

Background and Justification (cont'd) Parks is sympathetic to these unforeseen operating challenges and recognizes that OPRM provides a vital and necessary service at the facility. Parks manages this Agreement and is satisfied with OPRMs performance. In addition, OPRM experienced a change in ownership. The new ownership percentages are identified in the Disclosure of Beneficial Interests and identifies Osprey Point Restaurant Management LLC is 100% owned by Thoroughbred Holdings LLC, which is owned 100% by Dark Horse Capital which is owned 100% by Robert D. Genovese. Parks obtained a confirmation of continued financial ability and a secondary Guaranty Agreement with Dark Horse Capital LTD, included as Exhibit D to the First Amendment.

Staff is currently evaluating the effects of the COVID-19 crisis on other County concessionaires as impacts have varied depending on types of service, location and customers. Staff anticipates bringing additional requests for rental relief for Board consideration in the near future.

Osprey Point Golf Course



LOCATION MAP



Attachment #2
First Amendment
10 Pages / 2 copies

FIRST AMENDMENT TO CONCESSIONAIRE LEASE AGREEMENT

THIS FIRST AMENDMENT TO CONCESSIONAIRE LEASE AGREEMENT (R2019-1060), (the “First Amendment”) is made and entered into _____, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, (“County”) and **OSPREY POINT RESTAURANT MANAGEMENT, LLC.**, a Florida Company (“Concessionaire”).

WHEREAS, County and Concessionaire entered into that certain Concessionaire Lease Agreement dated July 25, 2019 (R2019-1060) (the “Agreement”) for the use of the Premises as defined in the Agreement, with a commencement date of July 25, 2019, for a term of three (3) years; and

WHEREAS, Concessionaire has provided County with written notice that due to the impact of COVID-19 on their business, Concessionaire is requesting an amendment to the current Agreement;

WHEREAS, Concessionaire has also provided notice on its change of ownership pursuant to Section 19.04; and

WHEREAS, the parties wish to modify (i) the Annual Rent; (ii) approve the change in ownership, (iii) update the Special Activities provision; and (iv) incorporate certain language required by County.

NOW, THEREFORE, in consideration of the mutual covenants and agreement 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 2.01 Annual Rent is hereby modified by adding the following:

Section 2.01 Annual Rent

Annual Rent for the period of November 1, 2020 through October 31, 2021 shall be at the rate of \$0.00.

Annual Rent for the period between November 1, 2021 through October 31, 2022 shall be at the rate of \$30,900.

Annual Rent for the period between November 1, 2022 through August 31, 2023 shall be at the rate of \$51,500; thereafter Annual Rent shall be adjusted as established in Section 2.02 below.

3. Section 2.02 Adjustment to Annual Rent is deleted in its entirety and replaced with the following:

Section 2.02 Adjustment to Annual Rent.

Starting on September 1, 2023, and on each anniversary date thereof, the Annual Rent shall be adjusted by multiplying the then current Annual Rent by one hundred and three percent (103%).

4. Section 4.02 (u) is deleted in its entirety and replaced with the following:

(u) Concessionaire may, with the approval of the Director of Parks and Recreation Department suspend operation of the concession whenever the Park is closed due to severe storms, maintenance, construction, epidemic pandemic, disaster, or acts of God. Reasonable effort shall be made to reopen the Park in a timely manner following severe storms, maintenance, construction, epidemic pandemic, disaster, or acts of God. If the closure is for an extended period of time (greater than seven (7) consecutive days, the Director of Parks and Recreation Department shall prorate the monthly payment of Annual Rent.

5. Section 4.02 is hereby modified to add the following:

(y) Any Special Activities approved by the County's Director of Special Facilities as established in Section 1.03, shall be posted forty eight (48) hours ahead of the event in the Premises. Between December 1st and April 15 the special events shall be limited to a maximum number of six (6) during the weekends and twenty (20) during the week total.

During Special Activities the Concessionaire must make arrangements to maintain reasonable menu items and beverages, both alcoholic and non-alcoholic available to Park patrons/golfers, provided by a dedicated staff person within a seating area set up by the Concessionaire at a location approved by the Golf Course Manager.

Any disruption in services before 2pm when Special Activities are planned for the evening shall be avoided by the Concessionaire.

