



# United States Department of the Interior



## NATIONAL PARK SERVICE

Atlanta Federal Center  
1924 Building  
100 Alabama Street, SW  
Atlanta, GA 30303

IN REPLY REFER TO:

FLP  
V-FL-566A  
Beach equipment CA

November 6, 2019

Mr. Jay Hatch  
Parks and Recreation Director  
300 Municipal Drive  
Madeira Beach, FL 33708

Dear Mr. Hatch,

We have completed our review of the draft concession agreement extension between the City of Madeira Beach and Saltwater Destination LLC for the beach equipment concession at Archibald Memorial Beach Park. We find the draft document to be satisfactory and hereby extend our concurrence on the proposed agreement.

We appreciate your cooperation. If you have any questions, please do not hesitate to contact me at 404-507-5689, or via e-mail at [john\\_barrett@nps.gov](mailto:john_barrett@nps.gov).

Sincerely,

John R. Barrett  
Program Manager  
Federal Lands to Parks  
Interior Region 2

**BEACH EQUIPMENT CONCESSION AGREEMENT EXTENSION**

**THIS BEACH EQUIPMENT CONCESSION AGREEMENT, is made and entered into by and between the CITY OF MADEIRA BEACH, located at 300 Municipal Drive, Madeira Beach, Florida hereinafter referred to as "CITY" and Saltwater Destination LLC, a Florida Limited Liability Company, hereinafter referred to as "CONCESSIONAIRE" for the purposes set forth hereafter:**

**WITNESSETH:**

**WHEREAS, on August 2, 1972 a Quitclaim Deed was recorded in the Official Records of Pinellas County in O.R. Book 3845 commencing at page 927 by which the United States of America deeded to the City of Madeira Beach all of the United States of America's right, title and interest in a parcel of property consisting of approximately 2.5 acres, commonly referred to as Archibald Memorial Beach Park generally located at 15100 Gulf Boulevard; a copy of said quitclaim deed being attached hereto and incorporated herein as Exhibit A; and**

**WHEREAS, said Quitclaim Deed evidences that Archibald Memorial Beach Park was transferred to the City of Madeira Beach for an in consideration of the perpetual use of the premises as and for public park and public recreation area purposed by the City of Madeira Beach in perpetuity as set forth in the program of utilization and plan contained in the application submitted by the CITY on June 18, 1971; and**

**WHEREAS, the Quitclaim Deed further provides that the property should not be sold, leased, assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of Interior agrees in writing can assure the continued use and maintenance of the property for public park or public recreational purposes and that nothing in this provision shall preclude the CITY from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties provided prior concurrence to such agreement is obtained in writing from the Secretary of the Interior; and**

**WHEREAS, CONCESSIONAIRE desires to extend this Beach Equipment Concession Agreement for 5 years.**

**WHEREAS, at a duly noticed public meeting of the Board of Commissioners of CITY conducted on September 13, 2016, CONCESSIONAIRE was selected and the City Attorney was directed to prepare a Concession Agreement for the Mayor's signature and subsequent concurrence by the National Park Service; and**

**WHEREAS, CITY and CONCESSIONAIRE desire to allow CONCESSIONAIRE to rent beach equipment at Archibald Memorial Beach Park and locations detailed in exhibit B for the use and benefit of the general public; and**

**WHEREAS, CITY hereby finds that the rental of beach equipment on a portion of Archibald Memorial Beach Park will enhance the park visitors' and users' experience; and**

**WHEREAS, CITY is satisfied that provision of additional services and the facilities at Archibald Memorial Beach Park is in the CITY'S best interest; and**

**WHEREAS, CITY and CONCESSIONAIRE desire to enter into this Beach Equipment Concession Agreement, hereinafter the Concession Agreement, so as to set forth the terms and conditions upon which CONCESSIONAIRE may rent beach equipment to the general public.**

**NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual covenants and agreements as hereinafter set forth CITY agrees to allow CONCESSIONAIRE to rent beach equipment to the general public upon a portion of the real property described in Exhibit A attached hereto and incorporated herein by this reference and located at the Archibald Memorial Beach Park and other locations listed in Exhibit B.**

- 1) Definitions: The terms set forth below, as used in this Concession Agreement, shall have the meanings herein stated:**

- a. **City Manager** shall mean the City Manager of the City of Madeira Beach, or his designee.
- b. **Concession Areas** shall mean a portion of the sandy beach area located on Archibald Memorial Beach Park, as well as the locations listed in Exhibit B. The Concession Areas shall be the portion of the sandy beach area in which CONCESSIONAIRE will be allowed to set up and maintain its beach equipment for rental to the general public. The Concession Areas shall be used in such a manner that placement of the beach equipment for rental keeps the beach open and unobstructed for the public not using the concession service. The Concession Areas will be restricted so as to leave enough sandy beach area open for beachgoers who do not wish to rent chairs or umbrellas from CONCESSIONAIRE. The chairs, lounges and umbrellas/cabanas shall not be pre-placed, and shall not be set up on the deck, parking lot, or sand dunes. The CONCESSIONAIRE shall use staging areas at the base of each beach walkover to stack the chairs, lounges, or umbrellas/cabanas prior to their rental.
- c. **NPS** shall mean the National Park Service of the United States of America as the delegated representative of the Secretary of the Interior.
- d. **Gross Sales** shall mean all income generated by CONCESSIONAIRE directly from services provided at public beaches, beach walkovers, parks and/or parking facilities with the City.

