

FLAGLER COUNTY PLANNING AND DEVELOPMENT BOARD
CONSENT / AGENDA ITEM #7k

SUBJECT: Request for Approval of an Amended and Restated Lease with Captain's Bait, Tackle & BBQ, LLC, at Bing's Landing.

DATE OF MEETING: November 19, 2018

OVERVIEW/SUMMARY: The request is for approval of a lease modification with Captain's Bait, Tackle & BBQ, Inc., for the construction of a new 5,200 sq ft restaurant building that will replace an existing substandard facility for Captain's BBQ, the County's concessionaire tenant at Bing's Landing. The new building will be constructed by the tenant at a cost of approximately \$1,000,000, but will be owned by Flagler County. The existing facility is older and was poorly constructed. It has severe structural issues that have plagued the facility for the five years necessitating various emergency and short-term repairs. While these repairs were completed to meet the terms of the lease and maintain operations at the restaurant, the present condition of the existing building – initially built in 1990 – requires more extensive permanent repairs that are not financially or practically feasible. Essentially this leaves building a replacement facility as the only real option.

To satisfy the terms of the County's lease, the tenant has proposed construction of a new 5,200 square foot restaurant building – to be built by the tenant, at their expense – North of the existing concessionaire building. This construction would allow the existing operations to continue throughout the term of construction, with the existing building to be demolished following the completion of the new building. This construction schedule and plan would: the maintain restaurant operations at the existing building; fulfill the lease obligations of the County/landlord; continue the terms of the lease for (and payments by) the applicant/tenant; and result in no lapse in other contractual obligations of the tenant (for its suppliers) and no reduction in staffing at the restaurant due to the continuing operations.

The Planning and Development Board approved the site development plan for the new restaurant building at its meeting on November 13, 2018. While the present lease area includes outside cooking and storage, the proposed building would include these ancillary uses under roof. The location of the proposed new building would allow the applicant to continue operations while the new restaurant building is constructed at the applicant's expense (and would allow the County as the landlord to satisfy its terms of the existing lease). Modifications to park infrastructure, like utility services, water and septic systems, parking and signage, would be the responsibility of the County, along with the demolition of the existing structure once work on the new building is complete.

The lease acknowledges the obligations of both the landlord and the tenant, with the lease term extending to August 31, 2026, with the lessee able to extend the lease for three additional five years periods at their Lessee's option. One additional term 5 year term is permitted through the mutual consent of the parties. In total, if reconstructed in 2019, the amended and restate lease would provide a term of approximately 21 years at the Lessee's option with the additional 5 year through mutual consent. The lease additionally recognizes the significant investment made by the tenant, initially setting the rent at

\$4,000 per month, but then reducing the rent by \$3,000 per month to recognize the large investment proposed. However, the overall the monthly rent would still increase from the current monthly rent of \$740 to \$1,000 per month. The new increased rate would be locked in for the initial five years of the lease with an automatic annual 3% increase thereafter.

Other notable changes to the lease include an increase in seating up to 150 seats and the potential ability of the applicant to serve alcohol above beer and wine. Additionally, the County would no longer be maintaining the building and potentially sub-metering water usage. Various construction particulars were added such finish, roof type, stem wall construction, screening, shrubs, and signage. The applicant was required to add 25 trees to the Park to offset various tree impacts. County obligations include the septic system, assisting with the oversight of construction, creating up to 30 new Park parking spaces (40+ County staff goal), creating up to 4 boat parking spaces on the west side of the basin. Bait sales are still required and may be sublet to another vendor upon approval of the County.

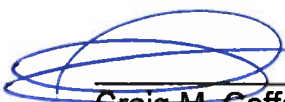
As background, on June 6, 2011, sealed request for proposals were publicly advertised seeking qualified individuals, businesses or companies to submit their qualifications to run concession operations with Bait & Tackle Shop at Bing's Landing on State Road A1A in the Hammock. Based on the results of the proposals, on June 6, 2011 the Board of County Commissioners initially approved a lease agreement with Captain's BBQ. On April 20, 2015, the Board amended the original five year lease agreement – beginning September 1, 2011 and ending on August 31, 2016 – with Captain's Bait, Tackle and BBQ, LLC, by extending the lease for an additional five year term at the tenant's option with a County-optional additional five year term so that the tenant could recoup over \$300,000 in tenant improvements made to the concessionaire building, including: complete build-out of the interior space; installation of a grease trap; installation of a new HVAC system; adding an enclosed porch; expanding the food preparation area; adding a hood exhaust system; adding an enclosed cooking area; and outside site improvements including fencing, landscaping, handicapped-accessible parking, and sidewalks.

Flagler County has two other restaurant facilities that are owned by the County and leased to tenants, which are: Hijackers Restaurant, located at the Airport, Bull Creek Restaurant, located at Dead Lake, etc.

RECOMMENDATION: Request the Board approve the Amended and Restated Captain's Bait, Tackle & BBQ Lease at Bings Landing.

