:

ARTICLE I

PURPOSE/GRANT OF LICENSE

To enhance and promote Manatee County as a unique community, and provide for the comfort in and enjoyment of the use of the Golf Courses by the Golf Course patrons, the COUNTY hereby grants unto the LICENSEE the right and privilege to use and operate the Facilities described in Article 2 for the preparation and vending of food and beverages, the vending of articles of use to the Parks' patrons and the limited sale of souvenirs, in accordance with the terms, conditions and limitations of this License Agreement (the "Agreement"). This License and the rights and privileges granted to LICENSEE hereunder for the vending of food and beverages are exclusive.

ARTICLE 2

PROPERTY DESCRIPTION

As used in this Agreement, the facility refers to the food concession areas identified within this agreement and as depicted in the attached Exhibit A.

Except as specifically provided for herein with respect to the LICENSEE'S use and operation of the food concession under this License Agreement, the COUNTY shall at all times continue to retain and have the unqualified right to deal with, treat of, and make any and all determinations concerning or relating to the Golf Courses, including but not limited to charging various user fees.

ARTICLE 3

TERM AND RENEWAL

3.1 Unless renewed or extended as provided herein, this Agreement shall remain in full force and effect for five (5) years from the 1st day of July 1, 2009, unless this term is sooner terminated as herein provided.

3.2 Provided there has been no default under this License Agreement by LICENSEE prior to the expiration of the initial five (5) year term, LICENSEE may, by written notice to the COUNTY at least 120 days before the end of the initial term, request renewal of this License Agreement for a second five-year term which shall be considered and not unduly withheld upon receipt of the aforementioned notice by COUNTY.

3.3 Unless the Board of County Commissioners determines that different arrangements should be made for the Facilities or the operation of the Facilities, and provided that there has been no default of this License Agreement by LICENSEE and COUNTY has not given LICENSEE written notice of COUNTY'S intent to terminate this Agreement, COUNTY'S Contract Administrator may, by written notice to the LICENSEE

with an option to renew this Agreement for additional two (2) year terms. Such notice shall not be furnished earlier than one hundred twenty (120) days before the end of the existing term. LICENSEE shall evidence his agreement to the renewal term in writing on or before ninety (90) days prior to the expiration of the existing term; provided, the LICENSEE shall have a period of at least five (5) business days to respond to the notice from County's Contract Administrator. All renewal terms shall be subject to all terms and conditions set forth in this Agreement.

ARTICLE 4

LICENSE FEES AND PAYMENTS

4.1 LICENSEE, in consideration for the COUNTY'S granting of this License and the right to use the Facilities and rights and privileges granted under this Agreement, shall pay to COUNTY 10% of gross receipts under \$25,000 per month and 12% of gross receipts exceeding \$25,000 per month, as defined in Paragraph 6.4.3 derived from the operation of the Facilities (hereinafter the "Monthly License Fee").

4.2 The Monthly License Fee shall be calculated at the end of each calendar month and must be delivered to COUNTY within sixteen (16) days thereafter.

4.3 In addition, LICENSEE shall pay when due any and all taxes arising under or resulting from this Agreement and as a result of LICENSEE'S operations, activities and use of the Facilities. LICENSEE shall pay all such taxes directly to the entity or agency collecting the taxes, unless COUNTY is required by law to collect and remit such taxes. LICENSEE shall provide COUNTY with documentation evidencing the payment of any and all taxes paid directly to the entity or agency collecting the taxes. Any taxes which must by law be collected by COUNTY shall be paid along with the Monthly License Fee.

4.4 All remittances of Monthly License Fees and charges to be made by LICENSEE under this Agreement shall be made in person or mailed to the address provided for notices to be delivered under County Board of County Commissioners. Checks shall be made payable to the Manatee County Board of County Commissioners.

4.5 In the event LICENSEE fails to pay any of the Monthly License Fees or charges as required to be paid under the provisions of this Agreement after same shall become due, interest at the maximum rate allowed by law but not to exceed 1-1/2 percent per month shall accrue against each delinquent payment until same is paid. Interest shall be charged from the date payment is due through the date received by the COUNTY. Neither the inclusion of this provision, nor its implementation, shall preclude the COUNTY from terminating this Agreement for default in the payment of Monthly License Fees or charges or enforcing any other provisions contained in this Agreement. The COUNTY'S acceptance of late payment of any Monthly License Fees or charges shall not constitute a waiver of COUNTY'S right to terminate this License in the event of any subsequent default

by LICENSEE in the payment of any Monthly License Fees or charges on the date the same shall be due and payable.

