City of Flowery Branch
City Council Meeting
Thursday, October 06, 2022, 6:00 PM
City of Flowery Branch City Hall
5410 West Pine Street, Flowery Branch, GA 30542

CALL WORK SESSION TO ORDER:

PLEDGE OF ALLEGIANCE:

ADOPTION OF AGENDA:

UNFINISHED BUSINESS - WORK SESSION:

- Presentation on funding sources for funding the expansion of the Wastewater Treatment Plant.
  Water bill chart.pdf

NEW BUSINESS -WORK SESSION:

- Consider Resolution 22-017 - Alcoholic Beverage Fees
  Executive Summary Alcoholic Beverage Licensing Fees.pdf
  Resolution 22-017.pdf
- Consider Resolution 22-018 - Generator, Hazard Mitigation Grant Project Award
  Executuve Summary Resolution 22-018.pdf
  Resolution 22-018 Award of Generator Bid.pdf
- Consider Resolution 22-019 - Flowery Branch Market Outdoor Furniture Award
  Executive Summary Resolution 22-019 - Farmers Market Outdoor Furniture.pdf
  Resolution 22-019 Farmers Market Outdoor Furniture - Copy.pdf
- Consider Ordinance 671 - An Amendment to the Insurer Licensing Fee
  Executive Summary Work Session for Ordinance 671.pdf
  Ordinance 671 Insurer Licensing Fee.pdf
- Resolution authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of Revenue Bonds for the planned expansion of the Wastewater Treatment Plant
  ES 2022 Resolution Bond Sale ERB Rev.pdf
  Authorizing Resolution.pdf
- Approval of Client Electronic File Disclaimer & Acceptance – Infratec Consultants, Inc.
  ES - Infratec Client Disclaimer.pdf
  Electronic File Disclaimer Document 9-26-2022.pdf

DEPARTMENT REPORTS: - a. City Manager Report
b. City Clerk Report
c. Downtown Director Report
d. Finance Director Report
e. Planning Director Report
f. Police Department Report

g. Attorney Report
h. Council Report

ADJOURNMENT WORK SESSION:

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

PUBLIC COMMENTS: - Please limit to two minutes

CONSENT AGENDA:

- Consider September 1, 2022 City Council Meeting Minutes
  Unofficial September 1, 2022 Minutes.pdf
- Consider September 15, 2022 City Council Meeting Minutes
  Unofficial Minutes September 15, 2022.pdf
- Consider Mayor Asbridge September 2022 Per Diem
  Mayor Per Diem September 2022.pdf

UNFINISHED BUSINESS - VOTING SESSION:

- Consider Second Reading of Ordinance 504-C, Amending the Alcohol Licensing Ordinance
  Executive Summary Ordinance 504-C Amending Alcohol Ordinance.pdf
  Ordinance 504-C Alcohol License Amendment.pdf

NEW BUSINESS - VOTING SESSION:

- Consider Resolution 22-017 - Alcoholic Beverage Fees
  Executive Summary Alcoholic Beverage Licensing Fees.pdf
  Resolution 22-017.pdf
- Consider Resolution 22-018 - Generator, Hazard Mitigation Grant Project Award
  Execututve Summary Resolution 22-018.pdf
  Resolution 22-018 Award of Generator Bid.pdf
- Consider Resolution 22-019 - Flowery Branch Market Outdoor Furniture Award
  Executive Summary Resolution 22-019 - Farmers Market Outdoor Furniture.pdf
  Resolution 22-019 Farmers Market Outdoor Furniture - Copy.pdf
- Consider First Amendment to FB Main Street, A Master Condominium Shopping Center Lease Agreement with The Social Peach Boutique, LLC.
  ES - Social Peach 1st amend to lease more time ERB Rev.pdf
  First Amendment to The Social Peach Boutique Lease Agreement.pdf
  The Social Peach Boutique, LLC Lease Agreement.pdf
- Consider First Amendment to FB Main Street, A Master Condominium Shopping Center Lease Agreement with El Sabor Costeno Taqueria, LLC.
  First Amendment to El Sabor Lease Agreement.pdf
  El Sabor Costeno, LLC Lease Agreement.pdf
  ES - El Sabor 1st amend to lease more time .pdf
- Resolution authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of Revenue Bonds for the planned expansion of the Wastewater Treatment Plant

ES 2022 Resolution Bond Sale ERB Rev.pdf
Authorizing Resolution.pdf

- Approval of Client Electronic File Disclaimer & Acceptance – Infratec Consultants, Inc.
  ES - Infratec Client Disclaimer.pdf
  Electronic File Disclaimer Document 9-26-2022.pdf

EXECUTIVE SESSION:

ADJOURNMENT:

If you have a disability or impairment and need special assistance please contact the City Clerk prior to the meeting at 770-967-6371 - Meeting agenda is subject to change

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Presentation on funding sources for funding the expansion of the Wastewater Treatment Plant.

COUNCIL MEETING DATE: October 6, 2022

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:
No action requested

SAMPLE MOTION:
No motion requested

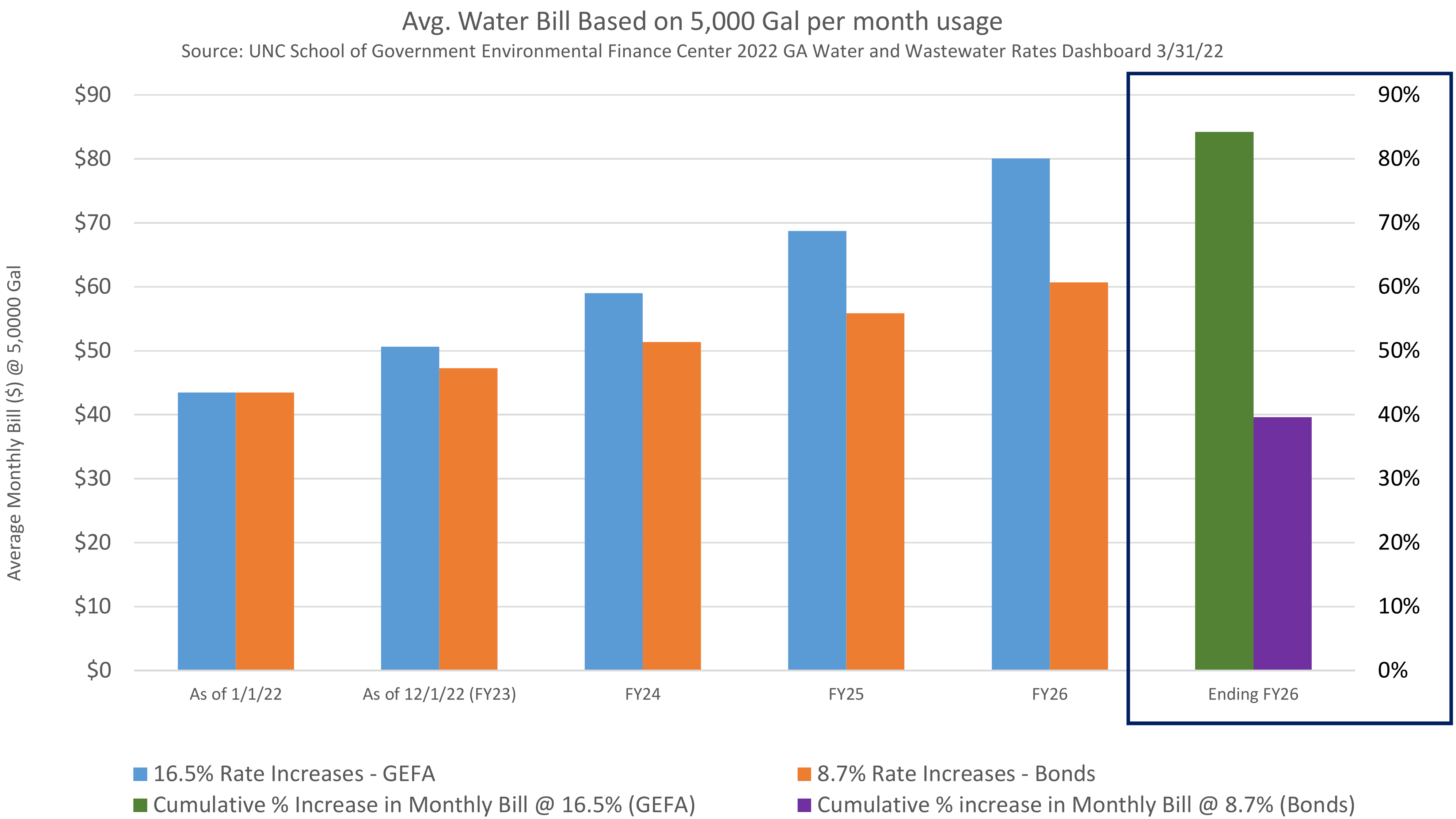
COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- Water bill chart.pdf


Avg. Water Bill Based on 5,000 Gal per month usage
Source: UNC School of Government Environmental Finance Center 2022 GA Water and Wastewater Rates Dashboard 3/31/22
Average Monthly Bill ($) @ 5,0000 Gal
$90
$80
$70
$60
$50
$40
$30
$20
$10
$0
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
As of 1/1/22
As of 12/1/22 (FY23)
FY24
FY25
FY26
Ending FY26
16.5% Rate Increases - GEFA
8.7% Rate Increases - Bonds
Cumulative % Increase in Monthly Bill @ 16.5% (GEFA)
Cumulative % increase in Monthly Bill @ 8.7% (Bonds)

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Resolution 22-017 - Alcoholic Beverage Fees

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
The Alcoholic Beverage Licensing Fees were last updated on March 15, 2018.

FACTS AND ISSUES:
This resolution will replace all prior resolutions and will update the fees for all alcoholic beverage caterers, event permits and amenity licenses.

OPTIONS:
Approve or Deny

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:
I make a motion to approve Resolution 22-017.

COLLABORATING DEPARTMENT:

DEPARTMENT: Police

Prepared by: Shelia Cooper

ATTACHMENTS

- Executive Summary Alcoholic Beverage Licensing Fees.pdf
- Resolution 22-017.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Update Alcohol Beverage Licensing Fees

DATE: 10/06/22

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL- N/A

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

COUNCIL ACTION REQUESTED ON: October 6th, 2022

PURPOSE: Flowery Branch City Council consideration of a resolution to amend the current alcohol beverage licensing fee resolution 18-004.

HISTORY: The last time the resolution had been updated was 2018.

FACTS AND ISSUES: This resolution will replace all prior resolutions. This resolution will update the fees for the alcoholic beverage caterer, event permit and amenity licenses.

OPTIONS: Approve resolution 22-017.

RECOMMENDED SAMPLE MOTION: I make a motion to approve Resolution 22-017.

DEPARTMENT: Flowery Branch Police Department

Prepared by: Chief Christopher Hulsey

ATTACHMENTS:

RESOLUTION NO. 22-017

A RESOLUTION ESTABLISHING THE AMOUNT OF ALCOHOLIC BEVERAGE LICENSING FEES; REPEALING CONFLICTING RESOLUTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Chapter 8 of the Flowery Branch Code authorizes the City Council of the City of Flowery Branch to set the amounts of fees for alcoholic beverage licensing.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Flowery Branch that the rates for alcoholic beverage licensing shall be as follows:

Section 1. Alcoholic Beverage Licensing Fees

Beer: Retail Package	$ 700.00
Beer: Consumption on Premises	$ 700.00
Beer: Wholesale	$ 150.00
Wine: Retail Package	$ 700.00
Wine: Consumption on Premises	$ 700.00
Wine: Wholesale	$ 150.00
Distilled Spirits: Retail Package	$5,000.00
Distilled Spirits: Consumption on Premises	$4,000.00
Brew Pub: Manufacturing	$5,000.00
Distilled Spirits Bottling	$1,000.00
Distilled Spirits: Wholesale	$ 150.00
Beer: Alcoholic Beverage Caterer	$ 300.00
Wine: Alcoholic Beverage Caterer	$ 300.00
Distilled Spirits: Alcoholic Beverage Caterer	$ 500.00
Amenity Permit	$ 200.00
Event Permit: Beer Caterer	$ 50.00
Event Permit: Wine Caterer	$ 50.00
Event Permit: Distilled Spirits Caterer	$ 250.00
Beer: Tasting Permit	$ 50.00
Wine: Tasting Permit	$ 150.00
Wine: Corkage Permit	$ 150.00
Growler Corkage Permit	$ 150.00
Transfer Fee	$ 200.00

Section 2. Repeal of Conflicting Resolutions.

Any part of any prior resolutions in conflict with the terms of this Resolution, are hereby repealed to the extent of the conflict; but it is hereby provided, that any resolution, ordinance or law which may be applicable hereto and aid in carrying out and making effective the intent, purpose and provisions hereof, is hereby adopted as a part hereof and shall be legally construed to be in favor of upholding this Resolution on behalf of the City of Flowery Branch.

Section 3. Severability.

If any paragraph, subparagraph, sentence, clause, phrase or any portion of this Resolution shall be declared invalid or unconstitutional by any court or competent jurisdiction or if the provisions of any part of this Resolution as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Resolution not so held to be invalid, or the application of the Resolution to other circumstances not so held to be invalid. It is hereby declared to be the intent of the City Council of the City of Flowery Branch to provide for separate and divisible parts, and it does hereby adopt any and all parts hereof as may not be held invalid for any reason.

Section 4. Effective Date.

This Resolution shall become effective the date it is adopted by the Council of the City of Flowery Branch.

SO RESOLVED this 6th day of October 2022.

____
Edward R. Asbridge, Mayor

ATTEST:

____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

____

E. Ronald Bennett, City Attorney

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Resolution 22-018 - Generator, Hazard Mitigation Grant Project Award

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
On September 15, 2017, the President declared that a major disaster exists in Georgia. This declaration was based on damage resulting from Hurricane Irma. In 2018, our Police Department applied for a generator grant through the Hazard Mitigation Grant from GEMA for our City Hall and Plaza building.

On February 17, 2022, council accepted the Grant Award in the amount of $36,372 to purchase and install a generator for the City Hall and Plaza Building. Award details were as follows:

75% Federal Cost Share	$27,279.00
10% State Cost Share	$3,637.00
15% Local Match Cost Share	$5,456.00
TOTAL:	$36,372.00

In anticipation of costs to be higher than the award, there are funds available in the Local Resources Fund in the amount of $50,000 to assist with match and any additional costs incurred.

FACTS AND ISSUES:
: Invitation to Bid was released August 10, 2022, and closed September 7, 2022. Bid site visit (non-mandatory) was held on August 24, 2022, at 11:00 am. There was one vendor that attended the meeting, and they were also the sole bidder.

Bidder is Current Edge Solutions out of Savannah, GA. Bid amounts are as follows:

60KW Bluestar propane generator with installation	$43,867.00
Propane tank with piping and 500 gallons fuel	$7,800.00
TOTAL:	$51,667.00

The City of Flowery Branch will be utilizing $21,471 of funding from the Local Resources Fund to cover the local match and additional funding requirements.

OPTIONS:
1. Accept and approve Resolution 22-018 awarding bid to Current Edge Solutions for Bid No: 22-010 Generator in the amount of $51,667.
2. Disapprove and provide alternative proposals.

** Please note: A previous resolution was approved accepting the GEMA grant for the generator which included our 15% local match of $5,456.00. In addition to that match, we will need to add additional funding from the Local Resource Fund in the amount of $15,295.00 which is included in this bid award resolution.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
Yes

AMOUNT AND SOURCE OF FUNDS:
$15,295 from Local Resource Fund

RECOMMENDATION:

SAMPLE MOTION:
I make a motion to approve Resolution 22-018 awarding generator bid number 22-010 to Current Edge Solutions for the purchase and installation of a generator in the amount of $51,667.00.

COLLABORATING DEPARTMENT:

DEPARTMENT: Finance

Prepared by: Shelia Cooper

ATTACHMENTS

- Executuve Summary Resolution 22-018.pdf
- Resolution 22-018 Award of Generator Bid.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Approval of Resolution 22-018: Generator – Hazard Mitigation Grant Project Award

DATE: October 6, 2022

BUDGET INFORMATION:
ANNUAL-
CAPITAL- $51,667.00

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

COUNCIL ACTION REQUESTED ON: Awarding Bid No. 22-010 to Current Edge Solutions for a propane generator for City Hall.

PURPOSE: Install a 60kw propane generator for City Hall for back-up power in the event of a power failure utilizing funds from the Hazard Mitigation Grant.

HISTORY: On September 15, 2017, the President declared that a major disaster exists in Georgia. This declaration was based on damage resulting from Hurricane Irma. In 2018, our Police Department applied for a generator grant through the Hazard Mitigation Grant from GEMA for our City Hall and Plaza building.

On February 17, 2022, council accepted the Grant Award in the amount of $36,372 to purchase and install a generator for the City Hall and Plaza Building. Award details were as follows:

75% Federal Cost Share	$27,279.00
10% State Cost Share	$3,637.00
15% Local Match Cost Share	$5,456.00
TOTAL:	**$36,372.00**

In anticipation of costs to be higher than the award, there are funds available in the Local Resources Fund in the amount of $50,000 to assist with match and any additional costs incurred.

FACTS AND ISSUES: Invitation to Bid was released August 10, 2022, and closed September 7, 2022. Bid site visit (non-mandatory) was held on August 24, 2022, at 11:00 am. There was one vendor that attended the meeting, and they were also the sole bidder.

Bidder is Current Edge Solutions out of Savannah, GA. Bid amounts are as follows:

60KW Bluestar propane generator with installation	$43,867.00
Propane tank with piping and 500 gallons fuel	$7,800.00
TOTAL:	**$51,667.00**

The City of Flowery Branch will be utilizing $21,471 of funding from the Local Resources Fund to cover the local match and additional funding requirements.

OPTIONS:

1. Accept and approve Resolution 22-018 awarding bid to Current Edge Solutions for Bid No: 22-010 Generator in the amount of $51,667.
2. Disapprove and provide alternative proposals.

RECOMMENDED SAMPLE MOTION: I make a motion to approve Resolution 22-018 awarding generator bid number 22-010 to Current Edge Solutions for the purchase and installation of a generator in the amount of $51,667.00.

DEPARTMENT: Finance

Prepared by: Krystle Hightower

RESOLUTION NO. 22-018

AWARD OF CONTRACT TO CURRENT EDGE SOLUTIONS FOR A GENERATOR FOR CITY HALL AND PLAZA

WHEREAS, City Council approved the Grant Award of $36,372.00 from GEMA to install a generator for the City Hall and Plaza building on February 17, 2022; and

WHEREAS, the City of Flowery Branch received one (1) qualified bid for said project, in the amount of $51,667.00; and

WHEREAS, the City of Flowery Branch is requesting acceptance of this bid with Current Edge Solutions in the amount of $51,667.00; and

WHEREAS, the additional funding in the amount of $15,295.00 will be moved from the Local Resources Fund to the grant fund for said project; and

NOW THEREFORE BE IT RESOLVED that the governing body for the City of Flowery Branch hereby authorizes the award of the contract to Current Edge Solutions for $51,667.00; and

BE IT FURTHER RESOLVED that the Mayor, City Manager, and City Attorney are authorized to sign documents that may be necessary to complete the generator project.

RESOLVED this 6th day of October 2022.

____
Edward R. Asbridge, Mayor

ATTEST:

____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

____
E. Ronald Bennett, Jr., City Attorney

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Resolution 22-019 - Flowery Branch Market Outdoor Furniture Award

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
On July 21, 2022, City Council was presented with a change order request for the Farmers Market Project. In this request was included furniture for the Market Alley in the amount of $143,100. At that time, the change request was approved excluding the furniture and City Council asked that an invitation to bid be created for the furniture items.

FACTS AND ISSUES:
Invitation to Bid was released August 10, 2022, and closed September 7, 2022. There were two (2) qualified bids received ranging from $28,058.10 to $40,165.00. The lowest bid was from Atlanta Teak Furniture in the amount as stated below:

17 Bistro Round Table – 36”	$619.00/each	$10,523.00
50 Chelmsford Stacking Armchairs	$339.00/each	$16,950.00
4 Hiback Rocking Chairs	$759.00/each	$3,036.00
Government Discount		- $3,050.90
Delivery/Assembly Fee		$600.00
TOTAL:		$28,058.10

The City of Flowery Branch will be utilizing the Tax Allocation District Funds within the Market and Streetscapes Capital Project.

OPTIONS:
1. Accept and approve Resolution 22-019 awarding bid to Atlanta Teak Furniture for Bid No: 22-011 Flowery Branch Market Outdoor Furniture in the amount of $28,058.10.
2. Disapprove and provide alternative proposals.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
Yes

AMOUNT AND SOURCE OF FUNDS:
$28,058.10 from TAD with the Market and Streetscapes Capital Project

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RECOMMENDATION:

SAMPLE MOTION:

I make a motion to approve Resolution 22-019 awarding Flowery Branch Market Outdoor Furniture bid number 22-011 to Atlanta Teak Furniture for the purchase and installation of 17 bistro round tables, 50 stacking armchairs, and 4 Hiback rocking chairs in the amount of $28,058.10.

COLLABORATING DEPARTMENT:

DEPARTMENT: Finance

Prepared by: Shelia Cooper

ATTACHMENTS

- Executive Summary Resolution 22-019 - Farmers Market Outdoor Furniture.pdf
- Resolution 22-019 Farmers Market Outdoor Furniture - Copy.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Approval of Resolution 22-019: Flowery Branch Market Outdoor Furniture Award

DATE: October 6, 2022

BUDGET INFORMATION:
ANNUAL-
CAPITAL- $28,058.10

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

COUNCIL ACTION REQUESTED ON: Awarding Bid No. 22-011 to Atlanta Teak Furniture for the Flowery Branch Market Outdoor Furniture.

PURPOSE: To purchase and install 17 Bistro round 36" tables, 50 stacking armchairs, and 4 Hiback rocking chairs for the Flowery Branch Market Alley.

HISTORY: On July 21, 2022, City Council was presented with a change order request for the Farmers Market Project. In this request was included furniture for the Market Alley in the amount of $143,100. At that time, the change request was approved excluding the furniture and City Council asked that an invitation to bid be created for the furniture items.

FACTS AND ISSUES: Invitation to Bid was released August 10, 2022, and closed September 7, 2022. There were two (2) qualified bids received ranging from $28,058.10 to $40,165.00. The lowest bid was from Atlanta Teak Furniture in the amount as stated below:

17 Bistro Round Table – 36"	$619.00/each	$10,523.00
50 Chelmsford Stacking Armchairs	$339.00/each	$16,950.00
4 Hiback Rocking Chairs	$759.00/each	$3,036.00
Government Discount		- $3,050.90
Delivery/Assembly Fee		$600.00
TOTAL:		**$28,058.10**

The City of Flowery Branch will be utilizing the Tax Allocation District Funds within the Market and Streetscapes Capital Project.

OPTIONS:

1. Accept and approve Resolution 22-019 awarding bid to Atlanta Teak Furniture for Bid No: 22-011 Flowery Branch Market Outdoor Furniture in the amount of $28,058.10.
2. Disapprove and provide alternative proposals.

RECOMMENDED SAMPLE MOTION: I make a motion to approve Resolution 22-019 awarding Flowery Branch Market Outdoor Furniture bid number 22-011 to Atlanta Teak Furniture for the purchase and installation of 17 bistro round tables, 50 stacking armchairs, and 4 Hiback rocking chairs in the amount of $28,058.10.

DEPARTMENT: Finance

Prepared by: Krystle Hightower

RESOLUTION NO. 22-019

AWARD OF CONTRACT TO ATLANTA TEAK FURNITURE FOR THE FLOWERY BRANCH MARKET OUTDOOR FURNITURE

WHEREAS, the City of Flowery Branch Market Alley design needs outdoor furniture; and

WHEREAS, the City of Flowery Branch received two (2) qualified bids for said project, ranging from $28,058.10 to $40,165.00, with Atlanta Teak Furniture qualifying as the preferred low bidder; and

WHEREAS, the City of Flowery Branch is requesting acceptance of this bid with Atlanta Teak Furniture in the amount of $28,058.10; and

WHEREAS, funding for said project will be provided by Fund 270, the Tax Allocation District Funds; and

NOW THEREFORE BE IT RESOLVED that the governing body for the City of Flowery Branch hereby authorizes the award of the contract to Atlanta Teak Furniture for $28,058.10; and

BE IT FURTHER RESOLVED that the Mayor, City Manager, and City Attorney are authorized to sign documents that may be necessary to complete the furniture project.

RESOLVED this 6th day of October 2022.

____
Edward R. Asbridge, Mayor

ATTEST:

____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

____
E. Ronald Bennett, Jr., City Attorney

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Ordinance 671 - An Amendment to the Insurer Licensing Fee

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
The insurer licensing fee ordinance was last updated in 2011 with the fee increase taking effect January 1, 2012.

FACTS AND ISSUES:
O.C.G.A. Sec. 33-8-8 permits Georgia municipalities to charge an annual flat fee to insurance companies transacting business within the municipal limits, the amount of which is determined by the population of each city. According to the revised Census, the population of Flowery Branch was revised to 10,144. Accordingly, under the authorizing statute, the City is authorized to increase its annual license fee to insurance companies from $50 to $75. For this fee increase to take effect by January 1, 2023, the City's ordinance must be adopted prior to the end of this year.

OPTIONS:
(1) Approve as presented with the $75 annual license fee (2) Keep the existing insurance licensing fee ordinance with the $50 annual license.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:
Work Session Only.

October 20, 2022 - First Vote
November 3, 2022 - Second/Final Vote

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- Executive Summary Work Session for Ordinance 671.pdf
- Ordinance 671 Insurer Licensing Fee.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Amendment to the Insurer Licensing Fee Ordinance 671

DATE: October 6, 2022

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL- N/A

COUNCIL ACTION REQUESTED ON: October 20, 2022 First Reading and November 3, 2022 Second Reading

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PURPOSE: To update the City's insurer licensing fee ordinance to adjust the fee based on the City's increase in population.

HISTORY: The insurer licensing fee ordinance was last updated in 2011 with the fee increase taking effect January 1, 2012.

FACTS AND ISSUES: O.C.G.A. Sec. 33-8-8 permits Georgia municipalities to charge an annual flat fee to insurance companies transacting business within the municipal limits, the amount of which is determined by the population of each city. According to the revised Census, the population of Flowery Branch was revised to 10,144. Accordingly, under the authorizing statute, the City is authorized to increase its annual license fee to insurance companies from $50 to $75. For this fee increase to take effect by January 1, 2023, the City's ordinance must be adopted prior to the end of this year.

OPTIONS: (1) Approve as presented with the $75 annual license fee (2) Keep the existing insurance licensing fee ordinance with the $50 annual license.

RECOMMENDED SAMPLE MOTION: Work Session Only

DEPARTMENT: Administration

Prepared by:

ATTACHMENTS: An Ordinance Amending Chapter 20 (Businesses), Article IV (Insurers) of the Code of the City of Flowery Branch, Georgia

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First Reading: 10/20/2022
Second Reading/Adoption: 11/3/2022

ORDINANCE NO. 671

AN ORDINANCE AMENDING CHAPTER 20 (BUSINESSES), ARTICLE IV (INSURERS), OF THE CODE OF THE CITY OF FLOWERY BRANCH, GEORGIA TO IMPOSE LICENSE FEES AND GROSS PREMIUMS TAXES ON INSURERS; TO ESTABLISH A DUE DATE FOR LICENSE FEES; TO PROVIDE FOR ENFORCEMENT; TO DIRECT TRANSMITTAL OF THIS ORDINANCE TO THE GEORGIA INSURANCE COMMISSIONER; TO ESTABLISH AN EFFECTIVE DATE; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS the City of Flowery Branch, Georgia is authorized by the Georgia Constitution, Art. 9, § 4, ¶ I(c); O.C.G.A. §33-8-8; O.C.G.A. § 33-8-8.1; O.C.G.A. § 33-8-8.2 and Section 6.5 of its Charter to impose taxation of insurance companies based on gross direct premiums received from insurance policies within the incorporated areas of the City of Flowery Branch, Georgia.

NOW THEREFORE the Council of the City of Flowery Branch hereby ordains as follows:

I. AMENDMENT TO CHAPTER 20 (BUSINESSES), ARTICLE IV (INSURERS).

Sections 20-114 through 20-147 of Chapter 20, Article IV of the Code of the City of Flowery Branch, Georgia, are deleted in their entirety and replaced with the following:

"ARTICLE IV. – INSURERS

Sec. 20-114. - License fees.

There is hereby levied for the year 2023 and for each year thereafter an annual license fee upon each insurer doing business within the city, in the amount of $75.00. For each separate business location in excess of one not covered by section 20-115 of this article, there is hereby levied a license fee in the amount of $75.00. For the purposes of this article, the term "insurer" means a company which is authorized to transact business in any of the classes of insurance designated in O.C.G.A. § 33-3-5.

Sec. 20-115. - License fees for insurers insuring certain risks at additional business locations.

For each separate business location, not otherwise subject to a license fee hereunder, operated and maintained by a business organization which is engaged in the business of lending money or transacting sales involving term financing and in connection with such loans or sales offers, solicits or takes application for insurance through a license agent of an insurer for insurance said insurer shall pay an additional license fee of twenty-six and 25/100 dollars ($26.25) per location for the year 2023 and for each year thereafter.

Sec. 20-116. - Gross premiums tax imposed on life insurers.

There is hereby levied for the year 2023 and for each year thereafter an annual tax based solely upon gross direct premiums upon each insurer writing life, accident and sickness insurance within the State of Georgia in an amount equal to one percent (1%) of the gross direct premiums received during the preceding calendar year in accordance with O.C.G.A. § 33-8-8.1. Gross direct premiums as used in this section shall mean gross direct premiums as used in O.C.G.A. § 33-8-4. The premium tax levied by this section is in addition to the license fees imposed by section 20-114 of this article.

Sec. 20-117. - Gross premiums tax, all other insurers.

There is hereby levied for the year 2023 and for each year thereafter an annual tax based solely upon gross direct premiums upon each insurer, other than an insurance transacting business in the class of insurance designated in subsection 1 of O.C.G.A. § 33-3-5, doing business within the state in an amount equal to two and one-half percent (2.5%) of the gross direct premiums received during the preceding calendar year in accordance with O.C.G.A. § 33-8-8.2. Gross direct premiums as used in this section shall mean gross direct premiums as used in O.C.G.A. § 33-8-4. The premium tax levied by this section is in addition to the license fees imposed by section 20-114 of this article.

Sec. 20-118. - Due date for license fees.

License fees imposed in sections 20-114 and 20-115 of this article shall be due and payable on the first day of 2023 and on the first date of each subsequent year.

Sec. 20-119. - Enforcement.

The fees and taxes levied by this article may be enforced by execution in the same manner as other taxes of the city. A violation of this article shall be grounds for refusing, or revoking a license, and the person responsible may be punished as for violations of other city ordinances.

Secs. 20-120—20-147. - Reserved."

II. ADMINISTRATIVE PROVISIONS

The city clerk is hereby directed to forward a duly certified copy of this ordinance to the Insurance Commissioner of the State of Georgia within forty-five (45) days of its adoption.

III. EFFECTIVE DATE

This ordinance shall become effective January 1, 2023.

IV. SEVERABILITY

In the event any portion of this ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the city council of the City of Flowery Branch, Georgia, that such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this ordinance which shall remain in full force and effect, as if the invalid or unconstitutional section, sentence, clause of phrase were not original part of the ordinance.

V. REPEALER

Section 20-114 through Section 20-147 of Chapter 20, Article IV of the Code of the City of Flowery Branch, all ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

SO ORDAINED this 3rd day of November, 2022.

____

Edward R. Asbridge, Mayor

ATTEST:

____

Shelia Cooper, City Clerk

Approved as to form:

____

E. Ronald Bennett, Jr., City Attorney

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Resolution authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of Revenue Bonds for the planned expansion of the Wastewater Treatment Plant

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
The City of Flowery Branch currently has a wastewater treatment plant designed to handle 400,000 gallons per day. This design has suited the city well for several decades, but as population and industry increases the need for additional treatment capacity does as well. The city has had, as a capital project, for many years an expansion of treatment capacity to 2.2 million gallons per day. Phase I consists of an expansion to 1.5 million gallons per day.

FACTS AND ISSUES:
When the planning of the expansion of the wastewater treatment plant began, the engineer's construction estimate for the expansion was $20,000,000. The city had previously obtained a loan from the Georgia Environmental Facilities Authority (GEFA) for $23,300,000. However, as time passed and supply chain issues arose, the anticipated construction cost of the plant increased to just under $30,000,000. Astonishingly, when the bids came in for the expansion, the low bid was approximately $52,000,000. There were three bids received ranging from $52M to $57M.

The city immediately began seeking alternatives to provide other wastewater treatment capacity solutions and started seeking funding sources to be able to build the planned expansion to handle the city's current and future growth.

One alternative for the additional funding needed is requesting an additional $30,000,000 in GEFA loans. By utilizing this funding avenue, ratepayers would see an increase of approximately 16.5% in both water and sewer rates on 12/1/22 and each July 1st through 2026 at which time the rates would be analyzed and adjusted for future ratepayers.

The other alternative for the additional funding needed is selling revenue bonds for which the debt service requirements would require an increase of approximately 8.5% in both water and sewer rates on 12/1/22 and each July 1st through 2026 at which time the rates would be analyzed and adjusted for future ratepayers.

OPTIONS:
1) Approve the resolution as presented authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of revenue bonds. 2) Do not approve the resolution and request the $30,000,000 from GEFA. 3) Do not approve the resolution and rebid the project with a different scope.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
Yes

AMOUNT AND SOURCE OF FUNDS:
Bonds or GEFA $30,000,000 (this item), GEFA $23.3M

RECOMMENDATION:
Authorize Resolution #22-020 authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of revenue bonds to fund the expansion of the wastewater treatment plant.

