

ORDINANCE 2022- 04

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. Notwithstanding the foregoing or anything else in the Lease to the contrary, Tenant and its employees, agents, invitees and licensees are granted non-exclusive access easements over, across, through and upon the Shared Parking Lot and other adjacent property owned by Landlord as necessary to enable Tenant to operate and use the Leased Premises for the purposes permitted under the Lease. 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 transfer of fifty percent (50%) or more of any direct or indirect partnership or limited liability company membership interests in Tenant to an entity or individual that is not currently a member or manager of Tenant or its parent entity or an Affiliate (as defined below) of any current member or manager of Tenant or its parent entity (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, and there is a transfer of any direct or indirect Controlling Interest of the voting stock of the corporation. Notwithstanding anything in this Amendment or the Lease to the contrary, a transfer of any direct or indirect partnership or limited liability company membership interests in Tenant shall not constitute a Transfer that requires Landlord's consent so long as either Michael B. Shuler, Jr. or Zayd Hammam remains the manager or managing member of Tenant or otherwise retains control of Tenant. As used herein, "**control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise.

(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 (each, a “**Commercial Agreement**”) for charter fishing, charter cruising, kayaking, boat rental, low speed vehicle rental, paddleboard rental, eco-tour, and/or boat clubs (each, a “**Commercial Use**”); provided, however, that (A) any Commercial Use comprising fifteen percent (15%) 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; (B) under no circumstance shall more than thirty-three percent (33%) 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; and (C) no boat club operator shall use dry boat storage within the Leased Premises for long-term storage of boat club boats or operation of such boat club but may utilize the dry boat storage within the Leased Premises for temporary storage of boat club boats for maintenance/repairs or in the event of a casualty, hurricane or other extreme weather event. Subject to the limitations set forth in the foregoing subsection (B), subsection (C) and Section 8 of this Amendment, Landlord hereby acknowledges and agrees that Coastal Marinas, LLC is an Affiliate of Tenant, expressly consents to any Commercial Agreement(s) for the operation of a boat club within the Leased Premises entered into by and between Tenant and Coastal Marinas, LLC from time to time (the “**Coastal Marinas Agreements**”), and agrees that no additional consent or approval by Landlord of the Coastal Marinas Agreements shall be required with respect to subsection (A) above. Subject to the limitations set forth in the foregoing subsections (A) and (B) and Section 8 of this Amendment, Landlord hereby acknowledges and agrees that Tenant may enter into one or more Commercial Agreement(s) for one or more Commercial Uses with Affiliates of Tenant from time to time and agrees that no additional consent or approval by Landlord of such Commercial Agreements shall be required. 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 41<sup>st</sup> Avenue; (b) any reconfiguration, alteration, addition or improvement of the Exclusive Parking Lot with a cumulative cost in excess of \$100,000.00 shall be subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; and (c) under no circumstance shall all or any portion of the Exclusive Parking Lot or the Leased Premises be used or operated for the construction or operation of a vertically oriented dry stack boat storage facility consisting of boats stacked one on top of another in a vertical fashion. For the avoidance of doubt and notwithstanding the foregoing to the contrary, Tenant is permitted to provide and operate "dry boat storage" as set forth in Exhibit IV of the Lease by storing boats within the Exclusive Parking Lot on a single horizontal plane provided that boats are not stored or stacked one on top of another in a vertical fashion. Tenant may use motor vehicles, forklifts or other machinery ("***Equipment***") in the storage, parking or transport of boats to, from or within the Exclusive Parking Lot provided that such Equipment does not emit or cause unreasonable beeping, noise or vibration to be transmitted outside of the Premises to such a degree as to be objectionable to Landlord ("***Noise Prohibition***"). Notwithstanding the foregoing to the contrary, the Noise Prohibition shall not apply to the use of Equipment or other construction vehicles or machinery in conjunction with any reconfiguration, alteration, addition or improvement of the Leased Premises in accordance with the Lease.

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 one hundred twenty percent (120%) of 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 on an annual basis, 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. Tenant covenants and agrees to use reasonable, good faith

efforts (i) to prohibit the consumption of beer and wine by patrons of the Marina Store Leased Premises within the Leased Premises leased to Tenant pursuant to the Lease (as modified by this Amendment), and (ii) to discourage and prohibit congregations and gatherings of persons in possession of open containers of beer or wine within the Leased Premises leased to Tenant pursuant to the Lease (as modified by this Amendment). Tenant acknowledges and agrees that Landlord has jurisdiction to enforce the foregoing prohibition of consumption of beer and wine according to the terms contained herein. So long as Tenant complies with its obligations under this Section 9, Landlord acknowledges and agrees that on-site consumption of alcohol by third parties that occurs beyond the permitted areas set forth in the Marina Store Lease shall be considered incidental in nature and shall not be a default by Tenant under the terms of the Lease.

