



August 28, 2019

Jon Chalfie & Hailey Clifton
Lee & Associates Charleston
960 Morrison Drive, Suite 400
Charleston, SC 29403

In response to the Request for Proposal for the City of Palms Marina restaurant lease I want to express my interest in obtaining a long term lease with the City. As the current tenant for the past seventeen years we would continue to provide a successful and popular business maintaining a family friendly concept servicing both the residents and visitors to the Isle of Palms.

To ensure a successful restaurant operation there will need to be a cooperative negotiated agreement between the City and Morgan Creek Grill, thus creating an effective partnership. This would be in the best interest of the marina overall, the other tenants, island residents and visitors.

If selected, it would be my intention to proceed with the necessary capital improvements to the building and property, which have previously been submitted to the City. The associated costs for improvements would be considered through the negotiation between the restaurant and the City. Additionally, there is a need for clarification the parking areas assigned to the tenants. This would ensure cooperation with all parties operating within the marina footprint.

With regards to the lease negotiations, we could start with the most recent lease proposal we submitted to the Real Property Committee dated June 29, 2018, and proceed from there. It was never our intention to have the council members take any action at that time, rather a starting point for further lease negotiations.

I am available for any further questions or can provide additional information as needed.

Thank you for your consideration,

James P. Clarke
President, Barrier Isles LLC

Revised 06/29/2018: Jay Clarke

State of South Carolina
County of Charleston

Commercial Lease Agreement

This agreement ("this Lease") is made and entered into as of this ____ day of _____, 2018, by and between The City of Isle of Palms, SC ("Landlord") and Barrier Isles LLC, a South Carolina limited liability company, and its permitted assigns ("Tenant").

In consideration of the covenants and agreements of the respective parties herein contained, which are expressly agreed to by Landlord and Tenant, the parties hereto, for themselves and their respective successors and permitted assigns, hereby agree as follows:

1. LEASED PREMISES: PARKING

A. Landlord by the presents hereby demises and let unto Tenant and Tenant hereby hires and leases from Landlord, that certain restaurant building and adjoining grounds, situated near the northeastern corner of the Isle of Palms Marina, an exact description of which is set forth on the map attached hereto and made a part hereof, labeled Exhibit 1 ("the Leased Premises")

B. Tenant is allowed employee parking and excess customer parking in the Marina parking area.

2. INITIAL TERMS: RENEWALS

A. The initial term of this Lease shall commence as of _____ 1, 2018 and end on _____, 2036.

B. Tenant has the option to renew this lease for five (5) additional, consecutive three (3) year terms, covenants and conditions set forth in this lease. Each option to renew must be exercised by Tenant in writing in strict accordance with the notice provisions contained in Sections 23 of the Lease, at least ninety (90) days prior to the expiration of the preceding term. Tenant may not renew this Lease if Tenant is in default of any provision of this Lease at the time Tenant exercises the option or at the time of the commencement date of the renewal term.

3. RENT:

A. During the initial term of this Lease and any renewal hereof, Tenant agrees to pay all monthly rent due hereunder to Landlord, or such agent of landlord as Landlord may from time to time designate in writing, payable in advance of the first day of each month commencing on _____ 1, 2018, or such earlier date as Tenant may conduct any sales at the Leased Premises, as follows:

B. During the first two (2) years of the Lease, i.e., June 1, 2018 through May 31, 2020, Tenant shall pay to Landlord the monthly sum of \$10,000.00 commencing June 1, 2018 and on the first day of each month thereafter through May 1, 2020 ("Base Rent"). For the third year of the Lease and every third year thereafter, the monthly rent payable from Tenant to Landlord shall be an amount equal to the Base Rent plus a percentage increase equal to the percentage increase, if any, in the consumer price index for all urban consumers, U.S. City average, as published by the United States Department of Labor, Bureau of Labor Statistics ("Index"). If such Index is discontinued, then the parties agree to use the closest comparable measure of the effect of inflation provided, however, notwithstanding any change in the Index, the Base Rent shall never be lower than the amount paid for the preceding Lease year.