2) **Grant of Concession License**: CITY hereby grants to CONCESSIONAIRE this Concession Agreement to rent beach equipment within the Concession Area pursuant to the terms and conditions set forth herein. CITY does hereby assign to the CONCESSIONAIRE the use of the Concession Area which is a portion of Archibald Memorial Beach Park as described in Exhibit A and the locations listed in Exhibit B. CONCESSIONAIRE hereby acknowledges that CITY cannot and has not surrendered absolute control and possession of the Concession Area. Rather,

**CONCESSIONAIRE hereby acknowledges that CITY has granted CONCESSIONAIRE a terminable agreement for use of the Concession Areas.**

- 3) **Term:** A condition precedent to the effective date of this Concession Agreement shall be the written concurrence of the same as required by the Quitclaim Deed from the United States of America to the CITY. This Concession Agreement shall become effective on the first day of the calendar month immediately following receipt from the United States of America of written concurrence of the Concession Agreement. Said first day of the calendar month shall be the Effective Date of this Concession Agreement. The renewed term of this Concession Agreement shall be a five (5) year period. This Concession Agreement may be extended for one additional five (5) year period subject to the mutual consent of both parties upon conditions to be mutually agreed upon at that time. In the event CONCESSIONAIRE desires to extend the term, CONCESSIONAIRE shall provide written notice thereof to the City Manager at least ninety (90) days prior to the expiration of the current term of this Concession Agreement. Any agreement reached by the CITY and CONCESSIONAIRE for renewal of this Concession Agreement shall be subject to the written concurrence of the Secretary of the Interior or his/her delegated representative, NPS.
- 4) **Use of Concession Area:** CONCESSIONAIRE shall use, occupy and maintain the Concession Area in a business-like, careful, clean and non-hazardous manner for the sole purpose of renting beach equipment to the general public and in strict accordance with all terms and provisions imposed by the Department of the Interior as to the Concession Area at Archibald Memorial Beach. Written approval by CITY and written concurrence by the Secretary of the Interior or his/her delegated representative, NPS, shall be required for other proposed use in conjunction with or in addition to those relating to Archibald Memorial Beach that are specified herein. The general public will be allowed to use the Archibald Memorial Beach park property, including the Concession Areas, for park and recreational use when the concession is not in operation. CONCESSIONAIRE is specifically authorized to use the Concession Areas for the purpose of renting to the general public beach equipment limited to beach chairs or lounges, umbrellas or cabanas. CONCESSIONAIRE may, at its discretion, also rent to the general public recreational equipment limited to floats, rafts, body boards, kayaks, non-motorized water scooters, and paddle boats or such other

recreational items as may be set in motion and whose movement is sustained by human, wave or wind force. At no time will any deviation be allowed from this list without prior written consent of the City Manager. The rental to the general public of the above-described beach equipment is supplementary to the public beach use of Archibald Memorial Beach Park.

CONCESSIONAIRE covenants that the fees charged by CONCESSIONAIRE for the above goods and services must be reasonable so as not to deny participation by the general public and a published list must be supplied to the City Manager on an annual basis.

5) Concession Fees: A Fixed Concession Fee in the amount of Fifteen Thousand (\$15,000.00) per annum, plus any applicable sales tax, shall be due from CONCESSIONAIRE to CITY. Fixed concession fee shall be paid semi-annually by October 31<sup>st</sup> and April 30<sup>th</sup>. In addition, CONCESSIONAIRE shall be obligated to pay the City the following:

- a. A single payment equivalent to 1% of 12-month aggregate gross sales, plus any applicable taxes, if such sales total less than \$1.1 million as certified by an actively licensed C.P.A., due to the City prior to July 31<sup>st</sup> of each year. Minimum payment due to the City shall be \$3,000.00, plus any applicable taxes; OR
- b. A single payment equivalent to 1.5% of 12-month aggregate gross sales, plus any applicable taxes, if such sales equal or exceed \$1.1 million as certified by an actively licensed C.P.A., due to the City prior to July 31<sup>st</sup> of each year.

In the event this Concession Agreement is extended, the Concession Fees due and payable during the extension period will be set forth in a written amendment or extension of this Concession Agreement. The Concession Fees are paid for the privilege of being permitted to do business at these advantageous locations. Amounts paid are not intended to be based upon periodic sales as reported and, therefore, are not subject to refund or pro rata return in

the event of breach or termination of the Concession Agreement. In all situations regarding termination of this Concession Agreement, CITY will not be responsible for return payments of any sums already received by CITY.

**6) Operations:** CONCESSIONAIRE may observe daylight beach use hours. CONCESSIONAIRE may operate the Concession Area seven (7) days per week (Weather permitting). CONCESSIONAIRE'S rental equipment shall be set up and maintained in a manner that keeps the sandy beach area open and unobstructed for the public not using the CONCESSIONAIRE'S services. Rental chairs, lounges and umbrellas/cabanas may be provided on a per rental basis in a number not to exceed the following per location:

- Archibald Memorial Beach Park - one hundred and fifty (150) sets of chairs (300 chairs total)
- John's Pass Park - fifty (50) sets of chairs (100 chairs total)
- 130<sup>th</sup> Avenue - fifty (50) sets of chairs (100 chairs total)
- 131<sup>th</sup> - 132<sup>nd</sup> - twenty-five (25) sets of chairs (50 chairs total)
- 133<sup>rd</sup> - fifty (50) sets of chairs (100 chairs total)
- 134<sup>th</sup> - 136<sup>th</sup> - fifty (50) sets of chairs (100 chairs total)

