

FIRST AMENDMENT TO
SNACK SHACK CONCESSION AGREEMENT

THIS FIRST AMENDMENT TO SNACK SHACK CONCESSION AGREEMENT ("First Amendment") is hereby entered into by and between the **CITY OF MADEIRA BEACH**, a Florida municipal corporation, hereinafter referred to as "City," and, **UNITED PARK SERVICES, INC.**, a Florida corporation, hereinafter referred to as "Concessionaire."

RECITALS

WHEREAS, the City and Concessionaire entered into that certain Snack Shack Concession Agreement, hereinafter referred to as "Agreement," dated July 23, 2019; and

WHEREAS, the Concessionaire, pursuant to Paragraph 12 of the Agreement was obligated to pay all utility costs applicable to the Concession Area; and

WHEREAS, the Concessionaire failed to pay the City for garbage service and water service during the entire term of the Agreement; and

WHEREAS, the City is entitled to \$12,350.00 from Concessionaire for garbage service through September 29, 2021, as well as for garbage service following said date; and

WHEREAS, the City is entitled to \$11,827.86 from Concessionaire for water service through August 5, 2021, as well as for water service following said date; and

WHEREAS, the COVID-19 pandemic has effected tourism in Madeira Beach as well as beach goers visiting Archibald Park and as a result the Concessionaire is requesting an additional year to be added to the term of the Agreement; and

WHEREAS, City and Concessionaire wish to address:

1. The extension the Agreement for an additional three (3) year period beginning August 1, 2021 and ending July 31, 2024.

2. Payment for the unpaid garbage service and water service provided to the concession area.
3. An increase in the amount of the monthly Concession Fee to be paid by the Concessionaire to the City.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the parties mutually agree that:

1. The Term of the Agreement shall be extended for an additional three (3) year period beginning August 1, 2021 and ending on July 31, 2024 unless terminated sooner pursuant to the terms of the Agreement.
2. In addition to all other financial obligations under the terms of the Agreement the Concessionaire's monthly Concession Fee shall be increased from \$6,000.00 per month to:
 - i. \$6,180.00 for August 1, 2021 through July 31, 2022
 - ii. \$6,365.40 for August 1, 2022 through July 31, 2023
 - iii. \$6,556.36 for August 1, 2023 through July 31, 2024
3. The Concessionaire will install, subject to approval by the City, at its sole cost, a water meter and related connections to the Concession Area in order to separate it's water consumption from that of the City's water consumption at Archibald Park. In return, the City will waive the \$11,827.86 for past due water consumption. The Concessionaire will continue to be obligated to pay the City for water consumption until the new meter is installed. Once the new meter is installed it shall pay for the water consumption through said meter.

4. The Concessionaire shall pay the City for all past due garbage services before the effective date of this Amendment. Should the Concessionaire fail to pay for the past due garbage services this Amendment shall be void and of no force and effect.
5. The Concessionaire shall pay the City an additional \$200.00 a month for maintenance and cleaning of public bathrooms, totaling \$1500.00 a month.
6. Except as expressly set forth herein, all of the terms, covenants and conditions of the Agreement are hereby ratified and confirmed by City and Concessionaire, and each, by the execution of this Amendment, hereby signifies their intent to be bound thereby.

IN WITNESS WHEREOF the Parties hereto have executed this Amendment on the day and year set forth next to their signatures below.

CITY OF MADEIRA BEACH
a Florida municipal corporation


By: 
Robert Daniels, City Manager

Dated: 10/14/2021

ATTEST:


Clara VanBlargan, City Clerk

UNITED PARK SERVICES, INC., a Florida corporation,

By: 
Alan L. Kahana, President

Dated: 10/11/21

SNACK SHACK CONCESSION AGREEMENT

THIS SNACK SHACK CONCESSION AGREEMENT, given at Madeira Beach, Florida, this 23rd day of July 2019, by the City of Madeira Beach, Florida, a municipal corporation, hereinafter referred to as "CITY," to United Park Services, Inc., a company authorized to do business in the State of Florida, hereinafter referred to as "CONCESSIONAIRE."

