

# Memorandum

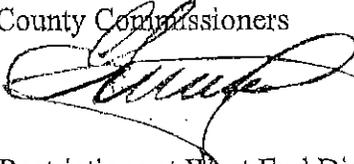
MIAMI-DADE  
COUNTY

**Date:** April 27, 2016

Agenda Item No. 2(B)4  
May 17, 2016

**To:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor



**Subject:** Report on Federal Deed Restrictions at West End District Park -- Directive 152383

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At the October 20, 2015 Board of County Commissioners (Board) Meeting, Commissioner Juan C. Zapata requested that the Mayor or Mayor's designee confer with the National Park Service's (NPS) Federal Lands to Parks Division regarding the federal deed restrictions for West End District Park, including conditions under which the NPS would be willing to release such deed restrictions, and to report back to the Board within 90 days on the results of the discussions.

The NPS responded to the Parks, Recreation and Open Spaces Department's (PROS) inquiry into this matter on December 3, 2015 (Attachment 1). The deed for the park property provides that the County may enter into Concession Agreements with third party entities with prior concurrence of the Secretary of the Interior through the Southeast Regional Office of the NPS. Such agreements, if required, will add to the standard timeline of the County's procurement process, which includes advertisement of the request for proposals or qualifications, a pre-proposal conference, and receipt and evaluation of proposals, followed by negotiations and issuance of an award recommendation, should negotiations be successful.

Concessionaires of other properties transferred through the Federal Lands to Parks program with similar deed conditions have built and upgraded facilities through concession agreements. Concessions may provide small-scale seasonal services, such as concession booths at youth sporting events and mobile food carts, to large-scale year-round operations, such as golf courses and marinas. The NPS outlined the process for pursuing this option, and NPS also indicated that it may be possible to undertake a land exchange if the County has a sound basis for needing to remove the restrictions from all or a portion of West End District Park. Among other things, a land exchange would require the replacement parcel(s) to not previously have been acquired for recreational use; be unencumbered by outstanding leases, easements, or surface/subsurface rights; and be of equal or greater fair market value in order to protect the federal government's financial interest. Depending on the complexity of issues on the lands under consideration for exchange, the process could take up to a year or longer to complete.

Similarly, the Florida Communities Trust (FCT) has advised through an email response (Attachment 2) that, with reference to the portion of the property acquired using FCT funding, the property is subject to Florida Statue 62-818.016 of the Florida Administrative Code outlining the process that must be followed when requesting a land exchange. It establishes that upon a 60-day notice, and subject to a revised Management Plan and a revised master site plan, a request may be made to the Governing Board of the Trust for land transfer. These land transfers are typically handled through the FCT, which is under the Florida Department of Environmental Protection.

Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners  
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In addition to the aforementioned federal and state requirements and pursuant to the guidelines of Article 7 of the County Charter, a referendum may be required depending on the type of solicitation received.

According to the Office of the Property Appraiser, it is estimated that the market value of the 157 acres that comprise West End District Park is more than \$31 million. As such, a land exchange is infeasible at this time; however, PROS staff will continue its dialogue with the NPS to explore any other options that may be achievable.

In accordance with Ordinance 14-65, this memorandum will be placed on the next available Board of County Commissioners meeting agenda.

If additional information is needed, please contact Jack Kardys, Director of PROS, at (305) 755-7903.

Attachment 1: Department of the Interior Letter  
Attachment 2: Email from the Florida Communities Trust

c: Michael Spring, Senior Advisor, Office of the Mayor  
Jack Kardys, Director, Parks, Recreation and Open Spaces  
Charles Anderson, Commission Auditor  
Eugene Love, Agenda Coordinator

ATTACHMENT 1



United States Department of the Interior



IN REPLY REFER TO:  
S7417 (SER-P)  
FL-West Kendall

NATIONAL PARK SERVICE  
Southeast Regional Office  
Atlanta Federal Center  
1924 Building  
100 Alabama St., SW.  
Atlanta, Georgia 30303

December 3, 2015

Ms. Marla Nardi  
Chief  
Planning and Design Excellence  
Parks, Recreation and Open Spaces  
Miami-Dade County  
275 NW 2 Street  
Miami, FL 33128

Dear Ms. Nardi:

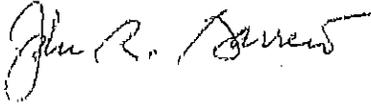
We are in receipt of your November 19, 2015 letter inquiring as to the prospects for entering into a concession agreement at West Kendall District Park to support Miami-Dade County's operation of the new park at that location. The deed for the park property provides that the County may enter into concession agreements with third party entities with prior concurrence of the Secretary of the Interior (through this office, the Southeast Regional Office of the National Park Service).

Concessionaires of other properties transferred through the FLP program with similar deed conditions have built and upgraded facilities through concession agreements. Concessions may provide small-scale, seasonal services, such as concession booths at youth sporting events and mobile food carts, to large-scale, year-round operations, such as golf courses and marinas. Please see the enclosed concession agreement guidance and model template for reference. The main purpose of this document is to provide an outline and points to consider when drafting such an agreement. Additionally, I've included a recent approved concession agreement as an example that follows this recommended format.

In addressing your other questions regarding the deed restrictions, it may be possible to undertake a land exchange if the County has a sound basis for needing to remove the restrictions from all or a portion of the West Kendall District Park. Among other things, a land exchange would require the replacement parcel(s) to be of equal fair market value in order to protect the federal government's financial interest. Please note that the National Park Service may approve a land exchange only with the concurrence of the General Services Administration. Attached please also find more detailed information that outlines our land exchange requirements.

If you have any questions, please do not hesitate to contact me at 404-507-5689 or via email at john\_barrett@nps.gov.

