

**CITY OF FAIRHOPE
BID INVITATION**

August 31, 2009

Sealed proposals will be received by the City of Fairhope of Baldwin County, Alabama, in the City of Fairhope offices, 555 South Section St. Fairhope, Alabama, until 2:00P.M. September 10, 2009, and then publicly opened thereafter, for furnishing all labor and materials, and performing all work required by the City of Fairhope and described as follows:

Bid Number 023-09, QUAIL CREEK GOLF COURSE FOOD SERVICE

Questions or comments pertaining to this bid must be presented in writing, sent as e-mail or faxed to the attention of the Purchasing Manager, Daniel P. Ames, P.O. Drawer 429, 555 South Section St., Fairhope, Al 36532, e-mail: dan.ames@cofairhope.com, fax number: 251-990-0125, Seventy Two (72) hours prior to the bid opening or will be forever waived.

All bids must be on bid forms provided in the Bid Documents. **BID BOND IS WAIVED.**
There will be a non-mandatory pre-bid meeting on Sept. 3, 2009, 10:00 AM at Quail Creek Golf Course, 19841 Quail Creek Dr., Fairhope, Al 36532.

The City of Fairhope is an Equal Opportunity Employer and requires that all contractors comply with the Equal Employment Opportunity laws and the provisions of the Contract Documents in this regard. The City also encourages and supports the utilization of Minority Business Enterprises on this and all public bids.

All bids, with their guarantee (when required), must be enclosed in a sealed, opaque envelope, clearly identified on the outside as a "**Sealed Bid**" with **Item Name, Bid Number, City of Fairhope's Name and Address and Bidder's Name and Address**. Each bid must be in a separate envelope. Bids made out in pencil will not be accepted.

Failure to observe the instructions contained herein will constitute grounds for rejection of your bid. The City reserves the right to accept or reject all bids or any portion thereof whichever is in the best interest of the City of Fairhope.

The company that is awarded the bid must have Workman's Compensation Insurance on all of its employees if work is done on City premises. General Liability Insurance must be maintained to hold the City harmless in the event of an accident. Proof of Workman's Compensation Insurance if work is done on City premises and General Liability Insurance specifying coverage must be submitted prior to starting work. See Instructions below for details.

No bids will be considered unless the bidder, whether resident or non-resident of Alabama, is properly qualified to submit a proposal for this type of work in accordance with all applicable laws of the State of Alabama. Where applicable, this shall include evidence of holding a current license from the State Licensing board for General Contractors, Montgomery, Alabama, as required by Chapter 8 of Title 34, of the Code of Alabama, 1975. In addition, non-residents of the State if a corporation, shall show evidence of having qualified with the Secretary of State to do business in the State of Alabama. Bidder must have a current business license or purchase a business license with the City of Fairhope prior to issuance of contract or Purchase Order.

Daniel P. Ames,
Purchasing Manager

Posted 08-27-09
Opens 09-10-09
Advertise Fairhope Courier

INSTRUCTIONS TO BIDDERS

1. PREPARATIONS FOR BIDS:
 - a. Forms furnished, or copies thereof, shall be used, and strict compliance with the requirements of the invitation, these instructions, and instruction printed on the forms is necessary. Special care should be exercised in the preparation of bids. Bidders must make their own estimates of the facilities and difficulties attending the performance of the proposed contract, including local conditions, uncertainty of weather, and all other contingencies. All designations and prices shall be fully and clearly set forth. The proper space in the bid form shall be suitably filled in.

2. LABOR AND MATERIALS NOT TO BE FURNISHED BY CITY OF FAIRHOPE:
 - a. The City of Fairhope, Alabama, will not furnish any labor, material, or supplies unless specifically provided for in the Contract, or Purchase Order documents.