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 (hereinafter "Property"); a copy of said August 2, 1972 Quitclaim Deed (hereinafter "Quitclaim Deed") being attached hereto and incorporated herein as Exhibit 1; and

WHEREAS, the Property had been conveyed by private parties to the United States via two Warranty Deeds recorded on January 7, 1933, in the Pinellas County, Florida Register of Deeds in Deed Book 640, Page 495 and Deed Book 640, Page 496 (hereinafter "Source Deeds"); and

WHEREAS, said Quitclaim Deed evidences that Archibald Memorial Beach Park was transferred to the City of Madeira Beach for and in consideration of the perpetual use of the premises as and for public park and public recreation area purposes 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 shall 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, CITY issued a Request for Proposals - Snack Shack Concession Services seeking parties desiring to operate a concession in the Snack Shack at Archibald Memorial Beach Park; and

WHEREAS, four (4) entities responded to the RFP; and

WHEREAS, at a duly noticed public meeting of the Board of Commissioners of CITY conducted on November 19, 2013, CONCESSIONAIRE was selected as the most responsible and responsive proposer

acknowledges that CITY cannot and has not surrendered absolute control and possession of the Concession Area, nor any right, title or other interest in the Concession Area or Property expressly granted herein. Rather, CONCESSIONAIRE hereby acknowledges that CITY has granted CONCESSIONAIRE a terminable at will agreement for use of the Concession Area within Archibald Memorial Beach Park consistent with the terms and conditions in this Agreement.

3. Term: A condition precedent to the effective date of this Concession Agreement shall be the written concurrence of same as required by the Quitclaim Deed from the NPS to the CITY attached as Exhibit A. This Concession Agreement shall become effective on the first day of the calendar month immediately following receipt from the NPS of written concurrence of the Concession Agreement. Said first day of the calendar month shall be the Effective Date of this Concession Agreement. The initial term of this Concession Agreement shall be for a two (2) year period. This Concession Agreement may be extended for up to two (2) additional (2) year periods 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 CITY and CONCESSIONAIRE for renewal of this Concession Agreement shall be subject to the written concurrence of the 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 providing a snack bar, light beach going foods and gift shop concession in strict accordance with all terms and provisions imposed in the Quitclaim Deed set forth in Exhibit A. Written approval by CITY and written concurrence by the NPS shall be required for other proposed use of the Property in conjunction with or in addition to those specified herein. The general public will be allowed to use Archibald Memorial Beach Parks including the Concession Area, for park and recreational use at all times (excepting official closures by the City), including those times when the concession service is, or is not, in operation. CONCESSIONAIRE is specifically authorized to use the Concession Area for the purpose of offering goods and food service amenities supplementary to the public beach use of Archibald Memorial Beach Park. A general description of the food and beverage items which CONCESSIONAIRE may make available to the public from the Concession Area is as follows:

- Ice Cream
- Hawaiian Shaved Ice
- Smoothies
- Soda Fountain Beverages
- Juices

- Floats
- Masks
- Snorkels and Fins
- Sunscreen
- Sun Glasses
- Disposable Cameras and Rim including One Hour Digital Photo Printing
- Souvenirs including Hand Crafted Local Art
- Postcards
- Any additional items of similar nature approved by the City Manager

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 must be approved by the City Manager. CONCESSIONAIRE covenants that beverages shall not be sold in glass containers.

To ensure immediate response to issues of public health, safety and welfare, the concessionaire may in its sole discretion:

- (a) report violations of state law and request assistance of law enforcement, including the County Sheriff's deputies, to enforce Florida laws and City Codes on, and within, the premises; and
- (b) trespass and eject from the premises any customer or patron who violates Florida law, (including assault, battery or other misdemeanors or crimes) or violates City Code.

5. Concession Fee: A Concession Fee in the amount of Six Thousand and No/100 Dollars (\$6,000.00) per month plus any applicable sales tax shall be due from CONCESSIONAIRE to CITY, in consideration of the use privilege granted in this Concession Agreement, on the first day of the first month after the Effective Date of this Concession Agreement through the first day of the sixtieth (60th) calendar month after the Effective Date of this Concession Agreement. 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 contract and/or extension of this Concession Agreement, rent is to be remitted to the City the 1st of every month.

~~In the event that Archibald Memorial Beach Park (Park") is completely closed for more than seven (7) consecutive days as a result of red tide, a named hurricane, an oil spill, or the closing of the 150th Street bridge as a result of an act of God, then the concession fee shall be reduced in proportion to the number of days the Park was closed.~~ Business Insurance. The CONCESSIONAIRE is not required, but is encouraged, to seek Business Loss Insurance. Business insurance if obtained by the CONCESSIONAIRE, may be available as insurance coverage for business costs and lost profits due to the inability to conduct business due to acts of god, red tide, oils spills or hurricanes, and if available may cover rent and other charges from the City, in which case, such business insurance amounts for rent shall be promptly remitted to the City.