ATTACHMENTS:

1. Amended and Restated Lease Agreement


Sally Sherman for cc
Craig M. Coffey, County Administrator

Nov. 15, 2018
Date

11/14/2018 Requested by Planning Director, Adam Mengel

11/15/2018 Electronically Approved by Deputy County Administrator, Sally Sherman

**AMENDED AND RESTATED
CAPTAIN'S BAIT, TACKLE & BBQ LEASE AT BINGS LANDING**

This AMENDED AND RESTATED CAPTAIN'S BAIT, TACKLE & BBQ LEASE AT BINGS LANDING ("Amended Lease Agreement") is made and entered as of 19th day of November, 2018 by FLAGLER COUNTY, a political subdivision of the State of Florida, located at 1769 E. Moody Blvd., Building 2, Bunnell, Florida 32110 (the "Lessor"), and CAPTAIN'S BAIT, TACKLE & BBQ, LLC, a Florida limited liability company, located at 5862 N. Oceanshore Blvd., Palm Coast, Florida 32137, and whose business address is 13 Capri Court, Palm Coast, Florida 32137 (the "Lessee"). Together, the Lessor and Lessee, collectively may be referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the parties entered into the Captain's Bait, Tackle & BBQ Lease at Bings Landing, effective as of the 1st day of September 2011, as amended by a First Amendment dated April 20, 2015, and as amended by a Second Amendment dated June 6, 2016 (collectively the "Lease Agreement") for approximately 4,200 square feet of building space plus appurtenances thereto located at 5862 N. Oceanshore Blvd., Palm Coast, Florida at Bing's Landing Park, Flagler County, Florida (the "Original Location");

WHEREAS, the Lease Agreement permitted the Lessee to use the Original Location for a BBQ restaurant known as Captains BBQ, as well as other uses as provided therein;

WHEREAS, the Lease Agreement memorialized that the Lessee made significant investments in excess of \$300,000.00 for improvements to the Original Location as approved by the Lessor;

WHEREAS, the Lessee has exercised an option to extend the present term of the tenancy created by the Lease Agreement for an additional five (5) years with one additional five (5) year extension subject to mutual consent of the Parties;

WHEREAS, the Parties have discovered that the Original Location suffers from significant structural deficiencies, defects and deterioration, which is well beyond normal wear and tear and not caused by lack of maintenance or repair, that renders the Original Location unsuitable for the Lessee's intended use and occupancy for the remainder of the present term of the Lease Agreement;

WHEREAS, the Lessee has agreed to pay for the cost of the design, permitting and construction of a new building consisting of approximately 4,500 square feet +/- of main building, with an overall footprint of all uses under roof or not for up to 5,200 s.f., all adjacent to the Original Location as depicted in the site plan layout attached hereto as Exhibit "A" (the "New Location");

WHEREAS, the Lessee anticipates that the cost to Lessee for the design, permitting and construction of the New Location will be approximately \$1,000,000.00;

WHEREAS, the New Location will be the property of the Lessor subject to the Lessee's tenancy;

WHEREAS, the Lessor has agreed to allow the design, permitting and construction of the New Location to commence immediately upon the Effective Date of this Amended Lease Agreement so that the restaurant and other activities at the Original Location can continue to operate without interruption;

WHEREAS, after the New Location is ready for occupancy the Lessee will relocate its operations and the Lessor shall cause the demolition and removal of the Original Location to allow for additional parking as depicted in Exhibit "A";

WHEREAS, the Parties agree to extend the term of the Lease Agreement to allow for the Lessee to amortize the significant costs to design, permit and construct the New Location;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend and restate the Lease Agreement, as follows:

Section 1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

Section 2. Property. Lessee presently leases the Original Location from Lessor as described in the Lease Agreement. Lessor shall continue to lease the Original Location to Lessee until the design, permitting and construction of the New Location is completed. The Lessor agrees to lease the New Location, as depicted in Exhibit "A", to the Lessee after the New Location is designed, permitted and constructed. Lessee shall be permitted to use the Original Location for all uses allowed in the Lease Agreement until the New Location is ready for occupancy and occupied by the Lessee.

Section 3. Use of the New Location. Lessee may use the New Location for a 150-seat restaurant, bait sales, and a convenience and concession operation, including, but subject to the limitations contained herein: packaged food and beverage sales, concession sundries, promotional apparel, ice, and similarly related items for public sale.

The Lessee shall also be permitted to have a BBQ cooker, firewood, propane tanks, and related items outdoors, which shall be used to produce food for sale and consumption at the New Location. Any modification of the use of the New Location as herein described shall only be by the express written consent of the Lessor, provided, however, that any subsequent modification shall be consistent with the uses and conditions stated in this Amended Lease Agreement and Section 6 (Lessee Acknowledgement).

All other park uses may include using pavilions and holding special events such as fishing tournaments and live entertainment/music and shall be handled like any other such park usage requests in accordance with the rules and regulations of Flagler County as may exist at the time the pavilion usage or special event is proposed to occur. The Lessee shall have no special privilege with regard to any other park facilities outside the leased premises except as provided for herein.

Section 4. Improvement Requirements/Obligations of the Lessee.

- a. General - All construction shall at a minimum meet the Florida Building Code to include but not be limited to: the applicable building elevation to avoid flooding, ADA requirements, and permitting/construction standards of the Code. All structures shall be constructed on a stem wall, pilings, or other approved foundation method to minimize the necessity for fill and subsequent destruction of trees and to avoid, as reasonably practicable, flooding of the structure. All uses and structures for the New Location shall fit within the (approximately 65ft by 80ft) or approximately 5,200 s.f. total building/space footprint shown on attachment A (Main Building with porch approximately 4,500 s.f.) and the approved site plan. All construction within the New Location shall be at Lessee's Expense, unless mutually agreed upon by the Parties.

