



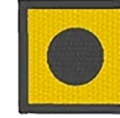
Special City Council
5:00 p.m., Thursday, June 2, 2022
Council Chambers
1207 Palm Boulevard
Isle of Palms, South Carolina

Public Comment:

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

Agenda

1. **Call to order** and acknowledgement that the press and public have been duly notified of the meeting in accordance with the Freedom of Information Act.
2. **Citizen's Comments** - All comments will have a time limit of three (3) minutes.
3. **Purpose** – Discussion and consideration of request from Marina Joint Ventures, Inc. and Marina Outpost, LLC. to assign lease hold interests to Morgan Creek Marina, LLC.
 - a. **First Reading of Ordinance 2022-04** – An ordinance authorizing the amendment and assignment of Marina Outpost, LLC to Morgan Creek Marina, LLC
 - b. **First Reading of Ordinance 2022-05** - An ordinance authorizing the amendment and assignment of Marina Joint Ventures, Inc., Inc. to Morgan Creek Marina, LLC
4. **Executive Session** – In accordance with S.C. Code Section 30-4-70(a) (2) to receive legal advice and discuss proposed contractual arrangements. Upon returning to open session, Council may take action on matters discussed in Executive Session.
5. **Adjournment**



Coastal Marinas

Isle of Palms Marina Overview



1

St Johns Yacht Harbor



2

Bohicket Marina



3

Old Village Yacht Club



4

Seabreeze Marina



About Coastal Marinas

- Largest owner/operator of mixed-use marinas in the Charleston market
- Founded and run by Charleston native, Mike Shuler
- Proven track record in operating mixed-use marinas
- Currently own four marinas in Charleston area, managing over 1,300 slips
- In addition to IOP, 5th major local marina acquisition closing June 2022

Shuler established CMH in January 2020. He has deep roots in the Charleston-area business and maritime communities.

About Mike Shuler

- Native to Charleston and has been a regular patron of the IOP Marina since childhood in the 1980s
- As an avid fisherman and boater, Shuler understands and greatly appreciates what the IOP Marina and access to our waterways means to residents and locals
- Owns and operates a real estate investment business in Downtown Charleston as well as a portfolio of businesses in the hospitality industry that collectively employ hundreds of people throughout the Lowcountry
- Born and raised in Charleston. Graduated from Clemson University with a B.S. in Real Estate Marketing & Finance

Amenities encourage
community engagement...



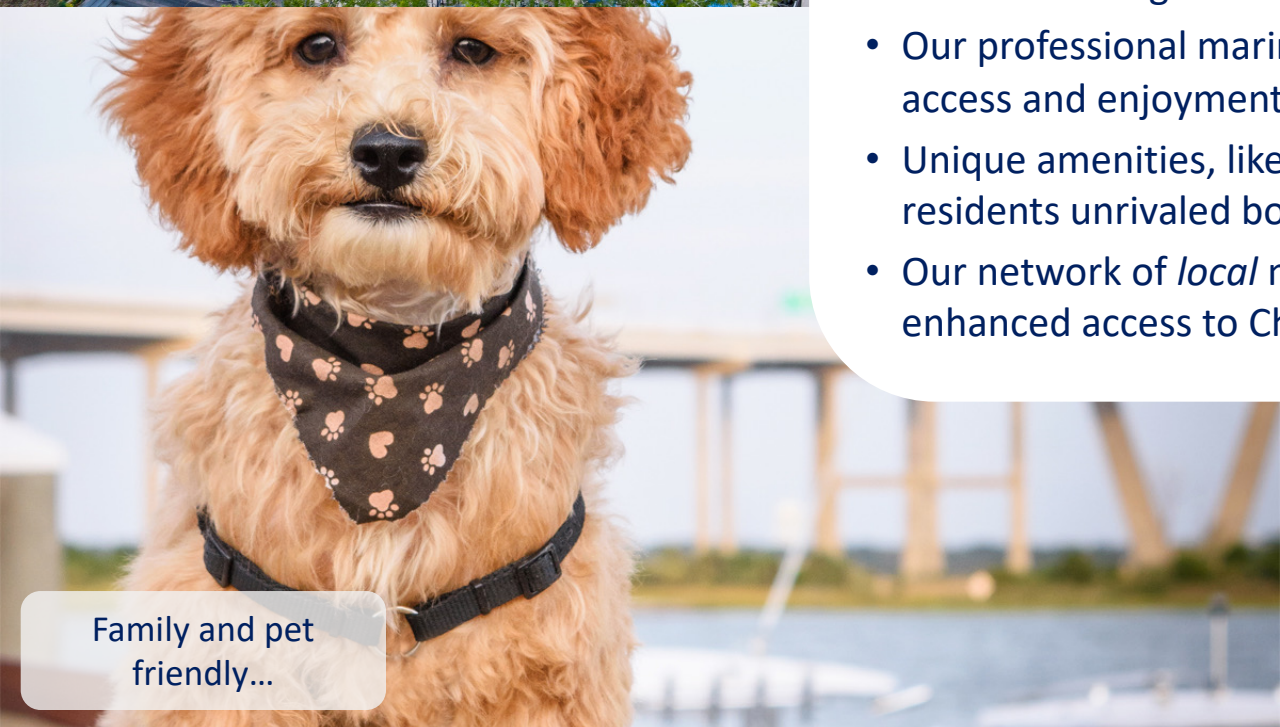
Activities for
everyone to enjoy...



More Than Just a Marina

- Our *local* marinas are customized to each individual community
- Our team's hospitality expertise help make our marinas a gathering place for all
- Our professional marina staff optimize water access and enjoyment with concierge service
- Unique amenities, like our Boat Club, offer residents unrivaled boating convenience
- Our network of *local* marinas provides enhanced access to Charleston's waterways

Family and pet
friendly...



