

3H-22

Agenda Item #:

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: June 19, 2007 [X] Consent [] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Concessionaire Service Agreement with Procell Watersports, Inc. for operation of the water sports and recreational rental concession located in Okeehetee Park at 7715 Forest Hill Boulevard in West Palm Beach.

Summary: The Parks and Recreation Department desires to continue to provide rentals of canoes, bicycles and other recreational items at Okeehetee Park through a concession operation. The current vendor, Procell Watersports, Inc. (Procell), operates under a Contract for Operation of Okeehetee Park Rental Concession issued through the Purchasing Department which expires on June 30, 2007. In March 2007, PREM advertised Request For Proposal No. 2007-101-SKS for the operation of the Okeehetee Park water sports and recreational rental concession. Only Procell submitted a proposal. The annual rental rate under this Concession Service Agreement is \$4,800 to be paid in equal monthly installments of \$400, with annual four percent (4%) increases. The initial term of this Agreement is for one (1) year, ending June 30, 2008, with four (4) options to renew each for one (1) year. Procell has submitted the required \$1,000.00 security deposit. Both Carol Procell and her husband, Frank Procell have executed personal guarantees of the Agreement. (PREM) District 6 (JMB)

Background and Justification: The RFP was advertised in the Palm Beach Post on March 25, 2007, and April 1, 2007. This RFP was also listed on PREM's webpage and on the County's Channel 20 television station. The current vendor is Procell and its Contract expires on June 30, 2007. No interruption of vendor service will occur since Procell was the only respondent and the Agreement will commence on July 1, 2007. Procell Watersports, Inc. provided a Disclosure of Beneficial Interests attached as Attachment 3, which identifies the ownership interests of Procell Watersports, Inc. as Carol Procell with a 45% interest, Patricia Caserta with a 40% interest and Frank Procell with a 15% interest.

Attachments:

1. Location Map
2. Concessionaire Service Agreement
3. Disclosure of Beneficial Interests

Recommended By: [Signature]

Department Director

5/31/07
Date

Approved By: [Signature]

County Administrator

6/14/07
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<1,200.00>	<3,600.00>	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<1,200.00>	<3,600.00>	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes X No _____

Budget Account No: Fund 0001 Dept 580 Unit 5111-05 Revenue Source 4729-09

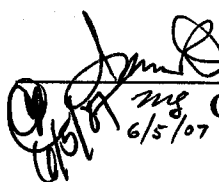
B. Recommended Sources of Funds/Summary of Fiscal Impact:

\$400.00 per month rent/income effective July 1, 2007, for initial one-year term.

C. Departmental Fiscal Review: _____

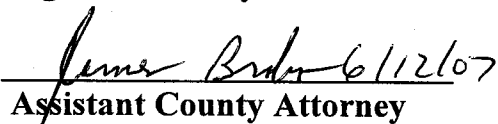
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 6-6-07
OFMB CN 4/17
6/5/07

 6/7/07
Contract Development and Control

B. Legal Sufficiency:

 6/12/07
Assistant County Attorney

This Contract complies with our
contract review requirements.

FDO will obtain proof of
insurance prior to
commencement of services.

C. Other Department Review:

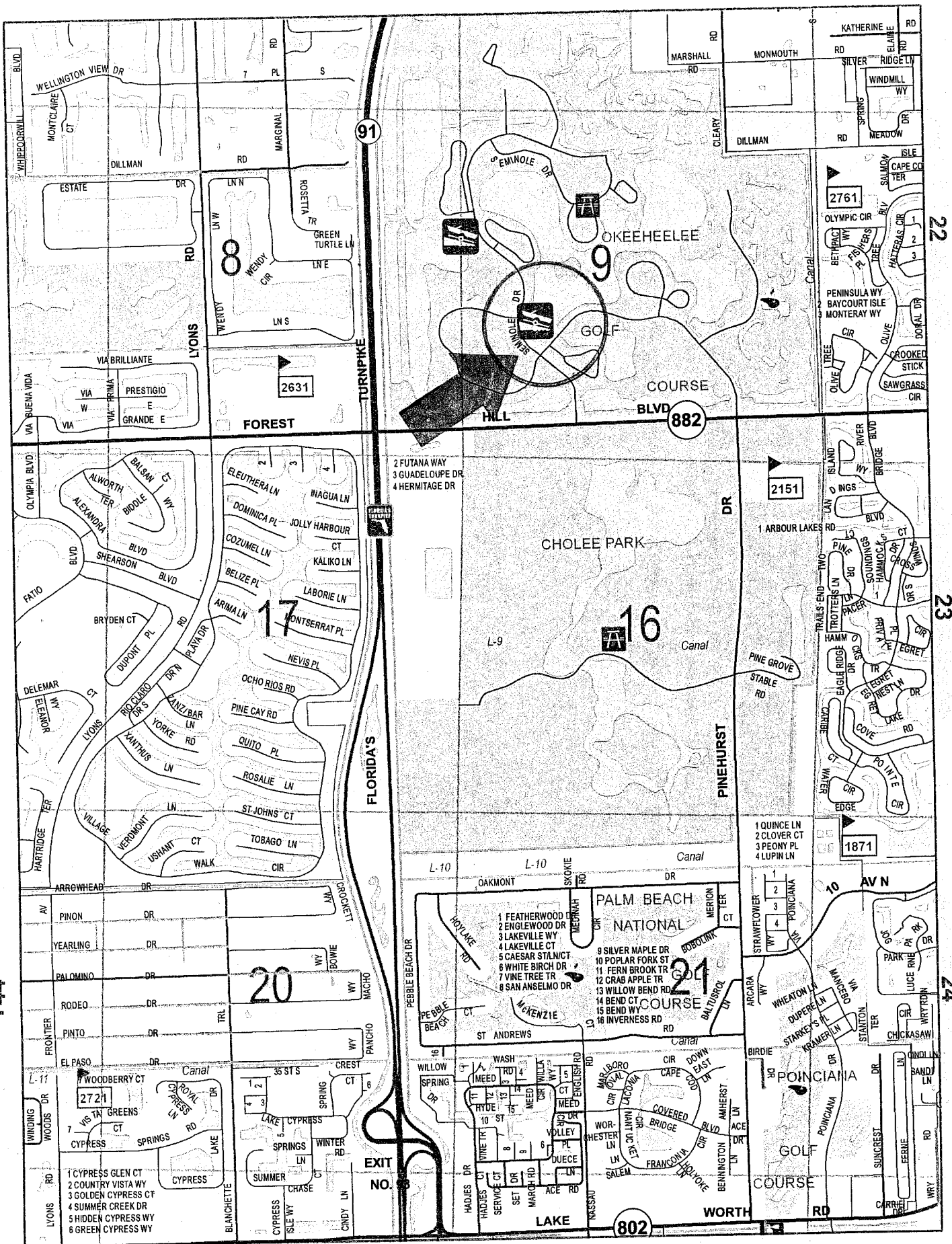
Department Director

This summary is not to be used as a basis for payment.

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LOCATION MAP

ATTACHMENT #1

PALM BEACH COUNTY
CONCESSIONAIRE SERVICE AGREEMENT

between

PALM BEACH COUNTY
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA
(County)

and

PROCELL WATERSPORTS, INC.
(Concessionaire)

CONCESSIONAIRE SERVICE AGREEMENT

THIS CONCESSIONAIRE SERVICE AGREEMENT, hereinafter referred to as "Agreement" made and entered into _____, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County" and PROCELL WATERSPORTS, INC., a Florida corporation (EIN: #65-1139474); hereinafter referred to as "Concessionaire".

WITNESSETH:

WHEREAS, County is the owner of certain real property, including the improvements located thereon, as more specifically described hereinafter which Concessionaire desires to use for operation of a concession; and

WHEREAS, Concessionaire is engaged in the business of operating the rental of water sports equipment and other sports equipment, basic instruction in the use and safety issues associated with the use of such equipment, and the sale of prepackaged food; non-alcoholic beverages, sundry items, and accessory items associated with the rental equipment; and

WHEREAS, Concessionaire was selected through the competitive proposal process to use such property and improvements for such purposes; and

WHEREAS, Concessionaire has indicated a willingness and demonstrated the ability to properly finance, operate, and manage said activities in accordance with the terms of this Agreement; and

WHEREAS, County is willing to allow such property and improvements to be used by Concessionaire for the use set forth.

