

## TOWN COUNCIL

### STAFF REPORT Executive Department



<b>MEETING DATE:</b>	November 13, 2025
<b>PROJECT:</b>	Consideration of an Ordinance for a Master Lease to the Don Ryan Center for Innovation, Inc. for Real Property Owned by the Town of Bluffton, Identified as Beaufort County Tax Map No. R610 030 000 2066 000 located at 97 Progressive Street, Bluffton – Second and Final Reading
<b>PROJECT MANAGER:</b>	Chris Forster, MPA, CPFO, CGFM, Assistant Town Manager

#### **RECOMMENDATION:**

Request for the Bluffton Town Council to approve Master Lease Agreement with Don Ryan Center for Innovation, LLC. (DRCI) at 97 Progressive Street.

#### **CHANGES SINCE FIRST READING:**

Language was added to the Master Lease to allow for non-profits to lease offices if their primary mission is to serve the business community in and around the Town of Bluffton.

#### **BACKGROUND:**

The Town of Bluffton released RFP 2023-62, Development of Buckwalter Commerce Park. The successful bidder, Parkway Commons, LLC entered into a Master Agreement with the Town on October 30, 2023. The developer will develop 50,100 square feet of class A office and light industrial warehouse space. The development will consist of three buildings. Two buildings will consist of class A office and light industrial warehouse space to meet demand for a growing service-based industry. The third building, at 97 Progressive Street, will serve as landing pad space for economic development and space for a new childcare facility.

#### **DISCUSSION:**

This master lease agreement will give DRCI exclusive permission to sub-lease space in the new building at 97 Progressive Street in Buckwalter place. The building will remain a Town owned property and maintain its tax-exempt status. The building's primary use will be for economic development and small business development for the general benefit of the local Bluffton economy. The primary tenants will be organizations that support business development and recruitment as well as small businesses starting up or looking to expand. For profit entities must

provide justification for expanded business production or job creation and must commit to going through and completing a DRCI program and coaching.

**ATTACHMENTS:**

1. Ordinance
2. Master Lease Agreement
3. Motion

**ORDINANCE NO. 2025-\_\_**

**TOWN OF BLUFFTON, SOUTH CAROLINA**

**AN ORDINANCE TO APPROVE THE ADOPTION OF A MASTER LEASE AGREEMENT BETWEEN THE TOWN OF BLUFFTON AND THE DON RYAN CENTER FOR INNOVATION, INC. TO ESTABLISH A LANDLORD-TENANT RELATIONSHIP AND FOSTER CONTINUED ECONOMIC DEVELOPMENT WITHIN THE BUCKWALTER COMMERCE PARK**

**WHEREAS**, pursuant to Town of Bluffton Ordinance Number 2023-08, effective October 10, 2023, Town of Bluffton Town Council approved of a public-private partnership to foster economic development, stimulate and encourage business growth within the Buckwalter Commerce Park, and establish more opportunities for gainful and meaningful employment for Town and Beaufort County residents; and

**WHEREAS**, a five (5) acre parcel within the Buckwalter Commerce Park adjacent to the Law Enforcement Center, identified by Beaufort County Tax Map Reference R610 000 1649 0000 was identified for the development of three (3) buildings plus infrastructure for such economic development; and

**WHEREAS**, the Town of Bluffton (the Town) is the owner and landlord of the building located at 97 Progressive Street, Bluffton, South Carolina and The Don Ryan Center for Innovation, Inc. (DRCI) will be a Tenant and will manage sub-tenants in accordance with the Master Lease; and

**WHEREAS**, DRCI will qualify sub-tenants as early-stage start-up entities with realistic potential of creating new, high-wage jobs in Bluffton and manage their participation in mandatory incubator programming during the term of their sublease; and

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA**, the commercial lease agreement is approved and the Town Manager is authorized to execute this commercial lease in substantial form to the one attached hereto with Bright Beginnings Academy, LLC, attached as Exhibit A.

**THIS ENTIRE ORDINANCE SHALL TAKE FULL FORCE AND EFFECT UPON ADOPTION.**

DONE, RATIFIED AND ENACTED this 14<sup>th</sup> day of October, 2025.

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Larry C. Toomer, Mayor  
Town of Bluffton, South Carolina

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Marcia Hunter, Town Clerk  
Town of Bluffton, South Carolina

# MASTER LEASE AGREEMENT

THIS MASTER LEASE AGREEMENT (“*Lease*”) made and entered into this [REDACTED] day of [REDACTED], 2025, (the “*Effective Date*”), by and between the TOWN OF BLUFFTON, a South Carolina municipal corporation (together with its successors and assigns, the “*Landlord*”) and DON RYAN CENTER FOR INNOVATION, INC., a South Carolina nonprofit corporation (together with its permitted successors and assigns, the “*Tenant*”), with reference to the following facts;

## RECITALS:

A. Landlord is the owner of the leased Premises (as defined herein) and is a political subdivision of the State of South Carolina. The Tenant is a nonprofit corporation focused on economic development and serving as an incubator for small and growing businesses within the Town of Bluffton and surrounding areas.

B. The Landlord and the Tenant are both committed to supporting and encouraging the development of business and industry within the Town of Bluffton and greater Beaufort County. Having recognized the need for additional commercial space to support emerging enterprises and business support systems, the Town of Bluffton constructed the Premises and hereby leases the same to the Tenant so that Tenant can sublease portions of the Premises to qualified businesses.

C. Both the Landlord and the Tenant intend for the business operations of the Premises conducted by the Tenant shall provide a funding source for Tenant so that Tenant can become self-funding and self-sustaining after the initial investment by the Landlord.

## AGREEMENT:

NOW, THEREFORE, for and in consideration of the Premises hereof, the sums of money to be paid hereunder, and the mutual and reciprocal obligations undertaken herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do hereby covenant, stipulate and agree as follows, *to wit*:

## ARTICLE 1 AGREEMENT TO LEASE

Section 1.1 **Leased Property**. Upon and subject to the terms and conditions hereinafter set forth, Landlord leases to Tenant and Tenant leases from Landlord all of Landlord’s right, title and interest in and to all of the following (collectively or individually as the context may require, the “*Premises*”): (i) those certain tracts, pieces and parcels of land, as more particularly described in EXHIBIT A attached hereto and made a part hereof (collectively, the “*Land*”); (ii) all buildings, structures, Fixtures (all capitalized terms used but not elsewhere defined herein shall have the meanings provided therefor in Article II hereof) and other improvements of every kind, including alleyways, sidewalks, utility pipes, conduits and lines, parking areas and roadways appurtenant to such buildings and structures presently or hereafter situated upon the Land (collectively, the “*Leased Improvements*”); (iii) all easements, rights and appurtenances relating to the Land and the Leased Improvements; and (iv) all permanently affixed equipment, machinery, fixtures (as defined in the Uniform Commercial Code as in effect in the State of South Carolina) (including all HVAC equipment, elevators, escalators and lighting, together with all equipment, parts and supplies used to service, repair, maintain and equip the foregoing), and other items of real and/or personal property, including all components thereof, now and hereafter located in, on or used in connection with, and

permanently affixed to or incorporated into the Leased Improvements, including all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air- and water-pollution-control, waste-disposal, air-cooling and air-conditioning systems and apparatus, sprinkler systems and fire- and theft-protection equipment, all of which, to the greatest extent permitted by law, are hereby deemed by the parties hereto to constitute real estate, together with all replacements, modifications, alterations and additions thereto (collectively the “*Fixtures*”), provided that the foregoing shall exclude all items included within Tenant’s Personality.