SAMPLE MOTION:
Motion to authorize Resolution #22-020 authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of revenue bonds to fund the expansion of the wastewater treatment plant.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS
- ES 2022 Resolution Bond Sale ERB Rev.pdf
- Authorizing Resolution.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Resolution authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of revenue bonds for the planned expansion of the wastewater treatment plant

DATE: October 6, 2022

BUDGET INFORMATION:
ANNUAL- Annual Debt Svc
CAPITAL- Construction of WWTP

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

COUNCIL ACTION REQUESTED ON: October 6, 2022

PURPOSE: To issue $30,000,000 in revenue bonds to cover the shortfall of funds needed for the planned expansion of the wastewater treatment plant.

HISTORY: The City of Flowery Branch currently has a wastewater treatment plant designed to handle 400,000 gallons per day. This design has suited the city well for several decades, but as population and industry increases the need for additional treatment capacity does as well. The city has had, as a capital project, for many years an expansion of treatment capacity to 2.2 million gallons per day.

FACTS AND ISSUES: When the planning of the expansion of the wastewater treatment plant began, the engineer's construction estimate for the expansion was $20,000,000. The city had previously obtained a loan from the Georgia Environmental Facilities Authority (GEFA) for $23,300,000. However, as time passed and supply chain issues arose, the anticipated construction cost of the plant increased to just under $30,000,000. Astonishingly, when the bids came in for the expansion, the low bid was approximately $52,000,000. There were three bids received ranging from $52M to $57M.

The city immediately began seeking alternatives to provide other wastewater treatment capacity solutions and started seeking funding sources to be able to build the planned expansion to handle the city's current and future growth.

One alternative for the additional funding needed is requesting an additional $30,000,000 in GEFA loans. By utilizing this funding avenue, ratepayers would see an increase of approximately 16.5% in both water and sewer rates.

The other alternative for the additional funding needed is selling revenue bonds for which the debt service requirements would require an increase of approximately 8.5%. Both of these increases would be through FY29 at which time the rates would be analyzed and adjusted for future ratepayers.

OPTIONS: (1) Approve the resolution as presented authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of revenue bonds. 2) Do not approve the resolution and request the $30,000,000 from GEFA. 3) Do not approve the resolution and rebid the project

---

with a different scope.

RECOMMENDED SAMPLE MOTION: Motion to authorize Resolution #22-020 authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of revenue bonds to fund the expansion of the wastewater treatment plant.

DEPARTMENT: Administration

Prepared by: Tonya D. Parrish

ATTACHMENTS: A Resolution Declaring the City of Flowery Branch's Intention to Issue Approximately $30,000,000 of Revenue Bonds, Series 2022, Through the Gainesville and Hall County Development Authority.

A RESOLUTION DECLARING THE CITY OF FLOWERY BRANCH'S INTENTION TO ISSUE APPROXIMATELY $30,000,000 OF REVENUE BONDS, SERIES 2022, THROUGH THE GAINESVILLE AND HALL COUNTY DEVELOPMENT AUTHORITY; AUTHORIZING THE ENGAGEMENT OF AN UNDERWRITER AND A BOND COUNSEL FOR THE ISSUANCE OF THE SERIES 2022 BONDS; AND FOR OTHER RELATED PURPOSES.

WHEREAS, the City Council of the City of Flowery Branch, Georgia (the "City") has determined that there is a need to make certain improvements to the water and sewer system of the City as generally described on **Exhibit "A"** attached hereto (the "Project"); and

WHEREAS, the City Council has determined that revenue bonds (the "Bonds") should be issued through the Gainesville and Hall County Development Authority (the "Authority") denoted as Series 2022, in an amount not exceeding $30,000,000 for the purpose of financing the acquisition, construction and equipping of the Project and to pay the costs of issuance of the Bonds; and

WHEREAS, the City wishes to engage Stifel, Nicolaus & Company, Incorporated ("Stifel") as underwriter and Stewart, Melvin & Frost, LLP as bond counsel for such Bonds; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Flowery Branch, Georgia, and it is hereby resolved by authority of the same, as follows:

Section 1. The City Council hereby declares its intention to issue approximately $30,000,000 aggregate principal amount of revenue bonds (the "Bonds") through the Authority to finance a portion of the Project. The Bonds shall have such terms as approved by the City Council by adoption of an authorizing resolution.

Section 2. The attorneys for the City are hereby authorized and instructed to commence preparation of the necessary documents for the issuance of the Bonds, and to take such other actions necessary for the issuance of the Bonds.

Section 3. The issuance of the Bonds shall not exceed any debt limitation prescribed by the Constitution of the State of Georgia.

Section 4. The Bonds shall be payable from the revenues of the water and sewer system of the City, from the proceeds received by the City from sales and use taxes, and from the general funds of the City.

Section 5. The City Council hereby approves the engagement of Stifel as underwriter for the City in the issuance and sale of the Bonds under the terms of the proposal to provide underwriting services for the City, submitted by Stifel to the City.

Section 6. The City Council hereby approves the engagement of Stewart, Melvin & Frost, LLP as bond counsel for the City in the issuance and sale of the Bonds under the terms of the engagement letter submitted by Stewart, Melvin & Frost, LLP to the City.

Section 7. The City shall issue the Bonds to provide funds to pay or to be applied toward the cost of the acquisition, construction and equipping of the Project.

Section 8. All resolutions and parts of resolutions in conflict with this Resolution, if any, shall be and the same are hereby repealed.

PASSED, ADOPTED, SIGNED, APPROVED, AND EFFECTIVE this _____ day of ______________, 2022.

CITY OF FLOWERY BRANCH, GEORGIA

By: ________________________________
Mayor

Attest: ______________________________
City Clerk

(SEAL)

EXHIBIT "A"
The Project

The construction, renovation, expansion, and equipping of the existing wastewater treatment facility located within the City of Flowery Branch, Georgia, including (i) the expansion of treatment capacity to 1,500,000 gallons per day, (ii) the construction of new biological treatment processing, clarification, and filtration systems capable of treating water to near drinking standards prior to discharge, and (iii) the replacement of existing systems wherever necessary to meet the growing demand caused by the growth of the City of Flowery Branch.

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Approval of Client Electronic File Disclaimer & Acceptance – Infratec Consultants, Inc.

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
The City of Flowery Branch engaged with Infratec Consultants on February 16, 2017 with task order FBR19001 to design an expansion of its wastewater treatment plant. Infratec Consultants designed the project and it was bid on May 25, 2022.

FACTS AND ISSUES:
Since the project came in more than twice the budgeted amount, the City of Flowery Branch has engaged the services of ESG Engineering to value engineer the project to attempt to bring the costs down.

During the value engineering effort, ESG Engineering may need access to CAD copies of the documents created by Infratec Consultants and its various subcontractors used on the project. As the value engineer for the city on this project, the files accessible by the City of Flowery Branch will be shared with ESG Engineering.

OPTIONS:
(1) Approve the client electronic file disclaimer & acceptance regarding the use of CAD documents with Infratec Consultants, Inc. (2) Do not approve and do not allow the city to have access to the CAD files.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:
Approve the Client Electronic File Disclaimer & Acceptance with Infratec Consultants, Inc.

SAMPLE MOTION:
Motion to approve the Client Electronic File Disclaimer & Acceptance with Infratec Consultants, Inc.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- ES - Infratec Client Disclaimer.pdf
- Electronic File Disclaimer Document 9-26-2022.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Approval of Client Electronic File Disclaimer & Acceptance – Infratec Consultants, Inc.

DATE: October 6, 2022

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL- N/A

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

COUNCIL ACTION REQUESTED ON: October 6, 2022

HISTORY: The City of Flowery Branch engaged with Infratec Consultants on February 16, 2017 with task order FBR19001 to design an expansion of its wastewater treatment plant. Infratec Consultants designed the project and it was bid on May 25, 2022.

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OPTIONS: (1) Approve the client electronic file disclaimer & acceptance regarding the use of CAD documents with Infratec Consultants, Inc. (2) Do not approve and do not allow the city to have access to the CAD files.

RECOMMENDED SAMPLE MOTION: Motion to approve the Client Electronic File Disclaimer & Acceptance with Infratec Consultants, Inc.

DEPARTMENT: Administration

Prepared by: Tonya D. Parrish

ATTACHMENTS: Client Electronic File Disclaimer & Acceptance document from Infratec Consultants, Inc.

Infratec Consultants, Inc.
Client Electronic File Disclaimer & Acceptance
310 Saddle Hill Court
Roswell, Georgia 30075

September 12, 2022

City of Flowery Branch
c/o Tonya Parrish, City Manager
5410 Pine Street
Flowery Branch, GA 30542

RE: Agreement for Engineering Services between City of Flowery Branch and Infratec Consultants, Inc. dated February 16, 2017; Task Order FBR19001

Dear Tonya:

Pursuant to your request and upon receipt of a copy of this executed agreement, we will provide you (Recipient) with CAD copies of documents prepared by Infratec Consultants, Inc. or its approved subconsultants: Engineering Strategies, Inc. for Process-Mechanical; EDEC, Inc. for Electrical and Instrumentation; WEKIVA, Inc. for Structural and Spylant, LLC. for Civil-Site pursuant to the above referenced contracts. Infratec Consultants, Inc. and its approved subconsultants are collectively called "Infratec." We previously provided you with PDF versions of these documents, which shall be considered the original documents with respect to our work. By signing below, you accept the following disclaimer regarding the use of these CAD documents.

Data delivered in CAD format can deteriorate undetected and can be modified by others without our knowledge. The content of data delivered in CAD format can also be affected if the user attempts to view the CAD files using hardware or software that is not compatible with the hardware and software we used to create the CAD files. By signing below you agree to accept responsibility for the completeness, correctness, and readability of the CAD files after their delivery to you, and you also agree to the extent permitted by law, to indemnify, defend and save Infratec harmless from any and all claims, losses, costs, damages, awards or judgments arising from your use of the CAD files, any decisions made by you based on the contents of the CAD files or any output generated from these files by you. To the extent permitted by law, this indemnification shall also apply to any claim, loss, cost, damage, or award of judgment against Infratec resulting from your delivery of these files to any subcontractors, material suppliers or any other third parties. Infratec accepts responsibility for the accuracy of the sealed drawings that were issued by us for this project in PDF format. Infratec makes no warranties, express or implied, under this agreement or otherwise in connection with the accuracy of files delivered in CAD format.

Infratec Consultants, Inc.
Client Electronic File Disclaimer & Acceptance
310 Saddle Hill Court
Roswell, Georgia 30075

Any reuse of this information without written verification or adaptation by Infratec for the specific purposes intended will be at the Recipient's sole risk and without liability or legal exposure to Infratec; and the Recipient releases and shall, to the extent permitted by law, indemnify, defend and hold Infratec harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting there from. Any such verification or adaptation will entitle Infratec to further compensation at rates to be agreed upon by the Recipient and Infratec.

Infratec will not be responsible for assuring that the CAD copies transmitted to the Recipient are continually updated and kept current. We are providing CAD copies for convenience of the Recipient on the above noted project only.

The files will be transmitted by email, through the use of Infratec or Client's FTP site, or by electronic media (CD or DVD), at the discretion of the Infratec.

Should the files be transmitted by electronic media they will be sent to the address and name referenced in the heading above. Should the files be transmitted by e-mail the files will be transmitted to tonya@flowerybranchga.org.

Sincerely,

Infratec Consultants, Inc.

Robert W Troxler

Robert W. Troxler, PE
President
770-596-1984
retroxler@gmail.com

Infratec Consultants, Inc.
Client Electronic File Disclaimer & Acceptance
310 Saddle Hill Court
Roswell, Georgia 30075

I hereby agree to the terms and conditions described above and accept the above disclaimer regarding the use of these electronic documents.

Date of Council Approval:

____

Recommended:

____
Tonya Parrish, City Manager

City of Flowery Branch

By:____________________
Ed Asbridge, Mayor

Attest:__________________
,City Clerk

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider September 1, 2022 City Council Meeting Minutes

COUNCIL MEETING DATE: October 6, 2022

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- Unofficial September 1, 2022 Minutes.pdf

City of Flowery Branch
City Council Meeting
Thursday, September 1, 2022, 6:00 PM
City of Flowery Branch City Hall
5410 W. Pine Street, Flowery Branch, GA 30542

CALL WORK SESSION TO ORDER:

Mayor Edward Asbridge called the council meeting to order at 6:00 p.m.

Present: Mayor Asbridge and Council Members Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, and Chris Mundy.

Also present were City Manager Tonya Parrish, City Clerk Shelia Cooper, Finance Director Matthew Hamby, Planning Director Rich Atkinson, Police Chief Christopher Hulsey, Public Works Director Bill Whidden, and City Attorney Ron Bennett.

Absent: Downtown Director Renee Carden

PLEDGE OF ALLEGIANCE:

Mayor Asbridge led the Pledge of Allegiance.

ADOPTION OF AGENDA:

There was a motion to move Resolution 22-014 and Resolution 22-015 from Consent Agenda to New Business Voting Session.

MOTION:	Chris Mundy
SECOND:	Joe Anglin
AYES:	Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS:	None

Motion carried

PUBLIC HEARING:

A Public Hearing to consider a request from Sparrow Acquisitions, LLC. to rezone three properties totaling 14.55 +/-acres from Highway Business (HB) to Residential Multi-Family (R-3).

Planning Director Atkinson stated that the applicant has withdrawn the application to rezone three properties totaling 14.55 +/- acres from Highway Business (HB) to Residential Multi-Family (R-3).

NEW BUSINESS -WORK SESSION:

Consider First Reading of Ordinance 447-C, a Speed Zone Ordinance.

Police Chief Hulsey presented Ordinance 447-C, a speed zone ordinance consideration. GDOT's requested update includes only two changes with respect to C.W. Davis Middle School school zone along SR 13 (Atlanta Highway) which will shorten the school zone from 1.70 miles to 0.45 miles and to reduce the speed limit from 45 mph to 35 mph.

Consider Approving Change Order #5 to the Farmers Market Project

Mr. Rich Edinger, Clark Patterson Lee, presented Change Order Number 5 to the Farmers Market Project on Pine Street. Electrical receptacles were desired by city staff in each tree well on Main Street to accommodate holiday decorations which cost $8,750.00. Tree planters are being modified to remove pavers and enlarge the area to accommodate landscaping which cost $5,500.00. The Farmers Market project encountered some utility conflicts on Pine Street that either required the utility to be relocated or be accommodated. AT&T cost is $75,000 to relocate the fiber optic line. Triscapes can accommodate the line by modifying the drainage structures for a cost of $30,519.75.

Consider Resolution 22-016, adopting a Climate Resiliency Plan as prepared by Clark Patterson Lee.

Tania Leyva, AICP with Clark Patterson Lee presented a consideration of Resolution 22-016, adopting a Climate Resiliency Plan. The Climate Resilience Action Plan will be a local supplement to the Water Resource Management Plan and the Flowery Branch Wastewater Master Plan adopted in 2018. The purpose will be to provide an overview of climate projections for Flowery Branch, an assessment of potential extreme weather impacts to City owned assets, and strategies to mitigate those impacts.

As part of the planning effort for this Climate Resilience Plan, CPL reached out to multiple city departments including the departments of Planning, Public Works, Water and Wastewater to catalogue other water and wastewater utility improvement efforts underway, identify potential vulnerabilities to City operations and assets, and to develop potential solutions to mitigate those impacts.

Climate resilience is the ability to effectively manage both immediate stressors related to climate change and weather extremes. Ongoing adaptation through long-range planning efforts and strategic investments in City assets and operations will ensure that Flowery Branch is prepared for changing climate conditions. The first step towards adaptation is understanding that local trends are a part of greater global climate change patterns – return to historical climate patterns, is unlikely. Adaption is a must, not an option.

Climate projections for Flowery Branch suggest there will be an increase in average annual temperatures with high temperature extremes becoming more common Precipitation patterns are expected to become more consistent throughout the year, leading to shorter periods of drought interspersed with heavy rainfall events. The climate hazards which emerged as the most critical for both long-term planning efforts: (1) Flooding and (2) Extreme Heat.

The following recommendations include best practices identified through a climate resilience planning process and literature review of the City of Austin Climate Change Resilience Plan for City Assets and Operations, the Metro North Georgia Utility Climate Resiliency Study, the 2041 Flowery Branch Comprehensive Plan and others. These strategies are intended to support long-term operations and longevity of water and wastewater utility systems owned by Flowery Branch through the year 2040:

ACTION	CITY LEAD
Review new paving materials and identify potential applications to account for increasing summer temperatures. Consider increasing use and frequency of maintenance treatments to extend pavement duration.	Public Works
Study potential impact of flooding on adjacent roads, explore flood control measures.	Public Works
Upgrade aging civic buildings to be more energy efficient and explore options for the use of civic facilities as public cooling centers or heating centers during extreme weather events.	Planning and Zoning
Create a resilience team to identify new opportunities to incorporate climate change considerations in future decision making, including permit review processes.	Planning and Zoning
Work with Hall County to track and keep an accurate count of properties as they switch off septic to sewer systems within Service Area #4.	Public Works
Avoid construction within 500-year floodplain and provide flood proofing if construction must occur within the floodplain. Planning and Zoning.	Planning and Zoning
Continue to monitor and inspect the integrity of existing systems.	Public Works
Create program to incentivize the replacement of fixtures, equipment, and appliances with high energy fixtures, equipment, and appliances to reduce long term water and energy demands.	Planning and Zoning
Adopt Green Infrastructure Ordinance that supports use of design features such as bioswales, to encourage more soil infiltration on-site.	Planning and Zoning
Increase capacity of stormwater collection, conveyance, and storage systems per the 2018 Wastewater Master Plan.	Public Works
As per the 2041 Flowery Branch Comprehensive Plan Update: · Adopt Groundwater Recharge Protection Ordinance · Adopt Water Supply Watershed Protection Ordinance · Amend Buffers, Tree Protection and Landscaping requirements to strengthen tree retention and support replanting of native species.	Planning and Zoning

ACTION	CITY LEAD
Strengthen Communications with Hall County Public Works by holding two recurring meetings each year to discuss Hall County – Flowery Branch specific items.	Public Works
Work with Hall County GIS to create a County – City map (updated quarterly) that shows locations of capital improvement projects underway or being put out to bid that year. Link the map to construction documents, project websites that can track progress on items.	Planning and Zoning
Consider establishing a Local Emergency Planning Committee and documenting standards of operation for emergency events; work with Hall County Emergency Management Agency to identify areas of collaboration. Codify emergency event protocols and communications frameworks.	City Manager
Provide bi-annual training or informational meetings to ensure all city staff is aware of the existence of City emergency response plans and key plan contents. Provide links to where staff can download or view a copy of plans via list-serv mailings. Require completion tutorials on key emergency response practices for new hires	City Manager
Review Sign Codes to ensure building identification signs and/or street numbers have letter height, placement, and illumination requirements that allow them to be clearly visible from adjacent roadways in daylight and nighttime conditions.	Planning and Zoning
Introduce Metro Water District Staff to new City Manager and/or establish new city position of City Sustainability Officer. Ensure Sustainability Officer has environmental engineering training to be able to serve as technical liaison to Metro Water District and Georgia Department of Natural Resource agencies.	City Manager
Consider creating databases that track roads which historically flood during severe weather events, and construction details that can inform an emergency response process such as: the lowest floor elevation for new structures, construction types.	Planning and Zoning
Distribute information and host outreach events to inform residents and businesses of external agency campaigns, such as Metro Water District water conservation initiatives	Planning and Zoning

UNFINISHED BUSINESS - WORK SESSION:

Ordinance 670, a request submitted by Edge City Properties, Inc. to rezone a 60.79 +/- acre tract of land known as 5183 Gainesville Street, tax parcel identification number 08098 001019 from Agricultural (A) to Planned Unit Development (PUD).

Planning Director Atkinson presented Ordinance 670, a request submitted by Edge City Properties, Inc. to rezone a 60.79 +/- acre tract of land known as 5183 Gainesville Street, tax parcel identification number 08098 001019 from Agricultural (A) to Planned Unit Development (PUD). The intent of this rezoning is to develop and construct 219 single-family detached homes and 94 townhomes.

The initial project did not fit any current zoning designations of Flowery Branch. The applicant requested R-3 but after receiving feedback from Mayor and Council, the applicant decided to make changes and changed his request from R-3 to Planned Unit Development (PUD). The changes increased the single-family detached homes from 186 to 219 and decreased townhomes from 149 to 94. The applicant created a 70/30 mix of single-family detached homes and townhomes to meet the newly requested PUD designation. Lowering the number of townhomes also helps the project become compliant with the Comprehensive Plans general housing mix suggestion. The Comprehensive Plan recommends a 60/15/15 split between single-family detached/apartments/townhomes. Generally, if approved, the breakdown would be around 66/19/15.

Planning Director Atkinson explained that a Planned Unit Development is a unique zoning put in place to assist projects that do not fit into any Flowery Branch zoning designations. There are no pre-set requirements regarding setbacks, lot size, units per acre, etc. The applicant presents the requirements needed to develop the property. Council approves specific requirements that are legally binding and are a part of the ordinance of rezoning. Typically, the information is included on the site plan and the site plan is approved as a part of the conditions of zoning.

Council Member Mezzanotte has a different definition of PUD when you look at how it was written in our code verses how it was explained in this presentation. You are talking about a creative and unique development that would not fit into the normal codes by mixing different uses on the same property. He does not believe that taking an R-3 and adding small homes or small lots makes a PUD. He has a question as to why it is considered a PUD. Planning Director Atkinson stated his professional opinion is this proposal does meet the PUD requirement and he has offered that opinion in the staff report but stated that Council has the hard job of making the decision.

Council Member Mezzanotte questioned that a new application was not submitted, and he asked to hear from Mr. Dye on why he thinks this proposal is a PUD development. Council Member Anglin inquired if the developer could offer up lots sizes and would like to know the layouts. Mike Dye, Edge City Properties, stated that this proposal does quality as a PUD under the actual ordinance. Mr. Dye stated when you look at the suburban residential character area in the Flowery Branch Comprehensive Plan, it calls out a PUD as an appropriate use and the PUD does not specify that it must have a different mixture of types of uses being it actually limits if you want to have industrial in the development.

There was a detailed discussion regarding the placement of the townhomes and detached homes. Council Member Anglin would like to see a rendering for the rear of the homes.

DEPARTMENT REPORTS:

City Manager Report:

City Manager Parrish encouraged all citizens to come out to the Block Party to hear the Swingin' Medallions.

<u>Finance Director Report:</u>

Finance Director Hamby stated that Krystle Hightower, Budget Manager, has put together a robust budget document and advised that is different from past budget documents. He commended Krystal on doing a great job on this document. The budget document is available to the public on the City's website.

ADJOURNMENT WORK SESSION:

Mayor Asbridge closed the work session at 6:33 p.m.

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

Mayor Asbridge called the voting session to order at 6:33 p.m.

PUBLIC COMMENTS:

Kelly McLincha, 5628 Church Street, Flowery Branch, GA 30542

Mr. McLincha has sewer plant concerns regarding the odor at night and on a regular basis.

Mark Weber, 6114 Stella Light Drive, Flowery Branch, GA 30542

Mr. Weber stated that the City can't continue to have density and continue to have new projects until we deal with the infrastructure problem.

Peter Harkonen, 5437 Ashmoore Lane, Flowery Branch, GA 30542

Mr. Harkonen is concerned with the sixty-acre development and the impact on the schools, the impact on traffic and the impact on the sewer system.

Mayor Asbridge advised the citizens that he instructed City Staff to not issue any new sewer permits on the Special Called City Council Meeting on Monday, August 29, 2022.

CONSENT AGENDA:

- Consider August 18, 2022 City Council Meeting Minutes

- Consider Mayor Asbridge Per Diem for August 2022.

There was a motion made to approve the consent agenda.

MOTION: Chris Mundy
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

NEW BUSINESS - VOTING SESSION:

Consider Resolution 22-016, adopting a Climate Resiliency Plan as prepared by Clark Patterson Lee.

Attorney Bennett read the caption for Resolution 22-016.

There was a motion made to approve Resolution 22-016 supporting the City of Flowery Branch Climate Resilience Action Plan.

MOTION: Chris Mundy
SECOND: Joseph Mezzanotte
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Council Member Anglin asked if the City would have to fund anything for Resolution 22-016.

Consider First Reading of Ordinance 447-C, a Speed Zone Ordinance.

Attorney Bennett read the caption for Ordinance 447-C.

There was a motion made to approve the First Reading of Ordinance 447-C.

MOTION: William McDaniel
SECOND: Joe Anglin
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

<u>Consider Approving Change Order #5 to the Farmers Market Project</u>

There was a motion made to approve Change Order #5 for the Farmers Market Project.

MOTION: Joe Anglin
SECOND: Chris Mundy
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

<u>Consider Resolution 22-014 a request by NNP, Looper Lake, LLC. for the City to accept the roadways and stormwater structures therein totaling 3.21 miles located in various pods in the Sterling on the Lake subdivision.</u>

There was a motion made to approve Resolution 22-014.

MOTION: Joe Anglin
SECOND: Chris Mundy
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Council Member Mundy wanted an explanation on the inspection process of the roadways and stormwater structures.

Planning Director Atkinson stated that Staff inspects the structures in the roads and gets a punch list and then there is a re-inspection.

Council Member Anglin asked what the process is for inspecting stormwater structures.

Public Works Director Whidden stated that he climbs down onto the catch basins to inspect the pipes on the inside and inspects the bottom for concrete or rocks. If concrete or rocks were found, the contractor must remove those items.

There was a detailed discussion on the approval process for the City accepting roadways and stormwater structures. Public Works Director advised the process in depth of evaluating the roadways and stormwater structures and the time frame of the inspections.

<u>Consider Resolution 22-015 - A request by RangeWater Real Estate for the City to accept the roadways and stormwater structures therein totaling 1.305 miles located in the Beacon Subdivision.</u>

There was a motion made to approve Resolution 22-015.

MOTION: Chris Mundy
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

EXECUTIVE SESSION: There was no executive session held.

ADJOURNMENT:

There was a motion made to adjourn at 6:52 p.m.

MOTION: Joe Anglin
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Ed Asbridge, Mayor	Date	Shelia Cooper, City Clerk

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider September 15, 2022 City Council Meeting Minutes

COUNCIL MEETING DATE: October 6, 2022

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- Unofficial Minutes September 15, 2022.pdf

City of Flowery Branch
City Council Meeting
Thursday, September 15, 2022, 6:00 PM
City of Flowery Branch City Hall
5410 W. Pine Street, Flowery Branch, GA 30542

CALL WORK SESSION TO ORDER:

Mayor Edward Asbridge called the council meeting to order at 6:00 p.m.

Present: Mayor Asbridge and Council Members Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, and Chris Mundy.

Also present were City Manager Tonya Parrish, City Clerk Shelia Cooper, Downtown Director Renee Carden, Finance Director Matthew Hamby, Planning Director Rich Atkinson, Police Chief Christopher Hulsey, Public Works Director Bill Whidden and City Attorney Ron Bennett.

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Asbridge led the Pledge of Allegiance.

ADOPTION OF AGENDA:

There was a motion made to adopt the agenda as presented.

MOTION:	Chris Mundy
SECOND:	Joe Anglin
AYES:	Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS:	None

Motion carried

PUBLIC HEARING: There was no public hearing.

UNFINISHED BUSINESS - WORK SESSION:

Consider Second Reading of Ordinance 447-C, a Speed Zone Ordinance

There was no presentation for Ordinance 447-C and there were no questions from Mayor or Council regarding the proposed ordinance.

NEW BUSINESS -WORK SESSION:

Presentation of Potential Funding for Wastewater Treatment Plant

City Manager Parrish introduced Bryan Huskey and Trey Monroe from Stifel Nicolaus & Company, Inc. regarding the potential financing options for the sewer system expansion. Stifel is the leading underwriter of municipal bonds in Georgia. In the last five years, Stifel has senior managed over 116 offerings in Georgia, which has resulted in a par amount over $2.3 billion. Mr. Monroe stated inflation is a real problem and the Federal Reserve continues to raise the short-term borrowing rate.

Mr. Huskey gave an overview of the City's current water and sewer debt profile and explained that there are four existing obligations. The City currently has one outstanding water/sewer bond issue (Series 2014 Refunding Bond) which carries an interest rate of 2.38% maturing through October 1, 2025. The City has three current GEFA Loans, Loan #CW13009 for $1.5M @ 1.40% maturing through June 1, 2036, Loan #DW2020020 for $5.71M @ 0.99% that will go into repayment by October 1, 2024 for twenty years, and Loan #CW2020010 for $23.3M @ 1.04% that will go into repayment by October 1, 2024 for twenty years.

- Assumptions:
  - Assumes City has funding priced and closed as of December 1, 2022.
  - Assumes no debt service coverage required for the bonds.
  - Assumes the additional cost of the project is $30,000,000 *(makes no adjustments for increased costs that may arise due to compliance with SRF federal loan standards)*.

- Financing Highlights:
  - Utilizes the Gainesville and Hall County Development Authority as issuer, similar to the structures used for the City's Old Town project and City Hall project.
  - Benefits from the City's strong 'Aa2' credit rating by Moody's.
  - To further assist near-term cash flow, the City may elect to also refund the 2014 Bond with the financing.
  - Debt service may be paid from any legally available revenue.

- Bonds will allow for a much more gradual adjustment to rate structures to accommodate the additional debt.
  - A more gradual increase in required Net Revenue also serves as a hedge against unexpected fluctuations in revenues derived from development fees or future recessionary pressures.

He explained financing options for the additional $30M needed for the Wastewater Treatment Plant expansion.

Council had a discussion regarding the options available for financing the Wastewater Treatment Plant expansion. There will be further discussion on these options in the future.

Consider Ordinance 504-C, Amending the Alcohol Licensing Ordinance.

Kelsey Cash, Court/Police Administrator, presented Ordinance 504-C, which will amend the Alcoholic Licensing Ordinance. There are several policy updates that are requested regarding the ordinance.

1. Designated cups are requested with the Flowery Branch logo which will let our police officers and City staff know that the beverage was sold by an authorized vendor.
2. An application deadline is needed for processing applications with a ten-day submittal prior to an event.
3. There is a request for our local businesses, who have a consumption on premise license, to be able to apply for an off-premises catering license. This would allow the business to be able to serve alcohol at any City of Flowery Branch sponsored event and pay a one-time fee per year. Examples of City of Flowery Branch sponsored events include the Farmers Market, Block Parties, and the Blooming Art Festival, to name a few.
4. Currently, all restaurant servers are required to have alcohol awareness training and have a GCIC (Georgia Crime Information Center) background check that is reviewed by the Chief of Police. We are requesting to stay consistent with servers for all off-premise catering functions but our current ordinance does not require pouring permits to be issued for caterers. They are required to have alcohol awareness training and are required to have a GCIC background check that is reviewed by the Chief of Police. This is a way to monitor who can serve in our City.
5. Currently, the City does not require any caterers serving alcohol to have liability insurance and this change is important to protect the City of Flowery Branch should an accident occur.
6. There is a request to update our current amenity license which is a license for non-eating establishments such as hair and nail salons. The current license only specifies that it may be served as an act of "hospitality" and there is not a limit on how much alcohol or what type of alcohol can be served. GDOR (Georgia Department of Revenue) rules and regulations state that alcohol can not be distributed at a cost less than what it was purchased for and GDOR requires all alcohol to be purchased from a distributor. It is requested to limit only two six-ounce servings of wine or two twelve-ounce servings of beer each day. Further, it cannot exceed ten percent of their sales and it must follow GDOR rules and regulations.

Council had a discussion regarding the designated cups and what other municipalities offer.

Consideration of Contract with Suez for an MBR Wastewater Treatment Solution

City Manager Parrish presented a contract consideration with Suez for an MBR Wastewater Treatment solution. One of the interim solutions is to bring in a mobile wastewater treatment plant that will handle 200,000 gallons per day. The funding amount is $1.5M with $1M to operate for one year and $500,000 for the setup, electrical panels, chemical feeds, piping, etc.

The request is to approve this emergency contract because an emergency exist due to the limited wastewater capacity. This contract will need approval from the City Attorney before execution.

Council had a discussion regarding the contract, timeline, and the ability of staff to run the rental equipment.

DEPARTMENT REPORTS:

Downtown Director Report:

Downtown Director Carden reported the new Farmers Market Pavilion is open and running great. She invited citizens to the following events:

- Cornhole Tournament on Friday, September 30th, 6pm – 10pm
- Faith in Blue on Saturday, October 8th, 3pm – 6pm with free hot dogs and hamburgers
- Trunk or Treat at the Farmers Market on Thursday, October 27th, 3:30pm – 6:30pm

Council Report:

Council Member Mundy stated the Swingin' Medallions Block Party had a great turnout and how good it was to see the vision from five or six years ago come to fruition. He thanked Staff for all the work that went into the event.

Council Member Mezzanotte stated he appreciated all the work that the Police Department has done to take over the Alcoholic Licensing and the presentation tonight was great, and Mrs. Cash did a wonderful job tonight with the presentation.

Mayor Asbridge stated the amphitheater is coming along great and he is excited for more events that are coming to the City.

ADJOURNMENT WORK SESSION:

Mayor Asbridge closed the work session at 6:46 p.m.

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

Mayor Asbridge called the voting session to order at 6:46 p.m.

PUBLIC COMMENTS:

Jan King, 5590 South Winds Way, Oakwood, Georgia 30566

Ms. King is concerned about the high density, traffic concerns, and the strain on education with the building in the City.

