

# Agenda Item

Agenda Date: February 8, 2022

<b>Department</b>	PLANNING	<b>Amount</b>	
<b>Item Key</b>	13104	<b>Account #</b>	
<b>Subject</b>	RESOLUTION 2022-XX APPROVING A CONCESSION LEASE AGREEMENT WITH THE GREEN LION CAFÉ, LLC FOR FOOD AND BEVERAGE CONCESSIONS AT PALM HARBOR GOLF COURSE		
<b>Presenter: Jason DeLorenzo, Chief Development Officer</b>			
<b>Background :</b>			
<p>The Green Lion Café, LLC has operated the food and beverage concession at Palm Harbor Golf Club since 2017. On April 13, 2021, the owners indicated, in writing, their desire to extend the concession lease, as allowed in the current contract, for an additional five years.</p> <p>On August 27, 2021 negotiations commenced with the intention of retaining The Green Lion Café, as the food and beverage concession provider. Negotiations concluded, after several meetings, with the draft Concession Lease Agreement provided herein.</p> <p>When negotiating the Agreement, staff did so with understanding of Council’s prior discussion of the current lease amount and a desire to raise the amount of the lease closer to market value. Staff was also mindful of the current minimal lease amount and finding a path that considered the Green Lion Café’s prior investment, COVID related closure and economic conditions, and structural conditions and limitations of the facility.</p> <p>Major changes in the Agreement include:</p> <ul style="list-style-type: none"> <li>• Several cleanup items related to the original RFP.</li> <li>• A clarification of utility payment responsibilities.</li> <li>• Required collaboration for operational changes, facility maintenance and event schedules.</li> <li>• A 653.25 sq. ft. reduction of the leased space to 1,998 sq. ft. to better match current operations.</li> <li>• A schedule to increase the lease each year to an amount more consistent with market value.</li> </ul> <p>The attached draft Concession Lease Agreement is still under final legal review. Any revisions made will be provided to Council for consideration at the February 15, 2022 Business Meeting.</p>			
<b>Recommended Action :</b>			
<p><b>ADOPT RESOLUTION 2022-XX APPROVING A CONCESSION LEASE AGREEMENT WITH THE GREEN LION CAFÉ, LLC, FOR FOOD AND BEVERAGE CONCESSIONS AT PALM HARBOR GOLF COURSE</b></p>			



# **Concession Lease Agreement for Palm Harbor Golf Course**

February 8<sup>th</sup>, 2022

# History of Food and Beverage

- Concessions originally included in Kemper management contract
- 2017 City took over course management
- City issued an RFP for food and beverage concessions
- Current provider was selected and a concession lease agreement was negotiated by the City Manager



# Current Agreement



- The Green Lion Café, LLC
- Originated in 2017
- First 5 year term ends in August
- \$600/month
- City paid utilities
  - Water / sewer
  - Electric
  - Propane
  - Solid Waste
- Owner desires to continue operation



## Staff Desired Outcomes

- Negotiate in good faith to retain tenant
- Meet City Council's previously discussed desire to attain a market rate lease
- Find a fair path to accelerate to market rate
- Cleanup old RFP related language
- Set clear expectations for both parties
  - Communication
  - Requirements for Golf Operations
  - Maintenance of facility
  - Concerns related to timely repairs



# Significant Changes to Agreement

- Removed outdated language related to the RFP
- Clarification of utility costs
  - City: water, electric, solid waste
  - Tenant: propane, business internet
- Required collaboration
  - Facility operational changes
  - Maintenance
  - Golf event schedules



# Significant Changes to Agreement

- Reduction of total leased space



AREA	GROSS SQ. FT.	% DISC	ADJ SQ. FT.
Kitchen Office – 8.5'X14'	119	0%	119.00
Indoor Dining – 22'X31'	682	0%	682.00
Kitchen – 14.5'X29'	420.5	0%	420.50
Patio – 19.5'X67'	1306.5	50%	653.25
Bar – 8.5'X14.5'	123.25	0%	123.25
Fenced storage area – 5'X21'	105	100%	0.00
Maintenance Garage storage closet – 8'X12'	96	100%	0.00
		<b>TOTAL</b>	<b>1998.00</b>