10. **Update of Landlord's Personal Property.**

(a) Exhibit II and Exhibit V of the Lease are hereby deleted in their entirety and replaced with Exhibit II and Exhibit V of this Amendment, which are attached hereto and incorporated herein by reference, to update and identify the personal property owned by Landlord at the Leased Premises leased to Tenant and to be maintained by Tenant or Landlord in accordance with the Lease, Exhibit II and Exhibit V of this Amendment.

(b) Exhibit VI and Exhibit VII of the Lease are hereby deleted in their entirety.

11. **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 II**

### *Improvements, Fixtures and Personal Property Owned by Landlord*

#### 1. Intellectual Property.

A. Tenant acknowledges that the Isle of Palms Marina trademark is a registered trademark of the City and is the City's sole and exclusive property. Tenant agrees to use this trademark only with permission of the City and in furtherance of the Tenant's Marina operations.

B. Tenant acknowledges that the internet domain names of "isleofpalmsmarina.com", "isleofpalmsmarina.net", "iopmarina.net", and "iopmarina.com" are the City's sole and exclusive property. Tenant agrees to use these domain names only with permission of the City and in furtherance of the Tenant's Marina operations.

C. Any customer lists regarding Tenant's operations at the Marina developed or obtained by Tenant shall be and remain the sole property of the City but may be used by Tenant.

2. Bulkhead – original
3. Bulkhead – constructed 2009
4. Boat Ramp
5. Dock and Pier System – replaced 2022
6. Dock and Pier System – "Intracoastal Dock" (not part of 2022 replacement)
7. Marine fueling system, pumps and dispensers connected to the following underground fuel storage tanks:
  - a. DHEC Tank Number 18 – 12,000 gallon gasoline – Operation Date 5/15/2019
  - b. DHEC Tank Number 19 – 12,000 gallon diesel – Operation Date 5/15/2019
8. TMS fuel control console – replaced 2022
9. Pump Out System – replaced 2022
10. Dock Utility Pedestals – replaced 2022
11. Safety Pedestals with Fire Extinguishers and safety rings – replaced 2022
12. Point of Sale revenue collection system in fuel dock office and admin office, VHF Radio console in fuel dock office – replaced 2022
13. Window A/C unit in fuel dock office – replaced 2022
14. Captains' bath facilities located in Marina Building
15. Water heater in Captain's Bath
16. Scale in Captain's Bath
17. One washing machine and one dryer for transient laundry
18. Window A/C unit in admin office – replaced 2021

## **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 clubs in accordance with the Lease; provided, however, no portion of the Leased Premises shall be used for commercial parasailing tours or operations, jetski rentals or launching of 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
17. Provide transient boater restroom, bathing and laundry facilities

## **EXHIBIT V**

### *List of Marina Assets Subject to Repair or Replacement by Landlord*

1. The Tenant agrees to be responsible for all normal and routine maintenance to the following property. City agrees to be responsible for extraordinary repairs or replacements to the following assets, except for damage caused by Tenant's negligent or willful acts, in which case the repair or replacement shall be the responsibility of Tenant:

Marina Dock Fuel Dispensers and Marina Dock Transfer Fuel Lines connected to the following underground fuel storage tanks:

a. DHEC Tank Number 18 – 12,000 gallon gasoline – Operation Date 5/15/2019

b. DHEC Tank Number 19 – 12,000 gallon diesel – Operation Date 5/15/2019

Utility and Safety Pedestals, including all associated Electrical Systems.

2. City agrees to be responsible for all ordinary and extraordinary repairs or replacements to the following property, except for damage caused by Tenant's negligent or willful acts, in which case the repair or replacement shall be the responsibility of Tenant:

Bulkheads;

Pilings;

Dock Replacements, including the Floating Docks and Fixed Piers;

Underground transfer lines and underground fuel pumps; and

Underground fuel storage tanks.



