



### **Special Real Property Committee**

10:00 a.m., Thursday, October 20, 2022

1207 Palm Boulevard

City Hall Council Chambers

#### **Public Comment:**

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

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

#### **Agenda**

1. **Call to order** and acknowledgment that the press and the public have been duly notified of the meeting in accordance with the Freedom of Information Act.
2. **Citizens Comments** - All comments shall be limited to 3 minutes.
3. **Purpose**
  - a. 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
  - b. Discussion of proposed amendments to Islander 71's lease received by restaurant tenant Marker 116
4. **Executive Session** - Pursuant to S.C. Code §30-4-70(a)(2) to receive legal advice and for the discussion of negotiations incident to proposed contractual arrangements related to the Marker 116 lease.
5. **Adjournment**




**DISCLAIMER**

INFORMATION DEPICTED IN THIS PLAN IS PROVIDED FOR GENERAL REFERENCE PURPOSES ONLY AND IS NOT TO BE CONSTRUED AS A SURVEY OR LEGAL DOCUMENT. ERRORS FROM NON-COINCIDENCE OF FEATURES AND/OR FROM ANY SOURCE MAY BE PRESENT. CILE ENGINEERING PLAN MAKES EVERY REASONABLE EFFORT TO ENSURE THAT THE INFORMATION PROVIDED HEREIN IS CURRENT AND ACCURATE. HOWEVER, CILE ENGINEERING PROVIDES NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY, COMPLETENESS, RELIABILITY, OR SUITABILITY OF THIS DATA FOR ANY PARTICULAR USE OR PURPOSE. CILE 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 IS TO BE VERIFIED AND REVIEWED BY LOCAL PLANNING OFFICE FOR COMPLIANCE TO ZONING CODE.

[illegible]

CLINE  
ENGINEERING

PROFESSIONAL DESIGN CONSULTING

TOP MASTER PLAN		50 41ST AVENUE ISLE OF PALMS, SOUTH CAROLINA
SITE PLAN		
PROJECT MANAGER DRAWN BY PROJECT DATE JOB NUMBER		
MOD A.J.R. AUGUST 2002 20047		
SHEET NUMBER		
C		



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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 41<sup>st</sup> 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.

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[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



under this Lease but shall be required before Tenant is permitted to use and operate the Outdoor Seating Area for the Permitted Use. Landlord and Tenant acknowledge and agree that live music shall be permitted within the Outdoor Seating Area, provided such live music is at all times in compliance with the Sound Level Limit.

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

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

### **ARTICLE III**

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

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

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

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

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

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

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

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

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

(c) No later than the twenty-five (25) days after the end of each month during the Term, Tenant shall provide Landlord a copy of the ST-3 State Sales and Use Tax Return filed with the South Carolina Department of Revenue evidencing Tenant's Gross Sales at the Premises for the preceding month and shall pay to Landlord the amount due as Percentage Rent for such preceding month. Within sixty (60) days after the end of each Lease Year or partial Lease Year, Tenant shall provide Landlord a statement showing the Gross Sales for each such Lease Year. If such statement shows an amount owing by Tenant that is less than the Percentage Rent paid by Tenant for the Lease Year, the excess shall be held by Landlord and credited against the next payment of Percentage Rent; however, if the Term has ended and Tenant was not in default at its end, Landlord shall refund the excess to Tenant. If such statement shows an amount owing by Tenant that is

more than the Percentage Rent previously paid by Tenant for such Lease Year, Tenant shall pay the deficiency to Landlord within thirty (30) days after the delivery of such statement. Each statement of Gross Sales furnished by Tenant shall be certified as correct by a certified public accountant licensed in the State (and shall show the computations of Gross Sales for Tenant and each of its Subtenants separately). Any intentional or deliberate misrepresentation by Tenant of its Gross Sales in any ST-3 State Sales and Use Tax Return, statement of Gross Sales, or other document or material provided to Landlord shall constitute an Event of Default hereunder.

