

3H-9

Agenda Item #:

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: February 3, 2009 [X] Consent [ ] Regular  
[ ] Ordinance [ ] Public Hearing  
Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

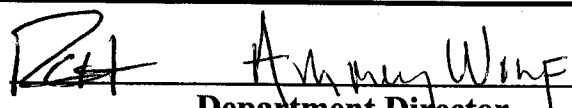
**Motion and Title:** Staff recommends motion to approve: a Concessionaire Service Agreement with Intuitive Investments, Inc. d/b/a Taste of Chicago for operation of a food concession building located in Ocean Inlet Park located at 6990 North Ocean Boulevard in Ocean Ridge.

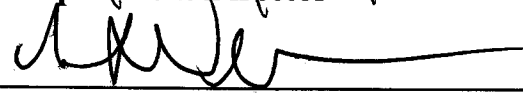
**Summary:** The Parks and Recreation Department desires a food concession at the Ocean Inlet Park, just south of the Boynton Inlet. In October 2008, PREM advertised a Request for Proposals to operate a food concession service to sell, food items, non-alcoholic beverages, and sundry items to the patrons at Ocean Inlet Park. Intuitive Investments, Inc. d/b/a Taste of Chicago (Taste of Chicago) submitted the only proposal. A Selection Committee consisting of two (2) representatives from the Parks and Recreation Department and one (1) from PREM reviewed the proposal, deemed it responsive and voted unanimously to support Taste of Chicago's proposal. The initial term of the Agreement is for three (3) years commencing either the first day Concessionaire opens for business or sixty (60) days after the Effective Date of this Agreement, whichever occurs first. The Agreement includes two (2) options to renew, each for one (1) year. The annual rent is \$10,200. to be paid in equal monthly installments of \$850, with annual four percent (4%) increases. Taste of Chicago has posted the required \$1,000 security deposit. The owner/operators of Taste of Chicago, Mindy Lee and her husband, Ray Ilyavi, have executed personal guarantees of the Concessionaire Agreement. (PREM) District 4 ( JMB)

**Background and Justification:** The RFP was advertised in the Palm Beach Post on October 26, 2008 and November 2, 2008. This RFP was also listed on PREM's webpage and the County's Channel 20 television station. Taste of Chicago has provided the attached Disclosure of Beneficial Interests. The Disclosure identifies Mindy Lee as holding a 100% beneficial interest in Intuitive Investments, Inc. d/b/a Taste of Chicago. In July 2006, the Parks and Recreation Department entered into a Concessionaire Service Agreement with Ester and David Company (R2006-1261). However, due to the Ester and David Company's non-performance, Parks and Recreation terminated the Agreement effective August 30, 2008 (R2008-1227).

**Attachments:**

- 1. Location Map
- 2. Budget Availability Statement
- 3. Concessionaire Service Agreement
- 4. Disclosure of Beneficial Interests

Recommended By:  Department Director Date: 1/14/09

Approved By:  County Administrator Date: 1/28/09

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(5,100.00)	(10,404.00)	(10,820.16)	(5,516.16)	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<b>(5,100.00)</b>	<b>(10,404.00)</b>	<b>(10,820.16)</b>	<b>(5,516.16)</b>	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes   X   No \_\_\_\_\_

Budget Account No: Fund   0001   Dept   580   Unit   5403   RSRC   4729-03  

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

Revenue is calculated beginning April 2, 2009, and reflects four percent (4%) annual increases.

**C. Departmental Fiscal Review: \_\_\_\_\_**

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development Comments:**

Jan. Amul 1-23-09  
 OFMB 88  
 1/22/09  
 (WD)  
 1/21  
 1/16/09  
 (1/22/09)  
 S  
 1/21/09.

Ann J. Jacoby 1/26/09  
 Contract Development and Control  
 E. Jones 1/26/09

**B. Legal Sufficiency:**

James Brubaker 1/28/09  
 Assistant County Attorney

This Contract complies with our contract review requirements.

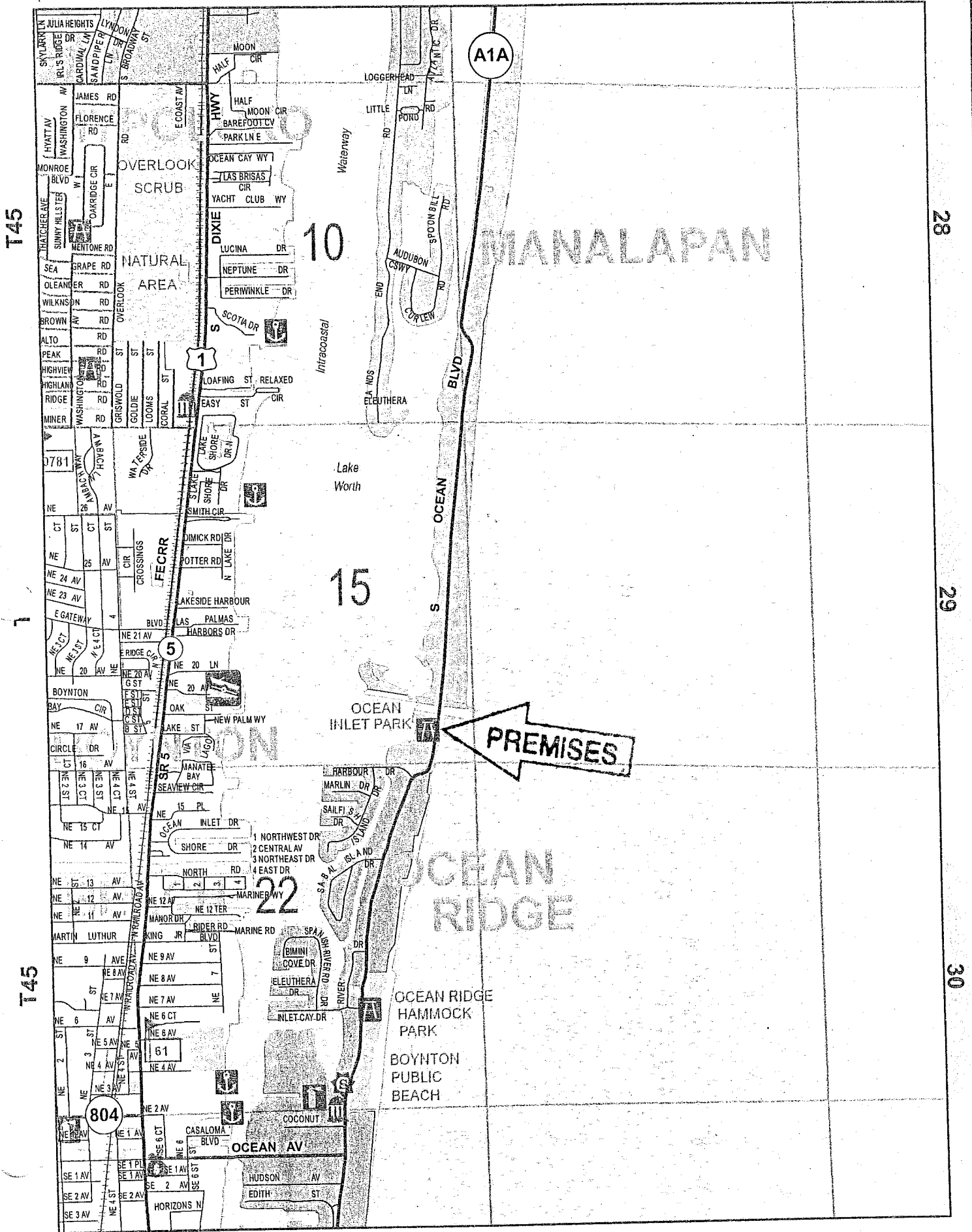
At the time of OC's review, the certificate of Insurance was NOT available.