## GUARANTY

This Guaranty (this “**Guaranty**”), dated as of \_\_\_\_\_, 2022 (the “**Effective Date**”), is signed by Coastal Marina Holdings, LLC, a South Carolina limited liability company having an address at 50 Immigration Street, Suite 200, Charleston, South Carolina 29403 (“**Guarantor**”), as consideration for and in order to induce THE CITY OF ISLE OF PALMS, SOUTH CAROLINA, having an address at c/o City Administrator, 1207 Palm Boulevard, Isle of Palms, SC 29451 (“**Landlord**”), to enter 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, as further amended by that certain Sixth Amendment to Commercial Lease Agreement dated as of \_\_\_\_\_, 2022 (the “**Lease**”) with Morgan Creek Marina, LLC, a South Carolina limited liability company, having an address at 50 Immigration Street, Suite 200, Charleston, South Carolina 29403 (“**Tenant**”), and Guarantor hereby agrees as follows:

1. Obligations. Guarantor guarantees unconditionally to Landlord the punctual payment, performance, and observance of all monetary (including the payment of all rent, additional rent, and any other payments due and payable under the Lease) and non-monetary obligations, covenants, conditions, and agreements required to be observed and performed or paid or reimbursed by Tenant pursuant to the Lease (collectively, the “**Obligations**”).

2. Unconditional Guaranty. Except as otherwise expressly provided herein, the Obligations are unconditional, and this Guaranty will remain in full force and effect without regard to any circumstances or conditions, including, without limitation:

(a) Any defense or set-off, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of the Lease or otherwise or the failure of Landlord to assert any claim or demand, or to enforce the Lease or any right or remedy available to Landlord under the Lease, against Tenant under the Lease or any other agreement.

(b) Any extension or renewal of the Lease or any other agreement.

(c) Any rescission, waiver, amendment, or modification of the Lease or any other agreement.

(d) The release of any security held by Landlord under the Lease.

(e) Any transfer by Landlord or Tenant in respect of the Lease or any interest in the Premises, including without limitation any assignment of the Lease by Tenant or any sublease of all, or a portion of, the Premises whether or not Guarantor receives notice and or has consented to such assignment or sublet.

- (f) Any transfer by Guarantor of any interest in or control of Tenant.
- (g) Any bankruptcy or similar proceeding involving Landlord or Tenant.
- (h) Failure of Landlord to exercise any right or remedy against any other guarantor of the Lease.

Notwithstanding anything in this Guaranty to the contrary (including Section 2(e) and Section 7(b)), upon any assignment of the Lease by Tenant for which Landlord has provided its prior written consent, Guarantor shall be released from liability under this Guaranty and this Guaranty shall terminate and be of no further force or effect.

3. Waiver. Guarantor agrees that this Guaranty constitutes a guaranty of payment and performance when due and not just of collection. Guarantor waives presentment and demand for payment, notice of non-payment or non-performance, and any other notice or demand to which Guarantor might otherwise be entitled to receive. Guarantor also waives trial by jury of all issues arising in any action to which Landlord and Guarantor may be parties in connection with this Guaranty. Landlord shall not be required to resort to any other person or entity or to any security for payment or performance of any part of the Lease or to any advance rent, or to any deposit, account, credit, or offset on the books of Landlord in favor of Tenant.

4. Joint and Several Liability. Landlord may, at Landlord's option, proceed against Guarantor and Tenant, jointly and severally, or against Guarantor only without having obtained a judgment against Tenant. Landlord shall not be required to use any security deposit provided to Landlord in accordance with the terms of the Lease before proceeding against or collecting any sums from Guarantor. The security held by Landlord pursuant to the terms of the Lease will not be applied to any Obligations paid or performed by Guarantor. If there is more than one Guarantor under this Guaranty, Guarantor's obligations and liabilities under this Guaranty are joint and several. Upon payment by Guarantor of any sums to Landlord hereunder, all rights of Guarantor against Tenant arising as a result thereof by way of right of subrogation, indemnification, or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full of all obligations under the Lease.

5. Further Assurances and Severability.

(a) Guarantor will execute, acknowledge, and deliver, at its own expense, all instruments and take all action as Landlord from time to time may reasonably request for ensuring Landlord the full benefits of this Guaranty.

(b) If any provision of this Guaranty is to any extent determined by final decision of a court of competent jurisdiction to be unenforceable, the remainder of this Guaranty will not be affected thereby, and each provision of this Guaranty will be valid and enforceable to the fullest extent permitted by law. Landlord's delay in exercising, or the failure to exercise, any right under this Guaranty will not waive such right or any other right of Landlord. All remedies of Landlord by reason of this Guaranty are separate and cumulative and no single remedy, whether or not exercised by Landlord, will exclude any other remedy of Landlord or limit or prejudice any other legal or equitable remedy which Landlord may have.

6. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the first page of this Guaranty (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All Notices shall be delivered by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally [or regionally] recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; (c) registered U.S. Mail, signature required and postage prepaid, whereby delivery is deemed to have occurred on the third (3rd) business day following deposit with the U.S. Postal Service; or (d) electronic transmission (facsimile or email) provided that the transmission is completed no later than 4:00 p.m. on a business day and the original also is sent via overnight courier or U.S. Mail, whereby delivery is deemed to have occurred at the end of the business day on which electronic transmission is completed.

7. Miscellaneous.

(a) If judgment is entered against Guarantor in any action to enforce this Guaranty, Guarantor will reimburse Landlord for all reasonable expenses incurred by Landlord in connection therewith, including reasonable attorneys’ fees and disbursements.

(b) This Guaranty may not be changed or terminated orally or in any manner other than by a written agreement signed by Guarantor and Landlord.

(c) Each reference herein to Landlord shall be deemed to include its heirs, successors, and assigns, in whose favor the provisions of this Guaranty shall also inure. Each reference herein to Guarantor shall be deemed to include its heirs, successors, and assigns, all of whom shall be bound by the provisions of this Guaranty.

(d) This Guaranty will be governed by the laws of the State of South Carolina.

(e) All capitalized terms not defined herein shall have the meaning accorded them in the Lease, a true and correct copy of which Guarantor hereby acknowledges receipt.

(f) The Paragraph headings appearing herein are for purposes of convenience only and are not deemed to be part of this Guaranty.

(g) If there is more than one Guarantor, this Guaranty may be executed in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute one and the same instrument.

8. Submission to Jurisdiction. Guarantor hereby agrees that any suit, action, or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Guaranty or the transactions contemplated hereby, whether in contract, tort, or otherwise, shall be brought in a court of competent jurisdiction located in Charleston County, South Carolina, so long as such court shall have subject-matter jurisdiction over such suit, action,

or proceeding, and that any cause of action arising out of this Guaranty shall be deemed to have arisen from a transaction of business in the State of South Carolina. Guarantor hereby irrevocably consents to the jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such suit, action, or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the venue of any such suit, action, or proceeding in any such court, or that any such suit, action, or proceeding that is brought in any such court has been brought in an inconvenient forum. Service of process, summons, notice, or other document by registered mail to the address for Guarantor set forth in the preamble hereof shall be effective service of process for any suit, action, or other proceeding brought in any such court.

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

**IN WITNESS WHEREOF**, Guarantor has caused this Guaranty to be executed as of the Effective Date.

**GUARANTOR:**

Coastal Marina Holdings, LLC

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

Name:

Title:

ORDINANCE 2022- 05

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 transfer of fifty percent (50%) or more of any direct or indirect partnership or limited liability company membership interests in Tenant to an entity or individual that is not currently a member or manager of Tenant or its parent entity or an Affiliate (as defined below) of any current member or manager of Tenant or its parent entity (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, and there is a transfer of any direct or indirect Controlling Interest of the voting stock of the corporation. Notwithstanding anything in this Amendment or the Lease to the contrary, a transfer of any direct or indirect partnership or limited liability company membership interests in Tenant shall not constitute a Transfer that requires Landlord’s consent so long as either Michael B. Shuler, Jr. or Zayd Hammam remains the manager or managing member of Tenant or otherwise retains control of Tenant. As used herein, “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise.

(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.

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 one hundred twenty percent (120%) of 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 41<sup>st</sup> Avenue, and (ii) any reconfiguration, alteration, addition or improvement of the Marina Store Parking Spaces with a cumulative cost in excess of \$100,000.00 shall be subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

7. **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 beer and wine for consumption within the permitted areas of the Premises shall not be permitted after sunset;

(iii) Consumption of beer and wine within the permitted areas of the Premises shall not be permitted after dark;

(iv) 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, and no live music shall be permitted on the outdoor patio portion of the Premises under any circumstance;

(v) 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

(vi) Tenant covenants and agrees to use reasonable, good faith efforts (i) 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, and (ii) to discourage and prohibit congregations and gatherings of persons in possession of open containers of beer or wine outside of those portions of the Premises expressly permitted under the Lease (as modified by this Amendment). Tenant acknowledges and agrees that Landlord has jurisdiction to enforce the foregoing restriction of consumption of beer and wine according to the terms contained herein. So long as Tenant complies with its obligations under this Section 7(b)(v), Landlord acknowledges and agrees that on-site consumption of alcohol by third parties that occurs beyond the permitted areas set forth in the Lease shall be considered incidental in nature and shall not be a default by Tenant under the terms of the Lease.