The fact that construction expenses are borne by the Lessee shall not be understood to preclude any labor or minor construction assistance by the Lessor.

- b. Timeframes in Constructing at New Location - All permits shall be obtained and construction shall commence with 12 months from the effective date of this Amended and Restated Lease. Construction shall be complete at the New Location as evidenced by a certificate of occupancy no later than 24 months from the effective date of this Amended and Restate Lease Agreement. The Lessee shall occupy the new facility no later than 30 months from the effective date of this Amended Lease Agreement.
- c. Main Building - The main building to include the deck area shall be constructed with Cracker style or Caribbean island architectural style. The square footage of the main building will be likely be around 4,500sq. ft. with additional outside uses, that may or may not under roof. The roof if metal shall be a standing seam metal roof. Otherwise a shingled roof is permitted provided it is a 50-year shingle or greater and matches the color of other shingle roofs on site (other than Original Location). The construction may be masonry or frame or some combination thereof however, the exterior finish shall be a finished concrete Hardie Board siding in order to mimic the styles mentioned above. Windows shall be single hung, vinyl, low E windows or equivalent. The main entrance into the premise shall face southward. The final materials and color of all exterior elements shall be approved by the Parties. The general interior layout, finishes shall be at the discretion of the Lessee. Changes to the above requirements may otherwise be approved by the General Services Director.

- d. Outside Area - Any outside areas associated with the New Location utilized for any of the above purposes listed in Section 3 shall be screened from view with a 6ft opaque screening, shadow box wood fence or solid wood fence, stained, painted, or natural, as finally approved by the Lessor's General Services Director. Such outside area may also be permitted to be covered at the expense of the Lessee subject to the approval of the General Services Director. Shorter screening of the same type may be permitted around any HVAC unit, grease tank or other visible feature for safety reasons.
- e. Landscaping and tree mitigation - The outside of the building or screen fence shall be generally be lined with non-deciduous shrubs. Additionally there shall be at least five (5) trees and additional shrubs/flowers/landscaping incorporated into the landscaping of the New Location. The trees may be all native palm trees or other approved native species by the Lessor. The shrubs shall be non-deciduous and at least 30 inches upon planting. All landscaping shall be incorporated into a landscaping plan that the parties shall approve.

The Lessee shall provide ten (10) hardwood trees and ten (10) native palm trees to plant within the park as mitigation for trees removed due to the New Location or the parking obligations of the Lessor. The hardwood trees shall be live oaks and other trees from the oak tree family and any other native, canopied hardwood trees. Palm trees shall be cabbage palms and other native species within the park. All trees shall be approved by the Lessor and shall be a minimum of 2" dbh (diameter at breast height (4ft from grade)).

- f. Bait - The Lessee shall have an obligation to provide bait at the New Location. Between March 1st and September 30, the Lessee shall attempt to offer live bait if available and at a minimum, frozen bait. Frozen bait only may be provided outside this time frame. Between March 1st and September 30th such bait shall be provided at least between 6am and 2pm and between 7am and noon the remainder to year. These minimum time frames shall not apply for County recognized holidays. In lieu of providing bait at the New Location, the Lessor may provide or cause to be provided through a sub-lessee such bait at the boat ramp in the first parking space to the west of the boat ramp or at another location agreed upon by the Parties. Such sub-lessee shall be specifically approved by the Lessor.
- g. Maintenance – Maintenance of the New Location shall be solely the responsibility of the Lessee with the exception of the landscaping/planting, which shall be the responsibility of the Lessor. Maintenance of the new, constructed facilities by the Lessee shall apply regardless of whether the County assisted in the construction of such new facilities.

Section 5. Improvement Requirements/Obligations of the Lessor.

- a. General - All improvements outside the leased premises shall be at the Lessor's expense unless otherwise specifically specified herein or mutually agreed upon by the Parties.
- b. Parking – The Lessor agrees to use best effort to expand visitor parking at the park by at least 30 parking spaces within 24 months of Lessee occupying the New Location. The new parking may be constructed through new spaces south of the main drainage canal or reconfiguring existing parking areas north of the main drainage canal, or

some combination thereof. The final configuration and construction materials for the new parking shall at the discretion of the Lessor. Lessor agrees to work to identify at least ten (10) parking spaces for use by the Lessee to include at least two (2) ADA spaces.

- c. Septic - The Lessor shall be responsible to upgrade or replace the existing septic system to accommodate the New Location and all uses served within the park at Lessor's expense. The upgraded or new septic system may be anaerobic for environmental reasons as determined solely by the Lessor.
- d. Boat Parking - The Lessor shall work to create up to four (4) dedicated Lessee parking spaces on the south of the boat basin yet still retaining the canoe/kayak launch, which may or may not be physically feasible or permissible. The Lessor shall have thirty –six (36) months after the New Location is occupied to provide any boat parking spaces. Lessor's obligation to provide the additional parking shall not be subject to the default provisions under this Amended Lease Agreement, nor subject to specific performance remedies, as the arrangement of parking within the boat basin park is within the sovereign planning function of Flagler County.

The Lessor agrees to maintain/enforce the boat parking within the boat basin as transitory boat loading and unloading and short-term parking and shall specifically preclude any boat leasing/rental/sales, etc., within the marina basin unless otherwise mutually agreed upon by the Parties.