3. SIGNATURE TO BIDS:
 - a. Each bid must give the full business address of the Bidder and must be signed by him with his usual signature. Bids by partnerships must furnish the full names of all partners and must be signed with the partnership name by one of the members of the partnership, or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State of Incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person shall also be typed or printed below the signature. A bid by a person who affixes to this signature the word "president", "secretary", "agent" or other designation without disclosing his principal, may be held to be the bid of individual signing. When requested by the City of Fairhope, Alabama, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

4. ALTERNATE BIDS:
 - a. Alternate bids will not be considered unless called for. Each bid will be bid separately unless otherwise expressly requested in the contract document. Combination bids, that is bids on separate projects lumped together as a single bid or on all or none basis, will not be accepted unless the contract document expressly requests or permits same.

5. CORRECTIONS:
 - a. Fill in all blanks on the bid form with non-erasable ink or type. Erasers or other changes must be explained or noted over the signature of the bidder.

6. OWNER:
 - a. Where the word "Owner" appears herein, the same refers to City of Fairhope, Alabama, and includes the Fairhope City Council, its governing body.

7. INSURANCE:
 - a. If work is to be performed by awarded bidder, The insurance policies of any insurance company recognized as an admitted carrier by the State of Alabama, will be accepted as insurance as required for any bid or contract. See the instructions hereinafter contained with respect to the type, form, and amounts of required insurance policies.

occurrence.

- h. Owner's Protective Liability The **CONTRACTOR** shall at his expense provide Owners Protective Liability policies issued in the name of the **OWNER** covering its liability for operation of the **CONTRACTOR**. The policy limits shall be no less than \$1,000,000 combined single limit Bodily Injury and Property Damage per occurrence

- i. Damage to Rented Premises \$1,000,000

- j. Certificate of Insurance

A Certificate of Insurance evidencing the above minimum requirements must be provided to and accepted by the City **PRIOR** to commencement of any work on the contract. Each policy shall be endorsed to provide ten (10) days written notice of cancellation to the City. Note: City of Fairhope as additionally insured.

8. MARKING AND MAILING BIDS:

- a. Mark and mail bids per the instructions above in Bid Invitation.

9. TIME FOR RECEIVING BIDS:

- a. Bids received prior to the time of opening will be securely kept, unopened. The Owner will decide when the specified time has arrived, and no bid will be considered if received thereafter, except that when a bid arrives by mail after time for opening, but before award is made, and it is shown to the satisfaction of the Owner that the non-arrival on time was due solely to delay in the mails for which the bidder was not responsible, such bid will be received and considered. No responsibility will attach to the City of Fairhope, or Fairhope City Council for the premature opening of a bid not properly addressed or identified. Unless specially authorized, telegraphic bids will not be considered.

10. WITHDRAWAL OF BIDS:

- a. Bids may be withdrawn on written or telegraph request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.

11. BIDDERS PRESENT:

- a. At, or shortly thereafter, the time fixed for the opening of bids, their contents will be made public for the information of bidders and others properly interested who may be present either in person or by representation.

12. AWARD OR REJECTION OF BIDS:

- a. Since this is a reverse bid, the bid will be awarded to the highest responsible bidder complying with conditions of the invitation for bids, provided his bid is reasonable and it is in the interest of the Owner to accept it. The bidder to whom the award is made will be notified at the earliest possible date. The Owner, however, reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the Owner. It also reserves the right to reject the bid of a bidder who has previously failed to perform properly or complete on time contracts, or Purchase Orders, of a similar nature, or a bid of a bidder who is not, in the judgment of the Owner, in a position to perform the Contract or Purchase Order.

- b. Local vendors, within the city limits of the City of Fairhope, will have a 3% favorable allowance in all bids.

13. ERRORS IN BIDS:

- a. Bidders or their authorized agents are expected to examine the sites, specifications and all other instructions pertaining to the work, which will be open to their inspection. Failure to do so will be at the Bidder's own risk, and he cannot secure relief on the plea of error in the bid. In case of error in the extension of prices, the unit price will govern.

14. CONTRACT AND BOND:

- a. The bidder to whom award is made must, when requested, enter into written contract on the standard form as set out herein, within the period specified, or, if no period be specified, within 15 days after the required forms are presented to him for signature.
- b. For bids awarded by Purchase Order, the bidder to whom award is made must fill the Purchase Order within times specified in the bid invitation or Purchase Order.

