

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BEACH FRANCHISE AGREEMENT

AGREEMENT, entered into this 9th day of January, 2018 by and between the **Town of Kiawah Island** (hereinafter the "Town") and **ISLAND BEACH SERVICE, INC.** (hereinafter the "Franchisee").

WHEREAS, the Franchisee, which maintains a business address at Post Office Box 771, Johns Island, South Carolina, 29457, desires to enter into a non-exclusive franchise agreement with the Town for the purpose of conducting, within the defined beach area, as depicted in Exhibit "A" certain commercial activities, specifically, the leasing only of those items listed in Exhibit "B" and sale of those items listed in Exhibit "C" to this agreement.

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

1. TERM:

This agreement shall be for a three year term commencing on the 1st day of April 2018, and expiring on the 31st day of March, 2021, with an option to renew for a maximum of one (1) additional two-year period, subject to mutual agreement. This Franchise Agreement may be terminated without cause by either party in whole or in part at any time with thirty (30) days written notice.

2. HOURS OF OPERATION:

The Franchisee may conduct commercial activities (as defined herein) within the beach area seven (7) days per week, between the hours of 8:00 AM and 7:00 PM. The regular season begins in March and extends through October or farther weather permitting.

3. VEHICLES:

Permission is hereby granted from the Town to the Franchisee to bring onto the beach those 4-wheel drive vehicles which are necessary for the operation of the franchise hereby granted. Prior to use, however, these vehicles must be approved by the Town. No vehicles operated by the Franchisee on the beach shall be driven at a speed in excess of ten (10) miles per hour, unless an emergency situation exists. Franchisee agrees to limit vehicle usage as much as possible so as to minimize traffic on the beach.

4. AREAS OF OPERATION:

By this agreement, the Franchisee is hereby authorized to operate and conduct

commercial activities within the Town of Kiawah Island, provided the Franchisee's operations do not extend into the dunes or on any land located within the area twenty (20) feet seaward of the toe of the primary dune, in the following areas depicted in the herein incorporated Exhibit "A."

5. CONDUCT OF OPERATION:

- A.** The Franchisee and its employees shall at all times evidence a due concern for the preservation and enhancement of the health, safety and general welfare of all beachgoers and also for the preservation and enhancement of the beach ecology by strict adherence to the Municipal Code of the Town of Kiawah Island, as amended. In that regard, such employees shall assist beach users to be aware of and adhere to Town Beach Ordinances.
- B.** Franchisee shall provide all employees with a distinctive uniform (shirts and pants) which identifies the employee with the Franchisee. Employees must also wear name tags at all times. Uniforms must be worn at all times while on duty and must be clean and neat in appearance. The uniform must be approved by the Town.
- C.** Franchisee and employees are prohibited from consuming alcoholic beverages while on duty during the designated hours of operation.
- D.** Franchisee and employees shall thoroughly instruct any potential customers regarding the safe use of any leased water sports equipment.
- E.** Franchisee and its employees shall provide its services in the following manner subject to the specified conditions:
 - (1)** At the start of the season, the Franchisee must have, at a minimum, the equipment supply available to accommodate the peak season demand:
 - 800 Umbrellas/Cabanas
 - 1600 Chairs/Lounges
 - Three (3) 4-wheel drive trucks for supervisor staff
 - (2)** Attendants shall be located at those boardwalk accesses deemed appropriate by the Franchisee within the Franchisee's area of operation as defined in Paragraph 4 of this Agreement.
 - (3)** Storage boxes and chair racks shall be placed at each attendant's station by the Franchisee. At no time shall any equipment, storage boxes and/or chair racks be placed in the dunes for overnight storage. During the hours

of operation, the attendant may place the Franchisee's office umbrella in front of these locations.

- (4) A setup is defined as a beach umbrella and two chairs.
- (5) The franchisee must have the ability to takes reservations by phone and/or e-mail, and the ability to accept payments on the beach.
- (6) Guests, visitors, property owners, or other persons may reserve setups at each attendant's station for designated time periods within the discretion of the Franchisee. Reservation of setups shall be dutifully recorded by the attendant.
- (7) Reserved setups shall be in place by 10:00 a.m. on each day in which the Franchisee operates.
- (8) Reserved setups may be placed by the Franchisee's employees within proximity to each attendant's station, or at other various places within the Franchisees' area of operation during the hours of operation. Additional non-reserved setups may be placed only within reasonable proximity to an attendant's station.
- (9) Setups shall be placed in a uniform, straight-line fashion. Setups shall be appropriately spaced so as to allow at least five (5) feet between each setup. The first setup of the attendant's line of setups shall be distanced approximately twenty (20) feet from each boardwalk access.
- (10) Franchisee and its employees understand that the beach is public and any guests, visitors, property owners, or other persons have priority on the use of the beach over the Franchisee's interest in placing setups. At no time will the Franchisee and its employees request any person on the beach to move or relocate for the sake of its operation, unless such persons are using the Franchisee's services or facilities without authorization.
- (11) Other equipment may be leased in accordance with Exhibit B and other items may be sold in accordance with Exhibit C.

