Agenda Item #: 3H-3

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

| Meeting Date: | December 10, 2024 | [X] Consent [] Ordinance | [] Regular [] Public Hearing |
|---------------|------------------------|---------------------------|-----------------------------------|
| Department: | Facilities Development | t & Operations | |

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a First Amendment to the Concessionaire Lease Agreement (Amendment) for concession services at Carlin Park in Jupiter consenting to a change in ownership interest from Dune Dog Acquisitions, Inc. (DDA) to Dune Dog Beach Café, LLC (DDBC); increasing the initial capital investment amount; increasing the initial term; and increasing the extension options.

Summary: Request for Proposals No. 2023-101-LMD (RFP) was advertised in November 2022 seeking proposals for food and beverage concessionaire services at Carlin Park. The RFP provided that the term and extension options for the agreement would be determined by the proposed initial capital investment. On October 17, 2023, the Board of County Commissioners (BCC) approved Concessionaire Lease Agreement (R2023-1567) (Agreement) with DDA to provide food and beverage services at Carlin Park. DDA proposed \$71,625 of initial capital investment which, pursuant to the terms of the RFP, qualified for an initial term of three (3) years with two (2) three (3) year extension options. DDA has determined that the concession building requires renovations beyond those initially considered in its proposal. Therefore, DDA now seeks to increase its initial capital investment to \$639,804 which would qualify for a term of five (5) years with two (2) five (5) year extension options. In addition, pursuant to the terms of the Agreement, DDA is requesting consent for a change in ownership interest from DDA to DDBC. This Amendment approves the change in ownership and revises the term and extension options in accordance with the increased initial capital investment. All other terms and conditions of the Agreement remain unchanged. There is no fiscal impact associated with the approval of this Amendment. The Parks and Recreation Department will continue to have administrative responsibility for the Agreement (Property and Real Estate Management) District1 (HJF)

Background & Justification: The RFP provided that the term of the Agreement would be dependent upon the proposed initial investment for site improvements. A proposal ranging from no initial capital investment up to the amount of \$499,999 dollars qualified for a term of three (3) years, with an option to extend for two (2) successive period(s) of three (3) years each under the same term (Tier 1). A proposal ranging from the amount of \$500,000 dollars up to \$1,000,000 dollars qualified for a term of five (5) years, with an option to extend for two (2) successive period of five (5) years under the same term (Tier 2). An initial investment in excess of \$1,000,001 dollars qualified for a ten (10) year period, with an option to extend for one (1) ten year period (Tier 3). DDA's proposal initially qualified for Tier 1 term. Upon determining that the concession building requires further renovations than initially anticipated, DDA now desires to increase their capital investment, which would qualify for Tier 2 term. The guaranteed annual rent is \$110,000 (\$9,167/month), with annual 2% increases, plus a percentage rent of 8.5% on monthly gross revenue. DDA has provided an updated Disclosure of Beneficial Interest reflecting the change in ownership.

Attachments:

- 1. Location Map
- 2. First Amendment to Concessionaire Lease Agreement
- 3. Disclosure of Beneficial Interest

| Recommended By: | somi e. agal felle | 10/31/24 |
|-----------------|----------------------|--------------|
| Approved By: | Department Director | Date // 1/24 |
| | County Administrator | Date |

