



City of
Tega Cay, South Carolina

www.tegacaysc.org

7725 Tega Cay Drive
Tega Cay, SC 29708

Phone: 803.548.3512
Fax: 803.548.1400

BID OVERVIEW

DATE: January 29, 2025

DESCRIPTION OF WORK: Food & Beverage Agreement for the Tega Cay Golf Club

ISSUING AGENCY: City of Tega Cay
7725 Tega Cay Dr.
Tega Cay, SC 29708

LOCATION OF SERVICE: 15083 Molokai Dr.

CONTACT PERSON: Charlie Funderburk
Email: cfunderburk@tegacaysc.gov

The City of Tega Cay reserves the right without prejudice to reject, in whole or in part, any and all proposals received, to waive all technicalities, or to negotiate any term(s) or provision(s) of such proposals. Such rejection, waiver, or negotiation shall be accomplished in any manner necessary to serve the best interest of the City. It also reserves the right to be the sole judge of the suitability of any and all proposals for use by the City.

The City of Tega Cay reserves the right to reject or otherwise disregard, in whole or in part, any ambiguous proposals or proposals which are uncertain as to terms, delivery, quantity of compliance with specifications.

BID PURPOSE AND DESCRIPTION

The City of Tega Cay is seeking proposals from qualified Responders to manage the food and beverage service inside the Tega Cay Golf Club. The objective of this Request for Proposals (RFP) is to provide information to enable invited Responders to submit written Proposals for the service. There will be a mandatory, pre-proposal meeting held on Wednesday, March 19, 2025, at 9:00 A.M. EST, in the Tega Cay Golf Club dining room, located at 15083 Molokai Dr. Proposals will only be accepted from Responders who have attend said pre-proposal meeting. Responder must submit two (2) hard copies and one (1) electronic copy of their Proposal in a sealed envelope. Proposals must be received by the City of Tega Cay at City Hall, located at 7725 Tega Cay Drive, Tega Cay, SC 29708, by **2:00 PM on Thursday, June 19 , 2025**. Qualifications received after this date and time shall be returned unopened.



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SCOPE OF SERVICES

- Provide food and beverage services at the areas identified in Exhibit A of the attached License Agreement.
- As an Alternate Proposal, include proposal for hosting and catering events, including but not limited to banquets, weddings, birthday celebrations, corporate outings/events, and seminars. Such proposal should also include a marketing plan for Conference Center/Ballroom shown in Exhibit B of the attached License Agreement.

PROPOSAL SUBMISSION SPECIFICATIONS AND REQUIREMENTS

1. Proposals should be as thorough and detailed as possible so that the City may properly evaluate your capabilities to provide the required goods/services. Responders are required to submit the following items as a complete Proposal:
 - a. The return of the addenda, if any, signed and filled out as required.
 - b. Cover Letter from the Principal Partner or similar with authority to speak on behalf of the Responder.
 - c. Resume of Responder, and any members of the entity's management team demonstrating their experience in operating restaurants for a minimum of five (5) years.
 - d. List of at least three (3) professional references, with direct knowledge of the Responder, including at least one from a landlord and at least one vendor.
 - e. Copies of current licenses pertaining to restaurants.
 - f. Current financial statements of the Responder and the entity demonstrating the cash reserves necessary to make the required deposit of \$42,000.
 - g. Financial statements or letter of credit from a reputable financial institution demonstrating the financial means and ability to perform renovations and an operational contingency.
 - h. A comprehensive business plan for spaces indicated in Exhibit A and B, including, but not limited to, menu, menu pricing, events/entertainment (if any), staffing (number and projected expense), overhead costs, and cost of goods sold.
 - i. Rendering and estimated, pre-designed costs, for renovating the bar, dining and current pro shop areas to provide for an extended bar/dining area. Renovations shall be completed no later than twelve (12) months after the pro shop has been relocated.
 - j. Insurance: The successful Responder must provide a statement indicating that they are able to procure and maintain, without interruption and on an occurrence basis, public liability insurance and workers compensation insurance. The liability



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insurance coverage shall name the City of Tega Cay as additional insured and shall be primary as to any overlapping coverage carried by the City.

- k. As part of the agreement, the successful Responder will also be required to sign as a Personal Guarantor and execute a lien waiver.
2. Ownership of all data, materials and documentation originated and prepared for the City pursuant to the RFP shall belong exclusively to the City and be subject to public inspection in accordance with the South Carolina Freedom of Information Act. Proprietary information, to include financial information, submitted by the Responder shall not be subject to public disclosure under the South Carolina Freedom of Information Act; however, the Responder must invoke the protections of Section 2.2-4342 F of the Code of South Carolina, in writing, either before or at the time the Proposal is submitted. The written notice must specifically identify the information or material to be protected and state the reasons why protection is necessary. The proprietary information submitted must be identified by some distinct method, such as highlighting or underlining, and must indicate only the specific words, figures, or paragraphs that constitute proprietary information. The classification of an entire proposal document, line-item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.

Offerors must submit two (2) hard copies and one (1) electronic copy of the proposal. Proposals shall be sealed and labeled "Food and Beverage Service at the Tega Cay Golf Club". Bids can be mailed, or hand delivered to the City of Tega Cay (7725 Tega Cay Dr.). All bids must be received by no later than **2:00 PM EST, Thursday, June 19, 2025.**

All questions pertaining to this request for bid must be submitted in writing by emailing cfunderburk@tegacaysc.gov no later than 5:00 PM (EST) on Wednesday, June 4, 2025. Only written questions will be considered.

EVALUATION CRITERIA AND SELECTION PROCEDURE

The City shall have sole discretion in evaluating qualifications and scheduling any interviews that it may deem necessary once proposals are received. The City reserves the right to select the qualifications that it may determine to be in the best interest of the City. The City also reserves the right to reject any and all qualifications, including that of the selected Responder, if Responder does not execute the Agreement that is included as part of this RFP.



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GENERAL TERMS AND CONDITIONS

1. RECEIPT AND OPENING OF SEALED PROPOSALS:

- a. Sealed proposals will be received and opened as specified in this request for bid document.
- b. The City will consider as non-responsive any proposal not prepared and submitted in accordance with the provisions hereof and may waive any informality or reject any and all proposals. Any proposal may be withdrawn prior to the above scheduled time for the opening of proposals or authorized postponement thereof. Any proposal received after the time and date specified shall not be considered.

2. PREPARATION OF PROPOSAL:

- a. Any proposal not providing sufficient information and documentation to comply with the RFP Evaluation requirements will be considered non-responsive and removed from further consideration.
- b. A proposal shall be made in the official name of the entity or individual under which business is conducted (showing the official business address) and must be signed in ink by a person duly authorized to legally bind the person, partnership, company, or corporation submitting the proposal.
- c. All information shall be typewritten.
- d. Two (2) hard copies and one (1) electronic copy submitted in a sealed envelope. The submitted Responder is required to have printed on the envelope or wrapping containing their proposal: responder business name and address and the proposal title. If forwarded by mail, the sealed envelope containing the proposal must be enclosed in the outer envelope. The City shall not be responsible for unidentified proposals.
- e. Responders mailing their proposal must allow a sufficient mail delivery period to insure timely receipt of their proposal. The City is not responsible for proposals delayed by mail and/or delivery services of any nature. It is the responder's sole responsibility to ensure that all documents are received by person (or office) at the time indicated in the proposal document. No facsimile or email submissions will be accepted.
- f. Each responder shall acknowledge receipt of all addenda by its submission of a proposal. It shall be each responder's responsibility to assure that all addenda have been received. Addenda, if any, will be posted on the RFP/Bid page of the City's website. No claim for failure to receive addenda will be considered.

