

IN THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA

CAPTAIN'S BAIT, TACKLE & BBQ, LLC,
a Florida limited liability company,

Case No.: 2019-CA-000381

Plaintiff / Counter-Defendant,

v.

FLAGLER COUNTY, a political subdivision
of the State of Florida,

Defendant / Counter-Plaintiff.

**DEFENDANT / COUNTER-PLAINTIFF FLAGLER COUNTY'S
ANSWER AND AFFIRMATIVE DEFENSES, AND
COUNTERCLAIM FOR CONTRACTUAL INDEMNITY**

Defendant / counter-plaintiff respectfully answers the Complaint and offers the following affirmative defenses, and counterclaims against plaintiff / counter-defendant, as follows:

ANSWER

1. Admitted for jurisdictional purposes.
2. Admitted.
3. Admitted for jurisdictional purposes.
4. Denied that defendant has waived sovereign immunity.
5. Without knowledge.

General Allegations¹

6. Admitted.
7. Admitted that the referenced lease permitted plaintiff to use the property as provided therein. Otherwise, without knowledge.
8. Admitted that structural issues arose as to the building. Otherwise, without knowledge.
9. Conclusory and without knowledge.
10. Admitted.
11. Admitted.
12. Without knowledge.
13. Admitted that the County prepared surveys. Otherwise, without knowledge.
14. Admitted that plaintiff submitted a site plan application. Otherwise, without knowledge.
15. Admitted that the Technical Review Committee reviewed the site plan application at its October 17, 2018 meeting. Otherwise, without knowledge.

¹ To the extent plaintiff attempts to assert claims or allegations via section headings, defendant denies the same.

16. Admitted that the Scenic A1A PRIDE board reviewed the relocation of plaintiff's restaurant at its October 26, 2018 meeting, and voted in favor of the proposal subject to two provisions. Otherwise, without knowledge.

17. Admitted.

18. Admitted that on June 6, 2001, the Florida Department of Transportation declared the State Road A1A Corridor from the Matanzas River and Intracoastal Waterway to the Atlantic Ocean a "Scenic Highway." Admitted that the Flagler County Board of County Commissioners ("BOCC") adopted Ordinances 2001-26 and 2004-01. Otherwise, without knowledge.

19. Admitted.

20. Admitted that on November 19, 2018, the BOCC voted 3 to 2 to approve the amended lease. Denied that the County did not have the right to rescind the amended lease, or that the amended lease represented a valid, binding agreement. Otherwise, without knowledge.

The County's Non-Performance and Breach²

21. Admitted that on December 3, 2018, the BOCC voted to rescind the motion made and approved at the November 19, 2018 meeting as to plaintiff, and in

² See n. 1.

favor of further discussion on the matter. Otherwise, conclusory and without knowledge.

22. Admitted that on November 30, 2018, the Scenic A1A PRIDE board voted to reconsider its prior vote in favor of the relocation of plaintiff's restaurant, which occurred at its October 26, 2018 meeting, and such reconsideration occurred as plaintiff did not provide the Scenic A1A PRIDE board with the terms of the amended lease at the October 26, 2018 meeting. Admitted that the Scenic A1A PRIDE board rescinded its prior vote in favor of the relocation of plaintiff's restaurant. Otherwise, without knowledge.

23. Admitted that discussion was had and actions were taken as reflected in the minutes of the December 3, 2019 BOCC meeting. Otherwise, without knowledge.

24. Admitted that discussion was had and actions were taken as reflected in the minutes of the January 7, 2019 BOCC meeting. Otherwise, without knowledge.

25. Without knowledge and conclusory.

26. Admitted that discussion was had and actions were taken as reflected in the minutes of the June 3, 2019 BOCC meeting. Otherwise, without knowledge.

27. Denied.

28. Denied that the County did not have the right to rescind the amended lease, or that the amended lease represented a valid, binding agreement.

29. Denied.

30. Denied.

31. Denied.

32. Without knowledge.

COUNT I
(Breach of Contract)³

33. See responses provided above to paragraphs 1-32.

34. Without knowledge.

35. Denied.

36. Denied.

37. Denied.

Defendant denies that plaintiff is entitled to the relief sought under Count I's "wherefore" paragraph.

COUNT II
(Breach of Implied Covenant of Good Faith and Fair Dealing)⁴

38. See responses provided above to paragraphs 1-32.

39. Without knowledge.

³ See n. 1.

⁴ See n. 1.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

Defendant denies that plaintiff is entitled to the relief sought under Count II's "wherefore" paragraph.

COUNT III
(Declaratory Relief)⁵

44. See responses provided above to paragraphs 1-32.

45. Without knowledge.

46. Denied.

47. Without knowledge.

48. Admitted that the BOCC considered the amended lease as indicated in the minutes of various meetings following the November 18, 2018 BOCC meeting. Denied that the County did not have the right to rescind the amended lease, or that the amended lease represented a valid, binding agreement. Otherwise, without knowledge.

⁵ See n. 1.

49. Admitted that plaintiff claims the amended lease is valid and enforceable, and demands that the County perform in accordance with plaintiff's assertion. Otherwise, denied.

50. Admitted that the BOCC considered the amended lease as indicated in the minutes of various meetings following the November 18, 2018 BOCC meeting. Denied that the County did not have the right to rescind the amended lease, or that the amended lease represented a valid, binding agreement. Otherwise, without knowledge.

51. Without knowledge.

52. Without knowledge.

53. Without knowledge.

54. Denied.

55. Without knowledge.

56. Without knowledge.

Defendant denies that plaintiff is entitled to the relief sought under Count III's "wherefore" paragraph.

COUNT IV
(Specific Performance)⁶

57. See responses provided above to paragraphs 1-32.

⁶ See n. 1.

58. Without knowledge.

59. Admitted that the BOCC considered the amended lease as indicated in the minutes of various meetings following the November 18, 2018 BOCC meeting. Denied that the County did not have the right to rescind the amended lease, or that the amended lease represented a valid, binding agreement. Otherwise, without knowledge.

60. Admitted that the BOCC considered the amended lease as indicated in the minutes of various meetings following the November 18, 2018 BOCC meeting. Denied that the County did not have the right to rescind the amended lease, or that the amended lease represented a valid, binding agreement. Otherwise, without knowledge.

61. Denied.

62. Denied.

Defendant denies that plaintiff is entitled to the relief sought under Count IV's "wherefore" paragraph.

Demand for Jury Trial

Defendant demands a trial by jury on all claims so triable.

