

PORT ST. LUCIE CITY COUNCIL
AGENDA ITEM REQUEST

COUNCIL ITEM 13C
DATE 9/19/11

Meeting Date: September 19, 2011

Public Hearing _____ Ordinance _____ Resolution _____ Motion X

Item: #20110075 - Concessionaire at the Saints Golf Course

Recommended Action:

- 1). Approval to award the Contract/Lease Agreement for the Concessionaire at the Saints Golf Course by the City Council to C & R Hospitality d/b/a The 19th Hole.

Exhibits: Department memo attached yes no

Summary Explanation/Background Information:

At a meeting on August 9, 2011, with Lefty's Bar and Grill, the City could not reach an agreement and Mr. Reynolds withdrew their proposal to the City. Negotiations with C & R Hospitality d/b/a The 19th Hole were held on August 25, 2011 and an agreement was met. These are the agreed terms: Initial nine (9) month's rent will be waived for start up after which the base rent will be \$1,000.00 a month plus 5% of gross sales after \$375,000.00 annually. C & R Hospitality d/b/a The 19th Hole will also be responsible for 1/2 of the electric bill and the propane which will be invoiced by the City. Rent will include dining room, patio and banquet room.

Director of OMB concurs with award: MP

City Manager concurs with award: JAB

Department requests _____ minutes to make a presentation.

Submitted by: Sherman Conrad

Date Submitted: August 13, 2011

Sherman Conrad
Signed in Director's absence to avoid delay
by Jamuel Kest

RECEIVED

SEP 13 2011

City Manager's Office

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SEP 13 2011

City Manager's Office

Lisa Lawrence

From: Patricia Roberts
Sent: Tuesday, September 13, 2011 10:44 AM
To: Lisa Lawrence
Cc: Sherman Conrad; Curt Wichern
Subject: AGENDA REQUEST ITEM-SAINTS CONCESSIONAIRE
Attachments: sharp@cityofpsl.com_20110913_084905.pdf

Attached please find the Agenda Request Item for the Saints concessionaire. Please know that, per Sherman's direction, he has approved that the item be added to the Council agenda as he recommends moving forward with this motion.

If you have any questions, please let me know. Thank you.

-----Original Message-----

From: Sharp Scanner On Behalf Of sharp@
Sent: Tuesday, September 13, 2011 9:49 AM
To: Patricia Roberts
Subject: Scanned image from MX-3501N

Reply to: sharp@cityofpsl.com <sharp@cityofpsl.com> Device Name: Not Set Device Model: MX-4501N
Location: Not Set

File Format: PDF (Medium)
Resolution: 600dpi x 600dpi

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**CITY OF PORT SAINT LUCIE
CONTRACT FORM**

This CONTRACT, executed this _____ day of _____, 2011, by and between the **CITY OF PORT ST. LUCIE, FLORIDA**, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called "City" party of the first part, and **C & R Hospitality, Inc. d/b/a The 19th Hole**, a Florida Corporation, whose principal address is 2601 S.E. Morningside Boulevard, Port St Lucie, FL 34984, hereinafter called "Concessionaire," party of the second part.

RECITALS

In consideration of the below terms, conditions, restrictions, obligations and covenants set forth herein, the parties agree as follows:

CONTRACT SUPERVISOR

As used herein the Contract Supervisor shall mean Curtis Wichern, Golf Course Administrator, at telephone number (772) 807-4454, or his designee.

**SECTION I
DESCRIPTION OF SERVICES TO BE PROVIDED**

The specific work that the Concessionaire agrees to perform is services for Concession Operations at The Saints Golf Course (the "Concession Premises"). This Contract hereby provides for, immediate occupancy of the Concession Premises to maintain the continuous provision of food and drink service.