- e. Tree and Landscaping Plantings – The Lessor agree to plant and maintain any trees provided by the Lessee both inside and outside the New Location.

- f. Construction Assistance - The Lessor at the Lessee's written request shall agree to assist the Lessee and its general contractor (who secures permits for the New Location) in the management, coordination, and oversight of construction at the New Location at no cost to Lessee. By requesting such assistance the Lessee acknowledges that the Lessor or its agents shall bear no responsibility whatsoever for any of the construction of the New Location. In addition, Lessee shall hold Lessor and Lessor's representatives performing such assistance harmless in addition to any other protections afforded by sovereign immunity.
- g. Maintenance - All areas and improvements outside the New Location shall be the maintenance responsibility of the Lessor unless otherwise agreed upon in writing by the Parties.

Section 6. Lessee Acknowledgement. Lessee acknowledges that Bings Landing Park is a unique environmental, recreational and historical park facility that: (i) is located on the A1A National Scenic Byway; (ii) is part of the Flagler County Coastal Greenway; (iii) is within the National Estuarine Research Reserve of the United States; (iv) includes historical resources that are listed on the National Register of Historic Places; and (v) has received national and state awards for its historical, environmental, and scenic qualities. Lessee acknowledges that Lessor has achieved these characteristics and attributes with substantial investments of its funds and staff, numerous grants from the State of Florida and the federal government, and broad based volunteerism from its citizens and civic groups. Lessee further acknowledges that it will operate its facilities and services to the public in recognition of and in respect for these attributes and the park's importance to the citizens of Flagler County and the State of Florida, and

accordingly will not compromise or harm the quality or reputation of this unique park or its resources. Lessor desires that Lessee be free to utilize the attributes and qualities of the park in its promotion of its business interests and in its service to the public.

Section 7. Term. The term of the Lease Agreement ends on August 31, 2026, which is hereby affirmed and acknowledged as the remaining term in this Amended Lease Agreement. In order to allow Lessee to amortize the significant funds it will invest for the design, permitting and construction of the New Location, Lessee is hereby granted three (3) options to renew for three (3) additional five (5) year periods after the end of the remaining term. If Lessee decides to exercise an option as provided herein, Lessee shall give written notice to Lessor at least ninety (90) days before the expiration of the remaining term, as specified above, or prior to the end of the first option period, if exercised by Lessee. If Lessee exercises both of the renewal options described above, then, at the end of the additional fifteen (15) year option period (August 31, 2041), this Amended Lease Agreement may be renewed for an additional five (5) year period upon the mutual agreement of both parties.

Section 8. Rent. Lessee shall continue to pay the rent in effect under the Lease Agreement until the date that Lessee has relocated its business operations to the New Location (the "New Rent Commencement Date") at which time the rent shall be \$4,000.00 per month. However, to recognize the significant costs to Lessee for the design, permitting and construction of the New Location, the rent amount shall be reduced by \$3,000.00 per month to \$1,000.00 per month. It shall remain at \$1,000 per month for the first five (5) years after the New Rent Commencement Date, without any annual adjustments. Thereafter, the amount of the monthly rent payment shall be adjusted

annually by three percent (3%) for the remaining term of the Amended Lease Agreement, including any extensions. Payments shall be due on the first day of each month and shall be considered late if not paid by the fifteenth (15th) day of each month and shall include any applicable sales taxes.

In addition to the rent specified above, Lessee shall be responsible for payment of all utility fees and deposits for water, wastewater and electricity to the extent those utilities are separately metered for the New Location and the uses occurring thereon. In the event that any of the above utilities are not separately metered for the New Location then those utilities shall be the responsibility of the Lessor unless otherwise agreed to by the Parties in writing. The Lessor shall have the ability to sub-meter the water service for the facilities.

During any period of time during which the Original Location or the New Location is partially or totally destroyed, damaged or otherwise rendered unusable or untenable by a natural disaster or other casualty that is not caused by the negligence or willful act of Lessee or its agents, employees, contractors or invitees, the monthly rent shall be abated until such time as the damaged or destroyed premises is replaced or restored so that the Lessee can commence its business operations as permitted in this Amended Lease Agreement.

Section 9. Security Deposit. The Lessor is already in possession of a security deposit from Lessee of \$1,000.00 under the Lease Agreement, which shall serve as and constitute the security deposit under this Amended Lease Agreement. No additional security deposit payments shall be required from Lessee under this Amended Lease Agreement except as specifically provided in this paragraph. The security deposit shall be forfeited upon Lessee's failure to perform all the terms, covenant, and conditions

of this Amended Lease Agreement, including any repair or maintenance responsibility. Lessor shall have the right, but not the obligation, to apply all or any part of the security deposit to cure any default of Lessee, and if the Lessor does so, Lessee shall, upon demand, deposit with Lessor the amount necessary so that Lessor shall at all times have on hand the full deposit during the term of this Lease and renewals thereof. Lessee's failure to pay the Lessor a sufficient amount to restore the security deposit to the above amount within seven (7) days after receipt of demand therefor shall constitute a breach of this Amended Lease Agreement. No interest shall be payable by Lessor to Lessee on the security deposit. Should Lessee comply with all of the terms, covenants, and conditions and promptly pay all of the rental installments as they become due, and all other sums payable to Lessor by Lessee hereunder, the security deposit shall be returned to the Lessee at the end of the term of this Amended Lease Agreement, or any renewal period thereof, after Lessee has vacated the New Location in a condition reasonably acceptable to Lessor, ordinary wear and tear excepted.