8. **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.

9. **Update of Landlord's Personal Property.** Exhibit II of the Lease is hereby deleted in its entirety and replaced with Exhibit II of this Amendment, which is attached hereto

and incorporated herein by reference, to update and identify the personal property owned by Landlord at the Leased Premises leased to Tenant and to be maintained by Tenant or Landlord in accordance with the Lease and Exhibit II of this 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.

10. **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.



## **EXHIBIT II**

### *Landlord's Personal Property*

1. Fuel system and above ground dispensing equipment connected to the following underground fuel storage tanks:
  - a. DHEC Tank Number 20 – 8,000 gallon gasoline – Operation Date 5/15/2019
  - b. DHEC Tank Number 22 – 8,000 gallon gasoline – Operation Date 5/15/2019
2. Tonka bait freezer 7x8x6
3. Built-in merchandise coolers
4. Awnings

## GUARANTY

This Guaranty (this “**Guaranty**”), dated as of \_\_\_\_\_, 2022 (the “**Effective Date**”), is signed by Coastal Marina Holdings, LLC, a South Carolina limited liability company [having an address at 50 Immigration Street, Suite 200, Charleston, South Carolina 29403 (“**Guarantor**”), as consideration for and in order to induce THE CITY OF ISLE OF PALMS, SOUTH CAROLINA, having an address at c/o City Administrator, 1207 Palm Boulevard, Isle of Palms, SC 29451 (“**Landlord**”), to enter 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, as further amended by that certain Fourth Amendment to Commercial Lease Agreement dated as of \_\_\_\_\_, 2022 (the “**Lease**”) with Morgan Creek Marina, LLC, a South Carolina limited liability company, having an address at 50 Immigration Street, Suite 200, Charleston, South Carolina 29403 (“**Tenant**”), and Guarantor hereby agrees as follows:

1. Obligations. Guarantor guarantees unconditionally to Landlord the punctual payment, performance, and observance of all monetary (including the payment of all rent, additional rent, and any other payments due and payable under the Lease) and non-monetary obligations, covenants, conditions, and agreements required to be observed and performed or paid or reimbursed by Tenant pursuant to the Lease (collectively, the “**Obligations**”).

2. Unconditional Guaranty. Except as otherwise expressly provided herein, the Obligations are unconditional, and this Guaranty will remain in full force and effect without regard to any circumstances or conditions, including, without limitation:

(a) Any defense or set-off, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of the Lease or otherwise or the failure of Landlord to assert any claim or demand, or to enforce the Lease or any right or remedy available to Landlord under the Lease, against Tenant under the Lease or any other agreement.

(b) Any extension or renewal of the Lease or any other agreement.

(c) Any rescission, waiver, amendment, or modification of the Lease or any other agreement.

(d) The release of any security held by Landlord under the Lease.

(e) Any transfer by Landlord or Tenant in respect of the Lease or any interest in the Premises, including without limitation any assignment of the Lease by Tenant or any sublease of all, or a portion of, the Premises whether or not Guarantor receives notice and or has consented to such assignment or sublet.

(f) Any transfer by Guarantor of any interest in or control of Tenant.

(g) Any bankruptcy or similar proceeding involving Landlord or Tenant.

(h) Failure of Landlord to exercise any right or remedy against any other guarantor of the Lease.

Notwithstanding anything in this Guaranty to the contrary (including Section 2(e) and Section 7(b)), upon any assignment of the Lease by Tenant for which Landlord has provided its prior written consent, Guarantor shall be released from liability under this Guaranty and this Guaranty shall terminate and be of no further force or effect.

3. Waiver. Guarantor agrees that this Guaranty constitutes a guaranty of payment and performance when due and not just of collection. Guarantor waives presentment and demand for payment, notice of non-payment or non-performance, and any other notice or demand to which Guarantor might otherwise be entitled to receive. Guarantor also waives trial by jury of all issues arising in any action to which Landlord and Guarantor may be parties in connection with this Guaranty. Landlord shall not be required to resort to any other person or entity or to any security for payment or performance of any part of the Lease or to any advance rent, or to any deposit, account, credit, or offset on the books of Landlord in favor of Tenant.