**SECTION II
TIME OF PERFORMANCE**

The term of this Lease shall begin on the _____ day of _____, 2011 and, except as otherwise provided herein, the Lease term will renew on a continuing basis at the end of five (5) year period. Starting on _____, 2016 and every three (3) years thereafter, both parties agree to open for re-negotiation, all current terms and conditions of this Lease Agreement. If parties are unable to achieve a mutually acceptable agreement, either party may cancel this Lease Agreement giving a one hundred twenty (120) calendar days' notice in writing as set forth more fully in Article XXII.

**SECTION III
LOCATION AND HOURS OF SERVICE**

The Saints Golf Course is located in Port St. Lucie, Florida at 2601 SE Morningside Boulevard. The Golf Course is open to the public during normal operation hours from dawn to dusk, unless otherwise changed by the City, the Contract Supervisor, or his designee.

All concessions shall be open to the public seven (7) days per week, fifty-two (52) weeks per year. All concessions will be closed all day on certain City Holidays and other days, as deemed necessary by the Contract Supervisor, or his designee, including Christmas Day (December 25th). The parties agree that the Contract Supervisor shall provide the Concessionaire with notice of closure of the Golf Course and Concession Premises no later than 5:00 p.m. on the day prior to the date the Golf Course will be closed.

Concessionaire at the Saints

The City reserves the right to schedule tournaments, leagues, and other special events. Concessionaire will be required to coordinate the sale and/or supply of food and beverages during such special events with the golf course manager. Concessionaire will be required to be open and fully operational during any and all scheduled tournaments, leagues and other special events and occasions.

SECTION IV CONCESSION USE PAYMENTS TO THE LANDLORD

The Landlord reports to the State of Florida the Sales Use Tax imposed and collected on the rental use of Landlord owned property. The Concessionaire shall be responsible for payment of the prevailing State of Florida Sales and Use Tax imposed on the rental use of Landlord owned property. The Concessionaire shall also be responsible for one-half (1/2) of the Club House electric bill and 100% of the propane gas bill. In addition, Concessionaire is responsible for the annual fee for the 11C Liquor License and for the 11CX, which includes the beverage cart. These are subject to change and can be confirmed by contracting the Division of Alcohol & Tobacco at (772) 468-3927.

Upon execution of the Lease, Concessionaire shall pay, to the Landlord, **a security deposit of \$2,000.00 equal to two (2) month's rent + \$3,200.00 for two (2) months electric**. The Landlord will hold the deposit in a non-interest bearing account for the term(s) of the Lease as security for the payment of rent, electric, and any damage to the facility caused by the Concessionaire, its agents, or employees.

Concessionaire shall pay base rent and percentage rent to the Landlord. Base rent shall be \$0 per month for the first nine (9) months. From months ten (10) until the end of the contract term, the base rent amount shall be \$1,000.00 per month. Percentage rent shall be 5% of all gross sales receipts over \$375,000.00 in annual gross sales receipts. The year period for calculating annual gross sales receipts shall commence with the month and day of the commencement date (date of execution) of the lease agreement and end the day before its anniversary. An example for such a period is October 1 to September 30. Percentage rent shall become due on a monthly basis after the Concessionaire exceeds \$375,000 in gross sales receipts in a given one year period.

All payments shall be made monthly, in advance, without notice or demand, by 5:00 P.M. on the 1st day of the month, and shall include the base rental amount due, one half (1/2) of the Club House electric bill, 100% of the propane gas bill, and the amount due for rental use tax. If the premises are occupied for a fraction of a month at the beginning or end of the term, Concessionaire shall pay a proportionate part of the applicable monthly installment. Any payments not received by 5:00 p.m. on the 1st day of the month in which the rent is due, shall be considered a default on the part of the Concessionaire and subject the Concessionaire to a termination of this lease with cause as set forth more fully in Article XXII. Concessionaire's final portion(s) of the Club House electric bill shall be paid out of Concessionaire's \$3,200.00 electric deposit. Any remaining electric deposit funds shall be returned to the Concessionaire.

