

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: June 5, 2018                      ☒ Consent                      ☐ Regular  
   ☐ Ordinance                      ☐ Public Hearing

Department: Facilities Development & Operations

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to:

**A) adopt** a Resolution finding that the Third Amendment to Concessionaire Service Agreement (R2010-1408) with DH2, Inc. for the use of a temporary mobile kitchen for the operation of food and beverage services at Osprey Point Golf Course in South County Regional Park for \$18,000.00/year is in the best interest of the County; and

**B) approve** a Third Amendment to Concessionaire Service Agreement (R2010-1408) with DH2, Inc.


**Summary:** On September 14, 2010, the Board awarded the Concessionaire Service Agreement (R2010-1408) to DH2, Inc. for the use of a 183 SF snack bar/exterior patio area at the Osprey Point Golf Course Clubhouse and for the operation of mobile food and beverage carts on the golf course located in South County Regional Park, Boca Raton. The Club House is undergoing construction and requires DH2, Inc. to relocate its snack bar concession outside the Club House. DH2, Inc. will provide and operate out of a temporary mobile kitchen. Construction for the new full service restaurant building is expected to be completed and operational in the summer of 2019, at which time a new RFP will be issued and awarded. This Third Amendment will: (i) reduce the annual rent retroactively to May 1, 2018 from \$30,000 (\$2,500/mo) to \$18,000 (\$1,500/mo); ii) modify the Licensed Area to identify the location of the temporary mobile kitchen; iii) provide for the use of a temporary mobile kitchen, at Concessionaire’s sole cost and expense; and iv) incorporate certain standard contract provisions required by the County. Parks will continue to have administrative responsibility for this Agreement. **(PREM) District 5 (HJF)**

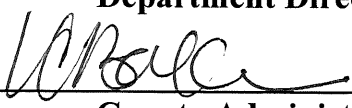
**Background and Justification:** The Osprey Point Golf Course became operational in November 2010. On September 14, 2010, the Board approved the Concessionaire Service Agreement with DH2, Inc., which commenced on November 5, 2010, for three (3) years, with two (2) one (1) year extension options. On June 21, 2011, (R2011-0897) the Board approved the first amendment deleting the IG .25 fee references.

cont’d on page 3

**Attachments:**

- 1. Location Map
- 2. Resolution (with Exhibit A)
- 3. Third Amendment to Concessionaire Service Agreement (2) (with Exhibit A)
- 4. Disclosure of Beneficial Interests (with Exhibits A & B)

Recommended By:                       5/12/18  
   Department Director                      Date

Approved By:                       5/24/18  
   County Administrator                      Date

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>\$7,500</u>	<u>\$12,000</u>	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$7,500)</u>	<u>(\$12,000)</u>	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes   X   No       

Does this item include the use of federal funds? Yes        No   X  

Budget Account No: Fund   1384   Dept   580   Unit   5258   Object   4729    
Sub-Object   03  

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

Fixed Asset Number \_\_\_\_\_

### C. Departmental Fiscal Review:

## III. REVIEW COMMENTS

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

Robert R. [Signature] 5/18/18 [Signature] 5/18/18  
OFMB (U) 5/18 AK 5/17 Contract Development and Control 5/18/18

### B. Legal Sufficiency:

[Signature] 5/21/18  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

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

**Background & Justification (Cont'd):** Both one (1) year extension options were exercised and the term was scheduled to expire on November 4, 2015. On July 12, 2015, and July 19, 2015, staff advertised a Request for Proposals for a continuation of similar services in the 183 SF kitchen/snack bar area at the Club House in the Palm Beach Post. However, on August 6, 2015, after being informed by the Parks Department that the property is undergoing a planned building and food service expansion, the RFP was canceled because the expansion changed the intent of the RFP as advertised. On October 6, 2015, (R2015-1408) the Board approved a Second Amendment increasing the Guarantee Annual Rent from \$17,019 to \$30,000, eliminating the per round fee, extending the term by nine (9) months, and allowing for it to continue on a month to month basis. The new full service restaurant building was, at that time, planned to be operational in August 2016.