- Retail Shelving
- Beer and Wine Coolers
- Walk-in Cooler/Freezer
- Grills and Fryers
- Stove
- Dishwasher
- Steam Table
- Fans and Heaters
- Portable Stage
- Electric
- Bird Lines
- Deck Lights

CONCESSIONAIRE shall obtain the prior written approval of the City Manager in advance of installing any equipment and improvements not specifically identified above and said approval shall not be unreasonably withheld. CONCESSIONAIRE shall be responsible to keep all of the equipment and improvements within the Concession Area in good appearance and working order throughout the entire term of this Concession Agreement.

7. Hours of Operation: CONCESSIONAIRE shall operate the concession within the Concession Area seven days per week from 8:00 a.m. until approximately one hour after sunset. Any deviation from the operational hours and days set forth in this paragraph shall take place only with the prior written approval of the City Manager, which approval shall not be unreasonably withheld.

8. Nature of Concession Agreement: CONCESSIONAIRE shall use the Concession Area for no purposes other than the operation of the concession as described in Section 4, above. CONCESSIONAIRE shall be solely responsible for all of its operations and activities pursuant to this Concession Agreement, including services with reference to the restrooms. 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 being leased to CONCESSIONAIRE by the CITY under this Concession Agreement. This is a Concession Agreement and not a lease. The CONCESSIONAIRE'S right to occupy the Concession Area and to operate within 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 and in the Quitclaim Deed.

9. Banquets and Special Events: Any person or entity desiring to conduct a special event or banquet within Archibald Memorial Beach Park shall obtain the advance approval of the City Manager prior to

City. At all times, the cleanliness of the Concession Area shall meet applicable requirements of the State of Florida pertaining to food service establishments, including the requirements of the Health Department. As required, CONCESSIONAIRE shall obtain pest control and eradication services for the Concession Area.

- (b) Maintenance of Restrooms: CONCESSIONAIRE shall pay additional \$1,300.00, per month for the purposes of maintaining the restroom facilities at Archibald Memorial Park. These additional monies shall be exclusively used for the purposes of maintaining a clean and sanitary restroom on the premises.

12. Utilities: CONCESSIONAIRE shall be responsible for all utility costs applicable to the Concession Area.

13. Beer and Wine: CONCESSIONAIRE shall be solely responsible to apply for and obtain all required beer and wine beverage licenses from the State of Florida, Department of Business Regulation, Division of Alcoholic Beverages and Tobacco, which will authorize CONCESSIONAIRE to sell beer and wine within the Concession Area. The cost of obtaining such licenses shall be at the sole expense of CONCESSIONAIRE. All sales of beer and wine by CONCESSIONAIRE shall be in strict conformity to applicable law. Beer and wine licenses shall be held only in the name of CONCESSIONAIRE.

14. Quality of Service: CONCESSIONAIRE shall stock such quantities of food, beverages, supplies or merchandise as are reasonably required to meet the public demand for the concession services which CONCESSIONAIRE will provide pursuant to this Concession Agreement. CONCESSIONAIRE shall provide a varied food menu consistent with Section 4, above. The food and beverages provided by CONCESSIONAIRE shall be equal in quality to those offered by other public beach concessions within Pinellas County. In the event that the City should determine that the quality or variety of food, beverages, supplies or merchandise is substandard as compared to the public beach concessions within Pinellas County, the City may declare a default pursuant to paragraph 27, 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 judged by comparison with any one public beach concession operated within Pinellas County.

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

16. CONCESSIONAIRE'S Records and Documents: With respect to all matters covered by this Concession Agreement, CONCESSIONAIRE'S records and documents shall be subject at all times to

(d) **Liquor Liability Insurance:** CONCESSIONAIRE shall provide and maintain during the term of this Concession Agreement liquor liability insurance in the minimum amount of \$1,000,000 for injury or death to any number of persons in one occurrence.

(e) **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.

20. 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 paragraph 27, 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.

21. Sales and 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, require that a patron vacate the Concession Area when, in the opinion of the CITY, the conduct of a patron is detrimental to the public beach operations.

22. CONCESSIONAIRE Parking: CITY shall provide CONCESSIONAIRE two (2) parking spaces which would allow employees of CONCESSIONAIRE to park in the Archibald Memorial Beach Park public parking lot without the necessity of placing coins in the parking meter.