NOW THEREFORE, in consideration of the rents, covenants and agreements hereinafter reserved and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I BASIC AGREEMENT PROVISIONS

Section 1.01 Premises

In consideration of the rents, covenants and agreements hereafter reserved and contained on the part of the Concessionaire to be observed and performed, the County provides to the Concessionaire, and Concessionaire accepts from County, the concession premises as depicted on Exhibit "A," attached hereto and made a part hereof (the "Premises"). The Premises are located at Okeeheelee Park, 7715 Forest Hill Boulevard, West Palm Beach, Florida.

County reserves the right to make such amendments, changes and revisions to the configuration of the Premises as County, in its sole discretion, may deem proper. The County, at its option, reserves the right, at any time and at County's expense, to relocate Concessionaire into another space of similar square footage. In the event that the Concessionaire does not agree to the relocation as provided herein, this Agreement shall be automatically terminated and of no further force or effect and the County shall not be liable to Concessionaire for any damages of any kind whatsoever. In the event of such termination of this Agreement, the parties hereto shall be relieved of all further obligations hereunder.

Section 1.02 Parking

Concessionaire shall utilize existing parking areas located at Okeeheelee Park for deliveries and parking.

Section 1.03 Length of Term and Commencement Date

The Premises are currently subject to a concessionaire service agreement (the "Previous Agreement") that will expire on June 30, 2007 (the "Expiration Date"). The concessionaire under the Previous Agreement has the option of terminating the Previous Agreement prior to the Expiration Date, and if such option is exercised, the effective date of the termination shall be referred to as the "Termination Date". The term of this Agreement shall commence (the "Commencement Date") upon the earlier of either July 1, 2007, or the first business day following the Termination Date, and shall extend for a period of one (1) year thereafter (the "Term") unless sooner terminated pursuant to the provisions of this Agreement. In the event the Commencement Date is to be upon the first business day following the Termination Date, the County shall use its best efforts to provide Concessionaire with written notice of the Commencement Date a minimum of 30 business days prior to the Commencement Date.

Notwithstanding the foregoing, the Commencement Date shall not occur prior to the Effective Date as hereinafter defined.

Section 1.04 Option to Renew

County hereby grants to Concessionaire, provided Concessionaire is not then in default of this Agreement, the right and option to renew the Term of this Agreement for four (4) successive period(s) of one (1) year each under the same terms and conditions of this Agreement and commencing upon the expiration of the initial Term of this Agreement or any renewal thereof. Concessionaire shall exercise its option to renew, if at all, by written notice to the County received by the County no sooner than one hundred fifty (150) days but no later than ninety (90) days prior to the expiration of the initial Term of this Agreement or any renewal thereof. Failure of Concessionaire to duly and timely exercise its option to renew the Term of this Agreement shall be deemed a waiver of Concessionaire's right to said renewal option and all further renewal options.

Section 1.05 Excuse of County's Performance

Anything in this Agreement to the contrary notwithstanding, the County shall not be deemed in default with respect to failure to perform any of the terms, covenants and conditions of this Agreement if such failure to perform shall be due to any strike, lockout, civil commotion, war-like operation, natural disaster, invasion, rebellion, military power, sabotage, government regulations or controls over which County has no amendatory powers, inability to obtain any material, utilities, service or financing, through Acts of God or other cause beyond the reasonable control of the County.

Section 1.06 Customer Service

Concessionaire shall place a sign provided by Palm Beach County Parks & Recreation Department (the "Parks Department"), in a location on the Premises designated by County, stating:

This business occupies space owned by County. If any customer cannot resolve any customer complaint with the business owner, they may forward the details of their complaint, in writing, to: Palm Beach County Parks & Recreation Department, Attention: Manager, Support Services, John Prince Park, 2700 Sixth Avenue South, Lake Worth, FL 33461. Concessionaire shall work diligently to resolve customer complaints regarding service or other issues.

Section 1.07 Amount of Deposit

Concessionaire, simultaneously with its execution of this Agreement, has deposited with the County the sum of One Thousand Dollars (\$1,000.00) as security for the full, faithful and timely performance of each and every term, covenant and condition to be performed by Concessionaire under this Agreement (the "Security Deposit"). The Security Deposit may be commingled with other funds of County, and County shall have no liability for the accrual or payment of any interest thereon. In the event of the failure of Concessionaire to keep and perform any of the terms, covenants and conditions of this Agreement to be kept and performed by

Concessionaire, then the County, at its option, may appropriate and apply said Security Deposit, or so much thereof as County may deem necessary, to compensate the County for all loss or damage sustained or suffered by County due to such default or failure on the part of Concessionaire. In no event shall the amount of said Security Deposit be deemed to limit Concessionaire's liability under this Agreement. Should any portion of the Security Deposit be so appropriated and applied by County, then Concessionaire shall, upon the demand of County, forthwith remit to County a sufficient amount in cash to restore said Security Deposit to the original sum deposited, and Concessionaire's failure to do so within five (5) days after receipt of such demand shall constitute a default of this Agreement. Should Concessionaire comply with all of the terms, covenants and conditions of this Agreement and promptly pay all of the Annual Rent and Additional Rent herein provided for as it becomes due, and all other sums payable by Concessionaire to County hereunder, the said Security Deposit shall be returned in full to Concessionaire within thirty (30) days of the expiration of this Agreement, or upon the earlier termination hereof.

ARTICLE II RENT

Section 2.01 Annual Rent

Concessionaire shall pay to the County Annual Rent during the term of this Agreement in equal monthly installments, together with all applicable sales taxes thereon, on the first day of each month, in advance, without any prior demand therefore or any deduction, holdback or setoff whatsoever. The initial amount of Annual Rent is \$4,800.00 (Four Thousand Eight Hundred and 00/100 Dollars). If the Commencement Date is a day other than the first day of the month, Concessionaire shall pay Annual Rent from the Commencement Date to the 1st day of the following month on a per diem basis (calculated on the basis of a thirty (30) day month), payable in advance on the Commencement Date. Any Annual Rent payment hereunder for any other fractional month shall likewise be calculated and paid on such a per diem basis. Annual Rent and Additional Rent shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to the Palm Beach County Parks & Recreation Department, Revenue Section, 2700 Sixth Avenue South, Lake Worth, FL 33461.

Section 2.02 Adjustment to Annual Rent

On the anniversary date of this Agreement or any extension thereof, the Annual Rent shall be adjusted by multiplying the then current Annual Rent by one hundred and four percent (104%).

Section 2.03 Additional Rent

Any and all sums of money or charges required to be paid by Concessionaire under this Agreement other than the Annual Rent shall be considered "Additional Rent", whether or not the same is specifically so designated and County shall have the same rights to enforce due and timely payment by Concessionaire of all Additional Rent as are available to County with regard to Annual Rent.

Section 2.04 Sales, Use and Rent, Taxes, Assessments, Ad Valorem, Non Ad Valorem Real and Personal Property Taxes

Concessionaire shall pay all sales, use or rent taxes assessed by any governmental authority against the Annual Rent and/or Additional Rent, if any, even if such tax is intended to be imposed against County. Concessionaire shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special and all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Premises, Concessionaire's interest in the Premises, Concessionaire's Alterations or personal property located on the Premises.

Section 2.05 Unpaid Fees, Holdover

In the event Concessionaire fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Agreement within ten (10) days after same shall become due and payable, interest at the rate established from time to time by the Board of County Commissioners [currently set at one and one-half percent (1 1/2 %) per month] shall accrue against the delinquent payment(s) from the date due until the date payment is received by County. Such interest shall constitute Additional Rent. Notwithstanding the foregoing, County shall not be prevented from terminating this Agreement for default in the payment of rentals, fees, charges, and payments due to County pursuant to this Agreement or from enforcing any other provisions contained herein or implied by law. In the event Concessionaire shall holdover, refuse or fail to relinquish possession of the Premises at the expiration or termination of this Agreement, Concessionaire shall be strictly liable to pay to County during the entire period of such holdover, double Annual Rent, as provided for in Chapter 83.06, Florida Statutes. In addition to the Annual Rent, Concessionaire shall pay all other charges or costs imposed upon Concessionaire by this Agreement, all cost of insurance for which Concessionaire would have been responsible if this Agreement had been renewed on the same terms contained herein, and all sales taxes assessed against such increased Annual Rent. Such tenancy shall be subject to all the other conditions, provisions and obligations of this Agreement.

Section 2.06 Accord and Satisfaction

In the event Concessionaire pays any amount that is less than the amount stipulated to be paid under this Agreement, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Agreement or under the law.