Sincerely,



John R. Barrett  
Program Manager  
Federal Lands to Parks  
Southeast Region

Enclosures



### Land Exchange Overview

A land exchange in the context of the Federal Lands to Parks Program involves the release of restrictive public park covenants on one piece of land (the exchange property) and the placement of those restrictive covenants on another piece of land provided by the grantee as future replacement parkland for the land being released. As a first step before fulfilling further requirements, the National Park Service (NPS) requires the grantee to state the purpose and justification for the proposed land exchange. This statement should include an assessment of public recreational utility for both the current park and the proposed replacement property, an explanation of why the original park property no longer serves the purpose for which it was conveyed, and how the replacement property will better satisfy the purpose (program of utilization) or meet current recreational needs. This analysis should include an assessment of public need and demographics. It should also reference relevant State, city, or other local comprehensive outdoor recreation plans.

### Documentation Requirements

If the purpose and justification statement is approved, then the grantee would need to prepare and submit the following documentation:

1. A boundary survey(s) of the portion(s) of the park properties that are to be exchanged and the replacement parcel(s).
2. Appraisals. The fair market value must be obtained for all properties by appraisers certified at the MAI level. The appraisals must conform to the Uniform Appraisal Standards for Federal Land Acquisitions. The appraisals must be current and the same individual(s) should appraise both the subject property as well as the proposed replacement property during the same time frame. The portion of the parkland that will be converted to non-park use must be appraised at its highest and best usage, which is as though the park and recreation restriction had already been removed. The replacement property must also be appraised at its highest and best usage.
3. Environmental Site Assessment (ESA) of the proposed replacement parcel(s) (minimum of a Level I Survey) performed by an independent analyst with the appropriate credentials recognized by the NPS. The American Society of Testing and Materials (ASTM) standards should be used to determine if the land is environmentally safe and not latently contaminated.
4. Preparation of NEPA environmental assessment document(s) (as required by the National Environmental Policy Act) for the total land exchange describing the environmental effects of the proposed development. Documentation should include an analysis of potential impacts from displacement of recreational opportunities and impacts to the remaining parkland etc., and an assessment of potential impacts of new park development on the proposed replacement property.

Note that an assessment of potential impacts of future development and use of the property to be released from park and recreation requirements (i.e. conversion property) is not required.

*Documentation from previously completed environmental assessments that address the potential impacts of the proposed land exchange may be submitted. Depending on the scope of the land exchange, the environmental review for both the subject property and the proposed replacement property may range from completing an Environmental Screening Form (ESF); to completing an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).*

5. A disclosure statement from the recipient that other than the FLP deed restrictions on the subject property, that neither the subject property, nor the proposed replacement property, are encumbered with other recreation, conservation, grant or any other type of restrictions etc.

6. A location map, legal description, Program of Utilization (i.e. park and rec plan), title report, and development schedule for the replacement parcel(s). An analysis and justification must be provided regarding how the proposed new park/areas will meet an identified need for public park and recreation opportunities; as well as how the grantee will fully fund the recreational improvements on the replacement property.

Then NPS may approve a land exchange only with the concurrence of the General Services Administration and, in certain instances, with the appropriate agency/department within the Department of Defense for former military properties.

ADDITIONAL INFORMATION: Any questions can be addressed to John Barrett, Program Manager, Federal Lands to Parks, National Park Service, 100 Alabama Street, S.W., Atlanta, Georgia 30303-8701, Telephone: 404-507-5689. FAX: 404-562-3246. E-Mail: john\_barrett@nps.gov

## CONCESSION AGREEMENT GUIDANCE

Most deeds for properties conveyed through the Federal Lands to Parks Program of the National Park Service (NPS), or its predecessors [the Bureau of Recreation (BOR) or the Heritage Conservation and Recreation Service (HCRS)] contain a clause which states:

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 recreation purposes subject to the same terms and conditions in the original instrument of conveyance.

Newer deeds also provide the following wording:

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.

Concessions are private businesses (or non-profits) operating under "contract" in a state/county/municipal park or recreational area to provide products and services designed to enhance the park visitor's (user's) experience. Concessions may provide small-scale, seasonal services, such as concession booths at youth sporting events and mobile food carts, to large-scale, year-round operations, such as golf courses and marinas. At large state/county parks, concessions may include snack bars, mobile food services, gift shops, camp stores, golf courses, marinas, aquatic services, equestrian centers, theaters, and educational programs and demonstrations. At smaller county/municipal facilities, concessions may be non-profit groups that organize youth sporting leagues; groups that provide after-school activities or senior services; groups which manage artistic activities (i.e., local theater or artist guilds); or historical societies, etc.

The main purpose of this document is to provide the Grantee/recipient of Federal Lands to Parks Program properties with an outline and points to consider when drafting a concession agreement. There are a variety of subjects and issues which should be included in a concession agreement, depending on the scope of the agreement, the facilities to be utilized and financial arrangements. The Concession Agreement Template provides standard wording which may be used, or tailored (subject to approval) to fit the particular need of the park or recreational manager. Use of the guidelines will help establish appropriate safeguards for the property, establish clear expectations for the use of the property and responsibilities for the parties involved, and make sure the operation is managed appropriately. Use of these guidelines also will facilitate the review and approval by the Secretary of the Interior or his/her delegated representative, National Park Service (NPS). Template subjects/issues generally fall into three categories:

1. Those which generally must be included in all agreements; (M)
2. Those which must be included in agreements, if applicable; (MA) and
3. Those which are optional, if applicable (OA).

The Grantee/recipient may substitute a concessions agreement using their own format, provided that sections relating to all elements marked (M) or (MA) are represented in their agreement. The Grantee/recipient may add any additional provisions that are necessary and agreed to by the Secretary of the Interior or his/her delegated representative, NPS.

**Please note the following caveats:**

**The Grantee/recipient cannot convey an estate or interest in the land, nor enter into agreements which surrender absolute control and possession of its property. Subsequently, the Grantee/recipient can enter into terminable at will license agreements for use upon parkland, including concession operations subject to prior concurrence by the Secretary of the Interior or his/her delegated representative, NPS.**

- 1. Any contemplated concession agreement must be in accordance with the current approved program of utilization for the property.**
- 2. Regardless of the use and occupancy of the property/facility by a concessionaire, the Grantee/recipient is ultimately responsible to ensure that the property is used for public park and recreation purposes by the general public and that the property is maintained in a safe and environmentally appropriate condition.**

Generally, text contained in [ ] is to be used as guidance and deleted from the finished agreement, or must be replaced with appropriate language specific to the agreement.