Concessionaire shall pay all rents, fees, charges, and expenses from Articles III and V, and submit all reports required by this Lease, to the following:

City of Port St. Lucie
Mr. Curtis Wichern, The Saints Administrator
The Saints at Port St. Lucie Golf Course
2601 SE Morningside Boulevard
Port St. Lucie, FL 34984

SECTION V REPORTS AND RECORDS

The Concessionaire shall maintain during the term of this Contract all books of accounts, reports, and records, which are customarily used in this type of operation and are necessary to document Concessionaire's activities and sales conducted pursuant to this Contract. The Concessionaire's records shall also include but not be limited gross receipts. The form of any and all such records and reports of the Concessionaire shall be subject to the review and approval of the Director of the Parks & Recreation Department ("Director"), or his/her designee. The Concessionaire shall make its records and reports available for review upon the request of Director, the Contract Supervisor, or their designees.

Concessionaire shall allow the Director, the Finance Director, or their designees, or the auditors of the City, to inspect all or any part of the compilation procedures for the monthly reports. The time, place and conduct of the City's inspections of the Concessionaire's reports and records shall be at the sole option and discretion of the Director, or his designee. All records shall be made available during regular business hours at a reasonable location in St. Lucie County, Florida for a period of five (5) years after the termination of this Contract and any extension thereof.

SECTION VI EXPENSES

In addition to rent, Concessionaire shall be responsible for fees, costs, and expenses as described below:

- Propane Gas - 100% (invoice will be provided to tenant by Curt Wichern)
- Telephone (those telephone lines related to the Concessionaire's operation) - 100%
- Advertising (for the Concessionaire's operation only) - 100%
- Personnel to operate City supplied mobile carts - 100%
- Any personal property and sales taxes related to the Concessionaire's operation – 100%
- Monthly utility bills related to the Concessionaire's operation – 50% (invoice will be provided to tenant by Curt Wichern)

Concessionaire shall provide all supplies to properly operate the restaurant and concessions located on or about the Concession Premises. Any items or supplies purchased, or other expenses created, by Concessionaire shall be the sole responsibility of Concessionaire.

SECTION VII RESPONSIBILITIES AND SPECIFIC DUTIES

Concessionaire will be responsible only for the daily operations of the food and beverage services. Concessionaire will have no responsibilities of any kind to or for the pro shop located on the Golf Course Premises.

Concessionaire shall be responsible for the daily cleaning of the mobile cart, grillroom and bar, and equipment, which shall also include, but not be limited to, the following:

- Dining/banquet area(s)
- Kitchen
- Pantry
- Outside sitting area (patio)
- Mopping and sanitizing all tile floors daily
- Disposing and removing of garbage, trash, and grease daily and deposit in proper receptacle. The grease trap(s) shall be cleaned daily by Concessionaire.
- Adjacent outside kitchen area to be trash free.

Concessionaire will be responsible for the equipment, stands and other fixtures related to Concessionaire's food and beverage service operations inside the clubhouse building and the mobile cart. There are no outside vending machines.

SECTION VIII ASSIGNMENT, SUBLETTING AND SUCCESSORS IN INTEREST

Concessionaire shall not sub-lease the Concession Premises in whole or part, nor assign or subcontract the services to be provided under this Contract to any other persons or firm without first obtaining the City's written approval, which shall not be unreasonably withheld. The City's written approval of any assignment or sub-lease shall not be construed as subjecting the City to liability of any kind or nature whatsoever to any assignee, sub-lessee, or subcontractor. Further, no assignment, sublease, or subcontract shall, under any circumstances, relieve the Concessionaire of its liabilities and obligations under this Contract.