CONSENT AGENDA:

- Consider August 29, 2022 Special Called City Council Meeting Minutes

There was a motion made to approve the consent agenda as presented.

MOTION: Oliver McClellan
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

UNFINISHED BUSINESS - VOTING SESSION:

Consider the Second Read of Ordinance 670, a request submitted by Edge City Properties, Inc. to rezone a 60.79 +/- acre tract of land known as 5183 Gainesville Street, tax parcel identification number 08098 001019 from Agricultural (A) to Planned Unit Development (PUD).

Attorney Bennett read the caption for Ordinance 670.

There was a motion to made to approve Ordinance 670.

Council had a discussion with Mike Dye, the applicant on density, the square footage of the homes, who will own the streets and if there was consideration on gating the community.

MOTION: Oliver McClellan
SECOND: Joe Anglin
AYES: Joe Anglin, Oliver McClellan
NAYS: William McDaniel, Joseph Mezzanotte, Chris Mundy
Motion Denied

Consider Second Reading of Ordinance 447-C, a Speed Zone Ordinance.

Attorney Bennett read the caption for Ordinance 447-C.

There was a motion made to approve Ordinance 447-C.

MOTION: Chris Mundy
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

NEW BUSINESS - VOTING SESSION:

Consider Ordinance 504-C, Amending the Alcohol Licensing Ordinance.

Attorney Bennett read the caption for Ordinance 504-C.

There was a motion made to approve Ordinance 504-C.

MOTION: Joe Anglin
SECOND: Chris Mundy
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Consideration of Contract with Suez for an MBR Wastewater Treatment Solution

City Attorney Bennett advised that Suez will set up the equipment and perform test to make sure it is operating and functioning, but routine maintenance will be up to the City to maintain the treatment operations so it meets the standards. If a repair is needed, Suez will charge the City for transportation, labor, and a per diem for service calls. There is a customer service hotline available to Staff and training will be provided on the operation of the equipment.

Council was informed that an emergency situation exists for the City's wastewater treatment capacity and a motion was made to approve the Suez contract pending City Attorney approval.

MOTION: Oliver McClellan
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

EXECUTIVE SESSION:

There was a motion to enter executive session at 7:00 p.m. for matters related to the acquisition/disposition of real estate.

MOTION: Joe Anglin
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

There was a motion made to exit executive session at 7:34 p.m.

MOTION: Joe Anglin
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

ADJOURNMENT:

There was a motion made to adjourn at 7:41 p.m.

MOTION: Joe Anglin
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Ed Asbridge, Mayor	Date	Shelia Cooper, City Clerk

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Mayor Asbridge September 2022 Per Diem

COUNCIL MEETING DATE: October 6, 2022

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- Mayor Per Diem September 2022.pdf

City of Flowery Branch
Mayor & Council Attendance Sheet Per Diem Pay

Name: Mayor Edward Asbridge Month/Year: September 2022

Meeting Date	Description of Meeting
September 8, 2022	Rep. Andrew Clyde -Discuss RR through the City
September 9, 2022	EDC Meeting, Liberty Utilities
September 14, 2022	Small Business Coalition, Motor Speedway
September 20, 2022	Empty Bowl Meeting
September 22, 2022	Chamber B.O.D. Meeting

My signature certifies that I am eligible to be paid for 5 meeting dates, maximum of 5 per month, in accordance with the Per Diem Pay as described in Ordinance 477 and at a rate of $50.00 per meeting.

Total of $250.00

Signature

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Second Reading of Ordinance 504-C, Amending the Alcohol Licensing Ordinance

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
The last time the Ordinance has been updated was 2017.

FACTS AND ISSUES:
The City wants all alcoholic beverages to be consumed from a cup designated and approved by the City. The City needs at least 10 days to process an event permit. The City wants to allow businesses within our jurisdiction to apply for off premises catering license for City sponsored events. The City wants to require all caterers to possess a pouring permit and to be required to provide proof of liability insurance. The City wants to update the amenity license to be in compliance with the Department of Revenue.

OPTIONS:
(1) Approve as presented (2) Keep existing alcohol ordinances and not accept the proposed changes.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:
I make a motion to approve the Second Reading of Ordinance No. 504-C.

COLLABORATING DEPARTMENT:

DEPARTMENT: Police

Prepared by: Shelia Cooper

ATTACHMENTS

- Executive Summary Ordinance 504-C Amending Alcohol Ordinance.pdf
- Ordinance 504-C Alcohol License Amendment.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Updated Alcohol Licensing Ordinance

DATE: 9/15/22

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL- N/A

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

COUNCIL ACTION REQUESTED ON: September 15, 2022, First Reading and October 6, 2022, Second Reading

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PURPOSE: The City ordinance to reflect with the Department of Revenue's rules and regulations.

HISTORY: The last time the ordinance has been updated was 2017.

FACTS AND ISSUES: The City wants all alcoholic beverages to be consumed from a cup designated and approved by the City. The City needs at least 10 days to process an event permit. The City wants to allow businesses within our jurisdiction to apply for off premises catering license for City sponsored events. The City wants to require all caterers to possess a pouring permit and to be required to provide proof of liability insurance. The City wants to update the amenity license to be in compliance with the Department of Revenue.

OPTIONS: (1) Approve as presented (2) Keep existing alcohol ordinances and not accept the proposed changes.

RECOMMENDED SAMPLE MOTION: I make a motion to approve Ordinance No. 504-C.

DEPARTMENT: Flowery Branch Police Department

Prepared by: Chief Christopher Hulsey

ATTACHMENTS:

First Reading: 9/15/2022
Second Reading: 10/6/2022

ORDINANCE NO. 504-C

AN ORDINANCE TO AMEND CHAPTER 8 – ALCOHOLIC BEVERAGES – OF THE CODE OF THE CITY OF FLOWERY BRANCH, GEORGIA BY AMENDING SECTION 8-114 (CONSUMPTION IN PUBLIC; POSSESSION OR CONSUMPTION ON CITY PROPERTY; EXEMPTION), AMENDING SECTION 8-133 (SALES OFF PREMISES FOR CATERED FUNCTIONS) AND REPLACING SECTION 8-141 (AMENITY LICENSE); TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS the City of Flowery Branch, Georgia is authorized by O.C.G.A. § 36-31-7 and by Section 1.4 of its Charter to license and regulate alcoholic beverages within its corporate limits.

NOW THEREFORE the Council of the City of Flowery Branch hereby ordains as follows:

Section 1. Section 8-114(b)(1)e. shall be added to the Code of the City of Flowery Branch, Georgia as follows:

"*Designated cups.* All alcoholic beverages shall be consumed from a cup designated and approved by the City."

Section 2. The following sentence shall be added at the beginning of Section 8-133(b) of the Code of the City of Flowery Branch, Georgia:

"All applications for an event permit shall be submitted to the city manager or designee at least ten (10) business days prior to the event."

Section 3. Section 8-133(b)4. shall be added to the Code of the City of Flowery Branch, Georgia as follows:

"The holder of a Flowery Branch, Georgia issued alcoholic beverage license for on premise consumption may apply for an off-premises catering license and annual event permit allowing it distribute or sell alcoholic beverages at all city sponsored events."

Section 4. The following sentence shall be added at the beginning of Section 8-133(c) of the Code of the City of Flowery Branch, Georgia:

"The caterer, special event licensee and all employees are required to possess a pouring permit in accordance with Section 8-143."

Section 5. Section 8-133(d) shall be added to the Code of the City of Flowery Branch, Georgia as follows:

"All caterers shall be required to provide proof of liability insurance to the city in an amount equal to a minimum of $1,000,000 and which shall name the City of Flowery Branch, Georgia as an additional insured thereon. All caterers shall be required to provide proof of alcoholic beverage liability insurance in an amount equal to a minimum of $1,000,000 and which shall name the City of Flowery Branch, Georgia as an additional insured thereon. All event sponsors shall be required to execute an indemnification and hold harmless agreement in a form acceptable to the city wherein the sponsor shall agree to indemnify and hold harmless the City of Flowery Branch, Georgia and its elected officials, appointed officers, employees, representatives and agents from and against any and all liability, costs, including attorney's fees, expenses, damages, suits, judgments and expenses arising from the event."

Section 6. Section 8-141 of the Code of the City of Flowery Branch, Georgia shall be deleted in its entirety and replaced with the following:

"Sec. 8-141. – Amenity license.

(a) The Flowery Branch Police Department may grant a license for amenity alcohol sales where it is determined that the sale, service, or consumption of alcohol is not the primary business of the licensed establishment.

(b) An amenity alcohol sales license permits the licensee to sell a patron either two (2) six (6) ounce glasses of wine or two (2) twelve (12) ounce servings of beer or other malt beverage per day.

(c) In no event shall a licensee's total annual gross alcohol revenue exceed ten (10) percent of the licensee's gross annual revenues.

(d) Amenity alcohol sales licensees shall be required to obtain a state alcohol license for consumption on the premises and except as expressly proved for herein, shall be subject to all state and local laws, rules, and requirements, including licensing requirements and the other provisions of this chapter related to the sale of alcohol for consumption on the premises."

Section 7. Any part of any prior ordinances, in conflict with the terms of this Ordinance, are hereby repealed to the extent of the conflict; but it is hereby provided, that any ordinance or law which may be applicable hereto and aid in carrying out and making effective the intent, purpose and provisions hereof, is hereby adopted as a part hereof and shall be legally construed to be in favor of upholding this Ordinance on behalf of the City of Flowery Branch, Georgia.

Section 8. If any paragraph, subparagraph, sentence, clause, phrase or any portion of this Ordinance shall be declared invalid or unconstitutional by any court of competent jurisdiction or if the provisions of any part of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of the Ordinance to other circumstances not so held to be invalid. It is hereby declared to be the intent of the City Council of the City of Flowery Branch to provide for separate and divisible parts, and it does hereby adopt any and all parts hereof as may not be held invalid for any reason.

SO ORDAINED this 6th day of October, 2022.

____
Edward R. Asbridge, Mayor

ATTEST:

____
Shelia Cooper, City Clerk

APPROVED AS TO FORM:

____
E. Ronald Bennett, Jr., City Attorney

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Resolution 22-017 - Alcoholic Beverage Fees

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
The Alcoholic Beverage Licensing Fees were last updated on March 15, 2018.

FACTS AND ISSUES:
This resolution will replace all prior resolutions and will update the fees for all alcoholic beverage caterers, event permits and amenity licenses.

OPTIONS:
Approve or Deny

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:
I make a motion to approve Resolution 22-017.

COLLABORATING DEPARTMENT:

DEPARTMENT: Police

Prepared by: Shelia Cooper

ATTACHMENTS

- Executive Summary Alcoholic Beverage Licensing Fees.pdf
- Resolution 22-017.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Update Alcohol Beverage Licensing Fees

DATE: 10/06/22

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL- N/A

COUNCIL ACTION REQUESTED ON: October 6th, 2022

PURPOSE: Flowery Branch City Council consideration of a resolution to amend the current alcohol beverage licensing fee resolution 18-004.

HISTORY: The last time the resolution had been updated was 2018.

FACTS AND ISSUES: This resolution will replace all prior resolutions. This resolution will update the fees for the alcoholic beverage caterer, event permit and amenity licenses.

OPTIONS: Approve resolution 22-017.

RECOMMENDED SAMPLE MOTION: I make a motion to approve Resolution 22-017.

DEPARTMENT: Flowery Branch Police Department

Prepared by: Chief Christopher Hulsey

ATTACHMENTS:

RESOLUTION NO. 22-017

A RESOLUTION ESTABLISHING THE AMOUNT OF ALCOHOLIC BEVERAGE LICENSING FEES; REPEALING CONFLICTING RESOLUTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Chapter 8 of the Flowery Branch Code authorizes the City Council of the City of Flowery Branch to set the amounts of fees for alcoholic beverage licensing.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Flowery Branch that the rates for alcoholic beverage licensing shall be as follows:

<u>Section 1. Alcoholic Beverage Licensing Fees</u>

Beer: Retail Package	$ 700.00
Beer: Consumption on Premises	$ 700.00
Beer: Wholesale	$ 150.00
Wine: Retail Package	$ 700.00
Wine: Consumption on Premises	$ 700.00
Wine: Wholesale	$ 150.00
Distilled Spirits: Retail Package	$5,000.00
Distilled Spirits: Consumption on Premises	$4,000.00
Brew Pub: Manufacturing	$5,000.00
Distilled Spirits Bottling	$1,000.00
Distilled Spirits: Wholesale	$ 150.00
Beer: Alcoholic Beverage Caterer	$ 300.00
Wine: Alcoholic Beverage Caterer	$ 300.00
Distilled Spirits: Alcoholic Beverage Caterer	$ 500.00
Amenity Permit	$ 200.00
Event Permit: Beer Caterer	$ 50.00
Event Permit: Wine Caterer	$ 50.00
Event Permit: Distilled Spirits Caterer	$ 250.00
Beer: Tasting Permit	$ 50.00
Wine: Tasting Permit	$ 150.00
Wine: Corkage Permit	$ 150.00
Growler Corkage Permit	$ 150.00
Transfer Fee	$ 200.00

<u>Section 2. Repeal of Conflicting Resolutions.</u>

Any part of any prior resolutions in conflict with the terms of this Resolution, are hereby repealed to the extent of the conflict; but it is hereby provided, that any resolution, ordinance or law which may be applicable hereto and aid in carrying out and making effective the intent, purpose and provisions hereof, is hereby adopted as a part hereof and shall be legally construed to be in favor of upholding this Resolution on behalf of the City of Flowery Branch.

Section 3. Severability.

If any paragraph, subparagraph, sentence, clause, phrase or any portion of this Resolution shall be declared invalid or unconstitutional by any court or competent jurisdiction or if the provisions of any part of this Resolution as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Resolution not so held to be invalid, or the application of the Resolution to other circumstances not so held to be invalid. It is hereby declared to be the intent of the City Council of the City of Flowery Branch to provide for separate and divisible parts, and it does hereby adopt any and all parts hereof as may not be held invalid for any reason.

Section 4. Effective Date.

This Resolution shall become effective the date it is adopted by the Council of the City of Flowery Branch.

SO RESOLVED this 6th day of October 2022.

____
Edward R. Asbridge, Mayor

ATTEST:

____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

____

E. Ronald Bennett, City Attorney

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Resolution 22-018 - Generator, Hazard Mitigation Grant Project Award

COUNCIL MEETING DATE: October 6, 2022

HISTORY:

On September 15, 2017, the President declared that a major disaster exists in Georgia. This declaration was based on damage resulting from Hurricane Irma. In 2018, our Police Department applied for a generator grant through the Hazard Mitigation Grant from GEMA for our City Hall and Plaza building.

On February 17, 2022, council accepted the Grant Award in the amount of $36,372 to purchase and install a generator for the City Hall and Plaza Building. Award details were as follows:

75% Federal Cost Share	$27,279.00
10% State Cost Share	$3,637.00
15% Local Match Cost Share	$5,456.00
TOTAL:	$36,372.00

In anticipation of costs to be higher than the award, there are funds available in the Local Resources Fund in the amount of $50,000 to assist with match and any additional costs incurred.

FACTS AND ISSUES:

: Invitation to Bid was released August 10, 2022, and closed September 7, 2022. Bid site visit (non-mandatory) was held on August 24, 2022, at 11:00 am. There was one vendor that attended the meeting, and they were also the sole bidder.

Bidder is Current Edge Solutions out of Savannah, GA. Bid amounts are as follows:

60KW Bluestar propane generator with installation	$43,867.00
Propane tank with piping and 500 gallons fuel	$7,800.00
TOTAL:	$51,667.00

The City of Flowery Branch will be utilizing $21,471 of funding from the Local Resources Fund to cover the local match and additional funding requirements.

OPTIONS:

1. Accept and approve Resolution 22-018 awarding bid to Current Edge Solutions for Bid No: 22-010 Generator in the amount of $51,667.
2. Disapprove and provide alternative proposals.

** Please note: A previous resolution was approved accepting the GEMA grant for the generator which included our 15% local match of $5,456.00. In addition to that match, we will need to add additional funding from the Local Resource Fund in the amount of $15,295.00 which is included in this bid award resolution.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
Yes

AMOUNT AND SOURCE OF FUNDS:
$15,295 from Local Resource Fund

RECOMMENDATION:

SAMPLE MOTION:
I make a motion to approve Resolution 22-018 awarding generator bid number 22-010 to Current Edge Solutions for the purchase and installation of a generator in the amount of $51,667.00.

COLLABORATING DEPARTMENT:

DEPARTMENT: Finance

Prepared by: Shelia Cooper

ATTACHMENTS

- Executuve Summary Resolution 22-018.pdf
- Resolution 22-018 Award of Generator Bid.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Approval of Resolution 22-018: Generator – Hazard Mitigation Grant Project Award

DATE: October 6, 2022

BUDGET INFORMATION:
ANNUAL-
CAPITAL- $51,667.00

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

COUNCIL ACTION REQUESTED ON: Awarding Bid No. 22-010 to Current Edge Solutions for a propane generator for City Hall.

PURPOSE: Install a 60kw propane generator for City Hall for back-up power in the event of a power failure utilizing funds from the Hazard Mitigation Grant.

HISTORY: On September 15, 2017, the President declared that a major disaster exists in Georgia. This declaration was based on damage resulting from Hurricane Irma. In 2018, our Police Department applied for a generator grant through the Hazard Mitigation Grant from GEMA for our City Hall and Plaza building.

On February 17, 2022, council accepted the Grant Award in the amount of $36,372 to purchase and install a generator for the City Hall and Plaza Building. Award details were as follows:

75% Federal Cost Share	$27,279.00
10% State Cost Share	$3,637.00
15% Local Match Cost Share	$5,456.00
TOTAL:	**$36,372.00**

In anticipation of costs to be higher than the award, there are funds available in the Local Resources Fund in the amount of $50,000 to assist with match and any additional costs incurred.

FACTS AND ISSUES: Invitation to Bid was released August 10, 2022, and closed September 7, 2022. Bid site visit (non-mandatory) was held on August 24, 2022, at 11:00 am. There was one vendor that attended the meeting, and they were also the sole bidder.

Bidder is Current Edge Solutions out of Savannah, GA. Bid amounts are as follows:

60KW Bluestar propane generator with installation	$43,867.00
Propane tank with piping and 500 gallons fuel	$7,800.00
TOTAL:	**$51,667.00**

The City of Flowery Branch will be utilizing $21,471 of funding from the Local Resources Fund to cover the local match and additional funding requirements.

OPTIONS:

1. Accept and approve Resolution 22-018 awarding bid to Current Edge Solutions for Bid No: 22-010 Generator in the amount of $51,667.
2. Disapprove and provide alternative proposals.

RECOMMENDED SAMPLE MOTION: I make a motion to approve Resolution 22-018 awarding generator bid number 22-010 to Current Edge Solutions for the purchase and installation of a generator in the amount of $51,667.00.

DEPARTMENT: Finance

Prepared by: Krystle Hightower

RESOLUTION NO. 22-018

AWARD OF CONTRACT TO CURRENT EDGE SOLUTIONS FOR A GENERATOR FOR CITY HALL AND PLAZA

WHEREAS, City Council approved the Grant Award of $36,372.00 from GEMA to install a generator for the City Hall and Plaza building on February 17, 2022; and

WHEREAS, the City of Flowery Branch received one (1) qualified bid for said project, in the amount of $51,667.00; and

WHEREAS, the City of Flowery Branch is requesting acceptance of this bid with Current Edge Solutions in the amount of $51,667.00; and

WHEREAS, the additional funding in the amount of $15,295.00 will be moved from the Local Resources Fund to the grant fund for said project; and

NOW THEREFORE BE IT RESOLVED that the governing body for the City of Flowery Branch hereby authorizes the award of the contract to Current Edge Solutions for $51,667.00; and

BE IT FURTHER RESOLVED that the Mayor, City Manager, and City Attorney are authorized to sign documents that may be necessary to complete the generator project.

RESOLVED this 6th day of October 2022.

____
Edward R. Asbridge, Mayor

ATTEST:

____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

____
E. Ronald Bennett, Jr., City Attorney

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Resolution 22-019 - Flowery Branch Market Outdoor Furniture Award

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
On July 21, 2022, City Council was presented with a change order request for the Farmers Market Project. In this request was included furniture for the Market Alley in the amount of $143,100. At that time, the change request was approved excluding the furniture and City Council asked that an invitation to bid be created for the furniture items.

FACTS AND ISSUES:
Invitation to Bid was released August 10, 2022, and closed September 7, 2022. There were two (2) qualified bids received ranging from $28,058.10 to $40,165.00. The lowest bid was from Atlanta Teak Furniture in the amount as stated below:

17 Bistro Round Table – 36"	$619.00/each	$10,523.00
50 Chelmsford Stacking Armchairs	$339.00/each	$16,950.00
4 Hiback Rocking Chairs	$759.00/each	$3,036.00
Government Discount		- $3,050.90
Delivery/Assembly Fee		$600.00
TOTAL:		$28,058.10

The City of Flowery Branch will be utilizing the Tax Allocation District Funds within the Market and Streetscapes Capital Project.

OPTIONS:
1. Accept and approve Resolution 22-019 awarding bid to Atlanta Teak Furniture for Bid No: 22-011 Flowery Branch Market Outdoor Furniture in the amount of $28,058.10.
2. Disapprove and provide alternative proposals.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
Yes

AMOUNT AND SOURCE OF FUNDS:
$28,058.10 from TAD with the Market and Streetscapes Capital Project

RECOMMENDATION:

SAMPLE MOTION:

I make a motion to approve Resolution 22-019 awarding Flowery Branch Market Outdoor Furniture bid number 22-011 to Atlanta Teak Furniture for the purchase and installation of 17 bistro round tables, 50 stacking armchairs, and 4 Hiback rocking chairs in the amount of $28,058.10.

COLLABORATING DEPARTMENT:

DEPARTMENT: Finance

Prepared by: Shelia Cooper

ATTACHMENTS

- Executive Summary Resolution 22-019 - Farmers Market Outdoor Furniture.pdf
- Resolution 22-019 Farmers Market Outdoor Furniture - Copy.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Approval of Resolution 22-019: Flowery Branch Market Outdoor Furniture Award

DATE: October 6, 2022

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

BUDGET INFORMATION:
ANNUAL-
CAPITAL- $28,058.10

COUNCIL ACTION REQUESTED ON: Awarding Bid No. 22-011 to Atlanta Teak Furniture for the Flowery Branch Market Outdoor Furniture.

PURPOSE: To purchase and install 17 Bistro round 36" tables, 50 stacking armchairs, and 4 Hiback rocking chairs for the Flowery Branch Market Alley.

HISTORY: On July 21, 2022, City Council was presented with a change order request for the Farmers Market Project. In this request was included furniture for the Market Alley in the amount of $143,100. At that time, the change request was approved excluding the furniture and City Council asked that an invitation to bid be created for the furniture items.

FACTS AND ISSUES: Invitation to Bid was released August 10, 2022, and closed September 7, 2022. There were two (2) qualified bids received ranging from $28,058.10 to $40,165.00. The lowest bid was from Atlanta Teak Furniture in the amount as stated below:

17 Bistro Round Table – 36"	$619.00/each	$10,523.00
50 Chelmsford Stacking Armchairs	$339.00/each	$16,950.00
4 Hiback Rocking Chairs	$759.00/each	$3,036.00
Government Discount		- $3,050.90
Delivery/Assembly Fee		$600.00
TOTAL:		**$28,058.10**

The City of Flowery Branch will be utilizing the Tax Allocation District Funds within the Market and Streetscapes Capital Project.

OPTIONS:

1. Accept and approve Resolution 22-019 awarding bid to Atlanta Teak Furniture for Bid No: 22-011 Flowery Branch Market Outdoor Furniture in the amount of $28,058.10.
2. Disapprove and provide alternative proposals.

RECOMMENDED SAMPLE MOTION: I make a motion to approve Resolution 22-019 awarding Flowery Branch Market Outdoor Furniture bid number 22-011 to Atlanta Teak Furniture for the purchase and installation of 17 bistro round tables, 50 stacking armchairs, and 4 Hiback rocking chairs in the amount of $28,058.10.

DEPARTMENT: Finance

Prepared by: Krystle Hightower

RESOLUTION NO. 22-019

AWARD OF CONTRACT TO ATLANTA TEAK FURNITURE FOR THE FLOWERY BRANCH MARKET OUTDOOR FURNITURE

WHEREAS, the City of Flowery Branch Market Alley design needs outdoor furniture; and

WHEREAS, the City of Flowery Branch received two (2) qualified bids for said project, ranging from $28,058.10 to $40,165.00, with Atlanta Teak Furniture qualifying as the preferred low bidder; and

WHEREAS, the City of Flowery Branch is requesting acceptance of this bid with Atlanta Teak Furniture in the amount of $28,058.10; and

WHEREAS, funding for said project will be provided by Fund 270, the Tax Allocation District Funds; and

NOW THEREFORE BE IT RESOLVED that the governing body for the City of Flowery Branch hereby authorizes the award of the contract to Atlanta Teak Furniture for $28,058.10; and

BE IT FURTHER RESOLVED that the Mayor, City Manager, and City Attorney are authorized to sign documents that may be necessary to complete the furniture project.

RESOLVED this 6th day of October 2022.

____
Edward R. Asbridge, Mayor

ATTEST:

____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

____
E. Ronald Bennett, Jr., City Attorney

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider First Amendment to FB Main Street, A Master Condominium Shopping Center Lease Agreement with The Social Peach Boutique, LLC.

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
The City of Flowery Branch and The Social Peach Boutique entered into a lease agreement previously, and the tenants began the process of finishing the space for the opening of the boutique.

FACTS AND ISSUES:
Upon inquiring of several contractors, the tenants was made aware of various supply chain issues and cannot complete the work within the rent commencement date timeframe set forth with the original lease.

The tenants requested an additional 90 days for the build-out of their leased space.

OPTIONS:
(1) Approve the first amendment to the lease agreement with The Social Peach Boutique. 2) Do not approve the first amendment to the lease agreement with The Social Peach Boutique and rent will commence upon the original terms.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:
Motion to approve the first amendment FB Main Street, A Master Condominium Shopping Center lease agreement with The Social Peach Boutique, LLC.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- ES - Social Peach 1st amend to lease more time ERB Rev.pdf
- First Amendment to The Social Peach Boutique Lease Agreement.pdf
- The Social Peach Boutique, LLC Lease Agreement.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: First Amendment to FB Main Street, a Master Condominium Shopping Center Lease Agreement with The Social Peach Boutique

DATE: October 6, 2022

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL- N/A

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

COUNCIL ACTION REQUESTED ON: October 6, 2022

PURPOSE: To delay the rent commencement date to the earlier of an additional 90 days, or upon its opening, whichever occurs first.

HISTORY: The City of Flowery Branch and The Social Peach Boutique entered into a lease agreement previously, and the tenants began the process of finishing the space for the opening of the boutique.

FACTS AND ISSUES: Upon inquiring of several contractors, the tenant was made aware of various supply chain issues and cannot complete the work within the rent commencement date timeframe set forth with the original lease. The tenant requested an additional 90 days for the build-out of their leased space.

OPTIONS: (1) Approve the first amendment to the lease agreement with The Social Peach Boutique. 2) Do not approve the first amendment to the lease agreement with The Social Peach Boutique and rent will commence upon the original terms.

RECOMMENDED SAMPLE MOTION: Motion to approve the first amendment FB Main Street, A Master Condominium Shopping Center lease agreement.

DEPARTMENT: Administration

Prepared by: Tonya D. Parrish

ATTACHMENTS: First amendment to FB Main Street, a master condominium shopping center lease agreement.

FIRST AMENDMENT TO FB MAIN STREET
A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT

THIS FIRST AMENDMENT TO FB MAIN STREET A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT (this “Amendment”), is made and entered into effective the 6th day of October, 2022, by and between the CITY OF FLOWERY BRANCH (hereinafter referred to as “Landlord”) and THE SOCIAL PEACH BOUTIQUE, LLC, a limited liability company, (hereinafter referred to as “Tenant”).

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated June 16, 2022, (the “Original Lease”), for that certain property commonly known as 5519 Main Street, Suite 103, Flowery Branch, Georgia (the “Demised Premises”); and

WHEREAS, Landlord and Tenant desire to amend the Original Lease, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, AND IN CONSIDERATION of the sum of One and No/100 Dollars ($1.00), each to the other paid, the receipt and adequacy and sufficiency of which is hereby acknowledge, and the mutual covenants flowing between the parties hereto, the Original Lease is hereby amended as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this Amendment and are incorporated herein by this reference, and such recitals and representations and the Original Lease are hereby ratified.

2. Basic Lease Provisions. Section 1.1. K. FIXED MINIMUM RENT COMMENCEMENT DATE is deleted in its entirety and replaced with the following: “Earlier of (i) Tenant opening for business or (ii) seven (7) months following the Lease Commencement Date.”

3. Landlord and Tenant’s Work. The first sentence of Section 2. of Exhibit B is deleted in its entirety and replaced with the following: “Provided Tenant is not in default hereunder and shall have completed Tenant’s Work in compliance with the plans and specifications approved by Landlord and in compliance with all governmental codes, ordinances and the terms hereof, Landlord shall pay to Tenant a sum up to Eighty One Thousand, Seven Hundred Fifty and No/100 Dollars ($81,750) as a construction allowance (the “Tenant Improvement Allowance”), in no event to exceed the actual costs of improvements constituting Tenant’s Work which are in stalled in the Leased Premises.”

EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the Original Lease shall remain the same and the parties hereto do hereby ratify the Original Lease.

IN WITNESS WHEREOF, Landlord and Tenant have carefully read and reviewed this Amendment and each term and provision contained herein, and by the execution of this

Amendment shows their informed and voluntary consent thereto. The parties hereby agree that, at the time this Amendment is executed, the terms of this Amendment are commercially reasonable and effectuate the intent and purpose of Landlord and Tenant with respect to the Demised Premises.

This 6th day of October, 2022.

LANDLORD: CITY OF FLOWERY BRANCH, GEORGIA

By: ______________________________
Edward R. Asbridge, Mayor

ATTEST:

____
Shelia Cooper, City Clerk

TENANT: THE SOCIAL PEACH BOUTIQUE, LLC

By: _______________________________
Katie Gettys, Member

Sworn to and subscribed before me
this_____ day of October, 2022.

____
NOTARY PUBLIC
My commission expires: _________

FB MAIN STREET

A MASTER CONDOMINIUM

SHOPPING CENTER

LEASE AGREEMENT

5519 Main Street

Suite 103

Flowery Branch, Georgia

LANDLORD: City of Flowery Branch

TENANT: The Social Peach Boutique, LLC

ARTICLE I. BASIC LEASE PROVISIONS
AND ENUMERATION OF EXHIBITS

SECTION 1.1. BASIC LEASE PROVISIONS

A.	DATE (for reference purposes):	June 16, 2022
B.	LANDLORD:	City of Flowery Branch, a Georgia municipal corporation
C.	LANDLORD'S ADDRESS:	5410 Pine Street Flowery Branch, Georgia 30542
D.	TENANT:	The Social Peach Boutique, LLC
E.	TENANT'S TRADE NAME:	The Social Peach Boutique
F.	TENANT'S NOTICE ADDRESS:	Katie Gettys 4362 Willow Oak Drive Gainesville, Georgia 30506
G.	PHONE NUMBER AND EMAIL:	(770) 778-1311 *katie.gettys@yahoo.com*
H.	POSSESSION DATE:	Upon delivery of a fully executed Lease and completion of Landlord's Work, if any.
I.	LEASE COMMENCEMENT DATE:	Upon delivery of a fully executed Lease and completion of Landlord's Work, if any.
J.	LEASE TERM:	Five (5) Years following the Rent Commencement Date.
K.	FIXED MINIMUM RENT COMMENCEMENT DATE:	Earlier of (i) Tenant opening for business or (ii) four (4) months following the Lease Commencement Date.
L.	FIXED MINIMUM RENT:	See Exhibit G for rent schedule.

M.	ESTIMATED ADDITIONAL MONTHLY RENT (for all relevant property expenses including but not limited to taxes, insurance, property management overhead and fee, maintenance, exterior building repairs and maintenance, and parking lot and landscaping maintenance):	$336.46 Notwithstanding anything contained in this Lease to the contrary, the Additional Monthly Rent shall be adjusted to actual expenses annually.
N.	ADVANCE RENT:	$3,063.75
	ADVANCE ADDITIONAL RENT:	$336.46
	SECURITY DEPOSIT:	$3,063.75 plus $336.46
	TOTAL AMOUNT DUE WITH LEASE:	$3,063.75 + $336.46 + $3,400.21
O.	GUARANTORS:	Katie Gettys, Caylen Foster and owners having more than 20% interest in Tenant
P.	USE:	For the use of a retail clothing store and for no other purpose.
Q.	HOURS OF OPERATION:	Tenant agrees to remain open during standard operating hours for a retail clothing store (11 a.m. to 7 p.m.) on a daily basis (Monday through Sunday) during the lease term and any extensions.
R.	APPROXIMATE SIZE OF LEASED PREMISES:	1634 Square Feet
S.	OPTION TO RENEW:	Subject to the conditions herein set forth. Tenant is hereby granted the option to renew the Term of this Lease (the "Renewal Option") for one (1) period of two (2) (the "Renewal Term"), to commence at the expiration of the initial Term of this Lease. Tenant shall exercise the Renewal Option by delivering written notice of such election to Landlord at least six (6) months but no more than twelve (12) months prior to the expiration of the initial Term of this Lease. The renewal of this Lease shall be upon the same terms and conditions as this Lease, except: (a) the annual Minimum Guaranteed Rental during the Renewal Term shall be as shown on Exhibit G; (b) Tenant shall have no option to renew this Lease beyond the expiration of the Renewal Term; and (c) Tenant shall not have the right to assign the Renewal Option to any sublessee of the Leased Premises or assignee of the Lease, not may any such sublessee or assignee exercise or enjoy the benefit of such Renewal Option.

