AMENDED AND RESTATED
FRANCHISE LICENSE AGREEMENT

between

MANATEE COUNTY

and

UNITED PARK SERVICES, INC.

for

CONCESSIONS AT COUNTY FACILITIES AT COQUINA BEACH

This is an Amended and Restated Franchise License Agreement, hereinafter referred to as “Agreement” by and between MANATEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," and UNITED PARK SERVICES, INC., a Florida corporation, whose address is 4737 Dolphin Cay Lañè, #602, St. Petersburg, FL 33711, a Florida corporation hereinafter referred to as "LICENSEE."

WHEREAS, the COUNTY has concession facilities at Coquina Beach, 2650 Gulf Boulevard South, Bradenton Beach, Florida as shown in the attached Exhibit "A" (Site Plan); and

WHEREAS, the COUNTY has solicited competitive proposals for operation of concession services pursuant to Manatee County Request for Proposal No. 10-0620MA (hereinafter RFP), and has successfully negotiated this Agreement with LICENSEE, the successful proposer; and

WHEREAS, the LICENSEE possesses the financial, legal, technical and experiential resources to enable it to fully perform the obligations contained herein; and

WHEREAS, Manatee County Code § 2-24-11 authorizes the County Commission to grant this concession license agreement; and

WHEREAS, the parties to this agreement entered into a Franchise License Agreement for Concessions at County Facilities at Coquina Beach dated June 20, 2010 (the "Prior Franchise License Agreement for Concessions At County Facilities At Coquina Beach"); and

WHEREAS, the County and United Park Services, Inc. wish to enter into this Agreement, in order to amend and restate the Prior Franchise License Agreement for Concessions At County Facilities At Coquina Beach in its entirety, to incorporate changes to Articles of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, provisions, terms, promises, and conditions contained herein, the parties agree as follows:
**ARTICLE 1: AMENDMENT RESTATEMENT PURPOSE/GRANT OF LICENSE**

To enhance and promote Manatee County as a unique community, and provide for the comfort in and enjoyment of the use of Coquina Beach Park by its patrons, the COUNTY hereby grants unto the LICENSEE the right and privilege to provide the County with Exclusive Concession Services in accordance with the terms, conditions and limitations of this Agreement. It is intended that LICENSEE create a visually pleasing, inviting impression at the Coquina Beach and Park facility through its continued promotion of a tropical, coastal community feel.

This Agreement and the rights and privileges granted to LICENSEE hereunder for the sale of food and beverages and retail items and rental of specified equipment are exclusive except as follows:

1) The COUNTY’S periodic authorization, via Special Event Permit, of the use of the Park or allowing the use of the Park by others, for the purpose of holding and conducting special events including the vending of food and beverages which may be in direct or indirect competition with the LICENSEE’S right to vend food and beverages as provided under this Agreement;

2) The right of COUNTY, upon a determination that it is in the public interest, to establish additional locations for the sale of food and/or beverage, other retail items, or other rental or revenue generating items by obtaining additional vendors or use of its own employees; and

3) Except as specifically provided for herein with respect to the LICENSEE’S use and operation of the Facilities in the Park under this Agreement, the COUNTY shall at all times continue to retain and have the unqualified right to make any and all determinations concerning or relating to the Park, including but not limited to, establishing operating procedures, safety standards and/or fees or fines.

**ARTICLE 2: COMPENSATION**

The LICENSEE shall make a monthly percentage payment to the COUNTY of twelve and one-half percent (12.5%) of the total gross of all sales (less sales tax). Of such total payment, eleven percent (11.0%) shall be considered rent to the COUNTY and one and one half percent (1.5%) shall be retained by the County, to be allotted for Capital Improvements/Investments. Payment shall be made monthly, as of the fifteenth (15th) business day of the following month (the Due Date), with interest accruing after 10 calendar days of that date.

In addition to applicable sales tax, the LICENSEE shall be solely responsible for any ad valorem, rental or similar taxes levied upon the LICENSEE’s equipment or activities arising from this Agreement. LICENSEE shall pay all such taxes directly to the entity or agency assessing the taxes, unless COUNTY is required by law to collect and remit such taxes. LICENSEE shall provide COUNTY with documentation evidencing the payment of any and all taxes paid directly to the entity or agency collecting the taxes.
In the event LICENSEE fails to pay COUNTY any of the fees or charges due under the provisions of this Agreement, interest at one and one half percent (1 1/2%) per month shall accrue against each delinquent payment until same is paid. Interest shall be charged from the date payment is due. Neither the inclusion of this provision, nor its implementation, shall preclude the COUNTY from terminating this Agreement for default or from pursuing any other remedies as provided herein or by law. The COUNTY’S acceptance of late payment of any fees or charges shall not constitute a waiver of COUNTY’S right to terminate this Agreement in the event of any subsequent default by LICENSEE in the payment of any fees or charges on the date they shall be due and payable.

ARTICLE 3: PAYMENT

LICENSEE shall remit monthly payments, fees and charges in the form of an Automatic Clearinghouse (ACH) remittance to the bank account of the Board of County Commissioners of Manatee County, Florida, on or before the due dates specified in Article 2, Compensation. Notification of the total ACH wire amount, the underlying compensation amounts which comprise it, the ACH confirmation number and the settlement date must be provided by the LICENSEE to the COUNTY by e-mail or fax to the Parks and Natural Resources Fiscal Services Manager or designee specified in Article 14, Notices. The bank account number and ACH remittance instructions will be separately provided by the Finance Division of the Clerk of the Court, after this Agreement has been executed.

ARTICLE 4: CASH HANDLING REQUIREMENTS

LICENSEE shall provide, operate and maintain equipment such as cash registers, or any other electronic or mechanical device used for recording sales. Daily register tapes or electronic transaction detail records shall be dated and number referenced and kept as a permanent record for a period of at least five (5) years. The proper functioning and maintenance of the cash register is the responsibility of the LICENSEE. In the event of a need for repair of a cash register machine, such repair shall be required to occur within a forty eight (48) hour period to assure accountability and proper recordkeeping.

All cash registers and devices used in recording sales to customers shall have a non-resettable grand total that accumulates each transaction entered into the device. All transactions devices shall be visibly displayed so that the amount can be viewed by customers from a reasonable distance. No register or device in which cash sales are recorded and deposited shall be opened without recording the date and the time of said opening. Cash register or device drawers shall be kept closed at all times except when sales are made, change is made, or routine audits are conducted.

Cash registers shall have sufficient keys for proper segregation of transactions and meet all accepted standards of accounting systems and cash control.

All persons handling sales shall promptly record said sales (cash or credit) in cash registers and other electronic or mechanical devices immediately upon sale to each paying customer and shall not delay or "gang" register or record such sales.
ARTICLE 5: REPORTS, RECORDS, AUDIT

LICENSEE shall provide a monthly financial accounting report, and gross receipts, applicable to the month for which payment is being made along with the payment that is being made in accordance with the established due date. This report shall be signed by an officer of the LICENSEE certifying to the accuracy of the report and gross receipts.

LICENSEE shall, at its own expense, submit annually by March 31\textsuperscript{st} to the COUNTY a report in a form approved by COUNTY and prepared in accordance with auditing standards adopted by the American Institute of Certified Public Accountants and attested to by an independent Certified Public Accountant licensed by the state of Florida, as to the correctness of quarterly reports and subsequent gross receipts per month arising from the LICENSEE’S operations under this Agreement.