# Significant Changes to Agreement

- Monthly lease fee first 5 years
  - September 1, 2022: \$1,207.13
  - September 1, 2023: \$1,448.55
  - September 1, 2024: \$1,738.26
  - September 1, 2025: \$2,085.91
  - September 1, 2026: \$2,503.09
- May be renewed for another 5 years upon mutual agreement
- If renewed, an adjustment based on the June CPI with a floor of 0% and a maximum increase of 3% will apply annually



**Questions?**



**RESOLUTION 2022-\_\_\_\_**  
**CONCESSION LEASE AGREEMENT**  
**FOR THE PALM HARBOR GOLF COURSE**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF THE CONCESSION LEASE AGREEMENT WITH THE GREEN LION CAFÉ, LLC; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Palm Coast owns the Palm Harbor Golf Course; and

**WHEREAS**, the Green Lion Café, LLC desires to provide food and beverage services for the Palm Harbor Golf Course; and

**WHEREAS**, the City Council of the City of Palm Coast desires to enter into this Concession Lease Agreement with the Green Lion Café, LLC for food and beverage services at the Palm Harbor Golf Course.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:**

**SECTION 1. APPROVAL OF THE AGREEMENT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of the Concession Lease Agreement with the Green Lion Café, LLC for food and beverage services at the Palm Harbor Golf Course, as attached hereto and incorporated herein by reference as Exhibit “A.”

**SECTION 2. AUTHORIZATION TO EXECUTE.** The City Manager or designee is hereby authorized to execute the necessary documents.

**SECTION 3. SEVERABILITY.** If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

**SECTION 4. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 5. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 6. EFFECTIVE DATE.** This Resolution shall take effect immediately upon adoption by the City Council.

**DULY PASSED AND ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 15th day of February 2022.

*ATTEST:*

**CITY OF PALM COAST**

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
NEYSA BORKERT, CITY ATTORNEY

Attachment: Concession Lease Agreement-Green Lion Café, LLC

## CONCESSION LEASE AGREEMENT

**THIS CONCESSION LEASE AGREEMENT** ("Agreement") made and entered into this 1<sup>st</sup> day of September, 2022 ("Effective Date") by and between **The Green Lion Cafe, LLC** a Florida corporation, with offices at 501 N. Oceanshore Blvd. Flagler Beach, FL 32136, ("Tenant"), and the **City of Palm Coast**, a Florida municipal corporation, with offices at 160 Lake Avenue, Palm Coast, Florida 32164, herein called ("City").

### W I T N E S S E T H:

**WHEREAS**, City controls, owns, operates, and maintains a golf course in the City of Palm Coast, Florida known as the Palm Harbor Golf Course ("Golf Course"), with the power to grant rights and privileges with respect thereto, and

**WHEREAS**, Tenant is engaged in the business of operating Food and Beverage facilities as a service to the public, and

**WHEREAS**, City, on the terms and conditions herein contained, is willing to grant to Tenant the right to operate the food and beverage concession at the Golf Course;

**NOW, THEREFORE**, for and in consideration of the premises and mutual covenants contained herein, City and Tenant agree as follows:

