3H-6

Agenda Item #:

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting	Date: May 6, 2008	[X] Consent [] Ordinance	[] Regular [] Public Hearing
Department:	Parks and Recreation		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Consent to Change of Ownership of Procell Watersports, Inc., the operator of the water sports and recreational concession located in Okeeheelee Park, from Carrol Procell, to Annette Arriaga Roque and Roger Roque, d/b/a Kayak-King Watersports,Inc.

Summary: On June 19, 2007, the Board approved a Concessionaire Service Agreement (CSA) with Procell Watersports, Inc., for operation of the water sports and recreational rental concession at Okeeheelee Park (R2007-0958). The term of this CSA extends until June 30, 2008, with four (4) options to extend, each for a period of one (1) year. Carol Procell, the sole shareholder of Procell Watersports, Inc., has sold the company to Annette Arriaga Roque and her husband Roger Roque. The CSA allows the change of ownership with the County's written consent. All terms and conditions of the CSA will remain unchanged. In the event of a default under the terms of the Agreement, Carol Procell will remain individually liable for performance of all Concessionaire's obligations under the CSA. Both Annette Roque and Roger Roque will execute personal guarantees of the CSA. The Roque's have several years experience helping to run this concession and are well suited to taking on the obligations and responsibilities of this concession. A Disclosure of Beneficial Interests was obtained and indicates that Annette Roque and Roger Roque own 100% of the interests in Procell Watersports, Inc.

(PREM) District 6 (JMB)

Background and Justification: Procell Watersports, Inc., the sole shareholder of which is Carol Procell, has been operating the water sports and recreation rental concession at Okeeheelee Park since June 2002. Carol Procell has sold the business to the Roque's and the Roque's have changed the name of the business to Kayak-King Watersports, Inc. The new owners have both worked several years running this concession with Carol Procell, so they have extensive experience in operating a water sports and recreational rental concession.

Attachments:

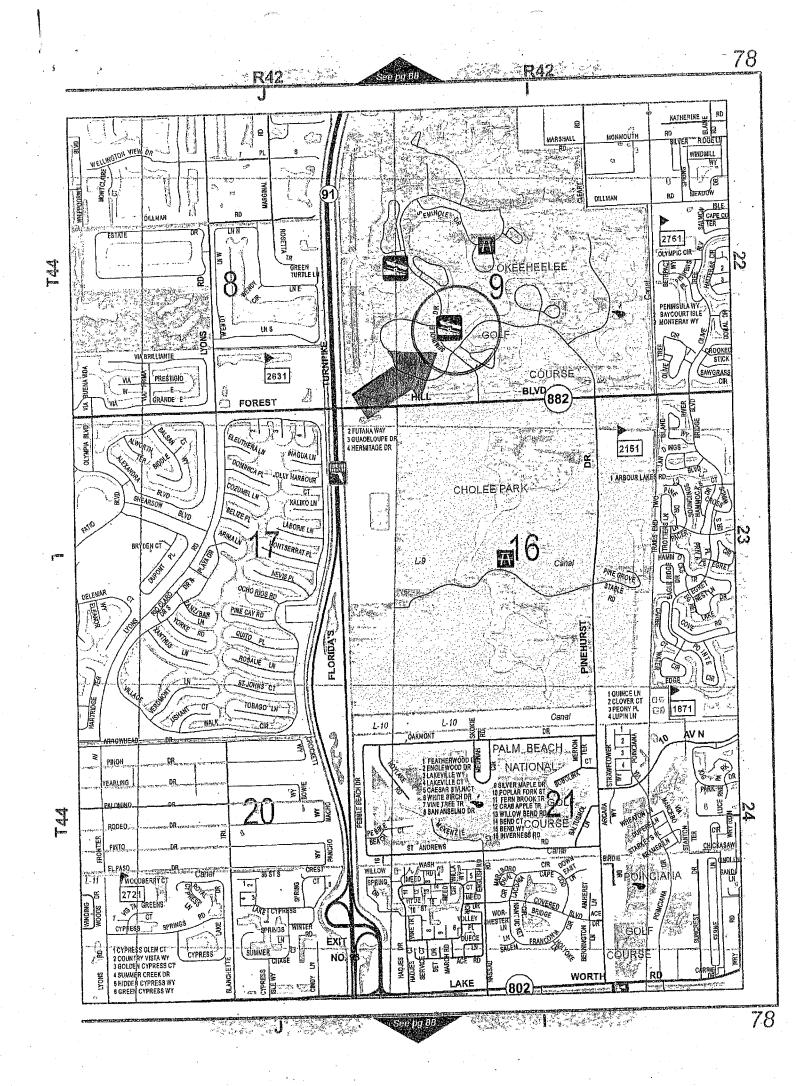
- 1. Location Map
- 2. Consent to Change of Ownership
- 3. Personal guarantees of CSA by new owner
- 4. Disclosure of Beneficial Interests

