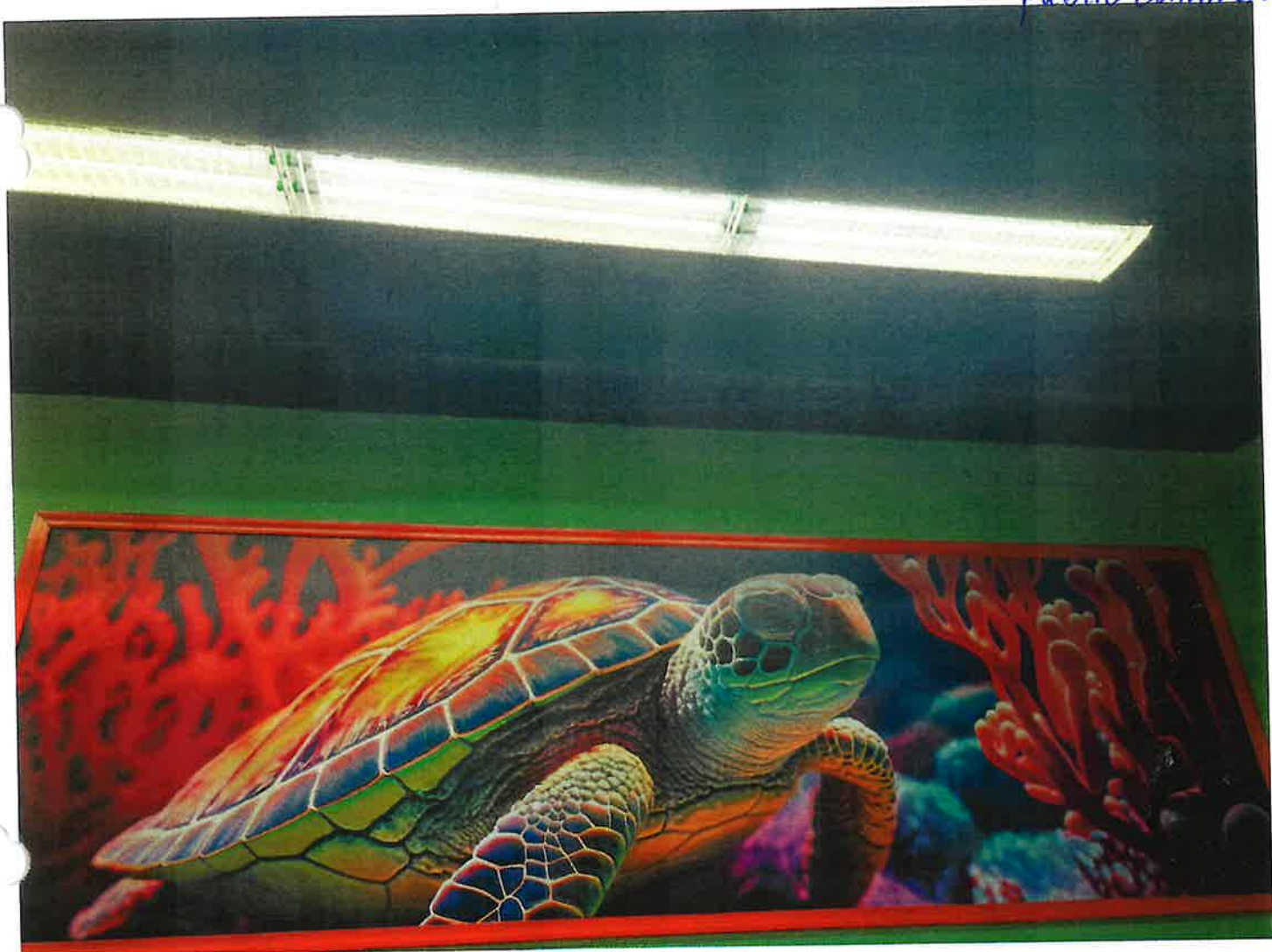


public comment



**APPEAL to Notice of Termination of Lease
For**

**Brevard County
Parks and Recreation Department**

**Lease for
Concession Building at
Spessard Holland North
Beach Park**

**Cheers on the Ocean Grill
Spessard Holland North Beach Park
2525 Highway A1A, Melbourne Beach, Florida 32951**

Effective December 5, 2023

**Rent Total:
\$17,930.00/Year**

TABLES OF CONTENTS

NOTICE OF REQUEST AND TO SCHEDULE AN APPEAL	TAB 1
NOTICE TO TERMINATE LEASE FEBRUARY 26, 2024	TAB 2
LEASE FOR CONCESSION BUILDNG DTD 12/5/2023	TAB 3
AFFIDAVITS TO FALSE WITNESS by Joanne Lee / Ken Brown	TAB 4
TRANSCRIPTION RECORDED THREATS by Daniel –homeless Vet	TAB 5
SUMMARY LEASE TERMS CONFIRMING MSUNDERSTOOD ACTS	TAB 6
LETTER PLEA TO MARY ELLEN DONNER Director by Joanne Lee	TAB 7
EXIT INTERVIEW ITEMIZED ESTIMATE OF INVESTMENT MADE	TAB 8
CCCL DUNE MAINTENANCE GUIDELINES –Cited infractions Minor	TAB 9
RESEARCH NOTES TENANT RIGHTS TO CURE LEASE DISPUTES	TAB 10
PHOTO CONDTIONS OF PROPERTY Shows Rats, debris and clutter	TAB 11
CHEERS ON THE OCEAN GRILL MENU (DRAFT)	TAB 12

NOTICE OF REQUEST AND TO SCHEDULE AN APPEAL

CONCESSION BUILDING LEASE TERMINATION

BY JOANNE LEE, MANAGING MEMBER

DBA CHEERS ON THE OCEAN GRILL

LEASE EFFECTIVE 12/5/2023 THRY 12/4/2025

NOTICE OF TERMINATION FEBRUARY 26, 2024

NOW COMES Ms. Joanne Lee, managing member of Cheers on the Ocean Grill, to state affirmatively an Appeal to the Notice to terminate Lease for the Concession Building at Spessard Holland North Beach Park from the award specified in ITB Bid #B-4-23-53 made effective for a two-year term on December 5, 2023 Contract, made between the Brevard County Board of Commissioners and DBA Cheers on the Ocean Grill, Joanne Lee Managing Member as Tenant. The Notice of Termination was delivered but not accepted on February 26, 2024, to Ms. Lee with no provocation.

The Lease affirmatively provides the provision to Appeal as Section 6 specifies Section 6. Administration. The Tenant, accepting this Contract, acknowledges and agrees that the County shall have the right and the authority, but not the obligation, to adopt Rules and Regulations regulating Tenant's conduct of its business when operating in County parks; to set schedules and times for operation and use of all facilities; to resolve disputes between Tenant, or with County's residents or County property owners; and to take such other or further action as may, in the County sole discretion, be necessary to further or promote the public health, safety and welfare. Any decisions by any member of the County administration as it relates to the above authority **may be appealed by the Tenant** to the Parks and Recreation Director or designee, whose decision shall be final.

The Notice cites Section 18 Unlawful or Improper Use to conclude a material breach of Contract to an immediate termination by reference to "their Contractor illegally destroyed, removed, and or cut protected Seagrape vegetation..."

The Tenant, Ms. Lee, contests a penalty to close and the breach of Contract to obliterate the whole company and the business with no recourse for an unknown act outside her control and knowledge. This violates the fundamental rights, liberties, and the American way that we hold dear to freedom and protections guaranteed to all Americans. Ms. Lee's affidavit clearly states that she and her

supervision of Cheers strictly adhered to the **Brevard County Mission:**
Contribute to enhancing and ensuring Brevard's quality of life today and always.

The Notice cites Section 19 Improvements. Any improvements or repairs, to the Park by the Tenant must be requested in writing to the County....This is a moment to get something done and not cause a threat to breach a contract that acknowledges numerous Tenant responsibilities to operate a food and beverage concession at the Park. Ms. Lee was not informed nor authorized an exhaust vent to be installed for the ventilation of operating a washer-dryer appliance, thus outside her control. Ken Brown's state of mind was to meet fire code requirements of proper Kitchen codes for ventilation compliance. This act is easily cured or corrected at any request or disapproval by the County. Brown's state of mind understood compliance duties. He was fully committed to bringing the best to operating successfully with high standards within the terms of the Lease, especially in compliance to protect the investment of the Tenant, fulfilling the responsibilities of Section 26 parts A, F, J, K, L, M, and N. It's regrettable and grossly unfair that Ms. Lee be denied due diligence and hearing or an opportunity to correct, defend, or explain a mere misunderstanding from often subjective or contradictory terms within the Contract. A cure that would cost less than \$100 to reverse hardly equates to an act fully close the business for a correctable mistake. Clearly, a *Draconian*, a *Les Miserable*, or *making a mountain out of a mole hill* punishment. Constitutionally, the Eight Amendment states: "...excessive fines imposed, nor cruel and unusual punishment inflicted" imposes an unduly harsh penalty upon Ms. Lee for consequences she did not know of or have control over.

And finally, the Notice cites Section 33. **Statutes, Laws, and Regulations. The Tenant's use of the Park will be in accordance with applicable laws, rules, regulations, policies, and procedures approved by the Department and/or the County....** Ms. Lee did not breach or violate this section and trusted Ken Brown to adhere strictly to it. To paraphrase this section, the County has the right to disapprove any and all activities...it shall be the Tenant's responsibility to be aware of and comply with all laws, statutes, ordinances. **Fire codes**, rules, orders, regulations, and requirements of all local, state, and federal agencies as applicable. Installing an exhaust vent is consistent with Ken Brown's state of mind; hence a mistake easily cured and reversed by a repair. The seagrapes were not known to be cut by either Ms. Lee or Ken Brown, nor were they known to have caused or the

control to stop any cutting if it took place. A person known as a homeless vet with PTSD requested work to have money to eat and was given work to clean trays and dishes. And not to cut seagrapes or sea oats. He acted outside of employment and was not paid for not doing the dishes he failed to do. Notwithstanding, he is on tape threatening to put Cheers out of business. On December 31, 2023 and January 1, 2024, Ken Brown with County knowledge attempted trim, groom, and manicure shrubs restore the beach view for patrons of what Billie's look-like before. Pictures are attached and to reduce the invasion of rats from hiding in the unkempt debris and grounds creating health and safety issues around the building and tables.

Vicarious Liability or Corporate liability is questionable here, but such liability only results or subjects the company to a fine and not a full closure to put the company out of business. Otherwise, no corporation is safe because no business or person is exempt from error, mistake, or dispute. Unilateral revocation from government upon a business to do business is unduly disastrous society. Thus, no business can survive unilateral acts of a governmental abuse of power. Clearly hereto, Ms. Lee suffers harshly, unfairly, and undeservingly from this lease termination beyond all reasonable judgment from what is claimed in this notice of termination. Certainly not a horror like a 911 attack on the World Trade Center.

This request for an Appeal has sufficient proof and merit to be granted. The file contains evidence that it is mutually beneficial for the Director to recall the termination notice perhaps by imposing certain conditions such as:

1. The Tenant be given a copy of rules, regulations, policies, procedures, and amendments thereto.
2. Tenant brings current lease payments for March \$1255 and April of \$1255 be paid with the Tenant's request to a) have the funds used for any building repair or improvements, b) hire an arborist to advise on seagrapes, landscaping, and dune care, or pest control that Health department concerns of rats and other pests encroaching the building and picnic tables.
3. The Tenant has any repeat infractions of pre-informed County concerns. The three cited breaches are repeated or initiated. Ms. Lee will comply with getting all taxes, employee E-Verify documents, and Brevard County Mission, given complete dedication to serving the community.
4. If the County determines Ken Brown to be incorrigible and at fault for causing this toxic termination, he resigns and would no longer exist to

have any presence of *Respondent superior* authority to attend to the business of this Lease and Cheers on the Ocean Grill.

5. A community petition be started to give Cheers a reinstatement of Lease will be given a public approval to be approved for the community's best interests.

In summary, Ms. Joanne Lee requests the due diligence opportunity to have the conditions bringing the prosecutable lease termination beyond the controversy to do what's best for the community. Cheers on the Ocean Grill is highly lauded by so many for Cheers to add value to the community. Cheers has a proven status of bringing integrity and quality of service to the Melbourne Beach community. Cheers on the Ocean Grill has restored the Concessions Building at great expense to deliver an outstanding Menu for fulfilling the terms of the Lease and community. Certainly, the Notice's claims are easily set up as a warning, can be cured, and are publicly forgivable misunderstandings or mistakes. This matter is distinguishable and unprecedented that a Corporate citizen be denied a Lease after an enormous effort has been made to serve the community meaningfully. Make this Appeal an example of Government and Business working together to smooth out differences to focus on the future in the spirit of unity and community founded in the American Way.

Respectfully submitted,

Joanne Lee, Managing Member
Cheers on the Ocean Grill
April 21, 2024



BOARD OF COUNTY COMMISSIONERS

Parks and Recreation Administration

2725 Judge Fran Jamieson Way
Building B, Room 203
Viera, Florida 32940

May 8, 2024

Cheers on the Beach Pub & Grill
3830 S Highway A1A
Melbourne Beach, FL 32951

Ms. Lee:

On April 26, 2024 I received a copy of your "Appeal to Notice of Termination of Lease". This Appeal states that it is pursuant to Section Six of the Lease for Concession Building at Spessard Holland North Beach Park.

Section 6. Administration

The Tenant, in accepting this Contract, acknowledges and agrees that the County shall have the right and the authority, but not the obligation, to adopt Rules and Regulations regulating Tenant's conduct of its business when operating in County parks; to set schedules and times for operation and for use of all facilities; to resolve disputes between Tenant, or with County's residents or County property owners; and to take such other or further action as may, in the County sole discretion, be necessary to further or promote the public health, safety and welfare. Any decisions by any member of the County administration as it relates to the above authority may be appealed by the Tenant to the Parks and Recreation Director, or designee, whose decision shall be final.

On February 25, 2024, I hand delivered a Notice of Lease Termination to yourself at Cheers on the Beach Pub & Grill, a copy of which you have included in your Appeal. At the request of yourself and your attorney, the County permitted you additional time to remove your property, and the building was vacated on March 8, 2024.

Based on a review of all information presented and the reasons stated in the Notice of Lease Termination, I am upholding my decision to terminate the Lease.

Respectfully,

Mary Ellen Donner, Director
Brevard County Parks and Recreation Department



Brevard County
Parks and Recreation Department



Lease for Concession Building at Spessard Holland North Beach Park

Cheers on the Ocean Grill

Spessard Holland North Beach Park
2525 Highway A1A, Melbourne Beach, Florida 32951

December 5 2023
Effective November XX, 2023

Rent Total:
\$17,930.00/Year

Table of Contents

Section 1. Premises.....	4
Section 2. Term.....	5
Section 3. Payments.	5
Section 4. Accounting Procedures and Reports.....	5
Section 5. Americans with Disabilities Act Compliance.....	6
Section 6. Administration.	6
Section 7. Attorney's Fees.	6
Section 8. Background Investigation Check.....	6
Section 9. Business Interruption.....	6
Section 10. Copyright.....	7
Section 11. Covenants against Assignment.....	8
Section 12. Emergencies.	8
Section 13. Entire Contract	8
Section 14. E-Verify.	8
Section 15. Florida Public Records Law.....	9
Section 16. Force Majeure.	10
Section 17. Governing Law.	10
Section 18. Illegal, Unlawful, or Improper Use.	10
Section 19. Improvements.	10
Section 20. Indemnification and Insurance.	11
Section 21. Independent Contractor.....	12
Section 22. Modification.	12

Section 23. Music Performance.	12
Section 24. Notice.	12
Section 25. Obligations of the Tenant.	12
Section 26. Obligations of the County.	15
Section 27. Personal Property.	15
Section 28. Public Entity Crimes.	15
Section 29. Right of Entry by County.	16
Section 30. Right to Audit Records.	16
Section 31. Severability.	16
Section 32. Statutes, Laws, Rules and Regulations.	16
Section 33. Successors in Interest.	17
Section 34. Termination for Convenience.	17
Section 35. Unauthorized Alien Workers.	17
Section 36. Utilities.	17
Section 37. Venue.	18
Signature Page.	18
Exhibit "A".	19
Exhibit "B".	21



Lease for Concession Building



This Lease, hereinto referred to as “**Contract**”, made by and between the **Brevard County Board of County Commissioners**, a political subdivision of the State of Florida, hereinafter referred to as “**County**”, and **Cheers on the Beach Pub & Grill, LLC DBA Cheers on the Ocean Grill**, hereinafter referred to as “**Tenant**”.

Witnesseth

Whereas, the County is the owner or authorized administrator of certain real property located in Brevard County, Florida, commonly known as Spessard Holland North Beach Park, 2525 Highway A1A, Melbourne Beach, Florida 32951 (attached hereto as Exhibit “A” and hereinafter referred to as “Park”); and

Whereas, the County has competitively procured the services of the Tenant to provide Concession Services at the Spessard Holland North Beach Concession Building as specified in ITB Bid Number B-4-23-53. The winning submitted bid is included as Exhibit “B”.

Whereas, the Tenant desires to utilize certain facilities located at the Park for purposes hereinafter set forth; and

Whereas, the County may provide parks, preserves, playgrounds, recreation areas, and other recreation facilities and programs pursuant to Section 125.01(1)(f), Florida Statutes; and

Whereas, the County issued a request for proposals to provide concession services at the Park and the Tenant was the selected vendor; and

Whereas, operation by the Tenant will mutually benefit the parties hereto and the residents of Brevard County, Florida.

Now, Therefore, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

Recitals. The foregoing recitals are true and are incorporated herein by reference.

Section 1. Premises.

The County hereby authorizes Tenant as part of this Contract of the Concession building to operate a food and beverage concession at the Park. It is specifically agreed and understood by

Tenant that the use set forth herein shall be the only use allowable under the Contract and that any variance in such use shall require the written consent of the County.

Section 2. Term.