3. RESPONDER QUALIFICATIONS:

To be acceptable to the City, Responders must be skilled and licensed, in the class of work on which they respond, and no proposal will be considered from any responder who is unable to show that he has actually performed considerable work of similar character to that on which he is responding.

4. EXECUTION OF AGREEMENT:



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The Responder to whom an award is made shall deliver to the City a Certificate of Insurance, listing the City of Tega Cay as additional insured, prior to execution of the Agreement.

5. **TERM OF AGREEMENT AND AGREEMENT DOCUMENTS:**

- a. The agreement documents that will form the contract shall include:
 - i. The Complete Request for Proposals
 - ii. All Addenda
 - iii. The Successful Responder's Submitted Proposal Document
 - iv. Notice of Award (Verbal or Written)
 - v. Executed Agreement
 - vi. Rendering and pre-design estimates of bar, dining area and current pro shop
 - vii. Insurance Certification
- b. Proposals submitted must be in a form suitable for incorporation, verbatim, into the License Agreement and will be labeled as Exhibit C to the License Agreement.
- c. No written Agreement may be assigned, sublet, or transferred without the written consent of the City Council.

6. **INSURANCE:**

The successful responder shall procure, maintain, and provide proof of, insurance coverage for injuries to persons and/or property damage as may arise from or in conjunction with, the work performed on behalf of the City by the responder, their agents, representatives, employees or subcontractors. Proof of coverage as contained herein shall be submitted within ten (10) days after the City has provided a verbal notice of award and such coverage shall be maintained by the Responder for the duration of the contract period.

- a. Worker's Compensation – Limits as required by the Workers' Compensation Act of SC, Employers Liability, \$1,000,000.
- b. General Liability insurance in the amount of \$1,000,000.00.
- c. Punitive damage coverage for liability insurance.
- d. Professional liability insurance in the amount of \$1,000,000.00.
- e. Coverage Provisions
 - i. All deductibles or self-insured retention shall appear on the certificate.
 - ii. City of Tega Cay shall be listed as additional insured. This provision does not apply to Professional Liability or Workers' Compensation/Employers' Liability.
 - iii. The Responder's insurance shall be primary over any applicable insurance or self-insurance maintained by the City.
 - iv. Shall provide thirty (30) days written notice to the City before any cancellation, suspension, or void of coverage in whole or part, where such provision is reasonable.
 - v. All coverage for subcontractors of the Responder shall be subject to all of the requirements stated herein.



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- vi. All deductibles or self-insured retention shall appear on the certificate and shall be subject to approval by the City. At the option of the City, either the insurer shall reduce or eliminate the deductible or self-insured retention; or the Responder shall be required to procure a bond guaranteeing payment of losses and related claims expense.
- vii. Failure to comply with any reporting provisions of the policy shall not affect coverage provided the City, its officers/officials, agents, employees and volunteers.
- viii. The insurer shall agree to waive all rights of subrogation against the City, its officers/officials, agents, employees or volunteers for any act, omission, or condition of premises which the parties may be held liable by reason of negligence.
- ix. The Responder shall furnish the City certificates of insurance including endorsements affecting coverage. The certificates are to be signed by a person authorized by the insurance company to bind coverage on its' behalf, if executed by a broker, notarized copy of authorization to bind, or certified coverage must be attached.

7. LAW AND REGULATIONS:

The Responder's attention is directed to the fact that all applicable Federal, State and Local laws, statutes, ordinances, and the rules and regulations of all authorities having jurisdiction over the licensed space shall apply to the Agreement, and they will be deemed to be included in the Agreement the same as though herein written out in full.

Responders are not required to have a City of Tega Cay Business License at the time of submission of the proposal, however they must obtain one prior to execution of the Agreement.

8. METHOD OF AWARD:

- a. Contracts will be awarded to the responder whose proposal appears to serve the best interest of the City. The successful Responder will be determined as prescribed herein this document.
- b. The City reserves the right to accept or reject, in whole, in part, together or separately, any and all responses as appears in its sole judgment to be in the best interests of the City, or to waive any and all technicalities and informalities in determining the action of each proposal.

9. OBLIGATION OF RESPONDER:

There will be a mandatory, pre-proposal meeting held on Wednesday, March 19, 2025, at 9:00 A.M. EST, in the Tega Cay Golf Club dining room, located at 15083 Molokai Dr. Proposals will only be accepted from Responders who have attend said pre-proposal meeting.



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RESPONDER AGREEMENTS

1. STATEMENT OF RIGHTS:

The City reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Responders may be asked to give an interview and presentation of their proposal after submission. Failure of Responder to respond to a request for additional information or clarification could result in rejection of that Responder's proposal. The City reserves the right to accept or reject any and all proposals, in whole or in part, separately or together, with or without cause; to waive technicalities in submissions, to secure a project that is deemed to be in the best interest of the City.

2. GENERAL TERMS:

Each Responder by submitting a response to the City as a result of this RFP, agrees to and acknowledges its acceptance of and agreement with the procedures outlined in section 3 below and the terms, conditions and requirements of the RFP document and the Agreement. Responder's agreement is evident by the submission of a response to the City. If a Responder cannot agree to these terms, or violates these procedures, the response will be judged non-responsive and not considered. If the procedures are violated during the evaluation process or prior to the execution of the Agreement by the City, the offer of the Responder in question will be void and the City will procure the services from the next most qualified Responder.

3. SPECIFIC TERMS:

- a. Any deviation from specifications in the proposal solicitation must be clearly pointed out; otherwise, it will be considered that the items offered are in strict compliance with these specifications, and the successful responder will be held responsible, therefore.
- b. Any attempt by a Responder to influence the opinion of the City staff, or City Council, by discussion, promotion, advertising or any other means to promote their offer, will constitute grounds to judge such an offer non-responsive. All offers presented to the City will be evaluated based on the current City Code and the offer as presented to the City on the date/time specified in the given solicitation.
- c. The City reserves the right to make periodic inspections of the manner and means the service is performed and the condition of the facility.
- d. All Responders are informed that the City Council may exercise the City's option to extend the Agreement under the provisions of the Agreement should such extension be mutually agreeable between the City and the selected Responder.
- e. The Responder agrees to secure at Responder's own expense all personnel and vendors necessary to carry out Responder's obligations under this Proposal. Such personnel shall not be deemed to be employees of the City nor shall they or any of them have or is deemed to have any direct contractual relationship with the City. The City shall not be responsible for withholding taxes with respect to the Responder's compensation hereunder. Responder shall not hold himself out as an employee of the City and shall have no power or authority to bind or obligate the City in any manner.