#### 1. Leased Premises.

- A.** City hereby provides Tenant with concession space and concession related operating and storage space located within the Palm Harbor Clubhouse ("Clubhouse") at the Palm Harbor Golf Course ("Golf Course"), 100 Cooper Lane, Palm Coast, Florida 32137 ("Leased Premises") as detailed in "Exhibit A", Description of Leased Premises, attached hereto and incorporated herein by reference. The Leased Premises are provided to Tenant "as is". All improvements Tenant has made or may make to the Leased Premises are at the sole cost of Tenant and must be pre-approved in writing by City.
- B.** During the term of this Agreement, Tenant shall, at its own cost and expense, and to the satisfaction of the City, provide normal and routine daily maintenance of the Leased Premises, designed to keep both Leased Premises and any equipment or fixtures located thereon clean, in good working order, sanitary and in a safe condition, free from hazardous conditions and deterioration, thus providing for the comfort and safety of visitors and patrons. The standard to be used shall be consistent with both a high-quality public golf course and a high quality food and beverage concession operation. For the avoidance of doubt, it is the intention of the parties that Tenant is responsible for the condition of the Leased Premises including any furniture, fixtures, equipment, and other property contained therein. All repairs and all replacements shall be at Tenant's cost and expense. Tenant is also solely responsible for any damages to the Clubhouse structure, including, but not limited to, foundational damages, pipe damages, and electrical wiring damages, to the extent such damages are caused by Tenant's negligent and/or reckless acts and/or omissions in the operation of Tenant's business.

- C. Tenant acknowledges that from time to time, special events, group outings and City golf programs (“Events”) take place at the Golf Course that may require catering services on site. At least one time per year, Tenant shall publish a menu of catering options. Such options shall be at comparable market rates as other caterers in Flagler County. Upon sixty (60) days advance notice to Tenant, Tenant shall accommodate the catering needs of such Events and shall provide adequate seating space within the Leased Premises. In those circumstances where sixty (60) days advance notice is not possible to provide, Tenant shall use commercially reasonable efforts to cooperate with and accommodate the Event sponsor’s catering needs. This Agreement does not preclude the City from hiring and utilizing an outside catering business to cater Events in the event Tenant cannot meet the City’s catering needs pursuant to this Agreement.
- D. Upon written approval of City, kiosks, patio-type tables and similar facilities may be located in other areas of the Golf Course if doing so is warranted for enhanced customer service, and does not interfere with other Golf Course activities. In addition, City may provide Tenant with access to additional storage facilities located in other areas of the Golf Course outside of the Leased Premises.
- E. Upon written approval by City and after obtaining any required permits, Tenant may put signage on the Clubhouse. All signage shall be in accordance with local law.
- F. In addition to the use of the Leased Premises as described herein, Tenant shall possess a non-exclusive right of ingress and egress to and from the Leased Premises as may be necessary on through areas designated by the City, subject to Golf Course rules and regulations, including security regulations, as may be amended from time to time, provided that Tenant’s exercise of such right shall not impede or interfere unduly with the operation of the Golf Course by City, its patrons and other authorized occupants.
- G. Tenant shall also have the right to the use of reasonably adequate parking facilities for its employees employed at the Golf Course in common with other employees, which facilities shall be located in an area designated by the City for employee parking. Only Tenant employees assigned to this concession shall use the employee parking facilities.
- H. City shall have the right to enter upon the Golf Course, including the Leased Premises, at all times for any purpose, including without limitation, inspecting the Golf Course or the Leased Premises or for making improvements or repairs thereto or thereon.
- I. Tenant shall not place or install any racks, stands or other display of merchandise or trade fixtures in any Golf Course property outside the Leased Premises without the express prior written consent of City.
- J. Tenant acknowledges and agrees that City shall have the right at all times to change, alter, expand, and contract the Golf Course. Notwithstanding the foregoing, any changes that will affect the Leased Premises, except changes

needed for immediate health and safety reasons, will be made after first providing Tenant with at least sixty days (60) notice and an opportunity to consult and collaborate. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that the Golf Course (i) may from time to time hereafter undergo renovation, construction, and other modifications; and (ii) the City may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Tenant's business.