LICENSEE shall provide to COUNTY Annual Financial Reports including a Balance Sheet and a Profit & Loss Statement (Income Statement) for each calendar year or portion thereof that this Agreement is in effect. The report shall be submitted by March 31\textsuperscript{st} of each calendar year during the term and within ninety (90) calendar days of the termination of this Agreement.

LICENSEE shall maintain during the term of this Agreement, all books of account, reports, and records customarily used in this type of operation and such records as are necessary to document LICENSEE’S activities pursuant to this Agreement and all monies collected by LICENSEE in its operations under this Agreement, not limited to gross receipts. The form of all such records, cash registers, tapes, books, ledgers, journals, sales slips, and invoices, installed or to be used for recording the operations of the LICENSEE under this Agreement shall be subject to the written approval of the COUNTY prior to commencement of operations. The COUNTY reserves the right to reasonably modify reports and records requirements to be provided by LICENSEE.

The term “gross receipts” as used in this Agreement shall mean all monies paid or payable to or considerations of determinable value received by the LICENSEE for sales made, transactions had, or for services rendered from all sources in the operation of the concession under this Agreement regardless of when or where the order is received or the goods delivered or services rendered, whether paid or unpaid, whether for cash or on a credit basis or in consideration of any other thing of value; provided, however, that any sales taxes imposed by law directly payable by the LICENSEE to a taxing authority and sales refunds may be excluded therefrom.

The LICENSEE shall allow the COUNTY or the COUNTY’S auditors to inspect and examine all documents used in the compilation of the aforesaid reports at such reasonable times as may be required by the COUNTY. Records shall be available Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. at a location within Manatee County.

All records, including tax returns and tax reports, of the LICENSEE necessary to verify any report referred to herein shall be available to the COUNTY and the COUNTY’S auditors at a reasonable location in Manatee County for a period of five years after the end of the Agreement including any extensions thereof.
LICENSEE shall cooperate with and provide the COUNTY, or its duly authorized representative, with any additional information or reports concerning its activities, income, revenues, expenses, and disbursements on request. The LICENSEE shall keep and maintain an accurate accounting system in accordance with Generally Accepted Accounting Principles.

The LICENSEE'S performance shall be reviewed at least annually by the COUNTY at which time a Vendor Performance Report shall be completed. Any operational or compliance deficiencies shall be noted in the Report and promptly remedied by LICENSEE. During this annual review period, LICENSEE and COUNTY shall discuss any operational, policy or service modifications one or both Parties identify as desirable to enhance the benefit and value of the concession to the public. However, no such modification shall be implemented by LICENSEE without prior COUNTY approval as required by Chapter 2-24 of the Manatee County Code.

LICENSEE shall deliver by June 30th of each even numbered Calendar Year, as hereinafter defined, to the Manatee County Parks and Natural Resources Department Fiscal Service Manager's office located at 5502 33rd Avenue Drive West, Bradenton, FL 34209, a gross revenue report for the prior Agreement year, prepared and certified by an independent Certified Public Accountant (CPA) employed at LICENSEE’S sole cost and expense. Said CPA shall certify that they made a complete examination of the books, state sales tax returns, and federal income tax returns of LICENSEE pursuant to this Agreement and that the LICENSEE is adhering to all requirements hereof.

ARTICLE 6: TERM AND RENEWAL

The initial term of this Agreement was five (5) years beginning at 12:01 a.m. on the 20th day of July 2010, and ending at 11:59 p.m. on the 19th day of July 2015.

Beginning on the 20th day of July 2015 through the 28th day of February 2017, six (6) Amendments provided for the extension of the initial Agreement.

This Amended and Restated Agreement provides for two (2) five (5) year terms. The first five (5) year term shall begin at 12:01 a.m. on the 1st day of March 2017 and end at 11:59 p.m. on the 28th day of February 2022, unless this term is earlier terminated as provided in the Agreement.

The second five (5) year term of this Agreement shall begin at 12:01 a.m. on the 1st day of March 2022 and end at 11:59 p.m. on the 28th day of February 2027, unless this term is earlier terminated as provided in the Agreement.

County shall have the option to renegotiate Article 2 Compensation based on the previous five (5) year gross sales for any renewal.

Provided there has been no default under this Agreement by LICENSEE prior to the expiration of the initial term, LICENSEE may, by written notice to the COUNTY at least 120 days before the end of the initial term, request renewal for the second five-year term. Unless the COUNTY exercises its right not to renew, the Agreement shall renew automatically.
Should LICENSEE fail to provide notice 120 days prior to the end of the first five-year term as required above, COUNTY shall make written demand upon LICENSEE and LICENSEE shall within 7 days thereafter advise COUNTY of LICENSEE’S desire to renew this Agreement. If LICENSEE should fail to respond within such 7-day period, this Agreement shall terminate without the requirement of any further notice to LICENSEE.

**ARTICLE 7: THE FACILITIES EQUIPMENT, MAINTENANCE AND ADDITIONAL IMPROVEMENTS**

As used herein, the 'Facilities' are those buildings at depicted in Exhibit "A" labeled Coquina Beach Gulfside Concession Area, attached hereto and made a part hereof.

The LICENSEE shall be permitted to utilize space seventy five (75) feet from the perimeter edge of the wooden deck area for additional seating and live music, subject to compliance with all applicable rules and regulations of COUNTY and other governmental authorities.

LICENSEE shall provide all equipment to be used at the Facilities needed to perform under this Agreement. LICENSEE shall bear the cost of all charges and expenses related to any and all improvements in the equipment and fixtures as shall be necessary for the LICENSEE’S performance of this Agreement.

So long as this Agreement shall be in effect, LICENSEE shall, except as otherwise provided herein, maintain the Facilities in good order and repair and shall keep the Facilities in a clean and functioning condition at all times, free of all trash, litter and debris. This obligation includes, but is not limited to:

a. The maintenance and upkeep of the patio, walkways and the areas adjacent to the Facilities measuring a distance of not less than one hundred feet (100') from the concrete edge of the perimeter of the Facilities.

b. Providing adequate County supplied paper stock in the restrooms immediately adjacent to the concession building as requested.

c. Providing trash and recyclables collection receptacles around the perimeter of the building and transferring trash generated by the service’s operations to the dumpsters on an as needed basis. Dumpster enclosure doors shall be kept closed. Trash receptacles located in areas exposed to the public shall be kept clean and stain free and not permitted to overfill.

d. Maintaining surrounding walkways and eating areas.

e. Maintaining and replacing as needed all internal fixtures, such as ceilings, walls, decorations, furnishings, lighting and floor coverings and any showcases, racks, other display and sales facilities, including concession identification and signage.

f. Electric utility service to the Facilities.
g. All plumbing and electrical repair, maintenance, or upgrades pertaining to food and beverage storage and preparation, including, but not limited to, kitchen sinks, dishwashers or disposals, as well as grease trap maintenance and service including pump down and cleaning.

h. Providing and maintaining adequate fire protection and inspections, as required, including kitchen hood systems, sprinkler systems and fire extinguishers, in compliance with all applicable fire, restaurant, or building code requirements.

i. Providing and maintaining all food and beverage storage and preparation equipment, including but not limited to, stoves, dishwashers, refrigerators, ice machines and sinks.