6. The contact information for the notices under Section 8.07 Insurance Terms and Conditions shall be updated with the following:

Palm Beach County
2700 6th Ave S
Lake Worth, FL 33461
Email: jsteele@pbcgov.org (561) 966-6654

7. Section 19.03, Notices Required by Agreement, shall be updated as to the Concessionaire as follows:

(b) If to Concessionaire at:

Thoroughbred Holdings, LLC
1250 South Pine Island Road
Suite 470

Plantation, FL 33324
Phone: 416-306-0966
Email: jim@bgsignature.com

8. County acknowledges receipt of notice and consents to the change in ownership of the Concessionaire as required by Section 19.04 of the Agreement and disclosed in the updated Exhibit "E" attached hereto.
9. The Agreement is hereby modified to add the following:

SECTION 19.27: Counterparts

This Agreement, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same Agreement. The County may execute the Agreement through electronic or manual means. Concessionaire shall execute by manual means only, unless the County provides otherwise

10. Exhibit "D" (Guaranty Agreement) of the Agreement is modified to add Exhibit "D-1" attached hereto.
11. Exhibit "E" (Disclosure of Beneficial Interests) of the Agreement is hereby replaced with the updated Exhibit "E" attached hereto.
12. Except as modified by this First Amendment, the Agreement remains unmodified and in full force and effect in accordance with the terms thereof.

(Remainder of the page intentionally left blank)

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed as of the day and year first above written.

ATTEST:

JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT &
COMPTRROLLER


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

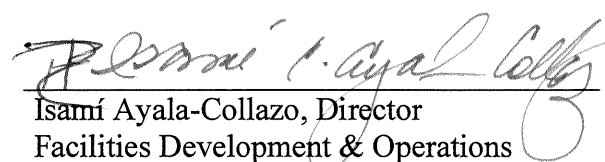
By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

APPROVED AS TO LEGAL
SUFFICIENCY:

APPROVED AS TO TERMS AND
CONDITIONS:

By:  _____
Chief Assistant County Attorney


By:  _____
Isami Ayala-Collazo, Director
Facilities Development & Operations

ATTEST:

**CONCESSIONAIRE:
OSPREY POINT RESTAURANT
MANAGEMENT, LLC., a Florida Company**

By: DocuSigned by:
Patricia Marlow

Witness Signature

By: DocuSigned by:


James Allan, Manager

Patricia Marlow

Witness Printed Name

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-HF approved 6-9.doc

EXHIBIT "D-1"
GUARANTY AGREEMENT

THIS IS A GUARANTY AGREEMENT made and executed on 7/7/2021 by the undersigned (hereinafter called the "Guarantor").

WITNESSETH

WHEREAS, Dark Horse Capital, Ltd. (herein called "Concessionaire") and PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, by and through its Board of County Commissioners, (herein called the "County") have entered into a certain Concessionaire Lease Agreement, dated July 25, 2019 (R2019-1060), as amended by first amendment, dated _____ (R_____ - _____) (collectively called the "Agreement"); and

WHEREAS, in order to induce the County to enter into the Agreement, the undersigned Guarantor has agreed to guarantee the payment of all rents and charges, and the performance of all of Concessionaire's obligations, under the Agreement.

NOW, THEREFORE, in consideration of the execution and delivery of the Agreement by the County, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

1. The undersigned Guarantor does hereby guarantee to the County the due and punctual payment of all Annual Rent, Additional Rent and other sums due and payable under the Agreement, and each and every installment thereof, as well as the full and prompt and complete performance by the Concessionaire of each and every covenant, condition, provision and obligation of the Concessionaire in the Agreement for the full Term of the Agreement and any extension thereof, as permitted by the Agreement, with no less force and effect than if the undersigned were named as the Concessionaire in the Agreement and the undersigned, will forthwith on demand pay all amounts at any time in arrears, and will make good any and all defaults occurring under the Agreement.

2. This Guaranty Agreement shall be an absolute, continuing, irrevocable, unconditional, and unlimited guaranty of payment, and the County shall not be required to take any proceedings against the Concessionaire, or give any notice to the undersigned before the County has the right to demand payment or performance by the undersigned upon default by the Concessionaire. This Guaranty Agreement and the liability of the undersigned hereunder shall in no way be impaired or affected by any assignment which may be made of the Agreement, or any subletting thereunder, or by any extension(s) of the payment of any rental or any other sums provided to be paid by Concessionaire, or by any forbearance or delay in enforcing any of the terms, conditions, covenants or provisions of the Agreement or any amendment, modification or revision of the Agreement.

