



Special City Council

3:30 p.m., Tuesday, September 13, 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. **Citizens Comments** - All comments will have a time limit of three (3) minutes.
3. **Purpose**
 - a. Second Reading
 - i. Ordinance 2022-05 – An ordinance authorizing the amendment and assignment of Marina Outpost, LLC., Inc. to Morgan Creek Marina, LLC
 - ii. Ordinance 2022-04 – An ordinance authorizing the amendment and assignment of Marina Joint Ventures, Inc. to Morgan Creek Marina, LLC
 - b. Discussion of parking layout options for the Intracoastal side of the marina to eliminate shared parking area and establish City parking and greenspace area and consolidate/expand Islander 71's exclusive parking lot
 - c. Discussion of proposed amendments to Islander 71's lease received by restaurant tenant Marker 116
 - d. Consideration of resolution to hold a public disciplinary hearing regarding council member Miars alleged violation of the City of Isle of Palms Code of Conduct
4. **Executive Session**
 - a. In accordance with S.C. Code Section 30-4-70(a) (2) to receive legal advice and discuss proposed contractual arrangements.
 - b. Executive Session pursuant to S.C. Code §30-4-70(a)(2) to receive legal advice related to potential claims concerning alterations to Isle of Palms zoning districts.
Upon returning to open session, Council may take action on matters discussed in Executive Session.
5. **Adjournment**

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 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 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 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 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 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 Areas.** 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 of outdoor parking spaces and other areas within the Marina parking lot (the "***Marina Store Parking Areas***") 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 Areas without the consent of Landlord, provided, however, that (i) under no circumstance shall such reconfiguration, alteration, addition or improvement of the Marina Store Parking Areas 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 Areas with a cumulative cost in excess of \$100,000.00 in any given calendar year shall be subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord hereby acknowledges and agrees that the conceptual proposed parking plan attached to this Amendment as Schedule A and incorporated herein by reference (the "***Conceptual Proposed Parking Plan***") is approved by Landlord and that no additional consent or approval by Landlord shall be required pursuant to subsection (b)(ii) above with respect to any reconfiguration, alteration, addition or improvement of the Marina Store Parking Areas that is substantially in conformance with the Conceptual Proposed Parking Plan.

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) Neither sales of beer and wine for consumption within the permitted areas of the Premises nor consumption of beer and wine within the permitted areas of the Premises shall 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, and no live music shall be permitted on the outdoor patio portion of the Premises under any circumstance;

(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 (excluding house/customer accounts), the operation or employment of a bar or bartender or the provision of beverage service be permitted; and

(v) 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 the site plan of the Premises and parking plan for the Marina attached as Exhibit I of this Amendment and incorporated herein by reference.

9. **Update of Landlord's Personal Property; Utilities; Preexisting Conditions.**

(a) 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 Premises leased to Tenant and to be maintained by Tenant or Landlord in accordance with the Lease and Exhibit II of this Amendment.

(b) Notwithstanding anything in the Lease to the contrary, Landlord 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: stormwater drainage systems and facilities.

(c) Notwithstanding anything in the Lease to the contrary, Tenant has no obligation for any repairs, maintenance or replacements of any pump/lift stations, fire hydrants, utilities or utility lines at the Premises, except for damage caused by Tenant's negligent or willful acts, in which case the repair or replacement shall be the responsibility of Tenant.

(d) Notwithstanding anything in the Lease to the contrary, Tenant shall not be in default of the Lease due to any lack of compliance with any applicable federal, state or local law, rule or regulation related to the state or condition of the Leased Premises or the improvements located thereon existing as of the date of this Amendment ("***Preexisting Condition***"). Tenant and Landlord agree to cooperate and use reasonable, good faith efforts to remedy any such Preexisting Condition.

10. **Gross Profits; Tips.** Section 4(C) of the Lease is hereby amended to add tips to the items to be deducted from annual gross receipts to determine gross profit.

11. **Operating Hours.** Section 7 of the Lease is hereby amended to provide that Tenant's 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.

12. **Easements.** Landlord grants Tenant and its employees, agents, invitees and licensees non-exclusive access easements over, across, through and upon the balance of the Marina and other adjacent property owned by Landlord as necessary to enable Tenant to operate and use the Premises for the purposes permitted under the Lease.

13. **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.

14. **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

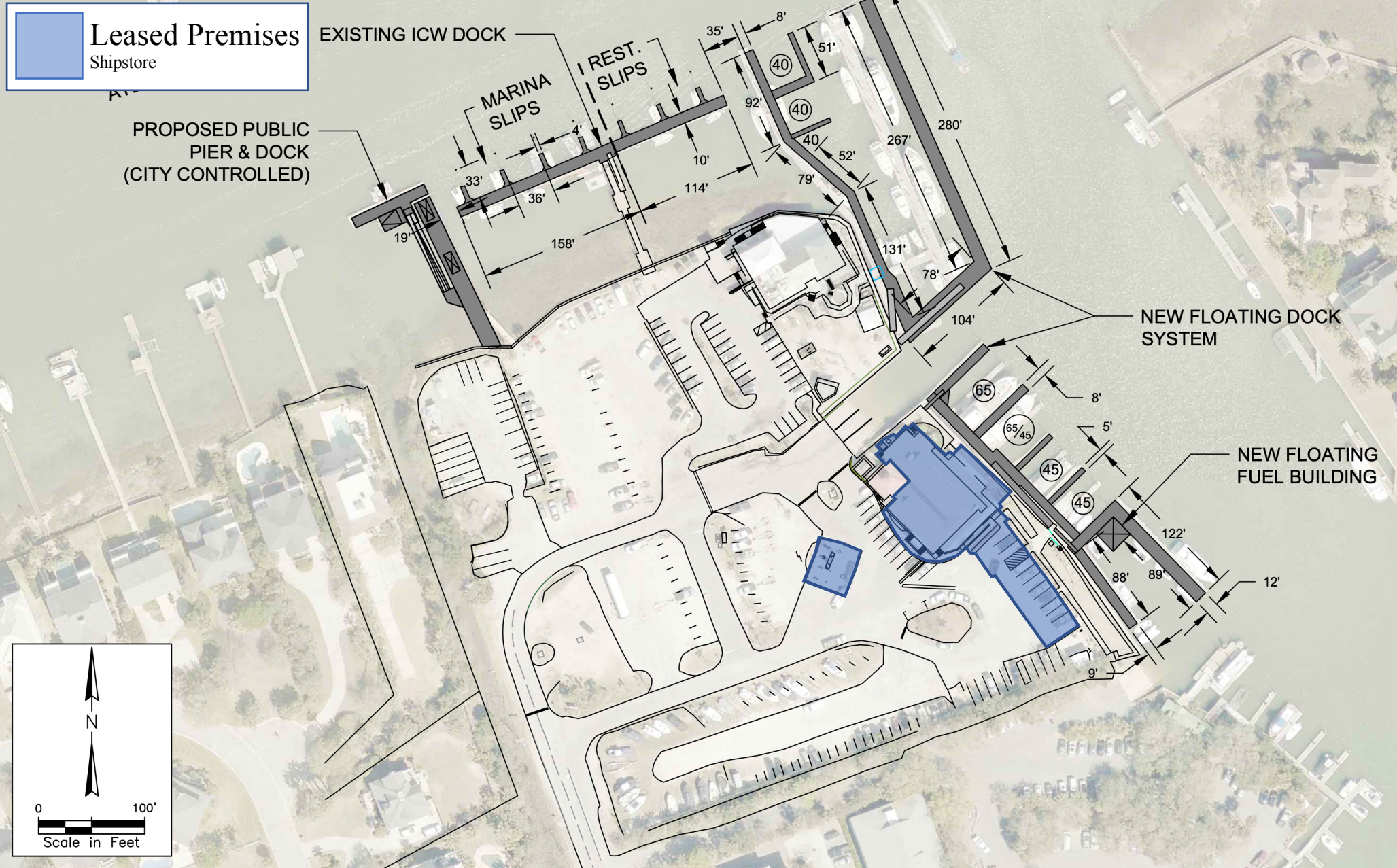
By: _____
Name: _____
Its: _____

EXHIBIT I
Site Plan

See attached.

