

AGENDA ITEM SUMMARY

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends a motion to:

A) adopt a Resolution authorizing a First Amendment to Concessionaire Service Agreement dated June 3, 2014, (R2014-0865), with Little Deeper Charters, Inc. (LDC), a Florida corporation to abate rent for a period of two months not to exceed \$4,166.68 for the Phil Foster Park Concession located in Riviera Beach; and

B) approve the First Amendment to Concessionaire Service Agreement.

Summary: On June 3, 2014, the Board awarded LDC the Phil Foster Park Concession to provide water sports rentals, prepackaged food, beverage and sundry services, including the use of various locations within the park, dock space, and a vending area within the building located at 900 Blue Heron Blvd in Riviera Beach. On July 11, 2014, LDC applied for an occupational license from the City of Riviera Beach (City). The City requested the County apply for a site plan modification to permit a concession to operate within the Park, delaying the issuance of the occupational license. After numerous conversations and written correspondence between County and City Staff, on October 30, 2014, the City reversed its position and issued the occupational license. The commencement date of the concession was established as November 4, 2014. LDC has requested, and Parks supports, a two month rental abatement to help offset the financial loss associated with the inability to operate during the peak 2014 summer season. This amendment will i) abate two months of the Guaranteed Annual Rent in an amount not to exceed \$4,166.68; ii) update the non-discrimination and insurance provisions; iii) updates various other standard County provisions; and iv) memorialize the commencement date of November 4, 2014. Parks will continue to have administrative responsibility for this Lease. **(PREM)**

District 1 (HJF)

Background and Policy Issues: In February of 2014, PREM issued an RFP for the Phil Foster Park Concession and received two (2) proposals. On June 3, 2014, the Board approved a Concessionaire Service Agreement with LDC for \$25,000/yr. LDC applied for an occupation license which the City of Riviera Beach refused to issue until a site plan amendment process was completed to permit concessions to operate in the park. County staff was able to encourage the City to reconsider its position and on October 30, 2014, the City issued the occupational license. LDC commenced operation of the concession on November 4, 2014. LDC claimed a financial burden in not being operational during the peak summer months. Parks acknowledged the impacts caused by the delay and negotiated a two month rental abatement. This First Amendment abates two months of the Guaranteed Annual Rent in an amount not to exceed \$4,166.68, updates the non-discrimination and certificate of insurance provisions, and adds headings and condemnation provisions. State Statutes do not require a Disclosure of Beneficial Interests be obtained when the County leases property to a tenant; however, Staff requested an updated disclosure which identifies David M. Brown and Lynn S. Brown each holding a 50% beneficial interest in LDC.

Attachments:

1. Location Map
2. Resolution
3. First Amendment to Lease Agreement
4. Disclosure of Beneficial Interests

Recommended By: Keth Armering
Department Director

41115

Approved By: _____
County Administrator

6/9/10
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>\$4,167</u>	<u>-\$0-</u>	<u>-\$0-</u>	<u>-\$0-</u>	<u>-\$0-</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>\$4,167</u></u>	<u><u>-\$0-</u></u>	<u><u>-\$0-</u></u>	<u><u>-\$0-</u></u>	<u><u>-\$0-</u></u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

Budget Account No: Fund 0001 Dept 580 Unit 5418 RSRC 4729
SUB RSRC 18

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

Impact is \$4,166.68 two months of lost guaranteed annual rental revenue. The delay in Riviera Beach issuing the occupation license caused undeterminable financial impacts to LDC as they were unable to operate during the 2014 peak summer period.

Fixed Asset Number: n/a

C. Departmental Fiscal Review: _____ *W 6/2/15*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

Sherry Bm
OFMB *6/3* *6/3* *6/4*
J. S. Jacobson *6/8/15*
Contract Development and Control
6-8-15 B. Wheeler