3. No action or proceeding brought or instituted under this Guaranty Agreement against the undersigned, and no recovery had in pursuance thereof shall be a bar or defense to

any further action or proceeding which may be brought under this Guaranty Agreement by reason of any further default or defaults of Concessionaire.

4. The liability of the Guarantor shall not be deemed to be waived, released, discharged, impaired or affected by reason of the release or discharge of the Concessionaire by any creditors, receivership, bankruptcy (or reorganization proceedings under the Bankruptcy Act) or other proceedings, or the rejection or disaffirmance of the Agreement in any proceedings.

5. There shall be no modification of the provisions of this Guaranty Agreement unless the same is in writing and signed by the undersigned and the County.

6. All of the terms, agreements and conditions of this Guaranty Agreement shall extend to and be binding upon the undersigned, their heirs, personal representatives, administrators, and assigns, and shall inure to the benefit of the County, its successors, and assigns, and to any future owner of the fee of the Premises referred to in the Agreement. Terms not defined herein shall have the same meaning as in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of:

WITNESSES:

DocuSigned by:
Patricia Marlow
BC54355A4229407...
Witness Signature

Patricia Marlow

Print Witness Name

GUARANTOR: Dark Horse Capital, Ltd.
DocuSigned by:
[Signature]
GFDC1GB991F8423...
James Allan, Manager

EXHIBIT "E"
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 James Allan, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the Manager of Osprey Point Restaurant Management, LLC, (the "Concessionaire") which entity is providing concession services on the real property legally described on or depicted in the attached Exhibit "A" (the "Property").

2. Affiant's address is: 1250 S. Pine Island Road, Suite 470, Plantation, FL 33324.

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.

James Allan
_____, Affiant
Print Affiant Name: James Allan

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of physical presence or online notarization this _____ day of 7/7/2021, 2021, by James Allan who is personally known to me or who has produced _____ as identification and who did take an oath.



Notary Public

Kirstie ward

(Print Notary Name)

NOTARY PUBLIC
State of Florida at Large

My Commission Expires: 01/06/2022

EXHIBIT "A"

Premises

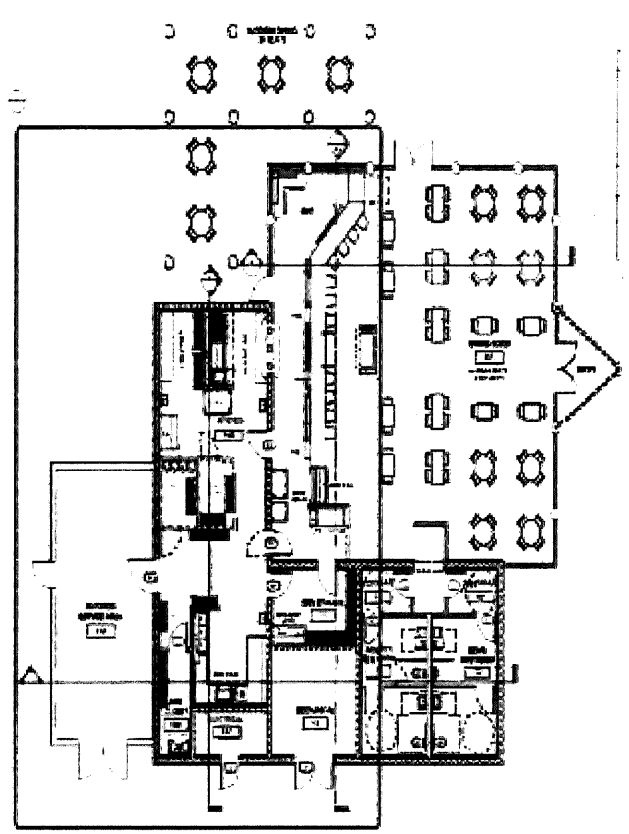


EXHIBIT "B"**SCHEDULE TO BENEFICIAL
INTERESTS**

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
Osprey Point Restaurant Management, LLC	1250 S. Pine Island Rd, Suite 470 Plantation, FL 33324	100% owned by Thoroughbred Holdings, LLC
Thoroughbred Holdings, LLC	1250 S. Pine Island Rd, Suite 470 Plantation, FL	100% owned by Dark Horse Capital, Ltd.
Dark Horse Capital, Ltd	Aristo House, The Balmoral Sandford Drive, P.O. Box N-7775 New Providence, The Bahamas	100% owned by Robert D. Genovese