**C. Other Department Review:**

Ramin Eshman  
 Department Director

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

See pg 107



ATTACHMENT #1

LOCATION MAP

II

### BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 1/13/2009 REQUESTED BY: Ted A. Simmons

PHONE: (561) 233-0203  
FAX: (561) 233-0210

PROJECT TITLE: Ocean Inlet Food Service Concession RFP2008-103-TAS

PROJECT NO.: 2008-5.021

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	<u>(5,100.00)</u>	<u>(10,404.00)</u>	<u>(10,820.16)</u>	<u>(5,516.16)</u>	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u><b>(5,100.00)</b></u>	<u><b>(10,404.00)</b></u>	<u><b>(10,820.16)</b></u>	<u><b>(5,516.16)</b></u>	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

*\*\* By signing this BAS your department agrees to these staff costs and your account will be charged upon receipt of this BAS by FD&O. Unless there is a change in the scope of work, no additional staff charges will be billed.*

**BUDGET ACCOUNT NUMBER**

FUND: 0001 DEPT: 580 UNIT: 5403 RSRC: 4729-03

IS ITEM INCLUDED IN CURRENT BUDGET: YES  X  NO \_\_\_\_\_

**IDENTIFY FUNDING SOURCE FOR EACH ACCOUNT: (check all that apply)**

- Ad Valorem (source/type: \_\_\_\_\_)
- Non-Ad Valorem (source/type: \_\_\_\_\_)
- Grant (source/type: \_\_\_\_\_)
- Park Improvement Fund (source/type: \_\_\_\_\_)
- General Fund
- Operating Budget
- Federal/Davis Bacon

Department: Parks and Recreation

BAS APPROVED BY: *[Signature]* DATE: 1/13/2009

ENCUMBRANCE NUMBER: \_\_\_\_\_

# ATTACHMENT #2

**EXHIBIT "D" TO THE RFP**

**PALM BEACH COUNTY**

**CONCESSIONAIRE SERVICE AGREEMENT**

**between**

**PALM BEACH COUNTY**

**A POLITICAL SUBDIVISION OF THE**

**STATE OF FLORIDA**

**(County)**

**and**

**Intuitive Investments Inc. d/b/a**  
**Taste of Chicago**

**(Concessionaire)**

**ATTACHMENT # 3**

## CONCESSIONAIRE SERVICE AGREEMENT

THIS CONCESSIONAIRE SERVICE AGREEMENT, hereinafter referred to as "Agreement" is made and entered into \_\_\_\_\_, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County" and Intuitive Investments Inc. d/b/a Taste of Chicago, a Florida Corporation, (EIN: # 65-0202536); hereinafter referred to as "Concessionaire".

### WITNESSETH:

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

WHEREAS, Concessionaire has demonstrated experience as a food service provider; and

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

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

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

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

### ARTICLE I BASIC AGREEMENT PROVISIONS

#### Section 1.01 Licensed Area

In consideration of the rents, covenants and agreements hereafter reserved and contained on the part of the Concessionaire to be observed and performed, the County provides to the Concessionaire, and Concessionaire accepts from County, the concession area depicted on Exhibit "A" attached hereto and made a part hereof (the "Licensed Area"). The Licensed Area is located within Ocean Inlet Park, 6990 North Ocean Boulevard, Ocean Ridge, Florida (the "Park").

Concessionaire shall operate its concession within the boundaries of the Licensed Area. County reserves the right to make such amendments, changes and revisions to the configuration of the Licensed Area as County, in its sole discretion, may deem proper. Construction may at times impact the operation of this concession. The County, at its option, reserves the right to relocate Concessionaire into another area of similar square footage. In the event that Concessionaire does not agree to the relocation as provided herein, this Agreement shall be automatically terminated and the parties hereto shall be relieved of all further obligations hereunder; County shall not be liable to Concessionaire for any damages of any kind whatsoever.

#### Section 1.02 Parking

Vehicle parking at the Park is designated exclusively for visitors participating in recreational activities based at/from the Park, as well as Park and Concession staff, on a first-come, first-served basis. Concessionaire shall utilize existing parking areas located at the Park for deliveries and parking.

### **Section 1.03 Length of Term and Commencement Date**

The term of this Agreement shall commence upon the first day Concessionaire opens its concession for business on the Licensed Area (the "Commencement Date") but no later than sixty (60) days after the Effective Date, as hereinafter defined, and shall extend for a period of three (3) years thereafter (the "Term") unless sooner terminated pursuant to the provisions of this Agreement.

The exact Commencement Date shall be established by written notice from Concessionaire to the County at the addresses set forth in Section 18.03(A), which notice shall be provided at least 3 business days in advance of the anticipated Commencement Date. If the Commencement Date has not occurred within sixty (60) days after the Effective Date as defined in Section 18.16, the same shall be considered an Event of Default by Concessionaire under Section 13.01, and County shall have all remedies available to it under 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 no sooner than one hundred fifty (150) days but no later than ninety (90) days prior to the expiration of the initial Term of this Agreement or any renewal thereof. Failure of Concessionaire to duly and timely exercise its option to renew the Term of this Agreement shall be deemed a waiver of Concessionaire's right to said renewal option and all further renewal options.

### **Section 1.05 Excuse of County's Performance**

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

### **Section 1.06 Customer Service**

Concessionaire shall place a sign provided by the Department in a location on the Licensed Area designated by County, stating:

This business occupies space owned by County. If any customer cannot resolve any customer complaint with the business owner, they may forward the details of their complaint, in writing, to: Palm Beach County Parks & Recreation Department, Attention: Director, Financial and Support Services, John Prince Park, 2700 Sixth Avenue South, Lake Worth, FL 33461.

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

### **Section 1.07 Amount of Security Deposit**

Concessionaire, simultaneously with its execution of this Agreement, has deposited with County the sum of One Thousand and no/100 Dollars (\$1,000.00) as security for the full, faithful and timely performance of each and every term, covenant and condition to be performed by Concessionaire under this Agreement (the "Security Deposit"). The Security Deposit may be commingled with other funds of County, and County shall have no liability for the accrual or payment of any interest thereon. In the event of the failure of Concessionaire to keep and perform

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

## **ARTICLE II RENT**

### **Section 2.01 Annual Rent**

Concessionaire shall pay to the County Annual Rent during the term of this Agreement in equal monthly installments, together with all applicable sales taxes thereon, on the first day of each month, in advance, without any prior demand therefore or any deduction, holdback or setoff whatsoever, commencing on the Commencement Date. The initial amount of Annual Rent is \$ 10,200.<sup>00</sup>/<sub>xx</sub>. Any Annual Rent payment hereunder for any fractional month shall be calculated and paid on a per diem basis using a 30-day month. Annual Rent and Additional Rent shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to the Palm Beach County Parks & Recreation Department, Revenue Section, 2700 Sixth Avenue South, Lake Worth, FL 33461.

