

CONCESSION AGREEMENT – AMENDMENT #1
(De Leon Springs State Park)

THIS AMENDMENT #1 TO CONCESSION AGREEMENT (“Amendment #1”) is entered into between the State of Florida Department of Environmental Protection (“Department”), an agency of the State of Florida, through its Division of Recreation and Parks (“Division”), an Agency of the State of Florida, and Schwarze Enterprises, Inc. (“Concessionaire”) organized as a Florida Profit Corporation.

RECITALS

WHEREAS, on or about October 1, 2017, the Department and Concessionaire entered into a Concession Agreement (DEP Agreement No. CA-1417) (the “Concession Agreement”); and

WHEREAS, pursuant to the Concession Agreement, the Concessionaire agreed to provide certain goods and services at De Leon Springs State Park (the “Park”), as such goods and services are more particularly described in the Concession Agreement; and

WHEREAS, the Original Concession Agreement as modified by the Amendments, and all exhibits/attachments referenced therein (collectively, the “Agreement”), is incorporated in this Amendment #1 by reference.

NOW, THEREFORE, the parties hereby mutually agree as follows:

1. Recitals:

The Recitals are true and correct and are incorporated herein by reference.

2. Modifications to the Agreement:

- a. Compensation: Paragraph F of the Agreement is hereby deleted in its entirety and replaced with the following language:

F. Compensation. The Concessionaire will pay the Department a commission fee based on the following schedule and the Special Conditions, Section F, and General Conditions, Sections 17 and 18 herein:

1. Compensation Period 1: From October 1, 2017 through September 30, 2019 (“Compensation Period 1”), Concessionaire will remit a commission equal to 10% of Total Gross Sales each month but not less than \$124,000 annually (“Period 1 Minimum Guarantee”), plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages).
2. Compensation Period 2: From October 1, 2019 through September 30, 2020 (“Compensation Period 2”), Concessionaire will remit a commission equal to 10% of Total Gross Sales each month but not less than \$77,500 annually (“Period 2 Minimum Guarantee”), plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages).

3. Compensation Period 3: From October 1, 2020 through September 30, 2022 ("Compensation Period 3"), Concessionaire will remit a commission equal to 10% of Total Gross Sales each month, but not less than \$75,000 ("Period 3 Minimum Guarantee") annually, plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages).

Each of the Period Minimum Guarantees listed above constitutes the minimum fee due each twelve-month period in each of the Compensation Periods. The Department will determine if an amount is owed by comparing the amount of commission fees paid for each 12-month period within each Compensation Period listed above to the corresponding Period Minimum Guarantee. If a shortfall exists, the Department will notice the Concessionaire of the amount owed within 90 days of the end of the 12-month period. The Concessionaire will remit any shortfall within fifteen (15) days of receiving a notice from the Department.

The Concessionaire will not be required to pay the full Minimum Fee during any period of time in which: (a) the Park is closed, or (b) other Force Majeure Event (defined below) prevents Concessionaire from conducting its operations; in which event the Minimum Fee will be reduced by a fraction, the numerator of which is the number of days such events prevent Concessionaire from conducting its operations in the Park and the denominator of which is 365.

"Total Gross Sales," for the purpose of this Agreement, shall be defined as all sales of goods, merchandise, food, vending and services generated as a result of the Concessionaire's operations at or associated with the Park. This includes all sales made or advertised within the Park, advertised on the Concessionaire's website associated with the Park, transactions conducted through the point of sale and bank accounts utilized by the Concessionaire for its Park operations, and sales generated by subcontractors or related entities whose sales are associated with the Concessionaire's authorized operations at the Park. Total Gross Sales shall not include:

1. tax collections, or
2. gratuities, or
3. pass through fees, which include:
 - a. admission fees collected by the Concessionaire on behalf of the Department, and
 - b. events fees collected by the Concessionaire on behalf of the Department, and
 - c. security fees collected by the Concessionaire to pay Park staff on behalf of the Department; or
4. funds that were collected but have been refunded to the customer.

Sales of goods and services and collections of sales tax shall be accounted for separately at the point of sale. If the Concessionaire is unable to do this, it shall calculate sales tax from gross receipts using a method approved by the Florida Department of Revenue."

