

6B-2

Agenda Item #:

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: August 25, 2020 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) adopt a Resolution authorizing a Third Amendment to Concessionaire Service Agreement (R2013-1018) dated August 13, 2013, with Hawkhaven, LLC d/b/a Lazy Loggerhead Café (Hawkhaven) for the continued operation of an approximately 1,300 SF concession building at Carlin Park in Jupiter from September 1, 2020 through August 31, 2021 at seven percent (7%) of monthly gross sales; and

B) approve a Third Amendment to Concessionaire Service Agreement (R2013-1018) with Hawkhaven, LLC d/b/a Lazy Loggerhead Café.

Summary: Hawkhaven manages and operates the Lazy Loggerhead Café in the Carlin Park concession building pursuant to a Concessionaire Service Agreement (R2013-1018). The current Agreement expires on August 31, 2020. Due to the impact of COVID-19 on their business, Hawkhaven declined to exercise its option for a two (2) year extension. As a result of the pandemic, it is unlikely there would be sufficient interest to pursue a Request for Proposal (RFP) for a new Concessionaire Service Agreement at this time. In order to avoid closing the concession building until a new Concessionaire Service Agreement can be awarded, Hawkhaven has agreed to continue to provide concession services at a reduced rental rate. This Third Amendment extends the term of the Agreement for one (1) year, from September 1, 2020 through August 31, 2021; eliminates the guaranteed annual rent of \$82,208.85; and reduces the percentage rent from eight percent (8%) of annual gross revenue derived from the operation of the concession to seven (7%) percent of monthly gross sales. All other terms of the Agreement will remain in full force and effect. Parks will continue to have administrative responsibility for this Agreement. (Property & Real Estate Management) District 1 (HJF)

Background and Policy Issues: On August 13, 2013, the Board approved a Concessionaire Service Agreement (R2013-1018) with Hawkhaven d/b/a Lazy Loggerhead Café for a period of three (3) years

Continued on page 3

Attachments:

- 1. Location Map
- 2. Resolution (w/Exhibit A)
- 3. Third Amendment to Concessionaire Service Agreement (2) (w/Exhibit A)
- 4. Budget Availability Statement
- 5. Disclosure of Beneficial Interests

Recommended By: [Signature] Department Director Date: 8/20/20

Approved By: [Signature] County Administrator Date: 8/13/2020

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$4,281)	(\$47,093)	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	(\$4,281)	(\$47,093)	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes No

Does this item include the use of federal funds Yes No

Budget Account No: Fund 0001 Dept 580 Unit 5111-02 RSRC 04729 SUB RSRC 03


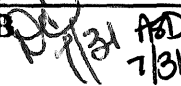
B. Recommended Sources of Funds/Summary of Fiscal Impact:

Fixed Assets Number N/A

C. Departmental Fiscal Review: 

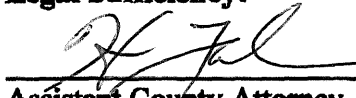
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 7/31/2020
 OFMB  7/31/20