ARTICLE 5

THE FACILITIES

EQUIPMENT, MAINTENANCE AND ADDITIONAL IMPROVEMENTS

5.1 LICENSEE represents that prior to signing this Agreement, LICENSEE had inspected the Facilities, the fixtures and equipment therein and LICENSEE acknowledges and confirms that LICENSEE is fully familiar with the condition of the Facilities, fixtures and equipment therein.

5.2 So long as this Agreement shall be in effect, LICENSEE shall, except as otherwise provided herein, maintain the Facilities in good order and repair and shall keep the Facilities in a clean and orderly condition at all times and free of all trash, litter and debris. Specifically and without limiting the foregoing, LICENSEE shall be responsible for:

- a. The daily and as needed cleaning and upkeep of the Patio(s), and the areas adjacent to the Facilities measuring a distance of not less than ten (10) feet from the Facilities;
- b. Contracting and arranging for the removal of all garbage, trash and litter and, furnishing at each of the Facilities, at least one dumpster;
- c. Transferring trash generated by the food services operations to the dumpsters on an as needed basis;
- d. Maintaining the surrounding walkways and eating areas in a clean and orderly fashion, picking up all litter and cleaning surfaces as needed;
- e. All internal concession finishing's, such as ceilings, walls, decorations, furnishings and floor coverings and any show cases, racks, other display and sales facilities, including concession identification and signage;
- f. All liquid petroleum gas (LPG) required to operate any LPG fueled equipment within the facilities;
- g. All plumbing maintenance pertaining to food and beverage storage and preparation, including, but not limited to kitchen sinks, dishwashers or disposal, grease trap maintenance including pumpdown and cleaning;

- h. Providing and maintaining adequate fire protection, including kitchen hood systems and fire extinguisher in compliance with all code requirements;
- i. Maintaining all food and beverage equipment. Replace of inoperable equipment no matter its age is the sole responsibility of the Proposer.
- j. All interior and exterior maintenance and repair of the Facilities, including but not limited to: replacement of all light bulbs and fixtures, all doors, door closures, locks, windows, vent fans, exhaust fans, all tables and chairs, excluding building structure maintenance and repair such as roof or air conditioning; and
- k. Pest control for the Facilities.

5.3 COUNTY shall provide, maintain and pay for the following:

- a. Monthly fees for water and sewage collection service;
- b. The electric utility service as presently provided to the Facilities and the golf courses;
- c. Repair and maintenance of all restrooms at the Facilities and provide all essential products.
- d. All structural repairs not caused by the negligent or intentional acts of LICENSEE. COUNTY'S obligation to provide structural repairs is limited to the repair of the existing foundation, walls and roof and the existing portions of the electrical, plumbing and mechanical system within such foundation, walls and roof.
- E. Exterior painting of the Facilities when, at the sole discretion of the COUNTY, such painting is warranted.

5.4 The COUNTY reserves the right to approve all equipment, furnishings, signage, and advertising installed, removed, or replaced by LICENSEE at the Facilities. Following the installation of any equipment, furnishings, and improvements, LICENSEE shall provide COUNTY with a statement setting forth the cost of such equipment, furnishings, or improvements and the date upon which each installation of such equipment, furnishings, and improvements was completed (See Exhibit C).

5.5 All new equipment, furnishings, and improvements provided by LICENSEE shall meet and comply with the requirements of all applicable building, fire, pollution, and other applicable codes.

5.6 LICENSEE shall not alter or modify any portion of the Facilities, or the improvements constructed therein without first obtaining written consent of the COUNTY. Such writing may include requirements relating to the furnishing of a payment and performance bond and the provision of insurance and such other provisions as may be required to protect and clarify the respective interests and rights of COUNTY and LICENSEE.

5.7 LICENSEE shall maintain a list of all equipment, fixtures and other personal property at the Facilities and no equipment, fixtures or other personal property shall be subject to any lien, leasing, or any security arrangement unless prior written consent is given by the COUNTY.

5.8 Upon the execution of this License Agreement, COUNTY agrees to make available to LICENSEE certain personal property previously purchased by the COUNTY for use at the Facilities as described in Exhibit B attached hereto and made a part hereof. LICENSEE shall be responsible for maintenance of this equipment throughout the useful life of each particular item. In the event that certain of the equipment specifically identified in Exhibit C is lost or stolen, LICENSEE shall be obligated to replace same with equipment of a type and quality at least as good as that of the lost or stolen equipment.