The terms of this Contract shall be effective for two years from the date of Contract execution. The Contract may be extended by mutual agreement, for an additional two-year period and a subsequent renewal for an additional one-year term with the option to negotiate pricing, terms and conditions. The Tenant will notify Brevard County in writing 90 days prior to the expiration of the Contract as to its intent to renew the Contract. *The Tenant has the first right of Refusal to a Second two year, Two year, one year Term with a*

Section 3. Payments. *Rent Adjustment Subject to CPI-U.*

- A.** Tenant shall pay to the County the amount of **\$1,665.00 during the Summer Season, April 1st through October 31st and \$1,255.00 during the Winter Season, November 1st through March 31st**, plus any applicable sales tax. Payments shall be made by the tenth day of each month for the term of this Contract. Payments shall be submitted directly to South Area Parks Operations, 1515 Sarno Road, Building A, Melbourne, Florida 32935.
- B.** Monthly rent shall be adjusted *Bi-* **annually** based on the effective date of the contract. Monthly rent may be increased by the Consumer Price Index for All Urban Consumers (CPI-U) utilizing the previous calendar years' 12-month CPI-U average.
- C.** Bid prices shall remain firm for the first 24 months of this Contract. The Tenant may have an opportunity to request an annual price adjustment for the optional two year and one-year renewal periods. The request for price adjustment must be submitted in writing no later than 90 calendar days prior to the annual anniversary of the Contract start date. The request for price adjustment must include written justification (raw material price increase, labor, etc.) for the increase and a copy must be sent to the Purchasing Manager. Any approved request for price adjustment will be in effect for the 24-month period following the said anniversary start date. Written request for price adjustments shall not exceed the rate of inflation determined by the CPI-U average during the previous 12 months. Any price adjustment shall be approved by the Purchasing Manager or designee prior to the new price becoming effective.
- D.** The Director may, for a period of time not to exceed six months, negotiate a reduction in the monthly payment amounts due to the County when unforeseen circumstances including major equipment breakdown, warrant said reduction.

Section 4. Accounting Procedures and Reports.

All sales by Tenant shall be registered on a cash register or computerized POS system with the amount of sale visible to the public. The cash register/POS system shall be furnished by the Tenant and shall be the responsibility of the Tenant. Sales tax reports shall be made to the State of Florida. Tenant shall accept Visa, Master credit and debit cards in addition to cash.

Section 5. Americans with Disabilities Act Compliance.

The County and Tenant shall conform to current requirements of the Americans with Disabilities Act (ADA) in the performance of this Contract, and shall not cause or place on the Park any condition causing the Park to become non-compliant. The parties shall work together to remedy any known violations of the ADA that may occur.

Section 6. Administration.

The Tenant, in accepting this Contract, acknowledges and agrees that the County shall have the right and the authority, but not the obligation, to adopt Rules and Regulations regulating Tenant's conduct of its business when operating in County parks; to set schedules and times for operation and for use of all facilities; to resolve disputes between Tenant, or with County's residents or County property owners; and to take such other or further action as may, in the County sole discretion, be necessary to further or promote the public health, safety and welfare. Any decisions by any member of the County administration as it relates to the above authority may be appealed by the Tenant to the Parks and Recreation Director, or designee, whose decision shall be final.

Section 7. Attorney's Fees.

In the event of any legal action to enforce the terms of this Contract each party shall bear its own attorney's fees and costs.

Section 8. Background Investigation Check.

The Tenant will be responsible for:

- a. Submit fingerprints to the Florida Department of Law Enforcement (FDLE:) under the Volunteer & Employee Criminal History System (VECHS) agreement using a digital fingerprint machine or using the fingerprint card provided for FDLE and National FBI criminal investigation check as well as Brevard Electronic Court Application (BECA): www.brevardclerk.us. AND PROVIDE PROOF OF SAID SUBMISSION VIA RECEIPT FROM AUE STAFFING WITH SUBMISSION OF BID.
- b. Prior to the Contract being executed, Tenant personnel shall complete fingerprinting and results must be submitted for the High-Level Security Background Screening as described in the bid documents. The High-Level Security Check must include fingerprinting with retention fees to ensure the County receives post information should the Tenant's personnel have any arrests following the initial Highest-Level Security Check. The Tenant personnel shall perform a rescreening at the same High-Level Security Check with retention fees annually or every five years, prior to their Background Investigation Check expiring. The Tenant shall conduct and maintain such standards for

the employment of personnel throughout the Contract term, including any renewal period as follows:

Fingerprints: submit fingerprints to the Florida Department of Law Enforcement (FDLE:) under the Volunteer & Employee Criminal History System (VECHS) agreement using a digital fingerprint machine or using the fingerprint card provided for FDLE and National FBI criminal investigation check as well as Brevard Electronic Court Application (BECA): www.brevardclerk.us.

- i. The Tenant shall be responsible for, and pay the cost of, having background screening checks performed on all of the Tenant's employees, Tenants, agents, representatives and volunteers.
- ii. The Tenant shall not allow any employees, Tenants, agents, representatives or volunteers to work unsupervised with at risk populations prior to such person successfully completing a High Level (Level One) background screening.
- iii. The Director may deny the Tenant and/or deny the Tenant the ability to utilize a staff member, volunteer or any other person providing a service at the Park based on the results of the background screening. The Director shall refer to criteria as outlined in this bid and reference Florida State Statutes and Brevard County policy on background screening in determining if a person shall be disqualified from working/volunteering at the Park.
- iv. For Tenant personnel under the age of 18, when applicable and allowed in lieu of fingerprinting, a Department of Juvenile Justice check shall be completed.
- v. The Tenant will be responsible for completing reference checks, prior employment checks and the following screening on a case-by case basis:
 1. Education/Licensing verification.
 2. Driver's License check.
 3. Drug Testing.

Section 9. Business Interruption.

The County shall not be liable to the Tenant for any damages arising out of the temporary prohibition of use and/or access to the designated parks, docks or launch areas for environmental protection, public safety, maintenance or governmental activities or events which prohibits the Tenant from being present and/or engaging in its business activities. ? ? IF Park

15 closed, Tenant Rent will be suspended until Park Re-opens

Section 10. Copyright.

No reports, data, programs or other materials produced, in whole or in part, for the benefit and use of the County, under this Contract shall be subject to copyright by the Tenant in the United States or any other country.

Section 11. Covenants against Assignment.

The Tenant, its successors or assigns, shall not assign any rights under this Contract nor allow same to be assigned by operation of law without express written approval of the County. The Tenant may not assign any right to use the Park, any part thereof, or any right or privilege connected therewith, or to allow any other individual, group, or Tenant to occupy the Park or any part thereof without prior written consent from the Director. No fees or charges of any kind shall be levied by the Tenant for use of the Park.

Section 12. Emergencies.

In the event of a declared state of emergency in Brevard County by the Board of County Commissioners, the County retains the right to immediately resume occupation, management, and maintenance of the facility, to use the facility to meet any emergency needs of the citizens of Brevard County for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County.

Section 13. Entire Contract.

This Contract, together with any Exhibits, constitutes the entire Contract between the County and Tenant and supersedes any prior written or oral understandings. This Contract and any Exhibits may only be amended, supplemented or canceled by a written instrument duly executed by both parties hereto. As of the Effective Date of this Contract, all authority, permission, and right, express or implied, heretofore granted or inferred to be granted by the County to Tenant to operate a Property shall be terminated.

Section 14. E-Verify.

- A. In accordance with Chapter 448.095, Florida Statutes, the Tenant shall register and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Tenant during the term of this Contract; and
- B. The Tenant shall expressly require anyone performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of this Contract; and
- C. The Tenant agrees to maintain records of its participation and compliance with the provisions of the E-Verify program and to make such records available to the County consistent with the terms of the Tenant's enrollment in the program. This includes maintaining a copy of proof of the Tenant's enrollment in the E-Verify Program.
- D. The Tenant must meet this requirement, unless:
 - 1) The Contract is solely for the goods-based procurement where no services are provided;
or
 - 2) Where the requirement is waived by the Board of County Commissioners;
 - 3) The Contract is being executed with a Sole Proprietor who does not hire employees and

therefore not required to file a Department of Homeland Security Form I-9 (which is the necessary document used for performing an E-Verify); or

- 4) The Contract is being executed with a company based outside of the United States of America and does not employ any United States of American citizens.

- E. Compliance with the terms of this section is made an express condition of this Contract and the County may treat a failure to comply as a material breach of this Contract.
- F. A Tenant who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E verify program, the Tenant hires or employs a person who is not eligible for employment.
- G. Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

Section 15. Florida Public Records Law.

Pursuant to Section 119.0701, Florida Statutes, a request to inspect or copy public records relating to this Contract must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Tenant of the request and the Tenant shall provide the records to the County or allow the records to be inspected or copied within twenty-four hours (not including weekends or legal holidays) of the request so the County can comply with the requirements of Chapter 119, Florida Statutes, Florida Public Records Law. The Tenant may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order AO-47, incorporated herein by this reference. A copy of AO-47 is available upon request from the County's public records custodian designated below.

If Tenant fails to provide the requested public records to the County within a reasonable time, the Tenant may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties pursuant to Section 119.10, Florida Statutes. Tenant's failure to comply with public records requests is considered a material breach of this Contract and grounds for termination. If Tenant claims certain information is exempt and/or confidential, it must cite to specific statutory provisions or case law in order to justify removal or redaction of said information.

Should the County face any legal action to enforce inspection or production of the records within the Tenant's possession and control, the Tenant agrees to indemnify the County for all damages and expenses, including attorney's fees and costs. The Tenant shall hire and compensate attorneys to represent the Tenant and County in defending such action. The Tenant shall pay all costs to defend such action and any costs and attorney's fees awarded pursuant to Section 119.12, Florida Statutes.

If the Tenant has questions regarding the application of Chapter 119 Florida Statutes, to the Tenant's duty to provide Public Records relating to this Contract, contact the Custodian of Public Records:

Brevard County Parks and Recreation Diana Marquardt, Office of the Director of Parks and Recreation, 2725 Judge Fran Jamieson Way, B203 Viera, Florida

[Email Diana Marquardt, Custodian of Public Records](#)

Phone: (321) 633-2046

Section 16. Force Majeure.

Neither party shall be responsible for damages or delays in performance caused by acts of God, strikes, lockouts or other events constituting force majeure beyond the reasonable control of the parties. Despite the foregoing, the Tenant shall make payments as otherwise provided herein, *or*

Section 17. Governing Law.

Suspended until Park Re-opens if Park is closed.

This Contract shall be deemed to have been executed and entered into within the State of Florida and this Contract, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

Section 18. Illegal, Unlawful, or Improper Use.

The Tenant shall make no unlawful, improper, immoral, or offensive use of the Park nor allow said Park to be utilized for any purpose other than that hereinabove set forth. Failure of the Tenant to comply with this provision shall be considered a material breach of this Contract and subject same to immediate termination by the County, where upon the County shall be entitled to immediately re-enter and retake possession of the Park and terminate this Contract.

Section 19. Improvements.

Any improvements or repairs, to the Park by the Tenant must be requested in writing to the County, and mutually agreed upon by the County and the Tenant, with written permission granted by the Director of Parks and Recreation, prior to any actual work. Said request shall state the party responsible for funding such improvements. The plans, specifications, and location for all improvements, structures, landscaping, and facilities made by the Tenant to the Park shall be submitted in writing to and approved by the Director of Parks and Recreation prior to the construction or installation of such improvement, structure, landscaping or facility. It is hereby mutually agreed and understood that any building, structure, fixture, or facility located thereon and permanently attached thereto shall become the property of the fee simple title holder.

Section 20. Indemnification and Insurance.

The Tenant agrees to indemnify and hold harmless the County from any and all liability, claims, damages expenses (including attorney's fees and costs), proceedings and causes of action of every kind and nature, arising out of or connected with the activities of the Tenant or Tenant's employees, contractors, agents, representatives or volunteer's use, occupation, management of the facilities or any improvements thereon or any furniture, furnishings, equipment and fixtures utilized in connection therewith. The Tenant agrees to defend at his expense any and all actions, suits or proceedings which may be brought against the County arising from the Tenant's activities and that he will satisfy, pay, and discharge any and all judgments that may be entered against the County in any such action or proceeding. It is agreed by the parties hereto that specific consideration has been paid under this Contract for this indemnification and hold harmless provision. The Tenant shall notify the County immediately in writing of any potentially hazardous condition existing on or about the premises utilized in conducting said program. All personal property utilized at a County facility shall be at the risk of the Tenant, and the County shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever.

The Tenant agrees and understands that the County does not and shall not carry liability, fire, or theft insurance on the operation of these facilities to cover the Tenant's interest therein. The Tenant agrees to provide and maintain at all times during the term of this Contract, without cost or expense to the County, policies of insurance generally known as comprehensive general liability policies insuring the Tenant against any and all claims, demands and causes of action whatsoever for injuries received and damage to property incurred in connection with the use, occupation, and management or control of the property during any activities conducted thereon by Tenant. Such policies of insurance shall insure the Tenant in the amount of not less than One Million Dollars per occurrence to cover any and all claims and costs arising in connection with any and all liability claims arising in connection with any particular accident or occurrence, Watercraft Liability Insurance in an amount not less than One Million Dollars per occurrence to cover any and all liability claims arising in connection with any particular accident or occurrence and Sexual Abuse and Molestation coverage in the amount of One Million dollars.

The Tenant is responsible for Workers Compensation in accordance with State law. Said insurance policies shall be endorsed to name the County as an additional insured and shall be entitled to thirty days prior notice of any changes or cancellation in said policies. The Tenant shall provide the described insurance on policies and with insurers acceptable to the County.

These insurance requirements shall not relieve or limit the liability of the Tenant. The County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Tenant's interests or liabilities, but are merely minimums. A certificate of insurance indicating that the Tenant has coverage in accordance with the requirements of the Contract shall be furnished by the Tenant to the Brevard County Parks and Recreation

Department, South Area Parks Operations, 1515 Sarno Road, Building A, Melbourne, Florida 32955, prior to execution of this Contract.

Section 21. Independent Contractor.

The Tenant shall perform the terms and conditions of this Contract as an independent contractor, and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Contract shall, in any way, be construed to constitute the Tenant or any of its agents or employees as the representative agents or employees of the County.

Section 22. Modification.

No modification of this Contract shall be binding on the County or the Tenant unless reduced to writing and signed by a duly authorized representative of both the County and the Tenant.

Section 23. Music Performance.

The Tenant shall not use, play or perform copyrighted music without appropriate licensing or other permission. The Tenant shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Contract. The Tenant agrees to indemnify and hold harmless the County for unauthorized use or performance of copyrighted music.

Section 24. Notice.

Notice under this Contract shall be given to the County by mailing written notice postage prepaid, to the Brevard County Parks and Recreation Department, South Area Parks Operations, 1515 Sarno Road, Building A, Melbourne, Florida 32935; and notice shall be given to the Tenant by mailing written notice, postage prepaid, Cheers on the Beach Pub & Grill, LLC DBA Cheers on the Ocean Grill, Joanne Lee, Authorized Member, 5975 S. Highway A1A, Melbourne Beach, Florida 32951.

Section 25. No Subcontractors.

There shall be no subcontracting of any services that are applicable to this contract.

Section 26. Obligations of the Tenant.

A. The Tenant will be responsible for all food service operations, maintenance and repairs of the concession building located at 2525 Highway A1A, Melbourne Beach, Florida 32951.

B. The Tenant will be responsible for all labor, materials, equipment and licensing to perform all sales of food and beverages. The term "Concession" is to include all sales of food and beverages. Although the County has installed a Fire Suppression Hood, the Tenant will be responsible for its maintenance and repair. The Fire Suppression Hood will remain the County's property.

C. Accurate records for the Concession operation, including monthly gross revenue reports and sales tax reports submitted to the State of Florida, shall be in accordance with accepted certified public accounting procedures. These records shall be available for inspection by a properly designated representative of the Board of County Commissioners, upon request at reasonable times, with 3-day notice.

D. The Parks and Recreation Director and the South Area Parks Operation Manager shall administer Brevard County's interest in Spessard Hollard North Beach Park Concession. The Tenant shall cooperate with Brevard County officials in all matters pertaining and relating to the Park Concession operations as related to the Food and Beverage Concession.

E. Keeping buildings and immediate premises clean and orderly in accordance with the State of Florida Department of Business and Professional Regulation, the County Health Department and any applicable laws or ordinances. The County reserves the right to perform, or have performed, period inspections of the cleanliness and sanitation conditions maintained on the premises. Environment Health inspections/reviews may be conducted.

F. All aspects of cleanliness in the Tenant's area of operations including food preparation, tables, chairs, walls, floors, including carpet cleaning and removal of debris. There shall be full County Health Department and other applicable laws or ordinances. Final determination in this matter shall rest with the County.

G. Grease traps must be properly cleaned out as necessary, and at a minimum every three months, depending on usage. The grease traps should be cleaned out when it reaches a quarter of its capacity. A regular service schedule shall be set up by the Tenant to avoid missing critical cleaning. All grease must be collected and disposed of in compliance with applicable law.

H. Trash containers for the interior of the Concession operation are the responsibility of the Tenant. The Tenant is responsible for the placing all trash in the Parks and Recreation dumpster. Parks and Recreation will have the dumpster emptied.

I. Janitorial services, including the restrooms for the interior of the building, shall be the responsibility of the Tenant. *3 3 Public Rest Rooms*

J. The Tenant shall provide and adequately arrange to offer the public a satisfactory Concession operation consistent with good food and beverage business practices and management. Maintaining a level of public relations and customer services that promotes a highly favorable atmosphere, responding to all customer complaints received by the Tenant and/or the County.

K. Advertisements in the Concession area shall be in good taste commensurate with acceptable family-oriented environments. Advertising of other business not related to the park Concession operation such as business cards and signs are not permitted.

L. The Tenant shall be responsible for all electrical and plumbing repairs associated with the Concession operation.

M. The Tenant shall be responsible for all security and fire alarm monitoring and Annual inspections as required by the Fire Inspector.

N. The Tenant shall install and maintain, at their expense, all required equipment, including refrigeration equipment, stoves, grills, deep fat fryers, microwaves, sinks, ice machines and associated food and beverage preparation equipment as needed to operate the facility, tables and chairs and repairs thereof. This is to include any required safety or fire prevention equipment necessary for proper operations as well as maintenance and mandatory inspections of the same. Where the facility is not ventilated to handle or accommodate deep fat fryers it is the responsibility of the Tenant to provide such ventilation.

O. The Tenant will operate pursuant to the following suggested hours of operations: Winter Season: open 6:30 a.m. and close 5:30 p.m. Summer Season: open 6:30 a.m. and close 6:30 p.m. This schedule of hours of operation shall be in the best interest of meeting the needs of the public. The schedule shall be subject to the approval and modification of the South Area Operations Manager.

P. The Tenant shall furnish merchandise and services for the needs and convenience of the public as follows:

1. Posted menu may include, but not limited to, breakfast items, hamburgers, hot dogs, hot entrees, delicatessen style sandwiches, chips, popcorn, candy, salads, and condiments, and non-alcoholic beverages. The menu shall be subject to the written approval of the South Area Operations Manager.
2. Providing a full range menu of items to meet the public needs.
3. ALCOHOLIC BEVERAGES ARE PROHIBITED in County Parks per County Ordinance 78-109. As such, the Tenant will not be allowed to sell any alcoholic beverages.
4. The use of Styrofoam is prohibited.

Q. The Tenant shall be responsible for the security of the Park. The Tenant may request any person violating any applicable law, rule or regulation to leave the Park. If a patron remains in the Park after such request the Tenant shall immediately notify local law enforcement.