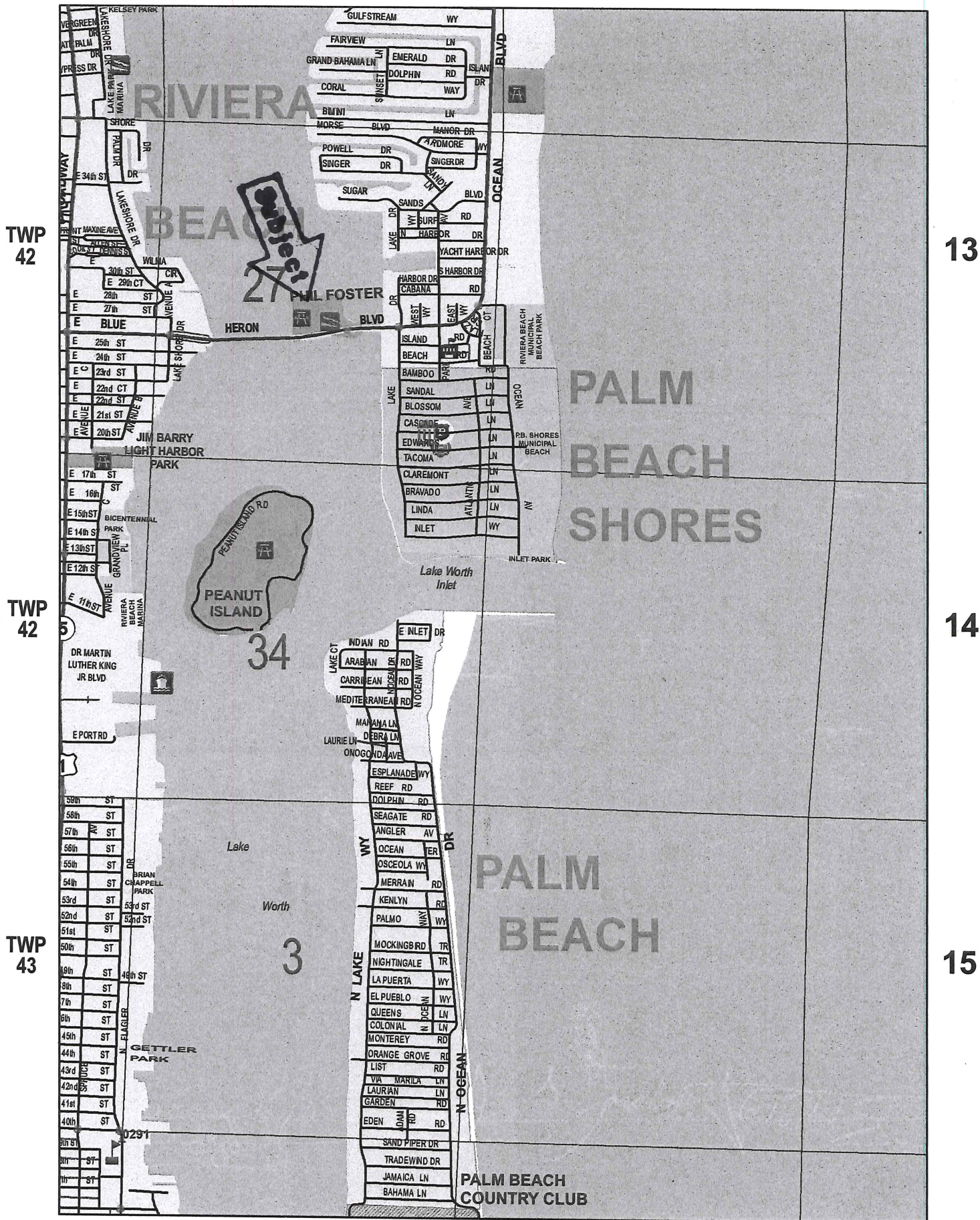
B. Legal Sufficiency:

K. J. Al *6/9/15*
Assistant County Attorney

C. Other Department Review:

Department Director

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



Handwritten signature or mark.

RESOLUTION NO. 2015-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING AN ABATEMENT FOR RENT TO LITTLE DEEPER CHARTERS, INC.; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Little Deeper Charters, Inc., a Florida corporation, ("Concessionaire"), pursuant to a Concessionaire Service Agreement, dated June 3, 2014, (R2014-0865), operates a multi service concession at Phil Foster Park; and

WHEREAS, Concessionaire has made application to the Board of County Commissioners of Palm Beach County requesting that Palm Beach County abate the rent due to the City of Riviera Beach delaying the issuance of Concessionaire's occupational license on the basis of zoning issues; and

WHEREAS, Concessionaire is largely dependent on business derived from park patrons and said delay caused Concessionaire a financial loss over the peak summer season; and

WHEREAS, Concessionaire provides a service to patrons of Phil Foster Park by offering them water sports rentals, prepackaged food, beverage and sundry services at a reasonable price and County wishes to retain Concessionaire's operations at Phil Foster Park; and

WHEREAS, Concessionaire has requested rent relief due to the delay in the issuance of Concessionaire's occupational license, which was no fault of Concessionaire, and County has agreed to abate the rent for two months; and

WHEREAS, the Board of County Commissioners of Palm Beach County hereby finds that Concessionaire provides a service to patrons of Phil Foster Park by offering them water sports rentals, prepackaged food, beverage and sundry services at a reasonable price that County does not wish to lose, and abatement of the rent for a two month period is in the best interest of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. Recitals

The foregoing recitals are true and correct and incorporated herein by reference.