- K.** City will, in its sole discretion, maintain the Golf Course, establish and enforce Golf Course rules and regulations, temporarily close portions of the Golf Course for maintenance purposes, and make changes to the Golf Course including changes in the location of driveways, entrances, exits, parking spaces, parking areas, and the direction of the flow of traffic.
- L.** Notwithstanding Section 1.J above, Tenant hereby waives all claims against City and releases City from all losses that Tenant may suffer or incur arising out of or in connection with any changes to the Golf Course or any portion of the Golf Course, including the Leased Premises, and Tenant further agrees that Tenant will not be entitled to any rent abatement or any other rent relief in connection with said changes.
- M.** Tenant shall not make any alterations, additions, or other improvements to the Leased Premises or any part thereof, without first obtaining the written consent of City. Authorized alterations, or additions, and/or other improvements, including replacements of equipment, shall be made at Tenant's sole cost and expense. Alterations, additions, and other improvements which are part of the structure or a fixture to the structure shall become the property of City at the expiration or termination of this Agreement. Tenant is responsible for ensuring that all required permits are issued prior to any such alterations, additions or other improvements. Any permits required for such alterations, additions and/or improvements shall be at Tenant's sole cost and expense. Tenant shall not have the right to create or permit the creation of any lien attaching to interest in the Leased Premises as a result of any construction, alterations or additions. Nothing in this Agreement shall be interpreted as granting City approval or consent for any permits, development orders, licenses or other certifications that may be required by law.
- N.** Upon sixty (60) days advance written notice by Tenant to City, and written approval by City, which approval shall be not be unreasonably withheld, Tenant may use the greens in front of the Leased Premises for events. Such use must not negatively impact golf operations.
- O.** Upon request by City, Tenant will provide an annual report including a statement of revenues and expenses (detailed by revenue and expense line item), a balance sheet and a statement of cash flows, all certified as true and correct by an outside accounting firm to City within of City's request.

## **2. Concession Rights Granted**

- A.** For and in consideration of the prompt payment of the compensation to City as hereinafter provided, City hereby grants to Tenant, subject to all of the terms and

conditions herein, the exclusive right and obligation to operate and maintain the food and beverage services operation as set forth herein.

- B. Tenant shall not use nor permit the Leased Premises to be used for any purpose other than as set forth herein except with the prior written consent of City, nor for any use in violation of any applicable present or future law, ordinance, rule or regulation of any governmental authority, agency, department or officer thereof.
- C. **Right of First Refusal.** If during the term of this Agreement, City builds or otherwise obtains a new golf clubhouse facility and removes the existing clubhouse including the Leased Premises, Tenant will have the first right of refusal to lease that space within the new clubhouse that City intends to be used for a concession operation. Such offer by Tenant must be at the then current market square foot lease rates for similar space within Flagler, Volusia and St. Johns Counties in Florida.

### 3. Tenant Responsibilities and Standards of Conduct

- A. Tenant shall be responsible for the professional quality, accepted standards, technical accuracy and the coordination of all services furnished by the Tenant under this Agreement as well as the conduct of its staff, personnel, employees, and agents.
- B. Tenant shall maintain standard business practices consistent with golf clubhouse operations including, but not limited to, uniforms, menus, concept design, pricing, training, and internal staff meetings.
- C. Tenant shall have an experienced manager on the Leased Premises at all times Tenant is open for business.
- D. During the term of this Agreement, Tenant must maintain its own liquor license.
- E. Tenant must post all prices charged for food and beverages at locations where fees are normally paid or readily made available to the general public. Tenant will charge market-rate prices for food and beverages.
- F. If the City determines that any employee or representative of Tenant is demonstrating improper conduct inconsistent with the requirements of this Agreement, has engaged in criminal activity, or is otherwise interfering with golf course operations, the City shall so notify the Tenant in writing. Tenant shall immediately remove such employee or representative of the Tenant from the Leased Premises.
- G. Tenant agrees to comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the services and rights granted hereunder. All equipment, devices, and material, utilized by Tenant, shall be installed and used in accordance with the listed limitations and the manufacturers' instructions.
- H. Tenant shall ensure that all services hereunder are provided after the Tenant has obtained, at its sole and exclusive expense, any and all permits, licenses,

permissions, approvals or similar consents from all applicable federal, state and local agencies.

- I. Tenant shall operate and be open seven days a week for the following minimum hours during the term of this Agreement and any renewals thereof:
  - December through March – 7:00 am to 5:00 pm
  - April through November – 7:00 am to 6:00 pm

Tenant shall have the option to extend such hours upon City approval provided that such hours do not extend before 7:00 am or later than 11:00 pm. Operations may be closed for Thanksgiving and December 24 and December 25. Such closures shall be noticed to the public no less than one week in advance.