After all of those chairs have been rented, CONCESSIONAIRE may increase the number available only upon approval by the City Manager. No permanent storage of beach rental equipment shall be permitted on the sandy beach area at Archibald Memorial Beach Park. Notwithstanding the foregoing, the City Manager may allow CONCESSIONAIRE the right to limited on-site storage in his sole discretion for selected items of equipment. Any on-site storage containers must be approved in advance in writing, by the City Manager. CONCESSIONAIRE shall operate the Concession Areas in a safe and sanitary manner. The City Manager shall also have the right to require improvement of the quality of either the equipment or services rendered by CONCESSIONAIRE. CONCESSIONAIRE shall comply with any applicable health and safety laws. CONCESSIONAIRE covenants to secure the beach rental equipment during non-operating hours. In the event of a hurricane warning, all beach rental equipment shall be removed and secured at an off-site location. CONCESSIONAIRE covenants to clean and remove paper, trash, debris and

the like from within the Concession Areas and between the mean low water line of the Gulf of Mexico and the dune line.

- 7) **Nature of Concession Agreement:** CONCESSIONAIRE shall use the Concession Area for no purposes other than the operation of the concession as generally described in Section 4 above. CONCESSIONAIRE shall be solely responsible for all its operations and activities pursuant to this Concession Agreement. CONCESSIONAIRE shall not permit any intoxicated person or any person acting in a disorderly manner to remain upon the Concession Area. It is expressly understood and agreed that no real or personal property is leased to CONCESSIONAIRE. This is a Concession Agreement and not a Lease. The CONCESSIONAIRE'S right to occupy the Concession Areas and to operate within the same shall continue only so long as CONCESSIONAIRE shall comply strictly and promptly with each and all of the undertakings, provisions, covenants, agreements and stipulations contained herein.
  
- 8) **Staffing:** CONCESSIONAIRE shall employ a sufficient number of personnel so that the concession operations are adequately staffed to meet the demand for services resulting from the number of customers who patronize the business of CONCESSIONAIRE. All employees of CONCESSIONAIRE shall be well groomed and appropriately dressed in accordance with standards applicable to other public beach concessions within Pinellas County. In the event that CONCESSIONAIRE shall employ any person who by his or her acts engages in a course of conduct detrimental to the best interests of the public use of the adjacent beach or tending to reflect negatively on the rendering of concession services to the general public as part of the operation a public beach owned and operated by a governmental entity, CONCESSIONAIRE shall terminate that employee upon the written request of the City Manager. As a condition to the hiring of any employee who will work at the Concession Areas, CONCESSIONAIRE shall require that the employee accept such employment with knowledge of the rights of CITY as set forth in this paragraph.
  
- 9) **Maintenance:** CONCESSIONAIRE, at its sole expense, shall maintain the Concession Areas in good repair. In addition, CONCESSIONAIRE shall, at its sole expense, maintain, repair or replace all equipment and improvements located within the



Concession Areas so as to keep the same in a serviceable condition. CONCESSIONAIRE shall maintain the Concession Areas in a clean and sanitary condition, to the satisfaction of the City Manager.

10) Emergencies: In the event of an emergency, when contacted by the CITY, CONCESSIONAIRE shall provide a one (1) hour response time to the situation and removal of beach equipment.

11) Licensing and Code Compliance: CONCESSIONAIRE must procure all necessary licenses, including a Madeira Beach Local Business Tax Receipt. CONCESSIONAIRE shall operate its business in accordance with all CITY codes and ordinances. All signs must be approved, in advance, by CITY. Failure to maintain a Local Business Tax Receipt or any code violation, including signage, shall be considered ground for termination of this Concession Agreement.

12) Quality of Service: CONCESSIONAIRE shall stock such quantities of beach equipment as are reasonable required to meet the public demand for the concessions services which CONCESSIONAIRE will provide pursuant to this Concession Agreement. Upon the request of City Manager, CONCESSIONAIRE shall provide samples of the beach equipment rented or used by CONCESSIONAIRE for inspection by the City Manager. In the event that the City Manager should determine that the quality or variety of beach equipment is substandard as compared to the public beach concessions within Pinellas County, the City Manager may declare a default pursuant to paragraph 24, hereof. In the event of a dispute concerning the variety, quality of services or prices charged by CONCESSIONAIRE, CITY and CONCESSIONAIRE shall utilize a broad cross-section of public beach concessions within Pinellas County as the comparable to resolve disputes. It is not intended that the business operations of CONCESSIONAIRE, pursuant to this Concession Agreement, be judge by comparison with any one public beach concession operated with Pinellas County.

13) Permits: CONCESSIONAIRE shall be responsible to obtain, at its sole expense, all required permits from any applicable regulatory agency with are necessary to allow CONCESSIONAIRE to operate, maintain, repair or improve the Concession Area.

**14) CONCESSIONAIRE'S Record and Documents:** With respect to all matters covered by this Concession Agreement, CONCESSIONAIRE'S records and documents shall be subject at all times to inspection, review or audit by CITY. CONCESSIONAIRE will supply CITY any documentation that may be needed by City to file required compliance reports to the Secretary of the Interior or his/her delegated representative, NPS.

