



Real Property Committee

1:30 p.m., Monday, July 12, 2021
1207 Palm Boulevard, Isle of Palms, SC

Public Comment:

All citizens who wish to speak during the meeting must email their first and last name, address and topic to Nicole DeNeane, City Clerk, at nicoled@iop.net no later than **3:00 p.m. the day before the meeting**. Citizens may also provide written public comment here:

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

Agenda

1. **Call to order** and acknowledgment that the press and the public have been duly notified of the meeting in accordance with the Freedom of Information Act.
2. **Approval of previous meeting's minutes – June 7, 2021**
3. **Citizens' Comments**
4. **Marina Tenants Comments**
5. **Old Business**
 - a. Update on marina dock rehabilitation project and dock insurance
 - b. Update on marina restaurant renovation by Marker116, LLC
 - c. Update and discussion on ADA compliant dual purpose beach boardwalk at 42nd Avenue beach access
 - d. Update on proposed public dock and greenspace at the IOP Marina
 - e. Discussion and consideration of noise agreement with Marker116 LLC
6. **New Business**
 - a. Discussion and consideration of Ordinance 2021-10 – An ordinance to authorize the temporary use of new or additional space for outdoor dining services
 - b. Discussion of installing electrical car charging stations at the Municipal Parking Lots
 - c. Consideration of change order to ATM contract for additional construction administration services for the marina dock rehabilitation project in the amount of \$40,000
 - d. Discussion and consideration of amendments to Marker 116 lease to allow overnight docking in unforeseen circumstances to protect the health and welfare of patrons and to delay payment of base rent for 2021 due to delays in construction and extended completion schedule
 - e. Discussion of shared parking in marina site
7. **Miscellaneous Business**

Next meeting date: 1:30 p.m., Monday, August 2, 2021
8. **Executive Session – If needed.**
9. **Adjournment**



REAL PROPERTY COMMITTEE

1:30pm, Monday, June 7, 2021

1207 Palm Boulevard, Isle of Palms, SC 29451

and broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>

MINUTES

1. Call to order

Present: Council members Moye, Popson, and Streetman

Staff Present: Administrator Fragoso, Director Kerr

2. Approval of previous meeting's minutes – May 4, 2021

MOTION: Council Member Moye made a motion to approve the minutes of the May 4, 2021 meeting and Council Member Popson seconded the motion. The motion passed unanimously.

3. Citizens' Comments -- none

4. Marina Tenant Comments -- none

5. Old business

A. Update on marina dock rehabilitation project

Administrator Fragoso reported that the restaurant face dock and the anchor pilings have been installed. The Marina Manager met recently with ATM, Epic Engineering, Salmons, and TransWorld to discuss the installation of the utilities.

She said the gangways are on order and they are awaiting a shipping and delivery update for those. While material shortages have caused unforeseen production delays, the two gangways serving the Dock Area C should arrive on site by the end of June. The goal remains to have the area serviceable and usable for the 4th of July weekend. Should the utilities not be completely installed by that weekend, the docks can still be used.

Regarding the fuel hut, the Marina Manager, Epic, ATM, Salmons, and Evans & Schmidt met last week to finalize some questions about the design. They anticipate being ready to submit for the building permit shortly. Administrator Fragoso said, "The final structural connections to the floating dock remain to be done as far as the final electrical engineering before the engineering of the hut is finalized. Salmons is coordinating directly with Structure Marine on the fuel hut platform. The drawings calculations have not yet been received and originally promised to be provided by Structure Marine in mid-May so they are running a little bit of a delay. However, the updated schedule that has us finalizing the fuel hut installation after Labor Day."

Administrator Fragoso said the broken piling has been raised and was broken down by the pluff mud.

B. Update on marina restaurant renovation by Marker 116, LLC

Administrator Fragoso reported that she and Director Kerr met with Dave Lorenz, Jon Bushnell, and James Frank, the City's representative from Insight Group, last week. Weekly meetings will begin next week. Demolition of the restaurant is complete. Once the mechanical drawings have been completed, renovation progress should move quickly.

Administrator Fragoso said that Attorney Hinchey is drafting the final contract for the parking lot improvements.

C. Update on proposed ADA-compliant dual-purpose beach boardwalk at 42nd Avenue

A lengthy discussion ensued regarding the scope of the proposed boardwalk at 42nd Avenue. Director Kerr said that further investigation into the Mr. Boardwalk product gave City staff pause about moving forward with them. The overall goal of the path is to enhance ADA-accessibility to the beach. Options for the path include continued use of the MobiMat, installation of Mr. Boardwalk, or a raised boardwalk.