Recommended By	: East Athrony Wing	4/14/08	
	Department Director	Date	
Approved By:	Muhr	4/23/08	
	County Administrator	Date	

II. FISCAL IMPACT ANALYSIS

A.	Five Year Summary of F	iscal Impact	t :			
Fiscal	Years	2008	2009	2010	2011	2012
Opera Exter Progr	al Expenditures ating Costs nal Revenues ram Income (County) nd Match (County)					
NET	FISCAL IMPACT	0		-0-		
	DITIONAL FTE TIONS (Cumulative)					
		dget: Yes_ Dep ram	ot Un	it Ob	ject	
В.	Recommended Sources o	f Funds/Sur	nmary of Fisca	al Impact:		
C.	Departmental Fiscal Rev		/IEW COMM			
A.	OFMB Fiscal and/or Con	itract Devel	opment Comm	ients:		
	OFMB OFMB	17-08 Vo	Contract De	evelopment ar	nd Control	op
В.	Legal Sufficiency:	,				
	Assistant County Attorn	<u> 22 08</u> ey				
C.	Other Department Review	w:				
	Department Director	***************************************				

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



LOCATION MAP ATTACHMENT #/

CONSENT TO CH	HANGE OF OWNERSHIP
This is a CONSENT TO CHANGE OF OWN PALM BEACH COUNTY , a political subdivisit Governmental Center, 301 North Olive Avenue,	ion of the State of Florida (the "County"), whose address is
WIT	TNESSETH:
0958) (the "Agreement"), incorporated herei	cession Service Agreement, dated June 19, 2007 (R2007 in by reference, with Procell Watersports, Inc. (the sports and recreational rental concession for use by the
WHEREAS, Carol Procell ("Procell" Concessionaire; and	') was the sole shareholder, officer and director of
WHEREAS, Procell sold all of the assets Annette Arriaga-Roque) and Roger Roque (colle	s and stock of the Concessionaire to Annette Arriaga (n/k/a ectively the "Assignee"); and
WHEREAS, Assignee changed the nar Kayak-King Watersports, Inc.; and	me of the corporation from Procell Watersports, Inc., to
	Article XI of the Agreement, Assignment and Subletting tten consent prior to the change in ownership of the
WHEREAS, Assignee has requested that the Concessionaire; and	County consent retroactively to the change of ownership of
	reement and has agreed to operate the Okeeheelee Park of the terms and conditions of the Agreement; and
WHEREAS, County has determined th welfare of the citizens of Palm Beach County.	at the assignment to Assignee will promote the general
the Agreement, County hereby consents to the sal to the Assignee, and acknowledges that the name of This Consent shall not be deemed to release Procertain Guaranty Agreement dated June 19, 20 reference pursuant to Article XI and Article 20 conditioned upon the execution by the Assignee of	of Assignee's assumption of the Procell's obligations under the of the assets and stock of the Concessionaire from Procell of the Concessionaire is now Kayak-King Watersports, Incrocell from her obligations under the Agreement or that 007, executed by Carol Procell, incorporated herein by XVII, respectively of the Agreement. This Consent is of a personal guarantee of the Agreement, which personal to the County attached hereto as Exhibit "A", and made a
IN WITNESS WHEREOF, County has representative, upon the date first above noted.	caused this Consent to be executed by its duly authorized
ATTEST: SHARON R. BOCK CLERK & COMPTROLLER	PALM BEACH COUNTY, a political subdivision of the State of Florida
By: Deputy Clerk	By:Addie L. Greene, Chairperson
APPROVED AS TO FORM AND LEGAL SUFFICIENCY	APPROVED AS TO TERMS AND CONDITIONS

Assistant County Attorney G:\Property Mgmt Section\In Lease\Parks Okee Equip Concession\ASSIGNMENT\Consent to Change of Ownership.003.JB app.031208.doc

ATTACHNENT # 2

Exhibit "A"

GUARANTY AGREEMENT

This Guaranty Agreement is made and executed this 30 day of March Annette Arriaga-Roque ("Arriaga-Roque") and Roger Roque ("Roque"). (Collectively, Arriaga-Roque and Roque shall hereinafter be referred to as the "Guarantors").

WITNESSETH:

WHEREAS, Procell Watersports, Inc. ("Concessionaire") and Palm Beach County, Florida, a political subdivision of the State of Florida ("County") entered into a Concession Service Agreement, dated June 19, 2007 (R2007-0958) (the "Agreement"), incorporated herein by reference; and

WHEREAS, Carol Procell ("Procell") was the sole shareholder, officer and director of Concessionaire; and

WHEREAS, Guarantors have requested that the County approve a Consent to Change of Ownership consenting to the transfer of ownership of Concessionaire from Procell to Guarantors and acknowledging that the name of the Concessionaire is now Kayak-King Watersports, Inc., and

WHEREAS, in order to induce the County to execute the Consent to Change of Ownership, the Guarantors have agreed to guarantee the payment of all rents and charges, and the performance of all of Concessionaire's obligations under the Agreement.