- C. If Landlord fails to receive any rental payment due under this lease within ten (10) days after the due date, a late charge of five (5%) percent of the rental amount shall be added to the rental and paid to landlord for each such late payment, and the same shall be treated as additional rent, due and payable with such rental payment.
4. SECURITY DEPOSIT: Landlord agrees to retain the initial Security Deposit in the sum of Ten Thousand and No/100 (\$10,000.00) Dollars paid by Tenant at the time the original Commercial Lease Agreement was executed on May 17, 2002 as security for the full and faithful performance by Tenant of all the terms of this Lease required to be performed by Tenant. This deposit, without interest, will be returned to Tenant after the expiration of this Lease provided that Tenant has fully and faithfully performed all of its terms and conditions.
 5. USE OF THE LEASED PREMISES: COMPLIANCE WITH PPLICABLE LAWS
 - A. The Leased Premises and all improvements located thereon shall be used only as a full-service restaurant, which at Tenant's option may include the on-premise sale and consumption of alcoholic beverages, the sale of artwork, or clothing apparel or other gift shop items which carry Tenant's restaurant logo, lounge areas and carry out and delivery service. Except to extent that Tenant needs to close the restaurant for approved repairs or renovations, Tenant agrees to keep the restaurant open for business year-round, serving dinner at least five (5) days per week and during the tourist season (Memorial Day weekend through Labor Day weekend), serving lunch and dinner at least six (6) days per week. Provided, however, that if tenant is unable to make a profit serving lunch as a direct result of restrictions on excess customer parking at the Marina during lunch hours, Tenant agrees to give Landlord written notice thereof. Landlord shall have thirty (30) days from receipt of such notice to eliminate the restrictions on Tenants excess customer parking during lunch hours. If landlord does not eliminate such restrictions within said thirty (30) day period, then Tenant shall not be required to serve lunch until such restrictions are eliminated.
 - B. Tenant agrees that all activities conducted at the leased Premises by Tenant will at all time comply with all applicable federal, state and local laws, rules and regulations including all state and federal environmental laws, rules and regulations promulgated thereunder. Tenant agrees that Tenant has familiarized himself with Landlord's City Code of Ordinances including, but not limited to zoning, noise and parking regulations. Tenant acknowledges and agrees that Tenant's failure to comply strictly with all such applicable federal, state and local laws, rules and regulations will, at City's option, be deemed a material default by Tenant under this Lease. Provided, however, that nothing in this subsection is to be construed as modifying nor does it modify, Tenant's rights to cure any default as set forth in Section 16 of this Lease.
 - C. Tenant agrees to obtain and maintain all licenses and permits which are required for Tenant's operation of the Restaurant, construction of any alterations or improvements, and any other activities conducted by Tenant in connection therewith.
 6. CONDITION AND MAINTENANCE OF THE PREMISES: Unless otherwise provided in this Lease, Tenant agrees to accept the Leased Premises in its present condition. Landlord makes no representation or warranties, either express or implied, regarding the condition of the Leased Premises or its fitness for any particular purpose. Except as otherwise expressly stated in this Lease, Tenant agrees that at all times during the term of this Lease and any renewals thereof, Tenant shall be responsible for any and all repairs, maintenance and replacement, both ordinary and extraordinary, at the Leased Premises and all of

it appurtenant systems, except to the extent of any damage covered and paid by Landlord casualty insurance carried pursuant to this Lease. Tenant agrees to keep the Leased Premises in a good, clean and safe order and repair and in good operating condition. All repairs, replacements and renovations shall be of good quality material and workmanship. Tenant's maintenance shall include but is not limited to, responsibility for garbage, trash or rubbish disposal in compliance with all applicable laws, rules and regulations prescribed from time to time. Tenant agrees to be responsible for litter control at the leased premises and to maintain the property free from trash, debris and other litter. Tenant agrees to keep the grounds of the leased premises in good condition and properly landscaped. Notwithstanding the foregoing, Landlord agrees to be responsible for any and all repairs, maintenance and replacement, both ordinary and extraordinary, which are necessary for the marina's bulkheads and retaining walls adjacent to the Leased Premises, and Tenant shall have no responsibility to maintain, repair or replace said bulkhead and retaining walls except for any damage caused by Tenant or Tenant's employees, invitees or licensees which is not covered and paid by Landlord's insurance carried hereunder. Further, notwithstanding any provision herein to the contrary, Landlord agrees to be solely responsible for any and all repairs, maintenance and replacements, both ordinary and extraordinary, which are necessary for the restaurant buildings' foundation, marina bulkheads and retaining walls adjacent to the Leased Premises. Tenant shall have no responsibility to maintain, repair or replace said foundations, bulkheads and retaining walls except for damage caused by Tenant or Tenant's employees, invitees or licensees which is not covered and paid by Landlord's insurance carrier.