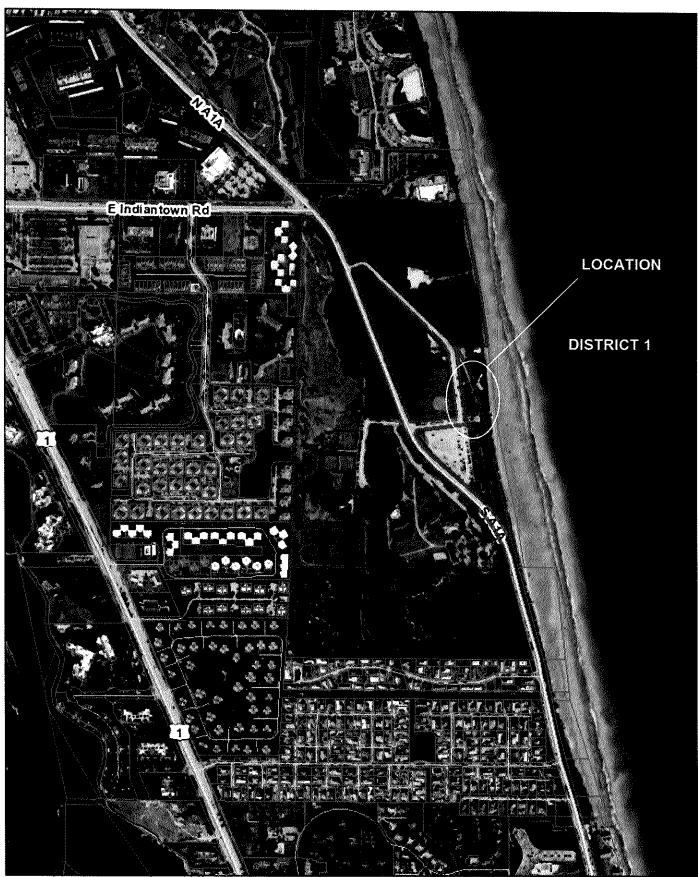
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II. FISCAL IMPACT ANALYSIS

| A. | Five Year Summary of] | Fiscal Impac | t: | | | |
|-----------|--|----------------|----------------|--|--|---|
| Fisc | al Years | 2025 | 2026 | 2027 | 2028 | 2029 |
| Ope | oital Expenditures erating Costs ernal Revenues | <u>N/A</u> | N/A | <u>N/A</u> | <u>N/A</u> | N/A |
| Pro | gram Income (County) | | A | ······· | | |
| In-H | Kind Match (County) | | | The state of the s | | *************************************** |
| NET | T FISCAL IMPACT | <u>(\$-0-)</u> | <u>(\$-0-)</u> | <u>(\$-0-)</u> | <u>(\$-0-)</u> | <u>(\$-0-</u> ` |
| | DDITIONAL FTE SITIONS (Cumulative) | | | | ************************************** | |
| Is I | tem Included in Current I | Budget: | Yes | No | <u>X</u> | |
| Doe | es this item include the use | of federal f | unds? Yes | | No X | |
| Doe | es this item include the use | of State fun | ıds? Yes | | No <u>X</u> | |
| В. | enue Source/Sub Reve Recommended Sources No fiscal impact Departmental Fiscal Re | of Funds/Su | mmary of Fis | *** | | |
| | | III. <u>RE</u> | VIEW COMI | <u>MENTS</u> | | |
| A. | OFMB Fiscal and/or Co | ontract Deve | Au. | nments: Mh Development a | and Control | 15/24 |
| В. | Legal Sufficiency: Assistant County Attorne | | 124 | | | |
| C. | Other Department Rev Department Director | iew: Cuilly | - | | | |

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

30-43-41-05-00-004-0060



September 6, 2023

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FIRST AMENDMENT TO CONCESSIONAIRE LEASE AGREEMENT

THIS FIRST AMENDMENT TO CONCESSIONAIRE LEASE AGREEMENT (R2023-1567) (the "First Amendment") is made and entered into <u>December 3 and</u> by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, ("County") and DUNE DOG BEACH CAFÉ, LLC, a Florida Limited Liability Company, ("Concessionaire") ("County" and "Concessionaire" collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, County and Dune Dog Acquisitions, Inc. ("DDA"), entered into that certain Concessionaire Lease Agreement dated October 17, 2023 (R2023-1567) (the "Agreement") for the use of the Premises as defined in the Agreement, for a term of three (3) years with two (2) three year options to extend; and

WHEREAS, DDA was selected through a competitive proposal process to use the Premises for food and beverage service through Request for Proposal No. 2023-101-LMD ("RFP"); and