### **Section 2.02 Adjustment to Annual Rent**

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

### **Section 2.03 Additional Rent**

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

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

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

### **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 of one and one half percent (1.5 %)



per month (or the highest rated permitted by law if lower) 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 Licensed Area 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 LICENSED AREA, ALTERATIONS**

### **Section 3.01 Acceptance of Licensed Area by Concessionaire**

Concessionaire certifies that Concessionaire has inspected the Licensed Area 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 Licensed Area including, without limitation, any relating to the physical condition of the Licensed Area or any improvements or equipment located thereon, or the suitability of the Licensed Area or any improvements for Concessionaire's intended use of the Licensed Area. No repair work, alterations, or remodeling of the Licensed Area 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 Licensed Area for the lawful use of the Licensed Area by Concessionaire as specified in Section 4.01 of this Agreement, unless the work is the responsibility of the County as specifically provided for in Section 6.02 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 Licensed Area suitable for Concessionaire's intended use. Concessionaire shall not install any permanent improvements in the Licensed Area without Department's consent. Prior to commencing any work within the Licensed Area, Concessionaire shall furnish to the Department for written approval, which approval may be granted or withheld in the Department's sole and absolute discretion, plans and specifications showing equipment, improvements, or utilities to be installed by Concessionaire within the Licensed Area ("Alterations"). All fixtures installed by Concessionaire shall be new or completely reconditioned. All work performed to the Licensed Area, 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. Department's approval of the plans and specifications submitted by Concessionaire in conjunction with Concessionaire's Alterations may, at

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

### **Section 3.03 Responsibility for Alterations**

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

### **Section 3.04 Construction**

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

### **Section 3.05 No Liens**

Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate shall not be subject to such liability. Concessionaire shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Concessionaire of this provision of this Agreement. If so requested by County, Concessionaire shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida, stating that County's interest shall not be subject to liens for improvements made by Concessionaire. In the event that a construction lien is filed against the Concessionaire's Licensed Area 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 LICENSED AREA BY CONCESSIONAIRE**

#### **Section 4.01 Use**

Concessionaire shall use and occupy the Licensed Area solely and exclusively for concessionaire services to provide food, beverage (prohibiting alcoholic beverages), and sundry items (the "Concession"). Concessionaire shall not use, permit, or suffer the use of the Licensed Area 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. Concessionaire shall comply with the Rules and Regulations set forth in Exhibit "B" as well as Palm Beach

County Parks and Recreation Ordinance (Ordinance No. 2004-022) as same may be amended from time to time.

Concessionaire shall not prohibit or hinder County personnel or any law enforcement officers from performing their official duties. Concessionaire shall ensure that all persons acting on behalf of it obey instructions from County personnel, including Park Rangers. Concessionaire shall not commit or permit any reckless or dangerous conduct on the Licensed Area at any time. This includes, but is not limited to, violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance.

#### **Section 4.02 Operation of Business**

a) Concessionaire shall operate its business upon the entire Licensed Area during the Term of this Agreement with due diligence and efficiency and in a manner prudent and in accord with generally accepted business practices within the locale for Concessionaire's business. Concessionaire shall open its concession for business on the Licensed Area within sixty (60) days after the Commencement Date.

b) Concessionaire shall operate the concession services on the Licensed Area on every weekend and holiday and at least six (6) days per week for at least (6) hours per day during daylight hours, weather conditions permitting. Concessionaire shall submit an operations schedule to the Department for approval prior to beginning operations. Concessionaire shall submit any proposed changes to the operations schedule to the Department, in writing, at least two (2) business days in advance, for approval prior to implementation. Concessionaire shall not implement any changes unless **written** approval has been received from the Department.

c) All menu prices must be posted in a conspicuous place on the Licensed Area at all times during operation in accordance with Article V. Concessionaire shall submit written requests for fee increases to the Department thirty (30) days prior to the proposed implementation, which requests Department may approve or deny at its sole discretion. Department will make its best efforts to respond in writing to the request within seven (7) days after receipt of the request.

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

e) Concessionaire shall obtain and maintain all licenses and permits necessary to operate the concession at its own expense. Concessionaire shall submit proof of same to County prior to commencing operations. Concessionaire shall conduct operations in such a manner as to meet all applicable health standards and codes.

f) Concessionaire shall conduct its operations and activities in a safe manner and comply with all safety and health regulations and standards imposed by Governmental Regulations as defined in Section 4.04 below. Concessionaire agrees that neither Concessionaire, nor employees or any person working for or on behalf of Concessionaire, shall require any personnel engaged in the performance of the Concessionaire's operations to work in surroundings or under working conditions which are unsanitary, unsafe, hazardous or dangerous to his or her health or safety as determined by Governmental Regulations.

g) Concessionaire shall employ a sufficient number of qualified staff to properly operate the concession.

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

i) Concessionaire shall coordinate and cooperate with the County regarding special events and activities conducted in the Park and shall, upon request from the County, suspend operation of the concession when such events warrant the suspension of the operation of the concession. County will coordinate the logistics of such events or activities with Concessionaire in advance of such events or activities. County shall make its best effort to notify Concessionaire at least fourteen (14) days prior to such events or activities.

j) Concessionaire shall not conduct special events or promotions of any kind within the Park unless prior written approval by the Department has been provided.

k) Concessionaire shall perform a background check on each employee prior to the employee beginning work at the concession. Concessionaire shall forward a copy of each background check to the Department for review **prior** to the employee commencing work at the concession. County reserves the right to disallow employment of any candidate or employee whose background check reveals one or more disqualifying offenses. A list of potential disqualifying offenses is available from the Department upon request. Concessionaire shall notify Department of any disqualifying offense it has knowledge of as to any of its employees during the term of this Agreement and Concessionaire shall immediately terminate employment of any and all employees whom Concessionaire discovers have committed a disqualifying offense.

l) Concessionaire shall suspend operation of the Concession whenever severe storms or other severe climatic hazards make human health or safety a concern in the opinion of the Department. Every effort shall be made to reopen the Concession in a timely manner following the inclement weather. If the closure is for an extended period of time (greater than seven (7) consecutive days), Concessionaire may request, in writing, that the monthly payment of Annual Rent be prorated, which request may be granted or denied in the County's sole and absolute discretion.

m) 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 services at the 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 proposed by Concessionaire in its response to RFP No. 2008-103-TAS on file with the County's Property & Real Estate Management Division. Concessionaire shall not alter its menu or prices from those proposed during the RFP process without first obtaining written approval from the Department's Director of Financial and Support Services, at the address set forth in Article I, Section 1.06 of this Agreement. Only minor changes may be approved by the Department, and such approval shall be granted in the Department's sole and absolute discretion. Proposed changes that would alter the menu or prices so they are no longer substantially the same as those submitted with Concessionaire's response to the RFP shall not be permitted.

#### **Section 4.03 Waste or Nuisance**

Concessionaire shall not commit or suffer to be committed any waste upon the Licensed Area, 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 the Park, or which may result in damage or depreciation of value of the Park or which may affect County's fee interest in the Licensed Area or which results in an unsightly condition. Concessionaire, at its sole cost and expense, will keep the Licensed Area free of rodents, vermin and other pests.

