

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

Meeting Date:	December 18, 2018	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

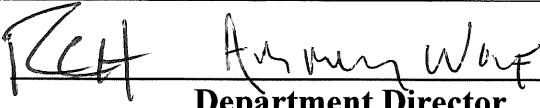

Motion and Title: Staff recommends motion to approve: Second Amendment to Concessionaire Service Agreement (R2013-1018) dated August 13, 2013, as amended, with Hawkhaven, LLC d/b/a Lazy Loggerhead Café (Hawkhaven) to permit the sale of beer and wine.

Summary: Hawkhaven manages and operates the Lazy Loggerhead Café in the Carlin Park concession building pursuant to Concessionaire Service Agreement (R2013-1018) which runs until August 31, 2020. Hawkhaven has requested the ability to sell beer and wine on the premises. The sale of alcohol at beachside food and beverage concessions is consistent with other similar concession operations in South Florida and in other County park concessions such as golf courses and museums. Allowing Hawkhaven to serve beer and wine will address current public dining preferences and will result in increased revenue to the County. This Second Amendment permits the sale of beer and wine; updates the insurance, non-discrimination and inspector general provisions; and adds the conflict of interest, scrutinized companies, heading and condemnation provisions. The Board may terminate the Concessionaire Service Agreement upon ninety (90) days written notice. All other terms of the Agreements will remain in full force and effect. Parks will continue to have administrative responsibility for the Agreement. **(PREM) District 1 (HJF)**

Background and Policy Issues: On August 13, 2013, the Board approved a Concessionaire Service Agreement (R2013-1018) with Hawkhaven for a period of three (3) years with three (3) options to extend, each for a period of two (2) years. The First Amendment (R2016-1057) dated August 16, 2016, exercised the first extension option, which extended the term of the Concessionaire Service Agreement until August 31, 2018; reduced the percentage rent from 8.5% to 8% to compensate for reductions in sales that Hawkhaven experienced due to County special events; and updated and added various standard County provisions. On August 14, 2018, the Board approved Hawkhaven's second extension option (R2018-1175) which extended the term to August 31, 2020, and increased the guaranteed annual rent by two percent (2%) to \$80,597.89. Due to the increasing number of special events at Carlin Park, Hawkhaven continues to experience a reduction in sales and requests the County permit the sale of beer and wine on the Premises to offset these losses. Additional County events at the Park can cause access issues for the concession customers and a reduction in available parking which may negatively affect Hawkhaven's business. The sale of beer and wine at this concession is consistent with other similar concession operations in South Florida and in other County park concessions such as golf courses and museums. This Second Amendment permits the sale of beer and wine; updates the insurance, non-discrimination and inspector general provisions; and adds the conflict of interest, scrutinized companies, heading and condemnation provisions. Brian Wilson and Jennifer Wilson submitted a Disclosure of Beneficial Interests in 2013, attached as Attachment No. 3, and confirmed no changes have occurred as Brian Wilson and Jennifer Wilson continue to each have a fifty percent (50%) ownership interest.

Attachments:

1. Location Map
2. Second Amendment To Concessionaire Service Agreement
3. Disclosure of Beneficial Interests

Recommended By:		12/6/18
	Department Director	Date
Approved By:		12/10/18
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>0</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 _____ Dept _____ Unit _____ Object _____
Program _____

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

No fiscal impact.

Fixed Asset Number N/A

C. Departmental Fiscal Review: [Signature] 11/14/18

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 11/15/18
OFMB [Signature] 11/19/18