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- Responder shall obtain and maintain all licenses and permits required by law for performance of this Agreement by him. The Responder shall have no claim against the City hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The City shall pay no employee benefits or insurance premiums of any kind to or for the benefit of Responder or his employees, agents, and servants by reason of this contract.
- f. The Responder will act in an independent capacity and not as officers or employees of the City. The Responder shall indemnify, defend and hold harmless the City, its officers, agents and employees from all liability and any claims, suits, judgments, and damages of any nature brought because of, arising out of, or due to breach of the Agreement by Responder, its vendors, subcontractors, suppliers, agents, or employees or due to any negligent act or occurrence or any omission or commission of Responder, its vendors, subcontractors, suppliers, agents, or employees.
 - g. The successful Responder shall indemnify and hold harmless the City, its officers, agents and employees from all suits or claims of any character resulting from patent, trademark or copyright infringement or accidents/injury at any point in the delivery of the Agreement.
 - h. It is the responsibility of the prospective Responder to review the entire request for proposals packet and to notify the City Manager's Office if the specifications are formulated in a manner that would unnecessarily restrict competition. Any such protest or question regarding the specifications or responding procedures must be received by the City Manager's Office not less than ten (10) business days prior to the time set for proposal opening. These requirements also apply to specifications or instructions that are ambiguous.
 - i. S.C. LAW CLAUSE: Upon award of the Agreement under this proposal, the person, partnership, entity, association, or corporation to whom the award is made must comply with the laws of South Carolina, which require such person or entity to be authorized and/or licensed to do business in this state. Notwithstanding the fact that applicable statutes may exempt or exclude the successful responder from requirements that it be authorized and/or licensed to do business in this state, by submission of this signed proposal, the responder agrees to subject itself to the jurisdiction and process of the appropriate courts of the State of South Carolina, to all matters and disputes arising or to arise under the Agreement and performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the State.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK) LICENSE AGREEMENT
CITY OF TEGA CAY)

This LICENSE AGREEMENT (“Agreement”) dated _____, 2025 (“Effective Date”) is by and between the City of Tega Cay, a South Carolina municipality, having an address of 7725 Tega Cay Dr., Tega Cay 29708, (the “Licensor” and at times, the “City”) and _____ having an address at _____ (the “Licensee”), and _____, as Guarantor. The Licensor and Licensee are at time referred to herein as a “party” or collectively, the “parties”.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, receipt of which hereby is acknowledged and sufficient, the parties agree as follows:

I. Grant of License. Subject to the terms and conditions hereof, the Licensor grants to the Licensee, for the purpose set forth in section II hereof:

- (a) An exclusive license to use those certain areas within the Tega Cay “Clubhouse” (located at 15083 Molokai Dr., Tega Cay, SC 29708) as such areas are generally referred to as “Deck”, “Event Lawn”, “Bar”, “Rear Veranda”, “Private Dining Room”, “Main Dining Room”, “Lobby”, “Women’s Restroom”, “Men’s Restroom”, “Kitchen”, “Upstairs Large Office”, “F&B small upstairs office”, “Upstairs Storage Room”, and “storage room” in the “cart storage” area, as further described in EXHIBIT A which is attached hereto and incorporated herein by reference;
- (b) An exclusive license to use all equipment, furniture, fixtures and supplies located within the above referenced areas.
- (c) An exclusive license to use those certain areas generally referred to as the Conference Center /Ballroom shown in Exhibit B, which is attached hereto and incorporated herein by reference, should the Licensor award Exhibit B to the Licensee.
- (d) The exclusive license granted herein is subject to the limitations set forth in XV(a) and (b).

The areas described in Sections I herein above and listed in EXHIBIT A and EXHIBIT B, if applicable, are referred to as the “Premises”. The Premises and Equipment, Furniture, Fixtures and Supplies are collectively referred to herein as the "Licensed Property".

Licensee acknowledges that Licensee has conducted a physical inspection of the Licensed Property and accepts same in an “AS IS” condition, without representation or warranty, in fact or by law, by Licensor, and without recourse to Licensor as to the condition thereof, or the use to which the Licensed Property may be applied. Licensor shall not be liable for any defects in the Licensed Property or any limitation on its use. WITHOUT LIMITING THE FOREGOING, LICENSOR HEREBY DISCLAIMS ALL EXPRESS AND/OR IMPLIED WARRANTIES REGARDING THE CONDITION OF THE LICENSED PROPERTY (INCLUDING, WITHOUT LIMITATION, THE EQUIPMENT), INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A

PARTICULAR PURPOSE.

II. Terms & Conditions.

- (a) The Term of this Agreement shall commence on **February 1, 2026**, and shall expire on **January 31, 2031**, or sooner terminated pursuant to the terms and/or conditions herein (“Term”). Provided the Licensee is not in default under the terms of this License Agreement, the Term shall be automatically extended pursuant to the terms and conditions of this License Agreement, for an additional five (5) years, such extended Term to terminate on **January 31, 2036**, (“Extension Term”) unless one hundred and twenty (120) days prior to the expiration of the initial term, either party gives notice to the other party that such noticing party elects not to extend this License Agreement.
- (b) Notwithstanding the above paragraph to the contrary, if Licensee has not received its liquor license, certificate of occupancy, and health permit prior to its initial opening for business (collectively, the “Initial Licenses”) on or before the twentieth (20th) day subsequent to the Effective Date, either party, in its discretion, may immediately thereafter and for a period up to thirty (30) days terminate this Agreement by giving written notice to the non-terminating party, such termination to be ab initio.
- (c) Licensee shall use the Licensed Property only for the purpose of providing food and beverage service, and for social events, live music (provided however live music shall not be played outside after 10:00 pm) and for no other purpose, unless advance written consent is given by the Licensor in its discretion (the “Permitted Uses”). Licensee shall not remove any Equipment or other property from the Premises without the advance written consent of the Licensor, which shall be in the sole discretion of the Licensor. Any violation of this provision constitutes a default by the Licensee and shall be grounds for immediate termination of this License Agreement by the Licensor.
- (d) Payment for Termination Without Cause. If either party terminates without cause prior to the end of the initial term, or the end of the extension if one is provided, the security deposit as outlined in Section III will be forfeited in whole or in part within ten (10) business days of the termination as follows: (i) if Licensee terminates early, the entire security deposit will be forfeited to Licensor (but this shall not absolve Licensee from any other damages to the Licensed Property or indemnity obligations as set forth herein) and (ii) if the Licensor terminates early, the security deposit, less the expense of any damages to be covered by the deposit, will be returned to Licensee. The term “without cause” shall mean for any reason other than a default under the terms and conditions of this License Agreement.
- (e) A party desiring to terminate this License Agreement pursuant to this section II(d) must provide the non-terminating party a minimum of ninety (90) days’ notice prior to the effective date of the actual termination (“Early Termination Date”). In the event that either party exercises its early termination, without cause, rights as described in this Section II(d), no License Fees shall accrue after the Early Termination Date
- (f) Licensee shall not commit any portion of the Leased Premises after termination of this Agreement without Licensor’s prior written consent. If the Licensee commits any portion of the Leased

Premises for events which will occur after the termination of this Agreement (whether such termination occurs at the end of the initial Term or the Extension Term), upon making such commitment the Licensee shall immediately deliver all funds received as prepayments, or deposits, for such event(s) to the City, along with copies of all documentation (e.g. contracts, agreements, deposit receipts) related to such event(s).

- (g) Except as set forth herein, the License granted hereunder shall be irrevocable during the Term, unless the Licensee violates the terms and conditions of this Agreement which allows termination in accordance with Section XII.

III. Security Deposit, Fees and Utilities.

- (a) Security Deposit. On the Effective Date of this Agreement, Licensee shall pay to Licensor a security deposit of \$42,000. Such security deposit will be held by Licensor for the entirety of the Agreement, including the extension if extension is provided, and returned to Licensee upon inspection of the Licensed Property. Licensor shall retain any interest proceeds from the deposit. Any damage, defects or missing items from or to the Licensed Property will be deducted by the Licensor from the deposit.
- (b) License Fee. Licensee shall pay to Licensor, without notice demand, reduction, setoff or any defense, a license fee of fifteen thousand dollars (\$15,000) per month, without notice demand, reduction, setoff or any defense. The license fee is due on or before the 10th of each month. Such payment shall be made in the form of a cashier's check, certified check or money order made payable to the City of Tega Cay. Should the initial term be extended, the Licensor may increase the License Fee by up to ten (10%) percent for the additional term.

