

**CONCESSION AGREEMENT AMENDMENT #1**

(Bill Baggs Cape Florida 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, by and through its Division of Recreation and Parks ("Division"), and Lighthouse Café, Inc. ("Concessionaire").

**RECITALS**

WHEREAS, on or about September 18, 2015, the Department and Concessionaire entered into DEP Agreement No. CA-0715 (the "Original Concession Agreement").

WHEREAS, pursuant to the Original Concession Agreement, the Concessionaire agreed to provide certain goods and services at Bill Baggs Cape Florida State Park (the "Park"), as such goods and services are more particularly described in the Original Concession Agreement.

WHEREAS, the Original Concession Agreement 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. Utilities: Paragraph D.2. of the Agreement is hereby deleted in its entirety and replaced with the following language:

"2. Water/Sewer: The Department will be responsible for fees associated with water and sewer."

- b. Public Records: Paragraph 26 of the Agreement is hereby deleted in its entirety and replaced with the following language:

"26. Public records.

a. Concessionaire will comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section 119.011(12), F.S. Concessionaire will keep and maintain public records required by the Department to perform the services under this Agreement.

b. This Agreement may be unilaterally canceled by the Department if the Concessionaire fails to either provide to the Department all public records relating to this Agreement upon request or allow the records to be inspected or copied within a reasonable time.

c. If Concessionaire meets the definition of "Contractor" found in Section 119.0701(1)(a), F.S.; [i.e., an individual, partnership, corporation, or business entity that enters

into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:

1. Pursuant to Section 119.0701, F.S., a request to inspect or copy public records relating to this Agreement must be made directly to the Department. If the Department does not possess the requested records, the Department will immediately notify the Concessionaire of the request, and the Concessionaire must provide the records to the Department or allow the records to be inspected or copied within a reasonable time. If Concessionaire fails to provide the public records to the Department within a reasonable time, the Concessionaire may be subject to penalties under s. 119.10, F.S.
2. Upon request from the Department's custodian of public records, Concessionaire will provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
3. Concessionaire will identify and ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the Term of the Agreement and following completion of the Agreement if the Concessionaire does not transfer the records to the Department.
4. Upon completion of the Agreement, Concessionaire will either transfer, at no cost to the Department, all public records in possession of Concessionaire or keep and maintain public records required by the Department to perform the Services under this Agreement. If the Concessionaire transfers all public records to the Department upon completion of the Agreement, the Concessionaire will destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the Agreement, the Concessionaire will meet all applicable requirements for retaining public records. All records that are stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is accessible by and compatible with the information technology systems of the Department.

**d. IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS by telephone at (850) 245-2118, by email at [ombudsman@dep.state.fl.us](mailto:ombudsman@dep.state.fl.us), or at the mailing address below:**

**Department of Environmental Protection  
ATTN: Office of Ombudsman and Public Services  
Public Records Request  
3900 Commonwealth Blvd, Mail Slot 49  
Tallahassee, FL 32399"**

- c. Services: Paragraph 2.a. of Exhibit A is hereby deleted in its entirety and replaced with the following language:
- a. Food and Beverage Services:  
Locations for Food and Beverage Services will be pre-approved, in writing, by the Department. The Concessionaire will provide prepared and prepackaged food and beverage service, including, but not limited to: meal items, non-alcoholic beverages, alcoholic beverages, snacks, ice cream and other similar items according to the following conditions:
- 1) The Concessionaire will maintain a standard menu with prices that will be preapproved, in writing, by the Department.
  - 2) Alternative menu items such as vegetarian and gluten-free options are encouraged, if viable.
  - 3) The Concessionaire will not use individually packaged condiment packs, Styrofoam serving containers, or straws.
  - 4) The Concessionaire will meet all applicable federal, state, and local regulations governing concession food service, the Florida Department of Health, Food Safety and Sanitation regulations, the Department of Business and Professional Regulation (DBPR) mandates, which includes inspection and regulation of food service establishments in Florida under Chapter 509, Florida Statutes, and Florida Administrative Code, Rule 61C-4. For additional information, visit websites: Florida Department of Health: <http://www.floridahealth.gov/> and Department of Business and Professional Regulation: <http://www.myfloridalicense.com/dbpr/>.
  - 5) The Concessionaire will meet inspection standards set by the Florida DBPR Routine Food Inspections, and the Fire Marshal. If there is a report of a violation, the Concessionaire will correct the violation in a timely manner and prior to the next routine inspection. For more information, please visit the website: <http://www.myfloridalicense.com/dbpr/index.html>.
  - 6) **Alcoholic Beverages Requirements**  
The Concessionaire may sell alcoholic beverages with written pre-approval from the Department. In the event the Department authorizes the sale of alcohol, the Concessionaire will comply with the following:
    - a. The Concessionaire will obtain an alcoholic beverage license from DBPR, Division of Alcoholic Beverages and Tobacco prior to selling any alcoholic beverage at the Park;
    - b. The Concessionaire will be responsible for complying with Chapters 561, 562, 563 and 564, Florida Statutes, and Rule 61A-3, Florida Administrative Code, the Division's Operations Manual, and Miami-Dade County Ordinances that regulate the alcoholic beverage licenses; and

