City of Daytona Beach Shores

"Life is Better Here"
"A Premier, Friendly Place to Be"

AGENDA
CITY COUNCIL MEETING
JANUARY 12, 2021
6:00 PM, Shores Community Center, 3000 Bellemead Drive
Daytona Beach Shores, FL 32118

Upon being recognized, a member of the public shall proceed to the podium and give his or her name and address and may, thereafter, speak for a maximum of three minutes on any matter relevant to a specific agenda item. During "Audience Comments," a member of the public may speak on any matter relevant to City business which is not on the agenda, for a maximum of three minutes in accordance with Section 2-1.1(d) and 2-2 of the City Code. In accordance with Section 2-2, during periods set aside for public discussion any person desiring to speak shall secure a form located at the agenda table, complete the form and present it to the City Clerk so the speaker can be recognized by the presiding officer. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section. It shall be the duty of the Director of Public Safety, upon the order of the presiding officer at any such meeting, to forcibly, if necessary, evict any person violating the provisions of this section from the Council Meeting Hall. Any such violation shall subject the offender, upon conviction thereof, to a fine and/or imprisonment as prescribed by Section 1-8.

1. CALL TO ORDER BY MAYOR

2. ROLL CALL BY CITY CLERK

3. PRAYER

4. PLEDGE OF ALLEGIANCE

5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

A. Milestone Recognition for Council-Manager Community from FCCMA

6. APPROVAL OF MINUTES

A. City Council Minutes December 8, 2020

7. CONSENT AGENDA:

A. Economic Development Grant Agreement: ANP Investments, LLC (Stroud's Barbeque and Grill), 2516 S. Atlantic Ave.

B. Building Division November, 2020 Monthly Report

C. Community Services November, 2020 Monthly Report

8. REPORTS OF THE CITY ATTORNEY:

A. City Attorney Report

9. REPORTS OF THE CITY MANAGER:

A. City Manager Report January 12, 2021

10. OLD BUSINESS:

11. NEW BUSINESS:

A. Economic Development Ordinance

B. Economic Development Grant (New Business Lease Subsidy) Application: Greater Than A Gym, Inc., D/B/A Greater Fitness, 2136 South Atlantic Avenue, Suite E & F

12. COUNCIL COMMENTS:

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

15. ADJOURNMENT:

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF DAYTONA BEACH SHORES, 2990 S. ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118, TELEPHONE NUMBER 386-7635364, CSCHWAB@CITYOFDBS.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 711 or 1 8009558771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

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MINUTES
CITY COUNCIL MEETING
December 8, 2020
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

1. CALL TO ORDER BY MAYOR

Present: Mayor Nancy Miller, Vice Mayor Mel Lindauer, Councilmember Michael Politis, Councilmember Richard Frizalone, Councilmember Richard Bryan
Staff: City Manager Michael T. Booker, City Clerk Cheri Schwab, City Attorney John Cary, City Planner Stewart Cruz, Finance Director Kurt Swartzlander, Recreation Director Nancy Maddox and Public Safety Director Stephan Dembinsky.

2. ROLL CALL BY CITY CLERK

3. PRAYER

4. PLEDGE OF ALLEGIANCE

5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

A. Ralph Wheeler Volunteer of the Year Award

Mayor Miller and City Manager Michael Booker presented the annual award to Marilyn Wheeler.

B. Employee Service Award - Jose Ramos 10 years

Mayor Miller announced Jose Ramos would be receiving his ten-year service award. It will be presented to him at a later date.

6. APPROVAL OF MINUTES

A. City Council Minutes November 10, 2020

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by COUNCILMEMBER MICHAEL POLITIS to Approve the City Council Minutes of November 10, 2020.
Vote: Motion carried by unanimous roll call vote (**summary**: Yes = 5 No = 0).
Yes: Mayor Nancy Miller, Councilmember Richard Bryan, Councilmember Richard Frizalone,

Vice Mayor Mel Lindauer, Councilmember Michael Politis

7. CONSENT AGENDA:

A. Public Safety October Monthly Report

B. Community Services October, 2020 Report

C. Building Division October, 2020 Report

D. Amendment to Beach Bagel Cafe of Daytona, LLC (High Tide Kitchen) Economic Development Grant: 3344 S. Atlantic Avenue

E. Application for Non-Exclusive Franchise - ACET Recycling, LLC

F. Renewal of Non-Exclusive Franchise - WCA of Florida, LLC

G. Renewal of Non-Exclusive Franchise - Creech Enterprises, Inc., dba Southeast Containers

H. Renewal of Non-Exclusive Franchise - Samsula Waste, Inc.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by COUNCILMEMBER RICHARD BRYAN to Approve the consent agenda.
Vote: Motion carried by unanimous roll call vote (**summary**: Yes = 5 No = 0).
Yes: Mayor Nancy Miller, Councilmember Richard Bryan, Councilmember Richard Frizalone, Vice Mayor Mel Lindauer, Councilmember Michael Politis

8. REPORTS OF THE CITY ATTORNEY:

A. City Attorney Report

Attorney Cary reviewed the items on his report for the council.