Concessionaire will be responsible for the cost of repairs to any of the aforementioned property that results from damage caused by Concessionaire, staff, customers, or agents. Concessionaire shall report any such damage immediately to Palm Beach County Emergency Management at (561) 712-6428, and then submit a written report within 24 hours to the Department's Director of Financial and Support Services at the address set forth in Article I,

Section 1.06 of this Agreement.

#### **Section 4.04 Governmental Regulations**

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

#### **Section 4.05 Non-Discrimination**

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

#### **Section 4.06 Surrender of Licensed Area**

Upon termination or expiration of this Agreement, Concessionaire, at its sole cost and expense, shall remove Concessionaire's personal property and Alterations and restore the Licensed Area if so directed by County. Concessionaire shall confirm with County the Alterations to be removed prior to removal. In no event shall Alterations be removed from the Licensed Area without prior consent in writing from the County. If Concessionaire fails to remove Alterations identified by County to be removed and fails to restore the Licensed Area 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 Licensed Area to its original condition and Concessionaire shall pay the cost of such restoration, with allowance for ordinary wear and tear arising from Concessionaire's permitted use of the Licensed Area as specified herein, promptly upon demand.

#### **Section 4.07 Hazardous Substance**

Concessionaire shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Concessionaire's operations, in the Licensed Area, 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 Licensed Area or upon adjacent lands and shall operate and occupy the Licensed Area 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 Licensed Area, or emanating therefrom onto adjacent lands, as a result of the use and occupancy of the Licensed Area 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 Licensed Area**

Concessionaire acknowledges and accepts full responsibility for the security and protection of the Licensed Area and any inventory, equipment, or facilities now existing or hereafter placed on or installed in or upon the Licensed Area, and for the prevention of unauthorized access to the Licensed Area. Concessionaire expressly acknowledges that any security measures deemed necessary or desirable for protection of the Licensed Area 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 Licensed Area as required by Article XIV. County may implement key, card or code control measures reasonably acceptable to Concessionaire to safeguard the keys, cards or code provided pursuant to this requirement.

Furthermore, although a fingerprint background check is not required under the terms of the background check set forth in Section 4.02, County reserves the right to subject Concessionaire's employees to fingerprint-based background checks to the extent permitted by law and to deny access rights to any Concessionaire employee in accordance with adopted laws, policies and procedures. Concessionaire shall have no recourse or claim against County for denied access rights.

### **ARTICLE V SIGNAGE**

Concessionaire shall not place or permit to be placed or maintained on any exterior door, wall, window, fence, railing, dock, or tree of the Licensed Area and/or Park any sign, awning or canopy, without first obtaining County's written approval and consent through the Department. Any such signs not approved shall be immediately removed at the sole cost and expense of Concessionaire, upon written notification thereof by County. Concessionaire further agrees that such signs, awning, canopy, decoration, lettering, or other items, 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 Park within which the Licensed Area is located. Hand-written signs shall not be posted at the facility. No advertising or any promotional items associated with the concession will be permitted within the Park or any other County facility or property without prior Department and/or County approval. Palm Beach County Ordinance, No. 2004-022, Section 21, prohibits any person from distributing, displaying or affixing any printed materials or advertisements to or within any park property.

## ARTICLE VI REPAIRS AND MAINTENANCE OF LICENSED AREA

### **Section 6.01 Responsibility of Concessionaire**

Concessionaire shall protect the County's capital investment in the Licensed Area through exercise of a high standard of maintenance. Concessionaire shall maintain the Licensed Area and all areas within 75 feet of the Licensed Area in a safe, clean, sanitary condition free of litter, refuse, and debris. Concessionaire, at a minimum, shall perform the following ongoing maintenance in the Licensed Area: 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 provide adequate refuse containers in the Licensed Area and shall be responsible for removal of trash located with seventy five (75) feet of the Licensed Area. The Concessionaire shall remove all trash daily.

Concessionaire shall repair all damages to concession Licensed Area caused by, resulting from, or in any way arising out of Concessionaire's operations or use of concession Licensed Area, whether such damage is caused by Concessionaire, its agents, or its invitees. Concessionaire shall maintain and repair all equipment thereon. The Department reserves the right to, periodically throughout the term of the Agreement, inspect or cause to be inspected the concession Licensed Area, identify any maintenance or repair items and report, in writing, the nature of these items and recommend corrective action. Concessionaire shall promptly repair, replace, or repaint any damaged or defaced surfaces within 72 hours of discovery or notification by the Department. Concessionaire is to provide a proposed schedule of cleaning, maintenance and repair of facilities.

In the event of a threat of tropical disturbance, Concessionaire shall close the hurricane shutters provided for the Licensed Area. Concessionaire shall secure and/or remove its equipment at the direction of the Department. Concessionaire shall be liable to County for any damage caused to Park or any Park improvements due to failure of Concessionaire to close the hurricane shutters and/or secure or remove any equipment belonging to Concessionaire.

Concessionaire shall immediately notify County of any possible health, safety and/or security hazards that may exist within any area, including use by unauthorized parties, 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 Licensed Area. 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.

### **Section 6.02 Responsibility of County**

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 Licensed Area (except for sewer lines clogged by grease or other Concessionaire-created problems), foundations and structural portions of the Licensed Area and the air conditioning, heating, and plumbing systems serving the Licensed Area. 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 Licensed Area; (iii) maintenance, repair and replacement of any plumbing (including grease trap ), electrical, air conditioning/heating system or equipment inside the Licensed Area which, whether connected directly to the building's system or not, were installed by Concessionaire specifically to serve the Licensed Area; (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 Licensed Area; (v) glass cleaning; (vi) janitorial services for the Licensed Area; and (vii) any fixtures, cooking hood, or cooking equipment, fire suppression system, whether inside the Licensed Area, or solely serving the Licensed Area.

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 Licensed Area shall be kept in good repair and condition by Concessionaire, and at the end of the Term of this Agreement, Concessionaire shall deliver the Licensed Area to County in good repair and condition, reasonable wear and tear arising from Concessionaire's permitted use of the Licensed Area as specified herein excepted.

## **ARTICLE VII UTILITIES**

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

## **ARTICLE VIII INSURANCE**

Unless otherwise specified in this Agreement, Concessionaire shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement or the performance of work hereunder, insurance limits, coverages or endorsements required herein. Concessionaire acknowledges that the requirements contained herein as well as County's review or acceptance of insurance, is not intended to and shall not in any manner limit nor qualify the liabilities and obligations assumed under this Agreement.

### **Section 8.01 Commercial General Liability**

Concessionaire shall maintain: Commercial General Liability with limits of liability not less than \$1,000,000 Each Occurrence including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability; Fire Legal liability with a limit not less than \$100,000; and Medical Payments (when available) with a limit not less than \$5,000. Concessionaire agrees this coverage shall be provided on a primary basis.

### **Section 8.02 Business Auto Liability**

Concessionaire shall maintain Business Automobile Liability with limits of liability not less than \$500,000 Each Occurrence for owned, non-owned and hired automobiles. In the event Concessionaire has no owned automobiles, the requirement shall be to maintain only Hired & Non-Owned Auto Liability. This amended coverage may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Liability. Concessionaire shall provide the foregoing coverage on a primary basis.



