

# **FRANCHISE LICENSE AGREEMENT**

**between**

**MANATEE COUNTY**

**and**

**UNITED PARK SERVICES, INC.**

**for**

## **CONCESSIONS AT COUNTY FACILITIES AT COQUINA BEACH**

This is a Franchise License Agreement by and between MANATEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," and UNITED PARK SERVICES, INC., whose address is 1320 8<sup>th</sup> Avenue, Suite 5, Tampa, Florida 33605, hereinafter referred to as "LICENSEE."

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

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

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

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

**NOW, THEREFORE**, in consideration of the mutual covenants, provisions, terms, promises, and conditions contained herein, the parties agree as follows:

### **ARTICLE I**

#### **PURPOSE/GRANT OF LICENSE**

To enhance and promote Manatee County as a unique community, and provide for the comfort in and enjoyment of the use of Coquina Beach Park by its patrons, the COUNTY hereby grants unto the LICENSEE the right and privilege to provide the County with Exclusive Concession Services in accordance with the terms, conditions and limitations of this Agreement.

It is intended that LICENSEE create a visually upgraded, inviting impression at Coquina Beach and Park facility through its improvements to the gulf-side concession building thought installation of upscale outdoor furnishings and additions of frangible structures to the bayside area, promoting a tropical, coastal community feel.

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

- 1) The COUNTY'S periodic authorization, via Special Event Permit, of the use of the Park or allowing the use of the Park by others, for the purpose of holding and conducting special events including the vending of food and beverages which may be in direct or indirect competition with the LICENSEE'S right to vend food and beverages as provided under this Agreement.
- 2) The right of COUNTY, upon a determination that it is in the public interest, to establish additional locations for the sale of food and/or beverage, other retail items, or other rental or revenue generating items by obtaining additional vendors or use of its own employees.
- 3) Except as specifically provided for herein with respect to the LICENSEE'S use and operation of the Facilities in the Park under this Agreement, the COUNTY shall at all times continue to retain and have the unqualified right to make any and all determinations concerning or relating to the Park, including but not limited to, establishing operating procedures, safety standards and/or fees or fines.

## **ARTICLE 2**

### **COMPENSATION**

As compensation to the COUNTY, the LICENSEE shall pay COUNTY eight percent (8%) of all gross receipts while the concession building is under renovation until such time as a Certificate of Occupancy (CO) is issued by the permitting agency unless LICENSEE is unable to offer kayak rentals during this period, in which case it shall pay four percent (4%) of all gross receipts during the period. Payment shall be made monthly, as of the fifteenth (15<sup>th</sup>) business day of the following month (the Due Date), with interest accruing after 10 calendar days of that date.

The LICENSEE shall pay the COUNTY thirty thousand dollars (\$30,000) annually in monthly base payments of two thousand five hundred dollars (\$2,500.00) as of the fifteenth (15<sup>th</sup>) business day of the following month (the Due Date), with the interest accruing after ten calendar days. The last month of the term of the contract will be prorated accordingly.

The LICENSEE shall make a monthly percentage payment to the COUNTY of ten percent (10%) of the total gross of all sales less sales tax over two hundred fifty thousand dollars and no cents (\$250,000.00) per annum. Payment shall be paid by the fifteenth (15<sup>th</sup>) business day the following month (due date), with interest accruing after ten (10) calendar days.

The LICENSEE shall make a monthly percentage payment to the COUNTY of eleven percent (11%) of the total gross of all sales less sales tax over six hundred fifty thousand dollars and no cents (\$650,000.00) per annum. Payment shall be paid by the fifteenth (15<sup>th</sup>) business day the following month (Due Date), with interest accruing after ten (10) calendar days.

In addition to applicable sales tax, the LICENSEE shall be solely responsible for any ad valorem, rental or similar taxes levied upon the LICENSEE's equipment or activities arising from this Agreement. LICENSEE shall pay all such taxes directly to the entity or agency assessing the taxes, unless COUNTY is required by law to collect and remit such taxes. LICENSEE shall provide COUNTY with documentation evidencing the payment of any and all taxes paid directly to the entity or agency collecting the taxes.