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

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

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

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

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

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



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

**Section 7.02 Uses Prohibited.** Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything in or on the Premises that is not within the Permitted Use of the Premises or which will in any way materially increase the existing rate on or affect any fire or other insurance upon the Building or the Marina or any of its contents, or cause a cancellation of any insurance policy or policies covering the Building or the Marina or any part thereof or any of its contents; provided, however, that the operation of Tenant's business for the Permitted Use shall not be an Event of Default under this Lease. Tenant shall not conduct or permit any auctions or sheriff's sales at the Premises. Tenant shall not in any manner deface or injure the Building or the Marina or any part thereof, or overload the floors of the Premises. Tenant shall not use or permit the Premises to be used in violation of any Law. Tenant shall not do anything or permit anything to be done in or upon the Premises in any way that creates a nuisance, or unreasonably disturbs any other tenant in the Marina and/or the occupants of neighboring property. Tenant shall refrain from and shall disallow any activity that injures or may reasonably cause injury to the reputation of the Marina; provided, however, that the foregoing restrictions outlined in this Section 7.02 shall not apply to any intrusion of live music and restaurant noise into the Marina at or below the limit as may be established under any applicable Laws or Superior Instruments ("**Sound Level Limit**").

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

Tenant shall be responsible for obtaining and maintaining all security with respect to the interior of the Premises, whether by the use of devices, security guard personnel, or otherwise. Tenant acknowledges and agrees that Landlord shall have no liability to Tenant and/or any Tenant Parties for the implementation or exercise of, or for the failure to implement or exercise, any security measures with respect to the interior of the Premises, the Building, or the Marina.

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

## **ARTICLE VIII HAZARDOUS MATERIALS**

**Section 8.01 Tenant Operations.** Tenant shall not cause in, on, or under the Premises, or suffer or permit to occur in, on, or under, the Premises any generation, use, manufacturing, refining, transportation, emission, release, treatment, storage, disposal, presence, or handling of Hazardous Materials, except that limited quantities of Hazardous Materials may be used, handled, or stored on the Premises, provided such limited quantities of Hazardous Materials are incident to and reasonably necessary for the maintenance of the Premises or Tenant's operations for its Permitted Use and are in compliance with all Environmental Laws. Should a release of any Hazardous Material occur at the Premises, the Building, and/or the Marina as a result of the acts or omissions of Tenant, or its employees, agents, suppliers, shippers, customers, contractors, or invitees, Tenant shall immediately contain, remove from the Premises, the Building, or the Marina, and/or properly dispose of such Hazardous Materials and any material contaminated by such release, and remedy and mitigate all threats to human health or the environment relating to such release, all in accordance with Environmental Laws.

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

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

## **ARTICLE IX PARKING**

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

**Section 9.02 Shared Parking Lot.** The Shared Parking Lot shall be a Common Area and may be used by Tenant, other tenants of the Marina, and the patrons, employees, agents, customers, contractors, licensees and invitees of Tenant and the other tenants of the Marina in accordance with this Lease. All parking spaces in the Shared Parking Lot shall be used and operated on an unreserved, self-park basis. All parking spaces in the Shared Parking Lot shall be free of charge to Tenant and Tenant's patrons, employees, agents, customers, contractors, licensees and invitees after 8:00 PM, seven (7) days a week, and under no circumstances shall Tenant or Tenant's patrons, employees, agents, customers, contractors, licensees or invitees be required to remit payment through any type of metering or payment service or system during such time periods. Landlord shall maintain the Shared Parking Lot in accordance with Section 11.02(b) of this Lease. All signage in the Shared Parking Lot shall be subject to the mutual approval of such signage by Tenant and all other tenants of the Marina entitled to use the Shared Parking Lot; provided, however, that the design, construction and installation of such signage shall be at the sole cost and expense of Tenant and the other tenants of the Marina entitled to use the Shared Parking Lot.

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

(a) Landlord and Tenant acknowledge and agree that Tenant is entitled to the exclusive use of certain parking spaces in the Private Parking Lot for parking by its patrons, employees, agents, customers, contractors, licensees and invitees pursuant to the terms and conditions of the Private Parking Agreement. On or before the Opening Date, Landlord shall, at its sole cost and expense, re-grade and re-stripe the Private Parking Lot (the "**Private Parking Lot Construction**") to a quality and condition and by a contractor or construction firm that are mutually agreeable to Landlord and Tenant, with such Private Parking Lot Construction having the objective of preparing the parking surface for the use Tenant and its patrons, employees, agents, customers, contractors, licensees