Site Plan

ISLE OF PALMS MARINA



ISLE OF PALMS MARINA

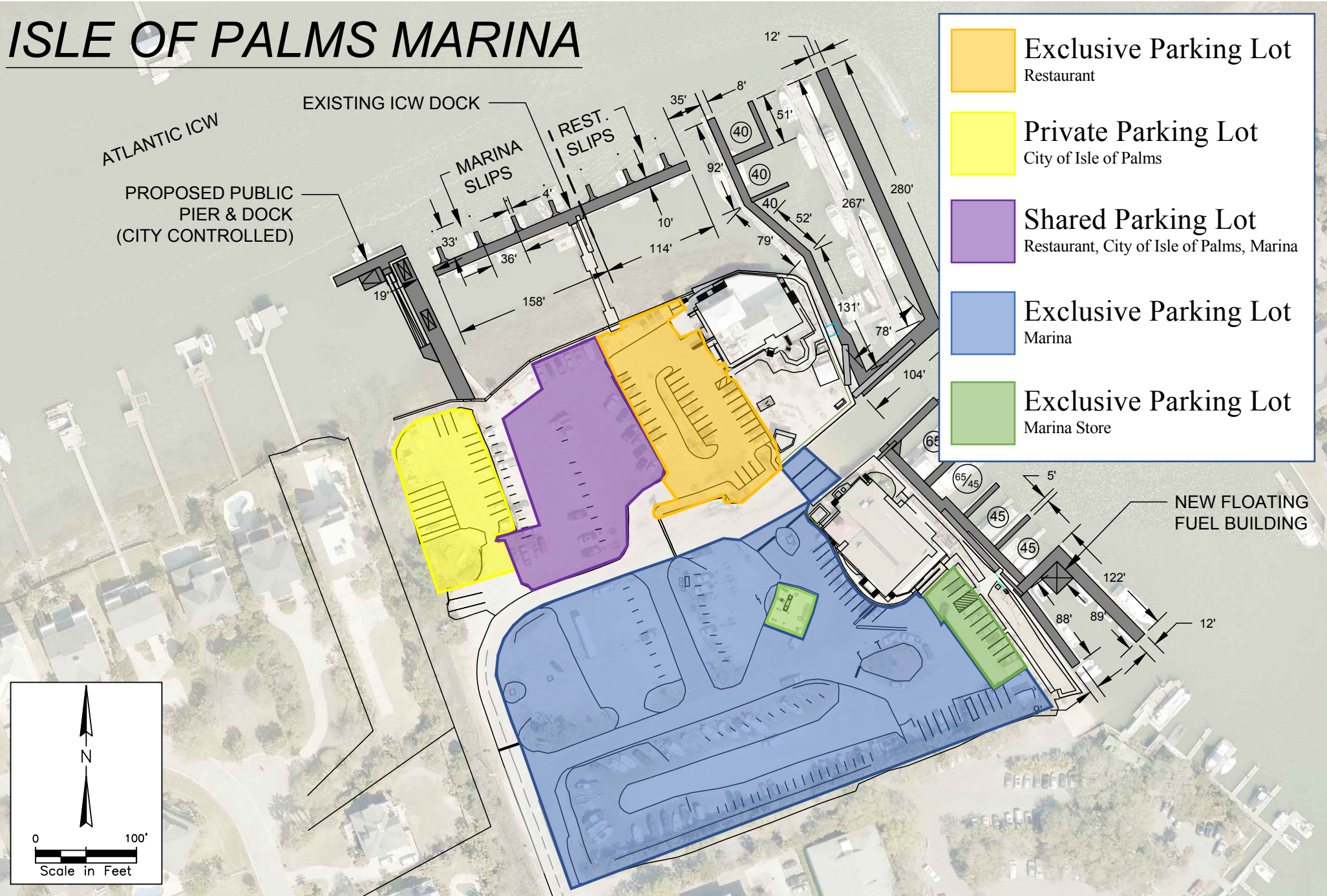


EXHIBIT II

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

SCHEDULE A

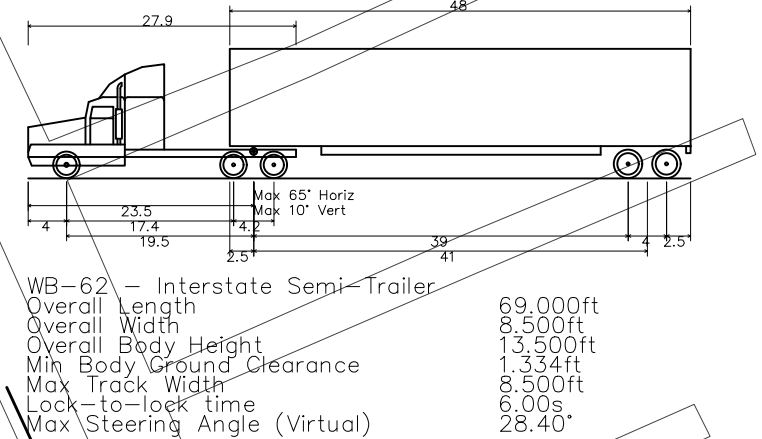
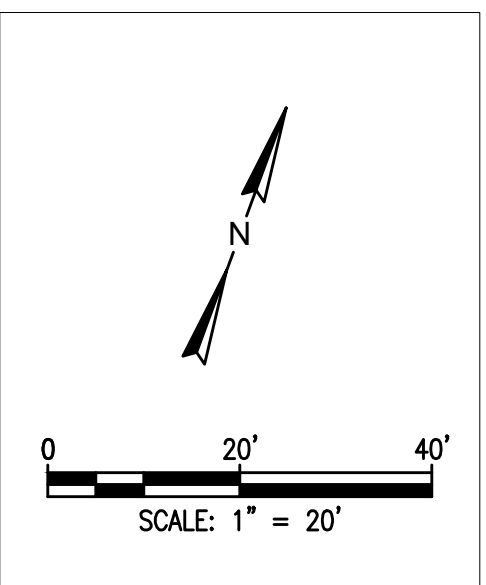
Conceptual Proposed Parking Plan

DISCLAIMER

INFORMATION DEPICTED IN THIS PLAN IS PROVIDED FOR GENERAL REFERENCE PURPOSES ONLY AND IS NOT TO BE CONSIDERED AS A SURVEY OR LEGAL DOCUMENT. ERRORS FROM NON-CONCURRENCE OF FEATURES FROM DIFFERENT SOURCES MAY BE PRESENT. CLINE ENGINEERING PLAN MAKES EVERY REASONABLE EFFORT TO ENSURE THAT THE INFORMATION PROVIDED HEREIN IS CURRENT AND ACCURATE. HOWEVER, CLINE ENGINEERING PROVIDES NO WARRANTY, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY, COMPLETENESS, TIMELINESS, OR SUITABILITY OF THIS DATA FOR ANY PARTICULAR USE OR PURPOSE. CLINE ENGINEERING ASSUMES NO LIABILITY WHATSOEVER ASSOCIATED WITH THE USE OR MISUSE OF SUCH DATA.

CONCEPT DESIGN NOTES

1. PLAN IS NOT FOR CONSTRUCTION.
2. ALL DIMENSIONS TO BE CONSIDERED APPROXIMATE AND TO BE VERIFIED BY A SURVEYOR.
3. LAYOUT TO BE VERIFIED AND REVIEWED BY LOCAL PLANNING OFFICE FOR COMPLIANCE TO ZONING CODE.



NOT FOR
CONSTRUCTION

FOURTH AMENDMENT TO COMMERCIAL LEASE AGREEMENT

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(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 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.

6. **Management and Alterations to Parking ~~Spaces~~Areas.** 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 of outdoor parking spaces and other areas within the Marina parking lot (the "***Marina Store Parking ~~Spaces~~Areas***") 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~~-Areas 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~~-Areas 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~~-Areas with a cumulative cost in excess of \$100,000.00 in any given calendar year shall be subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord hereby acknowledges and agrees that the conceptual proposed parking plan attached to this Amendment as Schedule A and incorporated herein by reference (the "***Conceptual Proposed Parking Plan***") is approved by Landlord and that no additional consent or approval by Landlord shall be required pursuant to subsection (b)(ii) above with respect to any reconfiguration, alteration, addition or improvement of the Marina Store Parking Areas that is substantially in conformance with the Conceptual Proposed Parking Plan.

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) Neither sales of beer and wine for consumption within the permitted areas of the Premises nor consumption of beer and wine within the permitted areas of the Premises shall 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, and no live music shall be permitted on the outdoor patio portion of the Premises under any circumstance;

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

(v) 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 the site plan of the Premises and parking plan for the Marina attached as Exhibit I of this Amendment, ~~which is attached hereto~~ and incorporated herein by reference.

9. **Update of Landlord's Personal Property; Utilities; Preexisting Conditions.**

(a) 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.

(b) Notwithstanding anything in the Lease to the contrary, Landlord 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: stormwater drainage systems and facilities.

(c) Notwithstanding anything in the Lease to the contrary, Tenant has no obligation for any repairs, maintenance or replacements of any pump/lift stations, fire hydrants, utilities or utility lines at the Premises, except for damage caused by Tenant's negligent or willful acts, in which case the repair or replacement shall be the responsibility of Tenant.

(d) Notwithstanding anything in the Lease to the contrary, Tenant shall not be in default of the Lease due to any lack of compliance with any applicable federal, state or local law, rule or regulation related to the state or condition of the Leased Premises or the improvements located thereon existing as of the date of this Amendment ("**Preexisting Condition**"). Tenant and Landlord agree to cooperate and use reasonable, good faith efforts to remedy any such Preexisting Condition.

10. **Gross Profits; Tips.** Section 4(C) of the Lease is hereby amended to add tips to the items to be deducted from annual gross receipts to determine gross profit.

11. **Operating Hours.** Section 7 of the Lease is hereby amended to provide that Tenant's 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.

12. **Easements.** Landlord grants Tenant and its employees, agents, invitees and licensees non-exclusive access easements over, across, through and upon the balance of the Marina and other adjacent property owned by Landlord as necessary to enable Tenant to operate and use the Premises for the purposes permitted under the Lease.