Should Licensee be awarded the Conference Center/Ballroom, Licensee shall also pay one thousand five hundred (\$1,500) dollars per month plus 10% of gross revenue generated by the area on a monthly basis to the Licensor in addition to the other fees described herein. The fee shall be paid on the 10th of each month with other License Fee described in the preceding paragraph except that payment shall be made for gross revenue of the prior month. As used herein, gross revenue shall mean and refer to the aggregate amount of all sales, charges, and rentals made and performed at or from the Conference Center/Ballroom for cash, credit or otherwise, of every kind, name and nature, regardless of how such payments are made. Licensee shall (i) record all charges in a point of sale or similar format acceptable to Licensor and (ii) report all charges to Licensor on a monthly basis by category no later than the 10th day of the following month, all of which shall be submitted with the monthly License Fee attributable to the Conference Center/Ballroom. Furthermore, no later than February 15th of each year, Licensee shall submit to Licensor a detailed Annual Statement of Food Revenue and Rental Fees, prepared by a Certified Public Accountant, reflecting food revenue, charges and rental fees for the preceding year of operation. Licensor shall have the right to audit Licensee's financial records at any time to confirm the amount of the License Fee. The cost of such audit shall be borne by Licensor, unless the result of such audit reveals a discrepancy of more than ten (10%) percent between Food Revenue and Rental Fees as determined by audit for any twelve (12) month period. In case of such discrepancy the full cost of the audit shall be borne by Licensee.

- (c) Landscape Fee. In addition to the License Fee, Licensee shall pay to the City's Golf Management Company, or as otherwise directed by the City, two hundred (\$200) dollars per month, "Landscape Fee" for landscaping services, provided around the exterior of the Premises, without notice demand, reduction, setoff or any defense. Such fee shall be due on the 10th of each month of the current term and during each month of the extension.
- (d) Utilities. The Licensee shall also be responsible for creating, in the Licensee's name, and paying for all utility accounts related to the Premises. The Golf Management Company will pay one hundred and fifty (\$150) dollars of the Duke Energy bill related to the Clubhouse each month to the Licensee for the charging of the Golf Club golf carts upon receipt of a copy of the monthly Duke Energy bill. Licensee shall be responsible to obtain all payments from the Golf Management Company and Licensor shall not be liable for any nonpayment thereof.

In the event Licensee fails to pay License Fee, and/or the Landscape Fee, on the date that is ten (10) days after the due date, a late charge of five (5%) percent of the amount due, compounded monthly, shall be added to the monthly License Fee and/or Landscape Fee and paid with such late payment. This late fee is in addition to the default remedies set forth in Section XII.

The License Fee and Landscape Fee as described above will not begin to accrue until the Licensee has received its Initial Licenses (City business license, liquor license and health department permits). Provided, however, if Licensee has not received its Initial Licenses on or before the twentieth (20th) business day subsequent to the Effective Date, either party, in its discretion, may immediately thereafter terminate this Agreement, by giving written notice to the non-terminating party, with such termination to be ab initio.

IV. Operation; Maintenance & Repair.

- (a) Licensee shall at all times maintain and use the Licensed Property and conduct the Permitted Uses in a manner satisfactory to Licensor and in a reasonable, conscientious, and business-like way, including without limitation: (i) maintaining the Licensed Property in a neat, clean, and safe condition and immediately clean-up and dispose of any trash or debris resulting from a permitted use; (ii) using the Licensed Property in a manner that does not create a hazard or disturbance to the public; (iii) maintaining Licensor's equipment, structures, fixtures, and other property used by Licensee on the Licensed Property in good condition; (iv) maintain a professional, businesslike, wholesome community environment on the Premises; and (v) maintain a high standard of services provided to the public, to the satisfaction of Licensor. Licensee shall at all times maintain contracts for the regular inspection and maintenance of all equipment, including, but not limited to: the refrigeration and freezer units, commercial stoves and hoods, fire suppression system, fire extinguishers, grease traps and dishwasher and shall be responsible for the maintenance and repair of those items. Inspection and service records of the equipment shall be provided to the Licensor within five (5) business days of the service and/or inspection.
- (b) Licensee assumes sole responsibility for the cleaning, maintenance and repair of the property licensed to Licensee and security therefore, provided however, the maintenance of HVAC unit(s), and roof, shall be the responsibility of the Licensor. Licensee shall, at its own cost and

expense, keep in good order, condition, and promptly repair the Licensed Property and all the fixtures and equipment located thereon. As of the Effective Date, the Licensor shall ensure that all commercial hood systems are in good working order. After the Effective Date, the maintenance and inspection of the commercial hood systems shall be the responsibility of the Licensee.

- (c) Upon expiration of the term or earlier termination of this Agreement, Licensee shall (a) surrender the Licensed Property to Licensor in good condition satisfactory to Licensor, (b) return all keys to the Licensed Property; and (c) remove any personal property owned by Licensee from the Licensed Property no later than 15 days after such expiration or termination. Any personal property remaining on the Licensed Property after such 15-day period may be disposed of by Licensor in its sole discretion. Licensee shall not remove any permanent fixtures without Licensor's prior written approval.

If Licensee refuses or neglects to make repairs, or if Licensor is required to make repairs by reason of Licensee's negligent acts or omissions, Licensor shall have the right, but not the obligation, to make such repairs on behalf of and for the account of Licensee. In such event, the cost of such work shall be paid for by Licensee as additional fees under this License Agreement promptly upon receipt of a bill therefor.

V. Alteration, Renovation, Construction.

- (a) Licensee, at its own cost and expense, shall perform all construction work necessary for Licensee's occupancy and use, including the renovation/expansion of the "Bar" area. Such renovation/expansion of the "Bar" area shall be completed no less than twelve (12) months following the relocation of the golf pro shop and offices. Licensee shall, at its own cost and expense, comply with all laws, ordinances, orders, and regulations relating to the installation, use, maintenance, and operation of the Licensed Property, including, but not limited to, building, health and safety codes, and obtain all required permits and approvals relating to the same. Licensee shall not perform any construction work or install any equipment without first obtaining Licensor's written approval and consent, and all Permits that may be necessary. Licensee shall present to Licensor plans and specifications for such work at the time approval is sought. Licensor's review and approval of any plans and specifications and consent to perform the work described therein shall not be deemed an agreement by Licensor that such plans, specifications and work conform with applicable legal requirements nor deemed a waiver of Licensee's obligations under this Agreement with respect to compliance with applicable legal requirements nor impose any liability or obligation upon Licensor with respect to the completeness, design, sufficiency or compliance of such plans, specifications and work with applicable legal requirements. Any work by Licensee shall be done by contractors selected by Licensee who are licensed and qualified by the Labor, Licensing and Review Board of the State of South Carolina to perform the work and able to obtain the necessary permits.
- (b) Licensee covenants and agrees to keep the Licensed Property free and clear of all liens, claims, and encumbrances, resulting from Licensee actions. Prior to contracting for any materials or labor that gives lien rights to the provider of such materials and/or labor, Licensor may require such provider execute a lien waiver prior to providing materials and/or labor on a lien waiver form acceptable to Licensor. In the event that any liens or encumbrances are filed on any of the Licensed Property as a result of acts or omissions of Licensee, Licensee, at its expense, shall procure the satisfaction or discharge of record of all liens and encumbrances within thirty days after the filing thereof. In the event Licensee has not so performed, Licensor may, at its option

but not its obligation, pay and discharge such liens and Licensee shall be responsible to reimburse Licensor for all costs and expenses incurred in connection therewith, which expenses shall include attorney's fees and any costs in posting bond to affect the discharge or release of the lien as an encumbrance against the Licensed Property.