Section 1.2 **Definitions.** In addition to any other terms whose definitions are fixed and defined by this Lease, each of the following defined terms, when used in this Lease with an initial capital letter, shall have the meaning ascribed to them in this Section 1.2:

- (a) “*Commencement Date*” shall be **December 1, 2025**.
- (b) “*Effective Date*” shall mean the date that the last of Landlord or Tenant executes this Lease.
- (c) “*Improvements*” shall mean the interior, non-structural elements of the Premises, including, but not limited to, the following: the ceiling system and light fixtures suspended from the roof; awnings; interior and partition walls; the finish or wall coverings applied to the interior surfaces of exterior walls or demising (i.e., party) walls; the glass, glazing, doors, windows and components thereof; floor coverings (i.e., carpet or tile), but not the slab or structural components thereof; and gas, electric, fire sprinkler, telephone, water, plumbing, heating, ventilation, and air conditioning lines, pipes, conduits, ducts, connections, meters, systems, and equipment which directly and exclusively serve the Premises except to the extent such systems of utilities are embedded within structural components of the Premises.
- (d) “*Lease Year*” shall mean each successive twelve-month period of the Term, with the first Lease Year commencing on the Commencement Date, including any partial calendar month in which the Commencement Date occurs, and ends on the last day of the twelfth full calendar month after the Commencement Date.
- (e) “*Landlord’s Buildings*” shall mean all buildings located within the Premises.
- (f) “*Personalty*” shall mean all signage, trade fixtures, wares, furnishings, merchandise, equipment, goods, inventory, and other personal property of Tenant.
- (g) “*Rent*” shall mean the aggregate of all Base Rent and Additional Rent due from Tenant to Landlord pursuant to this Lease.
- (h) “*Taxes*” shall mean all real estate, personal property and other ad valorem and no-ad valorem taxes, water and sewer charges, fire, rescue and emergency medical services and similar fees and any other levies, charges, fees impositions, local improvement rates and assessments whatsoever assessed or charged against the Premises, the equipment and the improvements therein contained (all of the above being ordinary, extraordinary, general, special or otherwise), or any part thereof, by any lawful taxing authority and including any amounts assessed or charged in substitution for or in lieu of any such taxes, excluding only income, franchise, inheritance or capital gains tax, to the extent such taxes are not levied in lieu of any of the foregoing against the Premises or Landlord.

- (i) “*Term*” shall mean the Initial Term and, if exercised, the Renewal Term.

Section 1.3 **Demise.** Landlord hereby demises, lets and leases unto Tenant, and Tenant hereby hires, leases and takes as tenant from Landlord the Premises, upon the terms and conditions hereinafter set forth.

Section 1.4 **Condition.** Tenant acknowledges and agrees that the Premises shall be leased by Landlord to Tenant in an “**AS IS**” condition, and that Landlord makes absolutely no representations or warranties whatsoever with respect to the Premises or the condition thereof. Tenant acknowledges that Landlord has not investigated and does not warrant or represent to Tenant that the Premises are fit for the purposes intended by Tenant or for any other purpose or purposes whatsoever. Tenant represents and warrants that, by leasing the Premises, Tenant has examined and approved all things concerning the Premises, which Tenant deems material to Tenant’s leasing and use of the Premises.

Section 1.5 **Rules of Construction.** The following rules shall apply to the construction and interpretation of this Lease:

(a) *Gender.* Singular words shall connote the plural number as well as the singular and vice versa, and the masculine shall include the feminine and the neuter.

(b) *Headings.* The headings contained herein are solely for convenience of reference and shall not constitute a part of this Lease nor shall they affect its meaning, construction or effect.

(c) *Construction.* Each party hereto and its counsel have reviewed and revised (or requested revisions of) this Lease and have participated in the preparation of this Lease, and therefore any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Lease or any exhibits hereto.

Section 1.6 **Recitals.** The Recitals set forth above are incorporated herein by reference as if set forth in their entirety herein.

## ARTICLE 2 TERM

Section 2.1 **Initial Term.** Subject to and upon the conditions set forth herein, including any exhibit or addendum hereto, the initial term (the “*Initial Term*”) of this Lease shall, unless sooner terminated as elsewhere provided in this Lease, commence on **December 1, 2025**, (the “*Commencement Date*”) and shall continue for a period of sixty (60) months and shall terminate and expire at 11:59 p.m. on **November 30, 2030**. Landlord shall be deemed to have delivered possession of the Premises to Tenant on the Commencement Date, subject to terms and provisions hereof. For all subsequent renewal or extension terms, the Commencement Date shall be December 1.

Section 2.2 **Extension of Terms.** Subject to Landlord approval, which will not be unreasonably withheld, Tenant shall have up to four (4) additional options (each, an “***Option***”) to extend or renew this Lease beyond the Initial Term for an additional period of five (5) years (each, a “***Renewal Term***”) and upon the same terms, covenants, and conditions as set forth herein, subject however, to Landlord’s right to adjust the Base Rent for the Renewal Term. Tenant may exercise such Option by giving written notice to Landlord not less than six (6) months prior to the expiration of then current Term of this Lease (the “***Option Notice***”). Within thirty (30) days of receipt of the Option Notice, Landlord shall notify Tenant of the adjusted amount of the Base Rent for the Renewal Term (the “***Adjusted Rent***”). Tenant may reject the amount of the Adjusted Rent (which rejection shall terminate Tenant’s Option) or may negotiate with Landlord to determine the Adjusted Rent for the Renewal Term. If Landlord and Tenant are unable to agree on the amount of the Adjusted Rent for the Renewal Term before the end of the current Term, the Option shall be terminated and the Lease shall expire as of the end of the current Term. Notwithstanding the foregoing, Tenant shall not be entitled to extend the Term of this Lease if, at the time of exercise of the Option or thereafter, an Event of Default has occurred and is continuing. If Tenant does not elect to extend, or shall not be entitled pursuant to the preceding sentence to extend the Term of this Lease for the Renewal Term, all remaining rights of renewal shall automatically expire.

Section 2.3 **Termination.** Notwithstanding any present or future law to the contrary, this Lease shall not be terminated by Tenant for any failure of Landlord to perform pursuant to the terms and conditions of this Lease or otherwise for any reason except as expressly provided herein.

### ARTICLE 3 USE AND OPERATION OF PREMISES

Section 3.1 **Generally.** The Parties acknowledge that the Premises are to be used as a business incubator facility that provides small units of space available for leasing by Qualified Sub-Tenants (as defined herein) at low cost or fair market cost, and in which the Tenant shall maintain or provide access to business development services for use by the Qualified Sub-Tenants, and in which the Tenant maintains appropriate qualifications for the determination of whether an applicant will be a Qualified Sub-Tenant (the “***Permitted Use***”).

Section 3.2 **Qualified Sub-Tenant.** The Tenant shall only be permitted to license or sub-lease a portion of the Premises to business enterprises that meets substantially all of the following eligibility criteria (a “***Qualified Sub-Tenant***”) as determined within the reasonable discretion of the Tenant taking into account that Tenant’s evaluation of the criteria for a Qualified Sub-Tenant is intended to fulfill the purpose and goals of this Lease as stated herein: the applicant (i) shall be an early-stage company or start-up having been in operation for less than five (5) years, or the expansion of an existing business enterprise into a new market; (ii) must demonstrate a realistic potential for creating new, high-wage jobs within the local jurisdiction over the course of its tenancy or provide a service that has been recognized to be unserved or underserved in the local jurisdiction; (iii) shall agree to participate and shall participate in the Tenant’s mandatory incubator programming during the term of any sublease or license agreement; (iv) must consent to and pass any required background or credits checks; (v) operate in an industry or business sector that aligns with the purposes of this Lease; and, (vi) shall demonstrate compliance with any other additional requirements or criteria reasonably imposed by Tenant; or, the applicant shall (i) be a nonprofit corporation or instrumentality/agency of a public body that provides programs, offers services, and/or otherwise engages in activities that promote and support local business or economic development within the greater Bluffton area; and,



(ii) demonstrate compliance with any other additional requirements or criteria reasonably imposed by Tenant.

Section 3.3 **Qualified Sub-Tenant Sublease or License Terms.** No Qualified Sub-Tenant shall be permitted to sublease or license a portion of the Premises for a term greater than three (3) years without the express written consent of the Landlord, which may be withheld in the Landlord's sole and absolute discretion. Further, all Qualified Sub-Tenant subleases or licenses shall be subject to termination upon the Qualified Sub-Tenant's demonstration of reasonable financial stability, relocation of a substantial portion of its services or operations outside of the local jurisdiction, or the consistent failure to meet agreed upon benchmarks, goals, or program participation requirements.

Section 3.4. **Qualified Sub-Tenant Reporting.** The Tenant shall provide the Landlord with an annual performance report that contains, at a minimum, the following information: (i) the essential terms of any sublease or license agreement with any Qualified Sub-Tenants, (ii) the number of full-time or part-time jobs created by the Qualified Sub-Tenants, and (iii) such further and other information that the Landlord may require.

