



## City Council

6:00 p.m., Tuesday, October 27, 2020

Council Chambers

1207 Palm Boulevard, Isle of Palms, South Carolina

### Virtual Meeting Due to COVID-19 Pandemic:

The public may join the virtual meeting by clicking here: <https://www.youtube.com/user/cityofisleofpalms>

### Public Comment:

Citizens may provide public comment here:

<https://www.iop.net/public-comment-form>

## Agenda

1. **Introduction of meeting** and acknowledgement that the press and public were duly notified of the meeting in accordance with the Freedom of Information Act.
  - a. Invocation
  - b. Pledge of Allegiance
  - c. Roll Call
2. **Citizens' Comments** - Citizens may submit written comments here: <https://www.iop.net/public-comment-form> Comments received prior to the meeting will be entered into the record.
3. **Consent Agenda**
  - a. Approval of Previous Meetings' Minutes
    - i. Regular Meeting – September 22, 2020
    - ii. Special Meeting – October 2, 2020
    - iii. Special Meeting – October 9, 2020
  - b. Approval of an amount not to exceed \$23,000 for roof repairs to the Public Works workshop to address ceiling condensation issues
  - c. Approval of increasing provision for Builder's Risk insurance for the marina dock rehabilitation project by an amount not to exceed \$35,000
4. **Reports from Standing Committees**
  - a. **Ways and Means Committee**

Consideration of marina restaurant lease proposal from the IOP Families Investment Group
  - b. **Public Safety Committee**
    - i. Consideration of Mutual Aid Agreements with the City of North Charleston and Town of Summerville

- ii. Consideration of recommendation of Terry McKenzie for the Signal 30 award

**c. Public Works Committee**

Approval of Memorandum of Understanding (MOU) with Isle of Palms Water & Sewer Commission regarding the island's Sewer Master Plan

**d. Recreation Committee**

**e. Personnel Committee**

**f. Real Property Committee**

**5. Reports from City Officers, Boards and Commissions**

- a. **Accommodations Tax Advisory Committee** – no meeting
- b. **Board of Zoning Appeals** – no meeting
- c. **Planning Commission** – minutes attached

**6. Reports from Special or Joint Committees** – None

**7. Petitions Received, Referred or Disposed of** – None

**8. Bills Already in Possession of Council** – None

**9. Introduction of New Bills, Resolutions and Proclamations**

- a. Ordinance 2020-10 – An ordinance to amend the City's Zoning Ordinance to allow sewer pump stations in the SR-1 single-residential district
- b. Ordinance 2020-11 – An ordinance to amend the regulations of alarm systems
- c. Ordinance 2020-12 – An ordinance to enter into a commercial lease with Marker116, LLC
- d. Ordinance 2020-13 – Fifth amendment to commercial lease agreement to Marina Joint Ventures, LLC

**10. Miscellaneous Business**

- a. Next meeting date: 6:00 p. m., Tuesday, November 17, 2020.
- b. Discussion of conducting economic analysis of taking ownership, control and maintenance of SCDOT roads.

**11. Executive Session** – If needed.

**12. Adjournment**



**CITY COUNCIL MEETING**  
**6:00pm, Tuesday, September 22, 2020**  
**Virtual Meeting via Zoom call due to COVID-19 Pandemic**  
**broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>**

**MINUTES**

**1. Call to order**

Present: Council members Popson, Streetman, Moye, Ward, Bell, Pounds, and Smith, and Mayor Carroll

Absent: Council Member Buckhannon

Staff Present: Administrator Fragoso, Asst. Administrator Hanna, Attorney Copeland, various department heads

**2. Citizens' Comments** – attached to these minutes

City Clerk DeNeane read submitted comments into the record. They appear in full alongside this meeting's agenda on the City's website.

**3. Consent Agenda**

**MOTION: Council Member Streetman made a motion to approve the items on the Consent Agenda, and Council Member Moye seconded the motion. The motion passed unanimously.**

**A. Approval of Previous Meetings' Minutes**

- i. Public Hearing – August 25, 2020
- ii. Regular Meeting – August 25, 2020
- iii. Special Meeting – September 15, 2020

**B. Consideration of award of a contract to Nicholson Business Systems for the Records Management System in the amount of \$38,990 [FY21 Budget; Capital Projects Fund; Police Department; Capital Outlay, \$30,000, pg. 17, ln. 30]**

**C. Consideration of purchase of beach services 4WD pickup truck, State contract pricing in the amount of \$26,870 [FY21 Budget; Hospitality Tax Fund; Police Department; Capital Outlay, \$30,000, pg. 21, ln. 21]**

**4. Reports from Standing Committees**

**A. Ways and Means Committee**

Council Member Pounds briefly reviewed the financial statements for August, noting that revenues are in line for this time in the budget year. The majority of spending has occurred

outside of the General Fund for expenses due to the Public Safety Building Rehabilitation project. Revenues are running about 6% ahead of last year, and expenditures are flat compared to last year. The City currently has about \$19M in cash deposits with \$7.5M of that restricted.

**i. Discussion and consideration of 2020 reassessment and millage rollback**

Council Member Pounds reviewed assessment rates in neighboring communities as compared to the Isle of Palms, noting the City assessment rate is the lowest. He also reviewed three options for reassessment and the financial effect of each option on homeowners, businesses, and the City's revenues.

**MOTION: Council Member Pounds made a motion to choose Option A for the millage rollback. Council Member Bell seconded the motion.**

Council Member Bell noted that the City is "making this choice absent information from the County" and how it will handle any change to millage.

**VOTE: The motion passed unanimously.**

**ii. Consideration of award of a contract for Salmon's Dredging Corporation in the amount of \$4,304,008 for the marina dock rehabilitation project and bulkhead re-coating [FY21 Budget, Marina Fund, Debt Proceeds, \$3,209,000, pg. 29-30]**

Council Member Pounds reviewed the bid from Salmon's Dredging and detailed the alternate items that will be included in the project and which ones will not. The City will continue to negotiate the price of the fuel hut. The budgeted amount for the project was \$3.2M, but with the add-ons and bulkhead recoating the project costs are \$4.3M.

Council Member Pounds also shared a comparison of estimated project costs from the 2017 referendum, which came to approximately \$5.5M and did not include the costs of bulkhead recoating. Lastly, he shared a comparison of the debt service estimate and the costs over 15 years.

**MOTION: Council Member Pounds made a motion to accept and award a contract to Salmon's Dredging Corporation in the amount of \$4,304,008 for the Marina Dock Rehabilitation Project and bulkhead recoating. Council Member Bell seconded the motion.**

Council Member Ward noted that the project is \$1.1M over budget. Mayor Carroll noted that the original budgeted amount did not include the bulkhead recoating, and it something that needs to be done to protect the long-term health of the marina. Council Member Bell said this is the second time we have had the bulkhead recoating bid out, and the thought that the City could save money by completing that project with the marina rehabilitation did not come to fruition. He also said that the City has a responsibility to tend to the bulkheads now.

**VOTE: A vote was taken as follows:**

Ayes: Smith, Pounds, Streetman, Bell, Popson, Moye, Carroll  
Nays: Ward

**The motion passed 7-1.**

**B. Public Safety Committee**

Council Member Ward reviewed the minutes of the September 14, 2020 meeting.

**MOTION: Council Member Ward made a motion to eliminate parking on the landside of Palm Boulevard between 22<sup>nd</sup> and 40<sup>th</sup> avenues due to public safety concerns. Council Member Pounds seconded the motion.**

Chief Graham said, “I think no matter what we do it is going to be safer if we reduce the traffic on Palm. The fire trucks will get down to a call one way or another. However, people crossing the road has always been dangerous, and ever since we did the parallel parking, I feel that that has increased the congestion and more delays in the traffic. People trying to wait for a spot, so anything we can do to reduce it one way or another the fire trucks will get to the call.

Chief Cornett said, “I think any time we could say that people were not crossing the road it would obviously be safer. However, the statistics would show from us that we have not had incidents involving unsafe practices there. Basically there has not been a collision that I could find that has resulted from somebody crossing the road inappropriately or vehicles traveling inappropriately.” He added that it would be nice to have more room alongside the road for vehicles to pull over to allow for emergency vehicles to pass safely.

Council Member Streetman noted that unless the shoulders along certain parts of Palm Boulevard are repaired, it will be hard for people to pull over. He believed limiting parking on Palm Boulevard is the right thing to do while still providing parking to visitors.

Council Member Moye asked if there could be more incremental changes to the parking considerations to see what works. He wondered if making this change on Palm Boulevard would cause more traffic with people attempting to park in less available spots. Chief Graham replied, “The ocean side, it is the same as it always will be. The landward side, we have seen a difference with the less traffic backing up, looking for a spot. Prior to eliminating parking on that side of the road, I would drive down on the weekends coming back from the marina. If someone saw a family going towards their car, the traffic would come to a complete standstill and the person first in line would be, they had waited it out regardless of how long it took so they got still got that spot.” Council Member Moye noted that the residents will also be unable to park along the landward side of Palm Boulevard.

Council Member Smith said that while there have been no incidents to date, there are numerous ways in which the area has its own safety concerns. She suggested revisiting allowing for parking on the landward side of Palm Boulevard after the whole area has been improved.

When asked about the possibility of designated golf cart parking along Palm Boulevard, Administrator Fragoso said, “I talked to the traffic engineer at Stantec who has been working with the City for many, many years, and mainly the concern that was expressed to that idea is confusion. It would just be confusing, and it would require a lot of signage to properly designate those areas as just only golf cart parking. All of these potential changes or recommendations

from Council have to go through SCDOT. And we also have concerns about trying to argue that it would be safe for golf cart parkers to cross the road whether or not they use the crosswalks that are currently in place, but not safe for vehicles and to guests using vehicles to cross the roads. I think that that would be difficult to be able to argue and just the concern that it would be confusing as people are driving down the road not understanding why golf cart parking can be allowed in certain sections of Palm and not particular vehicles. So that is part of the reason why we are not recommending that change from the staff's perspective."

Mayor Carroll noted that residents can park properly permitted golf carts along the residential streets off Palm Boulevard. Administrator Fragoso added, "We have been seeing potential increased traffic in the residential neighborhoods, and we are seeing beach parking migrate from the middle section of Palm Boulevard, which has historically been the beach parking area moving towards the other end of Palm Boulevard, which before May this year, last year, we had not seen a whole lot of beach traffic. I just want to make sure that folks understand that eliminating parking on the landside of Palm due to very valid public safety reasons may continue to increase traffic on the other area of Palm and potentially increase traffic down on Palm Boulevard as people are looking for vehicles." She also shared that they are working with the Flowbird app to allow for the identification of open parking spaces on the island.

Mayor Carroll asked Council Member Pounds to report back to COG that the Beach Reach app needs an additional page on the app allowing for police departments to update parking availability.

Administrator Fragoso added, "This will have to be included in the encroachment permit to SCDOT and approved by SCDOT. We have been waiting on this action and clarification from Council so that we get it included in the same permit about paid parking."

**VOTE: A vote was taken as follows:**

Ayes: Smith, Pounds, Streetman, Bell, Popson, Moye, Carroll  
Nays: Ward

**The motion passed 7-1.**

**C. Public Works Committee**

Council Member Pounds reviewed the minutes of the September 3, 2020 meeting.

**D. Recreation Committee**

Council Member Smith reviewed the minutes of the September 14, 2020 meeting. Mayor Carroll thanked the Recreation Center staff for their working starting and maintaining a presence on Facebook.

**E. Personnel Committee**

Council Member Moye reviewed the minutes of the September 15, 2020 meeting. Administrator Fragoso shared that 3-4 staff members use the employee benefit of 100% tuition reimbursement each year.

**F. Real Property Committee**

Council Member Popson reviewed the minutes of the September 9, 2020 meeting.

**5. Reports from City Officers, Boards, and Commissions**

- A. **Accommodations Tax Advisory Committee** – no meeting
- B. **Board of Zoning Appeals** – no meeting
- C. **Planning Commission** – minutes attached

**6. Reports from Special or Joint Committees** – none

**7. Petitions Received, Referred or Disposed of** – none

**8. Bills already in Possession of Council**

- A. **Amendment of Ordinance 2020-09 to increase the not-exceeding amount of the par amount of the general obligation bonds that may be issued from \$7,000,000 to \$8,000,000**

**MOTION: Council Member Bell made a motion to increase the not-exceeding amount on of the par amount of the general obligation bonds from \$7,000,000 to \$8,000,000. Council Member Streetman seconded the motion.**

Administrator Fragoso stated, “It is a GO bond. It is not a revenue bond. The debt issue for the marina is budgeted to be covered by tourism funds and rent revenue. The FY21 budget did include a slight millage increase to cover the debt service for the proposed Phase III Drainage.”

Regarding the drainage project, Administrator Fragoso added, “Right now, for the drainage project all we have is our estimates provided by our engineers. It is estimated at \$3.125M. Just like with the marina project, we estimated \$3.2M, and we saw bids come in higher than that. So I think by increasing the not-to-exceed amount to \$8M, it gives us some wiggle room to be somewhat flexible once those Phase III Drainage bids come back. We are in the process still of designing that project and going through the permitting that you all know takes time. So we do not have a concrete timeline yet on when we are going to be able to go to bid, but the original schedule has the City obtaining all permits by the end of this year, early next year. So we are hopeful that once permits are in place and we have all bid specifications we can prepare a bid package and go out for bid.”

Several Council members agreed that it is less disruptive to complete the bulkhead recoating project at the same time the marina is being rehabilitated.

**VOTE: A vote on the amendment was taken as follows:**

- Ayes: Smith, Pounds, Streetman, Bell, Popson, Moye, Carroll
- Nays: Ward

**The motion passed 7-1.**

**B. Ordinance 2020-09 -- (GO BOND for the Construction of Phase 3 and Marina Dock & Bulkhead Project) An Ordinance to Provide for the Issuance and Sale of Not Exceeding Seven Million Dollars Aggregate Principal Amount (\$8,000,000) of General Obligation Bonds of the City of Isle of Palms, South Carolina, to Provide for the Issuance and Sale of General Obligation Bond Anticipation Notes in Anticipation of the Issuance of Said Bonds; to Prescribe the Purposes to Which the Proceeds of Such Borrowing Shall be Applied, to Provide for the Payment Thereof; and Other Matters Relating Thereto.**

**MOTION: Council Member Bell made a motion to approve Ordinance 2020-09 as amended. Council Member Streetman seconded the motion. A vote was taken as follows:**

Ayes: Smith, Pounds, Streetman, Bell, Popson, Moye, Carroll  
Nays: Ward

**The motion passed 7-1.**

**D. Ordinance 2020-12 – Emergency Ordinance Declaring State of Emergency, Requiring the Use of Face Coverings, Limiting Parking on the Island, Live Entertainment after 10:00pm, and Occupancy in Bars and Restaurants Fifth (50%) and Other Measures to Protect the Life and Safety of the Citizens of Isle of Palms**

**MOTION: Council Member Ward made a motion to approve, and Council Member Pounds seconded the motion.**

**MOTION: Council Member Ward made a motion to amend to allow for the time live entertainment to extend to 11:00pm as per State law. Council Member Popson seconded the motion. The motion passed unanimously.**

**VOTE: The vote on the motion as amended passed unanimously.**

Council members clarified that the grace period for the plastics ban is not being extended. Businesses experiencing hardships in reference to this ordinance can apply to the City for an exemption.

**9. Introduction of New Bills, Resolutions, and Proclamations**

**Consideration of Reimbursement Resolution to Express the Intention of the City to Cause the City to be Reimbursed with the Proceeds of Tax-Exempt Obligations and Other Matters Related Thereto.**

**MOTION: Council Member Ward made a motion to approve, and Council Member Pounds seconded the motion.**

Mayor Carroll explained, “We are going for an \$8M bond issue, but we have got some projects they are going to be working in advance, and they are going to need some money. So, this is something to give them permission to give money in advance of the money we are receiving.”

**VOTE: The motion passed unanimously.**

10. **Miscellaneous Business**

A. **Discussion and consideration regarding future use of the watersports dock at the IOP Marina to be used as a commercial dock and 10 parking spaces or as a public dock with greenspace and residential parking spaces.**

Mayor Carroll said, “In April of last year, City Council voted to not automatically renew two existing leases at the Marina, the Tidal Wave Water Sports and Morgan Creek Grill, that were expiring this year. Council is in the process of determining the best use for that area, whether to continue to lease for a commercial operation or turn it into a public dock with greenspace with free resident parking spaces. If Council decides that it wants that dock and parking places to be leased for a private commercial operation, then the City would have to pursue the same competitive bid Request for Proposal that we did for the restaurant site. The City of Isle of Palms has a very valuable asset – the City-owned Marina – and the Council intends to maximize its potential for the benefit of all members of our community. This is a unique opportunity for the City to do something special at the Marina, which will stand as this council’s legacy for years to come.

**MOTION: Council Member Moye made a motion to use the space as a public green space, parking, and dock. Council Member Streetman seconded the motion.**

Council Member Popson said, “I am unfortunately going to repeat myself. While I support a residents’ dock, I just do not think this dock is the best solution. We are in a non-harvest DHEC area, so you cannot fish. You are right. You have got the 41 outfall right there, so who is going to want to swim, and plus with all the boat traffic going by. Again, with the paddleboards and the kayaks with all the boat traffic going by, is it really a safe place to put these things in the water right there? And then just keep in mind off season the no-wake buoys are pulled up, so now everybody is coming through there full speed. So I just don’t know that this is the safest place. So we are talking about taking an income-producing dock and turning it into a cost-producing dock with the added liability. I would just like to ask other Council members to consider is there a way of finding another location for this possible public dock including trying to work out an exchange deal with the Exchange Club. Hamlin Creek would be so much safer, and lastly, I am sure we can find a way to find a safe location for the residents’ dock while trying to help a long-time business who has served our island residents well, or at least extend the lifeline of an RFP process.”

Council Member Moye said, “I will probably echo a few of my comments from last week as well, but the marina is a special place for the island, it is one of the few assets that we own, and it is the only access point that we, as City-owned, to the water. This is a small parcel of land that is frankly the only parcel that we will have control of until 2045, and if we want our residents to have a place where they can go to the marina without having to buy something, this is the only place that we can do that. For me, my position, I have been pretty clear about why I believe this is the case, and the conversations I have had with residents, and I believe in my heart of hearts that creating a public green space at the Marina is the best thing we can do as a City. And so, that is why I am supporting it. And I believe that the Mayor said it right. That this is a legacy that

future generations will look back on and greatly appreciate the decision that we made tonight if we do choose to support this to put in a public green space for our kids and grandkids to enjoy.”

Council Member Streetman said, “I have lived here since 1984, and I was here when we had the marina issue come up in 1998 and 1999, and I ended up voting for the City to purchase the property, and I did it basically sort of not in favor of City government getting involved in private industry, but I did not like the idea of seeing it so privatized down there and having a lot of condos that we had no access at all. I know we have the dock down there, but to Councilman Moyer’s comment, we have not had any real public access down there, and this is our opportunity now that this lease that has been decided to not be renewed over a year ago. It is not going to be extended. It is an opportunity to take that part of the space right there and to put some public green space in there.” He added, “I just do not think that we have the space there to do both. I think it has to be one or the other to live up to what I consider my campaign commitment which was to provide some public space or see that we had public space for the citizens that voted for me.”

Council Member Smith said, “We have had a lot of conversation about this in the community, but we actually have not fully discussed this issue I don’t believe by Council in terms of seriously talking about what is possible to use that dock for. There have been concerns brought up but not discussed as Council Member Popson suggested that. Members of the community have come to us and suggested this would be a good place for a launch for kayaking and paddle sports. I am not clear on that though. I feel like we are taking a vote prematurely before we fully have a discussion about what is really possible there, about concerns, about potential liability of using that as a kayak, paddle sport launch. Although I fully embrace the idea of promoting those activities, again, I do not know that this is the right sport for it. Our Rec Center Director, who has experience with water sports safety has brought up concerns. I just feel like it is premature to lock in without, while clearly the direction of this Council is to look seriously at how we can use it for green space, I would much prefer that we put this in the form of an exploration of these important topics.”

**MOTION: Council Member Smith made a motion to amend the original motion to “explore the use of the space as a public green space, park and dock.” There being no second, the motion failed.**

Mayor Carroll pointed out that the dock is currently being used as a space from which to launch kayaks and paddleboards.

Administrator Fragoso stated, “I wanted to address the questions about liability. We had that question as well that was vetted back in 2017 when the City presented the referendum plan which all of the iterations included a public dock in that space. We have since then reached out to our insurance company and confirmed through the Municipal Association of South Carolina, and they have confirmed that the City’s liability insurance would cover the use of that dock with our current coverage.”

Council Member Ward asked, “So if this motion goes to the green space tonight, and Tidal Wave’s lease is up September 30<sup>th</sup>, does the City move in October 1<sup>st</sup>, and what do we do about

security? Do we put up a gate? Will there be a lock on it? Will there be somebody there to monitor the activities on the dock? Will there be lighting at night? Will the facility be secured at night from people that might be up to no good? And if that is so, when is all this going to take place?”

**MOTION: Council Member Pounds called the question. Council Member Bell seconded the motion. A vote was taken as follows:**

Ayes: Streetman, Moye, Smith, Pounds, Carroll

Nays: Popson, Ward

**The motion passed 5-2.**

**VOTE: A vote on the original motion was taken as follows:**

Ayes: Streetman, Moye, Smith, Pounds, Carroll

Nays: Popson, Ward

**The motion passed 5-2.**

B. The next meeting of the City Council will be Tuesday, October 27, 2020 at 6:00pm.

#### 11. **Adjournment**

Council Member Ward made a motion to adjourn, and Council Member Moye seconded the motion. The meeting was adjourned at 8:17pm.

Respectfully submitted,

Nicole DeNeane  
City Clerk



**SPECIAL CITY COUNCIL MEETING**  
**4:00pm, Friday, October 2, 2020**  
**Virtual Meeting via Zoom call due to COVID-19 Pandemic**  
**broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>**

**MINUTES**

1. **Call to order**

Present: Council members Buckhannon, Bell, Smith, Streetman, Ward, Pounds, and Mayor Carroll

Absent: Council members Popson and Moye

Staff Present: Administrator Fragoso, Asst, Administrator Hanna, Attorney Copeland, Chief Cornett

Also present: Brent Halversen, Jim Hinchey

2. **Purpose** – Discussion and consideration of legal options for holdover tenant at Isle of Palms Marina

Mayor Carroll said, “There has been a lot of misinformation on social media these past few months related to the City and Tidalwave. Before we discuss and take action on the issue on the agenda, I want to set the record straight with a brief timeline for the public’s benefit. I will also add this to the minutes, so anyone can read it.

- The lease with Tidalwave requires that the City give its tenant a year’s notice of non-renewal from September 30, 2020.
- On **April 12, 2019**, Tidalwave submitted by email to all members of Council a request to negotiate new lease terms. No member of Council opted to add this to an agenda for consideration.
- The first time members of this Council publicly talked about and voted on the Tidalwave lease was on **April of 2019** at a Real Property Committee meeting. It was during this meeting that the committee voted unanimously to recommend that Council notify Tidalwave that the City had NO intention to renew the lease terms or exercise its lease renewal option.
- Council met that same month on **April 23, 2019**, and voted 5-4 to notify Tidalwave Watersports that the City will not renew the lease or exercise the renewal option of the existing lease.
- The formal written notice was mailed to Tidalwave on July 5, 2019 by certified mail. The lease requires that.

- Our City Administrator restated the information I just shared with you, again, during the City Council meeting on **July 23, 2019**. During that same meeting, Mr. Fiem spoke during public comments and acknowledged receipt of the non-renewal notice.
- The City confirmed the information I just shared with you to the press through a formal statement in January of 2020.
- On **August 20, 2020**, legal counsel for Tidalwave sent a letter to the City, acknowledging receipt of non-renewal from the City in July of 2019, and requesting that Council consider a new or renegotiated lease. No member of this Council opted to put this on an agenda for consideration.
- On **September 22, 2020**, this Council voted to transform this area of the marina into a green space and public park for the island's residents and guests.

The City is and was not obligated to renew, renegotiate or obtain a new lease. This was a contract, agreed by all parties, and this contract had a non-renewal provision that City Council exercised. City Council sets policy based on what they believe is in their communities' best interest. Each council member has their own reason for voting. Council votes on the policy, and staff, is responsible for putting it in action.

This Council has remained transparent in its intent to not renew the current lease with this tenant. Despite the City's clear directive, we now have a tenant who is refusing to vacate the premises and now exposes itself and the City to liability. This vote today is about procedure; it is about how best to protect the City from risk. Staff needs a direction. We have followed the letter of this lease and provided ample notice to vacate. This tenant has had at least 17 months to plan.”

### 3. Executive Session

**MOTION: Council Member Bell made a motion to enter into Executive Session in accordance with South Carolina Code §30-4-70(a)(2) to receive legal advice concerning holdover tenant at the Isle of Palms Marina. Council Member Pounds seconded the motion. The motion passed unanimously.**

City Council entered into Executive Session at 4:07pm.

City Council returned from Executive Session at approximately 4:50pm.

**MOTION: Council Member Streetman made a motion to authorize the City Administrator and legal counsel to initiate eviction proceedings over the holdover tenant at the Isle of Palm Marina. Council Member Pounds seconded the motion. The motion passed unanimously.**

### 4. Adjournment

Council Member Buckhannon made a motion to adjourn and Council Member Pounds seconded the motion. The meeting was adjourned at 4:51pm.

Respectfully submitted,

*Special City Council Meeting, 9/15/2020*

Nicole DeNeane  
City Clerk



**SPECIAL CITY COUNCIL MEETING**  
**3:00pm, Friday, October 9, 2020**  
**Virtual Meeting via Zoom call due to COVID-19 Pandemic**  
**broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>**

**MINUTES**

**1. Call to order**

Present: Council members Buckhannon, Bell, Smith, Popson, Streetman, and Pounds, and Mayor Pro Tem Ward

Absent: Mayor Carroll

Staff Present: Administrator Fragoso, Asst, Administrator Hanna, Attorney Copeland, Treasurer Suggs

Also present: John Chalfie

**2. Purpose – Discussion and consideration of marina restaurant lease**

**3. Executive Session**

MOTION: Council Member Streetman made a motion to move into Executive Session in accordance with §30-4-70(a)(2) for negotiations incident to proposed contractual arrangements related to the marina restaurant lease. Council Member Bell seconded the motion. The motion passed unanimously.

City Council entered into Executive Session at approximately 3:03pm.

City Council returned from Executive Session at approximately 3:33pm. Mayor Pro Tem Ward reported that no decisions were made.

**4. Adjournment**

Council Member Buckhannon made a motion to adjourn and Council Member Moye seconded the motion. The meeting was adjourned at 3:34pm.

Respectfully submitted,

Nicole DeNeane  
City Clerk





**Salmons Dredging Corporation**  
P.O. Box 42, Charleston, SC 29402  
Tel: 843-722-2921  
Fax: 843-723-4630  
salmonsdredging.com

October 19, 2020

City of Isle of Palms  
1207 Palm Boulevard  
Isle of Palms, SC 29451

Re: Isle of Palms Marina Dock Rehabilitation & Bulkhead Maintenance  
Builder's Risk Insurance – Change Order Request

Ms. Desiree Fragoso:

Salmons Dredging Corporation is pleased to provide you a quote to include Builder's Risk Insurance for the referenced project. Note it is a maximum 6-month policy term with pricing based on all work falling outside of 2020 and 2021 storm seasons. I'd recommend binding coverage now but with actual coverage effective dates of December 1, 2020 to June 1, 2021 in order to have all covered work start and complete outside of storm season. The details of the cost are as follows:

- Policy Fees: \$42,930
- Additional fees for the City of Isle of Palms Business License: \$235
- Additional Payment & Performance Bond Fees: \$500
- Overhead & Profit: \$6,550
- Total: \$50,215

Notes:

1. All deductibles and self-insured retentions associated with coverages required for compliance with this Contract, except for Builder's Risk insurance, shall remain the sole and exclusive responsibility of the named insured CONTRACTOR "Salmons Dredging Corporation". Payment of any deductible or self-insured retention for Builder's Risk insurance related to this contract shall be the sole and exclusive responsibility of PROJECT OWNER "The City of Isle of Palms".

Please let me know if you have any questions or concerns. We look forward to working with you on this project.

Very truly yours,

Keith Simmons  
Operations Manager





**DOCK INSTALLATION FLOATER**

**PREMIUM:** \$40,000

**COVERAGE FORM:** Installation Floater – IM-IF

**LIMITS:**

Job Site Coverage:	\$3,700,000
Transit Coverage	\$250,000
Storage Coverage:	\$250,000
Aggregate Limit:	\$3,700,000

**RATE:** Flat

**DEDUCTIBLE:** \$50,000

**DEDUCTIBLE EXCEPTION:** \$200,000  
Wind/Hail/Flood/Named Storm

**FORMS & ENDORSEMENTS:** 011-1091 (1/06), IM-IF (8/07), MEIL 1211 (06/10) - 100% minimum earned, 011-1097 (1/02), MIL 1214 09 17, MPIL 1083 04 15, MEOM 2303 01 15, MPIL 1007 03 14, MJIL EVANSTON 1000 08 10, IL 00 17 11 98, MEIL 1200 01 10, OM-GE (2/97), TRIA Form MEOM 2202 01 15 (only if TRIA is accepted)

- OM-GE – It is hereby understood and agreed that Perils Excluded V. K., Water Damage, is deleted from form IM-IF.

**COMMENTS:**

- This quote is fully earned for approximately 6 months of coverage from November 2020 through April 2021, firm dates to be advised prior to binding. Any coverage beyond this would be subject to the current underwriting guidelines and pricing by the Company. Extensions are not guaranteed.

**SUBJECT TO:**

- Insured's resume and prior loss experience – prior to binding, subject to approval.

## POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

Date:  
 Policyholder/Applicant Name:  
 Submission Number:  
 Policy Number (if available):

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, you have a right to purchase insurance coverage for losses resulting from acts of terrorism, *as defined in Section 102(1) of the Act*. The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020 OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

**SELECTION OR REJECTION OF TERRORISM INSURANCE COVERAGE**  
**PLEASE "X" ONE OF THE BOXES BELOW AND TAKE THE ACTION INDICATED.**

<input type="checkbox"/>	I hereby elect to purchase terrorism coverage for a prospective premium of <u>\$2,000.00</u> .
<input type="checkbox"/>	I hereby decline to purchase terrorism coverage for certified acts of terrorism. I understand that I will have no coverage for losses resulting from certified acts of terrorism.

\_\_\_\_\_

Policyholder/Applicant Signature

\_\_\_\_\_

Print Name

\_\_\_\_\_

Date



**Ways & Means Committee Meeting**  
**6:00pm, Tuesday, October 20, 2020**  
**Virtual Meeting via Zoom call due to COVID-19 Pandemic**  
**broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>**

**MINUTES**

**1. Call to Order**

Present: Council members Pounds, Streetman, Popson, Bell, Buckhannon, Smith, Moye, Ward, and Mayor Carroll

Staff Present: Administrator Fragoso, Asst. Administrator Hanna, Treasurer Suggs, City Attorneys Copeland and Hinchey, various City Department heads

Also present: Kirby Marshall, ATM

**2. Approval of previous meeting's minutes – September 15, 2020**

Council Member Moye made a motion to approve the minutes and Streetman seconded the motion. The motion passed unanimously.

**3. Citizen's Comments**

City Clerk DeNeane read one comment into the record from Wendy Roper, 512 Palm Boulevard, asking that the Committee consider renegotiating the lease with Tidal Wave Sports.

**4. Financial Statements – Treasurer Suggs**

Treasurer Suggs reviewed the financial reports with Committee members. Noting the end of the first quarter to FY21, Treasurer Suggs reported that City's \$355,000 revenue deficit from FY20 is due to the lack of received tourism revenues from Charleston County. The City is in sound financial shape despite the impacts on tourism revenues.

Expenditures are \$1M over what they were last year, and those expenses are mostly related to the Public Safety Building Rehabilitation project. That project remains under budget and ahead of schedule.

Revenues from Municipal Accommodations Taxes are ahead of budget but only \$32,000 less than at this same time in FY20. The State ATAX payment has not yet been received. Hospitality taxes are done, impacted by the shutdown of Wild Dunes during the summer. Local Option Sales Tax is behind FY20 but ahead of budget.

The \$700,000 contingency for the Public Safety Building remains untouched to this point, and there is \$290,000 remaining in the contingency managed by the City. All that money will be returned to the City upon the project's completion.

There were no expenses for the \$4.5M Marina Dock Rehabilitation Project in September. Administrator Fragoso reported there was a pre-construction meeting earlier in the day. Work on the bulkhead cleaning is set to start November 1. The first shipment of materials for the floating dock is expected in January. She reviewed the upcoming phases of work for the project with Committee members.

No Request for Bids have been issued for the Phase III Drainage Project. The only expenses for this project in September were design related. Administrator Fragoso said that Thomas & Hutton continues to work on permitting and easement issues with regards to this project, and the design work is 80% complete.

## 5. **Old Business**

### **Discussion and consideration of marina restaurant lease proposal from the IOP Families Investment Group**

Administrator Fragoso reviewed the events of Marina Restaurant Lease Timeline beginning in September 2018 through the present. The final version of the contract has been submitted and will be sent to City Council for ratification.

Council Member Pounds highlighted some specifics of the lease agreements with the IOP Families. More specific financial details will be shared at next week's City Council meeting. Council Member Bell noted the "complex and long journey" it took to get to this point in the development of the property. Mayor Carroll encouraged everyone to visit the City's website to review all the project timelines in detail.

## 6. **New Business**

### **A. Discussion and consideration of roof repairs to the Public Works workshop to address ceiling condensation issues in an amount not to exceed \$23,000**

Administrator Fragoso said this request, approved by the Public Works Committee, will address condensation issues in the ceiling that were not discovered until after the completion of last year's work done to the Public Works workshop. Trident Construction was asked to offer a bid on the project as they are already onsite working on the Public Safety Building. She believes their quote is indicative of them not having to mobilize since they are already on the island. She also indicated they are having trouble securing another quote as required by the City's procurement code.

Asst. Director Asero detailed the scope of work needing to be done for Committee members.

**MOTION: Council Member Pounds made a motion to address the ceiling condensation issues in the Public Works workshop in an amount not to exceed \$23,000. Council Member Streetman seconded the motion.**

Administrator Fragoso noted this is an unbudgeted expense. She said there is approximately \$13,000 in the Public Works building contingency fund. She would like to use some of the monies in the remaining Public Safety contingency to make up the difference. Mayor Carroll noted the importance of having a third party to oversee projects such as these.

**VOTE: The motion passed unanimously.**

**B. Consideration of increasing the approved provision for Builder's Risk insurance for the marina dock rehabilitation project by an amount not to exceed \$35,000**

Administrator Fragoso reported that the insurance company supporting Salmon's Dredging had originally quoted \$15,000 as the cost for the Builder's Risk Insurance as approved by City Council. However, since the awarding of the contract, that company has declined to offer the insurance to Salmon's Dredging. She said they have reached out to several companies and not many are willing to insure coastline projects. She shared the best available premium quote they have received to date is \$50,215. The City plans to submit one more quote and application.

Administrator Fragoso shared that ATM reports they have done projects without the builder's risk insurance, but she does not recommend that course of action. She said this insurance covers the project materials and equipment during construction.

**MOTION: Council Member Bell made a motion to increase the approved provision for the Builder's Risk Insurance for the Marina Dock Rehabilitation Project by an amount not to exceed \$35,000. Council Member Smith seconded the motion. The motion passed unanimously.**

**7. Miscellaneous Business**

The next meeting of the Ways & Means Committee will be Tuesday, November 17, 2020 at 6:00pm.

Committee members thanked Attorney Copeland for her work for the City of Isle of Palms.

**8. Adjournment**

Mayor Carroll made a motion to adjourn and Council Member Pounds seconded the motion. The meeting was adjourned at 6:51pm.

Respectfully submitted,

Nicole DeNeane  
City Clerk



**Public Safety Committee**  
**9:00am, Monday, October 5, 2020**  
**Virtual Meeting via Zoom call due to COVID-19 Pandemic**  
**broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>**

**MINUTES**

**1. Call to order**

Present: Council members Buckhannon, Ward, and Pounds

Staff Present: Administrator Fragoso, Asst. Administrator Hanna, Chief Cornett, Chief Graham

**2. Approval of previous meeting's minutes – September 14, 2020**

Council Ward made a motion to approve, and Council Member Pounds seconded the motion. The minutes passed unanimously.

**3. Citizens' Comments**

The City Clerk read into the record comments submitted to the Public Safety Committee. They can be found on the City's website alongside the agenda for this meeting.

**4. Old Business**

**A. Update on Public Safety Building Rehabilitation Project**

Administrator Fragoso said the project is still ahead of schedule and under budget. She is pleased with the progress and appreciative to the Insight Group for their work as the City's representative. Staff is working on their relocation plans now with minor, punch-list type items being finished simultaneously. Administrator Fragoso and Council Member Buckhannon encouraged the public to review project timelines as found on the City's website.

**B. Discussion and update on implementation of paid parking plan on the existing public beach parking zones**

Administrator Fragoso clarified that SCDOT would not support the decision made by City Council at their September meeting to permanently eliminate parking along the landside of Palm Boulevard. Those parking restrictions remain in place at the moment under the Emergency Ordinance. She added, "We are excited and eager to work with them [SCDOT] to ensure and enhance pedestrian-vehicle safety in that area because we all know that is sort of an accident waiting to happen due to the volume of cars and volume of pedestrians that are crossing the road to go to the beach."

She asked Committee members for further direction with regards to implementing paid parking “in light of SCDOT’s higher level of scrutiny over the City’s parking plan and parking regulations due to the public outcry that we have seen all summer and also the pending litigation that the City has with the Charleston Area Public Beaches Group.” She noted there are budgeted expenses involved in the implementation of paid parking and does not want to make those purchases in the event the City does not prevail in litigation.

Committee members felt it was important to continue moving forward with the implementation process but hold off on purchasing any equipment or signage until the litigation has been settled.

Administrator Fragoso pointed out “the encroachment permit still needs to be completed and submitted to SCDOT. You all know that we are working with Stantec and updating the sign plan to include the changes that have been discussed, and that work is ongoing. We have already engaged Stantec for that work and we will continue to move forward.” She added that delays in purchasing needed equipment could delay the planned spring implementation deadline.

**C. Discussion of improvements to the ocean side of Palm Boulevard between 21<sup>st</sup> and 41<sup>st</sup> avenues**

Council Member Buckhannon noted the problem areas on the shoulders of 35<sup>th</sup>-41<sup>st</sup> avenues. Administrator Fragoso said that the Public Works department will be doing some of the work to repair the shoulder. They have been in contact with a vendor to help with the grading in that area.

She added, “I think that this will also be part of the conversations that the City will include with SCDOT for them to understand that the paid parking program is not only meant to cover the cost of the City providing public access to the beach but also improving the right-of-ways and improving the road.” She suggested the Committee may want to consider budgeting some funds in FY22 for conceptual designs of “what those improvements would look like and also do some surveying because conceptually everything is possible, but we have some significant hurdles to get through when it comes to Palm Boulevard, mainly utility work, some drainage, and also some encroachments in the right-of-way.”