5.9 Notwithstanding any other provision of this Agreement, COUNTY reserves the right to take such action as may be required to maintain, repair, enhance and improve the Facilities. Any work required as the result of LICENSEE'S failure to comply with LICENSEE'S obligation under this License Agreement shall be charged to LICENSEE provided COUNTY has advised LICENSEE in writing of the failure to comply and provided a reasonable time for compliance. Any charges assessed against LICENSEE shall be due with LICENSEE'S monthly License Fee payment next due. Any work by COUNTY, or COUNTY'S agents, employees or contractors shall not be undertaken without fifteen (15) days advance notice to LICENSEE and shall be scheduled and provided in a manner that will not substantially interfere with LICENSEE'S use or enjoyment of the Facilities unless such work is required on an emergency basis to preserve and protect the Facilities or correct an unsafe condition.

ARTICLE 6

LICENSEE'S PRODUCTS, OPERATIONS AND SERVICES

6.1 LICENSEE'S PRODUCTS

6.1.1 The LICENSEE shall offer for sale food and beverages and other products items as approved to serve the patrons of the Golf Courses. Maximizing customer

satisfaction and maintain profitability will be balanced in the selection and pricing of items for sale.

6.1.2 LICENSEE shall provide the COUNTY with a list of any changes in the products and the maximum price that will be charged for each product as LICENSEE'S products and prices are from time to time amended.

6.1.3 LICENSEE shall throughout the term of this License Agreement, maintain a 2COP State of Florida alcoholic beverage sales license as a condition precedent to this License Agreement authorizing sale of beer and wine at both facilities at which LICENSEE'S services are governed by this Agreement.

6.1.4 LICENSEE shall not sell products that, in the opinion of the COUNTY, pose a safety hazard or health hazard or are inappropriate for sale or display in a publicly owned golf course.

6.2 LICENSEE'S OPERATIONS

6.2.1.a. The facility shall be open to the public and in operation daily, each and every consecutive day throughout the term hereof beginning on the commencement date and continuing through the termination date of any future agreement.

6.2.1.b. Beginning the effective date of Eastern Daylight Savings Time through the date of reversion to Eastern Standard Time, the facility shall be open and in full operation consistent with the terms hereof daily and continually between the hours of 7:00 a.m. and 7:00 p.m.

6.2.1.c. Beginning the effective date of Eastern Standard Time through the date of reversion to Eastern Daylight Savings Time, the facility shall be open and in full operation consistent with the terms hereof daily and continually between the hours of 7:00 a.m. and 6:00 p.m.

6.2.1.d. LICENSEE may expand the number of daily hours of operation beyond the minimum number of hours established above hereof; however, at no time shall the facilities be operated earlier than 5:00 a.m. or later than 10:00 p.m. of any day without express written approval of COUNTY. LICENSEE shall not reduce the number of daily hours of operation without the express written consent of COUNTY.

6.2.1.e. The Contract Administrator, or his designee, may approve closing during periods of severe cold, maintenance, inclement weather, and under other extraordinary circumstances. In the interest of expediency such closing(s) may be authorized verbally with written confirmation from the Contract Administrator setting forth the circumstances and reasons for such authorization.

6.2.1.f. The LICENSEE shall provide and operate a beverage golf carts on each golf course. The Contract Administrator reserves the right to approve the equipment, the menu, and the operation of the beverage golf cart. LICENSEE agrees to comply with reasonable demands and modifications to the operation of the beverage golf cart as requested by the Contract Administrator.

6.2.1.g. The LICENSEE shall hire and assign a full-time qualified, experienced Manager for its operations at the Facilities. LICENSEE'S Manager will have no other duties or responsibilities except those duties and responsibilities directly related to the operation of the Facilities and will be physically available during reasonable operation hours. The LICENSEE if an individual, may serve as the Manager. Upon COUNTY'S request, the qualifications of the LICENSEE 'S Manager shall be submitted to the COUNTY. During the hours when the Manager is not on duty or available, there shall be an Assistant Manager on duty designated by the LICENSEE or the Manager at each of the Facilities. The Manager and Assistant Manager shall each be an authorized representative of the LICENSEE and be entitled to act in all matters relating to the Services provided hereunder. The COUNTY shall be advised in writing of the name(s), address(es), telephone contact number(s), and social security numbers of the manager(s) and Assistant Manager(s).

6.2.1.h. LICENSEE'S employees, agents, representatives, independent contractors, subcontractors, volunteers, or others involved in the maintenance or operation of the Facilities in contact with the public shall perform their duties in an efficient and courteous manner. Failure of any of these persons to do so shall be grounds for the COUNTY to demand his or her removal from duties at the Facilities. All of LICENSEE'S employees shall be distinctively uniformed or appropriately attired in a manner acceptable to COUNTY. Such uniforms shall readily identify individuals as the LICENSEE'S employees and be distinctively different from the COUNTY employees' attire.