Section 2. Authorization to Adjust Rent

The Board of County Commissioners of Palm Beach County shall amend its Concessionaire Service Agreement, dated June 3, 2014, (R2014-0865), with Little Deeper

Charters, Inc., a Florida corporation, by entering into the First Amendment to Concessionaire Service Agreement, attached hereto and incorporated herein by reference, in order to abate the Guarantee Annual Rent for a two month period for an amount not to exceed Four Thousand One Hundred Sixty-Six Dollars and Sixty-Eight Cents (\$4,166.68).

Section 3. Conflict with Federal or State Law or County Charter

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

Section 4. Effective Date

The provisions of this Resolution shall be effective immediately upon adoption hereof.

The foregoing Resolution was offered by Commissioner _____ who moved its adoption. The Motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner Shelley Vana, Mayor
Commissioner Mary Lou Berger, Vice Mayor
Commissioner Hal R. Valeche
Commissioner Paulette Burdick
Commissioner Steven L. Abrams
Commissioner Melissa McKinlay
Commissioner Priscilla A. Taylor


The Mayor thereupon declared the Resolution duly passed and adopted this ____ day of _____, 2015.

PALM BEACH COUNTY, a political
subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

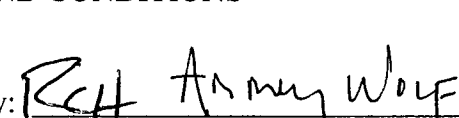
SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: 
Department Director

ATTACHMENT NO. 3

5 pages (2 originals)

**FIRST AMENDMENT
TO
CONCESSIONAIRE SERVICE AGREEMENT**

THIS FIRST AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT (the "First Amendment") is made and entered into _____ by and between Palm Beach County, a political subdivision of the State of Florida by and through its Board of County Commissioners ("County"), and Little Deeper Charters, Inc., a Florida corporation ("Concessionaire"). County and Concessionaire are sometimes referred to herein collectively as the "parties".

WITNESSETH:

WHEREAS, County and Concessionaire entered into that certain Concessionaire Service Agreement dated June 3, 2014, (R2014-0865) (the "Agreement"), for the use of the Licensed Area as defined in the Agreement; and

WHEREAS, the Commencement Date was established as November 4, 2014, pursuant to Section 1.04 of the Agreement; and

WHEREAS, Concessionaire has requested an abatement of rent due to the City of Riviera Beach delaying the issuance of Concessionaire's occupational license on the basis of zoning issues, which County Staff intervened and resolved; and

WHEREAS, said delay caused Concessionaire a financial loss over the peak summer season and County has agreed to abate the rent for a period of two months; and

WHEREAS, County and Concessionaire further agree to amend the Agreement to add certain standard provisions to the Agreement.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning ascribed to them in the Agreement.
2. The Guaranteed Annual Rent payable under Section 2.01 A. of the Agreement shall be abated for two months for an amount not to exceed Four Thousand One Hundred Sixty-Six Dollars and Sixty-Eight Cents (\$4,166.68). Thereafter, Concessionaire shall pay Guaranteed Annual Rent as provided for in the Agreement.

3. Section 2.04 Rent Payments, of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 2.04 Rent Payments

Annual Rent and Additional Rent, as herein defined, shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to Clerk & Comptroller's Office, Finance Department, P.O. Box 3977, West Palm Beach, FL 33402.

4. Section 4.05 Non-Discrimination, of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 4.05 Non-Discrimination

Concessionaire shall assure and certify that it will comply with Title VI 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, familial status, sexual orientation, gender identity or expression, disability, or genetic information with respect to any activity occurring on the Licensed Area or conducted pursuant to this Agreement. Concessionaire warrants that in the event the facilities constructed or operated upon the Licensed Area are public facilities the same shall be open to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis as to residents of the municipality in which the Licensed Area are located.