SAMPLE CONCESSION TEMPLATE:

Concession Agreement

(M) This Concession Agreement, hereinafter referred to as the "Agreement" is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20XX, between the [Name of Town/City/County/State] hereinafter referred to as the "[Town/City/County/State]", and [Name of Concessionaire], hereinafter called the "Concessionaire." [Identify type of Concessionaire, i.e. nonprofit, sole proprietor, LLC, volunteer organization].

Witnesseth:

(M) Whereas, the [Town/City/County/State], took fee title to certain lands totaling \_\_\_\_\_ acres, from the United States of America (hereinafter referred to as the "USA"), as surplus property, known as [former/current name of site], and deeded to the [Town/City/County/State] on [date]. Said Quitclaim Deed (hereinafter "Deed") is attached and hereinafter referred to as Exhibit A; and

(M) Whereas, Condition No. [insert correct condition number] of said Deed provides that the [Town/City/County/State] shall not sell, lease, assign or otherwise dispose of the premises, except to another eligible government agency. (MA) However, nothing in this provision shall preclude the [Town/City/County/State] 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 provided in writing by the Secretary of the Interior or his/her delegated representative, NPS; and

(M) Whereas, the [Town/City/County/State] and Concessionaire desire to provide a [insert type of service - ex. food service, bike rentals] on a portion of [former/current name of site] for the use and benefit of the general public; and

(M) Whereas the [Town/City/County/State] is satisfied that the provision of additional services and facilities at [former/current name of site] is in the [Town/City/County/State's] best interest.

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual covenants and agreements as hereinafter set forth, the [Town/City/County/State] agrees to allow Concessionaire to provide [describe type of concession] services and facilities hereinafter to be mentioned upon a portion of the real property described in Exhibit A attached hereto and incorporated herein by this reference and located at the [former/current name of site].

1. (M) Location: The [Town/City/County/State] does hereby assign to the Concessionaire the use of the [describe area/land/buildings/facilities] which is [a portion of/located on] the property as described in Exhibit A (hereinafter

"Assigned Premises"). [If the deed contains any restrictions on the use of the property which have been incorporated by reference, Concessionaire must be provided with appropriate sections of the documents and they should be described here and named as Exhibit B].

2. **(M) Use of Assigned Premises:** (a) Concessionaire shall use, occupy and maintain the Assigned Premises in a business like, careful, clean and non-hazardous manner for the sole purpose of [describe activity]; (b) Such use shall be considered Concessionaire's concession operation (hereinafter "Concession Operation"); (c) Concessionaire shall conduct the Concession Operation in strict compliance with, and subject to all of the restrictions, covenants, terms and provisions imposed by the Secretary on the Assigned Premises as set forth in Exhibit A; (d) Written approval by the [Town/City/County/State] and written concurrence by the Secretary shall be required for any other proposed use(s) in conjunction with or in addition to those specified in this agreement.

**(MA) [SPECIFICALLY ENUMERATE any restrictions and environmental and usage conditions which affect the property. [i.e., asbestos, lead paint, prohibition on digging in the soil, restricted use of ground water, historic property, archeological covenants, etc., and how they may effect the concessionaire's operation. For example: If there are ground water restrictions on the property, words like "Concessionaire is specifically prohibited from using ground water to irrigate the ball fields."]**

**(M) [Describe how the general public will be allowed to use the Assigned Premises for park and recreational use such as when the concession is not in operation and/or during off season.]**

3. **(MA) Personal Property:** In furtherance of the objectives of this Agreement, Concessionaire shall have the use of certain personal property which shall be maintained in good working condition, subject to reasonable wear and tear. [Insert list] Upon completion/termination of this Agreement, all items shall be accounted for and returned to [Town/City/County/State]. During the course of this Agreement any damage to personal equipment shall be reported to [Town/City/County/State] within a reasonable time of when the damage occurs. [If personal property is extensive, consider creating an Exhibit which would list any personal property being assigned to Concessionaire (e.g. furniture, sports fixtures, kitchen equipment etc.)]
4. **(M) Term:** This Agreement shall be effective from [date] to [date].
5. **(OA) Renewal:** Concessionaire will have an option to renew this Agreement for [select number of renewals] consecutive [number of years] -year terms upon conditions to be mutually agreed upon at that time. Any agreement reached by the [Town/City/County/State] and Concessionaire for renewal of this agreement shall be subject to the written approval of the Secretary if any

significant changes to the Agreement are proposed for inclusion in any subsequent renewal. Any renewal of this Agreement shall require Concessionaire to comply with all of the terms and conditions in the Deed and this Agreement, specifically including but not limited to paragraph 2(c) herein.

[Describe] specifics of Concessionaire exercising an option to renew the Agreement with the [Town/City/County/State]. (e.g. number of days notice prior to expiration of agreement).

6. **(M) Concession Payments:** [Describe the Payment structure between the [Town/City/County/State] and Concessionaire. Note: Fees charged by the Concessionaire must be reasonable so as not to deny participation by the general public and fees must be approved by the [Town/City/County/State] in advance.]
7. **(M) Concessionaire's Records and Documents:** With respect to all matters covered by this Agreement concessionaire's records and documents shall be subject at all times to inspection review or audit by the [Town/City/County/State]. Concessionaire will supply [Town/City/County/State] any documentation that may be needed by the [Town/City/County/State] to file required compliance reports to the Secretary.
8. **(M) Operations and Maintenance:** [Describe Concessionaire obligations (e.g. should offer reasonable prices, minimum hours of operation, seasonal use, courteous service, building requirements, etc.). Describe [Town/City/County/State] obligations, if any. I.e., snow plowing, trash removal, security.]
9. **(MA) Licenses and Permits:** All necessary licenses and permits to operate concession on the Assigned Premises must be obtained from the appropriate offices before operation may begin. All licenses are subject to Code of Enforcement for safety, health and fire inspections.
10. **(MA) Operating Expenses and Utilities:** [Describe operating expenses and who is responsible for the payment of operating expenses and utilities, as well as the costs associated with installation/upgrade of systems that are required by building codes and local ordinances relating to safety, health and fire. These systems must meet all local, state and federal requirements.]
11. **(M) Non-discrimination:** [Town/City/County/State] and Concessionaire agree to comply with all Federal laws relating to nondiscrimination in connection with any use, operation, program, or activity on or related to the previously described property, including, but not limited to:

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);

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d-1), which prohibits discrimination on the basis of race, color, or national origin;

The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age;

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicap;

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

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.