- J. City will provide the following utilities: electricity, refuse, and water/sewer for the Leased Premises. City will provide hot water booster as needed for Tenant to comply with health and safety regulations. Tenant is responsible for all other utilities including, but not limited to, propane, telecom, internet and any facility/food and beverage reservation system for the Lease Premises.

- K. Tenant is responsible for required inspections of any fire suppression equipment and range hood inspections within the Leased Premises.

- L. Tenant is responsible for transferring its refuse from the storage area to the dumpster located at the Golf Course maintenance building at the close of business each day. Tenant shall ensure that there is no refuse in the storage area adjacent to the Clubhouse remaining overnight. City may provide use of City golf utility vehicles during Golf Course business hours for the purpose of transferring the refuse, if such vehicles are available. After Golf Course business hours and when not available during Golf Course business hours, Tenant is responsible for its method of transferring the refuse. Further, repairs or replacement of City golf utility vehicles resulting from damage caused by Tenant's use of the City golf utility vehicles shall be at Tenant's sole cost and expense.

- M. Live music is permitted between the hours of 10am – 8pm. Live music may not exceed a volume considered disruptive, as determined by City, to golf course operations and the neighboring residential uses.

- N. Tenant and City agree to meet on a quarterly basis to discuss and coordinate services and upcoming events.

4. **Compensation.** Tenant shall compensate the City on a monthly basis for the Leased Premises in accordance with Exhibit B, Pricing, attached hereto and incorporated herein by reference.

#### 5. **Term and Termination.**

- A. Unless sooner terminated in accordance with the terms of this Agreement, this Agreement shall continue in effect for five (5) years ("Term") until August 31, 2027, with an option to renew for an additional five year period upon mutual agreement in writing of Tenant and City.

- B.** In the event that Tenant, without request or objection by City, shall continue to occupy the Leased Premises beyond the Term of this Agreement, such holding over shall not constitute a renewal of this Agreement, but shall be considered a month-to-month tenancy only upon all terms and conditions of this Agreement. No such holdover shall be deemed to operate as renewal or extension of the Term. Such month-to-month tenancy may be terminated by City or Tenant by giving thirty (30) days' written notice of said termination to the other party at any time. Tenant will have no rights to renew or extend the term of this Agreement.
- C.** City shall have the right to terminate this Agreement for material breach by way of a written notice, in the event Tenant defaults on any of its obligations under this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of default. Notwithstanding the foregoing, City shall have the right to immediately terminate without the thirty (30) day cure period, should Tenant be shut down by the State health department, or other authorized health and safety authority, except if the shutdown is due to structural reasons or other reasons not the fault of Tenant. Material breaches of this Agreement include but are not limited to, (i) failure to pay rent and applicable taxes within thirty (30) days of the due date, (ii) insolvency, abandonment/vacancy of the leased premises for a period of thirty (30) consecutive days, (iii) conviction of any principal, manager, officer or director of Tenant for any felony or second or third degree misdemeanor shall be violations of this Agreement, (iv) failure to maintain the required insurance coverage as per Section 7 of this Agreement (v) subletting the Leased Premises and (vi) appointment of a receiver over the Tenant's assets.
- D.** Upon receipt of a notice for any termination herein, the parties shall cooperate with each other and use all commercially reasonable efforts to effect a smooth transition process. Tenant shall return and make available to City all supplies, equipment, materials, inventory, fixtures and other property provided by City to Tenant and vacate the Leased Premises before the date indicated in the notice of termination. Tenant may take any equipment that it purchased by Tenant for use at the Leased Premises. However, if Tenant determines to sell the equipment, it shall give City first right of refusal to purchase any or all such equipment at the then current market value.