Attorney's Fees

Should defendant prevail, it demands recovery of its reasonable attorney's fees and costs from plaintiff in accordance with the terms of the Lease Agreement

Between Flagler County, Florida, and Captain's Bait, Tackle & BBQ, LLC, executed August 15, 2011, and any amendments thereto, and/or the Amended and Restated Captain's Bait, Tackle & BBQ Lease at Bings Landing, executed November 18, 2018.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's claims are barred by the doctrines of laches and estoppel.
3. Defendant was entitled to rescind the amended lease as plaintiff and defendant were mutually mistaken as to material facts considered by them in executing the amended lease, namely the condition of the building and whether and to what extent it could be repaired or rehabilitated.
4. Defendant was entitled to rescind the amended lease as plaintiff induced defendant to execute the amended lease through misrepresentations as to the condition of the building.
5. Plaintiff is not entitled to relief as it comes to the court with unclean hands as to its misrepresentations as to material facts associated with the amended lease, and its undisclosed failure to reasonably maintain the building.
6. Plaintiff is not entitled to specific performance as it has an adequate remedy at law availability, and justice does not require specific performance.
7. Plaintiff has waived any entitlement to remedies under the amended lease.

COUNTERCLAIM FOR CONTRACTUAL INDEMNITY

Counter-plaintiff Flagler County (“County”) sues counter-defendant Captain’s Bait, Tackle & BBQ, LLC’s (“Captain’s BBQ”) as follow:

1. The County is a political subdivision of the State of Florida.
2. Captain’s BBQ is a Florida limited liability company with a principal place of business at 5862 North Oceanshore Boulevard, Palm Coast, FL 32137.
3. The property and building at issue are located in Flagler County, and the Lease Agreement Between Flagler County, Florida and Captain’s Bait, Tackle & BBC, LLC, executed August 23, 2011 (“2011 Lease”), was executed in Flagler County. As such, venue is proper before this Court.
4. The substance of this counterclaim, namely the property and building at issue, the 2011 Lease, and the parties hereto, are all before the Court in the action filed by Captain’s BBQ against the County under case no. 2019-CA-000381, hence the assertion of this counterclaim as part of that pending case.
5. All conditions precedent to pursuit of this counterclaim have been performed, waived, or have occurred.
6. In 2017 the County and Captain’s BBQ were sued in a lawsuit titled *Imad Mansour and Gail Mansour v. Captain’s Bait, Tackle & BBQ, LLC, and County of Flagler*, case no. 2017-CA-203 (Fla. 7th Jud. Cir., Flagler Cty.). A copy of the *Mansour* complaint is attached as exhibit 1.

7. The *Mansour* complaint alleges on August 4, 2016, Imad Mansour was injured at Captain's BBQ's restaurant at 5862 North Oceanshore Boulevard. He claims he slipped and fell on wooden steps on the north side of the restaurant, where mildew, grime, and water accumulated. The *Mansour* complaint asserts negligence and loss of consortium claims.

8. Since 2011, Captain's BBQ has leased the building at the above address from the County to operate a restaurant. A copy of the 2011 Lease is attached as exhibit 2. The 2011 Lease was amended in 2015 and 2016. Under the 2011 Lease, Captain's BBQ had possession, control, and was entitled to enjoyment and use of the outdoor areas of the building, including the aforementioned wooden steps.

9. In June 2019, the County and the Mansours reached a settlement. A copy of the release the Mansours executed is attached as exhibit 3. The County agreed to pay the Mansours \$45,000 to settle and dismiss their claims against the County. The County's insurance carrier paid the settlement funds on the County's behalf. Copies of the settlement checks are attached as exhibit 4.

10. On July 12, 2019, the Court in *Mansour* executed an Order of Dismissal with Prejudice as to the claims against the County. A copy of the Order is attached as exhibit 5.

11. Upon being served with the *Mansour* complaint, the County requested that its liability insurer retain legal counsel to represent and defend the County. The

insurer retained Bell & Roper, P.A., of Orlando, Florida. In total, the County and/or its insurer incurred approximately \$91,000 in attorney's fees and litigation costs, as to Bell & Roper's defense of the County.

12. Section 16 of the 2011 Lease (as originally executed and amended), titled "Insurance, Indemnity and Hold Harmless," states in part:

[Captain's BBQ] shall indemnify and hold harmless [the County] 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, arising out of or in any way connected with the use, occupancy, management or control of the Leased Premises, or the act or omission of [Captain's BBQ] or its agents, servants, employees, customers, patrons or invitees, whether on the Leased Premises or elsewhere. ...

13. The alleged incident occurred while Imad Mansour was on the premises as Captain's BBQ's guest.

14. The claims in *Mansour* all related to Captain's BBQ "use, occupancy, management or control of the Leased Premises," and/or occurred as a result of an "act or omission of [Captain's BBQ] or its agents, servants, employees, customers, patrons or invitees[.]"

15. The 2011 Lease was in force and effect on August 4, 2016.

16. In accordance with section 16 of the 2011 Lease, Captain's BBQ is obligated to indemnify the County for the settlement funds paid to the Mansours, and all attorney's fees and costs incurred in defense of the *Mansour* lawsuit, a total of approximately \$136,000.

17. Before filing this counterclaim, the County demanded that Captain's BBQ, and/or its liability insurance carrier, indemnify the County as required under the 2011 Lease. A copy of the County's demand letter dated August 9, 2019, is attached as exhibit 6 (exhibits to letter omitted). As of the filing of this counterclaim, Captain's BBQ has not agreed to indemnify the County.

18. Pursuant to Section 21 of the 2011 Lease, the County is entitled to recover reasonable attorneys' fees, paralegal costs, expert witness fees, consultant fees, and any other litigation expense or cost, related to the initiation and pursuit of this counterclaim should the County prevail.

19. The County demands a jury trial as to all claims so triable.

WHEREFORE, the County demands a judgment against Captain's BBQ, including damages, attorney's fees and costs, interest, and such other relief deemed just and proper by the Court.

Respectfully submitted this 13th day of September, 2019, by:

BELL & ROPER, P.A.

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CERTIFICATE OF SERVICE

I certify that a copy of this document has been furnished via the F-Filing Portal on this 13th day of September, 2019, to:

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Counsel for Captain's Bait, Tackle & BBQ, LLC

By: Dale A. Scott
Dale A. Scott, Esq.

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

CASE NO.: 2017 - CA - 000203

IMAD MANSOUR and
GAIL MANSOUR, his wife.

Plaintiffs,

vs.

CAPTAIN'S BAIT, TACKLE & BBQ, LLC,
and COUNTY OF FLAGLER,
a political subdivision of the State of Florida

Defendants.

COMPLAINT

Plaintiffs sue Defendants and allege as follows:

1. This is an action for damages exceeding \$15,000.00.

COUNT I - IMAD MANSOUR vs. CAPTAIN'S BBQ

2. On August 4, 2016, CAPTAIN'S BAIT, TACKLE & BBQ, LLC was the owner and operator of a restaurant located at 5862 North Oceanshore Blvd., Palm Coast, Florida.
3. At that time and place, IMAD MANSOUR went to Defendant's restaurant to eat lunch.
4. Defendant negligently maintained the outside wooden steps on the North side of the restaurant, by allowing mildew, grime, and water to accumulate on the steps.
5. The negligent condition was created by Defendant, known to Defendant, or had existed for a sufficient length of time that Defendant should have known of it.
6. As a result, as Plaintiff was leaving the restaurant, he slipped on the steps and fell onto his spine, and he suffered vertebral fractures and other injuries, pain, disfigurement, disability, and incurred medical expense in the treatment of his injuries; the injuries are permanent and plaintiff will suffer the losses and impairment in the future.