Concierge services
make boating easy...



Goal: Make Isle of Palms Marina what IOP residents need, want, and deserve!

1

Don't Change What is Already Working

- Maintain water operations including Charters and Ecotours
- SaltWorks Kitchen
- Retain staff and provide with resources to improve customer service



2

Give IOP Residents Better Access to Water

- IOP Resident *priority* access to slips
- Improve and expand boat storage
- Concierge services: launch and cleaning
- Optimize parking & marina operations
- Open IOP Boat Club



3

Upgrade Retail Offering and Operations

- Integrate *local* brands and merchandising
 - Las Olas Swimwear / Cordina Shades
- New Initiatives, for example:
 - Ice cream station
 - Game room for kids
 - Fresh local seafood "market"



ORDINANCE 2022-

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OF THE CITY OF ISLE OF PALMS TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN FOURTH AMENDMENT AND CONSENT TO ASSIGNMENT OF COMMERCIAL LEASE AGREEMENT FROM MARINA OUTPOST, LLC TO MORGAN CREEK MARINA, LLC, ATTACHED HERETO AS EXHIBIT I AND INCORPORATED HEREIN BY REFERENCE.

WHEREAS, Landlord THE CITY OF ISLE OF PALMS, SOUTH CAROLINA (“*Landlord*”) and Marina Outpost, LLC, a South Carolina limited liability company (“*Marina Outpost*”), entered into that certain Commercial Lease Agreement dated as of January 4, 2008, as amended by that certain First Amendment to Commercial Lease Agreement dated as of April 25, 2012, as further amended by that certain Second Amendment to Commercial Lease Agreement dated as of July 24, 2012, as further amended by that certain Third Amendment to Commercial Lease Agreement dated as of February 26, 2015 (collectively, the “*Lease*”), pursuant to which Landlord has leased to Marina Outpost, and Marina Outpost has leased from Landlord, certain real property and improvements as more fully set forth in the Lease (the “*Property*”); and

WHEREAS, Marina Outpost is conveying its interest in the Property and assigning its rights and obligations in the Lease to MORGAN CREEK MARINA, LLC, a South Carolina limited liability company (“*Tenant*”) in conjunction with the execution of this Amendment; and

WHEREAS, in accordance with Section 44 of the Lease, Landlord consents to the conveyance of Marina Outpost’s interest in the Property from Marina Outpost to Tenant and the assignment of Marina Outpost’s rights and obligations under the Lease from Marina Outpost to Tenant; and

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

WHEREAS, City Council finds that leasing the Property under such amended terms to MORGAN CREEK MARINA, LLC will serve the interest of the public health, safety, welfare and general convenience of the residents of the City of Isle of Palms; and

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

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

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

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

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

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

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE _____ DAY OF _____, 2022.

Phillip Pounds, Mayor

(Seal)
Attest:

Nicole DeNeane, City Clerk
First Reading: _____
Public Hearing: _____
Second Reading: _____
Ratification: _____

EXHIBIT I
(ATTACH FOURTH AMENDMENT)

FOURTH AMENDMENT TO COMMERCIAL LEASE AGREEMENT

This FOURTH AMENDMENT TO COMMERCIAL LEASE AGREEMENT (this “**Amendment**”) is made effective as of the ____ day of [], 2022 (the “**Effective Date**”), by and between THE CITY OF ISLE OF PALMS, SOUTH CAROLINA (“**Landlord**”), MORGAN CREEK MARINA, LLC, a South Carolina limited liability company (“**Tenant**”).

RECITALS:

WHEREAS, Landlord and Marina Outpost, LLC, a South Carolina limited liability company (“**Marina Outpost**”), entered into that certain Commercial Lease Agreement dated as of January 4, 2008, as amended by that certain First Amendment to Commercial Lease Agreement dated as of April 25, 2012, as further amended by that certain Second Amendment to Commercial Lease Agreement dated as of July 24, 2012, as further amended by that certain Third Amendment to Commercial Lease Agreement dated as of February 26, 2015 (collectively, the “**Lease**”), pursuant to which Landlord has leased to Marina Outpost, and Marina Outpost has leased from Landlord, certain real property and improvements as more fully set forth in the Lease (the “**Property**”).

WHEREAS, Marina Outpost is conveying its interest in the Property and assigning its rights and obligations in the Lease to Tenant in conjunction with the execution of this Amendment.

WHEREAS, in accordance with Section 44 of the Lease, Landlord consents to the conveyance of Marina Outpost’s interest in the Property from Marina Outpost to Tenant and the assignment of Marina Outpost’s rights and obligations under the Lease from Marina Outpost to Tenant.

WHEREAS, Landlord and Tenant further intend to amend certain terms and conditions of the Lease as more fully set forth in this Amendment.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Recitals; Definitions.** The foregoing recitals are incorporated herein by this reference as a material part of this Amendment. Capitalized terms used in this Amendment without definition have the meaning given such terms in the Lease.

2. **Consent to Assignment.** Landlord hereby consents to the conveyance of Marina Outpost’s interest in the Property from Marina Outpost to Tenant and the assignment of Marina Outpost’s rights and obligations under the Lease from Marina Outpost to Tenant.