**15) Non-Discrimination:** CITY and CONCESSIONAIRE agree to comply with all Federal laws relating to non-discrimination in connection with any use, operation, program or activity on or related to the previously described property, including, but not limited to:

- a. All requirements imposed by or pursuant to the non-discrimination regulations of the U.S. Department of the Interior (43 C.F.R. Part 17);
- b. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d-1), which prohibits discrimination of the basis of race, color or national origin;
- c. The Age Discrimination Act of 1975, as amended (42 U.S.C. §6101 et seq.), which prohibits discrimination of the basis of age;
- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794) which prohibits discrimination on the basis of handicap;
- e. The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151), which requires facilities located on the property to be accessible to the physically handicapped; and
- f. The Americans with Disabilities Act of 1990 (42 U.S.C. 12181), which requires that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from the participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

**16) Indemnification:** CITY shall not be liable for any claim, lien, claim of lien, demand or loss of any nature whatsoever including, but not limited to reasonable attorney's fees, or any injury, death or damage to persons or property which may occur, result, be suffered or sustained by reason of this Concession Agreement and the operations of

the business of CONCESSIONAIRE hereunder, to the extent caused by the negligence, recklessness or intentional wrongful conduct of CONCESSIONAIRE or any person employed or utilized by CONCESSIONAIRE in the performance of this Concession Agreement, to include, without limiting the generality of the foregoing, liability to any person who may be using, occupying or visiting the Concession Area. CONCESSIONAIRE does hereby indemnify and hold harmless the CITY against all such claims, liens, claims of lien, demands, losses, liability or damage of any nature whatsoever arising out of or resulting from the subject matter of this Concession Agreement. This indemnification shall include independent torts of the CITY, its officers, agents and employees as well as vicarious liability. CITY and CONCESSIONAIRE acknowledge that the first Ten Dollars (\$10.00) of compensation received by CONCESSIONAIRE as a result of this Concession Agreement shall be deemed specific consideration for this indemnification.

- 17) **Insurance:** CONCESSIONAIRE, prior to signing this Concession Agreement and before starting any work within the Concession Area shall procure and maintain during the term of this Concession Agreement, including any extensions or renewals thereof, the insurance coverage listed below. The policies of insurance shall be primary and written on forms acceptable to CITY and placed with insurance carriers approved and licensed by the Insurance Department of the State of Florida and meet a minimum financial A.M. Best & Company rating of no less than A: Excellent. CITY, its elected and appointed officials, officers, employees and agents shall be named as an additional insured on all such policies. A Certificate of Insurance shall be furnished by CONCESSIONAIRE to the City Clerk and City Manager of CITY prior to the date upon which CONCESSIONAIRE commences any work pursuant to this Concession Agreement. Said Certificates shall provide that all insurance coverage shall not be canceled or reduced by the insurance carrier without CITY having been given at least thirty (30) days prior written notice thereof. It is requested that all policies have occurrence form policies. Should Claims Made Policies be submitted, CONCESSIONAIRE will be required to have the policy dates run concurrently through the life of this Concession License and will be required to maintain full coverage at CONCESSIONAIRE'S expense for a term acceptable to the City Manager.

CONCESSIONAIRE shall submit all Certificates of Insurance and Bonds as follows:

- a. **Workers Compensation:** CONCESSIONAIRE shall provide and maintain during the term of this Concession Agreement workers compensation and employers liability insurance. The workers compensation coverage shall be in accordance with the laws of the State of Florida.
- b. **Commercial General Liability:** CONCESSIONAIRE shall provide and maintain during the term of this Concession Agreement commercial general liability insurance coverage including, but not limited to, bodily injury, property damage and personal injury with limits of not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 per location aggregate plus property damage insurance in the minimum amount of \$500,000 covering all work performed pursuant to this Concession Agreement.
- c. **Automobile Liability:** CONCESSIONAIRE shall provide and maintain during the term of this Concession Agreement automobile liability insurance including bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than \$1,000,000 combined single unit per occurrence and \$2,000,000 aggregate covering all work performed pursuant to this Concession Agreement. Limits may be satisfied by combining an umbrella form and the automobile liability form for a combined total limit of \$2,000,000.
- d. **Certificate of Insurance:** CONCESSIONAIRE shall furnish to CITY proof of insurance, including, but not limited to, a Certificate of Insurance and the separate endorsement referencing CITY as "additional insured" except for workers compensation and the effectiveness of all required insurance for CONCESSIONAIRE. The Certificates of Insurance shall state that CITY will be notified in writing at least thirty (30) days prior to cancellation, non-renewal or any other modification of any policies required of CONCESSIONAIRE. No work shall commence under this Concession Agreement until CITY'S authorized representative has given written approval of the Insurance Certificates. Additionally, CONCESSIONAIRE has an affirmative obligation

throughout the entire term of this Concession Agreement to provide the City Manager evidence of the continuation of all policies required of CONCESSIONAIRE by this Concession Agreement. As such, as each policy of insurance is renewed, proof thereof must be provided in writing to the City Manager.

**18) Relationship of Parties:** CONCESSIONAIRE, by accepting this Concession Agreement, acknowledges that CONCESSIONAIRE is not engaged in a joint venture or co-partnership with CITY and shall not represent to any person or entity whatsoever that CITY and CONCESSIONAIRE are 'joint ventures' or co-partners. CONCESSIONAIRE acknowledges that it is not a tenant and has not received a lease of real property owned by CITY. CONCESSIONAIRE further acknowledges that the rights granted CONCESSIONAIRE, pursuant to this Concession Agreement, are solely a privilege originating from CITY. Should CONCESSIONAIRE fail to comply with the terms and conditions of this Concession Agreement, same is revocable by CITY and the privileges granted hereby shall immediately terminate upon the revocation of this Concession Agreement. Upon the termination of this Concession Agreement, as provided for in paragraphs 24 through 27, inclusive, hereafter, CONCESSIONAIRE acknowledges that CITY may avail itself of the self-help remedy of taking immediate possession of the Concession Area and all improvements and equipment located therein.