15. COLLUSION:

- a. If there is any reason for believing that collusion exists among the Bidders any or all Proposals may be rejected, and those participating in such collusion may be barred from submitting bids on the same or other work with the City of Fairhope.
- b. All bidders must sign and notarize the non collusion statement herein.

16. SUBLETTING OR ASSIGNING OF CONTRACT:

- a. Limitations: The Awarded Bidder shall not sublet, assign, transfer, convey, sell, or otherwise dispose of any portion of the contract, or Purchase Orders, his right, title or interest therein, of his power to execute such contract, or Purchase Orders, to any person, firm or corporation without written consent of the City of Fairhope, and such written consent shall not be construed to relieve the Awarded Bidder of any responsibility for fulfillment of the contract. Unless otherwise stipulated in the proposal or special provisions, the Awarded Bidder shall perform with his own Organization, and with the assistance of workmen under his immediate superintendence and reported on his payroll, all contract work.

17. EQUAL OPPORTUNITY

- a. The City of Fairhope is an Equal Opportunity Employer and requires that all Awarded Bidders comply with the Equal Employment Opportunity laws and the provisions of the Contract Documents or Purchase Orders in this regard. The City of Fairhope also encourages and supports the utilization of Minority Business Enterprises on this and all public bids.

18. BID INELIGIBILITY

- a. Bids that contain irregularities of any kind may be declared unacceptable at the discretion of the City of Fairhope. The City of Fairhope reserves the right to waive any irregularities and may reject any or all bids.
- b. Bids received after the deadline will be returned to the bidder unopened.

19. CONTRACT TIME

- a. The bidder in submitting an offer accepts the conditions of the Contract Documents and /or Purchase Orders stated for performing the work.

20. ADDENDA

- a. All Addenda are part of the Contract Documents. Include resultant costs in the Bid. Addenda will be issued by FAX or Email to all Bidders on record, and posted to the City of Fairhope website www.cofairhope.com. It is the responsibility of the bidder to verify that all addenda have been received, and to include all signed addenda in the bid submission.

21. BIDDERS INTERESTED IN MORE THAN ONE BID

- a. If more than one bid is offered by any one party, by or in a name of his clerk, partner, corporation in which he has a substantial interest, or in which he is an officer, or other person, all such bids may be rejected. A party who has quoted prices on materials to a bidder is not thereby disqualified from quoting prices to other bidders or from submitting a bid directly for the materials or work. The City of Fairhope reserves the right to determine in its discretion whether the provisions of this clause have been violated by any bidder.

22. COMPLIANCE

- a. All bid components will comply with all Federal, State and Local laws, ordinances, codes and regulations.
- b. The awarded vendor will be responsible for insuring that all items meet specifications before delivery.
- c. Awarded vendor will make no substitutions for bid items without prior written approval of the City of Fairhope Purchasing Department.
- d. If you are unable to furnish an item as specified and desire to offer a substitute, give full description of the item.
- e. No errors will be corrected after bids are opened.
- f. No prices shall include State or Federal Excise Taxes.
- g. Municipalities are exempt from Alabama Sales Tax by state law.
- h. Any attachments hereto are made and become a part of this inquiry and must be signed by bidder.
- i. Our bid form must be filled in completely.
- j. All pages of this bid form must be returned.
- k. All documents requested must be attached to the back of page of such request and acknowledgement must be made where blank appears.
- l. A signed contractual agreement, or Purchase Order must be in place prior to beginning work or services.

23. ORDERING

- a. The City of Fairhope will execute a contract with the awarded vendor.

AFFIRMATION OF NON-COLLUSION

All Bidders will sign and have notarized the following statement:

I hereby affirm I have not been in any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition, by agreement to bid at a fixed price or to refrain from bidding or otherwise.

Company: _____ Date: _____

Company Representative: _____
(Print)

Title: _____

Company Representative: _____
(Signature in ink)

Sworn to and subscribed before me this _____ day of _____, 2008.