~~10~~13. **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~~14. **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

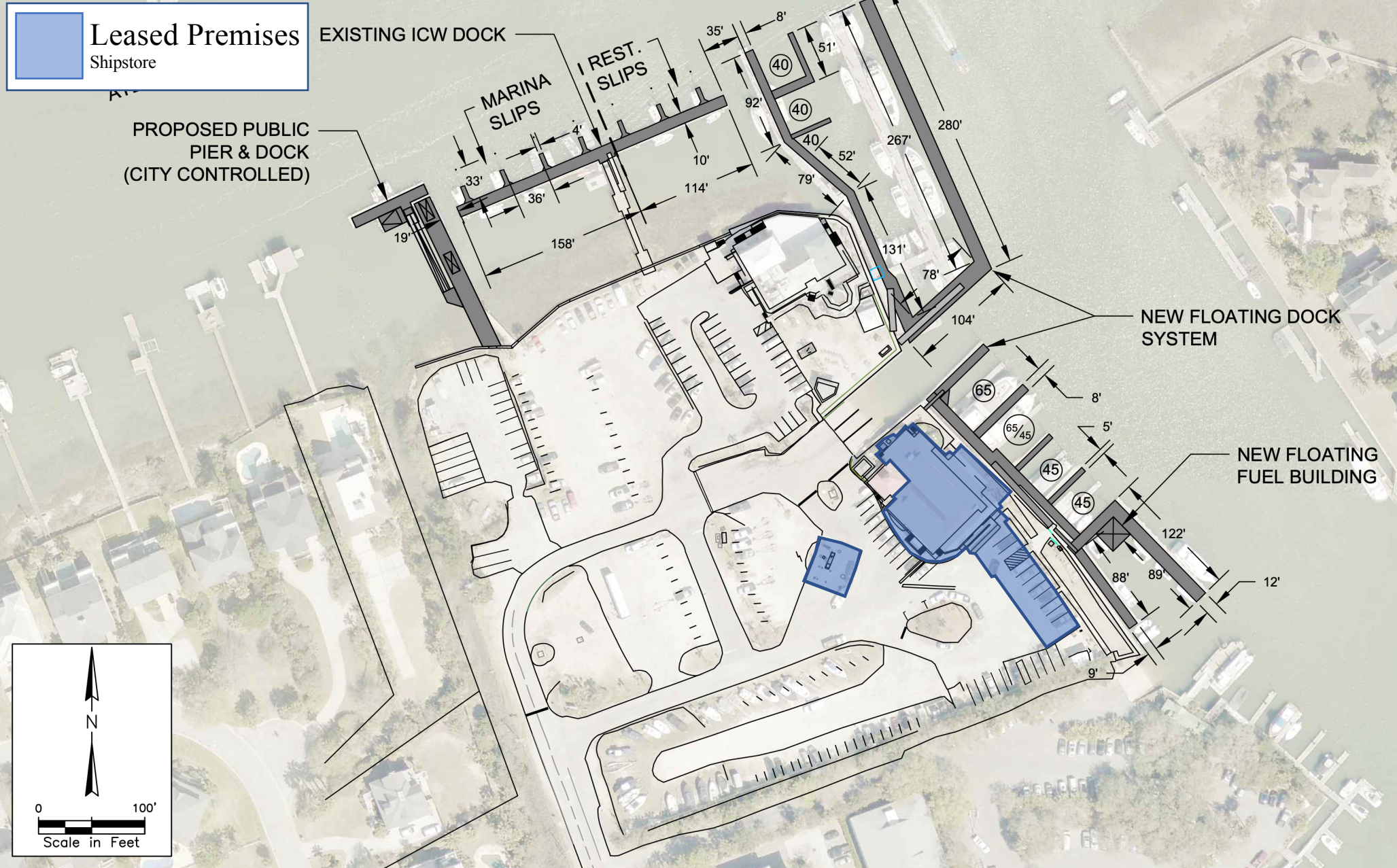
By: _____
Name: _____
Its: _____

EXHIBIT I
Site Plan

See attached.

Site Plan

ISLE OF PALMS MARINA



Parking Plan

ISLE OF PALMS MARINA

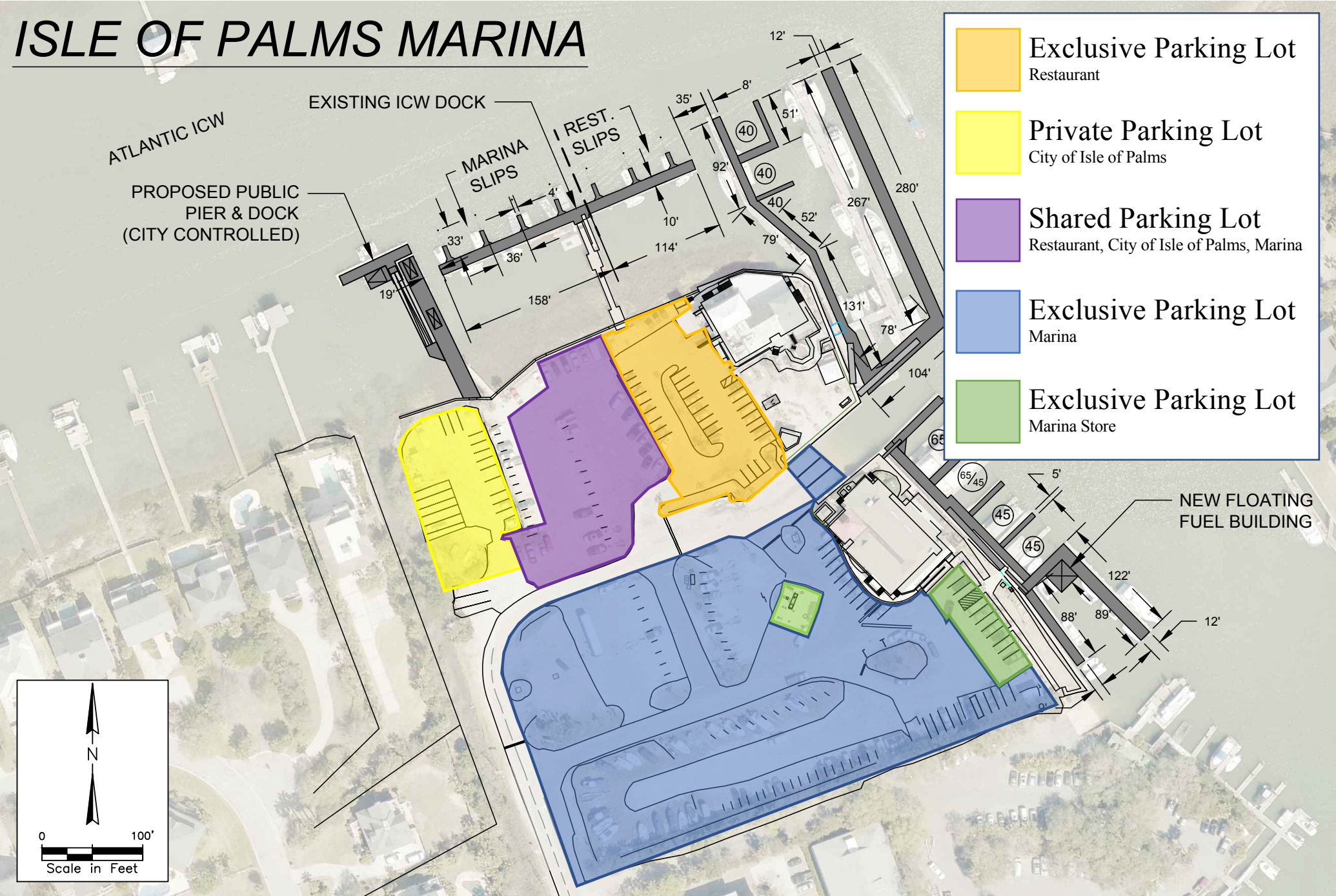


EXHIBIT II

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

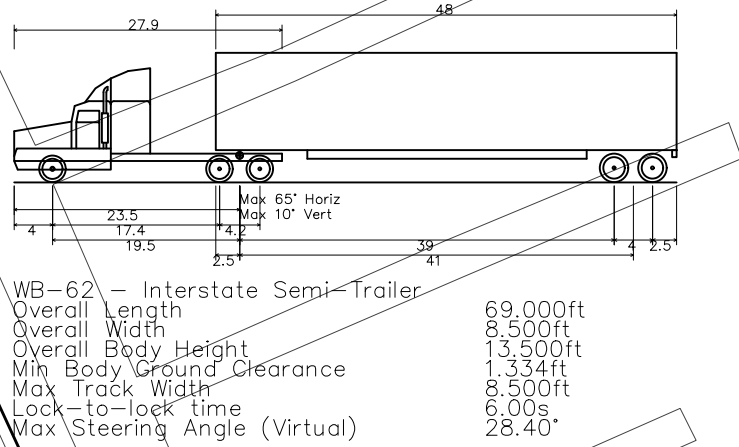
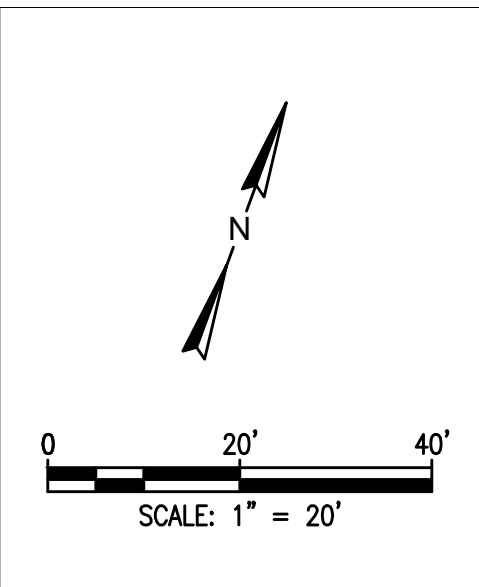
SCHEDULE A
Conceptual Proposed Parking Plan

DISCLAIMER

INFORMATION DEPICTED IN THIS PLAN IS PROVIDED FOR GENERAL REFERENCE PURPOSES ONLY AND IS NOT TO BE CONSIDERED AS A SURVEY OR LEGAL DOCUMENT. ERRORS FROM NON-CONCURRENCE OF FEATURES FROM DIFFERENT SOURCES MAY BE PRESENT. CLINE ENGINEERING PLAN MAKES EVERY REASONABLE EFFORT TO ENSURE THAT THE INFORMATION PROVIDED HEREIN IS CURRENT AND ACCURATE. HOWEVER, CLINE ENGINEERING PROVIDES NO WARRANTY, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY, COMPLETENESS, TIMELINESS, OR SUITABILITY OF THIS DATA FOR ANY PARTICULAR USE OR PURPOSE. CLINE ENGINEERING ASSUMES NO LIABILITY WHATSOEVER ASSOCIATED WITH THE USE OR MISUSE OF SUCH DATA.

CONCEPT DESIGN NOTES

1. PLAN IS NOT FOR CONSTRUCTION.
2. ALL DIMENSIONS TO BE CONSIDERED APPROXIMATE AND TO BE VERIFIED BY A SURVEYOR.
3. LAYOUT TO BE VERIFIED AND REVIEWED BY LOCAL PLANNING OFFICE FOR COMPLIANCE TO ZONING CODE.