SECTION IX USE OF PREMISES

Concessionaire shall use and occupy the Concession Premises as a restaurant/banquet facility exclusively for Concessionaire's operation of restaurant/banquet activities and for no other purpose. Concessionaire shall not use or occupy the premises in violation of any laws, or applicable codes, rules and regulations, or of the Certificate of Use or Occupancy issued for the building of which the Concession Premises are a part. The Concessionaire shall immediately discontinue any use of the premises which is declared by the City or any governmental authority having jurisdiction of the premises or applicable subject matter, to be in violation of any law, code, regulation, or in violation of said Certificate of Use or Occupancy. Concessionaire shall comply with any order or direction of the City or any governmental authority having jurisdiction, which shall, by reason of the nature of Concessionaire's use or occupancy of the Concession Premises, impose any duty upon Concessionaire or City with respect to the use or occupation of the Concession Premises.

Concessionaire shall neither permit nor do anything that will invalidate or increase the cost of any fire and extended coverage insurance policy covering the building and/or property located therein. The Concessionaire shall comply with all rules, orders, regulations and requirements of the appropriate Fire Rating Bureau or any other organization performing a similar function. Concessionaire shall promptly, upon demand, reimburse the City for any additional premiums charged for any additional policy required to be obtained by the City as a result of Concessionaire's failure to comply with the provisions of this paragraph. Concessionaire shall neither permit nor do anything, on or about the premises that would in any way obstruct or interfere with the rights of any other occupants of the building, Concession Premises, or attendant facilities. The Concessionaire agrees that it shall not use or allow the premises to be used for any immoral, unlawful or objectionable purpose, nor shall Concessionaire maintain or permit any nuisance or commit or suffer to be committed any waste in, on or about the Concession Premises.

SECTION X ALTERATION

Concessionaire may not make any changes, alterations, improvements or additions to the Concession Premises, or attach or affix any articles thereto without City's prior written consent. All alterations, additions, or improvements that may be made upon or about the Concession Premises by the City or Concessionaire (except unattached trade fixtures and office furniture and equipment owned by Concessionaire) shall not be removed by Concessionaire, but shall become and remain the property of the City. All alterations, improvements, and additions to the Concession Premises (as permitted by the City) shall be done only by the City or Concessionaire's or mechanics, approved by the City, and shall be at Concessionaire's sole cost and

Concessionaire at the Saints

expense. Any such alterations, improvements or addition shall be performed during the days and hours and in such a manner first approved by the City. If Concessionaire makes any alterations, improvements or additions to the Concession Premises, then the City may require Concessionaire, at the termination/expiration of this Contract, to restore the premises to substantially the same condition that existed prior to the commencement of this Contract. Any mechanic's or materialmen's lien for which the City has received a notice of intent to file, or which has been filed against the Concession Premises or any part of the Golf Course or the building, that arises or results from the work performed for and on behalf of the Concessionaire, or relates to the materials furnished to Concessionaire, shall be discharged, bonded over, or otherwise satisfied by Concessionaire within ten (10) days following the earlier of the date City receives: (1) notice of intent to file a lien; or (2) notice that the lien has been filed. If Concessionaire fails to discharge, bond over, or otherwise satisfy any such lien, the City may do so at Concessionaire's expense, and any and all amounts paid by the City, including reasonable attorney's fees, shall be reimbursed by Concessionaire within ten (10) days following Concessionaire's receipt of any bills paid for by the City.

The City has agreed to provide labor to paint the "restaurant" using Concessionaire supplied material prior to the Concessionaire moving in, this is a one-time service.

SECTION XI INDEMNIFICATION/INSURANCE

Neither the City nor its agents shall be liable for any damage to property entrusted to employees of the building, nor for loss of or damage to any property by theft or otherwise, nor for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the building or from the pipes, appliances or plumbing works therein or from the roof, street or sub-surfaces, or from any other place, or resulting from dampness or any other cause whatsoever, unless caused by or due to the gross negligence of the City, its agents, servants or employees. Neither the City, nor its agents, employees, officers nor representatives shall be liable for any latent defect in the Concession Premises or in the building. Concessionaire shall give prompt notice to the City in case of fire or accidents in the Concession Premises or in the building or of defects therein or in the fixtures or equipment. Concessionaire hereby acknowledges that the City shall not be liable for any interruption to Concessionaire's business for any cause whatsoever, and that Concessionaire shall obtain Business Interruption Insurance coverage should Concessionaire desire to provide coverage for such risk.