## **ARTICLE X SERVICES AND UTILITIES**

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

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

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

**Section 11.01 Maintenance by Tenant.** Except as otherwise set forth in this Lease, Tenant shall assume and perform all maintenance and management functions with respect to the Premises, including the obligations specifically set forth in this Section 11.01. Tenant shall at all times put, keep and maintain the Premises (including, without limitation, all or any portion of the Building, the Outdoor Seating Area, the Restaurant Dock (but excluding the seawall, which shall be maintained by Landlord), and the Exclusive Parking Lot; the HVAC system serving the Building; the roof and roof membrane of the Building; all bollards, dividers, safety barriers, paving and lining within the Exclusive Parking Lot; all seating, tables, bars, stages, and other improvements and fixtures in the Outdoor Seating Area; all landscaping within the Premises; walls (interior and exterior), footings and foundations of the Building and all other improvements within the Premises; and all structural and non-structural components of the Premises) in first-class repair and appearance, and shall promptly make all repairs and replacements of every kind and nature, whether foreseen or unforeseen, which may be required to be made upon or in connection with any of the Premises in order to keep and maintain the Premises in first class repair and appearance. Tenant shall do or cause others to do all that is necessary to plow or otherwise remove any accumulated snow from the Premises and keep it in safe condition. Tenant shall do or cause others to do all shoring of the Premises or of foundations and walls of the improvements and every other act necessary or appropriate for preservation and safety thereof, by reason of or in connection with any excavation or other building operation upon any of the Premises. Tenant shall from time to time replace with other similar operational equipment or parts any of the mechanical systems or other equipment included in any of the Premises or any Tenant Improvements which shall have become worn out, obsolete or unusable for the purpose for which it is intended, been taken by a condemnation, or been lost, stolen, damaged or destroyed. Tenant shall maintain, repair and replace the above-ground plumbing, utility, and/or sewer lines and mains which service all or any portion of the Premises, save and accepting that it shall be the Landlord's exclusive and sole responsibility to maintain, repair, or replace, or to coordinate such maintenance, repairs and replacements with the applicable utility or municipal service providers, any (i) underground sewer or water mains or (ii) underground or overhead electrical power lines leading up to the hookup location to the Building, and to make available those portions of the Marina as may be reasonably necessary for any such maintenance, repairs or replacements. Except as expressly required under this Lease, Landlord shall not be required to make any repair, whether foreseen or unforeseen, or to maintain any of the Premises in any way, and Tenant hereby expressly waives the right to make repairs at the expense of the

Landlord, which right may otherwise be provided for in any law now or hereafter in effect. Tenant shall, in all events, make all repairs for which it is responsible hereunder promptly, and shall commence such repair and diligently pursue completion of the same within thirty (30) days after a repair or replacement becomes prudent, and all repairs shall be done in a good, proper and workmanlike manner, and diligently pursued to completion. If Tenant fails to maintain or repair the Premises as required hereunder to the reasonable satisfaction of Landlord, then within thirty (30) days after written demand from Landlord, Landlord shall have the option, but not the obligation, to make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's inventory, fixtures, or property, or to Tenant's business thereon, and upon completion thereof, Tenant shall pay Landlord's reasonable and documented costs for making such repairs upon presentation of a bill therefor, as Additional Rent. Tenant shall contract with a service company approved by Landlord for the maintenance of the HVAC equipment servicing the Premises, with a copy of the service contract to be furnished to Landlord within thirty (30) days after the Rent Commencement Date. A copy of any subsequent contracts shall be furnished promptly to Landlord during the Term of this Lease. If Tenant fails to furnish a copy of said maintenance contract for the HVAC equipment, Landlord may contract for such maintenance and shall bill Tenant for the cost, and Tenant agrees to reimburse Landlord for the cost within thirty (30) days of Landlord's billing, as Additional Rent.

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

- (a) All capital repairs, improvements and replacements required for or relating to the Restaurant Dock required under Phase 3 of the City of Isle of Palms Marina Dock Rehabilitation Program, upon and subject to approval of the Isle of Palms City Council;
- (b) All maintenance, repair, and replacement of the Shared Parking Lot including any paving and lining thereof; and
- (c) All maintenance, repair and replacement of the seawall that borders the Premises and the intracoastal waterway and all connecting creeks, marshes and waterways.

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

- (a) Tenant shall not make any Alterations, additions, or improvements to the Premises without Landlord's prior written consent, which consent shall specify whether the specific Alterations must be removed by Tenant upon the expiration or earlier termination of the Lease and shall not be unreasonably withheld, conditioned, or delayed, and Landlord must respond within thirty (30) days of receipt of a written request from Tenant; provided, however, Landlord's consent shall not be required for non-structural Alterations made by Tenant which do not exceed \$50,000.00 in cost cumulatively over each calendar year. Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord if the cost of Alterations exceeds \$50,000.00. All Alterations, additions, and improvements shall be accomplished in a good and workmanlike manner, in conformity with all applicable Laws, and by a contractor (licensed as necessary by the State or municipality) and who is registered,