j. All interior and exterior maintenance and repair of the Facilities, including but not limited to: replacement of all light bulbs and fixtures, all doors, door closers, locks, windows, floors and floor coverings, vent fans, inspection of fire extinguishers, exhaust fans, all tables and chairs, but excluding maintenance and repair of structural systems such as roof or foundation and air conditioning systems.

k. External maintenance including landscaping and walkways.

l. Routine monthly pest control for the Facilities.

m. Ensuring compliance with Florida law concerning smoking in places of public accommodation.

n. Ensuring compliance with Americans with Disabilities Act requirements concerning places of public accommodation.

o. Ensuring all staff act professionally, are clean, well groomed, uniformed and trained in effective customer service. Uniforms shall be apparel that is acceptable to the COUNTY.

p. All maintenance (including filter replacement), repair and replacement of air conditioning unit(s). The replacement of central air conditioning unit(s), as required, shall be with unit(s) capable of providing adequate cooling to the facility.

q. Allowing annual termite warranty inspections.

r. Cleaning and draining of the septic system as needed.

s. Maintenance of plumbing fixtures in food preparation areas and areas provided for janitorial and cleaning services.

t. Annual inspections of the hot water system.
The COUNTY shall provide and/or maintain the following:

a. Monthly water and sewage collection service.

b. The repair of all public restrooms and showers at the Facilities.

c. All structural repairs not caused by the negligent or intentional acts of LICENSEE. County’s obligation to provide structural repairs is limited to the repair of the existing foundation, walls and roof and the existing portions of the electrical, plumbing and mechanical system within such foundation, walls and roof.

The COUNTY reserves the right to approve all equipment, furnishings, signage, and advertising installed, removed, or replaced by LICENSEE at the Facilities.

All new equipment, furnishings, repairs and improvements provided by LICENSEE shall meet and comply with the requirements of all applicable building, fire, restaurant, pollution, and other applicable codes.

All maintenance, service, and inspections shall be completed by qualified personnel and in compliance with manufacturer guidelines, and state and local laws, if applicable.

LICENSEE shall maintain records of all maintenance and inspections completed. These records shall be made available to the COUNTY upon request.

**ARTICLE 8: CAPITAL INVESTMENT AND IMPROVEMENTS BY LICENSEE**

Capital improvements which address the physical appearance of the interior and exterior of the Facility shall be made so as to support the coastal community feel of the area and must be approved by the COUNTY.

One and one half percent (1½%) payment of the total gross sales, less sales tax, will be held by COUNTY for capital improvements to be performed by LICENSEE. LICENSEE will provide and perform capital improvements which are approved by COUNTY for the Facilities at Coquina Beach. COUNTY will periodically confer with LICENSEE to determine improvements necessary and establish the priority order in which the improvements will be scheduled. However, COUNTY reserves the right, at any time, to require any given capital improvements be performed out of order of priority if same is deemed by COUNTY to be urgent. The amount of capital improvements shall be limited to the one and one half percent (1½%) compensation payment of total gross sales remitted monthly by LICENSEE and accumulated during the term.

The LICENSEE shall be solely responsible for ensuring the safety of its staff and customers during the periods in which improvements are occurring.

The LICENSEE shall be solely responsible for insuring, maintaining, repairing, and replacing LICENSEE’s improvements during the entire term of the Agreement and any extensions thereof.
LICENSEE shall obtain the prior written approval of the COUNTY for any proposed capital improvements, all of which shall become County owned assets upon termination of the Agreement. All improvements and all new equipment shall meet federal, state, county and local laws. The LICENSEE is responsible for applying for all and paying all costs of any required permits. The LICENSEE shall submit sealed architectural plans for all construction or renovation projects which include details on any affected plumbing, electrical, mechanical or other required utility system, including floor plan and material specifications for COUNTY approval prior to beginning any construction or alterations. All projects shall be required to provide specifics such as timelines, critical paths, methods of construction, approval of plans, amenities, signage, color schemes, advertising, total cost, amortization period for the improvements and other information deemed relevant by the County.

All such additions, improvements and fixtures except movable equipment and inventory shall become the property of the COUNTY upon completion and remain in and/or upon the facility and be surrendered upon termination of the Agreement. Any construction liens against the facility, Contractor's license, or the land and buildings arising out of work performed by or for the LICENSEE are expressly prohibited. In the event of the filing of any claim of lien, LICENSEE shall promptly satisfy same or transfer it to a bond and LICENSEE shall in any event protect the COUNTY's interest in underlying real estate and shall hold COUNTY harmless against any such claims.

The LICENSEE shall not allow activities in the facilities which are prohibited by federal, state or local laws, rules, regulations or ordinances.

Notwithstanding any other provision of this Agreement, COUNTY reserves the right to take such action as may be required to maintain, repair, enhance and improve the Facilities where LICENSEE fails to do so. Any work required as the result of LICENSEE'S failure to comply with LICENSEE'S obligations under this Agreement shall be charged to LICENSEE provided COUNTY has advised LICENSEE in writing of the failure to comply and provided a reasonable time for cure. Any charges assessed against LICENSEE shall be due with LICENSEE'S next due monthly payment. Any work by COUNTY, or COUNTY'S agents shall not be undertaken without a minimum of fifteen (15) days advance notice to LICENSEE and shall be scheduled and provided in a manner that will not substantially interfere with LICENSEE'S use or enjoyment of the Facilities unless such work is required on an emergency basis to preserve the Facilities from imminent harm or correct an unsafe condition endangering the Public.

**ARTICLE 9: LICENSEE'S PRODUCTS, OPERATIONS AND SERVICES**

The LICENSEE shall offer for sale or use, the food, beverages and other products or services identified on Exhibit "B". Any significant revisions to these categories shall be subject to pre-approval by the COUNTY.

LICENSEE shall provide the COUNTY with a list of any changes in the products or service and the maximum price that will be charged for each product or service as LICENSEE'S products, services and prices are from time to time amended. LICENSEE acknowledges that the COUNTY shall be entitled, in it's discretion, to set price ceilings on sale items deemed by the COUNTY to be core to the Facility's enjoyment by the public.
Such designations shall be made by the County Administrator or designee from time to time. With respect to such "price controlled" items, LICENSEE shall, during all hours of operation, maintain sufficient stock to provide and offer for sale at least one product of the nature and type shown for a charge not to exceed the amount established, unless LICENSEE can show good cause for such an increase, and a higher charge is approved by the COUNTY.

LICENSEE shall not sell any products in foam containers or cups, shall not provide disposable beverage straws or lids, and shall not sell products that, in the opinion of the COUNTY, pose a safety hazard or health hazard or are inappropriate for sale or display in a publicly owned park. LICENSEE shall utilize biodegradable products where available. LICENSEE shall promote the sale and use of reusable beverage souvenir cups (to be designed with COUNTY input).

COUNTY shall provide and maintain a beach wheelchair for use by the public. LICENSEE shall make beach wheelchair available in a visible location, such as near the umbrella/chair rentals, for use by beach patrons requiring this type of equipment, upon request. LICENSEE shall be responsible for obtaining the necessary picture identification to be held as a deposit and provide the COUNTY's "Beach Wheelchair Rules and Assumption of Risk" (Exhibit C) for review and signature, before releasing the wheelchair to the patron. LICENSEE shall store the beach wheelchair in a secure, indoor, on-site location at the conclusion of each business day.