Concessionaire has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the Concessionaire does not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to County that Concessionaire will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

5. Section 8.19 Certificate of Insurance, of the Agreement is hereby deleted in its entirety and replace with the following:

Section 8.19 Certificate of Insurance

Concessionaire will deliver to Insurance Tracking Services, Inc. (ITS), County's authorized insurance consultant, a certificate of insurance with respect to each required policy to be provided by the Concessionaire under this Section. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

Submit certificates of insurance to:

Palm Beach County
c/o Insurance Tracking Services, Inc. (ITS)
P.O. Box 20270
Long Beach, CA 90801

Email: pbci@instracking.com or Facsimile: +1 (562) 435-2999

Subsequently, Concessionaire shall, during the term of the Agreement, and prior to each renewal thereof, provide such evidence to ITS at pbci@instracking.com or fax (562) 435-2999, which is Palm Beach County's insurance management system. 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 is cancelled or not renewed 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 promptly pay as Additional Rent, upon demand from County, all premiums and expenses incurred by County.

6. Article XVIII of the Agreement is hereby modified to add the following:

Section 18.23 Headings

The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement, and are not to be considered in interpreting this Agreement.

Section 18.24 Condemnation

If the Licensed Area, or any part thereof, or any improvements thereto, shall be taken, appropriated or condemned by exercise of the power of eminent domain, or conveyed or transferred pursuant to an agreement in lieu of condemnation, County shall be entitled to the entire award therefor, including, without limitation, any award relating to both Concessionaire's leasehold estate and County's reversionary interest in the fee simple estate, without deduction, claim or setoff for any present or future estate of Concessionaire. Concessionaire hereby assigns and relinquishes to County all right, title and interest in such award and shall execute all documents required to evidence such result. Notwithstanding the foregoing, Concessionaire shall be entitled to pursue in such condemnation proceeding such award as may be allowed for moving expenses, business

damages, and value of any crops. In the event of a total taking of the Licensed Area, the rent shall be prorated to, and this Agreement shall terminate upon, the date title vests in the condemning authority. Notwithstanding such termination, Concessionaire shall remain liable for all matters arising under this agreement prior to such termination. In the event of a partial taking, Rent shall be reduced on a prorata basis. In the event of a temporary taking, Rent shall be abated on a pro rata basis for the period of time Concessionaire is unable to use the portion of the Licensed Area temporarily taken. After such period, Rent shall be restored to the Rent which would have been then due without regard to such taking. County shall have no obligation to restore the Licensed Area improvements or otherwise perform any work upon same as a result of any such taking.

7. This First Amendment 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.
8. Except as modified by this First Amendment, the Agreement remains unmodified and in full force and effect and the parties hereby ratify, confirm, and adopt the Agreement, as amended, in accordance with the terms thereof.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

ATTEST:

COUNTY:

SHARON R. BOCK
CLERK & COMPTROLLER

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

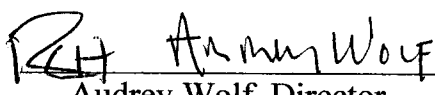
By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY


Assistant County Attorney

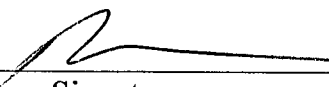
APPROVED AS TO TERMS
AND CONDITIONS

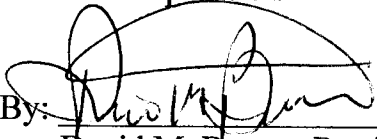

Audrey Wolf, Director
Facilities Development & Operations

WITNESSES:

CONCESSIONAIRE:

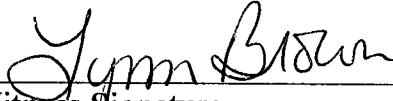
LITTLE DEEPER CHARTERS, INC., a
Florida corporation

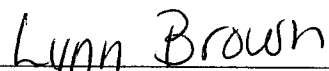

Witness Signature

By: 
David M. Brown, President


Print Witness Name

(SEAL)


Witness Signature


Print Witness Name

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 David Brown, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the President (position - i.e. president, partner, trustee) of Little Deeper Charters, Inc., a Florida corporation (name and type of entity - i.e. ABC Corporation, XYZ Limited Partnership), (the "Concessionaire") which entity is providing concession services on the real property legally described on the attached Exhibit "A" (the "Licensed Area").

2. Affiant's address is: 118 Castlewood Drive, #129
North Palm Beach, FL 33408

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 lease of the Property.