		Notwithstanding the foregoing, Tenant shall not have the right to exercise the Renewal Option, unless: (i) this Lease shall be in full force and effect on the date of the exercise of the Renewal Option and the date of the expiration of the original Term; and (ii) on the date of the exercise of the Renewal Option and the date of the expiration of the original Term there exist no default on the part of the Tenant under this Lease.

SECTION 1.2. SIGNIFICANCE OF BASIC LEASE PROVISIONS

Each reference in this Lease to any of the Basic Lease Provisions contained in Section 1.1 of this article shall be deemed and construed to incorporate all of the terms provided under each such basic lease provision.

SECTION 1.3. ENUMERATION OF EXHIBITS

The exhibits enumerated in this section and attached to this Lease are incorporated in this Lease by this reference and are to be construed as a part of this Lease.

Exhibit A.	Site Plan
Exhibit B.	Tenant's Work
Exhibit C.	Legal Description
Exhibit D.	Rules and Regulations
Exhibit E.	Sign Criteria
Exhibit F.	Lease Guarantee
Exhibit G.	Rent Schedule

ARTICLE II. LEASED PREMISES AND TERM

SECTION 2.1. SHOPPING CENTER

Landlord is the owner of a parcel of real estate, legally described on Exhibit C, located in 5519 Main Street, Flowery Branch, Georgia commonly known as the FB Main Street – a Master Condominium (the "Shopping Center"). It is agreed that the depiction of the Shopping Center on Exhibit A does not constitute a representation, covenant or warranty of any kind by Landlord. Landlord reserves the right to sell any portion or portions of the Shopping Center, such portion(s) thereafter shall not be included in the Shopping Center. Landlord reserves the right to change the number and location of buildings, building dimensions, the number of floors in any of the buildings, store dimensions, the identity and type of other stores and tenancies, and Landlord further reserves the right to locate kiosks and to make available common areas pursuant to the terms hereof, provided only that the Leased Premises as hereinafter defined shall be substantially as depicted on Exhibit A. Landlord further reserves the right to alter the Shopping Center, at

Landlord's sole election, however, no such alteration shall materially impair the visibility or accessibility of Tenants Leased Premises.

SECTION 2.2. LEASED PREMISES

Landlord hereby leases and demises to Tenant, and Tenant hereby accepts from Landlord, subject to and with the benefit of the terms and provisions of this Lease, the store premises sometimes herein referred to as the "Leased Premises" as more particularly described as follows:

Suite 103 consisting of approximately 1,634 sq. ft. as shown on Exhibit "A".

Said Leased Premises shall extend from the exterior faces of all exterior walls and the center line of those walls separating the Leased Premises from adjacent leased premises in the Shopping Center.

SECTION 2.3. LEASE TERM

The Lease Term shall, commence on the Lease Commencement Date [Section 1.1.I.] and shall end on the last day of the last Lease Year (hereinafter "Termination Date"), unless sooner terminated.

SECTION 2.4. LEASE YEAR

The term "Lease Year" means a period of twelve (12) consecutive calendar months. The first full Lease Year shall begin on the Lease Commencement Date if the Lease Commencement Date shall occur on the first day of a calendar month; if not, then the first Lease Year shall commence upon the first day of the month next following the Lease Commencement Date. Each succeeding Lease Year shall commence upon the anniversary date of the first Lease Year.

SECTION 2.5. STATEMENT AS TO LEASE TERM

In the event the Lease Commencement Date and Termination Date of the Lease Term have not been determined, as of the date of execution hereof, Landlord and Tenant shall execute and deliver a written statement specifying therein the Lease Commencement Date and Termination Date of the Lease Term when determined.

SECTION 2.6. OBLIGATIONS OF TENANT BEFORE LEASE TERM BEGINS

Prior to the Possession Date, Tenant shall deliver to Landlord the required Certificate of Insurance (stated in Section 7.2). Prior to the Lease Commencement Date, and after first obtaining the prior written consent of Landlord, Tenant shall be permitted to install its leasehold improvements, fixtures and other equipment required by Tenant to conduct its business. Tenant shall observe and perform all of its obligations under this Lease, from the Possession Date [Section 1.1.H.] until the Lease Commencement Date [Section 1.1.I.], in the same manner as though the Lease Term began on the Possession Date, including but not limited to payment of Additional Rent as stated in Section 1.1.M. but excluding Fixed Minimum Rent. Landlord shall have no liability whatsoever for loss or damage to Tenant's leasehold improvements, fixtures, equipment or other property of Tenant or Tenant's contractors.

ARTICLE III. RENT AND OTHER TENANT CONTRIBUTIONS

SECTION 3.1. FIXED MINIMUM AND ADDITIONAL RENT

Tenant agrees to pay rent to Landlord, or to such other person or entity as Landlord may direct, without demand, at such place as Landlord may by notice in writing to Tenant, from time to time, direct, a fixed amount of rent (the "Fixed Minimum Rent"), and an amount of additional rent based upon certain expenses relating to the Leased Premises and the Shopping Center (the "Additional Rent") at the following rates and times and as set forth on Exhibit G:

(a) Fixed Minimum Rent shall be payable in advance in equal successive monthly installments on the first day of each calendar month included in this Lease Term. For any portion of a calendar month included at the beginning of said term, one-thirtieth (1/30) of such a monthly payment for each day of such portion shall be payable on the first day of such portion; and

(b) Additional Rent shall be payable as provided in Sections 3.2, 5.3 and 8.1.

SECTION 3.2. TAXES

Tenant shall pay to Landlord, as Additional Rent hereunder, Tenant's prorata share of any and all special assessments, transportation or environmental protection taxes or levy or similar tax or levy, and Tenant's prorata share of real estate taxes attributable to the Shopping Center paid annually by Landlord during the Lease Term, prorated for any partial Lease Year beginning on the Possession Date. Tenant's prorata share shall be based on the ratio of the total Floor Area of the Leased Premises to the total Floor Area on all floors of building space within the Shopping Center as of the assessment date for the particular special assessment, tax or levy, or real estate tax in question. Tenant shall also pay its prorata share of all expenses, including reasonable attorneys' fees, expenses, administrative hearing and court costs incurred in contesting or negotiating the amount, assessment or rate of any such real estate tax, special assessment, tax or levy. Should the state, or any political subdivision thereof or any governmental authority having jurisdiction thereover, impose a tax and/or assessment upon or against the rentals and/or other charges payable hereunder by Tenant to Landlord, either by way of substitution for the taxes and assessments levied or assessed against such land and such buildings, or in addition thereto, or impose an income or franchise tax in substitution for the general tax levied against such land and buildings, such taxes and/or assessments shall be deemed to constitute a tax and/or assessment against such land and such buildings for the purpose of this section. The annual charges for such assessments or taxes shall be paid in monthly installments on the first day of each calendar month in advance in an amount estimated by Landlord. Landlord shall furnish Tenant, upon Tenant's request, a statement of the assessments or taxes paid or incurred by Landlord for each calendar year of the Lease Term and thereupon there shall be an adjustment between Landlord and Tenant with payment to Landlord or credit to Tenant for future tax payments, as the case may be, to the end that Landlord shall receive the precise amount of Tenant's prorata share of such assessments and taxes for such period and no more. In the event any portion or portions of the Shopping Center are separately

assessed, for purposes of the proration above, Tenant's proportionate share shall be the ratio of the total Floor Area of the Leased Premises to the total Floor Area of all floors of building space within the particular parcel assessed which includes the Leased Premises.

SECTION 3.3. SECURITY DEPOSIT

Tenant, contemporaneously with the execution of this Lease, has deposited with Landlord to secure the faithful performance by Tenant of all the covenants, conditions and agreements in this Lease set forth, and contained on the part of Tenant to be fulfilled, kept, observed and performed, such sum as set forth in Section 1.1 as a Security Deposit. Said deposit shall be held by Landlord, without liability for interest, as security for the faithful performance by Tenant of all the terms, covenants and conditions of this Lease, and Landlord may commingle the same with its other funds. Such interest, if any, may be retained as property of the Landlord, and will not be paid to the Tenant. Such Security Deposit or any portion thereof not previously applied may be applied to the curing of any default that may then exist under this Lease, without prejudice to any other remedy or remedies which Landlord may have on account thereof, and upon such application, Tenant shall pay Landlord on demand the amount so applied which shall be added to the Security Deposit so that the same may be restored to its original amount. In the event the Leased Premises are conveyed by Landlord, the deposit or any portion thereof not previously applied may be turned over to Landlord's grantee or successor, and in such event Tenant hereby releases Landlord from any and all liability with respect to the deposit and/or application or return and Tenant agrees to look to such grantee for such application or return. In the event Tenant shall faithfully fulfill, keep, perform and observe all the covenants, conditions and agreements in this Lease set forth and contained on the part of Tenant to be fulfilled, the sum deposited or the part or portion thereof not previously applied shall be returned to Tenant, without interest, no later than thirty (30) days after the expiration of the Term of this Lease or any renewal or extension thereof, provided Tenant has vacated the Leased Premises and surrendered possession thereof to Landlord at the expiration of said Term or any renewal thereof as provided herein.

ARTICLE IV. UTILITY SERVICES

SECTION 4.1. WATER, SEWER, ELECTRICITY AND GAS

Landlord has caused the necessary mains, conduits and other facilities to be provided to supply water, sewer, gas and electricity to the Shopping Center. Landlord shall provide gas service and facilities to Tenant, however, the same being the sole responsibility of Tenant. Tenant agrees to have all utility services transferred into Tenant's name on the Possession Date. If Tenant has not had any or all of the utilities transferred on the Possession Date, then Tenant agrees to pay Landlord, on demand, the actual cost paid by Landlord for such utilities, together with an administrative charge of One Hundred Fifty and no/100 Dollars ($150.00) for each such payment. Tenant shall pay for all electricity used in the Leased Premises and all water and sewer charges, and gas charges, if applicable, at its own cost and expense. In the event Landlord, who shall have the option to do so, shall elect to supply any one or more or all of said services, Tenant shall purchase the use of said services as are tendered by Landlord and shall pay the rates, including any established minimum charges, established by Landlord for such services, but the rate shall be no more than those charged by the public utility furnishing such services in the area. The charges for

such services as are so furnished shall be deemed Additional Rent due and payable on the first day of the calendar month following rendition of a bill therefor. Landlord may discontinue furnishing such services if payment for same is not received by Landlord upon not less than five (5) days written notice, and no such discontinuation shall be deemed an eviction or render Landlord liable to Tenant for damages or relieve Tenant from performance of its obligations hereunder. In the event Landlord shall elect to furnish one or more of such services, from time to time, Landlord shall not be liable to Tenant in damages or otherwise if any one or more of said services is interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of Landlord. In any event, Landlord may cease to furnish any one or more of such services without any responsibility to Tenant, except to connect the service facilities with such other sources of supply as may be available for the services so discontinued. Tenant will not install any equipment which will exceed or overload the capacity of any utility facilities servicing the Leased Premises and if any equipment installed by Tenant shall require additional utility facilities, the same shall be installed and maintained at Tenant's expense in accordance with plans and specifications to be approved in writing by Landlord. In the event the Leased Premises are not separately metered for water and Tenant's use requires an excessive volume of water, at Landlord's discretion, a sub-meter will be installed at the Leased Premises at Tenant's expense.

SECTION 4.2. HEATING, VENTILATING AND COOLING

Tenant shall be solely responsible and shall pay for all charges rendered in connection with all heating, ventilating and cooling of the Leased Premises and shall promptly pay all bills for materials furnished or labor performed for Tenant or at Tenant's instance and request in connection with any repairs, replacements, alterations, improvements and installation of all fixtures and equipment in connection therewith on the Leased Premises, and shall keep said Leased Premises free from all claims for liens for work, labor or materials in connection therewith.

SECTION 4.3. OTHER SERVICES

In addition to the above and foregoing, Tenant shall be solely responsible for all garbage and sewage disposal and waste removal, janitorial and other services of any type or nature furnished to the Leased Premises, and shall pay promptly all bills for materials or labor performed in connection therewith. Tenant further covenants and agrees to keep the Leased Premises and the walks adjacent thereto at all times in a neat, clean and sanitary condition and free from snow, ice, waste or debris, and neither to commit or permit any waste or nuisance thereon.

ARTICLE V. COMMON AREAS AND FACILITIES

SECTION 5.1. COMMON AREAS AND FACILITIES

Landlord shall make available, from time to time, such areas and facilities of common benefit to the tenants and occupants of the Shopping Center as Landlord shall deem appropriate (the "Common Areas"). Landlord shall operate, manage, equip, light, insure, repair and maintain the Common Areas and facilities for their intended purposes in such manner as Landlord shall, in its

sole discretion, determine, and may, from time to time, change the size, location and nature of any Common Areas and facilities and may make installations therein and move and remove such installation. Landlord shall have the right to close the Common Areas, or any part thereof, on such business days as Landlord deems necessary for the improvement, maintenance or repair of the Common Areas and on such nonbusiness days or during such nonbusiness hours as Landlord shall, in its sole discretion, determine.

SECTION 5.2. USE OF COMMON AREAS

Tenant and its permitted concessionaires, officers, employees, agents, customers and invitees shall have the nonexclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant such rights, to use the Common Areas as designated from time to time by Landlord, subject to such reasonable regulations as Landlord may from time to time impose, including the designation of specific areas in which vehicles owned by Tenant, its permitted concessionaires, officers, employees and agents must be parked. Tenant agrees to abide by such regulations and to use its best efforts to cause its permitted concessionaires, officers, employees, agents, customers and invitees to conform thereto. Landlord may at any time close temporarily any part of the Common Areas to make repairs or changes, to prevent the acquisition of public rights in such area or to discourage noncustomer parking, and may do such other acts in and to the Common Areas as in its reasonable judgment may be desirable to improve the convenience thereof. Tenant shall upon request furnish to Landlord the license numbers and description of the vehicles operated by Tenant and its permitted concessionaires, officers and employees. Tenant shall not at any time interfere with the rights of Landlord and other tenants, its and their permitted concessionaires, officers, employees, agents, customers and invitees, to use any part of the parking areas and other part of the Common Areas.

SECTION 5.3. CHARGE FOR COMMON AREAS AND FACILITIES

Tenant shall pay to the Landlord, as Additional Rent, in the manner provided in Section 5.5 Tenant's prorata share, as defined in Section 5.4, of Common Areas maintenance cost as hereinafter defined including the cost of Capital Improvements designed to protect the health and safety of the tenants in the Leased Premises and the Shopping Center.

Common Areas maintenance cost shall be deemed to include all costs and expenses of every kind and nature paid or incurred by Landlord during the Lease Term (including appropriate reserves) in operating, managing, equipping, policing and protecting (if and to the extent provided by Landlord), insuring, servicing (including heating, ventilating and cooling any enclosed mall, in the event Landlord elects to enclose any Common Areas), lighting, repairing, replacing and maintaining the Common Areas and facilities in the Shopping Center. Such costs and expenses shall include, but not be limited to, such maintaining and repairing as shall be required in Landlord's judgment to preserve the utility of the Common Areas in condition and status the same as it was at the time of the completion of the original construction and installation thereof; all exterior painting; all costs and expenses of security and fire protection; all costs of restriping, patching, repairing and maintaining parking areas, garages, entries, gutters and downspouts, the

construction of new entries as required and work on roads, as needed, adjacent to the Shopping Center; pedestrian traffic direction and control; roof repairs; all costs and expenses of cleaning and removing of rubbish, dirt, debris, snow and ice; all costs and expenses of planting, maintaining, replanting and replacing flowers and landscaping; management fees; water and sewerage charges; premiums for liability and property damage, fire, extended coverage, malicious mischief, vandalism, workers' compensation and employer's liability, and any other casualty or risk insurance procured by Landlord in connection with Common Areas, wages, unemployment taxes, social security taxes, special assessments and personal property taxes attributable to the Common Areas; fees for audits, required licenses and permits; all costs and expenses incurred by Landlord in testing of sprinkler systems located in the Shopping Center, all charges for utility services for the Common Areas including all costs and expenses of maintaining lighting fixtures and providing electricity to the Common Areas and to Common Areas pole signage (including the cost of light bulbs and electric current); all costs, expenses, surcharges or other impositions or assessments incurred by Landlord in connection with environmental protection legislation or regulation assessed against or imposed on the Shopping Center or any part thereof with regard thereto; reasonable depreciation of equipment, machinery and facilities, rents paid for the leasing of equipment and finance charges paid under any installment purchase of equipment, machinery and facilities used in the operation of the Common Areas and administrative costs at the rate of Fifteen Percent (15%) of the total costs of operating and maintaining the Common Areas (except the appropriate reserves); and such other costs as Landlord may reasonably determine are required for the proper maintenance of the Common Areas, except that all Capital Improvement expenses shall be excluded therefrom.

SECTION 5.4. TENANT'S PRORATA SHARE

Tenant's prorata share of the Common Areas maintenance cost shall be determined by multiplying the total cost incurred or paid by Landlord by a fraction whose numerator is the gross leasable area of the Leased Premises as set forth in Section 2.2 and the denominator of which is the total square feet of gross leasable area within the Shopping Center. The "Gross Leasable Area" shall mean with respect to the Leased Premises and with respect to all other leasable areas, the number of square feet of floor area on all levels, including any mezzanines, basements, or balconies, but excluding "Common Areas" measured from the exterior face of exterior walls and/or the exterior face of service corridor walls, the exterior of building line from all frontage, and the center line of party walls. No deduction shall be made for columns, stairs, elevators, or any interior construction or equipment. Provided, however, for any Common Areas maintenance cost separately metered, billed to or paid directly by any Tenant, the floor area of such tenant space attributable to such Common Areas cost shall be deleted from the above proration for such separate cost. The Floor Area hereinabove provided shall not include the floor area of roof structures used for mechanical equipment.

SECTION 5.5. PAYMENT OF COMMON AREAS MAINTENANCE COST

The annual charges for Common Areas maintenance cost shall be paid in monthly installments on the first day of each calendar month in advance in an amount estimated by Landlord. Landlord shall furnish Tenant, upon Tenant's request, a statement in reasonable detail of the actual Common

Areas maintenance cost paid or incurred by Landlord at the end of each calendar year and thereupon there shall be an adjustment between Landlord and Tenant with payment to Landlord or credit to Tenant against any current or future amounts due from Tenant to Landlord pursuant to this Lease, as the case may be, to the end that Landlord shall receive the precise amount of Tenant's prorata share of said costs for such period and no more.

ARTICLE VI. LANDLORD'S ADDITIONAL COVENANTS

SECTION 6.1. REPAIRS BY LANDLORD

Landlord covenants at its expense to keep the foundations and roof of the Leased Premises, and the structural soundness of the exterior walls thereof, in good order, repair and condition, unless any necessary work is required because of damage caused by any act, omission or negligence of Tenant, any permitted concessionaire or their respective employees, agents, invitees, licensees or contractors. Landlord shall not be required to commence any such repair until a reasonable time after written notice from Tenant that the same is necessary. The provisions of this section shall not apply in the case of damage or destruction by fire or other casualty or taking under the power of eminent domain, in which events the obligations of Landlord shall be controlled by Article VIII. Except as provided in this Section 6.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind upon the Leased Premises, or any equipment, facilities or fixtures contained therein, which shall be the responsibility of Tenant as hereinafter provided.

SECTION 6.2. QUIET ENJOYMENT

Landlord covenants and agrees that so long as Tenant has committed no default under this Lease, Tenant's peaceful and quiet possession of the Leased Premises during the Lease Term shall not be disturbed by Landlord or by anyone claiming by, through or under Landlord.

SECTION 6.3. LIMITATION ON RIGHT OF RECOVERY AGAINST LANDLORD

Tenant acknowledges and agrees that the liability of Landlord under this Lease shall be limited to Landlord's interest in the Shopping Center and any judgments rendered against Landlord shall be satisfied solely out of its interest in the Shopping Center. No personal judgment shall lie against Landlord upon extinguishment of its rights in the Shopping Center and any judgment so rendered shall not give rise to any right of execution or levy against Landlord's assets. The provisions hereof shall inure to Landlord's successors and assigns including any mortgagee of Landlord. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under the Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded Tenant by law or under the Lease.

If Tenant claims or asserts that Landlord has violated or failed to perform a covenant of Landlord not to unreasonably withhold or delay Landlord's consent or approval, Tenant's sole remedy shall be an action for specific performance, declaratory judgment or injunction and in no event shall

Tenant be entitled to any money damages for a breach of such covenant and in no event shall Tenant claim or assert any claim for any money damages in any action or by way of set off, defense or counterclaim, and Tenant hereby specifically waives the right to any money damages or other remedies.

ARTICLE VII. TENANT'S ADDITIONAL COVENANTS

SECTION 7.1. TENANT'S COVENANTS

Tenant covenants, at its expense, at all times during the Lease Term and at such further time as Tenant occupies the Leased Premises or any part thereof:

A. To perform promptly all of the obligations of Tenant set forth in this Lease; and pay when due the Fixed Minimum Rent, Additional Rent, and all charges, rates and other sums which by the terms of this Lease are to be paid by Tenant, without any right of recoupment, set-off, deduction or counterclaim whatsoever.

B. To open for business within one hundred twenty (120) days after the Lease Commencement Date; to use the Leased Premises only for the use provided in Section 1.1 and in compliance with the Rules and Regulations set forth in Exhibit D; not to use the Leased Premises for any exclusive use granted by Landlord to any other tenant in the Shopping Center; to keep its business located upon the Leased Premises open at all times throughout the term of this Lease during minimum Standard Operating Hours as set for in Section 1.1.Q; that it will not cease operations at said Leased Premises for a period of more than three (3) consecutive days or five (5) days in any Lease Year, without the express written consent of Landlord, which consent may be granted or withheld at Landlord's sole discretion, unless prevented from doing business therein by reason of applicable ordinances or other acts of governmental authority or acts of God.

C. Except for repairs required in Section 6.1 to be performed by Landlord, to keep the Leased Premises, including, but not limited to all partitions, doors, fixtures, equipment, apparatus and appurtenances thereof (including lighting, plumbing fixtures, sewer lines and the HVAC systems), clean, neat and safe, and in good order, repair and condition (including all necessary painting and decorating), and to keep all glass, including that in windows, doors, fixtures and skylights, clean and in good condition, and to replace glass which may be damaged or broken with glass of the same quality, damage by fire or other casualty covered by Landlord's insurance excepted. Tenant shall store all trash and garbage within the Leased Premises and arrange for the regular pickup of such trash and garbage at the Tenant's expense. Tenant shall not burn any trash or garbage at any time in or about the building and Tenant shall attend to the daily disposal thereof in the manner designated by Landlord. If Landlord shall provide any services or facilities for such pickup, the Tenant shall be obligated to use the same and shall pay a proportionate share of the actual cost thereof within ten (10) days after being billed therefor. (See Exhibit B "Landlord and Tenant's Work" for additional requirements.)

D. To make all repairs, alterations, additions or replacements to the Leased Premises required by any law or ordinance or any order or regulation of any public authority, or fire underwriters or

underwriters' fire prevention engineers; to keep the Leased Premises equipped with all safety appliances so required because of such use; to procure any licenses and permits required for any such use; and to comply with the orders and regulations of all governmental authorities.

E. To the extent permissible by state law and except for Landlord's negligence or willful misconduct, Tenant waives and releases Landlord and Landlord's agents and employees from all claims for damage to person or property sustained by Tenant and/or any person claiming through Tenant resulting from any accident or occurrence in or upon the Leased Premises or the building of which it shall be a part, or any other part of the Shopping Center, including, but not limited to, claims for damage resulting from: (i) any equipment or appurtenances becoming out of repair; (ii) Landlord's failure to keep said building or the Leased Premises in repair; (iii) injury done or occasioned by wind, water or other natural elements; (iv) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings or walks; (v) broken glass; (vi) the backing up of any sewer pipe or downspout; (vii) the bursting, leaking or running of any tank, tub, sink, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or Leased Premises; (viii) the escape of steam or hot water; (ix) water, snow or ice being upon or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near such building or the Leased Premises or otherwise; (x) the falling of any fixture, plaster or stucco; and (xi) any act, omission or negligence of co-tenants or of other persons or occupants of said buildings or of adjoining or contiguous buildings or of owners of adjacent or contiguous property.

F. To permit Landlord and its agents, upon reasonable notice, except in the event of an emergency, to enter the Leased Premises at reasonable times for the purpose of inspecting same, making repairs, additions or alterations thereto or to the building in which the same are located and of showing the Leased Premises to prospective purchasers, lenders and tenants.

G. To remove, at the termination of this Lease or earlier vacation of the Leased Premises, such of Tenant's goods and effects as are not permanently affixed to the Leased Premises; to remove such of the alterations and additions made by Tenant as Landlord may request; to repair any damage caused by such removal; and peaceably to yield up the Leased Premises and all alterations and additions thereto (except such as Landlord has requested Tenant to remove) and all fixtures, furnishings, floor coverings and equipment which are permanently affixed to the Leased Premises which shall thereupon become the property of Landlord, in clean and good order, repair and condition, damage by fire or other unavoidable casualty and ordinary wear and tear excepted. Any personal property of Tenant not removed within five (5) days following such termination or earlier vacation of the Leased Premises shall, at Landlord's option, become the property of Landlord.

H. If any mortgagee or trustee named in any first mortgage or trust deed hereafter placed upon the Shopping Center or any portion thereof shall elect to subject and subordinate the rights and interests of the Tenant under this Lease (in whole or in part) to the lien of its mortgage or trust deed, the rights and interests of Tenant under this Lease shall be so subject and subordinate automatically without further action needing to occur, provided that the mortgagee or trustee shall agree in writing to recognize this Lease of Tenant in the event of foreclosure if Tenant is not in default. Any mortgagee or trustee may in the alternative elect to give some or all of the rights and interest of Tenant under this Lease priority over the lien of its mortgage or trust deed. This election

of such mortgagee or trustee shall be binding upon Tenant whether this Lease is dated prior to or subsequent to the date of said mortgage or trust deed. Tenant shall execute and deliver whatever instruments may be required for such purposes, and in the event Tenant fails so to do within ten (10) days after demand in writing, Tenant does hereby make, constitute and irrevocably appoint Landlord as its attorney-in-fact and in its name, place and stead so to do.

I. To promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

J. To give Landlord prompt written notice of any accident, casualty, damage or other similar occurrence in or to the Leased Premises or in or to the Common Areas of which Tenant has knowledge.

K. To pay on demand the prevailing party's expenses, including reasonable attorney's fees and court costs incurred either directly or indirectly in enforcing any obligation of either party under this Lease in curing any default by the other party as provided herein and in defending or otherwise participating in any legal proceedings initiated by or on behalf of either party against the other.

L. Not to make any nonstructural alterations, additions or improvements to the Leased Premises in excess of Five Thousand and no/100 Dollars ($5,000.00), nor to make any structural changes whatsoever without first obtaining Landlord's written consent.

M. Not to suffer or allow any mechanic's lien to be filed against the Leased Premises or the Shopping Center or any interest therein by reason of any work, labor, services or materials performed at or furnished to the Leased Premises. If any such mechanic's lien shall at any time be filed, Tenant shall forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, but Tenant shall have the right to contest any and all such liens, provided security satisfactory to Landlord is deposited with Landlord. If Tenant shall fail to contest the same with due diligence (having secured Landlord as herein provided) or shall fail to cause such lien to be discharged within thirty (30) days after being notified of the filing thereof and in any case before judgment of sale thereunder, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by Landlord, and the amount so paid by Landlord and/or all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in procuring the discharge of such lien, shall be deemed to be Additional Rent and together with interest thereon as provided in Section 9.2 shall be due and payable by Tenant to Landlord on the first day of the next following month. Nothing in this Lease shall be construed as a consent on the part of the Landlord to subject Landlord's estate in the Leased Premises to any lien or liability under the mechanic's lien law of the state.

N. Not to affix or maintain upon the glass panes and supports of the show windows, doors and the exterior of the Leased Premises any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items except such as shall have first received the written approval of Landlord as to size, type, color, location, copy, nature and display qualities. Anything to the contrary in this Lease notwithstanding, the Tenant shall not affix any sign to the roof of the Leased Premises.

SECTION 7.2. TENANT'S INSURANCE

Tenant covenants, at its expense, at all times during the Lease Term and at such further time as Tenant occupies the Leased Premises or any part thereof, to indemnify, save and hold Landlord and Landlord's agents harmless from and against all liability, injury, loss, cost, damage and/or expense (including reasonable attorneys' fees) in respect of any injury to, or death of, any person, and/or damage to, or loss or destruction of, any property while on the Leased Premises or any other part of the Shopping Center occasioned by any act or omission of Tenant, or anyone claiming by, through or under Tenant including without limitation, Tenant's agents, contractors, employees, licensees, and suppliers. Tenant further covenants to maintain, in responsible companies approved by Landlord, public liability insurance insuring Tenant and Landlord and Landlord's agents, as their interests may appear, as Additional Insured, against all claims, demands or actions for injury to or death of any one person in an amount of not less than One Million Dollars ($1,000,000) and for injury or death of more than one person in any one occurrence in an amount of not less than One Million Dollars ($1,000,000) and for damage to property in an amount of not less than Five Hundred Thousand Dollars ($500,000) made by or on behalf of any persons, firm or corporation, arising from, related to, or connected with the conduct and operations of Tenant's business in the Leased Premises, and in addition, and in like amounts covering Tenant's contractual liability under the aforesaid indemnity and hold harmless clause; to carry like coverage against loss or damage by boiler or compressor or internal explosion of boilers or compressors, if there is a boiler or compressor in the Leased Premises; to maintain plate glass insurance covering all exterior plate glass in the Leased Premises and fire insurance with usual extended coverage endorsements covering all of Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment in the Leased Premises. Tenant shall be responsible for and shall insure against damage to the buildings occasioned by theft of Tenant's property. All of said insurance shall be in form and in responsible companies satisfactory to Landlord and shall provide that it will not be subject to cancellation, termination or change except after at least thirty (30) days prior written notice to Landlord. A duly executed Certificate of Insurance clearly stating the insurance requirements provided for herein, naming Landlord and Landlord's agent as Additional Insured (which shall evidence the insurer's waiver of subrogation) together with satisfactory evidence of the payment of the premium thereon, shall be deposited with Landlord on or before the date of delivery of the Leased Premises to Tenant and upon renewals of such policies, not less than thirty (30) days prior to the expiration of the term of such coverage; and that if Tenant fails to comply with such requirements, Landlord may obtain such insurance and keep the same in effect, and Tenant shall pay Landlord the premium cost thereof upon demand.

SECTION 7.3. ASSIGNMENT OF LEASE

Tenant shall not mortgage, pledge or assign this Lease or sublet the whole or any part of the Leased Premises, or permit any other person to occupy same or any part thereof, without prior written consent of Landlord, which consent shall not be unreasonably withheld so long as the assignee or sublessee has equal or better credit and business experience. Any assignment or sub-letting, even with Landlord's consent, shall not relieve Tenant from liability for payment of Fixed Minimum Rent, Additional Rent and all charges, rates and other sums; or from the obligations of Tenant set forth in this Lease.

In the event any assignment or subletting, even with the consent of Landlord, results in rental income or other lease charges in an amount greater than that provided for in this Lease, then such excess shall belong to Landlord and shall be payable to Landlord as Additional Rent herein reserved. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease, or to be a consent to any assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior written consent of Landlord.

In the event Tenant wishes to assign this Lease and Landlord consents to such assignment, Landlord may charge a reasonable fee, not to exceed Seven Hundred Fifty and no/100 Dollars ($750.00), to help offset any costs Landlord may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. If Tenant desires to assign the Lease or sublease all or part of the Leased Premises, Tenant shall submit to Landlord, at least sixty (60) days prior to the effective date of the proposed assignment or sublease, a written notice of its intent, which notice shall; (a) state the name of the proposed assignee or sublessee; (b) state the nature and character of the business of the proposed assignee or sublessee; (c) state the term, use, rental rate and other particulars of the proposed assignment or sublease, including, without limitation, evidence satisfactory to Landlord that the proposed assignee or sublessee is financially responsible and will immediately occupy and thereafter use the Leased Premises for the use stated in Section 1.1 and in accordance with Section 7.1.B; and (d) be accompanied by a copy of the proposed assignment or sublease documents. Upon receipt of said notice including items (a)—(d) above, Landlord shall have the right, at Landlord's sole discretion, within thirty (30) days after receipt of such notice, to approve or disapprove the proposed assignment or sublease, or to terminate this Lease effective as of the proposed effective date of the assignment or sublease (provided, however, that Tenant may nullify Landlord's termination right by withdrawing the proposed assignment or sublease). No assignee of the Lease or sublessee of the Leased Premises or any portion thereof may further assign or sublet the Leased Premises or any portion thereof. In the event Landlord consents to any assignment or subletting, any Renewal Options provided for in this Lease shall become null and void.