In the event LICENSEE fails to pay COUNTY any of the fees or charges due under the provisions of this Agreement, interest at one and one half percent (1 ½ %) per month shall accrue against each delinquent payment until same is paid. Interest shall be charged from the date payment is due. Neither the inclusion of this provision, nor its implementation, shall preclude the COUNTY from terminating this Agreement for default or from pursuing any other remedies as provided herein or by law. The COUNTY'S acceptance of late payment of any fees or charges shall not constitute a waiver of COUNTY'S right to terminate this Agreement in the event of any subsequent default by LICENSEE in the payment of any fees or charges on the date the same shall be due and payable.

### **ARTICLE 3**

#### **PAYMENT**

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

## **ARTICLE 4**

### **CASH HANDLING REQUIREMENTS**

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

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

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

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

## **ARTICLE 5**

### **REPORTS, RECORDS, AUDIT**

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

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

LICENSEE shall provide an Annual Profit and Loss Statement, including a balance sheet and an income statement to the COUNTY for each calendar year or portion thereof that this

Agreement is in effect. The report shall be submitted by January 31<sup>st</sup> of each calendar year during the term and within ninety (90) calendar days of the termination of this Agreement.

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

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

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

All records, including tax returns and tax reports, of the LICENSEE necessary to verify any report referred to herein shall be available to the COUNTY and the COUNTY'S auditors at a reasonable location in Manatee County for a period of five years after the end of the Agreement including any extensions thereof.

LICENSEE shall cooperate with and provide the COUNTY, or its duly authorized representative, with any additional information or reports concerning its activities, income, revenues, expenses, and disbursements on request. The LICENSEE shall keep and maintain an accurate accounting system in accordance with Generally Accepted Accounting Principles.

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

## **ARTICLE 6**

### **TERM AND RENEWAL**

The initial term of this Agreement is five (5) years beginning at 12:01 a.m. on the 20<sup>th</sup> day of July, 2010 (herein the “effective date”), and ending at 11:59 p.m. on the 19<sup>th</sup> day of July, 2015, unless this term is earlier terminated as herein provided.

Provided there has been no default under this Agreement by LICENSEE prior to the expiration of the initial term, LICENSEE may, by written notice to the COUNTY at least 120 days before the end of the initial term, request renewal for a second five-year term. Unless the COUNTY exercises its right not to renew, the Agreement shall renew automatically.

Provided that there has been no default of this Agreement by LICENSEE, and COUNTY has not given LICENSEE notice of intent to terminate, then, at the end of the second five-year term, LICENSEE may, by written notice to the COUNTY at least 120 days before the end of the second five-year term, request renewal of this Agreement, which again shall result in automatic five year renewal unless the COUNTY exercises its right to decline to renew.

Should LICENSEE fail to provide notice 120 days prior to the end of the first or second five-year term as required above, COUNTY shall make written demand upon LICENSEE and LICENSEE shall within 7 days thereafter advise COUNTY of LICENSEE’S desire to renew this Agreement. If LICENSEE should fail to respond within such 7-day period, LICENSEE’S right to any additional term as provided for above shall be forfeited.

## **ARTICLE 7**

### **THE FACILITIES: EQUIPMENT, MAINTENANCE AND ADDITIONAL IMPROVEMENTS**

As used herein, the ‘Facilities’ are those buildings at Coquina Beach depicted in Exhibit “A” labeled Concessions and Kayak Area that are attached hereto and made a part hereof.

The LICENSEE shall be permitted to utilize space seventy five (75) feet from the perimeter edge of the concrete patio area for additional seating and live music.