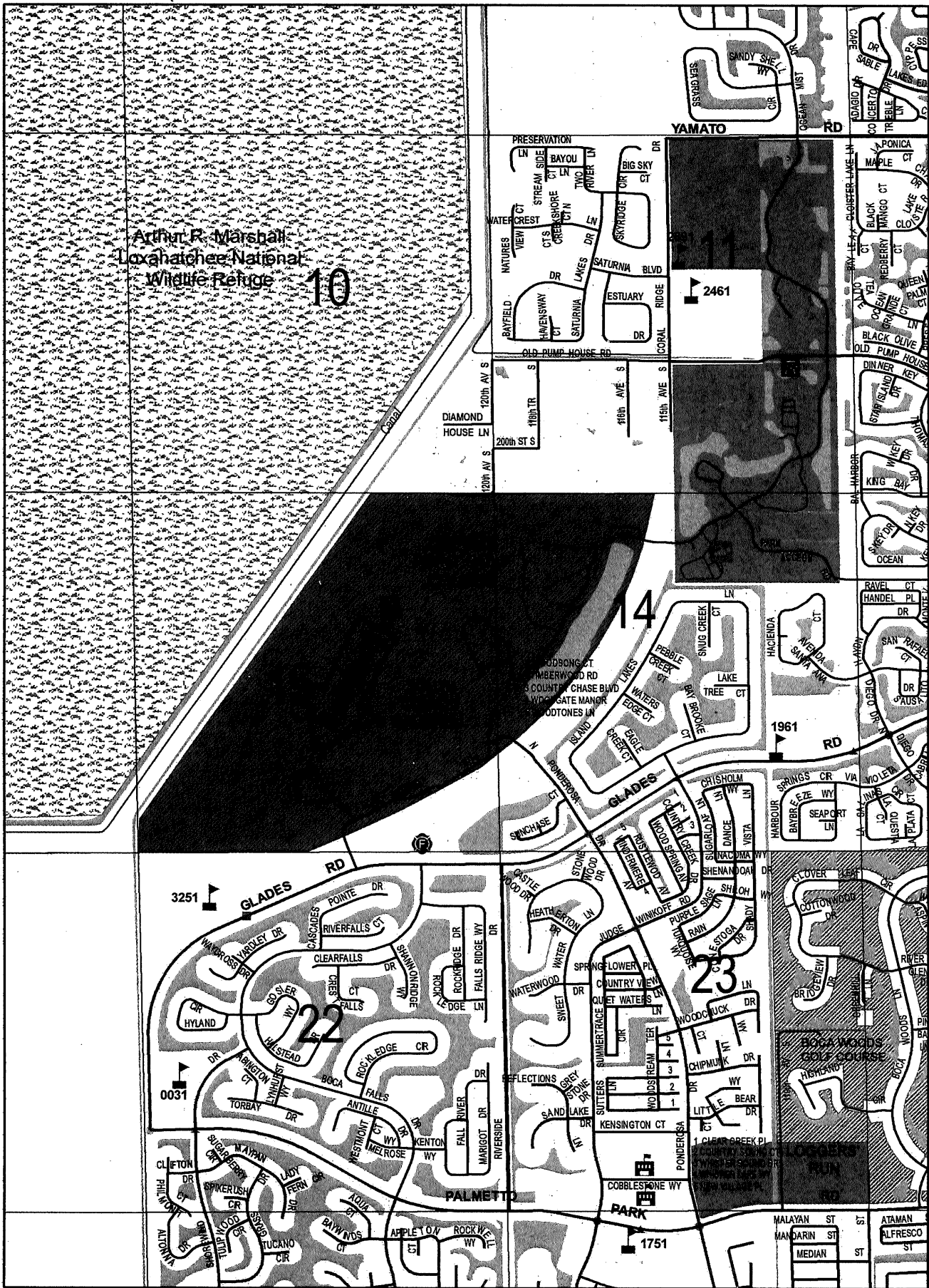
The kitchen/snack bar area of the Club House is being converted for pro-shop/office use and the alterations have caused a portion of the Licensed Area to be displaced. On May 1, 2018, DH2, Inc. relocated to the temporary mobile kitchen which was provided by DH2, Inc., at its sole cost and expense. The annual rent is being reduced to assist in offsetting the DH2, Inc.'s additional cost of providing the temporary mobile kitchen. The temporary mobile kitchen will allow food and beverage services to continue during the Club House rehabilitation. A new RFP will be issued and the awarding of a new concession agreement will coincide with the completion of the new restaurant. The building and restaurant are expected to be completed and operational in the Summer of 2019.