ARTICLE VIII. FIRE AND EXTENDED COVERAGE INSURANCE; DAMAGE OR EMINENT DOMAIN

SECTION 8.1. FIRE AND EXTENDED COVERAGE INSURANCE

From and after the Lease Commencement Date of the Lease and throughout the remainder of the Term of this Lease, Landlord shall procure and pay for windstorm, fire and extended coverage insurance, insuring the Shopping Center building in which the Leased Premises are located for such amount as Landlord's lender shall require, in a responsible insurance company authorized to do business in the State in which the Shopping Center exists. Such insurance policy may insure against loss or damage from fire, windstorm, tornado, hail, disaster, earthquake, vandalism, riot, malicious mischief (and including boiler insurance and war risk insurance if then available), insurance against floods if required by the Federal Flood Disaster Protection Act of 1973 and Regulations issued thereunder, and such other insurance as commonly, or in the judgment of Landlord prudently, maintained by those whose business, improvement to and use of the Leased Premises is similar to that of the Tenant. Such insurance may contain the so-called "Replacement

Cost" or "Restoration Endorsement," a provision to the effect that the waiver of subrogation rights by the insured does not void the coverage, and such special endorsements as reasonably requested by Landlord. Tenant shall pay to Landlord, as Additional Rent hereunder, on the first day of each calendar month Tenant's prorata share of the premiums for said fire and extended coverage insurance, Tenant's prorata share to be the same as its prorata share of Common Areas expense.

SECTION 8.2. FIRE, EXPLOSION OR OTHER CASUALTY

In the event the Leased Premises are damaged by fire, explosion or any other casualty to an extent which is less than Fifty Percent (50%) of the cost of replacement of the Leased Premises, the damage shall promptly be repaired by Landlord at Landlord's expense, provided that Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds recovered or recoverable as a result of such damage, and that in no event shall Landlord be required to repair or replace Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment. In the event of any such damage and (i) Landlord is not required to repair as hereinabove provided, or (ii) the Leased Premises shall be damaged to the extent of Fifty Percent (50%) or more of the cost of replacement, or (iii) the building of which the Leased Premises are a part is damaged to the extent of Twenty Five Percent (25%) or more of replacement, or (iv) the buildings (taken in the aggregate) in the Shopping Center shall be damaged to the extent of more than Twenty Five Percent (25%) of the aggregate cost of replacement, Landlord may elect either to repair or rebuild the Leased Premises or the building or buildings, or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the occurrence of the event causing the damage. If the casualty, repairing or rebuilding shall render the Leased Premises untenable, in whole or in part, and the damage shall not have been due to the act or omission of Tenant, a proportionate abatement of the Fixed Minimum Rent shall be allowed from the date when the damage occurred until the date Landlord completes its work, plus the earlier of (i) sixty (60) days or (ii) the date Tenant reopens for business, however, Tenant shall pay all Additional Rent charges beginning on the date Landlord completes its works, said proportion to be computed on the basis of the relation which the gross square foot area of the space rendered untenable bears to the floor space of the Leased Premises. In the event the Leased Premises shall be damaged or destroyed and the same are not repaired or rebuilt by Landlord within three hundred sixty-five (365) days after the date of the damage or destruction, unless said repair is held up by Tenant, or in the event that Thirty Percent (30%) or more of the Gross Leasable Area of the Shopping Center shall be damaged or destroyed and the same is not repaired or rebuilt within four hundred fifty-five (455) days after the date of damage or destruction, or in the event of any material damage or destruction to the Leased Premises during the last year of the Lease Term, then, in such event, Tenant shall have the right to terminate this Lease upon written notice to Landlord.

SECTION 8.3. EMINENT DOMAIN

If the whole of the Leased Premises shall be taken by any public authority by the exercise, or under the threat of the exercise, of the power of eminent domain, the Lease Term shall cease as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that date with an appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date the right of possession is taken. If less than all of the Floor

Area of the Leased Premises shall be so taken, the Lease Term shall cease only on the parts so taken as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that date with appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date the right to possession is taken and thereafter the Fixed Minimum Rent shall be equitably adjusted. Landlord shall, at its expense, make all necessary repairs or alterations to the basic building and exterior work so as to constitute the remaining premises a complete architectural unit, provided that Landlord shall not be obligated to undertake any such repairs and alterations if the cost thereof exceeds the award received by Landlord. If the Floor Area of the Leased Premises so taken leaves space no longer suitable for the use set forth in Section 1.1, then the Lease Term shall cease and Tenant shall pay rent up to the date the right to possession is taken, with an appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date of the taking of the right to possession. If more than Twenty Five Percent (25%) of the Floor Area of the building in which the Leased Premises are located, or more than Twenty Five Percent (25%) of the aggregate Floor Area of all buildings in the Shopping Center, shall be taken by the exercise, or under the threat of the exercise, of the power of eminent domain, Landlord may, by notice in writing to Tenant delivered on or before the day of surrendering the right to possession to the public authority, terminate this Lease and rent shall be paid or refunded as of the date of termination. In the event fifty percent (50%) of the Shopping Center is lost due to such taking and such taking significantly impairs Tenant's ability to do business in the Leased Premises, Tenant shall have the right to terminate this Lease by sending a written notice ("Termination Notice") to Landlord setting forth the grounds for such termination and setting a date for such termination ("Termination Date") at least ninety (90) days prior to such Termination Date. All compensation awarded for any taking under the power of eminent domain, whether for the whole or a part of the Leased Premises, shall be the property of Landlord, whether such damages shall be awarded as compensation for diminution in the value of the leasehold or to the fee of the Leased Premises or otherwise, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation.

ARTICLE IX. DEFAULTS BY TENANT AND REMEDIES

SECTION 9.1. DEFAULTS BY TENANT

Without further notice, Landlord may terminate this Lease:

(i) five (5) days after notice of default, if any default by Tenant continues after notice of default, in case of nonpayment of rent or the nonpayment of any other charges or payments to be made hereunder by Tenant, for more than five (5) days (except no notice need be given for a monetary default occurring after the second such monetary default in any Lease Year); or

(ii) thirty (30) days after notice of default, if Tenant does not cure any nonmonetary default within a reasonable time, but in any event no later than thirty (30) days after notice of default; or

(iii) immediately if Tenant makes any assignment for the benefit of creditors, commits any act of bankruptcy or files or is subject to a petition under any bankruptcy or insolvency law, and if such a petition filed against Tenant is not dismissed within ninety (90) days; or

(iv) immediately if a receiver or similar officer becomes entitled to this leasehold; or

(v) immediately if Tenant's interest in this Lease is taken upon execution or other process of law in any action against Tenant; or

(vi) immediately if the Leased Premises are levied upon by any revenue officer or similar officer; or

(vii) immediately if Tenant does, or permits to be done, any act which creates a mechanic's lien or claim therefor against the land or building of which the Leased Premises are a part and Tenant does not comply with the provisions of Section 7.1.M; or

(viii) immediately if Tenant shall abandon, vacate or cease to continually operate its business within said Leased Premises during the term of this Lease for a period of more than three (3) consecutive days or five (5) days in any Lease Year; or

(ix) immediately if Tenant fails to open for business within thirty (30) days after the Lease Commencement Date.

Upon termination of this Lease, Landlord may re-enter the Leased Premises with or without process of law, using such force as may be necessary, and remove all persons, fixtures and chattels therefrom, and Landlord shall not be liable for any damages resulting therefrom. Upon such repossession of the Leased Premises, Landlord shall not be liable for any damages resulting therefrom. Upon such repossession of the Leased Premises, Landlord shall be entitled to recover as liquidated damages and not as a penalty, immediately and upon demand, a lump sum of money equal to (a) the value of the Fixed Minimum Rent and other sums provided herein to be paid by Tenant to Landlord for the remainder of the Lease Term where recoverable under applicable state law (the "Total Rent Amount") or (b) the Total Rent Amount, less the fair rental value of the Leased Premises for said period. Upon the happening of any one or more of the above-mentioned events, Landlord may repossess the Leased Premises by forcible entry or detainer suit, or otherwise, without demand or notice of any kind to Tenant (except as hereinabove expressly provided for) and without terminating this Lease, in which event Landlord may, but shall be under no obligation so to do, relet all or any part of the Leased Premises for such rent and upon such terms as shall be satisfactory to Landlord (including the right to relet the Leased Premises for a term greater or lesser than that remaining under the Lease Term, and the right to relet the Leased Premises as a part of a larger area, and the right to change the character or use made of the Leased Premises). For the purpose of such reletting, Landlord may decorate and make any repairs, changes, alterations or additions in or to the Leased Premises that may be necessary or convenient. If Landlord does not relet the Leased Premises, Tenant shall pay to Landlord on demand as liquidated damages and not as a penalty a sum equal to the amount of the Fixed Minimum Rent, and other sums provided herein to be paid by Tenant for the remainder of the Lease Term. If the Leased Premises are relet and a sufficient sum shall not be realized from such reletting, after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the expenses of such reletting and the collection of the rent accruing therefrom, to satisfy the rent herein provided to be paid for the remainder of the Lease Term, Tenant shall pay to Landlord, on demand, any deficiency and Tenant agrees that Landlord may file suit from time to time to recover any sums falling due under the terms of this section. Any recovery under this section shall be without relief

from valuation and appraisement laws.

SECTION 9.2. INTEREST ON LATE PAYMENT; LATE CHARGE

Any payment due Landlord by Tenant pursuant to the terms and conditions of this lease including but not limited to all Fixed Minimum Rent, and Additional Rent which shall not be paid when due shall bear interest at the maximum rate payable by Tenant under state law, or in the absence of a maximum rate, at the rate of Eighteen Percent (18%) per annum from the date when the same is payable under the terms of this Lease until the same shall be paid. In the event any monetary payment is made more than seven (7) days after its due date, Landlord shall be entitled to a late payment fee of ONE HUNDRED and no/100 DOLLARS ($100.00) in addition to such interest charge as hereinabove set forth.

SECTION 9.3. HOLDOVER BY TENANT

In the event Tenant remains in possession of the Leased Premises after the expiration of the tenancy created hereunder, and without the execution of a new lease, Tenant shall be deemed to be occupying the Leased Premises as a tenant from month-to-month at One Hundred Fifty Percent (150%) of the Fixed Minimum Rent subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

SECTION 9.4. LANDLORD'S RIGHT TO CURE DEFAULTS

Landlord may, but shall not be obligated to, cure at any time, without notice, any default by Tenant under this Lease at Tenant's expense. Such cost to be immediately reimbursed upon written notice from Landlord that such expense has been paid.

SECTION 9.5. EFFECT OF WAIVERS OF DEFAULT

No consent or waiver, expressed or implied, by Landlord to or of any breach of any covenant, condition or duty of Tenant shall be construed as a consent of waiver to or of any other breach of the same or other covenant, condition or duty.

SECTION 9.6. REMEDIES CUMULATIVE

No remedy herein or otherwise conferred upon or reserved to Landlord shall be considered to exclude or suspend any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to Landlord may be exercised, from time to time, and so often as occasion may arise or as may be deemed expedient.

SECTION 9.7. TERMINATION OF TENANT'S ADDITIONAL RIGHTS

In consideration for the faithful observance of the terms of this Lease, and any extension hereof, Tenant has negotiated for (and Landlord has granted herein) certain option rights at Section 1.1.S. (referred to in this Section as "Tenant's Additional Rights"). For so long as no event of default occurs and remains uncured beyond the cure period, if any, set out in Section 9.1 of this Lease, Tenant's Additional Rights shall remain in full force and effect. However, should an event of default occur at any time during the term hereof or any extension(s) (and remain uncured beyond the applicable cure period, if any) Tenant's Additional Rights shall terminate, and the same shall be deemed null and void thereafter. Said termination shall occur as provided herein without further notice from Landlord, and Tenant's subsequent cure after the expiration of the appropriate cure period shall not reinstate or otherwise preserve Tenant's terminated rights.

ARTICLE X. MISCELLANEOUS PROVISIONS

SECTION 10.1. MUTUAL WAIVER OF SUBROGATION RIGHTS

Whenever (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Lease in connection with the Leased Premises, and (ii) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then the party so insured hereby releases the other party from any liability it may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance and waives any right of subrogation which might otherwise exist in or accrue to any person or account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost thereupon keeping such release and waiver in full force and effect).

SECTION 10.2. NOTICES FROM ONE PARTY TO THE OTHER

All notices provided for in the Lease shall be in writing and shall be deemed to be given (a) upon the earlier of (i) actual receipt; (ii) refusal thereof; or (iii) three (3) days after having been sent, if notice was sent by prepaid registered or certified mail, return receipt requested; or (b) one (1) day after having been sent, if notice was sent by a nationally recognized overnight courier service which requires the recipient to sign a receipt; addressed, if to Tenant, at the address of Tenant set forth in Section 1.1.F, or such other address as Tenant shall have last designated by notice in writing to Landlord (which written notice to Landlord must clearly be labeled "Change of Tenant's Address for Notice Purposes"), and if to Landlord, to the place then established for the payment of rent, or such other address as Landlord shall have last designated by notice in writing to Tenant. The customary receipt shall be conclusive evidence of such service.

SECTION 10.3. BROKERAGE

Tenant warrants that it has had no dealings with any broker in connection with this Lease, and

covenants to pay, hold harmless and indemnify Landlord from and against any and all costs (including reasonable attorneys' fees), expense or liability for any compensation, commissions and charges claimed by any other broker or other agent with respect to this Lease or the negotiation thereof.

SECTION 10.4. RELATIONSHIP TO THE PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto or any other relationship, other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

SECTION 10.5. ESTOPPEL CERTIFICATES

At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute, acknowledge and deliver to Landlord no later than ten (10) days after such request, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates through which the Fixed Minimum Rent, Additional Rent, and other charges have been paid, and making such other reasonable certifications as Landlord, Landlord's mortgagee or Landlord's potential mortgagee may require.

SECTION 10.6. APPLICABLE LAW AND CONSTRUCTION

The laws of the State in which the Shopping Center exists shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. The headings of the several articles and sections contained herein are for convenience only and do not define, limit or construe the contents of such articles or sections.

SECTION 10.7. FORCE MAJEURE

Whenever a period of time is provided in this Lease for either party to do or perform any act or thing, said party shall not be liable or responsible for any delay due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of said party, and in any such event said time period shall be extended for the amount of time said party is so delayed, provided that this section shall not apply to Tenant's covenants to pay Rent and other charges hereunder.

SECTION 10.8. EXECUTION OF LEASE BY LANDLORD

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Leased Premises and this document becomes effective and binding only upon the execution and delivery hereof by Landlord and by Tenant. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or other agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

SECTION 10.9. BINDING EFFECT OF LEASE

The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns. Landlord, at any time and from time to time, may make an assignment of its interest in this Lease, and in the event of such assignment and the assumption by the assignee of the covenants and agreements to be performed by Landlord herein, Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

SECTION 10.10. SURVIVAL

All representations, warranties, covenants, conditions and agreements contained herein which either expressly survive the expiration or termination of this Lease or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Lease, shall survive the termination or expiration of this Lease.

SECTION 10.11. NO MODIFICATION

This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. No representations, understandings or agreements have been made or relied upon in the making of this Lease other than those specifically set forth herein. This Lease can be modified only by a writing signed by the party against whom the modification is enforceable.

SECTION 10.12. SEVERABILITY

If any portion of any term or provision of this Lease, or the application thereof to any person or

circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 10.13. SIGN CRITERIA

Within fifteen (15) days after full Lease execution, Tenant shall submit to Landlord two (2) sets of drawings for all proposed signage. The drawings shall clearly show location of sign on storefront elevation, graphics, colors and materials. No signs of any type or description shall be erected, placed or painted in or about the Leased Premises except those signs submitted to Landlord in writing and approved by Landlord in writing, and which signs are in conformity with all applicable laws, regulations, codes and ordinances and in conformity with Landlord's sign criteria as stated in Exhibit E (including without limitation restrictions on duration of posting of sale signs or other signs by Tenant) established for the Shopping Center. Landlord reserves the right to remove, at Tenant's expense, all signs other than signs approved in writing by Landlord under this Section 10.13, without notice to Tenant and without liability to Tenant for any damages sustained by Tenant as a result thereof, and Tenant shall repair any damage caused by such removal. Tenant shall have thirty (30) days from the Possession Date in which to install approved signage on the building facade or Tenant shall be deemed in default.

SECTION 10.14. SALES AND RENTAL TAX

Tenant covenants and agrees to pay to Landlord any and all sales and/or rental taxes imposed by the State in which the Shopping Center exists or any other governmental agency with respect to all Fixed Minimum Rent, Additional Rent, and all other payments of monies, including but not limited to, Common Areas maintenance charges and Real Estate Taxes paid by Tenant to Landlord pursuant to the terms of this Lease.

SECTION 10.15. FAILURE OF TENANT TO OPEN

If Tenant fails to open for business within one hundred twenty (120) days after the Lease Commencement Date, then Landlord may terminate this Lease, at Landlord's option, and all monies paid to Landlord shall remain the property of Landlord.

SECTION 10.16. HAZARDOUS MATERIALS

Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances, or materials. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Leased Premises any such materials or substances. Without limitation, hazardous substances and materials shall include those described in the

Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C.A. §§ 6901 et seq., and any applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional charges if such requirement applies to acts and/or omissions of the Tenant. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Leased Premises. In all events, Tenant shall indemnify and hold Landlord harmless in the manner elsewhere provided in this Lease from any release of hazardous materials on the Leased Premises occurring while Tenant is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the Lease term.

Landlord, to the best of Landlord's knowledge and belief, states that there are no hazardous materials within the Leased Premises as of the date of this Lease.

Landlord acknowledges that materials potentially presenting a biohazard risk may be present on the site during the course of Tenant's business activities and that such biohazardous material will be collected and stored in containers using the universal biohazardous symbol in the Leased Premises prior to proper disposal. Tenant will at all times store such material in the required manner and shall assure that the material is disposed of as required by all governmental agencies. The parties acknowledge that Landlord shall not be responsible for the disposal or storage of any such materials and that in the event Landlord, its agents or employees shall enter the Leased Premises such party shall use best efforts and caution to deal in a reasonable manner with any such materials if required to do so.

SECTION 10.17. RIGHT TO RELOCATE

In the event Landlord shall add additional buildings to the Shopping Center or expand any of the buildings currently contained therein or renovate or reconfigure any part of the Shopping Center in the vicinity of the Leased Premises, Landlord shall have the right, subject to Tenant's right of termination as set forth below to relocate Tenant's operation to other premises (the "New Premises") in another part of the Shopping Center or building in accordance with the following:

Landlord shall notify Tenant, at least one hundred fifty (150) days prior to the proposed relocation date, of Landlord's intention to relocate Tenant's operation to the New Premises; the proposed relocation date and the size, configuration and location of the New Premises shall be set forth in Landlord's notice; and the New Premises shall be substantially the same in size and configuration as the Leased Premises described in the Lease.

In the event Landlord relocates Tenant and has completed the Tenant Improvements at Landlord's expense, Tenant shall enter into a new lease agreement with Landlord for a period of five (5) years

under the same terms and conditions of this Lease.

In the event the New Premises described in Landlord's relocation notice are unacceptable to Tenant, Tenant shall have the right, exercisable by written notice to Landlord, given thirty (30) days following receipt of Landlord's relocation notice, to reject the relocation request. Upon Landlord's receipt of Tenant's rejection Landlord shall, in its sole discretion, have the right to terminate this Lease, such termination to be effective as of the proposed relocation date as set forth in Landlord's notice or to retract the relocation request and this Lease shall continue in full force and effect. Failure by Tenant to timely exercise such right shall be deemed a waiver with respect thereto and confirmation that the New Premises are acceptable to Tenant. Tenant shall have the right to accept the New Premises only for the unexpired term of this Lease.

Landlord has made no representation as to any additional improvements or stores or any existing stores in the Shopping Center and this provision does not create any rights of option, first refusal or otherwise with respect to any present or future space in the Shopping Center.

SECTION 10.18. AMERICANS WITH DISABILITIES ACT

Landlord agrees that at the time of delivery to Tenant all common areas, such as sidewalks and parking lots to the best of Landlord's knowledge will comply with the Americans with Disabilities Act of 1990 and the regulations promulgated thereunder. At Tenant's expense, Tenant agrees to design, furnish, and construct the Leased Premises to comply with the Americans with Disabilities Act of 1990.

Within ten (10) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property or of the Leased Premises; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property or of the Leased Premises; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property or the Leased Premises.

SECTION 10.19. RECORDATION

Neither this Lease nor a short form or memorandum thereof shall be recorded in the public records.

SECTION 10.20. LANDLORD'S RESTRICTIONS

Except as permitted by existing leases, Landlord, to the best of Landlord's ability, agrees that no part of the Shopping Center shall be occupied by an adult book or adult video store or other businesses which sell or display pornographic material, however, any sale of adult magazines or rental of adult videos in less than ten percent (10%) of the sales floor area of any tenant shall not

be considered a violation of this agreement.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease the day and year first above written.

Date: 6/16/2022

LANDLORD: City of Flowery Branch, GA

Edward R. Asbridge

By: Edward R. Asbridge, Mayor

ATTEST:

Shelia R Cooper

By: Shelia Cooper, City Clerk

Date: 6-16-2022

TENANT: The Social Peach Boutique, LLC

By: Katie Gettys

Sworn to and subscribed before me

this 13th day of June, 2022.

Patty Hurt

NOTARY PUBLIC

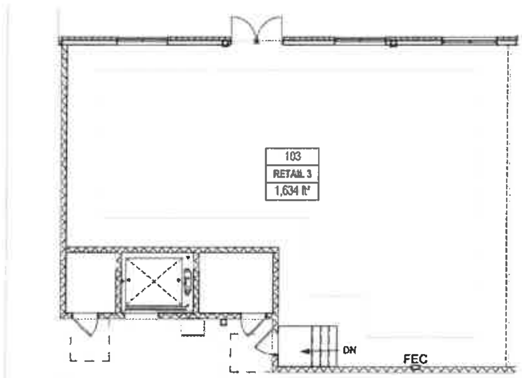
My Commission Expires:

PATTY HURT
Notary Public
HALL COUNTY, STATE of GEORGIA
My Commission Expires July 30, 2022

[NOTARY SEAL]

EXHIBIT A
SITE PLAN

This Exhibit is solely for the purpose of showing the approximate location of the Leased Premises within the Shopping Center and for no other reason whatsoever. Landlord reserves the right to relocate, change, expand or delete parking spaces or parking areas, curb cuts, entrances, service areas, total building area, frontage, etc., including expansion or demolition of existing or new buildings.



[RB1]

EXHIBIT B

LANDLORD AND TENANT'S WORK

Landlord's Work

1. Notwithstanding anything to the contrary contained herein, Tenant acknowledges and agrees to accept delivery of possession of the Leased Premises in the present "AS IS" condition, without any representation or warranty as to said condition, it being understood that Landlord has no obligation to perform any work or repairs in connection with the preparation of the Leased Premises for Tenant's occupancy, except as set forth below:

a. Landlord shall deliver the major components of the internal grease trap, sanitary sewer stub, ventilation chase for hood exhaust and an undistributed HVAC system in good working order.

2. Provided Tenant is not in default hereunder and shall have completed Tenant's Work in compliance with the plans and specifications approved by Landlord and in compliance with all governmental codes, ordinances and the terms hereof, Landlord shall pay to Tenant a sum up to Sixty Seven Thousand, Three Hundred Fifty and No/100 Dollars ($67,350.00) as a construction allowance (the "Tenant Improvement Allowance"), in no event to exceed the actual costs of improvements constituting Tenant's Work which are installed in the Leased Premises. The Tenant Improvement Allowance shall be paid by Landlord in four installments at the following times: (a) completion of 25% of the Tenant Work; (b) completion of 50% of the Tenant Work; (c) completion of 75% Tenant Work; and (d) the date Tenant opens the Leased Premises to the public. The payment of all installments shall be subject to Landlord's inspection confirming the percentage of Tenant Work has been completed in compliance with all applicable laws, codes, rules, and regulations. Additionally, the payment of the final installment is conditioned upon the Tenant delivers to Landlord the following documentation: (i) a certificate of occupancy for the Leased Premises, (ii) waivers of lien in form and substance satisfactory to Landlord, (iii) paid invoices for Tenant's Work for which the Tenant Improvement Allowance will be or has been applied, (iv) proof of installation of a Landlord approved exterior sign on the Leased Premises which identifies Tenant's business. Any portion of the Tenant Improvement Allowance not utilized by Tenant in connection with initial improvement of the Leased Premises in accordance with the provisions of this Work Schedule shall be retained by Landlord for Landlord's benefit. No portion of the Tenant Improvement Allowance shall be applied toward Tenant's moving expenses, furniture, trade fixtures, equipment or any other personal property of Tenant. In the event of default under this Lease by Tenant, which default shall not have been fully cured by Tenant within any applicable cure period allowed under this Lease, any and all portions of the Tenant Improvement Allowance which shall have theretofore been disbursed to Tenant shall constitute additional rent and shall be immediately due and payable as such to Landlord.

3. During the construction of the Tenant Improvements, Landlord shall make disbursements of the Tenant Improvement Allowance for the benefit of Tenant in installments as set forth in Paragraph 2 above and shall authorize the release of monies for the benefit of the Tenant as follows:

During the construction of the Tenant Improvements (or such other date as the Landlord may designate), Tenant shall deliver to Landlord: (a) a request for reimbursement of amounts paid to the contractor, approved by Tenant in a form to be provided by landlord, showing the schedule, by trade, of percentage of completion of the Tenant Improvements in the Premises, detailing the portion of the work completed and the portion not completed, (b) all invoices for labor rendered and materials for the Premises, (c) executed mechanic's lien releases as applicable, from all of Tenant's agents performing work in the Premises, and (d) all other information reasonably required by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in the Tenant's reimbursement request. Within thirty (30) days thereafter, Landlord shall deliver a check to Tenant made payable to Tenant in payment of the lesser of (i) the amounts so requested by Tenant as, or (ii) the balance of any remaining available portion of the Tenant Improvement Allowance balance provided that Landlord does not dispute any request for payment based on non-compliance of any work with the plans and specifications or due to any substandard work. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplies as set forth in Tenant's payment request. Upon completion of the construction of the Tenant Improvements, Tenant shall deliver to Landlord properly executed mechanic's liens for work furnished and/or the materials supplied.

Tenant's Work

1. Tenant agrees to submit to Landlord plans and specifications covering the Tenant Improvements in such detail as Landlord or Managing Agent may require within fifteen (15) days of execution of this Lease and Tenant agrees not to commence work on any of the Tenant Improvements until Landlord has approved such plans and specifications in writing. On or before the Possession Date, Tenant shall deposit with Landlord a certificate of insurance clearly stating the insurance requirements specified in Section 7.2, Tenant shall commence Tenant's Work and proceed diligently and continuously to completion, including installation of fixtures and equipment in the Leased Premises. At all times during Tenant's construction, Landlord and its representatives shall have the right to enter upon the Leased Premises for the purpose of inspecting construction and progress of the Tenant Improvements. Tenant, at its sole cost, shall complete all interior improvements needed to operate its business.

2. Heating and Air Conditioning Maintenance Provisions:

Tenant, at its sole cost, shall maintain the air conditioning (includes heating) units(s) for the Leased Premises in good condition and repair throughout the term of this Lease.

As a part of its air conditioning maintenance obligation, Tenant shall enter into an annual contract with an air conditioning repair firm, fully licensed to repair air conditioning units in the state in which the Shopping Center exists, which firm shall:

a. Regularly service the air conditioning unit(s) on the Leased Premises on a monthly basis, changing belts, filters and other parts as required; and supply Landlord with copies of the maintenance reports should Landlord request them to do so.

b. Perform energy and extraordinary repairs on the air conditioning unit(s).

c. Keep a detailed record of all services performed on the Leased Premises and prepare an annual service report to be furnished to the Tenant at the end of each calendar year.

Tenant shall furnish to Landlord at the end of each calendar year, a copy of said annual service report. Not later than thirty (30) days prior to the Lease Commencement Date of the term of this Lease and annually thereafter, Tenant shall furnish to Landlord a copy of the air conditioning maintenance contract described above, and proof that the annual premium for the maintenance contract has been paid. Nothing stated herein above shall limit Tenant's obligation to maintain the air conditioning unit(s) in good condition and repair throughout the Term of this Lease.

EXHIBIT C
LEGAL DESCRIPTION

All that tract or parcel of land lying and being in GMD 1270, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

The Retail Master Unit of the FB Main Street Master Condominium, as established by the Declaration of Condominium for FB Main Street, A Master Condominium, of record in Deed Book 8924, Page 507-595, Hall County, Georgia records, together with the undivided percentage of interest in the Common Elements appurtenance to said Unit as set forth in Exhibit B of the Declaration of Condominium for FB Main Street, A Master Condominium. Reference is hereby made to the plat of FB Main Street, A Master Condominium of record in Plat Book 880, Page 440 in Plat Book 880, Pages 441-445 Hall County, Georgia records, for a more complete identification and description of the Retail Master Unit.

EXHIBIT D
RULES AND REGULATIONS

Tenant covenants and agrees that Tenant, at its own cost and expense:

(a) Will keep all exterior and interior store front surfaces clean and will maintain the rest of the Leased Premises and all corridors and loading areas immediately adjoining the Leased Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests;

(b) Will not permit accumulations of any refuse, but will remove the same and keep such refuse in odor-proof, rat-proof containers within the interior of the Leased Premises shielded from the view of the general public until removed and will not burn any refuse whatsoever but will cause all such refuse to be removed by such person or companies, including Landlord, as may be designated in writing by Landlord and will pay all charges therefor, which shall in all events be competitive within the same geographical area for similar services performed by a reputable person or company; provided, however that Landlord may decline to designate any such person or company in which event all such refuse shall be removed by such person or company as Tenant, subject to Landlord's prior written approval, shall select;

(c) Will promptly replace, any plate glass or window glass of the Leased Premises which may become cracked or broken, with glass of a like kind and quality;

(d) Will not, without Landlord's prior written consent, place or maintain any merchandise or other articles in any vestibule or entry of the Leased Premises or within two (2) feet of any entrance from the Leased Premises, on the foot walk adjacent thereto or elsewhere on the exterior thereof;

(e) Will not use or permit the use of any apparatus, or sound reproduction or transmission, or any musical instrument in such manner that the sound so produced, transmitted or reproduced shall be audible beyond the confines of the Leased Premises, and will not use any other advertising medium, including without limitation flashing lights, or search lights which may be heard or seen outside of the Leased Premises;

(f) Will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Leased Premises;

(g) Will not cause or permit objectionable odors to emanate or be dispelled from the Leased Premises;

(h) Will not solicit business, distribute handbills or other advertising matter or hold demonstrations in the parking areas or other Common Areas;

(i) Will not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walk, parking area, or other Common Areas in the Shopping Center;

(j) Will comply with all laws, rules, regulations, guidelines, orders and ordinances of applicable

federal, state and local governmental authorities, commissions, boards and agencies with respect to this Lease, the use of Leased Premises or any work to be performed in the Leased Premises by Tenant and Tenant shall secure all permits, leases and approvals required for Tenant's use of the Leased Premises. In addition, Tenant shall also comply with all recommendations of the Association of Fire Underwriters, Factory Mutual Insurance Companies, the Insurance Services Organization, or other similar body establishing standards for fire insurance ratings with respect to the use occupancy of the Leased Premises by Tenant, and will participate in periodic fire brigade instructions and drills at the request of Landlord and will supply, maintain, repair and replace for the Leased Premises any fire extinguisher or other fire prevention equipment and safety equipment (including insulation of approved hoods and ducts if cooking activity is conducted in the Leased Premises) required by the aforementioned rules, regulations and associations or other body in order to obtain insurance at the lowest available premium rate throughout the Term of the Lease;

(k) Will keep all outside areas immediately adjoining the Leased Premises including, but not limited to, sidewalks and loading docks free from ice and snow and Tenant hereby agrees that Tenant is solely liable for any accidents occurring on said outside areas due or alleged to be due to any accumulation of ice and snow;

(l) Will not use the plumbing facilities for any other purpose than that for which they are constructed and will not permit any foreign substance of any kind to be thrown therein and the expense of repairing any breakage, stoppage, seepage or damage, whether occurring on or off the Leased Premises, resulting from a violation of this provision by Tenant or Tenant's employees, agents or invitees shall be borne by Tenant. All grease traps and other plumbing traps shall be kept clean and operable by Tenant at Tenant's own cost and expense;

(m) Will not permit any shopping carts in the Common Areas even if taken there by customers;

(n) Will not place or cause or permit to be placed within the Leased Premises, pay telephones, vending machines (except those for the exclusive use of this Tenant's employees) or amusement devices of any kind without the prior written consent of Landlord;

(o) Will comply with all obligations of the FB Main Street – A Master Condominium Declaration of Covenants and By-Laws.

EXHIBIT E
SIGN CRITERIA

Signs shall be furnished and installed by Tenant according to the following:

1. Landlord may erect and maintain such suitable signs or signage as Landlord, in its sole discretion, may deem appropriate to advertise the Premises.

2. Tenant may erect and maintain, at its sole cost and expense, not more than one (1) sign upon the exterior of the Premises, identifying Tenant's business by name. No such sign erected by Tenant shall contain a listing of merchandise or service or any slogan related to Tenant's business.

3. Tenant shall submit sign layout to Landlord for approval prior to its fabrication and installation.

4. All signs and sign locations must be approved by Landlord prior to installation, and Landlord reserves the right, in its sole discretion, to reject any sign proposed by Tenant that does not meet Landlord's requirements.

5. All signs must comply with applicable government regulations and requirements, and Tenant shall keep all signs property maintained and in good working order.