R. The Tenant shall immediately report to the County any accident or incident requiring emergency response.

Section 27. Obligations of the County.

A. Provide adequate collection and disposal of garbage by a dumpster located on site.

B. Provide water and sewer service connections. *Electric* *A/C*

C. Provide access to the Park during normal operating hours to the best of its ability, subject to the right of the County or any other governmental authority to temporarily restrict or deny access to said Park for the purpose of constructing, installing, operating or maintaining any public Park, including, but not limited to, public works and public utilities, or for the purpose of performing any other governmental function.

D. Change the existing locks and provide two sets of keys to the Tenant.

E. Provide appropriate measures to minimize damage when severe weather or other dangerous conditions are expected.

F. Customer Service Evaluation: The Tenant shall be provided copies of "Compliments, Concerns, Evaluation Cards," submitted by customers.

Section 28. Personal Property.

All personal property housed or placed at the Park shall be housed or placed at the risk of Tenant, and the County shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. The Tenant agrees and understands that the County does not and shall not carry liability, fire, or theft insurance on the operation of these facilities to cover the Tenant's interest therein.

The Tenant shall retain title to all personal property purchased by the Tenant and placed at the Park, unless otherwise agreed to by the parties. The Tenant shall obtain approval from the County prior to placing any personal property or equipment at the Park.

Section 29. Public Entity Crimes.

A person or affiliate who has been placed on the convicted Vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on contracts of real property to a public entity, may not be awarded or perform work as a contractor, supplier, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six months from the date of being placed on the convicted Vendor list.

Section 30. Right of Entry by County.

The County or its agents may at any time enter onto the Park for the purpose of inspection of same or for performing such other duties as are required by the terms of this Contract, or the rules, regulation, ordinances or laws of any governmental body.

Section 31. Right to Audit Records.

In performance of this Contract, the Tenant shall keep books, records, and account of all activities related to this Contract in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Tenant in conjunction with this Contract and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the County. The Tenant shall retain all documents, books and records for a period of five years after termination of this Contract, unless such records are exempt from section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes. All records or documents created by or provided to the Tenant by the County in connection with this Contract are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the County in a format compatible with the information technology systems of the County.

The Tenant shall ensure the public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Contract and following termination of the Contract if the Tenant does not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Contract, the Tenant may transfer at no cost to the County, all public records in possession of the Tenant. If the Tenant transfers all public records to the County upon termination of the Contract, the Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

Section 32. Severability.

If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

Section 33. Statutes, Laws, Rules and Regulations.

The Tenant's use of the Park will be in accordance with applicable laws, rules, regulations, policies and procedures approved by the Department and/or the County. The County reserves the right to disapprove any and all activities held at the Park, which may be in conflict with the Department's and/or the County's Policies and Administrative Orders, and agrees to furnish the Tenant with a copy of such rules, regulations, policies, procedures, and amendments thereto upon request.

It shall be the Tenant's responsibility to be aware of and comply with all laws, statutes, ordinances, fire codes, rules, orders, regulations and requirements of all local, state, and federal agencies as applicable.

Tenant shall provide to the County written evidence of current satisfactory health inspections at all times. The Tenant shall secure and maintain all licenses and/or permits required and pay when due any and all taxes and assessments which may be imposed or assessed by governmental units in connection with the business or operation conducted pursuant to the provisions of the Contract. Any such licenses and permits shall be maintained and posted, if required, at appropriate places at the Park within fifteen days of the execution of this Contract by both parties.

Section 34. Successors in Interest.

This Contract and the covenants and conditions hereof apply to and are binding on the heirs, successors, legal representatives, and assigns of the parties.

Section 35. Termination for Convenience.

Either party may terminate this Contract for their own convenience upon providing thirty days written notice to the other party. Upon termination of this Contract, the Tenant shall have fifteen days within which to remove the temporary concession vehicle and any personal property. Any property not removed within said fifteen-day period shall become the property of the County. All equipment owned by the Tenant and utilized in the facility will be removed by the Tenant upon expiration of the Contract. Removal of the equipment is at the Tenant's sole cost and expense, and will immediately repair any damage to the premises by reason of such removal so as to leave the premises in a neat and clean condition.

*Signage
Parking*

Return to Confusing

Section 36. Unauthorized Alien Workers.

The County will not intentionally award publicly-funded contracts to any Tenant who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) (Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider the employment by the Tenant of unauthorized aliens a violation of Section 274A (e) of the INA and such violation shall be grounds for unilateral cancellation of this Contract by the County

Section 37. Utilities.

- A.** The Tenant shall be responsible for payment and repair of all-natural gas or equipment used in the operation of the concession services.
- B.** The Tenant shall be bearing the cost of all utilities including electrical, water, and sewer services in the operation of the concession services.
- C.** The Tenant shall provide all electrical and plumbing associated with the operation of the concession services.

D. The Tenant shall be responsible for telephone and Wi-Fi accessibility. 

Section 38. Venue.

Venue for any legal action brought by any party to this Contract to interpret, construe or enforce this Contract shall be in court of competent jurisdiction in and for Brevard County, Florida, and **any trial shall be non-jury.**

(remainder of page left intentionally blank)

In Witness Whereof, the parties have hereunto set their hands and seals on the day and year written herein below.

**Board of County Commissioners
of Brevard County, Florida**

Reviewed for legal form and content:



Name
Assistant County Attorney

By: _____
Rita Pritchett, Chair Date

As Authorized by the Board on March 8, 2022

**Cheers on the Beach Pub & Grill, LLC DBA
Cheers on the Ocean Grill**

By: _____
Joanne Lee, Authorized Member Date

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization on this _____ day of _____, 2023 by Joanne Lee. She is personally known to me or has produced _____ as identification.


Notary Public

Typed/Printed Name

In Witness Whereof, the parties have hereunto set their hands and seals on the day and year written herein below.

**Board of County Commissioners
of Brevard County, Florida**

Reviewed for legal form and content:



Name

Assistant County Attorney

By: _____
Rita Pritchett, Chair Date

As Authorized by the Board on March 8, 2022

**Cheers on the Beach Pub & Grill, LLC DBA
Cheers on the Ocean Grill**

By: _____
Joanne Lee, Authorized Member Date

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization on this _____ day of _____, 2023 by Joanne Lee. She is personally known to me or has produced _____ as identification.

Notary Public

Typed/Printed Name

In Witness Whereof, the parties have hereunto set their hands and seals on the day and year written herein below.

**Board of County Commissioners
of Brevard County, Florida**

Reviewed for legal form and content:



Name


Assistant County Attorney

By: 

Jason Steele, Chair Date

As Authorized by the Board on March 8, 2022

**Cheers on the Beach Pub & Grill, LLC DBA
Cheers on the Ocean Grill**

By: 

Joanne Lee, Authorized Member Date

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization on this 27 day of November, 2023 by Joanne Lee. She is personally known to me or has produced, Driver's License as identification.



Notary Public



Typed/Printed Name



In Witness Whereof, the parties have hereunto set their hands and seals on the day and year written herein below.

**Board of County Commissioners
of Brevard County, Florida**

Reviewed for legal form and content:

Name
Assistant County Attorney

By: _____
Rita Pritchett, Chair Date

As Authorized by the Board on March 8, 2022

**Cheers on the Beach Pub & Grill, LLC DBA
Cheers on the Ocean Grill**

By: _____
Joanne Lee, Authorized Member Date

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization on this _____ day of _____, 2023 by Joanne Lee. She is personally known to me or has produced _____ as identification.

Notary Public

Typed/Printed Name

Exhibit "A" Location Map

Spessard Holland North Beach Park

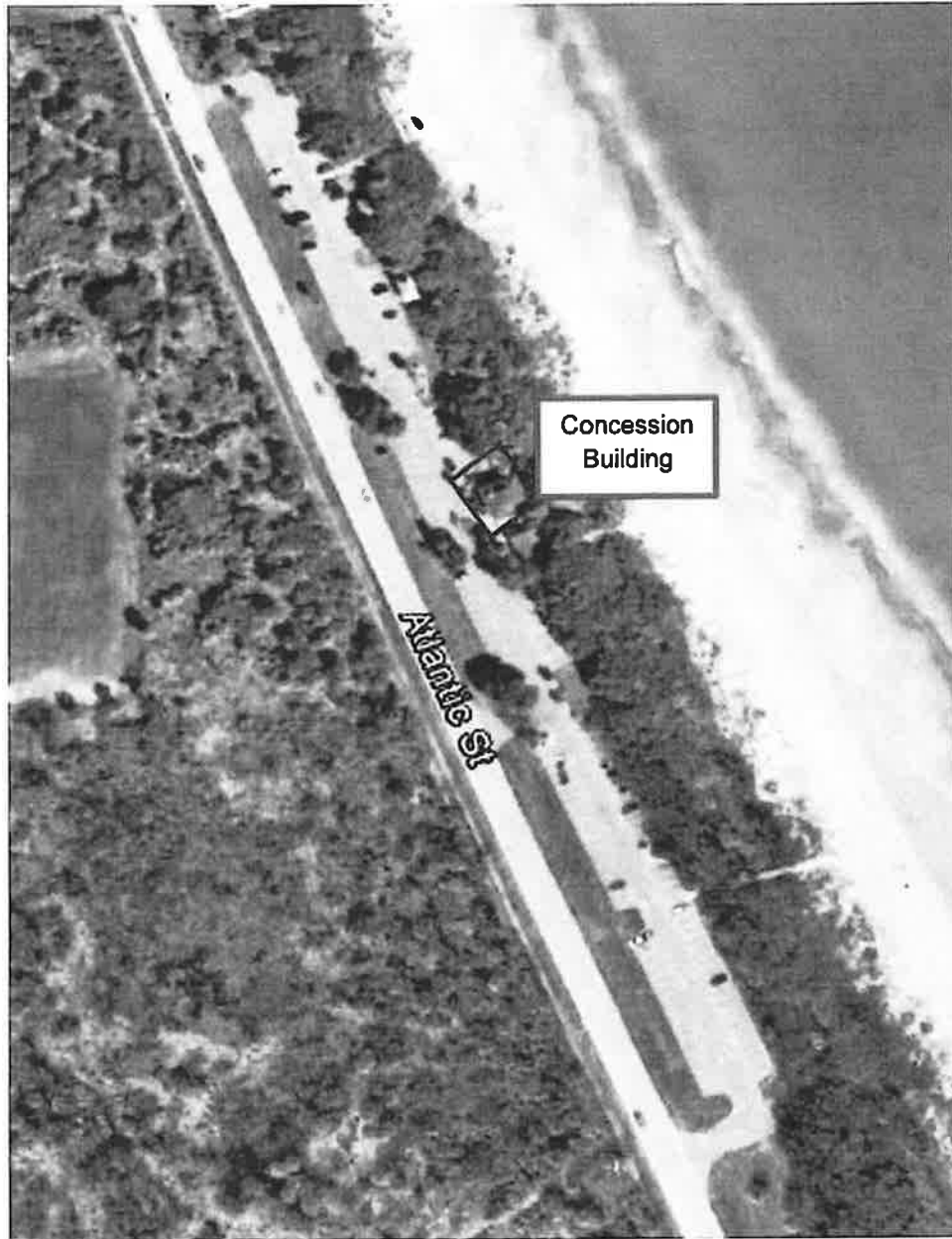


Exhibit "B"
Tenant's Winning Submitted Bid
(remainder of page left intentionally blank)

Exhibit "B"

CONCESSION SERVICES AT SPESSARD HOLLAND NORTH PARKS AND RECREATION B-4-23-53 PRICE SHEET

Bid price to provide all labor, materials, equipment, transportation and other facilities as necessary and/or required to execute all of the work described by the bidding documents for the price as follows:

Line Item Pricing:

Item Description	Monthly Rent	X 12 Months	Extended Amount
Monthly Rent – Summer Season April 1 st – October 31 st	\$ 1665.00	X 7	\$ 11,655
Monthly Rent – Winter Season November 1 st – March 31 st	\$ 1255.00	X 5	\$ 6,275
Total Annual			\$ 17,930.00

ACH PAYMENTS

Does your company accept ACH Payment Method? ☒ Yes / ☐ No

PROMPT PAYMENT DISCOUNT

Brevard County shall remit payment in accordance with the Florida Prompt Payment Act, Section 218.74, Florida Statutes. Tenants may offer cash discounts for prompt payment but they will not be considered in the determination of award. If a Tenant offers a discount, it is understood that the discount time will be from the date of satisfactory delivery, at the place of acceptance, and receipt of correct invoice, at the office specified, whichever occurs last.

* If Prompt Payment Discount is offered, please state discount and terms: Contingent upon the County's Tradition and discretion

ADDENDUM ACKNOWLEDGMENT

Tenant acknowledges receipt of amendments by indicating amendment number and date of issue.

Add. No. 1 Dated 6/27/23 // Add. No. 2 Dated 7/7/23
Add. No. 3 Dated 7/11/23 // Add. No. 4 Dated 8/1/23

I hereby acknowledge that I have read, understand, and agree to all terms, conditions, insurance, scope of work, specifications and pricing for B-4-23-53 / Concession Services at Spessard Holland North.

COMPANY NAME Cheers on the Beach Pub + Grill, LLC DBA

ADDRESS Cheers on the Ocean Grill 3830 S. Hwy 1A St 2/3
Melbourne Beach, FL 32951

AUTHORIZED SIGNATURE [Signature]

PRINTED SIGNATURE Joanne Lee DATE 8/2/23

TELEPHONE # 561 767 2630

FAX #

EMAIL Joanne1200@gmail.com

Cheers on the Beach Pub and Grill@gmail.com

NOTICE OF AWARD

August 16, 2023

B-4-23-53 Concession Services at Spessard Holland North

PROCUREMENT ANALYST: ANGEL BOSS

<u>VENDOR</u>	<u>VENDOR CITY AND STATE</u>	<u>ITEMS AWARDED</u>	<u>AWARD AMOUNT</u>
CHEERS ON THE BEACH PUB & GRILL LLC	MELBOURNE BEACH, FL	ALL	\$17,930.00

☐ BOARD AWARD--AGENDA ATTACHED

☒ APPROVED AWARD (NON-BOARD AGENDA):
(Per Sections III.E. & III.I. & J., BCC-25, PROCUREMENT)


Kathy Wall, Central Services Department Director

AWARDED BY A COMMITTEE CONSISTING OF:

FOR PURCHASING USE ONLY:

☐ ONE-TIME PURCHASE

☒ ANNUAL BID:

EFFECTIVE DATE: Contract Execution. ENDING DATE: Two (2) Years from Contract Execution
RENEWAL OPTION ☐ One year ☒ Other - One (1) additional Two (2) year
period followed by a subsequent One (1) year period

☐ Prompt Payment Discount Offered ☐ Yes _____ (Terms) ☒ NO

☐ Performance and payment bonds received with construction contract documents.

☐ Release Cashier's or Certified Check Received for Bid Deposit on Bids

SPECIAL INSTRUCTIONS TO AWARDED VENDOR:

☒ Please provide certificate of insurance.

☐ Please provide performance and payment bonds as required.

☒ OTHER: Please provide Current W9



BOARD OF COUNTY COMMISSIONERS

Parks and Recreation Administration

2725 Judge Fran Jamieson Way
Building B, Room 203
Viera, Florida 32940

Cheers on the Beach Pub & Grill, LLC DBA Cheers on the Ocean Grill
Joanne Lee, Authorized Member
3830 S Highway A1A St 2/3
Melbourne Beach, FL 32951

SUBJECT: Notice of Lease Termination for Concession Building at Spessard Holland North Beach Park

Monday, February 26, 2024

Ms. Joanne Lee:

On Thursday, February 22, 2024 it was reported that Cheers on the Beach Pub & Grill DBA Cheers on the Ocean Grill ("Cheers") and their Contractor illegally destroyed, removed, and/or cut protected Seagrape vegetation cut on the east side of the Concession Building at Spessard Holland North Beach Park.

I and a representative from Brevard County Natural Resources visited the area and determined that the Seagrape vegetation was cut or removed in violation of State of Florida Law, the Brevard County Code of Ordinances, and your lease agreement. Photos have been attached to this letter.

Section 18 of your Lease for Concession Building at Spessard Holland North Beach Park states:

"Section 18. Illegal, Unlawful, or Improper Use. – The Tenant shall make no unlawful, improper, immoral, or offensive use of the Park nor allow said Park to be utilized for any purpose other than that hereinabove set forth. Failure of the Tenant to comply with this provision shall be considered a material breach of this Contract and subject same to immediate termination by the County, where upon the County shall be entitled to immediately re-enter and retake possession of the Park and terminate this Contract."

The illegal trimming and removal of *Coccolobis uvifera* commonly known as Seagrapes, by Cheers (including its agents, employees, and contractors) on or around February 22, 2024 is unlawful pursuant to Section 161.242, *Florida Statutes*.

This trimming and removal of Seagrapes by Cheers is also in direct violation of Brevard County Code of Ordinances Chapter 62 Article XIII, Division 2 – Landscaping, Land Clearing & Tree Protection.

In addition to the above, Section 19 of your Lease states:

"Section 19. Improvements. Any improvements or repairs, to the Park by the Tenant must be requested in writing to the County, and mutually agreed upon by the County and the Tenant, with written permission granted by the Director of Parks and Recreation, prior to any actual work."

On Friday, January 26, 2024 Richard Tucci, South Area Parks Operations Manager sent Kenneth Brown, Directing Member of Cheers on the Beach Pub & Grill, LLC an email stating "you cannot add/change things in the park/building without prior written permission." This email has been attached to this letter.

installation of an exhaust fan in the Concession Building on or about February 20, 2024 without permission; and the third violation on or about February 22, 2024 when the seagrapes were cut without permission.

Section 33 of your Lease States:

"Section 33. Statutes, Laws, Rules and Regulations. The Tenant's use of the Park will be in accordance with applicable laws, rules, regulations, policies and procedures approved by the Department and/or the County. The County reserves the right to disapprove any and all activities held at the Park, which may be in conflict with the Department's and/or the County's Policies and Administrative Orders, and agrees to furnish the Tenant with a copy of such rules, regulations, policies, procedures, and amendments thereto upon request. It shall be the Tenant's responsibility to be aware of and comply with all laws, statutes, ordinances, fire codes, rules, orders, regulations and requirements of all local, state, and federal agencies as applicable. Tenant shall provide to the County written evidence of current satisfactory health inspections at all times. The Tenant shall secure and maintain all licenses and/or permits required and pay when due any and all taxes and assessments which may be imposed or assessed by governmental units in connection with the business or operation conducted pursuant to the provisions of the Contract. Any such licenses and permits shall be maintained and posted, if required, at appropriate places at the Park within fifteen days of the execution of this Contract by both parties."