[Signature] 11/29/18
Contract Development and Control [Signature] 11/24/18

B. Legal Sufficiency:

[Signature] 11/30/18
Assistant County Attorney

C. Other Department Review:

[Signature]
Department Director

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

TWP 40

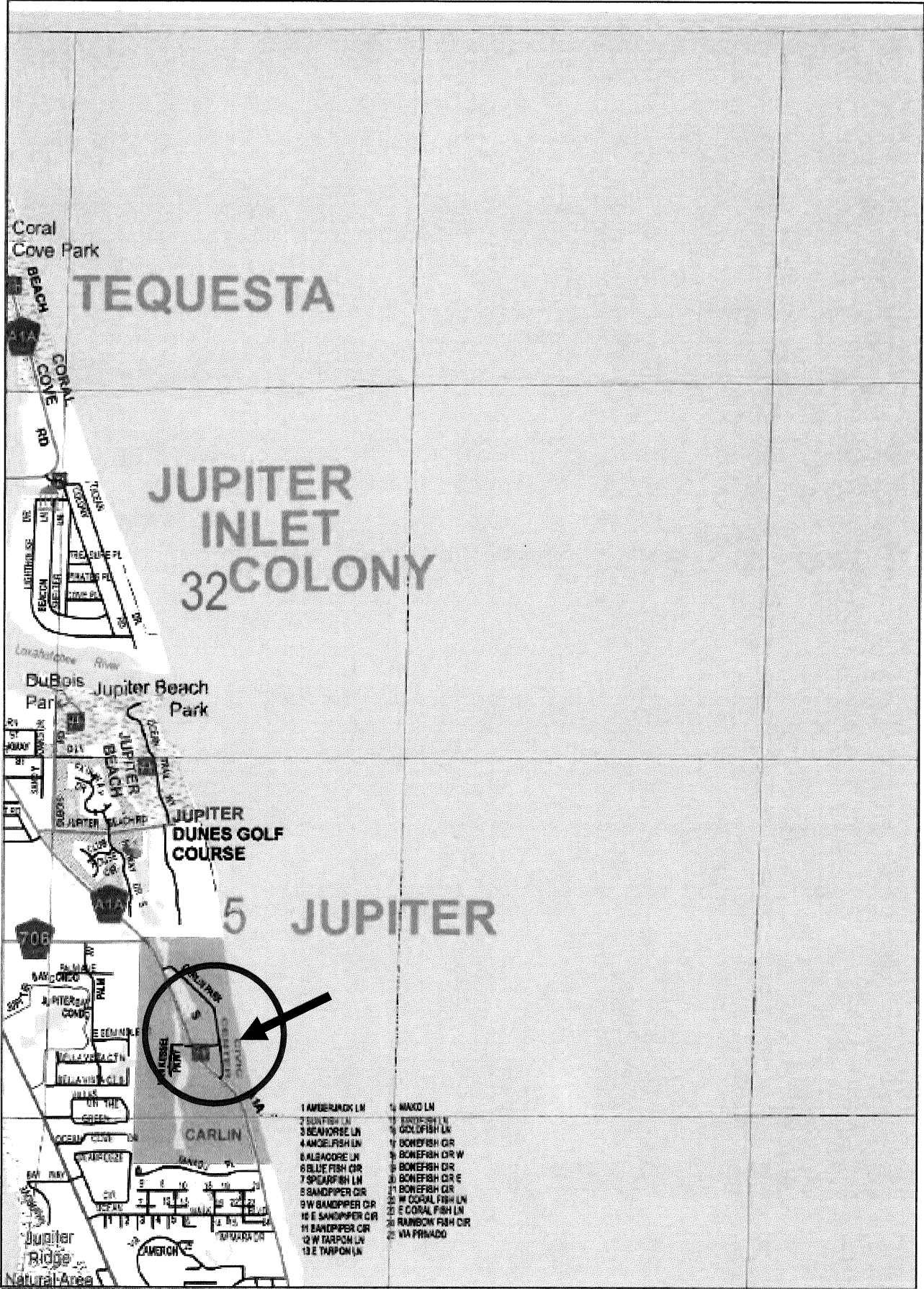
TWP 40

TWP 41

1

2

3



RNG 43

See pg 16

RNG 43

Page 8

LOCATION MAP

Attachment #1



Attachment #2

Second Amendment To Concessionaire Service Agreement (2 @ 5 pages)

SECOND AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT

THIS SECOND AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT (R2013-1018), (the "Second Amendment") is made and entered into _____, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, ("County") and **HAWKHAVEN, LLC, DBA LAZY LOGGERHEAD CAFE**, a Florida limited liability company, ("Concessionaire").