Section 3.5 **Permitted Use.** Tenant covenants that it shall, throughout the Term of this Lease, use and occupy the Premises only for the Permitted Use and for related uses (*e.g.*, café, cafeteria, conference center use) and for absolutely no other use or purpose whatsoever, and Tenant shall only offer space within the Premises to subtenants or licensees who will use and occupy the Premises in accordance with the provisions of this Lease. Notwithstanding the foregoing provision however, the following uses shall be expressly prohibited on the Premises:

- (a) Any purposes which conflict with covenants, restrictions or other matters of record affecting title to the Premises;
- (b) Any operation primarily used as an assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.
- (c) Any mobile home, trailer court, labor camp, junk yard or stock yard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance).
- (d) Any dumping, disposing, incineration or reduction of garbage (exclusive of garbage compactors located in the rear or side of any building).
- (e) Any establishment which has as its principal business the selling or exhibiting of pornographic materials, including, without limitation any adult book or film store and any adult entertainment nightclub.

Section 3.6 **Compliance with Laws.** Tenant shall at all times keep and maintain the Premises in compliance with all applicable laws, ordinances, statutes, rules, regulations, orders, directions and requirements of all federal, state, county and municipal governments and of all other governmental agencies or authorities having or claiming jurisdiction over the Premises or the business activities conducted thereon or therein and of all of their respective departments, bureaus, agencies or officers, and of any insurance underwriting board or insurance inspection bureau having or claiming such jurisdiction or any other body exercising similar functions and of all insurance companies from time to time selected by Tenant to write policies of insurance covering the Premises and any business or business activity conducted thereon or therein. However, notwithstanding the foregoing, should

there be a *de minimis* issue of non-compliance with applicable law which does not have a material adverse effect on the Premises, Tenant shall not be obligated to correct such *de minimis* violation but Tenant shall have the indemnity obligations set forth in this Lease with respect to any such *de minimis* violation, including indemnity against any fines or penalties imposed against the Premises as a result of such *de minimis* violations, if any.

Section 3.7 **Effect on Landlord's Insurance.** Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene Landlord's policies insuring against loss or damage by fire or other hazards, or which prevent Landlord from procuring such policies in companies acceptable to Landlord, or which will cause an increase in the insurance rates on any portion of the Premises. If Tenant violates any prohibition provided for in the first sentence of this section, Landlord may, without notice to Tenant, correct the same at Tenant's expense with any such amount to be deemed Additional Rent.

Section 3.8 **Americans With Disabilities Act.** Tenant and Landlord acknowledge that the Americans with Disabilities Act of 1990 (42 U.S.C. §12101, et seq.) and regulations and guidelines promulgated thereunder, all as amended and supplemented from time to time (collectively the "***ADA***") and applicable State Accessibility Building Codes (the "***Codes***") establish requirements for business operations, accessibility and barrier removal, which may or may not apply to the Premises or the School depending on, among other things; (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility," (2) whether such requirements are "readily achievable" and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties agree that: (a) Tenant shall be responsible for ADA Title III and Codes compliance for the Premises, including any Improvements or other work to be performed in the Premises under or in connection with this Lease, and (b) Landlord may perform, or require that Tenant perform, at Tenant's expense, "path of travel" requirements triggered by alterations to the Premises. The parties shall each be solely responsible for requirements under Title I of the ADA relating to their respective employees. Tenant may not rely on any written consents or approvals of Landlord for plans and Improvements as compliance with ADA or Codes requirements or guidelines or as a waiver by Landlord or Tenant's obligations hereunder.

Section 3.9 **Signage.** Tenant shall have the right, at its sole risk and expense and in conformity with applicable laws and ordinances, to erect and thereafter, to repair or replace, if it shall so elect signs on any portion of the Premises, providing that Tenant shall remove any such signs upon termination of this Lease, and repair all damage occasioned thereby to the Premises. Tenant shall have the right, at its sole risk and expense and in conformity with applicable laws and ordinances, to erect, maintain, place and install its usual and customary signs and fixtures in the interior of the Premises. Tenant shall repair, paint, and/or replace any portion of the Premises or the Building damaged or altered as a result of its signage when it is removed (ordinary wear and tear and reasonable discoloration of the Building excluded). Except as set forth herein, Tenant shall not (a) make any changes to the exterior of the Premises or the Building, (b) install any exterior lights, decorations, balloons, flags, pennants, banners or paintings, or (c) erect or install any signs, windows or door lettering, decals, window or storefront stickers, placards, decorations or advertising media of any type that is visible from the exterior of the Premises without Landlord's prior written consent.

## **ARTICLE 4**

### **RENT AND SECURITY DEPOSIT**

Section 4.1 **Base Rent.** Beginning on the Commencement Date and subject to the adjustment provisions set forth herein, Tenant covenants and agrees to pay Landlord annual base rent

in the amount of **ONE AND NO/100 (\$1.00) DOLLARS** for the Premises for the first year of the Initial Term ("**Base Rent**"). Base Rent shall be due and payable in the coin or currency of the United States of America, payable in advance in equal monthly installments, without deductions and setoffs and without prior demand therefore, on the 1<sup>st</sup> day of each December during the Initial Term and any Renewal Term. Landlord's decision not to send such statements, shall in no way diminish, waive or otherwise affect Tenant's payment obligations under this Lease.

Section 4.2 **Additional Rent.** If the Landlord shall make any expenditure for which Tenant is responsible or liable under this Lease, or if Tenant shall become obligated to Landlord under this Lease for any sum other than Base Rent as provided in Section 4.1, including but not limited to Tenant's Operating Expenses, the amount thereof shall be deemed to constitute additional rent ("**Additional Rent**") and shall be due and payable by Tenant to Landlord, together with all applicable sales taxes thereon, if any, simultaneously with the Base Rent or at such other time as may be expressly provided in this lease for the payment of the same or, if no time is so provided, upon demand.

Section 4.3 **Percentage Rent.** *Intentionally Omitted.*

Section 4.4 **Payment of Rent.** Each of the foregoing amounts of Rent and other sums shall be paid to Landlord without demand and without deduction, set-off, claim or counterclaim of any nature whatsoever which Tenant may have or allege to have against Landlord and all such payments shall, upon receipt by Landlord, be and remain the sole and absolute property of Landlord. All such Rent and other sums shall be paid to Landlord in legal tender of the United States at the address listed for payment of Rent in this Lease, or to such other party or to such other address as Landlord may designate from time to time by written notice to Tenant. Landlord's acceptance of Rent or other sums after the same shall become due and payable, shall not excuse a subsequent delay or constitute or be construed as a waiver of any of Landlord's rights hereunder. In the event that Landlord owes any Tenant any sum, the foregoing shall apply to Landlord in the same manner it applies to Tenant.

Section 4.5 **Past Due Rent.** If Tenant fails to make any payment of Rent or any other sums or amounts to be paid by Tenant hereunder on or before the date such payment is due and payable, Tenant shall pay to Landlord and administrative late charge of ten percent (10%) of the amount of such payment plus an additional charge of Five and 00/100 Dollars (\$5.00) for every day or part thereof thereafter until all sums due are received by Landlord. In addition, such past due payment shall bear interest at the maximum interest rate then allowable under the laws of the State of South Carolina, from the date such payment became due to the date of payment thereof by Tenant. Such late charge and interest shall constitute Additional Rent and shall be due and payable with the next installment of Rent due hereunder. This Section 4.5, however, shall not be construed to extend the date for any payment required hereunder and notwithstanding the imposition of such late charge, Landlord shall retain all of its rights under this Lease if any payment required to be made by Tenant is not made when due, and neither the demand for, nor collection by, Landlord of such late charge shall be construed as a cure of such failure of Tenant. It is agreed that such late charge is a fair and reasonable charge under the circumstances and shall not be construed as interest on a debt payment. In the event any charge imposed hereunder or under any other Article of this Lease is determined by a court of competent jurisdiction to be interest, then not such interest charge shall be calculated at a rate which is higher than the maximum rate which is allowed under the usury laws of the State, which maximum rate of interest shall be substituted for the rate in excess thereof, if any, computed pursuant to this Lease. If, at any time during the Term, Tenant forwards a check to Landlord for non-sufficient funds or is dishonored for any other reason, then Landlord, at its option, shall have the right to require Tenant to make all future payments of Rent by cashier's check or other form of certified funds. In

addition, Tenant shall pay to Landlord an NSF fee of Thirty and 00/100 Dollars (\$30.00) for each and every check returned to Landlord for non-sufficient funds or dishonored for any other reason.

Section 4.6     **No Abatement of Rent: Survival.** Unless expressly provided for in this Lease, no abatement, diminution or reduction (a) of Rent, or (b) of Tenant's other obligations hereunder shall be allowed to Tenant or any person claiming under Tenant, under any circumstances or for any reason whatsoever. Any obligation to pay Rent which is incurred prior to or in connection with the expiration or earlier termination of this Lease, shall survive such expiration or termination and shall be payable upon demand.