Section 10. Late Charge. Ten (10) calendar days after each rental payment is due, there will be a late charge of five percent (5%) assessed on all unpaid amounts, which are due and payable by the Lessee. Such late charge shall be assessed at five percent (5%) per month for each month or part thereof that the rental amount(s), including applicable sales taxes, that may be overdue.

Section 11. Operations. Lessee is not authorized to operate any business on the New Location outside of the scope of what is permitted in Section 3 of this Amended Lease Agreement without written authorization from Lessor. Lessee shall, at a minimum, operate and be open six (6) days per week from the hours of 10:30 am to 9 pm during

the term of this Amended Lease Agreement and any renewals thereof, excluding bait sales, which shall operate per the hours and terms/conditions contained herein.

Lessee shall have the option to extend or modify such hours upon the approval by the County's Director of General Services provided such hours are not reduced by more than 25% overall and that such hours don't extend before 6 am nor later than 11 pm.

Operations may be closed for Thanksgiving and December 24th, December 25th and one week for vacation each year as determined by the Lessee. Additional times may be approved by the General Services Director. Such closures shall be noticed to the public one week in advance, whenever possible.

Section 12. Taxes. Lessee shall be responsible for the payment of any and all taxes levied or assessed upon any personal property, fixtures, improvements, located at the Original Location and the New Location and owned by Lessee, sales taxes on goods sold, rented, or commissioned by Lessee from the Original Location and the New Location, and all leasehold and possessory interest taxes levied or assessed by any taxing authority. Unless otherwise specified herein, the payment of the taxes described above shall be paid directly to the appropriate taxing authority by Lessee. Within ten (10) days of receipt of written demand of Lessor, the Lessee shall provide to Lessee proof of payment of the taxes specified above, with the exception of the sales tax due on the rent payments, which shall be remitted monthly along with each monthly rental payment when it becomes due.

Section 13. Lessee and Lessor; Alterations and Improvements. To implement the uses contained in Section 3, the Lessee may, at its sole cost and expense, construct improvements that may be necessary and desirable for its use of the New

Location, subject to Lessor's approval which shall not be unreasonably withheld. Lessor's approval for minor, nonstructural work that does not require permits shall be obtained from the General Services Director in writing. For all other alterations, Lessee must obtain proper permits as well as written approval from the County Administrator or his/her designee prior to permit application. All changes, alterations, or improvements to the New Location are to be constructed and designed in accordance with the overall scheme for Bings Landing Park and in a workmanlike manner, and should be constructed in compliance with applicable laws, rules, regulations and codes. Any alteration or construction is subject to the Florida Building Code and may be reviewed by the County's Technical Review Committee for compliance. Lessor approves and consents to the New Location as conceptually shown in Exhibit "A" and the architectural elevations as conceptually shown in Exhibit "B", attached hereto. The Exhibit "A" conceptual layout plan and Exhibit "B" architectural elevations are not necessarily to scale. All of Lessee's equipment, furnishings and other property that is not permanently attached to the New Location shall remain the property of and be removed by Lessee from the New Location at the end of the term of this Amended Lease Agreement or the earlier termination thereof.

Section 14. Construction Liens. The New Location shall not be subject to any lien, and not less than five (5) calendar days before any construction material or services are provided to Lessee, Lessee shall post on the New Location and record a notice of non-responsibility of Lessor, giving notice that Lessor is not responsible for payment of such material or services and that the New Location subject to this Amended Lease Agreement, as public property, is not subject to liens. If, because of Lessee's act or omission, any construction lien, claim of lien, or professional lien is recorded in the

Public Records of Flagler County, Florida, pursuant to Chapter 713, Florida Statutes, or any amended or successor statute, encumbering any portion of the Original or New Location or Bings Landing Park, then Lessee shall at its own expense and cost cause said liens to be discharged, released or satisfied within fifteen (15) calendar days of receipt of notice of the recording of any such lien.

Section 15. Repairs and Maintenance Generally. When Lessee assumes occupancy of the New Location, Lessee shall keep the New Location and all equipment, fixtures, and furnishings located thereon in good condition and repair. The same obligation shall apply to the Original Location prior to Lessee's occupancy of the New Location. Lessee acknowledges and agrees to implement adequate measures and exercise reasonable diligence to collect and control trash and refuse generated by its use of the Original and New Location so that such trash and refuse is properly placed in present receptacles and those to be placed on the New Location and that such trash and refuse conditions are not causing littering of the park. Lessee shall secure and install a dumpster from the local waste management provider at a location mutually agreeable to the Parties and properly screened as provided herein for outdoor storage. In addition, Lessee agrees that its food service operations will result in the generation of grease and shall ensure that proper grease traps are in place and in working order to include any grease removal, serving the New Location (or Original Location as the case may be) at its sole cost and expense as may be required, by the appropriate waste management provider. The Lessor will be responsible for the maintenance and upkeep of the septic system to include any necessary pumping, maintenance and repair.

Lessor is responsible for maintaining the trees and the grounds Lessee shall be responsible to maintain and repair all other components/elements located within the New Location area.

Section 16. Compliance with Laws. Lessee shall, at its own cost and expense, comply with all applicable federal, state and local laws, and rules and regulations pertaining to Lessee's use of the New Location, as they may be amended from time to time.