 8-7-20 TW
 Contract Development and Control 8/7/2020

B. Legal Sufficiency:

 8/11/20
 Assistant County Attorney

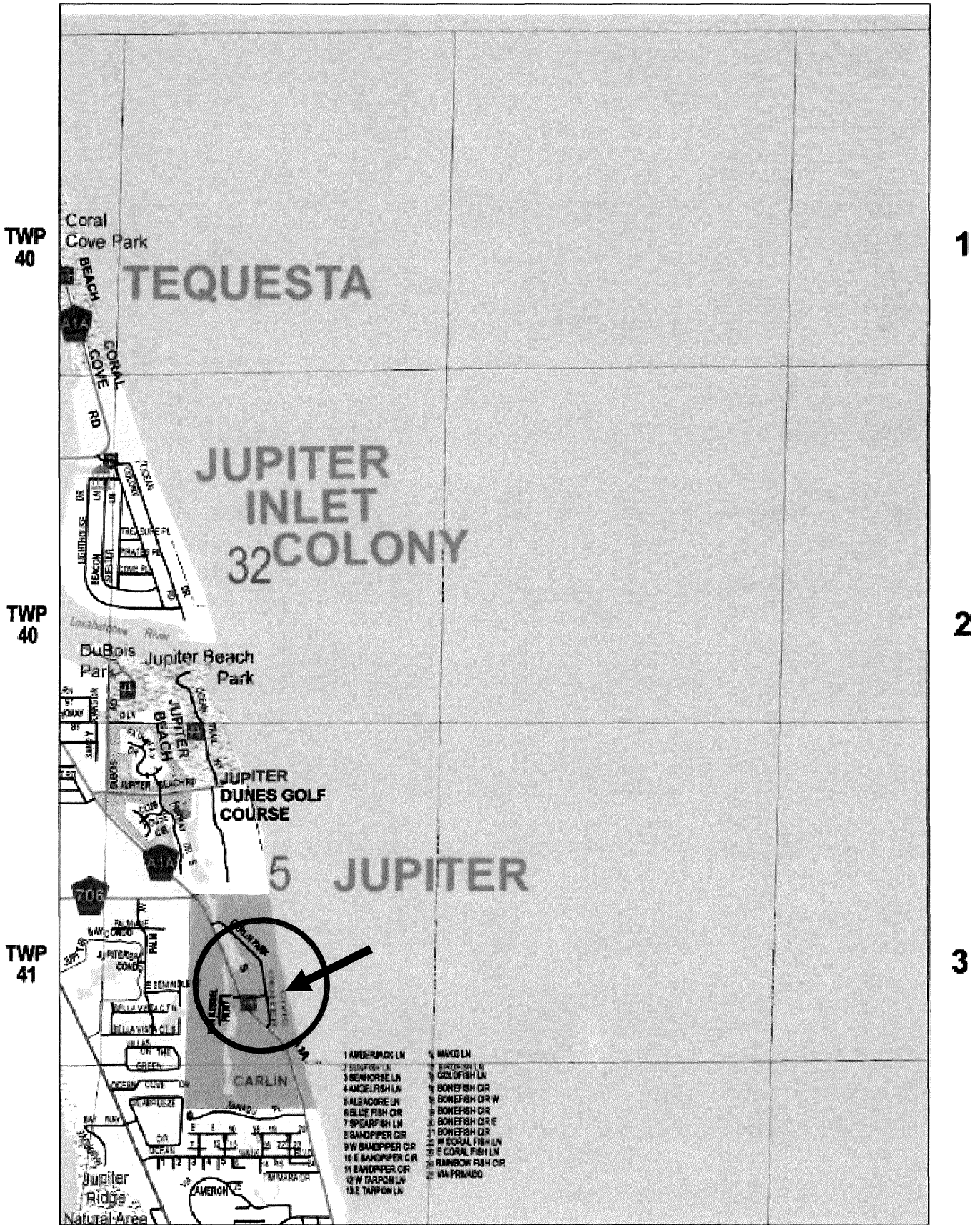
C. Other Department Review:


 Department Director

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

Background and Policy Issues (cont'd.): with three (3) options to extend, each for a period of two (2) years. The First Amendment (R2016-1057) dated August 16, 2016, extended the first renewal option of the Concessionaire Service Agreement for a term of two (2) years through August 31, 2018; reduced the percentage of annual gross revenue from 8.5% to 8% to compensate for the reduction in sales due to County special events in Carlin Park; and updated and added various standard County provisions. Hawkhaven exercised its second option on August 14, 2018 (R2018-1175), extending the term of the Agreement through August 31, 2020 at an annual rental rate of \$80,597.89. On December 18, 2018, the Board approved the Second Amendment (R2018-2063) which permitted the sale of beer and wine and updated and added various County's provisions. Hawkhaven has declined to exercise the third option to extend the term of the Concessionaire Service Agreement for two (2) years due to the impact of COVID-19 on their business. In order to avoid closing the concession building until a new Concessionaire Service Agreement can be awarded, Hawkhaven has agreed to continue to provide concession services with a modification to their existing Agreement. This Third Amendment modifies the current Concessionaire Service Agreement by extending the term of the Agreement for one year from September 1, 2020 through August 31, 2021, without additional options; eliminating the guaranteed annual rent; and adjusting the annual payment of eight (8%) percent of the annual gross revenue derived from the operation of the concession to a monthly payment of seven (7%) percent of monthly gross sales. The Parks and Recreation Department manages this Agreement, and is satisfied with Hawkhaven's performance, and desires to keep Hawkhaven in operation to service Park visitors.