Concessionaire shall maintain and, prior to commencement of this Contract, provide the City with evidence of insurance to cover liability for the serving of intoxicating beverages with limits of \$1,000,000 per occurrence. Note: Liquor Liability should be added under page 6 as a required coverage

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Contract will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to Florida Statutes, Section 768.28 under its self insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project, any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy, or otherwise protect the interests of the City of Port St. Lucie as specified in this Contract.

The Concessionaire including any and all independent contractors and subcontractors utilized must comply with the insurance requirements as outlined below. It shall be the responsibility of the Concessionaire to insure that all independent contractors and subcontractors comply with these requirements. All insurance policies shall be issued from a company or companies duly licensed by the State of Florida. All policies shall

Contract #20110075

be on an occurrence-made basis; the City shall not accept claims-made policies. Specific endorsements as well as increased limits of liability may be requested depending upon the type and scope of work to be performed. All insurance must be acceptable by and approved by the City as to form and types of coverage. Coverage outlined below shall apply on a primary and non-contributory basis.

Indemnification – The Concessionaire shall indemnify and hold harmless the City, and its Officers and their employees, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Concessionaire and all persons employed or utilized by the Concessionaire in the performance of the Contract. As consideration for this indemnity provision the Concessionaire shall be paid the sum of \$10.00 (ten dollars), which will be added, to the Contract price and paid prior to commencement of work.

Workers Compensation - The Concessionaire agrees to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability must include limits of at least \$100,000 each accident, \$100,000 each disease/employee, \$500,000 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage should apply on a primary basis. Should scope of work performed by contractor qualify its employee for benefits under Federal Workers' Compensation Statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

Commercial General Liability - Commercial General Liability insurance issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

Commercial General Liability shall not contain any policy exclusions for food contamination and food borne illnesses and shall provide, during the lifetime of this Contract, minimum limits of \$1,000,000 per occurrence, \$2,000,000 per location aggregate limit for Personal Injury, Bodily Injury, and Property Damage Liability. Coverage is to be written on an occurrence form basis and shall apply as primary. A per location aggregate limit endorsement should be attached. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage for the hazards of explosion, collapse and underground property damage (XCU) must also be included when applicable to the work performed. Coverage shall extend to independent contractors and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interest’s provision as provided under the standard ISO form separation of insurer’s clause. There shall be no exclusion for Mold, Silica or Respirable Dust or Bodily Injury or Property Damage arising out of heat, smoke, fumes or ash from a hostile fire.

Liquor Liability:	
Each Occurrence	\$1,000,000
Aggregate	\$2,000,000
Hired and Non Owned Automobile Liability	
Each Occurrence	\$1,000,000

Additional Insured Requirements - Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policy shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a political subdivision of the State of Florida, its officers, agents and employees as Additional Insured with a CG 2026-Designated Person or Organization endorsement, or similar endorsement, added to its Commercial General Liability policy. Additional Insured status is required for the Hired and Non Owned business Automobile Liability coverage as well. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, political subdivision of the State of Florida, its officers, employees and agents for Contract #20110075 for the Concessionaire at the Saints Golf Course**". The policy shall unequivocally provide thirty (30) days written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage there under. Said liability insurance must be acceptable by and approved by the City as to form and types of coverage. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Concessionaire shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

Waiver of Subrogation - The Concessionaire agrees by entering into this Contract to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss agreement to waive subrogation without an endorsement then Concessionaire shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Concessionaire enter into such an agreement on a pre-loss basis.

Deductible Amounts - All deductible amounts shall be paid for and be the responsibility of the Concessionaire for any and all claims under this Contract.

Certificate(s) of Insurance - Concessionaire agrees to deliver to the City a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Bid have been obtained and are in full force and effect. In the "Description of Operations ..." Certificate shall list **Contract #20110075 for Concessionaire at the Saints Golf Course**.

