

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: May 2, 2017	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular	
	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing	

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF





Motion and Title: Staff recommends motion to approve: a First Amendment to Concessionaire Service Agreement (R2012-0892) dated June 19, 2012, with Kayak-King Watersports, Inc., for the continued operation of a water sports and recreational rental concession in Okeeheelee Park at an annual rate of \$7,176.53 (\$598.04/monthly).

Summary: Kayak-King Watersports, Inc. (KKW) has operated its concession in Okeeheelee Park under the current Concessionaire Service Agreement (Agreement) since July 2012. This First Amendment will extend the term of the Agreement for two (2) years from July 1, 2017, through June 30, 2019, and add various standard County provisions. The annual rent for the first year of this two (2) year extension will increase by two percent (2%) from \$7,035.81/year (\$586.32/monthly) to \$7,176.53/year (\$598.04/monthly). The Board has no discretionary authority to deny the exercise of the option; however, the Board may terminate this Agreement at any time upon ninety (90) days written notice to KKW. 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 2 (HJF)**

Background and Justification: On June 19, 2012, the Board approved the Agreement. KKW exercised it's first option on June 23, 2015 (R2015-0781) extending the term of the Agreement through June 30, 2017. This First Amendment extends the term of the Agreement for two (2) years through June 30, 2019, updates the non-discrimination, Inspector General and insurance provisions, and adds the County's headings, condemnation, public records, and no third party beneficiary provisions. The annual rent will increase two percent (2%) on July 1, 2017, to \$7,176.53, and then another two percent (2%) on July 1, 2018, to \$7,320.06. The Parks and Recreation Department manages this Agreement and is satisfied with KKW's performance. KKW provided the Disclosure of Beneficial Interests listed as Attachment #4 in 2012 and has recently informed Staff that no changes have occurred as Annette Arriaga and Roger Roque continue to each have a 50% ownership interest.

Attachments:

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

Recommended By: <u></u>	<u></u> Department Director	<u>4/10/17</u> Date
Approved By: <u></u>	<u></u> County Administrator	<u>4/25/17</u> 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	(\$1,794.)	(\$7,212.)	(\$5,490.)	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	(\$1,794.)	\$7,212.)	(\$5,490.)	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes X No _____

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

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

On July 1, 2017, the rent will increase 2% to \$7,176.53/annually (\$598.04/monthly) and another 2% on July 1, 2018, to \$7,320.06/annually (\$610.01/monthly).