Section 17. Peaceful Possession and Quiet Enjoyment. The Lessee and its customers shall have the right of ingress, egress, and of free access to the Original Location and the New Location during the times Bings Landing is open to the public and the Lessor guarantees the peaceful possession and quiet enjoyment thereof to the extent possible with a public park facility and the special events that will occur at the park from time to time. Lessor reserves the right to designate short-term vehicle parking spaces and boat-docking spaces for use by Lessee's customers as stated herein.

Section 18. Prohibited Activities. The following operations, activities and uses are specifically prohibited on the Original Location and the New Location:

- A. The keeping or storage of flammable liquids inside the New Location.
- B. The keeping or storage of corrosive or poisonous chemicals or chemical compounds other than normal commercial cleaning supplies used in a restaurant as permitted by applicable laws and regulations. No corrosive or poisonous chemicals or chemical compounds other than normal commercial cleaning supplies shall be stored, handled or dispensed in any manner.

C. Any improvements to or use of the property that unreasonably interferes with the use or enjoyment of adjacent or nearby properties leased or licensed to other tenants or users by Lessor.

D. Any use of the Leased Premises that would interfere with or adversely affect the operation or maintenance of Bings Landing Park or would otherwise constitute a hazard to the public.

E. Any use that would constitute a violation of any applicable federal, state or local law or regulation.

F. The dumping, storage, disposal, or incineration of junk, sewage, garbage or refuse.

G. Smelting.

H. The storage of any motor vehicles, equipment, or machinery not directly used by Lessee in its operations.

I. No animals of any kind shall be kept on the site, except that service animals and seeing-eye dogs are specifically permitted on site.

Section 19. Assignment or Subletting. Lessee may not sublet all or any part of the Original Location and the New Location or assign this Amended Lease Agreement without the express written consent of the Lessor. The assignment or sublease shall incorporate and be subject to all of the provisions in this Amended Lease Agreement. No assignment or sublease shall relieve the Lessee of its obligation to pay the rent provided for in this Amended Lease Agreement in the event of a default by the sublessee or assignee unless Lessee is specifically relieved of that obligation in writing by Lessor. Lessee shall send Lessor a copy of the proposed assignment or sublease not

less than sixty (60) calendar days prior to its proposed execution and Lessor shall send Lessee notice of its consent or refusal to consent not less than thirty (30) calendar days thereafter. The Lessor may require any approved sublessees or assignees to post an additional security deposit in such sum as the Lessor may in its absolute discretion deem appropriate as a condition to approving any such sublease or assignment.

Section 20. Insurance, Indemnity and Hold Harmless. Lessee shall indemnify and hold harmless Lessor against any and all liability, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions and costs of actions, including attorneys' fees, paralegal fees, expert witness fees, consultant fees and any other litigation expense of any kind or nature, including those incurred on appeal or in settlement or mediation, arising out of or in any way connected with the Lessee's use, occupancy, management or control of the Original Location and the New Location, or the act or omission of Lessee or its agents, servants, employees, customers, patrons or invitees, whether on the Original Location, the New Location or elsewhere in the park. Lessee shall at its own expense procure and maintain liability insurance in a form acceptable to the County Administrator and/or Purchasing Manager from an insurer authorized to do business in Florida. This insurance shall have a minimum limit of liability of \$1,000,000 combined single limit for bodily injury, property damage, premises, and operations liability including food liability and liquor law legal liability on a claims made basis. All policies shall cover all uses and activities conducted by the Lessee on the Original Location and the New Location.

Lessee shall at its own expense procure and maintain insurance sufficient to repair or replace the New Location, including, without limitation, any fixtures or contents

belonging to the Lessor which are damaged as a result of the acts of Lessee, its employees, agents or customers, or by any failure of Lessee to perform its obligations hereunder.

All insurance policies, certificates and renewals shall be delivered to and held by Lessor. All policies shall be endorsed and shall list Flagler County as an additional insured.

The above indemnity provisions shall not apply to damage or liability brought on by a natural disaster, Act of God or other event beyond the control of the Lessee and not related to its operations on the Leased Premises.

Section 21. Nonliability of Lessor to Lessee. Lessor shall not be liable to Lessee, or its agents, representatives, invitees or employees, or any other person, for injury to or death of any of them, or for any damage to any of Lessee's property or loss of revenue caused by any third persons in the maintenance, construction or operation of the concession, its appurtenances, facilities or equipment, or caused by any third persons using the concession or its appurtenances, facilities and equipment, whether the injury, death or damage is due to negligence or not. Third persons, as used in this section, shall include the United States of America and the State of Florida, or any of their agencies, and all other persons.

Section 22. Lease Not A Joint Venture. Nothing contained in this Amended Lease Agreement is intended or shall be construed in any way as creating or establishing the relationship of partners or joint ventures between Lessor and Lessee or as constituting either party as the agent or representative of the other party for any purpose or in any manner.