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

So long as this Agreement shall be in effect, LICENSEE shall, except as otherwise provided herein, maintain the Facilities in good order and repair and shall keep the Facilities in a

clean and functioning condition at all times, free of all trash, litter and debris. This obligation includes, but is not limited to:

- a. The maintenance and upkeep of the patio, walkways and the areas adjacent to the Facilities measuring a distance of not less than one hundred feet (100') from the concrete edge of the perimeter of the Facilities.
- b. The maintenance and upkeep of the kayak outpost and kayak rack, including adjacent areas measuring a distance of not less than twenty five (25) feet from the perimeter.
- c. Provide adequate County supplied paper stock in the restrooms immediately adjacent to the concession building as requested.
- d. Providing trash and recyclables collection receptacles around the perimeter of the building and transferring trash generated by the service's operations to the dumpsters on an as needed basis. Dumpster enclosure doors must be kept closed. Trash receptacles located in areas exposed to the public must be kept clean and stain free and not permitted to overfill.
- e. Maintain surrounding walkways and eating areas.
- f. Maintaining and replacing as needed all internal fixtures, such as ceilings, walls, decorations, furnishings, lighting and floor coverings and any showcases, racks, other display and sales facilities, including concession identification and signage.
- g. Electric utility service to the Facilities.
- h. All plumbing and electrical repair, maintenance, or upgrades pertaining to food and beverage storage and preparation, including, but not limited to, kitchen sinks, dishwashers or disposals, as well as grease trap maintenance and service including pumpdown and cleaning.
- i. Providing and maintaining adequate fire protection and inspections, as required, including kitchen hood systems, sprinkler systems and fire extinguishers, in compliance with all applicable fire, restaurant, or building code requirements.
- j. Providing and maintaining all food and beverage storage and preparation equipment, including but not limited to, stoves, dishwashers, refrigerators, ice machines and sinks.

- k. All interior and exterior maintenance and repair of the Facilities, including but not limited to: replacement of all light bulbs and fixtures, all doors, door closers, locks, windows, floors and floor coverings, vent fans, inspection of fire extinguishers, exhaust fans, all tables and chairs, but excluding maintenance and repair of structural systems such as roof or foundation and air conditioning systems.
- l. External maintenance including landscaping and walkways.
- m. Routine monthly pest control for the Facilities.
- n. Ensure compliance with Florida law concerning smoking in places of public accommodation.
- o. Ensure compliance with Americans with Disabilities Act requirements concerning places of public accommodation.
- p. Ensure all staff act professionally, are clean, well groomed, uniformed and trained in effective customer service. Uniforms must be apparel that is acceptable to the COUNTY.
- q. The monthly replacement of filters in all air conditioning units.
- r. Allow annual termite warranty inspections.
- s. Cleaning and draining of the septic system as needed.
- t. Maintenance of plumbing fixtures in food preparation areas and areas provided for janitorial and cleaning services.
- u. Annual inspections of the hot water system.

The COUNTY shall provide and/or maintain the following:

- a. Monthly water and sewage collection service.
- b. The repair of all public restrooms and showers at the Facilities.
- c. All structural repairs not caused by the negligent or intentional acts of LICENSEE. County's obligation to provide structural repairs is limited to the repair of the existing foundation, walls and roof and the existing portions of the electrical, plumbing and mechanical system within such foundation, walls and roof.



- d. COUNTY will remove all stumps and visible dead root systems on the beach area located north of the South Bayside boat ramp within thirty (30) days after the commencement date of this Agreement.

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

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

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

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

## **ARTICLE 8**

### **CAPITAL INVESTMENT AND IMPROVEMENTS BY LICENSEE**

The capital investment improvements and repairs outlined in Exhibit "B" shall be completed by LICENSEE within the timeframes set forth therein.

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

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

The LICENSEE shall be solely responsible for insuring, maintaining, repairing, and replacing LICENSEE's improvements during the entire term of the Agreement and any extensions thereof.

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

relevant by the County. The LICENSEE shall pay for all charges for labor, services and materials used in connection with any improvements or repairs to the facility undertaken by the LICENSEE.