NOTE: Concessionaire shall not be allowed to operate without proper insurance certificates.

Umbrella or Excess Liability - The Concessionaire must satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, or Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on "Non-Follow Form," the City shall be endorsed as an "Additional Insured".

SECTION XII DAMAGE OR DESTRUCTION

If the Concession Premises are damaged by fire or other casualty (collective "Casualty"), the damage shall be repaired by and at the expense of the City, provided such repairs can, in the City's opinion, be made within sixty (60) days after the occurrence of such casualty without the payment of overtime or other premiums. Until such repairs are completed, the rent (if applicable) shall be abated in proportion to the part of the premises that is unusable by Concessionaire in the conduct of Concessionaire's restaurant/banquet area. However, there shall be no abatement of rent by reason of any portion of the premises being unusable for a period equal to one (1) day or less, or if the casualty is due to the negligent acts or omissions of Concessionaire or Concessionaire's employees.

If the City determines that such repairs cannot be made within sixty (60) days, the City may, at its option, make the repairs within a reasonable time, not to exceed one hundred twenty (120) days; and in such event this Contract shall continue in effect and the rent shall be apportioned in the manner provided above. City's election to make such repairs must be evidenced by written notice to Concessionaire within thirty (30) days after the occurrence of the damage.

If the City does not so elect to make such repairs that cannot be performed or completed within sixty (60) days, then either party may, by written notice to the other, cancel this Contract as of the date of the casualty. A total destruction of the building in which the Concession Premises are located shall automatically terminate the Contract.

SECTION XIII DEFAULTS

The occurrence of any of the following shall constitute a material default and breach of the Contract:

1. A failure by Concessionaire to observe and perform any provision, term or condition of this Contract.
2. The making by Concessionaire of any general assignment for the benefit of creditors; the filing by or against the Concessionaire of a petition to have the Concessionaire adjudged bankrupt or the filing of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Concessionaire, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Concessionaire's assets located at the premises or of Concessionaire's interest in this Contract, where possession is not restored to Concessionaire within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Concessionaire's assets located at the premises or of Concessionaire's interest in this Contract, where such seizure is not discharged within thirty (30) days.

Concessionaire shall not be in default in the performance of any obligation provided for herein, unless and until Concessionaire has failed to perform such obligation within thirty (30) days after written notice by the City to Concessionaire specifying wherein Concessionaire has failed to perform such obligation.

The City shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within thirty (30) days after written notice by Concessionaire to the City specifying wherein the City has failed to perform such obligation. Provided, however, that if the nature of the City's obligation is such that more than thirty (30) days are required for its performance, then the City shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

SECTION XIV REMEDIES

In the event Concessionaire commits an act of default as set forth in Section XIII or materially breaches any provision of this Contract, the City may terminate this Contract. Upon termination, the City shall have the right to collect an amount equal to any or all of the following: all expenses incurred by the City in recovering possession of the Concession Premises, including reasonable attorney's fees; all reasonable costs and charges for the care of the premises while vacant; all renovation costs incurred in connection with the preparation of the Concession Premises for a new Concessionaire; and an amount by which the entire rent for the remainder of the term exceeds the loss of rent that Concessionaire proves could have been reasonably avoided.

**SECTION XV
RIGHT OF ACCESS**

Upon reasonable notice to Concessionaire, the City and its agents, employees, or representatives shall have free access to the Concession Premises during all reasonable hours for the purposes of examining the same to ascertain whether the Concession Premises and attendant food and beverage service facilities are in good repair, and to determine if any repairs, which shall be performed at the sole cost and expense of the Concessionaire, are necessary; however, The City, however, shall have no obligation, as a result of conducting any such examination or inspection, to make any repairs other than expressly set forth herein.