MOTION: Council Member Popson made a motion to recommend to City Council further discussion about the next steps with the 42nd Avenue improvements for ADA accessibility. Council Member Moye seconded the motion. The motion passed unanimously.

D. Update the proposed public dock and greenspace at the IOP Marina

Administrator Fragoso said there are no updates to this project as they are still awaiting the outcome of the eviction proceedings with the former tenant. Staff has reached out to potential vendors for design and construction once the case has been adjudicated.

E. Discussion and consideration of noise agreement with Marker116, LLC

Administrator Fragoso said they are awaiting feedback from Marker116 on the new language in the noise agreement. It will be on July agenda.

6. New Business

A. Discussion of changes to the zoning ordinance to permanently allow outdoor dining at restaurants

Director Kerr explained the current process for such a request by a restaurant takes the application through BOZA who reviews each request on a case-by-case basis and applies appropriate conditions. He does not encourage a change to the City code allowing for blanket approval of outdoor dining. If there were to be any changes to the ordinance, he suggested amending the ordinance to remove the language that required restaurants to operate within the footprint of their building. Committee members expressed support of allowing outdoor dining.

Administrator Fragoso suggested a sunset provision for this change so that it could be evaluated. She said the change could be presented to City Council for First Reading in June, which would

make it a pending ordinance. She will send the proposed language to Committee members ahead of the City Council meeting.

B. Consideration of allowing new marina restaurant tenants to operate a food truck at the IOP Marina prior to opening the restaurant as a City-sanctioned activity

Administrator Fragoso said this request could be approved as a City-sanctioned event. She is waiting for a proposed schedule from Jon Bushnell that City Council could consider at the June meeting.

7. Miscellaneous Business

The next meeting of the Real Property Committee will be held on Monday, July 12, 2021 at 1:30pm.

8. Adjournment

Council Member Moye made a motion to adjourn and Council Member Popson seconded the motion. The meeting was adjourned at 2:26pm.

Respectfully submitted,

Nicole DeNeane
City Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) NOISE CONTROL AGREEMENT

This Noise Control Agreement (“Agreement”) is made and entered into this ____ day of _____, 2021, by and between The City of Isle of Palms, S.C., a South Carolina municipal corporation (“City”), and Marker116, LLC, a South Carolina limited liability company (“Tenant”).

WHEREAS, on February 23, 2016, the City amended Section 9-2-5(a)(3) of the City’s Code of Ordinances to exempt City-owned property subject to a commercial lease and a noise control agreement or permit from the prohibition on amplifiers and loudspeakers being operated at outdoor public places owned or under the control of the City; and

WHEREAS, Tenant is currently operating under a commercial lease with the City dated November 12, 2020; and

WHEREAS, Tenant desires to provide live entertainment to its restaurant patrons on the outdoor public grounds immediately surrounding the Tenant’s Restaurant, including musicians who use amplifiers; and

WHEREAS, Tenant will install improvements to the property to significantly reduce the sound emanating from the amplifiers into the adjacent residential neighborhoods; and

WHEREAS, the City wishes to allow the use of amplified music at the Tenant’s Restaurant subject to certain conditions which will protect the residents in adjacent neighborhoods from unreasonably loud or disturbing noise.

THEREFORE, in consideration of the premises and the mutual covenants and conditions set forth in this Agreement, the parties hereto agree as follows:

1. The City hereby agrees and grants permission for Tenant to use, maintain or operate loudspeakers, amplifiers or other mechanical or electrical devices for increasing the volume of sound

upon the outdoor public grounds immediately surrounding the Tenant's restaurant, subject to the following conditions:

A. Tenant agrees to at all times comply with the provisions of the City's noise ordinance, as may be amended from time to time;

B. Tenant agrees to employ sufficient noise abatement measures to ensure that the amplified sound is not in violation of the City's noise ordinance and cannot be heard inside residences in the adjacent neighborhoods;

C. Tenant agrees to immediately lower amplified sound levels when it determines or is informed that sound levels are too high. Tenant will be on notice that sound levels are too high if any of the following situations occur:

Deleted: promptly

- i. Amplified music can be heard inside residences in adjacent neighborhoods;
- ii. Residents have made complaints to the Tenant or the City Police Department;
- iii. City Police Officers have notified Tenant of complaints.