Hawkhaven has provided the Disclosure of Beneficial Interests attached hereto as Attachment #5 and identifies no changes in ownership has occurred with Brian Wilson and Jennifer Wilson each owning a fifty (50%) percent ownership interest.



RNG 43

See pg 16

RNG 43

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LOCATION MAP

Attachment #1



Attachment #2
Resolution with Exhibit "A" (6 pages)

RESOLUTION NO. _____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING A REDUCTION OF THE REVENUE PERCENTAGE PAYMENT REQUIRED UNDER THE TERMS OF THE CONCESSIONAIRE SERVICE AGREEMENT WITH HAWKHAVEN, LLC, dba LAZY LOGGERHEAD CAFE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Hawkhaven, LLC, dba Lazy Loggerhead Cafe, a Florida limited liability company, (“Concessionaire”), pursuant to a Concessionaire Service Agreement, dated August 13, 2013 (R2013-1018), operates a food and beverage concession at Carlin Park; and

WHEREAS, the existing Term expires on August 31, 2020; and

WHEREAS, Concessionaire is largely dependent on business derived from park patrons and the closure of Carlin Park due to Covid-19 and subsequent reduced customer activity has resulted in the Concessionaire sustaining a loss in revenue; and

WHEREAS, Concessionaire has provided County with written notice that Concessionaire does not wish to exercise the third and final two (2) year extension; and

WHEREAS, Concessionaire wishes to extend the Term of the Agreement for one (1) year, modify the Annual Rent and Adjustment and modify the Payment of Percentage of Annual Gross Revenues, and

WHEREAS, Concessionaire provides a service to patrons of Carlin Park by offering them food, beverage and sundry services at a reasonable price and County wishes to retain Concessionaire’s operations at Carlin Park; and

WHEREAS, the Board of County Commissioners of Palm Beach County hereby finds that Concessionaire provides a service to patrons of Carlin Park by offering them food, beverage and sundry services at a reasonable price that County does not wish to lose, and renewing the extension Term of the Agreement for one (1), modifying the Annual Rent and Adjustment and modifying Payment of Percentage of Annual Gross Revenues is in the best interest of the County.

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 Term, Modify the Annual Rent and Payment of Percentage of Annual Gross Revenues

The Board of County Commissioners of Palm Beach County shall extend the Term of the Agreement for one (1) year, modify the Annual Rent and Adjustment and modify the Payment of Percentage of Annual Gross Revenues pursuant to the Third Amendment to the Concessionaire Service Agreement attached hereto as Exhibit "A" and incorporated herein by reference.

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 Dave Kerner, Mayor
- Commissioner Robert S. Weinroth, Vice Mayor
- Commissioner Hal R. Valeche
- Commissioner Gregg K. Weiss
- Commissioner Mary Lou Berger
- Commissioner Melissa McKinlay
- Commissioner Mack Bernard

The Mayor thereupon declared the Resolution duly passed and adopted this ____ day of _____, 2020.

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: 
Chief Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS

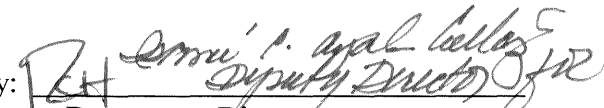
By: 
Department Director

EXHIBIT "A"

THIRD AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT

THIS THIRD AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT (R2013-1018), (the "Third 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 the 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 approval by the Board on August 14, 2018 (R2018-1175) currently expires on August 31, 2020.