6.2.1.i. LICENSEE shall furnish good, prompt, and efficient service adequate to meet all reasonable demands therefore. The COUNTY may periodically evaluate LICENSEE'S performance under any future agreement. As a result of these performance evaluations, the COUNTY may reasonably require LICENSEE to modify its operations so as to better serve the public.

6.2.1.j. The LICENSEE shall not conduct any business or activity not specifically authorized by this any future agreement, unless such activity is reasonably contemplated by any future agreement and approved in writing by the COUNTY. It is expressly understood and agreed that the LICENSEE'S operations shall not unreasonably interfere in any manner with the use of the public areas or infringe upon the rights of others authorized to conduct business near the location of the Facility. The LICENSEE agrees that a determination by the COUNTY will be accepted as final in evaluating LICENSEE'S activities that unreasonably infringe on the rights of others

or are reasonably within the contemplation of services and that LICENSEE will fully comply with any decisions on this matter.

6.2.1.k. LICENSEE, as part of the consideration hereof, hereby does covenant and agree that no person on the ground of race, color, religion, national origin, sex, age, or handicap shall be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination in the hiring of personnel or the performance of any future agreement and the use of and access to the Facilities.

6.2.1.l. The LICENSEE will observe, obey, and comply with all 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 LICENSEE'S use and operations under any future agreement. LICENSEE shall be responsible for obtaining all permits, licenses and approvals required for or in connection with and to enable LICENSEE'S performance under any future agreement.

6.2.1.m. LICENSEE shall permit and the COUNTY shall have the authority to review any reports, citations or records issued by any governmental entity or agency regulating LICENSEE 'S operations and services and to make periodic reasonable inspections of the Facilities during normal operating hours to determine if the Facilities are being maintained in a neat and orderly condition. The LICENSEE shall be required to make any improvements in the cleaning or maintenance methods reasonably required by the COUNTY. Such periodic inspections may also be made at the COUNTY'S discretion to determine whether the LICENSEE is operating in compliance with the terms and provisions of any future agreement.

6.2.1.n. LICENSEE shall not provide free or reduce charges for products or services in connection with the operation of the Facility, except in connection with promotional activities approved in advance by the COUNTY'S Contract Administrator. LICENSEE shall not extend credit to COUNTY employees.

6.2.1.o. LICENSEE shall provide signage as approved by the COUNTY advertising the ability to pre-ordering food and beverage via the patrons own cell phone and picked up at the clubhouse. The signage will be placed at the eighth or ninth tee as approved by the County.

6.3 CASH HANDLING REQUIREMENTS AND RECORDS

LICENSEE shall provide, operate and maintain the following:

- a) Equipment such as cash registers, or any other electronic or mechanical device used for recording customer's sales, shall have a serial totalizing unit built in them with a continual sequence recording of transaction of sales. Such sequent totalizing unit shall be sealed or unsealed only in the presence of an

authorized and designated representative of the COUNTY. The totalizer of such units may not be turned back but shall be continuous in adding to each transaction as made.

- b) All cash registers and devices used in recording sales to customers shall have a non-resettable grand total that accumulates each transaction entered into these devices. All transactions recorded on these devices shall be visibly displayed so that the amount recorded can be viewed by customers from a reasonable distance. No register or device in which cash sales are recorded and deposited may be opened without recording the date and the time of said opening. Cash register or device drawers must be kept closed at all times except when sales are made, change is made, or routine audits are conducted.

Cash registers must have sufficient keys for proper breakdown and segregation of transactions and meet all accepted standards of accounting systems and cash control.

- c) Cash registers and other electronic or mechanical devices that totalize customer transactions shall have a reading taken of same at least once each twenty-four (24) hours and recorded for accounting purposes. Adequate security protection is to be maintained so that unauthorized persons may not tamper with the totalizing unit of such devices.
- d) All persons handling sales shall promptly record said sales (cash or credit) in cash registers and other electronic or mechanical devices immediately upon sale to each paying customer and shall not delay or "gang" register or record such sales.

6.4 REPORTS AND RECORDS

6.4.1 LICENSEE shall maintain during the term of this License Agreement, all books of account, reports, and records customarily used in this type of operation and such records as are necessary to document LICENSEE'S activities pursuant to this License Agreement and all monies collected by LICENSEE in the operation of the Facilities under this License, not limited to gross receipts. The form of all such records, cash registers, tapes, books, ledgers, journals, sales slips, and invoices, installed or to be used for recording the operations of the LICENSEE under this License Agreement shall be subject to the written approval of the COUNTY prior to commencement of operations. The COUNTY reserves the right to reasonably modify reports and records requirements to be provided by LICENSEE.

