

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: March 14, 2017 Consent Regular
 Ordinance Public Hearing

Department: **Facilities Development & Operations**

I. EXECUTIVE BRIEF

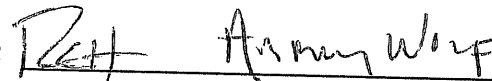
Motion and Title: Staff recommends motion to approve: a Second Amendment to Concessionaire Service Agreement (R2014-0359) with Loggerhead Marineline Center, Inc. (LMC) for the continued management and operation of the Juno Beach Pier and concession building at an annual rate of \$44,994.56/year (\$3,749.55/month).

Summary: LMC has managed and operated the Juno Beach Pier and its concession building under the current Concessionaire Service Agreement (CSA) since April 1, 2014. The initial term of the CSA was for two (2) years expiring on March 31, 2016, with three (3) one (1) year extension options. This Second Amendment will extend the term of the CSA for one (1) year from April 1, 2017, through March 31, 2018, and will update and add various standard County provisions. The annual rent will increase by four percent (4%) from \$43,264.00 (\$3,605.33/month) to \$44,994.56 (\$3,749.55/month). The Board has no discretionary authority to deny the exercise of the renewal option; however, the Board may terminate the CSA upon ninety (90) days written notice to LMC. All other terms and conditions of the CSA shall remain in full force and effect. Parks will continue to have administrative responsibility for this CSA. (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 CSA to LMC. The First Amendment (R2016-0348) dated March 22, 2016, updated the CSA to include various standard County provisions and extended the term for one (1) year, which expires on March 31, 2017. This Second Amendment extends the term for one (1) year, increases the rent by four percent (4%), updates the Inspector General provision and adds a public records provision per Florida Statute. The Parks and Recreation Department manages this CSA and is satisfied with LMC's performance. LMC is a not for profit corporation and in 2013 submitted a Disclosure of Beneficial Interests, listed as Attachment #5, identifying itself as a 501(c)(3) organization with no individuals or entities having a beneficial interest in its assets. LMC recently informed Staff that no changes have occurred since submitting the Disclosure of Beneficial Interests in 2013.

Attachments:

1. Location Map
2. Second Amendment to Concessionaire Service Agreement
3. Budget Availability Statement
4. Letter dated December 6, 2016, from LMCenter
5. Disclosure of Beneficial Interests

Recommended By:  2/7/17
 Department Director Date

Approved By:  3/1/17
 County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$22,497.)	(\$22,497.)	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$22,497.)</u>	<u>(\$22,497.)</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes X No _____

Budget Account No: Fund 0001 Dept 580 Unit 5111-03 Object 4729-18
 Program _____

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

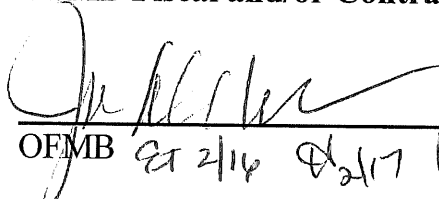
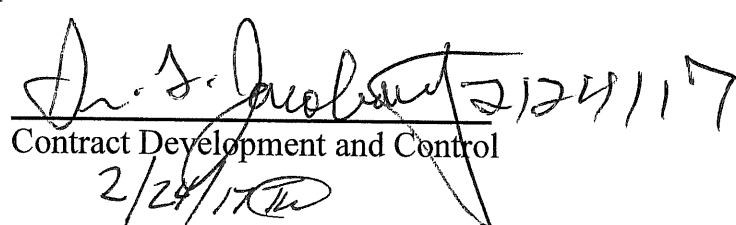
On April 1, 2017, the rent increases 4% to \$44,994.56 annually (\$3,749.55/month). Expenses are projected to be: **FY2017** (April-September) - \$22,497.28 and **FY2018** (October-March) - \$22,497.28

Fixed Asset Number n/a


C. Departmental Fiscal Review: _____ *W 2-14-17*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 OFMB <i>2/14</i> <i>2/17</i> <i>2/17</i>	 Contract Development and Control <i>2/24/17</i>
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B. Legal Sufficiency:


 Assistant County Attorney *2/27/17*

C. Other Department Review:

 Department Director

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

TWP 41

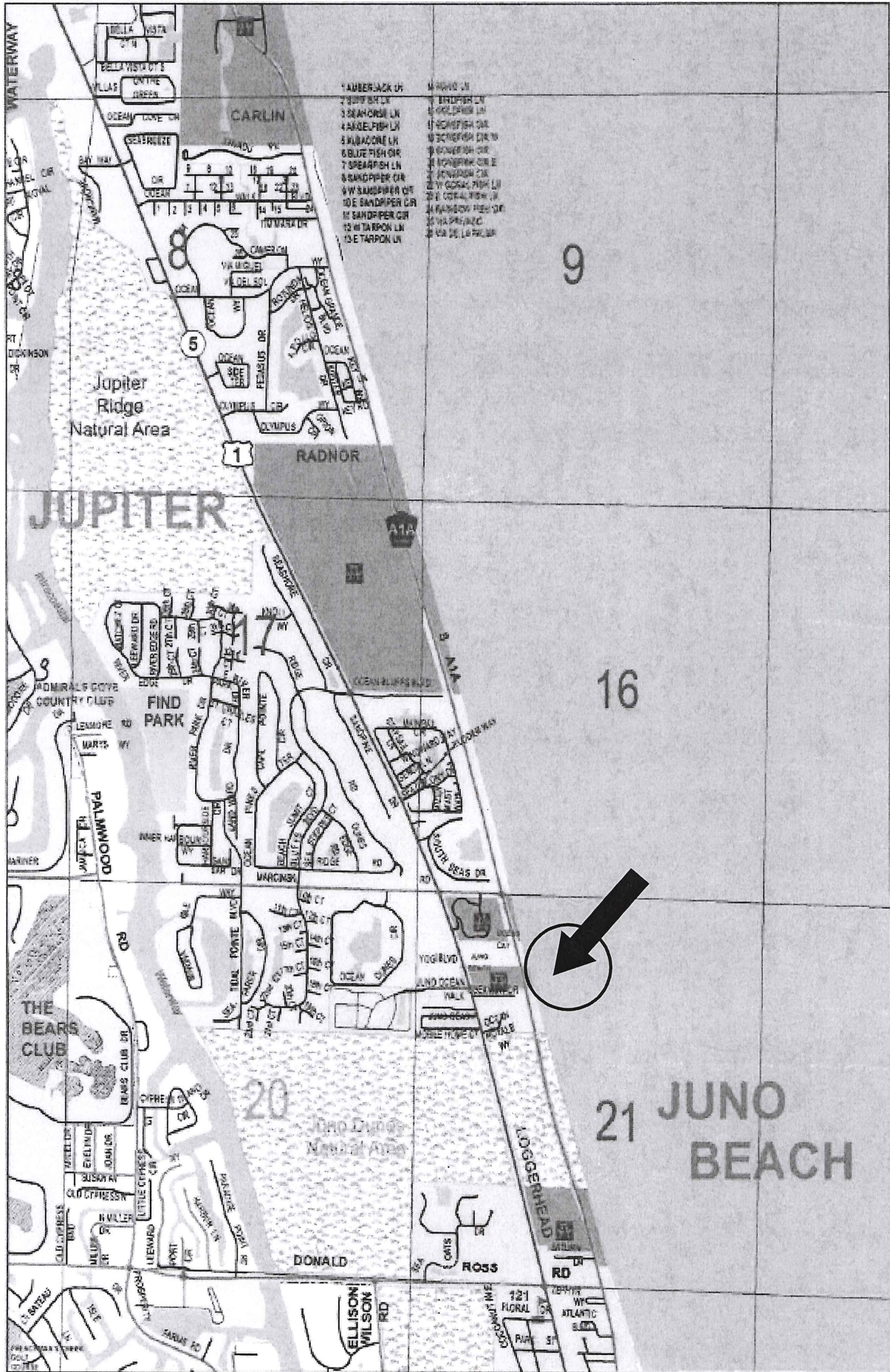
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TWP 41