9. REPORTS OF THE CITY MANAGER:

A. City Manager Report December 8, 2020

City Manager Michael Booker reviewed his report for the council. He added the following items: details for the Light Up the Shores decorating contest, free concert by Orlando Philharmonic Orchestra on Dec. 17th, and effective January 1st, Finance Director Kurt Swartzlander will have a new title added, Assistant City Manager.

10. OLD BUSINESS:

A. Ordinance 2020-13: Proposed Amendment to Atlantic Avenue Estates, LLC - Daytona Beach Shores Development Agreement 12020027

There was no discussion or public comments for the Ordinance.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by VICE MAYOR MEL LINDAUER to Adopt Ordinance 2020-13 on second reading.
Vote: Motion carried by unanimous roll call vote (**summary**: Yes = 5 No = 0).
Yes: Mayor Nancy Miller, Councilmember Richard Bryan, Councilmember Richard Frizalone, Vice Mayor Mel Lindauer, Councilmember Michael Politis

B. Ordinance 2020-17 Planning & Zoning Board Re-organization

There was no discussion or public comments for the ordinance.

COUNCILMEMBER RICHARD BRYAN moved, seconded by COUNCILMEMBER MICHAEL POLITIS to Adopt Ordinance 2020-17 on second reading.
Vote: Motion carried by unanimous roll call vote (**summary**: Yes = 5 No = 0).
Yes: Mayor Nancy Miller, Councilmember Richard Bryan, Councilmember Richard Frizalone, Vice Mayor Mel Lindauer, Councilmember Michael Politis

11. NEW BUSINESS:

A. Consideration to amend lease with Halifax Health

City Manager Booker explained the few modifications with the lease agreement. The effective date for the lease would be the date for the Certificate of Occupancy. The language for use of premises was modified to be less descriptive but still requires medical office use.
VICE MAYOR MEL LINDAUER moved, seconded by COUNCILMEMBER MICHAEL POLITIS to Approve the amended lease agreements with Halifax Health.
Vote: Motion carried by unanimous roll call vote (**summary**: Yes = 5 No = 0).
Yes: Mayor Nancy Miller, Councilmember Richard Bryan, Councilmember Richard Frizalone, Vice Mayor Mel Lindauer, Councilmember Michael Politis

B. Economic Development Grant Application 12020019: ANP Investments, LLC - Stroud's Barbeque and Grill

City Planner Stewart Cruz stated that the applicant, ANP Investments, LLC, had applied for an Economic Development Grant for buildout and kitchen equipment. The proposed reimbursable amount is $19,944. The business opened back in August and currently has a signed five year lease with their landlord. The Economic Development Committee recommended approval with a phased payout to mirror the lease subsidy portion of the program which is paid over a three year period. Staff would like direction from council for the payment distribution. Mayor Miller was in favor of phased payments as was the rest of the council. CMBR Frizalone said they had a bit of a rough start but are now open for business. Vice Mayor Lindauer had questions regarding some of the items listed for reimbursement. It was his opinion that portable equipment, cleaning supplies and routine maintenance items should not be included and he didn't want to set a precedent. Attorney Cary stated that the council could accept or reject any cost submitted per the grant guidelines. There was some minor confusion on which grant guidelines to follow, but Attorney Cary reminded the council that the applicant only requested a renovation grant, not a lease subsidy. It was mentioned that a revised ordinance for the economic development grants would be coming to council earlier next year. Staff has taken the comments and concerns from past grant applications and is working with the City Attorney on an amendment. Mayor Miller felt dividing the reimbursable amount into three years and quarterly payments was a practical method. Finance Director Swartzlander added that the payments could be in equal installments or similar to the lease payments in declining percentages. After a brief discussion regarding the types of items that could be included in a renovation grant that they weren't comfortable with, the council felt it would be best to limit economic development grants for lease subsidy, land purchase and alternative tax relief only. Attorney Cary explained that with that being said, the council has established a moratorium on the existing language and if any new applications were submitted, they could be held until the amendment was adopted.
COUNCILMEMBER RICHARD BRYAN moved, seconded by COUNCILMEMBER

RICHARD FRIZALONE to Approve the Economic Development Grant for Stroud's Barbeque and Grill to be paid out over a total of three years in quarterly payments in arrears.
Vote: Motion carried by unanimous roll call vote (**summary**: Yes = 4 No = 0).
Yes: Mayor Nancy Miller, Councilmember Richard Bryan, Councilmember Richard Frizalone, Vice Mayor Mel Lindauer. CMBR Politis abstained.