**19) Consumption of Alcoholic Beverages:** In recognition of the fact that Archibald Memorial Beach Park is operated by CITY for the public purpose of providing beach and related recreational facilities for use by the general public, and in consideration of the fact that the concession operation under this Concession Agreement is secondary and subservient to the primary public purpose, CONCESSIONAIRE shall, at the request of the City Manager, require that a patron vacate the Concession Area when, in the opinion of the City Manager, the conduct of a patron is detrimental to the public beach operations.

**20) Storage of Hazardous Substances:** CONCESSIONAIRE shall not use or store any hazardous substance except in compliance with applicable laws or regulations. The

City Manager may restrict the use or storage of hazardous substances upon determining that the same pose an unreasonable threat to the safety of the public beach or the general public.

**21) Right of Inspection:** The City Manager or the Secretary of the Interior's delegated representative, NPS (as to Archibald Memorial Beach only), may, at any and all reasonable times, inspect the licensed Concession Areas, to ascertain compliance by CONCESSIONAIRE with the requirements of this Concession Agreement. CONCESSIONAIRE shall cooperate to allow the Concession Areas to be inspected by any regulatory entity when an inspection is required to determine compliance with applicable laws or regulations. If a condition is found to exist during an inspection which requires that the business of CONCESSIONAIRE be interrupted in order to remedy the same, the CITY may order CONCESSIONAIRE to temporarily suspend business. During the period of time the business is suspended, pending corrective action to comply with this Concession Agreement, or requirements of any regulatory agency, CONCESSIONAIRE shall have no claim or recourse against CITY for any loss of business or profits.

**22) Taxes:** All taxes or assessments, of any nature whatsoever pertaining to the business operations, real or personal property, retail sales, the Concession Areas as improved real property, or the granting of this Concession Agreement and the payment hereunder of any amounts or the performance of any obligations hereunder, shall be the sole obligation of CONCESSIONAIRE. Although the CITY and CONCESSIONAIRE stipulate that this Concession Agreement is not a lease, should the State of Florida, Department of Revenue, determine that a sales tax is due and owing by virtue of the existence of this Concession Agreement, then CONCESSIONAIRE shall be solely responsible for the payment of the sales tax, including any delinquent amounts claimed due, penalties and interest thereon.

**23) Default:** By accepting this Concession Agreement, CONCESSIONAIRE acknowledges that the conditions, covenants and requirements on its part to be kept, as set forth herein, are material inducements to the CITY granting the Concession Agreement. Should CONCESSIONAIRE default in the performance

of any of the conditions, covenants and requirements of it, the City Manager shall give written notice of default to CONCESSIONAIRE specifying those acts or things which must occur in order to cure the default. The City Manager shall specify the period of time within which CONCESSIONAIRE may cure the default, said time to be specified in the written notice. In the event the default is failure to pay money, the time granted to cure shall be at least seventy-two (72) hours. In the event of any other default, the time granted to cure shall be at least thirty (30) days. Should the default continue, after expiration of time granted to cure the same, the City Manager may terminate or withdraw this Concessions Agreement. CONCESSIONAIRE shall be given written notice specifying the date and time of termination or revocation. CONCESSIONAIRE acknowledges that some defaults may not be curable. In such case, the provision of paragraph 25, hereof, shall apply.

**24) Revocation by CITY:** In the event of a continuing default after expiration of the time given to cure, or in the event of a default which is not curable, resulting in a notice of termination or revocation of this concession Agreement, CITY may immediately take possession of the Concession Areas, and all Improvements and personal property located therein, without advance notice to CONCESSIONAIRE and without the need for CITY to make application to any court of competent jurisdiction for judicial approval. By accepting this Concession Agreement, CONCESSIONAIRE expressly consents to the self-help summary procedural remedy of CITY immediately retaking possession of the Concession Area.

**25) Termination by CONCESSIONAIRE:** Should CITY fail to perform any of the covenants or requirements on its part to be kept hereunder, CONCESSIONAIRE shall give written notice thereof to CITY, specifying those acts or things which must occur in order to cure the default. The default notice shall specify a reasonable period of time within which to cure the default. Should the default remain, after expiration of the time granted to cure the same, CONCESSIONAIRE may immediately terminate this Concession Agreement by giving CITY written notice of termination.

- 26) Attorney's Fees:** Should it be necessary for either party to bring any legal action against the other to enforce any of the provision of this Concession Agreement, the non- prevailing party hereby agree to pay all costs attendant thereto, including a reasonable attorney's fee to the attorney representing the prevailing party, and said obligation to pay attorney's fees shall apply to any declaratory action, if necessary, to construe any of the terms hereof, and shall apply to trial court or appellate level proceedings.
- 27) Assignment and Subletting:** CONCESSIONAIRE shall not assign this Concession Agreement or any interest therein, nor let or sublet the Concession Areas or any part thereof or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof by any other person, unless approved in writing by the City Manager.
- 28) Executory Obligations:** The financial obligations of CITY under this concession Agreement shall be deemed executor until the Board of Commissioners appropriates funds therefore. No liability shall be incurred by CITY beyond the funds made available for the purpose of this Concession Agreement by the Board of Commissioners.
- 29) Applicable Law:** This Concession Agreement shall be governed by the laws of the State of Florida. CONCESSIONAIRE covenants to promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations and rules relating to the services to be limited to the Americans With Disabilities Act and any regulations regarding smoking in public places. CONCESSIONAIRE covenants that it will conduct no activity or provide any service that is unlawful or offensive.
- 30) Notices:** Notices required by or related to this Concession Agreement shall be sent by United States registered or certified mail, postage pre-paid and return receipt requested.