6. Care should be taken to prevent damage to the façade during sign installation.

7. Signage shall be installed in a manner so as not to create leaks through penetrations of the façade.

8. All permits and licenses for sign installation shall be the responsibility of Tenant or sign contractor.

EXHIBIT F

GUARANTY OF LEASE

LANDLORD:	CITY OF FLOWERY BRANCH, GEORGIA
TENTANT:	The Social Peach Boutique, LLC
LEASE DATE:	

GUARANTY

FOR VALUE RECEIVED, and in consideration of, and as an inducement for the execution and delivery of the Lease dated above, for demising store premises in the FB Main Street – A Master Condominium Shopping Center (hereinafter called the "Lease"), by and between CITY OF FLOWERY BRANCH, GEORGIA, (hereinafter called "Landlord"), and The Social Peach Boutique, LLC, (hereinafter called "Tenant"), the undersigned, Katie Gettys, an individual, (hereinafter called "Guarantor"), hereby guarantees to Landlord, its successors and assigns, the full and prompt payment of rent, including, but not limited to, the Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant's share of special assessments, and further hereby guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements herein provided to be performed and observed by Tenant, its successors and assigns; and Guarantor hereby covenants and agrees to and with Landlord, its successors and assigns, that if default shall at any time be made by Tenant, its successors and assigns, in the payment of any such Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant's share of special assessments, or if Tenant should default in the performance and observance of any of the terms, covenants, provisions or conditions contained in said Lease, Guarantor will forthwith pay such Fixed Minimum Rent, Additional Rent and other such sums and charges to Landlord, its successors and assigns, and any arrearages thereof, and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions, and will forthwith pay to Landlord all damages that may arise in consequence of any default by Tenant, its successors and assigns, under said Lease, including, without limitation, all reasonable attorneys' fees, disbursements incurred by Landlord or caused by any such default and/or by the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guarantee of payment and of performance. It shall be enforceable against Guarantor without the necessity of any suit or proceedings on Landlord's part of any kind or nature whatsoever against Tenant, its successors and assigns, and without the necessity of any notice of nonpayment, nonperformance or nonobservance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in nowise be terminated, affected, diminished or impaired

by reason of the assertion or the failure to assert by Landlord against Tenant, or against Tenant's successors and assigns, of any of the rights or remedies reserved to Landlord pursuant to the provisions of said Lease.

This Guaranty shall be a continuing guaranty and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the Lease or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Lease, or by reason of any extension of time that may be granted by Landlord to Tenant, its successors or assigns, or a changed or different use of the Leased Premises consented to in writing by Landlord, or by reason of any dealings or transactions or matter or thing occurring between Landlord and Tenant, its successors or assigns, whether or not notice thereof is given to Guarantor. Guarantor shall promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

Landlord's consent to any assignment or assignments, and successive assignments by Tenant, of the Lease made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

The assignment by Landlord of the Lease and/or the avails and proceeds thereof made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

All of Landlord's rights and remedies under the said Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others. If there is more than one Guarantor hereunder, each Guarantor is jointly and severally liable hereunder, and they are collectively herein referred to as the Guarantor.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty the date above set forth.

GUARANTOR:

KATIE GETTYS, INDIVIDUALLY

By: Katie Gettys, an Individual
Address: 4362 Willow Oak Drive, Gainesville, GA 30506
Social Security Number: 668 - 01 - 4656

Sworn to and subscribed before me
this is 13th day of June, 2022.

Patty Hurt

NOTARY PUBLIC

PATTY HURT
Notary Public
HALL COUNTY, STATE of GEORGIA
My Commission Expires July 30, 2022

My Commission Expires:

[SEAL]

GUARANTY OF LEASE

LANDLORD:	CITY OF FLOWERY BRANCH, GEORGIA
TENTANT:	The Social Peach Boutique, LLC
LEASE DATE:	

GUARANTY

FOR VALUE RECEIVED, and in consideration of, and as an inducement for the execution and delivery of the Lease dated above, for demising store premises in the FB Main Street – A Master Condominium Shopping Center (hereinafter called the "Lease"), by and between CITY OF FLOWERY BRANCH, GEORGIA, (hereinafter called "Landlord"), and The Social Peach Boutique, LLC, (hereinafter called "Tenant"), the undersigned, Caylen Foster, an individual, (hereinafter called "Guarantor"), hereby guarantees to Landlord, its successors and assigns, the full and prompt payment of rent, including, but not limited to, the Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant's share of special assessments, and further hereby guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements herein provided to be performed and observed by Tenant, its successors and assigns; and Guarantor hereby covenants and agrees to and with Landlord, its successors and assigns, that if default shall at any time be made by Tenant, its successors and assigns, in the payment of any such Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant's share of special assessments, or if Tenant should default in the performance and observance of any of the terms, covenants, provisions or conditions contained in said Lease, Guarantor will forthwith pay such Fixed Minimum Rent, Additional Rent and other such sums and charges to Landlord, its successors and assigns, and any arrearages thereof, and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions, and will forthwith pay to Landlord all damages that may arise in consequence of any default by Tenant, its successors and assigns, under said Lease, including, without limitation, all reasonable attorneys' fees, disbursements incurred by Landlord or caused by any such default and/or by the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guarantee of payment and of performance. It shall be enforceable against Guarantor without the necessity of any suit or proceedings on Landlord's part of any kind or nature whatsoever against Tenant, its successors and assigns, and without the necessity of any notice of nonpayment, nonperformance or nonobservance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in nowise be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against Tenant, or against Tenant's successors and assigns, of any of the rights or remedies reserved to Landlord pursuant to the

provisions of said Lease.

This Guaranty shall be a continuing guaranty and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the Lease or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Lease, or by reason of any extension of time that may be granted by Landlord to Tenant, its successors or assigns, or a changed or different use of the Leased Premises consented to in writing by Landlord, or by reason of any dealings or transactions or matter or thing occurring between Landlord and Tenant, its successors or assigns, whether or not notice thereof is given to Guarantor. Guarantor shall promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

Landlord's consent to any assignment or assignments, and successive assignments by Tenant, of the Lease made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

The assignment by Landlord of the Lease and/or the avails and proceeds thereof made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

All of Landlord's rights and remedies under the said Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others. If there is more than one Guarantor hereunder, each Guarantor is jointly and severally liable hereunder, and they are collectively herein referred to as the Guarantor.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty the date above set forth.

GUARANTOR:

CAYLEN FOSTER, INDIVIDUALLY

____

By: Caylen Foster, an Individual
Address: 317 Park Creek Ct. Gainesville, GA 30504
Social Security Number: 253 - 99 - 1496

Sworn to and subscribed before me
this is 16 day of June, 2022.

Shelia R Cooper

NOTARY PUBLIC

SHELIA R COOPER
NOTARY PUBLIC
Gwinnett County
State of Georgia
My Commission Expires Sept 18, 2023

My Commission Expires:

[SEAL]

EXHIBIT G
RENT SCHEDULE

The following schedule shall begin on the Fixed Minimum Rent Commencement Date. Notwithstanding the foregoing, beginning on the Possession Date Tenant shall begin the payment of Tenant's prorata share of Additional Rent as shown in Section 1.1.M.

LEASE TERM

Term	Monthly Fixed Minimum Rent	Annual Fixed Minimum Rent	Additional Rent
Months 1 – 12	$3,063.75	$36,765.00	Full Amount Due Under the Lease
Months 13 – 24	$3,155.66	$37,867.92	Full Amount Due Under the Lease
Months 25 – 36	$3,250.33	$39,003.96	Full Amount Due Under the Lease
Months 37 – 48	$3,347.84	$40,174.08	Full Amount Due Under the Lease
Months 49 – 60	$3,448.28	$41,379.36	Full Amount Due Under the Lease

FIRST OPTION

Term	Monthly Fixed Minimum Rent	Annual Fixed Minimum Rent	Additional Rent
Months 61 - 72	$3,551.73	$42.620.76	Full Amount Due Under the Lease
Months 73 - 84	$3,658.28	$43.899.36	Full Amount Due Under the Lease

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider First Amendment to FB Main Street, A Master Condominium Shopping Center Lease Agreement with El Sabor Costeno Taqueria, LLC.

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
The City of Flowery Branch and El Sabor Costeno Taqueria, LLC entered into a lease agreement previously and the tenants began the process of finishing the space for the opening of the restaurant.

FACTS AND ISSUES:
Upon inquiring of several contractors, the owners of El Sabor Costeno Taqueria, LLC. were made aware of various supply chain issues and cannot complete the work within the timeframe set forth with the original lease. The tenants requested an additional 90 days for the build-out of their leased space.

OPTIONS:
(1) Approve the first amendment to the lease agreement with El Sabor Costeno Taqueria, LLC. 2) Do not approve the first amendment to the lease agreement with El Sabor Costeno Taqueria, LLC. and rent will commence upon the original terms.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:
Motion to approve the first amendment FB Main Street, A Master Condominium Shopping Center lease agreement with El Sabor Costeno Taqueria, LLC.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- First Amendment to El Sabor Lease Agreement.pdf
- El Sabor Costeno, LLC Lease Agreement.pdf
- ES - El Sabor 1st amend to lease more time .pdf

FIRST AMENDMENT TO FB MAIN STREET
A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT

THIS FIRST AMENDMENT TO FB MAIN STREET A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT (this "Amendment"), is made and entered into effective the 6th day of October, 2022, by and between the CITY OF FLOWERY BRANCH (hereinafter referred to as "Landlord") and EL SABOR COSTENO TAQUERIA, LLC, a limited liability company, (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated May 9, 2022 (the "Original Lease"), for that certain property commonly known as 5519 Main Street, Suite 101, Flowery Branch, Georgia (the "Demised Premises"); and

WHEREAS, Landlord and Tenant desire to amend the Original Lease, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, AND IN CONSIDERATION of the sum of One and No/100 Dollars ($1.00), each to the other paid, the receipt and adequacy and sufficiency of which is hereby acknowledge, and the mutual covenants flowing between the parties hereto, the Original Lease is hereby amended as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this Amendment and are incorporated herein by this reference, and such recitals and representations and the Original Lease are hereby ratified.

2. Basic Lease Provisions. Section 1.1. K. FIXED MINIMUM RENT COMMENCEMENT DATE is deleted in its entirety and replaced with the following: "Eight (8) months following the Lease Commencement Date."

EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the Original Lease shall remain the same and the parties hereto do hereby ratify the Original Lease.

IN WITNESS WHEREOF, Landlord and Tenant have carefully read and reviewed this Amendment and each term and provision contained herein, and by the execution of this Amendment shows their informed and voluntary consent thereto. The parties hereby agree that, at the time this Amendment is executed, the terms of this Amendment are commercially reasonable and effectuate the intent and purpose of Landlord and Tenant with respect to the Demised Premises.

This 6th day of October, 2022.

Signatures Next Page

LANDLORD: CITY OF FLOWERY BRANCH, GEORGIA

By: ______________________________
Edward R. Asbridge, Mayor

ATTEST:

____
Shelia Cooper, City Clerk

TENANT: EL SABOR COSTENO TAQUERIA, LLC

By: ______________________________
Armando Altamirano Emiliano, Member

Sworn to and subscribed before me
This ______day of October, 2022.

____
NOTARY PUBLIC
My commission expires: _________

FB MAIN STREET

A MASTER CONDOMINIUM

SHOPPING CENTER

LEASE AGREEMENT

5519 Main Street

Suite 101

Flowery Branch, Georgia

LANDLORD: City of Flowery Branch

TENANT: El Sabor Costeno Taqueria, LLC

ARTICLE I. BASIC LEASE PROVISIONS
AND ENUMERATION OF EXHIBITS

SECTION 1.1. BASIC LEASE PROVISIONS

A.	DATE (for reference purposes):	May 9, 2022
B.	LANDLORD:	City of Flowery Branch, a Georgia municipal corporation
C.	LANDLORD'S ADDRESS:	5410 Pine Street Flowery Branch, Georgia 30542
D.	TENANT:	El Sabor Costeno Taqueria, LLC
E.	TENANT'S TRADE NAME:	El Sabor Costeno Taqueria
F.	TENANT'S NOTICE ADDRESS:	Armando Altamirano Emiliano 5467 Riverchase Drive Flowery Branch, GA 30542
G.	PHONE NUMBER AND EMAIL:	404-392-4149 Mando.alta@gmail.com
H.	POSSESSION DATE:	Upon delivery of a fully executed Lease and completion of Landlord's Work, if any.
I.	LEASE COMMENCEMENT DATE:	Upon delivery of a fully executed Lease and completion of Landlord's Work, if any.

J.	LEASE TERM:	Five (5) Years following the Rent Commencement Date.
K.	FIXED MINIMUM RENT COMMENCEMENT DATE:	Five (5) months following the Lease Commencement Date.
L.	FIXED MINIMUM RENT:	See Exhibit G for rent schedule.

M.	ESTIMATED ADDITIONAL MONTHLY RENT (for all relevant property expenses including but not limited to taxes, insurance, property management overhead and fee, maintenance, exterior building repairs and maintenance, and parking lot and landscaping maintenance):	$262.29 Notwithstanding anything contained in this Lease to the contrary, the Additional Monthly Rent shall be adjusted to actual expenses annually.
N.	ADVANCE RENT:	$2,622.91
	ADVANCE ADDITIONAL RENT:	$262.29
	SECURITY DEPOSIT:	$2,622.91 plus $262.29
	TOTAL AMOUNT DUE WITH LEASE:	$2,622.91 + $262.29 + $2,885.20
O.	GUARANTORS:	Armando Altamirano Emiliano
P.	USE:	For the use of a restaurant and for no other purpose.
Q.	HOURS OF OPERATION:	Tenant agrees to remain open during standard operating hours for a restaurant (11 a.m. to 9 p.m.) on a daily basis (Monday through Sunday) during the lease term and any extensions.
R.	APPROXIMATE SIZE OF LEASED PREMISES:	1259 Square Feet

S.	OPTION TO RENEW:	Subject to the conditions herein set forth. Tenant is hereby granted the option to renew the Term of this Lease (the "Renewal Option") for one (1) period of five (5) years (the "Renewal Term"), to commence at the expiration of the initial Term of this Lease. Tenant shall exercise the Renewal Option by delivering written notice of such election to Landlord at least six (6) months but no more than twelve (12) months prior to the expiration of the initial Term of this Lease. The renewal of this Lease shall be upon the same terms and conditions as this Lease, except: (a) the annual Minimum Guaranteed Rental during the Renewal Term shall be as shown on Exhibit G; (b) Tenant shall have no option to renew this Lease beyond the expiration of the Renewal Term; and (c) Tenant shall not have the right to assign the Renewal Option to any sublessee of the Leased Premises or assignee of the Lease, not may any such sublessee or assignee exercise or enjoy the benefit of such Renewal Option. Notwithstanding the foregoing, Tenant shall not have the right to exercise the Renewal Option, unless: (i) this Lease shall be in full force and effect on the date of the exercise of the Renewal Option and the date of the expiration of the original Term; and (ii) on the date of the exercise of the Renewal Option and the date of the expiration of the original Term there exist no default on the part of the Tenant under this Lease.

SECTION 1.2. SIGNIFICANCE OF BASIC LEASE PROVISIONS

Each reference in this Lease to any of the Basic Lease Provisions contained in Section 1.1 of this article shall be deemed and construed to incorporate all of the terms provided under each such basic lease provision.

SECTION 1.3. ENUMERATION OF EXHIBITS

The exhibits enumerated in this section and attached to this Lease are incorporated in this Lease by this reference and are to be construed as a part of this Lease.

Exhibit A.	Site Plan
Exhibit B.	Tenant's Work
Exhibit C.	Legal Description
Exhibit D.	Rules and Regulations
Exhibit E.	Sign Criteria
Exhibit F.	Lease Guarantee
Exhibit G.	Rent Schedule

ARTICLE II. LEASED PREMISES AND TERM

SECTION 2.1. SHOPPING CENTER

Landlord is the owner of a parcel of real estate, legally described on Exhibit C, located in 5519 Main Street, Flowery Branch, Georgia commonly known as the FB Main Street – a Master Condominium (the "Shopping Center"). It is agreed that the depiction of the Shopping Center on Exhibit A does not constitute a representation, covenant or warranty of any kind by Landlord. Landlord reserves the right to sell any portion or portions of the Shopping Center, such portion(s) thereafter shall not be included in the Shopping Center. Landlord reserves the right to change the number and location of buildings, building dimensions, the number of floors in any of the buildings, store dimensions, the identity and type of other stores and tenancies, and Landlord further reserves the right to locate kiosks and to make available common areas pursuant to the terms hereof, provided only that the Leased Premises as hereinafter defined shall be substantially as depicted on Exhibit A. Landlord further reserves the right to alter the Shopping Center, at Landlord's sole election, however, no such alteration shall materially impair the visibility or accessibility of Tenants Leased Premises.

SECTION 2.2. LEASED PREMISES

Landlord hereby leases and demises to Tenant, and Tenant hereby accepts from Landlord, subject to and with the benefit of the terms and provisions of this Lease, the store premises sometimes herein referred to as the "Leased Premises" as more particularly described as follows:

Suite 101 consisting of approximately 1,259 sq. ft. as shown on Exhibit "A".

Said Leased Premises shall extend from the exterior faces of all exterior walls and the center line of those walls separating the Leased Premises from adjacent leased premises in the Shopping Center.

SECTION 2.3. LEASE TERM

The Lease Term shall, commence on the Lease Commencement Date [Section 1.1.I.] and shall end on the last day of the last Lease Year (hereinafter "Termination Date"), unless sooner terminated.

SECTION 2.4. LEASE YEAR

The term "Lease Year" means a period of twelve (12) consecutive calendar months. The first full Lease Year shall begin on the Lease Commencement Date if the Lease Commencement Date shall occur on the first day of a calendar month; if not, then the first Lease Year shall commence upon the first day of the month next following the Lease Commencement Date. Each succeeding Lease Year shall commence upon the anniversary date of the first Lease Year.

SECTION 2.5. STATEMENT AS TO LEASE TERM

In the event the Lease Commencement Date and Termination Date of the Lease Term have not been determined, as of the date of execution hereof, Landlord and Tenant shall execute and deliver a written statement specifying therein the Lease Commencement Date and Termination Date of the Lease Term when determined.

SECTION 2.6. OBLIGATIONS OF TENANT BEFORE LEASE TERM BEGINS

Prior to the Possession Date, Tenant shall deliver to Landlord the required Certificate of Insurance (stated in Section 7.2). Prior to the Lease Commencement Date, and after first obtaining the prior written consent of Landlord, Tenant shall be permitted to install its leasehold improvements, fixtures and other equipment required by Tenant to conduct its business. Tenant shall observe and perform all of its obligations under this Lease, from the Possession Date [Section 1.1.H.] until the Lease Commencement Date [Section 1.1.I.], in the same manner as though the Lease Term began on the Possession Date, including but not limited to payment of Additional Rent as stated in Section 1.1.M. but excluding Fixed Minimum Rent. Landlord shall have no liability whatsoever for loss or damage to Tenant's leasehold improvements, fixtures, equipment or other property of Tenant or Tenant's contractors.

ARTICLE III. RENT AND OTHER TENANT CONTRIBUTIONS

SECTION 3.1. FIXED MINIMUM AND ADDITIONAL RENT

Tenant agrees to pay rent to Landlord, or to such other person or entity as Landlord may direct, without demand, at such place as Landlord may by notice in writing to Tenant, from time to time, direct, a fixed amount of rent (the "Fixed Minimum Rent"), and an amount of additional rent based upon certain expenses relating to the Leased Premises and the Shopping Center (the "Additional Rent") at the following rates and times and as set forth on Exhibit G:

(a) Fixed Minimum Rent shall be payable in advance in equal successive monthly installments on the first day of each calendar month included in this Lease Term. For any portion of a calendar month included at the beginning of said term, one-thirtieth (1/30) of such a monthly payment for each day of such portion shall be payable on the first day of such portion; and

(b) Additional Rent shall be payable as provided in Sections 3.5, 5.3 and 8.1.

SECTION 3.2. TAXES

Tenant shall pay to Landlord, as Additional Rent hereunder, Tenant's prorata share of any and all special assessments, transportation or environmental protection taxes or levy or similar tax or levy, and Tenant's prorata share of real estate taxes attributable to the Shopping Center paid annually by Landlord during the Lease Term, prorated for any partial Lease Year beginning on the Possession Date. Tenant's prorata share shall be based on the ratio of the total Floor Area of the Leased Premises to the total Floor Area on all floors of building space within the Shopping Center as of the assessment date for the particular special assessment, tax or levy, or real estate tax in question. Tenant shall also pay its prorata share of all expenses, including reasonable attorneys' fees, expenses, administrative hearing and court costs incurred in contesting or negotiating the amount, assessment or rate of any such real estate tax, special assessment, tax or levy. Should the state, or any political subdivision thereof or any governmental authority having jurisdiction thereover, impose a tax and/or assessment upon or against the rentals and/or other charges payable hereunder by Tenant to Landlord, either by way of substitution for the taxes and assessments levied or assessed against such land and such buildings, or in addition thereto, or impose an income or franchise tax in substitution for the general tax levied against such land and buildings, such taxes and/or assessments shall be deemed to constitute a tax and/or assessment against such land and such buildings for the purpose of this section. The annual charges for such assessments or taxes shall be paid in monthly installments on the first day of each calendar month in advance in an amount estimated by Landlord. Landlord shall furnish Tenant, upon Tenant's request, a statement of the assessments or taxes paid or incurred by Landlord for each calendar year of the Lease Term and thereupon there shall be an adjustment between Landlord and Tenant with payment to Landlord or credit to Tenant for future tax payments, as the case may be, to the end that Landlord shall receive the precise amount of Tenant's prorata share of such assessments and taxes for such period and no more. In the event any portion or portions of the Shopping Center are separately assessed, for purposes of the proration above, Tenant's proportionate share shall be the ratio of the total Floor Area of the Leased Premises to the total Floor Area of all floors of building space within the particular parcel assessed which includes the Leased Premises.

SECTION 3.3. SECURITY DEPOSIT

Tenant, contemporaneously with the execution of this Lease, has deposited with Landlord to secure the faithful performance by Tenant of all the covenants, conditions and agreements in this Lease set forth, and contained on the part of Tenant to be fulfilled, kept, observed and performed, such sum as set forth in Section 1.1 as a Security Deposit. Said deposit shall be held by Landlord, without liability for interest, as security for the faithful performance by Tenant of all the terms, covenants and conditions of this Lease, and Landlord may commingle the same with its other funds. Such interest, if any, may be retained as property of the Landlord, and will not be paid to the Tenant. Such Security Deposit or any portion thereof not previously applied may be applied to the curing of any default that may then exist under this Lease, without prejudice to any other remedy or remedies which Landlord may have on account thereof, and upon such application, Tenant shall pay Landlord on demand the amount so applied which shall be added to the Security Deposit so that the same may be restored to its original amount. In the event the Leased Premises are conveyed by Landlord, the deposit or any portion thereof not previously applied may be turned over to Landlord's grantee or successor, and in such event Tenant hereby releases Landlord from any and all liability with respect to the deposit and/or application or return and Tenant agrees to look to such grantee for such application or return. In the event Tenant shall faithfully fulfill, keep, perform and observe all the covenants, conditions and agreements in this Lease set forth and contained on the part of Tenant to be fulfilled, the sum deposited or the part or portion thereof not previously applied shall be returned to Tenant, without interest, no later than thirty (30) days after the expiration of the Term of this Lease or any renewal or extension thereof, provided Tenant has vacated the Leased Premises and surrendered possession thereof to Landlord at the expiration of said Term or any renewal thereof as provided herein.

ARTICLE IV. UTILITY SERVICES

SECTION 4.1. WATER, SEWER, ELECTRICITY AND GAS

Landlord has caused the necessary mains, conduits and other facilities to be provided to supply water, sewer, gas and electricity to the Shopping Center. Landlord shall provide gas service and facilities to Tenant, however, the same being the sole responsibility of Tenant. Tenant agrees to have all utility services transferred into Tenant's name on the Possession Date. If Tenant has not had any or all of the utilities transferred on the Possession Date, then Tenant agrees to pay Landlord, on demand, the actual cost paid by Landlord for such utilities, together with an administrative charge of One Hundred Fifty and no/100 Dollars ($150.00) for each such payment. Tenant shall pay for all electricity used in the Leased Premises and all water and sewer charges, and gas charges, if applicable, at its own cost and expense. In the event Landlord, who shall have the option to do so, shall elect to supply any one or more or all of said services, Tenant shall purchase the use of said services as are tendered by Landlord and shall pay the rates, including any established minimum charges, established by Landlord for such services, but the rate shall be no more than those charged by the public utility furnishing such services in the area. The charges for such services as are so furnished shall be deemed Additional Rent due and payable on the first day of the calendar month following rendition of a bill therefor. Landlord may discontinue furnishing such services if payment for same is not received by Landlord upon not less than five (5) days written notice, and no such discontinuation shall be deemed an eviction or render Landlord liable to Tenant for damages or relieve Tenant from performance of its obligations hereunder. In the event Landlord shall elect to furnish one or more of such services, from time to time, Landlord shall not be liable to Tenant in damages or otherwise if any one or more of said services is interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of Landlord. In any event, Landlord may cease to furnish any one or more of such services without any responsibility to Tenant, except to connect the service facilities with such other sources of supply as may be available for the services so discontinued. Tenant will not install any equipment which will exceed or overload the capacity of any utility facilities servicing the Leased Premises and if any equipment installed by Tenant shall require additional utility facilities, the same shall be installed and maintained at Tenant's expense in accordance with plans and specifications to be approved in writing by Landlord. In the event the Leased Premises are not separately metered for water and Tenant's use requires an excessive volume of water, at Landlord's discretion, a sub-meter will be installed at the Leased Premises at Tenant's expense.

SECTION 4.2. HEATING, VENTILATING AND COOLING

Tenant shall be solely responsible and shall pay for all charges rendered in connection with all heating, ventilating and cooling of the Leased Premises and shall promptly pay all bills for materials furnished or labor performed for Tenant or at Tenant's instance and request in connection with any repairs, replacements, alterations, improvements and installation of all fixtures and equipment in connection therewith on the Leased Premises, and shall keep said Leased Premises free from all claims for liens for work, labor or materials in connection therewith.

SECTION 4.3. OTHER SERVICES

In addition to the above and foregoing, Tenant shall be solely responsible for all garbage and sewage disposal and waste removal, janitorial and other services of any type or nature furnished to the Leased Premises, and shall pay promptly all bills for materials or labor performed in connection therewith. Tenant further covenants and agrees to keep the Leased Premises and the walks adjacent thereto at all times in a neat, clean and sanitary condition and free from snow, ice, waste or debris, and neither to commit or permit any waste or nuisance thereon.

ARTICLE V. COMMON AREAS AND FACILITIES

SECTION 5.1. COMMON AREAS AND FACILITIES

Landlord shall make available, from time to time, such areas and facilities of common benefit to the tenants and occupants of the Shopping Center as Landlord shall deem appropriate (the "Common Areas"). Landlord shall operate, manage, equip, light, insure, repair and maintain the Common Areas and facilities for their intended purposes in such manner as Landlord shall, in its sole discretion, determine, and may, from time to time, change the size, location and nature of any Common Areas and facilities and may make installations therein and move and remove such installation. Landlord shall have the right to close the Common Areas, or any part thereof, on such business days as Landlord deems necessary for the improvement, maintenance or repair of the Common Areas and on such nonbusiness days or during such nonbusiness hours as Landlord shall, in its sole discretion, determine.

SECTION 5.2. USE OF COMMON AREAS

Tenant and its permitted concessionaires, officers, employees, agents, customers and invitees shall have the nonexclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant such rights, to use the Common Areas as designated from time to time by Landlord, subject to such reasonable regulations as Landlord may from time to time impose, including the designation of specific areas in which vehicles owned by Tenant, its permitted concessionaires, officers, employees and agents must be parked. Tenant agrees to abide by such regulations and to use its best efforts to cause its permitted concessionaires, officers, employees, agents, customers and invitees to conform thereto. Landlord may at any time close temporarily any part of the Common Areas to make repairs or changes, to prevent the acquisition of public rights in such area or to discourage noncustomer parking, and may do such other acts in and to the Common Areas as in its reasonable judgment may be desirable to improve the convenience thereof. Tenant shall upon request furnish to Landlord the license numbers and description of the vehicles operated by Tenant and its permitted concessionaires, officers and employees. Tenant shall not at any time interfere with the rights of Landlord and other tenants, its and their permitted concessionaires, officers, employees, agents, customers and invitees, to use any part of the parking areas and other part of the Common Areas.

SECTION 5.3. CHARGE FOR COMMON AREAS AND FACILITIES

Tenant shall pay to the Landlord, as Additional Rent, in the manner provided in Section 5.5 Tenant's prorata share, as defined in Section 5.4, of Common Areas maintenance cost as hereinafter defined including the cost of Capital Improvements designed to protect the health and safety of the tenants in the Leased Premises and the Shopping Center.

Common Areas maintenance cost shall be deemed to include all costs and expenses of every kind and nature paid or incurred by Landlord during the Lease Term (including appropriate reserves) in operating, managing, equipping, policing and protecting (if and to the extent provided by Landlord), insuring, servicing (including heating, ventilating and cooling any enclosed mall, in the event Landlord elects to enclose any Common Areas), lighting, repairing, replacing and maintaining the Common Areas and facilities in the Shopping Center. Such costs and expenses shall include, but not be limited to, such maintaining and repairing as shall be required in Landlord's judgment to preserve the utility of the Common Areas in condition and status the same as it was at the time of the completion of the original construction and installation thereof; all exterior painting; all costs and expenses of security and fire protection; all costs of restriping, patching, repairing and maintaining parking areas, garages, entries, gutters and downspouts, the construction of new entries as required and work on roads, as needed, adjacent to the Shopping Center; pedestrian traffic direction and control; roof repairs; all costs and expenses of cleaning and removing of rubbish, dirt, debris, snow and ice; all costs and expenses of planting, maintaining, replanting and replacing flowers and landscaping; management fees; water and sewerage charges; premiums for liability and property damage, fire, extended coverage, malicious mischief, vandalism, workers' compensation and employer's liability, and any other casualty or risk insurance procured by Landlord in connection with Common Areas, wages, unemployment taxes, social security taxes, special assessments and personal property taxes attributable to the Common Areas; fees for audits, required licenses and permits; all costs and expenses incurred by Landlord in testing of sprinkler systems located in the Shopping Center, all charges for utility services for the Common Areas including all costs and expenses of maintaining lighting fixtures and providing electricity to the Common Areas and to Common Areas pole signage (including the cost of light bulbs and electric current); all costs, expenses, surcharges or other impositions or assessments incurred by Landlord in connection with environmental protection legislation or regulation assessed against or imposed on the Shopping Center or any part thereof with regard thereto; reasonable depreciation of equipment, machinery and facilities, rents paid for the leasing of equipment and finance charges paid under any installment purchase of equipment, machinery and facilities used in the operation of the Common Areas and administrative costs at the rate of Fifteen Percent (15%) of the total costs of operating and maintaining the Common Areas (except the appropriate reserves); and such other costs as Landlord may reasonably determine are required for the proper maintenance of the Common Areas, except that all Capital Improvement expenses shall be excluded therefrom.

SECTION 5.4. TENANT'S PRORATA SHARE

Tenant's prorata share of the Common Areas maintenance cost shall be determined by multiplying the total cost incurred or paid by Landlord by a fraction whose numerator is the gross leasable area of the Leased Premises as set forth in Section 2.2 and the denominator of which is the total square feet of gross leasable area within the Shopping Center. The "Gross Leasable Area" shall mean with respect to the Leased Premises and with respect to all other leasable areas, the number of square feet of floor area on all levels, including any mezzanines, basements, or balconies, but excluding "Common Areas" measured from the exterior face of exterior walls and/or the exterior face of service corridor walls, the exterior of building line from all frontage, and the center line of party walls. No deduction shall be made for columns, stairs, elevators, or any interior construction or equipment. Provided, however, for any Common Areas maintenance cost separately metered, billed to or paid directly by any Tenant, the floor area of such tenant space attributable to such Common Areas cost shall be deleted from the above proration for such separate cost. The Floor Area hereinabove provided shall not include the floor area of roof structures used for mechanical equipment.

SECTION 5.5. PAYMENT OF COMMON AREAS MAINTENANCE COST

The annual charges for Common Areas maintenance cost shall be paid in monthly installments on the first day of each calendar month in advance in an amount estimated by Landlord. Landlord shall furnish Tenant, upon Tenant's request, a statement in reasonable detail of the actual Common Areas maintenance cost paid or incurred by Landlord at the end of each calendar year and thereupon there shall be an adjustment between Landlord and Tenant with payment to Landlord or credit to Tenant against any current or future amounts due from Tenant to Landlord pursuant to this Lease, as the case may be, to the end that Landlord shall receive the precise amount of Tenant's prorata share of said costs for such period and no more.

ARTICLE VI. LANDLORD'S ADDITIONAL COVENANTS

SECTION 6.1. REPAIRS BY LANDLORD

Landlord covenants at its expense to keep the foundations and roof of the Leased Premises, and the structural soundness of the exterior walls thereof, in good order, repair and condition, unless any necessary work is required because of damage caused by any act, omission or negligence of Tenant, any permitted concessionaire or their respective employees, agents, invitees, licensees or contractors. Landlord shall not be required to commence any such repair until a reasonable time after written notice from Tenant that the same is necessary. The provisions of this section shall not apply in the case of damage or destruction by fire or other casualty or taking under the power of eminent domain, in which events the obligations of Landlord shall be controlled by Article VIII. Except as provided in this Section 6.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind upon the Leased Premises, or any equipment, facilities or fixtures contained therein, which shall be the responsibility of Tenant as hereinafter provided.

SECTION 6.2. QUIET ENJOYMENT

Landlord covenants and agrees that so long as Tenant has committed no default under this Lease, Tenant's peaceful and quiet possession of the Leased Premises during the Lease Term shall not be disturbed by Landlord or by anyone claiming by, through or under Landlord.

