

CONCESSION AGREEMENT – AMENDMENT #2
(Florida Caverns 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 Florida Caverns Gift Shop, LLC (“Concessionaire”), 3345 Caverns Road, Marianna, Florida 32446.

RECITALS

WHEREAS, on or about April 1, 2017, the Department and Concessionaire entered into a Concession Agreement (DEP Agreement No. CA-1616) (the “Concession Agreement”); and

WHEREAS, pursuant to the Concession Agreement, the Concessionaire agreed to provide certain goods and services at Florida Caverns 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. Compensation: Paragraph F of the Special Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language:

“ F. Compensation. The Concessionaire will pay the Department a monthly commission fee based on the following schedule and pursuant to the terms set forth in this Agreement, including, but not limited to, Special Conditions, Section F, and General Conditions, Sections 17 and 18 herein:

1. Compensation Period 1:

From April 1, 2017 through March 31, 2018 (“Compensation Period 1”), the Concessionaire will pay to the Department a commission fee equal to 6% of Total Gross Sales each month, but not less than \$33,000.00 annually (“Period 1 Minimum Guarantee”), which will be assessed and any shortfall remitted at the end of each year of this Agreement, plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to Florida’s Commercial Rental Tax rate); and

2. Compensation Period 2:

From April 1, 2018 through March 31, 2019 (“Compensation Period 2”), the Concessionaire will pay to the Department a commission fee equal to 12% of Total Gross Sales each month, but not less than \$67,000.00 annually (“Period 2 Minimum Guarantee”), which will be assessed and any shortfall remitted at the end of each year of this Agreement, plus, the applicable State Use Tax, (a percentage of the amount

paid to the Department, equal to Florida's Commercial Rental Tax rate). The DEP Agreement No. CA-1616 2 Period 2 Minimum Guarantee will be reduced by a pro rata-based amount for the partial year of October 1, 2018 through March 31, 2019; and

3. Compensation Period 3:
From April 1, 2019 through March 31, 2020 ("Compensation Period 3"), the Concessionaire will pay to the Department a commission fee equal to 6% of Total Gross Sales each month, plus the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to Florida's Commercial Rental Tax rate); and
4. Compensation Period 4:
From April 1, 2020 through September 30, 2020 ("Compensation Period 4"), the Concessionaire will pay to the Department a commission fee equal to 12% of Total Gross Sales each month, plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to Florida's Commercial Rental Tax rate); and
5. Compensation Period 5:
From October 1, 2020 through December 31, 2022 ("Compensation Period 5"), the Concessionaire will pay to the Department a commission fee equal to 6% of Total Gross Sales each month, , plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to Florida's Commercial Rental Tax rate).

"Total Gross Sales," means all sales of goods, merchandise, food and beverage, vending, and other permissible services generated from the Concessionaire's Services 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 does not include:

1. Sales tax collections, or
2. Gratuities, or
3. Pass through fees, which include:
 - a. Park admission fees collected by the Concessionaire on behalf of the Department,
 - b. Events fees collected by the Concessionaire on behalf of the Department, or
4. Funds that were collected but have been refunded to the customer.

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

- b. 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 #2. The

Concessionaire will conduct a sexual predator and sexual offender investigation on all employees and subcontractors hired subsequent to execution of this Amendment #2. 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 Amendment #2. 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 Amendment #2. 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.”
- c. 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.”

- d. 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. 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. 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."

3. Ratification:

Except as modified by this Amendment #2, the Agreement remains in full force and effect and is hereby ratified and confirmed. This Amendment #2 shall be attached to and incorporated into the Agreement. In the event of a conflict between the Agreement and this Amendment #2, this Amendment #2 shall control. Henceforth, the term "Agreement" shall 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 shall be deemed an original. The two, executed, identical counterparts shall 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 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 #2 to be executed as of the day and year last set forth below.

CONCESSIONAIRE:

FLORIDA CAVERNS GIFT SHOP, LLC

By: Anthony R. Shirah

President or Authorized Representative

Printed Name: Anthony R. Shirah

Title: Owner

Date: 10-28-2020

DEPARTMENT:

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Emile D. Hamilton

Secretary's signature or designee

Printed Name: Emile D. Hamilton

Title: Deputy Secretary

Date: 11/10/2020