- c. Prior to serving alcoholic beverages, Concessionaire will submit a written plan of action, including hours of service and control methods, to the Park Manager for approval.
  - 7) The Concessionaire may provide food and beverage sales via mobile carts. Mobile cart locations and menus will be pre-approved, in writing, by the Department.
  - 8) This Agreement will not preclude Park personnel or visitors from using alternate sources of food, such as bringing their own or having events catered, should they so desire.
- d. Capital Improvement Account: Paragraph 8. is added to Exhibit B of the Agreement to read:

"8. In addition to the Capital Improvement Costs, the Concessionaire will establish a Capital Improvement Account ("CIA"), to create a fund for future capital improvements. From December 1, 2017 until September 30, 2025, the Concessionaire will deposit at least one and a half (1.5%) percent of monthly total gross sales for all operations in the Park into the CIA, no later than the twentieth (20th) day of the following month. Disbursements from the CIA require written pre-approval from the Department. Disbursement decisions will be made jointly by the Concessionaire and the Department. CIA funds will not be used for routine maintenance, but will be used for major capital repairs, replacements, or improvements. All funds in the CIA must be expended on or before September 30, 2025. Upon Termination or expiration of this agreement for any reason, any remaining funds in the CIA will be forfeited by the Concessionaire and remitted to the Department and the CIA will be closed with a zero balance."

- e. Monthly Report of Concessionaire's Total Gross Sales: Exhibit D of the Concession Agreement is hereby deleted in its entirety and replaced with Exhibit D-2 attached hereto and incorporated herein.

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 will be attached to and incorporated into the Agreement. In the event of a conflict between the Agreement and this Amendment #1, this Amendment #1 will control. Henceforth, the term "Agreement" means the Agreement as further amended by this Amendment #1.

4. Merger:

The Agreement constitutes the entire agreement between the parties with respect to the Concessionaire's services at or within the Park, and integrates all understandings and agreements between the parties, whether oral or written, with respect thereto. The Agreement supersedes any prior agreement regarding the Concessionaire's services at or within the Park and may not be modified except by written instrument signed by both the Department and the Concessionaire.


5. Execution in Counterparts:

This Amendment #1 may be executed in two identical counterparts, each of which will be deemed an original. The two, executed, identical counterparts will 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 will 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 will provide the inked original thereof to the receiving party, at the receiving party's request.

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

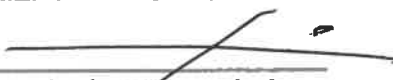
LIGHTHOUSE CAFÉ, INC., A FLORIDA CORPORATION

By:   
Authorized Representative

Printed Name: S. David Gonzalez  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:   
Secretary's signature or designee

Printed Name: Noah Valenstein  
Title: Secretary

Date: 10/29/18

Approved as to form and legality:

  
DEP Attorney

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**EXHIBIT D-2**

**Monthly Report of Concessionaire's Total Gross Sales**  
 (Due by the 20<sup>th</sup> of each month)

Park: \_\_\_\_\_ Date: \_\_\_\_\_

Concessionaire Name: \_\_\_\_\_

Period Covered: From \_\_\_\_\_ To \_\_\_\_\_

**Gross Sales**

Sale Location(s): \_\_\_\_\_ \$ \_\_\_\_\_  
*If there are multiple point of sale locations, please include the total sales for all locations on this line; and, list the name and total sales of each location on an attached second sheet.*

Subcontractor(s): \_\_\_\_\_ + \$ \_\_\_\_\_  
*Subcontractor is defined in paragraph 11 of this Agreement. If there are multiple subcontractors, please include the total gross sales for all subcontractors on this line; and, list the name and total gross sales of each subcontractor on an attached second sheet.*

Total Taxes Collected: - \$ \_\_\_\_\_

Total Funds from Concessionaire Employee Food Consumption: - \$ \_\_\_\_\_

Total Customer Refunds: # of Refunds: \_\_\_\_\_ - \$ \_\_\_\_\_

**Total Gross Sales** = \$ \_\_\_\_\_**Monthly Compensation**

Monthly Commission (\_\_\_\_ % rate x Total Gross Sales) \$ \_\_\_\_\_

State Use Tax (\_\_\_\_ % rate x Monthly Commission) + \$ \_\_\_\_\_

State Use Tax Exempt Amount (enter \$0.00 if not exempt) - \$ \_\_\_\_\_

Monthly Vending Machine Fee: # of Machines: \_\_\_\_\_ + \$ \_\_\_\_\_

Monthly Utility Fee(s) to Park + \$ \_\_\_\_\_

Pass through fee Pavilion rentals + \$ \_\_\_\_\_

Other Payments (identify) \_\_\_\_\_ + \$ \_\_\_\_\_

**Total Monthly Compensation Due:** = \$ \_\_\_\_\_**Capital Improvement Account**

Monthly Deposit Amount: \_\_\_\_ % x Total Gross Sales \$ \_\_\_\_\_

Monthly Spending \$ \_\_\_\_\_

Total Deposits, Year to Date \$ \_\_\_\_\_

Total Disbursements, Year to Date \$ \_\_\_\_\_

End of month balance \$ \_\_\_\_\_

**CERTIFICATION:** I certify that this monthly gross sales statement is true and correct and is based upon actual gross receipts for the period covered and recorded in the accounting records available for review/audit by the Department.

\_\_\_\_\_  
Signature of Concessionaire

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Preparer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Preparer Name

Return this form to the Department's Agreement Manager.