Fixed Asset Number _____

C. Departmental Fiscal Review: Kayn Spivey 4/12/17

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

OFMB ET 4/14 4/20 4/14
Contract Development and Control 4/27/17

B. Legal Sufficiency:

4/24/17
Assistant County Attorney

C. Other Department Review:

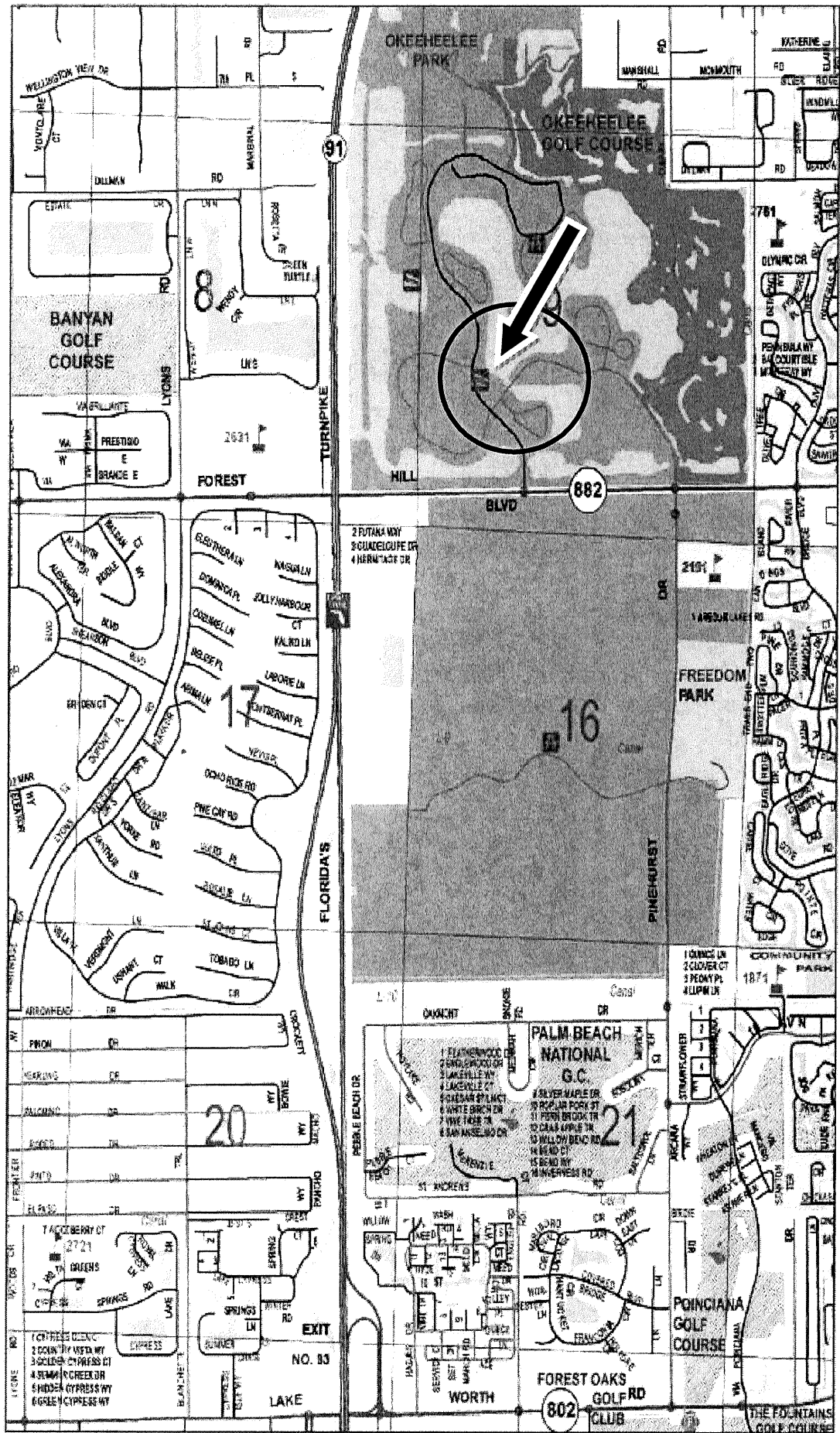
Department Director

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

TWP 44

TWP 44

TWP 44



22

23

24

RNG 42

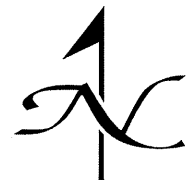
See pg 88

RNG 42

Page 78

LOCATION MAP

Attachment #1



Attachment #2

First Amendment to Concessionaire Service Agreement (2) (6 pages)

FIRST AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT

THIS FIRST AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT (R2012-0892), (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 **KAYAK-KING WATERSPORTS, INC.**, a Florida corporation, ("Concessionaire").

WITNESSETH:

WHEREAS, County and Concessionaire entered into that certain Concessionaire Service Agreement dated June 19, 2012 (R2012-0892) (the "Agreement") for the use of the Licensed Area as defined in the Agreement, which Agreement commenced on July 1, 2012, for a term of three (3) years, with two (2) two (2) year options to extend; and

WHEREAS, the Commencement Date was established as July 1, 2012, pursuant to Section 1.04 of the Agreement; and

WHEREAS, Concessionaire has provided County with written notice that Concessionaire wishes to exercise the second and final two (2) year renewal option; and

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

WHEREAS, the parties hereto desire to amend the Agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and various 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 as ascribed to them in the Agreement, as amended.
2. The parties agree that the Term of the Agreement shall be renewed for two (2) years commencing on July 1, 2017, extending the Term through June 30, 2019. Annual Rent shall be adjusted to \$7,176.53 (\$598.04/month), as provided for in Section 2.02 of the Agreement.
3. Section 4.05 Non-Discrimination 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, 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.