WHEREFORE, IMAD MANSOUR demands judgment against CAPTAIN'S BAIT, TACKLE & BBQ, LLC for damages and jury trial.

COUNT 2 – GAIL MANSOUR vs. CAPTAIN'S BBQ

7. Plaintiff GAIL MANSOUR re-alleges the allegations above.
8. Plaintiffs were married at the time of the described incident.
9. As a result of her husband's injuries, she lost her husband's services and consortium.

WHEREFORE, Plaintiff demands judgment against CAPTAIN'S BBQ for damages and jury trial.

COUNT 3 - IMAD MANSOUR vs. COUNTY OF FLAGLER

10. On August 4, 2016, COUNTY OF FLAGLER was the owner of the land and building at 5862 North Oceanshore Blvd., Palm Coast, Florida, which it leased to CAPTAIN'S BAIT, TACKLE & BBQ, LLC, for the purpose of operating a restaurant.

11. At that time and place, IMAD MANSOUR went on Defendant's property to eat lunch.

12. Defendant COUNTY OF FLAGLER negligently constructed its outside wooden steps on the North side of the building by not putting any non-slip tread on its steps, and configuring the steps so that mildew, grime and water would accumulate on the steps; Defendant also negligently maintained the same wooden steps, by allowing mildew, grime, and water to accumulate on the steps.

13. The negligent condition was created by Defendant COUNTY OF FLAGLER, known to Defendant, or had existed for a sufficient length of time that Defendant should have known of it.

14. As a result, as Plaintiff was leaving the restaurant, he slipped on the steps and fell onto his spine, and he suffered vertebral fractures and other injuries, pain, disfigurement, disability, and incurred medical expense in the treatment of his injuries; the injuries are permanent and plaintiff will suffer the losses and impairment in the future.

15. Pursuant to Florida Statute 768.28, Plaintiffs presented this claim in writing to Flagler County and to the Department of Financial Services, and the county denied it. or it has been more than 6 months since it was presented.

WHEREFORE, IMAD MANSOUR demands judgment against COUNTY OF FLAGLER and jury trial.

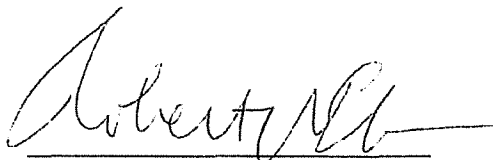
COUNT 4 – GAIL MANSOUR vs. COUNTY OF FLAGLER

16. Plaintiff GAIL MANSOUR re-alleges the allegations of Count 3.

17. Plaintiffs were married at the time of the described incident.

18. As a result of her husband's injuries, she lost her husband's services and consortium.

WHEREFORE. Plaintiff demands judgment for damages and jury trial.



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**LEASE AGREEMENT BETWEEN
FLAGLER COUNTY, FLORIDA
AND
CAPTAIN'S BAIT, TACKLE & BBQ, LLC**

This Lease Agreement ("Lease") is made by and between **FLAGLER COUNTY**, a political subdivision of the State of Florida, located at 1769 E. Moody Blvd., #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, and whose business address is 113 Island Estates Parkway, Palm Coast, Florida 32137 (the "Lessee"), in consideration of the mutual terms and conditions of this Lease, effective as of the 1st day of September, 2011, hereby agree as follows:

Section 1. Property. Lessor hereby leases to Lessee approximately 2080 square feet of building space, to include the existing attached porch area, plus two adjoining building additions (18ft by 20ft and 15ft by 20ft) plus an expanded 550 s.f. deck area, all shown on Exhibit A located at 5862 N. Oceanshore Blvd., Palm Coast, Florida, at Bings Landing Park, Flagler County, Florida (the "Leased Premises").

Section 2. Use of the Leased Premises. Lessee may use the Leased Premises for a bait and tackle shop and concession operation including, but subject to the limitations contained herein: packaged food and beverage sales, concession sundries, camping, boating, and fishing supplies, live and frozen bait sales, kayak and canoe rentals, fishing and promotional apparel, bike rentals, ice, cigarettes, and similarly related items for public sale. Rentals shall be limited to bikes, canoes and kayaks unless otherwise approved by the County. The Lessee shall also be permitted to have a BBQ cooker, firewood, and related items outdoors and on the leased premises as shown in Exhibit A, which shall be used to produce and sell carryout food from the building for consumption on the Leased Premises, elsewhere within the park, or off the park



property. In addition in this outside area the applicant shall be permitted to store safety vests, paddles, bikes, kayaks/canoes, and similar type items. However, the entire outside area shall be screened from view as provided for herein and may be covered at the discretion of the Lessee. Other uses may include such things as pavilion usage and special events such as fishing tournaments and live entertainment/ music and shall be handled like any other such requests in accordance with the rules and regulations of Flagler County that may exist at the time the pavilion usage or special event is proposed to occur. In addition, any modification of the use of the Leased Premises as herein described shall only be by the express written consent of the Lessor, which consent shall not be unreasonably withheld provided, however, that any subsequent modification shall be consistent with the uses and conditions stated in this Lease. Lessee acknowledges that Bings Landing Park is a unique environmental, recreational and historical park facility that: is located on the A1A National Scenic Byway; is part of the Flagler County Coastal Greenway; is within the National Estuarine Research Reserve of the United States; includes historical resources that are listed on the National Register of Historic Places; and 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.

A handwritten signature in black ink, appearing to be initials or a stylized name, located in the bottom right corner of the page.

Section 3. Term. This Lease shall be for a term of five (5) years beginning on September 1, 2011, and ending on August 31, 2016 with an option to renew for one (1) additional five (5) year period at Lessee's option. If Lessee decides to renew for an additional five (5) year period, Lessee shall give 180 days written notice to Lessor prior to the expiration of the initial five (5) year period. If Lessee exercises its renewal options described above, then at the end of this ten (10) year period this Lease may be renewed for an additional five (5) year period upon the mutual agreement of both parties.

Section 4. Rent. Lessee shall pay the Lessor as base rent for the Leased Premises the amount of \$500 per month, plus applicable state sales tax. Payments shall be due no later than the fifteenth (15th) day of each month until termination of the Lease. The monthly rental fee shall increase by forty dollars (\$40) on each annual anniversary of this Lease for the term hereof and for any renewal thereof.

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 these utilities are separately metered for the Leased Premises and the uses occurring thereon. In the event that any of the above utilities are not separately metered for the Leased Premises then these utilities shall be the responsibility of the Lessor unless otherwise agreed to by the parties in writing.