The LICENSEE'S performance under this Agreement shall be in conformance with all rules, regulations, laws and ordinances which may be applicable to LICENSEE's operations.

HOURS OF OPERATIONS. The Coquina Beach Concession shall be open to the public and operated (i) from December 1 through April 30 for a minimum of eight consecutive hours per day, and (ii) for a minimum of six consecutive hours per day, seven (7) days a week from May 1 through November 30. As provided for in § 2-24-10 of the County Code, the COUNTY may approve closing during periods of severe cold, hurricane warnings or due to other extraordinary circumstances. LICENSEE shall not change the normal hours of operation without the written consent of COUNTY.

Where LICENSEE provides musical entertainment, it shall select performers that appeal to the general population, and shall ensure family friendly performers. Any amplified music shall strictly comply with applicable noise codes.

LICENSEE'S employees, agents, representatives, independent contractors, subcontractors, volunteers, or others involved in the maintenance or operation of the Facilities in contact with the public shall perform their duties in a safe, efficient and courteous manner. All of LICENSEE'S employees shall be distinctively uniformed or appropriately attired so as to be distinguishable as the LICENSEE'S employees and distinguished from the COUNTY Parks employees' attire.

LICENSEE shall properly, adequately and securely store any items for rent in a manner that is compliant with all local ordinances.
LICENSEE and COUNTY shall agree on when additional services are to be added and what services are acceptable. COUNTY agrees to assist with permitting activities, if applicable. LICENSEE understands that all revenues generated from added services shall be included in the total gross sales and any compensation due the COUNTY as a result of additional revenue sources shall be made payable in accordance with Article 2 of this Agreement.

LICENSEE shall not discontinue or modify approved services without the written approval of the County in advance of the commencement of the change in service.

The LICENSEE shall not conduct any business or activity not specifically authorized by this Agreement, unless approved in writing by the COUNTY. It is expressly understood and agreed that the LICENSEE'S operations shall not unreasonably interfere in any manner with the use of public areas or infringe upon the rights of others authorized to conduct business near the location of the Park. The LICENSEE agrees that a determination by the COUNTY shall be accepted as final in evaluating LICENSEE’S activities that unreasonably infringe on the rights of others and that LICENSEE shall fully comply with any such decisions.

LICENSEE agrees that no person on the ground of race, color, religion, national origin, sex, age, or disability shall be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination in the hiring of personnel, the performance of this Agreement, or the use of and access to the Facilities.

LICENSEE shall be responsible for obtaining all permits, licenses and approvals required for or in connection with and to enable LICENSEE'S performance under this Agreement.

LICENSEE shall permit, and the COUNTY shall have the authority to review, any reports, citations or records issued by any governmental entity or agency regulating LICENSEE’S operations and services, and to make periodic reasonable inspections of the Facilities during normal operating hours to determine if the Facility is being maintained in accordance with the terms of this Agreement. The LICENSEE shall be required to make any improvements or operational changes resulting from such review.

The Facilities are intended for the general use and enjoyment of all residents and visitors. LICENSEE shall therefore not rent out or otherwise allow the Facility to be occupied by or under the control of any third party group or entity, including but not limited to private parties or political rallies, absent express prior approval of the COUNTY.

**ARTICLE 10: SALE OF ALCOHOLIC BEVERAGES**

LICENSEE'S sale of alcoholic beverages shall be subject to the following:

a. Sales shall be conducted in conformity with any controlling municipal or COUNTY ordinance and state laws, rules or regulations;
b. Sales shall be limited to beer, wine and alcoholic beverages as permitted under a 2COP state beverage license and sold for on-premises consumption only;

c. Prior to commencing any such sales, LICENSEE shall obtain any required licenses, and shall provide a copy of said license and all renewals to COUNTY;

d. All alcoholic beverages shall be sold in appropriate containers, and LICENSEE shall be responsible for the proper disposal of said containers;

e. LICENSEE’s conduct and operation in connection with any such sales is subject to, and shall be conducted by LICENSEE in compliance with, all other applicable terms and conditions of this Agreement;

f. The COUNTY may withdraw authorization to sell alcoholic beverages by providing notice to LICENSEE at least ninety (90) days prior to the effective date of such action. The Parties agree if this right is exercised, LICENSEE is entitled to open negotiations to discuss revision of the base compensation due to COUNTY; and

g. Employees of LICENSEE shall not sell or serve alcoholic beverages unless trained and qualified as required by State law or regulation.

ARTICLE 11: LIABILITY FOR DAMAGE, INDEMNITY, AND INSURANCE

LIABILITY FOR DAMAGE OR INJURY. The LICENSEE shall be liable for damage or injury to any party at the Facilities other than the damage or injury caused by negligence or intentional actions of the COUNTY. LICENSEE shall, at its expense, promptly repair all damage to the Facilities caused by the LICENSEE, its employees, agents, customers, or independent contractors contracting with LICENSEE.

INDEMNIFICATION OF COUNTY. LICENSEE shall at all times indemnify, hold harmless and defend COUNTY, its agents, officers and employees from any and all claims, liability, loss or cause of action of any kind or nature arising out of the actions, omissions, or negligence, in whole or in part of the LICENSEE, its officials, agents, or employees, in the performance of this Agreement. The LICENSEE shall pay all valid claims, losses and judgments of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the COUNTY when applicable, and shall pay all costs and judgments which may result therefrom. COUNTY reserves the right to defend itself with its own counsel or retained counsel at LICENSEE’s expense, unless COUNTY is found negligent or otherwise responsible for the occasion of the litigation.

DAMAGE OR DESTRUCTION OF FACILITIES. If the Facility or any structure thereon is partially damaged by fire, flood, wind or other casualty, excluding the negligent or intentional acts of LICENSEE or its Agents, COUNTY may repair the damage at its own costs and expense, and no adjustment shall be made in the monthly license fee.

In the event the Facility is destroyed or so damaged by fire, flood, wind or other casualty, excluding the negligent or intentional acts of LICENSEE, that such of the Facilities is unusable for the purpose of this Agreement, neither the LICENSEE nor the
COUNTY shall be under any obligation to repair or reconstruct the Facilities, and this Agreement shall terminate on the date that such determination is made by the COUNTY.

INSURANCE. Without limiting any obligation or liability of LICENSEE, LICENSEE, prior to the commencement of operations, shall furnish to the COUNTY evidence of the following insurance, which insurance coverages LICENSEE shall maintain and keep in full force and effect during the term of this Agreement.

A. Commercial General Liability Insurance in an amount not less than two million dollars ($2,000,000) per occurrence, four million dollars ($4,000,000) general aggregate. Coverage shall include products/completed operations aggregate, personal and advertising injury liability, fire damage liability, medical expense and third party property damage.

1. “Manatee County, a political subdivision of the State of Florida” shall be named as an "Additional Insured" with respect to liability arising out of Facilities' operations performed for the COUNTY by or on behalf of LICENSEE, or for acts of omissions of COUNTY in connection with general supervision of such Facilities' operations.

B. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the Agreement in an amount not less than two million dollars ($2,000,000) combined single limit. In lieu of the combined single limit, coverage can be split into individual limits of one million dollars ($1,000,000) bodily injury and one million dollars ($1,000,000) property damage. Coverage must also include $10,000 personal injury protection, $1,000,000 hired-non owned liability and $10,000 medical payments.