## **6. Indemnification**

- A.** Tenant shall indemnify, hold harmless, and defend the City, from and against any and all claims, damages, losses, and expenses including, but not limited to, attorney's fees, arising out of or resulting from the performance or provision for services under this Agreement, including damage to persons or property, provided that same is caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of Tenant, its agents, servants, officers, officials, employees, or subcontractors.
- B.** Nothing herein shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Section 768.28, Florida Statutes.
- C.** In claims against any person or entity indemnified under this Section by an employee of Tenant or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the

indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Tenant or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts.

- D. The execution of this Agreement by Tenant shall obligate the Tenant to comply with the indemnification provision in this Agreement; however, the Tenant must also comply with the provisions of this Agreement relating to insurance coverage. This obligation shall survive the termination or expiration of this Agreement.

## 7. Bonds and Insurance

- A. Tenant, at its sole cost and expense, shall, at all times, maintain insurance and bonds as set forth in Exhibit C, Insurance Requirements
- B. If Tenant fails to maintain the required bonds and insurance coverage and City does not elect to obtain the necessary coverage on Tenant's account, the City may deny Tenant entry to the Golf Course and may treat such failure to maintain insurance coverage as an immediate voluntary termination of this Agreement by Tenant.

- 8. **Notice** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically (i.e., telecopier device) or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

To Tenant at the following address:

Christopher Marlow, Director  
TCC Marlow Enterprises, Inc.  
501 N. Oceanshore Blvd.  
P.O. Box 2225  
Flagler Beach, FL 32136

To City at the following address:

City Manager  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, FL 32164

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

## 9. E-Verify Registration and Use

- A. Pursuant to section 448.095, Florida Statutes, beginning January 1, 2021, Tenant shall register with and use the U.S. Department of Homeland Security's E-

Verify system, <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all Tenant employees hired on and after January 1, 2021.

**B. Subcontractors**

(i) Tenant shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement.

(ii) Tenant shall obtain from all such subcontractors an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined in section 448.095, Florida Statutes.

(iii) Tenant shall maintain a copy of all subcontractor affidavits for the duration of this Agreement and provide it to CITY upon request.

**C.** Tenant must provide evidence of compliance with section 448.095, Florida Statutes. Evidence shall consist of an affidavit from the Tenant stating all employees hired on and after January 1, 2021 have had their work authorization status verified through the E-Verify system and a copy of their proof of registration in the E-Verify system.

**D.** Failure to comply with this provision is a material breach of the Agreement, and shall result in the immediate termination of the Agreement without penalty to City. Tenant shall be liable for all costs incurred by City to secure a replacement agreement, including but not limited to, any increased costs for the same services, any costs due to delay, and rebidding costs, if applicable.

**10. Public Records**

**A.** The Parties specifically acknowledge that the Agreement is subject to the laws of the State of Florida, including without limitation, Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the Parties. If Tenant is either a “contractor” as defined in Section 119.0701(1)(a), Florida Statutes, or an “agency” as defined in Section 119.011(2), Florida Statutes, Tenant shall:

(i) Keep and maintain all public records required by City to perform the Services herein; and

(ii) Upon request from City’s custodian of public records, provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; and

(iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement Term and following completion of the Agreement if Tenant does not transfer the records to City; and

(iv) Upon completion of the Agreement, transfer, at no cost, to City all public records in possession of Tenant or keep and maintain public records required by City to perform the Services herein. If Tenant transfers all public records to City upon completion of the Agreement, Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Tenant keeps and maintains public records upon completion of the Agreement, Tenant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City, upon request from City’s custodian of public records, in a format compatible with the information technology systems of City.

**B.** All requests to inspect or copy public records relating to the Agreement shall be made directly to City. Notwithstanding any other provision of this Agreement to the contrary, failure to comply with the requirements of this paragraph shall result in the immediate termination of the Agreement, without penalty to City. A contractor who fails to provide the public records to City within a reasonable time may be subject to penalties pursuant to Section 119.10, Florida Statutes. Further, Tenant shall fully indemnify and hold harmless City, its officers, agents and employees from any liability and/or damages, including attorney's fees through any appeals, resulting from Tenant's failure to comply with these requirements.