WHEREAS, the RFP provided that the term of the Agreement would be dependent upon the initial capital improvement investment for site improvements by DDA; and

WHEREAS, DDA had committed to an initial capital improvement investment in the amount of Seventy-One Thousand Six Hundred Twenty-Five Dollars (\$71,625.00) which qualified it for a term of three (3) years with two (2) three year options to extend; and

WHREAS, pursuant to the terms of the Agreement, DDA has provided County with written notice of the change in ownership and the assumption of performance obligations to Concessionaire; and

WHREAS, Concessionaire wishes to increase the capital improvement investment to Six Hundred Thirty-Nine Thousand Eight Hundred and Four Dollars (\$639,804.00) which, under the terms of the RFP, would qualify it for a term of five (5) years with two (2) five year options to extend; and

WHEREAS, effective August 1, 2024, the Florida Legislature has imposed additional requirements under Section 787.06(13), Florida Statutes, related to human trafficking for agreements between nongovernmental entities and governmental entities; and

WHEREAS, the parties wish to modify the Agreement to reflect the change in ownership from Dune Dog Acquisitions, Inc. to Dune Dog Beach Café, LLC, revise the term of the Agreement, reflect the increase in capital improvement investment, and add certain language to comply with the requirements of Section 787.06, Florida Statutes.

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.
- 2. County hereby consents to the change in ownership as disclosed in the updated Exhibit "G" (Disclosure of Beneficial Interest), attached hereto and made a part hereof.
- 3. **Exhibit "G" (Disclosure of Beneficial Interest)** of the Agreement is hereby replaced with the updated Exhibit "G" (Disclosure of Beneficial Interest) attached hereto.
- 4. **Section 1.04 Length of Term and Commencement Date** is hereby deleted in its entirety and replaced with the following:

The term of this Agreement shall commence upon the Commencement Date defined herein and shall extend for a term of five (5) years after the Concessionaire opens it concession for business on the Premises (the "Term") unless sooner terminated pursuant to the provisions of this Agreement.

The qualifying amount of capital improvement investment is identified in Section 3.02A The Concessionaire shall open its Concession for business on the Premises no later than sixty (60) days after the Effective Date (the "Commencement Date") if no alterations to the interior of the Premises were proposed; or no later than thirty (30) business days after the Concessionaire is issued a certificate of occupancy/completion if alterations to the inside of the Premises were proposed. The Commencement Date is intended to be the first day Concessionaire opens its Concession for business on the Premises. The exact Commencement Date shall be established by written notice from Concessionaire to the Department at least three (3) business days in advance of the anticipated Commencement Date.

Notwithstanding the above, the County shall have the option, at its sole discretion, to (i) establish the Commencement Date by written notice to Concessionaire; (ii) extend the deadline for Concessionaire's opening of the Concession for business; or (iii) declare Concessionaire's failure to open the Concession for business within the prescribed time to be an Event of Default by Concessionaire under Section 13.01 herein, in which event County shall have all remedies available to it under this Agreement. Notwithstanding the foregoing, if County elects to establish a Commencement Date and rent is received from Concessionaire prior to the opening of the Concession for business, County shall not be precluded from later declaring Concessionaire's failure to open its Concession for business an Event of Default if the Concession does not open for business by the new deadline established by County.

5. The first paragraph of **Section 1.05 Option to Extend** is hereby deleted in its entirety and replaced with the following:

County hereby grants to Concessionaire, provided Concessionaire is not in default of this Agreement, the right and option to extend the Term of this Agreement for two (2) five year extensions under the same terms and conditions as this Agreement and commencing upon the expiration of the initial Term of this Agreement.

Concessionaire shall exercise its option to extend, if at all, by written notice to the County received by the County no sooner than one hundred fifty (150) days but no later than ninety (90) days prior to the expiration of the initial Term of this Agreement or any extension thereof. Failure of Concessionaire to duly and timely exercise its option to extend the Term of this Agreement shall be deemed a waiver of Concessionaire's right to said extension option and all further extension options.