Section 4.7     **Application of Payments.** *Intentionally Omitted.*

Section 4.8     **Security Deposit.** *Intentionally Omitted.*

## **ARTICLE 5 – TAXES AND ASSESSMENTS**

Section 5.1     **Taxes and Assessments.** From and after the Effective Date and continuing throughout the Term of this Lease, Tenant's obligations with respect to Real Estate Taxes (as hereinafter defined) shall be as follows:

(a)     *Definition of "Real Estate Taxes."* As used herein, "***Real Estate Taxes***" shall mean all taxes, assessments and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, and each and every installment thereof which during the Term hereof or prior to the Term of the Lease shall be or have been charged, laid, levied, assessed, or imposed upon, or arise in connection with, the ownership of the Premises or any part thereof, including, without limitation, ad valorem real property taxes, and all taxes charged, laid, levied, assessed or imposed in lieu of or in addition to any of the foregoing by virtue of all present or future laws, ordinances, requirements, orders, directions, rules or regulations of federal, state, county and municipal governments and of all other governmental authorities whatsoever.

(b)     *Tenant's Obligation.* Tenant shall pay directly to the taxing authorities all Real Estate Taxes on or before the date such Real Estate Taxes are due and payable. Tenant will deliver to Landlord, upon request, receipts for payment or other evidence satisfactory to Landlord that the Taxes have been so paid.

(c)     *Personal Property Taxes.* Tenant shall pay and discharge, when due, all taxes assessed during the Term of this Lease against any leasehold interest or personal property of any kind owned by or placed in the Premises by Tenant. In addition to the Rent and any other sums or amounts required to be paid by Tenant to Landlord pursuant to the provisions of this Lease, Tenant shall also pay to Landlord, simultaneously with such payment of such Rent or other sums or amounts, the amount of any applicable sales, use or excise tax on any such Rent or other sums or amounts so paid by Tenant to Landlord, whether the same be levied, imposed or assessed by the State in which the Premises is located or any other federal, state, county or municipal governmental entity or agency. Any such sales, use or excise taxes shall be paid by Tenant to Landlord at the same time that each of the amounts with respect to which such taxes are payable are paid by Tenant to Landlord.

## **ARTICLE 6 UTILITIES**

From and after the Effective Date, Tenant shall be liable for and shall pay directly all charges and fees (together with any applicable taxes or assessments thereon) when due for water, gas, electricity, air conditioning, heat, septic, sewer, refuse collection, telephone and any other utility charges or similar items in connection with the use or occupancy of the Premises. Landlord shall not be responsible or liable in any way whatsoever for the quality, quantity, impairment, interruption, stoppage or other interference with any utility service, including, without limitation, water, air conditioning, heat, gas, electric current for light and power, telephone, or any other utility service provided to or serving the Premises. No such interruption, termination or cessation of utility services shall relieve Tenant of its duties and obligations pursuant to this Lease, including, without limitation, its obligation to pay all Rent as and when the same shall be due hereunder.

## **ARTICLE 7 AGREEMENTS, FEES, ETC.**

Tenant, at Tenant's sole cost and expense, shall keep and maintain in full force all franchise agreements, license agreements, equipment leases and other contracts or agreements involving or relating to the operation of the Premises for its Permitted Use. Landlord warrants that it has no such existing agreements, leases or other contracts that Tenant shall be required to keep and maintain.

## **ARTICLE 8 INSURANCE**

Section 8.1     **Insurance by Tenant.** Tenant shall, at its sole cost and expense, maintain in full force and effect the following types and amounts of insurance coverage:

(a)     *Property Insurance.* Special form insurance on the Improvements, including all permitted alterations, changes, additions and replacements thereof and thereto, including without limitation, insurance against loss or damage caused by: (i) fire, windstorm and other hazards and perils generally included under extended coverage; (ii) sprinkler leakage; (iii) vandalism and malicious mischief; and (iv) boiler and machinery, all in an amount which reasonably assures there will be sufficient proceeds to replace the Improvements in the event of a loss against which such insurance is issued. Such insurance shall (i) contain an agreed amount endorsement or equivalent clause within the policy with respect to the Improvements, (ii) provide for no deductible in excess of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00), and (iii) contain endorsements insuring against liability for "demolition costs" and "increased cost of construction", as well as "ordinance or law" coverage and an "enforcement" endorsement if any of the Improvements or the use of the Premises shall at any time constitute legally non-conforming structures or uses. All insurance required hereunder, and all other insurance maintained by Tenant on the Improvements in excess of or in addition to that required hereunder, shall be carried in favor of Landlord and Tenant, as their respective interests may appear.

(b)     *Commercial General Liability Insurance.* An occurrence form commercial general liability policy of insurance providing coverage against liability for personal and bodily injury, death and property damage having limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per person and TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) per occurrence. Such insurance shall cover at least the following hazards: (1) premises, operations, conduct, assumed liabilities, and use or occupancy of the Premises; (2)

products and completed operations; (3) independent contractors; (4) blanket contractual liability for all written and oral contracts; (5) automobiles; and (6) contractual liability covering the indemnities contained in this Lease to the extent the same is available. Such insurance, and any and all other liability insurance maintained by Tenant in excess of or in addition to that required hereunder, shall name Landlord as additional insured. In addition, such minimum limit may from time to time, at Landlord's option, be increased to an amount determined by Landlord to be consistent with industry standards.

(c) *Intentionally Omitted.*

(d) *Workers' Compensation Insurance.* Workers' compensation insurance, in a form prescribed by the laws of the State in which the Premises is located, and employers' liability insurance, upon Tenant's hiring of employees.

(e) *Intentionally Omitted.*

(f) *Other Insurance.* Such other insurance for such risks and in such amounts as may from time to time be commonly insured against in the case of business operations similar to those contemplated by this Lease to be conducted by Tenant on the Premises.

Section 8.2 **Carriers and Features.** All insurance policies required to be carried by Tenant as provided in this Article shall be issued by insurance companies approved by Landlord authorized and licensed to do business in the State in which the Premises is located. The insurance companies must have (as determined by Landlord at its discretion): (i) an investment grade rating for claims paying ability assigned by a credit rating agency approved by Landlord and (ii) a general policy rating of A or better and a financial class of VIII or better by A.M. Best Company, Inc. All such policies shall be for periods of not less than one year and Tenant shall renew the same at least thirty (30) days prior to the expiration thereof. With respect to the property insurance to be maintained by Tenant hereunder, Landlord and any lender of Landlord shall be named as "insureds as their interests may appear" thereon, and with respect to the liability insurance to be maintained by Tenant hereunder, Landlord and any lender of Landlord shall be named as "additional insureds" by endorsement satisfactory in form and substance to Landlord. The policies shall provide that said additional insured coverage is primary and non-contributory with any self-insurance or other insurance available to the Landlord. Further, Tenant's liability insurance policies will be indorsed as needed to provide for cross-liability coverage for Tenant, Landlord, and any lender of Landlord and will provide for severability of interests. All such policies shall require not less than thirty (30) days written notice to Landlord prior to any cancellation thereof or any change reducing coverage thereunder. In addition to the foregoing, all policies of insurance required in Section 8.1 shall contain clauses or endorsements to the effect that (a) no act, omission or negligence of Tenant, or anyone acting for Tenant, or failure to comply with the provisions of any policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Landlord is concerned, and (b) Landlord shall not be liable for any insurance premiums thereon or subject to any assessments thereunder. Tenant shall pay the premiums for all insurance policies which Tenant is obligated to carry under this Article and, at least thirty (30) days prior to the date any such insurance must be in effect, deliver to Landlord a copy of the policy of policies, or a certificate or certificates thereof (on ACORD 27 forms or equivalent), along with evidence that the premiums therefor have been paid for at least the next ensuing quarter-annual period.

Section 8.3 **Failure to Procure and Maintain Insurance.** In the event Tenant shall fail to procure insurance and deliver the certificate(s) thereof to Landlord as required under this Article,

Tenant shall not be allowed to take possession of the Premises until such insurance has been procured and the certificate(s) have been delivered to Landlord; however, any refusal by Landlord to deliver possession of the Premises pursuant to this Article shall not affect the Commencement Date and Rent shall accrue as of such date. In the event Tenant fails to maintain the insurance policies required pursuant to this Article continuously in full force and effect, Landlord shall be entitled, but not obligated, to procure the same and Tenant shall immediately reimburse Landlord of such premium expense as Additional Rent. Tenant's obligation to procure adequate workers' compensation insurance and provide certificate(s) thereof shall only commence upon Tenant's hiring of its first employee.