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

24. Right of Inspection: The CITY or the NPS, may, at any and all reasonable times inspect the Concession Area to ascertain compliance by CONCESSIONAIRE with the requirements of this Concession Agreement and the Quitclaim Deed. CONCESSIONAIRE shall cooperate to allow the Concession Area to be inspected by the Health Department or other 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 and/or the Quitclaim Deed, or requirements of any regulatory agency, CONCESSIONAIRE shall have no claim or recourse against CITY or the United States, by and through the NPS, for any loss of business or profits.

25. Taxes: All taxes or assessments, of any nature whatsoever pertaining to the business operations, real or personal property, retail sales, the Concession Area 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.

26. Default: By accepting this Concession Agreement, CONCESSIONAIRE acknowledges that the conditions, covenants and requirements on its part to be kept, as set forth herein and in the Quitclaim Deed, are material inducements to the CITY granting the Concession Agreement. Should CONCESSIONAIRE default in the performance of any of the conditions, covenants and requirements required of the Concession Agreement and/or the Quitclaim Deed, 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

personal property of CONCESSIONAIRE which may be brought onto the Concession Area or which may be affixed therein, said lien to secure unto CITY all sums due CITY, from time to time, under the provisions of this Concession Agreement. In the event of a default by CONCESSIONAIRE, pursuant to paragraph 28, hereof, or the revocation of this Concession Agreement by CITY pursuant to paragraph 29 or the revocation by CITY or termination by CONCESSIONAIRE pursuant to paragraph 30, CONCESSIONAIRE grants to CITY all right, title and interest in and to the personal property and equipment of CONCESSIONAIRE within the Concession Area, and the CITY may take possession thereof, without the need for judicial intervention by a court of competent jurisdiction, and the CITY may sell the same at public auction, retaining all proceeds from the sale of the personal property and equipment. In the event of a deficiency due CITY after any such sale, CITY may collect the deficiency by any available legal means.

31. Attorney's Fees: Should it be necessary for either party to bring any legal action against the other to enforce any of the provisions of this Concession Agreement, the non-prevailing party hereby agrees 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.

32. Assignment and Subletting: CONCESSIONAIRE shall not assign this Concession Agreement or any interest therein, nor let or sublet the Concession Area 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. Said let or underlet shall be grounds for termination of this Concession Agreement by CITY or possible reversion by the USA.

33. Executory Obligations: The financial obligations of CITY under this Concession Agreement shall be deemed executory 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.

34. 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 performed hereunder and in effect at the time of performance. This shall include, but is not 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.

35. 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 and City Clerk

40. **Signage:** CONCESSIONAIRE shall place no sign or advertisement upon any location of the Concession Area unless prior written approval has been granted by the CITY, 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.

41. **Surrender Waste:** CONCESSIONAIRE agrees that upon expiration of this Concession Agreement or earlier termination thereof, it shall surrender the Concession Area to CITY in as good or better condition as it was in at the time of execution of this document, ordinary wear excepted. If CONCESSIONAIRE has paid in full all sums due CITY hereunder has fully complied with the requirements of this paragraph, 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 Area. CONCESSIONAIRE shall leave the Concession Area broom clean. Upon the expiration of this Concession Agreement, the CITY shall not be required to demand that CONCESSIONAIRE vacate the Concession Area since CONCESSIONAIRE shall have no rights under this Concession Agreement after it terminates.

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

43. **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.

44. **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.

51. Public Records. CONCESSIONAIRE acknowledges that it is acting on behalf of a public agency; this Agreement is subject to the provisions of §119.0701, Florida Statutes, and; that CONCESSIONAIRE must comply with the public records laws of the State of Florida, and the CONCESSIONAIRE shall:

- (1) Keep and maintain public records required by the public agency to perform the service.
- (2) Upon request from the public agency's custodian of public records, the CONCESSIONAIRE shall provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed the costs provided in this chapter or as otherwise provided by law.
- (3) The CONCESSIONAIRE shall ensure that public records that are exempt or confidential and, therefore exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract.
- (4) The CONCESSIONAIRE shall, upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the CONCESSIONAIRE or keep and maintain public records required by the public agency to perform the service. If the CONCESSIONAIRE transfers all public records to the public agency upon completion of the contract, the CONCESSIONAIRE shall destroy any duplicate public records that are exempt or confidential and, therefore, exempt from public records disclosure requirements. If the CONCESSIONAIRE keeps and maintains public records upon completion of the contract, the CONCESSIONAIRE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
- (5) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the custodian of public records for the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the CONCESSIONAIRE of the request. The CONCESSIONAIRE must provide the records to the public agency or allow the records to be inspected, copied or photographed within a reasonable time and in compliance with the requirements of §119.07, Florida Statutes.
- (6) If CONCESSIONAIRE does not comply with a public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
- (7) A CONCESSIONAIRE who fails to provide public records to the public agency within a reasonable time may be subject to penalties under §119.10, Florida Statutes.
- (8) If a civil action is filed against a CONCESSIONAIRE to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the CONCESSIONAIRE the reasonable costs of enforcement, including reasonable attorney fees, if:
 - a. The court determines that the CONCESSIONAIRE unlawfully refused to comply with the public records request within a reasonable time, and;

THIS SNACK SHACK CONCESSION AGREEMENT ISSUED IN DUPLICATE this 23rd day of July, 2019, by the CITY OF MADEIRA BEACH, FLORIDA.

CITY OF MADEIRA BEACH, FLORIDA

By: Maggi Black
Maggi Black, Mayor

ATTEST:

Clara VanBlargan
Clara VanBlargan, City Clerk

APPROVED as to form and accuracy:

By: Ralf Brookes
Ralf Brookes, City Attorney

[ATTACH EXHIBIT 1]

LEGAL DESCRIPTION

Any person or entity who claims that this Article is inapplicable to him/her/it because a conviction or judgment has been reversed by a court of competent jurisdiction, shall prove the same with documentation satisfactory to the City Manager. Upon presentation of such satisfactory proof, the person or entity shall be allowed to contract with the City.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CITY IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT ANY CONTRACT OR BUSINESS TRANSACTION SHALL PROVIDE FOR SUSPENSION OF PAYMENTS, OR TERMINATION, OR BOTH, IF THE CONTRACTING OFFICER OR THE CITY ADMINISTRATOR DETERMINES THAT SUCH PERSON OR ENTITY HAS MADE FALSE CERTIFICATION.

Signatory Requirement. In the case of a corporation, this affidavit shall be executed by the corporate president. In the case of a partnership, this affidavit shall be executed by the general partner(s). In the case of a business entity other than a partnership or a corporation, this affidavit shall be executed by an authorized agent of the entity or the individual.


[Signature]

NOTARY PUBLIC

STATE OF FLORIDA
CITY OF MADEIRA BEACH

Sworn to and subscribed before me this 23rd day of JULY, 2019 by ALAN KAHANA.
Personally known _____ OR Produced Identification DRIVERS LICENSE
[Type of Identification]


Notary Public Signature My commission expires 02/12/2021

ANDREA GAMBIE
[Print, type or stamp Commissioned name of Notary Public]



(4) Notifying the City within ten (10) days after receiving notice under subsection (3) from an employee or otherwise receiving actual notice of such conviction.

(5) Imposing appropriate personnel action against such employee up to and including termination; or requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

(6) Making a good faith effort to continue to maintain a drug free work place through implementation of sections (1) through (5) stated above.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CITY OF MADEIRA BEACH IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT ANY CONTRACT OR BUSINESS TRANSACTION SHALL PROVIDE FOR SUSPENSION OF PAYMENTS, OR TERMINATION, OR BOTH, IF THE CITY DETERMINES THAT:

- (1) Such person or entity has made false certification.
- (2) Such person or entity violates such certification by failing to carry out the requirements of sections (1), (2), (3), (4), (5), or (6) or subsection 3-101(7)(B); or
- (3) Such a number of employees of such person or entity have been convicted of violations occurring in the work place as to indicate that such person or entity has failed to make a good faith effort to provide a drug free work place as required by subsection 3-101(7)(B).

Signatory Requirement. In the case of a corporation, this affidavit shall be executed by the corporate president. In the case of a partnership, this affidavit shall be executed by the general partner(s). In the case of a business entity other than a partnership or a corporation, this affidavit shall be executed by an authorized agent of the entity or the individual.

Signature

Title:

Company:

NOTARY PUBLIC

STATE OF FLORIDA

CITY OF MADEIRA BEACH

Sworn to and subscribed before me this 23rd day of JULY, 2019

by ALAN KAHANE

known to me
Identification?

OR Produced Identification

DRIVERS LICENSE

who is personally
[type of

[Signature]

My commission expires 02/12/2021

Notary Public Signature

[Print, type or stamp Commissioned name of Notary Public]