3. **Reporting of Tenant Financials.** Notwithstanding anything in the Lease to the contrary, within ninety (90) days after the end of each Lease Year or partial Lease Year, Tenant shall provide Landlord a statement showing the “Annual Gross Receipts” and “Annual Gross

Profit” (as such terms are used in the Lease) for each such Lease Year. Each such statement furnished by Tenant shall be certified as correct by a certified public accountant licensed in the State of South Carolina. Any intentional or deliberate misrepresentation by Tenant of its “Annual Gross Receipts” or “Annual Gross Profit” in any such statement or other document or material provided to Landlord in relation thereto shall constitute an Event of Default under the Lease. A “Lease Year” refers to (i) each period of twelve consecutive months during the Lease Term commencing October 1 in any calendar year and ending on September 30 in the following calendar year, and (ii) the period of the Lease Term following the last full twelve-month Lease Year and ending upon the expiration or termination of the Lease.

4. **Assignment and Subleasing.** Section 44 of the Lease is hereby deleted in its entirety and replaced with the following:

(a) Except as may otherwise be expressly permitted in relation to a Permitted Transfer as defined in Section 44(d) of this Lease, 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 (each such act is referred to herein as an “**Assignment**”) or sublet all or any portion of the Premises or permit the Premises to be occupied by anyone other than Tenant (each such act is referred to herein as a “**Sublease**”) (any Assignment or Sublease may be referred to herein as a “**Transfer**”), without Landlord’s prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. Other than Permitted Transfers, any attempted Transfer without Landlord’s prior written consent shall be void and shall constitute an Event of Default under the Lease. If Tenant is a partnership or a limited liability company, any cumulative ~~direct or indirect~~ transfer of ~~more than~~ fifty percent (50%) or more of ~~the~~any direct or indirect partnership or ~~the~~ limited liability company membership interests in Tenant (a “**Controlling Interest**”), as applicable, shall constitute a Transfer and shall require Landlord’s consent, which consent shall not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, it shall constitute a Transfer and shall require Landlord’s consent if: (i) Tenant is a limited partnership, and there is a transfer of a general partner interest; (ii) Tenant is a limited liability company, and there is a transfer of any direct or indirect Controlling Interest held by any manager or managing member; or (iii) Tenant is a corporation, any change in and there is a transfer of any direct or indirect Controlling Interest of the voting stock of the corporation. ~~Notwithstanding anything in the Lease or this Amendment to the contrary, upon any Assignment of the Lease by Tenant for which Landlord has provided its prior written consent, Tenant shall be released from liability under the Lease.~~

(b) Except as otherwise provided herein, no Transfer permitted under the Lease, whether with or without Landlord’s consent, shall release Tenant or change Tenant’s primary liability to pay rent to Landlord and to perform all other obligations of Tenant under the Lease. Landlord’s acceptance of rent from any other person is not a waiver of any provision of the Lease. Consent by Landlord to one Transfer is not consent to any subsequent Transfer. If Tenant’s transferee defaults under the Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee.

Landlord may consent to subsequent Transfers of the Lease by Tenant's transferee, without notifying Tenant or obtaining its consent. Such action shall not relieve Tenant's liability under the Lease. Notwithstanding the foregoing or anything else in the Lease or this Amendment to the contrary, upon any Assignment of the Lease by Tenant for which Landlord has provided its prior written consent, Tenant shall be released from liability under the Lease.

(c) 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 term of any Sublease and the amount of rent and security deposit payable under any partial Assignment or Sublease, and any other information reasonably requested by Landlord. Tenant shall provide to Tenant signed copies of all instruments and other documents evidencing any Transfer permitted under the Lease.

(d) Provided that no Event of Default shall have occurred and be continuing and subject to the terms and condition set forth herein, Tenant may make any of the following Transfers (each such Transfer a "***Permitted Transfer***" and each such transferee a "***Permitted Transferee***") without the consent of Landlord:

(i) the Sublease of the marina deli to Saltworks Catering Co., LLC; and

(ii) Subject to the limitations set forth in Section 5 of this Amendment, ~~Subleases~~subleases, licenses, or similar agreements for the use or rental of the marina deli between Tenant and Coastal Marinas, LLC (an Affiliate of Tenant) or any other Affiliate of Tenant.

Notwithstanding the foregoing, under no circumstance shall the term of any Permitted Transfer to a Permitted Transferee exceed Tenant's right to possession of the Lease Premises."

5. **Related Party Transactions.** Notwithstanding anything in the Lease to the contrary, under no circumstance shall Tenant enter into any Permitted Transfer or other sublease, license, or agreement for the use or occupation of any portion of the Leased Premises with any Affiliate (as hereinafter defined) of Tenant (a "***Related Party Agreement***") other than a Related Party Agreement that is entered into on an arm's length basis with terms no less favorable to Tenant than those that could reasonably be obtained from an unaffiliated third party and rental rates or other user fees payable to Tenant no less than the applicable Prevailing Market Rental Rate (as hereinafter defined). As used in this Amendment, the term "***Affiliate***" shall mean and refer to, with respect to any person, any other person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such person. For purposes of this definition, "***control***" when used with respect to any specified person, shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms "controlling"

and “controlled” shall have correlative meanings. As used in this Amendment, the term “**Prevailing Market Rental Rate**” shall mean and refer to the arm’s-length, fair market rental rate or user fees for the sublease, license, or agreement for the use or occupation of any portion of the Leased Premises entered into on or about the date on which the Prevailing Market Rental Rate is being determined hereunder. The Prevailing Market Rental Rate shall be either (a) such amount as may be mutually agreed upon by Landlord and Tenant, or (b) if Landlord and Tenant are unable to agree upon the Prevailing Market Rental Rate, such amount as determined in accordance with this Section 8. If Landlord and Tenant are unable to agree upon the Prevailing Market Rental Rate within thirty (30) days after receipt of a written request by either party for a determination thereof, Landlord and Tenant each shall, within ten (10) business days, select a Qualified Appraiser (as hereinafter defined). 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 Leased Premises is located, to name the third Qualified Appraiser. The three (3) Qualified Appraisers shall determine the Prevailing Market Rental Rate payable as rent or other user fees for the applicable sublease, license, or agreement for the use or occupation of the applicable portion of the Leased Premises 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 Appraisers, 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. As used in this Amendment, the term “**Qualified Appraiser**” shall mean an appraiser that: (i) is duly licensed in the State; (ii) has at least ten (10) years’ experience, on a full-time basis, with ownership, operation, and leasing of marinas and related facilities in the same general geographic area as that in which the Leased Premises are located; and (iii) 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.