Section 8.4 **Waiver of Subrogation.** Landlord and Tenant hereby mutually waive all rights and claims against each other for all losses covered by their respective insurance policies and waive all rights of subrogation of their respective insurers. Landlord and Tenant hereby agree that their respective insurance policies are now, or shall be prior to the Commencement Date, endorsed so that such waivers of subrogation shall not affect their respective rights to recover thereunder.

## **ARTICLE 9 DAMAGE OR DESTRUCTION**

Section 9.1 **Restoration and Repair.** If, during the Term of this Lease, the Improvements shall be destroyed or damaged in whole or in part by fire, windstorm or any other cause whatsoever, Tenant shall give Landlord immediate notice thereof and shall repair, reconstruct or replace the Improvements, or the portion thereof so destroyed or damaged (whichever is reasonably required), at least to the extent of the value and character thereof existing immediately prior to such occurrence. All work shall be started as soon as practicable and completed, at Tenant's sole cost and expense. Tenant shall, however, promptly take such action as is necessary to assure that the Premises (or any portion thereof) does not constitute a nuisance or otherwise present a health or safety hazard. There shall be no abatement or reduction in Rent as a result of a casualty. Notwithstanding anything to the contrary if there is a casualty to the Premises in the last two (2) Lease Years of the Term or of the then current Extension Term which damages the Improvements by more than twenty five percent (25%), then Tenant, at its option, may terminate this Lease, by delivering written notice of termination to Landlord within thirty (30) days of the event of casualty. All Rent shall be paid through the date of Landlord's receipt of Tenant's notice of termination. In the event of such termination, Landlord shall be entitled to any and all insurance proceeds relating to such casualty to be paid under all insurance policies to be carried under this Lease or any other insurance policies carried by Tenant on the Premises. Notwithstanding the foregoing, if the damage or destruction is due, in whole or in part to the negligence, recklessness, or willful misconduct of Tenant, its agents, employees, or contractors, then Tenant shall have no right to an abatement of Rent, and any and all work performed by Landlord to repair or reconstruct the Premises shall be at Tenant's sole cost and expense, which cost and expense shall constitute Additional Rent payable pursuant to the terms and conditions of this Lease.

Section 9.2 **Escrow of Insurance Proceeds.** In the event of a casualty resulting in a loss payment for the Improvements in an amount greater than One Hundred and No/100 Thousand Dollars (\$100,000.00), the proceeds of all insurance policies maintained by Tenant shall be deposited in Landlord's name in an escrow account at a bank or other financial institution designated by Landlord, and shall be used by Tenant for the repair, reconstruction or restoration of the Improvements. Such proceeds shall be disbursed periodically by Landlord upon certification of the architect or engineer having supervision of the work that such amounts are the amounts paid or payable for the repair, reconstruction or restoration. Tenant shall, at the time of establishment of such escrow account and from time to time thereafter until said work shall have been completed and paid

for, furnish Landlord with adequate evidence that at all times the undisbursed portion of the escrowed funds, together with any funds made available by Tenant, is sufficient to pay for the repair, reconstruction or restoration in its entirety. Tenant shall obtain and make receipted bills available to Landlord and, upon completion of said work, full and final waivers of lien. Upon the final completion of the repair, reconstruction or restoration, any un-disbursed portion of the escrowed funds, plus any interest earned thereon, shall be delivered to Landlord. In the event of a casualty resulting in a loss payment for the Improvements in an amount equal to or less than the amount stated above, the proceeds shall be paid to Tenant, and shall be applied towards repair, reconstruction and restoration. Tenant shall have no right to an abatement or Rent for any damage to Improvements and/or Personalty.

Section 9.3 **Uninsured Losses.** Nothing contained herein shall relieve Tenant of its obligations under this Article if the destruction or damage is not covered, either in whole or in part, by insurance.

## **ARTICLE 10 ADDITIONS, ALTERATIONS AND REMOVALS**

Section 10.1 **Prohibition.** Except as hereinafter expressly provided in Section 10.2, no portion of the Premises shall be demolished, removed, modified or altered by Tenant in any manner whatsoever without the prior written consent and approval of Landlord, which may be withheld or conditioned by Landlord in its sole and absolute discretion.

Section 10.2 **Permitted Renovations.** Tenant shall be entitled and obligated to undertake all alterations to the Premises required by any applicable law or ordinance including, without limitation, any alterations required by any Accessibility Laws. Tenant shall be entitled to make Minor Alterations, as defined herein, to the Premises without Landlord's prior consent, and without prior notice to Landlord. As used herein, "***Minor Alterations***" shall mean an alteration to the Premises the cost of which does not exceed \$25,000.00 and which does not decrease the value or the square footage of the Improvements. In performing any alterations or renovations to the Premises, including Minor Alterations, Tenant shall meet and comply with all of the following conditions:

(a) Before the commencement of any such alterations, Tenant shall furnish to Landlord plans and specifications therefor or a detailed itemization thereof; provided, however, for non-structural Minor Alterations Tenant shall have no obligation to deliver plans and specifications or an itemization of the work to Landlord before commencement of such work.

(b) Before the commencement of any such alterations, Tenant shall obtain the approval (if any is required) thereof by all governmental departments or authorities having or claiming jurisdiction of or over the Premises.

(c) Tenant represents and warrants to Landlord that all such alterations will be performed in a good and workmanlike manner, in accordance with the terms, provisions and conditions of this Lease, and for structural alterations (other than Minor Alterations), in accordance with the plans and specifications or itemization thereof approved by Landlord.

(d) Landlord shall have the right to inspect any such work at all times during normal working hours and to maintain at the Premises for that purpose (at its own expense) such inspector(s) as it may deem necessary so long as such inspections do not interfere with



Tenant's work (but Landlord shall not thereby assume any responsibility for the proper completion of the alterations in accordance with the terms of this Lease, nor any liability arising from the improper performance thereof).

(e) All such alterations shall be performed at Tenant's cost and expense and free of any expense to Landlord and free of any liens on Landlord's title.

(f) Upon substantial completion of any such alterations Tenant shall procure a certificate of occupancy or other written approval, from the appropriate governmental authorities verifying the substantial completion thereof and shall provide a copy of same to Landlord, but only if such certificate of occupancy or other written approval is required by the governmental authority.

(g) Tenant shall, and hereby agrees to, indemnify and save and hold Landlord harmless from and against and reimburse Landlord for any and all loss, damage, cost and expense (including, without limitation, reasonable attorneys' fees) incurred by or asserted against Landlord which is occasioned by or results, directly or indirectly, from any construction or renovation activities conducted upon the Premises; whether or not the same is caused by or is the fault of Tenant or any contractor, subcontractor, laborer, supplier, materialman or any other third party.

## **ARTICLE 11 MAINTENANCE AND REPAIRS**

Section 11.1 **Tenant's Obligations.** From and after the Effective Date and continuing throughout the Term of this Lease Tenant shall at all times and at its sole cost and expense, put, keep, replace and maintain the Premises in good repair and in good, safe and substantial order and condition, shall make all repairs and replacements thereto, ordinary and extraordinary, howsoever the necessity or desirability for repairs may occur, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise, and shall use all reasonable precautions to prevent waste, damage or injury.

Section 11.2 **Landlord's Obligation.** Landlord shall not be required to make any alterations, reconstructions, replacements, changes, additions, improvements or repairs of any kind or nature whatsoever to the Premises or any portion thereof (including, without limitation, any portion of the Improvements) at any time during the Term of this Lease, except as otherwise provided herein. Landlord is not responsible for the repair of conditions caused by deliberate or negligent acts or omissions of Tenant excepting normal wear and tear. Landlord shall be responsible for replacement of all electrical, gas, plumbing, sanitary, heating, ventilation, air conditioning, and other facilities and appliances within the Premises during the term of this Lease, unless such replacement or repair is the result of Tenant's actions or negligence.

## **ARTICLE 12 LANDLORD'S RIGHT TO INSPECT**

Landlord and its agents shall have the right, but not the obligation, to enter upon the Premises or any portion thereof at any reasonable time to inspect the operation, sanitation, safety, maintenance and use of the same, or any portions of the same and to assure itself that Tenant is in full compliance

with its obligations under this Lease (but Landlord shall not thereby assume any responsibility for the performance of any of Tenant's obligations hereunder, nor any liability arising from the improper performance thereof). In making any such inspections, Landlord shall not unduly interrupt or interfere with the conduct of Tenant's business. At any time within two (2) months immediately preceding the expiration of the Term, Landlord may affix to any suitable part of the Premises a notice for the rental or sale of the Premises and cause said notice to remain affixed to the Premises without hindrance or molestation.