5

TWP 41

6



RNG 43

See pg 25

RNG 43

Page 16

LOCATION MAP
Attachment #1



Attachment #2

Second Amendment to Concessionaire Service Agreement (2) (3 pages each)

**SECOND AMENDMENT
TO
CONCESSIONAIRE SERVICE AGREEMENT**

THIS SECOND AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT (the "Second 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), as amended by that certain First Amendment to Lease Agreement dated March 22, 2016 (R2016-0348) (collectively, the "Agreement"), for the use of the Licensed Area as defined in the Agreement; and

WHEREAS, Concessionaire has provided County with written notice that Concessionaire wishes to exercise the second 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, 2017, extending the Term through March 31, 2018. Annual Rent shall be adjusted to \$44,994.56 (\$3,749.55/month), as provided for in Section 2.02 of the Agreement.
3. Section 18.20 Palm Beach County Office of the Inspector General, of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 18.20 Palm Beach County Office of the Inspector General Audit Requirements.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

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

Section 18.24 Public Records

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Tenant: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Tenant shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time The Tenant is specifically required to:

- a) Keep and maintain public records required by the County to perform services as provided under this Contract.
- b) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Tenant further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- c) Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the Tenant does not transfer the records to the public agency.
- d) Upon completion of the Contract the Tenant shall transfer, at no cost to the County, all public records in possession of the Tenant unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Tenant transfers all public records to the County upon completion of the Contract, the Tenant shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Tenant keeps and maintains public records upon completion of the Contract, the Tenant shall meet all applicable requirements for retaining public records. All records stored electronically by the Tenant must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the Tenant to comply with the requirements of this article shall be a material breach of this Contract. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Tenant acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT [RECORDSREQUEST\(@pbcgov.org\)](mailto:RECORDSREQUEST@pbcgov.org) OR BY TELEPHONE AT 561-355-6680.

5. Except as set forth herein, the Agreement remains unmodified and in full force and effect.
6. This Second 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 Second Amendment as of the day and year second written above.

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

COUNTY:

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

By: _____
Deputy Clerk

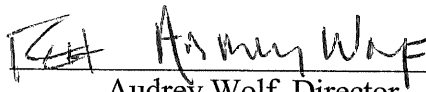
By: _____
Paulette Burdick, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY



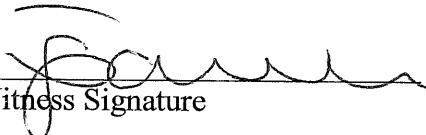
Chief Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS



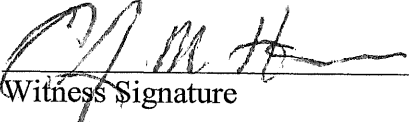
Audrey Wolf, Director
Facilities Development & Operations

WITNESSES:



Witness Signature
Caitlin Farmer

Print Witness Name

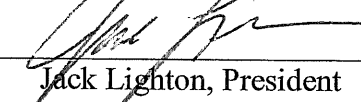


Witness Signature
Timothy M. Hannon

Print Witness Name

CONCESSIONAIRE:

LOGGERHEAD MARINELIFE CENTER,
INC., a Florida not for profit corporation

By: 

Jack Lighton, President

SEAL
(Corporation Not For Profit)



Attachment #3
Budget Availability Statement (1 page)

BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 01/04/17 REQUESTED BY: Della M. Lowery

PHONE: (561) 233-0239
FAX: (561) 233-0210

PROJECT TITLE: Juno Beach Pier Concession Option – 2 of 3

PROJECT NO.: 2017-5-002

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$22,497.28)	(\$22,497.28)	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$22,497.28)</u>	<u>(\$22,497.28)</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
- _____

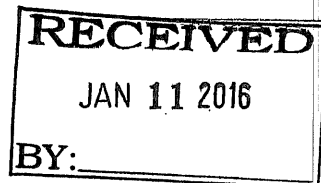
SUBJECT TO IG FEE? YES NO

Department: Parks & Recreation Department

BAS APPROVED BY: 

DATE: 1/9/17

ENCUMBRANCE NUMBER:



Attachment #4
Letter from Loggerhead Marinelifelife Center (1 page)



LOGGERHEAD

MARINELIFE CENTER

14200 U.S. Highway One
Juno Beach, Florida 33408
561.627.8280 • Fx: 561.627.8305
www.marinelife.org



Board of Directors

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Chair
- Raymond E. Graziotto
Vice Chair
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Treasurer
- Ann Miller
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- Bruce A. Beal
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- Susan Johnson
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- Karen Marcus
- James F. Mullen IV, CPA
- Joel Paige
- Morgan R. Poncy, M.D.
- Robert Weisman
- Lynne Wells
- Diana Wilkin
- Jeanette Wyneken, Ph.D.

December 6, 2016

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 #5
Disclosure of Beneficial Interests (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:

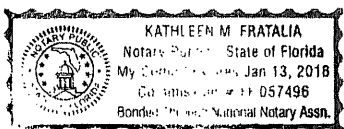
- 1. Affiant is the Chairman of Loggerhead Marinelife Center, Inc., (the "Concessionaire") which entity is providing concession services on the real property legally described on or depicted in the attached Exhibit "A" (the "Licensed Area").
- 2. Affiant's address is: 12407 Banyan Road, North Palm Beach, 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.

[Signature], Affiant
Print Affiant Name: Brian Waxman

The foregoing instrument was sworn to, subscribed and acknowledged before me this 20th day of January, 2016, by _____
[] who is personally known to me or [] who has produced _____ as identification and who did take an oath

[Signature]
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.

Client#: 1335326

77LOGGEMAR

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/10/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Table with PRODUCER (BB&T Huffaker Insurance), CONTACT NAME (Lisa Rader), INSURER(S) AFFORDING COVERAGE (Arch Insurance Company, Associated Industries Ins Compa, Twin City Fire Insurance), and INSURED (Loggerhead Marinelifelife Center Inc.)

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Main table listing insurance coverages: COMMERCIAL GENERAL LIABILITY (AAPKG0011400), AUTOMOBILE LIABILITY (AAAUT0011400), UMBRELLA LIAB (AAFXS0011400), WORKERS COMPENSATION AND EMPLOYERS' LIABILITY (AWC1067034), and D&O/EPL (NFP00H203, AAPKG0011400).

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) The Palm Beach County Board of County Commissioners, A Political Subdivision of the State of Florida, Its officers, employees and agents are named as additional insured with respect to liability caused by the negligence of the named insured per CG2026 as respect contractual agreement for operation of the Juno Beach Pier. Coverage is on a primary basis.

Table with CERTIFICATE HOLDER (Palm Beach County Board of County Commissioners) and CANCELLATION (SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.)

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Below is extended only information justifying the figures listed on the attached BAS for the Parks & Recreation Juno Beach Pier Concessionaire Option – 2 of 3:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>(\$22,497.28)</u>	<u>(\$22,497.28)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$22,497.28)</u>	<u>(\$22,497.28)</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>

For FY2017:

- The Agreement expires on 03/31/17.
- The current rent is \$43,264.00 annually = \$3,605.33 monthly.
- Per Second Amendment the term is being extended for one year from 04/01/17 – 03/31/18.
- The rent will be increasing four percent (4%) pursuant to R2014-0359.
- The rent for one year will be \$44,994.56 (\$3,749.55 per month rounded up).
- 04/01/17 – 9/30/17 = 6 months.
- $\$44,994.56 \div 12 \text{ months} \times 6 \text{ months} = \$22,497.28$

FY2017 TOTAL = \$22,497.28

For FY2018:

- 10/1/17 – 03/31/18 = 6 months.
- $\$44,994.56 \div 12 \text{ months} \times 6 \text{ months} = \$22,497.28$

FY2018 TOTAL = \$22,497.28

For FY2019:

FY2019 TOTAL = \$-0-

For FY2020:

FY2020 TOTAL = \$-0-

For FY2021:

FY2021 TOTAL = \$-0-