6. **Management and Alterations to Parking Spaces.** Notwithstanding anything in the Lease to the contrary, Tenant shall be entitled to (a) manage, operate and charge usage fees for that portion of the Premises consisting outdoor parking spaces within the Marina parking lot (the “**Marina Store Parking Spaces**”) upon such terms and conditions as it may determine in its sole and absolute discretion; and (b) reconfigure and/or construct alterations, additions and improvements upon the Marina Store Parking Spaces without the consent of Landlord, provided, however, that (i) under no circumstance shall such reconfiguration, alteration, addition or improvement of the Marina Store Parking Spaces impede or preclude pedestrian and vehicular access, ingress and egress to and from the Marina and 41st Avenue, and (ii) any reconfiguration, alteration, addition or improvement of the Marina Store Parking Spaces with a cumulative cost in excess of ~~[\$250,000.00]~~ shall be subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

67. **Permitted Use.** In addition to those uses set forth in Section 6 of the Lease and notwithstanding anything in the Lease to the contrary, Tenant shall be permitted to use and

occupy the Premises for counter-style general food service with commercial kitchen operations and beer and wine sales, subject, however, to the following terms and conditions:

(a) Table service (including the taking of orders and delivery of food and beverages) shall not be permitted, other than the bussing of tables; and

(b) Sales of food, beer and wine for on-site consumption shall be permitted subject to the following:

(i) Consumption of food, beer and wine by patrons shall be restricted to the interior of the Premises and the outdoor patio portion of the Premises, with seating for no more than twelve (12) persons within the interior of the Premises;

(ii) Sales of food, beer and wine for on-site consumption shall not be permitted after ~~{sunset}~~;

(iii) No music other than ambient background music shall be permitted to be played or broadcast within those portions of the Premises used for on-site sales and consumption of food and beverages;

(iv) Alcohol sales for on-site consumption shall be made exclusively as a self-serve, retail transaction at the sales counter within the Premises, and under no circumstance shall the sale of liquor, the use of bar tabs, the operation or employment of a bar or bartender or the provision beverage service be permitted; and

(v) Tenant shall ~~provide~~use reasonable, good faith efforts to restrict consumption of beer and wine to those portions of the Premises expressly permitted under the Lease (as modified by this Amendment), including, without limitation, providing signage at the Premises denoting the limitations on the on-site consumption of alcohol. ~~Any on-site consumption of alcohol by third parties that occurs on the Premises beyond the permitted areas shall be considered incidental in nature and shall not be a default by Tenant under the terms of this Lease.~~

78. **Site Plan.** Exhibit I of the Lease is hereby deleted in its entirety and replaced with Exhibit I of this Amendment, which is attached hereto and incorporated herein by reference.

79. **Entire Agreement.** The Lease (as modified by this Amendment) and this Amendment constitutes the final, exclusive and entire agreement and understanding between the parties with respect to the subject matter hereof, and all prior and contemporaneous negotiations, understanding and agreements between the parties as to the matters contained herein are expressly merged into and superseded by this Amendment. Neither party has made or relied upon any representations, warranties or covenants relating to such subject matter except as specifically set forth in this Amendment. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent, or representative of either party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

810. Miscellaneous. Except as herein expressly amended hereby, each and every term, condition, warranty and provision of the Lease shall remain in full force and effect, and is incorporated herein by this reference, such that the Lease and this Amendment shall be read and construed as one instrument, all of which are hereby ratified, confirmed and approved by the parties hereto. Landlord and Tenant each represent and warrant to the other that, as of the date hereof, neither party is aware of an event of default existing under the Lease. If there is a conflict between this Amendment and the Lease, then the provisions of this Amendment shall control. This Amendment may be executed by email, electronic or other digital signatures and in multiple counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute the same instrument. This Amendment will be effective immediately upon execution and delivery by the parties. This Amendment shall be governed by the law of the State of South Carolina, without reference to its choice of law rules.

*****Remainder of Page Intentionally Left Blank*****
[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned hereby execute and deliver this Fourth Amendment to Commercial Lease Agreement as of the Effective Date, representing and warranting by their signature that they are duly authorized and empowered to execute this Fourth Amendment to Commercial Lease Agreement.

LANDLORD:

**CITY OF ISLE OF PALMS,
SOUTH CAROLINA**

By: _____
Name: _____
Title: _____

TENANT:

MORGAN CREEK MARINA, LLC,
a South Carolina limited liability company

By: _____
Name: _____
Its: _____

EXHIBIT I
Site Plan

See attached.

Document comparison by Workshare Compare on Tuesday, May 31, 2022
3:46:24 PM

Input:	
Document 1 ID	PowerDocs://DM/7241691/4
Description	DM-#7241691-v4-Fourth_Amendment_to_Commercial_Lease_Agreement_(Marina_Outpost)
Document 2 ID	PowerDocs://DM/7241691/5
Description	DM-#7241691-v5-Fourth_Amendment_to_Commercial_Lease_Agreement_(Marina_Outpost)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	13
Deletions	21
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	34

ORDINANCE 2022-

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OF THE CITY OF ISLE OF PALMS TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN SIXTH AMENDMENT AND CONSENT TO ASSIGNMENT OF COMMERCIAL LEASE AGREEMENT FROM MARINA JOINT VENTURES, INC. TO MORGAN CREEK MARINA, LLC, ATTACHED HERETO AS EXHIBIT I AND INCORPORATED HEREIN BY REFERENCE.

WHEREAS, Landlord THE CITY OF ISLE OF PALMS, SOUTH CAROLINA (“*Landlord*”), and Marina Joint Ventures, Inc., a South Carolina corporation (“*Marina Joint Ventures*”), entered into that certain Commercial Lease Agreement dated as of September 10, 2009, as amended by that certain Amendment to Commercial Lease Agreement dated as of June 2, 2010, as further amended by that certain Second Amendment to Commercial Lease Agreement dated as of April 25, 2012, as further amended by that certain Third Amendment to Commercial Lease Agreement dated as of July 24, 2012, as further amended by that certain Fourth Amendment to Commercial Lease Agreement dated as of February 26, 2015, as further amended by that certain Fifth Amendment to Commercial Lease Agreement dated as of November 10, 2020 (collectively, the “*Lease*”), pursuant to which Landlord has leased to Marina Joint Ventures, and Marina Joint Ventures has leased from Landlord, certain real property and improvements as more fully set forth in the Lease (the “*Property*”); and

WHEREAS, Marina Joint Ventures is conveying its interest in the Property and assigning its rights and obligations in the Lease to MORGAN CREEK MARINA, LLC, a South Carolina limited liability company (“*Tenant*”) in conjunction with the execution of this Sixth Amendment to Commercial Lease Agreement; and

WHEREAS, in accordance with Section 9(A) of the Lease, Landlord consents to the conveyance of Marina Joint Ventures’ interest in the Property from Marina Joint Ventures to Tenant and the assignment of Marina Joint Ventures’ rights and obligations under the Lease from Marina Joint Ventures to Tenant; and

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

WHEREAS, City Council finds that leasing the Property under such amended terms to MORGAN CREEK MARINA, LLC will serve the interest of the public health, safety, welfare and general convenience of the residents of the City of Isle of Palms; and

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

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

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

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

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

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

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE _____ DAY OF _____, 2022.

Phillip Pounds, Mayor

(Seal)
Attest:

Nicole DeNeane, City Clerk

First Reading: _____

Public Hearing: _____

Second Reading: _____

Ratification: _____

EXHIBIT I
(ATTACH SIXTH AMENDMENT)

SIXTH AMENDMENT TO COMMERCIAL LEASE AGREEMENT

This SIXTH AMENDMENT TO COMMERCIAL LEASE AGREEMENT (this “**Amendment**”) is made effective as of the ____ day of [], 2022 (the “**Effective Date**”), by and between THE CITY OF ISLE OF PALMS, SOUTH CAROLINA (“**Landlord**”), MORGAN CREEK MARINA, LLC, a South Carolina limited liability company (“**Tenant**”).

RECITALS:

WHEREAS, Landlord and Marina Joint Ventures, Inc., a South Carolina corporation (“**Marina Joint Ventures**”), entered into that certain Commercial Lease Agreement dated as of September 10, 2009, as amended by that certain Amendment to Commercial Lease Agreement dated as of June 2, 2010, as further amended by that certain Second Amendment to Commercial Lease Agreement dated as of April 25, 2012, as further amended by that certain Third Amendment to Commercial Lease Agreement dated as of July 24, 2012, as further amended by that certain Fourth Amendment to Commercial Lease Agreement dated as of February 26, 2015, as further amended by that certain Fifth Amendment to Commercial Lease Agreement dated as of November 10, 2020 (collectively, the “**Lease**”), pursuant to which Landlord has leased to Marina Joint Ventures, and Marina Joint Ventures has leased from Landlord, certain real property and improvements as more fully set forth in the Lease (the “**Property**”).

WHEREAS, Marina Joint Ventures is conveying its interest in the Property and assigning its rights and obligations in the Lease to Tenant in conjunction with the execution of this Amendment.

WHEREAS, in accordance with Section 9(A) of the Lease, Landlord consents to the conveyance of Marina Joint Ventures’ interest in the Property from Marina Joint Ventures to Tenant and the assignment of Marina Joint Ventures’ rights and obligations under the Lease from Marina Joint Ventures to Tenant.

WHEREAS, Landlord and Tenant further intend to amend certain terms and conditions of the Lease as more fully set forth in this Amendment.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Recitals; Definitions.** The foregoing recitals are incorporated herein by this reference as a material part of this Amendment. Capitalized terms used in this Amendment without definition have the meaning given such terms in the Lease.

2. **Consent to Assignment.** Landlord hereby consents to the conveyance of Marina Joint Ventures’ interest in the Property from Marina Joint Ventures to Tenant and the assignment of Marina Joint Ventures’ rights and obligations under the Lease from Marina Joint Ventures to Tenant.

3. **Removal of Shared Parking from Leased Premises; Site Plan.**

(a) Exhibit I of the Lease is hereby deleted in its entirety and replaced with Exhibit I of this Amendment, which is attached hereto and incorporated herein by reference.