**Notices to CITY shall be sent to:**

**City of Madeira Beach  
City Manager or City Clerk  
300 Municipal Drive  
Madeira Beach, Florida 33708**

**Notices to CONCESSIONARE shall be sent to:**

**Saltwater Destination, LLC  
Tyler J. Morris, Manager  
2178 28<sup>th</sup> Avenue North  
St. Petersburg, FL 33713**

**As an alternative to notice by mail, notices may also be delivered to CONCESSIONAIRE at its place of business at the Concession Area by leaving the same with any employee of CONCESSIONAIRE working in the Concession Areas, or by posting same in a conspicuous area. CONCESSIONAIRE may deliver notices to CITY by leaving same with the City Manager or any employee who works in the office of the City Manager.**

**31) Amendment to Concession Agreement: This Concession Agreement contains all the terms and conditions between the parties and no alteration, amendment, or addition shall be valid unless in writing and signed by both parties with written concurrence by the Secretary of the Interior or his/her delegated representative, NPS.**

**32) Quitclaim Deed: One of the Concession Areas is located within Archibald Memorial Beach Park, CONCESSIONAIRE acknowledges that CITY obtained title to Archibald Memorial Beach Park from the United States of America pursuant to a Quitclaim Deed recorded in the Official Records of Pinellas County on August 2, 1972 in O.R. Book 3845 commencing at Page 927. CONCESSIONAIRE covenants that CONCESSIONAIRE'S operation of the concession within the concession with the Concession Area shall fully comply with said Quitclaim Deed. Furthermore, as required by paragraph 7 within said Quitclaim Deed, CONCESSIONAIRE covenants that its operation of the concession within the Concession Area will comply with all**

requirements issued under the provisions of Title VI of the Civil Rights Act of 1964.

**33) Laws and Regulations:** CONCESSIONAIRE is aware of and agrees that it will use the Concession Areas so as to conform with deeded environmental and usage controls and not violate any laws, regulations and/or requirements of the United States of American and/or the State of Florida and/or any ordinance, rule or regulation of CITY now or hereafter made, relating to the use of the premises.

**34) Signage:** CONCESSIONAIRE shall place no sign or advertisement upon any location of the Concession Areas unless prior written approval has been granted by the City Manager and the City Manager shall have the right, without first notifying CONCESSIONAIRE, to remove at the expense of CONCESSIONAIRE, any sign or signs that may be erected without prior approval.

**35) Surrender: Waste:** CONCESSIONAIRE agrees that upon expiration of this Concession Agreement or earlier termination thereof, it shall surrender the Concession Areas to CITY in as good or better condition as they were in at the time of execution of this document, ordinary wear excepted. If CONCESSIONAIRE has paid in full all sums due CITY hereunder, and returned the improvements, and the like of CITY, in good repair, CONCESSIONAIRE may remove, at its own cost and expense, its personal property and equipment from the Concession Area on or before the final date of the term of this Concession Agreement. CONCESSIONAIRE further agrees that it shall permit no waste nor suffer the same to be committed, nor injure nor misuse the Concession Areas. Upon the expiration of this Concession Agreement, the CITY shall not be required to demand that CONCESSIONAIRE vacate the Concession Areas since CONCESSIONAIRE shall have no rights under this Concession Agreement after it terminates.

**36) Liens:** CONCESSIONAIRE shall keep the Concession Areas free from any and all liens arising out of any work performed, material furnished, or obligations incurred by CONCESSIONAIRE during the term of this Concession Agreement or any extension or renewal thereof.

**37) Waiver:** Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of said party's rights hereunder. No waiver by either party at any time, expressed or implied, of any breach of any provision of this Concession Agreement shall be deemed a waiver of breach of any other provision of this Concession Agreement or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent and approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed to be a consent to or approval of said action on any subsequent occasion. Any and all rights and remedies which either party may have under this Concession Agreement, upon any breach, shall be distinct, separate, and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other.

**38) Termination:** This Concession Agreement shall terminate automatically upon the occurrence of any of the following events:

- a. CITY unilaterally terminates the Concession Agreement upon ninety (90) days written notice for any cause whatsoever and specifying the date of termination
- b. CONCESSIONAIRE materially violates any provision of the Concession Agreement.
- c. The expiration of the term of this Concession Agreement or any renewal thereof.

**39) Acknowledgement:** This Agreement and the obligations of the parties hereto are subject to the terms and conditions set forth in the deed from the United States of America (USA) to the City of Madelra Beach, dated July 12, 1972, and recorded at Official Records Book 3845 commencing at Page 927 of the Public Records of Pinellas County, Florida, and the current Program of Utilization which governs the use of the assigned property. The CITY covenants that it has made an independent

Interpretation of the quitclaim deed, and the CITY has determined that operating the concession authorized in this Concession Agreement does not and will not violate the restrictions, covenants or other terms and conditions in the quitclaim deed relating to the use of the Property. Violations of the said terms and conditions may be grounds for reversion to the United States of America, at its discretion and termination of this Concession Agreement. CONCESSIONAIRE owned personal and real property improvements associated with the real property, may be subject to seizure, without compensation, by the USA.

