

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: March 22, 2016 [X] Consent [] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a First Amendment to Concessionaire Service Agreement (R2014-0359) with Loggerhead Marinelifelife Center, Inc. (LMC) for the continued management and operation of the Juno Beach Pier and concession building at an annual rate of \$43,264/year (\$3,605.33/month).

Summary: Since April 1, 2014, LMC has managed and operated the Juno Beach Pier and its concession building under the current Concessionaire Service Agreement (R2014-0359). The initial term of the Agreement was for two (2) years expiring on March 31, 2016, with three (3) one (1) year extension options. This First Amendment will extend the term of the Agreement for one (1) year from April 1, 2016, through March 31, 2017, and also updates and adds various standard County provisions. The annual rent will increase by four percent (4%) from \$41,600 (\$3,466.67/month) to \$43,264 (\$3,605.33/month). The Board has no discretionary authority to deny the exercise of the renewal option; however, the Board may terminate the Agreement upon ninety (90) days written notice. All other terms and conditions of the Agreement shall remain in full force and effect. Parks will continue to have administrative responsibility for this Agreement. (PREM) District 1 (HJF)

Background and Justification: In 2014, a Request for Proposals was issued to manage and operate the Pier and concession building at the Juno Beach Pier. On March 11, 2014, the Board awarded the Concessionaire Service Agreement to LMC. The Agreement requires LMC to request the term extension option between 150 to 90 days prior to current expiration date (between November 2, 2015 and January 2, 2016). LMC submitted its request on December 30, 2015, as shown on Attachment No. 4. The Agreement's initial two (2) year term commenced on April 1, 2014, and is due to expire March 31, 2016. This First Amendment will extend the term for one (1) year, updates the non-discrimination and insurance provisions, and adds a headings and a condemnation provision. The Parks and Recreation Department manages this Agreement and is satisfied with LMC's performance. Loggerhead Marinelifelife Center, Inc. is a not-for-profit corporation and has provided the Disclosure of Beneficial Interests listed as Attachment No. 5 identifying itself as a 501(c)(3) organization with no individuals or entities having a beneficial interest in its assets.

- Attachments:
- 1. Location Map
 - 2. First Amendment to Concessionaire Service Agreement
 - 3. Budget Availability Statement
 - 4. Letter dated December 30, 2015, from Loggerhead Marinelifelife Center, Inc.
 - 5. Disclosure of Beneficial Interests

Recommended By: RCH Army Wolf Date 2/22/16
Department Director Date
Approved By: W Baker Date 3/6/16
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$21,632)	(\$21,632)	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$21,632)</u>	<u>(\$21,632)</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes No X

Budget Account No: Fund 0001 Dept 580 Unit 5260 Object 4729-18
 Program _____

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

On April 1, 2016, the rent increases 4% to \$43,264.00 annually (\$3,605.33/month).

Fixed Asset Number: N/A

W 20316

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature]
 OFMB *AP* *2/24/16*
2/29

[Signature] *3/2/16*
 Contract Development and Control

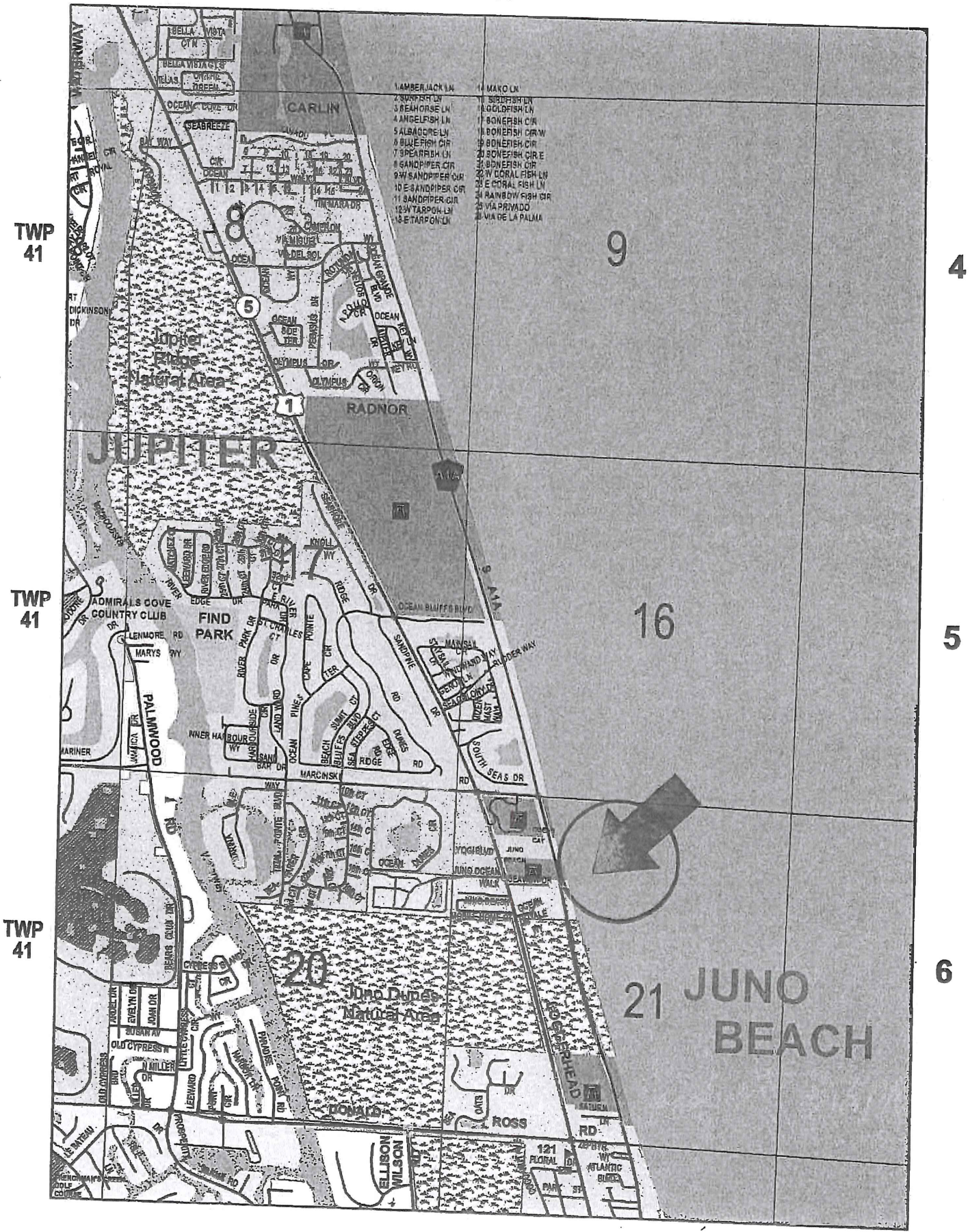
B. Legal Sufficiency:

[Signature] *3/4/16*
 Assistant County Attorney

C. Other Department Review:

 Department Director

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



RNG 43

See pg 25

RNG 43

LOCATION MAP

Attachment No. 1

1 of 1



ATTACHMENT NO. 2

2 - First Amendment to Concessionaire Service Agreements
(4 pages each)

**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 ("County"), and LOGGERHEAD MARINELIFE CENTER, INC., a Florida not for profit 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 March 11, 2014 (R2014-0359) (the "Agreement"), for the use of the Licensed Area as defined in the Agreement; and

WHEREAS, the Commencement Date was established as April 1, 2014, pursuant to Section 1.05 of the Agreement; and

WHEREAS, Concessionaire has provided County with written notice that Concessionaire wishes to exercise the first of three available one-year renewal options; and

WHEREAS, County wishes to amend the Agreement to incorporate certain language required by County.

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 parties agree that the Term of the Agreement shall be renewed for one year commencing on April 1, 2016, extending the Term through March 31, 2017. Annual Rent shall be adjusted to \$43,264.00 (\$3,605.33/month), as provided for in Section 2.02 of 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 the Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution R-2014-1421, as may be amended, 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, familial status, disability, or genetic information, with respect to any activity occurring in the Licensed Area, or conducted pursuant to this Agreement. Concessionaire warrants that its service in the Licensed Area shall be open to and benefit all visitors to the Park.

Concessionaire has submitted to County a copy of its non-discrimination policy which is consistent with the above, as contained in Resolution R-2014-1421, as may be

amended, or has acknowledged and provided to County a signed statement affirming Concessionaire's non-discrimination policy conforms to Resolution R-2014-1421, as may be amended.

5. Section 8.06 Insurance Terms and Conditions, of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 8.06 Insurance Terms and Conditions

The Comprehensive General Liability policy shall name the County as an Additional Insured with a "CG 2026 - *Additional Insured - Managers or Lessors of Licensed Area*", or similar endorsement. Such insurance shall be issued by an insurance company licensed to do business by Florida's Department of Insurance with Florida Certificate of Authority in full force and effect. The issuing insurance company shall maintain a minimum A.M. Best financial rating of "A and A-Excellent" and shall be subject to the review and approval of the Risk Management Department of the County. A Certificate of Insurance evidencing such insurance coverage shall be provided prior to the Commencement Date, such Certificate indicating at least ten (10) days prior notice of cancellation, to:

Palm Beach County
c/o Insurance Tracking Services, Inc. (ITS)
P.O. Box 20270
Long Beach, CA 90801
Email: pbc@instracking.com or Facsimile: +1 (562) 435-2999

The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

Subsequently, Concessionaire shall, during the term of the Agreement, and prior to each renewal thereof, provide such evidence to ITS at pbc@instracking.com or fax (562) 435-2999, which is Palm Beach County's insurance management system.

In no event shall the limits of said insurance policies be considered as limiting the liability of Concessionaire under this Agreement. In the event that Concessionaire fails to obtain or maintain in full force and effect any insurance coverage required to be obtained by Concessionaire under this Agreement, County may procure same from such insurance carriers as County may deem proper, and Concessionaire shall pay as Additional Rent, upon demand of County, any and all premiums, costs, charges and expenses incurred or expended by County in obtaining such insurance. Notwithstanding the foregoing, Concessionaire shall nevertheless hold County harmless from any loss or damage incurred or suffered by County from Concessionaire's failure to maintain such insurance.

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

Section 18.22 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 18.23 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. Except as set forth herein, the Agreement remains unmodified and in full force and effect.
8. 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.

(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

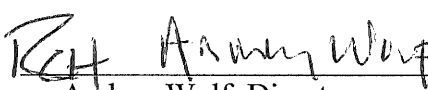
By: _____
Mary Lou Berger, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS



Chief Assistant County Attorney

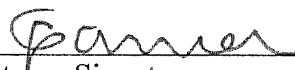


Audrey Wolf, Director
Facilities Development & Operations

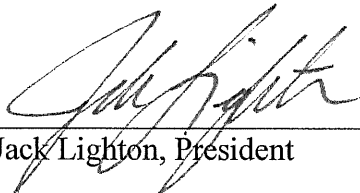
WITNESSES:

CONCESSIONAIRE:
LOGGERHEAD MARINELIFE CENTER, INC., a

Florida not for profit corporation



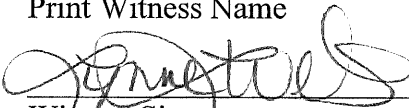
Witness Signature

By: 

Jack Lighton, President

Caitlin Farmer

Print Witness Name



Witness Signature

SEAL
(Corporation Not For Profit)



Lynne L Wells

Print Witness Name

ATTACHMENT NO. 3
1 page

BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 01/04/16 REQUESTED BY: Della M. Lowery

PHONE: (561) 233-0239

FAX: (561) 233-0210

PROJECT TITLE: Juno Beach Pier Concession Option - 1

PROJECT NO.:2016-_____

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$21,632.00)	(\$21,632.00)	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$21,632.00)</u>	<u>(\$21,632.00)</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</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: 5260

OBJ: 4729-18

SUB OBJ: _____

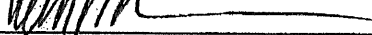
IS ITEM INCLUDED IN CURRENT BUDGET: YES NO

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
- _____ _____ _____

SUBJECT TO IG FEE? YES NO

Department: Parks & Recreation Department

BAS APPROVED BY: 

DATE: 1/4/16

ENCUMBRANCE NUMBER:

ATTACHMENT NO. 4
(1 page)



Board of Directors

Brian K. Waxman
Chair
Raymond E. Graziotto
Vice Chair
Robert Chlebek
Treasurer
Ann Miller
Secretary
Roger Amidon
Bruce A. Beal
Thomas Bean
Cressman Bronson
John D. Couris
Jodie Gless
Gordon Gray
Roe Green
Carrie Hanna
Dawn Hoffman
Todd Hutchison
Dan Jennings
Susan Johnson
Kim Edward Koger, M.D.
Ed Lunsford
Karen Marcus
Morris G. "Skip" Miller, Esq.
James F. Mullen IV, CPA
Elizabeth Neuhoff
Joel Paige
Morgan R. Ponce, M.D.
Robert Weisman
Lynne Wells
Diana Wilkin
Jeanette Wyneken, Ph.D.

December 30, 2015

Della Lowery
Property Specialist
Palm Beach County Board of County Commissioners
Property and Real Estate Management
2633 Vista Parkway
West Palm Beach, FL 33411

Dear Ms. Lowery,

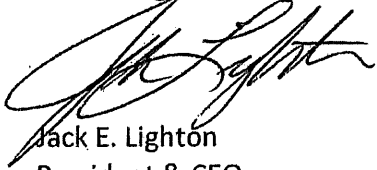
On behalf of the entire Loggerhead Marineline Center team, I would like to share with you our pride in operating the Juno Beach Pier.

Please use this letter as our "intent to renew" our operating agreement with Palm Beach County, FL.

Please advise if you need any additional paperwork at this time.

Thank you very much for your assistance.

Warm Regards,



Jack E. Lighton
President & CEO
Loggerhead Marineline Center

Emeritus Members

Nancy DiMarco, D.V.M.
Frank W. Harris
Gail Nelson
Emmy S. Rayne

President & CEO

Jack E. Lighton

ATTACHMENT NO. 5
(3 pages)

CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

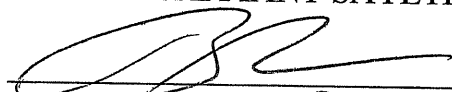
TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

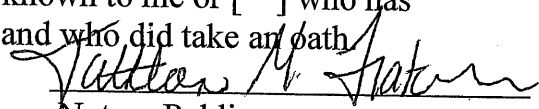
BEFORE ME, the undersigned authority, this day personally appeared Brian Waxman, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the Chairman of Loggerhead Marineline Center, Inc., (the "Concessionaire") which entity is providing concession services on the real property legally described on or depicted in the attached Exhibit "A" (the "Licensed Area").
2. Affiant's address is: 12407 Banyan Road, 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 entering into a Concessionaire Service Agreement for the Licensed Area.

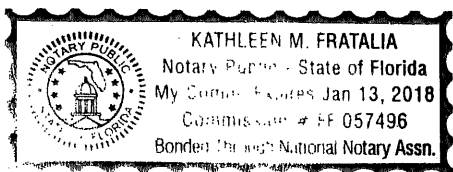
FURTHER AFFIANT SAYETH NAUGHT.


_____, Affiant
Print Affiant Name: Brian Waxman

The foregoing instrument was sworn to, subscribed and acknowledged before me this 22nd day of January, 2016, by _____
_____ who is personally known to me or [] who has produced _____ as identification and who did take an oath



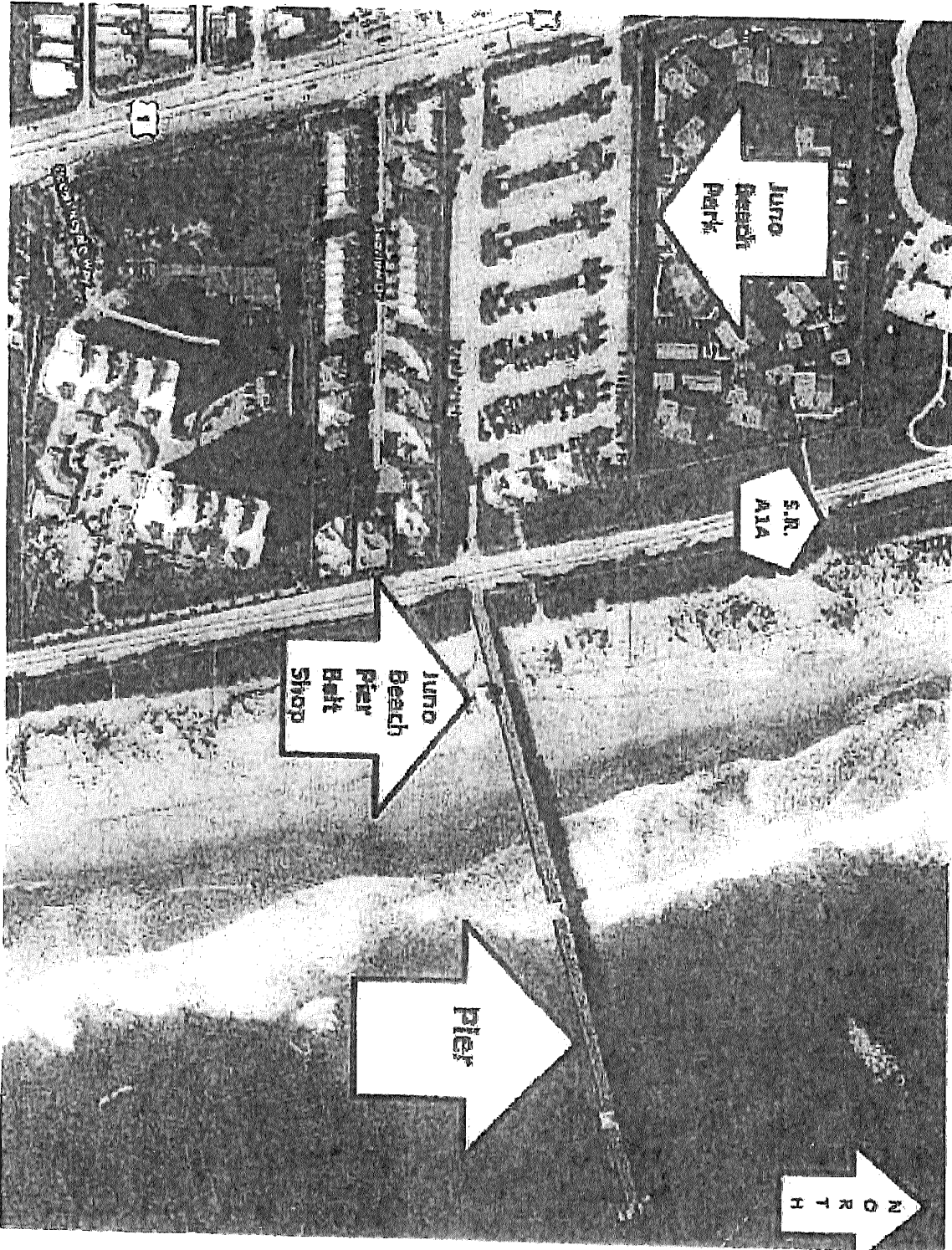
Notary Public
Kathleen M Fratalia
(Print Notary Name)



NOTARY PUBLIC
State of Florida at Large

My Commission Expires: 2018

EXHIBIT "A"
LICENSED AREA



14775 US Highway 1
Juno Beach, FL 33408
(PCN: 28-43-41-21-00-001-0011)

EXHIBIT "B"

**SCHEDULE TO BENEFICIAL
INTERESTS IN PROPERTY**

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

NAME	ADDRESS	PERCENTAGE OF INTEREST
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None. Loggerhead Marineline Center, Inc. is a 501(c)(3) organization. There are no individuals or entities that have a beneficial interest in its assets.