NOT FOR
CONSTRUCTION

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*” or “*City*”), 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 Lot and Private Parking Lot from Leased Premises; Site Plan.**

(a) Exhibit I of the Lease is hereby deleted in its entirety and replaced with the site plan of the Leased Premises and parking plan for the Marina attached as Exhibit I of this Amendment 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” (the “***Shared Parking Lot***”) and “Private Parking Lot” (the “***Private Parking Lot***”) on the parking plan attached to Exhibit I of this Amendment 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 the Private Parking Lot, or (ii) to charge or collect fees from persons using the Shared Parking Lot or the Private 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 and the Private 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 or the Private 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, the Private Parking Lot, the balance of the Marina 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 “Exclusive Parking Lot Marina” on the parking plan attached to Exhibit I of this Amendment 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 (including adding or relocating curb cuts into the Leased Premises) upon that portion of the Leased Premises shown and designated as the "Exclusive Parking Lot Marina" on the parking plan attached to Exhibit I of this Amendment (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; (b) any reconfiguration, alteration, addition or improvement of the Exclusive Parking Lot with a cumulative cost in excess of \$100,000.00 in any given calendar year 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. Landlord hereby acknowledges and agrees that the conceptual proposed parking plan attached to this Amendment as Schedule A and incorporated herein by reference (the "***Conceptual Proposed Parking Plan***") is approved by Landlord and that no additional consent or approval by Landlord shall be required pursuant to subsection (b) above with respect to any reconfiguration, alteration, addition or improvement of the Exclusive Parking Lot that is substantially in conformance with the Conceptual Proposed Parking Plan.

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; Utilities; Preexisting Conditions.**

(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.

(c) Notwithstanding anything in the Lease to the contrary, Tenant has no obligation for any repairs, maintenance or replacements of any pump/lift stations, fire hydrants, utilities or utility lines at the Leased Premises, except for damage caused by Tenant’s negligent or willful acts, in which case the repair or replacement shall be the responsibility of Tenant.

(d) Notwithstanding anything in the Lease to the contrary, Tenant shall not be in default of the Lease due to any lack of compliance with any applicable federal, state or local law, rule or regulation related to the state or condition of the Leased Premises or the improvements located thereon existing as of the date of this Amendment (“**Preexisting Condition**”). Tenant and Landlord agree to cooperate and use reasonable, good faith efforts to remedy any such Preexisting Condition.

11. **Gross Profits; Tips.** Exhibit III of the Lease is hereby amended to add tips to the items to be deducted from annual gross receipts to determine gross profit.

12. **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.

13. **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.

ISLE OF PALMS MARINA

Leased Premises
Marina

EXISTING ICW DOCK

MARINA SLIPS

REST. SLIPS

PROPOSED PUBLIC PIER & DOCK (CITY CONTROLLED)

NEW FLOATING DOCK SYSTEM

NEW FLOATING FUEL BUILDING

0 100'
Scale in Feet

ISLE OF PALMS MARINA

Leased Premises
Marina

EXISTING ICW DOCK

MARINA SLIPS

REST. SLIPS

PROPOSED PUBLIC PIER & DOCK (CITY CONTROLLED)

NEW FLOATING DOCK SYSTEM

NEW FLOATING FUEL BUILDING

Dimensions: 12', 8', 35', 92', 51', 280', 267', 131', 78', 104', 8', 5', 122', 88', 89', 12', 9', 40', 40', 52', 79', 114', 10', 4', 33', 36', 158', 19', 65', 65/45', 45', 45', 12'

0 100'
Scale in Feet

ISLE OF PALMS MARINA

Leased Premises
Marina

EXISTING ICW DOCK

MARINA SLIPS

REST. SLIPS

PROPOSED PUBLIC PIER & DOCK (CITY CONTROLLED)

NEW FLOATING DOCK SYSTEM

NEW FLOATING FUEL BUILDING

Dimensions: 12', 8', 35', 92', 51', 280', 267', 131', 78', 104', 8', 5', 122', 88', 89', 12', 9', 40', 40', 52', 79', 114', 10', 4', 33', 36', 158', 19', 65', 65/45', 45', 45', 12'

0 100'
Scale in Feet

ISLE OF PALMS MARINA

Leased Premises
Marina

EXISTING ICW DOCK

MARINA SLIPS

REST. SLIPS

PROPOSED PUBLIC PIER & DOCK (CITY CONTROLLED)

NEW FLOATING DOCK SYSTEM

NEW FLOATING FUEL BUILDING

Dimensions: 12', 8', 35', 8', 51', 280', 267', 131', 78', 104', 10', 114', 33', 36', 158', 19', 4', 92', 40', 40', 52', 79', 78', 8', 5', 122', 88', 89', 12', 9', 65', 65/45', 45', 45'.

0 100'
Scale in Feet

ISLE OF PALMS MARINA

Leased Premises
Marina

EXISTING ICW DOCK

MARINA SLIPS

REST. SLIPS

PROPOSED PUBLIC PIER & DOCK (CITY CONTROLLED)

NEW FLOATING DOCK SYSTEM

NEW FLOATING FUEL BUILDING

0 100'
Scale in Feet

ISLE OF PALMS MARINA

Leased Premises
Marina

EXISTING ICW DOCK

MARINA SLIPS

REST. SLIPS

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NEW FLOATING DOCK SYSTEM

NEW FLOATING FUEL BUILDING

0 100'
Scale in Feet

ISLE OF PALMS MARINA

Leased Premises
Marina

EXISTING ICW DOCK

MARINA SLIPS

REST. SLIPS

PROPOSED PUBLIC PIER & DOCK (CITY CONTROLLED)

NEW FLOATING DOCK SYSTEM

NEW FLOATING FUEL BUILDING

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Scale in Feet: 0 to 100'

North Arrow: N

ISLE OF PALMS MARINA

Leased Premises
Marina

EXISTING ICW DOCK

MARINA SLIPS

REST. SLIPS

PROPOSED PUBLIC PIER & DOCK (CITY CONTROLLED)

NEW FLOATING DOCK SYSTEM

NEW FLOATING FUEL BUILDING

Dimensions: 12', 8', 35', 92', 51', 280', 267', 131', 78', 104', 8', 5', 122', 88', 89', 12', 9', 40', 40', 52', 79', 114', 10', 4', 33', 36', 158', 19', 65', 65/45', 45', 45', 12'.

0 100'
Scale in Feet

ISLE OF PALMS MARINA

Leased Premises
Marina

EXISTING ICW DOCK

MARINA SLIPS

REST. SLIPS

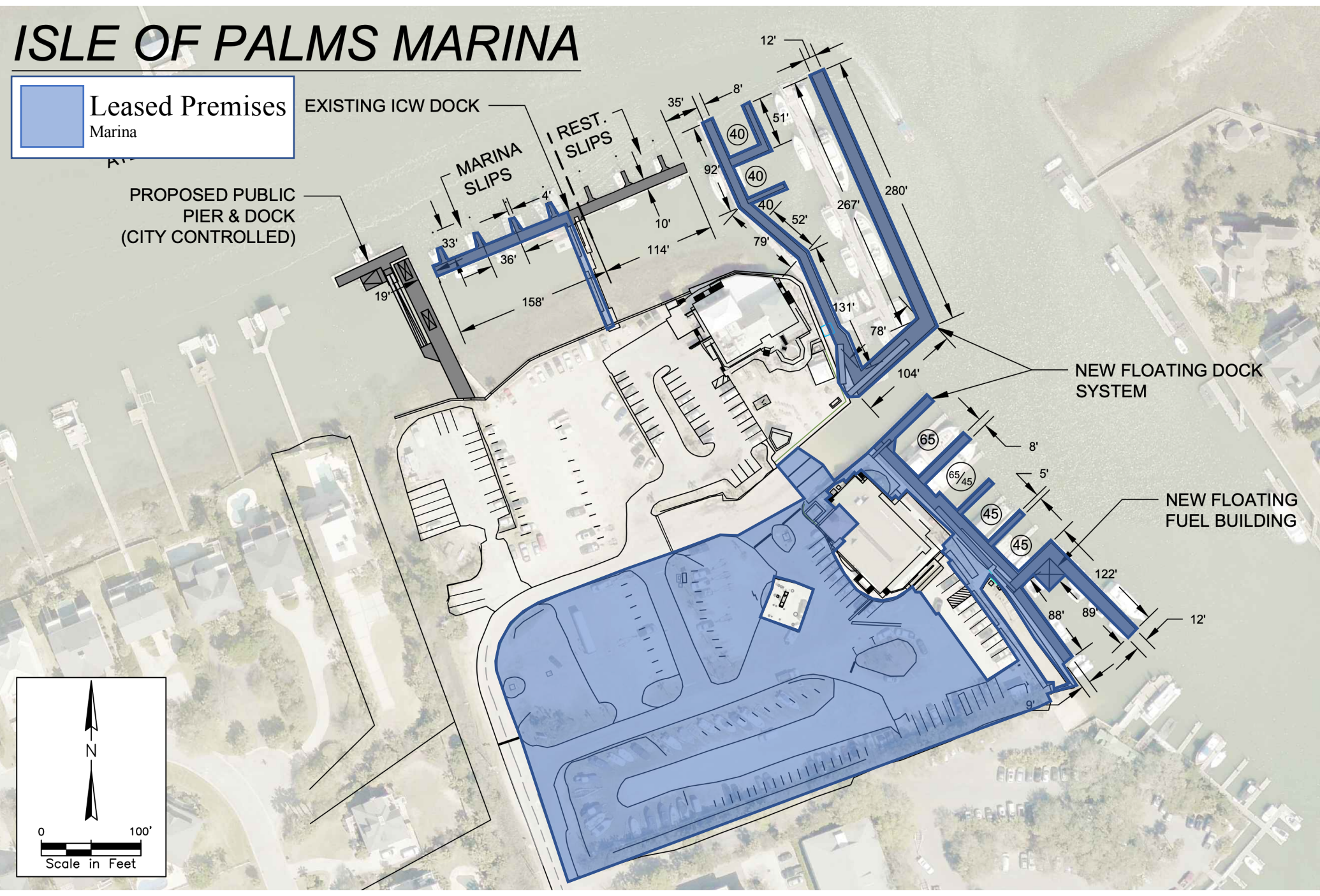
PROPOSED PUBLIC PIER & DOCK (CITY CONTROLLED)

