

Special City Council Meeting
4:45 p.m., Tuesday, July 16, 2019
Council Chambers
1207 Palm Boulevard, Isle of Palms, South Carolina

AGENDA

1. Call to order and acknowledgement that the press and public were duly notified of the meeting in accordance with the Freedom of Information Act.

2. **Purpose**

A. **First Reading, by title only of Ordinance 2019-15**

ORDINANCE 2019-15

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OF THE CITY OF ISLE OF PALMS TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN FOURTH AMENDMENT TO COMMERCIAL LEASE AGREEMENT BETWEEN THE CITY OF ISLE OF PALMS AND BARRIER ISLES, LLC, ATTACHED HERETO AS EXHIBIT I AND INCORPORATED HEREIN BY REFERENCE.

3. **Adjournment**

ORDINANCE 2019-15

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OF THE CITY OF ISLE OF PALMS TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN FOURTH AMENDMENT TO COMMERCIAL LEASE AGREEMENT BETWEEN THE CITY OF ISLE OF PALMS AND BARRIER ISLES, LLC, ATTACHED HERETO AS EXHIBIT I AND INCORPORATED HEREIN BY REFERENCE.

WHEREAS, the City of Isle of Palms (“City”) and Barrier Isles, LLC (“Tenant”) have entered into that certain Commercial Lease Agreement with an effective date of May 17, 2002 for the lease of certain real property located at Isle of Palms Marina, as more fully described in said lease and commonly known as “Morgan Creek Grill,” as amended by that certain First Amendment to Lease Agreement, dated March 12, 2010 (the “First Amendment”) and that certain Second Amendment to Lease Agreement, dated October 26, 2017 (the “Second Amendment”) and that certain Third Amendment to Lease Agreement, dated May __, 2018, (the Commercial Lease Agreement, the First Amendment, the Second Amendment, and the Third Amendment are together referred to herein as the “Lease”); and

WHEREAS, City and Tenant desire to further amend the Lease, as more fully set forth in the Fourth Amendment to Commercial Lease Agreement, attached hereto as Exhibit I and incorporated herein by reference; and

WHEREAS, City Council finds that leasing the Morgan Creek Grill property under such amended terms to Barrier Isles, LLC will serve the interest of the public health, safety, welfare and general convenience of the residents of the City of Isle of Palms; and

WHEREAS, S.C. Code sections 5-7-40 and 5-7-260 require that City Council act by ordinance in leasing any lands of the municipality.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE MAYOR AND COUNCIL MEMBERS OF THE CITY OF ISLE OF PALMS, SOUTH CAROLINA, IN CITY COUNCIL ASSEMBLED:

SECTION 1. City Council authorizes the City Administrator to execute the Fourth Amendment to Commercial Lease Agreement between the City of Isle of Palms and Barrier Isles, LLC which is attached hereto as Exhibit I and incorporated herein by reference.

SECTION 2. That should any part of this Ordinance be held invalid by a court of competent jurisdiction, the remaining parts shall be severable therefrom and shall continue to be in full force and effect.

SECTION 3. That all ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as the same affect this Ordinance.

SECTION 4. That this Ordinance shall take effect and be in full force immediately.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, SOUTH CAROLINA, ON THE ____DAY OF _____, 2019.

Jimmy Carroll, Mayor

(Seal)

Attest:

Marie Copeland, City Clerk

First Reading:
Second Reading:
Ratification:

EXHIBIT I

(ATTACH FOURTH AMENDMENT TO BARRIER ISLES, LLC LEASE)

STATE OF SOUTH CAROLINA) FOURTH AMENDMENT TO COMMERCIAL
) LEASE AGREEMENT
COUNTY OF CHARLESTON)

THIS FOURTH AMENDMENT TO COMMERCIAL LEASE AGREEMENT (“Fourth Amendment”) is made and entered into this ____ day of _____, 2019, by and between The City of Isle of Palms, South Carolina (“Landlord”) and Barrier Isles, LLC, a South Carolina limited liability company (“Tenant”).

WHEREAS, Tenant is the tenant under that certain Commercial Lease Agreement dated May 17, 2002, between Landlord and Tenant (the “Lease”), covering certain real property commonly known as “Morgan Creek Grill,” located near the northeastern corner of the Isle of Palms Marina; and

WHEREAS, Landlord and Tenant made certain amendments to the terms of the Lease in the First Amendment (“First Amendment”) to Lease Agreement dated March 12, 2010; and

WHEREAS, Landlord and Tenant made certain amendments to the terms of the Lease in the Second Amendment (“Second Amendment”) to Lease Agreement dated October 26, 2017; and

WHEREAS, Landlord and Tenant made certain amendments to the terms of the Lease in the Third Amendment (“Third Amendment”) to Lease Agreement dated May __, 2018; and

WHEREAS, Landlord and Tenant desire to further amend the Lease as hereinafter set forth.

THEREFORE, for and in consideration of the sum of Ten and no/100 (\$10.00) Dollars, and other good and valuable consideration in hand paid by each to the other, the parties hereto hereby agree as follows:

1. That the Lease is hereby amended to add the following new Section 28:
“28. DOCK USE BY TENANT. Landlord agrees to reserve the dock space (the “Restaurant Dock”) shown on Exhibit I attached hereto for the exclusive

use of Tenant from July 4, 2019 to October 31, 2020 or upon termination of the Lease, whichever comes first. From July 4, 2019 to September 30, 2019, Tenant agrees to allow Tidalwave Watersports the exclusive use of at least one slip for storage purposes of a jet dock and/or one (1) 24 ½' motorboat and two (2) jet skis. Tenant agrees to be responsible for payment of all property taxes assessed against the Restaurant Dock property which accrue during the time period for which the Restaurant Dock is reserved for the Tenant's exclusive use. Tenant agrees to prohibit overnight mooring of vessels at the Restaurant Dock other than for exceptional circumstances or for storage use by Tidalwave as described herein. Landlord agrees to be responsible for all repairs and maintenance at the Restaurant Dock which are not caused by the negligent or willful acts of Tenant or Tenant's patrons or subtenants. Tenant agrees to be responsible for all repairs and maintenance at the Restaurant Dock which are caused by the negligent or willful acts of Tenant or Tenant's patrons. Tenant agrees to hold harmless and indemnify Landlord against any loss or damage, including attorney's fees and expenses, incurred as a result of any and all claims, demands, causes of action, suits, judgments, fines, or penalties (including but not limited to all fees and expenses incurred as a result of death or injury to persons or for loss of or damage to property) arising out of or in connection with the use of the Restaurant Dock by Tenant, its agents, employees, licensees, or invitees except to the extent caused by the fault or neglect of Landlord or its employees, agents, invitees and licensees."

2. That all other terms and conditions of the Lease, First Amendment, Second Amendment and Third Amendment which are not inconsistent herewith shall remain

in full force and effect.

IN WITNESS WHEREOF, the Landlord and Tenant have caused this Third Amendment to be duly executed, sealed and delivered, by and through the undersigned agents, as of the date stated above.

WITNESS:

The City of Isle of Palms, S.C., Landlord

By: _____

Title: _____

(as to Landlord)

Barrier Isles, LLC, Tenant

By: _____

Title: _____

(as to Tenant)

Exhibit I
(Attach Map Showing Restaurant Dock)