6. Section 3.02A Concessionaire's Site Improvements is hereby deleted in its entirety and replaced with the following:

In the event that the Concessionaire constructs site improvements within the Premises to be used by the Concessionaire in the operation of its Concession ("Site Improvements") this section shall apply. Concessionaire shall be solely responsible for the construction of any and all Site Improvements, repairs, alterations or other work necessary to render the Premises suitable for Concessionaire's intended use. Concessionaire shall expend not less than Six Hundred Thirty-Nine Thousand Eight Hundred and Four Dollars (\$639,804.00) on the design, construction and installation of the Site Improvements (the "Minimum Capital Investment"). Design and construction of the Concessionaire Site Improvements shall be in accordance with the Development Rider attached hereto as Exhibit "C". Capital expenditure costs that may be counted toward the Minimum Capital Investment shall include all costs paid for work performed, services rendered and materials furnished for the construction of the Site Improvements, subject to the following terms, conditions and limitations:

- 1. The cost of design (subject to the limitations set forth herein), construction and acquisition of the improvements, bonds, construction insurance, and building, impact and concurrency fees shall be included in the Minimum Capital Investment.
- 2. No more than twelve percent (12%) of the Minimum Capital Investment for payments made by Concessionaire to independent consultants for engineering and architectural design work may be included in the Minimum Capital Investment.

- 3. Only true third party costs and payments made by Concessionaire shall be included in the Minimum Capital Investment. Costs incurred by any sublessee, licensee or other occupant of the Premises, or any portion thereof, other than Concessionaire shall not be included in the Minimum Capital Investment.
- 4. Costs for consultants (other than engineering and design consultants, as provided above), legal fees and accountant fees shall not be included in the Minimum Capital Investment.
- 5. Finance and interest expenses shall not be included in the Minimum Capital Investment.
- 6. Administrative, supervisory and overhead or internal costs of Concessionaire shall not be included in the Minimum Capital Investment.
- 7. Costs associated with acquisition or installation of personalty, such as furnishings, trade fixtures and equipment not permanently affixed to the Premises, or any other personalty whatsoever, shall not be included in the Minimum Capital Investment.
- 8. Any costs associated with any additional improvements shall not be included in the Minimum Capital Investment unless Concessionaire has obtained written approval from the Department prior to incurring such costs.
- 7. Section 19.03 Notices Required by Agreement, shall be updated as to the Concessionaire as follows:
 - (b) Dune Dog Beach Café, LLC 1001 N. US 1, Suite 500 Jupiter, FL 33477 Telephone: (561) 317-9346
- 8. Section 19.29 is hereby added to Article IX of the Agreement as follows:

Section 19.29 Nongovernmental Entity Human Trafficking

Concessionaire warrants and represents that it does not use coercion for labor or services as defined in Section 787.06, Florida Statutes. Concessionaire has executed Nongovernmental Entity Human Trafficking Affidavit, which is attached hereto and incorporated herein as Exhibit "I".

- 9. Exhibit "I" (Nongovernmental Entity Human Trafficking Affidavit) is hereby added to and incorporated into the Agreement.
- 10. This First Amendment is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and shall become effective (the "First Amendment Effective Date") only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.
- 11. Except as set forth herein, the Agreement remains unrevised and in full force and effect, and the parties hereby ratify, confirm, and adopt the Agreement as amended hereby.