- b. Notices: Paragraph G of the Agreement is hereby deleted in its entirety and replaced with the following language:

G. Notices. All notices and written communication between the Department and Concessionaire shall be sent by electronic mail, U.S. Mail, a courier delivery service or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by the recipient. All notices required by this Agreement shall be in writing and shall be delivered to the parties at the following addresses:

Concessionaire
John Michaelos,
Schwarze Enterprises, Inc.
PO Box 1273
De Leon Springs, Florida 32130

Department
Kenneth Torres, Park Manager
De Leon Springs State Park
601 Ponce de Leon Boulevard
De Leon Springs, Florida 32130

With a copy to:
Operational Services, Bureau Chief
3900 Commonwealth Boulevard, MS 535
Tallahassee, Florida 32399-3000
FPS.Concessions@FloridaDEP.gov

The Concessionaire shall inform the Department or its designee in writing within 30 days of any change to its name, business organization, ownership, address, Registered Agent, or other contact information.

- c. Agreement Managers: Paragraph H of the Agreement is hereby deleted in its entirety and replaced with the following language:

H. Agreement Managers. Kenneth Torres, Park Manager, who can be reached by telephone at (386) 985-4212 or by email at Ken.Torres@dep.state.fl.us, or his successor, is hereby designated as the Department's Agreement Manager. The Agreement Manager for the Concessionaire is John Michaelos, who can be reached by telephone at (386) 985-5644 or by email at sugarmill100@gmail.com.

- d. Concessionaire employee standards: Paragraph 16 of the Agreement is hereby deleted in its entirety and replaced with the following language:

16. Concessionaire employee standards. The Concessionaire will provide continual training and evaluation of all employees assigned to the Concessionaire's Service operations to ensure an appropriate level of proficiency, a public service attitude, and a good understanding of the principles of hospitality. All Concessionaire's employees and/or those acting on behalf of or providing services under the supervision of the Concessionaire will be required to wear a visitor service uniform and name tag while on duty in the Park. The Concessionaire will obtain written pre-approval from the Park Manager for all service uniforms and name tags. The Concessionaire has a duty to replace any employee and/or those persons acting on behalf of or providing services under the supervision of the Concessionaire if the Park Manager so requests. No Department employee or close relative of a Department employee is permitted to be employed by the Concessionaire or a subcontractor, or otherwise compensated by the Concessionaire or a subcontractor, without the prior written approval of the Department's Bureau of Human Resources Management and the Office of General Counsel.

- e. Accounting: Paragraph 18 of the Agreement is hereby deleted in its entirety and replaced with the following language:

18. Accounting. Accounting requirements will be as follows:

a. Minimum accounting requirements including subcontractors and audit. The Concessionaire will comply with, and document compliance with, the Minimum Accounting Requirements detailed in Exhibit C, attached hereto and incorporated herein by reference. The

Concessionaire will establish and maintain books, records, and documents directly pertinent to performance under this Agreement in accordance with the Minimum Accounting Requirements and with the generally accepted accounting principles, which will be consistently applied. The Department, and other appropriate government agencies, or their authorized representatives, as provided by law, will have access to all such records for audit purposes during the term of this Agreement and for five years following the Agreement's expiration or termination. Audits will be conducted at locations and at a frequency determined by the Department or other state agency and communicated to the Concessionaire. The Concessionaire will provide materials for the audit at the designated place within 15 days after the Department's or other government agency's notice is received. In addition, the Department may require the Concessionaire to procure an annual financial audit of the Concessionaire's operations conducted by a Certified Public Accountant, at the Concessionaire's sole cost and expense. If requested, the Concessionaire agrees such an audit will be conducted in accordance with generally accepted auditing and accounting principles and will be completed within a reasonable time frame, which will not be set at less than 60 days by the Department.

b. Monthly report of Total Gross Sales. The Concessionaire will provide to the Department a Monthly Report of Concessionaire's Total Gross Sales, which will include gross sales attributable to any and all subcontracts, in the form attached hereto as Exhibit D and incorporated herein by reference. Each monthly report will contain the required detail based upon Total Gross Sales for such month by point of sale. The Concessionaire will deliver such report and required payment(s) to the Park Manager no later than the 20th day of the succeeding month.

c. Annual Profit and Loss Statement. The Concessionaire will provide an Annual Profit and Loss Statement to the Department, in the form attached hereto as Exhibit E and incorporated herein by reference. Such statement will include the results of the Concessionaire's operations pursuant to this Agreement for each calendar year or portion thereof for which this Agreement is in effect. The statement will be delivered to, or sent so it is received by, the Park Manager no later than June 30th of the succeeding calendar year, or within 90 days of the expiration or termination of this Agreement, whichever is sooner.