Notary Public

_____/_____/_____
My Commission Expires:

SCOPE OF WORK AND SPECIFICATIONS
BID NO. : 023-09
BID NAME: QUAIL CREEK GOLF COURSE FOOD SERVICE

SCOPE OF WORK

1. PURPOSE

- a. The City of Fairhope is seeking a Food and Beverage Concessionaire (hereafter "TENANT") for the operation of a Food and Beverage service at the City's Quail Creek Golf Course.

2. FOOD AND BEVERAGE OPERATION OBJECTIVES

- a. Meet the food and beverage needs of the golfing public who play the golf course, including league play and tournament play.
- b. Provide a consistent service of an on-course beverage cart operation that meets the needs of the Quail Creek golfers.
- c. Quick food service for those golfers wishing to purchase food prior to the start of their golfing round and for those golfers who desire to purchase food at the midpoint of their round. (Finishing Hole #9 and before starting Hole #10).
- d. Sufficient mix of food offerings to cover the meal spectrum of breakfast, lunch, dinner and snack foods.
- e. Provide a high level of customer service for golfers that is quick and friendly.
- f. Enhance the image of the Quail Creek Golf Course within the golfing public as a public golf course that has a great club house facility and excellent customer service.
- g. Provide adequate food and beverage service for tournaments, group outings and other special events planned at Quail Creek Golf Course.

SPECIFICATIONS

1. GOLF OPERATIONS

- a. Quail Creek Golf Course, located in Baldwin County, Alabama is surrounded by established commercial and mid to high value residential areas. The golf course consists of 18 Holes.
- b. The golf operations are directed by a Director of Golf and Head Golf Professional under the general direction of the City of Fairhope.
- c. The course allows golfers to walk or ride, and adequate parking exists for daily use and/or large functions involving the food and beverage operations. The golf course is a fee basis facility that has individual & family memberships, daily walk-in players and numerous golf tournaments throughout the year.
 - The annual number of rounds played is 48,000.

- d. Major course renovations are currently being completed, including the greens, irrigation system and clubhouse.

2. FOOD AND BEVERAGE OPERATION

- a. The clubhouse facility is approximately 12,500 square feet of which approximately 4,000 square feet is designated for the Food and Beverage Concession.
- b. The TENANT will provide a short-order menu with a bar and grill style service. Both sit down dining and seating at the bar will be available.
- c. The TENANT will also provide food and beverage service for weekly organizational meetings or group social gatherings. In addition, the TENANT Food and Beverage Operation will be allowed to schedule and coordinate facility rentals and catered events as long as those rentals/events do not interfere with the primary operation of the golf course. All potential rentals and catered events must be pre-approved by the Director of Golf or his designee.
- d. The City of Fairhope will provide 15 dining tables, 60 chairs, existing storage cabinets and shelving, 1 microwave oven, 1 convection oven, 2 standup, reach in freezers, 1 reach in refrigerator/freezer combo, 1 sandwich/food prep refrigerator, 1 electric 4 basket deep fryer, 1 gas grill, 1 table top burner, 1 electric flattop burner for the TENANT. The TENANT will be responsible for providing all other food preparation equipment.
- e. The City will allow the TENANT the use of approximately 4,000 square feet for food and beverage services and an additional 750 square feet for storage.
- f. The TENANT will pay the city a monthly lease fee (____%) for the exclusive use of 4,750 square feet which includes the Bar and Grill lounge area, Kitchen and Storage space. During daily operational hours of the golf course - unless the area has been previously scheduled for a specific golf course or City of Fairhope event. (i.e., Golf Course Tournament) If not scheduled for any golf course or city function, the Clubhouse area will be available to the TENANT for any rental or catered event coordinated by the operator. However, an additional use fee (to be negotiated) will be required, payable to the City of Fairhope.
- g. The TENANT will be available during all hours the Golf Course is open for daily play Tuesday through Sunday, and for those Special Events scheduled by the Director of Golf, or his designee. Golf Course is closed on Christmas Day.
- h. The TENANT will be allowed to sell Beer, Wine and Liquor as long as the TENANT has acquired the proper licenses/permits to do so.
- i. The TENANT will be required to provide food and beverages on the beverage cart operation for the purpose of providing snacks and refreshments to golfers playing the course. This service must be available to the operation and the hours are negotiable with the Director of Golf, or his designee, depending on daily play and weather conditions.