**D. Update on pedestrian crosswalks and intersection safety**

Administrator Fragoso reported that she and Chief Cornett have been speaking with SCDOT about the best way to make the crosswalks more visible. They are trying to identify the correct locations for crosswalks and the kind of infrastructure needed to have the crosswalks properly connect to ADA pads. She said the City is “eager and hopeful” that an agreeable solution can be found that works for both the City and SCDOT.

Chief Cornett reported that the rectangular rapid flash beacons need Federal approval. Two beacons will need to be installed at each crosswalk at the cost of \$10-15,000 for the pair. Traffic studies are needed for each area where signs are being considered.

Chief Cornett said, “We have to have a study to show that the rectangular rapid flashing beacon installation is justified based on appropriate criteria from resources and research, and that includes traffic data to include pedestrian and vehicular accounts, crash history, narrative

describing the reason for the location, and what other traffic control devices have been used to try to address those concerns in the past.” Chief Cornett will reach out to SCDOT to see what data and or studies were used to justify the crosswalks in the past to see if they can be utilized in way to support this effort.

**E. Update on Front Beach loading zone and parking**

Chief Cornett recommends making two of the parking spaces at the Seaside Inn and two at the Palms Hotel available for parking outside of the loading zone time of 8am-2pm. Two spots will remain loading zone spots 24/7. The cost to restripe the area would be approximately \$2,500. He added a simple wording change to the loading zone ordinance will be necessary.

After further discussion, Committee members determined they would like to see all currently reserved parking spaces on the street to become regular parking spaces outside of the 8am-2pm loading zone timeframe. Chief Cornett will get updated pricing for restriping and signage as well as a suggested location in the budget for the expense.

**F. Consideration of Mutual Aid Agreements with the City of North Charleston and Town of Summerville**

**MOTION: Council Member Buckhannon made a motion to recommend to City Council signing the mutual aid agreements with the City of North Charleston and the Town of Summerville. Council Member Ward seconded the motion. The motion passed unanimously.**

**G. Discussion about refurbishment vs replacement of the 2003 Engine 1002**

Chief Graham explained, “When we received our information for the refurb we were also handed some numbers for a replacement for a demonstration truck. The numbers were a lot less than I anticipated. As you are aware, back several years ago when we purchased the rescue truck, it came in way over what we anticipated. A replacement, if we were to go with a demo, is considerably less than what we were anticipating. The amount of \$300,000 was approved for refurbishing the 2003 pumper. The number came in at \$335,000. However, that has already expired. The replacement, if we were to go with a demo unit, if we can find one that matches our needs, we could save some money. So we are looking at right now the appraisal value of the 75-footer, which could be used as a trade-in or a down payment, we have been getting numbers, many years ago \$125,000 for a trade-in value. Then we were given \$25,000, and with the work that we had done on it, it is back up to \$51,500. Shockingly, the number for the 2003 pumper came in at \$12,000, way lower than we anticipated. We believe that if we were going to sell it outright, however, once again, we are looking at possibly putting \$335,000-\$340,000 into a truck that has an appraised value of \$12,000, which seems that it makes more sense to do some digging to make sure we are making the right choice and evaluate all six of these demos that are available.” A commitment to a demo truck would need to be made during the budget planning process, using the ladder truck as a trade-in or down payment. She suggested that a letter of intent to purchase be signed and roll the money from the FY21 budget over into the FY22

budget, then “re-budget the difference.” The new truck would come with a full warranty on some parts.

She added, “With a refurb, it is still not a bad idea, but with refurbishing about a one year warranty, so we are talking about a \$200,00 difference to have a truck that is going to continue to service well with a one-year warranty versus a truck that is going to be built to current specs that is going to last with a warranty of 20 years on some parts and 6 on others.”

She and other fire personnel will continue to research the best option for the City.

## 5. **New Business**

### A. **Discussion of golf cart regulations and safety**

Chief Cornett said the police department is working on addressing those golf carts that are not properly registered and following State law. He also said the code enforcement officer has reached out to those off-island golf cart rental companies to educate them about the that State statute says you can only operate a golf cart within four miles of the registered address. The only exception to that is people who live in a gated community can operate a golf cart within four miles of the gate. Chief Cornett further clarified this restriction relates to golf carts and not LSVs. He also said that they do receive a number of complaints about underage drivers and have begun addressing that as well.

Administrator Fragoso shared that everyone registering for the Halloween Golf Cart Parade must provide their registration number in order to participate, which may help in making people aware of the need to register their golf carts with the City. There is a golf cart registration form available on the City’s website.

### B. **Consideration of recommendation for the Signal 30 award**

Chief Graham shared, “We have an island resident who was not home. However, his disabled relative was. Their generator caught on fire, and Terry McKenzie of the Water Company just happened to be in the area, darted over, put the fire out, and went and shut the gas off. The homeowner truly believes that had this not happened, the fire would have extended to the house before the Fire Department arrived, and he would highly recommend that we consider Terry McKenzie, who we all know and love, for the Signal 30 Award.”

**MOTION: Council Member Ward made a motion to approve that recommendation, and Council Member Pounds seconded the motion. The motion passed unanimously.**

### C. **Discussion and consideration of changes to the Alarm Ordinance**

Chief Cornett said the City ordinance addressing home alarms requires homeowners to register their alarm with the City. He feels this could discourage some people from having alarms installed. He also said the staff spends considerable time notifying those who have registered to update their permits.

Committee members asked Chief Cornett to discuss the needed wording changes with the City attorney for Council consideration later this month.

**6. Highlights of Departmental Reports**

**A. Fire Department – Chief Graham**

Chief Graham reported that staff continues to monitor COVID-19 and keep their PPE supplies full. The staff has begun to transition back into the Public Safety Building.

She shared a letter of gratitude sent by an island resident for Battalion Chief Smith and Firefighter John Susgenauk “who went down and assisted a resident with a washing machine that was full of water and he was not able to get it out. Very, very thankful.”

The budgeted replacement radios are now on the trucks. These radios will now be programmable over the air instead of needing to be taken to a shop for updates.

Staff has also made revisions to the Standard Operating Guidelines General Orders and Standards of Care. Battalion Chief Hathaway has completed an improved version of the Probationary Firefighter Handbook the Driver Operator Handbook, and the Aerial Handbook. He is working on a Watercraft Handbook. She reported on a recent watercraft in distress call and a response to a person in full cardiac arrest.

**B. Police Department – Chief Cornett**

Chief Cornett commended those who responded to the call for the full cardiac arrest. He reported there were 1,243 calls for service in September and 89 incident reports with 131 charges filed. Total DUIs are still going up with 9 arrests in September. There were also 348 traffic stops, many in response to complaints around the island.

He said there are two officers on the way to Columbia to pick up a mobile kitchen trailer from the Federal surplus program that could be used during a storm. He also shared that they have filed grant applications for two Polaris beach vehicles, a trailer, and a digital billboard sign. It is a fully-funded grant, so no matching funds are needed.

The BSO truck has been ordered and will be available for pickup in about 90 days.

**8. Miscellaneous Business**

The next meeting of the Public Safety Committee will be Monday, November 2, 2020 at 9am.

**9. Adjournment**

Council Member Ward made a motion to adjourn, and Council Member Pounds seconded the motion. The motion passed unanimously. The meeting was adjourned at 10:11am.

Respectfully submitted,

Nicole DeNeane  
City Clerk



adopted by a responding party's jurisdiction shall not be deemed extended into areas of operation that are located outside the geopolitical territorial limits of that party.

## 2. REQUEST FOR ASSISTANCE

The responding law enforcement officers may be requested in response to any public safety function across jurisdictional lines, such as multijurisdictional task forces, criminal investigations, patrol services, crowd control, traffic control and safety, and other emergency service situations. Assistance provided in this Agreement includes, but is not limited to:

- A. Emergency Situations;
- B. Civil Disorders;
- C. Natural or Manmade Disasters;
- D. Mass Processing of Arrests;
- E. Transporting of Prisoners;
- F. Operating Temporary Detention Facilities & Housing Inmates;
- G. Arrests;
- H. Pursuits of Criminal Suspects;
- I. Location of Missing Persons;
- J. Traffic Control and Safety;
- K. Criminal Investigations; or
- L. Any Other Matter Handled by Law Enforcement for that Particular Jurisdiction.

## 3. PRIMARY RESPONSIBILITY

It is agreed and understood that the primary responsibility of the parties to this Agreement is to provide law enforcement services within the geographical boundaries of their respective jurisdictions. Therefore, it is agreed that the law enforcement agency whose assistance is requested shall be the sole judge as to whether or not it can respond and to what extent it can comply with the request for assistance from the other agency.

## 4. PROCEDURE FOR REQUESTING LAW ENFORCEMENT ASSISTANCE

- A. Request. A request for assistance shall only be made by **the Chief of Isle of Palms Police Department**, or his/her designee, or the **Chief of Summerville Police Department**, or his/her designee. This request shall include a description of the situation creating the need for assistance, the specific aid needed, the approximate number of law enforcement officers requested, the location to which law enforcement personnel are to be dispatched, and the officer in charge of such location.
- B. Reply. A reply to any request for assistance shall only be made by **the Chief of Isle of Palms Police Department**, or his/her designee, or **the Chief of Summerville Police Department**, or his/her designee. If the request is granted, the requesting law enforcement agency shall be

immediately informed of the number of law enforcement officers to respond.

- C. Officer in Charge. The responding law enforcement officers shall report to the officer in charge of the requesting law enforcement agency at the designated location and shall be subject to the lawful orders and commands of that officer. The responding law enforcement officer shall exert their best efforts to cooperate with, and aid, the requesting law enforcement agency. The responding law enforcement officers shall be responsible at all times for acting within the policies and procedures set forth in the policy and procedure manual of the law enforcement agency by which they are regularly employed.
- D. Release. The responding law enforcement officers shall be released by the officer in charge when their services are no longer required or when they are needed to respond to a situation within the geographic boundaries of their own jurisdiction; provided however, the responding law enforcement officers shall use their best efforts to complete the requested service prior to being released.

#### 5. PERSONNEL, COSTS AND RECORDS

Except as otherwise agreed among the parties, each party shall maintain control over its personnel. Except as otherwise provided herein, each party shall bear its own costs incurred in the performance of its obligations hereunder, and shall keep its own personnel and other usual records as to its assigned officers.

Any and all records of law enforcement activities conducted pursuant to this Agreement shall be the property of and maintained by the agency conducting the activity, including any incident reports, citations, photographs, or other images captured on any photographic or digital media. Nothing contained herein prohibits or precludes any participating agency from making or maintaining a copy of any such records referenced above.

#### 6. REQUESTS FOR INFORMATION PURSUANT TO THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT

Upon receipt, each agency participating in this Agreement must respond to requests for information pursuant to the South Carolina Freedom of Information Act.

#### 7. COMPENSATION

This Agreement shall in no manner affect or reduce the compensation, pension, or retirement rights of any responding officer. Except as otherwise agreed, each party shall bear its own costs and expenses incurred in complying with this Agreement.

8. INSURANCE

Each party shall maintain such insurance coverage for general liability, workers' compensation, and other such coverage as may be required by law or deemed advisable by individual parties.

9. EMPLOYMENT STATUS

Nothing herein shall be construed or interpreted to imply that the law enforcement officers responding in accordance with this Agreement shall be the employees of the law enforcement agency requesting such assistance.

10. MODIFICATION OR AMENDMENT

This Agreement shall not be modified, amended, or changed in any manner except upon express written consent of the parties to this Agreement.

11. RESPONSIBILITY TO RESPECTIVE GOVERNING BODIES

Each party is responsible for any approval requirements to their respective governing body as may be required under South Carolina law.

12. SEVERABILITY

Should any part of this Agreement be found to be unenforceable by any court or other competent authority, then the rest shall remain in full force and effect.

13. BINDING SUCCESSORS IN OFFICE

All parties agree that any and all successors in interest to their offices will be similarly bound by the terms of this agreement without necessitating execution of any amendment.

14. NO INDEMNIFICATION OR THIRD PARTY RIGHTS

To the extent provided by law, the parties shall be solely responsible for the acts and omissions of their respective employees, officers, and officials, and for any claims, lawsuits and payment of damages that arise from activities of its officers. No right of indemnification is created by this agreement and the parties expressly disclaim such. The provisions of this agreement shall not be deemed to give rise to or vest any rights or obligations in favor of any rights or obligations in favor of any party or entity not a party to this agreement.

15. TERMINATION

This Agreement shall be terminated at any time upon written notice to the other party to this Agreement.

16. TERM AND RENEWAL

This Agreement is effective as to each party at the date and time of signing and will automatically renew each anniversary date, year to year, and term to term unless a party exercises its right to terminate as further described herein.

17. USE OF EQUIPMENT AND FACILITIES

Each party shall be responsible for the maintenance of its own equipment and shall be responsible for the procurement of facilities unless otherwise agreed upon by the parties.

IN WITNESS WHEREOF, these parties have set their hands and seals at the date set forth above.

**ISLE OF PALMS POLICE DEPARTMENT**

**WITNESSES**

\_\_\_\_\_  
**Kevin Cornett, Chief**

\_\_\_\_\_  
**Witness**

**SUMMERVILLE POLICE DEPARTMENT**

\_\_\_\_\_  
**Jon Rogers, Chief**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Mayor/Administrator**

\_\_\_\_\_  
**Witness**



adopted by a responding party's jurisdiction shall not be deemed extended into areas of operation that are located outside the geopolitical territorial limits of that party.

## 2. REQUEST FOR ASSISTANCE

The responding law enforcement officers may be requested in response to any public safety function across jurisdictional lines, such as multijurisdictional task forces, criminal investigations, patrol services, crowd control, traffic control and safety, and other emergency service situations. Assistance provided in this Agreement includes, but is not limited to:

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- C. Natural or Manmade Disasters;
- D. Mass Processing of Arrests;
- E. Transporting of Prisoners;
- F. Operating Temporary Detention Facilities & Housing Inmates;
- G. Arrests;
- H. Pursuits of Criminal Suspects;
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It is agreed and understood that the primary responsibility of the parties to this Agreement is to provide law enforcement services within the geographical boundaries of their respective jurisdictions. Therefore, it is agreed that the law enforcement agency whose assistance is requested shall be the sole judge as to whether or not it can respond and to what extent it can comply with the request for assistance from the other agency.

## 4. PROCEDURE FOR REQUESTING LAW ENFORCEMENT ASSISTANCE

- A. Request. A request for assistance shall only be made by **the Chief of Isle of Palms Police Department**, or his/her designee, or the **Chief of North Charleston Police Department**, or his/her designee. This request shall include a description of the situation creating the need for assistance, the specific aid needed, the approximate number of law enforcement officers requested, the location to which law enforcement personnel are to be dispatched, and the officer in charge of such location.
- B. Reply. A reply to any request for assistance shall only be made by **the Chief of Isle of Palms Police Department**, or his/her designee, or **the Chief of North Charleston Police Department**, or his/her designee. If the request is granted, the requesting law enforcement agency shall be

immediately informed of the number of law enforcement officers to respond.

- C. Officer in Charge. The responding law enforcement officers shall report to the officer in charge of the requesting law enforcement agency at the designated location and shall be subject to the lawful orders and commands of that officer. The responding law enforcement officer shall exert their best efforts to cooperate with, and aid, the requesting law enforcement agency. The responding law enforcement officers shall be responsible at all times for acting within the policies and procedures set forth in the policy and procedure manual of the law enforcement agency by which they are regularly employed.
- D. Release. The responding law enforcement officers shall be released by the officer in charge when their services are no longer required or when they are needed to respond to a situation within the geographic boundaries of their own jurisdiction; provided however, the responding law enforcement officers shall use their best efforts to complete the requested service prior to being released.

## 5. PERSONNEL, COSTS AND RECORDS

Except as otherwise agreed among the parties, each party shall maintain control over its personnel. Except as otherwise provided herein, each party shall bear its own costs incurred in the performance of its obligations hereunder, and shall keep its own personnel and other usual records as to its assigned officers.

Any and all records of law enforcement activities conducted pursuant to this Agreement shall be the property of and maintained by the agency conducting the activity, including any incident reports, citations, photographs, or other images captured on any photographic or digital media. Nothing contained herein prohibits or precludes any participating agency from making or maintaining a copy of any such records referenced above.

## 6. REQUESTS FOR INFORMATION PURSUANT TO THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT

Upon receipt, each agency participating in this Agreement must respond to requests for information pursuant to the South Carolina Freedom of Information Act.

## 7. COMPENSATION

This Agreement shall in no manner affect or reduce the compensation, pension, or retirement rights of any responding officer. Except as otherwise agreed, each party shall bear its own costs and expenses incurred in complying with this Agreement.

8. INSURANCE

Each party shall maintain such insurance coverage for general liability, workers' compensation, and other such coverage as may be required by law or deemed advisable by individual parties.

9. EMPLOYMENT STATUS

Nothing herein shall be construed or interpreted to imply that the law enforcement officers responding in accordance with this Agreement shall be the employees of the law enforcement agency requesting such assistance.

10. MODIFICATION OR AMENDMENT

This Agreement shall not be modified, amended, or changed in any manner except upon express written consent of the parties to this Agreement.

11. RESPONSIBILITY TO RESPECTIVE GOVERNING BODIES

Each party is responsible for any approval requirements to their respective governing body as may be required under South Carolina law.

12. SEVERABILITY

Should any part of this Agreement be found to be unenforceable by any court or other competent authority, then the rest shall remain in full force and effect.

13. BINDING SUCCESSORS IN OFFICE

All parties agree that any and all successors in interest to their offices will be similarly bound by the terms of this agreement without necessitating execution of any amendment.

14. NO INDEMNIFICATION OR THIRD PARTY RIGHTS

To the extent provided by law, the parties shall be solely responsible for the acts and omissions of their respective employees, officers, and officials, and for any claims, lawsuits and payment of damages that arise from activities of its officers. No right of indemnification is created by this agreement and the parties expressly disclaim such. The provisions of this agreement shall not be deemed to give rise to or vest any rights or obligations in favor of any rights or obligations in favor of any party or entity not a party to this agreement.

15. TERMINATION

This Agreement shall be terminated at any time upon written notice to the other party to this Agreement.

16. TERM AND RENEWAL

This Agreement is effective as to each party at the date and time of signing and will automatically renew each anniversary date, year to year, and term to term unless a party exercises its right to terminate as further described herein.

17. USE OF EQUIPMENT AND FACILITIES

Each party shall be responsible for the maintenance of its own equipment and shall be responsible for the procurement of facilities unless otherwise agreed upon by the parties.

IN WITNESS WHEREOF, these parties have set their hands and seals at the date set forth above.

**ISLE OF PALMS POLICE DEPARTMENT**

**WITNESSES**

\_\_\_\_\_  
Kevin Cornett, Chief

\_\_\_\_\_  
Witness

**NORTH CHARLESTON POLICE DEPARTMENT**

\_\_\_\_\_  
Reginald Burgess, Chief

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor/Administrator

\_\_\_\_\_  
Witness



**PUBLIC WORKS COMMITTEE**  
**8:00am, Thursday, October 1, 2020**

**Virtual Meeting via Zoom call due to COVID-19 Pandemic**  
**broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>**

**MINUTES**

**1. Call to order**

Present: Council members Pounds, Smith, and Streetman

Staff Present: Administrator Fragoso, Asst. Administrator Hanna, Director Pitts, Asst. Director Asero, Director Kerr

Also Present: Chairman Jay Leigh, Vice Chairman Curtis Helfrich, General Manager Chris Jordan of the IOP Water & Sewer Commission

**2. Approval of previous meeting's minutes – September 2, 2020**

Council Member Streetman made a motion to approve the minutes of the September 3, 2020 meeting, and Council Member Smith seconded the motion.

Council Member Smith requested the minutes reflect the net savings of garbage outsourcing as opposed to budgeted savings. Net savings for outsourcing garbage collection only would be approximately \$24,000 and net savings for outsourcing garbage and yard debris collection would be approximately \$153,000.

The amended minutes passed unanimously.

**3. Citizens' Comments**

The only comment was read into the record by City Clerk DeNeane regarding not renewing the lease for Tidal Wave Water Sports' lease at the Marina. This comment in its entirety can be found on the City's website alongside the agenda for this meeting.

**4. Department Reports – Director Pitts and Assistant Director Asero**

Director Pitts said he has not yet received garbage collection reports but will forward them on to committee members upon receipt. He reported that while he only spent \$600 on vehicle maintenance in September, he is waiting on a \$26,000 invoice for the flatbed.

He also reported that the extra travel time to the Bees Ferry Landfill is creating a loss in efficiency. While it is not an issue now, he expects it to become one in the spring and summer. Administrator Fragoso said the County does not seem interested in further negotiations about this change unless the City want to pay the \$115,000 transfer fee. She and Director Pitts have

discussed the potential financial impact, but they do not see any justification at this point to pay the transfer fee.

Director Pitts said that the public restrooms are now on winter operating hours of 9am-6pm.

Assistant Director Asero reviewed the drainage work being done across the island including opening the ditch at 23<sup>rd</sup> and 24<sup>th</sup> on Harnett Boulevard. He said that SCDOT is “hesitant to put in piping in that location and our right of way is a little bit too narrow for a swell ditch.” Eadie’s is completing additional pipe cleaning on Sand Dollar and Wild Wood. Vegetation clean up continues around the island, specifically on Forest Trail, 41<sup>st</sup>, 25<sup>th</sup>, 30<sup>th</sup>, and Wild Wood. Eadie’s is also scheduled to clean a ditch between 21<sup>st</sup> and 22<sup>nd</sup> avenues.

Regarding the persistent flooding at 34<sup>th</sup> Avenue and Hartnett and 23<sup>rd</sup> Avenue and Hartnett, Asst. Director Asero said he is having the independent contractor look into “how we can tie in some piping and bring the water down.”

The diesel generator at the Public Works building is up and running, and everyone has had lessons on its use. Weekly logs will be kept to track the machine’s parameters. He has been coordinating fall plantings with Pleasant Places. Administrator Fragoso added that Asst. Director Asero has also been working on the landscaping at the Public Safety building.

Director Pitts reported that some temporary asphalt work has been done on Intracoastal Court. Asphalt work at 34<sup>th</sup> and Forest Trail will be completed this week.

Council Member Smith thanked staff for their work on the website that now reflects timelines for ongoing City projects such as drainage. She suggested creating a presentation regarding the drainage project geared towards the public so they may better understand drainage issues like open versus closed ditches and other drainage-related challenges the City faces.

## 5. **Old Business**

### A. **Update on Phase III Drainage Project and small internal projects**

Administrator Fragoso shared the project timelines from the City’s website.

She also reported that the RFP for the smaller projects has been released. There will be a pre-bid meeting on October 8 and bids are due by October 29. Grant applications for two funding opportunities from FEMA are being drafted and will be submitted prior to the January deadline. The City submitted a grant application to the Rural Infrastructure Authority on September 14.

She reported the Phase III Drainage Project is still in the design and permitting phase. Thomas & Hutton has been “coordinating with the Wild Dunes staff for the design of the 30<sup>th</sup> Avenue outfall, and their meetings have resulted in some design changes. The design and plan production, according to Thomas & Hutton, is at 80% complete. They are working and making some progress on the stormwater report, and the permit applications are ready for signature, and they expect to be able to submit all permits this month.”

Director Kerr elaborated on the status of the design issues at the Wild Dunes Harbor Course. “The issue with the golf course that, I think it’s the eighth hole of the Harbor Course, we are

having an issue where the ditch that is there and it goes right across the fairway. And I don't know if it has shrunk over time or if it was always this size, but it is probably eight feet from bank to bank. Thomas & Hutton is saying that the amount of water that should be going through there that needs to be two or three times that width" which may cause playability issues for the course. He added, "Wild Dunes has indicated their preference would be to pipe that ditch and make it basically a flat fairway across the whole way there. That has implications though on the amount of wetlands being disturbed and obviously costs. But they are aggregable to potentially providing areas that we could mitigate and offset the wetlands that we would impact."

He also reported that Thomas & Hutton has the conceptual study for the multiuse path in its queue and will follow up with them on its status.

**B. Discussion of outsourcing household garbage collection services**

While there is no new information to report on this, Council Member Pounds said he would like to hear about any further conversation regarding the elimination of the backdoor service.

**C. Update on Memorandum of Understanding (MOU) between the City and Dominion Energy ahead of next tree-trimming cycle and Discussion of Dominion Energy's Non-Standard Service Fund and list of eligible projects**

Council Member Pounds reported that he and Administrator Fragoso will meet with the Community Affairs representative from Dominion Energy on October 12. They hope to review high-level estimates of eligible projects using the non-standard service fund. Administrator Fragoso hopes to be able to review a draft of a proposed MOU at the meeting.

Council Member Smith suggested asking Dominion Energy about areas that are particularly vulnerable to outages and if those places are good candidates for undergrounding power lines.

**6. New Business**

**A. Consideration of MOU with Isle of Palms Water & Sewer Commission regarding the island's Sewer Master Plan**

Director Kerr said this version of the MOU with the Water & Sewer Commission has a few slight edits from the previous version reviewed by the Committee. He added, "I would say this is a very open MOU that basically says the City and the Water & Sewer Commission will share the common goal of expanding public sewer and that the two bodies will work together towards that goal."

He reported that the Planning Commission intends to develop a more strategic and detailed agreement with the Water & Sewer Commission over the next year regarding island-wide sewer expansion.

Chairman Jay Leigh of the Water & Sewer Commission noted this is a fluid document that will change as needs and economics change. They are looking forward to working with the City.

**MOTION: Council Member Pounds made a motion to accept the current draft of the MOU with the Isle of Palms Water & Sewer Commission. Council Member Streetman seconded the motion.**

Director Kerr reported that he is attending the monthly Water & Sewer Commission meetings and reporting back to the Planning Commission. He also shared that the City and the Water & Sewer Commission use the same engineering firm (Thomas & Hutton) who does a great job of finding and applying for applicable grants for drainage projects for both entities.

The Committee briefly discussed the possibility of coordinating drainage and sewer work between the two entities.

**VOTE: The motion passed unanimously.**

**B. Discussion and consideration of amendment to §5-4-32 of the City’s Zoning Code to allow for sewer pump stations in the SR-1 single-residential district**

Director Kerr explained the need for the amendment to the City’s Zoning Code. “This is an amendment to the residential zoning code standards that would allow for the Water & Sewer Commission to build lift stations with a 1,000-square-foot footprint, which I think they would agree would satisfy their needs to put lift stations throughout these residential neighborhoods that would allow their system to operate” as the sewer system is expanded. He gave a brief history of previous amendments to this section of the code that have made this request necessary.

Chairman Leigh said the Water & Sewer Commission plans to purchase the property and dedicate most of the property for a park. They shared a conceptual drawing of where the lift station would be on the property and its planned size. He said the Commission has made their purchase of the property contingent upon the approval of the zoning change. Administrator Fragoso suggested the Commission be ready to address concerns from the community about the design of the project and possible odor emanating from the area. Chairman Leigh said the station will include odor containment. General Manager Jordan said this station will be smaller than the one at 29<sup>th</sup> and Waterway and blend into the area better with a wood fence and landscaping.

**MOTION: Council Member Streetman made a motion to amend §5-4-32 of the City’s Zoning Code to allow for sewer pump stations in the SR-1 single-residential district. Council Member Smith seconded the motion. The motion passed unanimously.**

**C. Discussion and consideration of roof repairs to the Public Works workshop to address ceiling condensation issues in an amount not to exceed \$19,000**

Administrator Fragoso explained that the recent work done to the Public Works workshop did not include roof repairs where staff has recently noticed “significant condensation issues.” She has been speaking with Trident Construction about bidding and possibly completing the work that needs to be done since they are already on the island working on the Public Safety building. She stated this work will be an unbudgeted expense but indicated \$12,000 has been set aside for repairs to that building as well as contingency money left over from the Public Safety building

project. She said City code requires two additional written quotes for a project in this cost range, and they will have additional quotes by the Ways & Means Committee meeting later this month.

Director Kerr explained the problem with the roof and ceiling tiles, the potential scope of work, and walked through the estimate provided by Trident Construction. He noted the estimate did not properly calculate the total, so the project estimate currently stands at \$22,658.

**MOTION: Council Member Smith made a motion to recommend an amount not to exceed \$23,000 to address the ceiling condensation issues and roof repairs at the Public Works workshop. Council Member Streetman seconded the motion. The motion passed unanimously.**

Council Member Pounds noted that the motion before the Ways & Means Committee should clarify it is an unbudgeted expense and where the money for it will come from in the budget.

**7. Miscellaneous Business**

The next meeting of the Public Works Committee will be Thursday, November 5, 2020 at 8:00am.

**8. Adjournment**

Council Member Pounds made a motion to adjourn, and Council Member Smith seconded the motion. The meeting was adjourned at 9:09am.

Respectfully submitted,

Nicole DeNeane  
City Clerk

STATE OF SOUTH CAROLINA ) MEMORANDUM OF UNDERSTANDING  
 )  
COUNTY OF CHARLESTON )

THIS MEMORANDUM OF UNDERSTANDING (~~“(this “MOU”)~~) is entered into this  
day of \_\_\_\_\_, 2020, by and between the City of Isle of Palms (~~“(hereinafter, the “City”)~~) and  
the Commissioners of Public Works of the City of Isle of Palms, doing business as the ~~IOP-WSC,~~  
~~“(WSC”).~~ ~~The City of~~ Isle of Palms Water and Sewer Commission (hereinafter, the  
“Commission”). ~~The City~~ is an incorporated municipality (1953) with a nine-member elected  
body in a Council form of Government. ~~The Isle of Palms Water and Sewer~~The Commission is a  
water and wastewater utility with a five-member elected body. Both public entities serve the same  
citizen customers in the same geographic area but operate separately, except that in order for the  
~~Isle of Palms Water and Sewer~~ Commission to borrow money, bond issues must be approved, via  
ordinance, by the City ~~of Isle of Palms City~~ Council.

#### PREAMBLE

#### BACKGROUND OF MOU

1. In 2015, the Isle of Palms Planning Commission received a request from City Council to investigate ways to expand the public wastewater collection and treatment system. This work was accomplished over a series of months culminating in a presentation to City Council on August 22, 2017, where the Planning Commission presented suggestions regarding possible courses of action to facilitate that effort and goal.
2. In October ~~4,~~of 2015, in October of 2016 and again in September of 2017, the City experienced flooding associated with three extreme weather events. During two of these events, the flooding caused individual septic systems to malfunction, rendered homes uninhabitable, and created unsanitary conditions in flood waters.

3. Following these weather events, two citizen forums were organized to discuss citizen priorities for Council action. The citizens identified, among other items, drainage and extension of the public sewer as priorities. The City and ~~WSC~~[the Commission](#) met on March 21, 2018, to discuss various forms of wastewater treatment to address these citizen concerns. The City and ~~WSC~~[the Commission](#) have jointly expressed an interest in investigating the requirements necessary to provide sewer service to the areas of the Isle of Palms not presently receiving sewer service from the ~~WSC~~[Commission](#).
4. The City ~~of Isle of Palms~~ budgeted and adopted \$50,000 in the Fiscal Year 2019 budget to facilitate its ability to fund the updated cost estimates for expansion of the public sewer system.
5. On May 30, 2018, the City and ~~WSC~~[the Commission](#) entered into an initial memorandum of understanding agreeing to a 50:50 cost share of a \$38,600 study to update the island's sewer master plan.
6. In December 2018, Thomas ~~and~~[Hutton Engineering Co.](#) presented the updated sewer master plan that included a phasing plan and ~~a~~ construction cost estimate of \$34,588,806. This amount does not include the \$18,990,000 necessary to ~~consolidate the Wild Dunes treatment facility into~~[expand](#) the Forest Trails treatment facility.
7. The City ~~of Isle of Palms~~ and ~~WSC~~[the Commission](#) further agree that the proliferation of non-traditional treatment systems, like grinder pump systems, are less than ideal, unsightly, rarely have alternative power supplies making them non-functional during periods of power outages.
8. ~~WSC~~[The Commission](#) has previously taken the proactive position in their agreements with customers having grinder pump systems that when public sewer becomes

available, those customers are required to abandon the grinder pump systems and connect to the public sewer at their expense.

9. ~~WSC~~The Commission has engaged the services of a rate consultant who has completed a study on impact fee increases, and this modeling will facilitate gathering of needed rate and cost information for future extensions.

#### FUTURE EXPECTATIONS

10. The City and ~~WSC~~the Commission commit to a goal to improve the barrier island environment, increase sustainability and improve property values. This MOU is intended to establish guidelines for collaboratively working together and sharing information.
11. The City and ~~WSC~~the Commission commit to a goal of developing an additional ~~MOU~~memorandum of understanding within one year from the date of this ~~memorandum~~MOU that will provide a detailed strategy detailing how to systematically expand ~~WSC's~~the Commission's public sewer system in a planned, safe sequence that is not only economically viable but also maximizes grant resources to mitigate costs to the customers.
12. The City and ~~WSC~~the Commission agree that they are providing public service to the same customers.
13. The City and ~~WSC~~the Commission set a target of realizing this goal for their citizen customers ~~by no later than~~within ten (10) years from the date of this ~~agreement~~MOU, with the understanding that this target date may need to be updated and modified as the expansion progresses.

14. This work and analysis will comprise data provided by Thomas & Hutton, as well as information on flood complaints; repetitive losses from flooding; the concentration of grinder pumps, new grinders and grinder requests; malfunctioning septic tanks; requests for sewer service; areas lacking service; and downstream improvements/impacts.
15. The City and ~~WSC~~[the Commission](#) agree to support one another in the pursuit of available grant funding for areas ~~which~~[that](#) may qualify. Funding, and issues related to proximity to the treatment plant, may also become a determining factor in the timing and location of phases towards accomplishing the goal.
16. When necessary, the City and the ~~WSC~~[Commission](#) shall develop any required ordinances as a means of facilitating individual homeowners connecting their properties to the system, once available, without undue financial hardship to the homeowners. Factors to be considered might be length of home ownership, owner occupancy and [any](#) homestead exemption.
17. The City and ~~WSC~~[the Commission](#) commit to sharing information that would not violate any ~~confidentialities~~[confidential information](#) or risk [exposing any](#) proprietary material~~-, not otherwise subject to disclosure under the South Carolina Freedom of Information Act.~~
18. The City and ~~WSC~~[the Commission](#) will improve and facilitate communication during the budgetary process and planning process, continuing to create awareness of the stated goals, will share reports, and [will](#) work to coordinate projects for possible cost saving opportunities created by economies of scale. The ~~WSC~~[Commission](#) agrees to supply to the City ~~at least~~[a](#) monthly~~-a~~ report or presentation detailing: (a) forecasted

spending versus original budget, (b) construction progress versus original timetable, and (c) any unexpected events that affect the construction projects associated with eliminating the Wild Dunes facility and consolidation at the Forest Trails facility. The City acknowledges its attendance at the monthly Board of Commissioners meetings and receipt of the Manager's monthly report to the Commissioners satisfy such requirement.

19. The City and ~~WSC~~the Commission commit to ~~maximizing~~working together to seek grant sources and ~~identifying~~identify potential sources of funds, to support and facilitate the necessary upgrades to accommodate the eventual connection of all individual systems to the Citypublic system.
20. Represented fully and inclusively, the City and the ~~WSC~~Commission shall acknowledge the need to trust that both are moving in the same direction with the same goal to serve the same citizen customers and so will participate together in meetings and, at least, annually, review the goals, performance and accomplishments of this ~~Memorandum of Understanding~~MOU.

NOW, THEREFORE, the City and ~~WSC~~the Commission agree that it is the intent of this ~~Memorandum of Understanding~~MOU to formalize their agreement to cooperate in this joint endeavor and to the terms of this MOU, and ~~the City~~each party requests ~~WSC~~the other to sign this ~~Memorandum of Understanding~~MOU and proceed as diligently as reasonably possible with achieving the overall goal by within the target ten-year ~~deadline~~timeframe.

IN WITNESS WHEREOF, the parties hereto have duly approved this MOU and their respective representatives have duly signed, ~~sealed,~~ and delivered this MOU, as of the ~~dates indicated by each parties' signature~~date first set forth above.

CITY OF ISLE OF PALMS \_\_\_\_\_

COMMISSIONERS OF PUBLIC WORKS OF

Date: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
PALMS, d/b/a Isle of

\_\_\_\_\_  
Mayor, City of THE CITY OF ISLE OF

Palms Water and Sewer Commission

\_\_\_\_\_  
IOP WSC

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_  
Jimmy Carroll, Mayor

By: \_\_\_\_\_  
Jay Leigh, Chair

DRAFT



3. Following these weather events, two citizen forums were organized to discuss citizen priorities for Council action. The citizens identified, among other items, drainage and extension of the public sewer as priorities. The City and the Commission met on March 21, 2018, to discuss various forms of wastewater treatment to address these citizen concerns. The City and the Commission have jointly expressed an interest in investigating the requirements necessary to provide sewer service to the areas of the Isle of Palms not presently receiving sewer service from the Commission.
4. The City budgeted and adopted \$50,000 in the Fiscal Year 2019 budget to facilitate its ability to fund the updated cost estimates for expansion of the public sewer system.
5. On May 30, 2018, the City and the Commission entered into an initial memorandum of understanding agreeing to a 50:50 cost share of a \$38,600 study to update the island's sewer master plan.
6. In December 2018, Thomas & Hutton Engineering Co. presented the updated sewer master plan that included a phasing plan and construction cost estimate of \$34,588,806. This amount does not include the \$18,990,000 necessary to expand the Forest Trails treatment facility.
7. The City and the Commission further agree that the proliferation of non-traditional treatment systems, like grinder pump systems, are less than ideal, unsightly, rarely have alternative power supplies making them non-functional during periods of power outages.
8. The Commission has previously taken the proactive position in their agreements with customers having grinder pump systems that when public sewer becomes available,

those customers are required to abandon the grinder pump systems and connect to the public sewer at their expense.

9. The Commission has engaged the services of a rate consultant who has completed a study on impact fee increases, and this modeling will facilitate gathering of needed rate and cost information for future extensions.