(b) Notwithstanding anything in the Lease to the contrary, that portion of the Property shown and designated as “Shared Parking Lot” on Exhibit I of the Lease (the “**Shared Parking Lot**”) shall not constitute all or any portion of the Leased Premises (as defined in the Lease) leased from Landlord to Tenant pursuant to the Lease. Except as otherwise provided herein, Tenant shall not be entitled (i) to control or manage the parking operations on the Shared Parking Lot, or (ii) to charge or collect fees from persons using the Shared Parking Lot. Landlord and Tenant acknowledge and agree that Landlord shall be solely responsible for the ownership, management, and operation of the Shared Parking Lot at all times from and after the Effective Date, and that Tenant and its licensees and invitees shall have no right to utilize the parking spaces in the Shared Parking Lot except as may be hereafter permitted by Landlord. For the avoidance of doubt, the portions of the Property shown and designated as “Private Parking Lot” and “Exclusive Parking Lot Marina Joint Ventures” on Exhibit I of the Lease are and shall remain part of the Leased Premises leased from Landlord to Tenant pursuant to the Lease.

4. **Reporting of Tenant Financials.** Notwithstanding anything in the Lease to the contrary, within ninety (90) days after the end of each Lease Year or partial Lease Year, Tenant shall provide Landlord a statement showing the “Annual Gross Receipts” and “Annual Gross Profit” (as such terms are used in Exhibit III of the Lease) for each such Lease Year. Each such statement furnished by Tenant shall be certified as correct by a certified public accountant licensed in the State of South Carolina. Any intentional or deliberate misrepresentation by Tenant of its “Annual Gross Receipts” or “Annual Gross Profit” in any such statement or other document or material provided to Landlord in relation thereto shall constitute an Event of Default under the Lease. A “Lease Year” refers to (i) each period of twelve consecutive months during the Lease Term commencing October 1 in any calendar year and ending on September 30 in the following calendar year, and (ii) the period of the Lease Term following the last full twelve-month Lease Year and ending upon the expiration or termination of the Lease.

5. **Assignment and Subleasing.** Section 9 of the Lease is hereby deleted in its entirety and replaced with the following:

“9. ASSIGNMENT OR SUBLEASE BY TENANT.

(a) Except as may otherwise be expressly permitted in relation to a Permitted Transfer as defined in Section 9(d) of this Lease, 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 Leased Premises or Tenant’s leasehold estate hereunder (each such act is referred to herein as an “**Assignment**”) or sublet all or any portion of the Leased Premises or permit the Leased Premises to be occupied by anyone other than Tenant (each such act is referred to herein as a “**Sublease**”) (any Assignment

or Sublease may be referred to herein as a “**Transfer**”), without Landlord’s prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. Other than Permitted Transfers, any attempted Transfer without Landlord’s prior written consent shall be void and shall constitute an Event of Default under the Lease. If Tenant is a partnership or a limited liability company, any cumulative ~~direct or indirect~~ transfer of ~~more than~~ fifty percent (50%) or more of ~~the~~any direct or indirect partnership or ~~the~~ limited liability company membership interests in Tenant (a “**Controlling Interest**”), as applicable, shall constitute a Transfer and shall require Landlord’s consent, which consent shall not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, it shall constitute a Transfer and shall require Landlord’s consent if: (i) Tenant is a limited partnership, and there is a transfer of a general partner interest; (ii) Tenant is a limited liability company, and there is a transfer of any direct or indirect Controlling Interest held by any manager or managing member; or (iii) Tenant is a corporation, ~~any~~and there is a transfer of any direct or indirect Controlling Interest of the voting stock of the corporation.

(b) Except as otherwise provided herein, no Transfer permitted under the Lease, whether with or without Landlord’s consent, shall release Tenant or change Tenant’s primary liability to pay rent to Landlord and to perform all other obligations of Tenant under the Lease. Landlord’s acceptance of rent from any other person is not a waiver of any provision of the Lease. Consent by Landlord to one Transfer is not consent to any subsequent Transfer. If Tenant’s transferee defaults under the Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee. Landlord may consent to subsequent Transfers of the Lease by Tenant’s transferee, without notifying Tenant or obtaining its consent. Such action shall not relieve Tenant’s liability under the Lease. Notwithstanding the foregoing or anything else in the Lease or this Amendment to the contrary, upon any Assignment of the Lease by Tenant for which Landlord has provided its prior written consent, Tenant shall be released from liability under the Lease.

(c) 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 term of any Sublease and the amount of rent and security deposit payable under any partial Assignment or Sublease, and any other information reasonably requested by Landlord. Tenant shall provide to Tenant signed copies of all instruments and other documents evidencing any Transfer permitted under the Lease.

(d) Provided that no Event of Default shall have occurred and be continuing and subject to the terms and condition set forth herein, Tenant may make any of the following Transfers (each such Transfer a “**Permitted Transfer**” and each such transferee a “**Permitted Transferee**”) without the consent of Landlord:

(i) Subleases, licenses, or similar agreements for the use or rental of boat slips and/or dry boat storage spaces with individual boat owners for non-commercial purposes; and