For the aforementioned reasons constituting multiple material breaches of your lease agreement,

YOUR LEASE FOR THE CONCESSION BUILDING AT SPESSARD HOLLAND NORTH BEACH PARK IS TERMINATED IMMEDIATELY.

In accordance with Section 18 of your lease, you are required to immediately vacate the premises and surrender the possession of the building and property. Please contact Richard Tucci at Richard.tucci@brevardfl.gov 321-255-4400 to coordinate the removal of your personal possessions from the Concession Building. Failure to fully vacate and return the premises by Monday, March 4, 2024, will result in formal legal action.

The County reserves all rights and actions in law or equity.

Sincerely,



Mary Ellen Donner, Director
Parks and Recreation Department

Enclosures

January 26, 2024 email

February 22, 2024 email

AFFIDAVIT FOR CHEERS ON THE OCEAN GRILL

JOANNE LEE

TO ATTEST TO TRUTH COMMITMENT and DEDICATION

Under the subject of perjury, I, Joanne Lee attest to adhering to the Brevard County Mission statement of Vision and Values as stated, "Our Mission: ***Contribute to enhancing and ensuring Brevard's quality of life today and always.***" **Our Vision:** A community which excels and is recognized for

- Providing for the health, safety, education and social needs of our community
- Building a diverse, strong economic base with the needed infrastructure to support a quality lifestyle
- Protecting the environment and conserving our valuable natural resources
- Creating cooperative partnerships between government, businesses, community organizations and our residents
- Maximizing performance and communications to provide excellent service to our customers

Our Core Values:

- Honesty
- Openness
- Leadership
- Quality
- Accountability and
- Innovation

Joanne Lee, as principal Cheers on the Ocean Grill and Managing Member to lease 2525 S. Highway A1A Melbourne Beach, FL 32951 for the purpose to bring a quality concession of food and beverage for the pleasure of the community, the Park, and customer public. Affidavit acknowledges the notarization of our signatures to be of truth, commitment and dedication to the Mission statement of Brevard County. I, did not know nor did authorize cutting sea grapes, or to install a dryer vent. The Affidavit is to be recorded or available with or for the Brevard County clerk of the Court or as public record.

AFFIDAVIT FOR CHEERS ON THE OCEAN GRILL

KENNETH BROWN

TO ATTEST TO TRUTH COMMITMENT and DEDICATION

Under the subject of perjury, I, Kenneth Brown attest to adhering to the Brevard County Mission statement of Vision and Values as stated, "Our Mission: ***Contribute to enhancing and ensuring Brevard's quality of life today and always.***" **Our Vision:** A community which excels and is recognized for

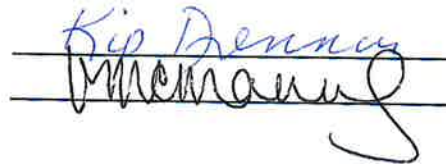
- Providing for the health, safety, education and social needs of our community
- Building a diverse, strong economic base with the needed infrastructure to support a quality lifestyle
- Protecting the environment and conserving our valuable natural resources
- Creating cooperative partnerships between government, businesses, community organizations and our residents
- Maximizing performance and communications to provide excellent service to our customers

Our Core Values:

- Honesty
- Openness
- Leadership
- Quality
- Accountability and
- Innovation

Kenneth Brown, as an officer and director Cheers on the Ocean Grill to lease 2525 S. Highway A1A Melbourne Beach, FL 32951 for the purpose to bring a quality concession of food and beverage for the pleasure of the community, the Park, and customer public. Affidavit acknowledges the notarization of our signatures to be of truth, commitment and dedication to the Mission statement of Brevard County. The Affidavit is to be recorded or available with or for the Brevard County clerk of the Court or as public record. On or about February 21, 2024, I scolded and told Daniel, a homeless PTSD Vet do not cut sea grapes or sea Oats. I had a licensed Plumber to properly installed a dryer vent. To erect Cheers signs subject to approval.


Kenneth Brown, Director

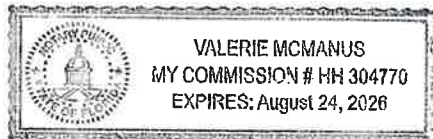
 witness
witness


NOTARY ACKNOWLEDGMENT

STATE OF FLORIDA

County of Brevard

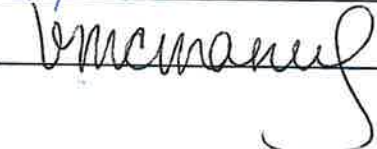
The foregoing instrument was acknowledged before me by means of physical presence or by online presentation, this 24 day of April 2024 by the above signors who are personally known to me by producing personal identification in my presence.




4-24-24

A1A Pack and Ship
3830 S Hwy A1A Suite 4
Melbourne Beach, FL 32951
321-726-1667


Joanne Lee
Managing Member

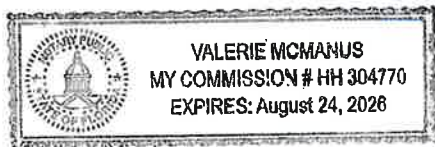
 witness
 witness


NOTARY ACKNOWLEDGMENT

STATE OF FLORIDA

County of *Brevard*

The foregoing instrument was acknowledged before me by means of physical presence or by online presentation, this *24* day of *April* ~~March~~ 2024 by the above signors who are personally known to me by producing personal identification in my presence.




4-24-24

A1A Pack and Ship
3830 S Hwy A1A Suite 4
Melbourne Beach, FL 32951
321-726-1667

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPTION OF RECORDED CONVERSATION

TRANSCRIBED BY: CHRISTINE S. REYNOLDS
STENOGRAPHIC COURT REPORTER

CSR Court Reporting, LLC

www.csrcourtreporting.com - (607) 301-1629

1
2 DANIEL: (Inaudible.) Good cop,
3 bad cop. Like I said, you're the good
4 cop. Ken's playing the bad cop role.
5 Well, he ain't gonna play it too much
6 longer.

7 Every restaurant that he has
8 anything to do with, my finger touch
9 your name. His name's on a piece of
10 paper, probably going to be shut down
11 and keys confiscated. None of y'all
12 will be able to have (inaudible) in this
13 place after they shut down. So you
14 better get any cash out of them bitches
15 you want out of them. Don't keep cash
16 in them. When they close them, you will
17 not be able to enter.

18 Ask Ken. A guy told him -- me and
19 Ken told him -- the guy we liked --
20 listen to what I said, the guy we liked,
21 that they did that to a guy in
22 Indialantic. They will do it to y'all.
23 Have a nice day. Have a nice life. You
24 better get right with me and Marty or
25 that's gonna happen. I'm telling you

1
2 right now.

3 West Palm lawyers are on this shit.
4 They went this morning to the police
5 shit I've got going on. Watch what
6 happens. I'm more for the police shit,
7 but I'll take this too.

8 (Audio recorded ended.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2 **CERTIFICATION:**
3

4 I hereby certify that the ***recorded***
5 ***conversation*** is contained fully and accurately in
6 the notes taken by me and that this is a correct
7 transcript of the same to the best of my ability.
8

9
10 

11 CHRISTINE S. REYNOLDS
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPTION OF RECORDED CONVERSATION

TRANSCRIBED BY: CHRISTINE S. REYNOLDS
STENOGRAPHIC COURT REPORTER

CSR Court Reporting, LLC

www.csrcourtreporting.com - (607) 301-1629

1
2 DANIEL: Y'all keep -- keep your
3 pillow talk going and good cop, bad cop,
4 good restaurant owner, bad restaurant
5 owner going, because it compiles the
6 evidence. And all of these taxes you're
7 giving me are more evidence of the
8 invisibility you think you're creating.
9 It's not invisible. People know.

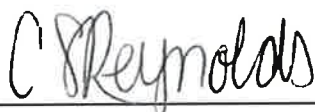
10 I have five people ready to go
11 tomorrow to the Better Business Bureau
12 about payment from the bad cop, Kenneth.
13 You're the good cop, JoJo. And I just
14 don't know how to handle this other than
15 what the lawyer tells me to do. I'm
16 going to follow these procedures. We'll
17 see you in court. Settle out.

18 (Inaudible.) All the restaurants
19 will be shut. I'm getting off this
20 beach when this happens. See ya.
21 Adios.

22 (Audio recording ended.)
23
24
25

CERTIFICATION:

I hereby certify that the ***recorded***
conversation is contained fully and accurately in
the notes taken by me and that this is a correct
transcript of the same to the best of my ability.



CHRISTINE S. REYNOLDS

SUMMARY OF LEASE TERMS CONFIRMING MISUNDERSTOOD ACTS

Section 6-Administration Any decisions by any member of the County administration as it relates to the above authority may be appealed by the Tenant to the Parks and Recreation Director, or designee, whose decision shall be final.

Section 18. Illegal, Unlawful, or Improper Use.

The Tenant shall make no unlawful, improper, immoral, or offensive use of the Park nor allow said Park to be utilized for any purpose other than that hereinabove set forth. Failure of the Tenant to comply with this provision shall be considered a material breach of this Contract and subject same to immediate termination by the County, where upon the County shall be entitled to immediately re-enter and retake possession of the Park and terminate this Contract.

Section 26. Obligations of the Tenant.

A. The Tenant will be responsible for all food service operations, maintenance and repairs of the concession building located at 2525 Highway A1A, Melbourne Beach, Florida 32951

F. All aspects of cleanliness in the Tenant's area of operations including food preparation, tables, chairs, walls, floors, including carpet cleaning and removal of debris. There shall be full County Health Department and other applicable laws or ordinances. Final determination in this matter shall rest with the County.

J. The Tenant shall provide and adequately arrange to offer the public a satisfactory Concession operation consistent with good food and beverage business practices and management. Maintaining a level of public relations and customer services that promotes a highly favorable atmosphere, responding to all customer complaints received by the Tenant and/or the County

K. Advertisements in the Concession area shall be in good taste commensurate with acceptable family-oriented environments. Advertising of other business not related to the park Concession operation such as business cards and signs are not permitted

L. The Tenant shall be responsible for all electrical and plumbing repairs associated with the Concession operation.

M. The Tenant shall be responsible for all security and fire alarm monitoring and Annual inspections as required by the Fire Inspector

N. The Tenant shall install and maintain, at their expense, all required equipment, including refrigeration equipment, stoves, grills, deep fat fryers, microwaves, sinks, ice machines and associated food and beverage preparation equipment as needed to operate the facility, tables and chairs and repairs thereof. This is to include any required safety or fire prevention equipment necessary for proper operations as well as maintenance and mandatory inspections of the same. Where the facility is not ventilated to handle or accommodate deep fat fryers it is the responsibility of the Tenant to provide such ventilation.

Section 33. Tenant with a copy of such rules, regulations, policies, procedures, and amendments thereto upon request. It shall be the Tenant's responsibility to be aware of and comply with all laws, statutes, ordinances, fire codes, rules, orders, regulations and requirements of all local, state, and federal agencies as applicable.

Tenant shall provide to the County written evidence of current satisfactory health inspections at all times. The Tenant shall secure and maintain all licenses and/or permits required and pay when due any and all taxes and assessments which may be imposed or assessed by governmental units in connection with the business or operation conducted pursuant to the provisions of the Contract. Any such licenses and permits shall be maintained and posted, if required, at appropriate places at the Park within fifteen days of the execution of this Contract by both parties.

Section 34. Successors in Interest.

This Contract and the covenants and conditions hereof apply to and are binding on the heirs, successors, legal representatives, and assigns of the parties.

Section 35. Termination for Convenience.

Either party may terminate this Contract for their own convenience upon providing thirty days written notice to the other party. Upon termination of this Contract, the Tenant shall have fifteen days within which to remove the temporary concession vehicle and any personal property. Any property not removed within said fifteen-day period shall become the property of the County. All equipment owned by the

Tenant and utilized in the facility will be removed by the Tenant upon expiration of the Contract. Removal of the equipment is at the Tenant's sole cost and expense, and will immediately repair any damage to the premises by reason of such removal so as to leave the premises in a neat and clean condition.

- FEMA contract for Bidders

- Termination for cause...

- Termination for Convenience Clause pp18

RESEARCH NOTES TENANT RIGHTS TO CURE LEASE DISPUTES

Attempting research, Florida Law-- Tenants have rights and defenses that supersede the lease terms. There's rights for eviction notice to have a time requirement. There was no monetary loss to the Landlord nor public scrutiny gives the Tenant time to cure any concerns by the Landlord for non-monetary breaches/

Quick note 1) the sign had requested approval but the sign maker had no prototype for me to send to seek approval other than a finished sign thus rather leave the sign on the grass installed it for a bona fide approval which I got verbally.

2) the hole in the wall for the dryer vent was done in a series of repairs of piping by a plumber who was doing all the plumbing repairs in compliance with **Paragraph L of the Lease. The Tenant shall be responsible for all electrical and plumbing repairs associated with the Concession operation.** Followed by **Paragraph N. The Tenant shall install and maintain all equipment at their expense ...it is the responsibility of the Tenant to provide such ventilation.** Thus, it most reasonable that the Tenant thought his compliance with this repair met with the terms of the lease when a licensed plumber did the repair to conform a future fire code inspection.

3) the cutting of the sea grapes was unauthorized and done without knowledge. By a homeless needy war veteran with PTSD who threaten to destroy the business.

If some way of assuring the County these were honest misunderstandings that are correctible and such will not be future occurrences that literal writing will after this enlightenment be rigorously adhere to. We have the fully adopted the County's mission to... ***Contribute to enhancing and ensuring Brevard's quality of life today and always.*** We will and I do.

Now, restlessly tried to research this stuff, and found this essay on Terminations of lease by www.gray-robinson.com

Commercial Landlord-Tenant Law in Florida

By GARY S. SALZMAN, ESQ.

GrayRobinson, P.A. 301 East Pine Street, Suite 1400

Orlando FL 32801 Telephone: (407) 843-8880 Facsimile: (407) 244-5690 Email: gary.salzman@gray-robinson.com

If the tenancy is not at will, notice must be given in accordance with the terms of the lease, but not less than 3 days notice for a default in the payment of rent. If the lease is silent on the matter, at least 3 days notice must be given to cure any default in the payment of rent **and at least 15 days notice must be given to cure any material breach of the lease, other than non-payment of rent.**

although a landlord's or tenant's termination of a lease must comply with the pre-**requisites of the lease and Florida law**, proving the presence of lawful grounds to terminate the lease is a separate issue of concern. Monetary defaults are usually straight forward, but may become unclear under certain circumstances

2. Non-monetary grounds for termination. Non-monetary grounds for termination of a lease are more problematic and are disfavored by Florida courts. On the tenant's behalf, a lease may be terminated if the landlord materially breaches a material obligation due the tenant under the lease or applicable law, such as the covenant of quiet enjoyment resulting in a constructive eviction. Another example would be where the landlord is obligated to make repairs to the demised premises, but fails to do so after receiving the requisite notice from the tenant.¹ Examples of non-monetary grounds that may justify the landlord terminating a lease may include the lapse of a tenant's liability insurance required under the lease, the assignment or subletting of the premises without the landlord's consent and the appointment of a receiver over the tenant.

In order for a non-monetary ground for termination to be judicially enforced, there must be evidence that the tenant's or **landlord's interests have been materially prejudiced and a forfeiture will not result in an unconscionable or inequitable result.** This rule is illustrated by the following summary of selected cases involving non-monetary grounds for termination of commercial leaseholds.

¹ § 83.201, Fla. Stat. (2009).

www.gray-robinson.com

In *Sharpe v. Sentry Drugs, Inc.*, a lessee sublet a portion of its commercial space in violation of a lease provision requiring prior written consent of the lessor.² The lessor gave notice of termination of the lease based upon this breach and sued for termination. The trial court agreed and upheld the termination. On appeal,

however, the court reversed stating that, although the sublease was a breach of the primary lease, the breach was “not sufficient to constitute a forfeiture of the main lease agreement as a matter of law.”³ The court’s decision was based upon the equitable principle that a court may refuse to enforce a forfeiture where the effect of doing so would result in an unconscionable, inequitable or unjust eviction under the circumstances.⁴ In other words, subletting in violation of the primary lease was not material enough to prejudice the lessor’s interests so as to justify a

forfeiture.⁵ insurances for its indemnity obligations. The trial court ruled in favor of Goodings. The appellate court affirmed, holding that Net Realty materially breached the lease and was given sufficient notice to cure the default, but failed to do so.⁹ In *Fowler v. Resash Corp.*, a tenant made unauthorized improvements to the 2 Sharpe v. Sentry Drugs, Inc., 505 So. 2d 618 (Fla. 3d DCA 1987).

(III) NOTICE AND RIGHT TO CURE.

Florida Statutes and most leases require one party to a lease to give the other party notice of a material default and an opportunity to cure the default. If after proper notice, the defaulting party fails to cure, the non-defaulting party may terminate the lease. Unless the lease states otherwise, the time period for the notice depends upon the term of the tenancy. Under Florida law, any tenancy is deemed a “tenancy at will” unless it is in 156, 159 (Fla. 5th DCA 1989); *F.D.I.C. v. Hemmerle*, 592 So. 2d 1110 (Fla. 4th DCA 1991).

If the tenancy is at will, its duration is determined by the periods of time at which rent is payable.²⁶ If rent is paid weekly, the tenancy is from week to week.²⁷ If rent is paid monthly, the tenancy is from month to month.²⁸ If rent is paid quarterly, the tenancy is from quarter to quarter.²⁹ If rent is paid yearly, the tenancy is from year to year.³⁰ A tenancy at will may be terminated by either party giving notice as follows:

- (1) Where the tenancy is from year to year, by giving not less than 3 months’ notice prior to any annual period;
- (2) Where the tenancy is from quarter to quarter, by giving not less than 45 days’ notice prior to the end of any quarter;
- (3) Where the tenancy is from month to month, by giving not less than 15 days’

notice prior to the end of any monthly period; and

(4) Where the tenancy is from week to week, by giving not less than 7 days

C. Pre-suit “self-help.”

A common example of a landlord using “self-help” to retake possession of the

demised premises is where a landlord unilaterally changes the locks for the premises during the night. Except under very limited circumstances, that action could subject the landlord to liability for damages under the lease and Florida law.³⁸ **A landlord may retake possession of leased premises in three exclusive ways: (1) the landlord pursues a court action, such as an ejectment action or an eviction lawsuit; (2) the tenant voluntarily surrenders possession of the premises; or (3) the tenant abandons the premises.**³⁹ “Self-help” is only available where the tenant either surrenders possession or abandons the premises. To prevent any dispute over whether or not the tenant voluntarily surrendered the premises, a surrender should be reflected in a written surrender agreement signed by the tenant. Otherwise, the landlord should proceed with the judicial process or determine whether the circumstances constitute an abandonment. In considering whether an abandonment has taken place, the landlord should be certain that, at a minimum, a statutory presumption of abandonment will arise before “self-help” is used to retake possession.⁴⁰ This presumption arises if the landlord reasonably believes the tenant has been absent from the premises for 30 consecutive days, the rent is past due, proper notice has been served and 10 days have elapsed since service of the notice.⁴¹ If any one of these elements are not present, the presumption of law will not be available to the landlord.⁴² In that event, the landlord will have the burden to prove in court that the premises were, in fact, abandoned. Other circumstantial evidence may prove actual abandonment, such as the termination of all utility services, the removal of the tenant’s property from the premises, and the tenant having all mail forwarded to another.