F. Franchisee and its employees shall strive to avoid interfering with the enjoyment of guests, visitors, property owners, or other persons of the public beach areas within the Town of Kiawah Island. At the request of the Town, Franchisee shall alter or amend its operations whenever the Town determines a substantial interference arises between the private enjoyment of persons on the beach and

Franchisee's services.

6. FRANCHISE CONSIDERATION:

During the term of this agreement, including any renewal term, a franchise fee of Three Hundred Thousand (\$300,000) Dollars or 30%, whichever is greater, shall be paid by the Franchisee annually to the Town. Said payments shall be made no later than December 31st of each franchise year.

7. INSURANCE:

Franchisee shall carry and maintain Worker's Compensation insurance in statutory amounts, comprehensive general liability insurance endorsed to include product and completed operations and contractual liability in a minimum amount of \$1,000,000.00 combined single limit and automobile liability insurance with minimum limits of \$500,000.00/\$1,000,000.00 (or \$1,000,000.00 combined single limit). Each policy shall provide that it may not be canceled or changed without at least ten (10) days prior notice to the Town. The Town of Kiawah Island shall be included as a named insured on the comprehensive general liability policy, and the Franchisee shall deliver to the Town a copy of the policy and any endorsements thereto.

8. INDEMNIFICATION:

A. Franchisee shall defend, indemnify and hold harmless the Town, its officers, directors, agents and employees from and against any and all actions, costs, claims, losses, expenses and/or damages, including attorney's fees, whether incurred prior to the institution of litigation, during litigation or on appeal arising out of or resulting from the conduct of any commercial activity hereby authorized or the performance of any requirement imposed pursuant by this agreement, however caused or occasioned, unless caused by the willful misconduct or gross negligence of the Town.

B. Franchisee shall further indemnify the Town, its officers, directors, agents and employees from and against any and all actions, costs, claims, losses, expenses and/or damage including attorney's fees, whether incurred prior to the institution of litigation, during litigation or on appeal, for or arising out of any bodily injuries to or the death of any of Franchisee's employees working at the specified location of operation during the specified hours of operation which may occur, however caused or occasioned, unless caused by the willful misconduct or gross negligence of the Town.

9. **NO AGENCY CREATED:**

The parties hereto intend that no master/servant, employer/employee, or principal/agent relationship will be created by this agreement. Nothing contained herein creates any relationship between Island Beach Service, Inc., and the Town of Kiawah Island, South Carolina, other than that which is expressly stated herein. The Town of Kiawah Island, South Carolina, is interested only in the results to be achieved through this grant of franchise. The conduct and control of the agents and employees of Island Beach Service, Inc., and the methods utilized by Island Beach Service, Inc., in fulfilling its obligations hereunder shall lie solely and exclusively with the corporation and its agents, officers, and directors. Franchisee's employees shall not be considered agents or employees of the Town of Kiawah Island, South Carolina for any purpose. No person employed by Island Beach Service, Inc., shall have any benefit, status or right of employment with the Town of Kiawah Island, South Carolina.

10. **ASSIGNMENT:**

Franchisee may assign or transfer its franchise to another entity or person subject to a sixty (60) day notification to the Town Administrator and upon approval in writing from the Town Council.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date and year first above written.

WITNESSES:

Stephanie Braswell

Mailey Feuell

Tom St. Jacques

Rusty Lamm

TOWN OF KIAWAH ISLAND

Craig Weaver

By: Craig Weaver

Its: Mayor

ISLAND BEACH SERVICE, INC.

C. K. Neal (Butch)

By: C. K. Butch Neal

Its: President

EXHIBIT A

Map of Kiawah Island, South Carolina showing the location of beach franchise areas. (Yellow number labels designate the location of markers placed on the beach to delineate boundaries, GPS coordinates found in table to far right.)

LEGEND

- Beachwalker County Park
- Kiawah Island Golf Resort
- Beach Club
- Beach Franchise Area

Point	Longitude	Latitude
1	-80.13825	32.58098
2	-80.13079	32.58568
3	-80.12928	32.58647
4	-80.09598	32.59889
5	-80.08987	32.60047
6	-80.04472	32.60836
7	-80.04286	32.60866
8	-80.02168	32.61097