12. **(MA) Historic Properties:** The subject property is deemed to be historic property as stated in Exhibit A, [Town/City/County/State] and Concessionaire will adequately ensure the preservation of the historic property per the covenants stated therein. Any proposed changes to a historic structure require consultation with the State Historic Preservation Officer (SHPO) and will be in compliance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

13. **(MA) Alterations and Improvements:** [Proposed alterations and improvements shall be described in agreement.] Concessionaire may not make alterations or improvements to the Assigned Premises without written consent of the [Identify Title of Position] representing the [Town/City/County/State]. Such written consent will not be unreasonably withheld or delayed.

Further define [other Titles of Positions] representing the [Town/City/County/State] *if necessary* for approval.

If structural changes are required, the [determine whether [Town/City/County/State] or Concessionaire] shall arrange for and supervise all necessary construction work and be responsible for all costs associated with providing the changes. (If applicable), All construction work must comply with the Historic Properties section of this agreement.

14. **(MA)** [This Agreement should specifically address disposition of any real and/or personal property constructed on or affixed to the site.] Concessionaire acknowledges that the Property, including the Assigned

Premises, is subject to the possibility of reversion back to the United States *without compensation being paid to the Concessionaire* should there be a material breach of noncompliance by the [Town/City/County/State] or the Concessionaire for not adhering to the Deed covenants, restrictions and agreements set forth in Exhibit A.

15. **(MA) Maintenance and Repair:** The [Concessionaire and/or [Town/City/County/State]] shall at its sole cost and expense maintain the Assigned Premises in good condition and perform such repairs that become necessary from time to time during the term of this Agreement and any renewals hereof as set forth herein.
16. **(M) Inspection of Concession Areas:** Concessionaire shall allow the [Identify Title of Position] representing the [Town/City/County/State], or his designee and/or the Secretary's designated representative, herein the NPS, at any and all reasonable times to inspect the Assigned Premises, including or improvement thereon.
17. **(M) Indemnity:** Concessionaire hereby expressly agrees to indemnify, save and hold harmless, and defend the [Town/City/County/State] and the United States against all fines, claims, damages, liens, losses, judgments, and expenses arising out of, or from any act or omission by the Concessionaire and its representatives, agents, employees, or any others in or on the Assigned Premises or the Property on the Concessionaire's behalf.
18. **(QA) Insurance:** Concessionaire shall, at its own expense, provide such public liability insurance that will protect Concessionaire and the [Town/City/County/State] from all claims for damages to property and persons, including death, and particularly the use of products prepared, and/or sold, which may arise in the operation of the activities conducted under this Agreement or anyone directly or indirectly employed by Concessionaire. All policies shall name the [Town/City/County/State] as a named insured. The public liability insurance shall provide limits of not less than [insert dollar amount] for one person or occurrence, [insert dollar amount] for more than one person injured or killed in any one accident or occurrence, and shall include products liability coverage. Property damage liability insurance shall provide a limit of not less than [insert dollar amount].  
  
Concessionaire agrees to provide evidence to the [Town/City/County/State] that insurance is current based on subsequent renewal information.  
[Examples of types of insurance to consider are: contents; building (e.g. fire, vandalism, weather hazard; liability ("patron" or employee accident?)]
19. **(M) Assignment and Subletting:** Concessionaire shall not assign this Agreement or any interest therein, nor let or sublet the said premises 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 Agreement by the [Town/City/County/State] or possible reversion by the United States.

20. (M) Amendment to Concession Agreement: This Agreement contains all the terms and conditions between the parties, and no alteration, amendment, or addition hereto 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.

21. (M) Laws and Regulations: Concessionaire is aware of and agrees that it will use the Assigned Premises so as to conform with deeded environmental and usage controls and not violate any laws, regulations and /or requirements of the United States of America and/or State of [Insert state] and/or any ordinance, rule or regulation of the [Town/City/County/State] now or hereafter made, relating to the use of the Assigned Premises.

22. (OA) Signage: Concessionaire shall place no sign or advertisement upon any location of the Assigned Premises unless prior written approval has been granted by the [identify title of position] representing the [Town/City/County/State], and the [identify title of position] 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.

23. (M) Surrender and Waste: Concessionaire agrees that upon expiration of this Agreement or earlier termination thereof, it shall surrender the Assigned Premises to the [Town/City/County/State] in as good or better condition as they were in at the time of execution of this Agreement, ordinary wear excepted.

[Describe removal of equipment, responsibility for cost and timeline].  
Concessionaire further agrees that it shall permit no waste nor suffer the same to be committed, nor injure nor misuse the Assigned Premises, and that upon termination of this Agreement for any reason, Concessionaire shall remove any of its personal property, that is not listed in paragraph 3 or otherwise belonging to the County, within \_\_\_\_ days of such termination.

24. (M) Liens: Concessionaire shall keep the Assigned Premises free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by Concessionaire during the term of this Agreement or any extension or renewal thereof.

25. (M) 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 Agreement shall be deemed a waiver of breach of any other provision of this 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 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.