NEW FLOATING DOCK SYSTEM

NEW FLOATING FUEL BUILDING

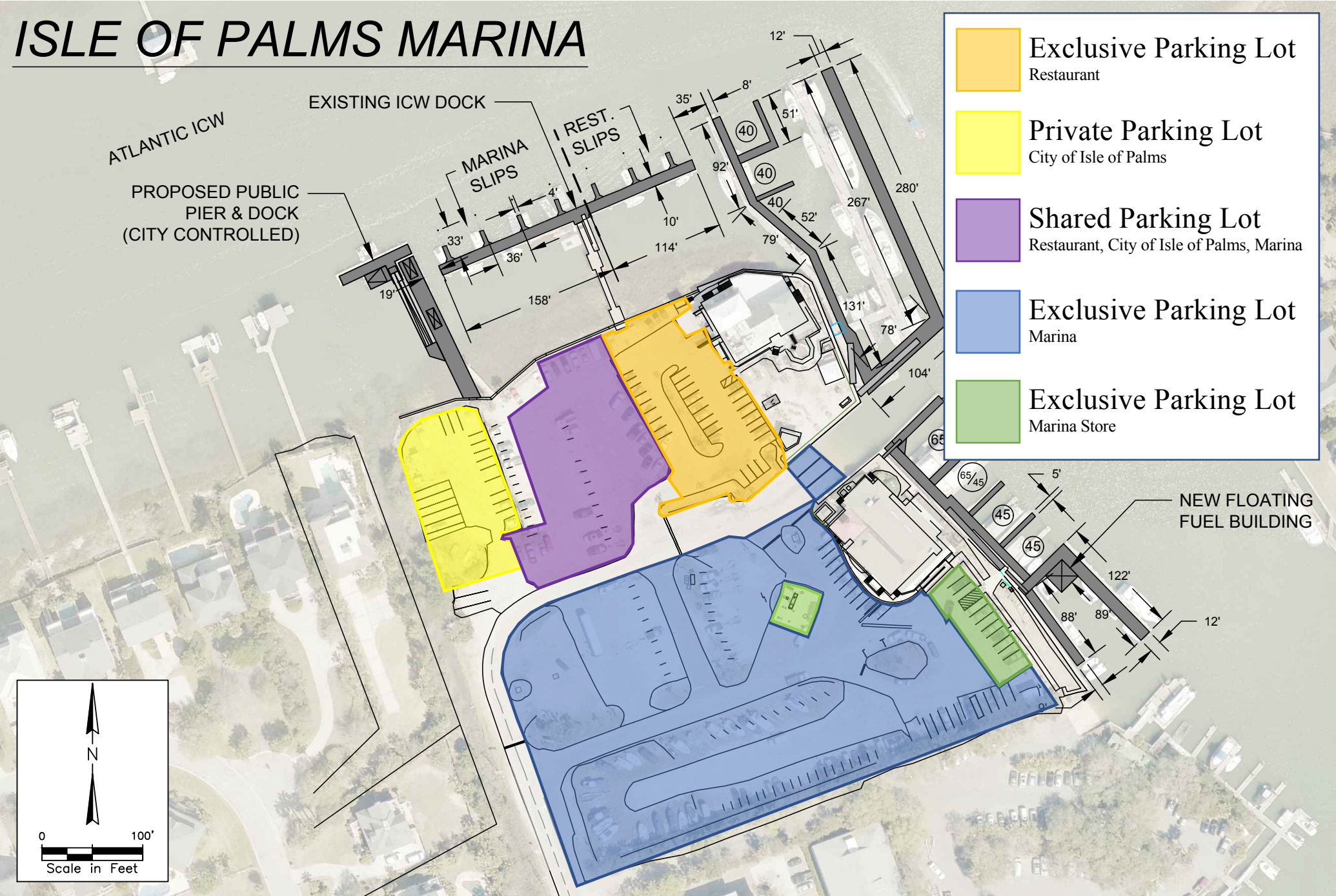
0 100'
Scale in Feet

North Arrow



Parking Plan

ISLE OF PALMS MARINA



- Exclusive Parking Lot
Restaurant
- Private Parking Lot
City of Isle of Palms
- Shared Parking Lot
Restaurant, City of Isle of Palms, Marina
- Exclusive Parking Lot
Marina
- Exclusive Parking Lot
Marina Store

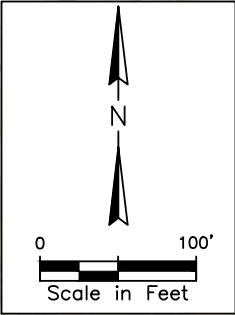


EXHIBIT II

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

IOP residents shall not be prohibited from parking trailers used to launch boats via the boat ramp in those portions of the Exclusive Parking Lot which are designated and operated for the parking of trailers by users of the boat ramp as 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
18. Live bait sales subject to Tenant's receipt of approval from any applicable governmental authority, seasonality, availability of equipment and availability of supply

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;

Underground fuel storage tanks; and

Stormwater drainage systems and facilities.

SCHEDULE A

Conceptual Proposed Parking Plan

DISCLAIMER

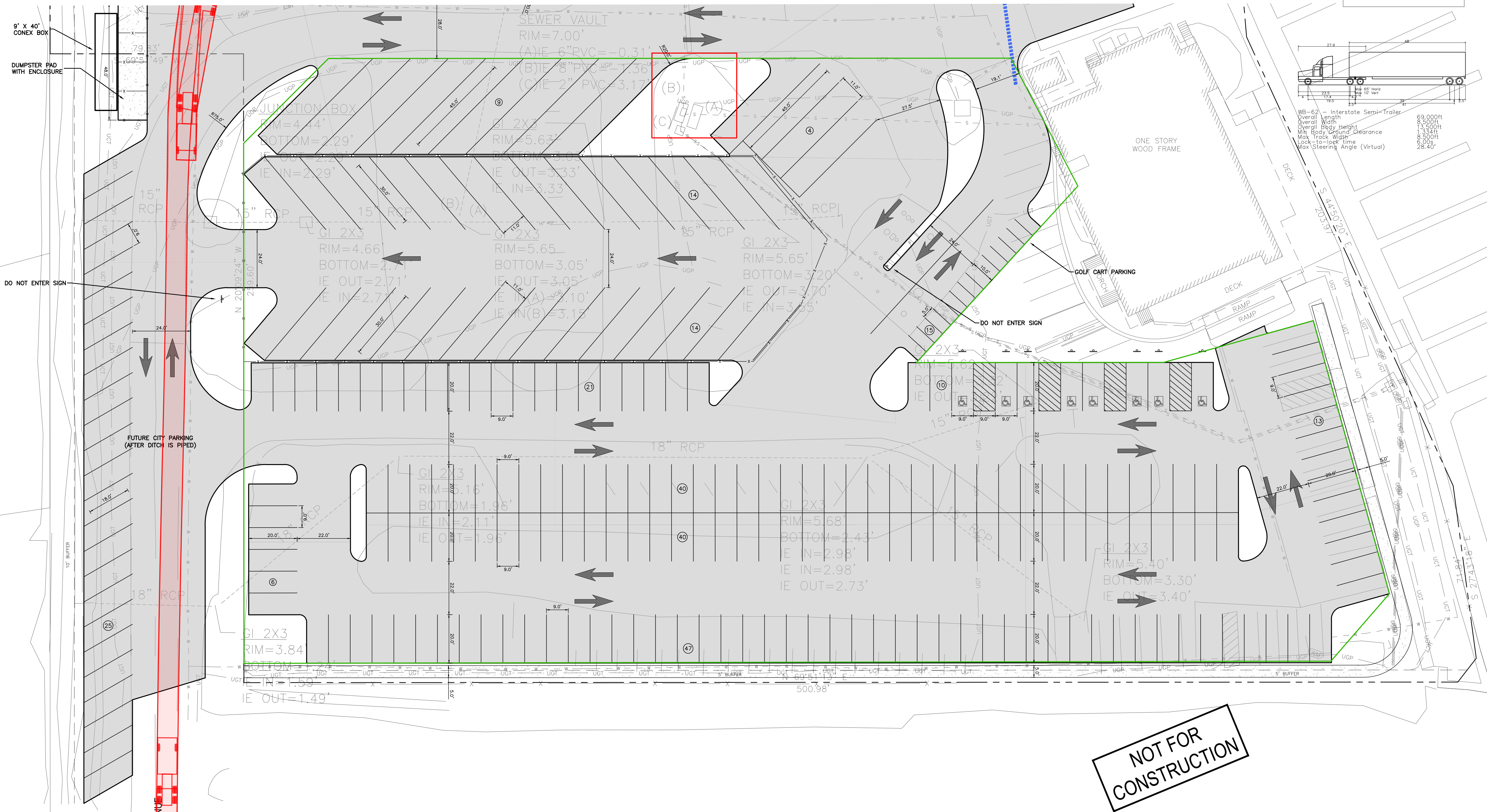
INFORMATION DEPICTED IN THIS PLAN IS PROVIDED FOR GENERAL REFERENCE PURPOSES ONLY AND IS NOT TO BE CONSIDERED AS A SURVEY OR LEGAL DOCUMENT. ERRORS FROM NON-CONCURRENCE OF FEATURES FROM DIFFERENT SOURCES MAY BE PRESENT. CLINE ENGINEERING PLAN MAKES EVERY REASONABLE EFFORT TO ENSURE THAT THE INFORMATION PROVIDED HEREIN IS CURRENT AND ACCURATE. HOWEVER, CLINE ENGINEERING PROVIDES NO WARRANTY, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY, COMPLETENESS, TIMELINESS, OR SUITABILITY OF THIS DATA FOR ANY PARTICULAR USE OR PURPOSE. CLINE ENGINEERING ASSUMES NO LIABILITY WHATSOEVER ASSOCIATED WITH THE USE OR MISUSE OF SUCH DATA.