Section 23. Exclusivity. Lessee shall have the exclusive right to sell to the public BBQ food at Bings Landing. Additionally, with regard to bait the Lessee shall have exclusive rights to sell same to the public at Bings Landing Park provided that the Lessee is adequately providing these services to the public, as determined solely by the Lessor. The Lessee shall have no other special or exclusive rights including to any charter fishing or eco-tourism service, fishing tournaments, use of park facilities or to hold or control special events. The public and organizations that rent or use Bings Landing Park shall have the right to bring their own food and beverages into Bings Landing Park without interference by the Lessee. The Lessor also reserves the right to add additional vendors (lessees or licensees) on the park property, that do not directly conflict with the exclusive rights above. Although not exclusive, no other permanent food vendors shall be permitted on the property. Special Events may be permitted on the property that temporarily allow the sale of non-BBQ food.

Section 24. Defaults. This Lease shall be in default and may be terminated upon the occurrence of any of the following events:

A. Failure to pay rent, utilities or applicable taxes. The failure by Lessee to pay Lessor any sum provided for herein when due. Lessee shall be given thirty (30) days written notice within which to cure this default.

B. Violation of terms. Lessee's violation of or failure to perform any term, covenant, or condition of this Lease. Lessee shall be given thirty (30) days written notice within which to cure this default, unless Lessor prescribes a shorter time to Lessee as determined in Lessor's sole discretion that the continued operation for a longer period by

Lessee potentially endangers the property of the County or potentially threatens the health and safety of the general public that uses Bings Landing Park.

C. Insolvency. In the event that Lessee becomes insolvent, bankrupt, or makes an assignment for the benefit of creditors; or the interest of Lessee in the Original Location and the New Location is levied upon or sold upon execution, or becomes vested by operation of law in some other person or entity because of the insolvency of Lessee; or a receiver or trustee is appointed for Lessee.

D. Abandonment. If the Lessee vacates or abandons the Original Location or the New Location, or permits the Original Location or the New Location to remain vacant or abandoned for a period of thirty (30) calendar days or more, regardless of whether or not rent payments are current. However, Lessor may at its sole discretion consent in writing to the vacation of the Original Location or the New Location for a longer period of time upon terms and conditions set by Lessor. Notwithstanding the foregoing, the Lessee shall abandon and completely vacate the Original Location after its business operations are relocated to the New Location to allow the demolition and removal of the building located at the Original Location by the Lessor.

E. Conviction of a Crime. If the Lessee is convicted of any felony or second or third degree misdemeanor as a result of a jury verdict, nonjury trial, or entry of a plea of guilt or nolo contendere. "Conviction" for purposes of this Lease shall be as defined in Florida Statutes, as amended from time to time.

Section 25. Remedies for Default. In the event of a default, Lessor shall have the following remedies:

A. Repossession by Lessor. Upon default by Lessee, Lessee's right to possession of the Original Location or the New Location shall terminate without notice or demand by Lessor, and Lessee shall surrender possession to Lessor. Lessee hereby grants to Lessor full and free license to enter the Original Location or the New Location to take possession of the Original Location or the New Location in any lawful manner and to expel Lessee. If Lessee fails to remove its personal property as provided within thirty (30) calendar days after notice, Lessor may dispose of personal property not removed by Lessee. In that case, Lessee is deemed by this Lease to have sold, assigned and transferred to Lessor all of Lessee's right, title and interest in the personal property not removed by Lessee.

B. Damages. In addition to terminating this Amended Lease Agreement and retaking possession of the Original Location or the New Location, Lessor may recover all damages and rent accrued or accruing under this Amended Lease Agreement or arising out of any breach of this Amended Lease Agreement. Lessor may resume possession of the Original Location or the New Location for its own account and recover from Lessee the total rent due under this Amended Lease Agreement for the remainder of the term, reduced to present value, or Lessor may resume possession of the Original Location or the New Location and at its option re-rent it for the remainder of the term for the account of Lessee and recover from Lessee, at the end of the term or at the time any rent becomes due under this Amended Lease Agreement, the difference between the rent specified in this Amended Lease Agreement and the rent received upon the re-renting of the property.

C. Other remedies. Lessor may pursue all other remedies provided by law or equity for the breach of this Amended Lease Agreement. No right or remedy conferred

upon or reserved to Lessor in this Amended Lease Agreement is intended to be exclusive of any other right or remedy, and each right and remedy shall be cumulative and in addition to any other right or remedy of Lessor under this Amended Lease Agreement, now or hereafter existing at law or equity or by statute.

D. Enforcement. In the event that either party must judicially enforce the terms of this Amended Lease Agreement the prevailing party shall be entitled to reasonable attorneys' fees, paralegal costs, expert witness fees, consultant fees, and any other litigation expense or cost, whether in trial, settlement, mediation or appeal.

Section 26. Waiver of Default; Effect. The acceptance by Lessor of one or more monthly rental installments after they fall due or after knowledge of any breach by Lessee of this Lease or after the sending of any notice or demand, or any other act or series of acts by Lessor, shall not be deemed or construed as a waiver of Lessor's right to act or as a waiver of any other right given to Lessor under this Lease or as an election not to proceed under the provisions of this Lease. The failure by Lessor to collect or demand any sums due under this Lease shall not relieve Lessee's obligation to pay those sums when demanded.