WITNESSETH:

WHEREAS, County and Concessionaire entered into that certain Concessionaire Service Agreement dated August 13, 2013 (R2013-1018) (the "Agreement") for operation of a food service concession within Carlin Park in Jupiter; and

WHEREAS, the First Amendment to the Agreement dated August 16, 2016, (R2016-1057) extended the Term through August 31, 2018, reduced the annual percentage of annual gross revenues and updated various County provisions; and

WHEREAS, the Term of the Agreement, as extended by Concessionaire's exercise of the second option to extend approved by the Board on August 14, 2018, (R2018-1175) currently expires on August 31, 2020; and

WHEREAS, Concessionaire has requested it be permitted to sell beer and wine; and

WHEREAS, the parties wish to amend the Agreement to approve the sale of beer and wine and 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 considerations, 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. Section 4.01 Use is hereby deleted and replaced with the following:

Section 4.01 Use

Concessionaire shall use and occupy the Licensed Area solely and exclusively for concessionaire services to provide food, beverages, beer, wine, and sundry items as identified in Section 4.02(q) of this Agreement. Concessionaire shall not use, permit, or suffer the use of the Licensed Area for any other use, business, or purpose whatsoever without the prior written consent of County, which consent may be granted or withheld in County's sole discretion. Concessionaire shall comply with the Rules and Regulations set

forth in Exhibit "B" as well as Palm Beach County Parks and Recreation Ordinance (Ordinance No. 2004-022) as same may be amended from time to time.

Concessionaire shall not prohibit or hinder County personnel or any law enforcement officers from performing their official duties. Concessionaire shall ensure that all persons acting on behalf of it obey instructions from County personnel. Concessionaire shall not commit or permit any reckless or dangerous conduct on the Licensed Area at any time. This includes, but is not limited to, violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance.

3. Section 4.02 Operation of Business is hereby modified to add the following:

r) Concessionaire shall, at its own expense, obtain, maintain and comply with all licenses and permits necessary, including a liquor license, that permits Concessionaire to sell beer and wine within the Premises area. Concessionaire shall provide Department all required licenses and permits prior to the sale of beer and wine. The sale of beer and wine shall be limited to the Premises and for sit down consumption only. Take outs shall not be permitted for any reason, at any time.

4. Section 4.05 Non-Discrimination is hereby deleted and replaced with the following:

Section 4.05 Non-Discrimination

The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Concessionaire warrants and represents that throughout the term of this Lease, including any renewals thereof, if applicable, all individuals shall be treated equally without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information with respect to any activity occurring at the Premises, or conducted pursuant to this Agreement. Failure to meet this requirement shall be considered default of this Agreement. Concessionaire warrants that its service at the Premises shall be open to and benefit all visitors to the Park.

5. Article VIII Insurance is hereby modified to add the following:

Section 8.09 Liquor Liability

Concessionaire shall maintain Liquor Liability coverage with limits of \$1,000,000 each occurrence in accordance with all of the terms and conditions set forth herein in the event a liquor license or permit is required, whether maintained or not; liquor is served with or without a charge to the general public; liquor is served as a means of generating revenue for a fund raising event; liquor is served by a third-party contracted by the insured for any of the foregoing reasons mentioned above; and/or liquor is offered for the purpose of financial gain or livelihood. Liquor also includes beer or wine. Coverage may be provided by way of the Commercial General Liability policy utilizing Liquor Liability endorsement CG 2408. Concessionaire shall provide this coverage on a primary basis for losses covered under the policy arising from Concessionaire's operations under this Agreement.

6. Section 18.20 Palm Beach County Office of the Inspector General is hereby deleted 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.

7. Article XVIII Miscellaneous is hereby modified to add the following:

Section 18.22 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.

Section 18.23 Scrutinized Companies

A. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the

Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

B. When contract value is greater than \$1 million, as provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the County determines, using credible information available to the public, that a false certification has been submitted by Concessionaire, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.

Section 18.24 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 18.25 Condemnation

If the Premises 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, the award relating to both Concessionaire's leasehold interest and County's reversionary interest in the Premises, without deduction, claim, or setoff, for any present or future estate of Concessionaire. Concessionaire hereby assigns and relinquishes to County all of its rights, 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 Concessionaire's improvements to the Premises and moving expenses.

In the event of a taking of the Premises, whether in whole or in part, either party shall have the right, at its option to terminate this Agreement, such termination to be effective as of the date title vests in the condemning authority. In the event of such termination, the Annual Rent shall be prorated to the date of termination. County shall have no obligation to restore the Premises, or improvements, or otherwise perform any work upon same due to such taking.