6.4.2 Not later than the 16TH day following the end of each calendar month throughout the term of this License Agreement, the LICENSEE shall furnish to the COUNTY, on forms approved by the COUNTY, report of gross receipts during the

preceding calendar month. This report shall be signed by the LICENSEE certifying to the accuracy of such gross receipts.

6.4.3 The term "gross receipts" as used in this License Agreement means all monies paid or payable to or considerations of determinable value received by the LICENSEE for sales made, transactions had, or for services rendered, from all sources, in the operations of the Facilities under this License Agreement regardless of when or where the order therefore is received or the goods delivered or services rendered, whether paid or unpaid, whether for cash or on a credit basis or in consideration of any other thing of value; provided, however, that any sales taxes imposed by law directly payable by the LICENSEE to a taxing authority and sales refunds may be excluded therefrom.

6.4.4 The LICENSEE shall allow the COUNTY or the COUNTY'S auditors to inspect and examine all documents used in the compilation of the aforesaid reports at such reasonable times as may be required by the COUNTY. Records shall be available Monday through Friday inclusive, between the hours of 9:00 a.m. and 5:00 p.m. at a location within Manatee County. In the event COUNTY, in County's sole discretion, determines there may be a significant deviation between revenues paid and revenues which normally would be required hereof, then COUNTY may, at COUNTY'S option, require LICENSEE at LICENSEE'S expenses, provide an audited statement prepared by an independent Certified Public Accountant verifying the correctness of all payments required herein.

6.4.5 All records, including tax returns and tax reports, of the LICENSEE necessary to verify any report referred to herein shall be available to the COUNTY and the COUNTY'S auditors at a reasonable location in Manatee County, Florida, for a period of five years after the end of the License Agreement or any extensions thereof.

ARTICLE 7

LIABILITY FOR DAMAGE, INDEMNITY INSURANCE, BOND

7.1 LIABILITY FOR DAMAGE OR INJURY. The LICENSEE shall be liable for damage or injury which may be sustained by any party or persons at the Facilities other than the damage or injury solely caused by the negligence or intentional actions of the COUNTY, its agents, and employees while in the course of COUNTY business. LICENSEE shall at LICENSEE'S expense promptly repair all damage to the Facilities caused by the LICENSEE, its employees, agents, customers, or independent contractors contracting with LICENSEE.

7.2 INDEMNIFICATION OF COUNTY. LICENSEE shall at all times hereafter, indemnify, hold harmless and defend COUNTY, its agents, servants and employees from any and all claims, liability, loss or cause of action of any kind or nature arising out of the actions, omissions, or negligence, in whole or in part of the LICENSEE, its officials, agents, or employees, in the performance of or under this License Agreement. The LICENSEE

shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the COUNTY when applicable, and shall pay all costs and judgments which may issue thereon.

7.3 DAMAGE OR DESTRUCTION OF FACILITIES. If either of the Facilities or any structures therein are partially damaged by fire, flood, wind or other casualty, excluding the negligent or intentional acts of LICENSEE, LICENSEE may repair the damage at its own costs and expense, and no adjustment shall be made in the monthly license fee. In the event either of the Facilities is destroyed or so damaged by fire, flood, wind or other casualty, excluding the negligent or intentional acts of LICENSEE, that such of the Facilities is unusable for the purpose of this License Agreement, neither the LICENSEE nor the COUNTY shall be under any obligation to repair or reconstruct such one of the Facilities and LICENSEE may, with written notice to the COUNTY within fifteen (15) days after such occurrence, terminate this License Agreement entirely and any advance payment returned to LICENSEE.

7.4 INSURANCE. Without limiting any of the other obligations and liability of LICENSEE, LICENSEE, prior to the commencement of operations, shall furnish to the COUNTY evidence of the following insurance, which insurance coverage's LICENSEE shall maintain and keep in full force and effect during the term of this License Agreement.

7.4.1 Comprehensive General Liability Insurance in an amount not less than Three Hundred Thousand Dollars (\$300,000) per occurrence combined single limit for bodily injury and property damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements as filed by the Insurance Services Office and must include:

- a. Premises and/or Operations.
- b. Independent Contractors. COUNTY is to be included as an "Additional Insured" in the name of "Manatee County Board of County Commissioners", with respect to liability arising out of Facilities' operations performed for COUNTY by or on behalf of LICENSEE or acts of omissions of COUNTY in connection with general supervision of such Facilities' operations.