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 Todd Weiss as holding a 100% beneficial interest in DH2, Inc.

TWP  
47

TWP  
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TWP  
47



RNG 41

See pg 127

RNG 41

Handwritten signature or initials.

**ATTACHMENT NO. 2**  
Resolution  
(11 pages)

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE BOARD OF COUNTY  
COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA,  
AUTHORIZING A THIRD AMENDMENT TO THE  
CONCESSIONAIRE SERVICE AGREEMENT WITH DH2,  
INC., A FLORIDA CORPORATION, AND PROVIDING FOR  
AN EFFECTIVE DATE.**

**WHEREAS**, DH2, Inc., (Concessionaire), pursuant to a Concessionaire Service Agreement dated September 14, 2010, (R2010-1408), as amended and extended, manages and operates a food service concession at the Osprey Point Golf Course; and

**WHEREAS**, in July 2015, a solicitation was issued for concession services and canceled as it was deemed not feasible at that time because the property was undergoing an expansion to accommodate current service demands. It was assumed the expansion and renovations to the property would be completed in mid 2016 and that a Request for Proposals would have been re-issued at that time; and

**WHEREAS**, the Term of the Agreement expired on November 4, 2015, and the Second Amendment to the Agreement dated October 6, 2015 (R-2015-1408), approved a nine (9) month extension of the Term and provided for continued occupancy on a month to month basis, and

**WHEREAS**, the golf course continues to undergo an expansion and renovations being made to the Golf Course Clubhouse have caused a portion of the Licensed Area to be relocated; and

**WHEREAS**, the Concessionaire has requested a \$1,000.00 per month reduction to the Guaranteed Annual Rent due to Concessionaire's inability to utilize the Clubhouse which requires the Concessionaire to operate its food concession out of a temporary mobile kitchen; and

**WHEREAS**, the Concessionaire provides a service for the benefit of the public and the County wishes to retain the Concessionaire's operations at the golf course until such time as a new Request for Proposals is issued and a new concessionaire service agreement can be negotiated; and

**WHEREAS**, the Board of County Commissioners of Palm Beach County hereby finds that the Third Amendment to the Concessionaire Service Agreement is in the best interest of the County as this amendment to the Concessionaire Service Agreement with DH2, Inc. will ensure continued concession operations at the golf course.

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 Extend the Term of the Lease

The Board of County Commissioners of Palm Beach County shall modify the Licensed Area, pursuant to the Third Amendment to Concessionaire Service Agreement, attached hereto and incorporated herein by reference, at a Guaranteed Annual Rent of \$18,000 (\$1,500 per month) as established by the Third Amendment to Concessionaire Service Agreement.

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 Melissa McKinlay , Mayor  
Commissioner Mack Bernard, Vice Mayor  
Commissioner Hal R. Valeche  
Commissioner Paulette Burdick  
Commissioner Dave Kerner  
Commissioner Steven L. Abrams  
Commissioner Mary Lou Berger

The Mayor thereupon declared the Resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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

BOARD OF COUNTY COMMISSIONERS

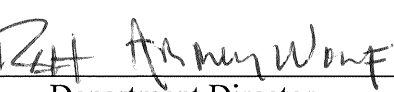
SHARON R. BOCK  
CLERK & COMPTROLLER

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

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

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

APPROVED AS TO TERMS  
AND CONDITIONS

By  \_\_\_\_\_  
Department Director

**EXHIBIT “A”**

**THIRD AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT**



**THIRD AMENDMENT TO  
CONCESSIONAIRE SERVICE AGREEMENT**

**THIS THIRD AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT** ("Third Amendment") 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 **DH2, Inc.**, a Florida corporation, hereinafter referred to as "Concessionaire".