4. Joint and Several Liability. Landlord may, at Landlord's option, proceed against Guarantor and Tenant, jointly and severally, or against Guarantor only without having obtained a judgment against Tenant. Landlord shall not be required to use any security deposit provided to Landlord in accordance with the terms of the Lease before proceeding against or collecting any sums from Guarantor. The security held by Landlord pursuant to the terms of the Lease will not be applied to any Obligations paid or performed by Guarantor. If there is more than one Guarantor under this Guaranty, Guarantor's obligations and liabilities under this Guaranty are joint and several. Upon payment by Guarantor of any sums to Landlord hereunder, all rights of Guarantor against Tenant arising as a result thereof by way of right of subrogation, indemnification, or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full of all obligations under the Lease.

5. Further Assurances and Severability.

(a) Guarantor will execute, acknowledge, and deliver, at its own expense, all instruments and take all action as Landlord from time to time may reasonably request for ensuring Landlord the full benefits of this Guaranty.

(b) If any provision of this Guaranty is to any extent determined by final decision of a court of competent jurisdiction to be unenforceable, the remainder of this Guaranty will not be affected thereby, and each provision of this Guaranty will be valid and enforceable to the fullest extent permitted by law. Landlord's delay in exercising, or the failure to exercise, any right under this Guaranty will not waive such right or any other right of Landlord. All remedies of Landlord by reason of this Guaranty are separate and cumulative and no single remedy, whether or not exercised by Landlord, will exclude any other remedy of Landlord or limit or prejudice any other legal or equitable remedy which Landlord may have.

6. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the first page of this Guaranty (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All Notices shall be delivered by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally [or regionally] recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; (c) registered U.S. Mail, signature required and postage prepaid, whereby delivery is deemed to have occurred on the third (3rd) business day following deposit with the U.S. Postal Service; or (d) electronic transmission (facsimile or email) provided that the transmission is completed no later than 4:00 p.m. on a business day and the original also is sent via overnight courier or U.S. Mail, whereby delivery is deemed to have occurred at the end of the business day on which electronic transmission is completed.

7. Miscellaneous.

(a) If judgment is entered against Guarantor in any action to enforce this Guaranty, Guarantor will reimburse Landlord for all reasonable expenses incurred by Landlord in connection therewith, including reasonable attorneys’ fees and disbursements.

(b) This Guaranty may not be changed or terminated orally or in any manner other than by a written agreement signed by Guarantor and Landlord.

(c) Each reference herein to Landlord shall be deemed to include its heirs, successors, and assigns, in whose favor the provisions of this Guaranty shall also inure. Each reference herein to Guarantor shall be deemed to include its heirs, successors, and assigns, all of whom shall be bound by the provisions of this Guaranty.

(d) This Guaranty will be governed by the laws of the State of South Carolina.

(e) All capitalized terms not defined herein shall have the meaning accorded them in the Lease, a true and correct copy of which Guarantor hereby acknowledges receipt.

(f) The Paragraph headings appearing herein are for purposes of convenience only and are not deemed to be part of this Guaranty.

(g) If there is more than one Guarantor, this Guaranty may be executed in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute one and the same instrument.

8. Submission to Jurisdiction. Guarantor hereby agrees that any suit, action, or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Guaranty or the transactions contemplated hereby, whether in contract, tort, or otherwise, shall be brought in a court of competent jurisdiction located in Charleston County, South Carolina, so long as such court shall have subject-matter jurisdiction over such suit, action,

or proceeding, and that any cause of action arising out of this Guaranty shall be deemed to have arisen from a transaction of business in the State of South Carolina. Guarantor hereby irrevocably consents to the jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such suit, action, or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the venue of any such suit, action, or proceeding in any such court, or that any such suit, action, or proceeding that is brought in any such court has been brought in an inconvenient forum. Service of process, summons, notice, or other document by registered mail to the address for Guarantor set forth in the preamble hereof shall be effective service of process for any suit, action, or other proceeding brought in any such court.

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

[Signatures on Following Page]

**IN WITNESS WHEREOF**, Guarantor has caused this Guaranty to be executed as of the Effective Date.

**GUARANTOR:**

Coastal Marina Holdings, LLC

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

Name:

Title: