

LEASE AGREEMENT
FOR USE OF CITY MARINA PROPERTY

This LEASE AGREEMENT ("Agreement") is entered into on _____, 2018, by and between AMELIA RIVER EXCURSIONS, INC., a Florida corporation and its successors and assigns, whose address is 1 N. Front Street, Fernandina Beach, FL 32034 ("Leasee" or "AREI") and CITY OF FERNANDINA BEACH, a municipal corporation existing under the laws of the State of Florida, whose address is 204 Ash Street, Fernandina Beach, FL 32034 (the "City"), with reference to the following facts:

WHEREAS, the City is owner of that certain real property Nassau County Parcel ID#'s are 00-00-31-1760-0031-0020 and 00-00-31-1760-0029-0010, known informally as Parking Lot B and Parking Lot C upland to and adjacent to the Fernandina Harbor Marina, City of Fernandina Beach, Nassau County, Florida 32034 (collectively known as the "Property");

WHEREAS, the Leasee wishes to occupy and utilize a four hundred square foot (400 sq. ft.) portion of the Property (the "Leased Area") for the limited purpose of installing and occupying a ticket booth no more than one hundred square feet (100 sq. ft.) in size to serve customers and sell tickets to its customers for AREI (the "Kiosk"); and

WHEREAS, the City is willing to allow the Leasee to use the Leased Area, subject to the terms and conditions set forth in this Agreement;

WHEREAS, AREI is the owner of three Boats; Bald Eagle-Amelia River Cruise, fifty-nine feet (59') in length with hull number KRI590006J990; Kieren Marie, forty-five feet (45') in length with hull number KRI450835111; and Miss Kaylynn, forty-five feet (45') with hull number 994406 (collectively known as the "Boats");

WHEREAS, the Leasee wishes to occupy three (3) long-term slip locations in the Fernandina Harbor Marina (the "Marina") to accommodate the mooring of the Boats.

WHEREAS, the City is willing to grant three (3) long-term slip locations to AREI for the mooring of the Boats more accurately identified as slip #3-03W, #2-25E and #3-02W (collectively referred to as the "Slips").

IN WITNESS WHEREOF, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are hereby incorporated into this Agreement by this reference, and are true and complete.

2. Lease Term. As it pertains to the three (3) Slips and one (1) Kiosk and the Leased Area, AREI shall have a five-year initial lease term (the "Initial 5-Year Lease Term"). This Agreement shall automatically renew for one (1) additional five-year (5 yr.) period. AREI shall have the option to renew for one (1) additional consecutive five-year (5 yr.) period with at least ninety (90) days' notice to the City prior to the expiration of the Lease Term. Thereafter, AREI shall have the option to review for additional five-year (5 yr.) periods with written consent from the City, and such consent shall not be unreasonably withheld by the City. AREI shall provide

written notice to the City of AREI's intention to renew at least ninety (90) days prior to the expiration of any lease term. If the City does not respond to AREI's intention to renew the five-year (5 yr.) lease term within fifteen (15) days of receipt of AREI's intention to renew, the City shall be deemed to consent to the renewal of the Lease for an additional five-year (5 yr.) term. The initial five-year (5 yr.) lease term shall commence on January 1, 2019 upon approval of this Agreement by the City Commission of Fernandina Beach, Florida.

3. Lease Payment. In exchange for the right to use the Property and Slips, AREI will pay a lump-sum payment of \$2,800 a month, plus applicable sales tax, for each month of the lease term, to be paid on or before the first day of the month. Rent for any fractional amount at the beginning or end of the said lease term will be prorated on a daily basis. The monthly lease payment shall be increased at a rate of one percent (1%) or the Consumer Price Index (CPI) - All Urban Consumers South Urban Region- All Items (base year 1982-84=100), as published by the United States Department of Labor-Bureau of Labor Statistics, whichever is greater, on an annual basis beginning in the second year of the Initial 5-Year Lease Term. Such CPI increase will be computed each year based on the twelve-month (12 mo.) percent change of the July index and any change will be implemented and effective with October rent payments of each applicable year.

In the event a similarly situated commercial entity or individual operating a US Coast Guard inspected passenger vessel providing services to seven (7) or more passengers (referred to as the "Competitor") desires to enter into an agreement with the City for the use of slips in the Marina, or any portion of the Property, for a term exceeding one (1) month, the City shall require that said Competitor shall agree to a lease payment equal or greater to the amount identified by this Agreement, subject to a pro-rata adjustment based on the length of the vessels and/or square footage of the Property to be leased by Competitor.

4. Property and Slip Use. The City hereby agrees and consents to allow the Lessee to use the Slips, the Kiosk and the Lease Area provided, however, that such consent shall constitute a lease only, subject to the terms and conditions of this Agreement, and shall not constitute an easement nor give rise to any claim of adverse possession or prescriptive easement by the Lessee. The Lessee hereby waives all rights it may have to make any such claims.

5. Assignment and Binding Effect. The terms of this Agreement shall be binding upon the City, the Lessee and the heirs, successors, and assigns of the Lessee and the City. With the approval of the City Commission, this Agreement may be assigned upon the City's written consent and such consent shall not be unreasonably withheld, thereby releasing AREI from any further liability under this Agreement.

6. Release and Indemnification. The Lessee understands acknowledges and agrees to assume all risks and hazards incidental to the installing and occupying the Kiosk and Leased Area to serve customers for AREI. The Lessee does hereby agree to waive, release, absolve, and covenants not to sue the City, its mayor, commissioners, officers, employees, contractors, consultants, volunteers, representatives, attorneys and agents, for any and all claims, including claims for equitable or injunctive relief, damages, loss or injury of any kind resulting from or in any way arising directly or indirectly out of this Agreement and/or the Lessee's installing and the Kiosk and Leased Area to serve customers for AREI. The Lessee further promises and agrees to indemnify, defend and hold harmless the City, its mayor, commissioners, officers, employees, contractors, consultants, representatives, volunteers, attorneys and agents from and against all liability, claims and expense, including reasonable attorneys' fees and costs, in connection with any and all claims whatsoever for personal or bodily injury or death, including loss of use, or

property damage of any kind and character in connection with and arising directly or indirectly out of this Agreement and/or the Leasee's installing and occupying the Kiosk and Leased Area to serve customers for AREI. This indemnity agreement encompasses all damages and claims, including claims for equitable or injunctive relief, arising out of the Leasee's installing and occupying the Kiosk and Leased Area to serve customers for AREI. This indemnification obligation shall survive the termination or expiration of this Agreement for any reason whatsoever. Notwithstanding the foregoing, nothing herein shall constitute a waiver of immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

7. Commercial General Liability Insurance. The Leasee shall furnish proof of commercial general liability insurance coverage to the City naming the City as additional insured in an amount no less than \$3,000,000 per occurrence. The Leasee shall provide updated certificates of insurance to City as they are issued by Leasee's insurer evidencing current and valid insurance coverage during the life of this Agreement.

8. Representation and Warranty. The City represents and warrants that it is the fee simple owner of the Property. The City further represents and warrants that it is authorized to enter into this Agreement without the joinder and consent of any other party, and that the party executing this Agreement on behalf of the City has full power and authority to bind the City to the terms hereof. The Leasee further represents and warrants that it is authorized to enter into this Agreement without the joinder and consent of any other party, and that the party executing this Agreement on behalf of the Leasee has full power and authority to bind the Leasee to the terms hereof.

9. Kiosk Location. In the event the Kiosk or Leased area are inaccessible or otherwise unusable due to maintenance, construction or repairs to the surrounding riverfront property owned by the City, or for any reason caused by the City, a reasonably suited alternative area for the kiosk/ticket booth shall be provided by the City and consented to by both parties. Such consent shall not be unreasonably withheld. A reasonably suited alternate area means immediately adjacent to the Marina and as near as possible to any boat slips leased or utilized by AREI in the Marina.

10. Boat Slip Lease: The City hereby grants a lease to Boat and AREI for use of the Slips located at the Marina for the Boats described above, including all riggings, engines, appurtenances and contents. The Boats shall be permanently assigned the Slips indicated hereafter; (Bald Eagle slip number 3-03W, Kieren Marie slip number 2-25E, Miss Kaylynn slip number 3-02W). In the event the City causes the Slip(s) to be inaccessible or otherwise unusable, the City shall provide a reasonably suited alternate slip(s) assignment in the Marina which has consented to by both parties. Such consent shall not be unreasonably withheld. Reasonably suited alternate slip assignment shall be located as near as possible to the Kiosk and Leased Area referenced by this Agreement. The parties acknowledge and agree that no bailment is created by this agreement.

11. Payment of Fees and Other Charges: If AREI fails to pay an outstanding balance for three (3) months, the City shall be authorized to sell the Boat at a nonjudicial sale within the provisions of FS 328.17 after providing a written notice of nonjudicial sale to the AREI by certified or registered letter, return receipt requested at the address provided in this Agreement at least 30 days prior to any proposed sale. This provision is in addition to and not a limitation of City's rights under state or federal maritime law, which rights and liens are not waived and are

expressly reserved. All charges are subject to applicable taxes.

12. Use Of Slip - Authority: AREI may use each Slip only to moor or store the Boats, and for no other purpose. If AREI replaces any of the Boats and wants to use a Slip for a replacement boat, AREI must first register the new boat with the City and shall agree to a pro-rata adjustment to the lease payment based on the length of the replacement boat. AREI represents that AREI has an ownership interest in the Boats and/or AREI is fully authorized to bind all owners of the Boats to the terms and conditions of this Agreement. If an agent of AREI, including a Captain, is signing this Agreement, said person represents that he has the authority to bind the AREI. If AREI removes the Boats from the Marina for extended periods (normally more than seven (7) days), for any reason, including repairs to the Boat, AREI shall notify the City.

13. Laws, Rules and Regulations: AREI shall comply with the Marina Rules. The City may change the Marina Rules by posting new ones. In using the Marina, AREI shall comply with all applicable laws, ordinances, resolutions, rules and regulations of federal, state and local entities, including US Coastguard regulations.

14. Care of Slip - Maintenance: AREI shall keep and maintain the Slip in a clean and sanitary condition at all times, and in accordance with the Marina Rules. Upon termination of this Agreement, AREI shall surrender the Slip in good order and repair other than normal wear and tear resulting from ordinary use. AREI shall not alter the Slip, dock area or utilities services. AREI shall not install or place any personal property, dinghies, small boats, equipment, boxes, or lockers of any type on the Slip, without the permission of Marina.

15. Utilities and Fees: Each Slip location shall be provided access to a 30-amp breaker, freshwater, fuel, and septic pump-out services and such other utility services then available to licensees at the Marina, generally. The Kiosk shall be provided electrical service. Marina does not warrant the availability of utility services and shall not be responsible for any damage or injury due to the interruption or unavailability of utility services. Without limiting the foregoing, AREI acknowledges that utility service may be discontinued during inclement weather. In addition, Marina does not warrant that the utility services will be compatible with the utility service requirements of the Boats (including electrical interconnection requirements or the effect of electrolytic action).

16. Discount. If, at any time during any monthly payment period, fuel, fresh water or septic pump-out services provided by the Marina is unavailable for AREI use for at least thirty (30) consecutive calendar days, AREI will receive a 10% discount for the corresponding monthly lease payment. Such discount shall be applied to any monthly payment period in which fuel, fresh water, or septic services are unavailable for AREI use. At the commencement of this Agreement, fuel is not available at the Marina. Notwithstanding the foregoing, the discount provided for in this paragraph shall not commence regarding the failure to provide fuel until after such date fuel is restored at the Marina.

17. Access to Boats: The City shall have the right to inspect the Boats from time to time to determine if the Boats are in compliance with the terms of this Agreement.

18. No Warranties: The City makes no warranties, express or implied, as to the condition of the Slip or the Marina (including floats, walkways, gangways, ramps, gear and related items) or the suitability of the Slip and the Marina for AREI's intended purposes. AREI acknowledges that AREI has had an opportunity to inspect the Marina and the Slip prior to execution of this

Agreement and agrees to accept the Marina and the Slip in their current condition.

19. Holding Over: If any of the Boats remain at the Slip following termination of this Agreement, and without otherwise limiting the rights of the City hereunder, AREI shall be deemed to be occupying the Slip for purposes of transient dockage and shall pay the City the then applicable daily rate of transient moorage for each day the Boat continues to be moored at the Slip.

20. Emergencies, Hurricanes Or Other Acts Of God: The City expects AREI to have made suitable arrangements for safe, sheltered anchorage during tropical storms or hurricanes, and AREI warrants such arrangement have or will be made. AREI may not assume that the Marina will be safe, sheltered anchorage during tropical storms or hurricanes. In the event of an impending tropical storm or hurricane or other emergency, the City, in its sole discretion, is authorized to do whatever the City deems appropriate and reserves the right to move or evacuate unattended Boats at the AREI's risk and expense. UNDERTAKING TO MOVE OR EVACUATE BOATS SHALL NOT BE DEEMED AN ASSUMPTION OF RESPONSIBILITY FOR THE SAFETY, SECURITY AND CARE OF BOAT BY THE CITY, NOR SHALL THE CITY BE DEEMED A BAILEE OF AREI.