D. Tenant will provide the City with the name and phone number of the manager who is responsible for noise compliance. If residents contact this person, he/she will immediately determine whether sound levels are too high, and if so, immediately lower sound levels as needed to comply with this Agreement and the City's noise ordinance. As used in this paragraph, "immediately" shall mean within thirty (30) minutes of the receipt of a noise complaint or being advised by the City of a noise complaint. The Tenant after complying with the above requirements, shall, in addition, have thirty (30) days to provide the City with a written plan which will cure sound

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level problems by establishing [and assuring](#) lower levels, adding additional sound abating materials, and/or developing policies to ensure ongoing compliance with this Agreement.

2. In the event that Tenant violates any one of the conditions set forth herein, the City may [in its sole discretion](#), immediately terminate this Agreement.

IN WITNESS WHEREOF, the parties hereto, by and through their undersigned agents, have executed this Agreement as of the date stated above.

WITNESS:

The City of Isle of Palms, S.C.

By: _____

Title: _____

Marker116, LLC

By: _____

Title: _____

ORDINANCE 2021-10

AN ORDINANCE AMENDING TITLE 5, PLANNING AND DEVELOPMENT, CHAPTER 4. ZONING, ARTICLE 2. DISTRICT REGULATIONS, SECTION 5-4-38. TABLE OF PERMITTED USES IN COMMERCIAL DISTRICTS, SUBSECTION 5. OUTDOOR SALE OR RENTAL OF PERSONAL PROPERTY, INCLUDING FOOD AND BEVERAGE; PUBLIC EVENTS TO AUTHORIZE THE TEMPORARY USE OF NEW OR ADDITIONAL SPACE FOR OUTDOOR DINING SERVICES.

WHEREAS, a full recovery of the City's food and beverage industry after the demise of the current pandemic is critical to the full recovery of the health, welfare, culture and economy of the City and its residents;

WHEREAS, the City should maximize outdoor dining opportunities by food and beverage establishments, while minimizing adverse impacts from, among other things, overcrowding, noise and traffic.

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

SECTION 1: That Title 5, Planning and Development, Chapter 4 Zoning, Article 2 District Regulations, Section 5-4-38 (5) be amended by adding subsection (e) to read as follows:

(e) Temporary Suspension of Regulations Governing Outdoor Dining Areas: Restaurants are authorized to offer outdoor dining services dining on site. The temporary suspension shall expire on _____.

- i. The restaurant shall be properly licensed by appropriate state and local agencies to perform any activities, sales, and services.
- ii. The restaurant shall comply with all applicable laws relating to litter, noise, and other livability matters.
- iii. Outdoor dining areas shall not be located more than two hundred feet (200') seaward of the right-of-way of Ocean Boulevard or within one hundred sixty feet of the OCRM baseline established along the beach of the Atlantic Ocean.
- iv. Outdoor dining areas shall not encroach within any public rights-of-way.
- v. Outdoor dining areas shall not encroach into or interfere with required handicapped parking spaces.
- vi. Outdoor dining areas shall not interfere with safe pedestrian and vehicular access or access required to be maintained under the Americans with Disabilities Act.
- vii. Outdoor dining areas shall not encroach within or interfere with fire and other emergency access.
- viii. Any sales and/or consumption of food and/or alcoholic beverages shall be in compliance with the provisions of any federal, state, and/or local laws and regulations governing same.

- ix. Outdoor dining areas shall comply with all applicable occupancy requirements and other provisions of the fire code.

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

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

SECTION 4. That this Ordinance take effect immediately upon approval by Council.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE ____ DAY OF _____, 2021.

Jimmy Carroll, Mayor

(Seal)

Attest:

Nicole DeNeane, City Clerk

First Reading: _____

Public Hearing: _____

Second Reading: _____

Ratification: _____



EV Charging as a Service (Pilot program*)

Multi-family Residential/Workplace/Retail: Dominion Energy South Carolina (DESC) will install electric infrastructure (Make Ready) and a managed Level 2 Networked Charging Station on Customer owned property.

DESC will design, install, own, operate and maintain station in approved location. No upfront cost will be required by customer. Customer must take electric service completely from DESC electric grid. Customer will sign 10 year agreement (contract) for EV charging service. Customer will pay DESC Monthly facility fee plus energy consumed under Rate 16 by the meter with a separate account for the EV charging installation.

Customer will set pricing** for charging sessions for EV drivers and determine if access is public or private. DESC will not dictate pricing and Customer will be credited all income on DE energy bill from charging sessions minus 10% administration fee from EV Charging Vendor.