Section 5. Security Deposit. Lessee shall deposit with Lessor the amount of \$1,000.00 in the form of a check, which must be delivered upon the execution of this Lease. This security deposit shall be forfeited upon Lessee's failure to perform all the terms, covenants, and conditions of this Lease, including any repair or maintenance responsibility. Lessor shall have the right, but not the obligation, to apply all or any part of the said 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 any renewals thereof. Lessee's failure to pay the Lessor a sufficient amount to restore the security deposit to the original sum deposited within seven (7) calendar days after receipt of demand therefor shall constitute a breach of this Lease. 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 pays 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 Lease, or any renewal period thereof, after Lessee has vacated the Leased Premises in a condition reasonably acceptable to Lessor, ordinary wear and tear excepted.

Section 6. 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 the rental amount is overdue subject to the maximum annual rate of interest under Florida law.

Section 7. Days/Hours of Operation. Lessee is not authorized to operate any business on the Leased Premises outside of the scope of Section 2 of this Lease without written authorization from Lessor. Lessee shall operate and be open the following minimum hours during the term of this Lease and any renewals thereof:

- April through November seven (7) days a week from 6:30 a.m. to 7:00 p.m.
- December through March seven (7) days week from 7:00 a.m. to 4:00 p.m.
- 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 do not lessen by more than 25% overall and that such hours don't extend before 5 a.m., nor later than 11 p.m.



Operations may be closed for Thanksgiving and December 24 and December 25 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 8. Taxes. Lessee shall be responsible for the payment of any and all taxes levied or assessed upon any personal property, fixtures, improvements, located on the Leased Premises and owned by Lessee, sales taxes on goods sold, rented, or commissioned by Lessee on the Leased Premises, 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 Lessor 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 9. Lessee and Lessor Alterations and Improvements. To implement the uses contained in Section 2, the Lessee shall at its sole cost and expense make any changes, alterations, or improvements that may be necessary for its use of the Leased Premises, with Lessor approval. Lessor approval for minor, nonstructural work not requiring permits shall be obtained from the County Administrator or his designee in writing. For all other alterations, Lessee must obtain proper permits as well as written approval from the County Administrator or his designee prior to permit application. All changes, alterations, or improvements to the Leased Premises 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 general layout plan for the Leased Premises as conceptually shown in Exhibit A, attached hereto. The Exhibit A conceptual layout plan is not to scale. All equipment, furnishings and fixtures attached to the Leased Premises shall become the property of County at the termination of the lease.

Notwithstanding the provisions in the foregoing paragraph regarding Lessor approval, Lessor hereby consents and permits Lessee to make the following improvements to the Leased Premises:

- Installation of floor tile on the interior of the building.
- Installation of wall food panels in the prep and storage area as depicted on the site plan.
- Improve and build out back room, including the installation or improvement of new or existing plumbing, installation of an HVAC unit, and upgrade the onsite electric to a 600 AMP system, if necessary.
- Installation of a manual retractable awning on the porch area as depicted on the site plan subject to approval of the type and appearance by the County.
- Installation of an overhang or cover for the BBQ cooker and firewood to be used therein, subject to approval of the material type and appearance by the County.
- Installation of fencing on the west side of the building (reference attachment A) for the security of Lessee's equipment and for screening as required herein. Such fence shall be at least 6ft high with a minimal opening at the ground, be of a solid material, be opaque and shall fully conceal the contents of the cooker, wood, bike storage, paddles, safety vests and other items in the outdoor area. It shall fully enclose any outside area not otherwise blocked by a building and shall contain a gate.



- Installation of a wall or other divider for the live bait tanks to ensure proper separation between the bait and tackle portion of Lessee's operation and the food prep, storage and storage areas.
- Installation of minimum six inch (6") rain gutters with a leaf guard along the roof on the north side of the building.
- Installation of counters for consumption of food items on the porch area.
- Installation and use of space heaters and misting fans.
- Replacement of any light fixtures on the Leased Premises subject to approval of the type of fixture and appearance by the County.
- Replacement of vanities in the bathrooms on the premises.
- Installation of an exhaust vent.
- Installation of a concrete slab or pavers for the placement of the BBQ cooker. The BBQ cooker must be placed at least ten feet (10') from the roof line of the main building.
- Installation of signage per Section 25 herein.
- Installation of any needed grease traps, grease holding tanks, and septic tank upgrades necessary to support the uses proposed by the Lessee.
- Installation of any needed trash and recycling receptacles on the Leased Premises and dumpster with a location, screening and pad construction acceptable to the County outside of the Leased Premises.

The foregoing improvements are subject to Lessor's review of any tree impacts of proposed improvements. Lessor may require a modification of the improvement to avoid tree impacts. Lessor in its sole discretion may relocate sable palms within the Park to avoid impacts.



The Lessor shall complete the construction of the improvements listed below. The final location and design of the improvements shall be solely at the discretion of the Lessor but shall be generally planned with and in conjunction with and for primary use by the Lessee

- A bicycle stand (s) within three months.
- A kayak/canoe stand(s) within three months.
- Replacement of all windows on the Leased Premises within thirty months.

In meeting the Lessee's requirements above, should the Lessee agree to upgrade the outdoor area to a hardened building extension with the same roof line and at least half of the additional area enclosed, the Lessor will install the addition, other building improvements listed above, and install the grease separation system provided the Lessee shall pay for design, permits, and material costs to construct the improvements. The Lessor shall not do any signage, retractable awning, septic tank improvements (if necessary) and any other improvements the Lessor determines it is unwilling to construct.

Section 10. Construction Liens. The Leased Premises shall not be subject to any construction lien, and not less than five (5) calendar days before any construction material or services are provided to Lessee, Lessee shall post on the Lease Premises 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 Leased Premises subject to this Lease, as public property, are not subject to construction 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 Leased Premises 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 11. Repairs and Maintenance Generally. Lessee shall keep the Leased Premises and all equipment, fixtures, and furnishings located thereon in good condition and repair. 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 Leased Premises so that such trash and refuse is properly placed in receptacles to be placed on the Leased Premises and 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, shall ensure at its sole cost and expense that all septic tanks serving the Leased Premises are pumped out, and shall secure a proper receptacle or holding tank, as may be required, for grease to be serviced and pumped out by the appropriate waste management provider. Lessor is responsible for maintaining the trees and the grounds, exterior building maintenance, including, without limitation the roof, except for improvements or fixtures made or installed by the Lessee. Lessor shall also be responsible to maintain and repair any water heaters and HVAC units located on or serving the Leased Premises.

Section 12. 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 Leased Premises, as they may be amended from time to time.

Section 13. Peaceful Possession and Quiet Enjoyment. The Lessee and its customers shall have the right of ingress, egress, and of free access to the Leased Premises during the times the park 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.