21. Cumulative Remedies – No Waiver: The City's rights and remedies hereunder are cumulative in nature, and pursuit of any particular remedy shall not be deemed an election of remedies or a waiver of any other remedies available hereunder or otherwise available in law. No waiver or forbearance of a breach of this Agreement shall be construed as a waiver or forbearance of any other subsequent breach, and the acceptance of any performance hereunder, or the payment of any amounts after the same have become due or at a time when any other default exists shall not constitute a waiver of the right to demand payment of all other amounts owed or a waiver of any other default then or thereafter existing.

22. Assumption Of Risk -Disclaimer Of Liability – Indemnity: The dock lockers, Slips, Kiosk, Lease Area and the Marina are to be used at the sole risk of AREI, and AREI hereby assumes such risk. The City assumes no responsibility for and shall not be liable for the care, protection and security of the Boats. AREI, for itself, for the Boat and for AREI's Agents (as defined in Section 24) hereby releases the City from any and all liability for loss, death, damage or injury (collectively "injury") to any person or property arising out of or in connection with the condition or use of the Boats or the condition or use of the City or its services (including forklift, travel lift, unloading or loading of trailers and other services) whether such injury is caused by or through the acts or omissions of the City or by any other cause whatsoever, including the City's negligence, except the City's gross negligence or willful misconduct. AREI shall indemnify and hold harmless the City from any claims, suits, actions, damages, liability or expense (including attorneys' fees) in connection with any injury (unless due to the willful misconduct or gross negligence of City) or arising from AREI's breach of this Agreement. Marina is not to be considered under this Agreement as an insurer of AREI's property and AREI should secure such insurance as AREI desires, AREI is advised to remove all items not permanently attached to the Boats while each Boat is in the Marina. Under no circumstances shall the City be liable for indirect, consequential, special or exemplary damages, whether in contract or tort (including strict liability and negligence) with respect to AREI's use of the Marina. AREI and AREI's insurers agree to waive any right to petition for exoneration from or limitation of liability under the laws of the United States in the event the Boats are involved in any casualty resulting in personal injury, death or property damage while stored at the Marina or in connection with this Agreement. In consideration of the monetary Lease Payment set forth in this Agreement, Owner

agrees that the City shall not carry any insurance for the protection of Owner or Boats.

23. AREI's Responsibility for Damage and the Environment: AREI shall be responsible for and shall promptly, upon demand, pay the City for any damage caused to the Marina by AREI, the Boats or AREI's Agents. AREI shall, in and around the Marina, comply with all laws, rules and regulations concerning the protection of the environment and pay the City for any damage, expense or liability incurred by the City due to AREI's or AREI's Agent's failure to comply with such laws and regulations or due to any pollution created by, caused by, or contributed to by AREI. AREI shall not release or permit to be released, by action or inaction, any hazardous waste or environmentally objectionable substances, including oil, gasoline or untreated sewage ("Hazardous Substances") into the water or land of the Marina. The costs for which AREI and Boat may be responsible include, but are not limited to, the costs of booms, absorbent pads, disposal of the Hazardous Substance, clean up oversight by governmental agencies and Marina personnel and any legal fees incurred in defense of any violations. AREI shall be responsible for immediately reporting and cleaning up any such release. AREI shall report any release immediately to the Marina manager and shall keep Marina informed on a daily basis of AREI's actions with respect to any clean up. If Marina is not satisfied, in Marina's sole discretion, with AREI's actions in reporting and cleaning up a release, Marina may take any action it deems appropriate regarding the release, at AREI's expense. This provision is in addition to, and not in lieu of, the indemnity provision set forth in this Agreement.

24. Conduct: The conduct at the Marina of any of AREI's employees, licensees, agents or guests (herein individually referred to as "AREI's Agent") shall be the sole responsibility of AREI. Conduct by AREI or AREI's Agent that might disturb or cause harm to any person, damage property, be a nuisance or harm the reputation of the City (including use of drugs or becoming intoxicated by alcohol) shall, at the option of the City, be cause for immediate termination of this Agreement by the City.