26. **(M) Termination:** This Agreement shall terminate automatically upon the occurrence of any one or more of the following events:

- a. The [Town/City/County/State] unilaterally terminates the Agreement upon [select number of days] days written notice for any cause whatsoever and specifying the date of termination.
- b. Concessionaire materially violates any provision of the Agreement.
- c. The expiration of the term of this Agreement or any renewal thereof.
- d. [Describe any conditions that may allow the Concessionaire to voluntarily terminate this agreement].

27. **(M) No Conveyance:**

Nothing in this Agreement conveys, or shall be construed as conveying, any estate or interest in the Assigned Premises, or in any of the Property described in Exhibit A or paragraph [insert # of the corresponding paragraph from above] in this Agreement, from the County to the Concessionaire, nor does this Agreement surrender absolute control over and possession of the Assigned Premises to the Concessionaire. The County, by this Agreement, conveys, and the Concessionaire, by this Agreement, receives only such authority as is set forth in this Agreement, and that may be necessary and appropriate to use the Assigned Premises in a manner that is consistent with the Concession Operation specified herein.

28. **(M) 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 to the [Town/City/County/State], dated \_\_\_\_\_, \_\_\_\_\_, and recorded at \_\_\_\_\_ County Registry of Deeds/Clerks Office at Book \_\_\_\_\_, Page \_\_\_\_\_ (attached hereto as Exhibit \_\_\_\_\_), and the current Program of Utilization which governs the use of the Assigned Premises. 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 Agreement. In the event of a reversion as described in this paragraph, Concessionaire-owned personal and real property improvements associated with the Assigned

Premises, may be subject to seizure, without compensation, by the United States.

29. (M) Notice: Any notice by either party to the other shall be in writing and shall be deemed to be given only if delivered personally or mailed by registered or certified mail as follows:

[Town/City/County/State]: [Identify Title of Position] representing the  
[Town/City/County/State]  
[Name]  
[Address]  
[Town, State, Zip Code]

Concessionaire: [Name of Concession]  
[Name of owner]  
[Address]  
[Town, State, Zip Code]

Other addresses may be established as the parties hereto may designate by written notice to the other party and delivered in accordance with the provisions of this paragraph.

Signature Page Follows

IN WITNESS WHEREOF, the [Town/City/County/State] has authorized its [insert title] representing the [Town/City/County/State] to sign this Agreement and Concessionaire has approved the Agreement and signed as of the date first noted above.

WITNESS: [Town/City/County/State], (OWNER)

BY: \_\_\_\_\_

[Name]  
[Title]  
[Address]  
[Town, State, Zip Code]

WITNESS: CONCESSIONAIRE

BY: \_\_\_\_\_

[Name]  
[Title]  
[Address]  
[Town, State, Zip Code]

*(OPTIONAL) Sample Notary blocks follow*

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 20XX before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_, representing the  
[Town/City/County/State], known to be the person described in the foregoing  
instrument and acknowledged that he/she executed the same in the capacity therein  
stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 20XX before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_, representing Concessionaire,  
known to be the person described in the foregoing instrument and acknowledged  
that he/she executed the same in the capacity therein stated and for the purposes  
therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

SNACK SHACK CONCESSION AGREEMENT

THIS SNACK SHACK CONCESSION AGREEMENT, given at Madeira Beach, Florida, this 3rd day of March, 2014, 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 3846 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 A; 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 and the City Manager was authorized to negotiate on behalf of CITY a Concession Agreement with CONCESSIONAIRE; and

WHEREAS, at a duly noticed public meeting of the Board of Commissioners of CITY conducted on December 10, 2013, this Snack Shack Concession Agreement was approved by the Board of Commissioners of CITY; and

WHEREAS, CITY and CONCESSIONAIRE desire to provide a snack bar and gift shop services on a portion of Archibald Memorial Beach Park for the use and benefit of the general public; and

WHEREAS, CITY hereby finds that the provision of a snack bar and gift shop services 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 facilities at Archibald Memorial Beach Park is in the best interest of the City and the general public; and

WHEREAS, CITY and CONCESSIONAIRE desire to enter into this Snack Shack Concession Agreement, hereinafter the Concession Agreement, so as to set forth the terms and conditions upon which CONCESSIONAIRE may operate a snack bar and gift shop concession at the Snack Shack located within Archibald Memorial Beach Park.

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 provide snack bar and gift shop services and facilities hereinafter to be mentioned upon a portion of the Property described in Exhibit A attached hereto and incorporated herein by this reference and located at the Archibald Memorial Beach Park.

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 Area* shall mean that log cabin type building commonly referred to as the Snack Shack located on Archibald Memorial Beach Park at 15100 Gulf Boulevard, Madeira Beach, Florida, including the wooden deck adjacent thereto and including the public restrooms located adjacent to the Snack Shack and including the open area between the Snack Shack/Deck and the pedestrian walkway that parallels the dune on the east side of the dune.
- C. *NPS* shall mean the National Park Service, a bureau of the United States Department of the Interior, as the delegated representative of the Secretary of the Interior.

2. Grant of Concession: CITY hereby grants to CONCESSIONAIRE this Concession Agreement to operate a snack bar and gift shop 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. CONCESSIONAIRE hereby 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 five (5) year period. This Concession Agreement may be extended for up to three (3) additional two (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 Park, 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
- Fresh Seasonal Fruit and Fruit Cups
- Bottled Water
- Bagged Ice
- Coffee and Espresso
- Candy
- Salads
- Fries
- Wings
- Wraps
- Seafood
- Pie
- Cheesecake
- Tacos
- Burgers
- Breakfast Items
- Hot Dogs
- Sandwiches
- Pizzas
- Snacks
- Beer and Wine
- Light beach going foods

Additionally, goods of the following nature may also be made available by CONCESSIONAIRE to the public from the Concession Area:

- Kites
- Tee Shirts
- Swim Suits
- Hats
- Jackets
- Flip Flops
- Beach Towels
- Umbrellas
- Beach Chairs
- Floats
- Masks
- Snorkels and Fins
- Sunscreen
- Sun Glasses
- Disposable Cameras and Film 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.

