

**CONCESSION AGREEMENT – AMENDMENT #2**  
(Bill Baggs Cape Florida State Park)

THIS AMENDMENT #2 TO CONCESSION AGREEMENT (“Amendment #2”) is entered into between the State of Florida Department of Environmental Protection (“Department”), a state agency, by and through its Division of Recreation and Parks (“Division”), 3900 Commonwealth Boulevard, Tallahassee, Florida 32399, and Lighthouse Café, Inc. (“Concessionaire”), organized as a Florida corporation, whose headquarters is located at 1200 Crandon Blvd., Miami, Miami-Dade County, Florida 33149.

**RECITALS**

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

WHEREAS, pursuant to the 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 Concession Agreement; and

WHEREAS, the Concession Agreement, and all exhibits/attachments referenced therein (collectively, the “Agreement”) is incorporated in this Amendment #2 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. Use of Facilities, Space and Equipment. Paragraph B of the Special Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language.

“ B. Use of Facilities, Space and Equipment. The Department will provide to the Concessionaire the following facilities, space, and equipment (“Facilities”) for use during the Term of the Agreement:

1. Beach area between beach access #5 and beach access #7 for the operation of beach chair and umbrella rentals.
2. 5,000 square-feet of area adjacent to a parking area and seven parking spaces for bicycle rental operation.
3. 13,000 square-feet of area including a restaurant building (BL011107) (“Boater’s Grill”) adjacent to the “No Name Harbor” seawall.
4. 13,000 square-feet of area including a restaurant building (BL011111) (“Lighthouse Café”) adjacent to Area C parking lot and south of beach access #6.
5. Additional storage space in the Park’s shop area, as deemed available by the Park.
6. Pavilion/Restroom facility (BL011109).
7. Additional space may be authorized with written pre-approved by the Department.

Except for the Department's specific repair and replacement responsibilities set forth in this Special Condition B, the Concessionaire accepts the Facilities "as is," "where is," and with no warranties as to the fitness of the Facilities for any particular purpose or the suitability of the Facilities for Concessionaire's intended use. Any current maintenance or repair needs which have been specifically identified by the Department are set forth in Exhibit A and shall be remediated by the Concessionaire at the Concessionaire's sole cost and expense. In addition, Concessionaire shall maintain and repair the Facilities pursuant to the maintenance and repair schedule agreed to by and between the Concessionaire and the Department as more particularly detailed in the Repair and Maintenance Plan. Prior to Concessionaire's commencement of operations under this Agreement, Concessionaire must submit and finalize the Repair and Maintenance Plan in accordance with the provisions of Exhibit A. The Concessionaire shall be responsible for and, at minimum, the Repair and Maintenance Plan shall encompass the following:

1. Routine maintenance and repair of the Facilities (including, but not limited to, interior electrical systems, interior plumbing systems, interior drain pipe systems, and interior painting) to keep the Facilities in good appearance and functioning condition; 2.
2. Routine maintenance of the HVAC systems, fire detection systems, cable, Wi-Fi, and security systems (if any), and other similar systems;
3. Cleaning of all restrooms in the Facilities;
4. Damage to Facilities caused by the Concessionaire or its customers, which shall be at the Concessionaire's sole cost and expense;
5. Maintenance, repair, and replacement (if necessary) of Concessionaire's signage; and
6. Nonstructural and/or cosmetic interior improvements to the Facilities, if pre-approved, in writing as by the Park Manager.

All cleaning, maintenance and repair supplies (chemicals and compounds) and all insecticides, rodenticides and herbicides shall be approved by the Park Manager prior to use by the Concessionaire. The Concessionaire shall perform daily removal of litter within 50 feet of the Facilities. All construction or alterations of Facilities must be pre-approved in writing by the Park Manager and the Department, Concessionaire shall deliver a written description and details pertinent to the proposed construction and/or alteration; and if duly approved, Concessionaire may proceed with such work in compliance with all applicable federal, state, and local laws. The Department shall be responsible for the repair and, if necessary, replacement of:

1. The major components comprising the HVAC systems (such as by way of example, the air handler units, compressors, fans, blowers, and evaporator coils), and
  2. The roofs, exterior walls, and other structural elements of the Facilities -- unless such items are in the nature of capital improvements and the parties mutually agree that the repair and replacement thereof shall be undertaken by Concessionaire and the associated expenses included as part of the Concessionaire's Capital Improvements Costs (as defined in Paragraph 8 below)."
- b. Compensation. The following language is hereby deleted from Paragraph F of the Special Conditions of the Agreement:
- "3. Funds collected on food consumed by the Concessionaire's employees, or"
- c. Notices. Paragraph G of the Special Conditions 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 will be sent by electronic mail, U.S. Mail, a courier delivery service or delivered in person. Notices will 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 will be in writing and will be delivered to the parties at the following addresses:

Concessionaire

Jose D. Gonzalez, President  
Lighthouse Café, Inc.  
1200 Crandon Blvd.  
Miami, Florida 33149  
[lh\\_cafe@bellsouth.net](mailto:lh_cafe@bellsouth.net)

Department

Jorge Brito, Acting Park Manager  
Bill Baggs Cape Florida State Park  
1200 S. Crandon Blvd.  
Key Biscayne, Florida 33149  
[Jorge.Brito@FloridaDEP.gov](mailto:Jorge.Brito@FloridaDEP.gov)

With a copy to:

Chief, Bureau of Operational Services  
3900 Commonwealth Blvd. MS 534  
Tallahassee, Florida 32399-3000  
[FPS.Concessions@DEP.State.FL.US](mailto:FPS.Concessions@DEP.State.FL.US)

- d. Monthly fee payment. Paragraph 17 of the General Conditions of the Agreement is hereby renumbered to paragraph 18 and paragraph 17 is replaced with the following language:

“17. Monthly revenue reporting. The Concessionaire will submit the Monthly Report of Concessionaire’s Total Gross Sales (“Monthly Report” detailed in Exhibit D) to the Park Business Development Section by email to [FPS.Concessions@DEP.State.FL.US](mailto:FPS.Concessions@DEP.State.FL.US). The Concessionaire will submit the report(s) to the Park Business Development Section no later than the 10<sup>th</sup> day of each month following the month the Gross Sales were collected by the Concessionaire. The Concessionaire will await confirmation of the Monthly Payment amount by the Park Business Development Section before submitting payment as detailed in paragraph 18 of this Agreement.”

- e. Monthly fee payment. New paragraph 18 of the General Conditions is replaced with the following language:

“18. Monthly fee payment. The Concessionaire will submit the monthly commission fee, plus the State Use Tax and any other fees or payments due (“Monthly Payment”) through the Park Manager. The Concessionaire will submit the funds to the Park Manager no later than the 20<sup>th</sup> day of each month following the month the Gross Sales were collected by the Concessionaire. The Department will assess a late fee in the amount of 1% of the current amount due for each day the Monthly Payment is late. The Department may waive the late fee based on documented circumstances beyond the Concessionaire’s reasonable control. If the Concessionaire fails to submit the Monthly Payment and accumulated late fees within 30 days of the normal monthly payment deadline, the Department may either suspend the Concessionaire’s performance of Services under this Agreement until the Department receives full payment or terminate this Agreement for cause and begin procedures to collect the Security Deposit. When the Department completes a system for accepting electronic payments from concessionaires, the Concessionaire agrees to use the system for making or delivering its monthly payments to the Department.

Concessionaire's agreement to use the system is contingent upon there being no fee or a nominal fee to use the system."

f. Accounting. Old paragraph 18 of the General Conditions of the Agreement is hereby renumbered to paragraph 19, and replaced with the following language:

"19. Accounting. Accounting requirements will be as follows:

a. Minimum Accounting Requirements and Audit Requirements. The Concessionaire and any subcontractors will document compliance with the Minimum Accounting Requirements detailed in Exhibit C. The Concessionaire and any subcontractors will establish and maintain books, records, and documents directly pertinent to performance under this Agreement according to the Minimum Accounting Requirements and with generally accepted accounting principles. The Department and other appropriate government agencies will have access to all records for audit purposes during the Term of this Agreement and for five years following the Agreement's expiration or termination. The Department will conduct audits at locations and at a frequency determined by the Department or other state agency and communicated to the Concessionaire and any subcontractor. The Concessionaire and any subcontractor will provide materials for the audit at the designated place within 20 days after receiving the Department's or other government agency's notice. In addition, the Department may require the Concessionaire, and any subcontractor, to procure an annual financial audit of the Concessionaire's or subcontractor's operations if the appropriate government agency's audit shows that the Limited Engagement document (prepared pursuant to subsection f, below) shows a gross sales discrepancy of greater than five percent (5%) from such agency's audit. The audit will be conducted by a Certified Public Accountant at the Concessionaire's or subcontractor's expense. The Concessionaire agrees the 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 90 days by the Department.

b. Monthly Report of Total Gross Sales. The Concessionaire will provide the Department with a Monthly Report of Concessionaire's Total Gross Sales. This report will include gross sales attributable to all subcontracts and be in the form attached hereto as Exhibit D, as it may be modified by the Department from time to time. Each monthly report will contain the required detail based upon Total Gross Sales for such month by point of sale. The Concessionaire will deliver the report and required payment(s) to the Park Business Development Section by email to [FPS.Concessions@FloridaDEP.gov](mailto:FPS.Concessions@FloridaDEP.gov) no later than the 10<sup>th</sup> day of the succeeding month.

c. Monthly Profit and Loss Statement. The Concessionaire will provide a Monthly Profit and Loss Statement to the Department in the form attached as Exhibit E. Such statement will include the results of the Concessionaire's operations pursuant to this Agreement for each calendar month or portion thereof. The Concessionaire will deliver the statement to the Park Business Development Section by email to [FPS.Concessions@FloridaDEP.gov](mailto:FPS.Concessions@FloridaDEP.gov) no later than the 10<sup>th</sup> day of the succeeding month.

d. Annual Profit and Loss Statement. The Concessionaire will provide an Annual Profit and Loss Statement to the Department in the form attached as Exhibit F. The statement will include the results of the Concessionaire's operations for each calendar year or portion thereof. The statement will be delivered to the Park Business Development Section by email to [FPS.Concessions@FloridaDEP.gov](mailto:FPS.Concessions@FloridaDEP.gov) no later than April 30<sup>th</sup> of the succeeding calendar year, or within 90 days of the expiration or termination of this Agreement, whichever is sooner.

e. 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 d. above.

f. Limited Engagement document. If, during any calendar year where this Agreement is effective, the annual Total Gross Sales from the Concessionaire's Services under this Agreement exceed \$400,000, the Concessionaire will obtain and submit, at its cost, a limited engagement document, prepared in accordance with the Agreed-Upon Procedures for a Certified Public Accountant specified in Exhibit G. Such limited engagement document will be conducted in accordance with generally accepted auditing and accounting principles. The limited engagement document will be submitted to the Park Business Development Section by email to [FPS.Concessions@FloridaDEP.gov](mailto:FPS.Concessions@FloridaDEP.gov) no later than June 30<sup>th</sup> of the following calendar year or within 120 days after the expiration or termination of this Agreement, whichever is sooner.

g. Revenue subject to sales tax. The Concessionaire's revenue is subject to State Use Tax, unless the Concessionaire is exempt from paying tax on commission fees. If it is tax exempt, the Concessionaire will provide the Department with verification of its tax-exempt status by completing the State Use Tax Exempt Certification form attached hereto as Exhibit H. The Concessionaire will provide its completed certification form to the Department at the time it delivers the executed Agreement to the Department.

h. Purchasing card industry ("PCI"). The Concessionaire will be responsible, at Concessionaire's cost, for complying with the PCI Data Security Standards ("PCI DSS"), which include a set of comprehensive requirements for enhancing payment account data security. The PCI DSS standards can be found at the PCI Security Standards Council website <https://www.pcisecuritystandards.org/>. The Concessionaire may obtain additional information through the Florida Department of Financial Services ("DFS"), which coordinates the State of Florida's efforts directly with the PCI Security Standards Council. Prior to beginning operations, the Concessionaire will ensure that the required data security measures are in place by submitting a completed Self-Assessment Questionnaire ("SAQ") to the Department. The Concessionaire will submit an updated SAQ to the Park Business Development Section by email to [FPS.Concessions@FloridaDEP.gov](mailto:FPS.Concessions@FloridaDEP.gov) annually on the anniversary of the Agreement commencement date. 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 amendment to or update of the PCI DSS. The Concessionaire, at its cost, is required to modify its annual SAQ to comply with the most current version of the PCI DSS."