**WHEREAS**, County and Concessionaire entered into that certain Concessionaire Service Agreement dated September 14, 2010, (R2010-1408), (the "Agreement"), for the operation of a food service concession within South County Regional Park, 12551 Glades Road, Boca Raton, Florida; and

**WHEREAS**, the First Amendment to the Agreement dated June 21, 2011 (R-2011-0897), deleted the reference to the Inspector General fee; and

**WHEREAS**, the Term of the Agreement, as extended by Concessionaire's exercise of the third and final option to extend approved by the Board on October 7, 2014, (R-2014-1453), expired on November 4, 2015; and

**WHEREAS**, the Second Amendment to the Agreement dated October 6, 2015 (R-2015-1408), approved a nine (9) month extension of the Term of the Agreement and provided for continued occupancy on a month to month basis, increased the Guaranteed Annual Rent to \$30,000, deleted the per round fee, added the use of an outside grill, the sale of liquor, and use of paper cups; modified the dress uniform, and incorporated certain language required by County; and

**WHEREAS**, in July 2015, a solicitation was issued for concession services and canceled as it was deemed not feasible at that time because the property was undergoing an expansion to accommodate current service demands, and it was assumed the expansion and renovations to the property would be completed in mid 2016 and that a Request for Proposals would have been re-issued at that time; and

**WHEREAS**, the golf course continues to undergo an expansion and renovations being made to the Golf Course Clubhouse have caused the Club House Area depicted on Exhibit "A-1" to be relocated; and

**WHEREAS**, the parties wish to amend the Agreement to (i) modify the Licensed Area and revise Exhibit "A-1" to reflect the modification; ii) provide for the use of a temporary mobile kitchen; iii) decrease the Guaranteed Annual Rent; and iv) incorporate certain language required by County.

**NOW, THEREFORE**, in consideration of the Licensed Area and mutual covenants and conditions contained herein, County and Concessionaire 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 in the Agreement.
2. Exhibit "A-1" (Licensed Area) of the Agreement is hereby replaced with Exhibit "A-1" (Licensed Area) attached hereto.
3. The parties agree that commencing on May 1, 2018, the Guaranteed Annual Rent shall be adjusted to \$18,000.00 (\$1,500.00 per month).
4. Section 4.02 Operation of Business is hereby modified to add the following:  
  
w) Concessionaire shall provide, at its sole cost and expense, a temporary mobile kitchen within the Licensed Area as depicted on Exhibit "A-1". Concessionaire shall be responsible for managing and maintaining the temporary mobile kitchen. County shall not be responsible for any damage caused to said temporary mobile kitchen.
5. Section 4.05 Non-Discrimination is deleted in its entirety and replaced with the following:

**Section 4.04 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 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 Lease. 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.

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

**Section 18.21 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.

7. Article XVIII MISCELLANEOUS is hereby amended to add the following:

**Section 18.22 Non-exclusivity of Remedies.**

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**Section 18.23 No Third Party Beneficiary.**

No provision of this Lease 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 Lease, including but not limited to any citizens of Palm Beach County or employees of County or Concessionaire.

**Section 18.24 Headings.**

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

**Section 18.25 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 Lease shall terminate upon, the date title vests in the condemning authority. Notwithstanding such termination, Concessionaire shall remain liable for all matters arising under this lease 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.

**Section 18.26 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, F.S., 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 Agreement.

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 Agreement term and following completion of the Agreement, if the Concessionaire does not transfer the records to the public agency.

D. Upon completion of the Agreement 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 Agreement, 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 Agreement, 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 Agreement. 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 AGREEMENT, 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.

**Section 18.27 Conflict of Interest**

The Concessionaire represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The Concessionaire further represents that no person having any such conflict of interest shall be employed for said performance of services.

The Concessionaire shall promptly notify the County's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may

influence or appear to influence the Concessionaire's judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Concessionaire may undertake and request an opinion of the County as to whether the association, interest or circumstance would, in the opinion of the County, constitute a conflict of interest if entered into by the Concessionaire. The County agrees to notify the Concessionaire of its opinion by certified mail within thirty (30) days of receipt of notification by the Concessionaire. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Concessionaire, the County shall so state in the notification and the Concessionaire shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the County by the Concessionaire under the terms of this Contract.