FURTHER AFFIANT SAYETH NAUGHT.

David M. Brown, Affiant

Print Affiant Name: David M. Brown

The foregoing instrument was sworn to, subscribed and acknowledged before me this 11th day of March, 2015, by David Michael Brown [] who is personally known to me or [X] who has produced FL Driver's Lic as identification and who did take an oath.

Terry Hearn
Notary Public

Terry Hearn
(Print Notary Name)



NOTARY PUBLIC
State of Florida at Large
My Commission Expires: _____

PROPERTY

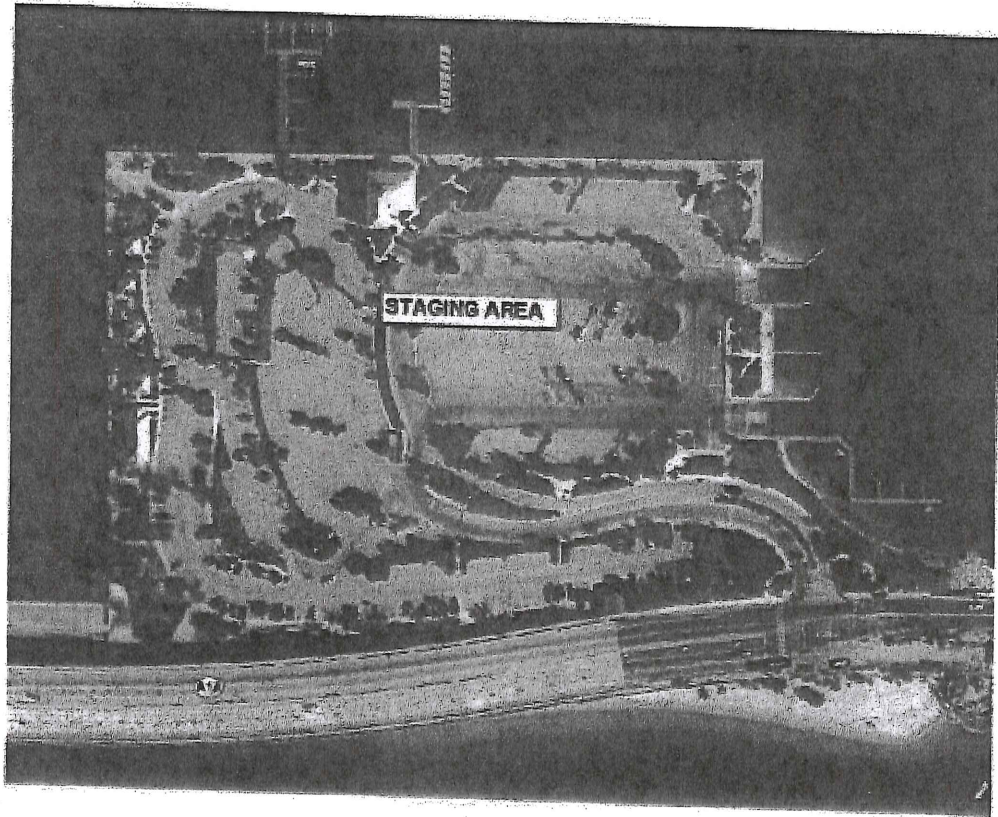
Architectural floor plan of a building, likely a school or institutional facility, showing a complex layout of rooms, corridors, and structural elements. The plan is heavily annotated with dimensions, room numbers, and structural notes.

Key features and labels include:

- Vending Area:** Two distinct areas are labeled "Vending Area". One is a large central area containing several smaller rooms and a staircase. The other is a smaller area in the lower-left corner.
- Structural Elements:** The plan shows a grid of structural columns and beams. Numerous circular and rectangular symbols are scattered throughout, representing various structural components or equipment.
- Dimensions and Notes:** The plan is covered in small text and numbers, providing detailed specifications for the building's layout and construction.
- Orientation:** A north arrow is located in the bottom right corner of the plan.