VI. Insurance. Licensee shall annually provide and keep in force and effect throughout the term of this License, and any renewals and extensions hereof, the following insurance coverage, with no deductibles or self-insured retention:

- (a) a policy of commercial general liability insurance in the broadest and most comprehensive form generally available from time to time, and under which the insurer agrees to indemnify and hold Licensor and its agent harmless from and against all cost, expense, and/or liability arising out of or based upon any and all claims, accidents, injuries, or damages described in this Agreement, the minimum limits of which policy shall be \$2,000,000.00 for bodily injury, including death, and personal injury for any one occurrence, and \$1,000,000.00 for property damage; or \$2,000,000.00 combined liability and property damage on an occurrence form.
- (b) a policy of insurance, commonly known as Special Perils Insurance (and historically known as an "All-Risk" policy), insuring against loss or damage or injury or destruction of Licensee's fixtures, furniture, store-front, improvements and equipment and heating, cooling, or other mechanical systems in or serving the Licensed Property, whether or not installed by Licensee, to the extent of the full replacement amount of their value in the event of damage due to such perils and hazards caused by, but not limited to, the following: fire, water, sprinkler leakage, flood, wind, collapse, earth movement, vandalism, malicious mischief, boiler or other machinery failure or malfunction. Said policy shall be in at least as broad a form as the Insurance Services Offices (ISO) Special form;
- (c) Liquor liability insurance for Licensee's serving of alcoholic beverages with minimum limits of \$1,000,000 and in compliance with the requirements of the SC Department of Revenue for the on-premises sale of alcoholic beverages. .

Licensee shall provide Licensor, concurrently with the execution hereof, with a certificate of insurance evidencing such coverage and including Licensor as additional insured with a 30-day notice of nonrenewal or termination. Licensee also shall maintain Workers' Compensation and Employer Liability Insurance covering all employees of Licensee performing the Permitted Uses.

VII. Indemnity. Licensee shall indemnify, defend, and hold harmless Licensor and Licensor's employees, council members and agents from and against all claims of whatever nature arising from any proven to have resulted from the act, omission, or negligence of the Licensee, Licensee's contractors, agents, employees, invitees, or customers or any other person(s) acting in concert therewith; or arising from any accident, injury, or damage whatsoever, caused to any person or to property, or from any violation of applicable ordinance, regulation, or law, occurring in, upon, at, or from the Licensed Property or in connection with the Licensee's occupancy or use thereof; or arising from any accident, injury, or damage occurring outside of the Licensed Property, but within the conference center, where such accident, injury, or damage results or is claimed to have resulted from an act or omission on the part of the Licensee or the Licensee's agents, invitees, customers or employees. This indemnity and hold harmless agreement, shall survive the expiration of this Agreement, and shall include indemnity against all costs, expenses, and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof with legal counsel acceptable to Licensor.

VIII. Risk of Loss or Damage. Licensee warrants and represents that it is using the Licensed Property and conducting the Permitted Uses at its sole risk, cost, and expense. The risk of loss or damage to materials, equipment, or any other personal property of Licensee used at the Conference Center/Ballroom or within the Premises or in the conduct of the Permitted Uses shall be that of the Licensee. At no time shall Licensor be responsible or liable for any loss or damage to Licensee, Licensee's employees, invitees, customers, property, or any loss of income arising from the use of the Licensed Property, and Licensee releases Licensor, to the full extent permitted by law, from all such claims, unless such loss or damage was solely caused by the acts, omissions of Licensor. If the Licensed Property is damaged by fire or other casualty and Licensee is unable to operate its business on the Premises, then either party shall have the right to terminate this License Agreement by giving written notice of termination within sixty (60) days after the date of casualty. If after such casualty the Licensee is able to operate its business on the Premises, the License Fee shall be prorated based on the reduction of square feet of the Premises resulting from such casualty.

IX. Assignment. Licensee shall not assign, or sublet, any of all of its rights, duties or obligations under this License Agreement nor delegate Licensee's duties hereunder without the advance written consent of the Licensor, which may be withheld in the Licensor's sole discretion. Licensor acknowledges that at times Licensee may use subcontractors to perform certain functions within the Premises, but Licensor shall not assign, or sublet, any portion of the Licensed Property, to such subcontractors, without the advance written consent of the Licensor.

X. Notices. All notices required or permitted to be given hereunder in writing shall be deemed to have been duly given if: (i) delivered in person on the date so delivered; or (ii) sent via a nationally recognized overnight delivery service on the day after picked-up by said carrier; or (iii) sent by United States Certified or Registered mail, postage prepaid, three days after being deposited in the mail. Notice addresses are provided in the first paragraph of this Agreement. Either party may change such notice address, by providing notice as set forth in this Section XI.

XI. Hazardous Substance. Licensee covenants and agrees that it will not use, keep or suffer to be kept, or generate or store any hazardous substances, pollutants or contaminants (collectively, "Hazardous Substance") in, upon or about the Licensed Property or the Conference Center. Licensee shall promptly remove and clean up (in accordance with applicable state and federal laws) any Hazardous Substance brought onto or about the Licensed Property or the Conference Center by Licensee or Licensee's agents, employees, invitees or customers in violation of this provision. Licensee shall indemnify, hold harmless and defend Licensor from any and all claims, liabilities, penalties, fines, damages, costs and expenses, incurred by Licensor, including reasonable attorneys' fees, incurred as a result of the introduction of any Hazardous Substance to the Licensed Property or the Conference Center by Licensee, its agents, employees or invitees or customers. This indemnification shall survive the termination or expiration of this License Agreement.

XII. Default. If Licensee fails to cure any default with respect to the performance of any of the terms, conditions or covenants of this Agreement within fifteen (15) days after written notice of such failure, (unless such default cannot be, within the reasonable discretion of the Licensor, cured within fifteen (15) days and Licensee has commenced to cure said default within said fifteen (15) days and continues diligently to pursue the curing of same; provided however such extension of time shall not apply to any monetary payment defaults); then Licensor may, if it so elects, at any time thereafter terminate this Agreement, and this Agreement shall terminate on the date

fixed in such notice as if such date were the date originally fixed in this Agreement for the expiration of the Term. If Licensor has previously notified Licensee of a default, which Licensee cured, but Licensee defaults in regard to such matter again, Licensor shall not be required to give notice to Licensee of such repeated default, and Licensor if it so elects, may immediately terminate this Agreement. Such rights to terminate shall be in addition to any and all other rights and remedies available to Licensor at law or in equity, including injunctive relief.

XIII. No Leasehold. Notwithstanding anything that may be implied from the provisions hereof, this Agreement grants to Licensee only a license to use the Licensed Property, subject to the terms and conditions herein, and no leasehold, title, interest or estate is created hereby in the Licensed Property, or any of property owned by the Licensor.

XIV. No Partnership; Not an Employee or Independent Contractor. Licensee is solely a licensee of Licensor with the right to use the Licensed Property strictly in accordance with this Agreement. Nothing in this Agreement shall be deemed to place the Parties in the relationship of employer/employee, partners, or joint venturers. No Party shall have the right to obligate or bind the other in any manner. Licensee agrees and acknowledges that it will not hold itself out as an authorized agent with the power to bind Licensor in any manner. Licensee shall be solely responsible for any withholding taxes, payroll taxes, disability insurance payments, unemployment taxes, or other similar taxes or charges applicable to its staff or its activities related to this Agreement.