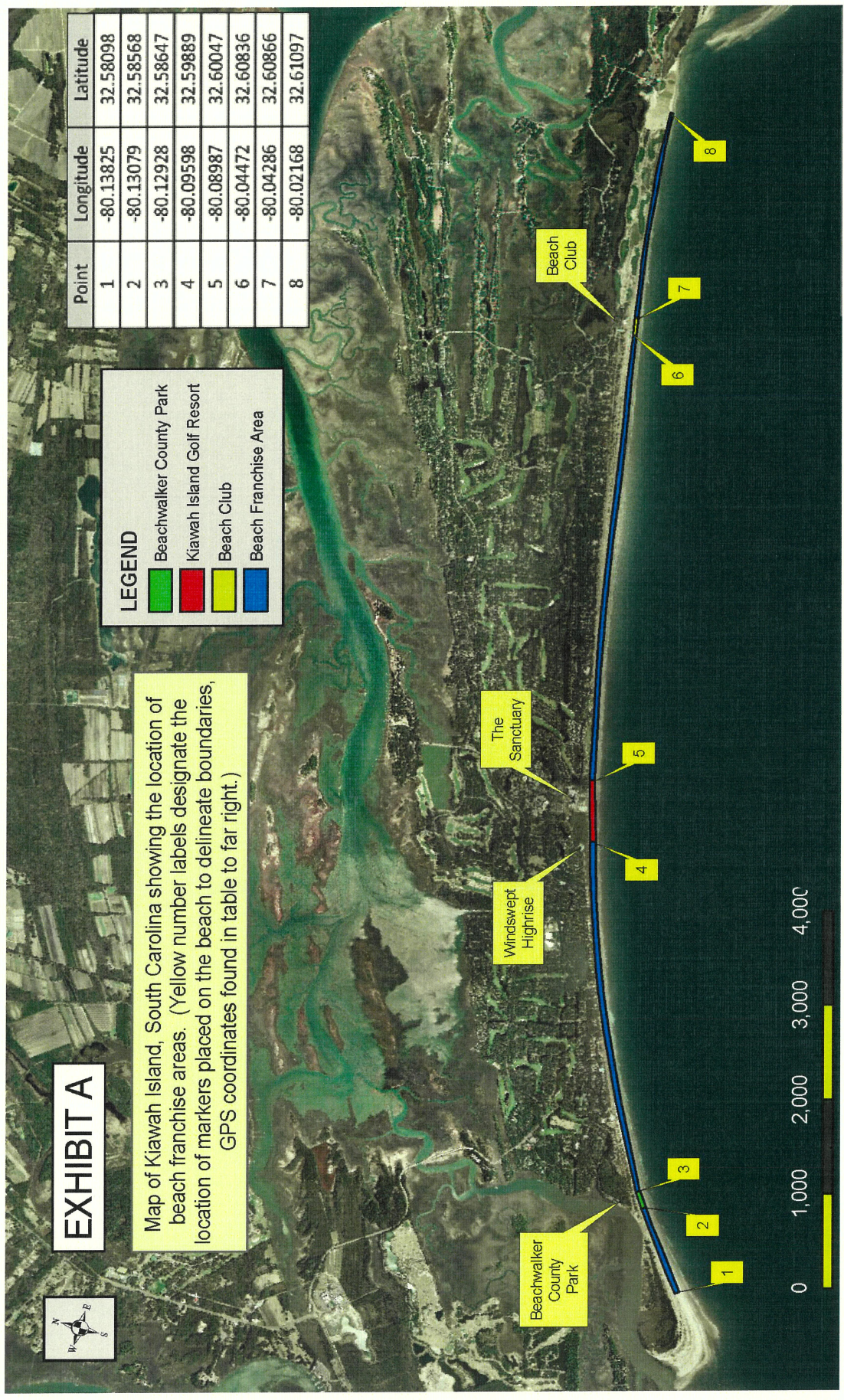


EXHIBIT "B" TO FRANCHISE AGREEMENT

The following is a list of products leased on the beach and in the ocean by the Franchisee.

Umbrellas/Cabanas

Chairs/Lounges

Back-Rests

Floats/Body Boards

Surf Kayaks

Handicap Equipment

The Franchisee shall take all appropriate and necessary steps to ensure that customers using the above referenced equipment shall utilize the same in a safe manner. The Town must give approval to the quantity and location of rental of surf kayaks.

EXHIBIT "C" TO FRANCHISE AGREEMENT

The following is a list of products that may be sold on the beach by the Franchisee. The area of sales is restricted to the areas of operation defined in Paragraph 4. Vehicles used to perform the service will only be allowed to access the franchise area through the beach accesses.

Non-Alcoholic Beverages
Snack Foods (e.g. crackers, chips, etc.)
Ice Cream Products

Food and snack items may be sold and delivered to the beach either from a licensed establishment or via a mobile concession equipped vehicle. The Franchisee shall take all appropriate and necessary steps to ensure that any beverages or food items sold meet applicable public health standards and must comply with all Town Ordinances and beach regulations.

- No alcoholic beverages may be sold on the beach.
- Only plastic/metal containers are allowed on the beach. The use of glass containers is strictly prohibited.

The Franchisee is responsible for all monitoring and removal of debris materials from those items sold and that no used beverage containers remain on the beach.