C. Workers’ Compensation Insurance and Employers’ Liability Insurance to apply for all employees in compliance with the laws and statutes of the State of Florida, and federal government. If any operation are to be undertake on or about navigable waters, coverage must be included for the US Longshoreman and Harbor Workers Act and Jones Act.

1. Should the LICENSEE have "leased" employees, the LICENSEE or the employee leasing agency shall provide evidence of a Workers' Compensation policy and an Employers' Liability policy for all personnel on the worksite and in compliance with the above requirements.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with an A.M. Best rating of A-FSC VII or better.

Certificates will provide that no modification or change in insurance shall be made without a 30-day written advance notice to the certificate holder (Manatee County) and approval by the COUNTY.
LICENSEE shall provide to COUNTY prior commencement of this Agreement, Certificates of Insurance evidencing the insurance coverage as specified above.

If the initial insurance period expires prior to completion of this Agreement, renewal Certificates of Insurance shall be furnished prior to the of expiration of any insurance coverage. Insurance shall not be canceled without 30 days prior written notice to COUNTY, and must be endorsed to provide the same.

Failure of LICENSEE to obtain and maintain proper amounts and types of insurance under this Agreement shall constitute material breach of this Agreement by LICENSEE.

COUNTY reserves the right to modify the insurance requirements by the issuance of a notice in writing to LICENSEE to the extent reasonably deemed necessary to protect COUNTY from loss damage or liability for the acts, errors and omissions of LICENSEE in the use and operations of the Facilities by LICENSEE.

COUNTY shall have no duty or responsibility to insure, replace or protect LICENSEE'S equipment, furnishings or other personal property or improvements provided or paid for by LICENSEE, and all risk of loss and insurance against such risks shall be the sole responsibility of LICENSEE.

Compliance with the foregoing requirements shall not relieve LICENSEE of any liability or obligation under this section or under any other section of this Agreement.

**NO WAIVER OF IMMUNITY.** Nothing herein shall be interpreted as a waiver of the COUNTY of its rights, including the limitations of the waiver of immunity, as set forth in Florida Statutes§ 768.28, or any other statute, and the COUNTY expressly reserves these rights to the full extent allowed by law.

**PERFORMANCE BOND.** The LICENSEE shall furnish a Performance Bond with a surety acceptable to the COUNTY, in an amount of ten thousand dollars ($10,000). This Performance Bond will be conditioned solely upon the LICENSEE's full and faithful performance of the capital improvements. The Performance Bond will be submitted to the COUNTY before the LICENSEE's commencement of operations at the Facilities. The LICENSEE may, in lieu of the Performance Bond, deposit with the COUNTY a cash deposit or irrevocable letter of credit in the amount of ten thousand dollars ($10,000). LICENSEE shall be entitled to a release of the Performance Bond, cash deposit or irrevocable letter of credit.

**ARTICLE 12: OWNERSHIP OF RIGHTS, SALE OR ASSIGNMENT**

The identity of the person or the entity, if not an individual, who or which shall be the owner or holder of the rights granted under this Agreement is very important to the COUNTY.

LICENSEE shall not, without prior written consent of the COUNTY, sell, assign, pledge, transfer or otherwise encumber this Agreement or the rights granted therein. Assignment, pledging, sale, transferring, or encumbering of any interest in or under this Agreement or the rights thereunder, to anyone other than the LICENSEE, without the
prior written consent of the COUNTY shall be of no force and effect and shall be grounds for immediate termination of this Agreement.

All terms and conditions of this Agreement shall extend to and be binding on any approved purchaser, assignee, or other successor in interest.

ARTICLE 13: APPROVALS

Except as provided otherwise, whenever any prior approval is required by either party, such approval shall not be unreasonably withheld. COUNTY shall retain broad discretion over matters pertaining to creating and maintaining the unique local character of the Facilities, the protection and preservation of the Facilities and the Park, the public interest and limited purpose for which this concession has been granted, and withholding approvals for the foregoing reasons shall be considered reasonable. Matters requiring the consent of the COUNTY are wholly within the discretion of the COUNTY.

LICENSEE shall not change or alter the following without the written approval of the COUNTY:

a. Modifications to the Facilities.

b. Equipment LICENSEE installs or plans to install requiring any building modifications.

c. Any COUNTY or municipally-installed signs or logos.

d. Vegetation or beach topography.

ARTICLE 14: NOTICES

Whenever either party desires to give notice to the other, it shall be given by written notice, by either hand delivery or registered or certified United States mail, with return receipt requested, addressed as noted below. Until notice of change is given, the parties designate the following as the respective individuals and places for giving notice, to wit:

FOR MANATEE COUNTY:
Director, Parks & Natural Resources
MANATEE COUNTY GOVERNMENT
PO Box 1000
Bradenton, FL 34206

With a copy to:
County Administrator
MANATEE COUNTY GOVERNMENT
PO Box 1000
Bradenton, FL 34206

FOR ACH remittance information:
Email: carrie.kelley@mymanatee.org
Fax: 941.742.5972

FOR LICENSEE:
Mr. Alan Kahana, President
UNITED PARK SERVICES, INC.
4737 Dolphin Cay Lane, # 602
St. Petersburg, FL 33711

With a copy to:
Kay J. McGucken, P.A.
1320 9th Avenue, Suite 210
Tampa, FL 33605
ARTICLE 15: TERMINATION

AUTOMATIC TERMINATION. The occurrence of any of the following shall cause this Agreement to be terminated automatically:

a. Institution of proceedings in voluntary bankruptcy by the LICENSEE.

b. Institution of proceedings in involuntary bankruptcy against the LICENSEE or appointment of Receiver if such proceedings continue for a period of 90 days.

c. Assignment by the LICENSEE for the benefit of creditors. Abandonment or discontinuance of operations hereunder.

d. Unauthorized sale, assignment or transfer of this Agreement or interest thereunder.

TERMINATION BY COUNTY. COUNTY may terminate this Agreement upon fourteen (14) days written notice to LICENSEE of any condition posing a threat to health or safety of the public or patrons and not remedied by LICENSEE within fourteen (14) days, or where LICENSEE does not proceed with due diligence to remedy such condition where the condition could not reasonably be remedied in such time.

COUNTY may terminate this Agreement immediately upon notice to LICENSEE of the discovery of any materially false representation in the LICENSEE’S proposal leading to award of this Agreement which, in the determination of COUNTY, significantly affects the LICENSEE’S qualifications to perform.

COUNTY may terminate this Agreement upon ten (10) days’ notice to LICENSEE of any sum due hereunder after the due date for such payment; provided, however, that such termination shall not be effective if LICENSEE makes the required payment(s) within the 10-day period following receipt of the notice.

COUNTY may terminate this Agreement upon thirty (30) days’ notice to LICENSEE with respect to:

Nonperformance of or failure to comply with any provision of this Agreement and failure of LICENSEE to remedy such nonperformance within the thirty (30) day period following delivery or mailing of the written notice.

The conduct of any activity or the sale of any product or service category not authorized herein.
TERMINATION FOR PUBLIC CONVENIENCE. COUNTY shall have the right to terminate this Agreement for public convenience upon at least 120 days' notice to LICENSEE.