#### FUTURE EXPECTATIONS

10. The City and the Commission commit to a goal to improve the barrier island environment, increase sustainability and improve property values. This MOU is intended to establish guidelines for collaboratively working together and sharing information.
11. The City and the Commission commit to a goal of developing an additional memorandum of understanding within one year from the date of this MOU that will provide a detailed strategy detailing how to systematically expand the Commission's public sewer system in a planned, safe sequence that is not only economically viable but also maximizes grant resources to mitigate costs to the customers.
12. The City and the Commission agree that they are providing public service to the same customers.
13. The City and the Commission set a target of realizing this goal for their citizen customers within ten (10) years from the date of this MOU, with the understanding that this target date may need to be updated and modified as the expansion progresses.
14. This work and analysis will comprise data provided by Thomas & Hutton, as well as information on flood complaints; repetitive losses from flooding; the concentration of grinder pumps, new grinders and grinder requests; malfunctioning septic tanks;

- requests for sewer service; areas lacking service; and downstream improvements/impacts.
15. The City and the Commission agree to support one another in the pursuit of available grant funding for areas that may qualify. Funding, and issues related to proximity to the treatment plant, may also become a determining factor in the timing and location of phases towards accomplishing the goal.
  16. When necessary, the City and the Commission shall develop any required ordinances as a means of facilitating individual homeowners connecting their properties to the system, once available, without undue financial hardship to the homeowners. Factors to be considered might be length of home ownership, owner occupancy and any homestead exemption.
  17. The City and the Commission commit to sharing information that would not violate any confidential information or risk exposing any proprietary material, not otherwise subject to disclosure under the South Carolina Freedom of Information Act.
  18. The City and the Commission will improve and facilitate communication during the budgetary process and planning process, continuing to create awareness of the stated goals, will share reports, and will work to coordinate projects for possible cost saving opportunities created by economies of scale. The Commission agrees to supply to the City a monthly report or presentation detailing: (a) forecasted spending versus original budget, (b) construction progress versus original timetable, and (c) any unexpected events that affect the construction projects associated with eliminating the Wild Dunes facility and consolidation at the Forest Trails facility. The City acknowledges its

attendance at the monthly Board of Commissioners meetings and receipt of the Manager's monthly report to the Commissioners satisfy such requirement.

19. The City and the Commission commit to working together to seek grant sources and identify potential sources of funds to support and facilitate the necessary upgrades to accommodate the eventual connection of all individual systems to the public system.
20. Represented fully and inclusively, the City and the Commission shall acknowledge the need to trust that both are moving in the same direction with the same goal to serve the same citizen customers and so will participate together in meetings and, at least annually, review the goals, performance and accomplishments of this MOU.

NOW, THEREFORE, the City and the Commission agree that it is the intent of this MOU to formalize their agreement to cooperate in this joint endeavor and to the terms of this MOU, and each party requests the other to sign this MOU and proceed as diligently as reasonably possible with achieving the overall goal within the target ten-year timeframe.

IN WITNESS WHEREOF, the parties hereto have duly approved this MOU and their respective representatives have duly signed and delivered this MOU, as of the date first set forth above.

CITY OF ISLE OF PALMS

COMMISSIONERS OF PUBLIC WORKS OF  
THE CITY OF ISLE OF PALMS, d/b/a Isle of  
Palms Water and Sewer Commission

By: \_\_\_\_\_  
Jimmy Carroll, Mayor

By: \_\_\_\_\_  
Jay Leigh, Chair



**Recreation Committee Meeting**  
**5:00pm, Monday, October 5, 2020**  
**Virtual Meeting via Zoom call due to COVID-19 Pandemic**  
**broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>**

**MINUTES**

1. **Call to order**

Present: Council members Moye, Popson, and Smith

Staff Present: Administrator Fragoso, Director Page

2. **Approval of the previous meeting's minutes – September 14, 2020**

**MOTION: Council Member Popson made a motion to approve and Council Member Moye seconded the motion. The motion passed unanimously.**

3. **Citizens' Comments – none**

4. **Departmental Reports – Director Page**

Director Page reviewed highlights of her activities report, noting that while some classes are limited in size due to COVID-19 restrictions, many are full, and some required adding additional times to accommodate all interested parties.

She said the Yard Sale on September 19 was successful. Keenagers starts back up this week with 35 people registered to attend. Ghostly Tide Tales will be on October 23. Signage and social media will reflect the location change for that event.

Registration for the Halloween Carnival Golf Cart Parade began today, and 10 families have already signed up. The registration form requests their golf cart registration number to increase awareness of the need to register. Goody bags will also include educational material about the legal use of golf carts on the island.

This year's Wellness Fair could only be accommodated for employees, so a free cholesterol screening and flu shots clinic will be held on October 22 from 7:30-10:30am for island residents.

Holiday workshops are being planned and staff continues to work on the Holiday Street festival.

She reported they are not yet ready to schedule open gym times due to COVID-19 restrictions.

5. **Old Business**

A. **Discussion of outlook for classes and activities in the fall**

Director Page said not much has changed since Committee members received the Activity Guide at the September meeting.

B. **Discussion of COVID-19 adaptations**

Director Page reported that she receives updates from MUSC twice a month regarding COVID concerns. They also follow the Governor's orders and directives very closely. She reviewed the measures staff has taken to prevent the spread of COVID including: one way in the building and one way out, temperature checks for everyone, required masks, no sharing of equipment, social distancing during classes, water fountains closed, and copious cleaning and disinfecting.

6. **New Business** – none

7. **Miscellaneous Business**

The next meeting of the Recreation Committee will be on Monday, November 2, 2020 at 5pm.

8. **Adjournment**

Council Member Popson made a motion to adjourn, and Council Member Moye seconded the motion. The meeting was adjourned at 5:16pm.

Respectfully submitted,

Nicole DeNeane  
City Clerk



**Personnel Committee**  
**9:00am, Thursday, October 8, 2020**  
**Virtual Meeting via Zoom call due to COVID-19 Pandemic**  
**broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>**

**MINUTES**

**1. Call to Order**

Present: Council Members Moye and Streetman, Mayor Carroll

Staff Present: Administrator Fragoso, Asst. Administrator Hanna

**2. Approval of previous meeting's minutes – September 15, 2020**

Mayor Carroll made a motion to approve the minutes September 15 meeting, and Council Member Streetman seconded the motion. The minutes passed unanimously.

**3. Citizen's Comments – none**

**4. Old Business**

**A. Update on Wage and Compensation Study**

Administrator Fragoso said they are working on the RFP for the study with a goal of receiving applications by November 6. She suggested delaying the November meeting of the Committee by a week so they will have time to review the applications and make a recommendation to the Ways & Means Committee.

**B. Update on hiring for HR/Payroll Officer**

Administrator Fragoso reported that the hiring of the HR/Payroll Officer is an ongoing process. They are still reviewing applications and have left the application process open until the position is filled. She noted that prior to the creation of the position department heads were completing the hiring process.

**5. New Business**

**A. Hiring Process for New Fire Chief**

Chief Graham has submitted her resignation effective December 31, 2020. Administrator Fragoso shared a proposed timeline for filling that position and the Committee discussed its feasibility. Advertising for the position will begin October 16. Both the Personnel and Public Safety committees will be involved in the hiring process. Administrator Fragoso said she would share the hiring timeline with the full City Council.

**6. Miscellaneous Business**

Council Member Moye asked for an update on the Strategic Planning Process. Administrator Fragoso said the department heads will meet for a (socially-distanced) workshop at the Riley Center on October 22. The City Council will meet for a similar workshop following soon after.

Mayor Carroll thanked staff for all their hard work as of late.

The next meeting of the Personnel Committee will be on Thursday, November 12, 2020 at 9am.

**7. Adjournment**

Mayor Carroll made a motion to adjourn, and Council Member Streetman seconded the motion. The motion passed unanimously. The meeting was adjourned at 9:59am.

Respectfully submitted,

Nicole DeNeane  
City Clerk



**REAL PROPERTY COMMITTEE**  
**1:00pm, Wednesday, October 7, 2020**  
**Virtual Meeting via Zoom call due to COVID-19 Pandemic**  
**broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>**

**MINUTES**

**1. Call to order**

Present: Council members Buckhannon, Bell, and Popson

Staff Present: Administrator Fragoso, Asst. Administrator Hanna, Director Kerr

**2. Approval of previous meeting's minutes – September 9, 2020**

Council Member Bell made a motion to approve the minutes of the September 9, 2020 meeting and Council Member Popson seconded the motion. The minutes passed unanimously.

**3. Citizens' Comments**

City Clerk DeNeane read the comments received into the record. They can be found in their entirety on the City's website alongside the agenda for this meeting.

**4. Marina Tenant Comments -- none**

**5. Old business**

**A. Update on marina dock permitting**

Administrator Fragoso reported that all permits for the have been received.

She added that while Army Corps of Engineers wanted the encroachment work on the floating dock done as soon as possible, they only just approved the permitting to complete the work. The other dock improvements have a 5-year timeline for completion. She noted that the process to get the permits was over a year. Council Member Bell added, "It is notable that they [Army Corps of Engineers] granted a variance to allow Tidal Wave to operate through September to not impact the season. So while it might seem like they sat on this, they were measuring, I am sure, right to that date as well knowing that we were trying not to interfere with the business at the same time."

Administrator Fragoso said the City also "offered alternative dock locations after we got the notification from the Corps requesting the encroachment to be removed."

Administrator Fragoso stated that Salmon's Dredging will evaluate the cost and timeline of moving the dock back while onsite for the rehabilitation project. She hopes to add that cost into the contract as a change order.

**B. Update on marina dock rehabilitation project**

Administrator Fragoso shared, "Council approved the award of the contract last month. Since then we have been working on the documents to get them executed by both parties. We have encountered a little bit of a hiccup when it comes to the Builder's Risk and the fact that the total amount of the project has now increased by virtue of the alternates that were approved. So the contractor has had some trouble securing Builder's Risk through their typical or their long-term insurance partner. We have chimed in and reached out to the City's insurance and asked them for a quote to see if they would be willing to include that in our policy through the property insurance we have for the dock." The original estimate for the Builder's Risk was \$15,000 and is now quoted at \$50,000. She added, "We are working on executing the documents for them to get the performance and payment bonds that need to be in place and also all the other insurance documents that they have to provide."

**C. Update on marina restaurant lease proposal**

Administrator Fragoso said, "I just received this morning the final reviewed document from our attorney. I think that we should be returning the final document to the IOP Families Group by the end of this week after Council has an opportunity to look at it and had an opportunity to ask questions or raise any concerns on that."

The goal is to have everything signed and executed by November 1.

**D. Update on proposed ADA-compliant beach walkover and observation deck at 42<sup>nd</sup> Avenue**

Administrator Fragoso will reach out the Greenbelt Fund to determine if the changes to this project will require another pass through the approval process after City Council has approved the new design.

Director Kerr reached out to the vendor used by the Town of Hilton Head for their boardwalk paths. He shared informational slides about the installation of such a path. The cost for 480 linear square feet at 8' wide would be \$46,000 for 2" x 5/4" or \$59,000 for IPE with an additional cost of \$5,000 for installation. Adding in a 15% contingency would bring the project cost total to approximately \$75,000. The Greenbelt Fund awarded \$100,000 for the original project as designed. He also said the pricing is only guaranteed for 30 days.

Administrator Fragoso said she would like to have the Police and Fire Departments provide feedback on this new option. She expressed concern about the additional maintenance involved for this path. Council Member Buckhannon said the path currently at 42<sup>nd</sup> Avenue has always needed constant maintenance. Director Kerr said after speaking with Director Pitts about path maintenance he believes the current landscape contractor could add this into their duties.

Additionally, Administrator Fragoso pointed out that due to the cost of the project, the procurement code requires a competitive bid process unless the City can justify sole source. Committee members suggested adding a wider section to the path to allow people to “pull over” if other people or emergency vehicle would need to pass. Director Kerr will try to get an additional or longer-term quote in addition to updated quotes to include the observation area.

Director Kerr said that he did not believe additional permitting would not be necessary as long as the observation area remains behind OCRM’s jurisdictional setback line.

**6. New Business**

**A. Discussion about addressing flooding issues on beach access paths between 21<sup>st</sup> and 41<sup>st</sup> avenues**

Council Member Buckhannon said it is important to identify the areas that present the most flooding concerns and then correlate that to crosswalks and safer areas where the public can access the beach. Administrator Fragoso said a list of beach access paths needing work could be prioritized, and funding for such repair work could come from beach preservation funds and Greenbelt funds.

Council Member Bell said, “It would be helpful to map the Palm flooding to the beach access path flooding because the last thing we want to do is build great beach access paths in a flooded area that just continues to encourage people to damage the side strips on the road while we wrestle with the parking issues.”

**B. Discussion on next steps for the development of a public dock and greenspace at the IOP Marina**

Committee members discussed the location for possible greenspace at the Marina and whether or not greenspace was actually the best term to use to describe how the space could benefit residents. Administrator Fragoso shared a map highlighting the area the City will now maintain upon the exit of Tidal Wave Watersports.

Previous conceptual plans created prior to the 2017 referendum could be referenced as a starting point for how to create a resident water-accessible area. Administrator Fragoso reminded Committee members of Council Member Smith’s request to investigate the feasibility of kayak and paddleboard storage at the Marina.

Administrator Fragoso shared that staff is still discussing the options for securing and monitoring the area and plans to share those options with the full City Council for consideration. She also stated that she had spoken to Kirby Marshall of ATM about whether or not the permits need to be altered in any way to reflect the change in use of the space from private to public.

7. **Miscellaneous Business**

The next meeting of the Real Property Committee will be Wednesday, November 4, 2020 at 1pm.

8. **Adjournment**

Council Member Bell made a motion to adjourn and Council Member Popson seconded the motion. The meeting was adjourned at 1:59pm.

Respectfully submitted,

Nicole DeNeane  
City Clerk



**Planning Commission**  
**3:00pm, Wednesday, October 14, 2020**  
**Virtual Meeting via Zoom call due to COVID-19 Pandemic**  
**broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>**

**MINUTES**

**1. Call to Order**

Present: Marty Brown, Scott Pierce, Ron Denton, William Mills, Vince DiGangi, Rick Ferencz, Lisa Safford, and Douglas Kerr, Director of Planning

**2. Approval of Previous Meeting's Minutes – September 9, 2020**

Mr. Mills made a motion to approve the minutes and Mr. DiGangi seconded the motion. The minutes were approved unanimously.

**3. Citizen's Comments -- none**

**4. Old Business -- none**

**5. New Business**

**MOTION: Mr. Ferencz made a motion to reorder the agenda so that the discussion of the zoning ordinance amendment occurred first under New Business. Mr. DiGangi seconded the motion. The motion passed unanimously.**

**A. Recommendation on zoning ordinance amendment to allow sewer lift stations in residential districts**

Director Kerr reported that the IOP Water & Sewer Commission would like to purchase the triangle-shaped piece of property at the corner of 7<sup>th</sup> Avenue and Palm Boulevard as the site of a future lift station. The purchase is contingent upon the approval of a change to the zoning ordinance that would allow for lift stations in residential districts. The current zoning code does not address properties less than one-half of an acre are to be handled in this particular situation.

Commissioners expressed concern that a lift station in a residential district could be unsightly and odorous particularly at a location that could be considered a gateway to the island. They would like more specifics as to what the lift station would look like and how it might be screened, and most importantly, how potential odors will be handled.

Director Kerr stated that the Public Works Committee has reviewed this request and made a recommendation that City Council approve the zoning change. He also said this property will be the first of many properties that need to be purchased in order to successfully sewer the entire island.

**MOTION: Mr. Mills made a motion to approve the recommendation for a zoning change to allow for lift stations in residential districts. There being no second, the motion failed.**

Administrator Fragoso shared a map created by Thomas & Hutton showing the approximate vicinities of lift stations needed around the island. Director Kerr noted that it is important to consider the future needs of sewerage the island, which goes beyond this one piece of property.

Commissioners expressed the need for further information from the Water & Sewer Commission before moving forward. They would like to talk about establishing a standard that could mitigate the “most offensive parts” associated with lift stations. As the Planning Commission has 30 days to respond to the zoning change request, a Special Meeting of the Planning Commission will be required.

**MOTION: Mr. Mills made a motion to table further discussion of the zoning change request until a meeting can be arranged with the Water & Sewer Commission. Ms. Safford seconded the motion. The motion passed unanimously.**

**B. Review of Community Facilities Element of Comprehensive Plan**

Director Kerr noted the narrative section of the Community Facilities element needs quite a bit of updating.

Commissioners discussed goals and strategies around improving public safety, supporting the installation of sewer services, improving recreational opportunities for all residents, and improving the appearance of the island. The remainder of the Community Facilities element will be discussed at the November meeting.

**C. Recommendation on adoption of new flood maps and associated ordinances**

Director Kerr said FEMA has released new flood maps which must be approved and adopted by January 29, 2021. He noted the changes “greatly reduce the flood elevation across the island.” He also shared that the new maps include a new flood zone “where FEMA is predicting you are going to have a bowl effect, and instead of establishing an elevation requirement above mean sea level, they are just saying you need to be X number of feet off the ground.” He added that the City’s 14’ elevation requirement “will always be higher than this AO requirement, but from a technical standpoint, we do need to have a standard in the code that addresses these new AO zones. So that is really what this change is doing. It is adopting the maps, and it is creating standards for these AO zones, which are new to us.”

**MOTION: Mr. Ferencz made a motion to recommend to City Council the approval of the new FEMA flood maps and associated ordinances. Mr. DiGangi seconded the motion. The motion passed unanimously.**

**5. Miscellaneous Business**

**A. Update on drainage planning**

Director Kerr reported that the City is preparing the necessary paperwork for the bond needed to pay for Phase III of the drainage project. Thomas & Hutton put out the RFP for the smaller

drainage projects. He shared there was a pre-bid meeting last week that generated a lot of interest. Work on the smaller projects is expected to begin in January 2021. He also shared that Thomas & Hutton is analyzing possible improvements to the Waterway Boulevard path.

**B. Update on MOU with Water & Sewer Commission**

Director Kerr reported that the Public Works Committee has recommended to City Council the execution of the MOU with the Water & Sewer Commission.

**C. Lot fill**

Mr. Denton requested clarification on non-conforming lots, setbacks, and fill. With regards to fill, Director Kerr said, “We established a maximum new elevation of one foot above the road, but if you are already more than a foot above the road, we allow you to stay to that elevation.” Any changes to fill on a property must be certified by a stormwater professional.

**7. Adjournment**

Mr. Ferencz made a motion to adjourn and Mr. Brown seconded the motion. The meeting was adjourned at 5:29pm.

Respectfully submitted,

Nicole DeNeane  
City Clerk

## ORDINANCE 2020-10

AN ORDINANCE AMENDING TITLE 5, PLANNING AND DEVELOPMENT, CHAPTER 4, ZONING, ARTICLE 1, GENERAL PROVISIONS, OF THE CITY OF ISLE OF PALMS CODE OF ORDINANCES

WHEREAS, the Isle of Palms Council is authorized to amend its ordinance; and

WHEREAS, it is necessary and appropriate to revise the current chapter to address Sewer pump stations with a footprint of one thousand square feet as a special exception; and

BE IT ORDAINED AND ENACTED BY THE MAYOR AND COUNCIL MEMBERS OF THE CITY OF ISLE OF PALMS, SOUTH CAROLINA, IN CITY COUNCIL ASSEMBLED THAT CHAPTER 4, ZONING, SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 5-4-32. - SR-1 single-family residential district.

In addition to all other applicable requirements of this chapter and other City ordinances, the requirements for the SR-1 district are as follows:

- (1) *Purpose.* The purpose of the SR-1 single-family residential district is:
  - a. To provide for quiet, low-density residential neighborhoods on comparatively large lots.
  - b. To discourage unwarranted encroachment by prohibiting commercial uses and to prohibit other uses which would interfere with the development or continuation of single-family use.
  - c. To encourage the cessation of nonconforming uses.
  - d. to discourage uses which would generate traffic on minor streets other than required to serve residences on those streets.
  - e. To maintain the integrity of established residential neighborhoods, and to minimize the disruption of existing residential patterns by the scattered development of comparatively large residential lots.
- (2) *Permitted uses.* Permitted uses in the SR-1 single-family residential district shall be:
  - a. Detached, single-family dwelling.
  - b. Residential accessory uses.
  - c. Sewer pump stations with a footprint of one thousand square feet (1,000 sq') or less.

- (3) *Permitted special exceptions.* Permitted special exceptions in the SR-1 single-family residential district shall be:
- a. Elementary and secondary schools offering general education courses.
  - b. Church, synagogue, or other place of worship.
  - c. Group dwellings.
  - d. Golf courses.
  - e. Home occupations meeting the requirements of section 5-4-44.
  - f. Public utility and municipal uses satisfying the special exception requirements set forth in subsection (9) of this section.
- (4) *Conditional uses.* Public utility and municipal uses satisfying the conditional use requirements set forth in subsection (9) of this section shall be conditional uses in the SR-1 single-family residential district.
- (5) *Minimum lot requirements.* Minimum lot requirements in the SR-1 single-family residential district are as follows:
- a. Lot area: thirty-five thousand (35,000) square feet of contiguous highland.
  - b. Lot width: seventy feet (70') measured at building line.
  - c. Lot depth: one hundred ten feet (110').
  - d. Lot frontage: sixty feet (60') on a public or private street; thirty feet (30') on a public or private cul-de-sac.
- Vehicle access to the lot from a public or private street shall be provided within the required lot frontage.
- (6) *Minimum yard requirements.* Minimum yard requirements in the SR-1 single-family residential district are as follows:
- a. Front yard: thirty feet (30').
  - b. Side yard: ten feet (10').
  - c. Rear yard: thirty feet (30').
- Exception: minimum yard requirements for lots with an area less than seventeen thousand five hundred (17,500) square feet.
- a. Front yard: twenty-four feet (24').
  - b. Side yard: ten feet (10').
  - c. Rear yard: twenty-four feet (24').
- (7) *Maximum height.* Maximum height in the SR-1 single-family residential district shall be forty feet (40').
- (8) *Double frontage lots.* Double frontage lots are prohibited in the SR-1 single-family residential district.

(9) *Public utilities and municipal uses.*

- a. *Public utility facilities and uses.* This subsection (9)a applies to wastewater treatment facilities, public works maintenance and storage facilities, and all other public utility facilities or uses.
  - (i) Construction or alteration of a public utility facility may be approved in a residential zoning district as a conditional use subject to a finding by the Zoning Administrator that the facility satisfies all of the following conditions:
    1. The facility is located on a lot that is at least one (1) acre in size;
    2. The overall lot coverage of the facility is less than fifty percent (50%);
    3. The minimum setback for any structure is thirty feet (30') from all property lines;
    4. The maximum overall height of any structure is thirty feet (30');
    5. The minimum buffer along all property lines is twenty feet (20') wide with at least six (6) canopy trees, twelve (12) understory trees, and one-hundred (100) three-gallon shrubs per one-hundred (100) linear feet of property line; with each species approved by the Zoning Administrator based on its ability to provide screening and drought tolerance;
  - (ii) The Board of Zoning Appeals may approve construction or alteration of a public utility facility in a residential zoning district as a special exception subject to the requirements of section 5-4-5(c) and upon a finding that the following additional conditions are met:
    1. The facility is located on a lot that is at least one-half ( $\frac{1}{2}$ ) acre in size;
    2. The overall lot coverage of the facility is less than fifty percent (50%);
    3. The minimum setback for any structure is twenty feet (20') from all property lines;
    4. The maximum overall height of any structure is forty feet (40');
    5. The minimum buffer along all property lines is ten feet (10') wide with at least six (6) canopy trees, twelve (12) understory trees, and one-hundred (100) three-gallon shrubs per one-hundred (100) linear feet of property line; with each species approved by the Zoning Administrator based on its ability to provide screening and drought tolerance.
- b. *Municipal facilities and uses.* This subsection (9)b applies to all municipal facilities, including but not limited to City halls, fire stations, police stations, public safety facilities, and recreation centers, parks, playgrounds, and any other municipal use, but excludes public utility facilities or uses.
  - (i) Construction or alteration of a municipal facility may be approved in a residential zoning district as a conditional use subject to a finding by the Zoning Administrator that the facility satisfies all of the following conditions:
    1. The facility is located on a lot that conforms in size to the applicable zoning district requirement;

2. The overall lot coverage is less than forty percent (40%);
  3. The minimum building setback from the front or rear lot line is thirty feet (30');
  4. The minimum building setback from any side lot line is ten feet (10');
  5. The maximum overall height of any structure is forty feet (40');
  6. A buffer is installed that complies with section 5-4-71.
- (ii) The Board of Zoning Appeals may approve construction or alteration of a municipal facility in a residential zoning district as a special exception subject to the requirements of section 5-4-5(c) and upon a finding that the following additional conditions are met:
1. The facility is located on a lot that conforms in size to the applicable zoning district requirement;
  2. The overall lot coverage is less than fifty percent (50%);
  3. The minimum building setback from the front or rear lot line is twenty feet (20');
  4. The minimum building setback from any side lot line is ten feet (10');
  5. The maximum overall height of any structure is forty feet (40');
  6. A buffer is installed that complies with section 5-4-71.

SECTION 2. That this Ordinance take effect and be in full force immediately.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE \_\_\_\_\_ DAY OF October, 2020.

\_\_\_\_\_  
Jimmy Carroll, Mayor

(Seal)

Attest:

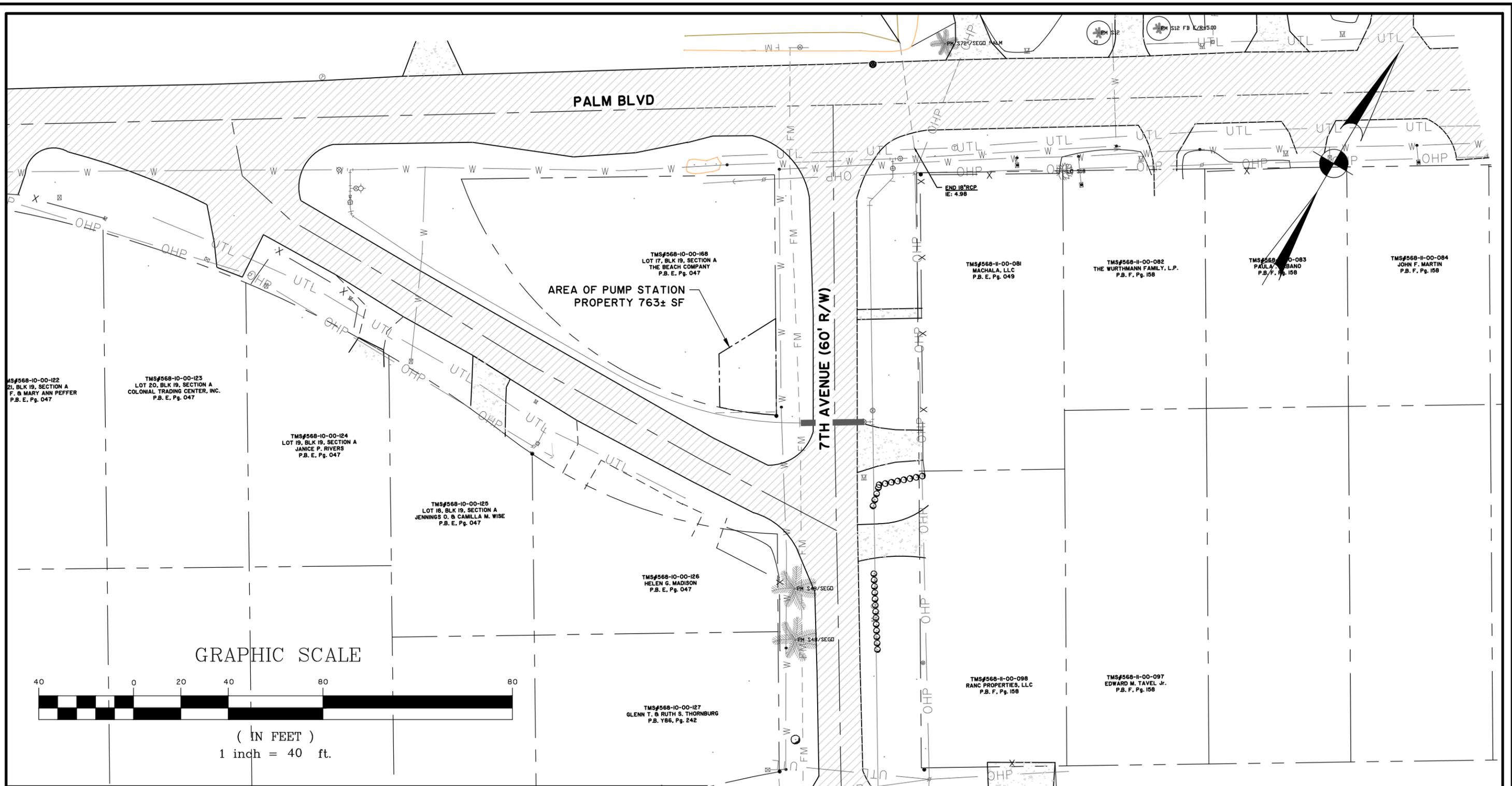
\_\_\_\_\_  
City Clerk

First Reading: \_\_\_\_\_

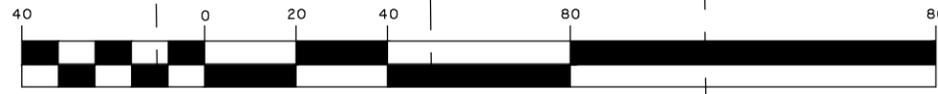
Second Reading: \_\_\_\_\_

Ratification: \_\_\_\_\_

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GRAPHIC SCALE



( IN FEET )  
1 inch = 40 ft.

### 7TH AVENUE SEWER PARCEL

#### LOCATION MAP

CLIENT:  
IOPWSC

LOCATION: ISLE OF PALMS, SC  
DATE: 9/28/20  
JOB NUMBER: 27924.0000

DRAWN BY: DNF  
REVIEWED BY: MFY

SHEET: C1  
SCALE: 1" = 40'

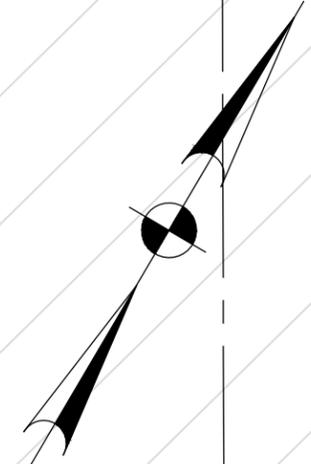
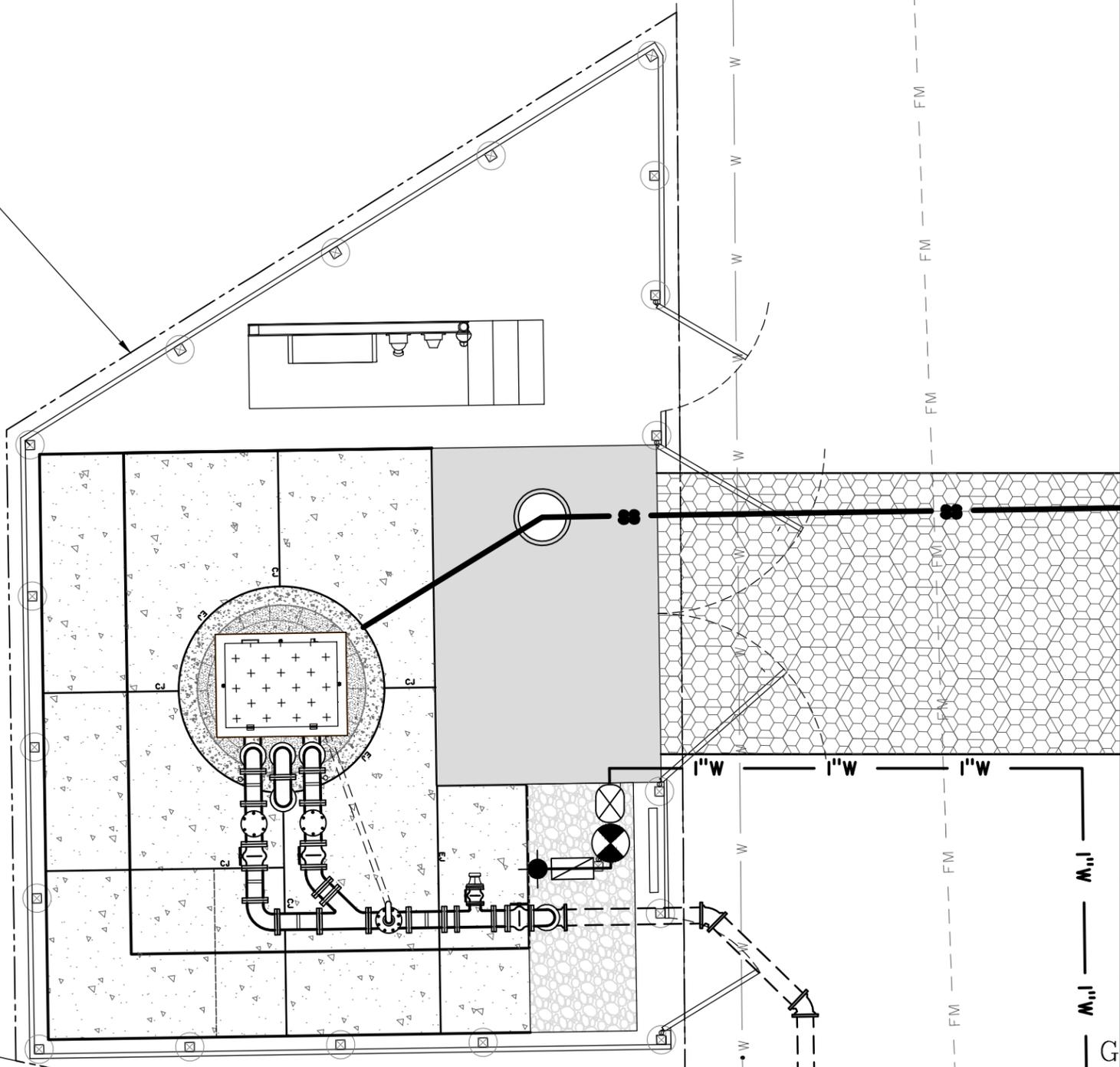


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Z:\27294\27294.0000\Engineering\Drawings\Exhibits\27294.0000 - Pump Station Site Plan at 7th Avenue.dwg - Sep 28, 2020 - 2:34:23 PM

AREA OF PUMP STATION  
PROPERTY 763± SF



7TH AVENUE (60' R/W)



( IN FEET )  
1 inch = 5 ft.