### **ARTICLE 13**

#### **ASSIGNMENT, TRANSFER AND SUBLETTING BY TENANT**

Section 13.1 **Transfers Prohibited Without Consent.** Tenant may not assign, sell, sublease, or transfer its entire interest in this Lease without the prior written consent of Landlord, which consent may be withheld at Landlord's sole discretion; provided, however, Tenant may sublease or license to third parties any portion of the Premises, in Tenant's sole discretion, to Qualified Subtenants in accordance with Article III hereof. During the term of this Lease and subject to the terms and provisions hereof, Tenant shall have the sole right and authority to manage, operate, negotiate, execute, enter into, and administer any and all licenses, occupancy agreements, subleases, advertising agreements, supplier agreements, and to further direct and supervise the Premises.

Section 13.2 **Indirect Transfers Prohibited Without Consent.** A sale, assignment, transfer, exchange or other disposition of the membership interests of Tenant, a change in the governance structure of Tenant, or the appointment of a new managing member or manager of Tenant that results in a change or transfer of management or control of Tenant, shall be deemed an assignment under Section 13.1 of this Lease.

Section 13.3 **Effect of Consent.** Unless expressly agreed by Landlord in writing to the contrary, Landlord's consent to any assignment of this Lease shall not operate to release any Tenant-assignor from its obligations hereunder, with respect to which said Tenant-assignor shall remain personally liable. Any assignee, subtenant or transferee approved by Landlord shall expressly assume this Lease by an agreement in recordable form, an original executed counterpart of which shall be delivered to Landlord prior to any assignment of the Lease. Any sale, assignment, transfer, sublease or encumbrance in violation of this Article shall be voidable at Landlord's option.

### **ARTICLE 14**

#### **LANDLORD'S INTEREST NOT SUBJECT TO LIENS**

Section 14.1 **Liens, Generally.** Tenant shall not create or cause to be imposed, claimed or filed upon the Premises, or any portion thereof, or upon the interest of Landlord therein, any lien, charge or encumbrance whatsoever. If, because of any act or omission of Tenant, any such lien, charge or encumbrance shall be imposed, claimed or filed, Tenant shall, at its sole cost and expense, and within thirty (30) days from the date of such imposition, claim or filing, cause the same to be fully paid and satisfied or otherwise discharged of record (by bonding or otherwise) and Tenant shall indemnify and save and hold Landlord harmless from and against any and all costs, liabilities, suits, penalties, claims and demands whatsoever, and from and against any and all attorneys' fees, at both trial and all appellate levels, resulting or on account thereof and therefrom. In the event that Tenant shall fail to comply with the foregoing provisions of this Section, Landlord shall have the option of paying, satisfying or otherwise discharging (by bonding or otherwise) such lien, charge or

encumbrance and Tenant agrees to reimburse Landlord, upon demand and as Additional Rent, for all sums so paid and for all costs and expenses incurred by Landlord in connection therewith, together with interest thereon, until paid.

Section 14.2 **Construction Liens.** Landlord's interest in the Premises shall not be subjected to liens of any nature by reason of Tenant's construction, alteration, renovation, repair, restoration, replacement or reconstruction of any Improvements or Personalty, or by reason of any other act or omission of Tenant (or of any person claiming by, through or under Tenant) including, but not limited to, construction liens. All persons dealing with Tenant are hereby placed on notice that such persons shall not look to Landlord or to Landlord's credit or assets (including Landlord's interest in the Premises) for payment or satisfaction of any obligations incurred in connection with the construction, alteration, renovation, repair, restoration, replacement or reconstruction thereof by or on behalf of Tenant. Tenant has no power, right or authority to subject Landlord's interest in the Premises to any construction lien or claim of lien. If a lien, a claim of lien or an order for the payment of money shall be imposed against the Premises Tenant shall, within thirty (30) days after written notice of such lien, claim or order, pay the obligation secured thereby or remove the lien by bond or by any other method prescribed or permitted by law, and deliver to Landlord a written instrument of release in recordable form.

## **ARTICLE 15 ADDITIONAL MATERIAL PROVISIONS**

Section 15.1 **Fiscal Non-Funding.** Notwithstanding anything to contrary contained herein, the Term of this Lease shall be contingent upon the appropriation of funds by the Landlord to fulfill its requirements under this Lease. In the event the Landlord terminates this Lease based upon fiscal non-funding, then such termination shall be without penalty or expense to the Landlord, except for any such obligations that have arisen prior to the termination date.

## **ARTICLE 16 SUBORDINATION, ATTORNMEN AND ESTOPPEL CERTIFICATE**

Section 16.1 **Subordination.** Tenant's rights under this Lease are subordinate, and subject, to: (i) all present and future ground or underlying leases affecting all or any part of the Premises; and (ii) any easement, license, mortgage, deed of trust or other security instrument now or hereafter affecting the Premises. Tenant's subordination provided in this Section 16.1 is self-operative and no further instrument of subordination is required.

Section 16.2 **Attornment.** Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

Section 16.3 **Estoppel Certificate.** Tenant shall certify, within five (5) days from receipt of Landlord's written notice, and without charge or cost to Landlord, by written instrument, which written instrument Tenant shall duly execute and deliver to Landlord or any other person designated by Landlord: (i) that this Lease is unmodified and in full force and effect (or if modified, stating the modification and that this Lease is in full force and effect as modified); (ii) the dates, if any, to which Rent has been paid; (iii) whether Landlord has failed to perform any covenant, term or condition

under this Lease, and the nature of such failure, if any; and (iv) such other relevant information as Landlord may request.

## **ARTICLE 17 END OF TERM**

Section 17.1 **Surrender of Premises.** Tenant shall, on or before the last day of the Term or upon the sooner termination thereof, peaceably and quietly surrender and deliver to Landlord the Premises in good order, condition and repair, reasonable wear and tear excepted, and free and clear of all liens and encumbrances.

Section 17.2 **Holding Over.** If Tenant or any other person or party shall remain in possession of the Premises or any part thereof following the expiration of the Term or earlier termination of this Lease without an agreement in writing between Landlord and Tenant with respect thereto, the person or party remaining in possession shall be deemed to be a tenant at sufferance, and during any such holdover, the Rent payable under this Lease by such tenant at sufferance shall be double the rate or rates in effect immediately prior to the expiration of the Term or earlier termination of this Lease. Additionally, Tenant shall be liable to Landlord for all of Landlord's consequential damages resulting directly or indirectly from Tenant's failure to surrender the Premises to Landlord in accordance with the terms of this Lease. In no event, however, shall such holding over be deemed or construed to be or constitute a renewal or extension of this Lease.

## **ARTICLE 18 LIABILITY OF LANDLORD: INDEMNIFICATION**

Section 18.1 **Liability of Landlord.** Landlord shall not be liable to Tenant, its employees, agents, business invitees, licensees, customers, clients, family members, guests, successors or assigns, for any damage, injury, loss, compensation or claim, including, but not limited to, claims for the interruption of or loss to Tenant's business, based on, arising out of or resulting from any cause whatsoever, including, but not limited to: (a) repairs to any portion of the Premises; (b) interruption in Tenant's use of the Premises; (c) any accident or damage resulting from the use or operation (by Landlord, Tenant or any other person or persons) of any equipment within the Premises, including without limitation, heating, cooling, electrical or plumbing equipment or apparatus; (d) the termination of this Lease by reason of the condemnation or destruction of the Premises in accordance with the provisions of this Lease; (e) any fire, robbery, theft, mysterious disappearance or other casualty; (f) the actions of any other person or persons; and (g) any leakage or seepage in or from any part or portion of the Premises, whether from water, rain or other precipitation that may leak into, or flow from, any part of the Premises, or from drains, pipes or plumbing fixtures in the Improvements. Any Personalty or personal effects stored or placed by the Tenant or its employees in or about the Premises shall be at the sole risk of the Tenant. Notwithstanding anything herein to the contrary Landlord shall be liable to the Tenant, its employee, agents, business invitees, licensees, customer, client, family member or guests for any damage, injury, loss or claim that arises as a direct and proximate cause of Landlord's gross negligence or intentional wrongdoing.

