

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 8, 2008

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: notice of termination letter dated August 30, 2007, sent by the Parks and Recreation Department Assistant Director in association with the termination of the Concessionaire Service Agreement (R2006-1261) with The Esther and David Company (Esther & David), effective August 30, 2007.

Summary: The Concessionaire Service Agreement with Esther & David was approved by the Board of County Commissioners on July 11, 2006, for a term of three (3) years, with two (2) extension options, each for a period of one (1) year. On August 16, 2007, the Director and Assistant Director of Parks and Recreation each sent a notice of default letter to Esther & David for failure to meet its contractual obligations. In accordance with the Agreement, a subsequent notice of termination letter, which terminated the Agreement for failure to cure the violations, was sent to Esther & David, and became effective on August 30, 2007. On September 18, 2007, a notice to vacate by October 8, 2007, was sent to Esther & David. Esther & David vacated the concession premises on October 8, 2007. District 4 (AH)

Background and Justification: A Request For Proposals (RFP) was issued in April 2006 for a Concessionaire Service Agreement at the Ocean Inlet Park located at 6990 North Ocean Boulevard, south of the Boynton Inlet in Ocean Ridge. The RFP was awarded to Esther & David by the Board and the Agreement commenced on July 11, 2006, for a term of three (3) years, with two (2) one (1) year extension options. On August 16, 2007, two (2) notice of default letters were sent by the Parks and Recreation Department to Esther & David for its failure to meet its contractual obligations by violating the terms of the Agreement (i) Article II, Section 2.01 Annual Rent, failure to make rental payments when due, (ii) violation of Article IV, Section 4.02 Operation of Business, failure to operate the concession service on weekends, failure to fully conduct its business for five consecutive days and (iii) violation of Section 4.04 Government Regulations, for its failure to maintain an active corporate status with the Department of State, Division of Corporations. A subsequent letter terminating the Agreement was sent to Esther & David for its failure to cure the violations they were notified of in the notice of default letters. On September 18, 2007, a notice to vacate the concession premises by October 8, 2007, was sent to Esther & David. Esther & David vacated the concession premises on October 8, 2007, and their security deposit of \$500 was applied to unpaid rent in accordance with the terms of the Agreement.

Attachments:

1. Notice of Termination
2. Concessionaire Service Agreement R2006-1261
3. Location Map

Recommended by: 
Department Director

6/16/08
Date

Approved by: 
Assistant County Administrator

7/3/08
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____
 Budget Account No.: Fund _____ Department _____ Unit _____
 Object _____ Program N/A

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

C. Departmental Fiscal Review: Chopelakis

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:
 Revenue has not been received and no collections are anticipated.

Atwillite 6-30-08
 OFMB 28 6/26/08 SK 6/19/08

Don J. Jacoby 7/1/08
 Contract Development and Control
7/1/08

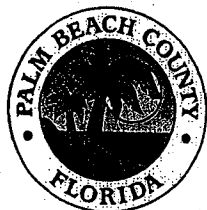
B. Legal Sufficiency:
[Signature] 7/2/08
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 10/95
 ADM FORM 01

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



Department of
Parks and Recreation
2700 6th Avenue South
Lake Worth, FL 33461
(561) 966-6600
Fax: (561) 642-2640
www.pbcgov.com

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**Palm Beach County
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NOTICE OF TERMINATION OF PALM BEACH COUNTY CONCESSIONAIRE SERVICE AGREEMENT

August 30, 2007

via Fax (561) 347-1992

The Esther & David Company
c/o John H. O'Brien, Jr.
1170 Pepperidge Terrace
Boca Raton, FL 33432

Re: R2006-1261 Concessionaire Service Agreement at Ocean Inlet Park

Dear Mr. O'Brien:

This letter is to inform you, as an authorized representative and president of The Esther & David Company (the "Concessionaire"), that effective August 30, 2007, Concessionaire's Service Agreement with Palm Beach County is terminated for non-payment of rent, failure to operate the concession service on weekends, failing to fully conduct its business for five (5) consecutive days and failing to maintain an active corporate status with the Department of State, Division of Corporations. Eviction proceedings will be filed against Concessionaire in the event Concessionaire fails to vacate the concession area immediately.

Concessionaire's security deposit will be applied to unpaid rent due in accordance with the terms of the Concessionaire Service Agreement. In addition, Concessionaire will be held liable for the difference between the deposit amount and any balance owed.

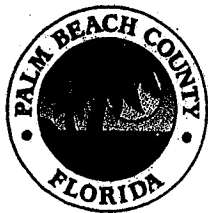
I have attached prior correspondence notifying you of the default. If you have any questions, please contact Joan Meyers at (561) 963-6771.

Sincerely,

Eric Call, Assistant Director
Palm Beach County Parks and Recreation Department

Enc.

cc: Dennis Eshleman, Director - Parks and Recreation Department
Anne Helfant, Assistant County Attorney - County Attorney's Office
Craig Murphy Director, Parks Division - Parks and Recreation Department



NOTICE OF DEFAULT

August 16, 2007

Notification via Facsimile

Department of
Parks and Recreation
2700 6th Avenue South
Lake Worth, FL 33461
(561) 966-6600
Fax: (561) 642-2640
www.pbcgov.com

The Esther & David Company
c/o John H. O'Brien, Jr.
1170 Pepperidge Terrace
Boca Raton, FL. 33432

Re: R2006-1261 Concessionaire Service Agreement at Ocean Inlet
Park

Dear Mr. O'Brien:

This letter is to inform you, as an authorized representative and president of The Esther & David Company (the "Concessionaire"), that Concessionaire is in violation of Article IV, Section 4.02 and Section 4.04 of its Concessionaire Service Agreement ("Agreement") with Palm Beach County dated July 11, 2006 for failing to operate the concession service on weekends, failing to fully conduct its business for five (5) consecutive days, and failing to maintain an active corporate status with the Department of State, Division of Corporations.

On August 2, 2007 it was reported to Joan Meyers, Special Projects Coordinator for Parks and Recreation Department that your concession had been closed more than it's been open for the past month. Joan Meyers called the concession and received a messaging system. You were then contacted by Ms. Meyers to find out if the concession was operating as required in the Agreement. She was told you would check with your manager and call her back. On August 3, 2007 Ms. Meyers drove to the concession to find it closed with a handwritten, undated sign taped to the front of the building stating that for the next two weeks the concession would be open Saturday and Sunday 10:00 a.m. to 5:00 p.m. due to restructuring (see attached photographs). On August 6, 2007, she had not received a return telephone call from you, so she called you again. You told her you understood you are contractually obligated to operate the concession a minimum of six (6) days each week for at least six (6) hours each day, including weekends.

On August 9, 2007, Ms. Meyers received emailed photographs of the closed concession, with the same handwritten, undated sign taped to the front of the building (see attached photographs). Further investigation revealed that your concession was not open on at least the following dates, Saturday 7/28/07, Sunday 8/5/07, Sunday 8/12/07, Monday 8/13/07, Tuesday 8/14/07, Wednesday 8/15/07 and Thursday 8/16/07.

■

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Karen T. Marcus

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**County Administrator
Robert Weisman**


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Additionally, the County just discovered the Concessionaire was administratively dissolved on September 9, 2006 by the Department of State, Division of Corporations for failing to file its annual report. According to Florida Statute 607.1421(3), a corporation administratively dissolved may not carry on any business except that necessary to wind up and liquidate its business and affairs. Based on the above statute, and since there is no valid insurance coverage at the concession, Concessionaire must cease operating immediately, until it provides documentation it has been reinstated as an active corporation with the Department of State, Division of Corporations.

Pursuant to Article XII, Section 12.01 of the Agreement, you are hereby notified that Concessionaire has three (3) days from receipt of this notice to cure the violation of failing to operate the concession service on weekends and failing to fully conduct its business for five (5) consecutive days. You are also hereby notified that Concessionaire has ten (10) days from receipt of this notice to provide documentation its corporate status has been reinstated by the Department of State, Division of Corporations. In the event Concessionaire fails to cure the violations within the three (3) and ten (10) day periods, the County may, without further notice or demand, pursue any available legal right or remedy against Concessionaire for its default under the Agreement, which will include immediate termination of the Agreement.

If you have any questions, please contact Joan Meyers at (561) 963-6771.

Sincerely,



Dennis Eshleman, Director
Palm Beach County Parks and Recreation Department

Encl.

cc: Eric Call, Assistant Director - Parks and Recreation Department
Anne Helfant, Assistant County Attorney - County Attorney's Office
Craig Murphy, Director Parks Division - Parks and Recreation Department
Ross Hering, Director Property & Real Estate Management, Facilities
Development and Operation



NOTICE OF DEFAULT

August 16, 2007

Notification via facsimile

Department of
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2700 6th Avenue South
Lake Worth, FL 33461
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Fax: (561) 642-2640
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The Esther & David Company
c/o John H. O'Brien, Jr.
1170 Pepperidge Terrace
Boca Raton, FL. 33432

Re: R2006-1261 Concessionaire Service Agreement at Ocean Inlet Park

Dear Mr. O'Brien:

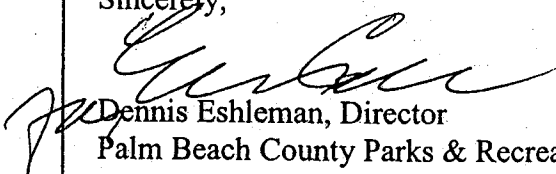
The purpose of this letter is to inform you, as an authorized representative and president of The Esther & David Company ("Concessionaire"), that Concessionaire is in violation of Article II, Section 2.01 of its Concessionaire Service Agreement ("Agreement") with Palm Beach County dated July 11, 2006 for failure to make rental payments when due.

Pursuant to Article XII, Section 12.01, of the Agreement, you are hereby notified that Concessionaire has three (3) days from receipt of this notice to cure the violation. In the event Concessionaire fails to cure the violation within the three (3) day period, the County may, without further notice or demand, pursue any available legal right or remedy against Concessionaire for its default under the Agreement, which will include immediate termination of the Agreement.

As of August 16, 2007, Concessionaire's outstanding balance due is \$923.65, which includes interest of one and a half (1 1/2) percent, pursuant to Article II, Section 2.05 of the Agreement.

It is the County's hope that Concessionaire will cure all outstanding debts to avoid termination of the Agreement. After you have paid all outstanding payments, please contact Joan Meyers at (561) 963-6771 to prevent any further legal action by the County. If you have any questions, please contact Joan Meyers.

Sincerely,


Dennis Eshleman, Director
Palm Beach County Parks & Recreation Department

cc: Eric Call, Assistant Director – Parks & Recreation Department
Anne Helfant, Assistant County Attorney – County Attorney's Office
Craig Murphy, Director Parks Division – Parks & Recreation Dept
Ross Hering, Director Property & Real Estate Management –
Facilities Development & Operation Department

■

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**County Administrator
Robert Weisman**

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R2006-1261

JUL 11 2006

PALM BEACH COUNTY

CONCESSIONAIRE SERVICE AGREEMENT

between

PALM BEACH COUNTY

A POLITICAL SUBDIVISION OF THE

STATE OF FLORIDA

(County)

and

**THE ESTHER & DAVID COMPANY, INC.
A FLORIDA CORPORATION**

(Concessionaire)

R2006-1261

CONCESSIONAIRE SERVICE AGREEMENT

THIS CONCESSIONAIRE SERVICE AGREEMENT, hereinafter referred to as "Agreement" made and entered into JUL 11 2006, by and between PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "County" and THE ESTHER & DAVID COMPANY, a Florida Corporation (EIN: #650541397); hereinafter referred to as "Concessionaire".

WITNESSETH:

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

WHEREAS, County is willing to allow such property to 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 food service provider area depicted on Exhibit "A," attached hereto and made a part hereof (the "Premises"). The Premises is located at Ocean Inlet Park, 6990 North Ocean Boulevard, Ocean Ridge, Florida.

The 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 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 cancelled and of no further force or effect and the County shall not be liable to Concessionaire for any damages of any kind whatsoever.

Section 1.02 Parking

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

Section 1.03 Length of Term and Commencement Date

The term of this Agreement shall commence upon the Effective Date, as hereinafter defined (the "Commencement Date") and shall extend for a period of three (3) years thereafter (the "Term"), unless sooner terminated pursuant to the provisions of this Agreement.

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 two (2) 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 on or before 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 option and all further 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 Act of God or other cause beyond the reasonable control of the County.

Section 1.06 Customer Service

Concessionaire shall place a sign in a visible location in the Premises, at least 8 1/2" x 11", with the following wording in 20 point or larger font:

This business occupies space owned by Palm Beach County. If any customer cannot resolve any customer complaint with the business owner, they may forward the details of their complaint, in writing, to: Parks & Recreation Department, John Prince Park, 2700 6th Avenue South, Lake Worth, FL 33462

Concessionaire shall work diligently to resolve customer complaints regarding food service or other issues.

Section 1.07 Amount of Deposit

Concessionaire, with its execution of this Agreement, has deposited with the County the sum of Five Hundred Dollars (\$500.00) as security for the full, faithful and timely performance of each and every of the terms, covenants and conditions 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 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 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 therefor or any deduction, holdback or setoff whatsoever. The initial amount of Annual Rent is ten thousand five hundred (\$10,500) 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 Finance Department, Revenue Section, P.O. Box 4036, West Palm Beach, Florida 33402.

Section 2.02 Adjustment to Annual Rent

On the first anniversary of the Commencement Date, and upon each anniversary of the Commencement Date thereafter during the Term of this Agreement or any renewal thereof, the Annual Rent shall be adjusted by multiplying the then current Annual Rent by 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 regards 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.

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 County, for County's 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 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 remain the property of the Concessionaire for the Term of this Agreement, or any extension or renewal hereof. Upon expiration of this Agreement, the Concessionaire 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 arising from Concessionaire's permitted use of the Premises as specified herein, promptly upon demand.

Section 3.04 Construction

Concessionaire shall ensure that all improvements and Alterations are constructed to completion in accordance with the approved plans therefor 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 for a food, beverage (prohibiting alcoholic beverages), and sundry items concessionaire

service. 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. Concessionaire shall operate the concession service on the Premises on weekends and holidays and at least six (6) days per week for at least (6) hours per day during daylight hours, weather conditions permitting.

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 Ocean Inlet Park. A component of the selection process was the proposed menu and prices. As such, the Concessionaire agrees to maintain, generally, the type of menu and range of prices submitted with the Concessionaire's response to the RFP as reflected on Exhibit "C" to the RFP attached hereto and made a part hereof. Before altering its menu or prices, the Concessionaire shall obtain the written approval from the Director of Financial & Support Services of Parks & Recreation Department.

Concessionaire shall obtain all licenses and permits necessary to operate the concession at their own expense. The Concessionaire shall conduct operations in such a manner as to meet all applicable health standards and codes and shall maintain the Premises, in a clean and sanitary condition. Concessionaire shall provide adequate refuse containers in the Premises and shall be responsible for removal of trash located within seventy five (75) feet of the Premises. The Concessionaire shall remove all trash daily.

The Concessionaire and staff shall wear attire which, in the sole determination of the County, is appropriate and conduct themselves in a professional manner at all times.

The Concessionaire shall coordinate and cooperate with the County regarding special events and activities conducted in the park and may be asked to keep their concession open or close down operations when such events warrant.

The Concessionaire shall maintain, during the term of this Agreement, all books of accounts, reports, and records, customarily used in this type of operation, and such records as are necessary to document its activities pursuant to this Agreement and all monies collected hereunder.

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 Ocean Inlet Park, or which may result in damage or depreciation of value of Ocean Inlet 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 there under 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.

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 Ocean Inlet Park.

Section 4.06 Surrender of Premises

Upon termination or expiration of this Agreement, Concessionaire, at its sole cost and expense, if so directed by County, shall remove Concessionaire's personal property, removable fixtures, equipment from the Premises. Upon surrender of the Premises, title to any and all remaining improvements, Alterations or property within the Premises shall vest in County.

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 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 immediately notify County of any losses incurred or security incidents concurrent with reporting same to the Town of Ocean Ridge Police Department. 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 XV. 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, 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

Section 5.01 Signs

Concessionaire shall not place or permit to be placed or maintained on any exterior door, wall or window 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. 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 air conditioning, heating, and plumbing systems serving the Premises. There is excepted from the preceding covenant, however: (i) repair, maintenance, or replacement of fixtures; (ii) repair or 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, which 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, cooking hood, or cooking equipment, fire suppression system, whether inside the Premises, or solely serving the Premises.

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 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. County shall provide and install hurricane shutters on the Premises.

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 arising from Concessionaire's permitted use of the Premises as specified herein excepted.

ARTICLE VII UTILITIES

Section 7.01 Utilities

County shall supply and pay all costs relating to the water, sewer, and trash collection to the Premises. In no event shall County be liable for an interruption or failure in the supply of any utility to the Premises. Concessionaire shall be solely responsible for and promptly pay all costs and expenses relating to providing other 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, phone charges, or any other utility used or consumed on the Premises. Concessionaire's other utility service installations must be reviewed and approved by County as provided for in Section 3.02 Concessionaire's Alterations and is subject to Section 3.03 Responsibility for Alterations of the Agreement.

ARTICLE VIII INSURANCE AND INDEMNITY

Section 8.01 Comprehensive General Liability Insurance

Concessionaire shall, during the entire Term hereof, keep in full force and effect

Comprehensive General Liability Insurance with a minimum limit of ONE MILLION DOLLARS (\$1,000,000) per occurrence combined single limit and TWO MILLION DOLLARS (\$2,000,000) General Aggregate for bodily injury, personal injury and property damage liability; fire legal liability with a minimum limit of \$100,000, and medical payments with a minimum limit of \$5,000. The Comprehensive General Liability policy shall include, but not be limited to, providing coverage for Premises/Operations, Product/Completed Operations, Contractual Liability, Personal Injury/Advertising Injury, Independent Contractors, Cross Liability and Broad Form Property Damage Liability coverages.

Section 8.02 Workers' Compensation & Employers Liability

Concessionaire shall maintain, during the entire Term hereof, Workers' Compensation & Employers Liability at the minimum statutory limits applying to any and all employees and shall maintain continuous compliance with Chapter 440 Florida Statutes and applicable federal laws or acts.

Section 8.03 Fire and Allied Lines Insurance

All property, including without limitation, stock, inventory, fixtures and equipment belonging to Concessionaire or any occupant of the Premises or the building shall be there at the risk of Concessionaire or such other person only, and County shall not be liable for damage thereto or theft or misappropriation thereof.

Section 8.04 Increase in Fire and Allied Lines Insurance Premium

Concessionaire agrees that it will not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any, condition, provision, limitation, or Special - Cause of Loss Form of the Fire and Allied Lines insurance policy. Concessionaire agrees to pay any increase in premiums for Fire and Allied Lines coverage insurance that may be charged during the Term of this Agreement on the amount of such insurance which may be carried by County on the Premises or the building resulting from the type of merchandise sold by Concessionaire in the Premises or resulting from Concessionaire's use of the Premises, whether or not County has consented to the same. Concessionaire agrees to promptly make, at Concessionaire's cost, all repairs, alterations, changes and/or improvements to Concessionaire's fixtures and equipment in the Premises required by the company issuing County's fire and allied lines insurance so as to avoid the cancellation of, or the increase in premiums on said insurance.

Section 8.05 Waiver by Concessionaire and Concessionaire's Insurers of Subrogation

In the event of loss or damage to the building, Premises and/or any contents, the Concessionaire shall look solely to any insurance in its favor before making any claim against the County, and the Concessionaire shall obtain and deliver to the County, from the insurer under each policy of such insurance, an agreement whereby such insurer waives subrogation of any claim against the County for loss or damage within the scope of the insurance, and the Concessionaire, for itself and its insurers, waives all such insured claims against the County.

Section 8.06 Insurance Terms and Conditions

The Comprehensive General Liability Insurance policies shall name the County as an Additional Insured with a "CG 2026 - Additional Insured - Managers or Lessors of Premises", or similar endorsement. Such insurance shall be issued by an insurance company licensed to do business by Florida's Department of Insurance with Florida Certificate of Authority in full force and effect. The issuing insurance company shall maintain a minimum A.M. Best financial rating of "A and A-Excellent" and shall be subject to the review and approval of the Risk Management Department of the County.

A Certificate of Insurance evidencing such insurance coverage shall be provided to the County prior to the Commencement Date, such Certificate indicating at least thirty (30) days prior notice of cancellation or adverse material change in coverage. In no event shall the limits of said insurance policies be considered as limiting the liability of Concessionaire under this Agreement. In the event that Concessionaire shall fail to obtain or maintain in full force and effect any insurance coverage required to be obtained by Concessionaire under this Agreement, County may procure same from such insurance carriers as County may deem proper, and Concessionaire shall pay as Additional Rent, upon demand of County, any and all premiums, costs, charges and expenses incurred or expended by County in obtaining such insurance. Notwithstanding the foregoing sentence, Concessionaire shall nevertheless hold County harmless from any loss or damage incurred or suffered by County from Concessionaire's failure to maintain such insurance.

Section 8.07 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 subConcessionaire 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

ARTICLE IX DESTRUCTION OF PREMISES

Section 9.01 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 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.

Section 9.02 Damage Near End of Term

If the Premises are destroyed or damaged during the last eighteen (18) 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.

Section 9.03 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 9.04 Insurance Proceeds to County

County's obligation to restore the Premises as required under this Article IX 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 X ASSIGNMENT AND SUBLETTING

Section 10.01 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, subConcessionaire 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, subConcessionaire, 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 10.02 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 XI RULES AND REGULATIONS

Section 11.01 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 XII DEFAULT

Section 12.01 Default by Concessionaire

The occurrence of any one or more of the events set forth below in (a) to (i), 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 sixty (60) 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.
- 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 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.
- l) Concessionaire fails to pay the Annual Rent or Additional Rent by the first day of the month without any prior demand.

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 12.02 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 XIII ACCESS BY COUNTY

Section 13.01 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 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 XIV ANNUAL BUDGETARY FUNDING/CANCELLATION

Section 14.01 Annual Appropriations

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 XV QUIET ENJOYMENT

Section 15.01 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 XVI GUARANTY

Section 16.01 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 XVII MISCELLANEOUS

Section 17.01 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 17.02 Amendments

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

Section 17.03 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 5PM on a business day and on the next business day if transmitted after 5PM 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: Michael Martz, Director of Financial & Support Services
John Prince Park
2700 6th Avenue South
Lake Worth, FL 33462
Telephone 561-966-6650
Fax 561-242-6930

(b) with a copies 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
Attn: County 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:
The Esther & David Company
c/o John H. O'Brien Jr.
1170 Pepperidge Terrace
Boca Raton, Florida 33432
Telephone 561-289-6372
Fax 561-347-1992

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 17.04 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 17.05 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.

Section 17.06 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 17.07 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 17.08 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 17.09 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 17.10 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 17.11 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 17.12 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 17.13 Incorporation by Reference

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

Section 17.14 Survival

Notwithstanding any early termination of this Agreement, 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 17.15 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.

Section 17.16 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 17.17 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 certified 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.

(Remainder of Page Intentionally Left Blank)

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

WITNESS:

CONCESSIONAIRE:

By: [Signature]
(Witness signature)

John H. O'Brien Jr.

Print/Title: John H. O'Brien Jr., President

Serena Cummings
(Print witness name)

[Signature]
(Witness signature)

Annette Pate
(Print witness name)

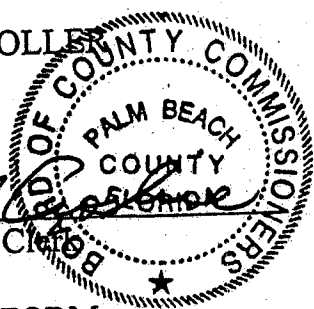
ATTEST:

COUNTY: **R 2006-1261**
JUL 11 2006

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: [Signature]
Deputy Clerk



By: [Signature]
for Karen T. Marcus
for Tony Masilotti, Chairman

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

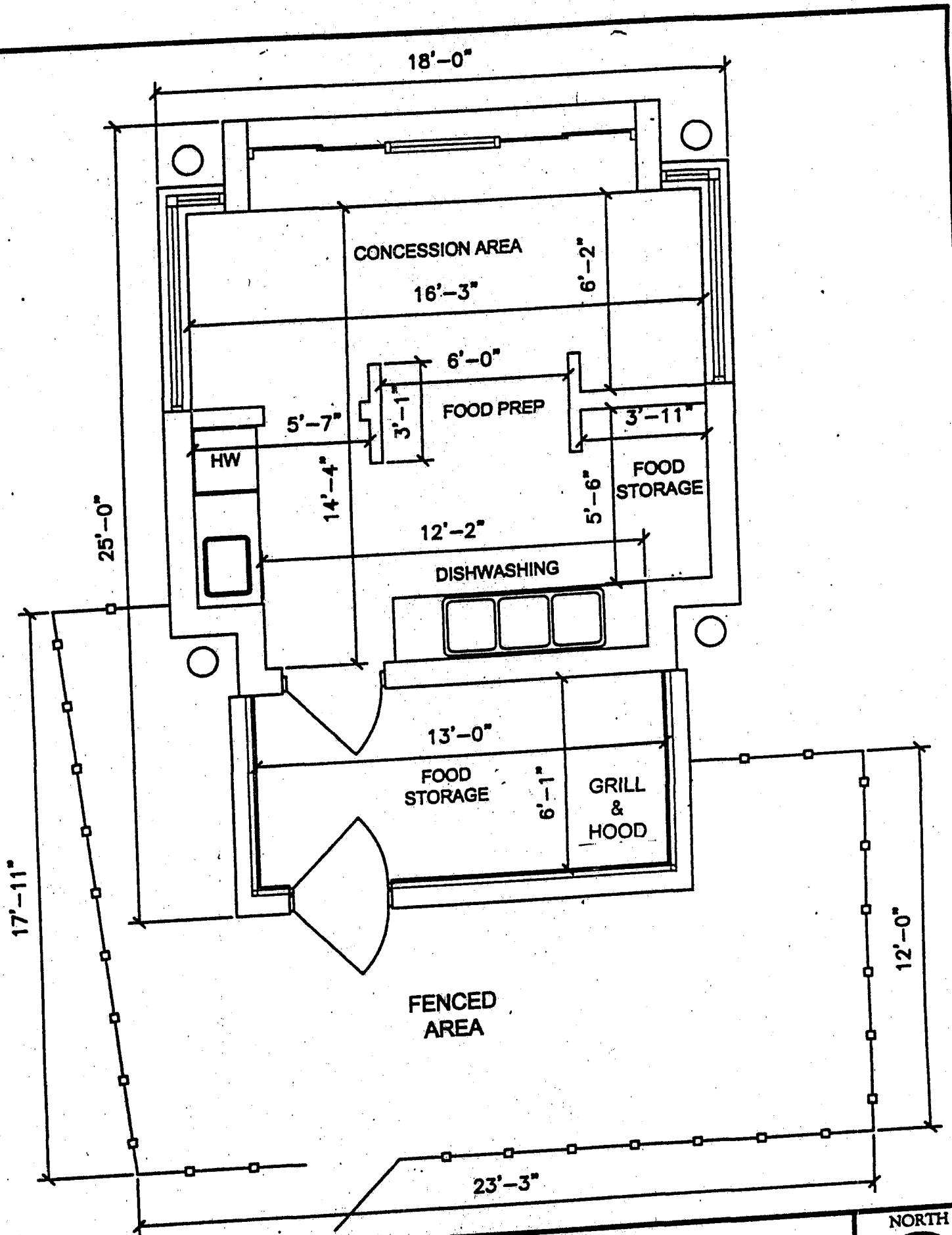
APPROVED AS TO TERMS
AND CONDITIONS

By: [Signature]
Assistant County Attorney

By: [Signature]
Department Director

EXHIBIT "A"
TO THE CONCESSIONAIRE SERVICE AGREEMENT

"PREMISES"



**PALM BEACH COUNTY
 PARKS & RECREATION DEPARTMENT
 OCEAN INLET PARK
 CONCESSION BUILDING**

NORTH



SCALE: 1/4" = 1'



EXHIBIT B
TO THE CONCESSIONAIRE SERVICE AGREEMENT
RULES AND REGULATIONS

1. The sidewalks, entrances, 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 bicycles, 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 (concession/restaurant use excepted) 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 Ocean Inlet 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 CONCESSION SERVICE AGREEMENT
GUARANTY AGREEMENT

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

WITNESSETH

WHEREAS, THE ESTHER & DAVID COMPANY, a Florida Corporation (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 _____ (R2006-_____) (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:

K. Schlotthauer
Signature

J. O'Brien Jr.
Signature

Kristel Schlotthauer
Printed Name

John H. O'Brien Jr., a single man
Printed Name

[Signature]
Signature

REED LEE MOORE, Sr.
Printed Name

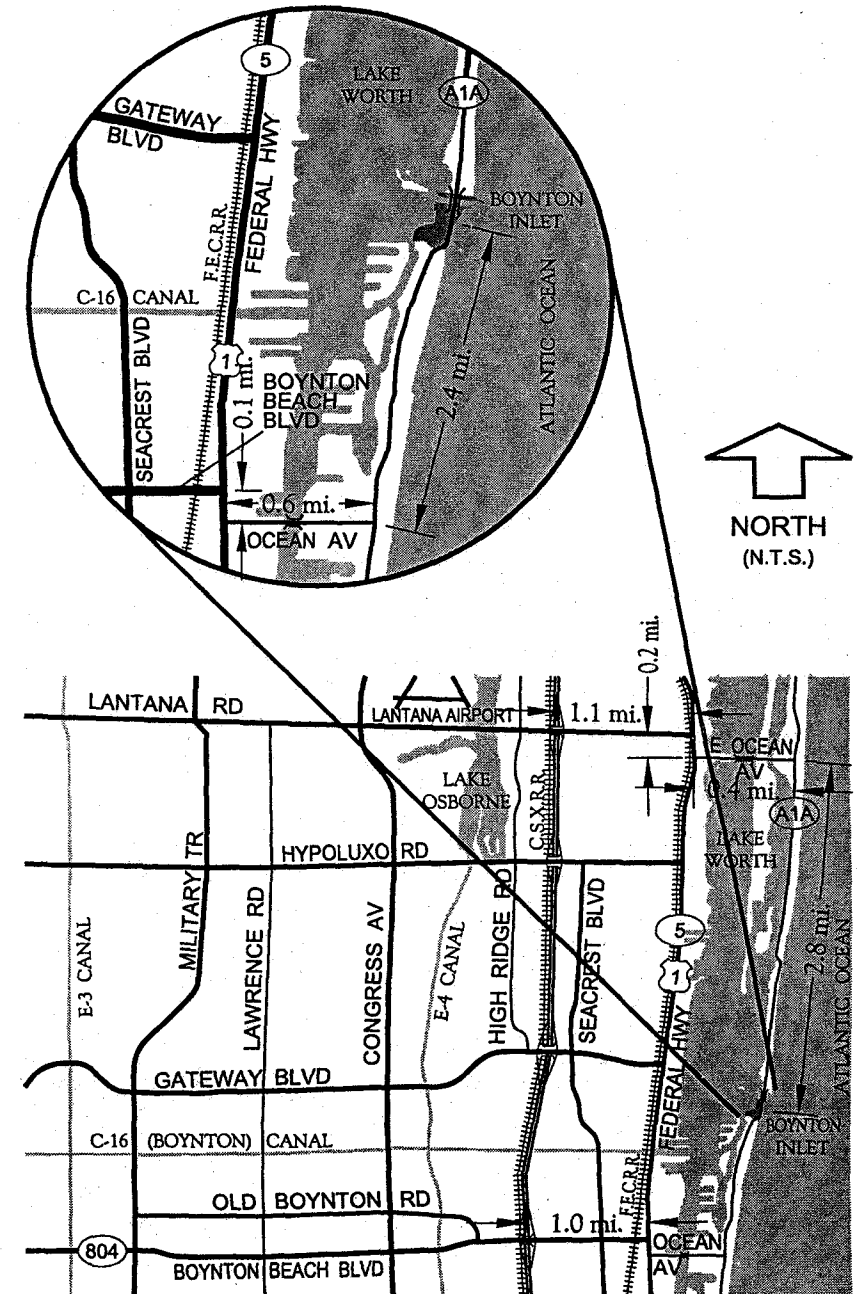
NAME: OCEAN INLET PARK
ENTRANCE: 6990 N. Ocean Boulevard, Ocean Ridge, FL 33435
CLASS: Beach
ACREAGE: 11.39 Acres
HOURS: Sunrise - sunset (inlet fishing 24 hours)

FACILITIES

- ▶ Intracoastal Waterway frontage (1100 feet)
- ▶ Ocean Inlet Grill and Snack Bar
- ▶ guarded beach frontage (600 feet)
(saltwater fishing and surfing not permitted in guarded swimming areas)
- ▶ jetty 1
- ▶ marina 1
- ▶ rental boat slips 20
- ▶ playground, including
play structure for ages 5-12 years
- ▶ ocean overlook 1
- ▶ seating pavilion 1
- ▶ family picnic shelters 5
- ▶ single table picnic area with grills
- ▶ restroom facilities
- ▶ outdoor showers
- ▶ parking spaces (6 accessible spaces) 262

INFORMATION

- beach conditions information (561) 276-3990
- boat slip rental (561) 966-6646
- grill and snack bar (561) 613-1999
- general park information (561) 966-6600



OCEAN INLET PARK