4. Section 8.07 Insurance Terms and Conditions is hereby modified to add the following:

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: pbcc@instracking.com or Facsimile: (562) 435-2999

Subsequently, Concessionaire shall, during the term of the Agreement, and prior to each renewal thereof, provide such evidence to ITS at pbcc@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.

5. Section 18.21 Palm Beach County Office of the Inspector General is hereby deleted in its entirety and replaced with the following:

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.

6. Section 18.22 Headings is hereby added as follows:

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.

7. Section 18.23 Condemnation is hereby added as follows:

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.

8. Section 18.24 Public Records is hereby added as follows:

Section 18.24 Public Records

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Concessionaire: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Concessionaire shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Concessionaire 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 Concessionaire 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 Concessionaire does not transfer the records to the public agency.
- D. Upon completion of the Contract the Concessionaire shall transfer, at no cost to the County, all public records in possession of the Concessionaire 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 Concessionaire transfers all public records to the County upon completion of the Contract, the Concessionaire shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the Contract, the Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically by the Concessionaire 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 Concessionaire 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. Concessionaire 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 CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'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.

9. Section 18.25 No Third Party Beneficiary is hereby added as follows:

Section 18.25 No Third Party Beneficiary

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens of Palm Beach County or employees of County or Concessionaire.

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

11. Except as set forth herein, the Agreement, as amended, remains unrevised and in full force and effect, and the parties hereby ratify, confirm, and adopt the Agreement, as amended, hereby.

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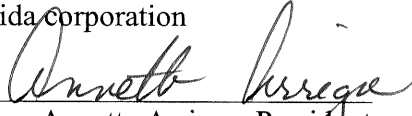
IN WITNESS WHEREOF, the parties have executed this First Amendment on the date set forth above.


Signed in the presence of:

CONCESSIONAIRE:


KAYAK-KING WATERSPORTS, INC., a
Florida Corporation

By:


Annette Arriaga, President


Signature of _____
Witness

Sharon Anosley
Print Name of Witness


Signature of Witness

Ernie Camerino
Print Name of Witness

(SEAL)

ATTEST:

COUNTY:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida, by and
through its Board of County Commissioners


By: _____
Deputy Clerk

By: _____
Paulette Burdick, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: 
Chief Assistant County Attorney

By: 
Department Director

Attachment #3

Budget Availability Statement (1 page)

BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 03/03/17 REQUESTED BY: Della M. Lowery PHONE: 233-0239
Property Spec./PREM FAX: 233-0210
PROJECT TITLE: Okeeheelee Park Equipment Concession -- 1st Amend. (Option 2 of 2) PROJECT NO.: 2017-5.009

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$1,794.12)	(\$7,212.39)	(\$5,490.09)	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	(\$1,794.12)	(\$7,212.39)	(\$5,490.09)	\$-0-	\$-0-
# 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: 5111 OBJ: 4729
SUB OBJ: 18

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: Concessionaire Service Agreement)
- ☐ 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: 3/3/17
mf
ENCUMBRANCE NUMBER:

Attachment # 4
Disclosure of Beneficial Interests (3 pages)

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 ANNETTE ARRIAGA, 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 KAYAK KING WATERSPORTS, INC. (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 or depicted in the attached Exhibit "A" (the "Licensed Area").

2. Affiant's address is: 1338 VICTORIA DR
W. PALM BEACH, FL 33406

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 SAYS YETH NAUGHT.

Annette Arriaga, Affiant
Print Affiant Name: ANNETTE ARRIAGA

The foregoing instrument was sworn to, subscribed and acknowledged before me this 30 day of April, 2012, by Annette Arriaga
[☒] who is personally known to me or [☐] who has produced [Signature]
as identification and who did take an oath.