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 (60<sup>th</sup>) 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 amendment or extension of this Concession Agreement. *Rent to commence May 1, 2011 SDC*

In the event that Archibald Memorial Beach Park ("Park") is closed for more than seven (7) consecutive days as a result of red tide, a named hurricane, an oil spill such as the BP Oil Spill, or the closing of the 150<sup>th</sup> 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.

6. Equipment: CONCESSIONAIRE shall be responsible to provide any and all necessary equipment and improvements to make the Concession Area functional for provision of the services described in Section 4 above, CONCESSIONAIRE covenants to provide the following equipment and improvements within the Concession Area:

- Plumbing
- Hood with Fire Suppression System
- Professional Commercial Grade Tile Flooring
- Countertops and Shelving
- Painting of the Exterior as Needed
- New Windows to the Gulf Boulevard side of the Snack Shack
- Signage
- Additional Exterior Stairs to the Snack Shack
- HVAC System

- Interior Decor of the Snack Shack with Historical Madeira Beach Artifacts and Photographs
- Indoor and Outdoor Seating
- Picnic Tables and Umbrellas
- Refrigeration and Freezers
- Triple Sink
- Hand Sinks
- Ice Machines
- Hot Dog Roller
- Pizza Ovens
- Sandwich Preparation Table
- Cash Registers
- Credit Card Machines
- Coffee and Espresso Machines
- Candy Dispensers
- Ice Cream Freezers
- Hawaiian Shave Ice Machine
- Smoothie Machine
- Milk Shake Blenders
- Soda Fountain
- 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 scheduling any particular banquet or special event. Scheduling of such special events shall not interfere with, or prohibit, use of Archibald Memorial Beach Park by the general public and beach patrons. If the CITY issues such special event permit, the person or entity to whom said permit was issued may make independent arrangements with CONCESSIONAIRE for use of the Concession Area. However, such use shall not interfere with, or prohibit, use of the Concession Area by the general public and beach patrons.

10. 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, as well as those who will attend banquets or other specially scheduled events. Although CONCESSIONAIRE shall establish the number of personnel required to meet its business needs, the City Manager shall have the right to require additional personnel if reasonably required in order for the business of CONCESSIONAIRE to operate consistent with the

business operations of other public beach concessions within Pinellas County. CITY reserves the right to approve the employment of any manager by CONCESSIONAIRE. At any time that CONCESSIONAIRE or said manager, is not to be present at the Concession Area, CONCESSIONAIRE covenants to keep the City Manager Informed in writing as to which representative of CONCESSIONAIRE will be present at the Concession Area and In charge of CONCESSIONAIRE'S operations at that time. All employees of CONCESSIONAIRE shall be well groomed and appropriately dressed in accordance with standards applicable to other public beach concessions within Pinellas County. The City Manager may determine that CONCESSIONAIRE'S employees should wear uniforms. If so, CONCESSIONAIRE shall require that its employees obtain and wear uniforms at no cost or expense to CITY. 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 Area, CONCESSIONAIRE shall require that the employee accept such employment with knowledge of the rights of CITY as set forth in this paragraph.

11. Maintenance: CONCESSIONAIRE, at its sole expense, shall maintain the Concession Area in good repair. In addition, CONCESSIONAIRE shall, at its sole expense, maintain, repair or replace all equipment and improvements located within the Concession Area so as to keep the same in a serviceable condition. CONCESSIONAIRE shall maintain the Concession Area in a clean and sanitary condition, to the satisfaction of the City Manager. CONCESSIONAIRE shall cleanse, disinfect, fumigate and deodorize these areas as directed by the City Manager. 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.

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

13. Restrooms: The public restroom facilities, including the men's, women's and handicapped areas, shall be the sole responsibility of CONCESSIONAIRE. CONCESSIONAIRE shall clean each of the restrooms (at a minimum, 12:00 noon, 2:00 p.m. and 4:00 p.m.), replenish the paper products therein, remove trash and assure the general ongoing cleanliness of same. All paper products, i.e. toilet paper, paper towels, trash can liners and seat liners, as well as hand soap, urinal sanitizers and light bulbs, shall be provided by CITY. No cleaning products will be provided by CITY for restroom maintenance. Any restroom cleaning requirement that results from a special event shall be the sole responsibility of CONCESSIONAIRE.

14. 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.

15. 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. Upon the request of City Manager, CONCESSIONAIRE shall provide samples of the food, beverages, supplies or merchandise sold or used by CONCESSIONAIRE for inspection by the City Manager. 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 Manager 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 Manager 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 comparables 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.

16. 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.

17. 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 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 NPS.

18. Non-Discrimination: CITY and CONCESSIONAIRE agree to comply with all Federal laws relating to nondiscrimination in connection with any use, operation, program, or activity on or related to the 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 on 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 on 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 disabled individual shall, solely by reason of his or her disability, be excluded from the participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

19. 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, or 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.

20. 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 Agreement 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. Employer's liability insurance shall provide limits of not less than \$100,000 per employee per accident; \$500,000 disease aggregate; and \$100,000 employee per disease.

(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) 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.

21. 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 venturers 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.

22. 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 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.

23. 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.

24. 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.

25. Right of Inspection: The City Manager 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.

26. 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.

27. 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 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 Concession 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 provisions of paragraph 28, hereof, shall apply.

28. 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 breach of the Concession Agreement and subsequent notice of termination or revocation of this Concession Agreement, CITY may immediately take possession of the Concession Area, 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.

29. 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.

30. Termination without Default: This Concession Agreement may be revoked by CITY or may be terminated by CONCESSIONAIRE, with or without cause and for any reason whatsoever, upon the giving of ninety (90) days' written notice. In the event CITY gives such notice, CONCESSIONAIRE shall be reimbursed for CONCESSIONAIRE'S equipment and improvements made within the Concession Area with the written approval of the City Manager so long as said equipment or improvements are left within the Concession Area in a satisfactory condition, as determined by the City Manager. In the event reimbursement is due to CONCESSIONAIRE, said reimbursement will be based upon a five (5) year straight line depreciation schedule from the date of installation through the date of termination of this Concession Agreement. Consequently, a list of the equipment and improvements with

documentation establishing the cost and date of installation must be provided to the City Manager by September 30 of each year during the term of this Concession Agreement. If CONCESSIONAIRE failed to provide written documentation establishing the cost and the date of installation of any equipment or improvements, CONCESSIONAIRE will have waived its ability to obtain compensation from CITY for said equipment or improvements.