### 7TH AVENUE SEWER PARCEL

#### SITE PLAN

CLIENT:  
IOPWSC  
LOCATION: ISLE OF PALMS, SC  
DATE: 9/28/20  
JOB NUMBER: 27924.0000

DRAWN BY: DNF  
REVIEWED BY: MFY  
SHEET: C1  
SCALE: 1" = 5'



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7TH AVE

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7TH AVE

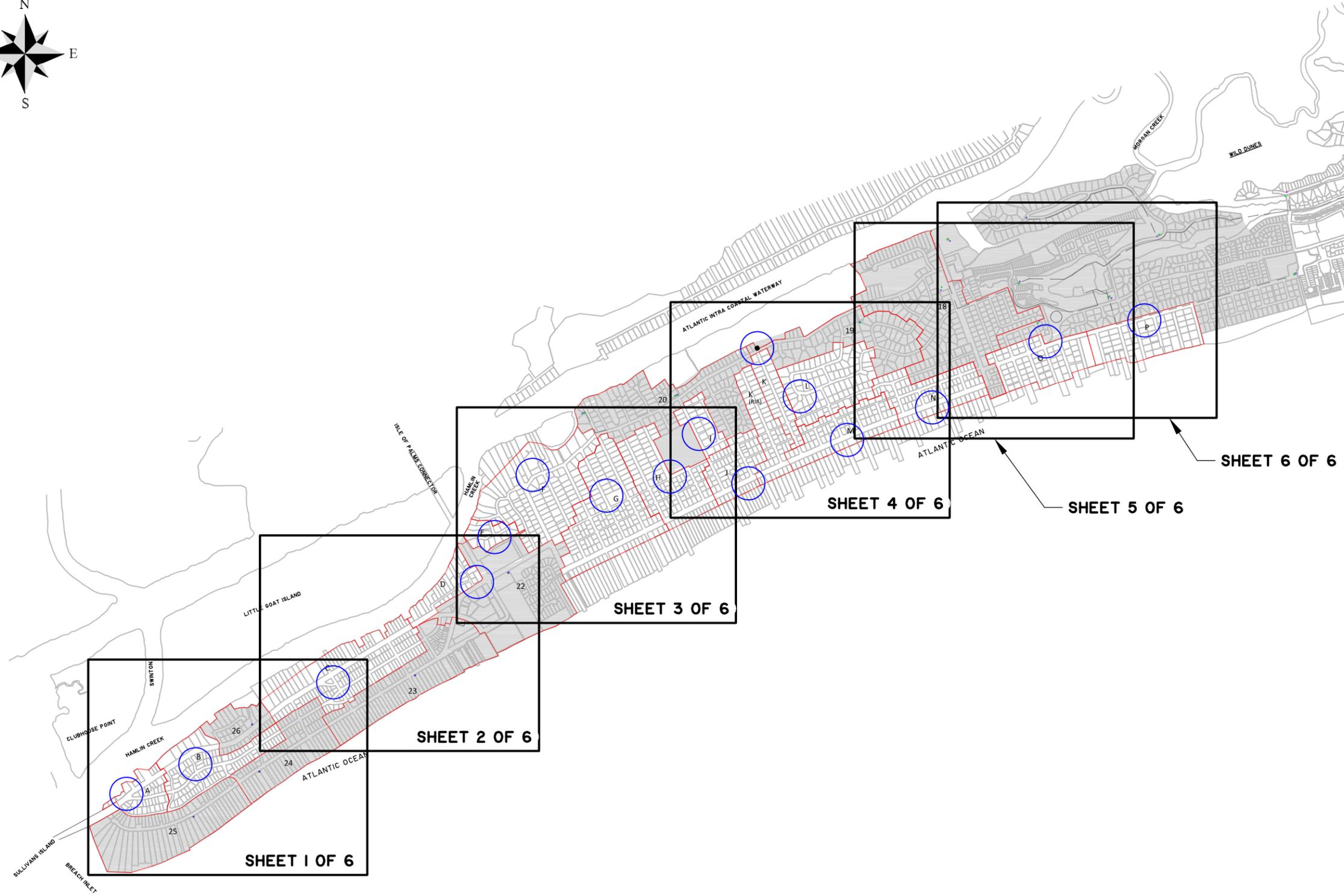
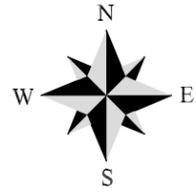
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**LEGEND**

- SEWERED AREA (HATCH)
- EXISTING RESIDENTIAL / COMMERCIAL GRINDER PUMP SYSTEM INTO FORCE MAIN
- EXISTING GRAVITY SEWER
- EXISTING FORCEMAIN
- EXISTING PUMP STATION
- PROPOSED GRAVITY SEWER
- PROPOSED FORCEMAIN
- PROPOSED PUMP STATION VICINITY
- PS SERVICE AREA

**IOPWSC SEWER MASTER**

PLAN UPDATE  
BASIN EXHIBIT

CLIENT:  
IOPWSC

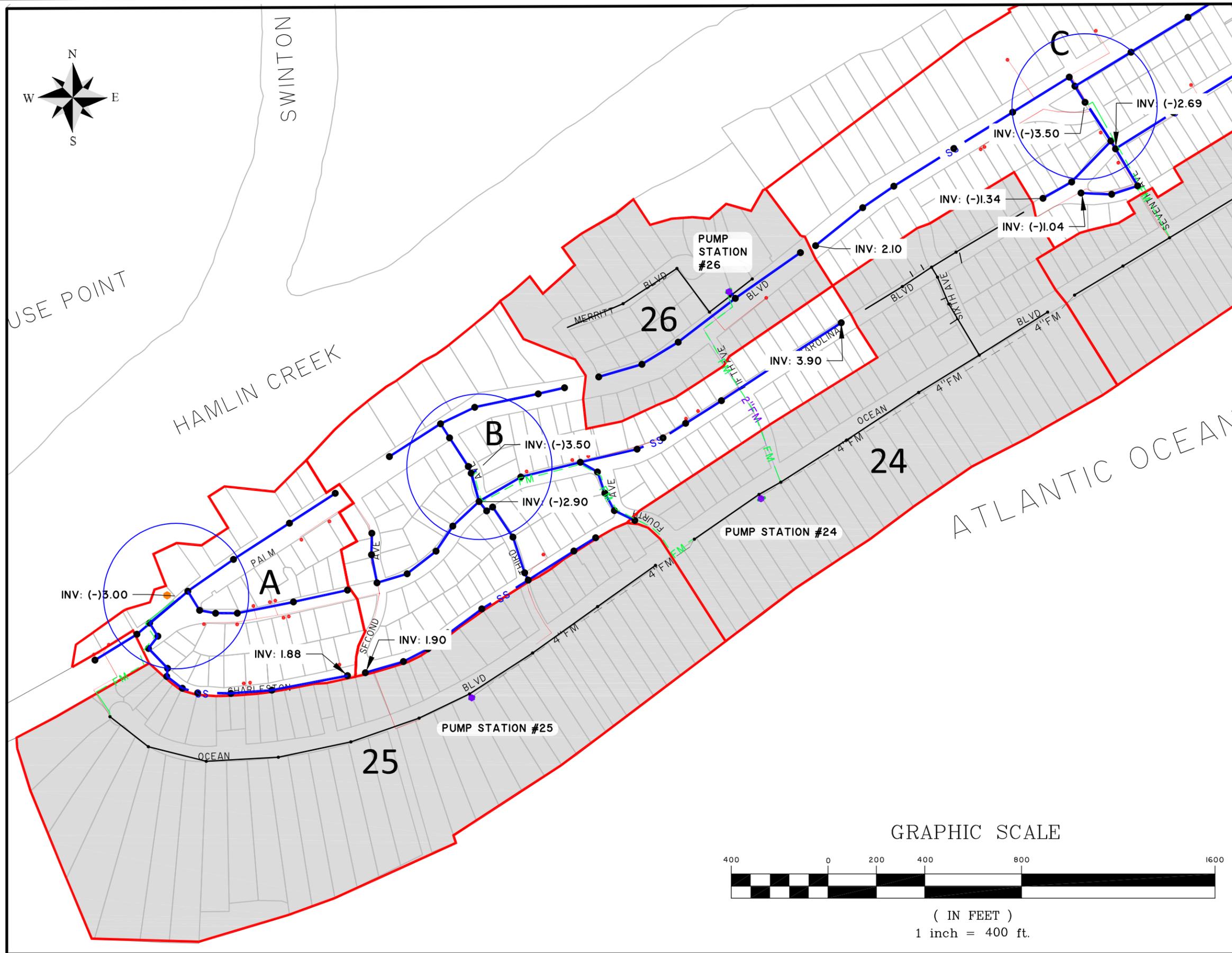
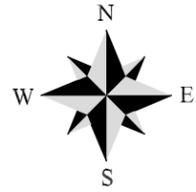
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DATE: 12/19/18 Rev.01 JOB NUMBER: 27294/27529  
DRAWN BY: CGB SHEET: OVERALL LAYOUT  
REVIEWED BY: MFY SCALE: 1" = 2000'



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**LEGEND**

- SEWERED AREA (HATCH)
- EXISTING RESIDENTIAL / COMMERCIAL GRINDER PUMP SYSTEM INTO FORCE MAIN
- EXISTING GRAVITY SEWER
- EXISTING FORCEMAIN
- EXISTING PUMP STATION
- PROPOSED GRAVITY SEWER
- PROPOSED FORCEMAIN
- PROPOSED PUMP STATION VICINITY
- PS SERVICE AREA

**IOPWSC SEWER MASTER**

PLAN UPDATE  
BASIN EXHIBIT

CLIENT:  
IOPWSC

LOCATION: CHARLESTON COUNTY, SC  
DATE: 12/19/18 Rev.01 JOB NUMBER: 27294/27529  
DRAWN BY: CGB SHEET: 1 OF 6  
REVIEWED BY: MFY SCALE: 1" = 400'

**GRAPHIC SCALE**



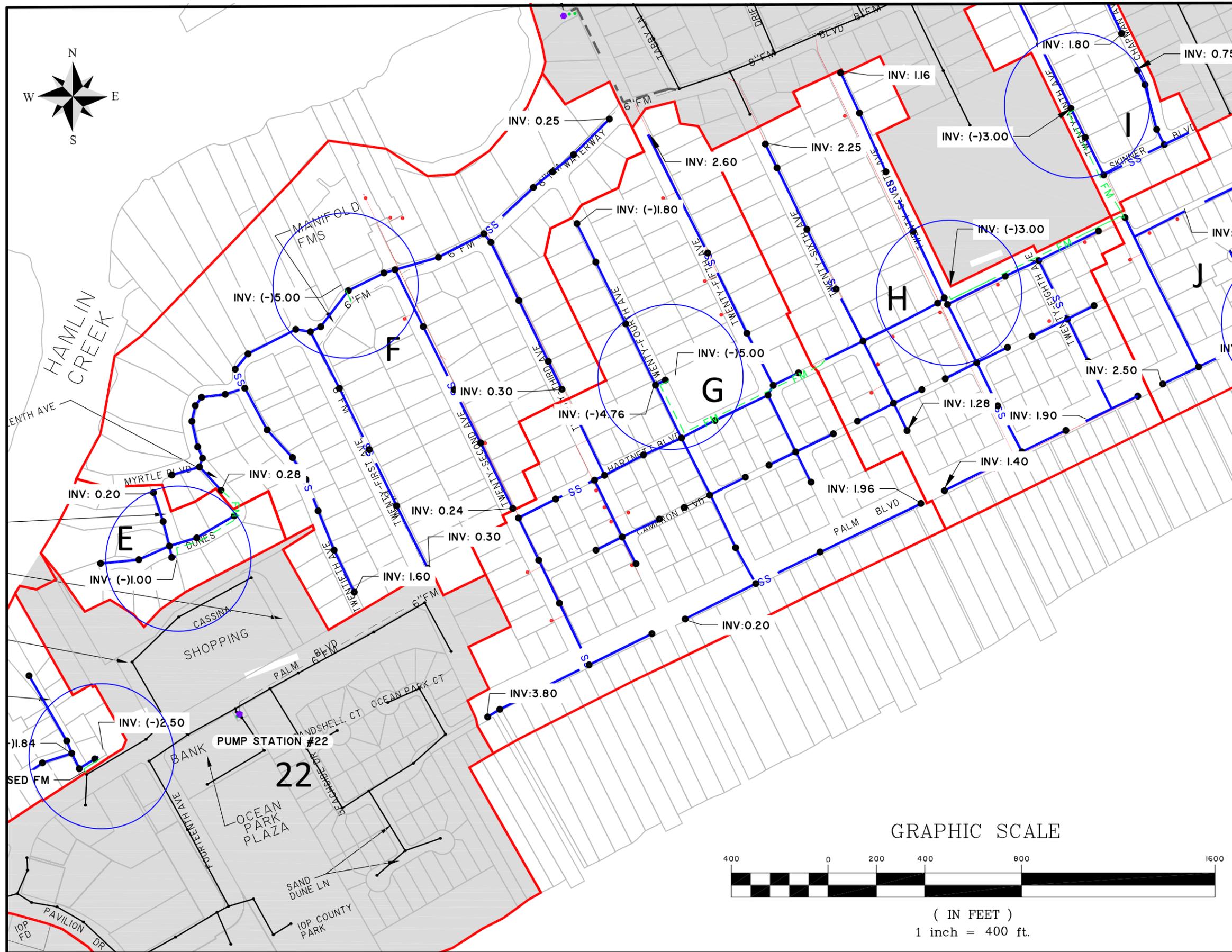
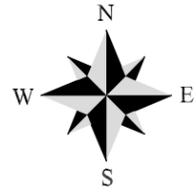
( IN FEET )  
1 inch = 400 ft.



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**LEGEND**

- SEWERED AREA (HATCH)
- EXISTING RESIDENTIAL / COMMERCIAL GRINDER PUMP SYSTEM INTO FORCE MAIN
- EXISTING GRAVITY SEWER
- EXISTING FORCEMAIN
- EXISTING PUMP STATION
- PROPOSED GRAVITY SEWER
- PROPOSED FORCEMAIN
- PROPOSED PUMP STATION VICINITY
- PS SERVICE AREA

**IOPWSC SEWER MASTER**

PLAN UPDATE  
BASIN EXHIBIT

CLIENT:  
IOPWSC

LOCATION: CHARLESTON COUNTY, SC  
DATE: 12/19/18 Rev.01 JOB NUMBER: 27294/27529  
DRAWN BY: CGB SHEET: 3 OF 6  
REVIEWED BY: MFY SCALE: 1" = 400'

**GRAPHIC SCALE**

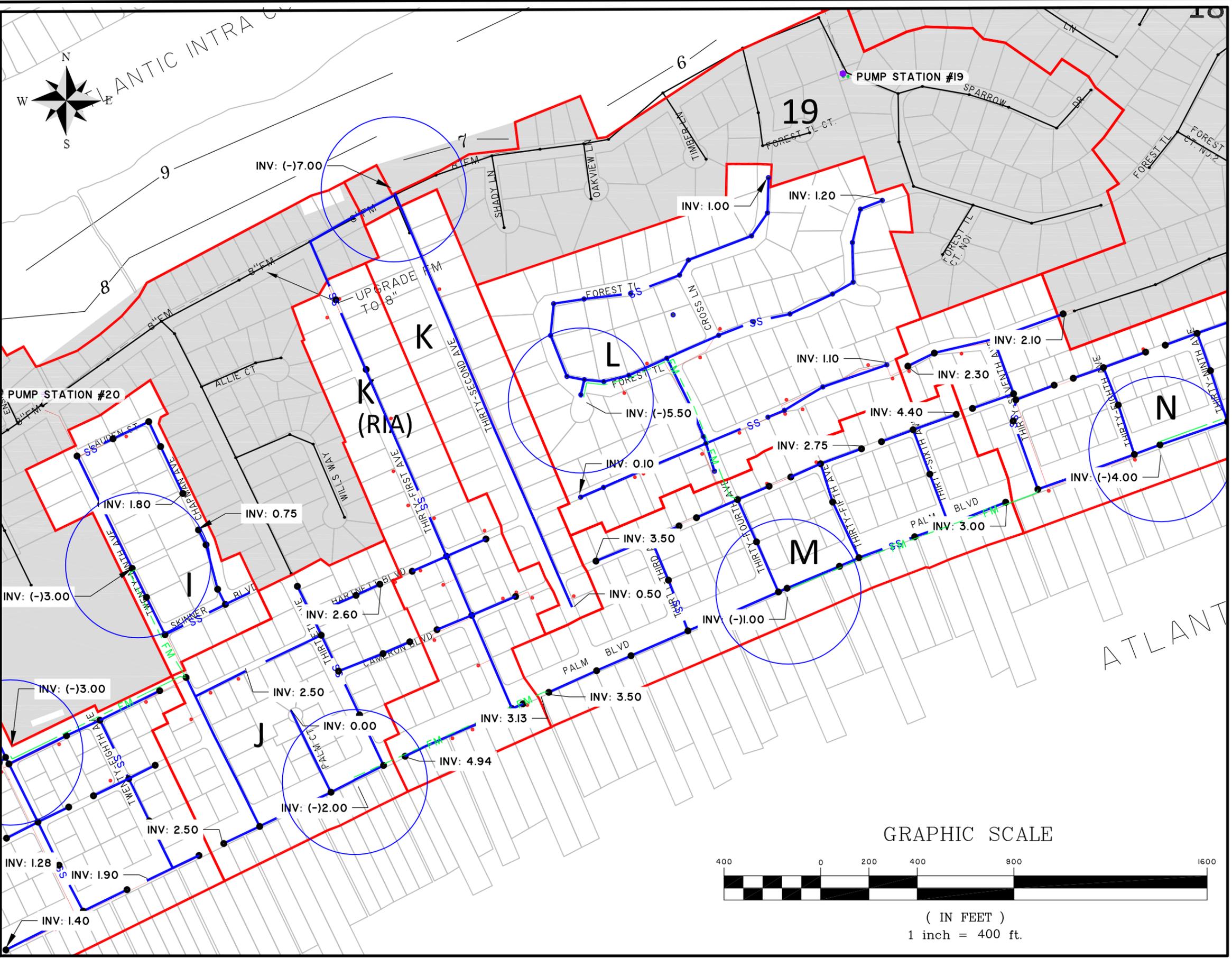


( IN FEET )  
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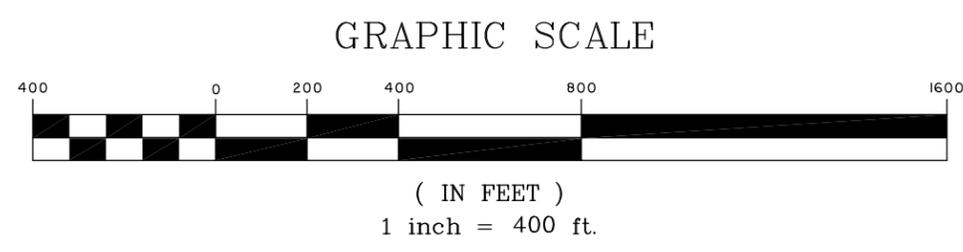
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**LEGEND**

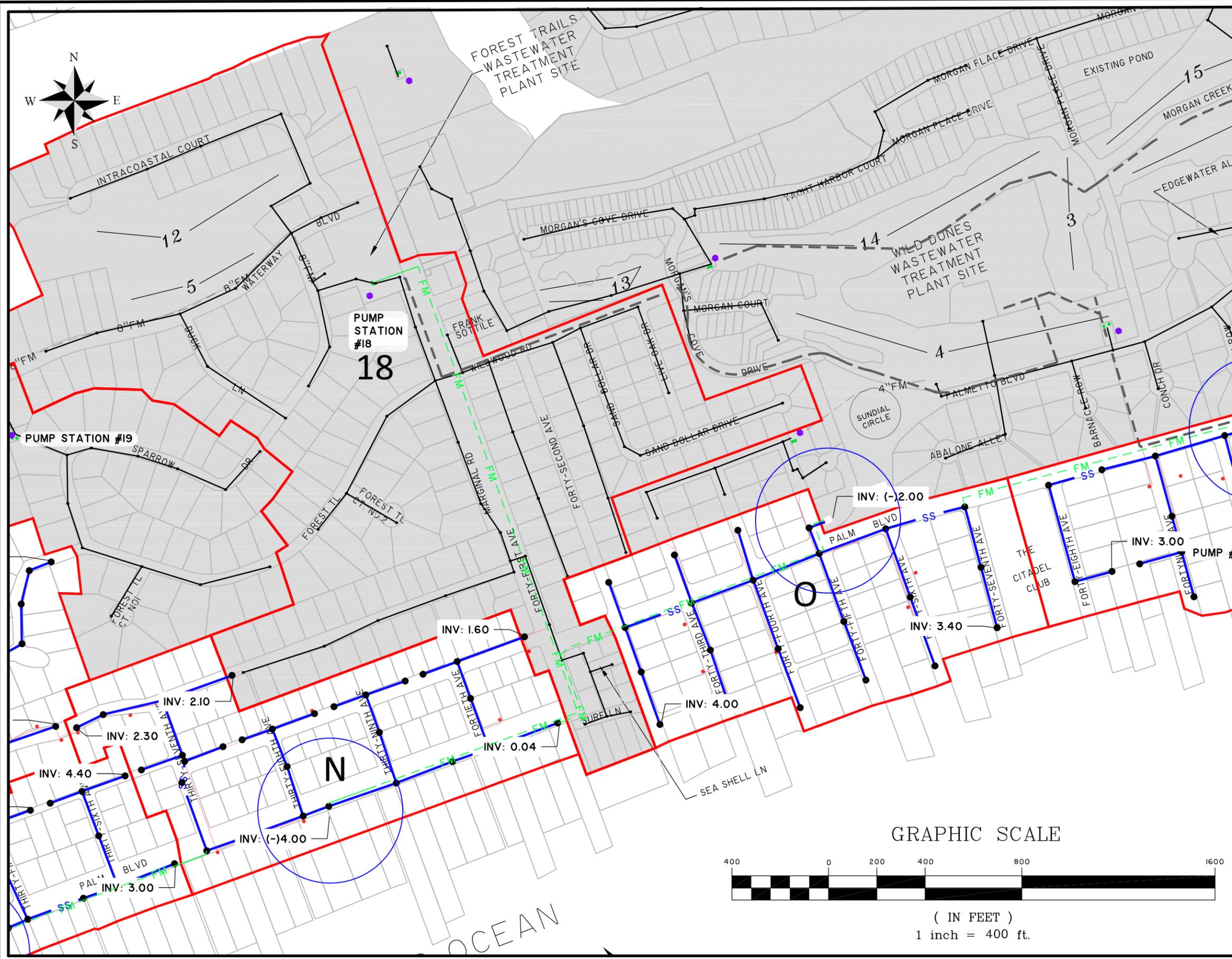
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- EXISTING RESIDENTIAL / COMMERCIAL GRINDER PUMP SYSTEM INTO FORCE MAIN
- EXISTING GRAVITY SEWER
- EXISTING FORCEMAIN
- EXISTING PUMP STATION
- PROPOSED GRAVITY SEWER
- PROPOSED FORCEMAIN
- PROPOSED PUMP STATION VICINITY
- PS SERVICE AREA

**IOPWSC SEWER MASTER**  
**PLAN UPDATE**  
**BASIN EXHIBIT**  
 CLIENT:  
**IOPWSC**  
 LOCATION: CHARLESTON COUNTY, SC  
 DATE: 12/19/18 Rev.01 JOB NUMBER: 27294/27529  
 DRAWN BY: CGB SHEET: 4 OF 6  
 REVIEWED BY: MFY SCALE: 1" = 400'



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**LEGEND**

-  SEWERED AREA (HATCH)
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-  EXISTING GRAVITY SEWER
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 DATE: 12/19/18 Rev.01 JOB NUMBER: 27294/27529  
 DRAWN BY: CGB SHEET: 5 OF 6  
 REVIEWED BY: MFY SCALE: 1" = 400'

**GRAPHIC SCALE**

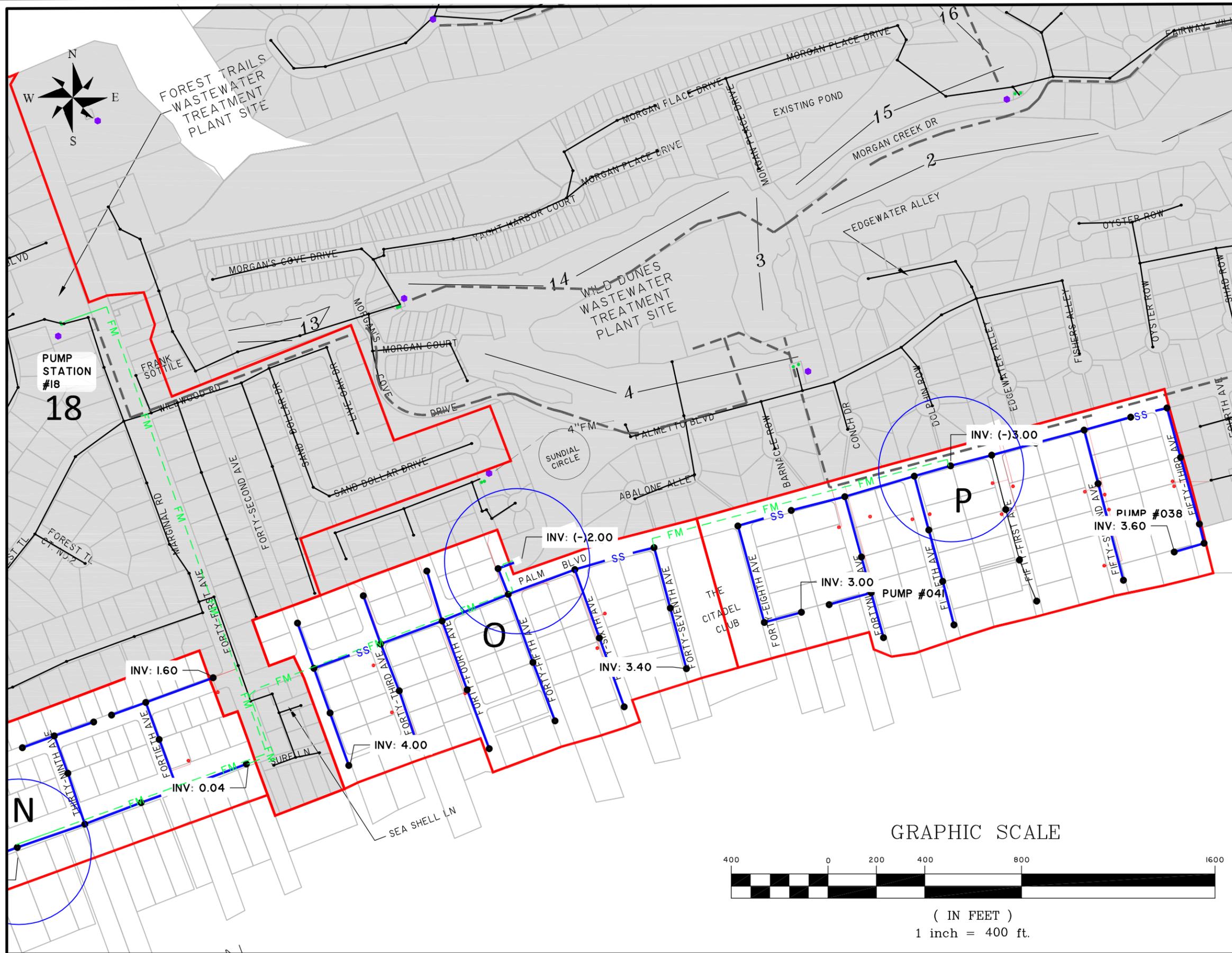


( IN FEET )  
 1 inch = 400 ft.



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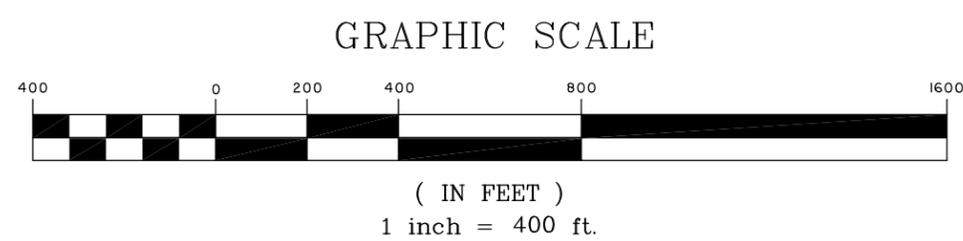
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**LEGEND**

- SEWERED AREA (HATCH)
- EXISTING RESIDENTIAL / COMMERCIAL GRINDER PUMP SYSTEM INTO FORCE MAIN
- EXISTING GRAVITY SEWER
- EXISTING FORCEMAIN
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## ORDINANCE 2020-11

AN ORDINANCE AMENDING TITLE 7, LICENSING AND REGULATION, CHAPTER 4, REGULATION OF ALARM SYSTEMS AND BUSINESSES, OF THE CITY OF ISLE OF PALMS CODE OF ORDINANCES

WHEREAS, the Isle of Palms Council is authorized to amend its ordinance; and

WHEREAS, it is necessary and appropriate to revise the current chapter to improve registration and responses to commercial and residential alarm systems; and

BE IT ORDAINED AND ENACTED BY THE MAYOR AND COUNCIL MEMBERS OF THE CITY OF ISLE OF PALMS, SOUTH CAROLINA, IN CITY COUNCIL ASSEMBLED THAT CHAPTER 4, REGULATION OF ALARM SYSTEMS AND BUSINESS, SHALL BE AMENDED TO READ AS FOLLOWS:

SECTION 1. That Chapter 4 is hereby amended by adding (c) to state as follows:

### **Sec. 7-4-1. - Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alarm business* means the business or occupation by any individual, partnership, corporation or other entity of selling, leasing, maintaining, servicing, repairing, altering, replacing, moving or installing any alarm system or causing to be sold, leased, maintained, serviced, repaired, altered, replaced, moved or installed any alarm system in or on any building, structure, or facility or dwelling.

*Alarm system.* The term "alarm system" means any assembly of equipment, mechanical or electrical, arranged or designated to signal the occurrence of an illegal entry, fire, need for medical assistance, or other activity or hazard requiring urgent attention within a building, home, structure or facility and to which the City Police Department or Fire Department is expected to respond.

The term "alarm system" shall not include individual smoke detectors in private dwellings which are not connected to an external alarm. Alarm systems shall not include audible alarms affixed to automobiles.

*Alarm user* means any person, firm, partnership, association, corporation, company or organization of any kind in control of any building, structure, or facility where an alarm system is maintained.

*Automatic dialing system* means any alarm system or device which automatically sends over regular telephone lines, by direct connection or otherwise, a prerecorded voice

message or coded signal indicating the existence of the emergency situation that the alarm system or device is designated to detect.

~~*False alarm.*~~

~~The term "false alarm" means any alarm which is given, sounded or otherwise expressed when there is no apparent causal event requiring immediate police, fire or other emergency response, including but not limited to the activation of or notification by an alarm system through mechanical or electronic defect or failure, malfunction, defective installation, the negligence of the alarm user or his employees, agents, invitees or licensees, or the conducting of an alarm test or drill without the prior notification to the City Police and Fire Departments.~~

~~The term "false alarm" shall not include alarms activated where fire conditions exist, alarms caused by power failure, or alarms activated due to severe weather conditions, including, but not limited to, lightning, high winds, heavy rainfall, sudden temperature changes that create implosive pressures within the affected property, hurricane conditions, earthquakes or other natural disasters.~~

~~*Local alarm* means those alarms which activate an audible signal within the proximity of the premises only.~~

(Code 1994, § 7-4-1; Ord. No. 1996-17, 10-22-1996; Ord. No. 2011-04, § 1, 7-26-2011)

**Sec. 7-4-2. - Compliance with chapter provisions.**

No person or entity shall engage in, conduct or carry on an alarm business within the City without complying with this chapter, and all other applicable State laws and City ordinances.

(Code 1994, § 7-4-2)

~~**Sec. 7-4-3.—Registration required.**~~

~~Each alarm business owner and operator is required to register with the City Police Department the name, address, and telephone number of each new subscriber within the City prior to the activation of the new alarm system, or upon notification that an existing alarm system has been sold or transferred to another subscriber.~~

~~Whenever any change occurs relating to the written information required by this chapter, the applicant or permittee shall give written notice thereof to the Police Department within ten (10) days following such change.~~

(Code 1994, § 7-4-3)

### **Sec. 7-4-3. - Specific alarm regulations.**

The alarm user shall at all times maintain the alarm system in a state of good repair. ~~The user will repair any malfunctioning alarm system within twelve (12) hours of discovery of a problem and will notify the Police Department when the malfunction has been remedied.~~

~~All alarm businesses shall have qualified repair and maintenance personnel available for call by the Police Department twenty four (24) hours a day, every day of the year. All alarm businesses shall have personnel available to respond at the request of the Police Department to any alarm location within thirty (30) minutes of notification.~~

All alarm users ~~shall~~ **may** provide the Police Department with a written list of at least two (2) persons who are authorized and available to respond to the Police Department on the alarm user's behalf regarding any alarms at such user's location within thirty (30) minutes of notification. Such list shall be on such form as is prescribed by the Police Department and ~~shall~~ **should** be updated by the alarm user no less than once per calendar year.

In the event an alarm system cannot be deactivated in a timely manner, such alarm business/user shall ~~be required to~~ provide personnel for surveillance to said business until such time as the alarm is deactivated (audible alarm) and/or the business is safely secured.

All alarm users shall notify the ~~Police Department Alarm Business~~ immediately prior to testing the alarm system or performing maintenance on the system. ~~Further, the user shall re-notify the Police Department immediately upon completion of testing or maintenance work.~~

~~All new alarm systems other than commercial fire alarms shall have reset capability to reset within fifteen (15) minutes. An alarm system cutoff shall be installed to override all malfunctioning reset systems. All audible alarms may not emit a sound similar to an emergency vehicle. The users of existing alarm systems will have one (1) year from the adoption of the ordinance from which this chapter is derived to convert such systems to comply with the provisions herein.~~

It is unlawful for any person or business to program or use an automatic dialing system to dial directly into the City's public safety communication centers, including, but not limited to, the City Police and Fire Departments and the Charleston County Consolidated 911 Dispatch Center, whether by dialing 911, a primary trunk line, or any other number or line leading into the City's public safety communication centers.

(Code 1994, § 7-4-4; Ord. No. 1996-17, 10-22-1996; Ord. No. 2011-04, § 2, 7-26-2011)

### **Sec. 7-4-4. - Alarm permits required.**

~~No person or entity shall install or use an alarm system within the City without first applying for and receiving an alarm permit in accordance with the provisions of this chapter. Each system and each location shall require a permit. The alarm user shall be responsible for obtaining permit and ensuring full compliance with this section.~~

~~There shall be an initial \$25.00 alarm permit fee, due and payable by the user upon installation of the alarm system. The Police Department shall provide for an annual postcard permit renewal system which shall provide for free renewal to the user for permit renewals received by the Police Department during the month of January of the renewal year. There shall be a \$10.00 permit renewal fee due from the user for any renewals received by the City after January 31 of the renewal year.~~

~~Alarm permits shall expire on December 31 of each year. Applications for renewals of permits shall be processed in the same manner as applications for the initial permit.~~

~~Applications for an alarm permit shall be filed with the Police Department on forms provided by the Department. The application shall be signed and verified by the applicant and shall contain such information as the Department may require and must include the name, address and telephone number of a person or company who will render service or repairs during any hour of the day or night. Permits provided for in this chapter shall be issued by the Police Department and shall be nontransferable.~~

The alarm user/permittee shall supply on his application for a permit the names, addresses and phone numbers of at least two (2) persons to call in the event of an emergency. If the user/permittee has arranged for a service contract, emergency telephone numbers of the service company shall be supplied. The alarm user/permittee is responsible for updating the information provided to the Police Department.

(Code 1994, § 7-4-5; Ord. No. 1996-17, 10-22-1996; Ord. No. 2011-04, § 3, 7-26-2011)

#### **Sec. 7-4-5. - Enforcement and penalties.**

~~Failure to apply or re-apply for a permit as required by this chapter shall constitute a misdemeanor, and shall be punishable as set forth in section 1-3-66.~~

~~Failure to maintain an alarm system in compliance with this chapter, or to otherwise comply with the requirements herein, shall constitute grounds for the suspension or revocation of an alarm permit. The procedures as set forth in section 7-1-15 shall be used in enforcing the City's right to suspend or revoke an alarm permit. Any continued use of an alarm system after a permit for said system is suspended or revoked shall constitute a misdemeanor and shall be punishable as set forth in section 1-3-66.~~

~~For those entities or activities that are required by fire code, State statute, or otherwise, to have an active alarm system in operation, the City will notify the appropriate agency or agencies about the pending discontinuance of the alarm system prior to the suspension or revocation of such an alarm system. No alarm system that is installed in any commercial business, assembly, or multi-family dwelling may be removed or discontinued pursuant to the International Fire Code and International Building Code, as published by the International Code Council, Inc., and as adopted by the South Carolina Building Codes Council.~~

The United States Government, the State, counties, municipal corporations, departments thereof and other governmental entities are exempt from all fees and penalties required by this chapter, ~~provided that the governmental entity must be the owner of the alarm system. In the event the governmental entity contracts with or otherwise arranges with a person, business, or nongovernmental entity for an alarm system, all fees and costs shall be required from the said person, business or nongovernmental entity.~~

~~The making of a false alarm shall constitute a misdemeanor against the alarm user and shall be punishable as follows: Each user is allowed three (3) false alarms during each calendar year at each separately permitted location, for which no fine shall be assessed. Each user shall be subject to a fine of \$100.00 each for the fourth, fifth and sixth false alarms at such location received by the City during such calendar year. Each user shall be subject to a fine of \$200.00 each for the seventh and all subsequent false alarms at such location received by the City during such calendar year. Each user shall be mailed or given a written warning from the Police Department for the first three (3) false alarms during any calendar year.~~

~~Failure of an owner, lessee, manager, or other person pre-designated by the alarm user pursuant to section 7-4-4(c) or section 7-4-5(e), to respond to an alarm activation within thirty (30) minutes or a reasonable time thereafter upon notification by the City Police Department or Fire Department shall constitute a misdemeanor against the alarm user and shall be punishable as follows: Each user shall be subject to a minimum fine of \$100.00 each for the first and second violations. Each user shall be subject to a minimum fine of \$200.00 each for the third and all subsequent violations.~~

Unlawful use of an automatic dialing system in violation of section 7-4-4(g) shall constitute a misdemeanor, and shall be punishable as set forth in Section 1-3-66.

SECTION 2. That this Ordinance take effect and be in full force immediately.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE \_\_\_\_\_ DAY OF October, 2020.

---

Jimmy Carroll, Mayor

(Seal)

Attest:

\_\_\_\_\_  
City Clerk

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Ratification: \_\_\_\_\_

ORDINANCE 2020-12

**AN ORDINANCE TO ENTER INTO A COMMERCIAL LEASE WITH MARKER116, LLC**

WHEREAS, the City owns the Isle of Palms Marina (“Marina”) facility located at 80 41st Avenue in Isle of Palms, SC.;

WHEREAS, the City sought proposals for the use of the existing restaurant site within the Marina in 2019;

WHEREAS, the City received multiple proposals, and following a due diligence period and negotiations, decided upon Marker116, LLC as the next commercial tenant to renovate the restaurant site for the purpose of opening and operating a successful restaurant for the benefit of residents and visitors of the City;

WHEREAS, following several months of negotiation, the City and Marker116, LLC have come to terms on the lease agreement, which are reflected in the attached Exhibit A;

WHEREAS, the City is authorized and desires to enter into a Commercial Lease Agreement with Marker116, LLC;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Councilmembers of the Municipality of Isle of Palms, in Council assembled, that City of Isle of Palms shall enter into the attached Commercial Lease Agreement;

Council authorizes its City Administrator to execute this Lease, and any and all supporting documents to satisfy this directive.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

\_\_\_\_\_  
Jimmy Carroll, Mayor

Attest:

\_\_\_\_\_

Clerk  
First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Ratification: \_\_\_\_\_

**RESTAURANT LEASE**

between

**CITY OF ISLE OF PALMS,**

a political subdivision of the State of South Carolina,

as Landlord

and

**MARKER116, LLC,**

a South Carolina limited liability company,

as Tenant

dated as of

November \_\_\_\_, 2020

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Exhibit D	Restaurant Rider
Exhibit E	Work Letter
Exhibit F	Form of Guaranty

## RESTAURANT LEASE

THIS RESTAURANT LEASE (this “**Lease**”), is made as of the \_\_\_\_ day of November, 2020, by and between CITY OF ISLE OF PALMS, a political subdivision of the State of South Carolina, having an address at c/o City Administrator, 1207 Palm Boulevard, Isle of Palms, SC 29451 (“**Landlord**”), and Marker116, LLC, a South Carolina limited liability company, having an address at [TENANT ADDRESS] (“**Tenant**”). Landlord and Tenant are also sometimes referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

### ARTICLE I DEFINITIONS

**Section 1.01 Definitions.** The terms defined in this Article I shall have the following meanings whenever used in this Lease:

“**Abatement Condition**” shall have the meaning set forth in Section 3.05 hereof.

“**Abatement Period**” shall have the meaning set forth in Section 3.05 hereof.

“**Additional Rent**” shall mean all monetary obligations, other than Base Rent and Percentage Rent, of Tenant to Landlord under the terms of this Lease, whether or not specified as Additional Rent herein.

“**ADA**” shall mean the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 to 12213), as amended by the Americans with Disabilities Act Amendments of 2008 (Pub. L. No. 110-325).

“**Affiliate(s)**” shall mean any partners, members, joint venturers, shareholders, parent company, subsidiary, property managers, directors, officers of a Person or entity, or any entity that directly or indirectly is in Control of, is Controlled by, or is under common Control with such Person or entity.

“**Alteration(s)**” shall mean any change, alteration, addition, or improvement to the Premises or the Building following completion of the initial Tenant’s Improvements.

“**Approved Sale**” shall have the meaning set forth in Section 14.05(d).

“**Assessable Transfer of Interest**” shall mean any conveyance of an interest in all or any portion of the Land or the Marina by Landlord constituting an assessable transfer of interest under the South Carolina Real Property Valuation Reform Act, S.C. Code § 12-37-3110, et. seq., and directly causing a reassessment of the Land or the Marina by the applicable taxing authorities. For the avoidance of doubt, standard, quadrennial reassessments of all or any portion of the Land or the Marina undertaken pursuant to S.C. Code § 12-43-217 shall not constitute an Assessable Transfer of Interest as used in this Lease.

“**Base Rent**” shall have the meaning set forth in Section 3.01 hereof.

“**Binding Extension Notice**” shall have the meaning set forth in Section 27.03(a) hereof.

“**Breakpoint**” shall have the meaning set forth in Section 3.02(a) hereof.

“**Brokers**” shall mean, collectively, Landlord’s Broker and Tenant’s Broker.

“**Building**” shall mean the two-story building comprising part of the Premises as depicted on Exhibit B attached hereto and made a part hereof, including all improvements, fixtures, and appurtenances attached thereto or located thereon, having a street address of 80 41st Avenue, in the City of Isle of Palms, County of Charleston, State of South Carolina, and being located within the Marina.

“**Business Day(s)**” shall mean all days, excluding the following days: Saturdays, Sundays, and all days observed as legal holidays by the State of South Carolina or the US federal government.

“**Certificate of Occupancy**” shall mean a certificate of occupancy or similar document or permit (whether conditional, unconditional, or permanent) that must be obtained from the appropriate governmental authority as a condition to Tenant’s lawful occupancy of the Premises, certifying that the Premises have been improved in compliance with all applicable Laws and the Premises are in a condition suitable for occupancy.

“**Commencement Date**” shall mean November     , 2020.

“**Common Areas**” shall mean all areas and facilities located outside of the Premises and within the exterior boundary line of the Marina that are provided and designated by Landlord from time to time for the general non-exclusive use of Landlord, Tenant, and other tenants of the Marina, and their respective employees, suppliers, shippers, customers, contractors, and invitees, including, without limitation, the Shared Parking Area, loading and unloading areas, trash areas, lighting facilities, fences and gates, roadways, sidewalks, walkways, parkways, driveways, signs, and landscaped areas.