TERMINATION BY LICENSEE. LICENSEE shall have the right upon 120 calendar days from receipt of notice to COUNTY to terminate this Agreement at any time after the occurrence of one or more of the following events:

Issuance of any court of competent jurisdiction of any injunction or order of taking substantially restricting the use of the Facilities for the purposes set forth herein, and the remaining in force of said injunction or order for a period of more than 30 calendar days.

The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of substantial part, or parts, thereof in such a manner as to substantially restrict LICENSEE'S operations for a period of ninety (90) calendar days or more.

TERMINATION WITHOUT CAUSE. LICENSEE shall have the right to terminate this Agreement without cause by providing written notice to COUNTY at least 120 days prior to termination. Should LICENSEE elect to terminate this Agreement without cause, LICENSEE'S rights, privileges and obligations as stated in this Agreement shall cease at the termination date provided in the notice.

ARTICLE 16: ENTIRE AGREEMENT AND AMENDMENTS

This Agreement and the exhibits and attachments hereto, and other documents and agreements specifically incorporated herein, constitute the entire, fully integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous verbal or written agreements between the parties with respect thereto, excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within the four comers of this Agreement. This Agreement may be amended only by written document, properly authorized, executed, and delivered by both parties hereto. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. Any act or delivery that must be completed on a Saturday, Sunday or County holiday shall be adequate if performed or delivered on the following business day. All interpretations shall be governed by laws of the State of Florida.

ARTICLE 17: MISCELLANEOUS PROVISIONS

No Waiver. The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision of any portion of this License Agreement, either at the time the breach or failure occurs, or at any time throughout the term of this Agreement.
Subcontracting. The LICENSEE shall not sub-contract, sublet, assign or transfer any duty under this Agreement to another party without the prior written consent of the COUNTY.

Dispute Resolution. Disputes shall be resolved as follows: good faith negotiations by the designated agents of the Parties and if not resolved by such designated agents after twenty-one (21) days, LICENSEE shall submit its claim, with the basis for the dispute, in writing to the Manatee County Purchasing Manager for a determination and handling in accordance with the provisions of the Manatee County Procurement Code.

Environmental Education Initiatives. LICENSEE shall work with relevant COUNTY staff and/or the Manatee County School District, to develop and/or facilitate pre-existing programs aimed at educating residents and visitors, with particular focus on children, of the unique and valuable beach ecosystem and its plant and animal life. To the extent the COUNTY or School District does not provide such programming, LICENSEE may utilize third parties qualified to provide such educational experiences. LICENSEE shall promote any Clean the Beach program involving local community organizations or schools. LICENSEE shall provide a free on site cook out for the participants. When these programs are being conducted on site, the persons or entities conducting them shall be entitled to priority use of Pavilion # 108, until such time that the shelter structure is constructed at Leffis Key.

Local Hiring and Buying Preference. In hiring staff for the operation of this concession, LICENSEE shall actively recruit and hire qualified residents with first preference given to residents of the City of Bradenton Beach, then to residents of the COUNTY. In purchasing supplies or services for or related to the operation of this concession, where confirmed costs or prices from a local provider (as defined by Manatee County's Purchasing Code) are within five percent (5%) of a provider who is not local, LICENSEE shall give preference to the local provider. LICENSEE shall include a summary of its efforts and the results of those efforts in its annual reporting to the COUNTY. In hiring subcontractors preference must be given to a Manatee County subcontractor where confirmed bids are within five percent (5%) of a subcontractor that is regionally local as defined by the by the Manatee County Purchasing Code.

Environmental Sustainability. LICENSEE shall work with COUNTY staff to develop and implement policies and procedures of concession operations aimed at minimizing the production of solid waste, and the use of energy and water resources. LICENSEE shall ensure all staff are trained in and comply with such policies and procedures. LICENSEE shall include a summary of its efforts and the results of those efforts in its annual reporting to the COUNTY.

Community Involvement. COUNTY and LICENSEE shall assist County citizenry to create a "Friends of Coquina Beach" organization should interested citizens come forward whose goal is the preservation of the Park's history, environmental and leisure activity.
Facility Name and Logo. COUNTY reserves the right to approve the name of the facility and any related logo design. Said name and logo design shall be property of the COUNTY.

Governing Law, Jurisdiction and Venue. LICENSEE consents and agrees that all legal proceedings related to the subject matter of this Agreement shall be governed by the laws of and maintained in courts sitting within the State of Florida. LICENSEE further consents and agrees that jurisdiction for such proceedings shall lie exclusively with such court and venue shall be in Manatee County, Florida or if in Federal Court, the Middle District of Florida, Tampa Division.

Attorneys’ Fees and Costs. Each Party hereto shall be solely responsible for paying its attorneys’ fees and costs in any dispute, litigation, dispute resolution proceeding, settlement negotiation or pre-litigation negotiation arising under this Agreement.

No Conflict. By accepting award of this Agreement, LICENSEE, which shall include its directors, officers and employees, represents that it presently has no interest in and shall acquire no interest in any business or activity which would conflict in any manner with the performance of duties or services required hereunder.

Public Records. Pursuant to Florida Statutes §119.0701, to the extent LICENSEE is performing services on behalf of COUNTY, LICENSEE shall:

a. Keep and maintain public records that ordinarily and necessarily would be required by COUNTY in order to perform the service.

b. Provide the public with access to public records on the same terms and conditions that COUNTY would provide and at a cost that does not exceed the cost provided in F.S. Chapter 119, or as otherwise provided by law.

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.

d. Meet all requirements for retaining public records and transfer, at no cost, to COUNTY all public records in possession of CONSULTANT upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential from public records disclosure requirements. All records stored electronically must be provided to the COUNTY in a format this is compatible with the COUNTY’S information technology systems.

PUBLIC RECORD CONTACT: DEBBIE SCACCIANOCE  
Debbie.scaccianoce@mymanatee.org  
941-742-5845
**Public Entity Crimes.** LICENSEE has been made aware of the Florida Public Entity Crimes Act, § 287.133, Florida Statutes, specifically section 2(a), and the COUNTY'S requirement that the LICENSEE comply with it in all respects prior to and during the term of this Agreement.

**No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties hereto, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the benefit of any third party. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, corporation, partnership, trust, private entity, agency, or other governmental entity any right, privilege, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof.

**Legal References.** All references to statutory sections or chapters shall be construed to include subsequent amendments to such provisions, and to refer to the successor provision of any such provision. References to "applicable law" and "general law" shall be construed to include provisions of local, state and federal law, whether established by legislative action, administrative rule or regulation, or judicial decision.

**Severability.** The provisions of this Agreement are declared by the parties hereto to be severable. In the event any term or provision of this Agreement shall be held invalid by a Court of competent jurisdiction, such invalid term or provision should not affect the validity of any term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent here thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.
WHEREFORE, the Parties have made and executed this Agreement for concessions at Manatee Beach as of the effective date stated herein.