Albeit, we want to have the opportunity operate this restaurant. It’s loss is gut wrenching and ripped our hearts out. It’s a disgrace, humiliating, and damaging personal financial loss. However, in good faith, we don’t want to tick off the County any more than they are because we don’t want harassment to befall us on our other two restaurants.



CCCL Dune Plant Maintenance Guidelines

These guidelines provide best management practices for maintenance of seagrapes and other salt tolerant dune plants protected seaward of a coastal construction control line by state law 161.053 (2)(a), Florida Statutes.

Beach – Dune Vegetation

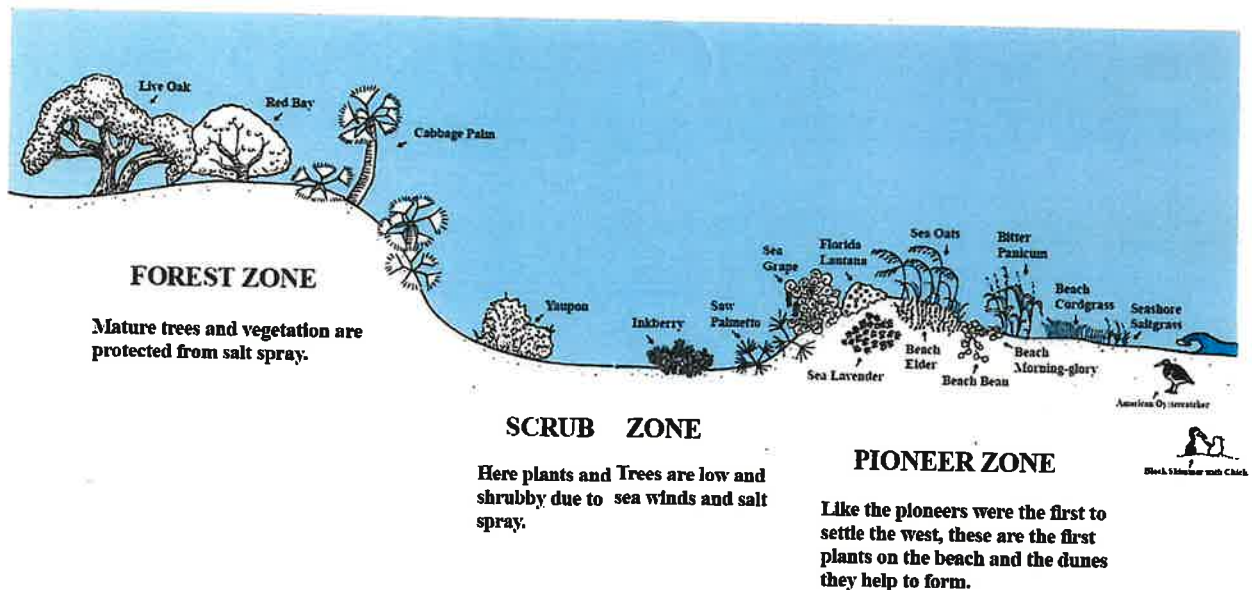


Figure 1: Diagram of pioneer, scrub (or strand) and forest zones of dunes within a typical Florida beach and dune system.

Sea oats, seagrapes and other plants growing on Florida dunes give significant benefits to beaches, dunes, upland properties and wildlife. Salt tolerant dune plants:

- build protective dunes by trapping and stabilizing wind-blown beach sand,
- reduce erosion losses by wind and storms,
- provide a buffer against storm surges and salt spray,
- provide shelter for wildlife, and
- block light pollution for nesting and hatchling sea turtles.

Dune plants are resilient and adapted to survive storms and grow back through natural recovery processes. At the same time, dune plants can be easily damaged by construction and other human activities and require much longer recovery times. It is important to conduct dune plant maintenance so that the plants are not permanently damaged and sea turtles and dune systems are protected.

What are Dune Plants?

Dune plants are those native trees, shrubs, grasses, groundcovers and other plants found in beach dune, coastal berm, coastal grassland, coastal strand and maritime hammock natural communities as described by the Florida Natural Areas Inventory (see [Guide to the Natural Communities of Florida – 2010 Edition](#)). Native plants are those species documented as native or endemic in the [Atlas of Florida Vascular Plants](#) maintained by the Institute for Systematic Botany. Nuisance or Invasive Exotic Plant Species are those species listed in the Florida Exotic Pest Plant Council's [List of Category I and II Invasive Species](#). Plants that have been intentionally planted or installed, or inadvertently introduced into the dune system for purposes other than for dune restoration are considered to be ornamental or landscape plantings.

What are the State Laws related to Dune Plant Maintenance?

Beach-dune plant damage or removal located seaward of a state of Florida coastal construction control line (CCCL) is regulated under section 161.053, Florida Statutes (F.S.). Additional protections for sea oats, *Uniola paniculata*, and seagrasses, *Coccoloba uvifera*, are found in section 161.242, F.S. CCCL regulations do not supersede more stringent requirements of other laws or jurisdictions that may be in effect, or the protection of endangered, threatened or commercially exploited plants regulated under Chapter 581 of the Florida Statutes, and Rule Chapter 5B-40, of the Florida Administrative Code.

In recognition of the storm buffer services of dune plants, Florida law states that no person, firm, corporation, or governmental agency shall damage or cause to be damaged sand dunes or the vegetation growing on them without a permit from the Florida Department of Environmental Protection (FDEP) (subparagraph 161.053(2)(a), Florida Statutes). Consequently, FDEP Coastal Construction Control Line Program (CCCL) rules in Chapter 62B-33, Florida Administrative Code, protect these important native salt-tolerant dune plants from damage. On dune systems seaward of the Department's Coastal Construction Control Line, property owners or their agents cannot cut down or damage beach dune plants without a CCCL permit. Landscape plant maintenance activities that target ornamental or introduced non-native species or do not damage native beach-dune vegetation or involve excavation do not require CCCL permits and are exempt from CCCL permit application requirements under subparagraph 161.053(11)(c)2, F.S.

What “Damages” Dune Plants?

Damage to vegetation refers to a material reduction in the health of plant from trampling, crushing, chopping, breaking, digging up, or excessive cutting of roots, stems, trunks, branches or leaves of beach dune plants naturally occurring or planted on-site for dune enhancement seaward of a CCCL. Excessive cutting means the removal of roots, branches, stems and leaves in exceedance of accepted horticultural practices, such as the standards published in ANSI A300 Part 1: Tree, Shrub and other Woody Plant Maintenance -Standard Practices, Pruning. Tree and landscape maintenance practices recognize exceptions to the standards and that certain coastal plants adapted to recover from breakage by damaging tropical storm force winds, such as seagrass, *Coccoloba uvifera*, are tolerant of heavy pruning or coppicing. Damage to beach and dune vegetation can be avoided, minimized or mitigated through employment of arborists and other landscape professionals and when following best management practices tailored for the unique physical conditions of coastal dune environments.

What Permits, if any, are Required to Cut Dune Vegetation?

Cutting dune vegetation seaward of a coastal construction control line requires a CCCL permit unless the activity qualifies as a minor activity determined by the department not to have an adverse effect on the coastal system, such as “maintenance of existing beach-dune vegetation” exempted in state law.

Vegetation maintenance that does not damage native dune plants includes trimming, shearing, pruning, dead heading and other accepted horticultural practices, and does not require a CCCL permit pursuant to section 161.053(11), F.S. An exemption of the work from CCCL permitting requirements does not shield the property owner from his or her responsibility for following other laws or from enforcement action taken by other local, state, or federal agencies. Furthermore, proper arboricultural and horticultural practices must be followed to ensure that the native beach-dune plants are not damaged or destroyed from the maintenance. Trespass onto another’s property to remove vegetation without the property owner’s approval is also not allowed.



Figure 2: Sea oats, *Uniola paniculata*, building a dune by trapping and stabilizing windblown beach sand.

CCCL staff are available to assist property owners in determining if the dune maintenance project is exempt, or if not exempt, in processing the proper CCCL permit. CCCL field inspectors can schedule site visits to meet on the property, discuss projects over the phone, and issue CCCL Field Permits as needed. Additionally, property owners can send dune maintenance project information (eg. address, description of work, photographs and plans) to a CCCL permit manager in a consultation request emailed to cccl@dep.state.fl.us. The permit manager can assist with the processing of a CCCL Individual Permit application as needed. Both CCCL field inspector and permit manager contact information is located at the FDEP [CCCL webpage](#) or by calling 850/245-2094 and asking for the CCCL staff member assigned to the county of the project.

General Dune Plant Maintenance Guidance

- Work is to be conducted in a way that does not alter or damage dune topography or beach-dune vegetation, require new beach access, disturb marked sea turtle nests or known nest locations, obstruct public access, cause excavation of the ground or damage adjacent properties.
- Any disturbance of the beach or soil surface must be restored to a stable, pre-work condition.
- Removal of beachfront vegetation must not result in the increase of the visibility of artificial light from the beach, nor additional exposure of salt-sensitive plants or property to increased salt spray.
- Vegetation maintenance, trimming, or removal requires the approval of the property owner or if on public property, the approval of the responsible government resource management agency.
- Native dune plants damaged by unauthorized maintenance activities must be replaced to the approval of the Department.



Property owners and others maintaining native vegetation seaward of the Coastal Construction Control Line must consider possible harm to sea turtles. Removal of beachfront vegetation increases the potential for disorientation and subsequent injury or mortality of hatchling sea turtles, which are attracted to light. Pruning or trimming removes vegetation from the canopy that often blocks lights from shining on the beach and thus protects sea turtle nesting habitat. Vegetation maintenance that increases lighting of the beach must be in compliance with section 379.2431, Florida Statutes, "Marine Turtle Protection Act." Information on lighting issues is provided in the publication "Sea Grape Trimming and Sea Turtles," available on the CCCL webpage or by visiting the Florida Fish and Wildlife Conservation Commission sea turtle conservation program [website](#). The Florida Fish and Wildlife Conservation Commission, Imperiled Species Management Section can be reached at 850/922-4330 or marineturtle@myfwc.com.

- If reducing the tree crown or canopy of the dune vegetation, the property owner must evaluate existing or potential sources of light visible from the beach and take appropriate measures to eliminate the possibility of increased light cast on the nesting beach. Before cutting down vegetation seaward of a beach house, property owners can protect sea turtle nesting habitat by replacing light fixtures that are visible from the beach with shielded "can" type or other fixtures.
- Operation, transportation, or storage of equipment or materials, including skid steers, cherry pickers and other equipment on the beach or frontal dune must be scheduled outside sea turtle nesting season, or coordinated with CCCL and FWC staff if proposed during nesting season. This may require engaging the services of a state permitted biologist to ensure that proposed activities avoid all sea turtle nesting, nests and hatchlings.

References

Guide to the Natural Communities of Florida – 2010 Edition.

Atlas of Florida Vascular Plants [website](#) maintained by the Institute of Systematic Botany

Florida Exotic Pest Plant Council's [List of Category I and II Invasive Species](#)

Florida Beach and Shore Preservation Act, Chapter 161, Florida Statutes, (go to [Online Sunshine](#))

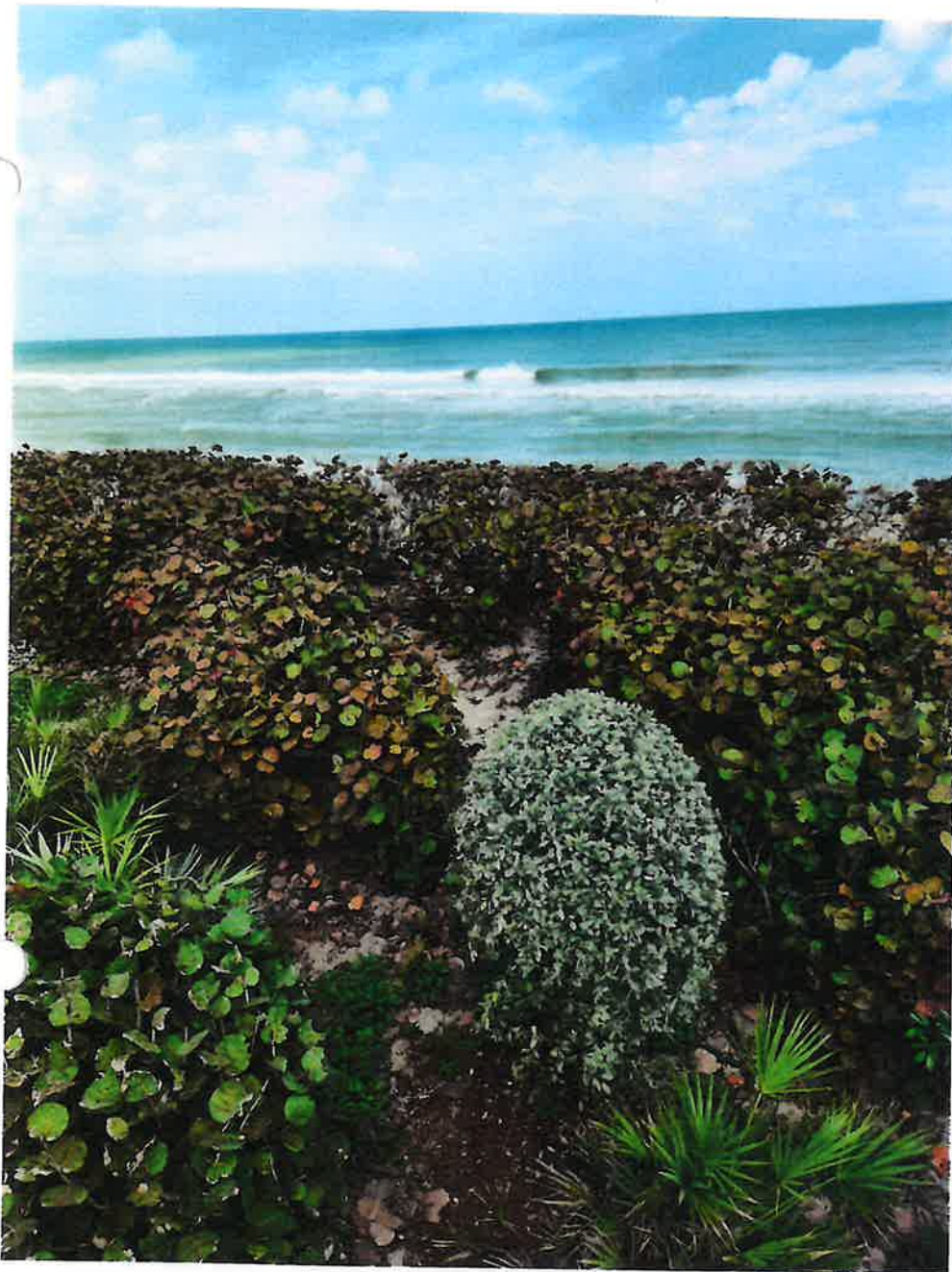
ANSI A300 Pruning Standard – Part 1 "Tree, Shrub, and Other Woody Plant Management – Standard Practices (Pruning)"; American National Standards Institute.

Coastal Construction Control Line Program, FDEP. (see [website](#))

Coastal Construction Control Line Program

Florida Department of Environmental Protection
Office of Resilience and Coastal Protection
Bob Martinez Center, Suite 505
2600 Blair Stone Road, MS 3522
Tallahassee, Florida 32399-2400
Email: cccl@dep.state.fl.us
Website: www.FloridaDEP.gov/CCCL





Sea Grape Trimming Guidelines

There are a small number of plant species that can endure the extreme conditions encountered along our state's coastline. Dune species such as the Sea grapes thrive in this harsh environment. Sea grape trees and shrubs act as a continuous sand trap. The accumulation of sand by the leaves, limbs and stalks play a major role in the construction of the beach and dune system. Without the stabilizing and accreting effects of Sea grapes and other salt-tolerant plant species, the beach and dune system becomes more vulnerable to erosion. To put it simply, sand stored in the dunes provides protection to homes and other structures from the effects of coastal storms.

The Florida Legislature recognized the importance of coastal plant species. Therefore Florida law states that no person, firm, corporation, or governmental agency shall damage or cause to be damaged sand dunes or the vegetation growing on the dune system (subparagraph 161.053(2)(a), Florida Statutes). Consequently, it is the policy of the Department of Environmental Protection to protect native salt-tolerant vegetation and endangered plant communities. Property owners or their agents proposing to alter the native vegetation seaward of the Department's Coastal Construction Control Line must apply for a permit if the alteration can be expected to damage the plants.

Damage to vegetation refers to the trampling, crushing, breaking, digging up, or excessive cutting of roots, stems or branches of native salt tolerant plants naturally occurring on-site or planted for dune restoration. Excessive cutting means the removal of branches, stems and leaves in excess of the Department trimming guidelines for sea grape or the standards published in ANSI A300 Part 1: Tree, Shrub and other Woody Plant Maintenance - Standard Practices, Pruning. Damage to beach and dune vegetation will be avoided, minimized or mitigated through the permit process.

Vegetation maintenance that does not damage plants as defined above, including trimming, shearing, pruning, dead heading and other accepted horticultural practices is exempt from permit requirements. An exemption from the permitting requirements of the Department of Environmental Protection does not shield the property owner from enforcement action taken by local, state, or federal agencies. Furthermore, proper horticultural practices must be followed to ensure that the plants are not damaged or destroyed. For more information you may contact the Bureau of Beaches and Coastal Systems regulatory program at 850/488-7708.

Persons intending to maintain native vegetation seaward of the Coastal Construction Control Line must consider the impacts to sea turtles. Removal of beachfront vegetation increases the potential for disorientation and subsequent injury or mortality of hatchling sea turtles, which are attracted to light. Pruning or trimming removes vegetation that often prevents lights from shining on the beach and thus protects sea turtle nesting habitat. Vegetation maintenance that increases lighting of the beach must be in compliance with Chapter 370.12, Florida Statutes, "Marine Turtle Protection Act." The property owner must evaluate existing or potential site lighting and take appropriate measures to eliminate the potential for increased light cast on the nesting beach. For information on lighting issues see the attached information on "Sea Grape Trimming and Sea Turtles," or visit the Florida Fish and Wildlife Conservation Commission website. You may also contact the sea turtle conservation program at 850/922-4330.