**SECTION XVI
COMPLIANCE WITH LAWS**

Concessionaire shall give all notices required by law, and shall otherwise comply with all applicable laws, ordinances, regulations and codes. The Concessionaire shall, at its sole cost and expense, secure and pay any and all fees and charges for any permits required for the performance of this Contract.

**SECTION XVII
LICENSING**

Concessionaire warrants that it possesses all licenses and certificates necessary to perform the services required under this Contract. Concessionaire also warrants and represents that it is not in violation of any laws. Concessionaire further represents and warrants that its license and certificates are current and will be maintained throughout the duration of the Contract. Concessionaire will supply the liquor license for wine, beer, and spirits.

**SECTION XVIII
SPECIAL CONDITIONS**

As additional consideration and inducement for the City to enter into this Contract with the Concessionaire for the use and occupancy of the Concession Premises to provide food and beverage service to the patrons of the City's Saints Golf Course, the Concessionaire agrees as follows:

1. It is expressly agreed and understood that the Concessionaire is in all respects an independent contractor as to the operation of the Concession Premises and the performance of its obligations under this Contract. The means and method utilized to operate the premises shall be the responsibility of the Concessionaire.
2. The hours of operation shall be mutually agreed upon by City and Concessionaire.
3. In the event that the City's Contract Supervisor, or his designee, determines that there are deficiencies in the service provided by the Concessionaire, the City shall notify the Concessionaire in writing as to the precise nature of any such deficiencies. Within ten (10) calendar days of receipt of such notice Concessionaire shall take reasonable steps to correct any deficiencies.
4. The City reserves the right to review and, if necessary, reject all proposed advertising of the Concessionaire's services to the general public and/or business associates, and/or other considered targeted markets or customers.

- a. The Concessionaire shall be required to submit any proposed signage for either inside or outside the Concession Premises at least ten (10) calendar days prior to the Concessionaire's proposed advertisement or sign posting date(s).
- b. The Concessionaire shall be required to comply with the City's sign ordinance.

5. The Concessionaire shall be responsible for providing and paying for the telephone(s) and internet and telecommunication services it intends to utilize; however, they must be compatible with the telephone system installed in the building and the City's internet service provider. Concessionaire will be responsible for any and all charges incurred by Concessionaire related to its use of utility and telecommunication services for its food and beverage (and any other business operations) on the Concession Premises.

6. The Concessionaire agrees to close the restaurant for one (1) day every quarter for a thorough cleaning of the kitchen (date to be mutually agreed upon by the Concessionaire and the City). This service will be paid for by the City.

SECTION XIX LAW AND VENUE

This Contract is to be construed as though made in and to be performed in the State of Florida and is to be governed by the laws of the State of Florida in all respects without reference to the laws of any other state or nation. The venue of any action taken pursuant to this Contract shall be in St. Lucie County, Florida.

SECTION XX RENEWAL OPTION

This Contract may be extended by mutual agreement of both parties as needed.

SECTION XXI TERMINATION

The City may terminate this Contract with or without cause by giving the Concessionaire a ten (10) day notice. At the termination of this Contract, Concessionaire shall surrender the premises to the City in good condition and repair as of the commencement date of this Contract, reasonable wear and tear is accepted. The Concessionaire shall leave the Concession premises "broom-cleaned" condition as follows:

- All floors, walls, hoods, food prep areas, and appliances must be "steam cleaned" and free of grease.
- All coolers must be free of food and cleaned.
- All grease traps and fryers must be emptied and free of oil/grease.
- Storage and bar area must be emptied and cleaned.

If the Concessionaire is not in default upon the termination of this Contract, Concessionaire shall have the right prior to said termination to remove any equipment, furniture, trade fixtures or other personal property placed in the Concession Premises by Concessionaire, provided that Concessionaire promptly repairs any damage to the Concession Premises caused by such removal.

At the termination of this Contract for any reason, the Concessionaire agrees to submit a change of ownership of the Liquor License to the City.

**SECTION XXII
ENTIRE AGREEMENT**

The written terms, conditions, obligations and provisions of this Contract shall supersede all prior verbal or written statements of any official or other representative of the City. Any such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any manner whatsoever, this Contract or Contract documents.