Section 18.2 **Indemnification of Landlord.** Tenant shall defend, indemnify and save and hold Landlord harmless from and against any and all liabilities, obligations, losses, damages, injunctions, suits, actions, fines, penalties, claims, demands, costs and expenses of every kind or nature, including reasonable attorneys' fees and court costs, incurred by Landlord, arising directly or indirectly from or out of: (a) any failure by Tenant to perform any of the terms or conditions of this Lease on Tenant's part to be performed; (b) any accident, injury or damage which shall happen at, in

or upon the Premises, however occurring; (c) any matter or thing growing out of the condition, occupation, use, or operation by any person of the Premises, or any part thereof, or the operation of the business contemplated by this Lease to be conducted thereon, thereat, therein, or therefrom; (d) any failure of Tenant to comply with any laws, ordinances, requirements, orders, directions, rules or regulations of any governmental authority; (e) any contamination of the Premises, or the ground waters thereof, arising on or after the date Tenant takes possession of the Premises and occasioned by the use, transportation, storage, spillage or discharge thereon, therein or therefrom of any Hazardous Materials, whether by Tenant or by any agent or invitee of Tenant; (f) any discharge of Hazardous Materials from the Premises into any septic facility or sanitary sewer system serving the Premises arising on or after the date Tenant takes possession of the Premises, whether by Tenant or by any agent of Tenant; or (g) any other act or omission of Tenant, its employees, agents, invitees, customers, licensees or contractors. Tenant's indemnity obligations under this Article and elsewhere in this Lease arising prior to the expiration, or earlier termination, or assignment of this Lease shall survive any such expiration, termination or assignment.

Section 18.3 **Notice of Claim or Suit.** Tenant shall promptly notify Landlord of any claim, action, proceeding or suit instituted or threatened against Tenant or Landlord of which Tenant receives notice or of which Tenant acquires knowledge. In the event Landlord is made a party to any action for damages or other relief against which Tenant has indemnified Landlord, as aforesaid, Tenant shall defend Landlord, pay all costs and shall provide effective counsel to Landlord in such litigation or, at Landlord's option, shall pay all attorneys' fees and costs incurred by Landlord in connection with its own defense or settlement of said litigation.

Section 18.4 **Limitation on Liability of Landlord.** In the event Tenant is awarded a money judgment against Landlord, Tenant's sole recourse for satisfaction of such judgment shall be limited to execution against the Premises including set off against rent obligations. In no event shall any officer, member, or director of Landlord, including but not limited to the Town of Bluffton, be personally liable for the obligations of Landlord hereunder.

## **ARTICLE 19 DEFAULT**

Section 19.1 **Events of Default.** Each of the following events shall be an Event of Default hereunder by Tenant and shall constitute a breach of this Lease:

(a) If Tenant shall fail to pay, when due, any Rent, or portion thereof, or any other sum due to Landlord from Tenant hereunder, and such failure shall continue for a period of five (5) days after the due date thereof.

(b) If Tenant shall violate or fail to comply with or perform any other term or condition to be performed or observed by Tenant under this Lease, and such violation or failure shall continue for a period of fifteen (15) days after written notice thereof from Landlord; provided, however, if Landlord has provided notice to Tenant under this Subsection (b) twice during any twelve (12) month period, Landlord may declare Tenant in default for any subsequent violation or failure to comply with or perform any such term or condition without notice.

(c) If any assignment, transfer, sublease, merger or encumbrance shall be made or deemed to be made that is in violation of the terms and conditions of this Lease.

(d) If Tenant shall cease the actual and continuous operation of the business contemplated by this Lease to be conducted by Tenant upon the Premises; or if Tenant shall vacate, desert or abandon the Premises; or if the Premises shall become empty and unoccupied; or if Tenant is ordered to terminate or suspend the operation of the business on the Premises by a regulatory authority with jurisdiction over the operation of child care centers. Tenant shall be deemed to have abandoned the Premises or ceased to continuously operate its business in violation of this Lease if Tenant fails to open and continuously operate its business in accordance with this Lease for more than fourteen (14) consecutive days, including weekends and holidays.

(e) If, at any time, Tenant shall file in any court, pursuant to any statute of either the United States or of any State, a petition in bankruptcy or insolvency, or for reorganization or arrangement, or for the appointment of a receiver or trustee of all or any portion of Tenant's property, including, without limitation, its leasehold interest in the Premises, or if Tenant shall make an assignment for the benefit of its creditors or petitions for or enters into an arrangement with its creditors.

(f) If, at any time, there shall be filed against Tenant in any courts pursuant to any statute of the United States or of any State, a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee of all or a portion of Tenant's property, including, without limitation, its leasehold interest in the Premises, and any such proceeding against Tenant shall not be dismissed within ten (10) days following the commencement thereof.

(g) If Tenant's interest in the Premises, Improvements, or Personalty shall be seized under any levy, execution, attachment or other process of court where the same shall not be vacated or stayed on appeal or otherwise within thirty (30) days thereafter, or if Tenant's leasehold interest in the Premises, Improvements, or Personalty is sold by judicial sale and such sale is not vacated, set aside or stayed on appeal or otherwise within thirty (30) days thereafter.

(h) If Tenant or any agent of Tenant falsifies any report or misrepresents any information required to be furnished to Landlord pursuant to this Lease.

(i) The death of Tenant or any guarantor of Tenant's obligations hereunder; or the commencement of steps or proceedings toward the dissolution, winding up, or other termination of the existence of Tenant or of any guarantor of Tenant's obligations hereunder, or toward the liquidation of any of their respective assets.

(j) If Tenant fails to make necessary improvements required and contemplated by this Lease, or if Tenant fails to follow the procedure for having improvements approved by Landlord.

(k) The occurrence of any other event described as a default elsewhere in this Lease, or any addendum or amendment hereto, regardless of whether such event is defined as an "*Event of Default*."

Section 19.2 **Remedies on Default.** If any of the Events of Default hereinabove specified shall occur, Landlord, at any time thereafter, shall have and may exercise any of the following rights and remedies:

(a) Landlord may, pursuant to written notice thereof to Tenant, immediately terminate this Lease and, peaceably or pursuant to summary dispossession proceedings or other appropriate legal proceedings, re-enter, retake and resume possession of the Premises for Landlord's own account without being liable for any damages therefor, and, for Tenant's breach of and default under this Lease, recover immediately from Tenant any and all Rent due or in existence at the time of such termination, including, without limitation, (i) all Rent and other sums, charges, payments, costs and expenses agreed and/or required to be paid by Tenant to Landlord hereunder, (ii) all costs and expenses of Landlord in connection with the recovery of possession of the Premises, including reasonable attorneys' fees and court costs, and (iii) all costs and expenses of Landlord in connection with any reletting or attempted reletting of the Premises or any part or parts thereof, including, without limitation, brokerage fees, attorneys' fees and the cost of any alterations or repairs, which may be reasonably required to so relet the Premises, or any part or parts thereof.

(b) Landlord may, without re-entering, retaking or resuming possession of the Premises, sue for all Rent and all other sums, charges, payments, costs and expenses due from Tenant to Landlord hereunder either: (i) as they become due under this Lease, taking into account that Tenant's right and option to pay the Rent hereunder on a monthly basis in any particular Lease Year is conditioned upon the absence of a default on Tenant's part in the performance of its obligations under this Lease, or (ii) at Landlord's option, accelerate the maturity and due date of the whole or any part of the Rent for the entire then-remaining unexpired balance of the Term, as well as all other sums, charges, payments, costs and expenses required to be paid by Tenant to Landlord hereunder, including, without limitation, damages for breach or default of Tenant's obligations hereunder in existence at the time of such acceleration, such that all sums due and payable under this Lease shall, following such acceleration, be treated as being and, in fact, be due and payable in advance as of the date of such acceleration. Landlord may then proceed to recover and collect all such unpaid Rent and other sums so sued for from Tenant by distress, levy, execution or otherwise. Regardless of which of the foregoing alternative remedies is chosen by Landlord under this subsection (b), Landlord shall not be required to relet the Premises nor exercise any other right granted to Landlord pursuant to this Lease, nor shall Landlord be under any obligation to minimize or mitigate Landlord's damages or Tenant's loss as a result of Tenant's breach of or default under this Lease.