Section 14. Prohibited Activities. The following operations, activities and uses are specifically prohibited on the Leased Premises:

A. The keeping or storage of flammable liquids inside the Leased Premises.

B. The keeping or storage of corrosive or poisonous chemicals or chemical compounds other than normal household and concession cleaning supplies. No corrosive or poisonous chemicals or chemical compounds other than normal household and concession 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 to other tenants 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. The use of the Leased Premises in 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 on the Leased Premises.

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

Section 15. Assignment or Subletting. Lessee may not sublet all or any part of the Leased Premises or assign this Lease without the express written consent of the Lessor. The



assignment or sublease shall incorporate and be subject to all of the provisions in this Lease. No assignment or sublease shall relieve the Lessee of its obligation to pay the rent provided for in this Lease 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 16. 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, arising out of or in any way connected with the use, occupancy, management or control of the Leased Premises, or the act or omission of Lessee or its agents, servants, employees, customers, patrons or invitees, whether on the Leased Premises or elsewhere. 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. All policies shall cover all uses and activities conducted by the Lessee on the Leased Premises.

Lessee shall at its own expense procure and maintain insurance sufficient to repair or replace the Leased Premises and 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 17. 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 18. Lease Not A Joint Venture. Nothing contained in this Lease is intended or shall be construed in any way as creating or establishing the relationship of partners or joint venturers 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 19. Exclusivity. Lessee shall have the exclusive right to sell to the public bait shop items described in its proposal and cooked barbeque at the Park. Additionally, with regard to bike and canoe/kayak rentals the Lessee shall also have exclusive rights to rent same to the public at the Park provided the Lessee is adequately providing these services, as determined solely by the Lessor. The Lessee shall have no other special or exclusive rights to any charter



fishing or eco-tourism service, fishing tournaments, use of park facilities or to hold or control special events. During special events the County may allow other vendors to sell products on the site, but shall generally seek to minimize conflict with the vendor products and specifically barbeque. The public and organizations that rent/use the park shall have the right to continue to bring their food beverages, bait, and other supplies into the park as currently exists today prior to the lease. The Lessor also reserves the right to add additional vendors (Lessees) that do not directly conflict with the exclusive rights above.

Section 20. Defaults. This Lease shall be in default and may be terminated only upon the occurrence 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 the 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 Leased Premises 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 Leased Premises, or permits the Leased Premises 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 Leased Premises for a longer period of time upon terms and conditions set by 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.

F. Closure or Failure to Sell Bait – Closure of the facility or failure to offer bait for sale to the general public for more than 30 consecutive days.

Section 21. 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 Leased Premises 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 Leased Premises to take possession of the Leased Premises 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 Lease and retaking possession of the Leased Premises, Lessor may recover all damages and rent accrued or accruing under this Lease or arising out of any breach of this Lease. Lessor may resume possession of the Leased Premises for its own account and recover from Lessee the total rent due under this Lease for the remainder of the term, reduced to present value, or Lessor may resume possession of the Leased



Premises 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 Lease, the difference between the rent specified in this Lease 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 Lease. No right or remedy conferred upon or reserved to Lessor in this Lease 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 Lease, 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 Lease the prevailing party shall be entitled to reasonable attorneys' fees, paralegal costs, expert witness fees, consultant fees, and any other litigation expense or cost.

Section 22. 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 23. 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 Administrator
1769 E. Moody Blvd. #2, Suite 302
Bunnell, FL 32110

Director, General Services
1769 E. Moody Blvd., Bldg #5
Bunnell, FL 32110

And As to the Lessee, the following address:

Michael Goodman
113 Island Estates Parkway
Palm Coast, Florida 32137

Jay W. Livingston, Esq.
Livingston Wolverton & Sword, PA
20 Airport Rd, Suite A
Palm Coast, FL 32164

Section 24. Inspection of Leased Premises. Lessee shall allow Lessor's authorized representative access to the Leased Premises at all reasonable hours for the purpose of examining and inspecting said Leased Premises for the purposes necessary, incidental to, or connected with the performance of Lessee's obligations under this Lease or in the exercise of its governmental functions with 24 hours notice.

Section 25. Signs. Lessee shall be permitted to install up to two (2) signs on the building and one (1) sign at the main entranceway to the concession and one (1) sign by the water way 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. The approval process includes review by the AIA Scenic Pride with final approval by the Lessor. 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.

Section 26. Beverage License. The Lessee shall be permitted to apply for and secure a 2COP license from the Florida Division of Alcoholic Beverages and Tobacco for the sale and consumption of beer and wine on the Leased Premises. Notwithstanding the scope of such license, Lessee shall be limited to the sale and consumption of beer and wine and under no circumstances will the sale of liquor or other alcoholic beverages be permitted on the Leased



Premises. Such sales and consumption shall be restricted to the Leased Premises, unless otherwise permitted through the County's normal park permit process for onsite consumption.

Section 27. Effect on Prior Agreements. This Lease 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.

Section 28. Construction of Lease. This Lease shall be construed under the laws of the State of Florida and Flagler County Ordinances and any litigation regarding this Lease shall be in the County or Circuit Court of Flagler County, Florida.

Section 29. Short Form of Lease. Either party may prepare for execution a short form of this Lease for recording in the public records. The costs of recording the short form Lease shall be paid by the party desiring to record the short form.

Section 30. Amendments to Lease. This Lease may be amended only by written instrument executed with the same formalities as this Lease.

Section 31. 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 32. Parties. Except as otherwise expressly provided, the covenants, conditions, and agreements contained in this Lease shall bind and inure to the benefit of the Lessor and Lessee and their respective heirs, successors, administrators, and assigns.

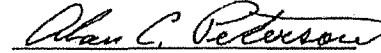


Date of Approval: 15 August, 2011

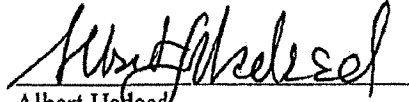
ATTEST:

FLAGLER COUNTY BOARD
OF COUNTY COMMISSIONERS


Gail Wadsworth, Clerk and Ex Officio
Clerk to the Board



Alan Peterson, Chairman


Approved as to form:

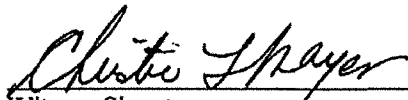

Albert Halsted
County Attorney

ATTEST:

CAPTAIN'S BAIT TACKLE & BBQ, LLC
A Florida limited liability company


Witness Signature
Andrew Johnson
Printed name


Grace A. Goodman, Manager


Witness Signature
CHRISTIE L. MAYER
Printed Name

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 23rd day of August 2011, by Grace A. Goodman, the Manager 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.