CONCEPT DESIGN NOTES

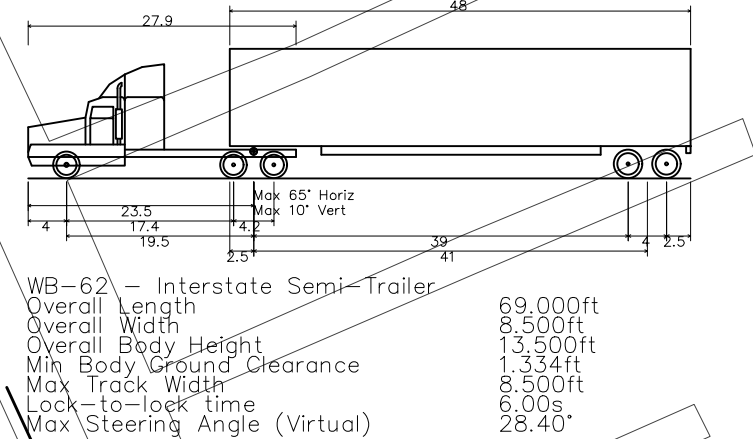
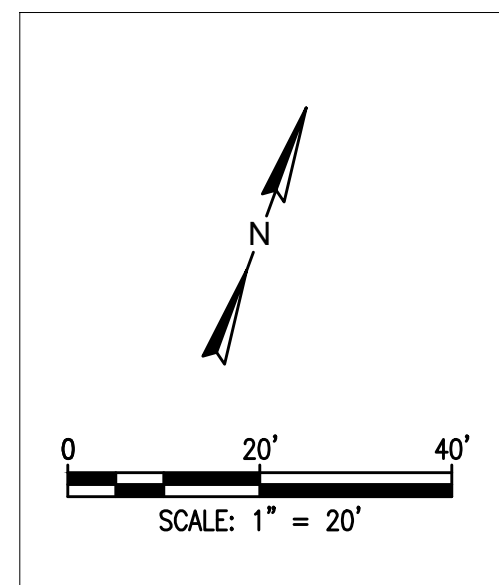
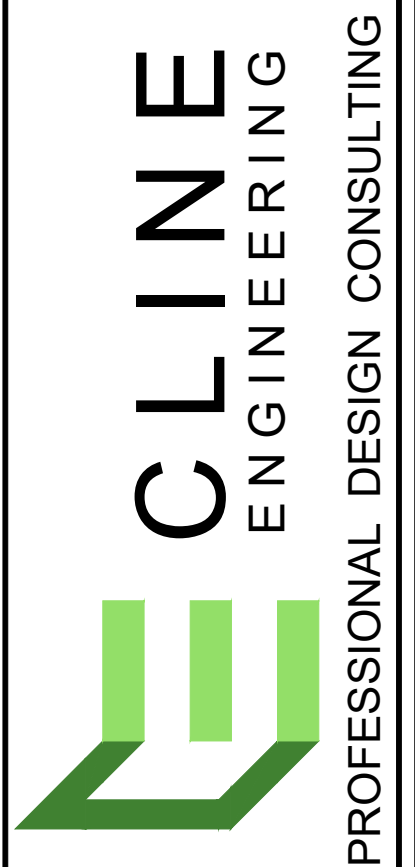
1. PLAN IS NOT FOR CONSTRUCTION.
2. ALL DIMENSIONS TO BE CONSIDERED APPROXIMATE AND TO BE VERIFIED BY A SURVEYOR.
3. LAYOUT TO BE VERIFIED AND REVIEWED BY LOCAL PLANNING OFFICE FOR COMPLIANCE TO ZONING CODE.

CONCEPT DESIGN NOTES

1. PLAN IS NOT FOR CONSTRUCTION.
2. ALL DIMENSIONS TO BE CONSIDERED APPROXIMATE AND TO BE VERIFIED BY A SURVEYOR.
3. LAYOUT TO BE VERIFIED AND REVIEWED BY LOCAL PLANNING OFFICE FOR COMPLIANCE TO ZONING CODE.



**NOT FOR
CONSTRUCTION**

[illegible]

IOP MASTER PLAN		50 41ST AVENUE ISLE OF PALMS, SOUTH CAROLINA	
SITE PLAN			
PROJECT MANAGER		MDC	
DRAWN BY		AJVR	
PROJECT DATE		AUGUST 2022	
JOB NUMBER		22047	
SHEET NUMBER			
E			

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*” or “*City*”), 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 Lot and Private Parking Lot from Leased Premises; Site Plan.

(a) Exhibit I of the Lease is hereby deleted in its entirety and replaced with the site plan of the Leased Premises and parking plan for the Marina attached as 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*”) and “Private Parking Lot” (the “*Private Parking Lot*”) on the parking plan attached to Exhibit I of this Amendment 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 the Private Parking Lot, or (ii) to charge or collect fees from persons using the Shared Parking Lot or the Private 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 and the Private 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 or the Private 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, the Private Parking Lot, the balance of the Marina 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~~ on the parking plan attached to Exhibit I of the Lease this Amendment 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 (including adding or relocating curb cuts into the Leased Premises) upon that portion of the Leased Premises shown and designated as the "Exclusive Parking Lot Marina" on the parking plan attached to Exhibit I of the Lease this Amendment (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; (b) any reconfiguration, alteration, addition or improvement of the Exclusive Parking Lot with a cumulative cost in excess of \$100,000.00 in any given calendar year 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. Landlord hereby acknowledges and agrees that the conceptual proposed parking plan attached to this Amendment as Schedule A and incorporated herein by reference (the "***Conceptual Proposed Parking Plan***") is approved by Landlord and that no additional consent or approval by Landlord shall be required pursuant to subsection (b) above with respect to any reconfiguration, alteration, addition or improvement of the Exclusive Parking Lot that is substantially in conformance with the Conceptual Proposed Parking Plan.

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; Utilities; Preexisting Conditions.**

(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.

(c) Notwithstanding anything in the Lease to the contrary, Tenant has no obligation for any repairs, maintenance or replacements of any pump/lift stations, fire hydrants, utilities or utility lines at the Leased Premises, except for damage caused by Tenant’s negligent or willful acts, in which case the repair or replacement shall be the responsibility of Tenant.

(d) Notwithstanding anything in the Lease to the contrary, Tenant shall not be in default of the Lease due to any lack of compliance with any applicable federal, state or local law, rule or regulation related to the state or condition of the Leased Premises or the improvements located thereon existing as of the date of this Amendment (“**Preexisting Condition**”). Tenant and Landlord agree to cooperate and use reasonable, good faith efforts to remedy any such Preexisting Condition.

11. **Gross Profits; Tips.** Exhibit III of the Lease is hereby amended to add tips to the items to be deducted from annual gross receipts to determine gross profit.

12. **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.

13. **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

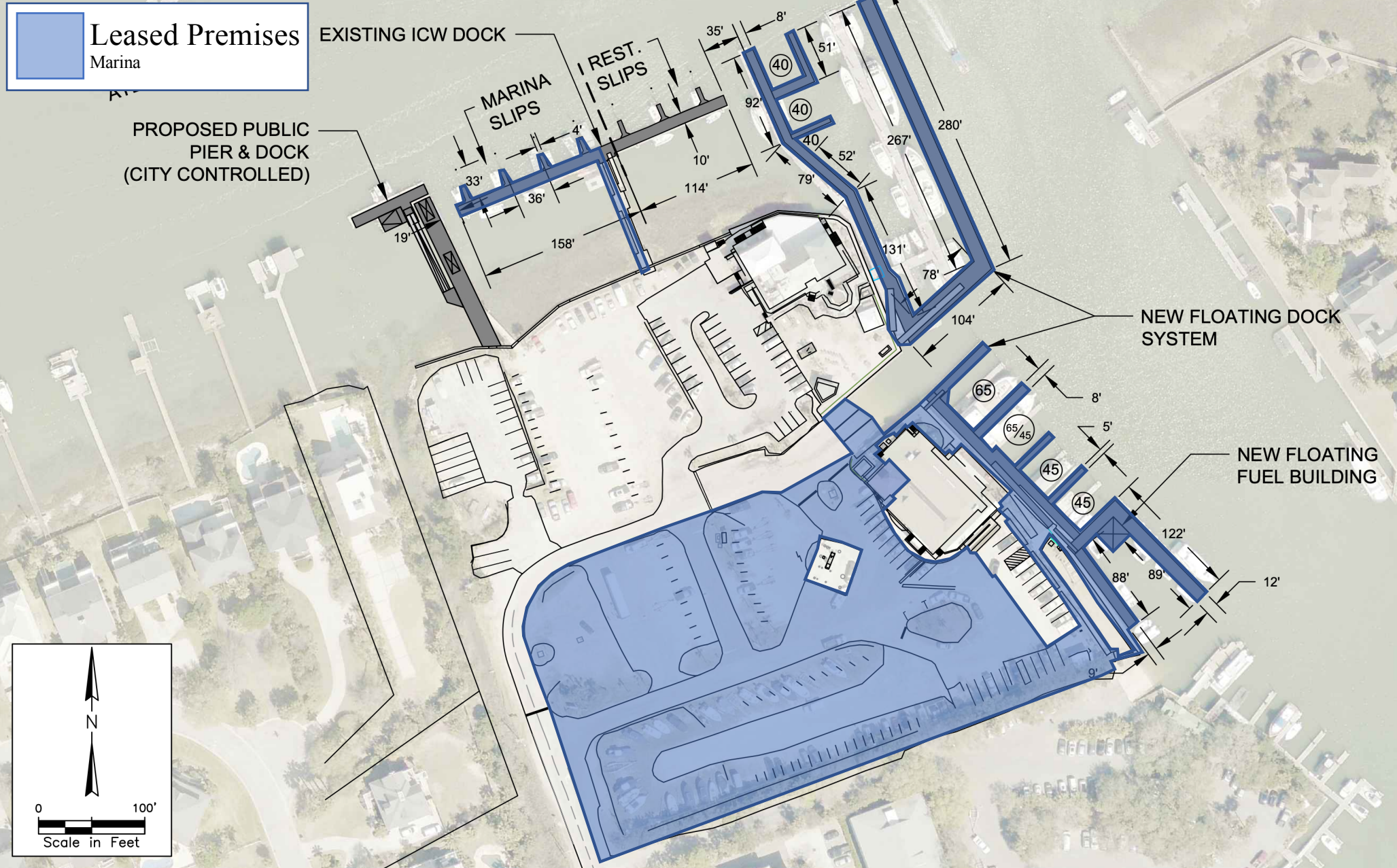
By: _____
Name: _____
Its: _____

EXHIBIT I
Site Plan

See attached.