Sea turtle mortality resulting from increased illumination is a violation of Chapter 370.12, Florida Statutes, and the Federal Endangered Species Act of 1973. Such a violation could subject the responsible party to prosecution by both the Department and the U.S. Fish and Wildlife Service with fines up to \$10,000.



SEA GRAPE (COCCOLOBA UVIFERA):

Is a native, salt-tolerant plant, which is an important component of the beach and dune system throughout its range. Fruit of the sea grape is a berry, which grows in grape-like clusters. The fruit is a source of food for a number of native birds and mammals. The leathery, broad leaves of

sea grape may grow to be 10 inches wide. Throughout its range, the sea grape is important to owners of oceanfront property. The large round leaves trap windblown sand and thereby help to build dunes that protect upland structures. Furthermore, thick stands of sea grape slow storm induced erosion of dunes.

Exemption Criteria: The Department will exempt maintenance of sea grapes seaward of the Coastal Construction Control Line from the permitting requirements of Chapter 161, Florida Statutes, when the maintenance will not damage or destroy the plant. The Department has determined that the maintenance will not destroy the plant when following the guidelines listed below:

Shrub(s):
Less than 72" in height.

- No more than one third of the leaf mass of each plant may be removed in a single pruning event or in a single year.

Tree(s): 6' in height, or more.

- No more than one third reduction in the height of each tree annually,
- Provided there is no more than one third of the leaf mass removed, annually.
- Pruning shall not result in plant being reduced to less than six feet in height.

Advisory Notes:

**THIS DOES NOT PRECLUDE LEAF AND STEM TIP SHEARING.
REMOVAL OF DEAD, BROKEN AND DISEASED LIMBS IS NOT INCLUDED IN ESTIMATES.
CANOPY REDUCTION GRATER THAN 1/3 OF THE HEIGHT OF THE PLANT WILL REQUIRE A PERMIT.**

- Maintenance of sea grapes, in accordance with the conditions described above, and not in conflict with the standards published in ANSI A300 Part 1: Tree, Shrub and other Woody Plant Maintenance - Standard Practices, Pruning, are exempt from the permitting requirements of Chapter 161, Florida Statutes, for any number of consecutive years.
- Proposed trimming that will result in reducing the plant to a height of less than 42 inches for shrubs and less than six feet for trees, or completely destroy it, will not be exempt from the permitting process. The Department will consider the site-specific information, including the possible adverse impacts to the beach and dune system from the activity, as part of its determination of whether or not to permit the proposed activity.



In addition, maintenance of sea grapes must be in compliance with Chapter 370.12, Florida Statutes, "Marine Turtle Protection Act" and should not result in additional exposure of salt-sensitive coastal hammock vegetation to increased salt spray.

darlene nicolette <alleykat7762@yahoo.com>

9/16/2023 9:59 PM

Fw: GRAPE LEAFE TRIMMING

To kenwbrown@comcast.net <kenwbrown@comcast.net>

Sent from Yahoo Mail on Android

----- Forwarded Message -----

From: HMS PROPERTY MANAGEMENT**To:** HMS PROPERTY MANAGEMENT**Sent:** Wed, Dec 28, 2022 at 6:56 PM**Subject:** RE: GRAPE LEAFE TRIMMING

All,

After an exhaustive litany of phone calls to get the definitive answer regarding trimming of our dune vegetation, Darlene was in contact with Tyler N. Turner, Fisheries and Wildlife Biological Scientist IV, Imperiled Species Management, Florida Fish and Wildlife Conservation Commission. Mr. Turner's agency monitors and protects marine turtles and their habitats. He says it does not matter how long you've lived on the beach, whether you are a real estate agent or a property manager, the rules for dealing with dune vegetation apply. Brevard County beaches support nesting and vital habitat essential for the recovery of threatened loggerhead (*Caretta caretta*), threatened green (*Chelonia mydas*), and endangered leatherback (*Dermochelys coriacea*) marine turtles. Dune habitat is protected for the benefit of threatened and endangered marine turtles under Florida Statute 379.2431(1), 161.053, and 62B-33.005(4)(h) & (12), F.A.C. These turtles are also protected under Federal Law, namely the Endangered Species Act, and would be subject to Federal protections. While his agency monitors marine turtle impacts, Florida Department of Environmental Protection (FDEP) monitors and enforces laws protecting native vegetation. Non-compliance issues would lead to a citation and the property needing to re-plant vegetation and possibly needing a new lighting survey and plan to address new lighting non-compliance issues from the lack of vegetation. Mr. Turner is planning a trip to Indialantic to view our property. This could be very costly to the building. He said if we have any issues or suspect anyone is acting illegally, please contact our Law Enforcement immediately. They are already on alert for vegetation issues in Brevard and Indian River Counties. He is also requesting for us to turn over video footage we have of an owner disturbing the dune vegetation to evaluate for a possible fine and prosecution. He sent us another copy of the guidelines confirming only a once per year cutting and only 1/3 of the total height at time of cutting can be removed. I have attached those guidelines. Please be on the lookout for anyone disturbing any dune vegetation. Please report it directly to my office or call the sheriff's department immediately. If anyone has any questions you can contact our office. I hope everyone has a safe and Happy New Year.

Robert NicoletteHMS PROPERTY MANAGEMENT
LIC. #CAM45300

MOBILE: 321-288-1351
OFFICE / FAX: 321-345-4071
HMSPROPERTYMGT@AOL.COM
WWW.HMSOFBREVARD.COM

-
- FDEP Sea Grape Trimming Guidelines.pdf (611 KB)

Joanne Lee, President
Cheers on the Beach Pub & Grill LLC
3830 S. Highway A1A Ste 2/3
Melbourne Beach, FL 32951
561 767 2630

Mary Ellen Donner, Director
Parks & Recreation
272 Judge Fran Jamieson Way Bldg B
Viera, FL 32940

March 26, 2024

RE: Locks changed at 2525 Cheers on the Ocean Grill

Greetings Mary Ellen:

Please accept this letter to open a dialogue to request your generosity to permit me to appeal the decision to terminate the Lease for Concession Building at Spessard Holland North Beach Park, AKA fka Billies, by the County and the relief that rips my heart out over what is possibly an overreaction, misinformation, and a mistake to the betterment of the community. The Notice blames matters that were not known to me or within my control to change which results in an unusually cruel and harsh penalty to close my company Cheers not to operate and serve.

Section 6 Administration gives the Tenant the authority to appeal the decision to the Parks and Recreation Director.

The plea for this chat complies, in fact, with the spirit and assurances given and acknowledged between us as party to the state of mind at the time of our meeting to formally sign the lease to the Concession Building. It was expressed and understood that the Lease, once the Tenant puts their hard work, diligence, and invests money into establishing the business, a capricious, malicious, or random termination or eviction does not happen in Brevard County unlike Dade, Broward, or Palm Beach Counties. Feels like being double crossed with some disingenuous solemn promise. To me this becomes a ruthless betrayal to close my business

rather than be given a warning, a fine, or remedy to cure any infraction seems more compelling government act than to close a credible business.

However, to Cheers, my company, this is unilateral lockout that quickly reverses the good faith and understanding that was expressed and represented to effect the lease agreement. Notwithstanding as a Tenant not to have a hearing or a dialogue to any dissatisfaction to our operating and opening Cheers s disappoints like being left at the altar. As Tenants' there are always two sides to a story. I complied with the best of intentions to perform to the Lease as agreed. This position was one for the betterment of the Community.

Amidst the Notice of February 26, 2024, the Community and surrounding residents and the various subsections have expressed their disappointment and strongly support that Cheers be opened. More than one community subsection has voiced and petition a strong support for Cheers given the relief to open and serve.

I stand committed that this lockout is a material overreaction to an over-blown exaggeration of factors cited in the Notice. The Notice misrepresents a situation that is correctible and matters outside my ken, and certainly understates the benefits to the Community that an operating Cheers brings to mutually benefit the party's to serve the Community.

We at Cheers and myself have done the best to put and will put forth a quality and committed effort to bring a mutually beneficial arrangement for a successful food concession to North Beach Park at Spessard Holland that proficiently serves the Community. The termination serves no justice, only underserved disgrace.

Reputation and quality of performance at Cheers is considered foremost over profits. We expressed this in the Cheers executive summary and mission statement provided with the bid process. We stand firm in our ability to prove this far above the hyperbole that appears to be present here to cause this lockout and closure of the business.

Since there was no opportunity to meet, to cure or be given a warning, I guess the Notice rests over three instances: 1) the signs, 2) the dryer vent, 3) the cutting sea grapes. None which I did, cause, know about, or control. Any damage to seagrapes was unauthorized and outside the scope of any employment. The dryer vent was not needed, but conforms with the fire code inspection for proper kitchen ventilation according to who did this without me. Yet, this can be corrected, cured, or removed for less than \$100 while I am at a loss of over \$60,000 plus the societal embarrassment to answer community disappointment of "what happened" to not be there to serve. All I want is to have a successful business that operates to serve the

community. Honestly, what's stated in the Notice has anything to do with me operating a successful business and to fulfill the terms of the Lease.

Sections 6, 18, 26, and 35 of the lease discusses tenant responsibilities. I, as the tenant, either misunderstand or request guidance on Section 18 as described as a material breach as it states, **“the Tenant shall make no unlawful, improper, immoral, or offensive use of the Park nor allow said Park to be utilized for any purpose other than the abovementioned set forth. Failure of the Tenant to comply with this provision shall be considered a material breach of this Contract and subject same to immediate termination by County, whereupon the County shall be entitled to immediately re-enter and retake possession of the Park and terminate this Contract.”** I, the Tenant did none these. Notwithstanding, each of the three instances have reasonable explanations and facts are supported by evidence to be misunderstood or be appropriate for the situation. Hence overblown, exaggerated, misrepresented, or untruthful to account no culpability of an outright cause of a material breach to terminate the business as opposed some other relief or penalty.

I have and have assured by Ken Brown where he has requested guidance to adhere and to have fulfilled the duty of a tenant and he believed that he acted with the highest standards and intention to bring the Concession building the property in compliance with the terms stated in **Section 26, parts A, F, J, K, L, M, and N describing the Obligations of the Tenant** wherein each section states as follows: Paragraph A. ***The Tenant will be responsible for all food service operations, maintenance, and repairs of the concession building...*** To date, The Tenant has done this, having spent over \$60,000 for equipment, supplies, maintenance, repairs and compliance with regs of what I was thought was to be a turn-key start. For instance, the hood and gas tubing were soaked in grease and grime that required a week long effort to deep clean or pass inspection. Such things like the intake fan was not working, the fire alarm and bell were not working, none of the plumbing was suitable or be there, sink had to be added, and what drains existed were clogged 30ft or more. An electrician had to install 220 outlets, the fire alarm operating, and the control panel to operate. The sinks were repaired and proper restaurant type sink installed for kitchen compliance approvals to operate. It's apparent that county contacts are not restaurant-savvy, but this lease termination prepares a turn-key quick start on the back of my money and time invested, thus will grant over many thousands of dollars in benefits. Meanwhile, the next party walks in for free takes all the achievements. I feel robbed and takes my (our) labor and money. Honestly, this was our greatest fear of doing business with the County

loose and omnipotent power to close us. This act violates that Brevard County is not Dade, Broward, or Palm Beach county when keeping an agreement. Such as stated the following paragraphs:

Paragraph F. ***All aspects of cleanliness n the Tenant's area of operations including food preparation, tables, chairs, walls, floors, including carpet cleaning and removal of DEBRIS. There shall be full County Health Department and other applicable laws or ordinances....***

Removal of debris is a health and safety issue and is precisely a clientele killer. Customers and regulators have high expectations and little tolerance for clutter, insects, rats, lizards, crawling bugs, spiders, and roaches. The premises have 10-12 rat traps around the building. Dune (marsh) rats were seen scurrying from the building into the bush and brush-covered grounds surrounding the tables. Soon, with the days longer and warmer, the critters will be infested from unkempt grounds. Removing forestation, shrubs, and brush helps to reduce the pest control. Using traps is not the only way to lessen the threats to the pest control ordinances and effects upon the customers, which is in the best interests of the Lease.

Citing Statute 161.242 Harvesting of sea oats and sea grapes prohibited; possession prima facie evidence of violation.—

- (1) The purpose of this Section is to protect the beaches and shores of the state from erosion by preserving natural vegetative cover to bind the sand.
- (2) **It is unlawful for any purpose to cut, harvest, remove, or eradicate any of the grass commonly known as sea oats or *Uniola paniculata* and *Coccolobis uvifera* commonly known as sea grapes from any public land or from any private land without consent of the owner of such land or person having lawful possession thereof. Possession of either *Uniola paniculata* or *Coccolobis uvifera* by other than the owner of such land shall constitute prima facie evidence of violation of this Section.** I fully understand this and none of this done under watch or control. What is to done in the email was nothing that authorized, ordered, or approved. The evidence of this will be shown at the Appeal. Any penalty for any clean-up cannot be measured without set-off for good intentions to protect customers and the health department for the concerns not to guard against the run-off of dune rats and other multitudes of critters finding shelter in unkempt grounds abetting the eating areas especially for the women and children. The only trimming and, or manicuring the front lawn type care and to also clear a view that existed previously. I knew about. It was the first few pictures that Ken discussed and requested on or about to do on January 1 and December 31, 2023 with County representatives. The Notice states the cutting "ON Thursday, February 22, 2024. This has nothing to do with me or with Ken. If anything was done, we and me had no knowledge nor authorized. This guy Daniel was told by

Ken NOT TO CUT SEA GRAPES OR SEA OATS. Categorically, he was not a Contractor, nor employed. He is homeless PTSD War Veteran who lives in a tent on the beach who was given work to eat. He was told to wash and clean trays, but instead he went psycho, he wanted vengeance for not being paid by Ken after not cleaning the trays and pots as instructed. Instead, he apparently took to trim trees to retaliate as described in transcriptions of his voice messages to me. Ken had planned to discuss with the County to have an assessment of property to have a better visual of the ocean with the thinking that he was doing a people and tourists a good thing to provide a more quality view and simultaneously lessen the habitat of dune rats and critters. Neither Ken or myself were aware of these acts until made aware by this Notice. Affidavits to this are attached. Thus, when Ken scolded him for not cleaning the trays, he disobeyed his instructions with acting upon threats to close the business. Ken's fault was to want to help a misfortunate wherever he could. The Notice unfairly punishes me and the community for a rogue act of another.

Paragraph J. ***The Tenant should provide and adequately arrange to offer the public a satisfactory Concession operation consistent with good food and beverage business practices and management. Maintaining level of public relations and customer services that promotes a highly favorable relations and customer services that promotes a highly favorable atmosphere, responding to all customer complaints received Tenant and or County.*** Having extensive customer experience, acting to prevent complaints is the best course to take by anticipating and adjusting the circumstances before receiving the complaints. The Concessions building has 10-12 rat traps around the building. The presence of rats does not promote **"a highly favorable atmosphere"**. Having dune rats, spiders, lizards, and other mosquito breeding grounds is the genesis of complaints. We thought to act accordingly to complement this provision on December 31 and January 1 with County oversight to clear unkempt grounds. County personnel carted away January 2 2024 the results of using the chain saw left in the building. This clearing of debris was thought to be in accordance with Paragraph J, and not be faced with the illegal charge of the February 26, 2024 notice.

Paragraph K. **Advertisements in the Concessions area shall be in good taste commensurate with acceptable family-oriented environments. Advertising of other businesses not related to park Concession operation...are not permitted.** The emails about signs that Mr Tucci and Ken Brown exchanged were instructive to move forward to the eventual opening of Cheers at the location. The email cited in the Notice misrepresents the facts and circumstances in a slanted state to suggest disobedience by the Tenant, which is not the case. The Tenant described the future

signage for approval. As discussed in the email, the Tenant had no pictures since the sign made signs. The Tenant installed the signs as requested. Mr. Tucci's January 26, 2024 email related to the installed signs and to nothing else like pointing to the dryer vent. Ken immediately replied to email saying having the signs up is subject to your approval. If not acceptable, they are removed immediately, but are there for your review and comment. The sign maker had no prototype to send. The emails fully described the signs once delivered Ken installed them subject to approval. Mr. Tucci replied, "I will get back to you", and when Ken him and asked, he said "leave them, and they are okay."

Thus, the emails had no relation to completing the dryer vent to properly which provides ventilation for fire code approval, like every dryer in America has an outdoor hot air exhaust release. The installed vent is simply misunderstood by Ken to adhere to Paragraph L. **The Tenant shall be responsible for all electrical and plumbing repairs associated with the Concession operation.** Unfortunately, Ken said that Blaze Leona left him a voice message not to complete the ventilation; the he did not hear this voice message until after the vent was installed otherwise he would have honored the call, and no vent would have been installed.

There was never any intention by me or by Ken to act outside any rule or conformity to County authority or the lease. Not knowing about the gravity attached to the County's disappointment over this vent shown in the picture, albeit the vent is reversible or movable if requested. According a licensed plumber, Ken was told that the vent shown makes the dryer function according to code and he considered it impart of Paragraph N. **The Tenant shall install and maintain all equipment at their expense...it is the responsibility of the Tenant to provide such ventilation.**

Accordingly, Section 33 Statutes, Rules and Regulations. **The Tenant's use of the Park will be in accordance with applicable laws, rules, regulations, policies and procedures approved by the Department and or County...Department's and or County's Policies and Administrative Orders, and agrees to furnish the Tenant with a copy of such rules, regulations, policies, procedures, and amendments thereto upon request.** The Tenant (me and Ken) has had every good faith intention to follow and act according to said policies and regulations to comply with instructive knowledge and not to be subject to any further misunderstandings. The Tenant dully requests the County hereto for such a copy, thus to know to act accordingly. The Tenant has complied with and fulfilled all the provisions and sections of the Lease Agreement with enthusiasm and performance. The Tenant has completely prepared the premises and invested the funds needed to

deliver the appropriate food and beverage preparation equipment, menu, and staff to perform accordingly to all terms of the Lease.

In summary, the premises are prepared and adjusted to pass all the necessary code inspections by the fire and health departments.

The premises have undergone an extensive deep cleaning of the hood, updating the fire suppression system, propane system, plumbing, and electric.

Cheers is all ready to pass inspections.

Any pruning of the sea grapes and clearing the unkempt bush and brush was done along the fence with the tacit approval of the County on December 31 and January 1, 2024. February 22, 2024. Any other event was a sabotage act, a vengeful reaction by a disgruntled vengeful misfortunate to bring harm to placate his cause not performing his assigned task of cleaning trays. I have had other encounters with this PTSD veteran with him going psycho besides cutting trees.