**C. IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS, ATTN: VIRGINIA SMITH, CITY CLERK, AT 386-986-3713, vsmith@palmcoastgov.com, 160 LAKE AVENUE, PALM COAST, FLORIDA 32164.**

## **11. Miscellaneous**

**A. Assignment or Subletting.** Tenant shall not assign this Agreement, any rights under this Agreement or any monies due or to become due hereunder nor delegate or subcontract any obligations or work hereunder without the prior written consent of the City. Tenant is expressly prohibited from subletting the Leased Premises.

**B. Choice of Law, Jurisdiction.** This Agreement shall be interpreted and enforced under the laws of the State of Florida. Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida. City and Tenant, in the event of litigation under this Agreement, hereby waive, to the fullest extent permitted by law, any right to a trial by jury.

**C. Entire Agreement.** As of the Effective Date above, this Agreement constitutes the entire understanding between City and Tenant and hereby replaces the prior Concession Agreement between the parties dated September 1, 2017. Neither this Agreement nor any provision hereof may be changed, modified, waived, discharged or terminated except by an instrument in writing signed by the party against whom the enforcement of any such change, modification, or amendment is sought.

**D. Force Majeure** Neither party shall be considered in default of performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by the following force majeure events ("Force Majeure Events: (a) acts of God; (b) flood fire, hurricanes, or forced closure due to a pandemic; (c) war, invasion, terrorist attacks or riots (d) government order or law; (e) national or regional emergency; and (g) other events beyond the reasonable control of the impacted party. If the Leased Premises are not usable as a result of a Force Majeure Event, the Lease Fee shall be abated until the Leased Premises is capable to return to use.

**E. Legal Fees.** In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising here from, the

prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney fees (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal. This provision shall survive the termination or expiration of this Agreement.

- F. No Joint Venture or Partnership.** Nothing contained in this Agreement shall create or be deemed to create any partnership or joint venture relationship between City and Tenant, nor be construed to give City any interest in the business of Tenant, and Tenant shall have no power or right to obligate or bind City in any manner whatsoever.
- G. No Waiver.** In the event Tenant shall fail to perform any of the terms or conditions of this Agreement, City shall have all equitable and legal rights and remedies permitted by law, including, without limitation, the right to terminate this Agreement effective immediately. No waiver by City of any default or breach of this Agreement shall be considered a waiver of any other or subsequent default or breach.
- H. Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

*[The remainder of this page is intentionally left blank.]*

**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have executed this Agreement.

**THE GREEN LION CAFÉ, LLC**

**CITY OF PALM COAST**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Christopher J. Marlow

Name: Denise Bevan

Title: Director

Title: Interim City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

DRAFT

**Exhibit A**  
**Description of Leased Premises**

**Leased Premises:**

The Leased Premises located at the Palm Harbor Golf Course Clubhouse, 100 Cooper Lane, Palm Coast, Florida 32137, and includes the restaurant, made up of the indoor dining room with bar, the indoor kitchen, kitchen office and the outdoor patio. There is also an approximate 21' long by 5' wide outdoor fenced-in storage location adjacent to the west side of the Clubhouse included in the Leased Premises along with an additional private locked storage room of approximately 10' by 12' in the Golf Maintenance building. The legal capacity for the indoor dining room is 78 pursuant to the Fire Marshall's Capacity Rating.

**Square Footage**

For pricing purposes, the square footage of the Leased Premises is 1998 square foot as follows:

AREA	GROSS SQ. FT.	% DISC	ADJ SQ. FT.
Kitchen Office – 8.5'X14'	119	0%	119.00
Indoor Dining – 22'X31'	682	0%	682.00
Kitchen – 14.5'X29'	420.5	0%	420.50
Patio – 19.5'X67'	1306.5	50%	653.25
Bar – 8.5'X14.5'	123.25	0%	123.25
Fenced storage area – 5'X21'	105	100%	0.00
Maintenance Garage storage closet – 8'X12'	96	100%	0.00
		<b>TOTAL</b>	<b>1998.00</b>

**Exhibit B  
Pricing**

**Monthly Lease Fee Payment:**

Beginning September 1, 2022, Tenant shall pay City a monthly Lease Fee of **\$1,207.13** (\$7.25 per SF x 1998 SF / 12 months). Such payment shall be due on the first day of the month. For example, the Lease Fee for September 2022 shall be paid on or before September 1, 2022.