31. Lien on Equipment and Personal Property: By the acceptance of this Concession Agreement, CONCESSIONAIRE acknowledges that CITY shall have a continuing lien upon all equipment and 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.

32. 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.

33. 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 lot or underlot shall be grounds for termination of this Concession Agreement by CITY or possible reversion by the USA.

34. 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.

35. 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.

36. 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  
City Hall  
300 Municipal Drive  
Madeira Beach, Florida 33708

Notices to CONCESSIONAIRE shall be sent to:

United Park Services, Inc.  
Attn: Alan Kahana  
1320 9<sup>th</sup> Avenue, Suite 210  
Tampa, Florida 33605

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 Area, 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.

37. 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.

38. Outdoor Cooking and Food Preparation: CONCESSIONAIRE shall obtain the prior written approval of the City Manager prior to using any open flame cooking device within the Concession Area and any temporary food and beverage service areas provided by CONCESSIONAIRE shall abide by all relevant local, state and federal requirements for said service areas.

39. Quitclaim Deed: The Concession Area 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 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 imposed by or pursuant to the regulations of the Department of the Interior (43 CFR Part 17) issued under the provisions of Title VI of the Civil Rights Act of 1964.

40. Laws and Regulations: CONCESSIONAIRE is aware of and agrees that it will use the Concession Area so as to conform with deeded environmental and usage controls and not violate any laws, regulations and /or requirements of the United States of America 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.

41. 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 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.

42. 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.

43. 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.

44. 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.

45. 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.

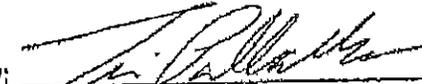
46. Acknowledgment: This Agreement and the obligations of the parties hereto are subject to the terms and conditions set forth in the Quitclaim Deed from the United States of America to the City of Madeira Beach, dated July 12, 1972, and recorded August 2, 1972, in Official Records Book 3845 commencing at page 927 of the Public Records of Pinellas County, Florida, and the Program of Utilization, as amended, which governs the use of the 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 of the Property 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 Property, may be subject to seizure, without compensation, by the USA.

47. 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.

48. Appropriations of the 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 SNACK SHACK CONCESSION AGREEMENT ISSUED IN DUPLICATE this  
3rd day of March, 2014, by the CITY OF MADEIRA BEACH, FLORIDA.

CITY OF MADEIRA BEACH, FLORIDA

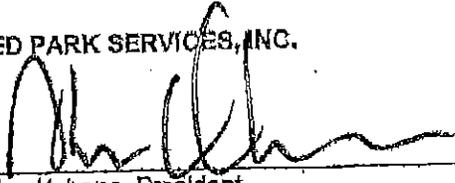
By:   
Travis Palladeno, Mayor

ATTEST:

  
Almee Servedo, City Clerk

THIS SNACK SHACK CONCESSION AGREEMENT ACCEPTED this 3rd day of March, 2014, and by executing this acceptance, CONCESSIONAIRE agrees to all terms, conditions and requirements hereof.

UNITED PARK SERVICES, INC.

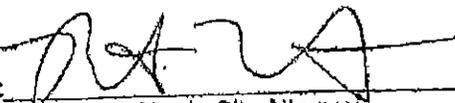
By:   
Alan Kahana, President

Witnesses as to execution on behalf  
of Alan Kahana, as President of  
UNITED PARK SERVICES, INC.

  
Witness  
Mark Feroch  
Print Name

  
Witness  
Cheryl Rodde  
Print Name

APPROVED as to form and accuracy;

By:   
FOR Thomas J. Trask, City Attorney

PINELLAS COUNTY, FLORIDA  
CLERK CIRCUIT COURT

AUG 2 10 12 AM '72

72094028

bk. 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 Administration Services Act of 1949 (53 Stat. 577), 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 2.3 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 405 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 Southwesterly direction along Mean High Tide line to the South line of Government Lot 1, thence West 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 Southeastwardly 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 2276  
Madeira Beach, Fla. 32720

**EXHIBIT A**

TOGETHER with improvements thereon.

SUBJECT, to any and all existing rights of way, covenants 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 hereinafore 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 the understanding of the agreement, and does covenant and agree for itself, and its successors and assigns, forever, as follows:

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**EXHIBIT A**

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 of 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

**EXHIBIT A**

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 cements, 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.

5  
**EXHIBIT A**

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and on its behalf this the 17 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 17 day of July, 1972, before me, the subscriber, personally appeared [Signature], 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 son 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 of Georgia  
My Commission Expires: Jan 3, 1976

EXHIBIT A

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 C. Elliott  
Joseph C. Elliott  
City Manager

STATE OF FLORIDA )  
COUNTY OF PINELLAS ) SS

On this 1<sup>st</sup> day of February, 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.

Joseph C. Elliott  
NOTARY PUBLIC

My Commission Expires:  
Notary Public, State of Florida, II License  
My Commission Expires JUNE 27, 1975

## ATTACHMENT 2

**Bowers, John (MDPR)**

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**From:** Taber, Jerry <Jerry.Taber@dep.state.fl.us>  
**Sent:** Thursday, December 03, 2015 10:44 AM  
**To:** Bowers, John (MDPR)  
**Cc:** Nardi, Maria (MDPR)  
**Subject:** RE: West Kendall District Park letter  
**Attachments:** 62-818.016- Land Exchange.docx

Thanks for the email.