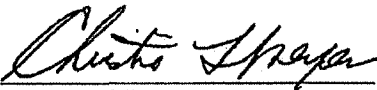
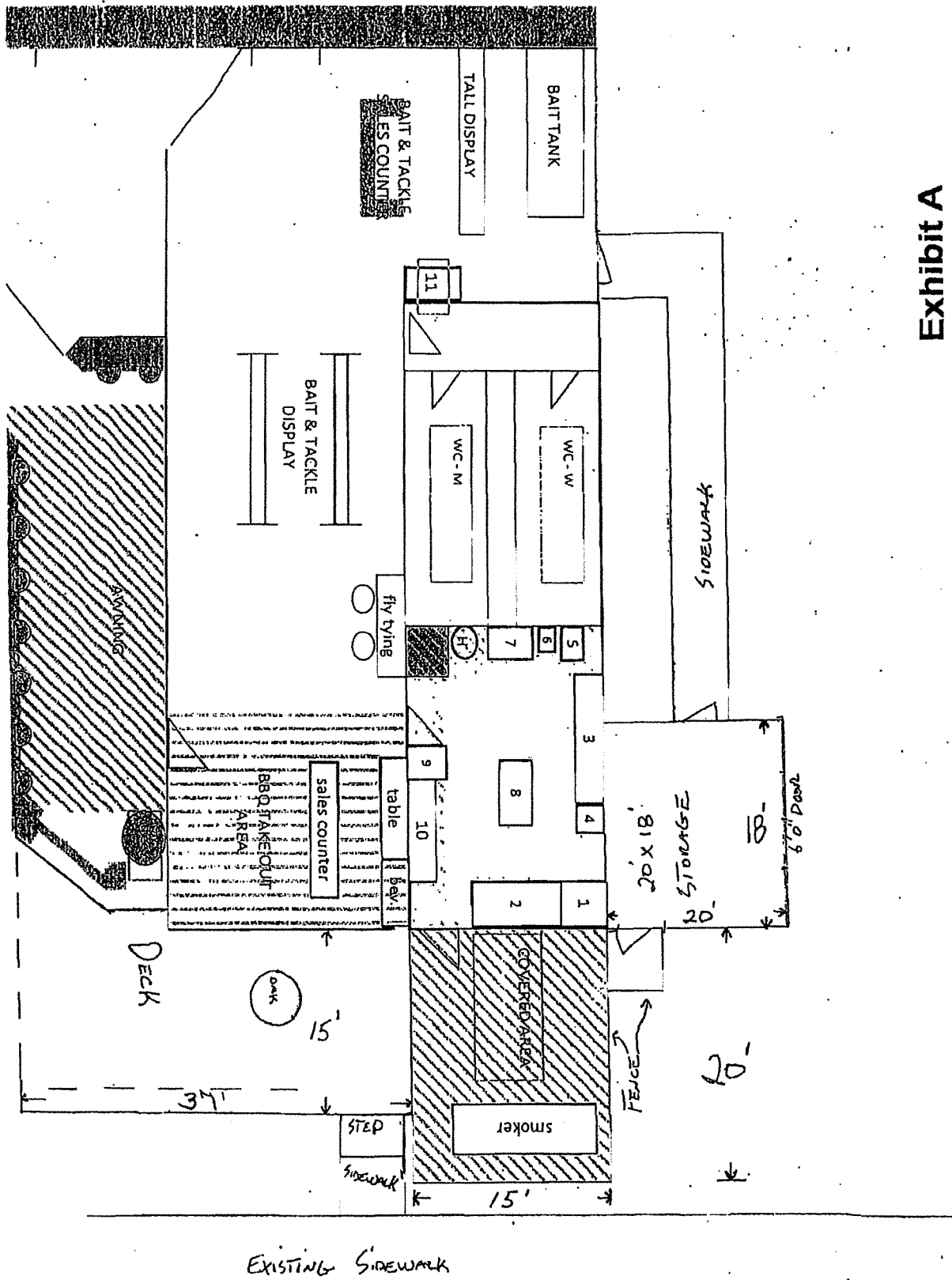

Notary Public
CHRISTIE L. MAYER
Printed



Exhibit A



RELEASE OF ALL CLAIMS¹

Recitals:

A. As used in this Release, the term "PLAINTIFFS" shall mean IMAD MANSOUR and GAIL MANSOUR, as well as their heirs, executors, administrators, personal representatives, successors and assigns, singular or plural, wherever the context so admits or requires.

A. As used in this Release, the term "DEFENDANT" shall mean COUNTY OF FLAGLER, as well as its past, present and future agents, agencies, officials, commissioners, employees, boards, representatives, subsidiary or parent companies, and any entity or person in privity with them, jointly or severally, singular or plural, wherever the context so admits or requires.

B. As used in this Release, the term "INSURERS" shall mean PREFERRED GOVERNMENTAL CLAIM SOLUTIONS / PREFERRED GOVERNMENTAL INSURANCE TRUST, as well as their agents, employees, servants, officials, representatives, attorneys, successors and assigns, and any entity or person in privity with them, jointly or severally, singular or plural, wherever the context so admits or requires.

WHEREAS, PLAINTIFFS allege that on or about August 4, 2016, Imad Mansour fell on wooden steps when exiting Captain's Bait, Tackle & BBQ, located at 5862 North Oceanshore Blvd., in Palm Coast, Florida.

WHEREAS, as a result of the aforesaid accident, PLAINTIFFS claim Imad Mansour suffered vertebral fractures and other injuries, pain, disfigurement, disability, and incurred

¹ This Release of All Claims does not include a release of any potential medical malpractice action which Plaintiffs may have arising from Mr. Mansour's recent medical diagnosis. Plaintiffs specifically preserve the right to bring such an action. This Release further does not include a release by the County of Flagler as to any claims it may have against Captain's Bait, Tackle & BBQ, LLC arising from its lease agreement for the property located at 5862 North Oceanshore Blvd., in Palm Coast, Florida.

medical expense in the treatment of his injuries, permanent loss of an important bodily function and/or permanent and significant scarring or disfigurement, aggravation or activation of an existing disease or physical defect, pain, suffering, disability, physical impairment, mental anguish, inconvenience, and a loss of capacity for the enjoyment of life. PLAINTIFFS further allege that Gail Mansour suffered loss of her husband's services and consortium. PLAINTIFFS assert all losses are continuing or permanent and that she will suffer or incur the injuries, expenses, and impairment in the future.

WHEREAS, DEFENDANT and INSURERS have denied and continue to deny any wrongdoing on their respective parts, and have denied and continue to deny any liability for the allegations which were the subject matter of the above-referenced lawsuit, but are desirous of entering into a compromise settlement of this claim in good faith, to avoid further costs of litigation; and

WHEREAS, PLAINTIFFS have agreed to accept FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00), in compromise and settlement of any and all claims they may have, whether now not known or contemplated against DEFENDANT and INSURERS, out of or resulting from the above described incident, and/or suit, and further agree to dismiss any and all claims that are currently pending or that may be filed in the future against said DEFENDANT and INSURERS, arising out of the above described incident.