EV drivers will access EV charger via an app on their smart phone and all financial transactions will be done via the app including payment from EV driver to Charging Station vendor and payments from vendor to Customer. (ie like Uber, Airbnb)

*pending regulatory approval

**can be no cost and session fee can be changed by Customer

Station Example (Dual Port Station serving 2 vehicles per station)





June 16, 2021

Ms. Desiree Fragoso
City Administrator
City of Isle of Palms City Hall
1207 Palm Boulevard
Isle of Palms, South Carolina 29451

Re: City of Isle of Palms Marina

Dear Ms. Fragoso,

Pursuant to our recent discussions and our meeting on Monday with Mr. Jack Harrelson of Salmons Dredging, we understand that the current, projected completion date for the Isle of Palms Marina Rehabilitation Project is now November 19, 2021. The original contracted substantial completion date for construction (as per the contract document with Salmons Dredging) was May 15, 2021. As you may recall, ATM's scope of services for construction administration services was based on a six-month construction schedule (see attached). To date we have performed eight months of construction phase services and have requested only a nominal adjustment to our construction administration scope of services to deal with two items that were out of original scope. With the extension of the construction contract, the need for additional construction administration services on the project is indicated.

In addition to the extended project schedule, ATM has expended significant out-of-scope effort related to the review of the floating dock design submittals provided by Structurmarine (via Salmons). As mentioned to you previously, the contract documents require that the contractor and floating dock supplier provide a single, comprehensive design submittal for the floating docks and pile anchorage for our review. ATM was contracted to provide a single review of this submittal package to ensure proper design and conformance with project design criteria. To date, we have received and reviewed *five* submittal packages from Structurmarine/Salmons related to the floating dock and anchorage system for Dock Areas B and C. The first four of these submittals were incomplete and/or contained incorrect design calculations based on our review. Yesterday we received a separate (sixth) submittal package for Dock Area A (fuel dock) that requires review.

With the above in mind, we request a change order to perform additional construction administration services on behalf of the City to facilitate contract completion. Specifically, ATM proposes to conduct five months of additional construction administration on this project.

Specific tasks shall include:

- Review Dock A floating dock and anchorage calculations and shop drawings. This scope assumes a single review only to ensure consistency with the design intent of the



project, performance specifications, identified loading criteria, regulatory permit conditions, utility routing, etc. If our initial review indicates the contents of the submittal are inaccurate or incorrect and in need of revision and re-submittal, we will not undertake any additional reviews without prior discussion with and authorization by the City.

- Review miscellaneous contractor submittals (pile driving logs, change order requests, etc.)
- Review contractor and utilities materials submittals and product certifications
 - Note: While much of this was completed during initial construction phases, we are now receiving substitute product submittals as the global supply chain is impacting the available materials for this project.
- Conduct additional site visits during active construction (weekly during active construction)
 - Assume 10 additional site visits during the construction of:
 - Utilities on Dock Area C
 - Dock and Utilities on Dock Area B
 - Dock, Utilities, and Fuel Hut on Dock Area A (Fuel Dock)
 - Document site observation via written correspondence and digital photography
 - Document project progress and identified project challenges/issues
- Review and certify contractor's applications for payment.
 - Assume 6 applications to coincide with the new completion date of November 19th
- Conduct ongoing, weekly project coordination with City, Contractor, Sub-Contractors, Marina Manager/Tenants, and other project participants
- Facilitate project close out

ATM's proposed fee for this work is \$40,000.

In the spirit of financial cooperation on the project, (a topic mentioned by some members of Council previously) we are not requesting compensation associated with the additional, out-of-scope submittal review described above which totals in excess of \$7,500 in professional labor fees. Additionally, we are not seeking compensation for the two months of construction administration services that have been performed to date and are beyond the scope of our current agreement.



Ms. Desiree Fragoso

June 15, 2021

Page 3 of 3

Thank you for your consideration of this request. As discussed on Monday, the current challenges in the construction and development industry are extremely difficult, unprecedented, and are similarly affecting many of our current projects. We appreciate the relationship we have built with the City and are eager to continue our services on this project to see it through to a successful completion. Please call me directly if you have any questions.

Thank you,



Kirby Marshall
Principal

Attachment

Copy: ATM File



APPLIED TECHNOLOGY AND MANAGEMENT, INC.