- j. The Director of Golf, or designee, will provide the TENANT with a monthly schedule of all activities to assist the TENANT in scheduling his operations, to include dates, starting times and the number of players.

SPECIAL CONDITIONS

Compliance with or variations from the specifications must be noted as to each item on the Specification Sheet. This requirement must be met even though the Purchasing Manager may alter the specifications in the form of an addendum to accommodate variances.

A request for a change in the specifications to accommodate a variation must be called to the attention of the Purchasing Manager at least 72 hours before the bid opening date. All requests for such changes will be considered and the merits weighed. Only those changes in specifications deemed to be in the best interest of the City will be made. In the event of a change in specifications, an addendum will be supplied to bidders.

These specifications are based upon design and performance criteria which have been developed by the City of Fairhope as a result of careful analysis of the data. Subsequently, these specifications reflect the only type of equipment, material(s), supplies, OR SERVICES that is/are acceptable at this time. Therefore, exceptions may be accepted if they are minor, equal, or superior to that which is specified, and provided that they are listed and fully explained on a separate page entitled, "Exceptions to Specifications". The exceptions shall refer to the specification page and paragraph number. The Purchaser shall determine which (if any) exceptions are acceptable and this determination shall be final.

**City of Fairhope
Request of Qualifications
Food and Beverage Service at Quail Creek Golf Course**

Qualifications Form

All answers must be typed. All requested information and financial data must be provided.

1. What is or was the name of your business?
2. Where is or was this business located?
3. How long has or was this business in operation?
4. If this business is no longer in operation, explain why.
5. Have you ever operated a food and beverage service at a Golf Course?
6. Describe your current or former food and beverage service operation. Include days/times of operation, types of food and beverages served, customer capacity, number of staff employed and the tasks they performed, your direct involvement with the operation and how many hours during a 7 day period you were there at the place of business.
7. Please provide a profit or loss statement along with your Tax Return for the last two years including 2008 or for the last two years that your food and beverage service operated.
8. Describe your philosophy of Customer Service as it relates to a food and beverage operation.
9. If you were operating the food and beverage service at Quail Creek Golf Course, what types of food and beverages would you provide to the golfing public? Be specific as to food and beverage items. (i.e., Sandwiches, soft drinks, etc) Please provide a price range for each item as well. (i.e., Sandwiches, \$3 -\$7)
10. If you were selected to operate the Food and Beverage Operation at Quail Creek Golf Course, how many days would you need before you could begin service to the golfing public?
11. Have you ever filed for Chapter 11 or Bankruptcy?

I, the undersigned authority in and for said State and County, hereby certify that
_____, as _____ respectively, of
_____, whose name is signed to the foregoing document and
who is known to me, acknowledged before me on this day, that, being informed of the contents of
the document they executed the same voluntarily on the day the same bears date.
Given under my hand and Notaries Seal on this _____ day of _____, 2009.

NOTARY PUBLIC

_____/_____/_____
MY COMMISSION EXPIRES:

QUAIL CREEK GOLF COURSE FOOD AND BEVERAGE CONCESSION AGREEMENT

This Commercial Lease Agreement ("Lease") is made and effective August 1, 2001, by and between CITY OF FAIRHOPE, a municipal corporation ("Landlord") and _____ ("**Tenant**").

Landlord is the owner of land and improvements commonly known and numbered as Quail Creek Golf Club, Fairhope, Alabama.

Landlord makes available for lease a portion of the Building designated as Quail Creek Golf Club Snack Bar (the "Leased Premises").

Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. Term.

a. Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning ___/___/___ and ending ___/___/___ . Landlord shall use its best efforts to give Tenant possession as nearly as possible at the beginning of the Lease term. If Landlord is unable to timely provide the Leased Premises, rent shall abate for the period of delay. Tenant shall make no other claim against Landlord for any such delay.

b. Tenant may renew the Lease for four extended terms of one year each. Tenant shall exercise such renewal option, if at all, by giving written notice to Landlord not less than sixty (90) days prior to the expiration of the Initial Term. The renewal terms for the first renewal shall be at 5% percent of gross sales before taxes per month. The rent for the second and third renewal term will be negotiated sixty (60) days before the end of the first renewal term, If the parties cannot agree regarding the rent for the second and/or third renewal term, then the Tenant shall have the right of first refusal.

2. Rental.

a. Tenant shall pay to Landlord during the Initial Term rental payable in installments of ____% of gross sales before taxes per month. Each installment payment shall be due on the twentieth day of each calendar month during the lease term to the City of Fairhope, 161 North Section Street, Post Office Drawer 429, Fairhope, Alabama 36533 or at such other place designated by written notice from Landlord. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis.

b. The rent for renewal term, if created as permitted under this Lease, shall be ____% percent of gross sales before taxes per month. The rent for the second and third renewal terms will be negotiated sixty (60) days before the end of the first renewal term. (Tut, terms and conditions including price, must remain same,

or rebid?)

3. Quiet Possession.

a. Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

4. Repairs and Maintenance.

a. During the Lease term, Tenant shall make, at Tenant's expense, all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of appliances, floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

b. Landlord reserves the right after reasonable notice and at any time to enter upon said premises itself, its workmen, contractor, architect, artisans and laborers, to make such repairs and to do such work on or about said premises as Landlord may deem necessary or proper, or that Landlord may be lawfully required to make, and such repairs shall be made at the Tenant's own risk as to his goods, ware, fixtures, equipment, stock and furnishings, as to protection thereof from theft or damages or other hazard directly or indirectly connected with such repair work.

c. Should the Tenant fail to make any repairs, replacements or fail to undertake any maintenance agreed to by him under this Lease, the Landlord may enter the premise and undertake such maintenance under the same conditions herein above set out, and the cost thereof shall be payable by the Tenant on demand, together with interest at the highest legal rate not to exceed 15% per annum and which said sum shall be secured as additional rent under the terms of this Lease.

5. Inspection

a. Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises. Landlord shall have the right to show said Premises to prospective tenants and to display "For Sale" and/or "For Rent" signs on said Premises.

6, Alterations and improvements.

a. Tenant, at Tenant's expense, shall have the right following Landlord's consent to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of

the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at Tenant's expense. The Landlord shall not be obligated to purchase any equipment or make any renovations to the lease premises.

7. Tenant's Duties.

a. Tenant will replace all plate and other glass if broken and will replace all lost or broken keys and will keep the interior of said Premises, together with all heating, ventilation, air conditioning, electrical, plumbing and other mechanical installation and/or systems therein, in good order and condition, and will promptly repair all damage suffered as a result of or from Tenant's usage including any damage to doors, loading docks, entrances or columns. Should Tenant fail to do or to undertake the maintenance and repair of the items and things herein required of Tenant, the Landlord may do and undertake the same, after ten (10) days' written notice, and the Tenant will pay the Landlord the costs and expenses thereof, together with interest thereon at the rate of interest being charged at the time of such notice by Regions Bank as published by Regions Bank in and through its mortgage offices (the "Regions Bank Rate").

b. The Tenant will maintain the restaurant hours of operation that are consistent with the pro shop hours and/or sufficient hours of operation for the golfing public; to supply enough employee help to provide quality service for tournaments and group outings that include lunch; to negotiate special pricing for catered tournaments and group outings; to maintain the entire restaurant area, including kitchen area; to meet all Health Department requirements; to clean the restaurant area, including vacuuming the carpet daily; to provide a menu that has an assortment of items, including items that have short preparation times for golfers that want such items while turning from the front nine to the back nine; to work closely with the head golf professional in scheduling meals for golf tournaments and group outings; and to acquire and keep up to date all licenses and fees required by law for the restaurant. Tenant agrees that the area shall be cleaned as needed and should be definitely cleaned at the end of each business day to be ready for customers the following morning.

c. The TENANT will be responsible for the proper disposal or recycling of recyclables (including grease, cooking oil) for any TENANT generated waste, including garbage fees from private services.