### **Section 8.03 Workers' Compensation & Employers Liability**

Concessionaire shall maintain Workers' Compensation & Employers Liability in accordance with Chapter 440 Florida Statutes and applicable Federal Acts. Concessionaire shall provide the foregoing coverage on a primary basis.

### **Section 8.04 Fire and Allied Lines Insurance**

Concessionaire shall at all times during the Term hereof, and at its cost and expense, maintain in full force and effect policies of insurance covering all Alterations to the Licensed Area made by or on behalf of Concessionaire and Concessionaire's fixtures and equipment located on the Licensed Area, in an amount not less than one hundred percent (100%) of its full replacement cost, providing protection with "All-Perils" coverage as provided by the "Special-Cause of Loss Form" excluding the perils of wind and flood." The proceeds of such insurance, so long as this Agreement remains in effect, shall be used to repair or replace the Alterations, fixtures and equipment so insured. All property, including without limitation, stock, inventory, fixtures and equipment belonging to Concessionaire or any occupant of the Licensed Area 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. Additionally, the Concessionaire shall maintain Business Interruption with Extra Expense insurance providing coverage for loss of net income and all continuing expenses at a minimum limit appropriate to cover the maximum period of restoration or interruption of the Concessionaire. Concessionaire shall deliver to the County certificates of such fire insurance policies which shall contain a clause requiring the insurer to give the County ten (10) days prior notice of cancellation of such policies.

### **Section 8.05 Additional Insured Endorsement**

Concessionaire shall endorse the County as an Additional Insured on each liability insurance policy required to be maintained by Concessionaire, except for Worker's Compensation and Business Auto Liability. The CG 2011 Additional Insured - Managers or Lessors of Premises or CG 2026 Additional Insured - Designated Person or Organization endorsements, or their equivalent, shall be endorsed to the Commercial General Liability policy. Other policies, when required, shall provide a standard Additional Insured endorsement offered by the insurer. Concessionaire shall ensure that the Additional Insured endorsements provide coverage on a primary basis. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents", c/o Property & Real Estate Management Division, 2633 Vista Parkway, West Palm Beach, FL 33411-5605.

### **Section 8.06 Loss Payee Endorsement**

Concessionaire shall endorse the County as a Loss Payee on the Property, Flood, and Windstorm Insurance policies. Concessionaire shall ensure that the Loss Payee endorsement provides coverage on a primary basis. The Loss Payee endorsement shall read "Palm Beach County Board of County Commissioners", c/o Property & Real Estate Management Division, 2633 Vista Parkway, West Palm Beach, FL 33411-5605.

### **Section 8.07 Certificate of Insurance**

Concessionaire shall provide the County with a certificate of insurance evidencing limits, coverages and endorsements required herein. The certificate of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage cancels or non-renews during the life of this Agreement, Concessionaire shall furnish thirty (30) days prior to, but in no case later than the expiration of such insurance, a new certificate of insurance evidencing replacement coverage. Should Concessionaire fail to maintain the insurance required herein, the County shall have the right, but not the obligation, to purchase or maintain said insurance, and Concessionaire shall pay as Additional Rent, upon demand of County, all premiums and expenses incurred by County.

**Section 8.08 Waiver of Subrogation**

The Concessionaire, by entering into this Agreement in writing, hereby agrees to a Waiver of Subrogation for each required policy providing coverage during the life of this Agreement. When required by the insurer, or should a policy condition not allow a pre-loss agreement to waive subrogation without an endorsement, then Concessionaire shall notify its insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition prohibiting such an endorsement, or voiding coverage should Concessionaire enter into such an agreement on a pre-loss basis.

**Section 8.09 Premiums and Proceeds**

Concessionaire shall not keep, use, sell or offer for sale in or upon the Licensed Area any article which may be prohibited by any, condition, provision, limitation, of the property, flood, or wind insurance policies. Concessionaire shall be responsible for all premiums, including increases, for property, flood, or wind insurance policies. Concessionaire shall make available all property, flood or windstorm insurance proceeds received as a result of a loss for use in order to promptly replace, repair or rebuild the building, betterments and improvements, including those made by or on behalf of Concessionaire, so to ensure a replacement cost settlement or avoid policy cancellation.

**Section 8.10 Deductibles, Coinsurance, & Self-Insured Retention**

Concessionaire shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

**Section 8.11 Right to Review, Reject or Adjust Insurance**

Concessionaire acknowledges that, notwithstanding the foregoing, the County's Risk Management Department, reserves the right, but not the obligation, to review, adjust, reject or accept insurance policies, limits, coverages, or endorsements throughout the life of this Agreement. The County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or by way of illegal operation. The County shall provide Concessionaire written notice of such action, and Concessionaire shall agree to cure or comply with such action within thirty (30) days receipt thereof.

**Section 8.12 No Representation of Coverage Adequacy**

The limits, coverages or endorsements identified herein primarily transfer risk and minimize liability for the County, and Concessionaire acknowledges that such requirements should not be relied upon by Concessionaire when assessing the extent or determining appropriate types or limits of coverage to protect Concessionaire against any loss exposures, whether as a result of this Agreement or otherwise.

**Section 8.13 Insurance for Special Events and Outside Persons/Groups**

Excluding County or its affiliates, when Concessionaire permits or schedules the use of the Licensed Area for a special event or outside persons/groups, Concessionaire shall require the special event or outside person/group to maintain Commercial General Liability, as described in Section 8.01, with limits of liability not less than \$1,000,000. The County and Concessionaire shall be named as Additional Insured, as described in Section 8.05. Concessionaire shall obtain and, when requested by the County, furnish copies of certificates of insurance evidencing coverage for the special event or outside person/group.

**ARTICLE IX  
INDEMNIFICATION AND DISCLAIMER OF LIABILITY**

**Section 9.01 Indemnification**

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

**Section 9.02 DISCLAIMER OF LIABILITY**

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

**ARTICLE X  
DESTRUCTION OF LICENSED AREA**

**Section 10.01 Total or Partial Destruction**

In the event the Park or the Licensed Area 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 the Licensed Area is not thereby rendered inaccessible or untenable in whole or in part, then the County shall, at its own expense, cause such damage to be repaired, and the Annual Rent and other charges payable by Concessionaire hereunder shall not be abated. If by reason of such occurrence, the Licensed Area shall be rendered untenable only in part, County shall, at its own expense, cause the damage to be repaired, and the Annual Rent meanwhile shall be abated proportionately as to the portion of the Licensed Area rendered untenable. If the Licensed Area shall be rendered wholly untenable by reason of such occurrence, the County shall, at its own expense, cause such damage 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 Licensed Area, and in such event this Agreement and the tenancy hereby created shall cease as of the date of said occurrence and the parties hereto shall be relieved of all further obligations hereunder. In no event shall County be responsible for repair of Concessionaire's equipment, trade fixtures and/or Concessionaire's Alterations.

#### **Section 10.02 Damage Near End of Term**

If the Licensed Area is destroyed or damaged during the last eighteen (18) months of the Term of this Agreement or any renewal thereof and the estimated cost of repair exceeds ten percent (10%) of the Annual Rent then remaining to be paid by Concessionaire for the balance of the Term, County may, at its option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Concessionaire of its election to do so within thirty (30) days after the date of occurrence of such damage and the parties hereto shall be relieved of all further obligations hereunder.