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

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

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

Signed in the presence of:

CONCESSIONAIRE:

HAWKHAVEN, LLC, DBA LAZY
LOGGERHEAD CAFE, a Florida limited
liability company

By:

Signature

Brina Walton chef/owner
(Print Name and Title)

(SEAL)

Megan Riley
Signature of Witness

Megan Riley
Print Name of Witness

Paul D Connell
Signature of Witness

Paul D Connell
Print Name of Witness

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Chief Assistant County Attorney

COUNTY:

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

By: _____
, Mayor

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Department Director

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

1. Affiant is the Managing Member (position - i.e. president, partner, trustee) of Handaan LLC d/b/a Lazy Lagoon Cafe (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: P.O. Box 14928
North Palm Beach, FL
33468

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.

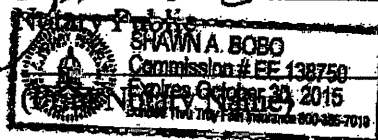
4. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

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.

Jennifer Wilson, Affiant
Print Affiant Name: Jennifer Wilson

The foregoing instrument was sworn to, subscribed and acknowledged before me this 8
day of July, 2013, by Jennifer Wilson
[] who is personally known to me or [☒] who has produced 22
Handaan LLC as identification and who did take an oath.



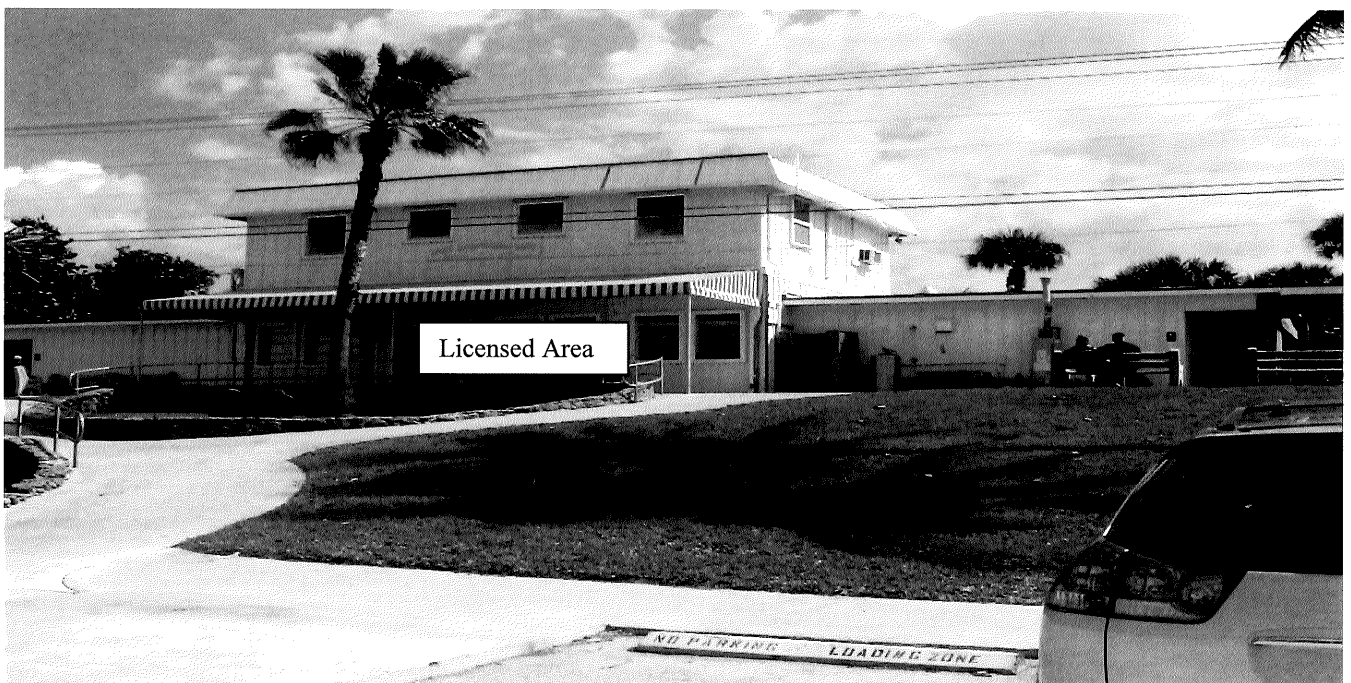
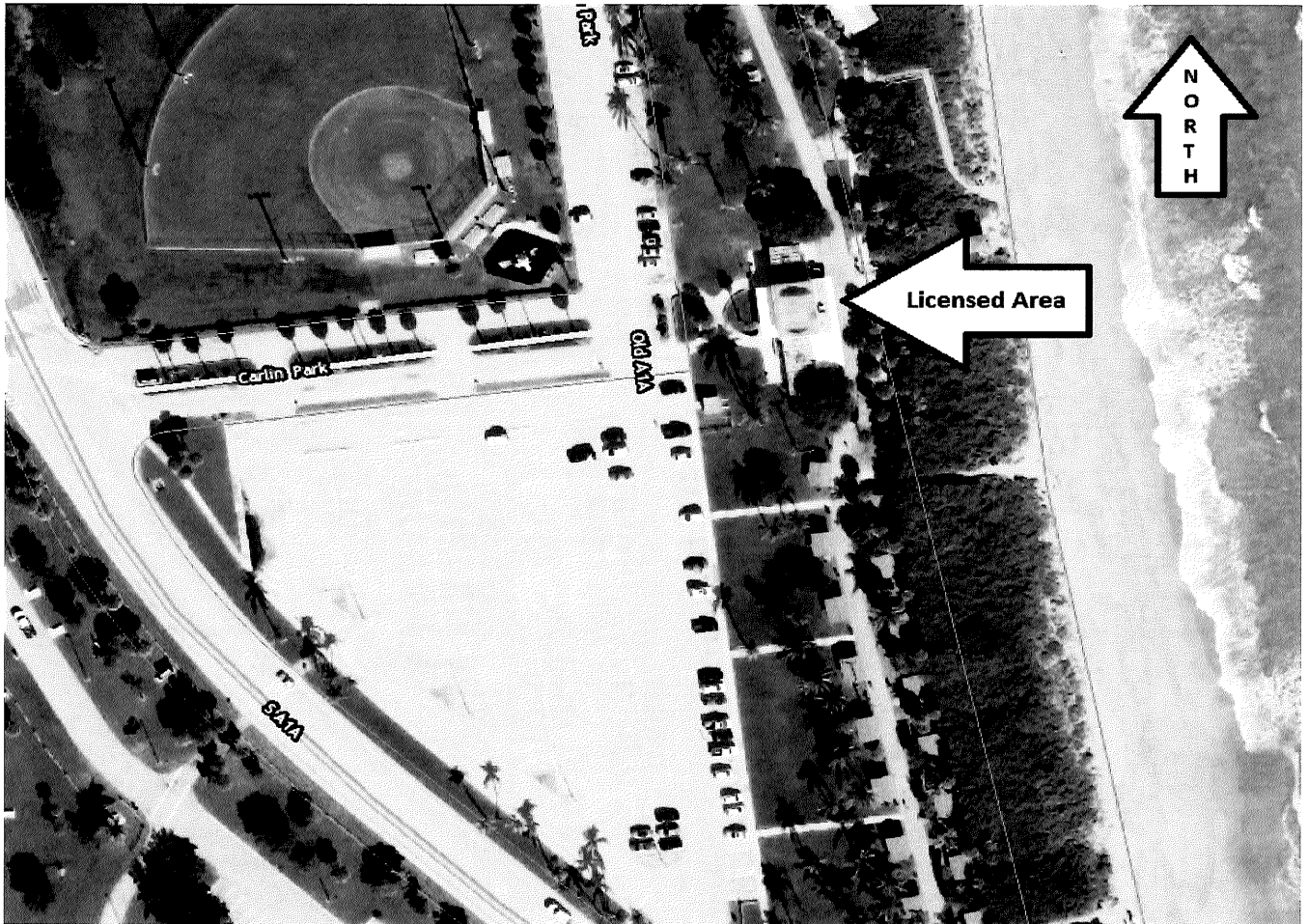
NOTARY PUBLIC
State of Florida at Large
My Commission Expires: 10/24/15

Attachment #3
1 of 3

EXHIBIT "A"

LICENSED AREA

Approximately 1,300 square feet of space on the first floor of a two-story building located in the County's Carlin Park at 601 South SR A1A, Jupiter, Florida (a portion of PCN 30-43-41-05-00-004-0060).



SCHEDULE TO BENEFICIAL INTERESTS

NAME	ADDRESS	PERCENTAGE OF INTEREST
Jennifer Wilson	Po Box 14928 N. Palm Beach, Fl. 33408	50%
Brian Wilson	Po Box 14928, N. Palm Beach, Fl 33408	50%