7. **TAXES AND INSURANCE:** As additional rent, Tenant agrees to be responsible for payment of all real and personal property taxes assessed against the Leased Premises which accrue during the term of this lease, including the County of Charleston Waste Disposal Users Fee. All such payments shall be paid to Landlord with fifteen (15) days after Tenant's receipt of written notice thereof. Tenant also agrees to promptly reimburse Landlord for and Landlord agrees to maintain all premiums for flood, earthquake, fire and extended casualty, windstorm and hail insurance coverage in amounts not less than the appraised value of the building and any other improvements now or hereafter located on the Leased Premises. Tenant agrees to maintain comprehensive general liability insurance coverage on the Leased Premises including Dram Shop Act Liability in an amount not less than \$250,000.00 per person, \$1,000,000.00 per claim and \$100,000.00 per claim for property damage. All insurance coverage required to be maintained by Tenant hereunder shall be with companies reasonably approved by Landlord, who shall be named as an additional insured on all such policies.
8. **UTILITIES** Tenant agrees to be responsible for the payment of all telephone, electrical, water, sewer or other utility service to the Leased Premises, which accounts shall be in the name of the Tenant.
9. **NO ASSIGNMENT OR SUBLEASE:** Tenant agrees not to sublease or assign Tenant's interest in the Leased Premises or any part thereof, or to encumber same in any manner, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Notwithstanding any such consent by Landlord, Tenant agrees to remain personally liable for the full performance of all terms and conditions contained in this Lease to be performed by the Tenant.
10. **SUBORDINATION AND ATTORNMENT:** So long as Tenant is provided with a written non-disturbance agreement from all such holders, Tenant agrees that this Lease shall be subject and subordinate to any mortgage which Landlord may hereafter place upon the Leased Premises, and to all modifications thereto, and to all present and future advances made with respect to any such mortgage. If

Tenant is provided with such non-disturbance agreements, Tenant agrees to attorn to any mortgages and to any purchaser at a sale pursuant to foreclose thereof.

11. **RIGHT OF ENTRY BY LANDLORD OR LANDLORD'S AGENTS:** Tenant agrees to at all times during the term of this Lease permit inspection of the Leased Premises during reasonable business hours by Landlord or Landlord's Agents or representatives for any purpose. Tenant also agrees to fully cooperate with the present or any future environmental contamination remediation efforts at the Marina, including access to the Leased Premises as reasonably required by the Landlord.
12. **INDEMNIFICATION:** Tenant agrees to hold harmless and indemnify Landlord against any loss or damage, including attorney's fees and expenses, incurred as a result of any and all claims, demands, causes of action, suits, judgments, fines or penalties (including but not limited to all fees and expenses incurred as a result of death or injury to persons or for loss of or damage to property) arising out of or in connections with the use and occupancy of the Leased Premises by Tenant, it's agents, employees, invitees and licenses and excluding any such claims by Landlord or its employees, agents, invitees and licenses and excluding any such claims by Landlord's authorized users of the pedestrian access reserved to Landlord in Section 15 of this Lease. In the event of any such claims made or suits filed, Landlord agrees to give Tenant reasonable notice thereof, and Tenant shall have the right to defend or settle the same to the extent of its interest hereunder. Nothing contained in this Lease is to be construed as, nor does it create any obligation by Tenant to any person or entity other than the Landlord or its successors to make any payments or be responsible for any claims, demands, causes of action, suits, judgments, fines or penalties whatsoever.
13. **IMPROVEMENTS AND ALTERATIONS:** No alterations or improvements to the Leased Premises shall be made by Tenant without the prior written consent of Landlord. Unless otherwise agreed to in writing by Landlord, all alterations, additions or improvements made by the Tenant and all fixtures, including trade fixtures, installed by Tenant shall be performed or installed in a good and workmanlike manner and shall at the Landlord's option become the property of the Landlord at the expiration or other sooner termination of this Lease; provided, however, that Landlord has the right to require Tenant to remove all such modifications upon the termination of this Lease, at Tenant's expense. Tenant acknowledges that all property listed on Exhibit II, whether fixtures or movable personal property is owned by Landlord. Notwithstanding any provision contained in this Lease to the contrary, Tenant shall solely pay the cost to replace the walk-in freezer located at the Leased Premises. The replacement of the walk-in freezer by Tenant shall be done in a workmanlike manner and consistent with all applicable building codes. Notwithstanding the provisions of Section 3 of the Lease entitled "Rent" and in consideration of Tenant's replacement of the walk-in freezer located at the Leased Premises, Tenant shall receive an abatement of rent to cover the carrying cost of debt in the amount of \$110,000.00 over a period of five (5) years commencing _____ 1, 2018, i.e., the Base Rent due from Tenant to Landlord in accordance with Section 3 shall be reduced by the sum of \$2,088.46 per month commencing _____ 1, 2018 through _____ 1, 2023.
14. **DAMAGE OR DESTRUCTION:** If the Leased Premises are totally or partially damaged by fire or other casualty, Landlord agrees to repair or replace the damage at Landlord's expenses in such a manner as is reasonably determined by Landlord. Landlord agrees to complete such repairs or replacements with a commercially practicable period of time. There shall be no abatement of rent for a period of nine (9) months from the date of such damage. If such repairs or replacements are not completed by