8. This Third Amendment shall become effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

9. Except as modified by this Third 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 hereto have duly executed this Third Amendment as of the day and year third above written.

WITNESS:

\_\_\_\_\_

Witness signature

**CONCESSIONAIRE:**

DH2, Inc., a Florida corporation

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

Todd Weiss, President

\_\_\_\_\_  
Print witness name

\_\_\_\_\_  
Witness signature

(SEAL)

\_\_\_\_\_  
Print witness name

ATTEST:

SHARON R. BOCK  
CLERK & COMPTROLLER

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

Deputy Clerk

**COUNTY:**

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

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

Melissa McKinlay, Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

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

Assistant County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

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

Department Director

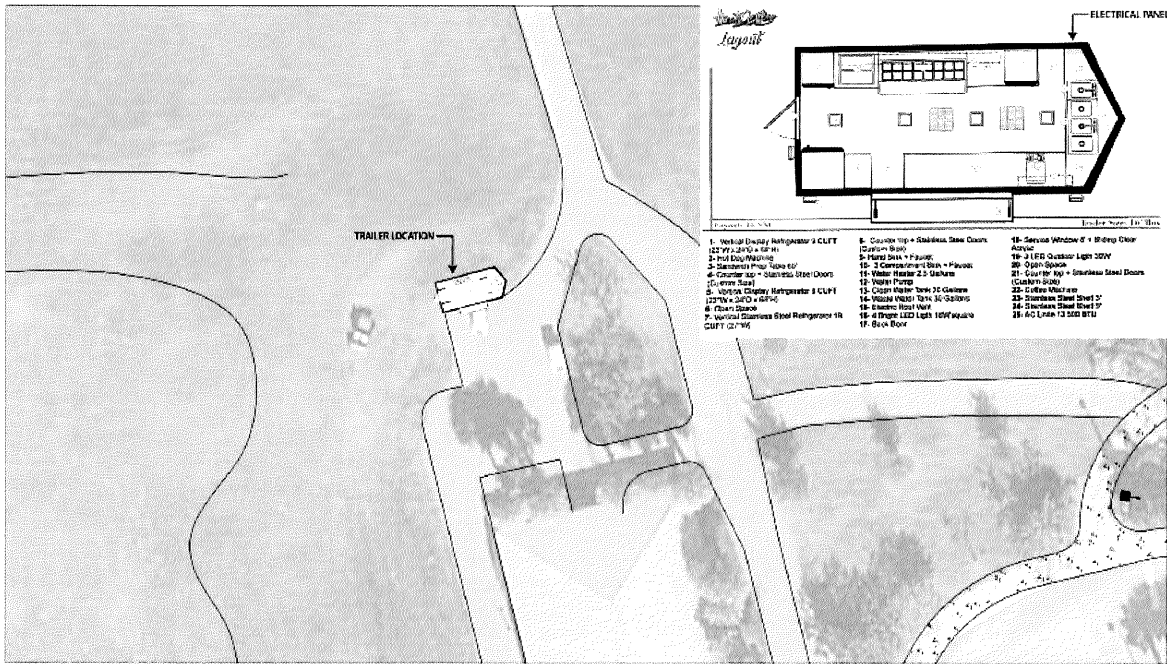
EXHIBIT “A-1”

LICENSED AREA

Golf Course Area



Temporary Mobile Kitchen Area





**ATTACHMENT NO. 3**  
Third Amendment to  
Concessionaire Service Agreement - 2  
( 8 pages each)

**THIRD AMENDMENT TO  
CONCESSIONAIRE SERVICE AGREEMENT**

**THIS THIRD AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT** (“Third Amendment”) 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 **DH2, Inc.**, a Florida corporation, hereinafter referred to as “Concessionaire”.

