

RESOLUTION NO. : 62-12-16

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH STERN, MORRIS & STERN (SMS) TO PROVIDE DEBT COLLECTION SERVICES ON PAST DUE ACCOUNTS AT THE LAKE PARK HARBOR MARINA; PROVIDING AN EFFECTIVE DATE

WHEREAS, the Town has all of the powers and authority conferred upon it pursuant to the Florida constitution and Chapter 166, Florida Statutes; and

WHEREAS, pursuant to its proprietary functions and authority, the Town owns and operates a marina known as the Lake Park Harbor Marina (the Marina) which leases slips to the operators of both recreational and commercial vessels; and

WHEREAS, the Town Manager has recommended to the Town Commission that a collection agency be retained to pursue the collection of delinquent dockage fees; and

WHEREAS, the Town Manager and Marina Director recommend that the Town enter into the Agreement with SMS for the collection of past due accounts.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The foregoing recitals are incorporated herein.

Section 2. The Mayor is hereby authorized and directed to execute the Agreement with SMS which is attached hereto and incorporated herein as **Exhibit "A"**.

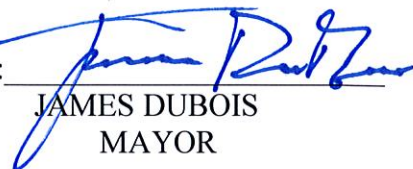
Section 3. This Resolution shall be effective upon adoption.

The foregoing Resolution was offered by Commissioner Flaherty who moved its adoption. The motion was seconded by Vice-Mayor Glas-Castro and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR JAMES DUBOIS	<u>/</u>	___
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	___
COMMISSIONER ERIN FLAHERTY	<u>/</u>	___
COMMISSIONER ANNE LYNCH	<u>/</u>	___
COMMISSIONER MICHAEL O'ROURKE	<u>/</u>	___

The Town Commission thereupon declared the foregoing Resolution NO. 62-12-16 duly passed and adopted this 21 day of December, 2016.

TOWN OF LAKE PARK, FLORIDA

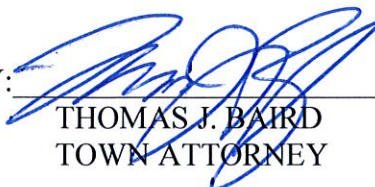
BY: 
JAMES DUBOIS
MAYOR

ATTEST:


VIVIAN MENDEZ
TOWN CLERK



Approved as to form and legal sufficiency:

BY: 
THOMAS J. BAIRD
TOWN ATTORNEY

CONTRACT FOR COLLECTION OF DEBT SERVICES

THIS CONTRACT FOR THE COLLECTION OF A DEBT SERVICES (Contract) is made this 21 day of December, 2016, by and between the Town of Lake Park (Town) and Stern, Morris & Stern ("SMS").

1. In exchange for SMS pursuing the collection of debt on accounts at the Town's Lake Park Harbor Marina, the Town agrees to pay SMS a commission in the form of a percentage of the debt it collects. The commission shall be 33.33% of the amount of the debt collected by SMS. In the event the Town has authorized SMS, or a law firm retained by SMS to collect a debt turned over to it by the Town, by filing a lawsuit, SMS shall be entitled to collect a fee from the Town of 40% of the debt collected on behalf of the Town. SMS or its law firm shall also be entitled to any court costs awarded to it upon prevailing in such litigation. In the event SMS does not prevail in any litigation it has been authorized to pursue on behalf of the Town, the Town shall not be required to compensate SMS for any costs or attorney fees expended by SMS, or incurred by SMS on behalf of the Town.
2. Town agrees that once it has submitted a delinquent account to SMS for collection, all communications with the debtor shall be the responsibility of SMS, and not the Town. In the event a Town employee is contacted by a debtor, the employee shall refer the debtor or its representative to SMS at the following phone number: 800-708-5007.
3. The Town agrees that while an account turned over to SMS is in the process of collection, negotiation, settlement or litigation, SMS' authority to represent the Town shall not be withdrawn unless the Town pays SMS the commission reference in paragraph 1, above.
4. Town agrees that any payment it receives directly from a debtor shall be reported to SMS within one business day of its receipt. The Town acknowledges and agrees that the acceptance of merchandise or other valuable consideration is a form of payment and will also be reported to SMS within one business day.
5. This Contract applies to any and all Town accounts the Town elects to submit to SMS for collection. In the event the Town proposes to change the terms of the commission to be received by SMS, it agrees to make such proposal prior to the time the Town submits the account to SMS for collection. Any changes to the terms of the commission agreed to herein shall be evidenced by a writing.
6. SMS and the Town agree that in the event the collection process has not been successful within 90 days, the Town may give written notice to cease and desist collection activity of the account(s) referred to SMS by giving a 30 day written notice sent by registered mail return-receipt to: Stern, Morris & Stern at 4801 Linton Blvd., Suite 462, Delray Beach, FL 33445. Provided however, in the event SMS is actively negotiating with the debtor to resolve the debt, or the account is in