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

The LICENSEE has familiarized itself with the nature and extent of the interior Build Out of the Concession Facility which is to occur once a Notice To Proceed is issued. LICENSEE will perform work in accordance with any and all local conditions, laws and regulations that may affect cost, progress, performance or furnishing of the work.

The LICENSEE assumes responsibility for all conditions which pertain to the physical conditions of the facility or which otherwise may affect the cost, progress, performance or furnishing of the Work and declares it is fully capable of performing the project within the required time frames agreed to.

The LICENSEE shall fully complete all interior build out work necessary to achieve a Certificate of Occupancy within one hundred twenty (120) days from the date the Notice To Proceed is issued.

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

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

## **ARTICLE 9**

### **LICENSEE'S PRODUCTS, OPERATIONS AND SERVICES**

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

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

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

LICENSEE shall provide and maintain a temporary concession facility with limited food, beverage and retail offerings from the effective date of this Agreement until such time as a Certificate of Occupancy is issued for the renovated concession facility.

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

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

The LICENSEE shall have on site a full-time qualified, experienced Manager for its operations at the Facilities. LICENSEE'S Manager will have no other off site duties or responsibilities and will be physically available during reasonable operating hours. Upon COUNTY'S request, the qualifications of LICENSEE'S Manager shall be submitted to the COUNTY. During the hours when the Manager is not on duty or available, there shall be an Assistant Manager on duty designated by the LICENSEE. The Manager and Assistant Manager shall each be an authorized representative of the LICENSEE and be entitled to act in all matters relating to the Services provided hereunder. LICENSEE and its hired Management shall, in addition to their

onsite duties, engage in community outreach including establishing relationships with local elected officials, local law and code enforcement staff, the beach business community, and local residents, so as to ensure open lines of communications with these stakeholders, and to improve the concessions status as “good neighbor” in the community. The COUNTY shall be advised in writing of the names and contact information of the Manager(s) and Assistant Manager(s) prior to contract commencement and shall be promptly notified of any changes in Management.

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

Where LICENSEE offers the sale of bait and tackle and kayak rentals, it must do so only in the designated bayside area of the park and only north of the south boat ramp. LICENSEE shall prioritize establishing its kayak operations so as to have them operational as soon as practicable after the effective date. Life preservers in the appropriate size must accompany every rental. In addition to the other leased premises covered in this agreement, LICENSEE is authorized to make non-exclusive use of that certain storage structure shown on Exhibit “A” as Building 603 for storage of rental items or other non-hazardous supplies related to concession operations.

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

LICENSEE shall properly, adequately and securely store any items for rent in a manner that is compliant with all local ordinances.

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

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

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

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

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

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

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

## **ARTICLE 10**

### **SALE OF ALCOHOLIC BEVERAGES**

LICENSEE'S sale of alcoholic beverages is subject to:

- a. Sales shall be conducted in conformity with any controlling municipal or County ordinance and state laws, rules or regulations;
- b. Sales shall be limited to beer, wine and alcoholic beverages as permitted under a 2COP state beverage license and sold for on-premises consumption only;
- c. Prior to commencing any such sales, LICENSEE shall obtain any required licenses, and shall provide a copy of said license and all renewals to COUNTY;
- d. All alcoholic beverages shall be sold in appropriate containers and LICENSEE shall be responsible for the proper disposal of said containers;
- e. LICENSEE's conduct and operation in connection with any such sales is subject to, and shall be conducted by LICENSEE in compliance with all other applicable terms and conditions of the Agreement; and
- f. The County Commission may withdraw authorization to sell alcoholic beverages by providing notice to LICENSEE at least ninety (90) days prior to the effective date of

such action. The Parties agree if this right is exercised, LICENSEE is entitled to open negotiations to discuss revision of the base compensation due to COUNTY.

- g. All employees of LICENSEE may not sell or serve alcoholic beverages unless trained and qualified as required by State law or regulation.