12. COUNCIL COMMENTS:

CMBR Frizalone stated that work had begun at Oceans 25. There maybe some movement on the Treasure Island property. A joint venture between two capital firms is being discussed. Mayor Miller reminded the audience of Coffee with the Mayor for Wednesday morning. Vice Mayor Lindauer thanked the residents for attending the meeting and wished everyone Happy Holidays.

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

John Nissenzone inquired if the pickleball courts could be blown off to prevent debris from collecting and creating a hazard. Recently, grass, sand and stones are collecting on the courts.

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

revised ordinance for economic development grants, workshop before second meeting in January to discuss 2021 Council priorities. Each councilmember should turn in 3-4 goals to the City Clerk for the agenda.

15. ADJOURNMENT:

The meeting ended at 7:06 pm.

MAYOR **NANCY MILLER**	**CITY MANAGER** **MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB

CITY OF DAYTONA BEACH SHORES / COMMERCIAL LEASE DEVELOPMENT / RENOVATION GRANT AGREEMENT FOR <u>2516 SOUTH ATLANTIC AVENUE</u>

THIS COMMERCIAL LEASE DEVELOPMENT / RENOVATION GRANT AGREEMENT (hereinafter, the "Agreement") is made and entered into this ___ day of__________, 2020, by and between the CITY OF DAYTONA BEACH SHORES, a Florida municipality, whose mailing address is 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, hereinafter referred to as the "CITY", and <u>ANP Investments, LLC,</u> of 1925 S. Atlantic Avenue (Unit 510), as the Tenant/Lessee of business property known as the **<u>"STROUD'S BARBEQUE AND GRILL"</u>** located at <u>2516 S. Atlantic Avenue, Daytona Beach Shores, Florida 32118</u> and is hereinafter referred to as GRANTEE.

WITNESSETH:

WHEREAS, the City Council of the CITY has enacted Ordinance 2019-06 to further its policy objectives of facilitating the establishment of new businesses, the expansion of existing businesses and for the general improvement of unsightly, unsafe, deteriorated or vacant and abandoned commercial properties, within a targeted geographical area of the CITY; and

WHEREAS, Ordinance 2019-06 authorizes a program of economic incentives designed to attract new businesses, which are presently underrepresented in the CITY, and to locate such businesses in the targeted area of the CITY for the purpose of providing residents and visitors a wider array of goods, services, entertainment and dining options, additional employment opportunities and, at the same time, expand the tax base of the CITY and eradicate vacant, abandoned and underutilized properties; and

WHEREAS, the economic incentives afforded by the ordinance include, but are not limited to, matching grants to new or existing owners of commercial properties and/or new or existing tenants of commercial businesses in the CITY, subject to specific dollar limits and meeting certain other criteria established by the CITY, which grants may be used for interior buildouts, infrastructure and façade improvements, structural alterations and/or beautification; and

WHEREAS, City Council of the CITY has determined that the investment of public funds in the economic incentive program generally, and in this Agreement in particular, are in the public interest and provide for and accomplish a public purpose; and

WHEREAS, the City Council of the CITY has found and determined that the provisions of this Agreement are consistent with applicable law and implement the provisions of controlling legal authority.

NOW, THEREFORE, in consideration of the terms, provisions and covenants contained herein, the parties hereto do mutually agree as follows:

SECTION 1. <u>RECITALS</u>. The foregoing recitals are true and correct, form a material part of this Agreement upon which the parties have relied and are hereby adopted and incorporated by reference herein.

SECTION 2. <u>PURPOSE AND TERM</u>. Subject to the terms and conditions hereinafter set forth, the CITY shall provide a Commercial Lease Development / Renovation Grant (hereinafter, "Grant") to the GRANTEE and the GRANTEE shall, in consideration for the receipt of said grant funds, make the following infrastructure, façade and/or beautification improvements to the business property located at 2516 S. Atlantic Avenue, Daytona Beach Shores, Florida 32118 (hereinafter, "the property"): an outdoor dining area including but not limited to the construction of support columns, new ceiling, privacy fence, electrical work, new glass patio door, ADA ramp work and internal and external painting.

SECTION 3. <u>TERMS AND CONDITIONS FOR PAYMENT OF GRANT FUNDS</u>

(A). The CITY shall pay the Grant funds to the GRANTEE under the terms and conditions of this Agreement as follow:

1. The GRANTEE must be current in the payment of all taxes, fees, special assessments and charges for services and obligations owed to the CITY, the City of Port Orange or Daytona Beach (water), Volusia County, the State of Florida and the United States government, if any, related to the property, which are obligations of the GRANTEE under the lease agreement for the property, at or before and continuing throughout the period of time which this Agreement is in effect; and

2. The GRANTEE must not be in default of its obligations to any creditor at or before and continuing throughout the period of time of which this Agreement is in effect, specifically including obligations for the cost of the infrastructure, façade and/or beautification improvements for which the Grant is awarded under this Agreement; and

3. The GRANTEE must not be subject to any pending or threatened eviction, lien foreclosure or bankruptcy proceedings at or before and continuing throughout the time of which this Agreement is in effect; and

4. The GRANTEE shall notify the City Manager if the lease is terminated or if GRANTEE has received notice of a default from the Landlord or other creditor; and

5. The GRANTEE must not be in violation of any code or ordinance of the CITY or of any State of Florida or Federal law or regulation governing the use and/or operation of the property at or before and continuing throughout the time of which this Agreement is in effect; and

6. The GRANTEE must not engage in any prohibited or nonconforming uses under the code, ordinances or regulations of the CITY or of any law or regulations of the State of Florida and the Federal Government at or before the time of payment by the CITY of the Grant funds under this Agreement; and

7. The GRANTEE must not engage in any business other than a business for which the property has been approved by the CITY at or before and continuing throughout the time of which this Agreement is in effect; and

8. The GRANTEE shall be required to submit such documentation as may be reasonably required by the CITY to verify compliance by the GRANTEE with the terms and conditions of this Agreement at or before and continuing throughout the time of which this Agreement is in effect.

9. The CITY has the right to inspect the completed work on the infrastructure, façade and/or beautification improvements to determine that such work was performed in a reasonable, workmanlike manner and conforms to all codes and regulations of the CITY at or before the time of payment by the CITY of the Grant funds under this Agreement.

10. The GRANTEE shall be responsible for the satisfaction and/or discharge of any mechanics lien(s) against the property due to the infrastructure, façade

and/or beautification improvements under this Agreement at or before and continuing throughout the time of which this Agreement is in effect.

(B) If the GRANTEE is in violation of any of the terms and conditions of this Agreement, the CITY shall declare a default and future Lease Subsidy Development/Renovation Grant payments suspended pending the cancelation provisions of Section 7 for failure to timely cure the default, if any.

(C). If the GRANTEE is in violation of any of the terms and conditions of this Agreement, the CITY shall declare a forfeiture and no Grant funds shall be awarded to the GRANTEE, or if already paid, the GRANTEE shall promptly refund to the CITY the amount of Grant funds awarded under this agreement.

SECTION 4. <u>PAYMENT OF GRANT FUNDS BY CITY TO GRANTEE.</u>

(A). Provided the GRANTEE is in compliance with all terms and conditions of this Agreement, the CITY shall pay to the GRANTEE an amount equal to one-half (½) of the total expenditures made by the GRANTEE for the infrastructure, façade and/or beautification improvements to the property based upon the lowest responsible bids received and approved by the CITY, upon satisfactory proof of payment by the GRANTEE as determined by the CITY, and for the total amount of Grant funds not exceeding $20,000.00.

(B) GRANTEE shall produce proof to the City Manager, or his designee, of a minimum 3-year extension of the lease with the Landlord of the property at or before execution of this Agreement; and

(C) GRANTEE shall produce proof to the City Manager, or his designee, of any additional employees added as a result of the infrastructure, façade and/or beautification improvements under this Agreement during the time of which this Agreement is in effect.

(D) GRANTEE shall complete all infrastructure, façade and/or beautification improvements under this Agreement within one (1) year after the effective date of this Agreement.

(E) Subject to the terms and conditions of this agreement, GRANTOR shall make payments to the GRANTEE as follows:

1. Payments shall be in quarterly installments of twelve (12) equal payments over a period of three (3) years.

2. Each payment shall be made at the convenience of the City at some point during each quarter of calendar years 2021, 2022, and 2023. The first payment shall be made during the first quarter of the 2021 calendar year, and the final payment shall be made during the last quarter of the 2023 calendar year.

SECTION 5. __DISCLAIMER OF THIRD-PARTY BENEFICIARIES.__ This Agreement is solely for the benefit of the formal parties hereto, and no right or case of action shall accrue upon or by reason hereon, to or for the benefit of any third party not a formal party hereto.

SECTION 6. __ASSIGNMENT.__ This Agreement shall be binding on the parties hereto and their representatives and successors. Neither party shall assign this Agreement or the rights and obligations hereof to any other party.

SECTION 7. __DEFAULT/PAYBACK__

(A). In the event of default by the GRANTEE or the CITY, the aggrieved party shall be entitled to any and all legal remedies available under Florida law.

(B). The aggrieved party shall give the defaulting party written notice of any defaults hereunder and shall allow the defaulting party thirty (30) days from the date of receipt to cure such defaults. Upon the failure to timely cure the default, the aggrieved party may cancel the Agreement by notice as provided below.