(Remainder of the page intentionally left blank)

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

| Signed in the presence of: | CONCESSIONAIRE: |
|---|---|
| Signature of Witness Print Name of Witness | Dune Dog Beach Café LLC a Florida limited liability company By: |
| Myanadows Signature of Witness | Print Title: CEO |
| Magan Adams Print Name of Witness | (SEAL) |

SIGNATURE PAGE to FIRST AMENDMENT TO CONCESSIONAIRE LEASE AGREEMENT between PALM BEACH COUNTY and DUNE DOG BEACH CAFÉ, LLC

| ATTEST: | COUNTY: |
|---|--|
| JOSEPH ABRUZZO CLERK OF THE CIRCUIT COURT & COMPTROLLER | PALM BEACH COUNTY, a political subdivision of the State of Florida |
| By: | By: |
| APPROVED AS TO LEGAL SUFFICIENCY By: Assistant County Attorney | APPROVED AS TO TERMS AND CONDITIONS By: Department Director College C |

EXHIBIT "G" DISCLOSURE OF BENEFICIAL INTERESTS

CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

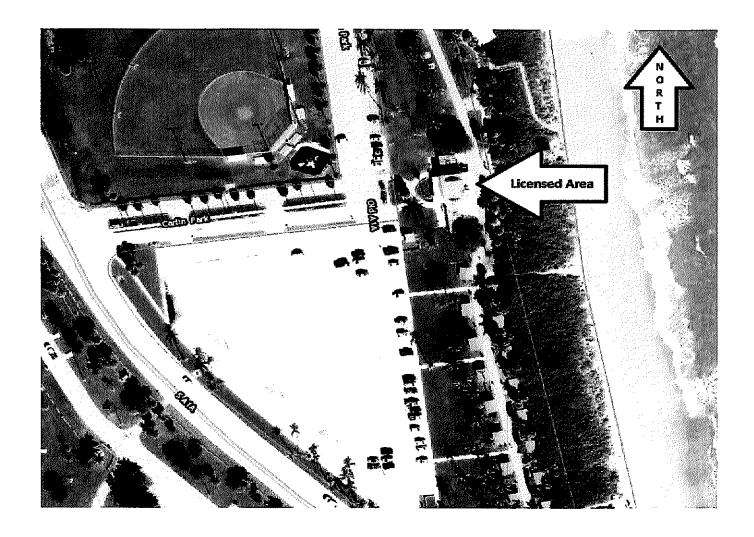
STATE OF FLORIDA COUNTY OF PALM BEACH

| COUNTY OF PA | LM BEACH | | | | |
|--|--|------------------------------------|----------------------------------|--|---|
| BEFORE M hereinafter referred follows: | IE, the undersigne to as "Affiant", w | d authority, thi /ho being by m | s day person e first duly | nally appeared <u>Gree</u> sworn, under oath, | Gory Bartolio |
| DUNE DO | G BEACH CAFE the real property | _LLC, (the "C | oncessionai | ion - i.e. president, pore") which entity is depicted in the attack | artner, trustee) of providing concession hed Exhibit "A" (the |
| 2. Aff | iant's address is: | א טסן | USI | Jupiter , FL | 33477 |
| and address | es of every person | or entity havir | ng a five pe | ibit "B" is a complet reent (5%) or greater ch person or entity. | e listing of the names beneficial interest in |
| Aff penalties proath. | iant further states ovided by the lav | that Affiant its of the State | s familiar of Florida | with the nature of a for falsely swearing | n oath and with the |
| the best of A | Affiant's knowledg ach County relati | ge and belief it | is true, com | ect, and complete, ar | this Affidavit and to d will be relied upon the Agreement for the |
| | | | FU | RTHER AFFIANTS | AYETH NAUGHT. |
| | | | Prin | Affiant Name: Go | Affiant Sory Bectol |
| The foregoi | ng instrument was ice or [] online i | sworn to, subs | scribed and s s <u>27</u> day | acknowledged befor of <u>September</u> | me by means of , 2024, by |
| Gregory Bo | rtoli | [who is | s personally | known to me or [| who has produced |
| | as id | entification and | iwho() | lid (X) did not take | an oath, |
| | MEGAN OCEANA AD | | Notary (Print) | Yun Ad Püblic Megan Notary Name) | lUNU) Idam3 |
| | Commission # HH 2: Comm. Expires Oct through National No | 15, 2026 | State o | RY PUBLIC of Florida at Large mmission Expires: | 10/15/2026 |
| | | | | | |

EXHIBIT "A" LICENSED AREA

"Premises"

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.