“**Common Area Work**” shall have the meaning set forth in Section 2.04 hereof.

“**Construction Completion Deliverables**” shall have the meaning set forth in Section 2.03(c) hereof.

“**Construction Documents**” shall have the meaning set forth in Section 2.03(a).

“**Control**” shall mean ownership of more than seventy-five (75%) of the outstanding voting stock of a corporation or other majority equity and control interest if not a corporation and the possession of power to direct or cause the direction of the management and policy of such corporation or other entity, whether through the ownership of voting securities, by statute, or according to the provisions of a contract.

“**Detachable FF&E**” shall have the meaning set forth in Section 11.03(c).

“**Embargoed Person**” shall have the meaning set forth in Section 26.17 hereof.

**“Environmental Cure Period”** shall have the meaning set forth in Section 8.03 hereof.

**“Environmental Hold Harmless”** shall have the meaning set forth in Section 8.04 hereof.

**“Environmental Laws”** shall mean all Laws: (a) relating to the environment, human health, or natural resources; (b) regulating, controlling, or imposing liability or standards of conduct concerning any Hazardous Materials; (c) relating to Remedial Action; and (d) requiring notification or disclosure of releases of Hazardous Materials or of the existence of any environmental conditions on or at the Premises, as any of the foregoing may be amended, supplemented, or supplanted from time to time.

**“Event(s) of Default”** shall have the meaning set forth in Section 18.01 hereof.

**“Exclusive Parking Lot”** shall mean the Exclusive Parking Lot identified on Exhibit B attached hereto and made a part hereof, including all improvements, fixtures, and appurtenances attached thereto or located thereon.

**“Executive Order”** shall have the meaning set forth in Section 26.17 hereof.

**“Expiration Date”** shall mean January 31, 2045, as same may be renewed pursuant to ARTICLE XXVII hereof, or such earlier date on which the Term shall sooner end pursuant to any of the terms, covenants, or conditions of this Lease or pursuant to Law.

**“Extension Term”** shall have the meaning set forth in Section 27.01 hereof.

**“Force Majeure”** shall mean whenever a period of time is provided in this Lease for either party to do or perform any act or thing, except for the payment of monies by Tenant, the computation of such period of time shall exclude any delays due to strikes, riots, acts of God, shortages of labor, or any cause or causes, whether or not similar to those enumerated, beyond the parties’ reasonable control or the reasonable control of their agents, servants, employees, and any contractor engaged by them to perform work in connection with this Lease.

**“GAAP”** shall mean US generally accepted accounting principles in effect from time to time.

**“Gross Sales”** shall mean the total gross proceeds of sales/rentals and withdrawals of inventory for own use (including, without limitation, proceeds from the sale of property sold on consignment, including property sold through a marketplace by a marketplace facilitator, proceeds from the sale of tangible personal property, and the fair market value of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business) required to be reported to the South Carolina Department of Revenue pursuant to the ST-3 State Sales and Use Tax Return, or any replacement thereof. For purposes of determining Gross Sales and the corresponding Breakpoint (as defined herein), Gross Sales shall not include any state sales taxes or state or local hospitality taxes, taxes chargeable as a result of the sale of food or wine and other municipal taxes that may

be charged at any time during the Term or any extension thereto or any franchise, occupancy, capital stock, income, or similar tax based on income or profits.

“**Guarantor(s)**” shall mean, individually and collectively, jointly and severally, as applicable, Dave Lorenz, Chrissy Lorenz, Jon Bushnell, and Bridget Bushnell.

“**Hazardous Materials**” shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemicals, materials, or substances within the meaning of any applicable Environmental Law, relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste substance or material, all as amended or hereafter amended including, without limitation, any material or substance which is: (a) designated as a “hazardous substance” pursuant to Section 311 of the federal Water Pollution Control Act (33 U.S.C. § 1317) or equivalent State Laws; (b) defined as a “hazardous waste” pursuant to § 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903) or equivalent State Laws; (c) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601) or equivalent State Laws; (d) petroleum; (e) asbestos or asbestos-containing materials; (f) polychlorinated biphenyls (“PCBs”) or substances or compounds containing PCBs; (g) radon; (h) medical waste; and (i) petroleum products.

“**HVAC**” shall mean heating, ventilating, and air-conditioning systems.

“**Initial Extension Notice**” shall have the meaning set forth in Section 27.01(a) hereof.

“**Initial Tenant Improvements**” shall mean the improvements to the Premises performed by or on behalf of Tenant for the initial build-out of the Premises, as more particularly described in the Work Letter.

“**Insurance Premiums**” shall mean the premiums or other costs of any insurance policies or coverages required to be maintained (subject to reimbursement by Tenant pursuant to Section 15.01) by Landlord pursuant to the terms of this Lease and any deductibles paid by Landlord in the event of a claim under any of such insurance policies.

“**Interest Rate**” shall mean the Prime Rate plus ten percent (10%) *per annum* but, in no event, in excess of the maximum permissible interest rate then in effect in the State.

“**Land**” shall mean all that certain plot, piece, or parcel of land on which the Marina is located, in the City of Isle of Palms, County of Charleston, State of South Carolina, and more particularly described on Exhibit A attached hereto and made a part hereof.

“**Landlord**” shall mean the entity specified in the preamble of this Lease and any successor or assign of such entity, subject to Section 26.10.

“**Landlord Parties**” shall have the meaning set forth in Section 15.12 hereof.

“**Landlord Redevelopment Notice**” shall have the meaning set forth in Section 27.01 hereof.

**“Landlord’s Broker”** shall mean Jon Chalfie, broker in charge of Landmark Enterprises.

**“Law(s)”** shall mean all laws, statutes, and ordinances (including building codes, zoning ordinances, and regulations), rules, orders, directives, and requirements of all federal, state, county, municipal departments, bureaus, boards, agencies, offices, commissions, and other subdivisions thereof, or of any official thereof, or of any governmental, public or quasi-public authority, whether now or hereafter in force, which may be applicable to the Land, the Marina, the Building, or the Premises, or any part thereof, including, without limitation, the ADA, the Liquor Control Laws, the OSH Act, and any and all Superior Instruments.

**“Lease”** shall have the meaning set forth in the preamble of this Lease.

**“Lease Extension”** shall mean have the meaning set forth in Section 27.01 hereof.

**“Lease Extension Amendment”** shall have the meaning set forth in Section 27.03(c) hereof.

**“Lease Year”** shall mean: (a) initially, the period that commences on the Rent Commencement Date and that ends on December 31, 2021; and (b) thereafter, each period of twelve (12) calendar months that commences on January 1st and that ends on the next following December 31st.

**“Liquor Control Laws”** shall mean any and all applicable federal or State laws, regulations, and local ordinances relating to the service of alcohol, all as amended or hereinafter amended.

**“Marina”** shall mean the Isle of Palms Marina complex located on the Land, including the Premises, all portions of the Land leased to other tenants, and the Common Areas.

**“Opening Date”** shall mean the date on which Tenant opens for business at the Premises.

**“OSH Act”** shall mean the Occupational Safety and Health Act (29 U.S.C. §§ 651 to 678), as amended from time to time.

**“Outdoor Seating Area”** shall mean the Outdoor Seating Area identified on Exhibit B attached hereto and made a part hereof, including all improvements, fixtures, and appurtenances attached thereto or located thereon.

**“Party/Parties”** shall have the meaning set forth in the preamble of this Lease.

**“Patriot Act”** shall have the meaning set forth in Section 26.17 hereof.

**“Percentage Rent”** shall have the meaning set forth in Section 3.02(a) hereof.

**“Permitted Transfer”** shall have the meaning set forth in Section 14.05 hereof.

**“Permitted Transferee”** shall have the meaning set forth in Section 14.05 hereof.

“**Permitted Use**” shall mean the operation of a full table service, full-service restaurant and bar for on-site dining and/or private events, including the sale of beer, wine, spirits and other alcoholic beverages, with carryout food service, catering, food delivery services, ancillary office use, the sale of other products such as t-shirts, hats, and other “souvenir” merchandise with the logo or other promotional material or images related to the Tenant’s restaurant printed on such merchandise, and for no other purpose. For purposes of this section that defines “Permitted Use,” a “private event” shall include event space at any location within or on the Premises for weddings, corporate events or retreats, and other venue rentals that Tenant shall determine, in its complete and sole discretion, to be a productive use of any rooms, halls, or other spaces within or on the Premises; provided, however, that the principal use shall be for a sit down, full service restaurant, and Tenant shall not have a counter for service of food other than carryout and that any area devoted in whole or in part to carryout services and/or office use shall not be a material portion of the Premises.

“**Person(s) or person(s)**” shall mean any natural person or persons, a limited liability company, a limited partnership, a partnership, a corporation, and any other form of business or legal association or entity.

“**Personal Property**” shall mean all tangible personal property now or at any time hereafter located on or at the Premises or used in connection with the Premises, including, without limitation, all trade fixtures, machinery, appliances, furniture, equipment, and inventory.

“**Premises**” shall mean the Building, the Outdoor Seating Area, the Restaurant Dock, and the Exclusive Parking Lot, all as depicted on Exhibit B attached hereto and made a part hereof, together with all improvements and appurtenances thereto.

“**Prevailing Market Rental Rate**” shall have the meaning set forth in Section 27.04 hereof.

“**Prevailing Party**” shall have the meaning set forth in Section 26.16 hereof.

“**Primary Lease Term**” shall mean the initial term of this Lease beginning on the Commencement Date and ending on January 31, 2045.

“**Prime Rate**” shall mean the prime rate of U.S. commercial banks as published in *The Wall Street Journal* (or, if more than one such rate is published, the average of such rates). Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a 360-day year with twelve (12) months of thirty (30) days each.

“**Private Parking Agreement**” shall mean that certain [**PARKING CONTRACT**] dated [**DATE**] by and between Tenant and the Private Parking Lot Operator entitling Tenant to use the Private Parking Lot.

“**Private Parking Lot**” shall mean the Private Parking Lot identified on Exhibit C attached hereto and made a part hereof, including all improvements, fixtures, and appurtenances attached thereto or located thereon.

**“Private Parking Lot Operator”** shall mean Marina Joint Ventures, Inc., a South Carolina corporation, its successors and assigns, or such other Person who may now or at any time in the future own, lease, license, manage, or operate the Private Parking Lot.

**“Prohibited Person”** shall have the meaning set forth in Section 26.17 hereof.

**“Proportionate Share”** shall have the meaning set forth in Section 5.01(a) hereof.

**“Qualified Appraiser”** shall mean an real estate appraiser that: (a) is duly licensed in the State; (b) has at least ten (10) years’ experience, on a full-time basis, leasing restaurant space in the same general geographic area as that in which the Premises are located, and at least ten (10) years of experience in the commercial leasing industry; and (c) is independent and has no then-pending or past brokerage relationship with any or all of Landlord, Tenant, and any Affiliates of either or both of Landlord and Tenant.

**“Quiet Enjoyment”** shall have the meaning set forth in ARTICLE XXIV hereof.

**“Real Estate Taxes”** shall mean any form of real estate tax or assessment, general, special, ordinary, or extraordinary imposed upon the Building or any portion of the Premises by any authority having the direct or indirect power to tax, including any city, state, or federal government, or any school, sanitary, fire, street, drainage, or other improvement district thereof, levied against any legal or equitable interest of Landlord in the Building or any portion of the Premises, including, without limitation, any Solid Waste User Fee imposed upon the Premises by the County of Charleston. The term “Real Estate Taxes” shall also include any tax, fee, levy, assessment, or charge, or any increase therein, imposed by reason of events occurring, or changes in applicable zoning, municipal, county, state, and federal laws, ordinances, and regulations, and any covenants or restrictions of record taking effect, during the Term of this Lease, whether or not contemplated by the parties hereto. Notwithstanding the foregoing, Real Estate Taxes shall specifically exclude the following: (a) any and all taxes on Landlord’s income; (b) franchise taxes or corporate or unincorporated business taxes; (c) estate, gift, succession, or inheritance taxes; (d) any capital gains taxes; and (e) any increase in Real Estate Taxes which, pursuant to Section 5.04 hereof, Tenant shall not be obligated to pay.

**“Rejection Notice”** shall have the meaning set forth in Section 27.03(a) hereof.

**“Remedial Action”** shall mean the investigation, response, clean up, remediation, prevention, mitigation, or removal of any Hazardous Materials necessary to comply with any Environmental Laws.

**“Rent”** shall collectively mean Base Rent, Percentage Rent, and Additional Rent.

**“Rent Commencement Date”** shall mean August 1, 2021.

**“Rent Payment Address”** shall mean City of Isle of Palms, c/o City Administrator, 1207 Palm Boulevard, Isle of Palms, SC 29451.

“**Restaurant Dock**” shall mean the Restaurant Dock identified on Exhibit B attached hereto and made a part hereof, including all improvements, fixtures, and appurtenances attached thereto or located thereon.

“**Restaurant Rider**” shall mean the rules and regulations governing Tenant’s operation of a restaurant on the Premises, attached hereto as Exhibit D and made a part hereof, as may be amended from time to time.

“**Secured Area**” shall have the meaning set forth in Section 7.04(c) hereof.

“**Shared Parking Lot**” shall mean the Shared Parking Lot identified on Exhibit C attached hereto and made a part hereof, including all improvements, fixtures, and appurtenances attached thereto or located thereon.

“**Sound Level Limit**” shall have the meaning set forth in Section 7.02 hereof.

“**State**” shall mean the State of South Carolina.

“**Structural Alterations**” shall mean any Alterations involving the structural, mechanical, electrical, plumbing, fire/life safety, or HVAC systems of the Premises, the Building, and/or the Marina.

“**Subtenant**” shall have the meaning set forth in Section 3.02(b) hereof.

“**Superior Instruments**” shall mean any reciprocal easement, covenant, restriction, restriction of easement, association requirements, or other agreement of record affecting the Land, the Building, and/or the Marina as of the date of this Lease or subsequent thereto.

“**Tenant**” shall mean the entity identified in the preamble of this Lease, including any successor to the original Tenant pursuant to a Transfer in accordance with ARTICLE XIV.

“**Tenant Improvements**” shall mean Alterations to the Premises performed by or on behalf of Tenant.

“**Tenant’s Broker**” shall mean Jonathan Bushnell, licensed broker at Harbourtowne Real Estate.

“**Tenant’s Contractor**” shall have the meaning set forth in Section 2.03 hereof.

“**Tenant’s Equipment**” shall have the meaning set forth in Section 26.14 hereof.

“**Tenant Parties**” shall mean Tenant’s officers, agents, employees, partners, successors, and assigns.

“**Tenant’s Signage**” shall have the meaning set forth in Section 7.03 hereof.

“**Term**” shall mean the Primary Lease Term and the Extension Term (provided Tenant is entitled to and properly exercises the Lease Extension).

“**Third Party**” shall have the meaning set forth in Section 26.14 hereof.

“**Tourist Season**” shall mean, during any Lease Year, the period of time from Memorial Day weekend until and including Labor Day weekend.

“**Transfer**” shall have the meaning set forth in Section 14.01 hereof.

“**Work Letter**” shall mean the work letter governing the Initial Tenant Improvements, attached hereto as Exhibit E and made a part hereof.

## **ARTICLE II PREMISES**

**Section 2.01 Lease of Premises for Lease Term.** Subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the Term, subject to earlier termination pursuant to any of the terms, covenants, or conditions of this Lease or pursuant to Law. Landlord shall deliver the Premises to Tenant on the Commencement Date in broom clean condition and clean and free of debris.

**Section 2.02 Acceptance of Premises.** Tenant hereby acknowledges that except as expressly set forth in this Lease: (a) Tenant has had the opportunity to inspect the Premises and accepts the Premises in its “**AS IS, WHERE IS**” condition; (b) the Premises are acceptable for Tenant’s intended Permitted Use; (c) neither Landlord, Landlord’s Broker, nor any of Landlord’s agents, has made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease; and (d) TENANT EXPRESSLY WAIVES ANY WARRANTY OF CONDITION OR OF HABITABILITY OR SUITABILITY FOR OCCUPANCY, USE, HABITATION, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY, EXPRESS OR IMPLIED, RELATING TO THE PREMISES.

### **Section 2.03 Initial Tenant Improvements.**

(a) Before performing the Initial Tenant Improvements, Tenant shall (i) obtain Landlord’s written approval of Tenant’s plans and specifications (including, without limitation, Alterations, signs, colors, materials, and lighting for the Premises), site plan, architectural, landscaping and engineering drawings, project budget, and other material construction-related documents prepared in conformance with the Work Letter (collectively, the “**Construction Documents**”); (ii) deposit with Landlord certificates of insurance as required by this Lease (including without limitation, a builder’s risk insurance policy as required under Section 15.08 hereof); and (iii) comply with all other requirements which may be set forth herein or reasonably imposed by Landlord. Landlord shall approve or reject the Construction Documents within thirty (30) days of receipt, such approval not to be unreasonably withheld, conditioned, or delayed. If the Construction Documents are not approved by Landlord, Tenant shall, within fifteen (15) days after receipt of notice Landlord’s disapproval, cause such Construction Documents to be revised to the extent necessary to obtain Landlord’s approval and resubmitted for Landlord’s approval. Landlord acknowledges that the project budget submitted as part of

the Construction Documents are estimates, and, so long as the Tenant completes the work outlined in the Tenant's Plans and Specifications, the final project costs may be higher or lower than what was originally submitted as part of Tenant's compliance with this Section 2.03. Should the Parties be unable to agree on all or any of the Construction Documents for the Initial Tenant Improvements within ninety (90) days of the Commencement Date, then either Party shall have the option, in its complete and sole discretion, to terminate this Lease upon written notice to the other Party, and upon such termination the Tenant and all Guarantors shall be released and discharged from all obligations and any monies submitted by Tenant upon the execution of this Lease shall be refunded to Tenant.

(b) Tenant shall commence the Initial Tenant Improvements within thirty (30) days after receipt of Landlord's approval of the Construction Documents and diligently proceed with construction so as to complete the work contemplated thereby, install all store and trade fixtures, equipment, stock in trade, merchandise, and inventory, and open for business in the Premises no later than the Rent Commencement Date. All Initial Tenant Improvements must be in conformance with the building codes of the State, other applicable governmental authorities and all other Laws. Tenant's contractor must be licensed (as required by the State or municipality), and registered, bonded, and insured in the State ("**Tenant's Contractor**"). At all times during construction of the Initial Tenant Improvements, Landlord shall be entitled to oversee the construction process, to conduct on-site inspections of the Premises to ensure compliance of the Initial Tenant Improvements with the Construction Documents, and to designate third party representatives or agents in furtherance thereof.

(c) Within thirty (30) days after the Opening Date, Tenant shall deliver to Landlord the following (collectively, "**Construction Completion Deliverables**"):

(i) Tenant's affidavit stating that the Initial Tenant Improvements to be performed by Tenant pursuant to the terms of this Lease has been completed in substantial compliance with the Work Letter and the Construction Documents approved by Landlord, and that no security interest under the Uniform Commercial Code or chattel mortgages are outstanding or have been filed, it being intended that any such affidavit may be relied upon by Landlord and that any deliberate misstatement by Tenant shall constitute an Event of Default hereunder;

(ii) An affidavit of Tenant's Contractor for the Initial Tenant Improvements stating that all subcontractors, laborers, and materialmen who have performed work on or furnished materials to the Premises (whose names and addresses shall be recited in the affidavit) have been paid in full and that all liens therefor that have or might be filed have been discharged of record or waived;

(iii) A complete release and waiver of lien with respect to the Premises from Tenant's Contractor for the Initial Tenant Improvements, or in lieu thereof, an attorney's certification that the lien period for the work performed on Tenant's

behalf in the Premises has expired and that no liens in connection therewith have been filed;

(iv) All certificates and approvals with respect to the work performed by Tenant or on Tenant's behalf that may be required by any governmental authorities as a condition for the issuance of the Certificate of Occupancy; and

(v) A copy of the Certificate(s) of Occupancy for the Premises.

**Section 2.04 Common Areas.** All Common Areas provided by Landlord for the general use in common by all tenants in the Marina shall be at all times subject to the exclusive control and management of Landlord, save, excepting and subject to any specific use provided by Landlord to Tenant as provided herein, if any. Landlord hereby grants to Tenant for the benefit of Tenant and its employees, suppliers, shippers, customers, contractors, and invitees, during the Term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof and Superior Instruments governing the use of the Marina. Under no circumstances shall the right granted herein be deemed to include the temporary or permanent right to store any property in the Common Areas. Provided such actions of Landlord do not cause a material adverse effect on Tenant's rights under this Lease or Tenant's use and operation of the Premises for the Permitted Use, the Landlord shall have the right, from time to time, to: (a) establish, modify, amend, and enforce reasonable rules and regulations regarding the Common Areas; (b) hire, appoint, designate or authorize third parties to direct the management, operation, maintenance and repair of the Common Areas; (c) make changes to the Common Areas, including, without limitation, changes in the location, size, shape, and number of driveways, entrances, ingress, egress, direction of traffic, loading and unloading areas, landscaped areas, and walkways, so long as reasonable access to the Premises remains available; (d) close temporarily any of the Common Areas for maintenance purposes, so long as reasonable access to the Premises remains available; (e) add additional buildings and improvements to the Common Areas; and (f) do and perform such other acts and make such other changes in, to, or with respect to the Common Areas as Landlord may, in the exercise of sound business judgment, deem to be appropriate (collectively, "**Common Area Work**"). Notwithstanding the foregoing, in the event Tenant is prevented from effectively conducting its business in the ordinary course as such business existed prior to the commencement of any Common Area Work and does not conduct its business in the Premises as a result of any failure by Landlord to provide access to the Premises or due to any Common Area Work which continues for more than thirty (30) consecutive days, then Base Rent and Additional Rent shall be proportionately abated until such interference is eliminated.

**Section 2.05 Outdoor Seating Area.** Landlord agrees that the Outdoor Seating Area is and shall be part of the Premises leased to Tenant, subject to the terms and conditions of this Lease. Prior to utilizing the Outdoor Seating Area, Tenant shall, at its sole cost and expense, diligently pursue and obtain any and all local governmental permits, licenses, or variances necessary to open and operate the Outdoor Seating Area for the Permitted Use in compliance with all applicable Laws. Landlord shall not be responsible for obtaining any of said governmental permits or approvals. Landlord shall however, at no cost to Landlord, cooperate

with and provide assistance to Tenant as reasonably necessary to obtain all governmental permits including, but not limited to, signing applications and other documents that require Landlord's signature within thirty (30) days after a request from Tenant. Obtaining the necessary approvals to operate the Outdoor Seating Area shall not be a condition precedent to Tenant's obligations under this Lease but shall be required before Tenant is permitted to use and operate the Outdoor Seating Area for the Permitted Use. Landlord and Tenant acknowledge and agree that live music shall be permitted within the Outdoor Seating Area, provided such live music is at all times in compliance with the Sound Level Limit.

**Section 2.06 Exclusive Parking Lot.** Landlord agrees that the Exclusive Parking Lot is and shall be part of the Premises leased to Tenant, subject to the terms and conditions of this Lease. Tenant shall be entitled to exclusive use of the Exclusive Parking for use as a parking lot by Tenant's patrons, employees, agents, customers, contractors, licensees and invitees and any other parties that Tenant determines are necessary for the operation of Tenant's business in Tenant's complete and sole discretion.

**Section 2.07 Restaurant Dock.** Landlord agrees that the Restaurant Dock is and shall be part of the Premises leased to Tenant, subject to the terms and conditions of this Lease. Tenant shall be entitled to exclusive use of the Restaurant Dock for the purpose of temporary, daily docking of boats and other watercraft by Tenant's patrons, employees, agents, customers, contractors, licensees, and invitees. Under no circumstance shall more than one (1) boat or other watercraft be permitted to dock overnight on or along the Restaurant Dock without the prior, written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. However, Tenant shall be expressly authorized to permit one (1) boat to dock overnight without obtaining the Landlord's permission pursuant to this Section 2.07, provided no boat docked overnight at the Restaurant Dock may extend waterward beyond the mooring piles into the one hundred twenty-five foot (125') channel offset. Patrons, licensees and invitees of Tenant using the Restaurant Dock in accordance with this Lease shall be entitled to use all floating docks or elevated walkways connecting the Restaurant Dock to the land as may be necessary for pedestrian access, ingress and egress to and from the Restaurant Dock. Landlord covenants and agrees to replace all damaged or missing dock bumpers and boat fenders from the Restaurant Dock prior to the Rent Commencement Date.

### **ARTICLE III PAYMENT OF BASE RENT, PERCENTAGE RENT, AND ADDITIONAL RENT**

**Section 3.01 Base Rent.** Tenant covenants and agrees to pay base rent ("**Base Rent**") to Landlord throughout the Primary Lease Term of this Lease as follows:

- (a) For the period commencing on the Rent Commencement Date and ending on December 31, 2021, an amount equal to \$40,000.00 *per annum*, payable in (5) equal monthly installments of \$8,000.00 per month;
- (b) For the period commencing on January 1, 2022, and ending on the December 31, 2024, an amount equal to \$100,000.00 *per annum*, payable in equal monthly installments of \$8,333.33 per month;

(c) For the period commencing on January 1, 2025, and ending on the December 31, 2025, an amount equal to \$120,000.00 *per annum*, payable in equal monthly installments of \$10,000.00 per month; and

(d) For the period commencing on January 1, 2026, and ending on the Expiration Date or the Primary Lease Term, an amount equal to one hundred two percent (102%) of the Base Rent payable for the immediately preceding Lease Year *per annum*, payable in equal monthly installments per month.

### **Section 3.02 Percentage Rent.**

(a) In addition to Base Rent, Tenant covenants and agrees to pay percentage rent (“**Percentage Rent**”) to Landlord throughout the Term of this Lease an amount equal to seven percent (7%) of Gross Sales for each Lease Year or partial Lease Year in excess of the Break Point. Percentage Rent shall be due and payable in each Lease Year on the first day of each quarter immediately following the quarter during which Gross Sales exceeds the Breakpoint for such Lease Year and shall be paid quarterly thereafter on all additional Gross Sales made during the remainder of such Lease Year, such payments to be made concurrently with the submission by Tenant to Landlord of the written statement of monthly Gross Sales as provided in Section 3.02(d) hereof. Quarterly payments shall be made on April 1, July 1, October 1, and January 2 during the term of this Lease. For the first Lease Year until and including the twelfth Lease Year expiring on December 31, 2032, the “**Breakpoint**” shall be \$5,000,000.00. For each Lease Year or partial Lease Year thereafter, the “**Breakpoint**” shall be \$4,000,000.00. For purposes of clarity, all Gross Sales up to, but not exceeding the Breakpoint shall be exempt from the Percentage Rent calculation, and Percentage Rent shall only be calculated on the Gross Sales that exceed the Breakpoint as outlined herein.

(b) If for the purpose of making sales or rentals of goods or provision of services, Tenant subleases, licenses, or in any manner allows use of space in the Premises (to the extent permitted hereunder) to another (each a “**Subtenant**”), Tenant is responsible for ensuring that Subtenant’s books and records conform to the requirements in this Lease. Tenant shall include in its monthly report of Gross Sales, but separately noted, the Gross Sales of Subtenant, if any. In addition, Tenant shall report as additional Gross Sales all rentals, commissions, revenue, income, or other compensation received by Tenant from Subtenant as payment for use of the Premises, or part of the Premises. The failure of any Subtenant to maintain its books and records of account as required in this subsection, or to report correctly Gross Sales, shall be deemed a failure on the part of Tenant to conform to the requirements of this Lease.

(c) No later than the twenty-five (25) days after the end of each month during the Term, Tenant shall provide Landlord a copy of the ST-3 State Sales and Use Tax Return filed with the South Carolina Department of Revenue evidencing Tenant’s Gross Sales at the Premises for the preceding month and shall pay to Landlord the amount due as Percentage Rent for such preceding month. Within sixty (60) days after the end of each Lease Year or partial Lease Year, Tenant shall provide Landlord a statement showing the

Gross Sales for each such Lease Year. If such statement shows an amount owing by Tenant that is less than the Percentage Rent paid by Tenant for the Lease Year, the excess shall be held by Landlord and credited against the next payment of Percentage Rent; however, if the Term has ended and Tenant was not in default at its end, Landlord shall refund the excess to Tenant. If such statement shows an amount owing by Tenant that is more than the Percentage Rent previously paid by Tenant for such Lease Year, Tenant shall pay the deficiency to Landlord within thirty (30) days after the delivery of such statement. Each statement of Gross Sales furnished by Tenant shall be certified as correct by a certified public accountant licensed in the State (and shall show the computations of Gross Sales for Tenant and each of its Subtenants separately). Any intentional or deliberate misrepresentation by Tenant of its Gross Sales in any ST-3 State Sales and Use Tax Return, statement of Gross Sales, or other document or material provided to Landlord shall constitute an Event of Default hereunder.

(d) Tenant and any Subtenant, as a condition of their subtenancy, agree to keep records of Gross Sales for at least two (2) years after the expiration of the respective Lease Year (including after the end of the Term); such records shall be kept in accordance with GAAP. Landlord and/or its agents may at reasonable times, and upon ten (10) days prior written notice to Tenant or Subtenant, inspect and audit such records at the Premises or such other location as Tenant or Subtenant may maintain such records within two (2) years after the period in question. If an audit or examination by Landlord or its representative discloses that Tenant or Subtenant has failed to report all Gross Sales accurately and that the total amount of the underreported Gross Sales exceeds five percent (5%) of the Gross Sales previously reported by Tenant or Subtenant for any period examined, or the total amount of the underreported Gross Sales results in Tenant owing additional Percentage Rent in excess of five percent (5%), Tenant shall reimburse Landlord for all reasonable and documented expenses incurred by Landlord in performing the examination, in addition to all additional Percentage Rent found to be owed by Tenant or Subtenant under this Section.

(e) Notwithstanding the payment of Percentage Rent, it is expressly agreed that Landlord is not to be construed as a partner of Tenant in the conduct of Tenant's business. The relationship between the Parties to this Lease is and shall at all times remain that of landlord and tenant.

### **Section 3.03 Time and Manner of Base Rent and Additional Rent Payments.**

(a) Tenant shall pay Base Rent to Landlord in equal monthly installments, in advance, on the first day of each month commencing on the Rent Commencement Date and thereafter for the remainder of the Term, without notice or demand.

(b) Base Rent due for any period of less than twelve (12) months (or any monthly installment of Base Rent due for any period of less than a full month) shall be appropriately apportioned based upon a 360-day year (or based upon the number of days in such month).

(c) Tenant shall pay to Landlord all Additional Rent that is payable to Landlord pursuant to the terms and conditions of this Lease within thirty (30) days after written demand therefor from Landlord, unless a different time period is specified in this Lease.

(d) All Rent shall be paid, without notice or demand, except as otherwise specifically provided in this Lease:

(i) by good check drawn on an account at a bank in currency that at the time of payment is legal tender for public and private debts in the United States of America, made payable to Landlord at Landlord's Rent Payment Address or to such other parties and at such other addresses as Landlord shall direct by written notice to Tenant from time to time;

(ii) at Landlord's or Tenant's option (at any time upon not less than ten (10) days prior written notice), by wire transfer of immediately available funds to an account at a bank designated by Landlord in writing; or

(iii) by any other method reasonably requested by Landlord.

#### **Section 3.04 Late Payment.**

(a) If any payment of Rent or any other charge or expense payable under this Lease is not received by Landlord within ten (10) days after its due date, such payment shall be subject to a late payment fee of five percent (5%) of the unpaid amount, or such lesser amount as may be the maximum amount permitted by Law, in order to compensate Landlord for its administrative expenses and not as a penalty, until such payment is received by Landlord.

(b) If any payment of Rent or any other charge or expense payable under this Lease is not received by Landlord within ten (10) days of the applicable due date, Tenant shall pay to Landlord, as Additional Rent, in addition to the late charge described above, interest on the overdue amount to Landlord at the Interest Rate or the maximum rate permitted under the laws of the State, whichever is lower. Such overdue payment shall bear interest from the applicable due date, without regard to any grace period, until the date such payment is received by Landlord. Such payment shall be in addition to, and not in lieu of, any other remedy Landlord may have.

(c) Tenant acknowledges that late payment by Tenant to Landlord of Rent or any other charge or expense payable under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult to fix. The parties agree that the late charge and default interest represent a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment of Rent or any other charge or expense payable under this Lease by Tenant. Acceptance of any late charge or default interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

**Section 3.05 Abatement of Base Rent.** Notwithstanding anything in this Lease to the contrary, in the event of a mandate, order or requisition by federal, state or local governmental authority, for any reason, requiring Tenant to not be open for business for more than thirty (30) total days (the “**Abatement Condition**”) in any twelve-month period in which the first day on which an Abatement Condition occurs shall be the first day of such twelve-month period (the “**Abatement Period**”), the Base Rent payable by Tenant shall abate at all times following the 30<sup>th</sup> day during which the Abatement Condition exists, but in no event shall Base Rent abate for more than ninety (90) days in such Abatement Period (with such first thirty (30) days during which the Abatement Condition exists not being calculated in determining the maximum of ninety (90) days in which Base Rent may abate in any Abatement Period). In addition, all rent abated in accordance with this Section 3.05 shall be discharged and shall not be construed to be deferred or added to any Base Rent or Additional Rent at any later point in the Term of this Lease, or any extension thereto, nor should such rent abatement be construed as a default by Tenant pursuant to this Lease. Notwithstanding anything in this Section 3.05 to the contrary, if Tenant has insurance covering its obligations to pay any portion of the Base Rent due during any period of abatement, Base Rent shall not abate for that portion of the Base Rent covered by such insurance.

#### **ARTICLE IV NET LEASE**

This Lease constitutes what is commonly known as a “net-net-net” or “triple net lease.” It is the purpose and intention of the parties to this Lease that the Rent due hereunder shall be absolutely net to Landlord and that this Lease shall yield, net to Landlord, the Base Rent provided in this Lease. Notwithstanding the foregoing, Tenant shall not be responsible for costs not directly related to the operation of the Premises or incurred by Landlord solely as a result of its ownership of the Premises, including but not limited to, management fees, attorneys’ fees (except as otherwise set forth herein), salaries, bonuses or payments of any other kind to employees, officers, financial advisors, accountants, and executives of Landlord, the cost of any repairs, alterations, additions, changes, replacements and other items which are made in order to prepare for a new tenant’s occupancy, interest on debt or amortization payments on any mortgage, all leasing expenses, including any real estate brokerage commissions or other costs (including concessions) incurred in procuring tenants, or any income, inheritance, or excise taxes assessed or levied upon Landlord.

#### **ARTICLE V TAXES**

**Section 5.01 Real Estate Taxes.** Beginning on the issuance of a Certificate of Occupancy for the Building following completion of the Initial Tenant Improvements and at all times during the Term thereafter, Tenant shall pay all Real Estate taxes in accordance with the following terms and conditions whenever all or any portion of the Premises or the interest of Landlord and/or Tenant therein shall be subject to Real Estate Taxes:

(a) For all Real Estate Taxes for which Landlord is billed by the applicable taxing authority as the fee simple owner of the entire Marina, Tenant shall pay directly to the applicable taxing authority or otherwise discharge its Proportionate Share of such Real Estate Taxes prior to delinquency. For purposes of this Section 5.01(a), Tenant's "**Proportionate Share**" of such Real Estate Taxes shall be the number, expressed as a percentage, that is derived by dividing the estimated market value of the Premises (inclusive of the Building, the Outdoor Seating Area, the Restaurant Dock, and the Exclusive Parking Lot, as applicable) by the estimated market value of the entire Marina. Landlord shall establish Tenant's Proportionate Share for all such Real Estate Taxes in its good faith, commercially reasonable discretion based upon the allocation of the estimated market value of the entire Marina between the Premises and the property, buildings and other improvements on the Land located outside of the Premises, as determined by the applicable taxing authority in the tax bills issued for such Real Estate Taxes. For the avoidance of doubt, under no circumstance shall Tenant be responsible for the payment of any Real Estate Taxes pursuant to this Section 5.01(a) that are attributable to any increase in the estimated market value of property, buildings and other improvements on the Land located outside of the Premises.<sup>1</sup>

(b) For all Real Estate Taxes for which Tenant is billed directly by the applicable taxing authority as the owner of a leasehold interest in all or any portion of the Premises, Tenant shall pay directly to the applicable taxing authority or otherwise discharge all such Real Estate Taxes prior to delinquency.

(c) Tenant shall submit evidence of the payment or discharge of all Real Estate Taxes required to be paid by Tenant to Landlord promptly following such payment or discharge. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord) and hold Landlord and the Premises harmless from and against all liability, cost and expense for non-payment of any Real Estate Taxes payable by Tenant hereunder, and all such interest or other penalties, and from any sale or other proceeding to enforce payment of such items, and shall reimburse Landlord for all attorneys' fees and all costs and expenses reasonably incurred by Landlord in defending or otherwise protecting against the same. In the event Tenant fails to pay any Real Estate Taxes required to be paid by Tenant hereunder when due, Landlord shall have the right to pay such Real Estate Taxes, and Tenant shall pay to Landlord such amounts, plus interest at the Interest Rate, upon demand from Landlord. Landlord shall deliver within ten (10) days of receipt thereof all invoices, bills, statements, notices and other instruments

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<sup>1</sup> NTD: The last sentence of Section 5.01(a) should provide assurance that Tenant will not be responsible for the payment of any increase in Real Estate Taxes resultant from improvements to the other areas of the Marina. However, Tenant will be responsible for any increase in Real Estate Taxes resultant from an increase in the estimated market value of the Premises from improvements to the restaurant, etc., which the City considers a fair and reasonable allocation of the property tax burden for the marina. As a threshold matter, a forty percent cap is not workable because the restaurant/restaurant dock already accounted for ~41-43% of the Real Estate Taxes for marina during 2017-2019. Regardless, a cap should not be needed in this instance given that Tenant will only ever be responsible for taxes imposed on the assets that it controls, i.e., the leased Premises and nothing else.

relating to the payment of Real Estate Taxes assessed with respect to the Premises that Landlord may receive from any taxing authority. Landlord shall reimburse Tenant a prorated amount for all Real Estate Taxes actually paid by Tenant for any period prior to the issuance of a Certificate of Occupancy for the Building following completion of the Initial Tenant Improvements.

(d) Notwithstanding anything in this Section 5.01 to the contrary, Landlord may, in its sole and absolute discretion, elect to pay all or certain of the Real Estate Taxes itself, in which event Tenant shall reimburse Landlord for such Real Estate Taxes paid by Landlord within thirty (30) days after receipt of written request therefor.

**Section 5.02 Personal Property Taxes.** Tenant shall pay, prior to delinquency, all taxes charged against Tenant's Personal Property. Tenant shall use all reasonable efforts to have Tenant's Personal Property taxed separately from the Premises or the Marina. If any of Tenant's Personal Property is taxed with the Building or the Marina, Tenant shall pay within ten (10) days after written notice from Landlord the taxes attributable to Tenant's Personal Property to Landlord as Additional Rent.