UNITED PARK SERVICES, INC.  
By: Alan Kahana, President

MANATEE COUNTY, a political subdivision of the State of Florida  
By: Melissa Wendel, CPPO Purchasing Official
EXHIBIT B

FOOD MENU

Breakfast
Belgian Waffle $5.99
Belgian Waffle with Strawberries $6.99
French Toast $5.99
French Toast with Strawberries $6.99
2 Eggs Any Style with Toast and Grits or Home fries $4.99
2 Eggs Any Style with Meat and toast, grits or home fries $5.99
3 Egg Omelets with toast and choice of grits or home fries:
  Ham and Cheese Omelet (American Swiss or Cheddar) $7.99
  Sausage and Cheese Omelet $7.99
  Bacon and Cheese Omelet $7.99
  Veggie Omelet (onion tomato pepper + cheese) $7.99
Meat Lovers Omelet (bacon, sausage, ham + cheese) $9.99
Biscuits and Gravy $5.99
Biscuits and Gravy with 2 eggs $7.99

Side Items
Bagel $2.29
English Muffin $2.29
Cream Cheese $0.75
Grits $2.49
Bacon $2.99
Home Fries $2.99
Thick Ham Slice $2.99
Cole Slaw $2.49
Sausage $2.99
French Fries $2.99
(To – Go Items add $0.50)

Sandwiches
Hot Dogs $4.49
Hot Dog w/ Kraut $5.49
Chili Dog $5.49
Chicago Dog $5.99
Hamburger $4.99
Cheeseburger $5.79
Bacon Cheeseburger $6.99
Fish Sandwich $7.99
BLT (White, Wheat or Rye) $7.99
Chicken Sandwich $7.99
Grilled Cheese Sandwich $4.99
Grilled Cheese with Bacon or Ham $6.99
Chicken Salad Sandwich $7.99

Salads
Caesar Salad $7.99
Grilled Chicken Caesar Salad $11.99
Island Catch Salad (grilled, blackened or fried fish) $12.99
Chicken Salad Platter $8.49

Specialty Items
Chicken Tender and Fries $8.99
Onion Rings $5.79
Cheese Fries $3.99
Chili Cheese Fries $4.99
Chili Cheese Fries w/ Bacon $5.99

Beverages
Coke, Sprite Diet Coke, Fresh Brewed Tea
Small $1.99
Large $2.99
Coffee, Tea, Hot Chocolate $1.99
Small Milk $2.49
Large Milk $3.49
Small Chocolate Milk $2.99
Large Chocolate Milk $3.99
Small Orange Juice $2.99
Large Orange Juice $3.99
Water $2.00

Prices do not include tax
EXHIBIT B – Continued

ALCOHOLIC BEVERAGES

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
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<tbody>
<tr>
<td>Assorted Beers</td>
<td>$ 4.00</td>
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<tr>
<td>Assorted Wines</td>
<td>$ 5.50</td>
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EXHIBIT B - Continued

COQUINA GIFT SHOP ITEMS

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<tr>
<th>Item</th>
<th>Price</th>
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<tbody>
<tr>
<td>Beach Towels</td>
<td>$14.99 – 32.99</td>
</tr>
<tr>
<td>Beach Bags</td>
<td>$3.99 &amp; up</td>
</tr>
<tr>
<td>Sunglasses</td>
<td>$9.99 &amp; up</td>
</tr>
<tr>
<td>General Sundry Items (Sunscreen &amp; Lotions)</td>
<td>$5.99 - 13.99</td>
</tr>
<tr>
<td>Clothing &amp; Hats</td>
<td>$7.99 &amp; up</td>
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<tr>
<td>T-Shirts</td>
<td>$7.99 &amp; up</td>
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<tr>
<td>Swim Apparel</td>
<td>$9.99 &amp; up</td>
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<tr>
<td>Beach Themed Merchandise &amp; Souvenirs</td>
<td>$3.99 &amp; up</td>
</tr>
<tr>
<td>Boogie Boards, Floats, Goggles, Water Toys</td>
<td>$3.99 &amp; up</td>
</tr>
<tr>
<td>Children’s Books &amp; Toys</td>
<td>$3.99 &amp; up</td>
</tr>
<tr>
<td>Books (Local Authors, Nature, Fish, Shell)</td>
<td>$5.99 &amp; up</td>
</tr>
<tr>
<td>Beach Shoes &amp; Flip Flops</td>
<td>$12.99 &amp; up</td>
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<tr>
<td>Candles</td>
<td>$5.99 – 19.99</td>
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<tr>
<td>Jewelry</td>
<td>$6.99 &amp; up</td>
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<tr>
<td>Magnets &amp; Keychains</td>
<td>$6.99 &amp; up</td>
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COQUINA UMBRELLA PRICING

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<tr>
<td>Umbrellas</td>
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<tr>
<td>Chairs</td>
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<td>Umbrella &amp; 2 Chairs</td>
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<tr>
<td>Cabanas</td>
<td>$14.99</td>
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<tr>
<td>Cabana &amp; 2 Chairs</td>
<td>$24.99</td>
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EXHIBIT C

Beach Terrain Wheelchair Rules and Assumption of Risk

1. The Beach Wheelchair is available to the public on a first come first served basis with a (2) two hour time limit per use. The Beach Terrain Wheelchair must be returned to the concession area no later than 4:00 p.m.

2. Users must arrange for transfer to the Beach Wheelchair without assistance from staff.

3. All users shall sign the liability waiver below and provide a valid Driver’s License or other valid identification to verify the identity of the individual signing the liability waiver. Companions are required to sign the waiver only if user is unable.

4. The user or companion’s Driver’s License or other identification will be held at the concession until the Beach Wheelchair is returned.

5. The Beach Wheelchair must remain within the lifeguard supervised area of the Coquina Public Beach at all times. The Beach Terrain Wheelchair shall not be taken into the Gulf.

6. In case of lightning storms or other inclement weather, users must return the Beach Wheelchair promptly to the concession area. Users must assure that there is adequate time to move to a safer and more protected area.

7. Manatee County Government assumes no responsibility for the Beach Wheelchair or other unattended personal belongings of the user.

8. Users shall be liable for any damage or lost attachments to the Beach Wheelchair.

9. Users must understand that the manufacturer of the Beach Terrain Wheelchair specifies there is a maximum load limit of 325 pounds. This limit shall not be exceeded.

As a consideration for the use of the Beach Wheelchair, the user and any attendant or person responsible for the user, affirmatively accepts the risk associated with its usage. No warranty is given or implied as to the Beach Wheelchair’s fitness for use, design or condition.

I have read, understand and agree to abide by the rules stated above. I, the undersigned, intending to be legally bound, do hereby for myself, my heirs, executors and administrators, waive and release any and all rights and claims for damages which I may have against the County of Manatee, their representatives, successors and employees for any and all injuries which I may suffer as a result of my use of Manatee County’s Beach Wheelchair.

<table>
<thead>
<tr>
<th>Print Name</th>
<th>Signature</th>
<th>Date</th>
<th>Time Out</th>
<th>Time In</th>
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</thead>
<tbody>
<tr>
<td>(User or Companion)</td>
<td></td>
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<tr>
<td>(Staff as Witness)</td>
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March 7, 2017 - Regular Meeting
Agenda Item #30

Subject
Amended and Restated Franchise License Agreement, Coquina Beach Concession

Briefings
None

Contact and/or Presenter Information
Presenter: Charlie Hunsicker, Director, Parks and Natural Resources, Ext. 6001
Contact: Greg Davis, Contract Negotiator, Financial Management, Ext. 3037

Action Requested
Motion to approve the Amended and Restated Franchise License Agreement ("Agreement") between Manatee County and United Park Services, Inc. (UPS) for Operations and Management of Concessions at County Facilities at Coquina Beach, and to authorize the County Administrator or his designee to execute the Agreement.