7.4.2 Business Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the License Agreement in an amount not less than \$100,000 combined single limit for bodily injury and property damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office.

7.4.3 Worker's Compensation Insurance – as required by the Worker's Compensation Law of the State of Florida and all applicable federal laws.

7.4.4 The insurance coverage required shall include those classifications, as listed in standard liability manuals, which most nearly reflect the operations of LICENSEE. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with management and financial strength qualifications as are approved by COUNTY. Certificates will provide that no modification or change in insurance shall be made without a 30-day written advance notice to the certificate holder (Manatee County) and approval by the COUNTY.

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

7.4.6 LICENSEE shall provide to COUNTY prior to commencement of any activities at the Facilities, Certificates of Insurance evidencing the insurance coverage as specified above. The required Certificates of Insurance shall not only name the types of coverage provided, but also shall refer specifically to this License Agreement and the particular sections contained herein in accordance with the type of insurance which is being furnished, and shall state that such insurance is as required by such sections of this License Agreement. If the initial insurance period expires prior to the completion of the License Agreement, renewal Certificates of Insurance shall be furnished 30 days prior to the date of expiration of any insurance coverage. Insurance shall not be canceled without 30 days prior written notice to COUNTY, and must be endorsed to provide the same. Failure of LICENSEE to obtain and maintain proper amounts and types of insurance under this License Agreement shall constitute material breach of this License Agreement by LICENSEE.

7.4.7 COUNTY reserves the right to amend the insurance requirements by the issuance of a notice in writing to LICENSEE to the extent reasonably deemed necessary to protect COUNTY from loss damage or liability for the acts, errors and omissions of LICENSEE in the use and operations of the Facilities by LICENSEE.

7.4.8 COUNTY shall have no duty or responsibility to insure, replace or protect LICENSEE'S equipment, furnishings or other personal property or improvements provided or paid for by LICENSEE, and all risk of loss and insurance against such risks shall be the sole responsibility of LICENSEE.

ARTICLE 8

OWNERSHIP OF LICENSE, ASSIGNMENT

8.1 The identity of the person or the entity, if not an individual, who or which shall be the owner or holder of the rights granted under this License Agreement is very important to the COUNTY. Therefore, the COUNTY reserves the right to terminate this License Agreement any time more than 10 percent of the ownership of the rights under this License Agreement has not been specifically approved of by the COUNTY. The COUNTY shall

reject any proposed new owner of any interest in or under this License Agreement for any reason it believes is in the best interests of the public. LICENSEE agrees to provide, on 24-hour notice to the COUNTY, an accurate list of all persons or entities having an interest in or under this License Agreement, showing the percentage of ownership of each such persons or entities. LICENSEE'S stock, if listed on a major stock exchange, is wholly excepted from the requirement of this Article.

8.2 LICENSEE shall not, without written consent of the COUNTY, assign, pledge, transfer or otherwise encumber this License Agreement or the right or privilege to operate within either of the Parks or the Facilities or any portion thereof, or any property used in or to be used in the operations under this License Agreement. Assignment, pledging, transferring, or encumbering of any interest in or under this License Agreement or the operation of either of the Facilities, by anyone other than the LICENSEE, without the written consent of the COUNTY, shall be grounds for immediate termination of this License Agreement.

It is agreed that all terms and conditions of this License Agreement shall extend to and be binding on any assignee or other successor of LICENSEE as may be approved by the COUNTY.

ARTICLE 9

APPROVALS AND NOTICES

9.1 APPROVALS.

9.1.1 Except as provided otherwise, whenever any prior approval is required by either party, such approval shall not be unreasonably withheld. COUNTY shall retain broad discretion over matters pertaining to creating and maintaining the unique local character of the Facilities, the protection and preservation of the Facilities and the Parks, the public interest and limited purpose for which this License has been granted, and withholding approvals for the foregoing reasons shall be considered unreasonable. Matters requiring the consent of the COUNTY are wholly within the discretion of the COUNTY.

9.1.2 LICENSEE shall not change or alter the following without the written approval of the COUNTY:

- a. Use of any type of vending machines, inside or outside of the building at the Facilities.
- b. Modifications to the Facilities.
- c. Equipment LICENSEE plans to install requiring any building modifications.

- d. Any use of the COUNTY'S, Facilities" name or the name of the Facilities.
- e. Tree and similar vegetation planting, replanting or removal.

9.1.3 COUNTY'S approval of any matter contained in or required by this License Agreement refers to approval by the Board of County Commissioners. COUNTY may, by resolution or written notice to LICENSEE, designate a Contract Administrator and provide specific details with respect to the nature and extent of authority delegated to the Contract Administrator. LICENSEE shall not be considered in breach or default under this Agreement as the result of any actions approved in writing by the Contract Administrator that are reasonably within the scope of authority provided within a resolution or written notice to LICENSEE from the Board of County Commissioners.