**Section 5.03 Landlord's Right to Contest Real Estate Taxes.** Landlord may, but is not obligated to, contest the amount or validity, in whole or in part, of any Real Estate Taxes. If Real Estate Taxes are reduced (or if a proposed increase is avoided or reduced) because Real Estate Taxes are contested, the reasonable costs and expenses incurred in connection with such contest, including without limitation reasonable attorneys' fees, up to the amount of any Real Estate Tax reduction obtained in connection with the contest or any Real Estate Tax increase avoided or reduced in connection with the contest, as the case may be, shall be payable by Tenant as Additional Rent within ten (10) days after written notice from Landlord. Tenant may not contest Real Estate Taxes except as set forth below. Tenant shall be credited with its equitable share of any refund of Real Estate Taxes, to the extent of the Real Estate Taxes actually paid by Tenant and, if applicable, such refund shall be made to Tenant within thirty (30) days after Landlord's receipt thereof. Landlord shall provide Tenant with a copy of any reappraisal of the Building or the Marina within thirty (30) days after Landlord's receipt of said reappraisal. If any reappraisal of the Building or the Marina reveals that Landlord has a basis to contest an increase of the Real Estate Taxes, and Landlord has elected not to contest the Real Estate Taxes, then Tenant shall have the right to contest the Real Estate Taxes on behalf of Landlord; provided, however, that such contest shall be at Tenant's sole cost and expense.

**Section 5.04 Increase in Real Estate Taxes from Sale.** Notwithstanding anything in this Lease to the contrary, Tenant shall not be responsible for the payment of any increase in Real Estate Taxes directly caused by an Assessable Transfer of Interest of all or any portion of the Land or the Marina. Upon the occurrence of an Assessable Transfer of Interest of all or any portion of the Land or the Marina, any increase in Real Estate Taxes directly caused by such Assessable Transfer of Interest shall be borne by Landlord. Landlord hereby covenants and agrees to pay to the applicable taxing authority, as and when due, the amount of any increase in Real Estate Taxes directly caused by an Assessable Transfer of Interest for each Lease Year from and after the occurrence of such Assessable Transfer of Interest; provided that Tenant shall remain responsible for the payment of any increase in Real Estate Taxes resultant from any

standard, quadrennial reassessment of all or any portion of the Land or the Marina undertaken pursuant to S.C. Code § 12-43-217.

## **ARTICLE VI GUARANTY OF LEASE**

Contemporaneously with the execution of this Lease, Tenant shall cause each of the Guarantors to execute and deliver to Landlord a personal guaranty in the form attached hereto as Exhibit F guaranteeing the payment and performance by Tenant of all of the obligations under this Lease.

## **ARTICLE VII USE**

**Section 7.01 Permitted Use.** Tenant shall use the Premises only for the Permitted Use and shall not use the Premises for any other purposes. Tenant shall obtain and pay for all permits, including a Certificate of Occupancy and liquor licenses, required for Tenant's occupancy of the Premises and shall promptly take and pay for all substantial and non-substantial actions necessary to comply with all Laws regulating the use by Tenant of the Premises, including, without limitation, the OSH Act, the ADA, and the Liquor Control Laws. Tenant shall use commercially reasonable efforts to obtain, and shall diligently pursue immediately upon execution of this Lease, any approvals or licenses from any governmental entity necessary for the Permitted Use and to serve beer, wine, and spirits on the Premises in accordance with all Laws. If Tenant sells or serves alcohol in or from the Premises, Tenant shall obtain at its expense all liquor licenses and any other licenses and permits required by Law or otherwise necessary for serving and selling alcoholic beverages at the Premises. Tenant shall also maintain said licenses and permits in full force and effect for as long as Tenant serves alcoholic beverages at the Premises, and Tenant shall operate the Premises in accordance with the requirements of said licenses and permits. Tenant acknowledges and agrees that the specific permitted use and purpose of the Premises set forth herein are a critical element of the bargain of the Parties hereto and that actual and substantial detriment will result to Landlord and the other tenants and occupants of the Marina in the event a change and/or deviation in such use and purpose shall occur or be permitted without the express written consent of Landlord, which consent of Landlord shall not be unreasonably withheld, conditioned, or delayed. Landlord shall cooperate with and provide assistance to Tenant as is reasonably necessary to obtain the foregoing operating and liquor licenses and permits including, but not limited to, signing applications and other documents that require Landlord's signature within thirty (30) days after request from Tenant.

**Section 7.02 Uses Prohibited.** Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything in or on the Premises that is not within the Permitted Use of the Premises or which will in any way materially increase the existing rate on or affect any fire or other insurance upon the Building or the Marina or any of its contents, or cause a cancellation of any insurance policy or policies covering the Building or the Marina or any part thereof or any of its contents; provided, however, that the operation of Tenant's business

for the Permitted Use shall not be an Event of Default under this Lease. Tenant shall not conduct or permit any auctions or sheriff's sales at the Premises. Tenant shall not in any manner deface or injure the Building or the Marina or any part thereof, or overload the floors of the Premises. Tenant shall not use or permit the Premises to be used in violation of any Law. Tenant shall not do anything or permit anything to be done in or upon the Premises in any way that creates a nuisance, or unreasonably disturbs any other tenant in the Marina and/or the occupants of neighboring property. Tenant shall refrain from and shall disallow any activity that injures or may reasonably cause injury to the reputation of the Marina; provided, however, that the foregoing restrictions outlined in this Section 7.02 shall not apply to any intrusion of live music and restaurant noise into the Marina at or below the limit as may be established under any applicable Laws or Superior Instruments ("**Sound Level Limit**").

**Section 7.03 Signs.** Except as otherwise provided in this Section 7.03, Tenant shall not place any signs on the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Tenant shall have the right to install the following signage ("**Tenant's Signage**"): (a) multiple identification signs on each side of the exterior of the Building and on any monument signage associated with the Building or the Marina that is used for tenant identification; (b) directional signage to the Premises from the Exclusive Parking Lot; (c) Tenant's name on any directory in the Marina that identifies tenants; (d) a fixed sign to be located at the entrance of the Marina, the size, design and location of which shall be subject to Landlord's consent, which consent shall not be unreasonably withheld, conditioned, or delayed and (e) identification signs on the docks that may be used to access the Tenant's restaurant.

**Section 7.04 Landlord's Access.**

(a) Landlord or its agents may enter the Premises at all reasonable times upon reasonable prior written notice to Tenant (a minimum of twenty-four (24) hours except in the case of an emergency) and, at Tenant's option, accompanied by a representative of Tenant (provided Tenant makes such representative available), to inspect the Premises or to show the Premises to potential purchasers, investors, tenants (but for tenants only during the last six (6) months of the Term or at any time while a continuing and uncured Event of Default occurs after the expiration of applicable notice and cure periods contained in this Lease), or other parties, or for any other purpose Landlord deems commercially reasonable necessary. Landlord shall at all times have and retain a key with which to unlock all the standard entrances and exit doors in, upon, and about the Premises, excluding Tenant's vaults, safes, and files. Landlord may place customary "For Sale" or "For Lease" signs on or about the Premises; however, Tenant has the right to provide input as to the location of any "For Sale" or "For Lease" signs during the Term and any extensions thereto so as not to diminish any other signage or so that such signs do not detract from the ambiance and character of the Tenant's operation of the Premises for the Permitted Use.

(b) Landlord shall exercise all reasonable efforts so that any entry into the Premises is reasonably designed to minimize interference with the operation of Tenant's business in the Premises.

(c) Notwithstanding any provision in this Lease to the contrary, Tenant may, at its own expense, provide its own locks to certain areas within the Premises (each, a “**Secured Area**”). Tenant need not furnish Landlord with a key to any such Secured Area, but upon the expiration or earlier termination of this Lease, Tenant shall surrender all such keys to Landlord. If Landlord must gain access to a Secured Area in a non-emergency situation, Landlord shall provide Tenant with not less than twenty-four (24) hours’ notice and Landlord and Tenant shall arrange a mutually agreed upon time for Landlord to do so. Landlord shall comply with all reasonable security measures pertaining to the Secured Area. If Landlord determines in its reasonable discretion that an emergency in the Premises, the Building, or the Marina, including, without limitation, a suspected fire or flood or a threatened weather event, requires Landlord to gain access to a Secured Area, Landlord shall give Tenant prior notice of such emergency entry to the extent such prior notice may be reasonable under the circumstances, and if prior notice is not possible because of an emergency, Landlord shall provide notice to Tenant as soon as is practicable thereafter.

**Section 7.05 Building Security.** Notwithstanding the foregoing, Landlord is not responsible for the security of persons or property in, on, or about the Premises, the Building, and/or the Marina. Landlord is not and shall not be liable in any way whatsoever for any criminal activity or any breach of security in, on, or about the Premises, the Building, and/or the Marina. Tenant shall be responsible for obtaining and maintaining all security with respect to the interior of the Premises, whether by the use of devices, security guard personnel, or otherwise. Tenant acknowledges and agrees that Landlord shall have no liability to Tenant and/or any Tenant Parties for the implementation or exercise of, or for the failure to implement or exercise, any security measures with respect to the interior of the Premises, the Building, or the Marina.

**Section 7.06 Continuous Operations.** Except for events of Force Majeure and a commercially reasonable period not to exceed thirty (30) days in any Lease Year for purposes of renovating the Premises or periodic cleaning of the Premises, Tenant shall diligently and continuously operate its business on the Premises year-round throughout the Term at a minimum during the following periods: (a) at all times, for dinner service at least six (6) days per week; and (b) during the Tourist Season, for lunch and dinner service at least seven (7) days per week. Subject to the requirements of this Section 7.06, Tenant shall have the authority to set commercially reasonable hours of operation and to temporarily suspend restaurant service within portions of the Building or the Outdoor Seating Area if Tenant determines in its commercially reasonable discretion that it would be financially beneficial to do so.

## **ARTICLE VIII HAZARDOUS MATERIALS**

**Section 8.01 Tenant Operations.** Tenant shall not cause in, on, or under the Premises, or suffer or permit to occur in, on, or under, the Premises any generation, use, manufacturing, refining, transportation, emission, release, treatment, storage, disposal, presence, or handling of Hazardous Materials, except that limited quantities of Hazardous Materials may be used, handled, or stored on the Premises, provided such limited quantities of Hazardous Materials are incident to and reasonably necessary for the maintenance of the Premises or Tenant’s operations

for its Permitted Use and are in compliance with all Environmental Laws. Should a release of any Hazardous Material occur at the Premises, the Building, and/or the Marina as a result of the acts or omissions of Tenant, or its employees, agents, suppliers, shippers, customers, contractors, or invitees, Tenant shall immediately contain, remove from the Premises, the Building, or the Marina, and/or properly dispose of such Hazardous Materials and any material contaminated by such release, and remedy and mitigate all threats to human health or the environment relating to such release, all in accordance with Environmental Laws.

**Section 8.02 Permits and Documents.** Tenant, in a timely manner, shall, to the extent required due to Tenant's use of the Premises or arising out of Tenant's actions at the Premises, the Building, or the Marina, obtain and maintain in full force and effect all permits, licenses, and approvals, and shall make and file all notifications and registrations as required by any Environmental Laws. Tenant shall at all times comply with the terms and conditions of any such permits, licenses, approvals, notifications, and registrations. Tenant shall provide copies of the following pertaining to the Premises or Tenant's use thereof, promptly after each shall have been submitted, prepared, or received by Tenant: (a) all notifications and associated materials submitted to any governmental agency relating to any Environmental Law; (b) all notifications, registrations, reports, and other documents and supporting information prepared, submitted, or maintained in connection with any Environmental Law or otherwise relating to environmental conditions; (c) all permits, licenses, and approvals, including any modifications thereof, obtained pursuant to any Environmental Law; and (d) any correspondence, notice of violation, summons, order, complaint, or other documents received by Tenant pertaining to compliance with or liability under any Environmental Law.

**Section 8.03 Inspection and Environmental Reports.** Upon not less than twenty-four (24) hours' prior written notice (except in the case of an emergency in which event Landlord shall provide written notice as soon as is practicable under the circumstances), Tenant agrees to permit Landlord and its authorized representatives to enter, inspect, and assess the Premises at reasonable times for the purpose of determining Tenant's compliance with the provisions of this Article VIII. Such inspections and assessments may include obtaining samples and performing tests of soil, surface water, ground water, or other media. Landlord may, at Landlord's sole option, now or in the future, obtain a report from an environmental consultant of Landlord's choice as to whether Tenant has been or is currently using any part of the Premises for the improper use, handling, storage, transportation, or disposal of Hazardous Materials. If any such report indicates such improper use, handling, storage, transportation, or disposal of Hazardous Materials on the part of Tenant (or on behalf of Tenant), Tenant agrees to reimburse Landlord within thirty (30) days after receipt of an invoice and supporting documentation from Landlord for the cost of obtaining the environmental report, and, in addition, Landlord shall require that all violations of Environmental Law with respect to the Hazardous Materials be corrected and/or that Tenant obtain all necessary environmental permits and approvals. If Tenant fails to correct any such violation(s) of Environmental Law and/or fails to obtain such necessary permits within a reasonable time after written demand from Landlord, but provided that Tenant has commenced the correction of such violations and is diligently pursuing said cure, Tenant shall have an additional time period of one hundred (180) days to cure the same (the "**Environmental Cure Period**"). If Tenant is able to provide Landlord evidence that the cure has been undertaken but that the applicable governmental body or agency has informed Tenant that final resolution shall

take longer than the initial Environmental Cure Period, then the Environmental Cure Period shall be extended to such reasonable time period as may be required to fully and finally cure the violation, not to exceed one hundred eighty (180) additional days. If Tenant fails to cure the foregoing, then upon prior written notice to Tenant, Landlord may declare this Lease in default and/or may cause the Premises and any surrounding areas to be freed from the Hazardous Materials at Tenant's sole cost and expense, which Tenant agrees to pay thirty (30) days after receipt of an invoice and supporting documentation from Landlord as Additional Rent.

**Section 8.04 Environmental Indemnification.** Tenant hereby agrees to indemnify, defend, save, and keep Landlord, and Landlord's officers, principals, shareholders, partners, employees, successors, and assigns, harmless from and against any and all liabilities, obligations, charges, losses, damages, penalties, claims, actions, and expenses, including without limitation, engineers' and professional fees, soil tests, and chemical analysis, court costs, legal fees, and expenses through all trial, appellate, and administrative levels, imposed on, incurred by, or asserted against Landlord, in any way relating to, arising out of, or in connection with the use, handling, storage, transportation, or disposal of Hazardous Materials by Tenant or its agents, employees, representatives, tenants, or contractors in, on, under, or about the Premises, the Building, and/or the Marina. The foregoing indemnification shall survive any assignment or termination of this Lease.

To the extent permitted by State law, Landlord hereby agrees to hold Tenant and Tenant's officers, principals, shareholders, partners, employees, successors, and assigns harmless from any and all liability, obligations, charges, loss, fines, cleanup costs, damages, penalties, claims, actions and expenses resulting from or related to or arising out of the existence of any Hazardous Materials in, on, under, or about the Premises, the Building or the Marina, whether known or unknown, that (i) existed prior to the Tenant's occupancy hereunder or (ii) in which the release of Hazardous Materials was not caused by the Tenant's actions that would require indemnification pursuant to this Section 8.04 (the "**Environmental Hold Harmless**"). Landlord hereby agrees to accept and cover all costs and fees associated with the existence of Hazardous Materials, (including cleanup costs), damages, or governmental fines resulting therefrom, and exempt Tenant, unless the Hazardous Materials are a direct cause of any act by the Tenant, its agents, employees, representatives, tenants, or contractors.

## **ARTICLE IX PARKING**

**Section 9.01 Exclusive Parking Lot.** The Exclusive Parking Lot shall be part of the Premises leased to Tenant, and Tenant shall be entitled to exclusive use of the Exclusive Parking Lot in accordance with Section 2.06 of this Lease.

**Section 9.02 Shared Parking Lot.** The Shared Parking Lot shall be a Common Area and may be used by Tenant, other tenants of the Marina, and the patrons, employees, agents, customers, contractors, licensees and invitees of Tenant and the other tenants of the Marina in accordance with this Lease. All parking spaces in the Shared Parking Lot shall be used and operated on an unreserved, self-park basis. All parking spaces in the Shared Parking Lot shall be

free of charge to Tenant and Tenant's patrons, employees, agents, customers, contractors, licensees and invitees after 8:00 PM, seven (7) days a week, and under no circumstances shall Tenant or Tenant's patrons, employees, agents, customers, contractors, licensees or invitees be required to remit payment through any type of metering or payment service or system during such time periods. Landlord shall maintain the Shared Parking Lot in accordance with Section 11.02(b) of this Lease. All signage in the Shared Parking Lot shall be subject to the mutual approval of such signage by Tenant and all other tenants of the Marina entitled to use the Shared Parking Lot; provided, however, that the design, construction and installation of such signage shall be at the sole cost and expense of Tenant and the other tenants of the Marina entitled to use the Shared Parking Lot.<sup>2</sup>

### **Section 9.03 Private Parking Lot.**

(a) Landlord and Tenant acknowledge and agree that Tenant is entitled to the exclusive use of certain parking spaces in the Private Parking Lot for parking by its patrons, employees, agents, customers, contractors, licensees and invitees pursuant to the terms and conditions of the Private Parking Agreement. On or before the Opening Date, Landlord shall, at its sole cost and expense, re-grade and re-stripe the Private Parking Lot (the "**Private Parking Lot Construction**") to a quality and condition and by a contractor or construction firm that are mutually agreeable to Landlord and Tenant, with such Private Parking Lot Construction having the objective of preparing the parking surface for the use Tenant and its patrons, employees, agents, customers, contractors, licensees and invitees and maximizing the parking surface area therein. Under no circumstance shall the aggregate costs and expenses incurred by Landlord for the Private Parking Lot Construction exceed \$50,000.00. While undertaking the Private Parking Lot Construction prior to the Opening Date, Tenant acknowledges and agrees that Landlord may use portions of the Private Parking Lot for a staging area and laydown yard for equipment and materials being used in Landlord's renovation of certain docks and other facilities located at the Marina. At all times from and after the Opening Date, all maintenance and repair of the Private Parking Lot shall be governed by the Private Parking Agreement, and Landlord shall have no obligation for the maintenance or repair of the Private Parking Lot. Provided that (a) no Event of Default shall have occurred and be continuing and (b) Tenant shall have provided such documentation evidencing payments made to the Private Parking Lot Operator under the Private Parking Agreement as may be reasonably requested by Landlord, Landlord covenants and agrees to reimburse Tenant for certain payments made by Tenant to the Private Parking Lot Operator pursuant to the Private Parking Agreement in accordance with this Section 9.03(a). Within thirty (30) days after the end of each Lease Year, Landlord shall reimburse Tenant for an amount equal to the lesser of (i) one-half (1/2) of all payments actually made by Tenant to the Private Parking Lot Operator pursuant to the Private Parking Agreement during such Lease Year, net of any rebates or reimbursements paid to

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<sup>2</sup> NTD: The City is negotiating an amendment to its parking agreement with Brian to prohibit the restaurant patrons from being charged for parking after 8:00 PM and to impose tenant consent requirements for all signage. The City's approval of this section is contingent upon execution of this amendment to the City's parking agreement.

Tenant under the Private Parking Agreement or any fees, rentals or payments paid to Tenant by any third parties for the use of parking spaces in the Private Parking Agreement during such Lease Year, or (ii) \$13,682.00. Tenant, upon request of Landlord, shall deliver to Landlord copies of the Private Parking Agreement and all amendments thereto and paid bills and other documentation evidencing all payments actually made by Tenant to the Private Parking Lot Operator pursuant to the Private Parking Agreement during any Lease Year. Rather than issuing a check directly to the Tenant for the payments required of Landlord hereunder, all amounts owed by Landlord shall be deducted from Base Rent on a monthly basis. Under no circumstance shall Landlord constitute a guarantor of Tenant's performance under the Private Parking Agreement. The entirety of this Section 9.03(a) shall be subject to Section 9.03(b) below.

(b) Notwithstanding anything in Section 9.03(a) above to the contrary, in the event the Private Parking Agreement is terminated for any reason prior to January 31, 2045, the right of Tenant, as a tenant of the Marina, to use the Private Parking Lot for parking by its patrons, employees, agents, customers, contractors, licensees and invitees shall be governed by the terms and conditions of that certain Commercial Lease by and between Landlord and Private Parking Lot Operator dated September 10, 2009, as amended by that certain Amendment to Commercial Lease Agreement dated June 2, 2010, as further amended by the certain Second Amendment to Commercial Lease Agreement dated April 25, 2012, as further amended by the certain Third Amendment to Commercial Lease Agreement dated July 24, 2012, as further amended by the certain Fourth Amendment to Commercial Lease Agreement dated February 26, 2015, and as further amended by the certain Fifth Amendment to Commercial Lease Agreement dated November [REDACTED], 2020.

## **ARTICLE X SERVICES AND UTILITIES**

**Section 10.01 Payment by Tenant for Services and Utilities.** Tenant shall pay, directly to the appropriate supplier, the cost of all natural gas, heat, light, power, sewer service, telephone, water, refuse disposal, and other services and utilities supplied to the Premises.

**Section 10.02 Availability of Services and Utilities.** Landlord represents and warrants to Tenant that sewer, water, electric, telephone, and gas lines are available directly at the Premises.

## **ARTICLE XI MAINTENANCE, REPAIRS, AND ALTERATIONS**

**Section 11.01 Maintenance by Tenant.** Except as otherwise set forth in this Lease, Tenant shall assume and perform all maintenance and management functions with respect to the Premises, including the obligations specifically set forth in this Section 11.01. Tenant shall at all times put, keep and maintain the Premises (including, without limitation, all or any portion of the Building, the Outdoor Seating Area, the Restaurant Dock (but excluding the seawall, which shall be maintained by Landlord), and the Exclusive Parking Lot; the HVAC system serving the

Building; the roof and roof membrane of the Building; all bollards, dividers, safety barriers, paving and lining within the Exclusive Parking Lot; all seating, tables, bars, stages, and other improvements and fixtures in the Outdoor Seating Area; all landscaping within the Premises; walls (interior and exterior), footings and foundations of the Building and all other improvements within the Premises; and all structural and non-structural components of the Premises) in first-class repair and appearance, and shall promptly make all repairs and replacements of every kind and nature, whether foreseen or unforeseen, which may be required to be made upon or in connection with any of the Premises in order to keep and maintain the Premises in first class repair and appearance. Tenant shall do or cause others to do all that is necessary to plow or otherwise remove any accumulated snow from the Premises and keep it in safe condition. Tenant shall do or cause others to do all shoring of the Premises or of foundations and walls of the improvements and every other act necessary or appropriate for preservation and safety thereof, by reason of or in connection with any excavation or other building operation upon any of the Premises. Tenant shall from time to time replace with other similar operational equipment or parts any of the mechanical systems or other equipment included in any of the Premises or any Tenant Improvements which shall have become worn out, obsolete or unusable for the purpose for which it is intended, been taken by a condemnation, or been lost, stolen, damaged or destroyed. Tenant shall maintain, repair and replace the above-ground plumbing, utility, and/or sewer lines and mains which service all or any portion of the Premises, save and accepting that it shall be the Landlord's exclusive and sole responsibility to maintain, repair, or replace, or to coordinate such maintenance, repairs and replacements with the applicable utility or municipal service providers, any (i) underground sewer or water mains or (ii) underground or overhead electrical power lines leading up to the hookup location to the Building, and to make available those portions of the Marina as may be reasonably necessary for any such maintenance, repairs or replacements. Except as expressly required under this Lease, Landlord shall not be required to make any repair, whether foreseen or unforeseen, or to maintain any of the Premises in any way, and Tenant hereby expressly waives the right to make repairs at the expense of the Landlord, which right may otherwise be provided for in any law now or hereafter in effect. Tenant shall, in all events, make all repairs for which it is responsible hereunder promptly, and shall commence such repair and diligently pursue completion of the same within thirty (30) days after a repair or replacement becomes prudent, and all repairs shall be done in a good, proper and workmanlike manner, and diligently pursued to completion. If Tenant fails to maintain or repair the Premises as required hereunder to the reasonable satisfaction of Landlord, then within thirty (30) days after written demand from Landlord, Landlord shall have the option, but not the obligation, to make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's inventory, fixtures, or property, or to Tenant's business thereon, and upon completion thereof, Tenant shall pay Landlord's reasonable and documented costs for making such repairs upon presentation of a bill therefor, as Additional Rent. Tenant shall contract with a service company approved by Landlord for the maintenance of the HVAC equipment servicing the Premises, with a copy of the service contract to be furnished to Landlord within thirty (30) days after the Rent Commencement Date. A copy of any subsequent contracts shall be furnished promptly to Landlord during the Term of this Lease. If Tenant fails to furnish a copy of said maintenance contract for the HVAC equipment, Landlord may contract for such maintenance and shall bill Tenant for the cost, and Tenant agrees to reimburse Landlord for the cost within thirty (30) days of Landlord's billing, as Additional Rent.

**Section 11.02 Maintenance by Landlord.** Notwithstanding anything in this Lease to the contrary, Landlord, at its sole cost and expense, shall be responsible for the following:

(a) All capital repairs, improvements and replacements required for or relating to the Restaurant Dock required under Phase 3 of the City of Isle of Palms Marina Dock Rehabilitation Program, upon and subject to approval of the Isle of Palms City Council;

(b) All maintenance, repair, and replacement of the Shared Parking Lot including any paving and lining thereof; and

(c) All maintenance, repair and replacement of the seawall that borders the Premises and the intracoastal waterway and all connecting creeks, marshes and waterways.

**Section 11.03 Alterations, Additions, and Improvements.**

(a) Tenant shall not make any Alterations, additions, or improvements to the Premises without Landlord's prior written consent, which consent shall specify whether the specific Alterations must be removed by Tenant upon the expiration or earlier termination of the Lease and shall not be unreasonably withheld, conditioned, or delayed, and Landlord must respond within thirty (30) days of receipt of a written request from Tenant; provided, however, Landlord's consent shall not be required for non-structural Alterations made by Tenant which do not exceed \$50,000.00 in cost cumulatively over each calendar year. Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord if the cost of Alterations exceeds \$50,000.00. All Alterations, additions, and improvements shall be accomplished in a good and workmanlike manner, in conformity with all applicable Laws, and by a contractor (licensed as necessary by the State or municipality) and who is registered, bonded, insured, and approved by Landlord, the approval of which shall not be unreasonably withheld, conditioned or delayed. Upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials. Tenant agrees that Tenant shall pay all liens of contractors, subcontractors, mechanics, laborers, materialmen, and other items of like character, and shall indemnify Landlord against all expenses, costs, and charges, including bond premiums for release of liens and attorneys' fees and costs reasonably incurred in and about the defense of any suit in discharging the Premises or any part thereof from any liens, judgments, or encumbrances caused or suffered by Tenant. In the event any such lien shall be made or filed, Tenant shall bond against or discharge the same within thirty (30) days after the same has been made or filed. It is understood and agreed between the parties to this Lease that the expenses, costs, and charges above referred to shall be considered as Additional Rent immediately due and shall be included in any lien for Rent. Landlord agrees to review and approve or provide specific comments to Tenant for any necessary revisions to plans that Tenant is required to provide to Landlord within thirty (30) days after receipt thereof or the same shall be deemed to be automatically approved.

(b) Anything herein to the contrary notwithstanding, Tenant shall provide Landlord prior written notice but shall not be required to obtain Landlord's consent with respect to any painting, decorating, or installation of carpeting within the Premises, installation or relocation of any electrical outlets within the Premises, the removal, reconfiguration, or installation of furniture including any power supply connected thereto, and/or the installation or relocation of low voltage wiring associated with any furniture, fixtures, or equipment installed within the Premises and which are not visible from the outside of the Building. In no event shall Tenant be required to provide Landlord notice in connection with any cosmetic Alterations. Landlord shall receive no fee for profit, overhead, general conditions, or supervision on any Alterations. Landlord acknowledges and agrees that Tenant shall have the right to self-manage the Alterations, or hire a third party of its choosing.

(c) All Alterations, additions, or improvements placed on or made to the Premises by Tenant, excluding the Detachable FF&E which Tenant elects to remove in accordance with this Section 11.03(c) and all Personal Property, furniture, trade fixtures, and other movable property not attached to the Building, shall at once become the property of Landlord. All furniture, fixtures, equipment or other machinery that is attached to the Building or Premises but can be detached (generally, for purposes of this Section 11.03(c), the "**Detachable FF&E**") and which Tenant elects to remove and keep as Tenant's property shall be removed at Tenant's expense prior to the expiration or termination of this Lease and the costs to repair any damage caused by such removal of such Detachable FF&E shall be borne by Tenant. All Personal Property or other moveable trade fixtures, shelves, bins, equipment, and machinery installed by Tenant shall be removed by Tenant prior to the expiration or termination of this Lease and all damage to the Premises or the Building caused by the installation or removal of such items shall be repaired at Tenant's expense, prior to the expiration or termination of this Lease. Notwithstanding the foregoing, (i) Tenant shall not be required to remove any Alteration for which Landlord's consent shall not have been required hereunder; (ii) if any Alteration required Landlord's consent hereunder, but Landlord failed to specify in its written consent to Tenant that such Alteration must be removed by Tenant upon the expiration or termination of this Lease, then Tenant shall not be required to remove such Alteration upon the expiration or termination of this Lease; and/or (iii) under no circumstance shall any commercial kitchen hood be removed from the Premises upon the expiration or earlier termination of this Lease, whether or not installed by Tenant, and any such commercial kitchen hood shall at once become the property of Landlord.

## **ARTICLE XII COVENANT AGAINST LIENS**

Nothing contained in this Lease shall authorize or empower Tenant to do any act which shall in any way violate any Superior Instruments, or encumber Landlord's title to the Marina, the Building, or the Premises, nor in any way subject Landlord's title to any claims by way of lien or encumbrance whether claimed by operation of Law or by virtue of any expressed or implied contract of Tenant, and any claim to a lien upon the Marina, the Building, or the Premises arising from any act or omission of Tenant shall attach only against Tenant's interest

and shall in all respects be subordinate to Landlord's title to the Marina, the Building, and the Premises. If Tenant has not removed or bonded over any such lien or encumbrance within thirty (30) days after written notice to Tenant by Landlord, Landlord may, but shall not be obligated to, pay the amount necessary to remove such lien or encumbrance, without being responsible for making any investigation as to the validity or accuracy thereof, and the amount so paid, together with all costs and expenses (including attorneys' fees) incurred by Landlord in connection therewith, shall be deemed Additional Rent reserved under this Lease and due and payable within ten (10) days after Tenant's receipt of notice of such payment by Landlord and supporting documentation. Nothing contained in this Article XII shall prevent Tenant, in its complete and sole discretion, from pledging any Personal Property, furniture, trade fixtures, equipment and other movable property not attached to the Building as collateral in the course of borrowing or obtaining any loan to finance the acquisition of the same, and Landlord hereby agrees that it will use reasonable efforts to comply with any request of Tenant should any lender of the Tenant require Landlord's consent to file any security instrument to secure lender's interest in such collateral. However, the Landlord shall not have any obligation to consent, nor shall Tenant be allowed, to pledge or mortgage Landlord's fee interest in the Premises.

### **ARTICLE XIII RESTAURANT RIDER**

Tenant agrees that in its use of the Premises, the Building, and/or the Marina, Tenant and its employees, invitees, customers, and contractors shall comply with the Restaurant Rider attached hereto as Exhibit D.

### **ARTICLE XIV ASSIGNMENT AND SUBLEASING**

**Section 14.01 Landlord's Consent Required.** Other than a Permitted Transfer as defined in Section 14.05 below, Tenant shall not, directly or indirectly, voluntarily or by operation of Law, sell, assign, encumber, mortgage, pledge, or otherwise transfer or hypothecate all or any part of the Premises, or Tenant's leasehold estate hereunder, or sublet all or any portion of the Premises or permit the Premises to be occupied by anyone other than Tenant (each such act herein referred to as a "**Transfer**"), without Landlord's prior written consent in each instance, which consent may be given or withheld in Landlord's sole discretion. Except for a Permitted Transfer, any attempted Transfer without Landlord's prior written consent shall be void and shall constitute an Event of Default under this Lease. If any proposed Transfer is an assignment of this Lease, Landlord shall have the right to terminate this Lease as of the effective date of such proposed assignment and enter into a direct lease with the proposed assignee. If Tenant is a partnership or a limited liability company, any cumulative transfer of more than twenty-five percent (25%) of the partnership or the limited liability company membership interests, as applicable, shall constitute a Transfer and shall require Landlord's consent, except for any Transfer of partnership or limited liability company membership interests between existing partners or members of Tenant which shall be a Permitted Transfer as defined in Section 14.05 below. Without limiting the foregoing, it shall constitute a Transfer and shall require Landlord's consent if: (a) Tenant is a limited partnership, and there is a transfer of a general

partner interest; (b) Tenant is a limited liability company, and there is a transfer of any manager or managing member's interest; or (c) Tenant is a corporation, any change in a controlling interest of the voting stock of the corporation.

**Section 14.02 No Release of Tenant.** Except as otherwise provided in this Section 14.02, no Transfer permitted under this Lease, whether with or without Landlord's consent, shall release Tenant or change Tenant's primary liability to pay the Rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of Rent from any other person is not a waiver of any provision of this Lease. Consent by Landlord to one Transfer is not consent to any subsequent Transfer. If Tenant's transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee. Landlord may consent to subsequent Transfers of this Lease by Tenant's transferee, without notifying Tenant or obtaining its consent. Such action shall not relieve Tenant's liability under this Lease. If Tenant transfers Tenant's interest hereunder, then Landlord shall receive, as Additional Rent, fifty percent (50%) of the excess, if any, between the rent (or other consideration) paid in connection with such Transfer and the Base Rent payable by Tenant hereunder. However, for any Approved Sale, upon the completion of the transaction by and between Tenant and the transferee or assignee under such Approved Sale, then Tenant and any guarantors to this Lease shall be completely discharged from all liability under this Lease arising from and after such Approved Sale, and Landlord shall only have the ability to look to such transferee or assignee and any replacement guarantors for any remedies for such liabilities.

**Section 14.03 Details of Proposed Transfer.** Tenant's request for consent to any Transfer shall be accompanied by a written statement setting forth the details of the proposed Transfer, including the name, business, and financial condition of the prospective transferee, the financial details of the proposed Transfer (such as the term of the sublease and the amount of rent and security deposit payable under any assignment or sublease), and any other information Landlord deems relevant. Tenant shall provide to Tenant signed copies of all instruments and other documents evidencing any Transfer permitted under this Lease.

**Section 14.04 No Merger.** No merger shall result from Tenant's sublease of the Premises, Tenant's surrender of this Lease, or the termination of this Lease in any other manner. In any event, Landlord may terminate any or all subtenancies or succeed to the interest of Tenant as sublandlord thereunder.

**Section 14.05 Permitted Transfers.** Notwithstanding the foregoing and provided that no Event of Default shall have occurred and be continuing, Tenant may, with Landlord's prior written consent, which consent shall not be unreasonably, withheld, conditioned or delayed, make any of the following Transfers (each such Transfer a "**Permitted Transfer**" and each such transferee a "**Permitted Transferee**"):

- (a) An assignment of this Lease to any Affiliate of Tenant which shall (i) Control, (ii) be under the Control of, or (iii) be under common Control with Tenant;

(b) A sublease of all or any portion of the Premises to be used exclusively for the Permitted Use to any Person with creditworthiness and net worth equal to or greater than that of Tenant at the time of the assignment;

(c) An assignment, pledge, or leasehold mortgage on Tenant's interest in this Lease to any bank or banks or other lending institutions for the purpose of securing indebtedness;

(d) An assignment of this Lease in connection with the sale of all or substantially all of the assets of Tenant occurring more than five (5) years after the Opening Date (an "**Approved Sale**"), provided that the transferee or surviving entity in such transaction and any replacement guarantor(s) as may be required by Landlord have a creditworthiness and net worth equal acceptable to Landlord in its commercially reasonable discretion; or

(e) If Tenant is a partnership or limited liability company, a transfer or assignment of partnership or limited liability company membership interest, as applicable, between the existing partners or members of Tenant as of the Commencement Date, provided the same does not result in the transfer or assignment of a general partner interest or manager or managing member's interest.

**Section 14.06 Percentage Rent for Subleases.** In accordance with Section 3.02 of this Lease, if any Transfer is a sublease of all or any portion of the Premises, the Subtenant thereunder shall (a) pay Percentage Rent to Landlord based on such Subtenant's Gross Sales, and (b) provide to Landlord books and records evidencing such Subtenant's Gross Sales.

## **ARTICLE XV INSURANCE AND INDEMNIFICATION**

**Section 15.01 Payment of Premiums.** Beginning January 1, 2021, and at all times during the Term thereafter, Tenant shall reimburse Landlord, as Additional Rent, for the cost of all Insurance Premiums. Insurance Premiums for policy periods commencing before January 1, 2021, or ending after the expiration or earlier termination of this Lease shall be prorated. Landlord shall pay all Insurance Premiums when they become due and payable, and Tenant shall reimburse Landlord for such Insurance Premiums within thirty (30) days of Landlord's demand therefore. Landlord, upon request of Tenant, will deliver to Tenant a copy of all paid bills for Insurance Premiums. In addition, Tenant shall pay for any increase in the Insurance Premiums if said increase is caused by Tenant's acts, omissions, use, or occupancy of the Premises.

**Section 15.02 Liability Insurance.** Tenant shall, at Tenant's sole cost and expense, obtain and keep in force during the Term of this Lease a policy of combined single limit, bodily injury and property damage insurance insuring Landlord and Tenant, and any lender(s) whose names have been provided to Tenant in writing (as additional insureds), against any liability arising out of the ownership, use, occupancy, or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be provided through a combined single limit policy in an amount not less than \$1,000,000.00 per occurrence, with \$2,000,000.00 of aggregate

coverage. The policy shall insure performance by Tenant of the indemnity provision of this Article XV. The limits of said insurance shall not, however, limit the liability of Tenant hereunder. All insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only. In addition, Tenant shall maintain workers' compensation insurance as is required by the Laws of the State.

**Section 15.03 Property Insurance.**

(a) Landlord shall obtain and keep in force during the Term of this Lease a policy or policies of insurance covering loss or damage to the Building in the amount of the full replacement value thereof, as the same may exist from time to time, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood, windstorm coverage, and special extended perils ("all risk" as such term is used in the insurance industry). Said insurance shall provide for a payment of loss thereunder to Landlord.

(b) Tenant shall obtain and maintain insurance coverage for full replacement cost on all of Tenant's Personal Property, trade fixtures, and Tenant Improvements in, on, or about the Premises. Such insurance shall be full replacement cost with a deductible not to exceed \$10,000.00 per occurrence. Landlord shall not insure Tenant's Improvements or any of its trade fixtures, equipment, or Alterations.