litigation, the Town cannot withdraw the account without paying SMS the commission set forth in paragraph 1, above.

7. The parties agree that payments collected from debtors shall be sent DIRECTLY to the Town. The Town shall pay SMS its commission within 5 business days of its receipt of the debtor's payment. In the event payment is made to the town in the form of a check or other form of negotiable instrument, the Town shall make its payment to SMS within five business days of the check or other negotiable instrument clearing its bank.
8. In the event the Town has authorized SMS to refer the account to a law firm for collection, any funds collected by the law firm shall be deposited into the law firm's trust account. After the funds clear the trust account, the law firm shall send the Town the funds collected, less SMS' commission. In the event a negotiated settlement between the debtor and the Town is proposed, the settlement shall be approved by the Town before any funds are released.
9. This Contract shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.
10. This Contract shall be governed by and construed in accordance with the laws of the State of Florida.
11. Any action or proceeding of any kind arising out of or related to this Contract shall be brought in the appropriate State or Federal Court for Palm Beach County, Florida. The parties hereto irrevocably consent to service, jurisdiction, and venue in the courts of Palm Beach County, Florida, for any litigation arising from this Contract and waive any other venue to which any of them might be entitled.
12. If any term, covenant, or condition of this Contract or the application thereof to any entity or circumstance shall be to any extent held invalid or unenforceable, the remainder of this Contract or the application of such terms, covenants, and conditions to entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
13. This Contract shall not be construed more strictly against one party than against any other, merely by virtue of the fact that it may have been prepared by counsel for one of the parties.
14. If any litigation is instituted for the purpose of enforcing or interpreting any provision of this Contract, the prevailing party shall be entitled to recover a reasonable attorney fees and court costs.

15. THE PARTIES HERETO WAIVE ANY RIGHTS ANY OF THEM MAY HAVE TO A JURY TRIAL IN ANY LITIGATION ARISING OUT OF OR RELATED TO THIS CONTRACT AND AGREE THAT THEY SHALL NOT ELECT A TRIAL BY JURY. THE PARTIES HERETO HAVE SEPARATELY, KNOWINGLY AND VOLUNTARILY GIVEN THIS WAIVER OF RIGHT TO TRIAL BY JURY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

16. This constitutes the entire Contract between the parties. No terms or conditions can be changed unless made in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first above written.

Signed, Sealed and Delivered
In the Presence of:

David Wolfe
Print Name: DAVID WOLFE

Print Name: _____

STERN, MORRIS & STERN

By: *David Wolfe*
Print Name: _____
Its: _____

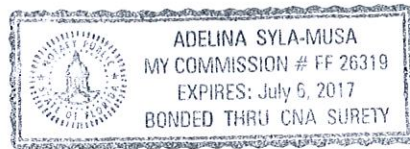
WH10-170-50-459-0

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 3 day of JANUARY 3, 2017 by DAVID WOLFE, as MANAGER of STERN MORRIS & STERN, a REPRESENTATIVE, on behalf of the company. He/she is personally known to me or has produced a driver's license as identification.

(NOTARY SEAL)

Adelina Sylla-Musa
Notary Public
My Commission Expires: 07/06/2017



ATTEST:

TOWN OF LAKE PARK, FLORIDA

By: Vivian Mendez
Vivian Mendez, Town Clerk



By: James Dubois
Print Name: James Dubois
Its: Mayor

Date: December 21, 2016

Approved as to form and legal
sufficiency:

BY: Thomas J. Baird
THOMAS J. BAIRD
TOWN ATTORNEY