8. Utilities.

a. Unless otherwise expressly agreed in writing by Landlord, Landlord shall pay charges for Fairhope Utilities supplied utilities (water, sewer, gas, electricity) and telephone (local service only) services used by Tenant on the Leased Premises during the term of this Lease.

9. Compliance with Law.

a. Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

10. Overloading.

a. Tenant will not overload the building, its floors, roof, or walls and shall be liable for all damage to the Premises or other consequences of overloading.

11. Default.

a. If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity.

12. Acceleration.

a. Upon default, the rent payable under this Lease shall become immediately due and payable and without regard whether possession of the Premises shall have been surrendered to or taken by the Landlord.

13. Damage and Destruction.

a. If the Leased Premises are damaged to the extent that the same are rendered wholly untenable, and such damage is not directly attributable to Tenant's negligence, then at Landlord's option, this lease shall automatically thereupon terminate, and rent shall be payable only to the time of said destruction. Landlord shall notify Tenant within sixty (60) days from the time of such damage as to whether Landlord shall terminate this Lease or whenever it shall repair and restore the Leased Premises. If Landlord elects to repair and restore the Leased Premises, Landlord shall make such repairs as soon following the time such damage occurs as is practicable. If the Landlord elects not to repair said building, then this Lease shall be terminated as of the date of the occurrence.

14. Notices.

a. Any notice required or allowed under this Lease shall be in writing and shall be delivered in person or sent by prepaid certified mail to the Tenant at the Leased Premises and to the Landlord at the address set forth hereinabove, or to such other address as the parties hereto may designate in writing.

15. Signs.

a. Following Landlord's consent, Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse consent to any proposed signage that is in Landlord's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises or use of any other tenant. Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

16. Surrender.

a. Upon the expiration or termination of the Lease, Tenant shall surrender possession of the Lease Premises in the same condition as the same were in on the Commencement Date, natural wear and tear excepted.

17. Attorney's Fees.

a. In the event that Landlord employs an attorney to render advice or services incident to Tenant's breach or threatened breach of this Lease, the Tenant agrees to pay all reasonable attorney's fees incurred by Landlord.

18. Indemnification and Insurance.

a. Tenant shall, at its own expense, maintain a policy or policies of comprehensive general liability insurance with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection of not less than \$1,000,000 for injuries to or death of more than one persons with a \$2,000,000 aggregate. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least (10) days prior to such expiration.

b. Tenant shall indemnify Landlord and hold Landlord harmless from and against any and all claims, actions, damages, liability and expenses, including costs of defense and attorney's fees, in connection with loss of life, personal injury or property damage arising from the Tenant's occupancy or use of the Leased Premises, including without limitation claims for professional malpractice, or caused wholly or in part by any act or omission of Tenant, its agents, contractors, employees or invitees.

19. Sublease and Assignment.

a. Tenant shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Landlord's consent, such consent not to be unreasonably withheld or delayed. Any violation hereof is agreed and

understood to constitute a substantial and material breach of condition of this Lease, with all of the rights thereunto pertaining as in the case of default for any other cause hereunder.

20. Waiver of Subrogation.

a. Landlord and Tenant each hereby waives such causes of action that either may have or acquire against the other that are occasioned by the negligence of either party or their respective employees or agents and that result in damage to the other party's property that is located in or about the Leased Premises and that are caused by fire and/or hazards normally insured by an extended coverage endorsement to a standard fire insurance policy. Each party further agrees to use its respective best efforts to cause any insurance policy covering damage to such property from fire and/or the hazards covered under said endorsement to contain a waiver of subrogation or endorsement under which the insurance company waives its right of subrogation against any party to this Lease in case of destruction of or damage to said property.