#### **Section 10.03 Reconstruction of Alterations**

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

#### **Section 10.04 Insurance Proceeds to County**

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

### **ARTICLE XI ASSIGNMENT AND SUBLETTING**

#### **Section 11.01 Consent Required**

Concessionaire may not assign, mortgage, pledge or encumber this Agreement, in whole or in part, nor sublet or rent all or any portion of the Licensed Area, 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 Licensed Area or any part thereof is sublet or occupied by any party other than Concessionaire and Concessionaire is in default under its obligations under this Agreement, County may collect rent from the assignee, sub-contractor or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, sub-contractor, 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 Licensed Area, and all right and interest of the County in this Agreement, may be conveyed, assigned or encumbered at the sole discretion of the County at any time.

### **Section 11.02 Significant Change of Ownership**

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

## **ARTICLE XII RULES AND REGULATIONS**

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

## **ARTICLE XIII DEFAULT**

### **Section 13.01 Default by Concessionaire**

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

- a) Concessionaire fails to open its concession for business on the Licensed Area within sixty (60) days of the Effective Date.
- b) Concessionaire fails to pay any one or more of said monthly installments of Annual Rent, or any other sums due hereunder as Additional Rent, as and when the same become due, without any prior demand.
- c) Concessionaire ceases to fully conduct its business as specified herein for a period of five (5) consecutive business days as determined by the County.
- d) A petition in bankruptcy under any present or future bankruptcy laws (including but not limited to reorganization proceedings) is filed by or against the Concessionaire and such petition is not dismissed within thirty (30) days from the filing thereof, or in the event Concessionaire is adjudged bankrupt.
- e) An assignment for the benefit of creditors is made by Concessionaire.
- f) An appointment, by any court, of a receiver or other court officer of Concessionaire's property and such receivership is not dismissed within thirty (30) days from such appointment.
- g) Concessionaire's estate is taken by execution, attachment or process of law or subjected to any bankruptcy proceeding.
- h) Concessionaire removes, attempts to remove, or permits to be removed from the Licensed Area, except as required herein or upon County's approved assignment or subletting or in the usual course of trade, the goods, furniture, effects or other property of the Concessionaire brought thereon.
- i) Concessionaire vacates the Licensed Area 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 Licensed Area 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 Licensed Area, or upon the interest of Concessionaire in this Agreement, and the same is not satisfied or dismissed within ten (10) days from such levy.
- k) Concessionaire violates any other term, condition or covenant herein on the part of Concessionaire to be performed, and Concessionaire fails to commence and proceed with diligence and dispatch to remedy the same within ten (10) days after written notice thereof, is given by County to Concessionaire.

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

#### **Section 13.02 Default by County**

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

### **ARTICLE XIV ACCESS BY COUNTY**

County or County's agents shall have the right to enter the Licensed Area, at reasonable times, to examine the same and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable. Concessionaire must provide the County with access to the Licensed Area within two (2) business days after the County's request for access. The Rent and other charges herein reserved and imposed shall not be abated while said repairs, alterations, improvements, or additions are being made. During the six (6) months prior to the expiration of the initial Term of this Agreement or any renewal thereof, County may exhibit the Licensed Area to prospective Concessionaires, and place upon the Licensed Area 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 Licensed Area, 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 Licensed Area. 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 Licensed Area or the building or any part thereof, except as otherwise herein specifically provided.

**ARTICLE XV  
ANNUAL BUDGETARY FUNDING/CANCELLATION**

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

**ARTICLE XVI  
QUIET ENJOYMENT**

Upon payment by 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 Licensed Area for the Term hereby demised without hindrance or interruption by County or any other person or persons lawfully or equitably claiming by, through or under the County, subject, nevertheless, to the terms and conditions of this Agreement.

**ARTICLE XVII  
GUARANTY**

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

**ARTICLE XVIII  
MISCELLANEOUS**

**Section 18.01 Entire Agreement**

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

**Section 18.02 Amendments**

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

**Section 18.03 Notices**

**A. Notices Required by Agreement**

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

binding notice given to such party:

(a) If to the County at:

Parks & Recreation Department  
Attn: Director, Financial and Support Services  
John Prince Park  
2700 Sixth Avenue South  
Lake Worth, FL 33461  
Telephone 561-966-6650  
Fax 561-242-6930

(b) with a copy to:

Palm Beach County  
Property and Real Estate Management Division  
Attn: Director  
2633 Vista Parkway  
West Palm Beach, FL 33411-5605  
Telephone 561-233-0217  
Fax 561-233-0210

&

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

(c) If to the Concessionaire at:

Taste of Chicago  
3274 W. Buena Vista Drive  
Margate, FL 33063  
Telephone 954-263-7573  
Fax 954-956-0216

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.

#### **B. Notification of Accident or Incident**

All accidents or incidents involving patrons shall immediately thereafter be reported by Concessionaire to Palm Beach County Emergency Management at (561) 712-6428. Concessionaire shall further provide the Department's Director of Financial and Support Services with a written report of each accident or incident within 24 hours after occurrence of same. The Director's address is set forth in Article I, Section 1.06 of this Agreement. The on-call Park Ranger Supervisor may be reached at (561) 252-1714 between 7:00 A.M. and 11:00 P.M.

#### **Section 18.04 Disclosure of Beneficial Interests**

Concessionaire represents that simultaneously with Concessionaire's execution of this Agreement, Concessionaire has executed and delivered to County, the Disclosure of Beneficial Interests attached hereto as Exhibit "D" (the "Disclosure") disclosing the name and address of every person or entity having a 5% or greater beneficial interest in the ownership of the Concessionaire. Concessionaire warrants that in the event there are any changes to the names and



addresses of the persons or entities having a 5% or greater beneficial interest in the ownership of the Concessionaire after the date of execution of the Disclosure and prior to the Effective Date of the Agreement, Concessionaire shall immediately, and in every instance, provide written notification of such change to the County pursuant to Section 18.03 of this Agreement.

**Section 18.05 Severability**

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

**Section 18.06 Broker's Commission**

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

**Section 18.07 Recording**

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

**Section 18.08 Waiver of Jury Trial**

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

**Section 18.09 Governing Law and Venue**

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

**Section 18.10 Radon**

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

**Section 18.11 Time of Essence**

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

**Section 18.12 Waiver, Accord and Satisfaction**

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver. The waiver by County of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or subsequent default of the same or any other term, condition or covenant herein contained. The

consent or approval by County to or of any act by Concessionaire requiring County's consent to or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by Concessionaire. No re-entry hereunder shall bar the recovery of rents or damages for the default of any of the terms, conditions or covenants on the part of Concessionaire herein contained. The receipt of rent after default or condition broken, or delay on the part of County to enforce any right hereunder, shall not be deemed a waiver of any proceeding default by Concessionaire of any term, covenant or condition of this Agreement, or a waiver of the right of the County to terminate this Agreement or re-enter the Licensed Area or to re-let same.