Notary Public

Juan Diaz
(Print Notary Name)

NOTARY PUBLIC
State of Florida at Large

My Commission Expires: 4-8-16



EXHIBIT "A"
TO CONCESSIONAIRE DISCLOSURE OF BENEFICIAL INTERESTS

LICENSED AREA

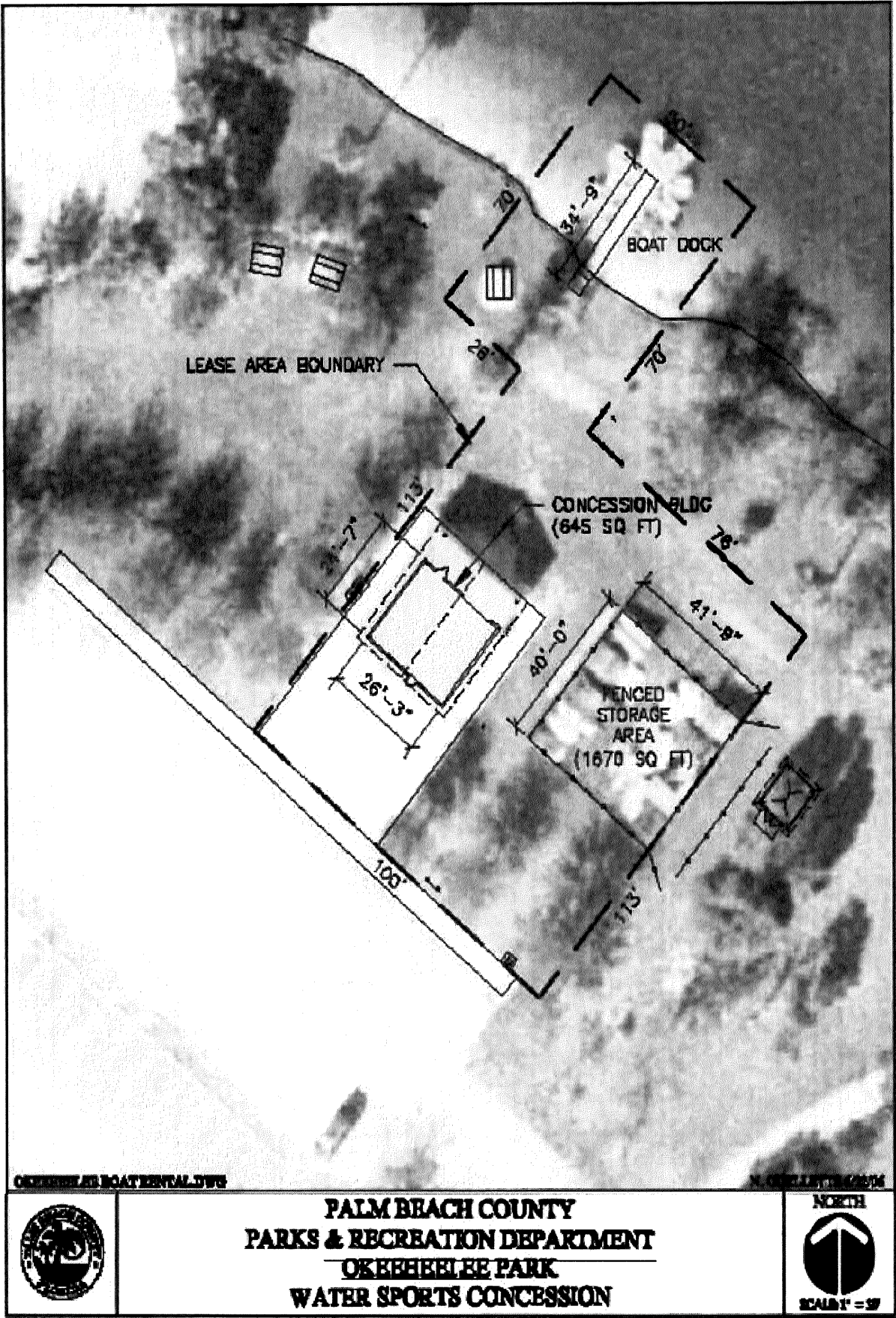


EXHIBIT "B"
TO CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

**SCHEDULE TO BENEFICIAL
INTERESTS**

Concessionaire is only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. Concessionaire must identify individual interest holders. 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 interest holders of such other entity.

NAME	ADDRESS	PERCENTAGE OF INTEREST
ANETTE ARREA	1338 VICTORIA DR WPD FL 33406	50%
ROGER ROQUE	1338 VICTORIA DR WPD FL 33406	50%