PROPOSAL FOR CONSULTING SERVICES

ISLE OF PALMS MARINA

- MARINA UTILITY PERMITTING
- CVAP GRANT APPLICATION
- CONSTRUCTION ADMINISTRATION SERVICES

ISLE OF PALMS, SOUTH CAROLINA

PREPARED FOR:



Attn: Ms. Desiree Fragoso

April 15, 2020

INTRODUCTION

Applied Technology & Management, Inc. (ATM) respectfully submits this proposal to Ms. Desiree Fragoso of the City of Isle of Palms to provide assistance with the following tasks related to the rehabilitation of the Isle of Palms Marina.

1. Perform required DHEC permitting for the potable water and wastewater (pumpout) systems proposed as part of the redevelopment of the marina.
2. Development and submittal of a Clean Vessel Act (CVAP) grant application to procure grant funding reimbursement for new pumpout installation
3. Perform Construction Administration services during the marina redevelopment process

TASK 1 – WATER/WASTEWATER PERMITTING

ATM will prepare and submit on the City's behalf a permit application for the water/wastewater systems for the redeveloped portion of the marina along Morgan Creek. These authorizations are required by the South Carolina Department of Health and Environmental Control (SCDHEC) prior to installation of the systems. The permit is also required as part of the application for CVAP funding for the pumpout system (Task 2). This permit application will include the following, at a minimum:

- Transmittal letter
- Location Map
- SCDHEC permit application form
- Signed/sealed design plans and specifications (developed under previous work authorization)
- Design calculations based on applicable regulations
- Letter from the Isle of Palms Water and Sewer Commission stating their willingness and ability to serve the project; *ATM will coordinate with the utility to obtain this letter.*
- A letter from the City agreeing to be responsible for the operations and maintenance of the wastewater system; *This letter will need to be provided by the City on the City's letterhead. ATM will provide appropriate language for the letter to the City.*

After submitting the application package, ATM will coordinate with SCDHEC as required to expedite the review/approvals process. *Coordination limited to 2 hours of ATM professional labor.*

The deliverable for this task will be a completed DHEC permit application with requisite supporting documentation.

TASK 2 – CVAP PUMPOUT GRANT APPLICATION AND COORDINATION

Upon receipt of the SCDHEC's water/wastewater permit (Task 1), ATM will prepare and submit an application for a CVAP grant to the South Carolina Department of Natural Resources (SCDNR) for the marina pumpout system. Under this task, ATM will:

- Review and discuss facilities/services that are or may be included in the grant program with SCDNR.
- Coordinate with SCDNR and the City of Isle of Palms in an effort to maximize the grant funding available. To this effect, ATM will consider the following inasmuch as they are appropriate and acceptable in accordance with the grant program
 - Upland pumping facility and upland piping
 - Operations and Maintenance program funding
 - Permitting and engineering fees
- Coordinate with pumpout vendor(s) and mechanical contractor(s) to develop a detailed cost estimate for the system, including the pumpout unit, plumbing, electrical controls, and installation.
- Gather appropriate application materials and documentation for submission including:
 - Pumpout brand/manufacturer and model
 - Design plans, specifications, and calculations (developed under previous work authorization)
 - Grant application form
- Prepare the Grant Application including all the necessary documentation and design plans required by the application and discussed with SCDNR. Prior to submission, ATM will provide the City of Isle of Palms with a completed copy of the documents to review and for appropriate signatures to complete the package.
- Submit the Grant Application package to SCDNR for their consideration.
- Coordinate with SCDNR as required to expedite the review/approvals process. *Limited to 2 hours of ATM professional labor.*
- Fill out and submit, on the City's behalf, SCDNR's reimbursement request form; *It is assumed that a single reimbursement request will be made for the entire system after procurement and installation.*

Note: It is assumed that the City has, or will acquire, a registered Data Universal Numbering System (DUNS) number and is, or will be, registered in the System for Award Management (SAM). These registrations are required to receive federal funding through the program.

The deliverable for this task will be a completed CVAP application with appropriate, supporting documentation.