## **ARTICLE 11**

### **LIABILITY FOR DAMAGE, INDEMNITY, AND INSURANCE**

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

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

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

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

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

Comprehensive General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage. Coverage must be afforded on a form filed and approved by the Federal Department of Insurance (FDI) and must include:

- a. Premises and/or Operations.
- b. Independent Contractors. COUNTY is to be included as an “Additional Insured” in the name of “Manatee County Board of County Commissioners”, with respect to liability arising out of Facilities’ operations performed for COUNTY by or on behalf of LICENSEE or acts of omissions of COUNTY in connection with general supervision of such Facilities’ operations.

Business Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Agreement in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage. Coverage must be afforded on a form filed and approve by the Federal Department of Insurance (FDI).

Worker’s Compensation Insurance – as required by the Worker’s Compensation Law of the State of Florida.

The insurance coverage required shall include those classifications, as listed in standard liability manuals, which most nearly reflect the operations of LICENSEE. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with an A.M. Best rating of A or better. Certificates will provide that no modification or change in insurance shall be made without a 30-day written advance notice to the certificate holder (Manatee County) and approval by the COUNTY.

LICENSEE shall provide to COUNTY prior to commencement of this Agreement, Certificates of Insurance evidencing the insurance coverage as specified above. If the initial insurance period expires prior to the completion of the Agreement, renewal Certificates of Insurance shall be furnished 30 days prior to the date of expiration of any insurance coverage. Insurance shall not be canceled without 30 days prior written notice to COUNTY, and must be endorsed to provide the same. Failure of LICENSEE to obtain and maintain proper amounts and types of insurance under this Agreement shall constitute material breach of this Agreement by LICENSEE.

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

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



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

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

PERFORMANCE BOND – The LICENSEE shall furnish a Performance Bond with a surety acceptable to the COUNTY, in an amount of ten thousand dollars (\$10,000). This Performance Bond will be conditioned solely upon the LICENSEE's full and faithful performance of the capital improvements required as outlined in Exhibit "B". The Performance Bond will be submitted to the COUNTY before the LICENSEE's commencement of operations at the Facilities. The LICENSEE may, in lieu of the Performance Bond, deposit with the COUNTY a cash deposit or irrevocable letter of credit in the amount of ten thousand dollars (\$10,000). LICENSEE shall be entitled to a release of the Performance Bond, cash deposit or irrevocable letter of credit, as applicable, once it has performed the first and second year work required as outlined in Exhibit "B".

## **ARTICLE 12**

### **OWNERSHIP OF RIGHTS, SALE OR ASSIGNMENT**

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

LICENSEE shall not, without prior written consent of the COUNTY, sell, assign, pledge, transfer or otherwise encumber this Agreement or the rights granted therein. Assignment, pledging, sale, transferring, or encumbering of any interest in or under this Agreement or the rights thereunder, to anyone other than the LICENSEE, without the prior written consent of the COUNTY, shall be grounds for immediate termination of this Agreement.

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

## **ARTICLE 13**

### **APPROVALS**

Except as provided otherwise, whenever any prior approval is required by either party, such approval shall not be unreasonably withheld. COUNTY shall retain broad discretion over matters pertaining to creating and maintaining the unique local character of the Facilities, the

protection and preservation of the Facilities and the Park, the public interest and limited purpose for which this concession has been granted, and withholding approvals for the foregoing reasons shall be considered reasonable. Matters requiring the consent of the COUNTY are wholly within the discretion of the COUNTY.

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

- a. COUNTY Modifications to the Facilities.
- b. Equipment LICENSEE installs or plans to install requiring any building modifications.
- c. Any COUNTY or municipally-installed signs or logos.
- d. Vegetation or beach topography.