(ii) Subleases, licenses, or similar agreements for the use or rental of boat slips and/or dry boat storage spaces with commercial operators for charter fishing, charter cruising, kayaking, boat rental, low speed vehicle rental, paddleboard rental, eco-tour, ~~boat club~~ and/or ~~other similar commercial purposes~~ boat clubs (each, a “*Commercial Agreement*”); provided, however, that (A) any Commercial Agreement with a commercial operator for the use or rental of boat slips comprising twenty-five percent (25%) or more of the total linear footage of dock space within the Leased Premises, whether as a result of a single Commercial Agreement or multiple Commercial Agreements in the aggregate, shall be subject to prior written approval of Landlord, such consent not to be unreasonably withheld, conditioned or delayed; and (B) under no circumstance shall more than fifty percent (50%) of the total linear footage of dock space within the Leased Premises be subleased, licensed or otherwise used or occupied by one or more boat club operators. Subject to the limitations set forth in the foregoing ~~subsection~~ subsections (A) and (B) and Section 8 of this Amendment, Landlord hereby acknowledges and agrees that Coastal Marinas, LLC is an affiliate of Tenant, expressly consents to any that certain Commercial Agreement(s) dated [] entered into by and between Tenant and Coastal Marinas, LLC (an Affiliate of Tenant) or any other Affiliate of Tenant the “Coastal Marinas Agreement”, and agrees that no additional consent or approval by Landlord of any such Commercial Agreement(s) between Tenant and the Coastal Marinas, LLC or any other Affiliate of Tenant Agreement shall be required with respect to subsection (A) above, except to the extent consent of Landlord is required for any future amendments thereof. For purposes of the foregoing calculations, Landlord and Tenant acknowledge and agree that the total linear footage of the dock space within the Leased Premises is deemed to be [2,600] linear feet.

Notwithstanding the foregoing, under no circumstance shall the term of any Permitted Transfer to a Permitted Transferee exceed Tenant’s right to possession of the Leased Premises.”

6. **Tenant’s Operational and Service Requirements.** Exhibit IV of the Lease is hereby deleted in its entirety and replaced with Exhibit IV of this Amendment, which is attached hereto and incorporated herein by reference.

7. **Alterations to Exclusive Parking Lot.** Notwithstanding anything in the Lease to the contrary, Tenant shall be entitled to reconfigure and/or construct alterations, additions and improvements upon that portion of the Leased Premises shown and designated as the “Exclusive Parking Lot” on Exhibit I of the Lease (the “*Exclusive Parking Lot*”) without the consent of Landlord; provided, however, that (a) under no circumstance shall such reconfiguration, alteration, addition or improvement of the Exclusive Parking Lot impede or preclude pedestrian and vehicular access, ingress and egress to and from the Marina and 41st Avenue; and (b) any reconfiguration, alteration, addition or improvement of the Exclusive Parking Lot with a cumulative cost in excess of ~~[\$250,000.00]~~ shall be subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

8. **Related Party Transactions.** Notwithstanding anything in the Lease to the contrary, under no circumstance shall Tenant enter into any Permitted Transfer or other sublease, license, or agreement for the use or occupation of any portion of the Leased Premises with any Affiliate (as hereinafter defined) of Tenant (a “***Related Party Agreement***”) other than a Related Party Agreement that is entered into on an arm’s length basis with terms no less favorable to Tenant than those that could reasonably be obtained from an unaffiliated third party and rental rates or other user fees payable to Tenant no less than the applicable Prevailing Market Rental Rate (as hereinafter defined). As used in this Amendment, the term “***Affiliate***” shall mean and refer to, with respect to any person, any other person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such person. For purposes of this definition, “***control***” when used with respect to any specified person, shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “controlling” and “controlled” shall have correlative meanings. As used in this Amendment, the term “***Prevailing Market Rental Rate***” shall mean and refer to the arm’s-length, fair market rental rate or user fees for the sublease, license, or agreement for the use or occupation of any portion of the Leased Premises entered into on or about the date on which the Prevailing Market Rental Rate is being determined hereunder. The Prevailing Market Rental Rate shall be either (a) such amount as may be mutually agreed upon by Landlord and Tenant, or (b) if Landlord and Tenant are unable to agree upon the Prevailing Market Rental Rate, such amount as determined in accordance with this Section 8. If Landlord and Tenant are unable to agree upon the Prevailing Market Rental Rate within thirty (30) days after receipt of a written request by either party for a determination thereof, Landlord and Tenant each shall, within ten (10) business days, select a Qualified Appraiser (as hereinafter defined). 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 Leased Premises is located, to name the third Qualified Appraiser. The three (3) Qualified Appraisers shall determine the Prevailing Market Rental Rate payable as rent or other user fees for the applicable sublease, license, or agreement for the use or occupation of the applicable portion of the Leased Premises 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 Appraisers, 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. As used in this Amendment, the term “***Qualified Appraiser***” shall mean an appraiser that: (i) is duly licensed in the State; (ii) has at least ten (10) years’ experience, on a full-time basis, with ownership, operation, and leasing of marinas and related facilities in the same general geographic area as that in which the Leased Premises are located; and (iii) 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.

9. **Marina Store; Alcohol License.** Reference is made to that certain Commercial Lease Agreement dated as of January 4, 2008 between Landlord and Marina Outpost, LLC, a South Carolina limited liability company ("***Marina Outpost***"), as amended by that certain First Amendment to Commercial Lease Agreement dated as of April 25, 2012, as further amended by that certain Second Amendment to Commercial Lease Agreement dated as of July 24, 2012, as further amended by that certain Third Amendment to Commercial Lease Agreement dated as of February 26, 2015, as assigned by Marina Outpost to Tenant as of the date hereof, and as further amended by that certain Fourth Amendment to Commercial Lease Agreement dated as of the date hereof between Landlord and Tenant (collectively, the "***Marina Store Lease***"), pursuant to which Landlord has leased to Tenant (as assignee of Marina Outpost), and Tenant has leased from Landlord, certain real property and improvements commonly known as the "Marina Store" as more fully set forth in the Marina Store Lease (the "***Marina Store Leased Premises***"). As set forth in the Marina Store Lease, Tenant is permitted to sell food, beer and wine for on-site consumption at the Marina Store Leased Premises. ~~Landlord acknowledges Tenant covenants and agrees that (i) on-site to use reasonable, good faith efforts to restrict consumption of alcohol by third parties food, beer and wine within that occurs on portion of the Marina Store Leased Premises and the Leased Premises beyond the permitted areas set forth in the Marina Store Lease shall be considered incidental in nature and shall not be a default by leased to~~ Tenant ~~underpursuant to the terms of Lease (as modified by this Lease; and (ii) Tenant may apply for all necessary permits, licenses and approvals for the sale of food, beer and wine for on-site consumption at the Marina Store Leased Premises and the Leased Premises provided that Tenant may only sell food, beer and wine for on-site consumption at the Marina Store Leased Premises in accordance with the terms and conditions of the Marina Store Lease~~ Amendment).