**WHEREAS**, County and Concessionaire entered into that certain Concessionaire Service Agreement dated September 14, 2010, (R2010-1408), (the “Agreement”), for the operation of a food service concession within South County Regional Park, 12551 Glades Road, Boca Raton, Florida; and

**WHEREAS**, the First Amendment to the Agreement dated June 21, 2011 (R-2011-0897), deleted the reference to the Inspector General fee; and

**WHEREAS**, the Term of the Agreement, as extended by Concessionaire’s exercise of the third and final option to extend approved by the Board on October 7, 2014, (R-2014-1453), expired on November 4, 2015; and

**WHEREAS**, the Second Amendment to the Agreement dated October 6, 2015 (R-2015-1408), approved a nine (9) month extension of the Term of the Agreement and provided for continued occupancy on a month to month basis, increased the Guaranteed Annual Rent to \$30,000, deleted the per round fee, added the use of an outside grill, the sale of liquor, and use of paper cups; modified the dress uniform, and incorporated certain language required by County; and

**WHEREAS**, in July 2015, a solicitation was issued for concession services and canceled as it was deemed not feasible at that time because the property was undergoing an expansion to accommodate current service demands, and it was assumed the expansion and renovations to the property would be completed in mid 2016 and that a Request for Proposals would have been re-issued at that time; and

**WHEREAS**, the golf course continues to undergo an expansion and renovations being made to the Golf Course Clubhouse have caused the Club House Area depicted on Exhibit “A-1” to be relocated; and

**WHEREAS**, the parties wish to amend the Agreement to (i) modify the Licensed Area and revise Exhibit “A-1” to reflect the modification; ii) provide for the use of a temporary mobile kitchen; iii) decrease the Guaranteed Annual Rent; and iv) incorporate certain language required by County.

**NOW, THEREFORE**, in consideration of the Licensed Area and mutual covenants and conditions contained herein, County and Concessionaire 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 in the Agreement.
2. Exhibit "A-1" (Licensed Area) of the Agreement is hereby replaced with Exhibit "A-1" (Licensed Area) attached hereto.
3. The parties agree that commencing on May 1, 2018, the Guaranteed Annual Rent shall be adjusted to \$18,000.00 (\$1,500.00 per month).
4. Section 4.02 Operation of Business is hereby modified to add the following:
  - w) Concessionaire shall provide, at its sole cost and expense, a temporary mobile kitchen within the Licensed Area as depicted on Exhibit "A-1". Concessionaire shall be responsible for managing and maintaining the temporary mobile kitchen. County shall not be responsible for any damage caused to said temporary mobile kitchen.
5. Section 4.05 Non-Discrimination is deleted in its entirety and replaced with the following:

**Section 4.04 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 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 Lease. 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.

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

**Section 18.21 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.

7. Article XVIII MISCELLANEOUS is hereby amended to add the following:

**Section 18.22 Non-exclusivity of Remedies.**

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**Section 18.23 No Third Party Beneficiary.**

No provision of this Lease 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 Lease, including but not limited to any citizens of Palm Beach County or employees of County or Concessionaire.

**Section 18.24 Headings.**

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

**Section 18.25 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 Lease shall terminate upon, the date title vests in the condemning authority. Notwithstanding such termination, Concessionaire shall remain liable for all matters arising under this lease 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.

**Section 18.26 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, F.S., 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 Agreement.

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 Agreement term and following completion of the Agreement, if the Concessionaire does not transfer the records to the public agency.

D. Upon completion of the Agreement 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 Agreement, 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 Agreement, 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 Agreement. 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 AGREEMENT, 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.

#### **Section 18.27 Conflict of Interest**

The Concessionaire represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The Concessionaire further represents that no person having any such conflict of interest shall be employed for said performance of services.

The Concessionaire shall promptly notify the County's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may

influence or appear to influence the Concessionaire's judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Concessionaire may undertake and request an opinion of the County as to whether the association, interest or circumstance would, in the opinion of the County, constitute a conflict of interest if entered into by the Concessionaire. The County agrees to notify the Concessionaire of its opinion by certified mail within thirty (30) days of receipt of notification by the Concessionaire. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Concessionaire, the County shall so state in the notification and the Concessionaire shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the County by the Concessionaire under the terms of this Contract.