NOW, THEREFORE, in consideration of the execution and delivery of the Consent to Change of Ownership by the County, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantors hereby agree as follows:

- 1. The recitals set forth above are true and correct and incorporated herein by this reference.
- 2. The Guarantors, do hereby guarantee to the County and to any mortgagee holding a mortgage upon the interest of the County in the Premises, 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 Guarantors were named as the Concessionaire in the Agreement, and the Guarantors, will forthwith on demand pay all amounts at any time in arrears, and will make good any and all defaults occurring under the Agreement.
- 3. The obligations and liability under this Guaranty Agreement shall be joint and several. 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 Guarantors before the County has the right to demand payment of performance by the Guarantors upon default by the Concessionaire. This Guaranty Agreement and the liability of the Guarantors shall in nowise 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.
- 4. No action or proceeding brought or instituted under this Guaranty Agreement against the Guarantors, 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. The liability of the Guarantors 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 Lease in any proceedings.

- 5. There shall be no modification of the provisions of this Guaranty Agreement unless the same be in writing and signed by Guarantors and the County.
- 6. All of the terms, agreements and conditions of this Guaranty Agreement shall extend to and be binding upon the Guarantors, their heirs, personal representatives, administrators, successors 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, and to any mortgage on the fee interest of the County in the Premises.
- 7. Any married person who signs this Guaranty Agreement expressly agrees that recourse may be had against his or her separate property for all obligations under this Guaranty Agreement.

IN WITNESS WHEREOF, the Guarantors have hereunto set their hand and seal the day and year first above written

Signed, sealed and delivered in the presence of:

Jennifer C. Usley

Print Witness Name

Witness Signature-as to both

MARIA DALDESUSO
Print Witness Name

GUARANTORS

Annette Arriaga-Roque

By: Oper

04/01/2008 09:40 4347375

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Page: 002-002

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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, Annette Arriaga-Roque, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

- 1. Affiant is the President of Kayak-King Water sports Corporation, (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: <u>1338 Victoria Drive, West Palm Beach, Florida</u> 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.

Omette Orriaga-Rage, Affiant
(Print Affiant Name)

(Signature)

The foregoing instrument was acknowledged before me this 3/87 day of March, 2008, by Ornette Ornage - Roque

[X] who is personally known to me or [·] who has produced

as identification and who did take an oath.

Joyce Poitier

(Print Notary Name)

NOTARY PUBLIC State of Florida at Large

My Commission Expires: Dec. 19,2011



EXHIBIT "A"

PREMISES

A portion of Parcel Control Number 00-42-43-27-05-012-0350

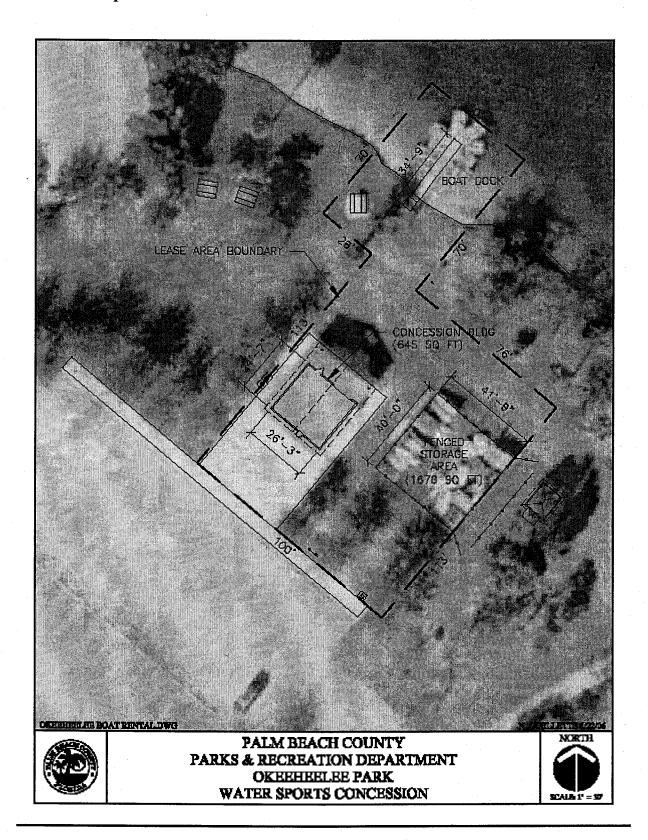


EXHIBIT "B"

SCHEDULE TO BENEFICIAL INTERESTS IN PREMISES

•	Pago Address 338 victoria		
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.			
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