TASK 3 – CONSTRUCTION ADMINISTRATION SERVICES

To ensure successful completion of the marina rehabilitation project, ATM will perform the following services during construction:

- Coordinate and participate in an on-site pre-construction meeting with the City, selected contractor, key sub-contractors, suppliers, etc. *It is assumed that this meeting will occur on site and will last two hours.*
- Facilitate regulatory commencement notification.
- Review floating dock, anchorage, gangway, fixed landing pier, and fuel hut calculations and shop drawings as provided by the contractor. It is assumed that the design package for these elements will be provided in a **single, comprehensive package for review**. **This scope includes single review only** to ensure consistency with design intent of the project, performance specifications, identified loading criteria, and regulatory permit conditions.
- Review miscellaneous contractor submittals (schedule, work plan, safety plan, hurricane preparedness plan, etc.).
- Review contractor materials submittals and product certifications.
- Review utilities shop drawings and materials submittals.
- Conduct ongoing observation of the project progress to include weekly site visits during active construction. Assume 10 site visits.
 - Document site observations via written memorandum reports and digital photography.
 - Document project progress and identified project challenges or issues.
- Review and certify contractor's applications for payment. ATM will ensure the applications properly reflect the work completed, properly account for procured/stored materials, and are certified in accordance with the contract requirements.
- Facilitate project close out
 - Conduct punch list inspection of all project components
 - Conduct audit of project documentation and close out of open items
 - Establish and execute Certificate of Substantial Completion and coordinate release of retainage/final payment
 - Facilitate regulatory close out
 - Facilitate completion of as-built, operations and maintenance, and warranty documents for the City/marina operator/project record. It is assumed that the as-built drawings will be produced by the installing contractor.

Deliverables for this task will include: pre-construction meeting agenda and minutes, response to provided submittals, site observation memoranda, certified payment applications, punch list summary memorandum, and project close out documentation.

SUMMARY OF PROFESSIONAL FEES

Task	Scope Element	Professional Fee
1	Water/Wastewater Permitting	\$6,500
2	CVAP Grant Application	\$5,000
3	Construction Administration Services	\$55,000

Notes:

1. The above includes professional labor fees and anticipated expenses, with the exception of permit application fees required by SCDHEC which are assumed to be paid directly by the City.
2. This scope assumes a 6-month project duration for the demolition of existing docks and appurtenances, procurement and installation of new docks and anchor pilings, and installation of associated marina utilities.
3. ATM services may be initiated immediately upon the acceptance of this proposal and execution of a contract amendment.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

First Amendment
to
Lease Agreement

A. This First Amendment to Restaurant Lease Agreement (“**First Amendment**”) is entered into by and between the CITY OF ISLE OF PALMS, a political subdivision of the State of South Carolina (the “**Landlord**” or “**City**”) and MARKER116, LLC, a South Carolina limited liability company (the “**Tenant**”) this ____ day of _____, 2021.

RECITALS

B. The Landlord and Tenant are parties to that certain Restaurant Lease Agreement dated _____, 2020 (the “**Lease**”) to lease certain property located at the City of Isle of Palms Marina, 50 41st Avenue, Isle of Palms, South Carolina, known generally as the “Marina Restaurant” and more specifically defined in the Lease and referred to herein as the “**Premises**.”

C. The Landlord and Tenant wish to amend the Lease pursuant to the terms stated herein. However, unless explicitly modified by this First Amendment, all provisions of the Lease shall remain in full force and effect.

D. The Landlord and Tenant wish to amend Article II Premises, Section 2.07 Restaurant Dock.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Landlord and Tenant, for themselves and their successors and assigns, agree as follows:

- A. The foregoing recitals are incorporated herein.
- B. The following hereby replaces Article II Premises, Section 2.07 Restaurant Dock, in its entirety:

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. Tenant shall be expressly authorized to permit one (1) boat to dock overnight, 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. The Landlord and Tenant agree that there may be unforeseen circumstances in which the overnight docking of boats and other watercraft on or along the Restaurant Dock may be necessary for the health, safety, and general welfare of Tenant and Tenant’s patrons, employees, agents, customers, contractors, licensees, and invitees. Landlord agrees that the overnight docking of boats and other watercraft on or along the Restaurant Dock shall be permitted without Landlord’s prior consent in unforeseen circumstances in which the

Tenant deems it necessary for the health, safety, and general welfare of Tenant and Tenant's patrons, employees, agents, customers, contractors, licensees, and invitees, and Tenant shall not be required to provide notice to Landlord for such circumstances and situations in which overnight docking was permitted in accordance with this Section 2.07. 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. No construction materials or building products shall be placed on or around the docks, by either Landlord or any other third party business, individual or organization, for the health, safety, and general welfare of Tenant and Tenant's patrons, employees, agents, customers, contractors, licensees, and invitees.

[INTENTIONALLY LEFT BLANK]
[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment to Restaurant Lease Agreement 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