g. Public records. Paragraph 19 of the General Conditions of the Agreement is hereby renumbered to paragraph 20.

h. No vested real property right; Violation of grant terms. Paragraph 20 of the General Conditions of the Agreement is hereby renumbered to paragraph 21.

i. Termination. Paragraph 21 of the General Conditions of the Agreement is hereby renumbered to paragraph 22.

- j. Equipment and other tangible property. Paragraph 22 of the General Conditions of the Agreement is hereby renumbered to paragraph 23.
- k. Review of terms. Paragraph 23 of the General Conditions of the Agreement is hereby renumbered to paragraph 24.
- l. Insurance coverage. Paragraph 24 of the General Conditions is hereby renumbered to paragraph 25 and replaced with the following language:

“25. Insurance coverage. The Concessionaire’s failure to comply with any part of the insurance requirements is considered a material breach and will be cause for termination by the Department. All insurance policies will name the Florida Department of Environmental Protection and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (“Board of Trustees”) as Additional Named Insureds for the entire Term of the Agreement, including all extensions, if any. The Concessionaire may not begin Services under this Agreement prior to compliance with these insurance requirements. Compliance with these requirements does not relieve the Concessionaire of liability under any portion of this Agreement. All insurance obtained by the Concessionaire in accordance with this Agreement will include a Hold Harmless Agreement in favor of the Department and the Board of Trustees. All insurance policies will include the DEP Agreement No. on the certificate. The Concessionaire will submit insurance policy certificates to the to the Park Business Development Section by email to [FPS.Concessions@FloridaDEP.gov](mailto:FPS.Concessions@FloridaDEP.gov), and will list the Park Manager’s name, Bill Baggs Cape Florida State Park, and mailing address, as listed in Paragraph G of the Special Conditions of this Agreement, as the insurance policy certificate holder. All insurance policies will be with insurers licensed or eligible to do business in the State of Florida. The Concessionaire’s current certificate of insurance will contain a provision that the insurance will not be canceled for any reason except after 30 days prior written notice to the Department or its designee, except for nonpayment of insurance premium, which will be handled in accordance with Florida law. The Concessionaire will provide evidence of its current insurance coverage to the Department prior to beginning any activity permitted by this Agreement. All required insurance policies will remain in full force and effect throughout the term of this Agreement. Evidence of all policy renewals will be provided to the Park Business Development Section by email to [FPS.Concessions@FloridaDEP.gov](mailto:FPS.Concessions@FloridaDEP.gov) at the time of every renewal of the policy and prior to any extension of this Agreement. The Department reserves the right to request copies of insurance policies for examination and copying at any time during the Term of the Agreement. Required per occurrence and aggregate loss limits for insurance coverage of the Concessionaire’s services under this Agreement will not be subject to dilution or reduction by any other insurable loss or interest of the Concessionaire under the policy. Any releases required by the Concessionaire’s insurer to be signed by members of the public may be used in accordance with applicable law. To the extent releases are used, the release will also release the Department and the Board of Trustees, in addition to the Concessionaire, and must be pre-approved in writing by the Department. If, at any time, the Department deems it necessary, the Concessionaire will obtain liability waivers signed by members of the public. Waivers seeking parents’ or guardians’ signature on behalf of a minor will comply with the form requirements set forth in Section 744.301, Florida Statutes.