Enabling/Regulating Authority
Manatee County Code 2-24-11

Background Discussion
On June 22, 2010, the Board of County Commissioners (BCC) approved the franchise license agreement for the Operations and Management of Concessions at County Facilities at Coquina Beach with United Park Services (UPS) Inc. for a period of five (5) years. In accordance with the franchise license agreement (Agreement) UPS provides operation and upkeep of the concession and surrounding grounds.

UPS performed satisfactorily during the initial term of the Agreement. The Agreement allowed up to two (2) five year renewal terms at the same terms and conditions of the current Agreement. However, the County and UPS agreed to engage in renegotiating certain terms and conditions of the Agreement in order to address items contractually and enhance the Agreement to better serve the general public.

In summary, the following terms and conditions are provided for in the attached Amended and Restated Franchise License Agreement.

- Redefine compensation structure and capital investment for the upcoming term;
- Recurring capital investment by UPS for the life of the Agreement;
- Maintenance and repair responsibilities of County and UPS are clarified for better accountability, and facilities, equipment, maintenance, and improvements are defined;
- UPS will be responsible for all interior and exterior maintenance of buildings, patios, walkways, and adjacent areas during the entire term of the Agreement;
- UPS will be responsible for all repair, maintenance, and replacement of air conditioning system;
UPS will be responsible for signing in/out of Beach Wheelchair for use by beach patrons upon request.

To create equitability for the partners, the compensation is updated to require twelve and one-half percent (12.5%) of monthly gross sales less sales tax. One and one-half percent (1.5%) of the monthly compensation will be retained by the County for capital investment improvements.

The Amended and Restated Franchise License Agreement for Coquina Beach Concession is effective for five (5) years commencing on March 1, 2017, and ending February 28, 2022. There is one (1) renewal option to renew for five (5) additional years upon mutual consent of the parties.

**County Attorney Review**
Formal Written Review (Opinion memo must be attached)

**Explanation of Other**

**Reviewing Attorney**
Clague

**Instructions to Board Records**

Original Amended and Restated Coquina Beach Concession Franchise License Agreement to Board of Records.

Copy to: United Park Services, Inc., 4737 Dolphin Cay Lane, #602, St. Petersburg, FL 33711.

Email copies to:
United Park Services, Inc., Attn: Mark Enoch at bbenoch@aol.com
Parks and Natural Resources Department, Attn: Debbie Voorhees at debbie.voorhees@mymanatee.org
Procurement Division, Attn: Greg Davis at gregory.davis@mymanatee.org

**Cost and Funds Source Account Number and Name**
N/A

**Amount and Frequency of Recurring Costs**
N/A

Attachment: Coquina Beach Concession Franchise License Agreement 1 March 2017.pdf
Attachment: Response Memo to CAO Matter No. 2016-0864 dtd 2.23.17.pdf
Attachment: 2-22-17 UPS Coquina Agenda Memo.pdf
To: Melissa Wendel / Financial Management Purchasing Official  
From: Charlie Hunsicker, Director  
Date: February 22, 2017  
Subject: Approval for Submission – Amended and Restated Franchise License Agreement with United Park Service, Inc.

Please allow this memo to serve as approval for submission to the Manatee County Board of County Commissioners of the Amended and Franchise License Agreement between Manatee County and United Parks Service, Inc. for Operations and Management of Concessions at County Facilities at Coquina Beach.

As always, thank you for your assistance.

Copies: Debbie Voorhees, Contracts Manager  
Carrie Kelley, Fiscal Services Manager
MEMORANDUM

Date: February 23, 2017

To: Greg Davis, Contracts Negotiator - Procurement Division

Through: Mitchell O. Palmer, County Attorney

From: William Clague, Assistant County Attorney

RE: Amended and Restated Coquina Beach Concession Franchise Agreement; RLS-2016-0864

This memorandum is in response to the above referenced Request for Legal Services in which you asked this office to review the above referenced Franchise Agreement.

Subject to inclusion of the changes set forth in my email to you of January 31, 2017 (copy attached), the document is in legally sufficient form for consideration by the Board of County Commissioners.

If you have any further questions, comments, or concerns, please feel free to contact me.

Copies to: Anne Morris, Assistant County Attorney
Jan Brewer, Director, Financial Management Department
Melissa Wendell, Purchasing Official

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law
William Clague

From: William Clague
Sent: Tuesday, January 31, 2017 9:35 AM
To: Gregory Davis
Cc: Mitchell Palmer (mitchell.palmer@mymanatee.org); Anne Morris; Melissa Wendel; Jan Brewer; Juliet Shepard
Subject: Coquina Beach Concession Franchise Agreement; RLS-2016-0864
Attachments: Amended & Restated Franchise License Agr -Coquina Beach CAO Comments 1.30.17.pdf

Greg:

Pursuant to the above Request for Legal Services, you have asked this office (1) to advise whether a “Seventh Amendment” to the above referenced Franchise Agreement requires approval by the Board of County Commissioners, and (2) to review the draft of the Amendment. On December 29, 2016, I responded by email to you, advising that the proposed amendments do require Board approval, and also advising that they should be incorporated into an amended and restated agreement, rather than a stand-alone amendment.

You subsequently provided a draft Amended and Restated Franchise License Agreement (Agreement) for my review under this RLS. My comments are as follows:

1. Attached is a mark-up of the Agreement reflecting my suggested changes.

2. On page 1, I have noted the need to include a recital and operative language indicating that the Agreement is an amendment and restatement of the current agreement. Per your request, I provided an example agreement to you by email on December 29, 2016. Please utilize this to incorporate the appropriate language.

3. Beginning on page 2, several of the required improvements to the Facilities have been deleted. It is unclear whether they have been completed or simply removed from the transaction.

4. The Agreement spells out the payments due during the first renewal period, but is silent as to the second renewal period.

5. In Article 8 there is reference to the “funding” of capital improvements from gross sales receipts. There is also language indicating that the County will “reimburse” the Licensee for the cost of improvements. Because these statements appear to contradict one another, it is unclear how the relationship will work with respect to capital improvements.

6. By copy of this response to Linda Klasing, the County’s Risk Manager, I ask that she review the insurance provisions of Article 11.

7. The section requiring a performance bond for capital improvements has been deleted. Please indicate why, given that the Agreement still appears to contemplate some capital improvements.

8. The section regarding “Force Majeure” has been deleted. Again, please indicate why.

9. In the section regarding “Public Records”, please add the standard all-caps contact info for the County’s records custodian.
10. The formatting of the document is extremely choppy (no page numbers on most pages, no section numbers, page breaks in the middle of paragraphs, a change in the format of headings in Article 17). This makes legal review more difficult than it otherwise should be. Please correct these issues and provide a professionally drafted revised document to the Board for consideration. This office does not have the resources or capacity to correct such issues in documents from your division.

Subject to addressing the above comments, I have no objection to the Agreement being scheduled for approval by the Board. I express no opinion as to the business terms included within the Agreement.

This concludes my response to the RLS. Please feel free to contact me if you have any questions or concerns regarding this response.

Bill Clague
Assistant County Attorney
Manatee County, Florida
ph. 941-745-3750
fx. 941-749-3089
william.clague@mymanatee.org