9.2 NOTICES

Whenever either party desires to give notice unto the other, it must be given by written notice, by registered or certified United States mail, with return receipt requested, addressed to the party for whom it is intended, or by hand delivery and acknowledged to the individual at the place last specified, as the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective individuals and places for giving notice, to wit:

FOR MANATEE COUNTY:

By mail or hand delivery:

Director, Parks & Recreation Department
5502 33rd Avenue Drive West
Bradenton, FL 34209

FOR LICENSEE:

By mail:

Mr. Peder M. Jansson, President
Sunrise Sunset Concession of Snook Haven LLC
2171 Muskogee Trail
Nokomis, FL 34275

By hand delivery:

Managing employee in charge at either facility

ARTICLE 10

TERMINATION

10.1 **AUTOMATIC TERMINATION.** The occurrence of any of the following shall cause this License Agreement to be terminated automatically:

10.1.1 Institution of proceedings in voluntary bankruptcy by the LICENSEE.

10.1.2 Institution of proceedings in involuntary bankruptcy against the LICENSEE or appointment of Receiver if such proceedings continue for a period of 90 days.

10.1.3 Assignment by the LICENSEE for the benefit of creditors.

10.1.4 Abandonment or discontinuance of operations hereunder.

10.1.5 Unauthorized assignment or transfer of this License Agreement or any change of ownership interest in LICENSEE or this License Agreement and/or failure to submit the ownership list within 24 hours upon the request of the COUNTY.

10.2 **TERMINATION BY COUNTY.**

10.2.1 COUNTY may terminate this License Agreement upon fourteen (14) days written notice to LICENSEE of any condition posing a threat to health or safety of the public or patrons and not remedied by LICENSEE within 14 days, or where LICENSEE does not proceed with due diligence to remedy such condition where the condition could not possibly be remedied in such time.

10.2.2 COUNTY may terminate this Agreement immediately upon notice to LICENSEE of the discovery of any mis-statement in the LICENSEE'S proposal leading to award of this License Agreement which, in the determination of COUNTY, significantly affects the LICENSEE'S qualifications to perform under this License Agreement.

10.2.3 COUNTY may terminate this License Agreement upon ten (10) days notice to LICENSEE of any sum due hereunder after the due date for such payment; provided, however, that such termination shall not be effective if LICENSEE makes the required payment(s) within the 10-day period following receipt of the written notice.

10.2.4 COUNTY may terminate this Agreement upon thirty (30) days written notice to LICENSEE with respect to:

- a. Nonperformance of or failure to comply with any provision of this License Agreement and failure of LICENSEE to remedy such nonperformance within the thirty (30) day period following delivery or mailing of the written notice.

- b. The conduct of any activity or the merchandising of any product or service not specifically authorized herein.

10.2.5 TERMINATION FOR PUBLIC CONVENIENCE. COUNTY shall have the right to terminate this License Agreement for public convenience upon at least ninety days written notice to LICENSEE. Should COUNTY elect to terminate this License Agreement for public convenience, or should this License Agreement be terminated through COUNTY'S fault and through no fault of LICENSEE, COUNTY will pay to LICENSEE the "Compensation Amount". The "Compensation Amount" shall be defined below and limited to the sum of the following: (i) the cost of all permanent improvements approved by COUNTY and made and paid for by the LICENSEE to the Facilities subject to a "straight line" depreciation value reduction of ten percent (10%) per year for each approved improvement; and, (ii) at LICENSEE'S option, COUNTY shall purchase LICENSEE'S remaining stock at the Facilities, at LICENSEE'S cost, up to a Five Hundred Dollar (\$500) total limit.

10.3 TERMINATION BY LICENSEE. LICENSEE shall have the right upon 30 calendar days from receipt of written notice by certified or registered mail to COUNTY to terminate this License Agreement at any time after the occurrence of one or more of the following events:

10.3.1 Issuance by any court of competent jurisdiction of any injunction or order of taking substantially restricting the use of the Facilities for the purposes set forth herein, and the remaining in force of said injunction or order for a period of more than 30 calendar days.

10.3.2 A breach by the COUNTY of any of the terms, covenants, or conditions contained in this License Agreement on the part of the COUNTY to be performed, and the failure of the COUNTY to remedy such breach for a period of 30 calendar days after receipt of written notice from the LICENSEE, of the existence of such breach or, if such breach cannot be remedied within 30 days, COUNTY has not in good faith proceeded with due diligence to remedy such breach.

