

ASSIGNMENT, ASSUMPTION AND NOVATION AGREEMENT

THIS ASSIGNMENT, ASSUMPTION AND NOVATION AGREEMENT ("Assignment") is made and entered into this _____ day of _____, 2019 ("Effective Date"), by and among **TDKS Enterprises, LLC**, a limited liability corporation with offices located at 6106 63rd Street East, Bradenton, Florida 34203 ("Assignor"), **Florida Boat Tours Inc.**, a Florida profit corporation with offices located at 6512 Lincoln Road, Bradenton, Florida 34203 ("Assignee"), and **Manatee County**, a political subdivision of the State of Florida ("County") with offices located at 1112 Manatee Avenue West, Bradenton, Florida 34205.

WHEREAS, on December 15, 2015, Assignor and County entered into a Franchise License Agreement, whereby Assignor agreed to operate a County-owned concession at Jiggs Landing Fish Camp, located at 6106 63rd Street East, Bradenton, Florida 34203 ("Concession"); and

WHEREAS, the Franchise License Agreement was amended on August 26, 2016 ("Amendment No. 1"), whereby the County and the Assignor agreed to provide for updates to the Concession's operating hours, kayak rental prices and other minor amendments; and

WHEREAS, the Franchise License Agreement was subsequently amended on November 7, 2016 ("Amendment No. 2"), whereby the County extended the term of the Agreement for five (5) years, amended certain terms of service, and provided for other minor amendments; and

WHEREAS, the Franchise License Agreement was subsequently amended on April 4, 2017 ("Amendment No. 3"), whereby the County and the Assignor agreed to amend the statement of work concession requirements and authorize the sale of beer and wine; and

WHEREAS, the Franchise License Agreement was subsequently amended on March 6, 2018 ("Amendment No. 4"), whereby the County and the Assignor agreed to modify the payment terms for the monthly utilities and provide for other minor amendments; and

WHEREAS, the Franchise License Agreement, Amendment 1, Amendment 2, Amendment 3 and Amendment 4 shall hereafter be referred to as the ("Agreement"); and

WHEREAS, Assignor desires to transfer and assign to Assignee its rights, duties and obligations under the Agreement; and

WHEREAS, Section 20.1 of the Agreement requires the County to consent to any assignment or transfer of any interest in the Agreement; and

WHEREAS, Assignor desires to be discharged and County is willing to release Assignor from the performance of the obligations enumerated in the Agreement, and to consent to Assignee assuming the assignment, assumption, and novation of the Agreement.

NOW, THEREFORE, for and in consideration of the above premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree for themselves, their successors and assigns, as follows:

1. **Assignment.** Assignor hereby assigns, transfers, conveys and delivers to Assignee as of the Effective Date, all of Assignor's rights, title and interest in, to and under the terms of the Agreement.
2. **Assumption.** Assignee hereby accepts such assignment and agrees to assume, from and after the Effective Date, all of Assignor's rights, duties, liabilities, obligations and indemnities in, to and under the terms of the Agreement. Upon such assignment and assumption, Assignor shall be released from all rights, duties, liabilities, obligations and indemnities under the Agreement.
3. **Release.** Assignor agrees that, as of the Effective Date of this Agreement, it has received all compensation and payment owed to it under the Agreement by County, and that County is released from any further obligations or liabilities owed to Assignor.
4. **Novation.** Assignor, Assignee and County hereby agree that this Assignment shall constitute a novation of the obligations of Assignor under the Agreement. All rights, duties, liabilities, obligations, and indemnities of Assignor are hereby extinguished under the Agreement. County recognizes Assignee as Assignor's successor in interest in and to all of Assignor's rights, duties, liabilities, obligations and indemnities in, to and under the Agreement.
5. **Successors.** This Assignment shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns, with respect to the Agreement.
6. **Subsequent Actions.** The parties hereto agree that they will take those actions reasonably necessary to carry out the matters contemplated by this Assignment or any of its provisions.
7. **Consent.** Assignor, Assignee and the County consent to all the provisions of this Assignment.
8. **Governing Law: Venue.** This Assignment is entered into in and shall be governed by and construed and interpreted in accordance with the laws of the State of Florida, without respect to any choice of law provisions or statutes. Venue for any action to enforce the provisions of this Agreement shall be filed in Manatee County, Florida, or if in Federal Court, the United States District Court for the Middle District of Florida, Tampa Division.
9. **Attorney Fees.** In the event of any litigation arising under the terms of this Agreement, each party shall be responsible for their own attorney's fees, including appellate fees, regardless of the outcome of the litigation.
10. **Notice.** All notices and other communications regarding the Assignment and/or Agreement shall be sent to the following addresses:

County:

Manatee County
Attn: Director of Parks and Natural Resources
1112 Manatee Avenue West
Bradenton, FL 34205

Assignor: TDKS Enterprises, LLC
Attn: Trina Smith
5438 Lockwood Ridge
Bradenton, FL 34208

Assignee: Florida Boat Tours Inc.
Attn: Denise Kleiner
6512 Lincoln Road
Bradenton, FL 34203

11. Entire Agreement. This Assignment constitutes the entire agreement between the parties pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions of their agreement. Any and all prior agreements, representations, negotiations and understandings made by the parties, oral and written, express or implied, are hereby superseded and merged herein. This Assignment is intended by all parties to be a fully integrated contract, and that no evidence, written or oral, may be admitted or considered outside of this Assignment in order to determine the intent of the parties or the meaning of any terms contained in this Assignment.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed by their authorized representatives effective as of the date set forth above.

**ASSIGNOR
TDKS ENTERPRISES, LLC**

By: Trina Smith
Name: TRINA Smith
Title: Managing Member
Date: 1-7-2019

**ASSIGNEE
FLORIDA BOAT TOURS INC.**

By: Denise Kleiner
Name: Denise Kleiner
Title: President

Date: 1-7-2019

**MANATEE COUNTY, a political
subdivision of the State of Florida**

By: its Board of County Commissioners

By: _____
Chairperson

Date: _____

**ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER**

By: _____
Deputy Clerk