XV. Miscellaneous.

- (a) During such occasions that the Golf Management Company hosts golf tournaments, or there is a rental of the Conference Center/Ballroom, Licensee may be requested to provide any necessary food and beverage service for said events. In such cases where the Licensee is not utilized for these services, a \$200 fee will be paid to the Licensee per event by the Golf Management Company or renter of the Conference Center/Ballroom. Parts of this provision will become inapplicable if Licensee obtains a license for the Conference Center / Ballroom. Persons associated with golf tournaments are allowed access and use of the Lobby, Women's Restroom and Men's Restroom during such event.
- (b) Licensor reserves and retains the right to use portions of the Licensed Property for up to seven (7) times during any calendar year for public events, including, but not limited to: July 4th Celebration, Christmas Tree Lighting, and other governmental events hosted or sponsored by the Licensor. These events will not materially have an adverse impact Licensee's Permitted Uses of the remaining Licensed Property. On such occasions, Licensor shall be responsible for set up prior to the event and cleanup after the event. Licensee shall not be entitled to any compensation, rental payment or offset in charges from this retained governmental use by Licensor.
- (c) Licensee shall: (i) obtain all required permits and approvals with respect to the use of the Licensed Property and the Permitted Uses; (ii) comply strictly with all applicable governmental laws, codes, and ordinances; (iii) pay any and all taxes, fees, and assessments including, but not limited to, license fees, fees for permits, profits, gross receipts, sales or use taxes, hospitality taxes, personal property taxes, or any other taxes that may be levied or assessed on the assets, business or capital of Licensee or on Licensee's income therefrom; and (iv) maintain no signs in or about the Licensed Property unless the same shall have been approved in writing by Licensor, and any and all non-approved signs shall be promptly removed upon request of Licensor (in no event shall Licensee utilize any trade-name, logo, trademark, service mark or other proprietary

mark of Licensor, without first obtaining Licensor's prior written consent). Without limiting the foregoing, Licensee shall obtain all permits and approvals and comply with all laws pertaining to the sale of alcoholic beverages.

In addition, Licensee shall not discriminate against any employee or applicant for employment, or guest or client, because of race, color, religion, sex, sexual orientation, age, national origin, disability, or marital status in violation of any laws. Licensee will take affirmative action to ensure that applicants are employed, and employees and guests or clients treated in a manner, without regard to their of race, color, religion, sex, sexual orientation, age, national origin, disability, or marital status in violation of applicable laws.

- (d) Licensee agrees to pay all costs, expenses and reasonable legal fees that may be incurred or paid by Licensor in enforcing the terms of this License Agreement.
- (e) Licensee shall permit Licensor and its agents, employees and contractors access to the Licensed Property at all times.
- (f) Licensee shall observe faithfully and comply strictly with any rules and/or regulations that Licensor may from time to time reasonably adopt for the safety, operation, care and cleanliness of the Licensed Property, or the preservation of good order therein, provided such rules and/or regulations do not unreasonably interfere with the Permitted Use.
- (g) Failure of Licensor to insist upon the strict performance of any provision or to exercise any option or any rules and regulations shall not be construed as a waiver for the future of any such provision, rule or option.
- (h) This License Agreement shall be construed, interpreted, enforced and governed by and under the laws of the State of South Carolina, without regard to its principles of conflicts of law. Each party to this Agreement hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement or any of the agreements or transactions contemplated hereby must be brought in the courts of York County, in the State of South Carolina and hereby expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and expressly waives any claim of improper venue and any claim that such courts are an inconvenient forum.;
- (i) This Agreement contains the entire agreement between the parties and all prior understandings and agreements between the parties are merged into this License. This Agreement may be changed or modified only by a writing executed by the party against whom enforcement thereof is sought.
- (j) The submission of this Agreement for examination does not constitute an offer to license the Licensed Property and shall vest no right in either party. This License Agreement shall not be effective until: 1) it is approved by the City of Tega Cay City Council, and 2) this License Agreement has been executed by the signers hereinbelow.
- (k) Licensee's duties, obligations and liabilities under this License Agreement shall survive the expiration or other termination of this License Agreement, for a period of three years after termination.
- (l) Guaranty. _____, joins in this License Agreement as Guarantor of the Licensee's performance hereunder, and has executed a Guaranty of License Agreement simultaneously herewith, a copy of which is attached as EXHIBIT C hereto, and is incorporated herein by reference.
- (m) Time of Essence. Time is of the essence with respect to the terms, conditions and provisions of this Agreement.

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SIGNATURE PAGE TO FOLLOW

DRAFT

EXECUTION PAGE OF LICENSE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be agreed and accepted by their duly authorized representatives, respectively:

Read and Agreed:

By: Licensee

Witness:

By: _____
[Please Sign Name]

Name: _____
[Please Print Name]

Title: _____
[Please Print Title]

Read and Agreed:

By: Licensor – City of Tega Cay

Witness:

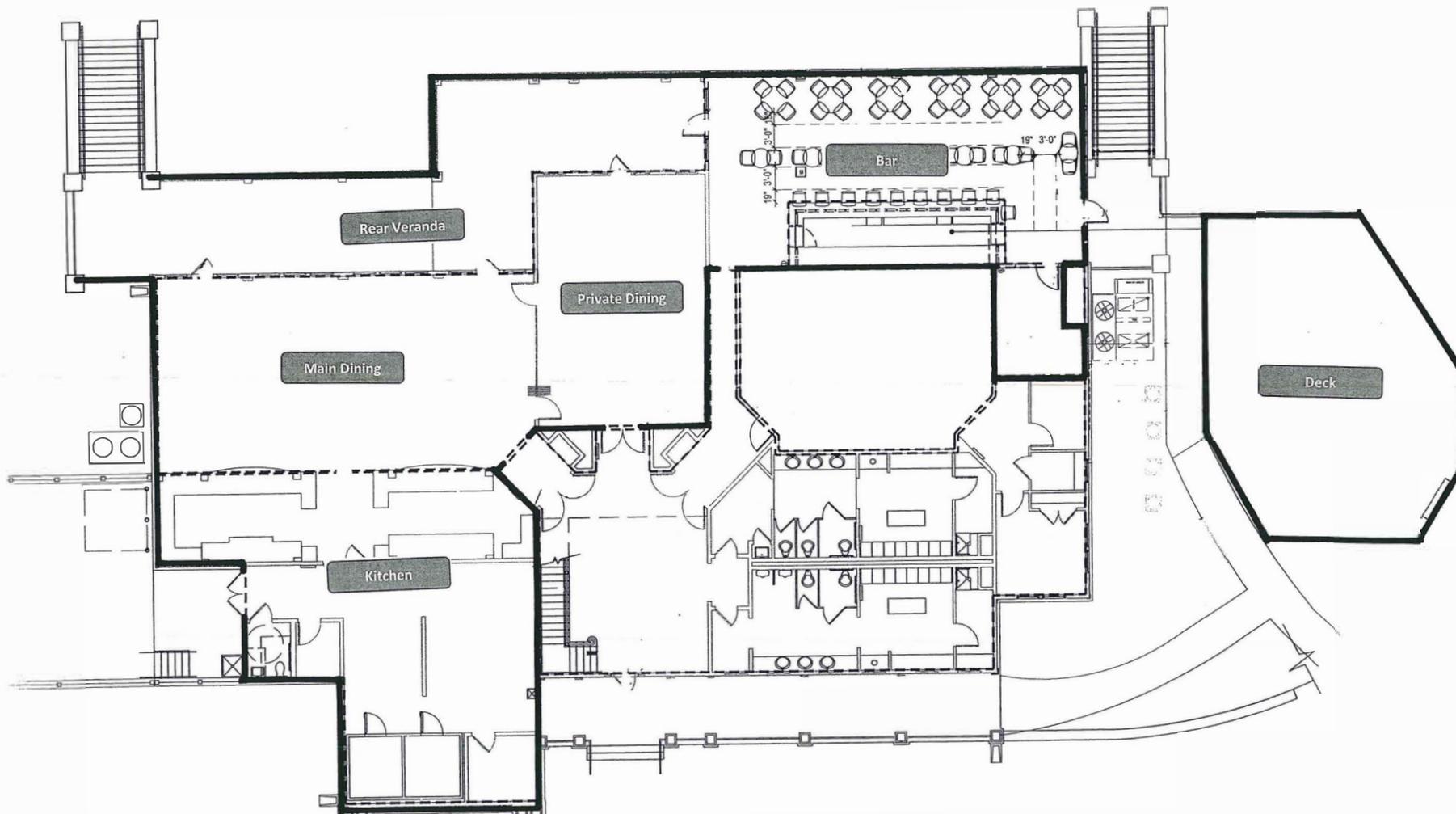
By: _____

Name: Charlie Funderburk

Title: City Manager, City of Tega Cay.