WHEREAS, the Second Amendment to the Agreement dated December 18, 2018, (R2018-2063) permitted the Concessionaire to sell beer and wine and updated various County provisions; and

WHEREAS, Concessionaire has provided County with written notice that due to the impact of COVID-19 on their business, Concessionaire does not wish to exercise the third and final two (2) year extension option; and

WHEREAS, to provide continuous operation of the concession, the parties wish to modify (i) the renewal extension Term of the Agreement; (ii) the Annual Rent and Adjustment; and (iii) Payment of Percentage of Annual Gross Revenues, 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. The parties agree that the Term of the Agreement shall be renewed for one (1) year, commencing on September 1, 2020, extending the Term through August 31, 2021, without additional options.
3. Section 2.01 A. Guaranteed Annual Rent is hereby deleted in its entirety.
4. Section 2.01 B. Payment of Percentage of Annual Gross Revenues is hereby deleted and replaced with the following:

Section 2.01 B. Monthly Percentage Rent. Concessionaire shall pay to the County seven (7%) percent of its monthly Gross Sales, together with applicable sales taxes thereon, on the first day of each month. No later than the twentieth (20th) day of each month, Concessionaire shall provide a Monthly Report of Concessionaire's Gross Sales, utilizing the form attached hereto and incorporated as Exhibit A to this Third Amendment to the Concessionaire's Service Agreement, certifying the Gross Sales for the preceding month. Any Gross Sales hereunder for any fractional month shall be calculated and paid on a 30 day per diem basis. This section shall survive the termination of this Agreement.

“Gross Sales”, for the purpose of this Agreement, shall be defined as all sales of goods, merchandise, food, and services generated as a result of the Concessionaire’s operations at or associated with the Concession. This includes all sales made or advertised within the Premises, advertised on the Concessionaire’s website, transactions conducted through the point of sale and bank accounts utilized by the Concessionaire for its operations, and sales generated by subcontractor or related entities whose sales are associated with the Concessionaire’s operations. Gross sales shall not include:

1. Tax collections
2. Gratuities
3. Funds collected on food consumed by the Concessionaire’s employees, or
4. Funds that were collected but have been refunded to the customer.

Sales of goods and services and collections of sales tax shall be accounted for separately at the point of sale. If the Concessionaire is unable to do this, it shall calculate sales tax from the gross receipts using a method approved by the Florida Department of Revenue.

5. **Section 2.02** Adjustment to Guaranteed Annual Rent is hereby deleted in its entirety.

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

7. 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:

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

Signature of Witness

By: _____
Signature

Print Name of Witness

(Print Name and Title)

Signature of Witness

(SEAL)

Print Name of Witness

ATTEST:

COUNTY:

SHARON R. BOCK
CLERK & COMPROLLER

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

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Chief Assistant County Attorney

By: _____
Department Director

EXHIBIT "A"
TO THE THIRD AMENDMENT TO THE
CONCESSIONAIRE LEASE AGREEMENT

MONTHLY REPORT

Monthly Report of Concessionaire's Gross Sales (Due by the 20th of each month)

Date: _____

Concessionaire Name: _____

Period Covered: From _____ To _____

Itemization of Monthly Gross Sales

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total Monthly Gross Sales \$ _____

7 % x Monthly Gross Sales \$ _____

Sales Tax _____% + \$ _____

Total Monthly Annual Rent Due to County \$ _____

Signature

Date

Attachment #3

Third Amendment to Concessionaire Service Agreement (2 @ 4 pages each)

“Gross Sales”, for the purpose of this Agreement, shall be defined as all sales of goods, merchandise, food, and services generated as a result of the Concessionaire’s operations at or associated with the Concession. This includes all sales made or advertised within the Premises, advertised on the Concessionaire’s website, transactions conducted through the point of sale and bank accounts utilized by the Concessionaire for its operations, and sales generated by subcontractor or related entities whose sales are associated with the Concessionaire’s operations. Gross sales shall not include:

1. Tax collections
2. Gratuities
3. Funds collected on food consumed by the Concessionaire’s employees, or
4. Funds that were collected but have been refunded to the customer.

Sales of goods and services and collections of sales tax shall be accounted for separately at the point of sale. If the Concessionaire is unable to do this, it shall calculate sales tax from the gross receipts using a method approved by the Florida Department of Revenue.