GENERAL RELEASE

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the said and undersigned PLAINTIFFS, for and in consideration of the payment in the total sum of FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00), to them in hand paid, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release and forever

discharge DEFENDANT and INSURERS from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, account, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which PLAINTIFFS ever had, now have, or which any personal representative, successor, heir, or assign of PLAINTIFFS hereafter can, shall or may have, against said DEFENDANT and INSURERS, by reason of any matter, cause or thing, from the beginning of the world to the date of these presents, including, but not limited to, all claims that were or could have been asserted and any and all claims for compensatory damages, injunctive relief, declaratory relief, punitive damages, interest, costs, attorney's fees, federal claims, state statutory or common law claims, lost wages, workers compensation insurance benefits, medical payment benefits, impairment of earning capacity, physical, emotional or psychological injury, mental anguish, pain and suffering, past and future medical expenses.

PLAINTIFFS acknowledge and agree this is a Release of All Claims. PLAINTIFFS expressly waive and assume the risk of any and all claims for damages which exist as of this date, of which PLAINTIFFS do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise and which, if known, would materially affect PLAINTIFFS' decision to enter into this settlement and provide this Release. PLAINTIFFS further agree they have accepted payment of the sum specified herein as a complete compromise of matters involving disputed issues of law and fact. PLAINTIFFS assume the risk that the facts or law may be other than PLAINTIFFS believe.

PLAINTIFFS further warrant that no promise or inducement not herein expressed has been made, that payment of the above mentioned sum is in full compromise settlement and full

satisfaction of all the aforesaid actions, claims and demands whatsoever; that this Release is given in good faith and discharges DEFENDANT and INSURERS, from all liability for contribution to any other alleged tortfeasor; and that the PLAINTIFFS are over 21 years of age, legally competent to execute this Release, have read the contents of this Release, have been adequately represented by counsel of their own choice, and sign this Release with full knowledge and appreciation of its meaning.

NON-ADMISSION OF LIABILITY

This Release of All Claims shall not be construed as an admission of liability or responsibility by DEFENDANT or INSURERS, but is rather a compromise settlement designed to avoid further litigation and attendant costs. DEFENDANT and INSURERS specifically deny liability for the claims brought by PLAINTIFFS, deny all allegations of PLAINTIFFS, and deny any wrongdoing whatsoever.

ATTORNEYS' FEES

Each party hereto shall bear all attorneys' fees and costs arising from the action of their own counsel in connection with this matter, the terms of this settlement agreement, the matters and documents referenced herein, and all related matters.

DISMISSAL DROPPING SETTLING PARTIES AS DEFENDANT

Following receipt of settlement funds and the execution of this release and settlement agreement, counsel for PLAINTIFFS have, or will, in the immediate future, deliver to counsel for the DEFENDANT an executed stipulation of dismissal with prejudice of the DEFENDANT, as a party to the pending action. The PLAINTIFFS have authorized PLAINTIFFS' counsel to execute the stipulation on their behalf and hereby authorize counsel for the DEFENDANT to file

the dismissal with the court and enter it as a matter of record. The court shall retain jurisdiction as to any remaining parties and for enforcing the terms of this settlement.

HOLD HARMLESS AGREEMENT

It is further agreed and understood that PLAINTIFFS will protect and hold harmless the DEFENDANT and INSURERS from any claims or demand by any person, firm or corporation for medical expenses related to the incident giving rise to this claim, including, but not limited to, the Federal government, Medicare, Medicaid, insurance companies, physicians, health care institutions, and any attorneys previously employed by the undersigned. PLAINTIFFS acknowledge they have or will satisfy all such claims.

PLAINTIFFS acknowledge they have read this release and understand the terms outlined herein.

IN WITNESS WHEREOF, the undersigned hereby sets her hand and seal to this Release of All Claims this 13 day of June, 2019.

Signed, sealed and delivered in the presence of:

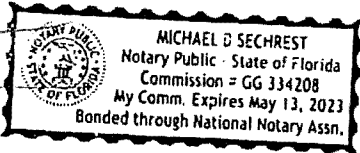
[Signature]
Loriana TRAVI

[Signature]
GAIL MANSOUR - Individually and
on behalf of
I mad Mansour as
His Power of Attorney.

STATE OF FLORIDA
COUNTY OF Alachua

The foregoing Release of All Claims was acknowledged before me this 13 day of June, 2019, by GAIL MANSOUR who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

[Signature]
NOTARY PUBLIC
MY COMMISSION EXPIRES:



PGIT COMBINED CLAIMS ACCOUNT

Regions Bank

63-466
631

ADMINISTERED BY PREFERRED GOVERNMENTAL CLAIM SOLUTIONS

PO BOX 958456

LAKE MARY, FL 32795 -8456

Claim Number: 296658

VOID AFTER 120 DAYS

DATE	CHECK NO.
6/6/2019	356856
AMOUNT	
\$44,000.00	

PAY Forty-Four Thousand and 00/100 Dollars*****

TO
THE
ORDER
OF

Warner Sechrest & Butts Trust Account f/b/o Gail and
Imad Mansour
Gainesville, FL 32653

Gail Stearns
Imad Mansour



Please cash or deposit the above check as soon as possible and retain this portion for your records

Description	From Date	To Date	Invoice #	Invoice Amt	Amount
Bodily Injury Settlement	6/6/2019	6/6/2019	Full & Final Settlement	\$44,000.00	\$44,000.00

Claim Number: 296658 Claimant: Imad Mansour Payee: Warner Sechrest & Butts Trust Account f/b/o Gail and Imad Mansour

Check Number: 356856 Total Check Amt: \$44,000.00 Event Date: 8/4/2016 Department: Flagler BoCC Flagler County Board Of Cou
Adjuster Name: Cynthia Otazu Adjuster Phone #: (321) 832-1400 Ext:4087 Event Number: EV2016287346 Control Number: 6989858
Memo: Full & Final settlement of all claims against Flagler County BoCC

THIS CHECK IS VOID WITHOUT A BLUE & GREEN BORDER AND BACKGROUND PLUS A HIGHLIGHT & PINGPONG WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

PGIT COMBINED CLAIMS ACCOUNT

Regions Bank

63-466
631

ADMINISTERED BY PREFERRED GOVERNMENTAL CLAIM SOLUTIONS

PO BOX 958456

LAKE MARY, FL 32795 - 8456

Claim Number: 345459

VOID AFTER 120 DAYS

DATE	CHECK NO.
6/6/2019	356855
AMOUNT	
\$1,000.00	

PAY One Thousand and 00/100 Dollars*****

TO
THE
ORDER
OF

Wamer Sechrest & Butts Trust Account f/b/o Gail and
Imad Mansour

Paul Stearns

Cynthia Otazu



Please cash or deposit the above check as soon as possible and retain this portion for your records

Description	From Date	To Date	Invoice #	Invoice Amt	Amount
Bodily Injury Settlement	6/6/2019	6/6/2019	Full & Final Settlement	\$1,000.00	\$1,000.00

Claim Number: 345459 Claimant: Gail Mansour Payee: Wamer Sechrest & Butts Trust Account f/b/o Gail and Imad Mansour

Check Number: 356855 Total Check Amt: \$1,000.00 Event Date: 8/4/2016 Department: Flagler BoCC Flagler County Board Of Cou

Adjuster Name: Cynthia Otazu Adjuster Phone #: (321) 832-1400 Ext:4087 Event Number: EV2016287346 Control Number: 6989857

Memo: Full & Final Settlement of all claims against Flagler County BoCC

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA

IMAD MANSOUR and
GAIL MANSOUR, his wife,

CASE NO.: 2017-CA-000203

Plaintiffs,

vs.