d. Books of original entry. Both the monthly reports of Total Gross Sales and the Annual Profit and Loss Statements will be based on source documents and books of original entry. The Concessionaire will retain books of original entry and source documents for five years, or until final resolution of matters resulting from any litigation, claim, or audit that started prior to the expiration of the five year retention period, whichever is later. The retention period commences from the date of submission of the last annual profit and loss statement required in Paragraph 18 c. above.

e. Limited Engagement document. If annual Total Gross Sales from the Concessionaire's operations under this Agreement exceed \$400,000, the Concessionaire will obtain and submit, at its sole cost and expense, a limited engagement document, prepared in accordance with the Agreed - Upon Procedures for a Certified Public Accountant as stated in Exhibit F, attached hereto and incorporated herein. Such limited engagement document will be conducted in accordance with generally accepted auditing and accounting principles. This limited engagement document will be submitted to the Park Manager no later than June 30th of the following calendar year or within 120 days after the expiration or termination of this Agreement, whichever is sooner.

f. Revenue subject to sales tax. The Concessionaire's revenue is subject to State Use Tax, unless the Concessionaire is exempt from paying such tax on commission fees to

the Department. If it is tax exempt, the Concessionaire will provide verification of its tax exempt status by completing the State Use Tax Exempt Certification form attached hereto as Exhibit G and incorporated herein by reference. The Concessionaire will provide its completed Certification form to the Department contemporaneously with its delivery of the executed Agreement to the Department.

g. Purchasing card industry ("PCI"). The Concessionaire will be responsible for complying with the PCI Data Security Standards ("PCI DSS"), which include a set of comprehensive requirements for enhancing payment account data security, at the Concessionaire's sole cost and expense. The PCI DSS standards can be found at the PCI Security Standards Council website, which is linked through: <https://www.pcisecuritystandards.org/>. Additional information can be obtained through the Florida Department of Financial Services ("DFS"), which coordinates the State of Florida's efforts directly with the PCI Security Standards Council. The Concessionaire will ensure that the required data security measures are in place no later than 60 days after the execution of this Agreement or prior to the commencement of operations, whichever is sooner, by submitting a completed Self-Assessment Questionnaire ("SAQ") to the Park Manager. The Concessionaire will submit an updated SAQ to the Park Manager annually on the anniversary of the commencement date through the expiration or termination of this Agreement. The SAQ can be found on the PCI DSS website listed above. During the term of this Agreement, it will be the Concessionaire's responsibility to be apprised of any subsequent version, modification, amendment, or update of the PCI DSS, and, if necessary, in order to comply with the most current version of the PCI DSS, to modify its annual SAQ as it pertains to its operations under the Agreement, at the Concessionaire's sole cost and expense.

f. Force majeure event: Paragraph 26 of the Agreement is hereby deleted in its entirety and replaced with the following language:

26. Force majeure event. A force majeure event is an act of God or nature, a strike, lockout or other industrial disturbance, and act of a public enemy, war, blockade, public riot, lightning, fire, flood, explosion, failure to receive timely necessary government or third party approvals, government restraint, pandemic disease, terrorism, threat to homeland security, tornado, hurricane or other severe storms, civil commotion, criminal activity, or any other cause that is not reasonably within the control of the Concessionaire. The following do not constitute force majeure events: (1) failures by the Concessionaire's subcontractor to perform; (2) business losses; or (3) equipment failures.

A force majeure event does not relieve the Concessionaire of any terms of this agreement that can be performed. No commission payment or Utility fees payable to the Department from the Concessionaire will be due for the period during which its operations are totally suspended because of a force majeure event.

The Concessionaire hereby waives all claims for compensation arising from loss or damage sustained from a force majeure event that takes place in or affects the Park, except as outlined in Paragraph F of the Special Conditions of this Agreement. If a force majeure event causes delay or a reasonable likelihood of delay in the Concessionaire's performance, the Concessionaire will promptly notify the Department's Agreement Manager orally, and, within seven calendar days, notify the Department's Agreement Manager in writing of the anticipated length and cause of the delay, the measures to minimize the delay, and the Concessionaire's timetable for implementing these measures. If the parties agree that a delay or anticipated delay has been or will be caused by a force majeure event, time for performance of this Agreement may be extended for a period equal to the delay resulting from the force majeure event. Except as outlined in Paragraph F of

the Special Conditions of this Agreement, such extension is the Concessionaire's sole remedy under this Agreement for a delay caused by a force majeure event. The extension will be confirmed by an amendment to this Agreement, reduced to writing and executed by both parties.