Landlord within the said nine (9) month period, rent shall then abate to the extent Tenant does not have viable use of the Lease Premises.

15. **RESERVATION OF PEDESTRIAN INGRESS AND EGRESS TO DOCKS:** Throughout the entire term of this Lease, Landlord hereby expressly reserves unto itself, its successors and assigns, its invitees and licenses, and all authorized users of the Marina, a non-exclusive easement of pedestrian ingress and egress across and through the grounds of the Leased Premises for the purpose of access to the Marina Docks which are adjacent thereto.
16. **DEFAULT:** If Tenant defaults in the fulfillment of any of the covenants and conditions hereof, Landlord may, at Landlord's option, after ten (10) days prior to written notice to Tenant, make performance for Tenant and for that purpose advance such amounts as may be necessary. Any amount so advanced or any reasonable expense incurred or sum of money paid by Landlord by reason of failure of Tenant to comply with any covenant, agreement, obligation, or provision of this Lease, or in defending any action to which Landlord may be subjected by reason of any such failure shall be deemed to be additional rent for the Leased Premises and shall be due and payable to Landlord on demand. The acceptance by Landlord of any installment of fixed rent or any additional rent hereunder shall not be a waiver of Landlord's right to demand full payment of any additional rent then due and to hold Tenant in default under this lease.
If Tenant defaults in the payment of rent when due and such default continues for a period of fifteen (15) days, or if Tenant defaults in the prompt performance of any of the other covenants herein, and such default continues for a period of thirty (30) days the Landlord may, in addition to any other rights or remedies, declare this Lease to be in default, retake possession of the Leased Premises, declare the full amount remaining rent for the balance of the term at once due and payable, re-let or sublet the premises at the risk of Tenant, or declare this Lease terminated for the balance of its term, all of which rights and remedies shall be cumulative. Notwithstanding anything hereinabove to the contrary, none of the above shall constitute an event of default unless, as to monetary defaults, it continues for a period of fifteen (15) days after written notice is given by Landlord to Tenant as set forth in Section 23 of this Lease, or, as to non-monetary defaults, it continues for a period of thirty (30) days after written notice is given by Landlord to tenant as set forth in Section 23 of this Lease; provided, however, that Landlord shall not be required to give Tenant written notice prior to declaring a default more than twice in any Lease Year.
17. **GOVERNING LAW: ENFORCEMENT:** This Lease shall be governed by the law of the State of South Carolina. If either party enforces the terms of this lease by legal proceedings, the prevailing party in such proceedings shall be entitled to reimbursement from the other party of all costs and expenses incurred by the prevailing party in connection therewith, including reasonable attorney's fees, at all trial and appellate levels.
18. **RIGHTS OF HEIRS AND ASSIGNS:** The covenants and agreements contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto, and their respective heirs, successors and permitted assigns.
19. **PARAGRAPH HEADINGS:** The paragraph headings as to the contents of particular paragraphs herein, are inserted only for convenience and are in no way to be construed to be part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