(C) The GRANTEEE shall be in default of this agreement under any of the following conditions:

1. The GRANTEE fails to operate the business pursuant to the grant application and business plan provided to the City Council for the consideration of this grant agreement; or

2. The GRANTEE fails to operate the business pursuant to any term or condition imposed by the City Council in the approval of this grant agreement; or

3. The GRANTEE relocates or closes its business location at 2516 S. Atlantic Avenue, Daytona Beach Shores, Florida 32118, at any time during the greater of i) the lease term or lease extension, or ii) the three (3) year period after the receipt by GRANTEE of grant funds,

3. The GRANTEEE is in violation of any term or condition in this Agreement.

(D) In the event of a default by the GRANTEE, GRANTEE shall be liable to the CITY for the prompt refund of all grant funds awarded under this Agreement.

SECTION 8. <u>NOTICES</u>. Any notice required or allowed hereunder shall be in writing and either (1) personally served upon a party, with an affidavit of service from the server or (2) sent by a commercial delivery service, restricted delivery, or (3) by US mail, certified delivery, with return receipt requested, to the designated address set forth above for that party or such other address as a party may specify by a prior written notice delivered in accordance herewith. If a party cannot be served in the manner prescribed above after two attempts, delivery may be accomplished by publication, one time, in a newspaper of general circulation. For purposes of notice to or by a party, the City Manager, or his designee, shall represent the CITY and Ashley Stroud shall represent the GRANTEE.

SECTION 9. THE GRANTEE'S MANDATORY COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES, AND PUBLIC RECORDS REQUESTS.

In order to comply with Section 119.0701, *Florida Statutes*, public records laws, the GRANTEE must:

(A). Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.

(B). Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(C). Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(D). Meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the GRANTEE upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

(E). If the GRANTEE does not comply with a public records request, the

CITY shall enforce the contract provisions in accordance with this Agreement.

(F). Failure by the GRANTEE to grant such public access and comply with public records requests shall be grounds for immediate unilateral cancellation of this Agreement by the CITY. The GRANTEE shall promptly provide the CITY with a copy of any request to inspect or copy public records in possession of the GRANTEE and shall promptly provide the CITY with a copy of the GRANTEE's response to each such request.

(G). **IF THE GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE GRANTEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CHERI SCHWAB, CITY CLERK, (386) 763-5353, CSCHWAB@CITYOFDBS.ORG, 2990 SOUTH ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118.**

SECTION 10. <u>SEVERABILITY.</u> If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be affected. To that end, the terms of this Agreement is declared severable.

SECTION 11. <u>TIME OF THE ESSENCE.</u> Time is hereby declared essence to the lawful performance of the duties and obligations contained in this Agreement.

SECTION 12. <u>APPLICABLE LAW/VENUE.</u> This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida.

SECTION 13. **ATTORNEYS FEES.** In the event it becomes necessary to institute legal action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover all out-of-pocket expenses and costs and all reasonable attorneys fees, paralegal fees and associated fees and costs from the date of filing until the termination of litigation whether incurred at trial, on appeal, or otherwise.

SECTION 14. **NONDISCRIMINATION.** The GRANTEE agrees that it will not discriminate against any business invitee, employee or applicant for employment because of race, color, religion, sex, age, national origin or disability. The GRANTEE, moreover, shall comply with all the requirements of the *Americans with Disability Act*, the regulations of the Federal government issued thereunder, and any and all requirements of State law related thereto.

SECTION 15. **INTERPRETATION.** The CITY and the GRANTEE agree that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another in the interpretation of this Agreement.

SECTION 16. **MODIFICATION.** This Agreement may not be amended, changed, or modified, and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith, approved by the City Council of the CITY and the GRANTEE and executed by all parties to this Agreement.

SECTION 17. **ENTIRE AGREEMENT: EFFECT IN PRIOR AGREEMENT.**

This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment.

IN WITNESS WHEREOF, the parties hereto have hereunder executed this Agreement in the date and year first above written.

ATTEST:

CITY OF DAYTONA BEACH SHORES

____
Cheri Schwab, City Clerk

____
Nancy J. Miller, Mayor

____
Michael T. Booker, City Manager

Approved as to form:

____
GRETCHEN R. H. “BECKY” VOSE, CITY ATTORNEY

ATTEST:

ANP Investments, LLC - Grantee

____

____
Ashley Stroud

City of Daytona Beach Shores
Planning & Building Division Statistics
Monthly Report – November, 2020

Planning Division

Site Plans - Submittals and Approvals:

Submitted this Month: 0

Submitted this Fiscal Year: 0

Approved by Staff this Month: 0

Approved by Staff this Fiscal Year: 0

Approved by City Council this Month: 0

Approved by City Council this Fiscal Year: 0

Amendments Approved by Staff this Fiscal Year: 0

Building Division

Specific Large Projects (Over $10,000) - Submitted This Month:

PROJECT	WORK ADDRESS	DATE	WORK DESCRIPTION	VALUE	REVENUE
Felix Residence	3051 South Atlantic Avenue, Unit 1002	11/3	Remove and replace 3 windows	$10,880.00	$120.55
Peninsula Condo	2545 South Atlantic Avenue	11/3	Hurricane damage and general repairs, including window replacements	$8,826,817.00	$21,439.61
Miller Residence	3756 South Atlantic Avenue, Unit 202	11/3	Replace 13 windows and 2 sliding glass doors	$17,875.00	$172.20
KB&M Enterprises	3333 South Atlantic Avenue, Unit 1105	11/3	Replace counter tops	$10,100.00	$120.55
Winn Dixie	2200 South Atlantic Avenue	11/4	Replace generator	$22,942.00	$69.25
Bowman Residence	3245 South Atlantic Avenue, Unit 608	11/6	Replace cabinets and counter tops, remodel shower	$42,500.00	$312.11
Oceans 25 LLC	2900 South Atlantic Avenue	11/6	Develop site and build 25 town homes	$5,500,000.00	$13,766.78
Snyder Residence	2987 South Atlantic Avenue, Unit 303	11/9	Replace kitchen cabinets, open kitchen wall	$12,000.00	$129.10
Ladner Residence	3647 South Atlantic Avenue, Unit 6A	11/11	Install counter tops in kitchen and bathroom	$10,100.00	$120.55
Shores Plaza Investments	2120 South Atlantic Avenue	11/11	Install (2) A/C systems	$10,000.00	$103.90
City of Daytona Beach Shores	3050 South Atlantic Avenue	11/12	Remove and replace roofing system	$256,900.00	$0.00

PROJECT	WORK ADDRESS	DATE	WORK DESCRIPTION	VALUE	REVENUE
2626 Condo	2626 South Atlantic Avenue	11/12	Retrofit new panel fire sprinkler standpipe	$12,500.00	$227.50
Proudfoot Residence	3333 South Atlantic Avenue, Unit 603	11/12	Remodel master and guest bathrooms	$40,400.00	$297.37
Condra Residence	3425 South Atlantic Avenue, Unit 505	11/13	Replace kitchen cabinets and counter tops	$27,924.00	$226.90
Moon Residence	3815 South Atlantic Avenue, Unit 703	11/13	Demo kitchen, cabinets and counter tops	$45,000.00	$323.64
Halifax Health	3048 South Atlantic Avenue	11/16	Demo portion of building, remodel remaining building	$715,000.00	$0.00
Halifax Health	3048 South Atlantic Avenue	11/18	Install modified roof, tile	$52,599.00	$0.00
Pirates Cove	3501 South Atlantic Avenue	11/18	Apply silicone over existing roof	$47,600.00	$340.59
Grand Coquina	3333 South Atlantic Avenue	11/20	Resurface pool and spa	$19,550.00	$182.96
Halifax Health	3048 South Atlantic Avenue	11/23	New lighting, power devices, service	$69,850.00	$0.00
Oceans 25 LLC	2900 South Atlantic Avenue	11/23	Plumbing for 25 town homes	$222,262.00	$1,453.81
Oceans 25 LLC	2900 South Atlantic Avenue	11/23	Wire 25 residential units	$287,500.00	$679.06
Oceans 25 LLC	2900 South Atlantic Avenue	11/23	Install 25 A/C units, duct work	$141,980.00	$687.57
Gellner Residence	3343 South Atlantic Avenue, Unit 703	11/24	Install 3 motorized roll down hurricane shutters	$10,346.00	$120.55
Crappy Joe’s	3701 South Atlantic Avenue	11/25	Install three reinforced pile jackets on pier	$75,000.00	$494.31
Weisberg Residence	148 Florida Shores Boulevard	11/25	Install tile underlayment on roof	$13,500.00	$146.20
Winn Residence	1 Oceans West Boulevard, Unit 17A2	11/30	New kitchen cabinets and tops, vanities and showers	$28,000.00	$226.94
Lomax Residence	1 Oceans West Boulevard, Unit 11B2	11/30	New kitchen cabinets and counter tops	$11,000.00	$120.55
TOTALS	WORK ADDRESS	DATE	WORK DESCRIPTION	$18,540,125.00	$41,882.55

Building Division Revenue by Permit Category:

PERMIT TYPE	NOVEMBER 2020	FISCAL YEAR-TO-DATE 2020 TO 2021	NOVEMBER 2019	LAST FISCAL YEAR-TO-DATE 2019 TO 2020
BUILDING	$40,420.68	$54,001.56	$15,573.53	$32,003.21
ROOF	$1,306.29	$2,023.15	$930.05	$1,560.31
DEMOLITION	$0.00	$120.00	$120.00	$120.00
ELECTRICAL	$2,125.06	$7,096.86	$2,826.72	$4,340.10
MECHANICAL	$3,613.27	$9,830.49	$2,213.81	$4,861.68
PLUMBING	$3,281.56	$7,943.88	$3,513.47	$5,264.40

SIGN	$89.50	$404.35	$365.03	$964.44
POLITICAL SIGN BONDS	$0.00	$220.00	$0.00	$0.00
STORMWATER MANAGEMENT	$0.00	$0.00	$0.00	$0.00
MISCELLANEOUS	$65.25	$195.75	$100.00	$314.25
DEVELOPMENT FEES	$50.00	$160.00	$25.00	$865.40
PROMOTIONAL ACTIVITIES	$0.00	$0.00	$0.00	$0.00
TOTALS	$50,951.61	$81,996.04	$25,667.61	$50,293.79

Building Division Activities:

ACTIVITY	NOVEMBER 2020	FISCAL YEAR-TO-DATE 2020 TO 2021	NOVEMBER 2019	LAST FISCAL YEAR-TO-DATE 2019 TO 2020
INSPECTIONS	284	688	278	522
FINAL CERTIFICATES OF OCCUPANCY ISSUED	0	0	0	0
TEMPORARY CERTIFICATES OF OCCUPANCY ISSUED	0	0	0	0
FINAL INSPECTIONS	191	441	167	350
FAILED INSPECTIONS	34	58	22	36

Annual Totals, Large Projects (Over $10,000):

Projects Begun Current Fiscal Year-to-Date – 2020 to Present: $22,201,998.00

Projects Begun Last Fiscal Year – 2019 to 2020: $64,300,811.00

Projects Begun Two Fiscal Years Ago – 2018 to 2019: $39,968,375.00

COMMUNITY SERVICES DEPARTMENT MONTHLY REPORT - NOVEMBER 2020

FACILITIES MAINTENANCE DIVISION:

Currently one position.

Normal monthly duties:

This division is now only the building maintenance position. The maintenance position assesses any problems reported with the buildings and handles the repair if it is within his ability. He has an a/c certification so he can do a lot of the repairs inhouse. He replaces light bulbs, cleans the outside windows, paints and any other general maintenance needed with the city buildings.

Additionally, this month:

This employee installed a new water fountain at public safety, worked on painting and repairing the city building back flows and began cleanup of the drainage area of the facility building. He also came in over the weekend of the 12th to assist in resetting things after a lightning strike at city hall.

PARKS/STREETS DIVISION:

This division is normally eleven maintenance positions and one electrician position.

Normal monthly duties:

This division takes care of the maintenance, upkeep and general appearance of all the parks, streets, sidewalks and medians daily. They mow, change out lights, restock supplies, replace plants as needed, replace or repair street signs, check and clear the storm drains, as well as any other issues that may arise in the city. Although there are two divisions, they now all share in the normal monthly duties.

Additionally, this month:

The park/streets division started decorating the streets and city facilities for the upcoming holidays. There were many banner repairs to take care of as well as a repaired to the beach walkover near Bella Vista. The department also handled the set up and take down for the 5K marathon event.

SEWER DIVISION:

Currently four positions.

Normal monthly duties:

This division maintains and checks all the sewer stations daily, they do all the general maintenance of the sewer stations, generators and the property the stations are located on. This includes mowing and general outside maintenance as well as cleaning the pump areas, wet wells and floats. The division also maintains and inspects the manholes in the city, delivers past due sewer bill notices for finance every month, does cooling tower readings and grease trap inspections quarterly and has two employees in the division that are animal control officers.

Additionally, this month:

The division handled repairs to the odor control motor, clean out boxes on Dottie and Cardinal, check valve at the master station and installed a new gate at station 4. They also handled 4 animal control calls, 51 sewer line locates and 46 electrical locates.

Article II, Section 8, *Constitution of the State of Florida*: ***"Ethics in government.—A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse."***

"LIFE IS BETTER HERE."

CITY COUNCIL AGENDA MEMORANDUM
DECEMBER 8, 2020 AGENDA

TO:	Honorable Mayor and Members of the City Council
COPIES TO:	Mike Booker, City Manager Cheri Schwab, City Clerk
FROM:	John Cary, City Attorney
DATE	January 6, 2021
SUBJECT:	***City Attorney Report***

The following is intended as my written report to the City Council for matters arising subsequent to its last meeting of December 8, 2020. Please advise if you have any questions, comments or concerns relative to these matters.

(1) Economic Development Ordinance

Drafted Economic Development Ordinance and coordinated with city staff.