SECTION 6.3. LIMITATION ON RIGHT OF RECOVERY AGAINST LANDLORD

Tenant acknowledges and agrees that the liability of Landlord under this Lease shall be limited to Landlord's interest in the Shopping Center and any judgments rendered against Landlord shall be satisfied solely out of its interest in the Shopping Center. No personal judgment shall lie against Landlord upon extinguishment of its rights in the Shopping Center and any judgment so rendered shall not give rise to any right of execution or levy against Landlord's assets. The provisions hereof shall inure to Landlord's successors and assigns including any mortgagee of Landlord. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under the Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded Tenant by law or under the Lease.

If Tenant claims or asserts that Landlord has violated or failed to perform a covenant of Landlord not to unreasonably withhold or delay Landlord's consent or approval, Tenant's sole remedy shall be an action for specific performance, declaratory judgment or injunction and in no event shall Tenant be entitled to any money damages for a breach of such covenant and in no event shall Tenant claim or assert any claim for any money damages in any action or by way of set off, defense or counterclaim, and Tenant hereby specifically waives the right to any money damages or other remedies.

ARTICLE VII. TENANT'S ADDITIONAL COVENANTS

SECTION 7.1. TENANT'S COVENANTS

Tenant covenants, at its expense, at all times during the Lease Term and at such further time as Tenant occupies the Leased Premises or any part thereof:

A. To perform promptly all of the obligations of Tenant set forth in this Lease; and pay when due the Fixed Minimum Rent, Additional Rent, and all charges, rates and other sums which by the terms of this Lease are to be paid by Tenant, without any right of recoupment, set-off, deduction or counterclaim whatsoever.

B. To open for business within thirty (30) days after the Lease Commencement Date; to use the Leased Premises only for the use provided in Section 1.1 and in compliance with the Rules and Regulations set forth in Exhibit D; not to use the Leased Premises for any exclusive use granted by Landlord to any other tenant in the Shopping Center; to keep its business located upon the Leased Premises open at all times throughout the term of this Lease during minimum Standard Operating Hours as set for in Section 1.1.Q; that it will not cease operations at said Leased Premises for a period of more than three (3) consecutive days or five (5) days in any Lease Year, without the express written consent of Landlord, which consent may be granted or withheld at Landlord's sole discretion, unless prevented from doing business therein by reason of applicable ordinances or other acts of governmental authority or acts of God.

C. Except for repairs required in Section 6.1 to be performed by Landlord, to keep the Leased Premises, including, but not limited to all partitions, doors, fixtures, equipment, apparatus and appurtenances thereof (including lighting, plumbing fixtures, sewer lines and the HVAC systems), clean, neat and safe, and in good order, repair and condition (including all necessary painting and decorating), and to keep all glass, including that in windows, doors, fixtures and skylights, clean and in good condition, and to replace glass which may be damaged or broken with glass of the same quality, damage by fire or other casualty covered by Landlord's insurance excepted. Tenant shall store all trash and garbage within the Leased Premises and arrange for the regular pickup of such trash and garbage at the Tenant's expense. Tenant shall not burn any trash or garbage at any time in or about the building and Tenant shall attend to the daily disposal thereof in the manner designated by Landlord. If Landlord shall provide any services or facilities for such pickup, the Tenant shall be obligated to use the same and shall pay a proportionate share of the actual cost thereof within ten (10) days after being billed therefor. (See Exhibit B "Landlord and Tenant's Work" for additional requirements.)

D. To make all repairs, alterations, additions or replacements to the Leased Premises required by any law or ordinance or any order or regulation of any public authority, or fire underwriters or underwriters' fire prevention engineers; to keep the Leased Premises equipped with all safety appliances so required because of such use; to procure any licenses and permits required for any such use; and to comply with the orders and regulations of all governmental authorities.

E. To the extent permissible by state law and except for Landlord's negligence or willful misconduct, Tenant waives and releases Landlord and Landlord's agents and employees from all claims for damage to person or property sustained by Tenant and/or any person claiming through Tenant resulting from any accident or occurrence in or upon the Leased Premises or the building of which it shall be a part, or any other part of the Shopping Center, including, but not limited to, claims for damage resulting from: (i) any equipment or appurtenances becoming out of repair; (ii) Landlord's failure to keep said building or the Leased Premises in repair; (iii) injury done or occasioned by wind, water or other natural elements; (iv) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings or walks; (v) broken glass; (vi) the backing up of any sewer pipe or downspout; (vii) the bursting, leaking or running of any tank, tub, sink, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or Leased Premises; (viii) the escape of steam or hot water; (ix) water, snow or ice being upon or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near such building or the Leased Premises or otherwise; (x) the falling of any fixture, plaster or stucco; and (xi) any act, omission or negligence of co-tenants or of other persons or occupants of said buildings or of adjoining or contiguous buildings or of owners of adjacent or contiguous property.

F. To permit Landlord and its agents, upon reasonable notice, except in the event of an emergency, to enter the Leased Premises at reasonable times for the purpose of inspecting same, making repairs, additions or alterations thereto or to the building in which the same are located and of showing the Leased Premises to prospective purchasers, lenders and tenants.

G. To remove, at the termination of this Lease or earlier vacation of the Leased Premises, such of Tenant's goods and effects as are not permanently affixed to the Leased Premises; to remove such of the alterations and additions made by Tenant as Landlord may request; to repair any damage caused by such removal; and peaceably to yield up the Leased Premises and all alterations and additions thereto (except such as Landlord has requested Tenant to remove) and all fixtures, furnishings, floor coverings and equipment which are permanently affixed to the Leased Premises which shall thereupon become the property of Landlord, in clean and good order, repair and condition, damage by fire or other unavoidable casualty and ordinary wear and tear excepted. Any personal property of Tenant not removed within five (5) days following such termination or earlier vacation of the Leased Premises shall, at Landlord's option, become the property of Landlord.

H. If any mortgagee or trustee named in any first mortgage or trust deed hereafter placed upon the Shopping Center or any portion thereof shall elect to subject and subordinate the rights and interests of the Tenant under this Lease (in whole or in part) to the lien of its mortgage or trust deed, the rights and interests of Tenant under this Lease shall be so subject and subordinate automatically without further action needing to occur, provided that the mortgagee or trustee shall agree in writing to recognize this Lease of Tenant in the event of foreclosure if Tenant is not in default. Any mortgagee or trustee may in the alternative elect to give some or all of the rights and interest of Tenant under this Lease priority over the lien of its mortgage or trust deed. This election of such mortgagee or trustee shall be binding upon Tenant whether this Lease is dated prior to or subsequent to the date of said mortgage or trust deed. Tenant shall execute and deliver whatever instruments may be required for such purposes, and in the event Tenant fails so to do within ten (10) days after demand in writing, Tenant does hereby make, constitute and irrevocably appoint Landlord as its attorney-in-fact and in its name, place and stead so to do.

I. To promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

J. To give Landlord prompt written notice of any accident, casualty, damage or other similar occurrence in or to the Leased Premises or in or to the Common Areas of which Tenant has knowledge.

K. To pay on demand the prevailing party's expenses, including reasonable attorney's fees and court costs incurred either directly or indirectly in enforcing any obligation of either party under this Lease in curing any default by the other party as provided herein and in defending or otherwise participating in any legal proceedings initiated by or on behalf of either party against the other.

L. Not to make any nonstructural alterations, additions or improvements to the Leased Premises in excess of Five Thousand and no/100 Dollars ($5,000.00), nor to make any structural changes whatsoever without first obtaining Landlord's written consent.

M. Not to suffer or allow any mechanic's lien to be filed against the Leased Premises or the Shopping Center or any interest therein by reason of any work, labor, services or materials performed at or furnished to the Leased Premises. If any such mechanic's lien shall at any time be filed, Tenant shall forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, but Tenant shall have the right to contest any and all such liens, provided security satisfactory to Landlord is deposited with Landlord. If Tenant shall fail to contest the same with due diligence (having secured Landlord as herein provided) or shall fail to cause such lien to be discharged within thirty (30) days after being notified of the filing thereof and in any case before judgment of sale thereunder, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by Landlord, and the amount so paid by Landlord and/or all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in procuring the discharge of such lien, shall be deemed to be Additional Rent and together with interest thereon as provided in Section 9.2 shall be due and payable by Tenant to Landlord on the first day of the next following month. Nothing in this Lease shall be construed as a consent on the part of the Landlord to subject Landlord's estate in the Leased Premises to any lien or liability under the mechanic's lien law of the state.

N. Not to affix or maintain upon the glass panes and supports of the show windows, doors and the exterior of the Leased Premises any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items except such as shall have first received the written approval of Landlord as to size, type, color, location, copy, nature and display qualities. Anything to the contrary in this Lease notwithstanding, the Tenant shall not affix any sign to the roof of the Leased Premises.

SECTION 7.2. TENANT'S INSURANCE

Tenant covenants, at its expense, at all times during the Lease Term and at such further time as Tenant occupies the Leased Premises or any part thereof, to indemnify, save and hold Landlord and Landlord's agents harmless from and against all liability, injury, loss, cost, damage and/or expense (including reasonable attorneys' fees) in respect of any injury to, or death of, any person, and/or damage to, or loss or destruction of, any property while on the Leased Premises or any other part of the Shopping Center occasioned by any act or omission of Tenant, or anyone claiming by, through or under Tenant including without limitation, Tenant's agents, contractors, employees, licensees, and suppliers. Tenant further covenants to maintain, in responsible companies approved by Landlord, public liability insurance insuring Tenant and Landlord and Landlord's agents, as their interests may appear, as Additional Insured, against all claims, demands or actions for injury to or death of any one person in an amount of not less than One

Million Dollars ($1,000,000) and for injury or death of more than one person in any one occurrence in an amount of not less than One Million Dollars ($1,000,000) and for damage to property in an amount of not less than Five Hundred Thousand Dollars ($500,000) made by or on behalf of any persons, firm or corporation, arising from, related to, or connected with the conduct and operations of Tenant's business in the Leased Premises, and in addition, and in like amounts covering Tenant's contractual liability under the aforesaid indemnity and hold harmless clause; to carry like coverage against loss or damage by boiler or compressor or internal explosion of boilers or compressors, if there is a boiler or compressor in the Leased Premises; to maintain plate glass insurance covering all exterior plate glass in the Leased Premises and fire insurance with usual extended coverage endorsements covering all of Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment in the Leased Premises. Tenant shall be responsible for and shall insure against damage to the buildings occasioned by theft of Tenant's property. All of said insurance shall be in form and in responsible companies satisfactory to Landlord and shall provide that it will not be subject to cancellation, termination or change except after at least thirty (30) days prior written notice to Landlord. *A duly executed Certificate of Insurance clearly stating the insurance requirements provided for herein, naming Landlord and Landlord's agent as Additional Insured (which shall evidence the insurer's waiver of subrogation) together with satisfactory evidence of the payment of the premium thereon, shall be deposited with Landlord on or before the date of delivery of the Leased Premises to Tenant and upon renewals of such policies, not less than thirty (30) days prior to the expiration of the term of such coverage;* and that if Tenant fails to comply with such requirements, Landlord may obtain such insurance and keep the same in effect, and Tenant shall pay Landlord the premium cost thereof upon demand.

SECTION 7.3. ASSIGNMENT OF LEASE

Tenant shall not mortgage, pledge or assign this Lease or sublet the whole or any part of the Leased Premises, or permit any other person to occupy same or any part thereof, without prior written consent of Landlord, which consent shall not be unreasonably withheld so long as the assignee or sublessee has equal or better credit and business experience. Any assignment or sub-letting, even with Landlord's consent, shall not relieve Tenant from liability for payment of Fixed Minimum Rent, Additional Rent and all charges, rates and other sums; or from the obligations of Tenant set forth in this Lease.

In the event any assignment or subletting, even with the consent of Landlord, results in rental income or other lease charges in an amount greater than that provided for in this Lease, then such excess shall belong to Landlord and shall be payable to Landlord as Additional Rent herein reserved. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease, or to be a consent to any assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior written consent of Landlord.

In the event Tenant wishes to assign this Lease and Landlord consents to such assignment, Landlord may charge a reasonable fee, not to exceed Seven Hundred Fifty and no/100 Dollars ($750.00), to help offset any costs Landlord may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. If Tenant desires to assign the Lease or sublease all or part of the Leased Premises, Tenant shall submit to Landlord, at least sixty (60) days prior to the effective date of the proposed assignment or sublease, a written notice of its intent, which notice shall; (a) state the name of the proposed assignee or sublessee; (b) state the nature and character of the business of the proposed assignee or sublessee; (c) state the term, use, rental rate and other particulars of the proposed assignment or sublease, including, without limitation, evidence satisfactory to Landlord that the proposed assignee or sublessee is financially responsible and will immediately occupy and thereafter use the Leased Premises for the use stated in Section 1.1 and in accordance with Section 7.1.B; and (d) be accompanied by a copy of the proposed assignment or sublease documents. Upon receipt of said notice including items (a)—(d) above, Landlord shall have the right, at Landlord's sole discretion, within thirty (30) days after receipt of such notice, to approve or disapprove the proposed assignment or sublease, or to terminate this Lease effective as of the proposed effective date of the assignment or sublease (provided, however, that Tenant may nullify Landlord's termination right by withdrawing the proposed assignment or sublease). No assignee of the Lease or sublessee of the Leased Premises or any portion thereof may further assign or sublet the Leased Premises or any portion thereof. In the event Landlord consents to any assignment or subletting, any Renewal Options provided for in this Lease shall become null and void.

ARTICLE VIII. FIRE AND EXTENDED COVERAGE INSURANCE; DAMAGE OR EMINENT DOMAIN

SECTION 8.1. FIRE AND EXTENDED COVERAGE INSURANCE

From and after the Lease Commencement Date of the Lease and throughout the remainder of the Term of this Lease, Landlord shall procure and pay for windstorm, fire and extended coverage insurance, insuring the Shopping Center building in which the Leased Premises are located for such amount as Landlord's lender shall require, in a responsible insurance company authorized to do business in the State in which the Shopping Center exists. Such insurance policy may insure against loss or damage from fire, windstorm, tornado, hail, disaster, earthquake, vandalism, riot, malicious mischief (and including boiler insurance and war risk insurance if then available), insurance against floods if required by the Federal Flood Disaster Protection Act of 1973 and Regulations issued thereunder, and such other insurance as commonly, or in the judgment of Landlord prudently, maintained by those whose business, improvement to and use of the Leased Premises is similar to that of the Tenant. Such insurance may contain the so-called "Replacement Cost" or "Restoration Endorsement," a provision to the effect that the waiver of subrogation rights by the insured does not void the coverage, and such special endorsements as reasonably requested by Landlord. Tenant shall pay to Landlord, as Additional Rent hereunder, on the first day of each calendar month Tenant's prorata share of the premiums for said fire and extended coverage insurance, Tenant's prorata share to be the same as its prorata share of Common Areas expense.

SECTION 8.2. FIRE, EXPLOSION OR OTHER CASUALTY

In the event the Leased Premises are damaged by fire, explosion or any other casualty to an extent which is less than Fifty Percent (50%) of the cost of replacement of the Leased Premises, the damage shall promptly be repaired by Landlord at Landlord's expense, provided that Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds recovered or recoverable as a result of such damage, and that in no event shall Landlord be required to repair or replace Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment. In the event of any such damage and (i) Landlord is not required to repair as hereinabove provided, or (ii) the Leased Premises shall be damaged to the extent of Fifty Percent (50%) or more of the cost of replacement, or (iii) the building of which the Leased Premises are a part is damaged to the extent of Twenty Five Percent (25%) or more of replacement, or (iv) the buildings (taken in the aggregate) in the Shopping Center shall be damaged to the extent of more than Twenty Five Percent (25%) of the aggregate cost of replacement, Landlord may elect either to repair or rebuild the Leased Premises or the building or buildings, or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the occurrence of the event causing the damage. If the casualty, repairing or rebuilding shall render the Leased Premises untenable, in whole or in part, and the damage shall not have been due to the act or omission of Tenant, a proportionate abatement of the Fixed Minimum Rent shall be allowed from the date when the damage occurred until the date Landlord completes its work, plus the earlier of (i) sixty (60) days or (ii) the date Tenant reopens for business, however, Tenant shall pay all Additional Rent charges beginning on the date Landlord completes its works, said proportion to be computed on the basis of the relation which the gross square foot area of the space rendered untenable bears to the floor space of the Leased Premises. In the event the Leased Premises shall be damaged or destroyed and the same are not repaired or rebuilt by Landlord within three hundred sixty-five (365) days after the date of the damage or destruction, unless said repair is held up by Tenant, or in the event that Thirty Percent (30%) or more of the Gross Leasable Area of the Shopping Center shall be damaged or destroyed and the same is not repaired or rebuilt within four hundred fifty-five (455) days after the date of damage or destruction, or in the event of any material damage or destruction to the Leased Premises during the last year of the Lease Term, then, in such event, Tenant shall have the right to terminate this Lease upon written notice to Landlord.

SECTION 8.3. EMINENT DOMAIN

If the whole of the Leased Premises shall be taken by any public authority by the exercise, or under the threat of the exercise, of the power of eminent domain, the Lease Term shall cease as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that date with an appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date the right of possession is taken. If less than all of the Floor Area of the Leased Premises shall be so taken, the Lease Term shall cease only on the parts so taken as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that date with appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date the right to possession is taken and thereafter the Fixed Minimum Rent shall be equitably adjusted. Landlord shall, at its expense, make all necessary repairs or alterations to the basic building and exterior work so as to constitute the remaining premises a complete architectural unit, provided that Landlord shall not be obligated to undertake any such repairs and alterations if the cost thereof exceeds the award received by Landlord. If the Floor Area of the Leased Premises so taken leaves space no longer suitable for the use set forth in Section 1.1, then the Lease Term shall cease and Tenant shall pay rent up to the date the right to possession is taken, with an appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date of the taking of the right to possession. If more than Twenty Five Percent (25%) of the Floor Area of the building in which the Leased Premises are located, or more than Twenty Five Percent (25%) of the aggregate Floor Area of all buildings in the Shopping Center, shall be taken by the exercise, or under the threat of the exercise, of the power of eminent domain, Landlord may, by notice in writing to Tenant delivered on or before the day of surrendering the right to possession to the public authority, terminate this Lease and rent shall be paid or refunded as of the date of termination. In the event fifty percent (50%) of the Shopping Center is lost due to such taking and such taking significantly impairs Tenant's ability to do business in the Leased Premises, Tenant shall have the right to terminate this Lease by sending a written notice ("Termination Notice") to Landlord setting forth the grounds for such termination and setting a date for such termination ("Termination Date") at least ninety (90) days prior to such Termination Date. All compensation awarded for any taking under the power of eminent domain, whether for the whole or a part of the Leased Premises, shall be the property of Landlord, whether such damages shall be awarded as compensation for diminution in the value of the leasehold or to the fee of the Leased Premises or otherwise, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation.

ARTICLE IX. DEFAULTS BY TENANT AND REMEDIES

SECTION 9.1. DEFAULTS BY TENANT

Without further notice, Landlord may terminate this Lease:

(i) five (5) days after notice of default, if any default by Tenant continues after notice of default, in case of nonpayment of rent or the nonpayment of any other charges or payments to be made hereunder by Tenant, for more than five (5) days (except no notice need be given for a monetary default occurring after the second such monetary default in any Lease Year); or

(ii) thirty (30) days after notice of default, if Tenant does not cure any nonmonetary default within a reasonable time, but in any event no later than thirty (30) days after notice of default; or

(iii) immediately if Tenant makes any assignment for the benefit of creditors, commits any act of bankruptcy or files or is subject to a petition under any bankruptcy or insolvency law, and if such a petition filed against Tenant is not dismissed within ninety (90) days; or

(iv) immediately if a receiver or similar officer becomes entitled to this leasehold; or

(v) immediately if Tenant's interest in this Lease is taken upon execution or other process of law in any action against Tenant; or

(vi) immediately if the Leased Premises are levied upon by any revenue officer or similar officer; or

(vii) immediately if Tenant does, or permits to be done, any act which creates a mechanic's lien or claim therefor against the land or building of which the Leased Premises are a part and Tenant does not comply with the provisions of Section 7.1.M; or

(viii) immediately if Tenant shall abandon, vacate or cease to continually operate its business within said Leased Premises during the term of this Lease for a period of more than three (3) consecutive days or five (5) days in any Lease Year; or

(ix) immediately if Tenant fails to open for business within thirty (30) days after the Lease Commencement Date.

Upon termination of this Lease, Landlord may re-enter the Leased Premises with or without process of law, using such force as may be necessary, and remove all persons, fixtures and chattels therefrom, and Landlord shall not be liable for any damages resulting therefrom. Upon such repossession of the Leased Premises, Landlord shall not be liable for any damages resulting therefrom. Upon such repossession of the Leased Premises, Landlord shall be entitled to recover as liquidated damages and not as a penalty, immediately and upon demand, a lump sum of money equal to (a) the value of the Fixed Minimum Rent and other sums provided herein to be paid by Tenant to Landlord for the remainder of the Lease Term where recoverable under applicable state law (the "Total Rent Amount") or (b) the Total Rent Amount, less the fair rental value of the Leased Premises for said period. Upon the happening of any one or more of the above-mentioned events, Landlord may repossess the Leased Premises by forcible entry or detainer suit, or otherwise, without demand or notice of any kind to Tenant (except as hereinabove expressly provided for) and without terminating this Lease, in which event Landlord may, but shall be under no obligation so to do, relet all or any part of the Leased Premises for such rent and upon such terms as shall be satisfactory to Landlord (including the right to relet the Leased Premises for a term greater or lesser than that remaining under the Lease Term, and the right to relet the Leased Premises as a part of a larger area, and the right to change the character or use made of the Leased Premises). For the purpose of such reletting, Landlord may decorate and make any repairs, changes, alterations or additions in or to the Leased Premises that may be necessary or convenient. If Landlord does not relet the Leased Premises, Tenant shall pay to Landlord on demand as liquidated damages and not as a penalty a sum equal to the amount of the Fixed Minimum Rent, and other sums provided herein to be paid by Tenant for the remainder of the Lease Term. If the Leased Premises are relet and a sufficient sum shall not be realized from such reletting, after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the expenses of such reletting and the collection of the rent accruing therefrom, to satisfy the rent herein provided to be paid for the remainder of the Lease Term, Tenant shall pay to Landlord, on demand, any deficiency and Tenant agrees that Landlord may file suit from time to time to recover any sums falling due under the terms of this section. Any recovery under this section shall be without relief from valuation and appraisement laws.

SECTION 9.2. INTEREST ON LATE PAYMENT; LATE CHARGE

Any payment due Landlord by Tenant pursuant to the terms and conditions of this lease including but not limited to all Fixed Minimum Rent, and Additional Rent which shall not be paid when due shall bear interest at the maximum rate payable by Tenant under state law, or in the absence of a maximum rate, at the rate of Eighteen Percent (18%) per annum from the date when the same is payable under the terms of this Lease until the same shall be paid. In the event any monetary payment is made more than seven (7) days after its due date, Landlord shall be entitled to a late payment fee of ONE HUNDRED and no/100 DOLLARS ($100.00) in addition to such interest charge as hereinabove set forth.

SECTION 9.3. HOLDOVER BY TENANT

In the event Tenant remains in possession of the Leased Premises after the expiration of the tenancy created hereunder, and without the execution of a new lease, Tenant shall be deemed to be occupying the Leased Premises as a tenant from month-to-month at One Hundred Fifty Percent (150%) of the Fixed Minimum Rent subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

SECTION 9.4. LANDLORD'S RIGHT TO CURE DEFAULTS

Landlord may, but shall not be obligated to, cure at any time, without notice, any default by Tenant under this Lease at Tenant's expense. Such cost to be immediately reimbursed upon written notice from Landlord that such expense has been paid.

SECTION 9.5. EFFECT OF WAIVERS OF DEFAULT

No consent or waiver, expressed or implied, by Landlord to or of any breach of any covenant, condition or duty of Tenant shall be construed as a consent of waiver to or of any other breach of the same or other covenant, condition or duty.

SECTION 9.6. REMEDIES CUMULATIVE

No remedy herein or otherwise conferred upon or reserved to Landlord shall be considered to exclude or suspend any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to Landlord may be exercised, from time to time, and so often as occasion may arise or as may be deemed expedient.

SECTION 9.7. TERMINATION OF TENANT'S ADDITIONAL RIGHTS

In consideration for the faithful observance of the terms of this Lease, and any extension hereof, Tenant has negotiated for (and Landlord has granted herein) certain option rights at Section 1.1.S. (referred to in this Section as "Tenant's Additional Rights"). For so long as no event of default occurs and remains uncured beyond the cure period, if any, set out in Section 9.1 of this Lease, Tenant's Additional Rights shall remain in full force and effect. However, should an event of default occur at any time during the term hereof or any extension(s) (and remain uncured beyond the applicable cure period, if any) Tenant's Additional Rights shall terminate, and the same shall be deemed null and void thereafter. Said termination shall occur as provided herein without further notice from Landlord, and Tenant's subsequent cure after the expiration of the appropriate cure period shall not reinstate or otherwise preserve Tenant's terminated rights.

ARTICLE X. MISCELLANEOUS PROVISIONS

SECTION 10.1. MUTUAL WAIVER OF SUBROGATION RIGHTS

Whenever (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Lease in connection with the Leased Premises, and (ii) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then the party so insured hereby releases the other party from any liability it may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance and waives any right of subrogation which might otherwise exist in or accrue to any person or account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost thereupon keeping such release and waiver in full force and effect).

SECTION 10.2. NOTICES FROM ONE PARTY TO THE OTHER

All notices provided for in the Lease shall be in writing and shall be deemed to be given (a) upon the earlier of (i) actual receipt; (ii) refusal thereof; or (iii) three (3) days after having been sent, if notice was sent by prepaid registered or certified mail, return receipt requested; or (b) one (1) day after having been sent, if notice was sent by a nationally recognized overnight courier service which requires the recipient to sign a receipt; addressed, if to Tenant, at the address of Tenant set forth in Section 1.1.F, or such other address as Tenant shall have last designated by notice in writing to Landlord (which written notice to Landlord must clearly be labeled "Change of Tenant's Address for Notice Purposes"), and if to Landlord, to the place then established for the payment of rent, or such other address as Landlord shall have last designated by notice in writing to Tenant. The customary receipt shall be conclusive evidence of such service.

SECTION 10.3. BROKERAGE

Tenant warrants that it has had no dealings with any broker in connection with this Lease other than the City of Flowery Branch and Landlord's broker, Oakhurst Realty Partners, and Janet Thomas of Century 21 Connect Realty, Tenant's Broker and covenants to pay, hold harmless and indemnify Landlord from and against any and all costs (including reasonable attorneys' fees), expense or liability for any compensation, commissions and charges claimed by any other broker or other agent with respect to this Lease or the negotiation thereof.

SECTION 10.4. RELATIONSHIP TO THE PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto or any other relationship, other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

SECTION 10.5. ESTOPPEL CERTIFICATES

At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute, acknowledge and deliver to Landlord no later than ten (10) days after such request, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates through which the Fixed Minimum Rent, Additional Rent, and other charges have been paid, and making such other reasonable certifications as Landlord, Landlord's mortgagee or Landlord's potential mortgagee may require.

SECTION 10.6. APPLICABLE LAW AND CONSTRUCTION

The laws of the State in which the Shopping Center exists shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. The headings of the several articles and sections contained herein are for convenience only and do not define, limit or construe the contents of such articles or sections.

SECTION 10.7. FORCE MAJEURE

Whenever a period of time is provided in this Lease for either party to do or perform any act or thing, said party shall not be liable or responsible for any delay due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of said party, and in any such event said time period shall be extended for the amount of time said party is so delayed, provided that this section shall not apply to Tenant's covenants to pay Rent and other charges hereunder.

SECTION 10.8. EXECUTION OF LEASE BY LANDLORD

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Leased Premises and this document becomes effective and binding only upon the execution and delivery hereof by Landlord and by Tenant. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or other agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

SECTION 10.9. BINDING EFFECT OF LEASE

The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns. Landlord, at any time and from time to time, may make an assignment of its interest in this Lease, and in the event of such assignment and the assumption by the assignee of the covenants and agreements to be performed by Landlord herein, Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

SECTION 10.10. SURVIVAL

All representations, warranties, covenants, conditions and agreements contained herein which either expressly survive the expiration or termination of this Lease or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Lease, shall survive the termination or expiration of this Lease.

SECTION 10.11. NO MODIFICATION

This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. No representations, understandings or agreements have been made or relied upon in the making of this Lease other than those specifically set forth herein. This Lease can be modified only by a writing signed by the party against whom the modification is enforceable.

SECTION 10.12. SEVERABILITY

If any portion of any term or provision of this Lease, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 10.13. SIGN CRITERIA

Within fifteen (15) days after full Lease execution, Tenant shall submit to Landlord two (2) sets of drawings for all proposed signage. The drawings shall clearly show location of sign on storefront elevation, graphics, colors and materials. No signs of any type or description shall be erected, placed or painted in or about the Leased Premises except those signs submitted to Landlord in writing and approved by Landlord in writing, and which signs are in conformity with all applicable laws, regulations, codes and ordinances and in conformity with Landlord's sign criteria as stated in Exhibit E (including without limitation restrictions on duration of posting of sale signs or other signs by Tenant) established for the Shopping Center. Landlord reserves the right to remove, at Tenant's expense, all signs other than signs approved in writing by Landlord under this Section 10.13, without notice to Tenant and without liability to Tenant for any damages sustained by Tenant as a result thereof, and Tenant shall repair any damage caused by such removal. Tenant shall have thirty (30) days from the Possession Date in which to install approved signage on the building facade or Tenant shall be deemed in default.

SECTION 10.14. SALES AND RENTAL TAX

Tenant covenants and agrees to pay to Landlord any and all sales and/or rental taxes imposed by the State in which the Shopping Center exists or any other governmental agency with respect to all Fixed Minimum Rent, Additional Rent, and all other payments of monies, including but not limited to, Common Areas maintenance charges and Real Estate Taxes paid by Tenant to Landlord pursuant to the terms of this Lease.

SECTION 10.15. FAILURE OF TENANT TO OPEN

If Tenant fails to open for business within three hundred and sixty (360) days after the Lease Commencement Date, then Landlord may terminate this Lease, at Landlord's option, and all monies paid to Landlord shall remain the property of Landlord.

SECTION 10.16. HAZARDOUS MATERIALS

Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances, or materials. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Leased Premises any such materials or substances. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C.A. §§ 6901 et seq., and any applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional charges if such requirement applies to acts and/or omissions of the Tenant. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Leased Premises. In all events, Tenant shall indemnify and hold Landlord harmless in the manner elsewhere provided in this Lease from any release of hazardous materials on the Leased Premises occurring while Tenant is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the Lease term.

Landlord, to the best of Landlord's knowledge and belief, states that there are no hazardous materials within the Leased Premises as of the date of this Lease.

Landlord acknowledges that materials potentially presenting a biohazard risk may be present on the site during the course of Tenant's business activities and that such biohazardous material will be collected and stored in containers using the universal biohazardous symbol in the Leased Premises prior to proper disposal. Tenant will at all times store such material in the required manner and shall assure that the material is disposed of as required by all governmental agencies. The parties acknowledge that Landlord shall not be responsible for the disposal or storage of any such materials and that in the event Landlord, its agents or employees shall enter the Leased Premises such party shall use best efforts and caution to deal in a reasonable manner with any such materials if required to do so.

SECTION 10.17. RIGHT TO RELOCATE

In the event Landlord shall add additional buildings to the Shopping Center or expand any of the buildings currently contained therein or renovate or reconfigure any part of the Shopping Center in the vicinity of the Leased Premises, Landlord shall have the right, subject to Tenant's right of termination as set forth below to relocate Tenant's operation to other premises (the "New Premises") in another part of the Shopping Center or building in accordance with the following:

Landlord shall notify Tenant, at least one hundred fifty (150) days prior to the proposed relocation date, of Landlord's intention to relocate Tenant's operation to the New Premises; the proposed relocation date and the size, configuration and location of the New Premises shall be set forth in Landlord's notice; and the New Premises shall be substantially the same in size and configuration as the Leased Premises described in the Lease.

In the event Landlord relocates Tenant and has completed the Tenant Improvements at Landlord's expense, Tenant shall enter into a new lease agreement with Landlord for a period of five (5) years under the same terms and conditions of this Lease.

In the event the New Premises described in Landlord's relocation notice are unacceptable to Tenant, Tenant shall have the right, exercisable by written notice to Landlord, given thirty (30) days following receipt of Landlord's relocation notice, to reject the relocation request. Upon Landlord's receipt of Tenant's rejection Landlord shall, in its sole discretion, have the right to terminate this Lease, such termination to be effective as of the proposed relocation date as set forth in Landlord's notice or to retract the relocation request and this Lease shall continue in full force and effect. Failure by Tenant to timely exercise such right shall be deemed a waiver with respect thereto and confirmation that the New Premises are acceptable to Tenant. Tenant shall have the right to accept the New Premises only for the unexpired term of this Lease.

Landlord has made no representation as to any additional improvements or stores or any existing stores in the Shopping Center and this provision does not create any rights of option, first refusal or otherwise with respect to any present or future space in the Shopping Center.

SECTION 10.18. AMERICANS WITH DISABILITIES ACT

Landlord agrees that at the time of delivery to Tenant all common areas, such as sidewalks and parking lots to the best of Landlord's knowledge will comply with the Americans with Disabilities Act of 1990 and the regulations promulgated thereunder. At Tenant's expense, Tenant agrees to design, furnish, and construct the Leased Premises to comply with the Americans with Disabilities Act of 1990.

Within ten (10) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property or of the Leased Premises; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property or of the Leased Premises; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property or the Leased Premises.

SECTION 10.19. RECORDATION

Neither this Lease nor a short form or memorandum thereof shall be recorded in the public records.