The Concessionaire will secure and maintain the following types of insurance covering its operations under this Agreement:

- a. Liability. The Concessionaire will secure and maintain Commercial General Liability insurance, including bodily injury, property damage, personal and advertising injury, coverage for factors relevant to the Concessionaire’s business, personal and property damage, and

provide coverage for contents of the Facilities and space, including additional products, services, and expansion of the Concessionaire's Services. Insurance coverage must include coverage for all claims that may arise from the Services and operations provided under this Agreement, whether such Services and operations are by the Concessionaire or someone directly e Concessionaire. The minimum limits of liability will be \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.

b. Automotive. The Concessionaire will secure and maintain Commercial Automobile Liability insurance for company-owned vehicles and for hired and non-owned vehicles that are used to conduct business and provide Services. For these vehicles, the Concessionaire will have a minimum combined single limit of \$1,000,000. Commercial Automobile Liability insurance coverage may be provided as either vehicle specific coverage or as a coverage for the business use as a rider on the Concessionaire's general liability insurance policy.

c. Other as needed. The Department may require other insurance under this Agreement for the unique operations, recreations, or facilities provided and any unique hazards arising from them. Examples include liability for the operation of vessels, water sports, operation of other motorized vehicles, and diving and snorkeling. The Concessionaire must provide its own insurance for boat hulls, building contents, theft, vehicle comprehensive, and any other applicable insurance. The Concessionaire understands the State's insurance does not cover the Concessionaire's personal property or business losses in the Park. The Concessionaire is advised to thoroughly research its insurance needs prior to executing this Agreement.

d. Workers' Compensation. The Concessionaire will maintain Workers' Compensation insurance for all of its employees for the duration of this Agreement. The Concessionaire will provide evidence of the coverage to the Department prior to starting Services under this Agreement. The self-insurance program or insurance coverage will comply fully with the Florida Workers' Compensation Law and the Merchant Marine Act of 1920 (P.L. 66-261), commonly known as the Jones Act, including any subsequent amendments or conditions. If any employees engaged in work under this Agreement are not protected under Workers' Compensation statutes, the Concessionaire will provide adequate insurance, satisfactory to the Department, for the protection of its non-covered employees."

m. Sexual predator and offender check. Paragraph 36 of the General Conditions of the Agreement is deleted in its entirety and hereby replaced with the following language:

"36. 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 Agreement. The Concessionaire will conduct a sexual predator and sexual offender investigation on all employees and subcontractors hired subsequent to execution of this Agreement. 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 Park Business Development Section by email to [FPS.Concessions@FloridaDEP.gov](mailto:FPS.Concessions@FloridaDEP.gov).
  - 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 this Agreement for cause.
  - d. The Concessionaire will be responsible for including all of the provisions of this paragraph in all subcontracts entered into under this Agreement."
- n. 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."

- o. 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 #2, the Agreement remains in full force and effect. This Amendment #2 will be attached to and incorporated into the Agreement. In the event of a conflict between the Agreement and this Amendment #2, this Amendment #2 will control. Henceforth, the term "Agreement" will mean the Agreement as further amended by this Amendment #2.



4. Execution in Counterparts:

This Amendment #2 may be executed in two identical counterparts, each of which will be deemed an original. The two, executed, identical counterparts will constitute this Amendment #2. 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.

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WHEREFORE, the parties hereto have caused this Amendment #2 to be executed as of the day and year last set forth below.

**CONCESSIONAIRE:**

**DEPARTMENT:**

LIGHTHOUSE CAFÉ, INC., A FLORIDA  
CORPORTATION

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By:   
President or Authorized Signatory

By: \_\_\_\_\_  
Secretary's Signature or Designee

Print Name: Jose D. Gonzalez  
Print Title: \_\_\_\_\_  
Owner President

Print Name: Emile D. Hamilton  
Print Title: \_\_\_\_\_

Date: 02/14/2022

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

List of Exhibits incorporated in this Amendment  
Exhibit H: Area Map (Included as part of this Amendment)

### Use Area Map



1. Beach area between beach access #5 and beach access #7 for the operation of beach chair and umbrella rentals
2. 5,000 square-feet of area adjacent to a parking area and seven parking spaces for bicycle rental operation
3. 13,000 square-feet of area including a restaurant building (BL011107) ("Boater's Grill") adjacent to the "No Name Harbor" seawall
4. 13,000 square-feet of area including a restaurant building (BL011111) ("Lighthouse Café") adjacent to Area C parking lot and south of beach access #6
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