EXHIBIT A

The City of Tega Cay Tega Cay Clubhouse Main Floor



The City of Tega Cay
Tega Cay Clubhouse Second Floor

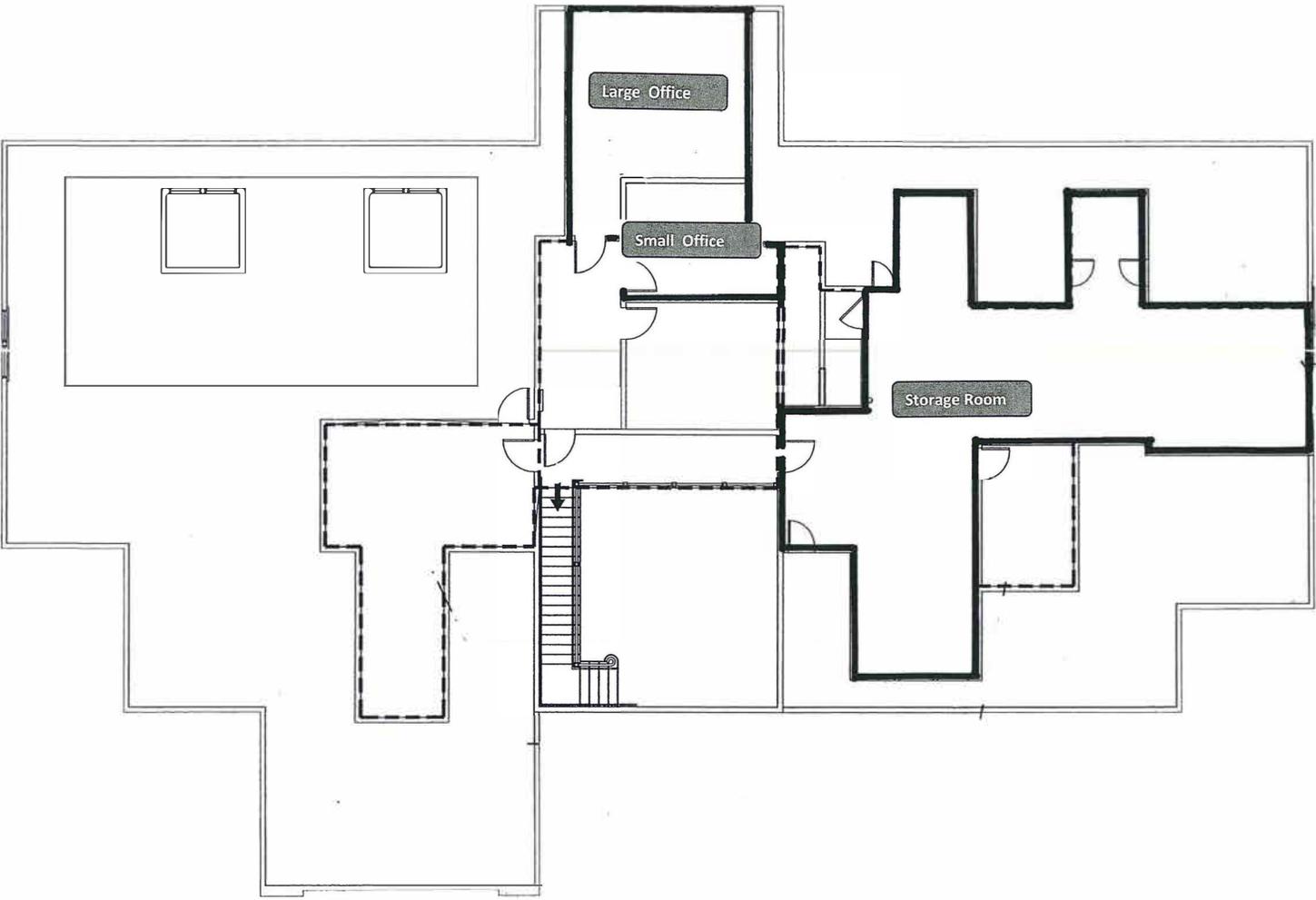
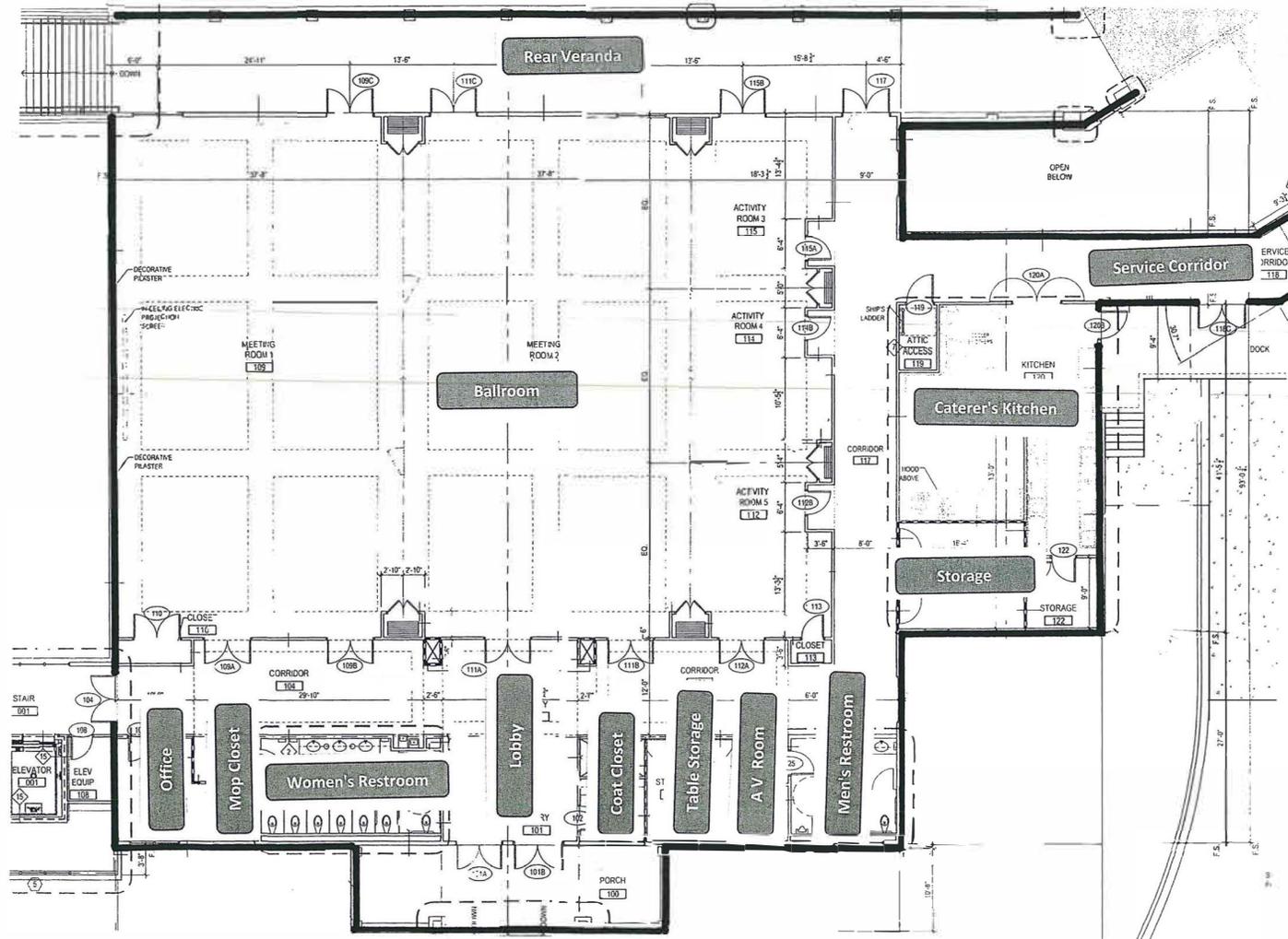


EXHIBIT B

The City of Tega Cay Conference Center/Ballroom



Guaranty of License Agreement between City of Tega Cay, as Licensor, _____, as Licensee, and _____ as Guarantor

THIS GUARANTY OF LICENSE AGREEMENT (this "Guaranty") is given as of the ___ day of _____, 2025, by _____, the "Guarantor), to the **City of Tega Cay**, a South Carolina municipality (the "Licensor").