20. **ADDITIONAL INSTRUMENTS:** The parties agree to execute and deliver any instruments in writing necessary to carry out any agreement, term condition or assurance in this Lease whenever occasion shall arise including the execution of a short form memorandum of Lease Agreement which may be recorded at the Charleston County RMC Office by Tenant at Tenant's sole expense.
21. **SURRENDER OF PREMISES:** Tenant agree to deliver all keys and to surrender the Leased Premises at the expiration or sooner termination of this Lease, or any extensions thereof, broom clean and in substantially the same condition as when said premises were delivered to Tenant, or as altered pursuant to the provisions of this Lease, reasonable wear and tear expected, and Tenant agrees to remove all of its personal property. Tenant agrees to pay a reasonable cleaning charge if necessary for Landlord to restore or cause to be restored the premises to a clean and orderly condition.
22. **WAIVER OF COVENANTS:** It is agreed that the waiver of any of the covenants of this Lease by either party shall be limited to the particular instance and shall not be deemed a waiver of any other breaches of such covenant or any other provision herein contained.
23. **NOTICE:** Any notices or demand required or permitted by law, or any provision of this Lease, shall be in writing, and shall be deemed to be received by Landlord when personally delivered to Landlord or three days (3) after same is deposited in the United States Mail, registered or certified, with return receipt requested, postage prepaid, and addressed to the Landlord, Attention: City Administrator, at Post Office Box 508, Isle of Palms, SC 29451, or at such other address as Landlord may hereafter designate in writing to Tenant. Any such notice or demand to be served upon the Tenant shall be in writing and shall be deemed to be received by Tenant when personally delivered to Tenant, or three (3) days after same is deposited in the United States Mail, registered or certified, with return receipt requested, postage prepaid and addressed to Tenant at 80 41st Avenue Isle of Palms, SC 29451 or at such other address as Tenant may hereafter designate in writing to Landlord.
24. **ENTIRE AGREEMENT:** This lease contains the entire understanding of the parties hereto. There are no oral understandings, terms or conditions and neither party has relied upon any representation by the other party, either express or implied, which are not contained in this Lease. All prior understandings, terms or conditions are deemed merged into this Lease. This Lease may be altered or amended only by an instrument in writing signed by both parties.
25. **DOCK USE BY TENANT'S PATRONS:** Landlord Agrees to reserve the dock space (the "Restaurant Dock") shown on Exhibit II attached hereto for the exclusive use of Tenant's patrons from June 1, 2018 to May 31, 2019. at which time Landlord has the option to relocate dock space for restaurant patrons to a comparable dock space within the marina. Tenant agrees to be responsible for payment of all property taxes assessed against the Restaurant Dock property which accrue during the time period for which the Restaurant Dock is reserved for the Tenant's exclusive use. Tenant agrees to prohibit overnight mooring of vessels at the Restaurant Dock other than for exceptional circumstances. Landlord agrees to be responsible for all repairs and maintenance at the Restaurant Dock which are not caused by the negligent or willful acts of Tenant or tenant's patrons. Tenant agrees to hold harmless and indemnify Landlord against any loss or damage, including attorney's fees and expenses, incurred as a result of any and all claims, demands, causes of action, suits, judgments, fines or penalties (including but not limited to all fees and expenses incurred as a result of death or injury to persons or for loss of or damage to property) arising out of or in connection with the use of the Restaurant Dock by Tenants, its agents, employees,

licensees, or invitees except to the extent caused by the fault or neglect of Landlord or its employees, agents, invitees and licensees.

- 26. BOAT CRUISES: Tenant is allowed to host boat cruises which embark from the Restaurant dock so long as all such cruises are conducted in accordance with all governmental laws, rules and regulations and vehicular parking for such cruises does not materially interfere with the operations of Landlord's Marina Operations Tenant.
- 27. NOTICE REGARDING ISSUES AFFECTING TENANT: Landlord shall provide Tenant at least forty-eight (48) hours prior written notice of any meetings and/or other action by Landlord or any of the Marina tenants of which Landlord has knowledge which materially affects the operation of Tenant's business at the Leased Premises.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease Agreement to be duly executed, sealed and delivered, by and through their undersigned authorized representatives, as of the date stated above.

WITNESS:

LANDLORD

The City of Isle of Palms

By: _____
Jimmy Carroll, Mayor

TENANT

Barrier Isles, LLC

By: _____
James P. Clarke, Member