Site Plan

ISLE OF PALMS MARINA



ISLE OF PALMS MARINA

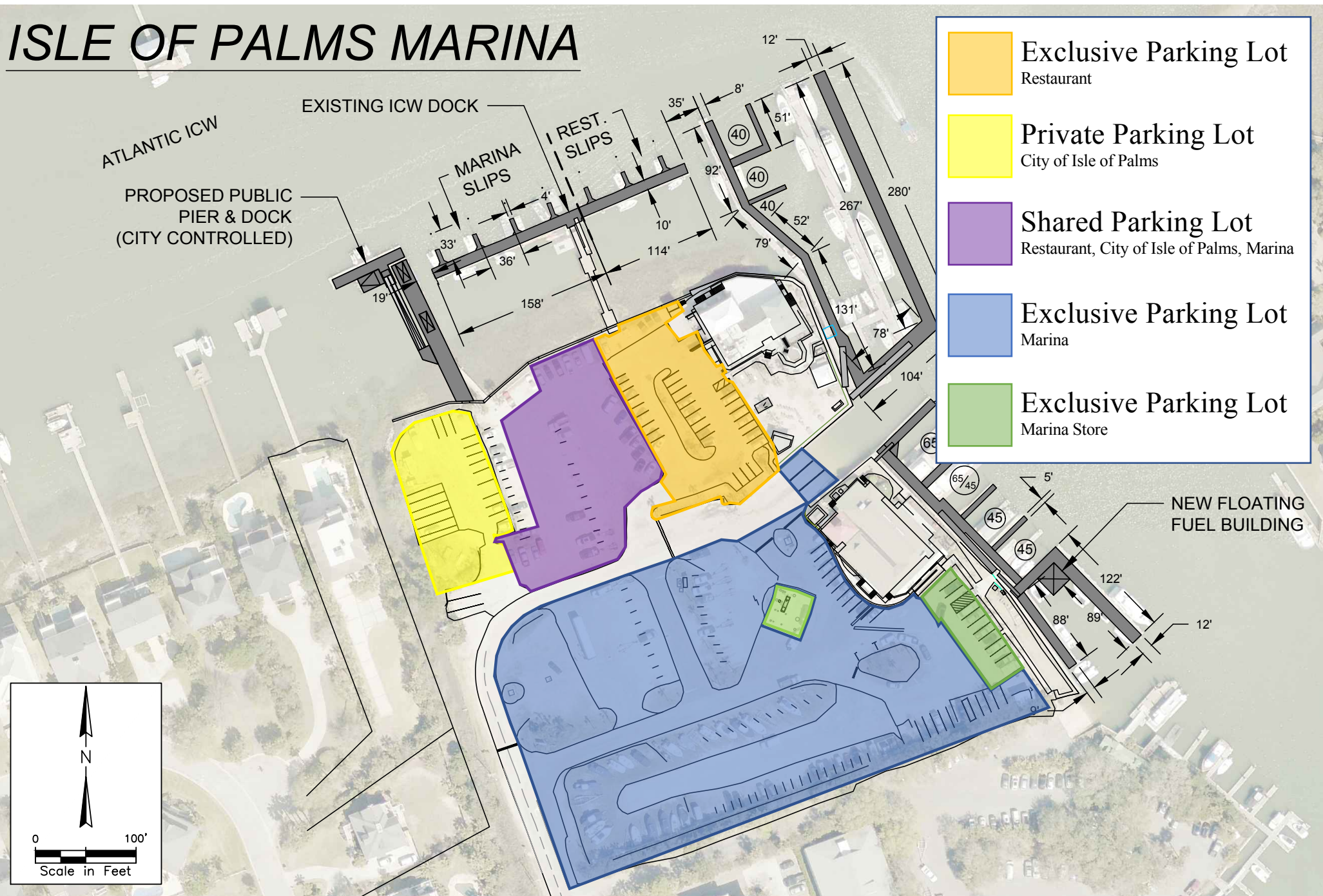


EXHIBIT II

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

IOP residents shall not be prohibited from parking trailers used to launch boats via the boat ramp in those portions of the Exclusive Parking Lot which ~~shall be~~ are designated and operated for the parking of trailers by users of the boat ramp as 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
18. Live bait sales subject to Tenant's receipt of approval from any applicable governmental authority, seasonality, availability of equipment and availability of supply

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; **and**

Stormwater drainage systems and facilities.

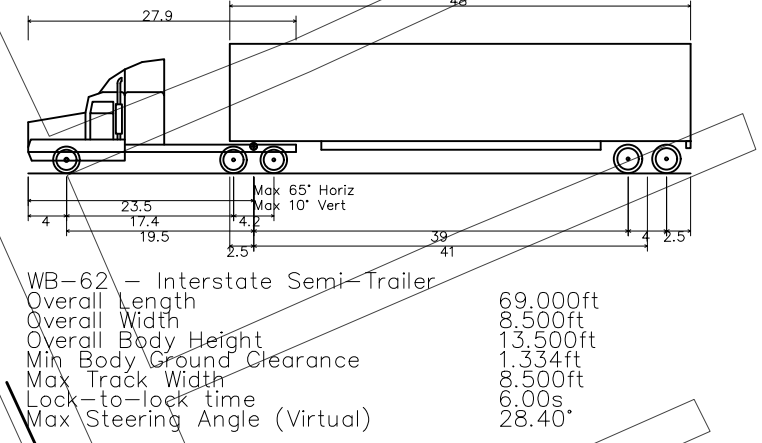
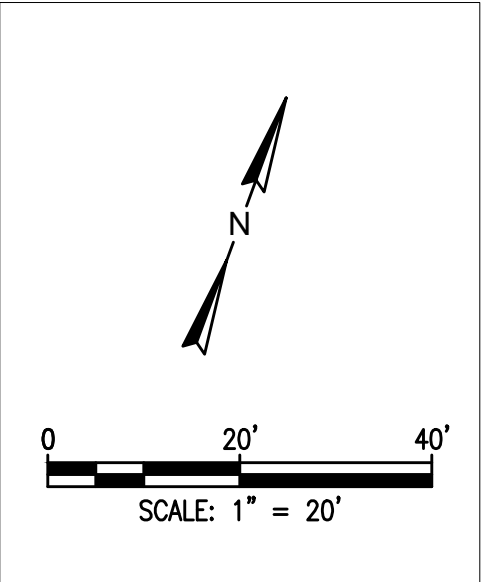
SCHEDULE A
Conceptual Proposed Parking Plan

DISCLAIMER

INFORMATION DEPICTED IN THIS PLAN IS PROVIDED FOR GENERAL REFERENCE PURPOSES ONLY AND IS NOT TO BE CONSIDERED AS A SURVEY OR LEGAL DOCUMENT. ERRORS FROM NON-COINCIDENCE OF FEATURES FROM DIFFERENT SOURCES MAY BE PRESENT. LINE ENGINEERING PLAN MAKES EVERY REASONABLE EFFORT TO ENSURE THAT THE INFORMATION PROVIDED HEREIN IS CURRENT AND ACCURATE. HOWEVER, CLIENT AGREES TO WAIVE ANY CLAIMS OR DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, NEGLIGENCE, COMPLETENESS, RELIABILITY, OR SUITABILITY OF THIS DATA FOR ANY PARTICULAR USE OR PURPOSE. CLIENT ENGINEERING ASSUMES NO LIABILITY WHATSOEVER ASSOCIATED WITH THE USE OR MISUSE OF SUCH DATA.

CONCEPT DESIGN NOTES

1. PLAN IS NOT FOR CONSTRUCTION.
2. ALL DIMENSIONS TO BE CONSIDERED APPROXIMATE AND TO BE VERIFIED BY A SURVEYOR.
3. LAYOUT TO BE VERIFIED AND REVIEWED BY LOCAL PLANNING OFFICE FOR COMPLIANCE TO ZONING CODE.



**NOT FOR
CONSTRUCTION**

DISCLAIMER

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[illegible]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

First Amendment
to
Lease Agreement

This First Amendment to Restaurant Lease Agreement (“**First Amendment**”) is entered into by and between the CITY OF ISLE OF PALMS, a political subdivision of the State of South Carolina, having an address at c/o City Administrator, 1207 Palm Boulevard, Isle of Palms, SC 29451 (“**Landlord**”) and MARKER116, LLC, a South Carolina limited liability company, having an address at 27 26th Avenue, Isle of Palms, SC 29451 (“**Tenant**”) this ____ day of _____, 2022. Landlord and Tenant may be referred to herein as the “parties.”