#### **Section 18.13 Construction**

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

#### **Section 18.14 Incorporation by Reference**

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

#### **Section 18.15 Survival**

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

#### **Section 18.16 Effective Date of Agreement**

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

#### **Section 18.17 Successors**

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

#### **Section 18.18 Public Entity Crimes**

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

#### **Section 18.19 Independent Contractor Relationship**

Concessionaire is, and shall be, in the performance of all work, services, and activities under this Agreement, an Independent Contractor and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this

Agreement shall at all times, and in all places, be subject to Concessionaire's sole direction, supervision, and control. Concessionaire shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Concessionaire's relationship, and the relationship of its employees, to the County shall be that of an Independent Contractor and not as employees or agents of the County.

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

**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:

Laura Kerr  
Witness Signature

Laura Kerr  
Print Witness Name

Olivia Angeli  
Witness Signature

Olivia Angeli  
Print Witness Name

WITNESS:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Witness Name

ATTEST:

SHARON R. BOCK  
CLERK & COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

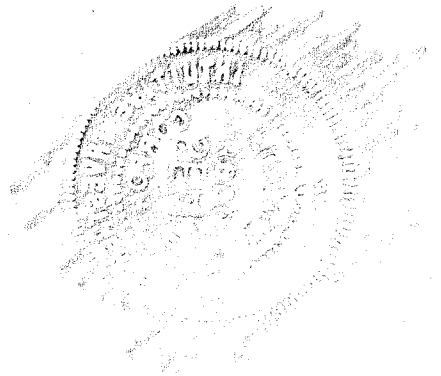
APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

CONCESSIONAIRE:

By: Mindy Lee  
Mindy Lee

Title: President  
President



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

Title: \_\_\_\_\_

COUNTY:

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

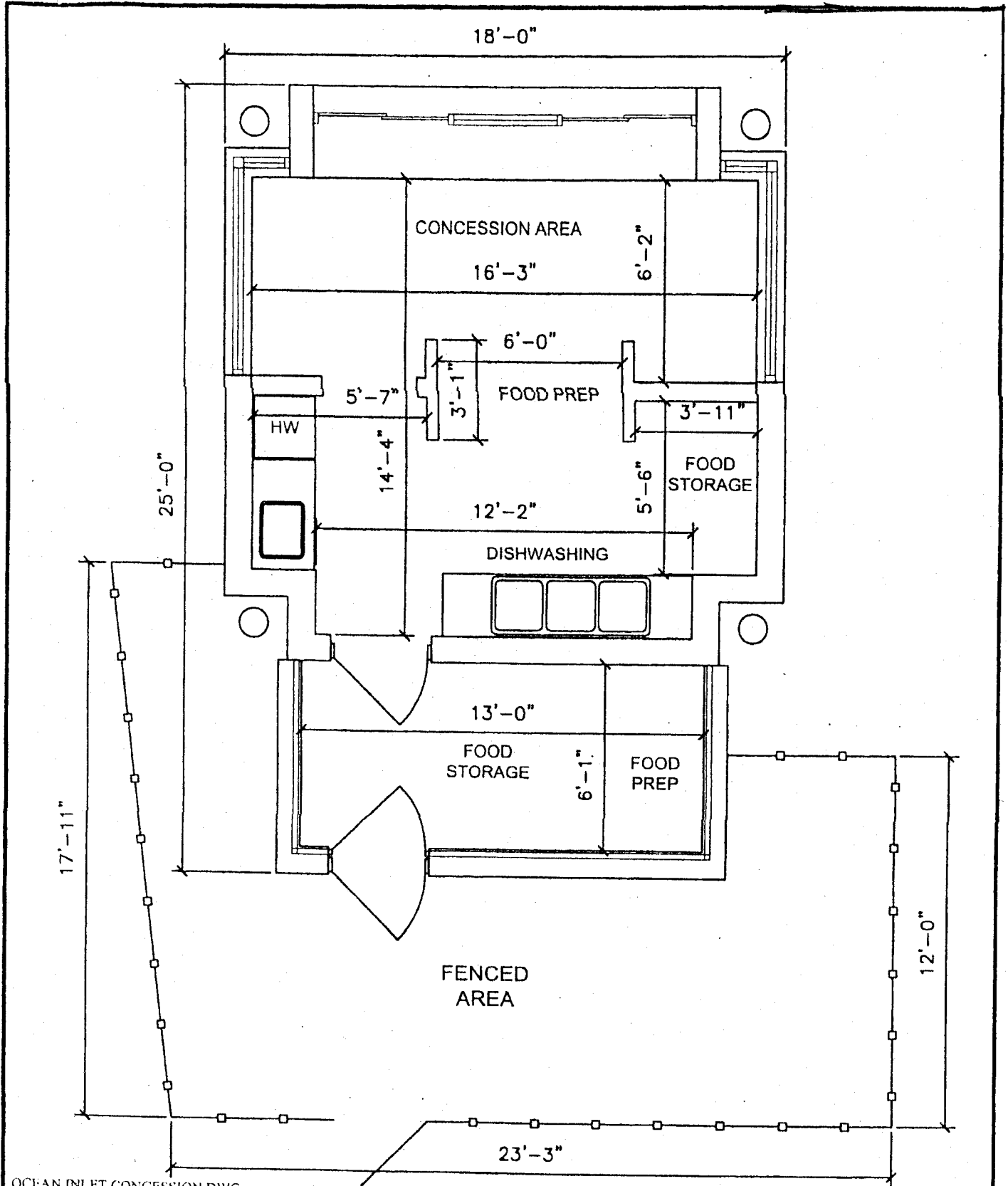
By: \_\_\_\_\_  
John F. Koons, Chairman

APPROVED AS TO TERMS  
AND CONDITIONS

By: Rest Anthony Wolfe  
Department Director

EXHIBIT "A"  
TO THE CONCESSIONAIRE SERVICE AGREEMENT

"The Licensed Area"



OCEAN INLET CONCESSION.DWG

N. OUELLETTE 12/7/05



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



SCALE: 1/4" = 1'

**EXHIBIT "B"**  
**TO THE CONCESSIONAIRE SERVICE AGREEMENT**

**RULES AND REGULATIONS**

**The Licensed Area and Park**

1. The sidewalks, entrances and passages surrounding the Licensed Area shall not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the Licensed Area demised to Concessionaire or occupant.
2. No awnings or other projections shall be attached to the outside walls or windows of the Licensed Area.
3. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Licensed Area.
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 Licensed Area.
5. No 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 Licensed Area.
6. Concessionaire shall not cause or permit any unusual or objectionable odors to emanate from the Licensed Area.
7. No space in the Licensed Area 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.
8. Concessionaire shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with visitors of the 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.
9. 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.
10. The County shall have the right to prohibit any advertising in or around the Park by the Concessionaire or any Service Provider which, in the County's opinion, tends to impair the reputation or desirability of the Park, and upon notice from the County, the Concessionaire or Service Provider shall refrain from or discontinue such advertising.
11. Concessionaire shall maintain a business mailing address that does not include the address of the Park. Any promotional materials distributed by Concessionaire or any Service Provider must include Concessionaire's business mailing address. The U.S Postal Service does not provide service to the Park.
12. Concessionaire, before closing and leaving the Licensed Area, shall see that all doors are locked and all windows are closed.

13. The Licensed Area shall not be used, or permitted to be used, for lodging or sleeping, or for any immoral or illegal purpose.

14. There shall not be used in the Licensed Area, 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.

15. The use of drugs or alcoholic beverages in the Licensed Area is prohibited at all times. No person who is intoxicated or under the influence of drugs or alcohol is permitted to be in or around the Licensed Area.