The CCCL guidelines suggests that Sea Grapes are hearty plant species that endure extreme conditions to thrive in this harsh environment. I think that the sea grapes and views are perfect and look very much like previously with Billies. However, Ken, more of a perfectionists, wants or would like to have more guidance on performing upon Paragraph J to groom and manicure a very attractive landscaping for that confined area of the property. Although he knows as the Tenant it's generally illegal to cut down or severely or excessively trim Sea Grape trees without the necessary permit or an arborist opinion.

I as the Tenant have complied with every Section of the lease agreement, including the FEMA Contract for the Bid. As the Tenant, I greatly respect the environment and would give time for the trimmed sea grapes to replenish themselves and then if needed suggest any plan for refurbishment. As the Tenant, in the best interest of the Park, I would request permission to hire an Arborist to dully manicure the Park area east of the Concession building to be more planned, attractive, and alluring to the public to bring nature's beauty to the Park.

In the final analysis, this Tenant has acted in good faith to open Cheers on the Ocean Grill with enthusiasm, vigor, and talent to achieve outstanding food concessions for the public, the Park, and the County.

Again, Section 6-Administration provides that **Any decisions by any member of the County administration as it relates to the above authority may be appealed by the Tenant to the Parks and Recreation Director, or designee, whose decision shall be final.**

Section 35. Termination for Convenience. Either party may terminate this Contract for their own convenience upon providing thirty written Notice to other party. Upon termination of this Contract, the Tenant shall have fifteen days within which to remove the temporary concession vehicle and any personal property.... The notice grants to March 4, 2024, for which March 12, 2024, becomes 15 days from the Notice date of February 26, 2024. I got an immediate termination without a warning, an attempt to cure, or negotiation to no other repeat offenses. The sea grapes are already with showing a vigorous sprouting and bloom. The dryer vent removed, panted or relocated. The signs are the signs subject comment. To terminate the lease kills the business completely beyond any fair penalty or penalty. Personally, very Draconian or Procrustean punishments that I believe there is some other relief possible.

Therefore, the Tenant respectfully requests a hearing for an APPEAL with an extension for a continuance trial to pursue the Lease as planned and promised.

Respectfully submitted,

Joanne Lee, president
Cheers on the Ocean Grill

561 767 2630

KENNETH BROWN <kenwbrown@comcast.net>

3/8/2024 12:42 PM

Fwd: 2525 cheers lease exit interview

To steven.kimball@brevardfl.gov <steven.kimball@brevardfl.gov>

fyi

----- Original Message -----

From: KENNETH BROWN <kenwbrown@comcast.net>

To: maryellen.donner@brevardparks.com, richard.tucci@brevardfl.gov, blaise.leone@brevardfl.gov,
steven.kimball@brevardfl.gov

Date: 03/08/2024 12:11 PM EST

Subject: 2525 cheers lease exit interview

Greetings:

Cheers has vacated 2525. We request that an exit interview be done to confirm everything is in order sometime this afternoon since today is the last extension day .

I await a time to meet at the premises for the review.

thank you

ken brown

561 542 6669

CHEERS OCEAN EXPENDITURES (exact amounts and or estimates [e])

Propane Tanks	550 e
Hood Inspection and hookups	550
Hood Inspection ATP for code approval	850
Hood and intake motor repair	295
Hood n piping Deep Clean (Filthy n caked on grease mess)	1000
Gas line tube and connector	550
Nozzles replacements for suppression pipes (4)	285
Gas 8 burner stove and Salamander (not hood compatible)	2250
Gas 4 burner n oven	850
Fryer new	1500
Griddle 36" new	3200
Convection oven new	1000
Pots Pans Trays n Utensils	550
Gas water heater parts and repair	450
Fire Alarm (alarm + install electrician)	350 e
Fire Extinguishers	250
Dish Washing sink n faucet (sink + install Plumber)	1400 e
3 basin sink (repair)	200 e
Plumbing repairs sink area	1500
Plumbing repairs coffee table area	500
Plumbing drains installed and snaked 30-60 feet	550
Electrical repairs and 220 outlet installed	600
Cleaners, degreasers, vacuum, brushes mops brooms etc	200
Ice machine (repair + purchase 650 + install)	1000

Ice Machine install and repair	550
Ice machine install and repair	450
Ice machine new	750
Dishwasher new	650
Washer Dryer (220 line + hot air exhaust vent) new	950
Refrigerators (2)	2000
Freezers (2)	1200
Food warmers (2)	450
Food racks (3)	150
Prep table refrigerated	450
Prep Table double refrigerator	1850
Dessert n soft drink cooler	400
Rack stainless steel (2)	350
Bunn Coffee n tea makers (2)	450
Donut maker	75
Sausage/ hot dog maker	85
Grinders (2)	150
Snow Cones n Ice grinders new	950
Shelving (4)	350
Ace/Loews miscellaneous	150
Other Small toaster, can opener blenders crockpot juicers	450
Microwaves (3)	350
Signs	1750
Truck rentals movers labor	2250
Administration (finger printing filings licenses etc	975

Food (smash burgers)	550
Capital invested out of pocket	38365
Four months' time time n labor (ken brown 30 hours a week \$50 phr)	18000
Total	56365

Rent Paid (2 months + 26 days) \$ 3562.58

Richard Tucci <richard.tucci@brevardfl.gov>

2/29/2024 10:23 AM

RE: Concesssions award old Billies

To KENNETH BROWN <kenwbrown@comcast.net>

Ken,

The removal off your equipment/belongings includes Monday, March 4. I can have a staff member on site Friday, Saturday, Sunday, and Monday from 7am until 2pm to allow access. I just need to know the days and times you would like to have access. Please let me know and I will schedule such and be ready tomorrow.

Thanks,
Richard

From: KENNETH BROWN <kenwbrown@comcast.net>

Sent: Thursday, February 29, 2024 8:14 AM

To: Tucci, Richard <Richard.Tucci@brevardfl.gov>

Subject: RE: Concesssions award old Billies

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Richard:

The Notice states by March 4th to fully vacate and return premises and to coordinate the removal of your personal possessions.

This removal is a major task requiring movers and trucks with a storage unit to be leased.

Progress to complete this the arrangements have not been made. The moving of the equipment has only Saturday and Sunday as the time to move the contents.

Section 18 ,,the County shall be entitled to immediately reenter and retake possession of the park and terminate this contract. The County changed the locks, and has possession.

Will the County grant an extension to entitle Cheers to remove its possessions?

Does by March 4th include the day of March 4th?

Will the building be opened for a Saturday and Sunday removal?

I emailed you yesterday a request and have not gotten a reply to my request or an explanation.

"No have date to move out is set yet. March 4th is it on or before March 4th or will a request for an extension be granted to at the fifteen days stated in the lease from the Notice date of February 26th?" Please reply. Thank you,

Ken brown

On 02/28/2024 9:06 AM EST KENNETH BROWN <kenwbrown@comcast.net> wrote:

Greetings Richard:

Something went awry because we opening communicators about functioning to prepare Cheers to serve the public. Your 1/26/2 email was not about the vent or alteration it was about sign approval as stated below:

Hi Ken,

My staff sent the attached to me.

Just to be clear, you cannot add/change things in the park/building without prior written permission. This is in the lease agreement.

Richard

Wherein we discussed that had proof to offer before the sign was made, thus I posted it for like a show and tell if you like it stays or if not it comes down. Is that not a request for approval?

Next was this communication over the fire suppression system and hood. Is this not communicating in terms of the lease? If not, I request us to meet at the property to discuss issues and concerns. We never did, but I was available.

Your email...Hey Ken,

I will call you in a minute. Here is what the lease says about the vent hood and responsibility. It passed with our contractor as far as function. The only thing we can think of why it is not passing the use certification is the amount and or width of the cooking components under the hood.

Thanks,

Richard

Please explain any disappointment?

thanks,

ken

On 01/28/2024 10:56 PM EST KENNETH BROWN <kenwbrown@comcast.net> wrote:

Greetings: Richard

Certainly, we request the signage approval. Clearly, we have to post signs for the Public to be aware of the new Cheers grill. This was discussed in an email where I send a sketch of a sign. The signs are up for review. The signs are apparent for review and easily movable.

We are hoping to be close to opening.

The hood review included Eric the Gas man. The objectionable hood comments were verbal. The companies expressing their concerns are attached. I have purchased a 4 burner stove to replace the 8 burner stove which possibly gets past the hood size problem.

The alarm bell was replaced and the exhaust fan motor now turns on. By replacing the 8 burner stove with a 4 burner or burner stove I hope to attempt to fit in a fryer. And then I will ask for an inspection approval.

I had hoped that the construction company used for the review could modify the hood piping, but it appears it is what it is. We will see if it passes approval

Let's talk at your convenience.

respectfully,

ken brown

On 10/20/2023 3:54 PM EDT KENNETH BROWN <kenwbrown@comcast.net> wrote:

Richard

the temporary sign is attached as shown 2x10x1/2 painted blue wall fiberboard material.

I am taking it to Stripes in Melbourne.

thanks

ken

On 10/20/2023 3:19 PM EDT Tucci, Richard <richard.tucci@brevardfl.gov> wrote:

Ken,

I will need to see some pics of them prior to getting them up. Once approved, I can arrange your staff to meet you as they will actually need to put them up.

Richard

From: KENNETH BROWN <kenwbrown@comcast.net>

Sent: Friday, October 20, 2023 3:01 PM

To: Tucci, Richard <Richard.Tucci@brevardfl.gov>

Subject: RE: Concessions award old Billies

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi Richard:

No they are planks 2'x10' x1/2" Plan to fix them on the posts from the former Billies sign. Paint them ocean blue with white letters. A more permanent sign will be designed and submitted for approval on the same location.

regards,

ken

On 10/20/2023 2:55 PM EDT Tucci, Richard <richard.tucci@brevardfl.gov> wrote:

Hi Ken,

Will these be banners that you are proposing?

Thanks!

From: KENNETH BROWN <kenwbrown@comcast.net>
Sent: Friday, October 20, 2023 2:08 PM
To: Tucci, Richard <Richard.Tucci@brevardfl.gov>
Subject: RE: Concesssions award old Billies

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Greetings Richard:

Trying to get set. This a request to approve a temporary "open sign."
I have attached a simple sign. Thinking to fix it on the old Billies sign. I will be designing a permanent sign to replace it.
let me know, thanks,
ken brown

On 08/22/2023 2:36 PM EDT Tucci, Richard <richard.tucci@brevardfl.gov> wrote:

Ken,

We can get you in to look but no setup or anything until we have a fully executed contract. Have you submitted everything as requested to this point?

Thanks!
Richard

From: KENNETH BROWN <kenwbrown@comcast.net>
Sent: Tuesday, August 22, 2023 1:55 PM
To: Tucci, Richard <Richard.Tucci@brevardfl.gov>; Boss, Angel <Angel.Boss@brevardfl.gov>
Subject: RE: Concesssions award old Billies

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Greetings Richard:

I am registered with E-verify and have I-9 form for employees. However, until the facility is set-up and ready operate the I-9 form gives three days for filing after the employee start date. I need to get access to set-up and install equipment, signage, food, and the like for the operation to get started.

Let's get together for you to give the details to open.
thanks,
ken brown
561-542-6669

Donner, Mary Ellen

From: Tucci, Richard
Sent: Thursday, February 22, 2024 2:41 PM
To: Donner, Mary Ellen
Subject: FW: North Spessard

FYI

From: Leone, Blaise <Blaise.Leone@brevardfl.gov>
Sent: Thursday, February 22, 2024 12:51 PM
To: Tucci, Richard <Richard.Tucci@brevardfl.gov>
Cc: Thibodeau, Henry <henry.thibodeau@brevardfl.gov>; Brumfield, Jesse <Jesse.Brumfield@brevardfl.gov>
Subject: North Spessard

More pictures of sea grapes that were cut at North Spessard. This was done by the new concessionaire.

Blaise Leone

Parks Maintenance Superintendent

South Area Parks Operations

1515 Sarno Road, Building A, Melbourne,
FL, 32935

C: (321) 615-8201 O: (321) 255-4400 F: (321)
255-4402

<http://www.BrevardParks.com>



The comments and opinions expressed herein are those of the author of this message and may not reflect the policies of the Brevard County Board of Commissioners.

From: Thibodeau, Henry <henry.thibodeau@brevardfl.gov>
Sent: Thursday, February 22, 2024 12:48 PM
To: Leone, Blaise <Blaise.Leone@brevardfl.gov>
Subject:

From: Tucci, Richard
Sent: Friday, January 26, 2024 3:24 PM
To: KENNETH BROWN <kenwbrown@comcast.net>
Subject: Signage at the park

Hi Ken,

My staff sent the attached to me.

Just to be clear, you cannot add/change things in the park/building without prior written permission. This is in the lease agreement.

Richard

Richard Tucci, MS, CPRP
Operations Manager

South Area Parks Operations
1515 Sarno Road, Bldg A,
Melbourne, FL, 32935
P: (321) 255-4400 F: (321)
255-4422

<http://www.BrevardParks.com>



The comments and opinions expressed herein are those of the author of this message and may not reflect the policies of the Brevard County Board of Commissioners.

From: Tucci, Richard
Sent: Wednesday, February 21, 2024 10:35 AM
To: KENNETH BROWN <kenwbrown@comcast.net>
Subject: Alterations to the building

Ken,

As previously related in my email to you from 1/26/2024, you cannot make any alterations to the building without requesting such in writing and then receiving written approval. This duct work was never submitted or approved and impacted the mural on the outside wall. Please do not make any further alterations without written approval.

Thanks,
Richard

Richard Tucci, MS, CPRP
Operations Manager

South Area Parks Operations
1515 Sarno Road, Bldg A,
Melbourne, FL, 32935
P: (321) 255-4400 F: (321)
255-4422

<http://www.BrevardParks.com>



The comments and opinions expressed herein are those of the author of this message and may not reflect the policies of the Brevard County Board of Commissioners.



3:35

◀ Google



BILLIESONTHEBEACH Posts

Follow

billiesonthebeach Fresh squeezed lemonade 🍊🍊 come check out B-O-B! Billie's on the Beach Tues-Sun... more

June 22, 2021



billiesonthebeach

...



- image_123655411.JPG (1 MB)
- image_123655411.JPG (1 MB)
- image_123655411.JPG (837 KB)



2 likes

billiesonthebeach Happy Father's Day out there to all the great dads! *****DO NOT MISS THIS !!!! We will be... more

June 20, 2021



Tripadvisor



BILLIE'S ON THE BEACH, Melbourne Beach - Restaurant Reviews ...

Visit

Images may be subject to copyright. [Learn More](#)

Share



Tripadvisor

LA PLAGE LE VEILLON, Talmon...



Tripadvisor

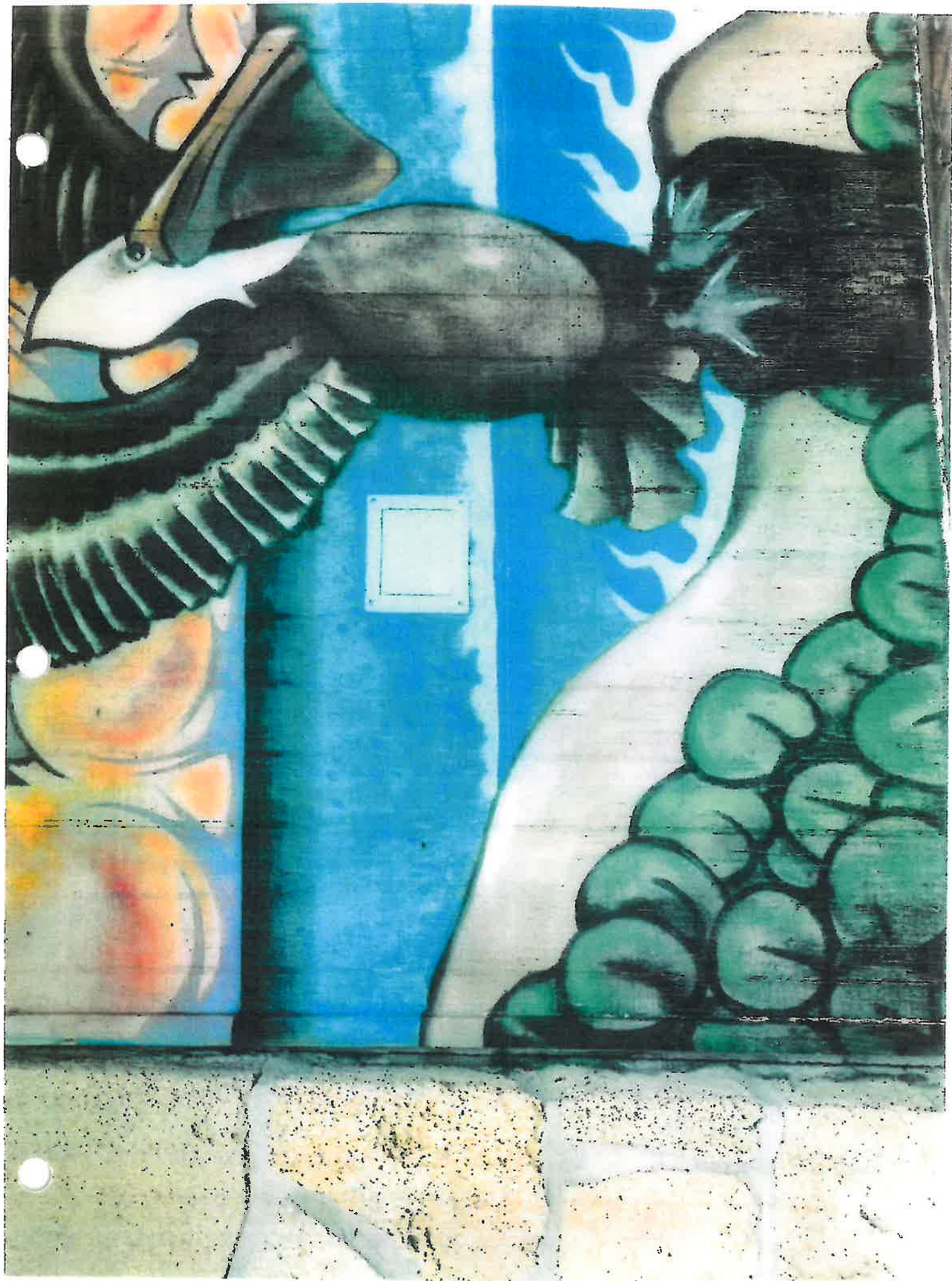
SURF BEACH CAFE, Narooma -...