This is in response to your letter dated November 19, 2015 related to West Kendall District Park. The West Kendall District Park Addition (Project Site) was primarily acquired to provide additional passive recreation activities and to extend the West Kendall District Park to SW 16th Avenue and the Urban Development Boundary Line.

Below is FCT's response to the questions asked.

*(a) The conditions and parameters by which concession agreements would be approved.*

The Recipient shall provide at least 60 days written notice of any such activity or interest to FCT prior to the activity taking place, and shall provide to FCT such information with respect thereto as FCT reasonably requests in order to evaluate the legal and tax consequences of such activity or interest. The Recipient acknowledges that if at any point revenue generating activities are incorporated within the *Project Site*, those funds will be placed in a separate account and go toward the upkeep and maintenance of the Project Site.

*(b) The possibility of acquiring additional park land upon which to transfer the deed restrictions.*

Rule 62-818.016, F.A.C., is the Land Exchange rule that establishes the conditions to transfer deed restrictions on FCT funded parcels.

**Attached is the rule.**

*(c) The conditions under which FCT would be willing to release its deed restrictions on all or a portion of WKD Park.*

The Land Exchange Rule would be the instrument to release deed restrictions on FCT funded parcels.

If I can help you with anything else, don't hesitate to ask.

Jerry Taber, Planner IV  
Florida Communities Trust  
Florida Department of Environmental Protection  
3800 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000  
MS 103, Mail Code 7550  
850-245-2683

Please go to this link and complete the [Office of Operations Customer Survey](#)

It will take less than five minutes and your response will be totally anonymous. Please make sure to select the Bureau of Financial Management for answer #2 on the survey. Thank you in advance for your feedback.

**From:** Bowers, John (MDPR) [mailto:[jbower@miamidade.gov](mailto:jbower@miamidade.gov)]  
**Sent:** Thursday, December 03, 2015 9:54 AM  
**To:** Taber, Jerry  
**Cc:** Nardi, Maria (MDPR)  
**Subject:** West Kendall District Park letter

Thanks for the call. Here are our e-mails to facilitate your response.

*John*

**John M. Bowers**  
PROS Park Planning Section Supervisor  
Miami-Dade County Parks, Recreation and Open Spaces Department

Phone: 305.755.5447

*"Delivering Excellence Every Day"*

*"Building a livable community one green space at a time"*

*Parks and Open Space System Master Plan*

 *Save a tree. Don't print this e-mail unless it's really necessary.*



62-818.016 Consideration of Recipient's Request for Land Exchanges.

The Declaration of Restrictive Covenants for Trust Project Sites limits the use of the property to conservation, outdoor recreation, and other related activities. However, Recipients occasionally receive requests from adjacent property owners for land exchanges to expand the adjacent development in return for other lands adjacent to the park. When evaluating these requests, the following process must be followed.

(1) Only local governments may participate in land exchanges. The Local Government must send a request to the Trust for a proposed land exchange. The Trust will not accept proposals from any other party. To be considered by the Trust, the proposal must at a minimum meet the following tests:

(a) The proposed exchange parcel(s) must be contiguous to a Trust Project Site, which could include being connected through a land bridge, easement or blue way;

(b) The proposed exchange parcel(s) must be at least equal to or greater in terms of upland acreage;

(c) The proposed exchange parcel(s) must have at least the same real estate value (as determined through independent appraisal[s]) as the Trust parcel being given up (or monetary compensation of the difference). There will be no monetary compensation if the proposed parcel(s) to be exchanged have a value greater than the Trust parcel;

(d) The proposed exchange parcel(s) must have a significant and clear net environmental, conservation and/or recreational benefit to the Project Site as determined by Trust staff; and,

(e) The exchange cannot result in a lower score based on the Application criteria.

If it is determined that no discernable net environmental, conservation, and/or recreational benefit to the Project Site would be achieved through the land exchange, the request will be denied.

(2) If the above tests are met, the Trust staff will then request the below additional information to further evaluate the request.

(a) A written statement from the Recipient's governing council that it has reviewed the proposal and that the governing body conceptually approves the proposed land exchange by an affirmative vote of at least three-fourths of its members or the local requirement, whichever is higher;

(b) A revised Management Plan with a revised master site plan;

(c) Information on the natural communities and cultural features found on the area to be exchanged;

(d) A survey and legal description of the parcel to be acquired and of the parcel to be provided by the Recipient/Trust (paid by the entity proposing the exchange and commissioned by the Recipient);

(e) A title policy of the parcel to be acquired;

(f) Separate appraisals for each parcel (to be paid by the entity proposing the exchange and commissioned by the Recipient). The appraisal shall be completed according to Uniform Standards of Professional Appraisal Practice (USPAP) and FCT standards by an approved DEP appraiser, after consultation with FCT appraisal staff. The parcel(s) to be provided by the Recipient/Trust shall be appraised as if it did not have any development restrictions on it;

(g) Phase I environmental site assessment of the parcel to be acquired (to be paid by the entity proposing the exchange and commissioned by the Recipient); and

(h) Any other items requested by the Trust to properly evaluate the request.

After receiving all of the above information, Trust staff will evaluate and review the request for consistency according to the above listed requirements. If the exchange proposal meets the above requirements and has a net positive environmental, conservation and/or recreational benefit, Trust staff will put the request on the agenda of the next scheduled Trust Governing Board Meeting for consideration.

(3) If the exchange request is approved by the Governing Board, the Recipient must:

(a) Sign an amendment to the Declaration of Restrictive Covenants that provides for the changed use of the Project Site;

(b) Record the amended Declaration of Restrictive Covenants (and any other necessary local Government document[s]) in the Public Records of the County where the original Declaration was recorded; and,

(c) The entity receiving the exchange must provide monetary compensation to the Trust if the value of the land provided by the Recipient/Trust is greater than the land received by the Recipient/Trust in the exchange. Such funds will be distributed between the Trust and the Recipient in accordance with the percentages in the original grant award.

*Rulemaking Authority 380.507(11) FS. Law Implemented 259.105, 380.510 FS. History- New 2-8-10, Formerly 9K-7.016.*