**Section 15.04 Rental Insurance.** Tenant shall obtain and keep in force during the Term of this Lease a policy of rental value insurance covering Rent for a period of one year, with loss payable to Landlord. Tenant shall pay the cost of such insurance directly to the insurer and shall provide Landlord proof of such insurance and payment of the premiums therefor.

**Section 15.05 Liquor Liability Insurance.** Tenant, at its sole cost and expense, shall purchase and keep in full force and effect during the Term of this Lease, liquor liability insurance for all periods of time that Tenant uses, sells, gifts, or otherwise permits the consumption of alcoholic beverages on or from the Premises. Such liquor liability insurance policy shall name Landlord as an additional insured. Tenant shall deliver to Landlord a policy of liquor liability insurance in form, substance, and with insurers satisfactory to Tenant, with total limits of liability for bodily injury, death, loss of means of support, and property damage because of each occurrence of not less than \$1,000,000.00, or such greater amounts as Landlord may designate, against any and all liability by virtue of the Liquor Control Laws, any amendments or supplements thereto, or any kindred legislation concerning the use, sale, or giving away of alcoholic liquors. If at any time the required liquor liability insurance is for any reason not in force, then, during all and any such times no sale, merchandising, transfer, giving away, or exchange of alcoholic beverages shall be made by Tenant or any other person in, upon, or from any part of the Premises.

**Section 15.06 Automobile Insurance.** Tenant, at its sole cost and expense, shall purchase and keep in full force and effect, automobile liability insurance with a combined single

limit of not less than \$1,000,000.00 for any vehicles used by Tenant in direct conjunction with Tenant's business operations at the Premises.

**Section 15.07 Business Interruption Insurance.** Tenant, at its sole cost and expense, shall purchase and keep in full force and effect business interruption insurance (including extra expense coverage) in an amount sufficient to cover lost profits and overhead, including Rent, for twelve (12) months.

**Section 15.08 Builder's Risk.** To the extent of the Initial Tenant Improvements or any Alterations, Tenant, at its sole cost and expense, shall purchase and keep in full force and effect, or cause its general contractor to purchase and keep in full force and effect, builder's risk insurance for the full replacement cost of the Building and in a form acceptable to Landlord.

**Section 15.09 Other Insurance.** Tenant, at its sole cost and expense, shall purchase and keep in full force and effect any other insurance as may be required by Landlord in its commercially reasonable discretion, including, without limitation, such marine insurance policies as may be reasonably required by Landlord affording property and liability coverage for any ownership or operation of a boat providing ferry service to and from the Restaurant Dock.

**Section 15.10 Insurance Policies.** Insurance required hereunder shall be issued by companies authorized to do business in the State and holding a "General Policyholders Rating" of not less than "A" as set forth in the most current issue of "Best Insurance Guide," or any successor thereto (or if there be none, an organization having a national reputation). No policy carried by Tenant shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to Landlord. Not less than thirty (30) days prior to the expiration of such policies, Tenant shall furnish Landlord with renewals or "binders" thereof, or Landlord may order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant upon demand. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies carried by Landlord. Executed copies of policies of insurance or certificates thereof shall be delivered to Landlord within thirty (30) days after the Commencement Date (and with respect to any insurance required for Tenant Improvements, prior to the commencement of such Tenant Improvements). All insurance obtained by Tenant shall be primary. Except as otherwise approved in writing by Landlord, all insurance obtained by Tenant shall name Landlord and the holder of any first mortgage or deed of trust encumbering all or any portion of the Premises as additional insured parties, as their interests may appear.

**Section 15.11 Waiver of Subrogation.** Tenant and Landlord each hereby release and relieve the other, and waive their entire right of recovery against the other for loss or damage arising out of or incident to the perils insured against under this Article XV, which perils occur in, on, or about the Premises, whether due to the negligence of Landlord, any Landlord Parties, Tenant, or any Tenant Parties, or Tenant's contractors or invitees. Tenant and Landlord shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

**Section 15.12 Indemnity.** Except for the negligence and intentional misconduct of Landlord and/or any Landlord Parties, Tenant shall indemnify and hold harmless Landlord and Landlord's officers, agents, employees, partners, successors, and assigns (collectively, "**Landlord Parties**") from and against any and all claims arising from Tenant's use of the Premises, or from the conduct of Tenant's business or from any activity, work, or things done, permitted, or suffered by Tenant in, on, or about the Premises or elsewhere, and shall further indemnify and hold harmless Landlord and all Landlord Parties from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence of Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, attorneys' fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding shall be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damages to property or injury to persons, in, on, or about the Premises arising from any cause, and Tenant hereby waives all claims in respect thereof against any Landlord Parties, except for claims resulting from the gross negligence and intentional misconduct of Landlord and/or any Landlord Parties.

To the extent allowed by State law, Landlord hereby agrees to hold Tenant and Tenant's officers, principals, shareholders, partners, employees, successors, and assigns harmless from any and all liability, damages, obligations, charges or loss, resulting from or related to or arising out of the gross negligence or intentional misconduct of Landlord Parties.

## **ARTICLE XVI DAMAGE AND DESTRUCTION**

**Section 16.01 Damage or Destruction to Premises.** Tenant shall notify Landlord in writing promptly upon the occurrence of any damage or destruction to the Premises by fire or other casualty. Subject to Section 16.02 below, if all or any portion of the Premises is damaged by fire or other casualty, Landlord shall repair or rebuild the Premises or such damaged or destroyed portion thereof as soon as is reasonably possible; provided, however, that Landlord shall not be required to make repairs or replacements of any damage to Tenant's Improvements or to any other fixtures, equipment, Personal Property, or leasehold improvements of Tenant. Tenant may terminate this Lease by giving written notice to Landlord if Landlord has not commenced the required repairs within one hundred twenty (120) days from the date of such damage or destruction or has not restored and/or rebuilt the Premises as herein provided within two (2) years from the date of such damage or destruction. Landlord shall not be obligated to expend in such repair or rebuilding any sums greater than the proceeds of any insurance policy required to be carried by Landlord under this Lease or for Landlord's benefit plus the amount of any deductible under such policy. Tenant shall pay Landlord the deductible amount (if any) under any insurance policies carried by Landlord or for Landlord's benefit affording coverage for such damage or destruction required to be repaired by Landlord pursuant to this Section 16.01.

**Section 16.02 Option to Terminate.** Notwithstanding anything in this Lease to the contrary, both Landlord and Tenant shall have the right to terminate this Lease upon thirty (30) days prior written notice in the event that twenty-five (25%) or more of the Premises is destroyed at any time during the last two (2) Lease Years of the Term (as the same may be extended or renewed).

**Section 16.03 Temporary Reduction of Rent.** If the Premises are destroyed or damaged and Landlord repairs or restores the Premises pursuant to the provisions of this Lease, any Base Rent and Additional Rent payable during the period of such damage, repair, and/or restoration shall be reduced according to the degree, if any, to which Tenant's use of the Premises is impaired. However, the reduction shall not exceed the proceeds received by Landlord from Tenant's loss of income insurance coverage. Except for such possible reduction in Base Rent and Additional Rent, Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, destruction, repair, or restoration of or to the Premises.

## **ARTICLE XVII EMINENT DOMAIN**

Should the Premises or the Building be taken, appropriated, or condemned for public purposes, or voluntarily transferred in lieu of condemnation, in whole or in such substantial part as to render the Building or the Premises unsuitable for Landlord's purposes or Tenant's purposes, the Term of this Lease shall, at the option of Landlord in the first instance and at the option of Tenant in the second instance, terminate when Tenant's right to possession is terminated. If neither party exercises their respective option to terminate within sixty (60) days after the date of such taking, or if the portion of the Premises or the Building that is taken, appropriated, condemned, or voluntarily transferred in lieu of condemnation does not render the Building or the Premises unsuitable for Landlord's purposes or Tenant's purposes, then this Lease shall terminate only as to the part taken or conveyed on the date Tenant shall yield possession, and Landlord shall make such repairs and alterations as may be necessary to make the part not taken usable, and the Rent payable hereunder shall be reduced in proportion to the part of the Premises taken. All compensation awarded for such taking of the fee and leasehold shall belong to and be the property of Landlord without any deduction therefrom for any present or future estate of Tenant and Tenant hereby assigns to Landlord all its right, title, and interest to any such award. However, Tenant shall have the right to recover from the condemning authority, but not from Landlord, such compensation as may be awarded to Tenant on account of the interruption of Tenant's business, for moving and relocation expenses, for depreciation to and removal of Tenant's goods and trade fixtures, for its interest in this Lease and the Premises, and for the value of any Alternations made by Tenant.

## **ARTICLE XVIII DEFAULTS AND REMEDIES**

**Section 18.01 Events of Default.** Tenant shall be in material default under this Lease if any one or more of the following events (herein sometimes referred to individually as an "**Event**

**of Default**” and collectively as “**Events of Default**”) shall occur and shall not be timely remedied as herein provided:

(a) Except as otherwise provided in Section 18.01(b), if Tenant fails to make any payment of Rent due under this Lease or any part thereof within ten (10) days of the date the same shall become due and payable.

(b) If Tenant fails to make any payment of any sum or charge payable under this Lease other than Base Rent, Percentage Rent, or Additional Rent, or any part thereof, when and as the same shall become due and payable and such default continues for a period of ten (10) days after receipt by Tenant of notice from Landlord specifying the default.

(c) If Tenant fails to observe or perform any of the other covenants, agreements, or conditions of this Lease on the part of Tenant to be kept and performed, including abiding by the Restaurant Rider, and such default continues for a period of thirty (30) days after written notice thereof from Landlord to Tenant, provided, however, that with respect to any default (other than a default which can be cured by the payment of money) that cannot be reasonably cured within said thirty (30) day period, Tenant shall have the greater of (i) any additional cure period that is specified in this lease, or (ii) where no such additional cure period is accounted for, an additional period of ninety (90) days to cure such default, provided Tenant commences to cure within said thirty (30) days and actually cures the default within ninety (90) days after Landlord’s notice.

(d) If Tenant or any Guarantor files a petition in bankruptcy, is adjudicated as bankrupt, or files any petition or answer seeking any reorganization, rearrangement, recomposition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future Law, or makes an assignment for the benefit of creditors, or if any trustee, receiver, or liquidator of Tenant, any Guarantor, or of all or any substantial part of its properties or of the Premises shall be appointed in any action, suit, or proceeding by or against Tenant or any Guarantor and such proceeding or action shall not have been dismissed within sixty (60) days after such filing or appointment.

(e) If Tenant vacates, abandons, or fails to use the Premises for the Permitted Use for a period in excess of thirty (30) days, except that Tenant shall not be deemed to have abandoned or vacated the Premises (i) when and to the extent that the Premises are untenable by reason of damage by fire, other casualty or condemnation, (ii) to the extent that the Premises are closed in accordance with Section 7.06 hereof for purposes of renovations or periodic cleaning, or (iii) as a result of any events of Force Majeure.

**Section 18.02 Remedies.** In the event of any Event of Default, Landlord may, at its option, exercise any and all of the remedies listed below. No such remedy herein or otherwise conferred upon or reserved to Landlord shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at Law or in equity, and every power and remedy given by the Lease to

Landlord may be exercised from time to time and as often as the occasion may rise or may be deemed expedient.

(a) Landlord may, without terminating this Lease, enter upon the Premises, without being liable for prosecution or any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease, in which event Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in complying with Tenant's obligations under this Lease, and Landlord shall not be liable for any damages resulting to Tenant from such action, unless caused by the gross negligence of Landlord.

(b) Landlord may, if it elects to do so, bring suit for the collection of rents and/or any damages resulting from Tenant's default without entering into possession of the Premises or voiding this Lease.

(c) Landlord may terminate this Lease after ten (10) days' written notice to Tenant and this Lease shall terminate on the date specified in such notice. Tenant shall quit and surrender the Premises by said date, failing which, Landlord may enter upon the Premises immediately or at any subsequent time without additional notice or demand (which additional notice or demand is hereby expressly waived by Tenant) without being liable for prosecution of any claim for damages therefor, and expel Tenant and those claiming under Tenant and remove their effects without being guilty of any manner of trespass. Tenant agrees that if Landlord shall cause Tenant's goods or effects to be removed from the Premises pursuant to the terms hereof or of any court order, Landlord's act of so removing such goods or effects shall be deemed to be the act of and for the account of Tenant.

(d) In the event of such termination: (i) Landlord may accelerate and declare the entire remaining unpaid Rent and any and all other monies payable under this Lease for the balance of the Term hereof to be immediately due and payable; or (ii) Landlord may collect from Tenant, as liquidated damages: (A) all past due Rent and other amounts due Landlord up to the date of expiration or termination; plus (B) the difference between Rent provided for herein and the proceeds from any re-letting of the Premises, payable in monthly installments over the period that would otherwise have constituted the remaining term of this Lease; plus (C) all expenses in connection with such re-letting including, without limitation, all costs, fees, and expenses of repossession, brokers, advertising, attorneys, courts, repairing, cleaning, repainting, and remodeling of the Premises for re-letting. In the event of default by Tenant, Landlord shall use commercially reasonable efforts (i) to re-let the Premises to a replacement tenant and (ii) to mitigate the damages incurred by Tenant as a result of such default.

(e) Without waiving its rights to terminate as provided above, Landlord may retake possession of the Premises in the same manner as provided in Section 18.02(a) above. It is agreed that any such retaking or the commencement and prosecution of any action by Landlord in forcible entry and detainer, ejectment, or otherwise, or any execution of any judgment or decree obtained in any action to recover possession of the

Premises shall not be construed as an election to terminate this Lease unless Landlord expressly exercises its option hereinbefore provided to declare the Term hereof ended, whether or not such entry or reentry be had or taken under summary proceedings or otherwise, and shall not be deemed to have absolved or discharged Tenant from any of its obligations and liabilities for the remainder of the current Term of this Lease; rather, this Lease shall continue in effect for the remainder of the then current Term, and Tenant shall remain liable and obligated under all of the covenants and conditions hereof during the said period and shall pay as and when due the Rent and other amounts payable hereunder as if Tenant had not defaulted. In the event Landlord elects to exercise any remedies under this Section 18.02(e) following the occurrence of an Event of Default, Landlord shall provide at least ten (10) days' advance written notice to Tenant stating the nature of Tenant's default and Landlord's intention to recover possession of the Premises. Landlord, as part of its obligations to mitigate the damages of the Tenant's default in accordance with Section 18.02(d), may re-lease the Premises for the account of Tenant, crediting the rent received on such re-leasing first to the costs of such re-leasing and then to any other amounts owing by Tenant hereunder. Tenant hereby constitutes and appoints Landlord as its attorney-in-fact to take any and all actions necessary or incidental to such re-leasing and this power shall be irrevocable during the Term of this Lease. Such continuance of this Lease shall not constitute any waiver or consent by Landlord of or to said default or any subsequent default.

**Section 18.03 Landlord's Damages.** In addition to the foregoing remedies and regardless of which remedies Landlord pursues, Tenant covenants that it will indemnify Landlord from and against any loss and damage directly or indirectly sustained by reason of any termination resulting from any Event of Default as provided above or the enforcement or declaration of any rights and remedies of Landlord or obligations of Tenant, whether arising under this Lease or granted, permitted, or imposed by Law or otherwise. Landlord's damages hereunder shall include, but shall not be limited to, any loss of Rent prior to or after re-leasing the Premises, broker's or salesperson's commissions, advertising costs, costs of repairing and remodeling the Premises for re-leasing, moving, and storage charges incurred by Landlord in moving Tenant's property and effects, and legal costs and reasonable attorneys' fees incurred by Landlord in any proceedings resulting from Tenant's default, collecting any damages hereunder, obtaining possession of the Premises by summary process or otherwise or re-leasing the Premises, or the enforcement or declaration of any of the rights or remedies of Landlord or obligations of Tenant, whether arising under this Lease or granted, permitted, or imposed by Law or otherwise. In the event that any court or governmental authority shall limit any amount which Landlord may be entitled to recover under this paragraph, Landlord shall be entitled to recover the maximum amount permitted under Law. Nothing in this paragraph shall be deemed to limit Landlord's recovery from Tenant of the maximum amount permitted under Law or of any other sums or damages which Landlord may be entitled to so recover in addition to the damages set forth herein.

**Section 18.04 Non-Waiver of Defaults.** No delay or omission of Landlord to execute any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein. No waiver of any breach of any of the covenants of this Lease shall be construed, taken, or held to be a waiver of

any other breach, waiver, or acquiescence in, or consent to, any further or succeeding breach of the same covenant. Receipt by Landlord of less than the full amount due from Tenant shall not be construed to be other than a payment on account of the amounts then due, nor shall any statement on Tenant's check or any letter accompanying Tenant's payment be deemed an accord and satisfaction, and Landlord may accept such payment as a partial payment only. The rights herein given to receive, collect, sue, or distrain for any rent or rents, monies, or payments, or to enforce the terms, provisions, and conditions of this Lease, or to prevent the breach or nonobservance thereof, or the exercise of any such right (or of any other right or remedy hereunder), or otherwise granted or arising, shall not in any way affect or impair or take away the right or power of Landlord to declare the Term hereby granted ended and to terminate this Lease as herein provided because of any default in or breach of any of the covenants, provisions, or conditions of this Lease.

## **ARTICLE XIX PROTECTION OF LENDERS**

**Section 19.01 Subordination.** This Lease and Tenant's rights hereunder are and shall be subordinate and inferior to any ground lease, deed of trust, or mortgage encumbering all or any portion of the Premises or the Marina, any advances made on the security thereof and any renewals, modifications, consolidations, replacements, or extensions thereof, whenever made or recorded. If any ground lessor, beneficiary, or mortgagee elects to have this Lease rank prior to the lien of its ground lease or mortgage, and gives written notice thereof to Tenant, this Lease shall be deemed prior to such ground lease mortgage whether this Lease is dated prior or subsequent to the date of said ground lease, deed of trust, or mortgage or the date of recording thereof. Notwithstanding anything to the contrary contained herein, Landlord shall use best efforts to obtain a standard, executed subordination, non-disturbance, and attornment agreement with such ground lessor, beneficiary, or mortgagee, on terms reasonably acceptable to Tenant. The provisions of this Section 19.01 shall be self-operative and no further instrument shall be required to cause the provisions of this Section 19.01 to be effective.

**Section 19.02 Attornment and Non-Disturbance.** If Landlord's interest in the Premises or the Marina is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Tenant shall attorn to the transferee of or successor to Landlord's interest in the Premises or the Marina and shall recognize such transferee or successor as Landlord under this Lease, so long as any such transferee agrees to assume all obligations under this Lease. Tenant waives the protection of any statute or rule of Law which gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Premises upon the transfer of Landlord's interest.

**Section 19.03 Signing of Documents.** Tenant shall sign and deliver any instrument or document reasonably necessary or appropriate to evidence any such attornment or subordination or agreement to do so. Such subordination and attornment documents may contain such provisions as are customarily required by any ground lessor under a ground lease, mortgagee, or beneficiary under a deed of trust. If Tenant fails to do so within fifteen (15) days after written request, Tenant shall be in default under this Lease.

**Section 19.04 Estoppel Certificates.** Upon Landlord's written request, Tenant shall execute, acknowledge, and deliver to Landlord a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been cancelled or terminated; (iii) the last date of payment of Base Rent, Percentage Rent, Additional Rent, and any other charges and the time period covered by such payment; (iv) that Landlord is not in default under this Lease (or, if Landlord is claimed to be in default, stating why); and (v) such other matters as may be reasonably required by Landlord or the holder of a mortgage or lien to which the Premises are or become subject. Tenant shall deliver such statement to Landlord within fifteen (15) days after Landlord's request or Tenant shall be in default under this Lease. Any such statement by Tenant may be given by Landlord to any prospective purchaser or encumbrancer of the Premises. Such purchaser or encumbrancer may rely conclusively upon such statement as being true and correct. Unless Landlord has received a written statement to the contrary within such 15-day period, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (A) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (B) that this Lease has not been cancelled or terminated except as otherwise represented by Landlord; (C) unless provided otherwise, that not more than one month's Base Rent, Additional Rent, or other charges have been paid in advance; and (D) that Landlord is not in default under this Lease. In such event, Tenant shall be estopped from denying the truth of such facts.

**Section 19.05 Tenant's Financial Condition.** Tenant shall deliver to Landlord, from time to time upon request of Landlord, such financial statements as are reasonably required by Landlord to verify the net worth of Tenant and any Subtenant or assignee of Tenant. In addition, until such time as Landlord has delivered all of the Construction Completion Deliverables in accordance with Section 2.03(c), Tenant shall deliver to Landlord upon request therefor such financial statements as are reasonably required by Landlord to verify the net worth of each of the Guarantors. All financial statements provided to Landlord shall be confidential and shall be used only for the purposes set forth herein.

## **ARTICLE XX WAIVER OF CLAIMS**

Tenant agrees that, to the extent not expressly prohibited by Law, Landlord, its lenders and the Landlord Parties shall not be liable for (nor shall Rent abate as a result of) any direct or consequential damage (including damage claimed for actual or constructive eviction) either to person or property sustained by Tenant, any Tenant Parties, any Subtenants, contractors, service providers invitees, or guests of Tenant due to the Premises, the Marina, or any part thereof or any appurtenances thereto becoming out of repair, or due to the happening of any accident in or about the Premises or the Marina, or due to any act or neglect of any tenant or occupant of the Premises or the Marina or of any other person. This provision shall apply particularly (but not exclusively) to damage caused by water, snow, frost, steam, sewage, gas, electricity, sewer gas, or odors or by the bursting, leaking, or dripping of pipes, faucets, and plumbing fixtures, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the causes specifically enumerated above or

to some other cause of an entirely different kind. Tenant further agrees that all of Tenant's Improvements, trade fixtures, equipment, and all other Personal Property in the Premises, the Building, or the Marina shall be at the risk of Tenant only, and that Landlord shall not be liable for any loss or damage thereto or theft thereof. Notwithstanding the foregoing, Landlord shall not hereby be exculpated from any liability arising from Landlord's or Landlord Parties' gross negligence or intentional misconduct and in no way shall this Article XX be construed to limit the remedies of Tenant for seeking damages against Landlord for a default of any provision of this Lease.

#### **ARTICLE XXI WAIVER OF NOTICE**

Except as otherwise provided in this Lease, Tenant hereby expressly waives the service of: (a) any notice of intention to terminate this Lease or to reenter the Premises; (b) any demand for payment of Rent or for possession of the Premises; and (c) any other notice or demand prescribed by any Law.

#### **ARTICLE XXII NOTICES**

Unless specifically stated otherwise in this Lease, all notices, waivers, and demands required or permitted hereunder shall be in writing and delivered to the addresses of Landlord and Tenant set forth in the Preamble to this Lease, by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the Business Day following deposit with the courier; (c) registered United States mail, signature required, and postage-prepaid, whereby delivery is deemed to have occurred on the third Business Day following deposit with the United States Postal Service; or (d) electronic transmission by email provided that the transmission is completed no later than 5:00 p.m. Eastern Time on a Business Day and the original also is sent via overnight courier or United States Mail, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed. Any Party shall change its address for purposes of this Lease by giving written notice as provided in this Article XXII and notices shall only be valid if served in the manner provided. All notices and demands delivered by a party's attorney on a Party's behalf shall be deemed to have been delivered by said Party. For purposes hereof, Landlord's address for electronic transmission is desireef@iop.net and Tenant's address for electronic transmission is dave@mex1can.com and jbushnell55@yahoo.com.

#### **ARTICLE XXIII BROKERS**

**Section 23.01 Broker's Fee.** Upon the execution and delivery of this Lease by both Landlord and Tenant, Landlord shall pay the real estate commission owing to Landlord's Broker to Lee & Associates as provided in a separate written agreement between Landlord and Lee & Associates. Landlord's Broker shall cause an appropriate portion of its commission to be paid to

Tenant's Broker as provided in an agreement between Landlord's Broker and Tenant's Broker. Nothing contained in this Lease shall impose any obligation on Landlord to pay a commission or fee to any party other than Landlord's Broker.<sup>3</sup>

**Section 23.02 No Other Brokers.** Tenant and Landlord each represent and warrant to the other that Landlord's Broker and Tenant's Broker are the only brokers, agents, finders, or other parties with whom either party has dealt who are or may be entitled to any commission or fee with respect to this Lease or the Premises. Landlord and Tenant each agree to indemnify and hold the other and the other's officers, directors, persons, agents, and representatives harmless from and against any and all liabilities, damages, claims, costs, fees, and expenses whatsoever (including, without limitation, reasonable attorneys' fees and costs at all trial and appellate levels) resulting from any other broker, agent, or other person (other than the Brokers) claiming a commission or other form of compensation by virtue of having dealt with the indemnifying party with regard to this leasing transaction. The provisions of this Section 23.02 shall survive the expiration or other termination of this Lease.

#### **ARTICLE XXIV QUIET ENJOYMENT**

Landlord agrees that Tenant shall, upon paying the Rent and other payments herein reserved and upon keeping, observing, and performing all of the other terms, covenants, conditions, provisions, and agreements contained in this Lease on the part of Tenant to be kept, observed, and performed during the Term of this Lease and so long as no Event of Default exists that would permit Landlord to terminate this Lease, peaceably and quietly have, hold, and enjoy the Premises subject to the terms, covenants, conditions, provisions, and agreements hereof, free from hindrance by Landlord or any other person claiming by, through, or under Landlord ("**Quiet Enjoyment**").

#### **ARTICLE XXV END OF TERM**

**Section 25.01 Surrender of the Premises.** Upon the expiration or other termination of this Lease, Tenant shall quit and surrender the Premises vacant, broom clean, and in good order and condition, ordinary wear and tear and damage by casualty or condemnation excepted, failing which Landlord may restore the Premises, equipment, and fixtures to such condition and Tenant shall pay the cost thereof upon demand as Additional Rent. All of Tenant's Personal Property, furniture, trade fixtures, shelves, bins, inventory, equipment, and machinery not removed from the Premises when Tenant leaves the Premises upon the expiration or other termination of this

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<sup>3</sup> NTD: Section 6(1) of the City's listing agreement with Lee & Associates provides that Owner is "to pay Broker a commission of 6.0%." Section 6(2) of the listing agreement further provides that "Owner understands that that Broker shall pay cooperating agents/transaction brokers . . . a commission of 3.000%." The listing agreement does not provide that the City is to make separate direct payments to each broker. The City will not agree to make any payments for commissions except as set forth in the listing agreement.

Lease shall thereupon be conclusively presumed to have been abandoned by Tenant and immediately become Landlord's property; provided, however, that Landlord may require Tenant to remove such Personal Property, furniture, trade fixtures, shelves, bins, inventory, equipment, and machinery or may have such property removed at Tenant's expense. Prior to Tenant's vacating the Premises, Tenant shall pay to Landlord an amount reasonably estimated by Landlord as necessary to put the Premises including, without limitation, all HVAC systems and equipment therein, in good condition and repair, but in no case shall Tenant be required to pay any costs to put the Premises in a better condition or repair than that required under this Section 25.01 upon the expiration or other termination of this Lease. Notwithstanding any provision to the contrary in this Lease, Tenant shall have the right to enter the Premises immediately after the end of the Term of this Lease for five (5) consecutive Business Days to repair and restore the Premises as required by the terms of this Lease, and Tenant shall not be deemed to be holding over during such period of time, and Landlord shall provide Tenant with written notice of any restoration required to the Premises along with a reasonable opportunity to access and restore the Premises as required by the terms of this Lease before Landlord proceeds to complete such restoration work on its own and charge Tenant for the costs thereof Tenant. If Landlord fails to do so, Tenant shall have no obligation to reimburse Landlord for any costs Landlord incurs in connection with Landlord's restoration of the Premises. The provisions of this Section 25.01 shall survive the expiration or earlier termination of this Lease.

**Section 25.02 Holding Over.** Any holding over by Tenant after the expiration or termination of this Lease, by lapse of time or otherwise, shall not operate to extend or renew this Lease except by the express mutual written agreement between Landlord and Tenant, and in the absence of such agreement, Tenant shall continue in possession as a month-to-month tenant only, except that the monthly Rent shall be increased to an amount equal to one hundred fifty percent (150%) of the monthly installment of Base Rent, Percentage Rent, and Additional Rent paid in the month immediately preceding the expiration or termination of this Lease. Either party may thereafter terminate such occupancy at the end of any calendar month by first giving to the other party no less than thirty (30) days' prior written notice.

## **ARTICLE XXVI MISCELLANEOUS PROVISIONS**

**Section 26.01 Governing Law; Venue.** The Laws of the State shall govern the validity, performance, and enforcement of this Lease. Tenant consents to personal jurisdiction and venue in the state and judicial district in which the Marina is located. The courts of the state where the Marina is located shall have exclusive jurisdiction, and Tenant hereby agrees to such exclusive jurisdiction.

**Section 26.02 Entire Agreement; Waivers.** This Lease forms the entire agreement between Landlord and Tenant and no provision hereof shall be altered, waived, amended, or extended, except in a writing signed by both parties. Tenant affirms that, except as expressly set forth herein, neither Landlord nor any of its agents has made, nor has Tenant relied upon, any representation, warranty, or promise with respect to the Premises or any part thereof. Landlord shall not be considered to have waived any of the rights, covenants, or conditions of this Lease unless evidenced by its written waiver and the waiver of one default or right shall not constitute

the waiver of any other. The acceptance of rent shall not be construed to be a waiver of any breach or condition of this Lease. No extrinsic evidence whatsoever may be introduced in any judicial proceeding involving this Lease. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning and not construed for or against any party by reason of such party having drafted such language.

**Section 26.03 Successors and Assigns.** The provisions of this Lease shall be binding upon and inure to the benefit of Landlord and Tenant, respectively, and their respective successors, assigns, heirs, executors, and administrators. Tenant agrees to become the tenant of Landlord's successor in interest under the same terms and conditions of its tenancy hereunder.

**Section 26.04 Partial Invalidity.** If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws, the remainder of this Lease shall not be affected thereby and there shall be added as part of this Lease a replacement clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

**Section 26.05 Relationship of the Parties.** Landlord and Tenant agree that the relationship between them is that of landlord and tenant and that Landlord is leasing space to Tenant. It is not the intention of the parties, nor shall anything herein be constructed to constitute Landlord as a partner or joint venturer with Tenant, or as a "warehouseman" or a "bailee."

**Section 26.06 Headings.** The headings as to the contents of particular paragraphs herein are intended only for convenience and are in no way to be constructed as a part of this Lease or as a limitation of the scope of the particular paragraphs to which they refer.

**Section 26.07 Survival of Obligations.** All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term of this Lease shall survive the expiration or earlier termination of the Term hereof.

**Section 26.08 Independent Covenants.** Subject to the other terms and provisions of this Lease, Tenant's covenants to pay Rent and other sums due hereunder are independent of Landlord's covenants hereunder and Tenant shall have no right to withhold any such payments on account of any alleged failure by Landlord to perform or comply with any of Landlord's covenants.

**Section 26.09 Additional Rights of Landlord.** In addition to other rights conferred by this Lease or by Law, and as long as it does not render the Premises untenable, Landlord reserves the right, to be exercised in Landlord's sole discretion, to: (a) change the name of the Marina; (b) install and maintain a sign or signs on or about the Marina, so long as such signs do not materially block or interfere with the visibility of any of the Tenant's signs; (c) change the street address of the Building or the Marina, in which Landlord shall provide prompt notice to Tenant of the address change so that Tenant can make the appropriate changes to its website and other marketing material; (d) designate all sources furnishing signs, sign painting, and lettering that are not connected to the Premises; (e) take all measures as may be reasonably necessary or desirable for the safety and protection of the Marina; (f) have pass keys to the Building; (g) construct, alter, add to, improve, or build additional stories on any buildings or improvements on

any portion of the Marina other than the Premises, so long as any such construction projects do not materially impede access to the Premises or related parking lots by any employees, managers, officers, customers or other invitees; (h) renovate, refurbish, relocate, or modify the Common Areas so long as any such modifications do not materially impede access to the Premises or related parking lots by any employees, managers, officers, customers or other invitees; and (i) carry on any work, repairs, Alterations, or improvements in, on, or about any portion of the Marina other than the Building, so long as any such work or repairs do not materially impede access to the Premises or related parking lots by any employees, managers, officers, customers or other invitees. This Section 26.09 shall not be construed to alter or create any obligations of Landlord or Tenant with respect to repairs or improvements or other obligations provided herein. Notwithstanding the foregoing, to the extent that Landlord's actions in exercising any of its rights contained in this Section 26.09 interfere substantially with the normal use of the Premises, the Building, and/or the Marina, appurtenant parking and/or other Common Areas by Tenant and/or Tenant Parties as allowed herein or create disruptive sounds, vibrations, dust, or debris which continues for a period of more than ten (10) consecutive days, then the Base Rent and Additional Rent shall be proportionately abated until such interference or disturbance is eliminated or the Premises, the Building, and/or the Marina are otherwise rendered tenantable again.

**Section 26.10 Limitation of Liability.** Anything in this Lease to the contrary notwithstanding, any judgment obtained against Landlord in connection with this Lease or the subject matter hereof shall be limited solely to Landlord's interest in the Premises and the Marina and shall be absolutely nonrecourse with respect to Landlord personally and all other assets of Landlord. For purposes of this Section 26.10, the term "Landlord" shall be limited to mean and include only the then owner of the Premises or the Marina and not any predecessor owner or tenant.

**Section 26.11 Authority.** Tenant makes the following representations to Landlord, on which Landlord is entitled to rely in executing this Lease: (i) Tenant is a limited liability company duly organized and existing under the laws of the State of South Carolina and is qualified to do business in the State of South Carolina, has the power to enter into this Lease and the transactions contemplated hereby and to perform its obligations hereunder; (ii) by proper resolution the signatory hereto has been duly authorized to execute and deliver this Lease; and (iii) the execution, delivery, and performance of this Lease and the consummation of the transactions herein contemplated shall not conflict with or result in a violation, breach of, or default under Tenant's articles of organization and operating agreement, as amended, or any indenture, deed of trust, mortgage, note, security agreement, or other agreement or instrument to which Tenant is a party or by which it is bound or to which any of its properties is subject.

Landlord makes the following representations to Tenant, on which Tenant is entitled to rely in executing this Lease: (i) Landlord is an incorporated municipality and has the power to enter into this Lease and the transactions contemplated hereby and to perform its obligations hereunder; (ii) by proper authorization by the City of the Isle of Palms, the signatory hereto has been duly authorized to execute and deliver this Lease in accordance with all governing rules and regulations; and (iii) the execution, delivery, and performance of this Lease and the consummation of the transactions herein contemplated shall not conflict with or result in a

violation, breach of, or default of any existing leases, management contracts, contracts, indenture, deed of trust, mortgage, note, security agreement, or other agreement or instrument to which Landlord is a party or by which it is bound or to which any of its properties is subject.

**Section 26.12 Compliance with Laws.** Subject to the other terms and provisions of this Lease, Tenant shall comply at its cost and expense with all Laws, and with any direction or recommendation of any public officer or officers, pursuant to Law, or any reasonable request of any insurance company carrying any insurance on the Premises, and any insurance inspection or rating bureau which shall impose any duty upon Landlord or Tenant with respect to the Premises or the Tenant's use or occupation of the Premises, and shall bear all costs of any kind or nature whatsoever occasioned by or necessary for compliance with the same. If, during the Term of this Lease any Law mandates that an alteration, repair, addition, or other change be made to all or any portion of the Premises, including, without limitation, any Structural Alterations to the Premises, such work shall be performed at Tenant's expense.

**Section 26.13 Waiver of Jury Trial.** LANDLORD AND TENANT KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER IN ANY MATTER ARISING OUT OF THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR ANY CLAIM OF INJURY OR DAMAGE.

**Section 26.14 Landlord's Lien Waiver.** It is contemplated that certain Personal Property now or hereafter installed by Tenant in the Premises is or may be either leased by Tenant or purchased by Tenant from a lessor or a conditional seller, or otherwise hypothecated to a "Third Party." All of Tenant's Personal Property, now or hereafter located upon the Premises and owned by Tenant or any Third Party, and regardless of the method in which such Personal Property is attached or affixed to the Premises, shall not be deemed a fixture of the real estate and shall be and remain the Personal Property of Tenant or such Third Party. All such Personal Property of Tenant or any Third Party is herein referred to collectively as "Tenant's Equipment." Tenant or any Third Party shall have the right to remove Tenant's Equipment from the Premises from time to time; provided, however, that if such removal shall injure or damage the Premises, Tenant shall repair the damage and place the Premises in the same condition as it would have been if such equipment had not been installed. Landlord hereby waives its rights, statutory or otherwise, to any lien on Tenant's Equipment. Landlord shall, upon request of Tenant or any Third Party, execute, or cause to be executed, a commercially reasonable waiver of Landlord's lien and Landlord's mortgagee's lien on any of Tenant's Equipment.

**Section 26.15 Counterparts.** This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument.

**Section 26.16 Prevailing Party.** If any Party brings an action or proceeding involving the Premises to enforce the Terms hereof or to declare rights hereunder, then the Prevailing Party in any such proceeding, action, or appeal thereon shall be entitled to reasonable attorneys' fees. The term, "Prevailing Party" shall include, without limitation, a Party that substantially obtains

or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, the Prevailing Party shall be entitled to attorneys' fees, costs, and expenses incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such default.

**Section 26.17 Patriot Act.** Tenant hereby represents and warrants to Landlord that Tenant: (i) is in compliance with the Office of Foreign Assets Control sanctions and regulations promulgated under the authority granted by the Trading with the Enemy Act, 12 U.S.C. § 95(a) *et seq.*, and the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, as the same apply to it or its activities; (ii) is in compliance with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended from time to time (the "**Patriot Act**") and all rules and regulations promulgated under the Patriot Act applicable to Tenant; and (iii) (A) is not now, nor has Tenant ever been, under investigation by any governmental authority for, nor has Tenant been charged with or convicted of a crime under, 18 U.S.C. §§ 1956 or 1957 or any predicate offense thereunder; (B) has never been assessed a civil penalty under any anti-money laundering laws or predicate offenses thereunder; (C) has not had any of its funds seized, frozen, or forfeited in any action relating to any anti-money laundering laws or predicate offenses thereunder; (D) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is not promoting, facilitating, or otherwise furthering, intentionally or unintentionally, the transfer, deposit, or withdrawal of criminally derived property, money, or monetary instruments which are (or which Tenant suspects or has reason to believe are) the proceeds of any illegal activity or which are intended to be used to promote or further any illegal activity; and (E) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is in compliance with all Laws and regulations applicable to its business for the prevention of money laundering and with anti-terrorism Laws and regulations, with respect both to the source of funds from its investors and from its operations, and that such steps include the development and implementation of an anti-money laundering compliance program within the meaning of Section 352 of the Patriot Act, to the extent such a party is required to develop such a program under the rules and regulations promulgated pursuant to Section 352 of the Patriot Act. Neither Tenant nor any other person owning a direct or indirect, legal, or beneficial interest in Tenant is in violation of the Executive Order or the Patriot Act. Neither Tenant nor any of its respective constituents, investors (direct or indirect and whether or not holding a legal or beneficial interest), or affiliates, acting or benefiting, directly or indirectly, in any capacity in connection with Landlord and/or the Marina or this Agreement or any of the transactions contemplated hereby or thereby, is: (1) listed in the Annex to, or otherwise subject to the provisions of, that certain Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism (the "**Executive Order**"); (2) named as a "specifically designated national (SDN)" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website (<http://www.treas.gov/ofac/t11sdn.pdf>) or at any replacement website or other replacement official publication of such list or that is named on any other Governmental Authority list issued post 9/11/01; (3) acting, directly or indirectly for terrorist

organizations or narcotics traffickers, including those persons that are included on any relevant lists maintained by the United Nations, North Atlantic Treaty Organization, Financial Action Task Force on Money Laundering, U.S. Office of Foreign Assets Control, U.S. Securities and Exchange Commission, U.S. Federal Bureau of Investigation, U.S. Central Intelligence Agency, U.S. Internal Revenue Service, all as may be amended or superseded from time to time; or (4) owned or controlled by, or acting for or on behalf of, any person described in clauses (1), (2), or (3) above (a “**Prohibited Person**”). None of the funds or other assets of the Tenant constitute property of, or are beneficially owned, directly or indirectly, by any person, entity, or government subject to trade restrictions under U.S. Law, including but not limited to: (x) the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.*; (y) The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*; and (z) any Executive Orders or regulations promulgated thereunder, with the result that a sale by Tenant or other Persons (whether directly or indirectly), is prohibited by law (an “**Embargoed Person**”). No Embargoed Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly); and none of the funds of Tenant have been derived from any unlawful activity with the result that an investment in Tenant (whether directly or indirectly) or a sale by Tenant that is prohibited by Law, or that execution, delivery, and performance of this Lease or any of the transactions or other documents contemplated hereby or thereby is in violation of Law.