- g. Sexual predator and offender check: Paragraph 35 of the Agreement is hereby deleted in its entirety and replaced with the following language:

35. Sexual predator and offender investigation. The Concessionaire will not employ within the Park any person who is listed on either the sexual predator or sexual offender list maintained by the Florida Department of Law Enforcement ("FDLE") or maintained by the U.S. Department of Justice's Dru Sjodin National Sex Offender Public Website ("NSOPW").

- a. The Concessionaire will conduct a sexual predator and sexual offender investigation on all employees and subcontractors prior to executing this Amendment #1. The Concessionaire will conduct a sexual predator and sexual offender investigation on all employees and subcontractors hired subsequent to execution of this Amendment #1. The Concessionaire will keep a copy of its investigation records in the Concessionaire's personnel files and have those files available to the Department during the Concessionaire's regular office hours.
- b. At the Department's election, the Concessionaire will at its sole cost and expense, conduct criminal and civil, and sexual predator and sexual offender background investigations on all officers prior to executing this Agreement. The Concessionaire will at its sole cost and expense, conduct criminal and civil and sexual predator and sexual offender background investigations on all officers elected, hired or otherwise taking office subsequent to execution of this Agreement. All background investigations of the Concessionaire's officers required under the provisions of this paragraph will be conducted by an independent third-party entity and the Concessionaire will authorize the investigating entity to release the investigation results directly to the Department's Agreement Manager.
- c. If the Concessionaire or any subcontractor employs a sexual predator or sexual offender or fails to perform the required research of the FDLE list or the NSOPW, the Department may immediately terminate the Agreement for cause.
- d. The Concessionaire will be responsible for including all of the provisions of this paragraph in all subcontracts entered into under the Agreement.

- h. Safety Plan: Paragraph 7. in Exhibit A of the Agreement is hereby deleted in its entirety and replaced with the following language:

7. Safety Plan: Prior to commencing operations under this Agreement, the Concessionaire will provide a draft Safety Plan to be evaluated by the Department's Safety Officer and Department's Agreement Manager. The Concessionaire will implement a final Safety Plan incorporating the District's and Department's Agreement Manager's comments. The Safety Plan will be revised at least once a year before the Agreement anniversary date, prior to the commencement of any new services, or as otherwise requested by the Department, and the Concessionaire will submit the proposed revision to the Department's Safety Officer and Department's Agreement Manager for evaluation and approval. The Safety Plan will include guidelines for all aspects of the Concessionaire's operation, with special attention to traffic control, first aid, security, fire prevention, health safety and water related activities and

equipment. A section of the Safety Plan will be devoted to Emergency Action, which will cover proper preparations and responses to all natural and human-caused emergencies.

- i. Minimum Accounting Requirements: The following language is added to Paragraph A of Exhibit C of the Agreement:

10. If receipts exceed \$2,000.00, they will be deposited intact daily. If receipts do not exceed \$2,000.00 a day, they will be deposited intact periodically, which will be no more than a five-day working period. Un-deposited receipts will be stored in a secure manner – a safe is preferable. Validated deposit slips and bank statements supporting amounts deposited will be retained by the Concessionaire.

3. Ratification:

Except as modified by this Amendment #1, the Agreement remains in full force and effect and is hereby ratified and confirmed. This Amendment #1 shall be attached to and incorporated into the Agreement. In the event of a conflict between the Agreement and this Amendment #1, this Amendment #1 shall control. Henceforth, the term "Agreement" shall mean the Agreement as further amended by this Amendment #1.

4. Execution in Counterparts:

This Amendment #1 may be executed in two identical counterparts, each of which shall be deemed an original. The two, executed, identical counterparts shall constitute this Amendment #1. If any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof. Any party transmitting an electronic signature shall provide the inked original thereof to the receiving party, at the receiving party's request.

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WHEREFORE, the parties hereto have caused this Amendment #1 to be executed as of the day and year last set forth below.

CONCESSIONAIRE:

SCHWARZE ENTERPRISES, INC. A
FLORIDA PROFIT CORPORATION

By: 

President or Authorized Representative

Printed Name: John Michaelos

Title: President

Date: 12-21-20

DEPARTMENT:

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: 

Secretary's signature or designee

Printed Name: Emile D. Hamilton

Title: Deputy Secretary

Date: 01/19/2021