(c) In addition to the remedies specified and enumerated above, Landlord shall have and may exercise the right to invoke any other remedies allowed at law or in equity as if the remedies of re-entry, unlawful detainer proceedings and other remedies were not herein provided. Accordingly, the mention in this Lease of any particular remedy shall not preclude Landlord from having or exercising any other remedy at law or in equity. Nothing herein contained shall be construed as precluding the Landlord from having or exercising such lawful remedies as may be and become necessary in order to preserve the Landlord's right or the interest of the Landlord in the Premises and in this Lease, even before the expiration of any notice periods provided for in this Lease, if under the particular circumstances then existing the allowance of such notice periods will prejudice or will endanger the rights and estate of the Landlord in this Lease and in the Premises.

**Section 19.3 Landlord May Cure Tenant Defaults.** If Tenant shall default in the performance of any term or condition on its part to be performed hereunder, Landlord may, after ten (10) days written notice to Tenant (or without notice if, in Landlord's reasonable opinion, an emergency exists) perform the same for the account and at the expense of Tenant. If, at anytime and by reason of such default, Landlord is compelled to pay, or elects to pay, any sum of money or do any

act which will require the payment of any sum of money, or is compelled to incur any expense (including, but not limited to, attorneys' fees and costs) in the enforcement of its rights hereunder or otherwise, such sum or sums, together with interest thereon at the highest rate allowed under the laws of the state in which the Premises is located, shall be deemed Additional Rent hereunder and shall be repaid to Landlord by Tenant promptly when billed therefor, and Landlord shall have all the same rights and remedies in respect thereof as Landlord has in respect of all other Rent herein reserved.

Section 19.4 **Rights Cumulative.** The rights and remedies provided and available to Landlord in this Lease are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by Landlord, shall be deemed to be in exclusion of any other.

## **ARTICLE 20 IMPROVEMENTS AND PERSONALTY**

All Improvements and Personalty installed by Tenant upon the Premises shall be new or completely reconditioned. In the event Tenant fails to remove any Personalty within thirty (30) days after such expiration or termination of this Lease, then said Personalty shall be deemed abandoned by Tenant and shall automatically become the property of Landlord. Tenant shall be responsible for the timely filing of all required tangible personal property tax returns and for the timely payment of all taxes assessed against any personal property, including, but not limited to, Improvements and Personalty, located in or upon the Premises or utilized by Tenant in the conduct of its business whether or not such personal property was originally installed by Tenant.

## **ARTICLE 21 ROOF(S)**

Tenant shall not use the roof for any purpose, nor shall Tenant make any penetrations in the roof, without Landlord's prior written consent, which consent Landlord may withhold at Landlord's sole discretion. If Tenant's use of the Premises requires that equipment be placed upon the roof, or that the roof be penetrated, then upon Tenant's receipt of approval from Landlord, Tenant shall coordinate penetration of the roof using Landlord's approved roofing contractor.

## **ARTICLE 22 NOTICES; ADDRESSES**

Any notice required or permitted to be given under this Lease must be given only by one of the following: (a) United States registered or certified mail, postage prepaid, return receipt requested, (b) facsimile with confirmation notice or (c) reputable overnight courier service which provides written evidence of delivery, or (d) personal delivery; and addressed as follows:

If Notice to Tenant:                      Don Ryan Center for Innovation, Inc.  
Attn: CEO  
7 Venture Drive, Suite 100  
Bluffton, South Carolina 29910

If Notice to Landlord:                      Town of Bluffton  
Attn: Town Manager  
20 Bridge Street  
Bluffton, South Carolina 29910



or such other address as may be designated by either party by written notice to the other. Except as otherwise provided in this Lease, every notice, demand, request or other communication shall be deemed to have been given or served upon actual receipt thereof. Notwithstanding the foregoing, any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or the failure or refusal of such person or party to accept delivery of the notice.

## **ARTICLE 23 MISCELLANEOUS**

Section 23.1 **Brokerage.** Landlord and Tenant hereby represent and warrant to each other that they have not engaged, employed or utilized the services of any business or real estate brokers, salesmen, agents or finders in the initiation, negotiation or consummation of the business and real estate transaction reflected in this Lease.

Section 23.2 **No Partnership or Joint Venture.** Landlord shall not, by virtue of this Lease, in any way or for any purpose, be deemed to be a partner of Tenant in the conduct of Tenant's business upon, within or from the Premises or otherwise, or a joint venturer or a member of a joint enterprise with Tenant.

Section 23.3 **Entire Agreement.** This Lease contains the entire agreement between the parties and, except as otherwise provided herein, can only be changed, modified, amended or terminated by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Landlord and Tenant that there are no verbal agreements, representations, warranties or other understandings affecting the same; and that Tenant hereby waives, as a material part of the consideration hereof, all claims against Landlord for rescission, damages or any other form of relief by reason of any alleged covenant, warranty, representation, agreement or understanding not contained in this Lease.

Section 23.4 **Waiver.** No release, discharge or waiver of any term or condition of this Lease shall be enforceable against or binding upon Landlord unless in writing and executed by Landlord. Neither the failure of Landlord to insist upon a strict performance of any of the terms and conditions hereof, nor the acceptance of any Rent by Landlord with knowledge of a breach of this Lease by Tenant in the performance of its obligations hereunder, shall be deemed a waiver of any rights or remedies that Landlord may have or a waiver of any subsequent breach or default in any of such terms and conditions.

Section 23.5 **Time.** Time is of the essence in every particular of this Lease, including, without limitation, obligations for the payment of money.

Section 23.6 **Costs and Attorneys' Fees.** If either party shall bring an action to recover any sum due hereunder, or for any breach hereunder, and shall obtain a judgment or decree in its favor, the court may award to such prevailing party its reasonable costs and reasonable attorneys' fees, specifically including reasonable attorneys' fees incurred in connection with any appeals. Landlord shall also be entitled to recover its reasonable attorneys' fees and costs incurred in any bankruptcy action filed by or against Tenant, including, without limitation, those incurred in seeking relief from the automatic stay, in dealing with the assumption or rejection of this Lease, in any adversary proceeding, and in the preparation and filing of any proof of claim.

Section 23.7 **Public Telephone.** Tenant shall not at any time install a public or private pay telephone within the Premises or on or about the exterior of the Premises.

Section 23.8 **Captions and Headings.** The captions and headings in this Lease have been inserted herein only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of, or otherwise affect, the terms and conditions of this Lease.

Section 23.9 **Severability.** If any term or condition of this Lease shall be deemed to be invalid, it shall be considered deleted therefrom and shall not invalidate the remaining terms and conditions of this Lease.

Section 23.10 **Successors and Assigns.** The terms and conditions contained in this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective successors, assigns, subtenants, or licensees.

Section 23.11 **Applicable Law.** This Lease shall be governed by, and construed in accordance with, the laws of the state in which the Premises is located without regard to conflict laws. Landlord and Tenant hereby agree that any legal proceedings arising pursuant to this Lease or the Premises shall be instituted in, and Landlord and Tenant each submits itself to the jurisdiction of, the Circuit Court in the County and State in which the Premises is located.

Section 23.12 **Recording.** Neither this Lease or a memorandum, short form or affidavit thereof, shall be recorded without the written consent of Landlord.

Section 23.13 **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Additional information regarding radon and radon testing may be obtained from the South Carolina Department of Public Health.

Section 23.14 **Counterparts.** This Lease may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument; provided, however, this Lease shall not be effective until fully executed by all parties.

*[Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibit(s) to Follow.]*

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be duly executed on or as of the day and year first above written.

**LANDLORD:**

TOWN OF BLUFFTON, a South Carolina municipal corporation

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BY: STEPHEN STEESE

ITS: TOWN MANAGER

DATE:\_\_\_\_\_

**TENANT:**

DON RYAN CENTER FOR INNOVATION, INC., a South Carolina nonprofit corporation

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BY: DAVID NELEMS

ITS: CEO & AUTHORIZED SIGNATORY

DATE:\_\_\_\_\_

**EXHIBIT “A”  
REAL PROPERTY**



Recommended Motion

Consideration of an Ordinance Approving the Adoption of a Master Lease Agreement Between The Town and The Don Ryan Center for Innovation, Inc. to Establish and Landlord-Tenant Relationship and Foster Continued Economic Development within the Buckwalter Commerce Park - Chris Forster, Assistant Town Manager

**“I make a motion to approve an ordinance authorizing the Town Manager to enter into a commercial master lease agreement with The Don Ryan Center for Innovation, Inc. establishing a landlord-tenant relationship at the property located at 97 Progressive Street, Bluffton South Carolina to foster continued economic development within the Buckwalter Commerce Park .”**