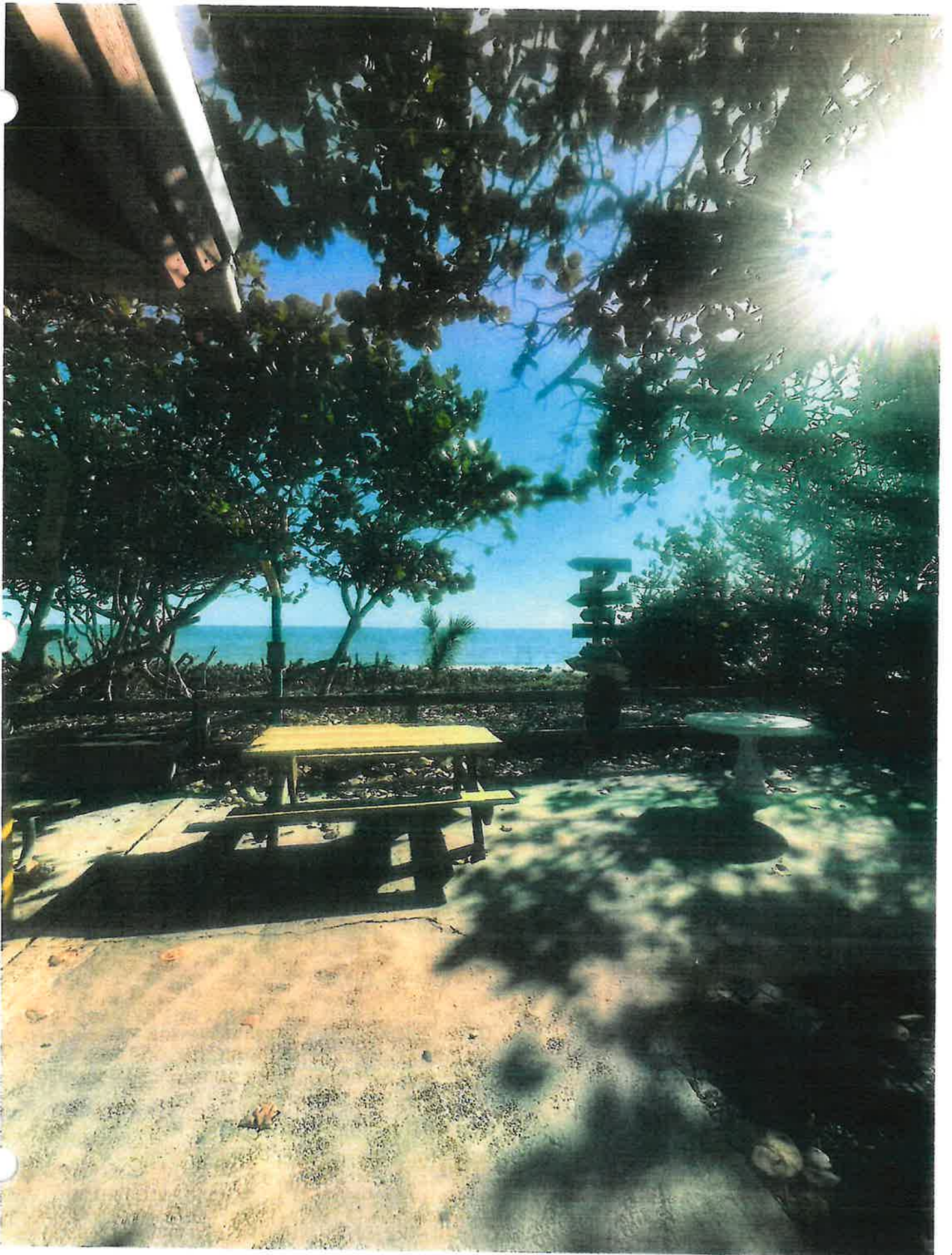


Yelp

BILLIE'S MELBOURNE BEACH -...











Tripadvisor



Billie's on the Beach - Picture of Billie's on the Beach, Melbourne Beach - Tripadvisor

Visit

Images may be subject to copyright. [Learn More](#)

Share

Tripadvisor

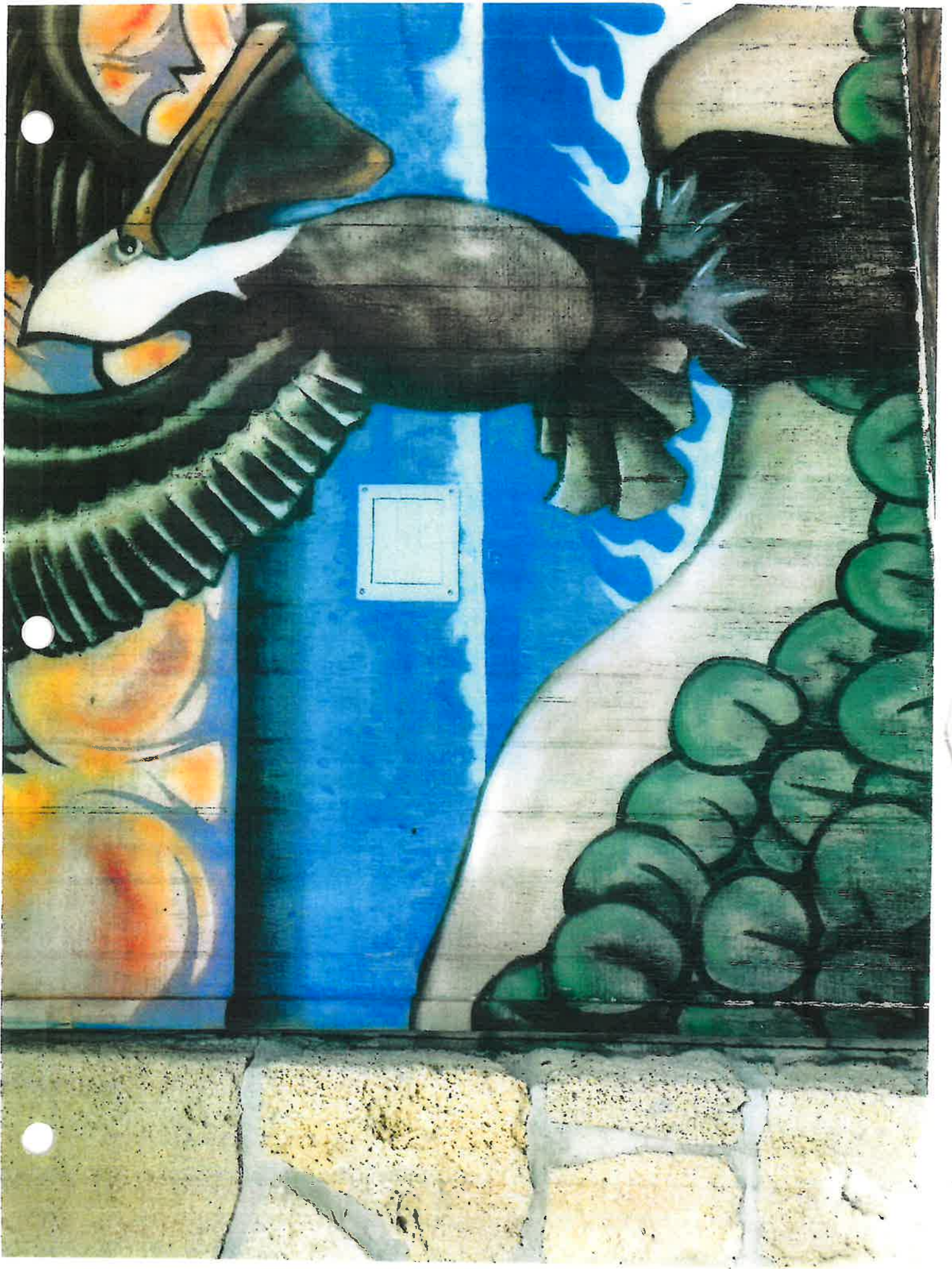
Billie's on the Beach - Picture of ...

Tripadvisor

Juan statue - Picture of Juan Pon...

Tripadvisor

sign - Picture of Billie's on the Be...





Billie's on the beach - Melbourne, FL updated their profile picture.

November 23, 2017 · 🌐



Like



Comment



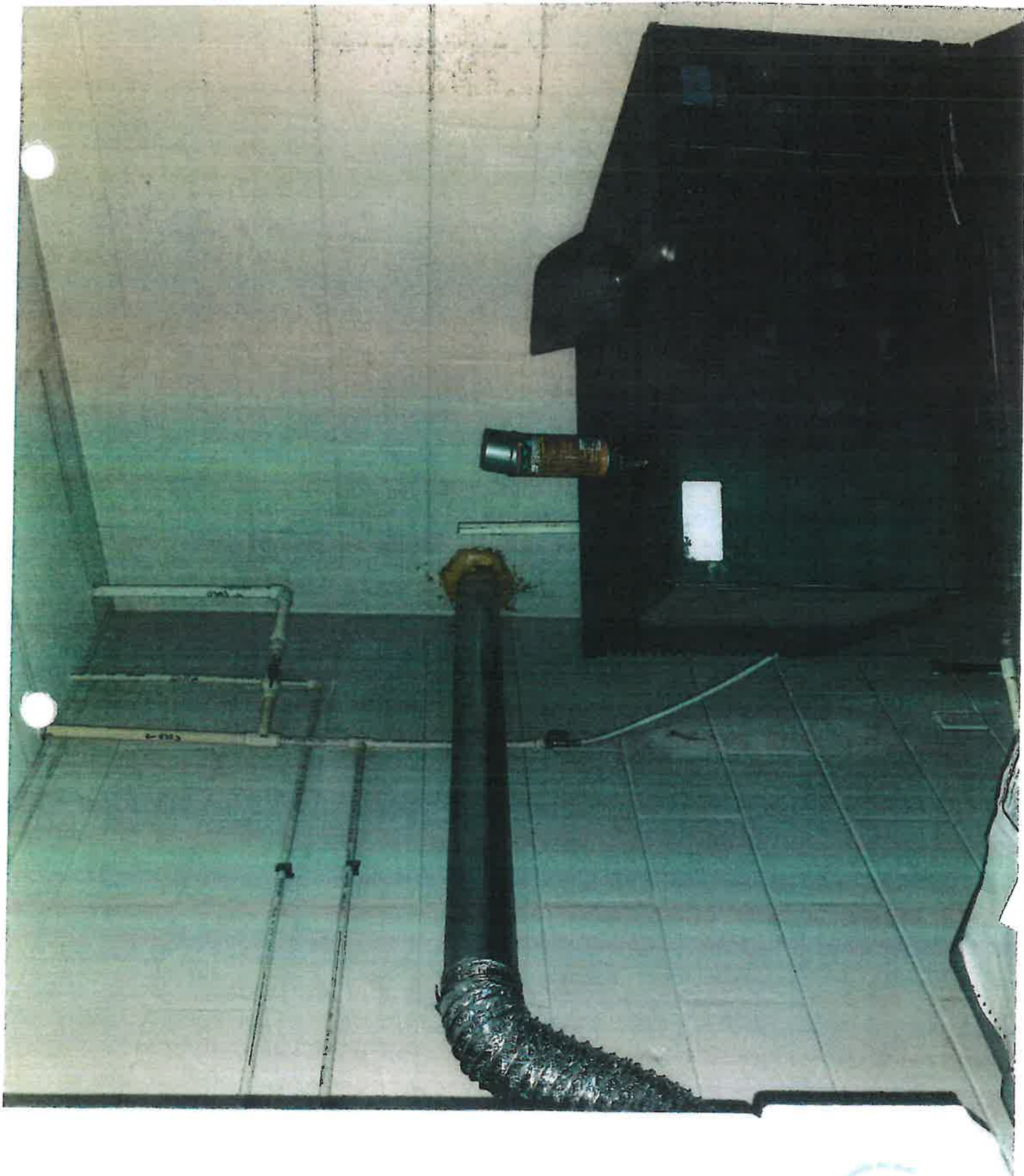
Share

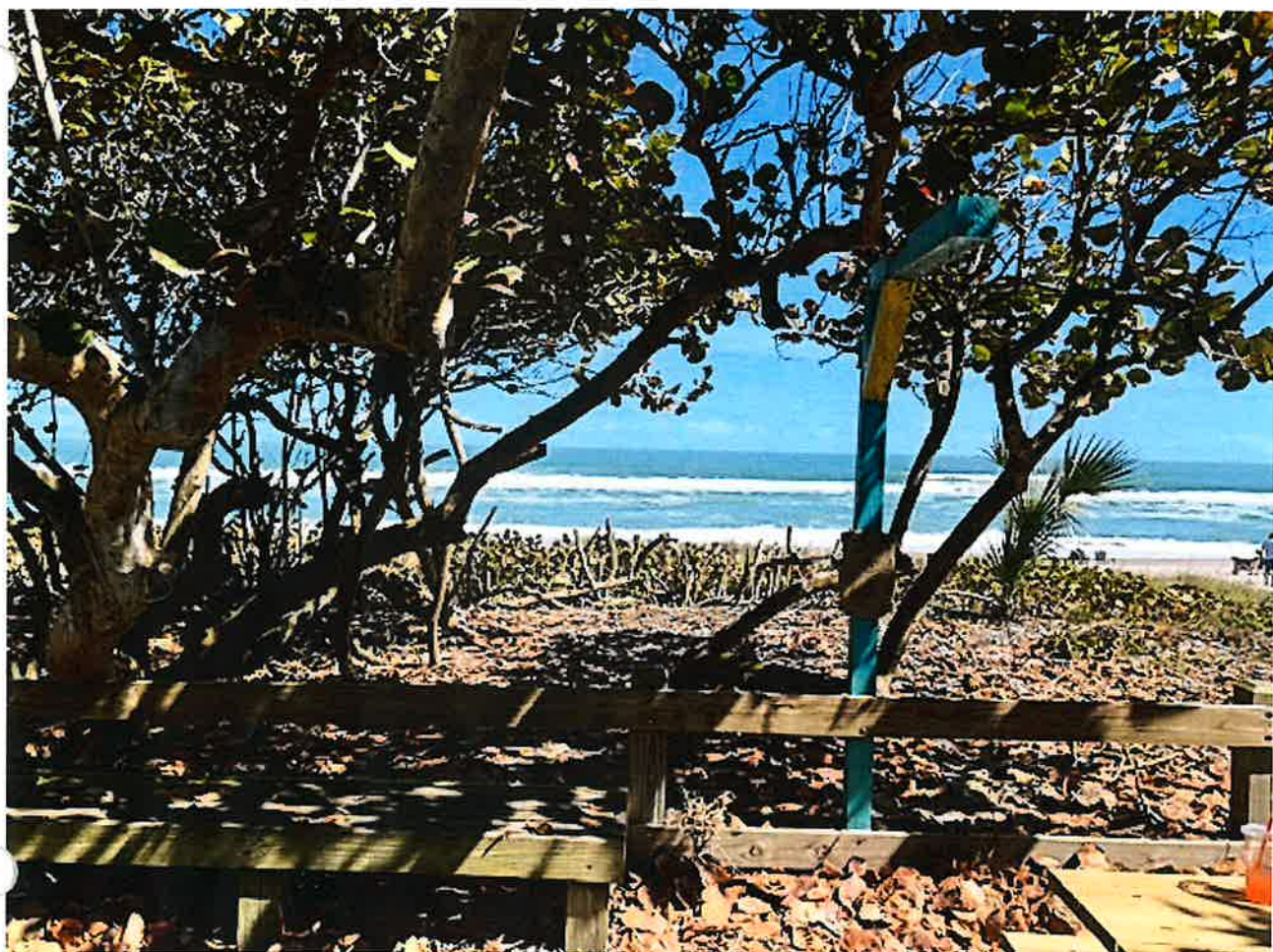


Write a comment...



















Cheers on the Ocean

SUNRISE EYE OPENERS

Egg and Cheese 4.99

NY Style Hard Roll or Honey Backed Biscuit

Choice of Cheese add protine

American

Bacon +1.5

Swiss

Sausage +2

Cheddar

Ham +2

Turkey +2



SANDWICH BOARD

The Citrus King 11

Pan seared Mahi topped

with a citrus relish

finished with remoulade

Mushroom Swiss Smash 9

Angus beef smash patty topped

with swiss and mushroom relish

Smashburger 8

Angus beef smash patty topped
with cheese and onions.

Cheese Dream Double Smash 11

Cheers classic, double meat smash beuger with

our famous cheese sauce

Philly Cheese Steak 11

Philly style meat covered in

pepers, onions and cheese sauce

Chicken Cheese Dream 9

GOURMET DOGS

Brisket Sausage 8

Cheers on, Burtn ends Brisket

Sausage, Smothered in Mushroom

relish, and remelade Sauce

Cheers Dream Dog 6

All beef dog with our famous

cheese sauce, bacon jam and

creamy coleslaw

Chicago Style Sausage 9

Our Brisket dog Chi-town style.

Pickls, tomatooes, red peper

relish, relce claw and remelad

Pork Belly Dog 7

Sweet Caribbean curry style pork

belly, all beef dog topped with red

relish and remelade sauce



Famous

Cheers Burger Dog 12

Beef patty wrapped around 1/4lb

hot dog. Topped with onion,

relish, mustard, ketchup

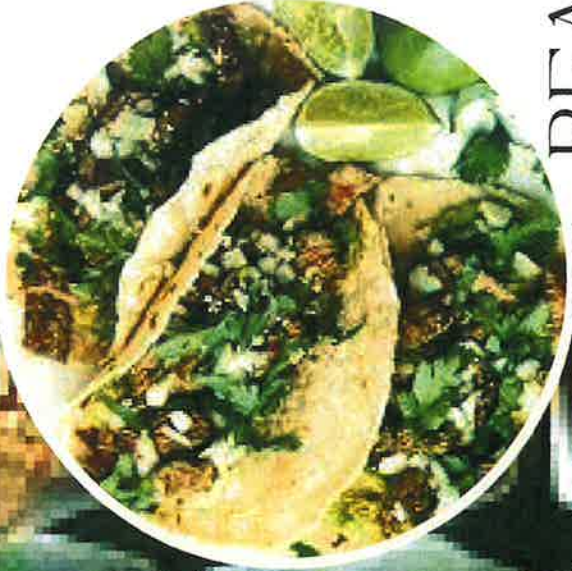
TACOS

Jerked Fish Taco 11

Pan seared jerk Mahi, Citrus relish and remoulade sauce

Beef Street Taco 10

Angus beef, pico, lettuce, chesse sauce and remaloude



BEACH BASKETS

Baby Shrimp or Cocunt Tenders 9
Shrimp 10

FOR THE KIDS

Tenders 6 Burger 6
Grilled Cheese 5 Corn Dog bites 6

DRINKS

- Coke Products
- Florida Orange Juice
- Apple Juice
- Pineapple Juice

BITES & SIDES

Smothered Pretzel Bites

Corn Dog Bites

Fries

Hash Brown

Chips



SNOW CONE

- Any Flavor 4
- Strawberry
- Orange
- Grape
- Cherry
- Lime

BANANA CAKE

Ask about joining our
Loyalty Club