25. Security Service: AREI acknowledges that the security service provided by the City is a courtesy only and that, while the City will use its best efforts to provide adequate surveillance, the City bears no liability or responsibility in the event that AREI's or the Boats' security is breached.

26. Parking: AREI is in no way guaranteed parking spaces at the Marina or anywhere else on City property. Parking is available on a first come, first serve basis only

27. Joint and Several Liability: The obligations of AREI and each person executing this Agreement as AREI, are joint and several, and any act or signature of, or notice or refund to any one or more of them with respect to this Agreement shall be fully binding upon each of them.

28. Attorney's Fees: If either party defaults under this Agreement, the other party shall be entitled to recover any costs incurred, including prevailing party's attorney's fees in enforcing or protecting its rights.

29. Choice of Law: This Agreement shall be governed by the laws of Florida.

30. Lien on Boat: The City shall have a lien against each Boat for amount owed under this Agreement and for any damage caused or contributed to by each Boat or AREI to any property of the City. If the City enforces its lien, AREI agrees to pay all legal fees and costs incurred by the City in such enforcement.

31. Environmental Awareness Contract: AREI shall abide by the terms of the Environmental Awareness Contract.

32. Severability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties to this Agreement that the remainder of this Agreement shall not be affected by any such provision.

33. Entire Agreement. This Agreement contains the entire agreement between the Leasee and the City with regard to the matters set forth herein, and other prior or contemporaneous agreements and understandings, whether oral or written, express or implied, are hereby superseded and of no further force or effect. No amendments shall be made to this Agreement unless it is in writing and signed by both parties to this Agreement.

34. Notices. All notices to be provided hereunder shall be delivered to the City at their address stated above or to the Leasee addressed to Kevin P. McCarthy, Amelia River Excursions, Inc., 1 N. Front Street, Fernandina Beach, FL 32034 either by certified mail, return receipt requested, in which case such notice shall be deemed given on the third business day after deposit in the U.S. Mail, or by hand delivery, in which case such notice shall be deemed given upon delivery to the above-specified address.

35. Force Majeure. Either party shall not be required to perform any obligation under this Agreement or be liable to each other for damages so long as the performance or non-performance of the obligation is delayed, caused or prevented by an act of God or force majeure. An “act of God” or “force majeure” is defined as hurricanes, earthquakes, floods, fire, unusual transportation delays, wars, insurrections and any other cause not reasonable within the control of either party and which by the exercise of due diligence, the non-performing party is unable in whole or in part to prevent or overcome. All time periods will be extended (not to exceed thirty (30) days) for the period that the force majeure or act of God is in place. In the event that such “act of God” or “force majeure” event continues beyond the thirty (30) days, either party may cancel the Agreement by delivering written notice to the other party.

36. Breach Other Than Non-Payment. If either AREI or the City fails to perform or breaches any agreement of the lease other than the agreement of AREI to pay rent to City, and the failure or breach continues for thirty (30) days after a written notice specifying the performance required has been given to the party in breach or failing to perform, the party giving notice may terminate the lease.

37. Termination for Non-Payment. If any rent due under this Agreement is not paid within fifteen (15) days of the date due, the City may assess additional finance charges of 18% per annum. If AREI continues to remain delinquent for a period of ninety (90) days, the City shall have the option to terminate this Agreement, resume possession of the Slip and kiosk/ticket booth area, and recover immediately from AREI the balance of the rent due as specified in this Agreement.

38. Option to Terminate/Liquidated Damages. If AREI wishes to terminate this Agreement before the ending date of the Agreement, AREI will provide the City at least thirty (30) days prior written notice. The City will charge AREI \$5,600.00 as a termination fee. AREI will owe rent for the month prior to termination, any unpaid back rent and other damages as allowed by law. The City will not seek rent beyond the month of termination.

39. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, in consideration for the use of the Property and Slips, the parties have executed this instrument on the date first above written.

WITNESSES:

"LEASEE"

AMELIA RIVER EXCURSIONS, INC.
a Florida corporation

Signature of Witness
Printed Name: _____

By: _____
Kevin McCarthy, President

Signature of Witness
Printed Name: _____

WITNESSES:

"CITY"

FERNANDINA BEACH, FLORIDA
a municipal corporation

Signature of Witness
Printed Name: _____

By: _____
Dale L. Martin, City Manager

Signature of Witness
Printed Name: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Tammi E. Bach, City Attorney

ATTEST:

By: _____
Caroline Best, City Clerk