## **ARTICLE XXVII EXTENSION TERM**

**Section 27.01 Extension Term.** Not more than twenty-four (24) months and not less than twelve (12) months prior to the expiration of the Primary Lease Term, Landlord shall provide written notice to Tenant indicating whether Landlord intends to redevelop the Premises or use the Premises for any purpose other than the Permitted Use following the expiration of the Primary Lease Term (“**Landlord Redevelopment Notice**”). If the Landlord Redevelopment Notice indicates that Landlord does not plan to redevelop the Premises or to use the Premises for a purpose other than the Permitted Use following the expiration of the Primary Lease Term, Tenant shall have the right to extend the Term of this Lease (the “**Lease Extension**”) for an additional term (“**Extension Term**”) commencing on the day following the expiration of the Primary Lease Term, provided that each of the following occurs:

- (a) Landlord receives initial notice of the exercise of the Lease Extension (“**Initial Extension Notice**”) not more than twelve (12) months and not less than one hundred eighty (180) days prior to the Expiration Date of the Primary Lease Term;
- (b) No Event of Default exists at the time Tenant delivers its Initial Extension Notice, at the time Tenant delivers its Binding Extension Notice, or at the commencement of the Extension Term;
- (c) This Lease has not been assigned by Tenant prior to the commencement of the Extension Term; and
- (d) Landlord and Tenant have agreed upon the length of the Extension Term.

### **Section 27.02 Rent Payable During the Extension Term.**

(a) The Base Rent payable during the Extension Term shall equal the greater of: (i) the annual Base Rent payable immediately prior to the commencement of the Extension Term; or (ii) the then Prevailing Market Rental Rate for the Premises.

(b) Tenant shall pay Percentage Rent to Landlord during the Extension Term as provided in this Lease.

(c) Tenant shall pay Additional Rent during the Extension Term as provided in this Lease.

### **Section 27.03 Binding Extension Notice/Rejection Notice.**

(a) Within thirty (30) days after receipt of the Initial Extension Notice, Landlord shall advise Tenant of its initial determination of the Prevailing Market Rental Rate payable as Base Rent for the Extension Term. Tenant shall, within ten (10) days after the date on which Landlord advises Tenant of its initial determination of the Prevailing Market Rental Rate payable as Base Rent for the Extension Term, either: (i) give Landlord final binding written notice (“**Binding Extension Notice**”) of its election to exercise the Lease Extension; or (ii) if Tenant disagrees with Landlord’s determination of the applicable Base Rent for the Extension Term, provide Landlord with written notice of rejection (“**Rejection Notice**”). If Tenant fails to provide Landlord with either a Binding Extension Notice or a Rejection Notice within such 10-day period, Tenant’s Initial Extension Notice shall be null and void and of no further force and effect.

(b) If Tenant provides Landlord with a Binding Extension Notice, Landlord and Tenant shall enter into a Lease Extension Amendment prepared by Landlord upon the terms and conditions set forth herein. If Tenant provides Landlord with a Rejection Notice, Landlord and Tenant shall work together in good faith to agree upon the Prevailing Market Rental Rate payable as Base Rent during the Extension Term. Upon agreement upon such Prevailing Market Rental Rate payable as Base Rent during the Extension Term, Tenant shall provide Landlord with a Binding Extension Notice and Landlord and Tenant shall enter into the Lease Extension Amendment in accordance with the terms and conditions hereof. Notwithstanding the foregoing, if Landlord and Tenant are unable to agree upon the Prevailing Market Rental Rate payable as Base Rent during the Extension Term within thirty (30) days after the date on which Tenant provides Landlord with a Rejection Notice, Landlord and Tenant agree to obtain an appraisal to determine the Prevailing Market Rental Rate in accordance with the terms and conditions contained in Section 27.03(c) below.

(c) If Landlord and Tenant are unable to agree upon the Prevailing Market Rental Rate within thirty (30) days after the date on which Tenant provides Landlord with a Rejection Notice, Landlord and Tenant each shall, within ten (10) Business Days following Landlord’s receipt of the Rejection Notice, select a Qualified Appraiser. Landlord’s Qualified Appraiser and Tenant’s Qualified Appraiser shall then, within ten (10) Business Days following their appointment, designate a third Qualified Appraiser. If

Landlord's Qualified Appraiser and Tenant's Qualified Appraiser cannot agree on the third Qualified Appraiser within the 10-Business Day period, Landlord and Tenant shall promptly make application to a court of competent jurisdiction seated in the county in which the Premises is located, to name the third Qualified Appraiser. The three (3) Qualified Appraisers shall determine the Prevailing Market Rental Rate payable as Base Rent during the Extension Term and notify Landlord and Tenant of their determination within thirty (30) days following the appointment of the third Qualified Appraiser. The decision of a majority of the three Qualified Appraiser, acting as experts and not as arbitrators, shall be binding and conclusive on the parties. Landlord and Tenant shall each be responsible for the costs of expenses of their own Qualified Appraiser and shall each be responsible for one-half (1/2) of the costs and expenses incurred by the third Qualified Appraiser.

(d) If Tenant is entitled to and properly elected to exercise the Lease Extension, Landlord shall prepare an amendment ("**Lease Extension Amendment**") to reflect the changes in the Base Rent, the Expiration Date, and other appropriate terms subject to Tenant's reasonable approval. At Landlord's election, the valid election by Tenant to exercise the Lease Extension shall be fully effective whether or not the Lease Extension Amendment is executed. The renewal rights of Tenant hereunder shall not be severable from this Lease and are personal to the tenant originally named in this Lease.

**Section 27.04 Prevailing Market Rental Rate.** For purposes hereof, "**Prevailing Market Rental Rate**" shall mean the arm's-length fair market annual rental rate under renewal leases entered into on or about the date on which the Prevailing Market Rental Rate is being determined hereunder for space comparable to the Premises in the Marina and in buildings comparable to the Building. The determination of the Prevailing Market Rental Rate shall take into account any material economic differences between the terms of this Lease and any comparison lease, such as rent abatements, construction costs, other concessions, and the manner, if any, in which the landlord under any such lease is reimbursed for operating expenses and taxes. The determination of the Prevailing Market Rental Rate shall also take into consideration any reasonably anticipated changes in the Prevailing Market Rental Rate from the time such Prevailing Market Rental Rate is being determined and the time such Prevailing Market Rental Rate will become effective under this Lease.

**\*\*\*\*\*Remainder of Page Intentionally Left Blank\*\*\*\*\***  
*[Signatures on Following Page]*

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Commencement Date.

LANDLORD:

**CITY OF ISLE OF PALMS,**  
a political subdivision of the State  
of South Carolina

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

**MARKER116, LLC**  
a South Carolina limited liability company

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: Dave Lorenz  
Title: Authorized Member

**EXHIBIT A**

*Legal Description of the Land*

**EXHIBIT B**  
*Site Plan of Premises*

**EXHIBIT C**

*Parking Plan*

# 80 41<sup>ST</sup> AVENUE

ISLE OF PALMS, SOUTH CAROLINA



	<b>Exclusive Parking Lot</b> Restaurant
	<b>Private Parking Lot</b> Available to restaurant pursuant to agreement with Marina Manager (MJV)
	<b>Shared Parking Lot</b> Shared among tenants under the direction of the Marina Manager (MJV)
	<b>Exclusive Parking Lot</b> Marina Joint Ventures
	<b>Exclusive Parking Lot</b> Marina Store

Dumpster area

**EXHIBIT D**  
*Restaurant Rider*

THIS RESTAURANT RIDER IS ATTACHED TO AND FORMS A PART OF THAT CERTAIN RESTAURANT LEASE DATED [DATE] (THE "LEASE") BY AND BETWEEN CITY OF ISLE OF PALMS, A POLITICAL SUBDIVISION OF THE STATE OF SOUTH CAROLINA ("LANDLORD") AND [TENANT NAME], A(N) [STATE OF ORGANIZATION] [ENTITY TYPE], ("TENANT") LEASING THAT CERTAIN PREMISES, AS MORE PARTICULARLY DESCRIBED THEREIN. IF THERE ARE ANY INCONSISTENCIES BETWEEN THE TERMS AND PROVISIONS OF THE RESTAURANT LEASE AND THIS RESTAURANT RIDER, THE TERMS AND PROVISIONS OF THIS RESTAURANT RIDER SHALL PREVAIL.

1. **Food and Beverage Preparation Permitted.** Tenant shall be permitted to prepare and sell all food, alcoholic beverages, including beer, wine and liquor, and other items as may be permitted in the Lease.

2. **Exhaust Systems; Cleaning and Degreasing.** Tenant shall, at its sole cost and expense, prior to opening for business in the Premises and at all times thereafter during the Term, provide the necessary exhaust fans and systems, ductwork, and venting to ensure that all smoke, odors, vapors, and steam are properly exhausted from the Building. Such systems shall be installed so as to prevent the discharge of smoke, odors, vapors, and steam into the Building or into spaces leased to others and to avoid the likelihood that such smoke, odors, vapors, and steam will be retained in the Building or in spaces leased by others. Tenant's exhaust or venting systems shall include fire prevention and/or extinguishment facilities or systems as may be reasonably required from time to time in view of Tenant's methods and volume of cooking and other food and beverage preparation. This shall be in addition to any sprinkler or other fire protection facilities installed in the Premises.

No exhaust vents, flues, pipes, or other outlets shall be installed through the walls, floor, or ceiling of the Building (including but not limited to the exterior walls or the roof of the Building) without the written consent of Landlord as to the location, construction, and appearance thereof. Landlord may require that Tenant's exhaust system(s) be connected to pipes, stacks, flues, vents, or other facilities located outside the Premises and intended for use by Tenant and other food preparation facilities in the Building. In such event, Tenant shall provide the necessary pipes, vents, ductwork, and other facilities to connect Tenant's exhaust system thereto. Landlord shall not, by its approval of the location, construction, or appearance of any of Tenant's exhaust system or facilities in the Building, be deemed to have represented that such systems are adequate or that the same comply with any applicable law, ordinance, or regulation, nor shall such approval be deemed a waiver by Landlord of the right to require that Tenant modify such systems or facilities or add other or additional such systems or facilities in order to prevent the discharge of smoke, odors, vapors, and steam into the Building or into spaces leased to others or to avoid such smoke, odors, vapors, and steam being retained in the Building or in spaces leased to others. Tenant shall regularly and adequately clean or provide for the cleaning of all exhaust and venting systems serving the Premises. This cleaning shall include degreasing of all hoods, fans, vents, pipes, flues, grease traps and other areas of such systems subject to grease

buildup. Tenant shall provide to Landlord, upon demand, reasonable proof that Tenant is doing such cleaning and degreasing or causing it to be done. In the event that Tenant shall refuse or fail to clean and degrease such systems or not arrange for the cleaning and degreasing of such systems, then Landlord may arrange for the cleaning and degreasing thereof (provided Tenant shall have had thirty (30) days' prior written notice to cure same), and Tenant shall pay the cost thereof plus an administrative charge equal to ten percent (10%) of the cost thereof upon demand as Additional Rent.

3. **Exterminating.** Tenant shall, at its sole cost and expense, engage professional exterminators to service the Premises, including but not limited to all food preparation and food storage areas, at such frequency and to the extent necessary to keep the Premises and the Marina free of insects, rodents, vermin, and other pests. Tenant shall provide to Landlord, upon demand, reasonable proof that Tenant is causing such exterminating to be regularly performed. In the event that Tenant shall refuse or fail to have such exterminating regularly performed, then Landlord may arrange for such work to be done (provided Tenant shall have had thirty (30) days' prior written notice to cure same), and Tenant shall pay the entire cost thereof plus an administrative charge equal to ten percent (10%) of the cost thereof.

4. **Sewers and Catch Basins.** Tenant shall, at its sole cost and expense, prior to opening for business in the Premises and at all times thereafter during the Term, provide the necessary piping and connections to the existing grease trap located within the Building, catch basins, and other facilities for the removal of all waste liquids from the Premises in compliance with all applicable codes and ordinances of the City of Isle of Palms and all other governmental authorities having jurisdiction. Such facilities shall be connected to the sewers and mains provided by Landlord, and shall be constructed so as to prevent the backing up or discharge of any such waste liquids into the Building, into spaces leased to others, or into any other portion of the Marina.

No pipes, connections, grease traps, catch basins, or other facilities shall be installed through the walls, floor, or ceiling of the Building (including but not limited to the exterior walls or the foundation of the Building) without the written consent of Landlord as to the location and construction thereof, the consent of which shall not be unreasonably withheld, conditioned or delayed. Landlord may require that Tenant's facilities be connected to pipes, risers, catch basins, or other facilities located outside the Premises. In such event, Tenant shall provide the necessary pipes, connections, and other facilities to connect Tenant's facilities thereto. Landlord shall not, by its approval of the location or construction of any of Tenant's waste liquid disposal facilities, be deemed to have represented that such facilities are adequate or that the same comply with any applicable Law, ordinance, or regulation, nor shall such approval be deemed a waiver by Landlord of the right to require that Tenant modify such facilities or add other or additional facilities to provide adequate waste liquid removal capacity for Tenant's use of the Premises or in order to prevent the discharge of such waste liquids or odors therefrom into the Building, into spaces leased to others, or into any other portion of the Marina.

Tenant shall not dispose of waste grease, oil, or other materials which tend to cause clogging or blockage of pipes and drains (hereinafter collectively referred to as "grease") by pouring or permitting the same to flow into any drains or pipes. In the event that Tenant shall do so, Tenant shall reimburse Landlord for the entire cost of cleaning of all drains, pipes, sewers, or other waste liquid disposal facilities damaged thereby plus an administrative charge equal to ten

percent (10%) of the cost thereof upon demand as Additional Rent (provided Tenant shall have thirty (30) days' prior written notice to cure same). For this purpose, the term "cleaning" shall be deemed to include the replacement of all or any portion of the waste liquid disposal facilities necessitated by Tenant's improper disposal of grease.

Tenant shall regularly and adequately clean or provide for the cleaning of all grease traps, catch basins, and similar facilities serving the Premises. Tenant shall not use any chemicals or other cleaning methods which could damage the drainpipes or other portions of the drainage and/or sewer system in the Premises, the Building, or the Marina. Tenant shall provide to Landlord, upon demand, reasonable proof that Tenant is regularly doing such cleaning or causing it to be done. In the event that Tenant shall refuse or fail to regularly clean or arrange for the regular cleaning of such facilities, then Landlord may arrange for the cleaning thereof (provided Tenant shall have had thirty (30) days' prior written notice to cure same), and Tenant shall pay the entire cost thereof plus an administrative charge equal to ten percent (10%) of the cost thereof upon demand as Additional Rent. Landlord shall not be liable to Tenant for any loss or damage that may accrue to Tenant's stock in trade or business by reason thereof, including but not limited to any loss of revenues resulting from any required limitation or cessation of Tenant's business while such cleaning is performed or as a result thereof. Landlord's performance of such cleaning work shall not release Tenant from Tenant's obligations hereunder nor shall the same be deemed to be a waiver by Landlord of Tenant's default for the failure to perform such cleaning.

5. **Equipment.** All equipment installed or used by Tenant in the Premises shall be properly installed and, where necessary, with adequate electrical wiring in conformity with the recommendations of the manufacturers thereof and with all applicable codes and ordinances. All electrical equipment shall have been tested and approved by the Underwriter's Laboratory or similar safety testing organization licensed in the State. No equipment shall be used by Tenant in the Premises unless and until such equipment and the installation thereof has been inspected and approved by the departments or bureaus of the City of Isle of Palms and other governmental authorities having jurisdiction and unless, until and only for so long as all necessary permits and authorizations for the use and/or operation thereof have been obtained by Tenant from such authorities at Tenant's sole cost and expense.

6. **Serving of Liquor.** If Tenant's Permitted Use of the Premises includes the serving of alcoholic beverages, Tenant agrees that:

- a. No person shall be served or continue to be served any alcoholic beverages who, in the reasonable judgment of Tenant or its employees, appears to be intoxicated;
- b. It will not serve alcoholic beverages for off-premises consumption and will use its best efforts to ensure that its customers do not carry such beverages outside of the Premises or the Outdoor Seating Area;
- c. It will comply with all applicable codes and ordinances from time to time in effect regarding the serving of alcoholic beverages, including but not limited to restrictions as to the serving of alcoholic beverage to minors, the age of persons serving alcoholic beverages, and the hours and days during which such beverages may be served (for purposes of this Section 6, the "Alcoholic Beverage Service"), and Tenant shall not be unreasonably restricted or limited from engaging in Alcoholic

Beverage Service that is not equally applied to other businesses located on the Isle of Palms;

- d. It will at all times, at Tenant's sole cost and expense, obtain and keep in full force and effect all necessary licenses, permits, authorizations, and approvals from all governmental authorities having jurisdiction in respect to the serving of alcoholic beverages;
- e. It will hold Landlord, Landlord's beneficiaries, and their respective agents harmless from and indemnify them against any and all liability, loss, cost, damage and/or expense (including reasonable attorneys' fees and expenses) of any kind or nature whatsoever, including but not limited to that resulting from any injury to or death of any persons or damage to or loss of property, by reason of or in any way relating to Tenant's serving of alcoholic beverages in the Premises, including but not limited to liability under any Liquor Control Laws, host liquor laws, or similar laws, statutes, or ordinances, whether now in effect or hereafter adopted by the State of South Carolina, County of Charleston, the City of Isle of Palms or any other governmental authority having jurisdiction.

7. **Cleaning and Maintenance.** Tenant shall clean and maintain all space within the Premises every day it operates business at the Premises. Tenant agrees to clean and maintain the Premises in accordance with the reasonable standards maintained by Landlord in public areas of the Marina. Tenant shall clean the interior and exterior window and door glass surfaces of the Premises. Tenant shall also replace lamps and ballasts in the lighting fixtures within the Premises.

8. **Deliveries.** Tenant agrees that:

- a. Tenant, in Tenant's complete and sole discretion, shall be expressly authorized to allow vendors to drop off deliveries at certain times of the day and during which times that Tenant's employees may not be on site. This is generally done by having "key drop" locations in which these authorized vendors can access the specific parts of the Building in which the deliveries need to be made;
- b. It will not permit any goods or merchandise to remain in, on, or near any doorways, loading docks, receiving areas, or other portions of the Marina; any goods or merchandise remaining in such areas shall be deemed to be trash and may be disposed of by Landlord in such manner as Landlord may deem advisable and without liability to Tenant therefor;
- c. It will require that all purveyors with whom Tenant does business adequately and securely package all goods and merchandise to prevent any leaking, spilling, spoilage, odors, or infestation;
- d. If any leaking or spilling shall occur or if any goods and/or merchandise shall fall out of any containers or packages, Tenant shall be responsible for and shall immediately cause the same to be cleaned and removed and tenant shall restore any damage to the Common Areas that may result therefrom; and

- e. It will immediately transfer all goods and merchandise received to the Premises and properly store the same in the Premises to retard any spoilage thereof, to prevent any odors emanating therefrom, and to prevent the infestation thereof.

9. **Trash Removal.** Tenant agrees that Tenant shall store all trash and other waste within in the Premises in odor and vermin proof containers, such containers to be kept in temperature-controlled areas of the Premises not visible to members of the public. Tenant shall, at Tenant's expense, attend to the frequent disposal of such trash and other waste in commercial trash receptacles to be placed in such area along 41<sup>st</sup> Avenue within or in reasonable proximity to the Marina as may be designated by Landlord. Tenant understands and agrees that because trash removal must be done using the corridors and other areas of the Building or the Marina which are open to the public, trash removal must be done by Tenant using containers approved by Landlord at such times and in such manner as Landlord may direct. Tenant further understands and agrees that because of the unique nature of Tenant's business the rules and regulations may be different than those which apply to trash removal by other tenants in the Marina.

10. **Intentionally Omitted.**

11. **Provision of Special Areas Within the Premises.** Tenant agrees to provide within the Premises adequate customer waiting areas, washrooms, employee changing areas, locker facilities, and other special areas necessary for the proper conduct of Tenant's business. In no event shall Tenant permit its employees to use any portion of the Common Areas of the Marina, including but not limited to the public washrooms located therein, for the changing of clothes or for the storage of their personal effects nor shall Tenant permit its employees to loiter at the entrance to the Premises or in the Common Areas of the Marina.

12. **Employee Attire.** The workplace attire for Tenant's employees serving the public or those visible to the public shall not be vulgar, obscene, or lewd.

13. **Valet Parking.** Tenant desires to provide for the valet parking of automobiles for its customers, such valet parking service is approved by Landlord; however, such valet services shall be provided at Tenant's sole cost and expense. Prior to instituting any valet parking service, Tenant shall notify Landlord in writing, giving Landlord adequate details as to the manner in which such service would be provided.

**EXHIBIT E**  
*Work Letter*

[TO BE PROVIDED BY TENANT]

**EXHIBIT F**  
*Form of Guaranty*

This GUARANTY (this “**Guaranty**”), dated as of [MONTH] [DAY], [YEAR] (the “**Effective Date**”), is made in favor of CITY OF ISLE OF PALMS, a political subdivision of the State of South Carolina, having an address at c/o City Administrator, 1207 Palm Boulevard, Isle of Palms, SC 29451 (“**Landlord**”), by [GUARANTOR NAME], having an address at [GUARANTOR ADDRESS] (“**Guarantor**”) (collectively, the “**Parties**” or, individually, a “**Party**”).

WHEREAS, Landlord, as landlord, has entered into that certain Restaurant Lease dated of even date herewith (the “**Lease**”), by and between Landlord and [TENANT NAME], a[n] [STATE OF ORGANIZATION] [ENTITY TYPE], as tenant (“**Tenant**”), with respect to certain property located at 80 41st Avenue, in the City of Isle of Palms, County of Charleston, State of South Carolina (the “**Premises**”);

WHEREAS, Landlord is unwilling to enter into the Lease unless Guarantor absolutely and unconditionally guarantees to Landlord the prompt and unconditional payment and performance of the Guaranteed Obligations, and Guarantor is executing this Guaranty as an inducement to Landlord to enter into the Lease; and

WHEREAS, Guarantor is a principal of Tenant and acknowledges that it will receive substantial benefits from Landlord and Tenant entering into the Lease.

NOW, THEREFORE, in consideration of the Premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor, intending to be legally bound, hereby guarantees as follows:

1. Definitions. Capitalized terms not otherwise defined in this Guaranty shall have the meanings given them in the Lease. In the event of a conflict between capitalized terms defined herein and in the Lease, the Lease shall control.

2. Guaranteed Obligations. Guarantor hereby absolutely, unconditionally, and irrevocably guarantees to Landlord the full and punctual performance by Tenant of all the obligations under the Lease to be performed and observed by Tenant, including without limitation: (a) the payment of Rent and all other sums, costs, expenses, charges, and payments payable by Tenant to Landlord, provided, however the amount of Rent and other sums, costs, expenses, charges, and payments due and owing from Guarantor to Landlord under this Guaranty shall not exceed, in the aggregate, the sum of all Base Rent payable by Tenant during the first three (3) Lease Years; (b) the full and timely payment of all contractors, subcontractors, materialmen, engineers, architects, and other Persons who have rendered or furnished services or materials that are or become a part of the Initial Tenant Improvements; and (c) the substantial completion of the Initial Tenant Improvements to be constructed on the Premises by Tenant in accordance with the Lease (collectively, the “**Guaranteed Obligations**”). This is a Guaranty of payment and performance, and not of collection, and Landlord shall not be obligated to enforce or exhaust its remedies against Tenant before proceeding to enforce this Guaranty.

3. Payment and Performance. Guarantor hereby covenants and agrees that in the event Tenant defaults in the payment or performance, as the case may be, of any of its obligations under the Lease which constitute the Guaranteed Obligations (or any part thereof) when such payment or performance becomes due, Guarantor shall, thirty (30) days from the date Landlord notifies Guarantor of Tenant's failure to satisfy any of its obligations which constitute Guaranteed Obligations (or any part thereof), at Guarantor's sole cost and expense, pay or perform any such Guaranteed Obligations then due, including, but not limited to, the diligent construction of the Initial Tenant Improvements to substantial completion in accordance with the Lease.

4. Waivers. Guarantor hereby waives: (a) notice of execution and delivery of the Lease; (b) all notices of any default by Tenant under the Lease (except as may be otherwise expressly required herein); (c) any Lease termination notice; (d) all other notices required or permitted to be given under the Lease or otherwise; (e) acceptance and notice of acceptance of this Guaranty; (f) all demands for payment and performance; (g) all defenses other than payment and performance in full; and (h) all suretyship defenses.

5. Direct Guaranty. This Guaranty is a direct guaranty and independent of any security or remedies which Landlord has under any Laws. Landlord may proceed against Guarantor at any time and shall not be obligated, in order to enforce the Guaranteed Obligations, first to institute suit or exhaust its remedies against Tenant or resort to any security or other collateral it may hold. No application of any security or other collateral held by Landlord shall be credited, offset, or applied against any liability of Guarantor under this Guaranty. Guarantor represents, warrants, and agrees that its obligations under this Guaranty are not and shall not be subject to any counterclaims, offsets, or defenses of any kind against Landlord or Tenant whether now existing or which may arise in the future.

6. Cumulative Remedies. The exercise by Landlord of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise by Landlord of any other right or remedy. No termination of the Lease or recovery of the Premises shall deprive Landlord of any of its rights and remedies against Guarantor under this Guaranty.

7. Liability of Guarantor Not Affected. Guarantor's liability under this Guaranty shall not be released, diminished, impaired, reduced, or affected by any one or more of the following events: (a) the taking or accepting of any other security or guaranty for any or all the Guaranteed Obligations; (b) any release, surrender, exchange, subordination, or loss of any security at any time in connection with any or all the Guaranteed Obligations; (c) any delay or failure of Landlord in enforcing any of its rights or remedies under the Lease or any Laws; (d) any waiver, settlement, deferral, or release of Tenant's obligations under the Lease; (e) any accord and satisfaction or any forbearance by Landlord in exercising any of its rights and remedies or by any other action, inaction, or omission by Landlord; (f) the insolvency, bankruptcy, or lack of partnership or corporate power of Tenant, or of any party at any time liable for any or all the Guaranteed Obligations, whether now or existing or hereafter occurring; (g) the existence of any claim, setoff, counterclaim, defense, or other rights that Guarantor may have against Tenant or Landlord, whether in connection with the Premises or any other

transaction; (h) any sublease or assignment of the Lease or any assignment of the Guaranteed Obligations or any part thereof; (i) the unenforceability of all or any part of the Guaranteed Obligations against Tenant by reason of the fact that the act of creating the Guaranteed Obligations, or any part thereof, is ultra vires, or the officers creating same acted in excess of their authority; (j) any payment by Tenant to Landlord in respect of the Guaranteed Obligations is held to constitute a preference under the Bankruptcy Code of the United States (the “Code”) or if any other reason Landlord is required to refund such payment or pay the amount to someone else; or (k) any impairment, modification, release, or limitation of liability of Tenant or its estate in bankruptcy, resulting from the operation of any present or future provision of the Code or from the decision of any court interpreting same.

8. Termination of Guaranty. This Guaranty, including, without all limitation, all Guaranteed Obligations, shall be irrevocably terminated on the date on which Tenant delivers all Construction Completion Deliverables to Landlord in accordance with Section 2.03(c) of the Lease, and the Guarantor’s obligations shall be irrevocably discharged. Upon any termination of this Guaranty, Landlord and Guarantor shall promptly execute a written confirmation of such termination; provided, however, any failure or refusal by Landlord to execute any such confirmation that may be required by Guarantor shall not have any impact upon the effectiveness of the termination.

9. Representations and Warranties of Guarantor. Guarantor represents and warrants that: (a) it will receive a direct or indirect material benefit from the execution and delivery of the Lease; (b) this Guaranty constitutes Guarantor’s valid and legally binding agreement in accordance with its terms; (c) Guarantor’s execution of this Guaranty will not violate any order, judgment, or decree to which Guarantor or any of its assets may be subject; (d) no action, suit, proceeding, or investigation, judicial, administrative or otherwise (including without limitation, any reorganization, bankruptcy, insolvency, or similar proceeding), currently is pending or, to the best of Guarantor’s knowledge, threatened against Guarantor which, either in any one instance or in the aggregate, may have a material adverse effect on Guarantor’s ability to perform its obligations under this Guaranty; and (e) Guarantor is currently solvent and will not be rendered insolvent by providing this Guaranty.

10. Waiver of Subrogation and Subordination. For as long as any amounts are due and owing to Landlord under the Lease, Guarantor shall have no rights (direct or indirect) of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery from any person or entity (including without limitation, Tenant) for any payments made by Guarantor hereunder, and Guarantor hereby waives and releases, absolutely and unconditionally, any such rights of subrogation, contribution, reimbursement, indemnification, and other rights of recovery which it may have or hereafter acquire. Until such time as this Guaranty is terminated as provided in Section 8 above, Guarantor: (a) waives to the fullest extent permitted by law any rights that Guarantor may have: (i) against Tenant by reason of one or more payments or acts in compliance with the Guaranteed Obligations hereunder; (ii) to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against Guarantor; and (iii) to presentment for payment, demand, protest, notice of nonpayment, or failure to perform or observe, or of any other proof, notice, or demand (except as

may be otherwise expressly required herein); and (b) subordinates any liability or indebtedness of Tenant held by Guarantor to the obligations of Tenant to Landlord under the Lease.

11. Notices. Unless specifically stated otherwise in this Guaranty, all notices, waivers, and demands required or permitted hereunder shall be in writing and delivered to all other Parties at the addresses set forth , by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the Business Day following deposit with the courier; (c) registered United States mail, signature required and postage-prepaid, whereby delivery is deemed to have occurred on the third Business Day following deposit with the United States Postal Service; or (d) electronic transmission email provided that the transmission is completed no later than 5:00 p.m. EST on a Business Day and the original also is sent via overnight courier or United States Mail, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed.

To Landlord at: City of Isle of Palms  
c/o City Administrator  
1207 Palm Boulevard  
Isle of Palms, SC 29451  
Attn: Desiree Fragoso  
Email: desireef@iop.net

To Guarantor at: [NAME]  
[ADDRESS]  
[EMAIL]

Any Party shall change its address for purposes of this Section 11 by giving written notice as provided in this Section. All notices and demands delivered by a party's attorney on a Party's behalf shall be deemed to have been delivered by said Party. Notices shall be valid only if served in the manner provided in this Section.

12. Enforcement Costs. Guarantor hereby agrees to pay, on written demand by Landlord, all reasonable costs incurred by Landlord in collecting any amount payable under this Guaranty or enforcing or protecting its rights under this Guaranty, in each case whether or not legal proceedings are commenced. Such fees and expenses may include, without limitation, reasonable fees for attorneys and other hired professionals, court fees, costs incurred in connection with pre-trial, trial, and appellate level proceedings (including discovery and expert witnesses), costs incurred in post-judgment collection efforts or in any bankruptcy proceeding. Amounts incurred by Landlord shall be immediately due and payable.

13. Successors and Assigns. This Guaranty is for the benefit of Landlord and its successors, transferees, and assigns. In the event of an assignment by Landlord of the Lease, the rights hereunder may be transferred by Landlord to such successor, transferee, or assign. This Guaranty shall be binding on Guarantor and its heirs, personal representatives, successors, transferees, and assigns. Guarantor may not assign or transfer its rights or obligations hereunder without the express prior written consent of Landlord. Any attempted assignment in violation of this section shall be null and void.

14. Joint and Several Liability. If more than one Person has signed this Guaranty, each of the undersigned shall be jointly and severally liable for all the Guaranteed Obligations herein. Any notice by Landlord to any one of the undersigned Guarantors shall be deemed to be given to all Guarantors and shall have the same force and effect as though given to all Persons constituting Guarantor.

15. Governing Law. THIS GUARANTY SHALL BE GOVERNED BY, CONSTRUED, AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA, WITHOUT REGARD TO THE CONFLICTS OR CHOICE OF LAW PRINCIPLES THEREOF. GUARANTOR HEREBY IRREVOCABLY CONSENTS TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN COUNTY OF CHARLESTON, STATE OF SOUTH CAROLINA IN ANY ACTION, CLAIM, OR OTHER PROCEEDING ARISING OUT OF OR ANY DISPUTE IN CONNECTION WITH THIS GUARANTY. GUARANTOR HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF A SUMMONS AND COMPLAINT AND OTHER PROCESS IN ANY ACTION, CLAIM, OR PROCEEDING BROUGHT BY LANDLORD IN CONNECTION WITH THIS GUARANTY.

16. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, LANDLORD AND GUARANTOR, BY THEIR ACCEPTANCE OF THIS GUARANTY OR THE BENEFITS THEREOF, HEREBY IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY ACTION, CLAIM, OR OTHER PROCEEDING ARISING OUT OF OR ANY DISPUTE IN CONNECTION WITH THIS GUARANTY.

17. Severability. If any provision of this Guaranty is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law: (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of Landlord in order to carry out the intentions of the parties as nearly as may be possible; and (b) the invalidity or unenforceability of any provisions hereof in any jurisdiction shall not affect the invalidity or unenforceability of such provision in any other jurisdiction.

18. Interpretation and Construction. The various headings of this Guaranty are inserted for convenience only and shall not affect the meaning or interpretation of this Guaranty or any provisions hereof. The use of the singular shall be deemed to refer to the plural whenever the context so requires. The use of the masculine, feminine, or neuter genders shall be deemed to refer to another gender wherever the context so requires.

19. Entire Agreement. This Guaranty constitutes the entire agreement between Landlord and Guarantor. No amendment or modification shall be binding unless such amendment or modification is in writing and signed by the party against whom enforcement is sought.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, Guarantor has caused this Guaranty to be executed as of the Effective Date.

**GUARANTOR:**

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[Guarantor Name]

ORDINANCE 2020 - 13

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

THIS FIFTH AMENDMENT TO COMMERCIAL LEASE AGREEMENT (“Fifth Amendment”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between The City of Isle of Palms, South Carolina (“Landlord”) and Marina Joint Ventures, Inc., a South Carolina Corporation (“Tenant”).

WHEREAS, the Parties have heretofore entered into that certain Commercial Lease with an effective date of September 10, 2009 (the “Lease”) for the lease of certain real property located at Isle of Palms Marina, 41<sup>st</sup> Avenue, Isle of Palms, SC, as more fully described in said Lease and commonly known as “Isle of Palms Marina,” as amended by that certain Amendment to Commercial Lease Agreement, dated June 2, 2010 (the “First Amendment”), as further amended by the certain Second Amendment to Commercial Lease Agreement, dated April 25, 2012 (the “Second Amendment”), and as further amended by the certain Third Amendment to Commercial Lease Agreement dated July 24, 2012 (the “Third Amendment”), and as further amended by the certain Fourth Amendment to Commercial Lease Agreement dated February 26, 2015, (the “Fourth Amendment”) (the Lease, the First, Second, Third and Fourth Amendments are collectively referred to herein as the “Lease”); and

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

NOW, THEREFORE, for and in consideration of the Lease and this Fifth Amendment, and other good and valuable consideration in hand paid by each to the other, the parties hereto hereby

agree to amend the Lease as follows:

1. Exhibit I: Page two (2) of Exhibit I is hereby removed and replaced in its entirety with revised page two (2), which depicts an accurate surveyed parking site layout plan, including the areas designated in the Private Parking Agreement between Tenant and Restaurant tenant dated August \_\_, 2020, as “Private Parking,” “Exclusive Parking” and “Shared Parking”.
2. Exhibit IV: Paragraph 22: Paragraph 22 shall be deleted in its entirety and replaced with the following:

Employee Parking On-Site: A Parking Agreement between Tenant and IOP Families was executed on \_\_\_\_\_, detailing a paid arrangement for designated employee parking associated with the new restaurant site and intended to survive the restaurant’s lease term with the City. This Agreement addresses employee parking needs of the restaurant in exchange for financial consideration. Tenant will not be required to provide free employee parking for the IOP Families Group, or its assignee provided the current parking agreement remains in effect and unaltered in any material respect. Tenant shall be obligated to provide free employee parking for any tenant of the restaurant site or any portion of the restaurant site should the parking agreement terminate prior to January 31, 2045 for any reason. Should the Parking Agreement terminate prior to January 31, 2045, the area designated for this purpose shall revert back to the prior Shared Parking area for all tenants and subtenants.

Tenant will provide employee parking for any other tenant or subtenant of the marina site; the number of employee spaces and rate applied shall be at the discretion of the Tenant.

3. That all other terms and conditions of the Lease, First Amendment, Second Amendment, Third Amendment and Fourth Amendment which are not inconsistent herewith shall remain in full force and effect.

IN WITNESS WHEREOF, the Landlord and Tenant have caused this Fifth 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)

Marina Joint Ventures Inc., Tenant

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
(as to Tenant)

Exhibit I  
(Attach Parking Exhibit)

# 80 41<sup>ST</sup> AVENUE

ISLE OF PALMS, SOUTH CAROLINA



	<b>Exclusive Parking Lot</b> Restaurant
	<b>Private Parking Lot</b> Available to restaurant pursuant to agreement with Marina Manager (MJV)
	<b>Shared Parking Lot</b> Shared among tenants under the direction of the Marina Manager (MJV)
	<b>Exclusive Parking Lot</b> Marina Joint Ventures
	<b>Exclusive Parking Lot</b> Marina Store

Dumpster area