16. Concessionaire and staff shall wear attire which, in the sole determination of the County, is appropriate and shall conduct themselves in a professional manner at all times. Attire shall clearly distinguish Concession staff from County and Park staff.

**EXHIBIT "C"**  
**TO THE CONCESSIONAIRE SERVICE AGREEMENT**  
**GUARANTY AGREEMENT**

THIS IS A GUARANTY AGREEMENT made and executed on December 17, 2008 by the undersigned (hereinafter called the "Guarantor").

WITNESSETH

WHEREAS, Intuitive Investments, Inc. d/b/a Taste of Chicago (herein called "Concessionaire") and PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida (herein called the "County") have entered into a certain Concessionaire Service Agreement, dated \_\_\_\_\_ (R200 - \_\_\_\_\_) (herein called the "Agreement"); and

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

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

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

2. This Guaranty Agreement shall be an absolute, continuing, irrevocable, unconditional, and unlimited guaranty of payment, and the County shall not be required to take any proceedings against the Concessionaire, or give any notice to the undersigned before the County has the right to demand payment of performance by the undersigned upon default by the Concessionaire. This Guaranty Agreement 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 Agreement 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 Agreement 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 Licensed Area 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 AS TO BOTH:

GUARANTOR:

Laura Kerr  
Signature

Mindy Lee  
Signature

Laura Kerr  
Printed Name

Mindy Lee  
Printed Name

Dina Angela  
Signature

SPOUSE OF GUARANTOR (if any):

Dina Angela  
Printed Name

Ray Ilyavi  
Signature

Ray Ilyavi  
Printed Name

**EXHIBIT "D"**  
**TO THE CONCESSIONAIRE SERVICE AGREEMENT**  
**CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS**

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

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared Mindy Lee, 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 Intuitive Investments, Inc. d/b/a Taste of Chicago (the "Concessionaire") which entity is providing concession services on the real property legally described on the attached Exhibit "A" (the "Premises").

2. Affiant's address is: 3274 W. Buena Vista Drive  
Margate, FL 33063

3. Attached hereto, and made a part hereof, 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 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.

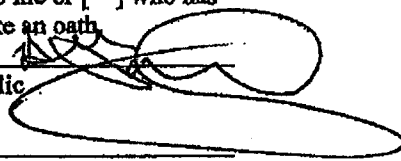
5. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete, and will be relied upon by Palm Beach County relating to its entering into a Concessionaire Service Agreement for the Premises.

FURTHER AFFIANT SAYETH NAUGHT.

Mindy Lee, Affiant  
(Print Affiant Name)



The foregoing instrument was sworn to, subscribed and acknowledged before me this 14 day of JANUARY, 2009, by MINDY LEE [X] who is personally known to me or [ ] who has produced \_\_\_\_\_ as identification and who did take an oath.

Notary Public   
(Print Notary Name)

NOTARY PUBLIC  
State of Florida at Large  
My Commission Expires: \_\_\_\_\_


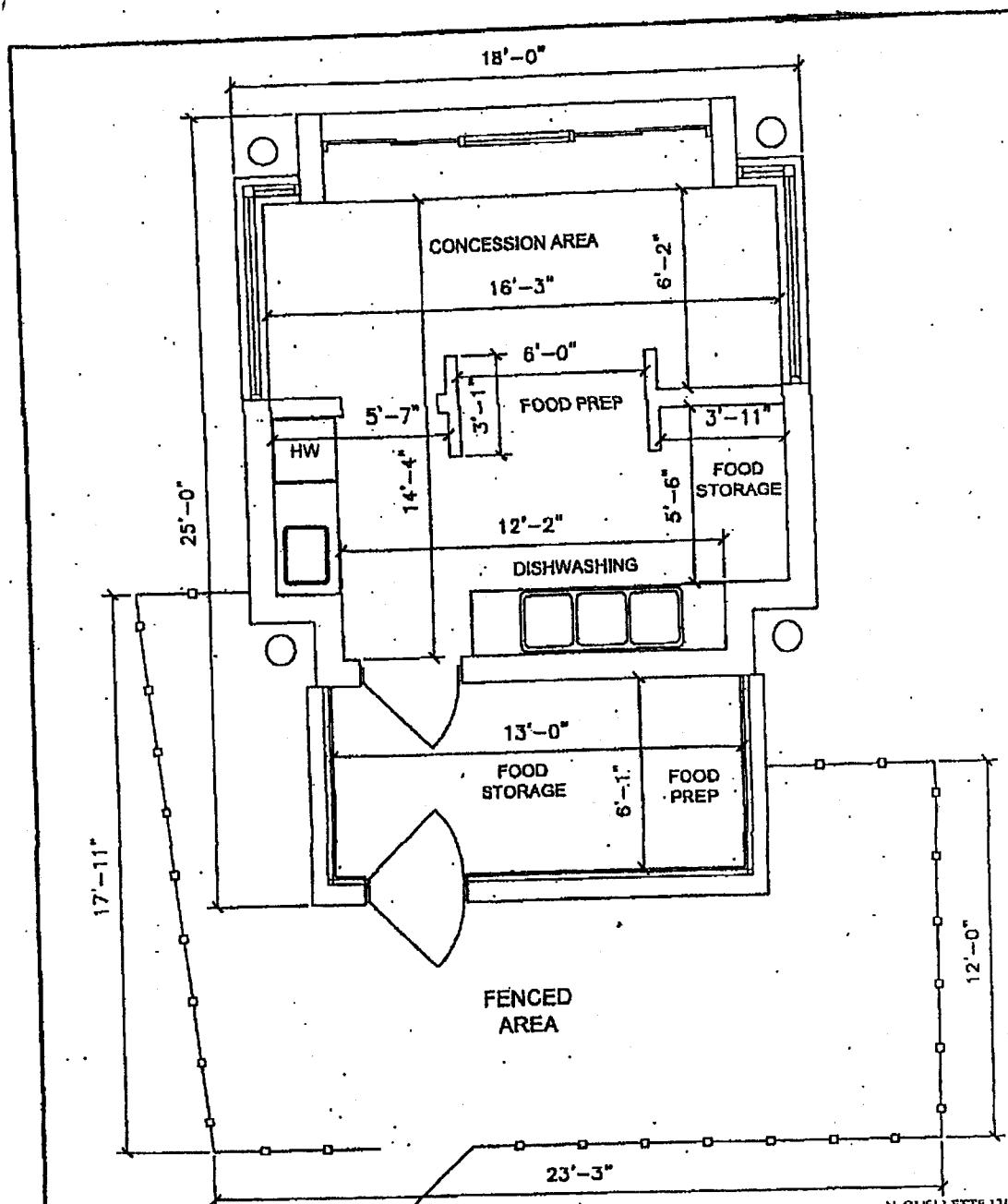
NOTARY PUBLIC-STATE OF FLORIDA  
 D. H. Buikus  
Commission # DD419571  
Expires: JUNE 03, 2009  
Bonded Thru Atlantic Bonding Co., Inc.

EXHIBIT "A"  
 PREMISES / LICENSED AREA



OCEAN INLET CONCESSION.DWG

N. OUELLETTE 12/7/05



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



SCALE: 1/4" = 1'