8. This Third Amendment shall become effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

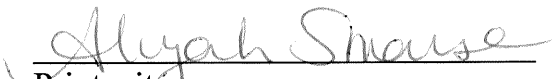
9. Except as modified by this Third Amendment, the Agreement remains unmodified and in full force and effect and the parties hereby ratify, confirm, and adopt the Agreement, as amended, in accordance with the terms thereof.

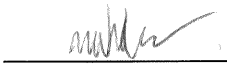
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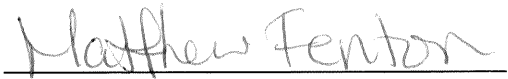
IN WITNESS WHEREOF, the parties hereto have duly executed this Third Amendment as of the day and year third above written.

WITNESS:

  
\_\_\_\_\_  
Witness signature


  
\_\_\_\_\_  
Print witness name

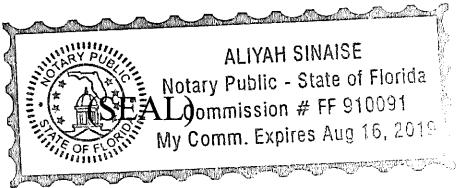
  
\_\_\_\_\_  
Witness signature

  
\_\_\_\_\_  
Print witness name

CONCESSIONAIRE:

DH2, Inc., a Florida corporation

By:   
\_\_\_\_\_  
Todd Weiss, President



ATTEST:

SHARON R. BOCK  
CLERK & COMPTROLLER

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

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

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

COUNTY:

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

By: \_\_\_\_\_  
Melissa McKinlay, Mayor

APPROVED AS TO TERMS  
AND CONDITIONS

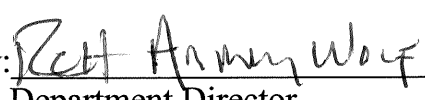
By:   
\_\_\_\_\_  
Department Director



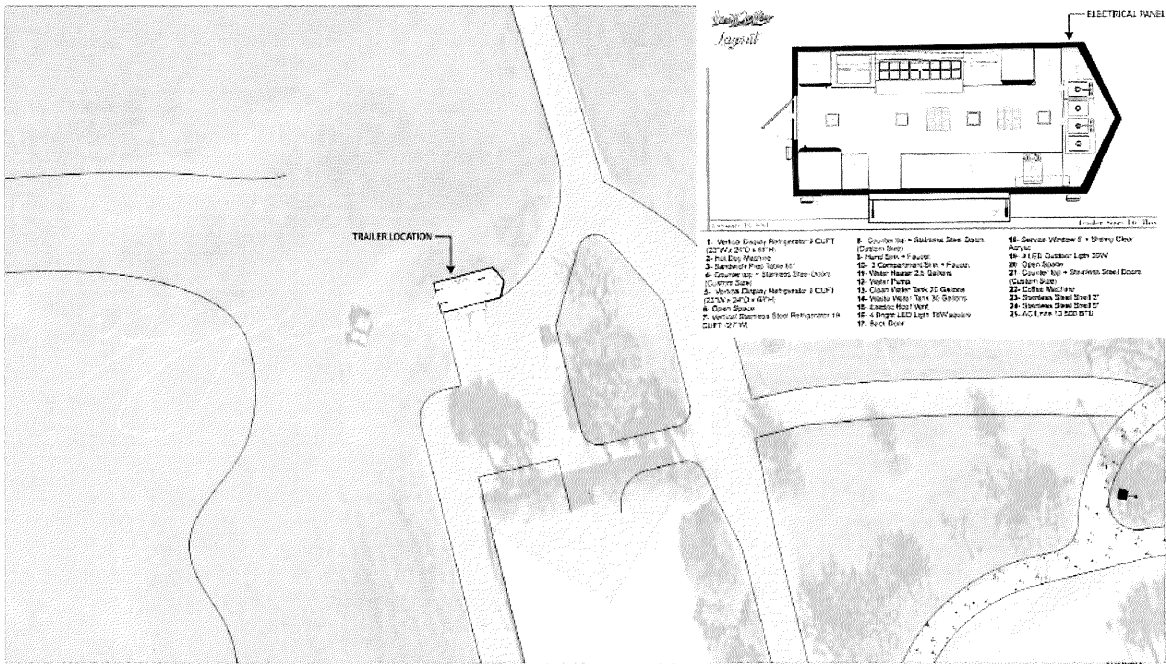
EXHIBIT "A-1"

LICENSED AREA

Golf Course Area



Temporary Mobile Kitchen Area



**ATTACHMENT NO. 4**  
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 Todd Weiss, 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 DH2 Inc, a For Profit Florida Corporation, (the "Concessionaire") which entity is providing concession services on the real property depicted in the attached Exhibit "A" (the "Licensed Area").
2. Affiant's address is: 9858 Glades Road #119, Boca Raton, FL 33434.
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.