In order to induce Licensor to enter into the License Agreement between the City of Tega Cay and _____, contemporaneously herewith ("License Agreement"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor, agrees as follows:

1. Guaranty.

(a) Guarantor, jointly and severally, hereby absolutely and unconditionally guarantees to Licensor, subject to the terms of this Guaranty and to the limitations set forth herein, (i) the full, prompt and complete payment of the License Fee and all other sums due and payable by Licensee under the License Agreement and all costs incurred by Licensor in collecting such sums or in enforcing its rights hereunder, including but not limited to attorneys' fees due Licensor under the License Agreement, and (ii) the full, prompt and complete performance by Licensee of all covenants, conditions and provisions in the License Agreement required to be performed by Licensee (collectively, the "Liabilities"). If Licensee fails to pay or perform any of the Liabilities, Guarantor shall pay or perform such Liabilities within fifteen (15) days after written notice of such failure from Licensor. Licensor agrees that if Licensee fails to satisfy any of its obligations under the License, Licensor may pursue Licensee and Guarantor jointly and severally for any and all remedies available to it under the License. Provided that Licensee is not in default under any provision of the License Agreement and all obligations of Guarantor as set forth in this Guaranty have been fully performed, upon the expiration of the License Agreement Term, Licensor shall release Guarantor from his obligations under this Guaranty, such release to be evidenced by a writing signed by Licensor.

(b) The duties and obligations of Guarantor hereunder shall not be affected by, and Guarantor hereby waives, any defense based on Licensee's becoming insolvent or being adjudicated a bankrupt, or filing a petition for reorganization, liquidation, or for the adjustment of debts or for similar relief under any present or future provision of the Bankruptcy Code, or the issuance by a court of an order for relief in the case of a petition being filed by a creditor or creditors of Licensee, or the seeking by Licensee of a judicial readjustment of the rights of its creditors under any present or future federal or state law, or the appointment of a receiver or trustee of all or part of Licensee's property and assets by any state or federal court.

(c) If the Licensee exercises its early termination, without cause, rights pursuant to Section II(b) of the License Agreement, the Guarantor's obligations hereunder shall terminate as of the Early Termination Date (as described in the License Agreement), unless the Licensee is in default as of the Early Termination Date.

2. Waivers by Guarantor. Notwithstanding anything in this Guaranty to the contrary, Guarantor hereby waives the right to receive (i) notice of acceptance of this Guaranty, (ii) notice of any amendment of any Liabilities (including any amendment of the License) and the granting of any indulgence or extension of time to Licensee to perform under the License, (iii) any and all other notices which by law or under the terms and provisions of the License Agreement are required to be given to Licensee, and (iv) any demand for or notice of default regarding the performance of any of the terms, covenants, conditions and provisions in the License Agreement required to be performed by Licensee. If Licensor seeks to enforce the Liabilities against Guarantor by action in any court, Guarantor waives any necessity, substantive or procedural, that a judgment previously be rendered against Licensee or any other person or entity or that Licensee or any other person or entity be joined in such cause or that a separate action be brought against Licensee or any other person or entity. Guarantor agrees that this Guaranty shall not be discharged except by payment of the Liabilities in full and by complete performance of all obligations of Guarantor contained in this Guaranty. Any modification, amendment, change or extension of any of the terms, covenants or conditions of the License Agreement which Licensee (which term shall include, without limitation, a trustee in bankruptcy) and Licensor may hereafter make, or any forbearance, delay, neglect or failure on the part of Licensor in enforcing any of the terms, covenants, conditions or provisions of the License, or any

sale, conveyance, mortgaging or other transfer by Licensor of any right, title, interest or estate in or to any of the property of which the Licensed Property is a part, or any assignment, mortgaging or other transfer by Licensee of the License Agreement or any interest therein or any assignment of all or part of the Licensed Property, or any dissolution or liquidation of Licensee, shall not in any way affect, impair or discharge the unconditional liability of Guarantor to Licensor hereunder.

3. **Notices.** Any notice provided herein shall be deemed to have been served sufficiently if the same shall be in writing and either hand delivered to the addressee designated below or mailed via certified mail, return receipt requested, addressed as follows:

IF TO LICENSOR:

City of Tega Cay
Attn: City Manager
7725 Tega Cay Dr., Tega Cay 29708

IF TO GUARANTOR:

4. **Miscellaneous.** The amount of liability of Guarantor and all rights, powers, and remedies of Licensor hereunder and under any other agreement now or at any time hereafter in force between Licensor and Guarantor relating to any obligations or indebtedness of Licensee or Guarantor to Licensor shall be cumulative and not alternative; and such rights, powers, and remedies shall be in addition to all rights, powers, and remedies given to Licensor by law. The agreements, obligations, warranties and representations of Guarantor hereunder are independent of the obligations of Licensee. In the event of any default hereunder, a separate action or actions may be brought and prosecuted against the undersigned, jointly and severally, whether Licensee is joined therein or a separate action or actions are brought against Licensee. Licensor may maintain successive actions for other defaults. Licensor’s rights hereunder shall not be exhausted by its exercise of any of its rights or remedies until and unless all indebtedness and obligations hereby guaranteed have been paid and fully performed. If any one or more provisions of this Guaranty is determined to be illegal or unenforceable, all other provisions nevertheless shall be effective. This Guaranty shall inure to the benefit of Licensor, and shall bind the heirs, executors, administrators, successors, and assigns of Guarantor. No provision of this Guaranty or right of Licensor hereunder can be waived nor can Guarantor be released from Guarantor’s obligations hereunder except by a writing duly executed by Licensor as specifically provided for herein. If it becomes necessary for Licensor to employ counsel to enforce the obligations of Guarantor hereunder, then, all reasonable attorneys’ fees and expenses incurred by Licensor in connection therewith shall be paid by Guarantor to the extent permitted by law. This obligation of Guarantor for attorneys’ fees is in addition to any attorneys’ fees included as part of the Liabilities. The parties hereto hereby agree that any litigation, action or proceeding arising out of or relating to this Guaranty shall be instituted in a state or federal court in the County and State of York, South Carolina. For all purposes of this Guaranty, the parties hereto hereby submit to the venue and jurisdiction of the courts in the State of South Carolina (federal or state), irrevocably consents to personal jurisdiction of such courts, and further agrees that service of process may be effected pursuant to United States mail. Notwithstanding the survival provisions of Section XV(l) of the License Agreement, such survival provisions shall not apply in the event that a party exercises its rights to early termination pursuant to Section II(b) of the License Agreement unless a party is in default as of the Termination Effective Date.

Signature Page to Follow