10.3.3 The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of substantial part, or parts, thereof in such a manner as to substantially restrict LICENSEE'S operations for a period of 90 calendar days or more.

10.4 TERMINATION WITHOUT CAUSE. LICENSEE shall have the right to terminate this License Agreement without cause by providing written notice to COUNTY at least thirty (30) days prior to termination. Should LICENSEE elect to terminate this License Agreement without cause, LICENSEE'S rights and privileges as stated in this License Agreement shall cease at the termination date provided in the written notice and

LICENSEE shall not be entitled to any reimbursement by COUNTY for capital improvements made or fixtures installed at the Facilities by LICENSEE.

10.5 LIEN ON EQUIPMENT, VACATION OF THE FACILITIES. It is expressly agreed that the COUNTY shall have a continuing lien on all equipment and personal property of the LICENSEE which may be at the Facilities for any and all sums which may from time-to-time become due to the COUNTY under the terms of this License Agreement, and upon default of payment by the LICENSEE, the COUNTY has the right to take possession of and retain the same until the full amount due shall be paid, or to sell the same at public auction and, after deducting the expenses of such sale, apply the balance of the proceeds to such payment, and if there should be any deficiency, to resort to any legal remedy. The LICENSEE shall not remove from the Facilities any personal property brought thereon by the LICENSEE for the purpose of operating the concession. Upon the expiration of the term herein, if the LICENSEE has made full payment under this License and carried out all terms of this License Agreement, LICENSEE may remove its equipment and personal property from the Facilities. Within fifteen (15) calendar days following the termination of this License Agreement, LICENSEE shall forthwith remove all of its personal property not acquired by COUNTY under the terms of this license Agreement. Any personal property of LICENSEE not removed in accordance with this paragraph may be removed by the COUNTY for storage at the cost of the LICENSEE or shall constitute a gratuitous transfer of title thereof to the COUNTY for whatever disposition is deemed to be in the best interests of the COUNTY. The COUNTY shall not be liable to LICENSEE for the safekeeping of LICENSEE'S personal property. It is the intention of the parties to this License Agreement that all furnishings and equipment purchased or leased by LICENSEE, except those bolted, screwed in place or permanently affixed to buildings, unless stipulated to by COUNTY in writing as removable equipment, shall be the personal property of the LICENSEE.

10.6. Upon termination or expiration of this Agreement, LICENSEE shall vacate the Facilities, leaving it in a clean and orderly condition and in a good state of repair meeting or exceeding the condition existing on the date LICENSEE commenced operations or, if improvements have been made to the Facilities, on the date such improvements were complete.

ARTICLE 11

INDULGENCE NOT WAIVER

11.1 The indulgence of either party with regard to any breach or failure to perform any provision of this License Agreement shall not be deemed to constitute a waiver of the provision of any portion of this License Agreement, either at the time the breach or failure occurs, or at any time throughout the term of this License Agreement.

ARTICLE 12

INTERPRETATIONS

12.1 This License Agreement and the exhibits and attachments hereto, and other documents and agreements specifically referred to herein, constitute the entire, fully integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous verbal or written 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 License Agreement. This License 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 appropriate formal action by the Board of County Commissioners. This License Agreement shall be interpreted as a whole unit and section headings are for convenience only. Any act or delivery that must be completed on a Saturday, Sunday or County holiday shall be adequate if performed or delivered on the following business day. All interpretations shall be governed by laws of the State of Florida.

ARTICLE 13

LIST OF EXHIBITS AND MISCELLANEOUS

13.1

List of Exhibits

EXHIBIT A - Facility layouts for Manatee and Buffalo Creek Golf Courses

EXHIBIT B - Equipment List

EXHIBIT C – Facility Improvements

IN WITNESS WHEREOF, the parties have made and executed this License Agreement on the respective dates under each signature.

WITNESSES:

**SUNRISE SUNSET CONCESSIONS
OF SNOOK HAVEN LLC**

By: Robert Pepe

Print Name: Robert Pepe

By: E. Janssen

Print Name: E. JANSSEN

By: Peter Janssen

Print Name: Peter JANSSEN

Title: Manager

RECOMMENDED BY MANATEE COUNTY PARKS AND RECREATION DEPARTMENT

By: Cindy Turner
Cindy Turner, Director

COUNTY OF MANATEE

Authority to execute this contract per Manatee County Code, Chapter 2-26, and per the delegation by the County Administrator effective 1/26/2009.

By: R. C. Cuthbert
R. C. "Rob" Cuthbert, C.P.M.; CPPO;
Purchasing Manager