**40) United States of America is Not a Party:** It is expressly understood by the CITY and the CONCESSIONAIRE that the United States, and its departments, agencies, and bureaus, including specifically the NPS, is not a party to this Concession Agreement. It is further understood that nothing in this Concession Agreement waives the sovereign immunity of the United States, and its departments, agencies, and bureaus, including specifically the NPS, as to any and all matters, except as such sovereign immunity has been specifically waived under applicable laws of the United States.

**41) Appropriation by United States of America:** The parties hereto acknowledge, agree and understand that nothing in this Concession Agreement shall be construed as binding, requiring or authorizing the United States, and its departments, agencies, and bureaus, including specifically the NPS, to expend any sums for, or in connection with any of the provisions or purposes in this Concession Agreement, or to involve the United States, and its departments, agencies, and bureaus, including specifically the NPS, in any contract or other obligation for the expenditure of money in excess of any appropriations or in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

THIS BEACH EQUIPMENT CONCESSION AGREEMENT ISSUED IN DUPLICATE this 22 day of October, 2019 by the City of Madeira Beach.

ATTEST:

CITY OF MADEIRA BEACH, FL

Clara Van Biargen  
Clara Van Biargen, City Clerk

Maggi Black  
Maggi Black, Mayor

THIS BEACH EQUIPMENT CONCESSION AGREEMENT ACCEPTED this 8 day of October, 2019 and by executing this acceptance, CONCESSIONAIRE agrees to all terms, conditions and requirements hereof.

SALTWATER DESTINATION, LLC

By: Tyler J. Morris  
Tyler J. Morris, Manager

Witnesses as to execution of behalf of Saltwater Destination LLC:

Max Michalski  
Witness  
Max Michalski  
Print Name

Say Stabelo  
Witness  
Say Stabelo  
Print Name

APPROVED AS TO FORM AND CORRECTNESS:

Ralf Brookes  
Ralf Brookes, City Attorney

RECORDED  
PINELLAS CO. FLORIDA  
Clerk of the Circuit Court

AUG 2 10 12 AM '72

72096028

O.R. 3845 PAGE 927

QUITCLAIM DEED

The UNITED STATES OF AMERICA, acting by and through the Secretary of the Interior, acting by and through the Southeast Regional Director, Bureau of Outdoor Recreation, under and pursuant to the power and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and particularly as amended by Public Law 485, 91st Congress, and regulations and orders promulgated thereunder (hereinafter designated "Grantor"), for and in consideration of the perpetual use of the hereinafter described premises as and for public park and public recreation area purposes, by the City of Madeira Beach, Florida (hereinafter designated "Grantee"), does hereby release and quitclaim to Grantee, and to its successors and assigns, subject to the reservations, exceptions, restrictions, conditions and covenants hereinafter expressed and set forth, all Grantor's right, title and interest in and to the following described property consisting of approximately 2.5 acres, located in Pinellas County, Florida.

Parcel Number One

Beginning at the intersection of the South line of Government Lot 1 and the Westerly margin of paved Highway, and running thence in a Northwesterly direction along said Highway a distance of 485 feet, thence in a Southwesterly direction and at right angles to said Highway to the line of Mean High Tide of Gulf of Mexico, and thence in a Southeasterly direction along Mean High Tide line to the South line of Government Lot 1, thence East along the Government Lot Line to point of beginning.

Parcel Number Two

Beginning at the intersection of the North line of Government Lot 2, and Westerly margin of the paved Highway, and running Southeasterly along said Highway a distance of 15 feet, thence in a Southwesterly direction at right angles to said Highway to the line of Mean High Tide of the Gulf of Mexico, thence Northwesterly along Mean High Tide line to North line of Government Lot 2, thence East along Government Lot Line to point of beginning.

RETURN TO:

City of Madeira Beach  
P. O. Box 8276  
Madeira Beach, Fla. 33738

TOGETHER with improvements thereon.

SUBJECT, to any and all existing rights of way, easements and covenants, restrictions, reservations, conditions, and agreements affecting the above described premises, whether or not the same now appear of record.

RESERVING to the Grantor, and its assigns, all oil, gas, and other minerals in, under, and upon the lands herein conveyed, together with the right to enter upon the land for the purpose of mining and removing the same.

To Have and to Hold the hereinbefore described property, subject to the reservations, exceptions, restrictions, conditions and covenants herein expressed and set forth unto the Grantee, its successors and assigns, forever.

Pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended, and applicable rules, regulations and orders promulgated thereunder, the General Services Administration determined the property to be surplus to the needs of the United States of America and assigned the property to the Department of the Interior for further conveyance to the City of Madeira Beach, Florida.

It is Agreed and Understood by and between the Grantor and Grantee, and the Grantee by its acceptance of this deed, does acknowledge its understanding of the agreement, and does covenant and agree for itself, and its successors and assigns, forever, as follows:

1. This property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application, submitted by the Grantee on June 18, 1971, which program and plan may be amended from time to time at the request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments shall be added to and become a part of the original application.

2. The Grantee shall, within 6 months of the date of the deed of conveyance, erect and maintain a permanent sign or marker near the point of principal access to the conveyed area indicating that the property is a park or recreation area and has been acquired from the Federal Government for use by the general public.