SECTION 10.20. LANDLORD'S RESTRICTIONS

Except as permitted by existing leases, Landlord, to the best of Landlord's ability, agrees that no part of the Shopping Center shall be occupied by an adult book or adult video store or other businesses which sell or display pornographic material, however, any sale of adult magazines or rental of adult videos in less than ten percent (10%) of the sales floor area of any tenant shall not be considered a violation of this agreement.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease the day and year first above written.

Date: 5/9/2022

LANDLORD: City of Flowery Branch, GA

Edward R. Asbridge

By: Edward R. Asbridge, Mayor

ATTEST: Shelia R Cooper

By: Shelia Cooper, City Clerk

Date: 5/5/2022

TENANT: El Sabor Costeno Taqueria, LLC

By: Armando Altamirano Emiliano

Sworn to and subscribed before me

this 5 day of May, 2022.

Tonya Caldwell Bailey

NOTARY PUBLIC

My Commission Expires: 11/24/2023

[NOTARY SEAL]

STATE OF GEORGIA NOTARY PUBLIC
TONYA CALDWELL BAILEY
Notary Public, Georgia
Dekalb County
My Commission Expires
November 24, 2023

EXHIBIT A
SITE PLAN

This Exhibit is solely for the purpose of showing the approximate location of the Leased Premises within the Shopping Center and for no other reason whatsoever. Landlord reserves the right to relocate, change, expand or delete parking spaces or parking areas, curb cuts, entrances, service areas, total building area, frontage, etc., including expansion or demolition of existing or new buildings.

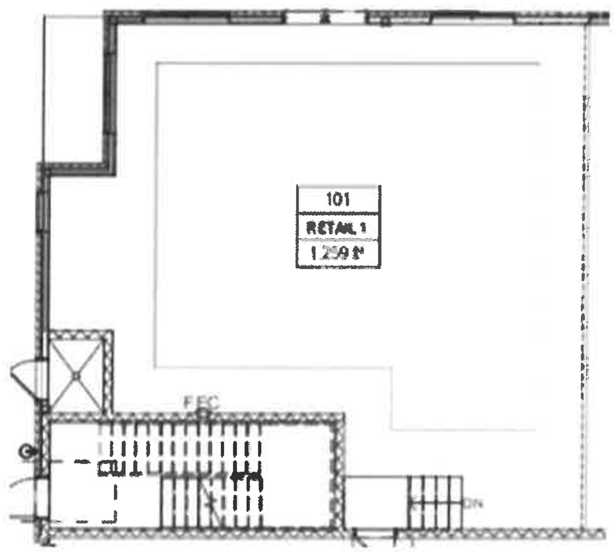


EXHIBIT B

LANDLORD AND TENANT'S WORK

Landlord's Work

1. Notwithstanding anything to the contrary contained herein, Tenant acknowledges and agrees to accept delivery of possession of the Leased Premises in the present "AS IS" condition, without any representation or warranty as to said condition, it being understood that Landlord has no obligation to perform any work or repairs in connection with the preparation of the Leased Premises for Tenant's occupancy, except as set forth below:

a. Landlord shall deliver the major components of the internal grease trap, sanitary sewer stub, ventilation chase for hood exhaust and an undistributed HVAC system in good working order.

2. Provided Tenant is not in default hereunder and shall have completed Tenant's Work in compliance with the plans and specifications approved by Landlord and in compliance with all governmental codes, ordinances and the terms hereof, Landlord shall pay to Tenant a sum up to Sixty Two Thousand, Nine Hundred Fifty and No/100 Dollars ($62,950.00) as a construction allowance (the "Tenant Improvement Allowance"), in no event to exceed the actual costs of improvements constituting Tenant's Work which are installed in the Leased Premises. The Tenant Improvement Allowance shall be paid by Landlord in four monthly installments at the following time: (a) completion of 25% of the Tenant Work; (b) completion of 50% of the Tenant Work; (c) completion of 75% Tenant Work; and (d) the date Tenant opens the Leased Premises to the public. The payment of all installments shall be subject to Landlord's inspection confirming the percentage of Tenant Work has been completed in compliance with all applicable laws, codes, rules, and regulations. Additionally, the payment of the final installment is conditioned upon the Tenant delivers to Landlord the following documentation: (i) a certificate of occupancy for the Leased Premises, (ii) waivers of lien in form and substance satisfactory to Landlord, (iii) paid invoices for Tenant's Work for which the Tenant Improvement Allowance will be or has been applied, (iv) proof of installation of a Landlord approved exterior sign on the Leased Premises which identifies Tenant's business. Any portion of the Tenant Improvement Allowance not utilized by Tenant in connection with initial improvement of the Leased Premises in accordance with the provisions of this Work Schedule shall be retained by Landlord for Landlord's benefit. No portion of the Tenant Improvement Allowance shall be applied toward Tenant's moving expenses, furniture, trade fixtures, equipment or any other personal property of Tenant. In the event of default under this Lease by Tenant, which default shall not have been fully cured by Tenant within any applicable cure period allowed under this Lease, any and all portions of the Tenant Improvement Allowance which shall have theretofore been disbursed to Tenant shall constitute additional rent and shall be immediately due and payable as such to Landlord.

3. During the construction of the Tenant Improvements, Landlord shall make disbursements of

the Tenant Improvement Allowance for the benefit of Tenant in installments as set forth in Paragraph 2 above and shall authorize the release of monies for the benefit of the Tenant as follows:

During the construction of the Tenant Improvements (or such other date as the Landlord may designate), Tenant shall deliver to Landlord: (a) a request for reimbursement of amounts paid to the contractor, approved by Tenant in a form to be provided by landlord, showing the schedule, by trade, of percentage of completion of the Tenant Improvements in the Premises, detailing the portion of the work completed and the portion not completed, (b) all invoices for labor rendered and materials for the Premises, (c) executed mechanic's lien releases as applicable, from all of Tenant's agents performing work in the Premises, and (d) all other information reasonably required by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in the Tenant's reimbursement request. Within thirty (30) days thereafter, Landlord shall deliver a check to Tenant made payable to Tenant in payment of the lesser of (i) the amounts so requested by Tenant as, or (ii) the balance of any remaining available portion of the Tenant Improvement Allowance balance provided that Landlord does not dispute any request for payment based on non-compliance of any work with the plans and specifications or due to any substandard work. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplies as set forth in Tenant's payment request. Upon completion of the construction of the Tenant Improvements, Tenant shall deliver to Landlord properly executed mechanic's liens for work furnished and/or the materials supplied.

Tenant's Work

1. Tenant agrees to submit to Landlord plans and specifications covering the Tenant Improvements in such detail as Landlord or Managing Agent may require within fifteen (15) days of execution of this Lease and Tenant agrees not to commence work on any of the Tenant Improvements until Landlord has approved such plans and specifications in writing. On or before the Possession Date, Tenant shall deposit with Landlord a certificate of insurance clearly stating the insurance requirements specified in Section 7.2, Tenant shall commence Tenant's Work and proceed diligently and continuously to completion, including installation of fixtures and equipment in the Leased Premises. At all times during Tenant's construction, Landlord and its representatives shall have the right to enter upon the Leased Premises for the purpose of inspecting construction and progress of the Tenant Improvements. Tenant, at its sole cost, shall complete all interior improvements needed to operate its business.

2. Heating and Air Conditioning Maintenance Provisions:

Tenant, at its sole cost, shall maintain the air conditioning (includes heating) units(s) for the Leased Premises in good condition and repair throughout the term of this Lease.

As a part of its air conditioning maintenance obligation, Tenant shall enter into an annual contract with an air conditioning repair firm, fully licensed to repair air conditioning units in the State in which the Shopping Center exists, which firm shall:

a. Regularly service the air conditioning unit(s) on the Leased Premises on a monthly basis, changing belts, filters and other parts as required; and supply Landlord with copies of the maintenance reports should Landlord request them to do so.

b. Perform energy and extraordinary repairs on the air conditioning unit(s).

c. Keep a detailed record of all services performed on the Leased Premises and prepare an annual service report to be furnished to the Tenant at the end of each calendar year.

Tenant shall furnish to Landlord at the end of each calendar year, a copy of said annual service report. Not later than thirty (30) days prior to the Lease Commencement Date of the term of this Lease and annually thereafter, Tenant shall furnish to Landlord a copy of the air conditioning maintenance contract described above, and proof that the annual premium for the maintenance contract has been paid. Nothing stated herein above shall limit Tenant's obligation to maintain the air conditioning unit(s) in good condition and repair throughout the Term of this Lease.

EXHIBIT C
LEGAL DESCRIPTION

All that tract or parcel of land lying and being in GMD 1270, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

The Retail Master Unit of the FB Main Street Master Condominium, as established by the Declaration of Condominium for FB Main Street, A Master Condominium, of record in Deed Book 8924, Page 507-595, Hall County, Georgia records, together with the undivided percentage of interest in the Common Elements appurtenance to said Unit as set forth in Exhibit B of the Declaration of Condominium for FB Main Street, A Master Condominium. Reference is hereby made to the plat of FB Main Street, A Master Condominium of record in Plat Book 880, Page 440 in Plat Book 880, Pages 441-445 Hall County, Georgia records, for a more complete identification and description of the Retail Master Unit.

EXHIBIT D
RULES AND REGULATIONS

Tenant covenants and agrees that Tenant, at its own cost and expense:

(a) Will keep all exterior and interior store front surfaces clean and will maintain the rest of the Leased Premises and all corridors and loading areas immediately adjoining the Leased Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests;

(b) Will not permit accumulations of any refuse, but will remove the same and keep such refuse in odor-proof, rat-proof containers within the interior of the Leased Premises shielded from the view of the general public until removed and will not burn any refuse whatsoever but will cause all such refuse to be removed by such person or companies, including Landlord, as may be designated in writing by Landlord and will pay all charges therefor, which shall in all events be competitive within the same geographical area for similar services performed by a reputable person or company; provided, however that Landlord may decline to designate any such person or company in which event all such refuse shall be removed by such person or company as Tenant, subject to Landlord's prior written approval, shall select;

(c) Will promptly replace, any plate glass or window glass of the Leased Premises which may become cracked or broken, with glass of a like kind and quality;

(d) Will not, without Landlord's prior written consent, place or maintain any merchandise or other articles in any vestibule or entry of the Leased Premises or within two (2) feet of any entrance from the Leased Premises, on the foot walk adjacent thereto or elsewhere on the exterior thereof;

(e) Will not use or permit the use of any apparatus, or sound reproduction or transmission, or any musical instrument in such manner that the sound so produced, transmitted or reproduced shall be audible beyond the confines of the Leased Premises, and will not use any other advertising medium, including without limitation flashing lights, or search lights which may be heard or seen outside of the Leased Premises;

(f) Will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Leased Premises;

(g) Will not cause or permit objectionable odors to emanate or be dispelled from the Leased Premises;

(h) Will not solicit business, distribute handbills or other advertising matter or hold demonstrations in the parking areas or other Common Areas;

(i) Will not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walk, parking area, or other Common Areas in the Shopping Center;

(j) Will comply with all laws, rules, regulations, guidelines, orders and ordinances of applicable federal, state and local governmental authorities, commissions, boards and agencies with respect to this Lease, the use of Leased Premises or any work to be performed in the Leased Premises by Tenant and Tenant shall secure all permits, leases and approvals required for Tenant's use of the Leased Premises. In addition, Tenant shall also comply with all recommendations of the Association of Fire Underwriters, Factory Mutual Insurance Companies, the Insurance Services Organization, or other similar body establishing standards for fire insurance ratings with respect to the use occupancy of the Leased Premises by Tenant, and will participate in periodic fire brigade instructions and drills at the request of Landlord and will supply, maintain, repair and replace for the Leased Premises any fire extinguisher or other fire prevention equipment and safety equipment (including insulation of approved hoods and ducts if cooking activity is conducted in the Leased Premises) required by the aforementioned rules, regulations and associations or other body in order to obtain insurance at the lowest available premium rate throughout the Term of the Lease;

(k) Will keep all outside areas immediately adjoining the Leased Premises including, but not limited to, sidewalks and loading docks free from ice and snow and Tenant hereby agrees that Tenant is solely liable for any accidents occurring on said outside areas due or alleged to be due to any accumulation of ice and snow;

(l) Will not use the plumbing facilities for any other purpose than that for which they are constructed and will not permit any foreign substance of any kind to be thrown therein and the expense of repairing any breakage, stoppage, seepage or damage, whether occurring on or off the Leased Premises, resulting from a violation of this provision by Tenant or Tenant's employees, agents or invitees shall be borne by Tenant. All grease traps and other plumbing traps shall be kept clean and operable by Tenant at Tenant's own cost and expense;

(m) Will not permit any shopping carts in the Common Areas even if taken there by customers;

(n) Will not place or cause or permit to be placed within the Leased Premises, pay telephones, vending machines (except those for the exclusive use of this Tenant's employees) or amusement devices of any kind without the prior written consent of Landlord;

(o) Will comply with all obligations of the FB Main Street – A Master Condominium Declaration of Covenants and By-Laws.

EXHIBIT E
SIGN CRITERIA

Signs shall be furnished and installed by Tenant according to the following:

1. Landlord may erect and maintain such suitable signs or signage as Landlord, in its sole discretion, may deem appropriate to advertise the Premises.

2. Tenant may erect and maintain, at its sole cost and expense, not more than one (1) sign upon the exterior of the Premises, identifying Tenant's business by name. No such sign erected by Tenant shall contain a listing of merchandise or service or any slogan related to Tenant's business.

3. Tenant shall submit sign layout to Landlord for approval prior to its fabrication and installation.

4. All signs and sign locations must be approved by Landlord prior to installation, and Landlord reserves the right, in its sole discretion, to reject any sign proposed by Tenant that does not meet Landlord's requirements.

5. All signs must comply with applicable government regulations and requirements, and Tenant shall keep all signs property maintained and in good working order.

6. Care should be taken to prevent damage to the façade during sign installation.

7. Signage shall be installed in a manner so as not to create leaks through penetrations of the façade.

8. All permits and licenses for sign installation shall be the responsibility of Tenant or sign contractor.

EXHIBIT F

GUARANTY OF LEASE

LANDLORD:	CITY OF FLOWERY BRANCH, GEORGIA
TENTANT:	EL SABOR COSTENO TAQUERIA, LLC
LEASE DATE:	

GUARANTY

FOR VALUE RECEIVED, and in consideration of, and as an inducement for the execution and delivery of the Lease dated above, for demising store premises in the FB Main Street – A Master Condominium Shopping Center (hereinafter called the "Lease"), by and between CITY OF FLOWERY BRANCH, GEORGIA, (hereinafter called "Landlord"), and EL SABOR COSTENO TAQUERIA, LLC, (hereinafter called "Tenant"), the undersigned, Armando Altamirano Emiliano an individual, (hereinafter called "Guarantor"), hereby guarantees to Landlord, its successors and assigns, the full and prompt payment of rent, including, but not limited to, the Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant's share of special assessments, and further hereby guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements herein provided to be performed and observed by Tenant, its successors and assigns; and Guarantor hereby covenants and agrees to and with Landlord, its successors and assigns, that if default shall at any time be made by Tenant, its successors and assigns, in the payment of any such Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant's share of special assessments, or if Tenant should default in the performance and observance of any of the terms, covenants, provisions or conditions contained in said Lease, Guarantor will forthwith pay such Fixed Minimum Rent, Additional Rent and other such sums and charges to Landlord, its successors and assigns, and any arrearages thereof, and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions, and will forthwith pay to Landlord all damages that may arise in consequence of any default by Tenant, its successors and assigns, under said Lease, including, without limitation, all reasonable attorneys' fees, disbursements incurred by Landlord or caused by any such default and/or by the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guarantee of payment and of performance. It shall be enforceable against Guarantor without the necessity of any suit or proceedings on Landlord's part of any kind or nature whatsoever against Tenant, its successors and assigns, and without the necessity of any notice of nonpayment, nonperformance or nonobservance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in nowise be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against Tenant, or against Tenant's successors and assigns, of any of the rights or remedies reserved to Landlord pursuant to the provisions of said Lease.

This Guaranty shall be a continuing guaranty and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the Lease or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Lease, or by reason of any extension of time that may be granted by Landlord to Tenant, its successors or assigns, or a changed or different use of the Leased Premises consented to in writing by Landlord, or by reason of any dealings or transactions or matter or thing occurring between Landlord and Tenant, its successors or assigns, whether or not notice thereof is given to Guarantor. Guarantor shall promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

Landlord's consent to any assignment or assignments, and successive assignments by Tenant, of the Lease made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

The assignment by Landlord of the Lease and/or the avails and proceeds thereof made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

All of Landlord's rights and remedies under the said Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others. If there is more than one Guarantor hereunder, each Guarantor is jointly and severally liable hereunder, and they are collectively herein referred to as the Guarantor.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty the date above set forth.

GUARANTOR(S):

Armando Altamirano Emiliano

By: ______________________________
an Individual
Address: 5467 Riverchase Dr. Flowery Branch, GA. 30542
Social Security Number: 70596 2008
Sworn to and subscribed before me
this 5 day of May, 2022.

____
NOTARY PUBLIC

My Commission Expires: 11/24/2023

[SEAL]

STATE OF GEORGIA NOTARY PUBLIC
TONYA CALDWELL BAILEY
Notary Public, Georgia
Dekalb County
My Commission Expires
November 24, 2023

EXHIBIT G
RENT SCHEDULE

The following schedule shall begin on the Fixed Minimum Rent Commencement Date. Notwithstanding the foregoing, beginning on the Possession Date Tenant shall begin the payment of Tenant's prorata share of Additional Rent as shown in Section 1.1.M.

LEASE TERM

Term	Monthly Fixed Minimum Rent	Annual Fixed Minimum Rent	Additional Rent
Months 1 – *12*	$2,622.91	$31,474.92	Full Amount Due Under the
Months 13 – *24*	$2,701.60	$32,419.17	Full Amount Due Under the
Months 25 – 36	$2,782.65	$33,391.74	Full Amount Due Under the
Months 37 – 48	$2,866.12	$34,393.49	Full Amount Due Under the
Months 49 – 60	$2,952.11	$35,425.30	Full Amount Due Under the

FIRST OPTION

Term	Monthly Fixed Minimum Rent	Annual Fixed Minimum Rent	Additional Rent
Months 61 – 72	$3,040.67	$36,488.06	Full Amount Due Under the
Months 73 - 84	$3,131.89	$37,582.70	Full Amount Due Under the
Months 85 - 96	$3,225.85	$38,710.18	Full Amount Due Under the
Months 97 – 108	$3,322.62	$39,871.18	Full Amount Due Under the

Months 109 -	$3,422.30	$41,067.63	Full Amount Due Under the

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: First Amendment to FB Main Street, a Master Condominium Shopping Center Lease Agreement with El Sabor Costeno, LLC

DATE: October 6, 2022

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL- N/A

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

COUNCIL ACTION REQUESTED ON: October 6, 2022

HISTORY: The City of Flowery Branch and El Sabor Costeno, LLC entered into a lease agreement previously and the tenants began the process of finishing the space for the opening of the restaurant.

FACTS AND ISSUES: Upon inquiring of several contractors, the tenants of El Sabor Costeno, LLC were made aware of various supply chain issues and cannot complete the work within the timeframe set forth with the original lease. The tenants requested an additional 90 days for the build-out of their leased space.

OPTIONS: (1) Approve the first amendment to the lease agreement with El Sabor Costeno, LLC. 2) Do not approve the first amendment to the lease agreement with El Sabor, Costeno, LLC and rent will commence upon the original terms.

RECOMMENDED SAMPLE MOTION: Motion to approve the first amendment FB Main Street, A Master Condominium Shopping Center lease agreement.

DEPARTMENT: Administration

Prepared by: Tonya D. Parrish

ATTACHMENTS: First amendment to FB Main Street, a master condominium shopping center lease agreement.

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Resolution authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of Revenue Bonds for the planned expansion of the Wastewater Treatment Plant

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
The City of Flowery Branch currently has a wastewater treatment plant designed to handle 400,000 gallons per day. This design has suited the city well for several decades, but as population and industry increases the need for additional treatment capacity does as well. The city has had, as a capital project, for many years an expansion of treatment capacity to 2.2 million gallons per day. Phase I consists of an expansion to 1.5 million gallons per day.

FACTS AND ISSUES:
When the planning of the expansion of the wastewater treatment plant began, the engineer's construction estimate for the expansion was $20,000,000. The city had previously obtained a loan from the Georgia Environmental Facilities Authority (GEFA) for $23,300,000. However, as time passed and supply chain issues arose, the anticipated construction cost of the plant increased to just under $30,000,000. Astonishingly, when the bids came in for the expansion, the low bid was approximately $52,000,000. There were three bids received ranging from $52M to $57M.

The city immediately began seeking alternatives to provide other wastewater treatment capacity solutions and started seeking funding sources to be able to build the planned expansion to handle the city's current and future growth.

One alternative for the additional funding needed is requesting an additional $30,000,000 in GEFA loans. By utilizing this funding avenue, ratepayers would see an increase of approximately 16.5% in both water and sewer rates on 12/1/22 and each July 1st through 2026 at which time the rates would be analyzed and adjusted for future ratepayers.

The other alternative for the additional funding needed is selling revenue bonds for which the debt service requirements would require an increase of approximately 8.5% in both water and sewer rates on 12/1/22 and each July 1st through 2026 at which time the rates would be analyzed and adjusted for future ratepayers.

OPTIONS:
1) Approve the resolution as presented authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of revenue bonds. 2) Do not approve the resolution and request the $30,000,000 from GEFA. 3) Do not approve the resolution and rebid the project with a different scope.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
Yes

AMOUNT AND SOURCE OF FUNDS:
Bonds or GEFA $30,000,000 (this item), GEFA $23.3M

RECOMMENDATION:
Authorize Resolution #22-020 authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of revenue bonds to fund the expansion of the wastewater treatment plant.

SAMPLE MOTION:
Motion to authorize Resolution #22-020 authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of revenue bonds to fund the expansion of the wastewater treatment plant.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- ES 2022 Resolution Bond Sale ERB Rev.pdf
- Authorizing Resolution.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Resolution authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of revenue bonds for the planned expansion of the wastewater treatment plant

DATE: October 6, 2022

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

BUDGET INFORMATION:
ANNUAL- Annual Debt Svc
CAPITAL- Construction of WWTP

COUNCIL ACTION REQUESTED ON: October 6, 2022

PURPOSE: To issue $30,000,000 in revenue bonds to cover the shortfall of funds needed for the planned expansion of the wastewater treatment plant.

HISTORY: The City of Flowery Branch currently has a wastewater treatment plant designed to handle 400,000 gallons per day. This design has suited the city well for several decades, but as population and industry increases the need for additional treatment capacity does as well. The city has had, as a capital project, for many years an expansion of treatment capacity to 2.2 million gallons per day.

FACTS AND ISSUES: When the planning of the expansion of the wastewater treatment plant began, the engineer's construction estimate for the expansion was $20,000,000. The city had previously obtained a loan from the Georgia Environmental Facilities Authority (GEFA) for $23,300,000. However, as time passed and supply chain issues arose, the anticipated construction cost of the plant increased to just under $30,000,000. Astonishingly, when the bids came in for the expansion, the low bid was approximately $52,000,000. There were three bids received ranging from $52M to $57M.

The city immediately began seeking alternatives to provide other wastewater treatment capacity solutions and started seeking funding sources to be able to build the planned expansion to handle the city's current and future growth.

One alternative for the additional funding needed is requesting an additional $30,000,000 in GEFA loans. By utilizing this funding avenue, ratepayers would see an increase of approximately 16.5% in both water and sewer rates.

The other alternative for the additional funding needed is selling revenue bonds for which the debt service requirements would require an increase of approximately 8.5%. Both of these increases would be through FY29 at which time the rates would be analyzed and adjusted for future ratepayers.

OPTIONS: (1) Approve the resolution as presented authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of revenue bonds. 2) Do not approve the resolution and request the $30,000,000 from GEFA. 3) Do not approve the resolution and rebid the project

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with a different scope.

RECOMMENDED SAMPLE MOTION: Motion to authorize Resolution #22-020 authorizing the Gainesville and Hall County Development Authority to issue $30,000,000 of revenue bonds to fund the expansion of the wastewater treatment plant.

DEPARTMENT: Administration

Prepared by: Tonya D. Parrish

ATTACHMENTS: A Resolution Declaring the City of Flowery Branch's Intention to Issue Approximately $30,000,000 of Revenue Bonds, Series 2022, Through the Gainesville and Hall County Development Authority.

A RESOLUTION DECLARING THE CITY OF FLOWERY BRANCH'S INTENTION TO ISSUE APPROXIMATELY $30,000,000 OF REVENUE BONDS, SERIES 2022, THROUGH THE GAINESVILLE AND HALL COUNTY DEVELOPMENT AUTHORITY; AUTHORIZING THE ENGAGEMENT OF AN UNDERWRITER AND A BOND COUNSEL FOR THE ISSUANCE OF THE SERIES 2022 BONDS; AND FOR OTHER RELATED PURPOSES.

WHEREAS, the City Council of the City of Flowery Branch, Georgia (the "City") has determined that there is a need to make certain improvements to the water and sewer system of the City as generally described on **Exhibit "A"** attached hereto (the "Project"); and

WHEREAS, the City Council has determined that revenue bonds (the "Bonds") should be issued through the Gainesville and Hall County Development Authority (the "Authority") denoted as Series 2022, in an amount not exceeding $30,000,000 for the purpose of financing the acquisition, construction and equipping of the Project and to pay the costs of issuance of the Bonds; and

WHEREAS, the City wishes to engage Stifel, Nicolaus & Company, Incorporated ("Stifel") as underwriter and Stewart, Melvin & Frost, LLP as bond counsel for such Bonds; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Flowery Branch, Georgia, and it is hereby resolved by authority of the same, as follows:

Section 1. The City Council hereby declares its intention to issue approximately $30,000,000 aggregate principal amount of revenue bonds (the "Bonds") through the Authority to finance a portion of the Project. The Bonds shall have such terms as approved by the City Council by adoption of an authorizing resolution.

Section 2. The attorneys for the City are hereby authorized and instructed to commence preparation of the necessary documents for the issuance of the Bonds, and to take such other actions necessary for the issuance of the Bonds.

Section 3. The issuance of the Bonds shall not exceed any debt limitation prescribed by the Constitution of the State of Georgia.

Section 4. The Bonds shall be payable from the revenues of the water and sewer system of the City, from the proceeds received by the City from sales and use taxes, and from the general funds of the City.

Section 5. The City Council hereby approves the engagement of Stifel as underwriter for the City in the issuance and sale of the Bonds under the terms of the proposal to provide underwriting services for the City, submitted by Stifel to the City.

Section 6. The City Council hereby approves the engagement of Stewart, Melvin & Frost, LLP as bond counsel for the City in the issuance and sale of the Bonds under the terms of the engagement letter submitted by Stewart, Melvin & Frost, LLP to the City.

Section 7. The City shall issue the Bonds to provide funds to pay or to be applied toward the cost of the acquisition, construction and equipping of the Project.

Section 8. All resolutions and parts of resolutions in conflict with this Resolution, if any, shall be and the same are hereby repealed.

PASSED, ADOPTED, SIGNED, APPROVED, AND EFFECTIVE this _____ day of _____________, 2022.

CITY OF FLOWERY BRANCH, GEORGIA

By: ______________________________
Mayor

Attest: ____________________________
City Clerk

(SEAL)

EXHIBIT "A"
The Project

The construction, renovation, expansion, and equipping of the existing wastewater treatment facility located within the City of Flowery Branch, Georgia, including (i) the expansion of treatment capacity to 1,500,000 gallons per day, (ii) the construction of new biological treatment processing, clarification, and filtration systems capable of treating water to near drinking standards prior to discharge, and (iii) the replacement of existing systems wherever necessary to meet the growing demand caused by the growth of the City of Flowery Branch.

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Approval of Client Electronic File Disclaimer & Acceptance – Infratec Consultants, Inc.

COUNCIL MEETING DATE: October 6, 2022

HISTORY:
The City of Flowery Branch engaged with Infratec Consultants on February 16, 2017 with task order FBR19001 to design an expansion of its wastewater treatment plant. Infratec Consultants designed the project and it was bid on May 25, 2022.

FACTS AND ISSUES:
Since the project came in more than twice the budgeted amount, the City of Flowery Branch has engaged the services of ESG Engineering to value engineer the project to attempt to bring the costs down.

During the value engineering effort, ESG Engineering may need access to CAD copies of the documents created by Infratec Consultants and its various subcontractors used on the project. As the value engineer for the city on this project, the files accessible by the City of Flowery Branch will be shared with ESG Engineering.

OPTIONS:
(1) Approve the client electronic file disclaimer & acceptance regarding the use of CAD documents with Infratec Consultants, Inc. (2) Do not approve and do not allow the city to have access to the CAD files.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:
Approve the Client Electronic File Disclaimer & Acceptance with Infratec Consultants, Inc.

SAMPLE MOTION:
Motion to approve the Client Electronic File Disclaimer & Acceptance with Infratec Consultants, Inc.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- ES - Infratec Client Disclaimer.pdf
- Electronic File Disclaimer Document 9-26-2022.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Approval of Client Electronic File Disclaimer & Acceptance – Infratec Consultants, Inc.

DATE: October 6, 2022

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL- N/A

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

COUNCIL ACTION REQUESTED ON: October 6, 2022

HISTORY: The City of Flowery Branch engaged with Infratec Consultants on February 16, 2017 with task order FBR19001 to design an expansion of its wastewater treatment plant. Infratec Consultants designed the project and it was bid on May 25, 2022.

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OPTIONS: (1) Approve the client electronic file disclaimer & acceptance regarding the use of CAD documents with Infratec Consultants, Inc. (2) Do not approve and do not allow the city to have access to the CAD files.

RECOMMENDED SAMPLE MOTION: Motion to approve the Client Electronic File Disclaimer & Acceptance with Infratec Consultants, Inc.

DEPARTMENT: Administration

Prepared by: Tonya D. Parrish

ATTACHMENTS: Client Electronic File Disclaimer & Acceptance document from Infratec Consultants, Inc.

Infratec Consultants, Inc.
Client Electronic File Disclaimer & Acceptance
310 Saddle Hill Court
Roswell, Georgia 30075

September 12, 2022

City of Flowery Branch
c/o Tonya Parrish, City Manager
5410 Pine Street
Flowery Branch, GA 30542

RE: Agreement for Engineering Services between City of Flowery Branch and Infratec Consultants, Inc. dated February 16, 2017; Task Order FBR19001

Dear Tonya:

Pursuant to your request and upon receipt of a copy of this executed agreement, we will provide you (Recipient) with CAD copies of documents prepared by Infratec Consultants, Inc. or its approved subconsultants: Engineering Strategies, Inc. for Process-Mechanical; EDEC, Inc. for Electrical and Instrumentation; WEKIVA, Inc. for Structural and Spylant, LLC. for Civil-Site pursuant to the above referenced contracts. Infratec Consultants, Inc. and its approved subconsultants are collectively called "Infratec." We previously provided you with PDF versions of these documents, which shall be considered the original documents with respect to our work. By signing below, you accept the following disclaimer regarding the use of these CAD documents.

Data delivered in CAD format can deteriorate undetected and can be modified by others without our knowledge. The content of data delivered in CAD format can also be affected if the user attempts to view the CAD files using hardware or software that is not compatible with the hardware and software we used to create the CAD files. By signing below you agree to accept responsibility for the completeness, correctness, and readability of the CAD files after their delivery to you, and you also agree to the extent permitted by law, to indemnify, defend and save Infratec harmless from any and all claims, losses, costs, damages, awards or judgments arising from your use of the CAD files, any decisions made by you based on the contents of the CAD files or any output generated from these files by you. To the extent permitted by law, this indemnification shall also apply to any claim, loss, cost, damage, or award of judgment against Infratec resulting from your delivery of these files to any subcontractors, material suppliers or any other third parties. Infratec accepts responsibility for the accuracy of the sealed drawings that were issued by us for this project in PDF format. Infratec makes no warranties, express or implied, under this agreement or otherwise in connection with the accuracy of files delivered in CAD format.

Infratec Consultants, Inc.
Client Electronic File Disclaimer & Acceptance
310 Saddle Hill Court
Roswell, Georgia 30075

Any reuse of this information without written verification or adaptation by Infratec for the specific purposes intended will be at the Recipient's sole risk and without liability or legal exposure to Infratec; and the Recipient releases and shall, to the extent permitted by law, indemnify, defend and hold Infratec harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting there from. Any such verification or adaptation will entitle Infratec to further compensation at rates to be agreed upon by the Recipient and Infratec.

Infratec will not be responsible for assuring that the CAD copies transmitted to the Recipient are continually updated and kept current. We are providing CAD copies for convenience of the Recipient on the above noted project only.

The files will be transmitted by email, through the use of Infratec or Client's FTP site, or by electronic media (CD or DVD), at the discretion of the Infratec.

Should the files be transmitted by electronic media they will be sent to the address and name referenced in the heading above. Should the files be transmitted by e-mail the files will be transmitted to tonya@flowerybranchga.org.

Sincerely,

Infratec Consultants, Inc.

Robert W Troxler

Robert W. Troxler, PE
President
770-596-1984
retroxler@gmail.com

Infratec Consultants, Inc.
Client Electronic File Disclaimer & Acceptance
310 Saddle Hill Court
Roswell, Georgia 30075

I hereby agree to the terms and conditions described above and accept the above disclaimer regarding the use of these electronic documents.

Date of Council Approval:

____

Recommended:

____
Tonya Parrish, City Manager

City of Flowery Branch

By:_____________________
Ed Asbridge, Mayor

Attest:___________________
,City Clerk