10. **Entire Agreement.** The Lease (as modified by this Amendment) and this Amendment constitutes the final, exclusive and entire agreement and understanding between the parties with respect to the subject matter hereof, and all prior and contemporaneous negotiations, understanding and agreements between the parties as to the matters contained herein are expressly merged into and superseded by this Amendment. Neither party has made or relied upon any representations, warranties or covenants relating to such subject matter except as specifically set forth in this Amendment. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent, or representative of either party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

11. **Miscellaneous.** Except as herein expressly amended hereby, each and every term, condition, warranty and provision of the Lease shall remain in full force and effect, and is incorporated herein by this reference, such that the Lease and this Amendment shall be read and construed as one instrument, all of which are hereby ratified, confirmed and approved by the parties hereto. Landlord and Tenant each represent and warrant to the other that, as of the date hereof, neither party is aware of an event of default existing under the Lease. If there is a conflict between this Amendment and the Lease, then the provisions of this Amendment shall control. This Amendment may be executed by email, electronic or other digital signatures and in multiple counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute the same instrument. This Amendment will be effective immediately upon

execution and delivery by the parties. This Amendment shall be governed by the law of the State of South Carolina, without reference to its choice of law rules.

*****Remainder of Page Intentionally Left Blank*****

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned hereby execute and deliver this Sixth Amendment to Commercial Lease Agreement as of the Effective Date, representing and warranting by their signature that they are duly authorized and empowered to execute this Sixth Amendment to Commercial Lease Agreement.

LANDLORD:

**CITY OF ISLE OF PALMS,
SOUTH CAROLINA**

By: _____
Name: _____
Title: _____

TENANT:

MORGAN CREEK MARINA, LLC,
a South Carolina limited liability company

By: _____
Name: _____
Its: _____

EXHIBIT I
Site Plan

See attached.

EXHIBIT IV
Tenant's Operational and Service Requirements

1. Minimum Hours of Operation:

Summer: 7:00 am to 7:00 pm, Seven (7) Days per Week

Winter: 7:00 am to 5:00 pm, Seven (7) Days per Week

Provided, however, the foregoing hours of operation are subject to modification from time to time for maintenance/repairs, federal and state holidays, casualty events and/or other matters beyond the control of Tenant.

2. Marine fuel sales (diesel, gasoline and LP gas)

3. Dock / boat slip rentals:

Except as otherwise provided in the Lease, allocation, rates, terms and conditions to be determined by Tenant in its sole and absolute discretion

Tenant shall use commercially reasonable efforts to provide IOP residents with priority opportunity to rent publicly available boat slips at standard rates to be determined by Tenant in its sole and absolute discretion on an as-available basis (must present valid evidence of IOP residence)

4. Boat ramp launching:

IOP resident launch fee: Free (must present valid evidence of IOP residence)

IOP employee and City Official launch fee: Free (must present City Identification Card)

Non-resident launch fee: Fee to be determined by Tenant in its sole and absolute discretion

Non-resident annual pass: Fee to be determined by Tenant in its sole and absolute discretion

5. Providing boat slips and dry boat storage spaces for use by individuals and, in Tenant's sole and absolute discretion, by commercial operators for charter fishing, charter cruising, kayaking, boat rental, low speed vehicle rental, paddleboard rental, eco-tour, and/or boat ~~club and/or other similar commercial purposes~~clubs in accordance with the Lease; provided, however, no portion of the Leased Premises shall be used for jetski rentals or for launching jetskis to be used on a rental basis

6. Standard boat sewage pump-out service during business hours, subject to reasonable notice from applicable vessels and system functionality
7. Dry boat storage:

Except as otherwise provided in the Lease, allocation, rates, terms and conditions to be determined by Tenant in its sole and absolute discretion

No fewer than twelve (12) dry boat storage spaces shall be reserved for rental by IOP residents (must present valid evidence of IOP residence)
8. Safely maintain all facilities for which Tenant is responsible as provided in the Lease
9. Monitor underground fuel system for leaks
10. Regularly communicate with City Administrator as to any unusual occurrences, complaints, safety concerns, etc.
11. Provide an on-site dock master during all hours of operation
12. Enforce existing rules and regulations for Marina users and make changes as needed, subject to City's prior written approval
13. Promote a family-friendly atmosphere
14. Cooperate with other tenants at the Marina
15. Provide complimentary dock space for City of Isle of Palms vessels (Fire Department boat, wave runners) not to exceed five percent (5%) or more of the total linear footage of dock space within the Leased Premises in locations determined by Tenant in its sole and absolute discretion
16. Coordinate as needed with military or other government organizations as they occasionally train at the Marina

Document comparison by Workshare Compare on Tuesday, May 31, 2022
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Document 2 ID	PowerDocs://DM/7241684/6
Description	DM-#7241684-v6-Sixth_Amendment_to_Commercial_Lease_Agreement_(Marina_Joint_Ventures)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
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Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
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Padding cell	

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Moved to	0
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