Section 27. Notices. Any notices required by this Lease, or which Lessor or Lessee may wish to serve on the other, shall be in writing and shall be deemed served, whether or not receipt is admitted, when delivered in person to an agent or employee of the party at its place of business or when deposited in the U.S. Mail, postage prepaid, return receipt requested, addressed to the Lessor as follows:

Flagler County
Attn: County Administrator
1769 E. Moody Blvd. #2, Suite 301
Bunnell, FL 32110

Flagler County
Attn: General Services Director
1769 E. Moody Blvd., Bldg #5
Bunnell, FL 32110

Flagler County
Attn: County Attorney
1769 E. Moody Blvd. #2 Suite 303
Bunnell, FL 32110

And As to the Lessee, the following addresses:

Michael Goodman
13 Capri Court
Palm Coast, Florida 32137

Jay W. Livingston, Esq.
Livingston & Sword, PA
393 Palm Coast Parkway SW #1
Palm Coast, FL 32164

Section 28. Inspection of Leased Premises. Lessee shall allow Lessor's authorized representative access to the Original Location or the New Location at all reasonable hours for the purpose of examining and inspecting said Original Location or the New Location for the purposes necessary, incidental to, or connected with the performance of Lessee's obligations under this Lease. This shall be in addition to full 24 hrs. a day inspection throughout the construction process at the New Location by the Flagler County Building Department or the County appointed construction coordinator, prior to a certificate of occupancy being issued for the New Location.

Section 29. Signs. Lessee shall be permitted to install up to three (3), 8 s.f. signs on the building subject to the design/appearance approval of the Lessor and compliance with the Flagler County Land Development Code, Article VII, and other provisions of the Flagler County Code, as amended and/or supplemented from time to time. Signs shall be on the east, west and south sides of the building. The design, permitting, installation and maintenance of any sign shall be at the sole expense of Lessee and shall substantially follow the conceptual theme and style of the County proposed park signage. The one (1) existing two-sided sign at the main entranceway to

the concession shall be permitted to remain for Lessee's use. However, any changes to existing signs shall be subject to the review and approval process as provided for above.

Section 30. Beverage License. The Lessee shall be permitted to apply for and secure a 4COP (SRX) non-quota beverage license from the Florida Division of Alcoholic Beverages and Tobacco for the sale and consumption of beer wine and liquor on the New Location. Notwithstanding the scope of such license, Lessee shall be limited to the sale and consumption of beer, wine and liquor as regulated by state law during normal business hours. Such sales and consumption shall be restricted to the New Location, unless otherwise permitted through the County's normal park permit process for onsite consumption. The Lessee shall be permitted to sell beer and wine at the Original Location as provided for in the Lease Agreement until the Lessee relocates its business operations to the New Location. No package sales for offsite consumption shall be permitted from this location.

Section 31. Effect on Prior Agreements. This Amended Lease Agreement supersedes all prior agreements, if any, between the parties regarding the leasing of the Leased Premises and, as of the date of this Lease, those prior agreements shall be of no force or effect. Notwithstanding the foregoing, the terms of the Lease Agreement shall remain valid and binding on the parties with regard to the Original Location for as long as the Lessee occupies the Original Location. Upon the date that the Lessee occupies and commences its business operations from the New Location the Lease Agreement will terminate and be of no further force and effect and the terms of the Amended Lease Agreement shall control all of the rights and obligations of the Lessor and the Lessee with regard to the New Location and the Lessee's operations thereon. In the event there is a

conflict between the Lease Agreement and this Amended Lease Agreement with regard to the Lessee's use of the Original Location then the Lease Agreement shall control until the Lessee relocates its business operations to the New Location and the Lease Agreement terminates, as provided for above.

Section 32. Construction of Lease. This Amended Lease Agreement shall be construed under the laws of the State of Florida and Flagler County Ordinances and any litigation regarding this Amended Lease Agreement shall be in the County or Circuit Court of Flagler County, Florida.

Section 33. Short Form of Lease. Either party may prepare for execution a short form of this Amended Lease Agreement for recording in the public records. The costs of recording the short form of this Amended Lease Agreement shall be paid by the party desiring to record the short form. Both parties shall be provided a copy of the Short Form Lease proposed to be recorded, at least 14 days prior to any recording, to allow a review by the other Party.

Section 34. Amendments to Lease. This Amended Lease Agreement may be amended only by written instrument executed with the same formalities as this Amended Lease Agreement.

Section 35. Property Rights. Lessee agrees that no subordination or use of the Lessee's interest as collateral will be permitted without the Lessor's express written permission, which is in the Lessor's sole and absolute discretion.

Section 36. No Third Party Beneficiaries. Except as otherwise expressly provided, the covenants, conditions, and agreements contained in this Amended Lease

Agreement shall bind and inure to the benefit of the Lessor and Lessee and their respective heirs, successors, administrators, and assigns.

Section 37. Force Majeure. No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by *Force Majeure*. *Force Majeure* shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any emergency declaration under state or local law, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

Date of Approval: 19 November, 2018

ATTEST:

**Flagler County Board of County
Commissioners**

Tom Bexley, Clerk and Ex Officio Clerk
to the Board

Gregory L. Hansen, Chairman

Approved as to form:

Albert Hadeed
County Attorney

CAPTAIN'S BAIT, TACKLE & BBQ, LLC

A Florida limited liability company

Witness Signature

Print Name

By: _____
Grace A. Goodman, Managing
Member

Witness Signature

Print Name

STATE OF FLORIDA

COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this ____ day of November, 2018 by Grace A. Goodman, the Managing Member of Captain's Bait, Tackle & BBQ, LLC, on behalf of the company. She ____ is personally known to me or ____ has produced a driver's license as identification.

NOTARY PUBLIC

Printed Name