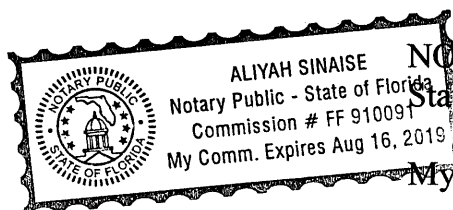
FURTHER AFFIANT SAYETH NAUGHT.

Todd Weiss, Affiant  
Print Affiant Name: Todd Weiss, President

The foregoing instrument was sworn to, subscribed and acknowledged before me this 26 day of April, 2018, by Todd Weiss [ ] who is personally known to me or [ ] who has produced [Signature] as identification and who did take an oath.

Notary Public

Aliyah Sinaise  
(Print Notary Name)



NOTARY PUBLIC  
State of Florida at Large

My Commission Expires: Aug 16, 2019

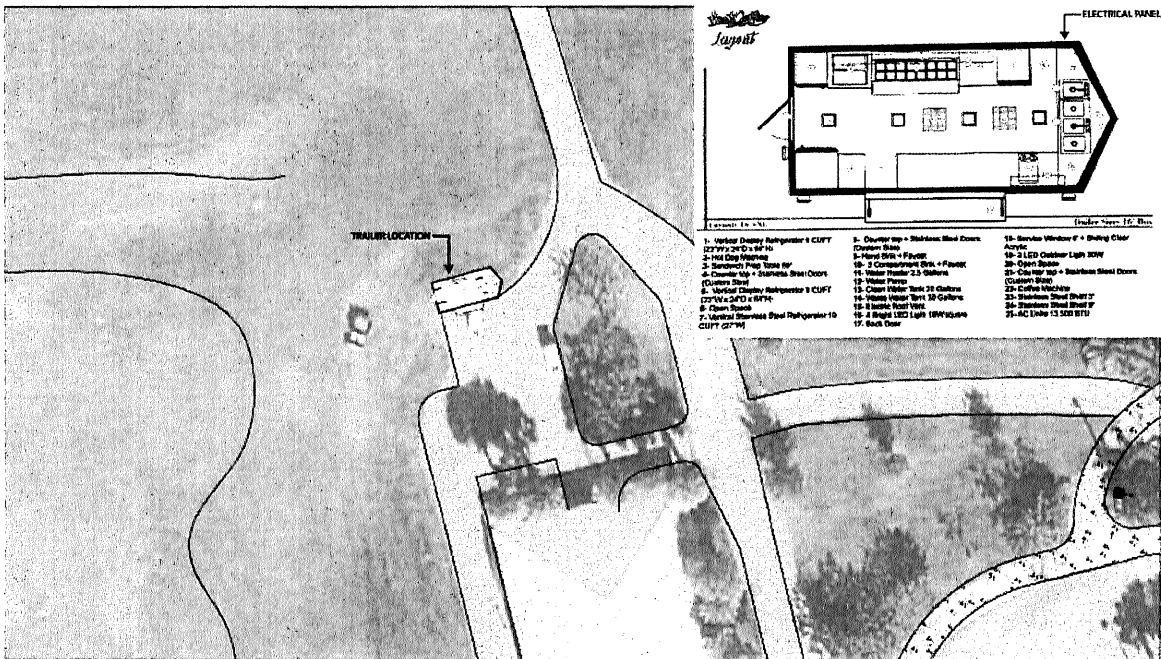
EXHIBIT "A"  
to CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

LICENSED AREA

Golf Course Area



Temporary Mobile Kitchen 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.

[illegible]