21. Landlord's Rights Cumulative.

a. Landlord's failure to insist upon Tenant's strict performance of any of its obligations under this lease shall not be construed as a waiver of Tenant's future strict performance. Landlord's receipt of any payment with knowledge of Tenant's breach of any covenant hereunder shall not be deemed a waiver of such breach.

22. Holding Over.

a. If the Tenant continues to occupy the Premises following the expiration of the Term, or option period, of this Lease or following an event of default, then such holding over shall create a month-to-month extension of the Term of this Lease. PROVIDED, HOWEVER, that the Landlord may terminate this Lease during any holdover period upon ten (10) days' prior written notice to Tenant.

23. Eminent Domain.

a. In the event that a governmental authority causes the Leased Premises (or so much thereof so as to render the same untenable) to be taken under power of eminent domain or to otherwise be transferred in lieu thereof, then this Lease shall automatically terminate as of the date that possession is taken by the governmental authority, Any compensation awarded or paid for any taking or acquiring under the power or threat of eminent domain, whether for the whole or a part of the Leased Premises, shall be paid to the Landlord.

24. Safety.

a. Tenant shall make any and all additions, improvements, alterations and repairs to or on the Leased Premises that are required or recommended by any lawful authorities, insurance underwriters or insurance inspectors and that are necessitated by Tenant's use or occupancy of the Leased **Premises**. In the event that Tenant fails or refuses to make any such improvements, alterations or

repairs, the Landlord may perform the same and Tenant agrees to pay Landlord upon demand for the costs incurred by Landlord in doing so.

b. TENANT will maintain existing fire suppression system in TENANT's area, including all necessary inspections, updates or repairs.

25. Accord and Satisfaction.

a. Tenant's payment or Landlord's receipt of acceptance of a lesser amount than is actually due hereunder shall not be deemed an accord and satisfaction. Landlord may accept any such payment without prejudice to Landlord's right to recover the balance of such payment or to pursue any other remedy provided in this Lease.

26. Entire Agreement.

a. This Lease and any exhibits attached hereto set forth all the agreements between Landlord and Tenant concerning the Leased Premises. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless the same is reduced to writing and signed by them.

27. Partial Invalidity.

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

28. Recording.

a. Tenant shall not record this Lease without first obtaining the prior written consent of Landlord and the recordation of this Lease by Tenant without first obtaining such consent shall be deemed a material breach of this Lease.

29. Counterparts.

a. This Lease is executed in counterparts, each of which shall be deemed a duplicate original hereof.

30. Termination of Agreement (Tut, Insert this?)

a. Termination for Default: Performance of Work under this Agreement may be terminated by the Owner, in whole or in part, in writing, whenever the Owner determines that the Contractor has failed to meet the requirements of this Agreement.

b. Termination for Convenience: The Owner has the absolute right to terminate the Agreement upon "Award of Contract" to another Contractor, to perform major modernization work on equipment referenced herein. In such event, payment of

the monthly Agreement fee shall cease on the date of cancellation of the Agreement by the Owner.

c. Termination for Non-appropriation – The continuation of any financial obligation beyond the current fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the local source, State Legislature and/or federal sources. The Customer may terminate any financial obligation, and Successful Vendor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Customers funding from local, State and/or federal sources is not appropriated, withdrawn or limited.

31. Litigation

a. This Agreement is deemed to be under and shall be governed by and construed according to the laws of the State of Alabama. Any litigation arising out of the Agreement shall be heard in the Courts of Baldwin County, Alabama.

32. Use of Premises.

a. Tenant shall use the Leased Premises For snack bar and concession sales and for no other purpose.

33. Successors in Interest.

a. This Lease shall be binding upon the Landlord and personal representative and assigns and it shall bind the Tenant, its successors and assigns.

THE CITY OF FAIRHOPE
OF BALDWIN COUNTY, ALABAMA

ATTEST:

BY: _____
(Mayor)

(City Clerk)

Two Witnesses to TENANT:

(TENANT)

(Contractor Business Address)

I _____, certify that I am
the

Given under my hand and notarial seal on this the ____day of _____
20 ____.

NOTARY PUBLIC, BALDWIN COUNTY, ALABAMA