CAPTAIN'S BAIT, TACKLE & BBQ, LLC
and COUNTY OF FLAGLER,
a political subdivision of the State of Florida,

Defendants.

ORDER OF DISMISSAL WITH PREJUDICE

This cause having come before the Court upon the Plaintiffs IMAD MANSOUR and GAIL MANSOUR, and Defendant COUNTY OF FLAGLER's Joint Stipulation for Dismissal with Prejudice, and the Court being otherwise fully advised in the premises, it is thereupon ORDERED AND ADJUDGED that this cause is hereby dismissed with prejudice as to COUNTY OF FLAGLER only, each party to bear their own costs and attorney's fees.

DONE AND ORDERED in Chambers in Bunnell, Flagler County, Florida on this _____ day of _____, 2019.



e-Signed 7/12/2019 1:57 PM 2017 CA 000203

Terence R. Perkins
Circuit Court Judge

Copies furnished to:

Michael D. Sechrest, Esq.
5200 SW 91st Terrace
Suite 101
Gainesville, FL 32608

Anna E. Engelman, Esq.
Bell & Roper, P.A.
2707 E. Jefferson Street
Orlando, Florida 32803

Administration
1769 E. Moody Blvd Bldg 2
Bunnell, FL 32110



www.flaglercounty.org
Phone: (386)313-4001
Fax: (386)313-4101

August 9, 2019

Michael Goodman
Captain's Bait, Tackle & BBQ, LLC
5862 N. Oceanshore Blvd.
Palm Coast, FL 32137

Re: Indemnification Demand from Flagler County as to *Mansour* Lawsuit and Settlement

Dear Mr. Goodman:

In March 2017, your company, Captain's Bait, Tackle & BBQ, LLC ("Captain's BBQ"), and Flagler County, were sued in a lawsuit titled *Imad Mansour and Gail Mansour v. Captain's Bait, Tackle & BBQ, LLC, and County of Flagler*, case no. 2017-CA-203 (Fla. 7th Jud. Cir., Flagler Cty.). A copy of the Complaint is attached as Exhibit 1. It alleges that on August 4, 2016, Imad Mansour was injured at your restaurant located at 5862 North Oceanshore Boulevard in Palm Coast. He claims he slipped and fell on wooden steps on the north side of the restaurant, where mildew, grime, and water accumulated. The Complaint asserts negligence and loss of consortium claims.

Since 2011, Captain's BBQ has leased the building at the above address from the County to operate its restaurant. A copy of the "Lease Agreement Between Flagler County, Florida and Captain's Bait, Tackle & BBC, LLC" ("Lease") is attached as Exhibit 2. The Lease was amended in 2015 and 2016.

Upon being served with the Mansours' Complaint, the County requested that its liability insurer, Preferred Governmental Insurance Trust ("Preferred"), retain legal counsel to represent and defend the County. Preferred retained Bell & Roper, P.A., of Orlando, Florida, and in particular attorneys Michael J. Roper and Anna E. Engelman. Bell & Roper charged \$180 per hour for partner attorney time, \$165 per hour for associate attorney time, and \$85 per hour for paralegal time. These figures represent Bell & Roper's insurance/governmental defense rates. In total, the County/Preferred incurred \$87,286.75 in attorney's fees, and \$4,033.24 in litigation costs, with regard to Bell & Roper's defense of the County.

Charles Ericksen, Jr.
District 1

Greg Hansen
District 2

David Sullivan
District 3

Joe Mullins
District 4

Donald O'Brien Jr.
District 5

EXHIBIT 6

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Palm Coast, FL 32137
August 9, 2019

In June 2019, the County and the Mansours reached a settlement. A copy of the release the Mansours executed is attached as Exhibit 3. The County agreed to pay the Mansours \$45,000 to settle and dismiss their claims against the County. Preferred paid the settlement funds on the County's behalf. Copies of the settlement checks are attached as Exhibit 4. On July 12, 2019, the Court executed an Order of Dismissal with Prejudice as to the claims against the County. A copy of the Order is attached as Exhibit 5.

Section 16 of the Lease (as originally executed and amended in 2015 and 2016), titled "Insurance, Indemnity and Hold Harmless," states in part:

[Captain's BBQ] shall indemnify and hold harmless [Flagler County] 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, arising out of or in any way connected with the use, occupancy, management or control of the Leased Premises, or the act or omission of [Captain's BBQ] or its agents, servants, employees, customers, patrons or invitees, whether on the Leased Premises or elsewhere. [Captain's BBQ] 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. All policies shall cover all uses and activities conducted by [Captain's BBQ] on the Leased Premises.

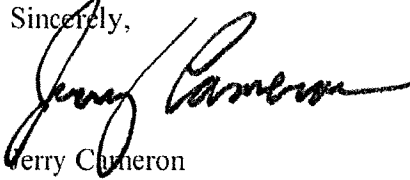
The claims in the lawsuit all related to Captain's BBQ "use, occupancy, management or control of the Leased Premises." The alleged incident occurred while Imad Mansour was on the premises as a guest of your restaurant. As such, in accordance with section 16 of the Lease, the County, on behalf of itself and Preferred, respectfully demands that Captain's BBQ, or its liability insurer, indemnify the County and Preferred as to all attorney's fees and costs incurred in defense of the lawsuit, and the settlement funds paid to the Mansours, a total of \$136,319.99. Please respond whether you agree to indemnify the County and Preferred.

Should the County not receive payment as respectfully demanded, it intends to enforce its rights under Section 16 of the Lease in circuit court. Please note, section 21.D. of the Lease provides "[i]n the event that either party must judicially enforce the terms of this Lease the prevailing party shall be entitled to reasonable attorneys' fees, paralegal costs, expert witness fees, consultant fees, and any other litigation expense or cost." As such, the County would seek to recover attorney's fees and costs associated with any proceedings to enforce its right to indemnity.

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Our counsel has advised yours as to this indemnification request. I look forward to receipt of the indemnification funds as requested above, and thank you for your attention to this matter.

Sincerely,



Jerry Cumeron

Attachments