5. **Section 2.02** Adjustment to Guaranteed Annual Rent is hereby deleted in its entirety.

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

7. 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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EXHIBIT "A"
TO THE THIRD AMENDMENT TO THE
CONCESSIONAIRE LEASE AGREEMENT

MONTHLY REPORT

Monthly Report of Concessionaire's Gross Sales (Due by the 20th of each month)

Date: _____

Concessionaire Name: _____

Period Covered: From _____ To _____

Itemization of Monthly Gross Sales

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total Monthly Gross Sales \$ _____

7 % x Monthly Gross Sales \$ _____

Sales Tax _____% + \$ _____

Total Monthly Annual Rent Due to County \$ _____

Signature

Date

Attachment #4
Budget Availability Statement (1 page)

Attachment #5
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 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 Laza Lager (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.

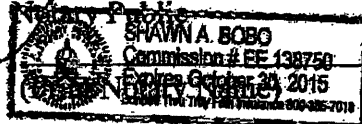
4. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

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 DL as identification and who did take an oath.



NOTARY PUBLIC
State of Florida at Large
My Commission Expires: 10/23/15

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).

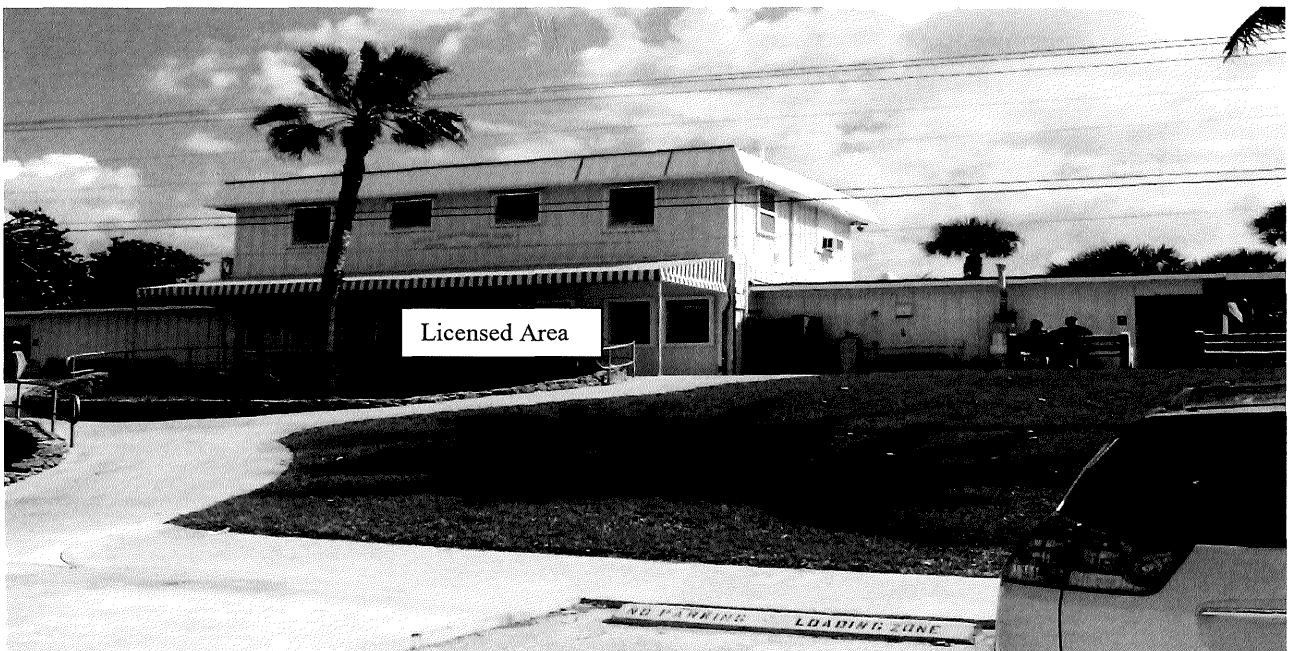
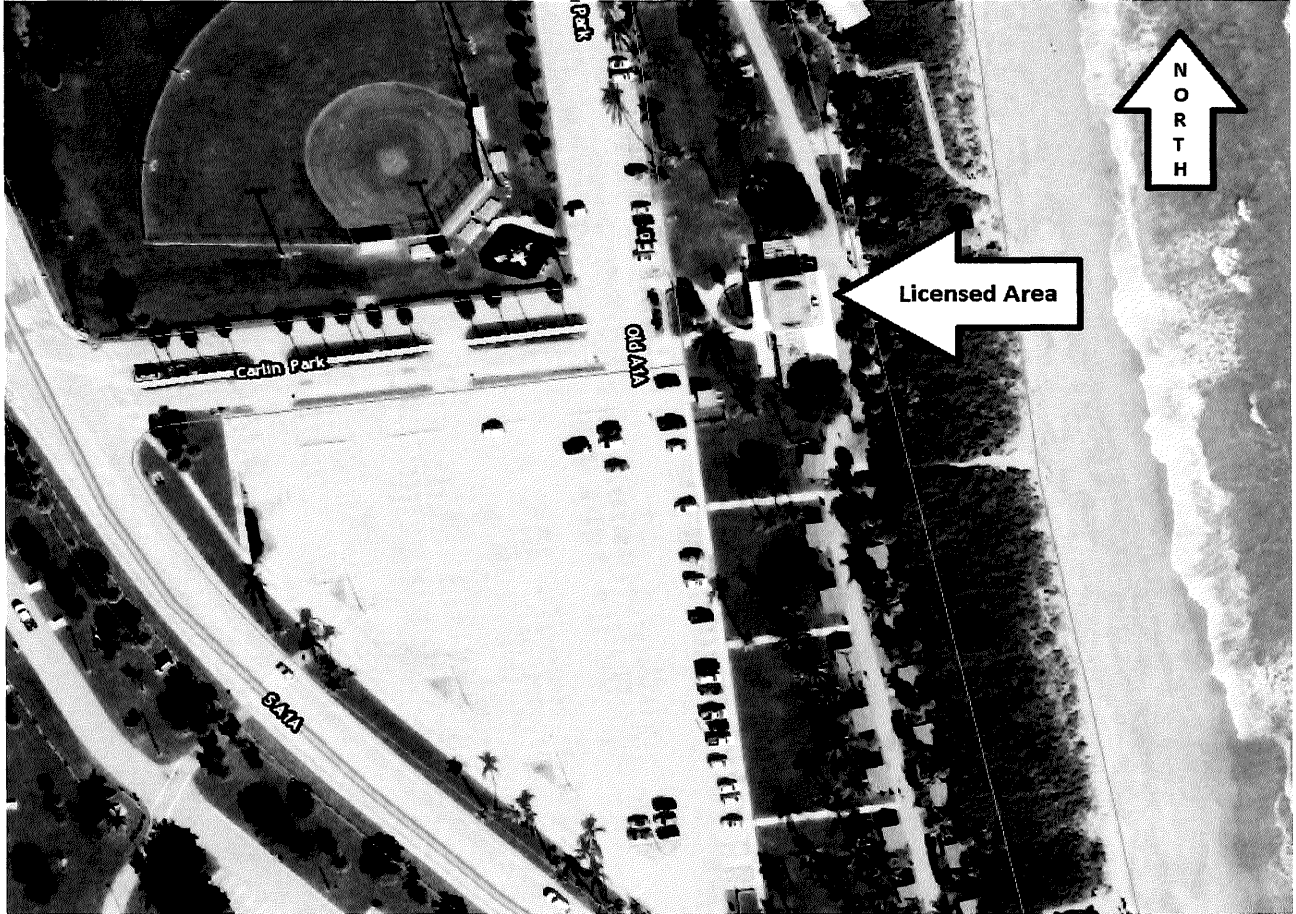


EXHIBIT "B"

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
Jennifer Wilson	PO Box 14928 N. Palm Beach, FL 33408	50%
Brian Wilson	PO Box 14928, N. Palm Beach, FL 33408	50%