3. The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior agrees in writing can assure the continued use and maintenance of the property for public park or public recreational purposes subject to the same terms and conditions in the original instrument or conveyance. However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior.

4. The grantee will use the property only as a recreation park and beach for governmental purposes incident thereto and not use the same for commercial purposes, as provided in those two certain deeds, one from Lone Palm Corporation to the United States of America, dated October 16, 1931, filed for record January 7, 1933, Deed Book 640, Page 495, and Madeira Holding Company to United States of America, dated October 28, 1931, filed for record January 7, 1933, Deed Book 640, Page 496, Public Records of Pinellas County, Florida.



5. From the date of this conveyance, the Grantee, its successors and assigns, shall submit biennial reports to the Secretary of the Interior, setting forth the use made of the property during the preceding two-year period, and other pertinent data establishing its continuous use for the purposes set forth above, for ten consecutive reports and as further determined by the Secretary of the Interior.

6. If at any time the United States of America shall determine that the premises herein conveyed, or any part thereof, are needed for the national defense, all right, title and interest in and to said premises, or part thereof determined to be necessary to such national defense, shall revert to and become the property of the United States of America.

7. As part of the consideration for this Deed, the Grantee covenants and agrees for itself, its successors and assigns, that (1) the program for or in connection with which this Deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to the regulations of the Department of the Interior as in effect on the date of this Deed (43 C.F.R. Part 17) issued under the provisions of Title VI of the Civil Rights Act of 1964; (2) this covenant shall be subject in all respects to the provisions of said regulations; (3) the Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) the United States shall have the right to seek judicial enforcement of this covenant, and (5) the Grantee, its successors and assigns, will (a) obtain from each other person (any legal entity) who, through contractual or other arrangements with the Grantee, its successors or assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other person shall, with respect to the services or benefits which he is authorized to provide, undertake for himself

the same obligations as those imposed upon the Grantee, its successors and assigns; by this covenant, and (b) furnish a copy of such agreement to the Secretary of the Interior, or his successor; and that this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor and enforceable by the Grantor against the Grantee, its successors and assigns.

8. In the event there is a breach of any of the conditions and covenants herein contained by the Grantee, its successors and assigns, whether caused by the legal or other inability of the Grantee, its successors and assigns, to perform said conditions and covenants, or otherwise, all right, title and interest in and to the said premises shall revert to and become the property of the Grantor at its option, which in addition to all other remedies for such breach shall have the right of entry upon said premises, and the Grantee, its successors and assigns, shall forfeit all right, title and interest in said premises and in any and all of the tenements, hereditaments and appurtenances thereunto belonging; provided, however, that the failure of the Secretary of the Department of the Interior to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment of such future performance, but the obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect:

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and on its behalf this the 12 day of July, 1972.

UNITED STATES OF AMERICA  
Acting by and through the  
Secretary of the Interior

Through:

ROY K. WOOD  
Southeast Regional Director  
Bureau of Outdoor Recreation

By

*[Signature]*

WITNESSES:

*[Signature]*

*[Signature]*

STATE OF GEORGIA  
COUNTY OF FULTON

On this 12 day of July, 1972, before me, the subscriber, personally appeared *[Signature]*, Bureau of Outdoor Recreation, of the United States Department of the Interior, a governmental agency of the United States of America, and known to me to be the same person described in and who executed the foregoing instrument aforesaid, as the act and deed of the United States of America, for and on behalf of the Secretary of the Interior, duly designated, empowered and authorized so to do by said Secretary, and he acknowledged that he executed the foregoing instrument for and on behalf of the United States of America, for the purposes and uses therein described.

*[Signature]*  
NOTARY PUBLIC



My Commission expires:  
Notary Public, Georgia, State at Large  
My Commission Expires Jan. 4, 1976

The foregoing conveyance is hereby accepted and the undersigned agrees, by this acceptance, to assume and be bound by all the obligations, conditions, covenants and agreements therein contained.

CITY OF MADEIRA BEACH  
FLORIDA

By Joseph G. Elliott  
Joseph G. Elliott  
City Manager

STATE OF FLORIDA )  
                          ) ss  
COUNTY OF PINELLAS )

On this 1st day of August, 1972, before me, the undersigned Officer, personally appeared Joseph C. Elliott, to me known and known to me to be the same person whose name is subscribed to the foregoing acceptance, who being by me duly sworn, did depose and say that he is the City Manager of the City of Madeira Beach, Florida, that he is duly designated, empowered and authorized by a resolution adopted by the Board of City Commissioners of the City of Madeira Beach, Florida, on May 25, 1971, to execute the foregoing acceptance and sign his name thereto; and that he signed his name thereto and acknowledges that he executed the foregoing instrument for and on behalf of the City of Madeira Beach, Florida, for the purposes and uses therein described.

Donna R. O'Neil  
NOTARY PUBLIC



My Commission expires:  
Notary Public, State of Florida at Large  
My Commission Expires JUNE 27, 1976

**Exhibit "B"**

**South Beach Park, Madeira Beach, Florida**

**Beach Access Ways located at:**

**130<sup>th</sup> Street**

**131<sup>st</sup> Street**

**132<sup>nd</sup> Street**

**133<sup>rd</sup> Street**

**134<sup>th</sup> Street**

**135<sup>th</sup> Street**

**136<sup>th</sup> Street**