On an annual basis, the then current Monthly Lease Fee shall be increased as follows every September 1<sup>st</sup> beginning on September 1, 2023 through and including September 1, 2026:

September 1, 2023: **\$1,448.55**  
September 1, 2024: **\$1,738.26**  
September 1, 2025: **\$2,085.91**  
September 1, 2026: **\$2,503.09**

Should the Agreement be renewed at the conclusion of the initial 5 year term, each year thereafter on September 1<sup>st</sup> the Monthly Lease Fee shall be adjusted based on the June Consumer Price Index (CPI) with a floor adjustment of 0.00% and a maximum increase of 3.0%

**Exhibit C  
INSURANCE AND BOND  
REQUIREMENTS**

**1. GENERAL REQUIREMENTS.**

- 1.1. Prior to performance under this Agreement, Tenant shall furnish City with a Certificate of Insurance evidencing the Property and Casualty (an all-risk policy for full replacement value of all Leased Preises improvements, structures, equipment and personal property, Liquor Liability Insurance, Pollution Liability Insurance, Workers' Compensation/Employer's Liability, Commercial General Liability, and Automobile Liability Insurance. The City, its officials, officers, and employees shall be named Loss Payee under the Property and Casualty Insurance and Additional Insured under the Commercial General Liability policy using CG 1185 or its equivalent, as well as additional insured under the business auto policy. The Certificate of Insurance shall provide that the City shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. The insurance provided by Tenant shall apply on a primary basis and any other insurance or self-insurance maintained by the City or the City's officials, officers, or employees shall be in excess of and not contributing with the insurance provided by or on behalf of the Tenant. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis.
- 1.2. Tenant waives all rights against City for recovery of damages to the extent covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability or Workers Compensation and Employers Liability insurance maintained per requirements herein.
- 1.3. Compliance with the insurance requirements set forth herein shall not relieve Tenant, its employees or agents of liability from any indemnification obligation under this Agreement.
- 1.4. Companies issuing policies other than Workers' Compensation, must be authorized to conduct business in the State of Florida. In addition, such companies other than those authorized by Section 440.57, Florida Statutes, shall have and maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

**2. COVERAGE AMOUNTS.**

**2.1. Workers' Compensation/Employer's Liability.**

**A. Workers Compensation Coverage** SUPPLIER'S insurance shall cover Tenant for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements.

**B. Employers Liability Coverage**

\$500,000.00	(Each Accident)
\$500,000.00	(Disease-Each Employee)

\$500,000.00 (Disease-Policy Limit)

**2.2. Commercial General Liability.**

LIMITS

General Aggregate (per project)	\$2,000,000.00
Personal & Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

The CGL limits may be satisfied by a combination of primary CGL and Umbrella/Excess coverage. When Umbrella/Excess is provided it shall follow form.

**2.3. Automobile Liability Insurance.**

LIMITS

Each Occurrence Bodily Injury and Property Damage Liability Combined	\$1,000,000.00
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**2.4. Liquor Liability Insurance**

LIMITS

\$1,000,000.00

**2.5. Pollution Liability Insurance**

LIMITS

\$1,000,000.00

**2.6. Property and Casualty** (an all-risk policy for full replacement value of all Leased Premises improvements, structures, equipment and personal property)

**3. Bonds**

Comprehensive Dishonesty, Destruction and Disappearance (3-D Bond): Tenant shall obtain and maintain throughout the term of this Agreement (including any renewal period) a 3-D Bond, or equivalent, in an amount not less than Two Hundred Thousand Dollars (\$200,000.00), or limit carried, whichever is greater, from a surety or insurance company authorized to conduct business in the City acceptable to the City covering as a minimum Depositor's Forgery and all employees who may handle funds or property in connection with the Golf Course.