IN WITNESS WHEREOF, the parties have executed this Contract at Port St. Lucie, Florida, the day and year first above written.

CITY OF PORT ST. LUCIE FLORIDA

By: _____
Jerry A. Bentrutt, City Manager

ATTEST:

By: _____
Karen A. Phillips, City Clerk

By: _____
Authorized Representative: C & R Hospitality, Inc., d/b/a The 19th Hole

State of: _____

County of: _____

Before me personally appeared: _____)
(please print)

Please check one:

Personally known _____

Produced Identification: _____
(type of identification)

Identification No. _____

and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that _____ executed said instrument for the purposes therein expressed.
(he/she)

WITNESS my hand and official seal, this _____ day of _____, 2011

Notary Signature

Notary Public, State of _____ at Large.

My Commission Expires: _____

(seal)

**Electronic Articles of Incorporation
For**

P11000079008
FILED
September 07, 2011
Sec. Of State
bmcknight

C & R HOSPITALITY INC.

The undersigned incorporator, for the purpose of forming a Florida profit corporation, hereby adopts the following Articles of Incorporation:

Article I

The name of the corporation is:

C & R HOSPITALITY INC.

Article II

The principal place of business address:

2601 SE MORNINGSID BLVD.
PORT ST. LUCIE, FL. US 34984

The mailing address of the corporation is:

2601 SE MORNINGSID BLVD.
PORT ST. LUCIE, FL. US 34984

Article III

The purpose for which this corporation is organized is:

ANY AND ALL LAWFUL BUSINESS.

Article IV

The number of shares the corporation is authorized to issue is:

1000

Article V

The name and Florida street address of the registered agent is:

UNITED STATES CORPORATION AGENTS, INC.
13302 WINDING OAK COURT
A
TAMPA, FL. 33612

I certify that I am familiar with and accept the responsibilities of registered agent.

Registered Agent Signature: SHEILA DANG, US CORP. AGENTS, INC.

Article VI

The name and address of the incorporator is:

SHEILA DANG
101 N. BRAND BLVD.
10TH FLOOR
GLENDALE, CA 91203

Electronic Signature of Incorporator: SHEILA DANG, LEGALZOOM.COM, INC.

I am the incorporator submitting these Articles of Incorporation and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of this corporation and every year thereafter to maintain "active" status.

Article VII

The initial officer(s) and/or director(s) of the corporation is/are:

Title: P, D
CARL M BUSSETT
2601 SE MORNINGSIDE BLVD.
PORT ST. LUCIE, FL. 34984 US

Title: S
CARL M BUSSETT
2601 SE MORNINGSIDE BLVD.
PORT ST. LUCIE, FL. 34984 US

Title: T
RICK E ASLIN
2601 SE MORNINGSIDE BLVD.
PORT ST. LUCIE, FL. 34984 US



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Florida Profit Corporation

C & R HOSPITALITY INC.

Filing Information

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State FL
Status ACTIVE

Principal Address

2601 SE MORNINGSID BLVD.
PORT ST. LUCIE FL 34984 US

Mailing Address

2601 SE MORNINGSID BLVD.
PORT ST. LUCIE FL 34984 US

Registered Agent Name & Address

UNITED STATES CORPORATION AGENTS, INC.
13302 WINDING OAK COURT
A
TAMPA FL 33612 US

Officer/Director Detail

Name & Address

Title P, D
BUSSETT, CARL M
2601 SE MORNINGSID BLVD.
PORT ST. LUCIE FL 34984 US

Title S
BUSSETT, CARL M
2601 SE MORNINGSID BLVD.
PORT ST. LUCIE FL 34984 US

Title T
ASLIN, RICK E
2601 SE MORNINGSID BLVD.
PORT ST. LUCIE FL 34984 US

Annual Reports

No Annual Reports Filed

Document Images

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

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