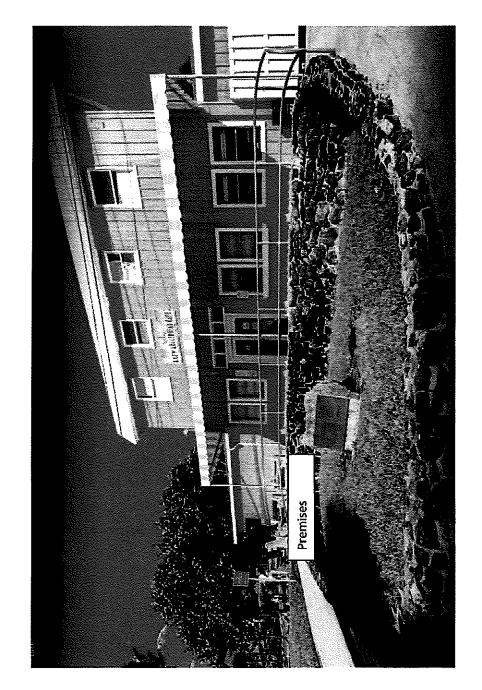


EXHIBIT "B"

SCHEDULE TO BENEFICIAL INTERESTS

| dividual interest holders. If, by med by another entity, such as a city, its address and percentage interest holders of such other | Percentage Of interest | 100.1 | | | | | |
|---|---------------------------|--------------------|--|--|--|--|--|
| holders. If none, so state. Concessionaire must identify individual intenest 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 intenest, as well as such influmation for the individual interest holders of such other entity. | ADDRESS | Sarble | | | | | |
| holders. If none, so su way of example, Conc corporation, Concessic interest, as well as su entity. | NAME | Gregory D. Bartol? | | | | | |

EXHIBIT "I"

NONGOVERNMENTAL ENTITY HUMAN TRAFFICKING

NONGOVERNMENTAL ENTITY HUMAN TRAFFICKING AFFIDAVIT (§ 787.06(13), Fla. Stat.) THIS AFFIDAVIT MUST BE SIGNED AND NOTARIZED

| 1, the undersigned, am an officer or representative of | Dune Dog Beach Cate |
|--|---|
| (CONTRACTOR) and attest that CONTRACTOR do | pes not use coercion for labor or services as |
| defined in section 787.06, Florida Statutes. | |
| Under penalty of perjury, I hereby declare and af and correct. | firm that the above stated facts are true |
| and correct. | |
| | |
| Jel C | Gregory D. Bartoli printed name of officer or representative) |
| (signature of officer or representative) | printed name of officer or representative) |
| State of Florida, County of Palm Beach | |
| Sworn to and subscribed before me by means of pthis, 21 day of Stptm bur 2021 | hysical presence or online notarization the by Gregon Bortoli. |
| Personally known 🗹 OR produced identification 🗆 | |
| Type of identification produced | • |
| MyCunddum NOTARY PUBLIC My Commission Expires: (6) 5 2026 State of Florida at large | MEGAN OCEANA ADAMS Notary Public - State of Florida Commission # HH 279572 My Comm. Expires Oct 15, 2026 Bonded through National Notary Assn. |

(Notary Seal)

CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

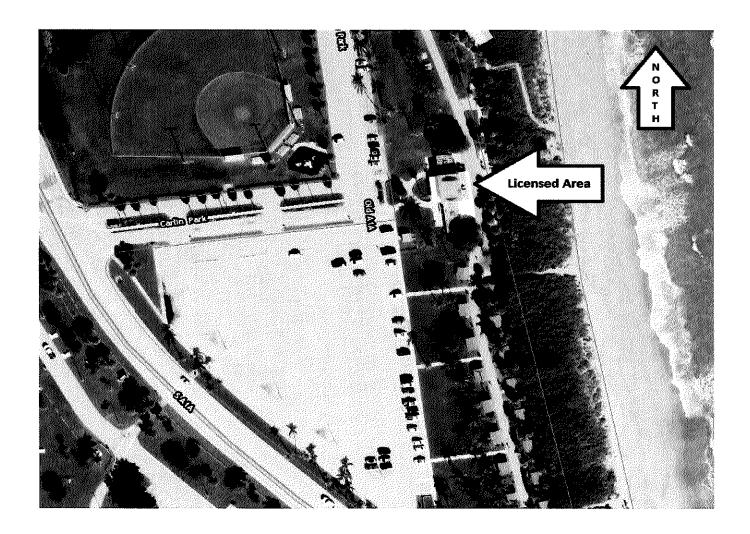
STATE OF FLORIDA COUNTY OF PALM BEACH

| COONTI OF F. | ALM BEACH | | | | | |
|---|--|--------------------------------------|-----------------------------------|--|--------------------|--|
| BEFORE hereinafter referre follows: | ME, the undersigned ed to as "Affiant", wh | l authority, this ho being by me | day person first duly | ally appeared <u>C</u> sworn, under oa | th, depo | y Bactolio oses and states a |
| <u>DUNE D</u> | ffiant is the Preson the real property I Area"). | LLC, (the "Cor | ncessionair | e") which entity | is prov | riding concession |
| 2. A | ffiant's address is: | 100 N | us <u>ı</u> | Jupiter , F | -L ; | 33477 |
| and addre | ttached hereto, and n sses of every person ssionaire and the per | or entity having | g a five per | cent (5%) or gre | ater ber | ting of the name neficial interest in |
| 4. A penalties oath. | ffiant further states provided by the law | that Affiant is s of the State of | familiar v of Florida | vith the nature for falsely swea | of an o ring to | ath and with the statements unde |
| the best o | inder penalty of perju f Affiant's knowledg Beach County relatir Area. | e and belief it is | true, corre | ect, and complete | e, and w | rill be relied upor |
| | | | (| Len | | ETH NAUGHT , Affiant —, Rectoi. |
| The foreg | oing instrument was ence or [] online n | sworn to, subscotarization this | ribed and a | icknowledged bo of <u>Septembe</u> | efore me | by means of 2024, by |
| Gregory B | Sartoli | | | | | |
| | AS 106 MEGAN OCEANA ADI Notary Public - State of Commission # HH 27 My Comm. Expires Oct 1 ed through National Not. | AMS Florida 9572 15, 2026 | Notary (Print I) NOTA State of | id (X) did not the full of the | Lll Add | oath. M) am5 (1≤ 202U |

EXHIBIT "A" LICENSED AREA

"Premises"

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.



"Premises"

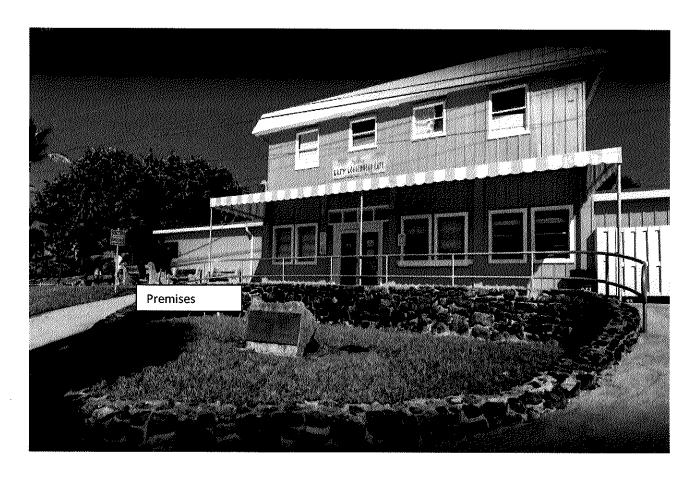


EXHIBIT "B"

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 |
|--------------|----------------------|---------------------------|
| Gregory D. E | bartoli ^o | 100% |
| | | |
| | | |
| | | |
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| | | |
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