RECITALS

WHEREAS, the Landlord and Tenant are parties to that certain Restaurant Lease Agreement dated November 12, 2020 (“**Lease**”) to lease certain property located at the City of Isle of Palms Marina, 50 41st Avenue, Isle of Palms, South Carolina, known generally as the “Marina Restaurant” and more specifically defined in the Lease and referred to herein as the “Premises.”; and

WHEREAS, as consideration for the parties desiring to enter an amended and revised parking arrangement, Landlord and Tenant wish to amend the Lease pursuant to the terms stated herein.

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

1. The foregoing recitals are incorporated herein.

2. The Lease is hereby amended as follows:

A. The following provision hereby replaces Section 2.07 in its entirety:

Section 2.07 Restaurant Dock. Landlord agrees that the Restaurant Dock is and shall be part of the Premises leased to Tenant, subject to the terms and conditions of this Lease. Tenant shall be entitled to exclusive use of the Restaurant Dock for the purpose of temporary, daily or overnight docking of boats and other watercraft by Tenant’s patrons, employees, agents, customers, contractors, licensees, and invitees. Tenant shall be authorized to charge boaters, patrons and other parties and to otherwise collect revenue for the right to dock at the Restaurant Dock. Any such revenue received by Tenant shall be subject to the provisions of Section 3.02 regarding Percentage Rent. Subject to Tenant’s discretion, Tenant shall be expressly authorized to permit overnight docking of boats or other watercraft on or along the Restaurant Dock, provided no boat docked overnight at the Restaurant Dock may extend waterward beyond the mooring piles into the

one hundred twenty-five foot (125') channel offset. Patrons, licensees, and invitees of Tenant using the Restaurant Dock in accordance with this Lease shall be entitled to use all floating docks or elevated walkways connecting the Restaurant Dock to the land as may be necessary for pedestrian access, ingress and egress to and from the Restaurant Dock. Landlord covenants and agrees to maintain the Restaurant Dock and to replace all damaged or missing dock bumpers and boat fenders from the Restaurant Dock.

B. Section 3.02(a) shall be amended to require Tenant to make Percentage Rent payments on an annual basis (subject to the provisions of revised Section 3.02(c)), rather than a quarterly basis.

C. The following provision hereby replaces Section 3.02(c) in its entirety:

Section 3.02 Percentage Rent - Subsection (c). Notwithstanding anything in this 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 Gross Sales for the preceding year. The Tenant may provide the Landlord a copy of all ST-3 State Sales and Use Tax Returns filed by Tenant for the preceding year, and shall remit to Landlord the cumulative Percentage Rent to Landlord based on such returns. Any intentional or deliberate misrepresentation by Tenant of its Gross Sales in any ST-3 State Sales and Use Tax Return, statement of Gross Sales, or other document or material provided to Landlord shall constitute an Event of Default hereunder.

D. **Section 7.02** shall be amended to add and include the following provisions:

a. During the term of this Lease and any amendments thereto, Landlord shall be subject to the following terms and conditions regarding current and prospective tenants (generally, the items below shall be collectively referred to as the "**Landlord Lease Restrictions**"):

i. Current and prospective commercial tenants or sub-tenants shall be forbidden and shall not have the authorization or authority from the Landlord to obtain a liquor license for the service of on-premises liquor, spirits, or mixed drinks in which liquor is incorporated, including, without limitation, pre-made or canned alcoholic beverages; or

ii. Current and prospective commercial tenants or sub-tenants shall be forbidden and shall not have the authorization or authority from the Landlord to have an inside seating capacity of greater than twelve (12) people for the service of food or beverages or alcoholic beverages within any building or structure nor have greater than thirty-four (34) people consuming food or beverages or alcoholic beverages of any kind or nature in, on, above or around any leased premises. Landlord agrees that during the term of the Lease and any renewal or extension thereof, that Landlord shall not permit to any person or entity other than Tenant to prepare or serve the following food items: Shrimp, oysters, lobster, crab, tuna, mahi-mahi, flounder or scallops (the "Restricted Seafood"). These restrictions shall

include any sandwiches, dips, soups, tacos, wraps or other type of foods in which the Restricted Seafood listed above are a part of the ingredients of such food item. Such exclusivity shall not include or be deemed to restrict any other food items other than the Restricted Seafood.

iii. Current and prospective tenants shall be forbidden and shall not have the authorization or authority from the Landlord to allow the docking of boats or other watercraft in which food is served on the boat, regardless of whether such food is prepared onshore or prepared in a kitchen on the boat. No such boat shall be allowed to operate or dock at the Isle of Palms marina or on property owned by the Landlord. The current business using the current boat titled "The Osprey" shall be exempt from this restriction.

b. Landlord shall be required to provide notice of the Landlord Lease Restrictions to all current and prospective tenants that desire to lease property from Landlord. All prospective leases between Landlord and such prospective tenants and co-tenants must contain the Landlord Lease Restrictions and have provisions that any violation of the Landlord Lease Restrictions shall constitute a default under such lease and Landlord shall be required to take all actions, whether legal or equitable, to enjoin such tenant from breaching the Landlord Lease Restrictions.

c. All Landlord Lease Restrictions shall apply to current and future tenants of property leased by Landlord other than Tenant, as Tenant shall be expressly authorized to engage in such activities outlined herein.

E. The following provision hereby replaces Section 7.06 in its entirety:

Section 7.06 Continuous Operations. Except for events of Force Majeure and a commercially reasonable period not to exceed thirty (30) days in any Lease Year for purposes of renovating the Premises or periodic cleaning of the Premises, Tenant shall diligently and continuously operate its business on the Premises on days and hours that are, in the Tenant's sole discretion, commercially reasonable. Such factors that Tenant may consider include, but are not limited to: (i) staffing availability and (ii) seasonal considerations.

F. Article IX Parking, is hereby amended pursuant to the following terms:

i. Section 9.02 is hereby deleted in its entirety. The lot that is reflected on Exhibit C of the Lease currently referenced as the "Shared Parking Lot" shall now be considered to be part of the Tenant's Exclusive Parking Lot as reflected on the updated Exhibit C Parking Plan, which is hereby amended and attached hereto as "Revised Exhibit C Parking Plan."

- ii. Section 9.03 is hereby deleted in its entirety. The lot that is reflected on Exhibit C of the Lease currently referenced as the “Private Parking Lot” shall no longer be leased to the Tenant for any purpose, and any such leasehold rights that Tenant may have to the “Private Parking Lot” shall be conveyed to the Landlord for use as a public use space. However, during the Term of this Lease and any amendments thereto, Landlord shall be restricted from leasing the “Private Parking Lot” to any commercial tenant for any purpose. The former “Private Parking Lot” shall now be referred to as “Leased Parking Premises” in the updated Exhibit C which is hereby amended and attached hereto as “Revised Exhibit C Parking Plan.”

G. Section 11.01 is hereby amended to remove the obligation to maintain the Restaurant Dock as an obligation of the Tenant and Section 11.02 is hereby amended to include the obligation to maintain the Restaurant Dock as an obligation of Landlord.

3. Electrical Transformer Relocation. Should Landlord provide any monies, funds or services of any kind or nature to any tenant or sub-tenant leasing real property from Landlord for the removal, burial, or relocation of any electrical power transformer, substation, utility box or other electrical component that may be located on such tenant’s property under lease, then Landlord must offer identical terms to Tenant for the removal, burial, or relocation of any electrical power transformer, substation utility box or other electrical component to a location that is mutually agreeable to the parties.

4. Termination of Guaranty. The parties hereby acknowledge that Tenant has performed all requirements and conditions outlined in Exhibit F of the Lease, and that all individuals who executed any Guaranty, including, without limitation, Dave Lorenz, Chrissy Lorenz, Jon Bushnell and Bridget Bushnell (collectively, the “Released Parties”), are hereby discharged from all such guaranty obligations, and Landlord does hereby consider any such Guaranty as irrevocably discharged and terminated, and Landlord shall have no recourse against the Released Parties for any default of the Lease or this Amendment by Tenant.

5. Miscellaneous. Except as 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 terms 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 shall be effective immediately upon execution and delivery of the parties. This Amendment shall be governed by the laws of the State of South Carolina.

[INTENTIONALLY LEFT BLANK]

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment to Restaurant Lease Agreement as of the Commencement Date.

LANDLORD:

CITY OF ISLE OF PALMS,
a political subdivision of the State
of South Carolina

Witness

By: _____
Name: _____
Title: _____

TENANT:

MARKER116, LLC
a South Carolina limited liability company

Witness

By: _____
Name: Dave Lorenz
Title: Authorized Member

RESOLUTION NO. 2022-08

A RESOLUTION TO HOLD A PUBLIC DISCIPLINARY HEARING REGARDING
COUNCILMEMBER MIARS' ALLEGED VIOLATION OF THE CITY OF ISLE OF PALMS
CODE OF CONDUCT.

WHEREAS, the City of Isle of Palms Code of Conduct for Elected Officials was unanimously adopted on March 22, 2022; and

WHEREAS, the Code of Conduct provides the procedure for compliance and enforcement for violation of the Code; and

WHEREAS, the Code of Conduct provides that a "public disciplinary hearing against a Member for violation of the Code of Conduct may be held only upon resolution of Council moved and adopted according to the following procedures: (1) a Member must move to hold a public disciplinary hearing; (2) two additional Members must second the motion; and (3) Council must approve the motion by a vote of at least two-thirds (2/3) of Members present and voting;" and

WHEREAS, City Council finds it to be in the best interest of the residents of the City to conduct a public disciplinary hearing for violation of the Code of Conduct.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council this ____ day of September, 2022 that the City of Isle of Palms shall hold a public disciplinary hearing regarding Councilmember Miars' alleged violation of the City of Isle of Palms Code of Conduct, notice of which shall be published in one or more newspapers of general circulation in the City at least one week in advance of the hearing.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS,
SOUTH CAROLINA, ON THE ____ DAY OF SEPTEMBER, 2022.

Phillip Pounds, Mayor

Nicole DeNeane, City Clerk