ARTICLE III CONDITION OF PREMISES, ALTERATIONS

Section 3.01 Acceptance of Premises by Concessionaire

Concessionaire certifies that Concessionaire has inspected the Premises and accepts same "As Is", in its existing condition, together with all defects, latent or patent, if any, and subject to all easements, encumbrances, restrictions and matters of record. Concessionaire further acknowledges that the County has made no warranties or representations of any nature whatsoever regarding the Premises including, without limitation, any relating to the physical condition of the Premises or any improvements or equipment located thereon, or the suitability of the Premises or any improvements for Concessionaire's intended use of the Premises. No repair work, alterations, or remodeling of the Premises is required to be done by County as a condition of this Agreement. Concessionaire agrees to perform any and all work at its own cost and expense which is necessary to fully equip and maintain the Premises for the lawful use of the Premises by Concessionaire as specified in Section 4.01 of this Agreement, unless the work is the responsibility of the County as specifically provided for in Section 6.01 of this Agreement.

Section 3.02 Concessionaire's Alterations

Concessionaire shall be solely responsible for any and all improvements, repairs, alterations or other work necessary to render the Premises suitable for Concessionaire's intended use. Prior to commencing any work within the Premises, Concessionaire shall furnish to the County, through its Parks Department for written and discretionary approval, plans and specifications showing a layout, fixture plan, interior finish, store front and any work, equipment or fixtures to be done or installed by Concessionaire within the Premises ("Alterations"). All fixtures installed by Concessionaire shall be new or completely reconditioned. All work performed to the Premises, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of Concessionaire, and not for the benefit of County, such work being nevertheless subject to each and every provision of this Agreement. County's approval of the plans and specifications submitted by Concessionaire in conjunction with

Concessionaire's Alterations may, at County's sole option, be contingent upon the receipt by the County of a surety company payment and performance bond obtained by Concessionaire at its sole cost and expense. Said bond shall be issued by a surety company satisfactory to County, insuring completion of Concessionaire's Alterations free and clear of all liens, encumbrances, chattel mortgages, conditional bills of sale and other title retention or security agreements or other charges, all in accordance with the plans and specifications approved by the County. Concessionaire shall design and construct such Alterations at Concessionaire's sole cost and expense, in accordance with the requirements of this Agreement and in full compliance with applicable governmental laws, rules, orders, building codes and zoning regulations. All of Concessionaire's construction and Alterations shall be made and performed in a good and workmanlike manner and shall be diligently performed to completion strictly in accordance with the approved plans and specifications therefore.

Section 3.03 Responsibility for Alterations

All Alterations made by Concessionaire shall be maintained by Concessionaire in good working order at the sole expense of Concessionaire during the Term of this Agreement, or any extension or renewal hereof.

Section 3.04 Construction

Concessionaire shall ensure that all improvements and Alterations are constructed to completion in accordance with the approved plans thereof and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials.

Section 3.05 No Liens

Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate shall not be subject to such liability. Concessionaire shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Concessionaire of this provision of this Agreement. If so requested by County, Concessionaire shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida, stating that County's interest shall not be subject to liens for improvements made by Concessionaire. In the event that a construction lien is filed against the Concessionaire's Premises or other County property in connection with any work performed by or on behalf of Concessionaire, Concessionaire shall satisfy such claim, or transfer same to security, within 10 days from the date of filing. In the event that Concessionaire fails to satisfy or transfer such claim within said 10 day period, County may do so and thereafter charge Concessionaire and Concessionaire shall promptly pay to County upon demand, as Additional Rent, all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Concessionaire agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien.

ARTICLE IV

CONDUCT OF BUSINESS AND USE OF PREMISES BY CONCESSIONAIRE

Section 4.01 Use

Concessionaire shall use and occupy the Premises solely and exclusively to rent water sports and recreational equipment and sell prepackaged food, beverages (prohibiting alcoholic beverages), and sundry items to the public. Concessionaire shall not use, permit, or suffer the use of the Premises for any other use, business, or purpose whatsoever without the prior written consent of County, which consent may be granted or withheld in County's sole discretion.

Section 4.02 Operation of Business

Concessionaire shall operate its business upon the entire Premises during the Term of this

Agreement with due diligence and efficiency and in a manner prudent and in accord with generally accepted business techniques within the locale for Concessionaire's business.

During the months of June through August, Concessionaire shall operate the concession a minimum of five (5) days per week, including weekends, for a minimum of eight (8) hours per day during daylight hours. During the months of September through May, Concessionaire shall operate the concession, at a minimum, on all weekends and holidays for a minimum of eight (8) hours per day during daylight hours. Concessionaire shall submit an operations schedule to the Parks Department for approval prior to beginning operations. Concessionaire shall submit any proposed changes to the operations schedule to the Parks Department, in writing, at least two (2) business days in advance, for approval prior to implementation. Concessionaire shall not implement any changes unless **written** approval has been received from the Parks Department.

Concessionaire shall provide a wide range of recreational equipment for rent by the public that shall include, but not be limited to:

- a) Non-motorized boats including kayaks, canoes, small sail boats, paddle boats and rowboats.
- b) Electric powered boats.
- c) Bicycles and tricycles.
- d) In-line skates.
- e) Fishing gear.
- f) Baseball and tennis equipment.
- g) Volleyballs and nets, horseshoes and tug of war ropes.

Concessionaire shall also provide for sale or rent: 1) prepackaged food and non-alcoholic beverage items including chips, snacks, cookies, ice cream, and assorted beverages, 2) sundry items and souvenirs including sunscreen, sunglasses, film, disposable cameras, tee shirts and hats, 3) fishing bait and tackle, and 4) accessory items associated with the rental equipment including bike helmets, life jackets, wrist guards, knee pads, tennis balls, baseballs and sipper bottles. No vending machines shall be installed on the Premises without the prior written consent of the Parks Department.

All rates for goods and services must be visibly posted on the Premises at all times during operation in accordance with Article V.

Concessionaire shall equip the concession with all equipment necessary to conduct business such as telephones, storage racks, all rental equipment, an electrically powered chase boat (carbon fueled motors are prohibited on Clear Lake), and all safety equipment including life jackets, bike helmets, and wrist/knee guards.

Concessionaire shall provide telephone and/or cellular phone service at the Premises during all hours of operation for emergency calls and to ensure accessibility by the public for reservations, general questions, schedules, etc.

Concessionaire shall obtain all licenses and permits necessary to operate the concession at their own expense. Concessionaire shall conduct operations in such a manner as to meet all applicable health standards and codes and all nationally recommended standards regarding the use of rental equipment.

Concessionaire shall instruct customers and staff on the operation and safety rules/standards for all rental equipment. Concessionaire shall require all customers to sign a statement indicating that they are familiar with the operation and safety rules/ standards for such equipment along with a liability waiver in favor of County. Concessionaire shall require customers of the concession to use applicable safety equipment such as helmets and life jackets.

The liability waiver text and format must be submitted in writing to, and approved by, the Parks Department prior to Concessionaire's rental of any equipment to its customers.

Concessionaire shall maintain all rental equipment in a safe and clean condition. Concessionaire shall conduct a daily safety check on all rental equipment and related operational and safety equipment prior to operation each day. Any equipment determined to be unsafe or questionable shall be removed from service immediately and replaced by the Concessionaire in a timely manner. The County reserves the right to perform safety inspections through its Parks Department without prior notice.

To every extent possible, the Concessionaire will provide services to patrons in a manner consistent with the provisions of the Americans with Disabilities Act (ADA).

Concessionaire shall coordinate and cooperate with the County regarding special events and activities conducted in the park and shall, upon request from the County, suspend operation of the concession when such events warrant the suspension of the operation of the concession. Concessionaire shall allow County to use the Fenced Storage Area located on the Premises and depicted on Exhibit "A" during such special events and activities.

Concessionaire acknowledges and agrees that the County may independently operate a "Junior Olympic Kayak" program and associated "USCKT Advanced Kayak" classes, or other aquatic programs, at Okeeheelee Park which may require shared use of the Fenced Storage Area located on the Premises and depicted on Exhibit "A", and which shared use shall be allowed by Concessionaire.

County shall provide Concessionaire with 10 days notice of such events that would require County to share use of the Fenced Storage Area with the Concessionaire.

The Concessionaire shall not conduct special events or promotions of any kind within the park unless prior written approval by the Parks Department has been provided.

Concessionaire and all staff shall wear appropriate attire and conduct themselves in a professional manner at all times. Attire should be neat, clean and clearly distinguish Concession staff from park personnel. Attire for Concession staff is subject to approval by the Parks Department.

Concessionaire shall perform a background check on each employee prior to the employee beginning work at the concession. Concessionaire shall forward a copy of each background check to the County's Parks Department for County review **prior** to the employee commencing work at the concession. County reserves the right to disallow employment of any candidate whose background check reveals one or more disqualifying offense. A list of potential disqualifying offenses is available from the Parks Department upon request.

The existing dock and ramp at the concession's lake shoreline are used by the Parks Department. The Concessionaire shall be allowed to use the dock and ramp for the staging of boats. If Concessionaire uses the existing dock and ramp for staging of boats, Concessionaire shall install a floating dock system at the Concessionaire's expense prior to the staging. The type and location of the floating dock system must be approved by the Parks Department prior to installation by the Concessionaire.

Concessionaire shall suspend operation of the concession whenever severe storms or other severe climatic hazards make human health or safety a concern in the opinion of either Concessionaire or the Parks Department. If the closure is for an extended period of time (greater than five (5) concurrent days), Concessionaire may request, in writing, that the monthly payment of Annual Rent be prorated, which request may be granted or denied in the County's sole and absolute discretion.

Concessionaire shall keep, throughout the entire term of the Agreement or any extension thereof, all books of account and records customarily used in this type of operation, and as from time to time may be required by the County, in accordance with Generally Accepted Accounting Principals (GAAP). Such books of accounts and records shall be retained and available for such period of time as provided herein unless otherwise approved by the County. The County, at all times, throughout the term of the Agreement or any extension thereof and for up to three (3) years following expiration, shall have the right to audit and examine during normal working hours, all such records and books or account relating to Concessionaire's operation, provided that Concessionaire shall not be required to retain such books of account and records for more than three (3) years after the end of each year of this Agreement. Concessionaire shall arrange for the books of account and records to be brought to a location convenient to the auditors for the County in order for the County to conduct the audits and inspections.

The County entered into this Agreement with Concessionaire because Concessionaire was selected as the best respondent to the County's Request for Proposals (RFP) to provide concession service at Okeeheelee Park. As such, the Concessionaire agrees to maintain generally, the prices submitted with the Concessionaire's response to the RFP as reflected on Exhibit "C" to the RFP. Before altering its prices, the Concessionaire shall obtain the written approval from the Director of Financial & Support Services of Parks & Recreation Department.

Section 4.03 Waste or Nuisance

Concessionaire shall not commit or suffer to be committed any waste upon the Premises, or commit or permit the maintenance or commission of any nuisance or other act or thing which may disturb the quiet enjoyment of visitors of Okeeheelee Park, or which may result in damage or depreciation of value of Okeeheelee Park or which may affect County's fee interest in the Premises or which results in an unsightly condition. Concessionaire, at its sole cost and expense, will keep the Premises free of rodents, vermin and other pests.

Section 4.04 Governmental Regulations

Concessionaire shall, at Concessionaire's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Concessionaire or Concessionaire's use of the Premises, or the Premises generally. Concessionaire shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Concessionaire's failure to perform its obligations in this Section. This Section shall survive termination of this Agreement.

Section 4.05 Non-Discrimination

Concessionaire shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation or disability with respect to any activity occurring in the Premises, or under this Agreement. Concessionaire warrants that the Premises shall be open to and benefit all visitors to Okeeheelee Park.

Section 4.06 Surrender of Premises

Upon termination or expiration of this Agreement, the Concessionaire, at its sole cost and expense, shall remove all such Alterations and restore the Premises if so directed by County. In no event shall Alterations be removed from the Premises without prior consent in writing from the County. If the Concessionaire fails to remove Alterations identified by County to be removed and fails to restore the Premises upon the expiration of the Term of this Agreement or any renewal hereof to its condition on the Commencement Date of this Agreement, such Alterations shall become the property of the County. In such event, should County so elect, County may restore the Premises to its original condition and Concessionaire shall pay the cost of such restoration, with allowance for ordinary wear and tear arising from Concessionaire's permitted use of the Premises as specified herein, promptly upon demand.

Section 4.07 Hazardous Substance

Concessionaire shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Concessionaire's operations, in the Premises, or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, Concessionaire shall not cause or permit the Disposal of Hazardous Materials upon the Premises or upon adjacent lands and shall operate and occupy the Premises in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Any Disposal of a Hazardous Material, whether by Concessionaire or any third party, shall be reported to County immediately upon Concessionaire becoming aware of such Disposal. Concessionaire shall be solely responsible for the entire cost of remediation and clean up of any Hazardous Materials disposed of or discovered upon the Premises, or emanating therefrom onto adjacent lands, as a result of the use and occupancy of the Premises by Concessionaire, or Concessionaire's agents, licensees, invitees, subcontractors or employees.

Concessionaire hereby agrees to indemnify, defend and hold harmless County from and against any and all claims, suits, judgments, loss, damage, fines or liability which may be incurred by County, including reasonable attorney's fees and costs, which may arise directly, indirectly or proximately as a result of any violation of the Disposal of any Hazardous Materials in violation of this provision. Concessionaire's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. While this provision establishes contractual liability of Concessionaire, it shall not be deemed to alter or diminish any statutory or common law liability of Concessionaire.

Concessionaire acknowledges that County would not have entered into this Agreement without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. This provision shall survive expiration or termination of this Agreement.

Section 4.08 Security of Premises

Concessionaire acknowledges and accepts full responsibility for the security and protection of the Premises and any inventory, equipment, or facilities now existing or hereafter placed on or installed in or upon the Premises, and for the prevention of unauthorized access to the Premises. Concessionaire shall secure all boats and rental equipment during non-operating hours to avoid non-sanctioned use. Concessionaire expressly acknowledges that any security measures deemed necessary or desirable for protection of the Premises shall be the sole responsibility of Concessionaire at no cost to County. Notwithstanding the above, Concessionaire shall notify County of any incident resulting in loss of or damage to Premises or breach of security whether or not such incident is reported to the Palm Beach County Sheriff's Office. Notification of County shall be made via telephone call to Support Services at the Parks Department no later than 24 hours after any such incident. In the event that Concessionaire chooses to install additional security systems and hardware, Concessionaire shall be required to provide County with continuous and unescorted access to the Premises as required by Article XIV. County may implement key, card or code control measures reasonably acceptable to Concessionaire to safeguard the keys, cards or code provided pursuant to this requirement.

Furthermore, although a fingerprint background check is not required under the terms of the background check set forth in Section 4.02, County reserves the right to subject Concessionaire's employees to fingerprint-based background checks to the extent permitted by law and to deny access rights to any Concessionaire employee in accordance with adopted laws,

policies and procedures. Concessionaire shall have no recourse or claim against County for denied access rights.

ARTICLE V SIGNAGE

Except for as set forth in Section 4.02, Concessionaire shall not place or permit to be placed or maintained on any exterior door, wall, window, fence or tree of the Premises any sign, awning or canopy, or advertising matter on the glass or visible through the glass of any window or door, nor will any promotional interior illuminated sign be placed in the window display area of the building without first obtaining County's written approval and consent through the Parks Department. Any such signs not approved shall be immediately removed at the sole cost and expense of Concessionaire, upon written notification thereof by County. Concessionaire further agrees that such signs, awning, canopy, decoration, lettering, advertising matter or other things, as may be approved, shall be maintained in good condition and repair at all times and shall conform to the criteria established from time to time by County for the section of the building within which the Premises is located.

ARTICLE VI REPAIRS AND MAINTENANCE OF PREMISES

Section 6.01 Responsibility of County and Concessionaire

County agrees to repair and maintain in good order and condition, ordinary wear and tear excepted, the roof, the roof drains, exterior walls, the utility lines outside the Premises (except for sewer lines clogged by grease or other Concessionaire-created problems), foundations and structural portions of the Premises and the plumbing systems serving the Premises. There is exempted from the preceding covenant, however: (i) repair, maintenance, or replacement of fixtures; (ii) repair of damage caused by Concessionaire, its employees, agents, contractors, customers, licensees or invitees to the Premises; (iii) maintenance, repair and replacement of any plumbing (including grease trap), electrical, air conditioning/heating system or equipment inside the Premises which, whether connected directly to the building's system or not, were installed by Concessionaire specifically to serve the Premises; (iv) interior repainting and redecoration, whether or not caused by, or growing out of any breakage, leakage or defective condition of the electric wiring, air conditioning or heating pipes and equipment, closets, plumbing, appliances, sprinklers, other equipment, or other facilities serving the Premises; (v) glass cleaning; (vi) janitorial services for the Premises; and (vii) any fixtures inside the Premises or solely serving the Premises. County agrees to be responsible for painting the exterior of the Concession Building depicted on Exhibit "A" attached hereto, unless the Concession Building is damaged or defaced as a result of negligence by or act of the Concessionaire or the Concessionaire's patrons.

The Concessionaire shall protect the County's capital investment in the Premises through exercise of a high standard of maintenance. Concessionaire, at a minimum, shall perform the following ongoing maintenance: a) clean interior and exterior walls, windows, doors, and surfaces; b) clean ceiling, floors, furnishings, lights, light bulbs, tubes, and concession equipment as is customary for a quality concession. Concessionaire shall maintain the area within 100 feet of the Concession in a safe, sanitary condition free of litter and debris. Concessionaire shall provide adequate refuse containers, remove trash daily and dispose of trash at the Concessionaire's expense. Concessionaire shall maintain the section of lake shoreline within 50 feet of the Concessionaire's launching area free of floating and submerged debris. Within twelve (12) hours of the issuance of a hurricane warning from the National Hurricane Center or upon Concessionaire's receipt of written notice from the Parks Department, whichever event shall first occur, Concessionaire shall install upon the Premises the hurricane shutters provided by County. Concessionaire shall be responsible for storing the hurricane shutters on the Premises when not in use.

Concessionaire shall immediately notify County of any possible health, safety and/or security hazards that may exist within any area so corrective actions can be determined and implemented. Neither County nor County's agents or servants shall be liable for any damages caused by, or growing out of any defect in the Premises. In no event shall County be liable for damages or injuries arising from the failure to make repairs, nor shall County be liable for damages arising from defective workmanship or materials in making such repairs. County shall have no obligation to commence repairs until fifteen (15) days after the receipt by County of written notice of the need for repairs. Concessionaire waives the provision of any law, or any right Concessionaire may have under common law, permitting Concessionaire to make repairs at County's expense.

Except as provided in this Section, County shall not be obligated or required to make or conduct any other maintenance or repairs, and all other portions of the Premises shall be kept in good repair and condition by Concessionaire, and at the end of the Term of this Agreement, Concessionaire shall deliver the Premises to County in good repair and condition, reasonable wear and tear arising from Concessionaire's permitted use of the Premises as specified herein excepted.

ARTICLE VII UTILITIES

Concessionaire shall be solely responsible for and shall promptly pay all costs and expenses relating to providing utility services to the Premises, including, without limitation, construction and connection charges, and shall pay directly to the utility company or the provider of such other services all charges and assessments for any utility or other services provided including, without limitation, electric, gas, waste management and phone charges, or any other utility used or consumed on the Premises. Concessionaire shall be responsible for the cost of electricity for all uses connected to the electrical meter at the Concession Building whether or not Concessionaire is the user of the electricity. These uses include, but are not limited to, the storage shed located adjacent to the Premises. Concessionaire's utility service installations must be reviewed and approved by County's Parks Department prior to installation.

ARTICLE VIII INSURANCE

Section 8.01 Insurance Requirements

The Concessionaire shall at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described herein. Failure to maintain the required insurance will be considered default of the Agreement. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Concessionaire are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under the Agreement.

Section 8.02 Comprehensive General Liability Insurance

Commercial General Liability: Concessionaire shall maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall not contain any endorsement excluding Products and Completed Operations, Personal Injury, Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. Concessionaire shall provide this coverage on a primary basis.

Watercraft Liability: Concessionaire shall maintain Watercraft Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall include Palm Beach County as an Additional Insured. This coverage requirement may also be satisfied via endorsement to the Concessionaire's Commercial General Liability policy with a "CG 24 12 Boats" endorsement or similar endorsement.

Business Auto Liability: Concessionaire shall maintain Business Auto Liability at a limit of liability not less than \$500,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event Concessionaire does not own any automobiles, the Business Auto Liability requirement shall be amended allowing Concessionaire to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. Concessionaire shall provide this coverage on a primary basis.

Section 8.03 Workers' Compensation & Employer's Liability

Concessionaire shall maintain and cause any Sub-Concessionaire to maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440. Concessionaire shall provide this coverage on a primary basis.

Section 8.04 Property Insurance

Concessionaire shall agree to maintain Property insurance written on an "all risk", replacement cost basis, excluding the perils of wind and flood, in an amount not less than one hundred percent (100%) of the replacement cost of the Concession Building(s) and contents, including Betterments and Improvements made by, or written on a replacement cost basis. Concessionaire shall agree to endorse County as a Loss Payee, and to provide the coverage on a primary basis. Concessionaire shall agree to be fully responsible for any deductible, uncovered loss, or self-insured retention.

Section 8.05 Additional Insured Clause

Concessionaire shall endorse the County as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a political Subdivision of the State of Florida, its Officers, Employees and Agents." Concessionaire shall provide the Additional Insured endorsements coverage on a primary basis.

Section 8.06 Waiver of Subrogation

Concessionaire hereby waives any and all rights to Subrogation against the County, its Officers, Employees and Agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Concessionaire shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should Concessionaire enter into such an agreement on a pre-loss basis.

Section 8.07 Certificate (s) of Insurance

Immediately following notification of the award of this Agreement, Concessionaire shall deliver to the County Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage.

Section 8.08 Umbrella or Excess Liability

If necessary, Concessionaire may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The County shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-form" basis.

Section 8.09 Right to Review

County, by and through its Risk Management Department in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits and coverages, and further reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

ARTICLE IX INDEMNIFICATION AND DISCLAIMER OF LIABILITY

Section 9.01 Indemnification

Concessionaire shall indemnify, defend and save harmless the County from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Agreement for any personal injury, loss of life, environmental contamination, and/or damage to property sustained in or about the Premises or building by reason, during, or as a result of the use and occupancy of the Premises or building by the Concessionaire, its agents, employees, licensees, invitees, any Sub-Concessionaire and the general public, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim at trial or on appeal. In the event County shall be made a party to any litigation commenced against Concessionaire or by Concessionaire against any third party, then Concessionaire shall protect and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Concessionaire recognizes the broad nature of this indemnification provision and specifically acknowledges that County would not have entered into this Agreement without Concessionaire's agreement to indemnify County and further acknowledges the receipt of good and valuable separate consideration provided by County in support hereof in accordance with the laws of the State of Florida. This provision shall survive expiration or termination of this Agreement.

Section 9.02-3 DISCLAIMER OF LIABILITY

COUNTY HEREBY DISCLAIMS, AND CONCESSIONAIRE HERBY RELEASES COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY CONCESSIONAIRE, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS AGREEMENT OR ANY EXTENSION THEREOF INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF THE CONCESSIONAIRE OR CONCESSIONAIRE'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO CONCESSIONAIRE'S USE OF THE PREMISES PURSUANT TO THIS AGREEMENT

ARTICLE X DESTRUCTION OF PREMISES

Section 10.01 Total or Partial Destruction

In the event the Premises shall be damaged or injured by fire, the elements, unavoidable accident or other casualty, without the fault of Concessionaire, during the Term of this Agreement or any extension thereof, but are not thereby rendered untenable in whole or in part, then the County shall, at its own expense, cause such damage, except to Concessionaire's equipment, trade

fixtures and Concessionaire's Alterations, to be repaired, and the Annual Rent and other charges payable by Concessionaire hereunder shall not be abated. If by reason of such occurrence, the Premises shall be rendered untenable only in part, County shall, at its own expense, cause the damage, except to Concessionaire's equipment, trade fixtures, and Concessionaire's Alterations, to be repaired, and the Annual Rent meanwhile shall be abated proportionately as to the portion of the Premises rendered untenable. If the Premises shall be rendered wholly untenable by reason of such occurrence, the County shall, at its own expense, cause such damage, except to Concessionaire's equipment, trade fixtures, and Concessionaire's Alterations, to be repaired, and the Annual Rent meanwhile shall be abated in whole except that County and Concessionaire shall each have the right, to be exercised by notice in writing delivered to the other party within forty-five (45) days after said occurrence, to elect not to reconstruct the destroyed Premises, and in such event this Agreement and the tenancy hereby created shall cease as of the date of said occurrence and the parties hereto shall be relieved of all further obligations hereunder.

Section 10.02 Damage Near End of Term

If the Premises are destroyed or damaged during the last six (6) months of the Term or Renewal Term of this Agreement and the estimated cost of repair exceeds ten percent (10%) of the Annual Rent then remaining to be paid by Concessionaire for the balance of the Term, County may, at its option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Concessionaire of its election to do so within thirty (30) days after the date of occurrence of such damage and the parties hereto shall be relieved of all further obligations hereunder.

Section 10.03 Reconstruction of Alterations

Concessionaire, at its sole cost and expense, shall be responsible for the repair and restoration of Concessionaire's Alterations and the replacement of its stock in trade, trade fixtures, furniture, furnishings and equipment. Concessionaire shall commence the installation of fixtures, equipment, and merchandise hereof promptly upon delivery to it of possession of the Premises and shall diligently prosecute such installation to completion.

Section 10.04 Insurance Proceeds to County

County's obligation to restore the Premises as required under this Article X is expressly contingent upon County's receipt of, and limited to the extent of, any insurance proceeds received by County relating to the Premises.

ARTICLE XI ASSIGNMENT AND SUBLETTING

Section 11.01 Consent Required

Concessionaire may not assign, mortgage, pledge or encumber this Agreement, in whole or in part, nor sublet or rent all or any portion of the Premises, nor enter into any management licensing or similar agreement without the prior written consent of County in each instance, which may be granted or withheld at County's sole and absolute discretion. The consent by County to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. If this Agreement is assigned, or if the Premises or any part thereof is sublet or occupied by any party other than Concessionaire and Concessionaire is in default under its obligations under this Agreement, County may collect rent from the assignee, Sub-Concessionaire or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, Sub-Concessionaire, or occupancy as Concessionaire, or a release from the further performance by Concessionaire of the covenants on the part of Concessionaire herein contained. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary. Notwithstanding any assignment or sublease, Concessionaire shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions

hereof or any rents or other sums to be paid hereunder. Concessionaire acknowledges and agrees that any and all right and interest of the County in and to the Premises, and all right and interest of the County in this Agreement, may be conveyed, assigned or encumbered at the sole discretion of the County at any time.

Section 11.02 Significant Change of Ownership

If the Concessionaire is a corporation (other than one whose shares are regularly and publicly traded on a recognized stock exchange), partnership, limited liability company, or other business entity, Concessionaire represents that the ownership and power to control such entity belongs to and is vested in the person or persons executing this Agreement and/or as those disclosed to County prior to executing this Agreement. If there shall occur any changes of ownership of and/or control of Concessionaire, whether such change of ownership is by sale, assignment, bequest, inheritance, operation of law or otherwise, without the prior written consent of the County, then County shall have the option to terminate this Agreement upon thirty (30) days notice to Concessionaire.

ARTICLE XII RULES AND REGULATIONS

The rules and regulations appended to this Agreement as Exhibit "B" are hereby made a part of this Agreement, and Concessionaire agrees to comply with and abide by same. Concessionaire's failure to keep and observe said rules and regulations shall constitute a default under the terms and conditions of this Agreement. County reserves the right from time to time to amend and supplement the rules and regulations, and to impose additional rules and regulations. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to the Concessionaire. Concessionaire agrees to comply with all additional and supplemental rules and regulations upon notice of same from County.

ARTICLE XIII DEFAULT

Section 13.01 Default by Concessionaire

The occurrence of any one or more of the events set forth below in (a) to (k), inclusive (any of which is referred to hereinafter as an "Event of Default"), shall constitute an Event of Default by Concessionaire under this Agreement:

- a) Concessionaire fails to open its business in the Premises within thirty (30) days of the Commencement Date.
- b) Concessionaire fails to pay any one or more of said monthly installments of Annual Rent, or any other sums due hereunder as Additional Rent, as and when the same become due, without any prior demand.
- c) Concessionaire ceases to fully conduct its business as specified herein for a period of five (5) consecutive business days as determined by the County.
- d) A petition in bankruptcy under any present or future bankruptcy laws (including but not limited to reorganization proceedings) is filed by or against the Concessionaire and such petition is not dismissed within thirty (30) days from the filing thereof, or in the event Concessionaire is adjudged bankrupt.
- e) An assignment for the benefit of creditors is made by Concessionaire.
- f) An appointment, by any court, of a receiver or other court officer of Concessionaire's property and such receivership is not dismissed within thirty (30) days from such appointment.
- g) Concessionaire's estate is taken by execution, attachment or process of law or subjected to any bankruptcy proceeding.
- h) Concessionaire removes, attempts to remove, or permits to be removed from the Premises, except upon County's approved assignment or subletting or in the usual course of trade, the goods, furniture, effects or other property of the

- Concessionaire brought thereon.
- i) Concessionaire vacates the Premises or abandons the possession thereof before the expiration of the Term of this Agreement and without the written consent of the County, or uses the same for purposes other than the purposes for which the same are hereby licensed, or ceases to use the Premises for the purposes herein contained.
 - j) An execution or other legal process is levied upon the goods, furniture, effects or other property of Concessionaire brought on the Premises, or upon the interest of Concessionaire in this Agreement, and the same is not satisfied or dismissed within ten (10) days from such levy.
 - k) Concessionaire violates any other term, condition or covenant herein on the part of Concessionaire to be performed, and Concessionaire fails to commence and proceed with diligence and dispatch to remedy the same within ten (10) days after written notice thereof, is given by County to Concessionaire.

If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to pursue such remedies as may be available to County under the law, including, without limitation, the right to give Concessionaire notice that County intends to terminate this Agreement upon a specified date not less than three (3) days after the date notice is received by Concessionaire, in which event this Agreement shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Agreement. If, however, the default is cured within the three (3) day period and the County is so notified, this Agreement will continue.

Section 13.02 Default by County

County shall not be in default unless County fails to perform its obligations hereunder within the time specified and if none, within a reasonable time, but in no event later than thirty (30) days after written notice by Concessionaire to County, specifying how County has failed to perform such obligations; provided, however, that if the nature of County's obligations is such that more than thirty (30) days are required for performance, then County shall not be in default if County commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

ARTICLE XIV ACCESS BY COUNTY

County or County's agents shall have the right to enter the Premises, at reasonable times, to examine the same and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable. The Concessionaire must provide the County with access to the Premises within two (2) business days after the County's request for access. The Rent and other charges herein reserved and imposed shall not be abated while said repairs, alterations, improvements, or additions are being made. During the six (6) months prior to the expiration of the Term of this Agreement or any Renewal Term, County may exhibit the Premises to prospective Concessionaires, and place upon the Premises the usual notice "To Let" or similar notice, in a location that does not obscure Concessionaire's sign, which notices Concessionaire shall permit to remain thereon without molestation. If Concessionaire shall not be personally present to open and permit entry into the Premises, at any time, when for any reason entry therein shall be necessary, County or County's agents may enter the same without in any manner affecting the obligations and covenants of this Agreement. Any such entry shall be calculated to minimize interference with or disruption of Concessionaire's operations within the Premises. Nothing herein contained, however, shall be deemed or construed to impose upon the County any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the Premises or the building or any part thereof, except as otherwise herein specifically provided.

ARTICLE XV ANNUAL BUDGETARY FUNDING/CANCELLATION

This Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners. Notwithstanding anything in this Agreement to the contrary, upon expiration of the initial Term of the Agreement, County shall have the right to cancel this Agreement for any reason upon ninety (90) days prior written notice to the Concessionaire, whereupon the parties shall be relieved of all further obligation hereunder.

ARTICLE XVI QUIET ENJOYMENT

Upon payment by the Concessionaire of the Annual Rent, Additional Rent and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Concessionaire's part to be observed and performed, Concessionaire shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by County or any other person or persons lawfully or equitably claiming by, through or under the County, subject, nevertheless, to the terms and conditions of this Agreement.

ARTICLE XVII GUARANTY

The payment of all rents and charges, and the performance of all covenants of Concessionaires, required by this Agreement are guaranteed pursuant to that Guaranty Agreement, a copy of which is attached hereto as Exhibit "C" and made a part hereof.

ARTICLE XVIII MISCELLANEOUS

Section 18.01 Entire Agreement

This Agreement and any Exhibits attached hereto constitute all agreements, conditions and understandings between County and Concessionaire concerning the Premises and supersedes all other negotiations, representations, or agreement, written or oral, relating to this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or Concessionaire unless reduced to writing and signed by them.

Section 18.02 Amendments

This Agreement may be modified and amended only by written instrument executed by the parties hereto.

Section 18.03 Notices

All notices, consents, approvals, and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service (provided in each case a receipt is obtained), or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5 P.M. on a business day and on the next business day if transmitted after 5 P.M. or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-

deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to the County at:

Parks & Recreation Department
Attn: Manager, Support Services
John Prince Park
2700 Sixth Avenue South
Lake Worth, FL 33461
Telephone 561-963-6753
Fax 561-242-6930

(b) with a copy to:

Palm Beach County
Property and Real Estate Management Division
Attn: Director
3200 Belvedere Road, Building 1169
West Palm Beach, FL 33406-1544
Telephone 561-233-0217
Fax 561-233-0210

&

Palm Beach County Attorney's Office
Attn: Real Estate Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
Telephone 561-355-2225
Fax 561-355-4398

(c) If to the Concessionaire at:
Procell Watersports, Inc.
Attn: Carol Procell, President
1551 Woods Bend Road
West Palm Beach, FL 33406
Telephone (561) 642-1124
Fax (561) 642-8477

Any party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

Section 18.04 Disclosure of Beneficial Interests

Concessionaire represents that simultaneously with Concessionaire's execution of this Agreement, Concessionaire has executed and delivered to County, the Disclosure of Beneficial Interests attached hereto as Exhibit "D" (the "Disclosure") disclosing the name and address of every person or entity having a 5% or greater beneficial interest in the ownership of the Concessionaire. Concessionaire warrants that in the event there are any changes to the names and addresses of the persons or entities having a 5% or greater beneficial interest in the ownership of the Concessionaire after the date of execution of the Disclosure and prior to the Effective Date of the Agreement, Concessionaire shall immediately, and in every instance, provide written notification of such change to the County pursuant to Section 18.03 of this Lease.

Section 18.05 Severability

If any term of this Agreement or the application thereof to any person or circumstances

shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 18.06 Broker's Commission

Concessionaire represents and warrants that Concessionaire has not dealt with any real estate salesperson, agent, finder or broker in connection with this Agreement and further agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Concessionaire. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand. This provision shall survive expiration or termination of this Agreement.

Section 18.07 Recording

Concessionaire shall not record this Agreement, or any memorandum or short form thereof, in the public records of Palm Beach County. Any such recording shall constitute a default hereunder and shall result in immediate termination of this Agreement.

Section 18.08 Waiver of Jury Trial

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN CONNECTION WITH THIS AGREEMENT OR CONCESSIONAIRE'S USE AND OCCUPANCY OF THE PREMISES.

Section 18.09 Governing Law and Venue

This Agreement shall be governed by and interpreted according to the laws of the State of Florida. Venue shall be in a State Court of competent jurisdiction in Palm Beach County, Florida.

Section 18.10 Radon

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

Section 18.11 Time of Essence

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

Section 18.12 Waiver, Accord and Satisfaction

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver. The waiver by County of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by County to or of any act by Concessionaire requiring County's consent to or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by Concessionaire. No re-entry hereunder shall bar the recovery of rents or damages for the default of any of the terms, conditions or covenants on the part of Concessionaire herein contained. The receipt of rent after default or condition broken, or delay on the part of County to enforce any right hereunder, shall not be deemed a waiver of any proceeding default by Concessionaire of any term, covenant or condition of this Agreement, or a waiver of the right of the County to terminate this Agreement or re-enter the Premises or to re-let

same.

Section 18.13 Construction

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 18.14 Incorporation by Reference

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

Section 18.15 Survival

Except as otherwise permitted herein, Concessionaire shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Concessionaire hereunder arising prior to the date of such termination.

Section 18.16 Effective Date of Agreement

This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners (the "Effective Date").

Section 18.17 Successors

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and permitted assigns of the said parties; and if there shall be more than one Concessionaire, they shall be bound jointly and severally by the terms, covenants and agreements herein. In the event County sells its interest in the building and the purchaser assumes County's obligations and covenants, County shall thereupon be relieved of all further obligations hereunder.

Section 18.18 Public Entity Crimes

As provided in Section 287.131-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), F.S. Concessionaire also certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder have not been suspended from doing business with Palm Beach County.

Section 18.19 Non-Discrimination

Concessionaire for itself, its successors in interest and assigns, does hereby covenant and agree that no person on the grounds of race, creed, color, national origin, sex, age or handicap shall be excluded from participation in or denied the use of the Premises.

Section 18.20 Independent Contractor Relationship

The Concessionaire is, and shall be, in the performance of all work, services, and activities under this Agreement, an Independent Contractor and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Concessionaire's sole direction, supervision, and control. The Concessionaire shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Concessionaire's relationship, and the relationship of its employees, to the County shall be that of an Independent Contractor and not as employees or agents of the County.

The Concessionaire does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

WITNESS:

CONCESSIONAIRE:

[Signature]
Witness signature

By: Carol Procell

Carol Procell
Print witness name

Title: President

[Signature]
Witness signature

Shannon Hart
Print witness name

WITNESS:

By: _____

Witness signature

Title: _____

Print witness name

Witness signature

Print witness name

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

COUNTY:

PALM BEACH COUNTY,
A political subdivision of the State of Florida

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO TERMS
AND CONDITIONS

By: Reh Anthony Wolf
Department Director

“Premises”

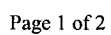


EXHIBIT "A"
TO THE CONCESSIONAIRE SERVICE AGREEMENT
"Premises"

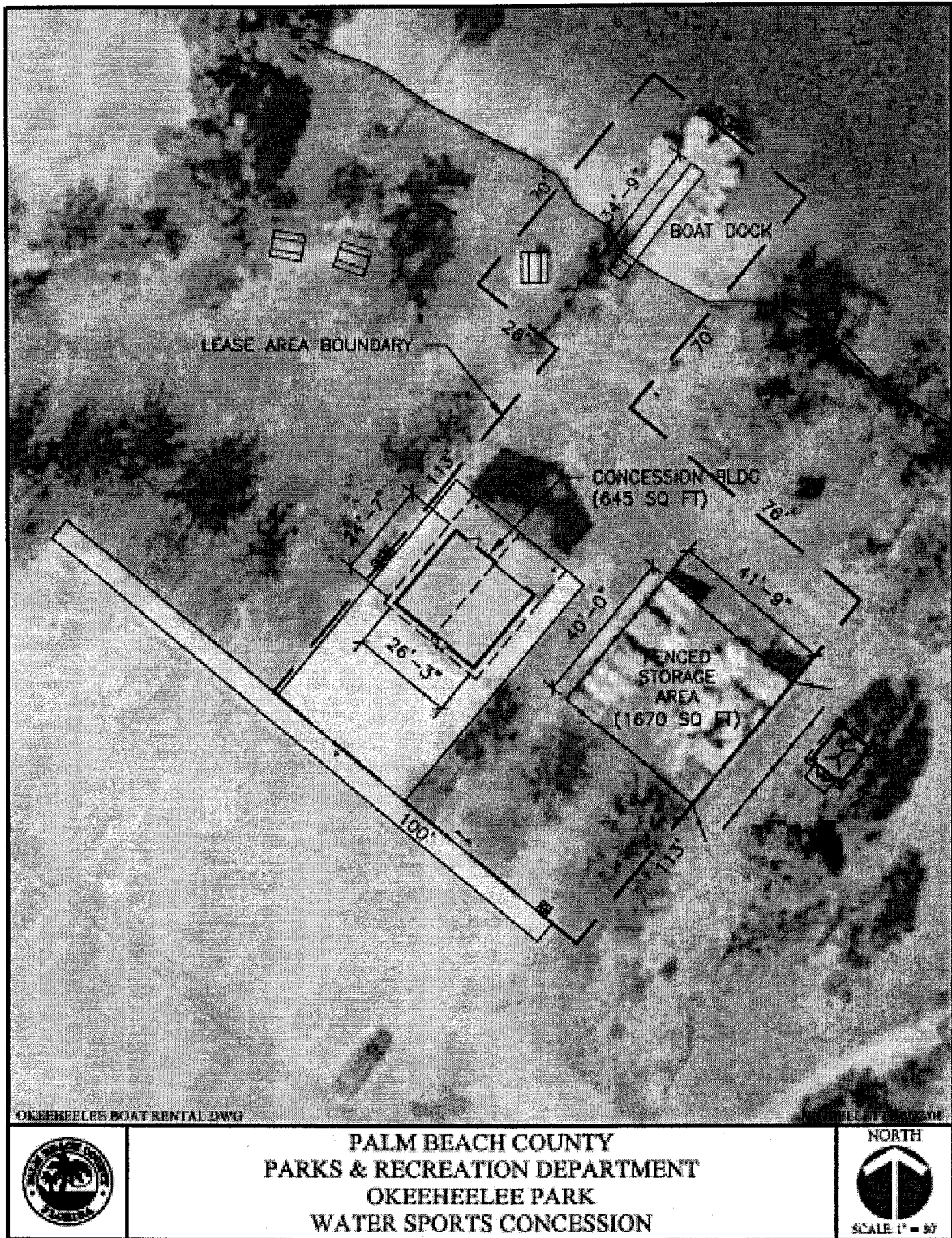


EXHIBIT "B"
TO THE CONCESSIONAIRE SERVICE AGREEMENT

RULES AND REGULATIONS

1. The sidewalks, entrances and passages surrounding the Premises shall not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the Premises demised to Concessionaire or occupant.
2. No awnings or other projections shall be attached to the outside walls or windows of the Premises.
3. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Premises.
4. The water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, acids, or other substances shall be thrown therein. Concessionaire shall not bring or keep, or permit to be brought or kept, any inflammable, combustible or explosive fluid, material, chemical or substance in or about the Premises.
5. No vehicles or animals (except for guide dogs for the blind or service dogs for the physically impaired) of any kind shall be brought into or kept in or about the Premises. No cooking shall be done or permitted in the Premises by a Concessionaire without the approval of the County. Concessionaire shall not cause or permit any unusual or objectionable odors to emanate from the Premises.
6. No space in the Premises shall be used for manufacturing, or for the storage or sale of merchandise, goods or property of any kind, at auction, without the prior consent of the County.
7. Concessionaire shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with visitors of Okecheelee Park, whether by the use of any musical instrument, radio, television set, or other audio device, musical noise, whistling, singing, or in any other way. Nothing shall be thrown out of any doors or windows.
8. No additional locks or bolts of any kind shall be placed upon any of the doors or windows, nor shall any changes be made in locks or the mechanism thereof. Concessionaire must, upon the termination of its tenancy, restore or return to the County all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by Concessionaire.
9. The County shall have the right to prohibit any advertising in or around the Premises by any Concessionaire or occupancy which, in the County's opinion, tends to impair the reputation or desirability of the building, and upon notice from the County, such Concessionaire or occupancy shall refrain from or discontinue such advertising.
10. Concessionaire, before closing and leaving the Premises, shall see that all entrance doors are locked and all windows are closed.
11. The Premises shall not be used, or permitted to be used, for lodging or sleeping, or for any immoral or illegal purpose.
12. There shall not be used in the Premises, either by Concessionaire or occupants or by their agents or contractors, in the delivery, shipping or receipts of merchandise, freight or other matter, any hand trucks or other means of conveyance except those equipped with rubber tires, rubber side guards and such other safeguards as the County may require.

EXHIBIT "C"
TO THE CONCESSIONAIRE SERVICE AGREEMENT
GUARANTY AGREEMENT

THIS IS A GUARANTY AGREEMENT made and executed on _____ by the undersigned (hereinafter called the "Guarantor").

WITNESSETH

WHEREAS, PROCELL WATERSPORTS, INC. (herein called "Concessionaire") and PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida (herein called the "County") have entered into a certain Concessionaire Service Agreement, dated _____ (R200 - _____) (herein called the "Agreement"); and

WHEREAS, in order to induce the County to enter into the Agreement, the undersigned Guarantor has agreed to guarantee the payment of all rents and charges, and the performance of all of Concessionaire's obligation, under the Agreement.

NOW, THEREFORE, in consideration of the execution and delivery of the Agreement by the County, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

1. The undersigned Guarantor does hereby guarantee to the County the due and punctual payment of all Annual Rent, Additional Rent and other sums due and payable under the Agreement, and each and every installment thereof, as well as the full and prompt and complete performance by the Concessionaire of each and every covenant, condition, provision and obligation of the Concessionaire in the Agreement for the full Term of the Agreement and any extension thereof, as permitted by the Agreement, with no less force and effect than if the undersigned were named as the Concessionaire in the Agreement and the undersigned, will forthwith on demand pay all amounts at any time in arrears, and will make good any and all defaults occurring under the Agreement.

2. This Guaranty Agreement shall be an absolute, continuing, irrevocable, unconditional, and unlimited guaranty of payment, and the County shall not be required to take any proceedings against the Concessionaire, or give any notice to the undersigned before the County has the right to demand payment of performance by the undersigned upon default by the Concessionaire. This Guaranty and the liability of the undersigned hereunder shall in no way be impaired or affected by any assignment which may be made of the Agreement, or any subletting thereunder, or by any extension(s) of the payment of any rental or any other sums provided to be paid by Concessionaire, or by any forbearance or delay in enforcing any of the terms, conditions, covenants or provisions of the Agreement or any amendment, modification or revision of the Agreement.

3. No action or proceeding brought or instituted under this Guaranty against the undersigned, and no recovery had in pursuance thereof shall be any bar or defense to any further action or proceeding which may be brought under this Guaranty Agreement by reason of any further default or defaults of Concessionaire.

4. The liability of the Guarantor shall not be deemed to be waived, released, discharged, impaired or affected by reason of the release or discharge of the Concessionaire by any creditors, receivership, bankruptcy (or reorganization proceedings under the Bankruptcy Act) or other proceedings, or the rejection or disaffirmance of the Agreement in any proceedings.

5. There shall be no modification of the provisions of this Guaranty unless the same is in writing and signed by the undersigned and the County.

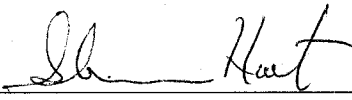
6. All of the terms, agreements and conditions of this Guaranty shall extend to and be binding upon the undersigned, their heirs, personal representatives, administrators, and assigns, and shall inure to the benefit of the County, its successors, and assigns, and to any future owner of the fee of the Premises referred to in the Agreement. Terms not defined herein shall have the same meaning as in the Agreement.

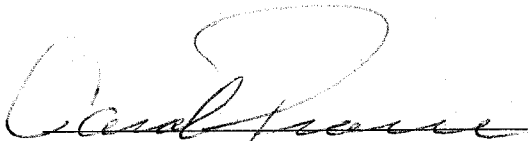
IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of:

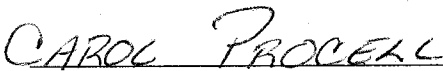
WITNESSES:

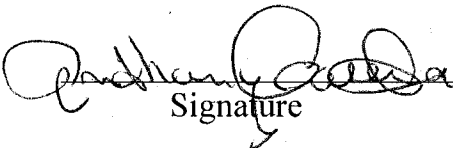
GUARANTOR:


Signature


Signature

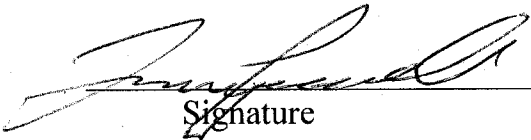

Printed Name


Printed Name


Signature

SPOUSE OF GUARANTOR (if any):


Printed Name


Signature


Printed Name

EXHIBIT "D"
TO THE CONCESSIONAIRE SERVICE AGREEMENT

CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY
DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared, CAROL PROCELL, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the PRESIDENT (position - i.e. president, partner, trustee) of PROCELL WATERSPORTS, INC. (name and type of entity - i.e. ABC Corporation, XYZ Limited Partnership), (the "Concessionaire") which entity intends to enter into an agreement with the County to provide concession services on the real property depicted on the attached Exhibit "A" (the "Premises").

2. Affiant's address is: 1551 Woods BEND RD.
WEST PALM BEACH
FL 33406

3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater beneficial interest in the Concessionaire and the percentage interest of each such person or entity.

4. Affiant acknowledges that this Affidavit will be relied upon by Palm Beach County in its granting of a Concessionaire Service Agreement on the Premises.

5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

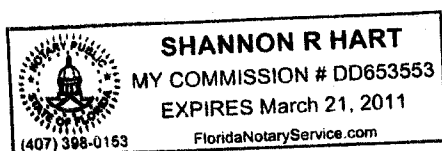
6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

CAROL PROCELL, Affiant
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 24th day of April, 2007, by Carol Procell
☒ who is personally known to me or [] who has produced _____ as identification and who did take an oath.

Shannon R Hart
Notary Public
Shannon R Hart
(Print Notary Name)



NOTARY PUBLIC
State of Florida at Large

My Commission Expires: 3/21/11

PREMISES

OKEEHEELEE BOAT RENTAL.DWG

NORTH
SCALE 1" = 30'

PALM BEACH COUNTY
PARKS & RECREATION DEPARTMENT
OKEEHEELEE PARK
WATER SPORTS CONCESSION

EXHIBIT "B"

SCHEDULE TO BENEFICIAL
INTERESTS IN PREMISES

Name _____ Address _____ Percentage of Interest _____

Concessionaire is only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. Concessionaire must identify individual owners. If, by way of example, Concessionaire is wholly or partially owned by another entity, such as a corporation, Concessionaire must identify such other entity, its address and percentage interest, as well as such information for the individual owners of such other entity.

NAME

ADDRESS

CAROL PROCELL - 1551 Woods Bend W.D.R. 33406 - 45%

PATRICIA CASERTA 2706 West End Rd. W.D.R. 33406 - 40%

FRANK PROCELL 1551 Woods Bend Rd. W.D.R. 33406 - 15%