## **ARTICLE 14**

### **NOTICES**

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

**FOR MANATEE COUNTY:**

Parks Director  
MANATEE COUNTY GOVERNMENT  
PO Box 1000  
Bradenton, FL 34206

**With a copy to:**

County Administrator  
MANATEE COUNTY GOVERNMENT  
PO Box 1000  
Bradenton, FL 34206

**FOR ACH remittance information:**

Email: cindy.turner@mymanatee.org  
Fax: 941.742.5972

**FOR LICENSEE:**

Mr. Alan Kahana, President  
UNITED PARK SERVICES, INC.  
PO Box 260633  
Tampa, FL 33685-0633

**With a copy to:**

Kay J. McGucken  
Kay J. McGucken, P.A.  
1320 9<sup>th</sup> Avenue, Suite 210  
Tampa, FL 33605

## **ARTICLE 15**

### **TERMINATION**

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

Institution of proceedings in voluntary bankruptcy by the LICENSEE.

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

Assignment by the LICENSEE for the benefit of creditors.

Abandonment or discontinuance of operations hereunder.

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

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

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

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

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

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

The conduct of any activity or the sale of any product or service category not authorized herein.

TERMINATION FOR PUBLIC CONVENIENCE. COUNTY shall have the right to terminate this Agreement for public convenience upon at least 120 days notice to LICENSEE.

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

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

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

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

## **ARTICLE 16**

### **ENTIRE AGREEMENT AND AMENDMENTS**

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

## ARTICLE 17

### MISCELLANEOUS PROVISIONS

**No Waiver.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision of any portion of this License Agreement, either at the time the breach or failure occurs, or at any time throughout the term of this Agreement.

**Subcontracting.** The LICENSEE shall not sub-contract, sublet, assign or transfer any duty under this Agreement to another party without the prior written consent of the COUNTY.

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

**Force Majeure.** Neither Party shall be in default of its obligations hereunder to the extent that performance of such obligations or any of them is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, hurricane, or other disruptive event of nature, act of terrorism, explosion, oil spill reaching Manatee County waters, lack of or failure of transportation or bridge/roadway facilities, any law, proclamation, regulation, ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause, whether or not enumerated in this Article, is beyond the control and without the fault of the party seeking relief under this Article. In the event that an event covered herein and/or the concession site falls under a declared state or local emergency as provided for by Florida Statutes or the Manatee County Code, the only compensation that shall be paid shall be eight (8%) of gross daily sales based on a per day calculation.

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

**Frequent Customer Appreciation.** LICENSEE will implement a program to reward regular/frequent visitors though discounts, free items or the like.

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

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

**Community Involvement.** LICENSEE will work to create a "Friends of Coquina Beach" organization whose mission is the preservation of the Park's history, environmental and leisure activities.

**Facility Name and Logo.** COUNTY reserves the right to approve the name of the facility and any related logo design. Said name and logo design shall be property of the COUNTY.

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

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

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

**Public Records.** By accepting award of this Agreement, LICENSEE acknowledges that the portion of its books and records related to its contracting activities with COUNTY may become subject to inspection and copying under the Florida Public Records Act, and that it will in all respects comply with any requirements of that Act.

**Public Entity Crimes.** LICENSEE has been made aware of the Florida Public Entity Crimes Act, § 287.133, Florida Statutes, specifically section 2(a), and the COUNTY'S requirement that the LICENSEE comply with it in all respects prior to and during the term of this Agreement.


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

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

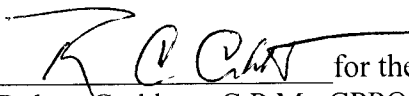
**Severability.** The provisions of this Agreement are declared by the parties hereto to be severable. In the event any term or provision of this Agreement shall be held invalid by a Court of competent jurisdiction, such invalid term or provision should not affect the validity of any term or provision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

WHEREFORE, the Parties have made and executed this Agreement for concessions at Manatee Beach as of the effective date stated herein.

**UNITED PARK SERVICES, INC.**

By:   
Alan Kahana, President

**MANATEE COUNTY GOVERNMENT**

By:  for the County  
Robert Cuthbert, C.P.M., CPPO  
Purchasing Official