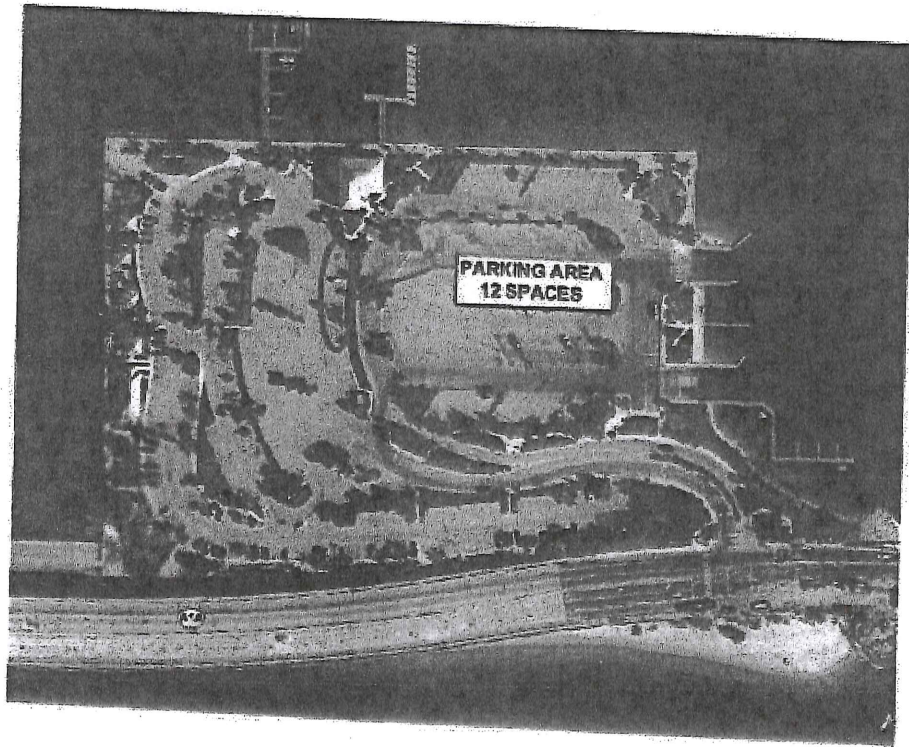
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Staging Area



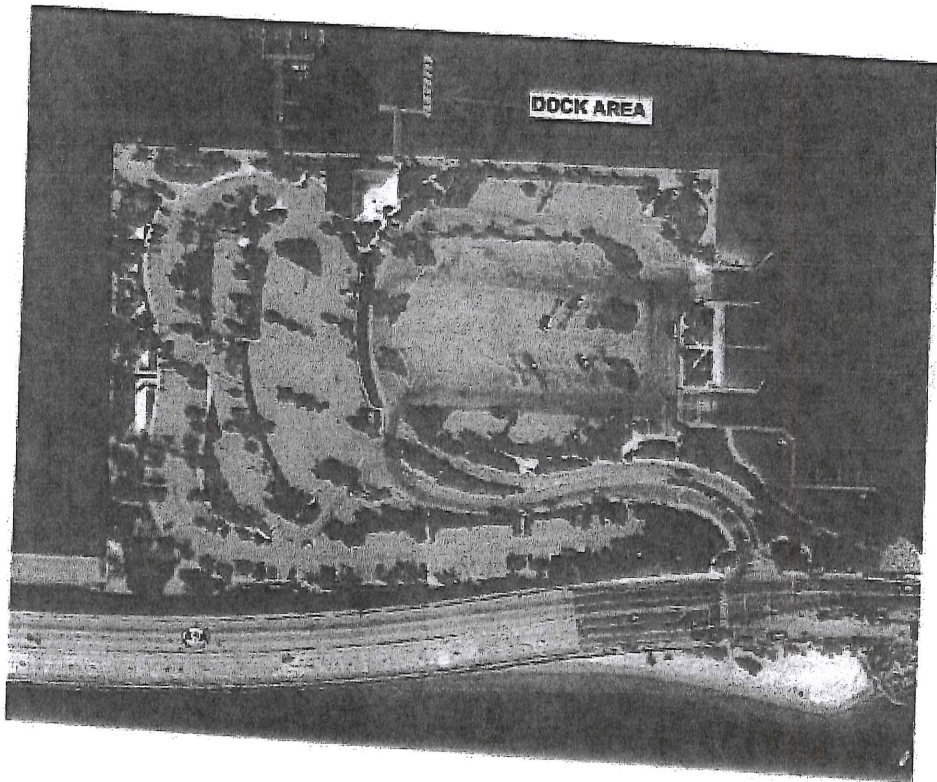
Page 3 of 4

Parking Area



Page 4 of 4

Dock Area



SCHEDULE TO BENEFICIAL INTERESTS IN PROPERTY

[illegible]