(2) Stroud's BBQ Economic Development Grant

The City Attorney revised the Stroud's BBQ Grant Agreement in accordance with direction from the City Council.

(3) Audit Letter

The City Attorney drafted an audit letter providing legal disclosures to the city's auditing firm.

Respectfully, submitted,

/s/ John Cary, City Attorney

CITY OF DAYTONA BEACH SHORES
"Life Is Better Here"
Office of the City Manager

Phone (386) 763-5373 Fax (386) 763-5360

MEMORANDUM

DATE: January 5, 2021

TO: City Council: Mayor Nancy Miller; Vice Mayor Mel Lindauer, Council Member Rick Frizalone; Council Member Richard Bryan, and Council Member Michael Politis

FROM: Michael T. Booker, City Manager

SUBJECT: City Manager's Report – January 12, 2021

Halifax Health Services (HHS):

- HHS has returned the signed amended agreement to the City and demolition of the former Senior Center is well under way.

Pedestrian Overpass:

- We are in the early stages of discussions with The Shores Resort and Spa to place a City logo on their pedestrian overpass (on both sides). (See Illustration Attached)

City Council Goals:

- As of this writing, I have only received a list of goals for the coming year from Mayor Miller, Vice Mayor Lindauer and Council Member Frizalone (Attached). In an effort to expedite the upcoming Council Workshop, please send any goals you have for the upcoming year to our City Clerk.

Bocce and Shuffleboard:
- Both courts are essentially complete and ready for play.

Vaccinations:
- County Council Member Billie Wheeler will be at the January 13 Coffee with the Mayor to brief everyone on the County's efforts.

GOALS

MAYOR MILLER

- Annexation
- Public Safety Openings
- Sewer Redundancy
- Force Mains on A1A

VICE MAYOR LINDAUER

- Assess and discuss the damage to the City caused by the Virus and develop plans of how we're going to deal with it. Work on a plan to return to normal.
- Let the residents know that we Council Members are available individually to discuss their concerns and ideas. Notification could be done in the Pelican newsletter, perhaps as a regular part of the Pelican. Meetings between a single Council Member and a resident, or group of residents, could take place in Council chambers. This would let the residents know that their voice(s) can be heard.
- Continue to work together as a Council and not be disagreeable or make it personal when/if we disagree. Accept the will of the majority and move on to working on the next issue.

COUNCIL MEMBER FRIZALONE

- See the completion of our Oceans 25 town house development.
- See the groundbreaking ceremony for Treasure Island's new Hotel and Condominium complex.
- Initiate one more major Real Estate opportunity for the Shores that moves the needle.

DAYTONA BEACH SHORES

LIFE IS BETTER HERE

CITY COUNCIL AGENDA MEMORANDUM
JANUARY 12, 2021 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM: John Cary, City Attorney
PREPARED BY: John Cary, City Attorney
SUBJECT: Economic Development Ordinance

SYNOPSIS:

This is an ordinance to modify the city's economic development program. It eliminates the renovation grant as well as facade and beautification grants and the business loyalty program. The ordinance also provides various clarifications to provide better direction to city staff and the public.

FISCAL IMPACT STATEMENT:

Dependent upon Council Action

BACKGROUND:

The City Council provided direction to the city attorney at the December City Council meeting to modify the economic development ordinance. The ordinance as presented has been reviewed by staff and reflects the desire of the City Council, as understood by staff and the city attorney.

LEGAL REVIEW:

This ordinance is approved as to form and legality.

RECOMMENDATION:

Approve the ordinance or provide direction for amendment, as desired by the Council.

SUGGESTED MOTION:

Approve Ordinance 2021-01 and set for second reading and a public hearing on January 26, 2021.

ATTACHMENT: 1. Ordinance - Economic Development Program amendments 2021

ORDINANCE 2021-__

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO A COMPREHENSIVE ECONOMIC DEVELOPMENT PROGRAM; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; AMENDING THE REQUIREMENTS TO RECEIVE A GRANT; ELIMIATING CERTAIN GRANT PROGRAMS; MAKING MINOR AND TECHNICAL AMENDMENTS; MAKING FINDINGS; PROVIDING FOR CONFLICTS, SEVERABILITY; CODIFICATION AND EFFECTIVE DATE.

WHEREAS, the City Council of the City of Daytona Beach Shores ("City Council") is the elected collegial body that is the legislative arm of the City of Daytona Beach Shores ("City"); and

WHEREAS, the City Council of the City of Daytona Beach Shores desires to ensure that the City and its environs are desirable for economic development of a positive nature for the benefit of the citizens of the City; and

WHEREAS, economic development programs are consistent with state statutes, including, but not limited to, sections 166.021 and 187.201, Florida Statutes, as well as the goals, objectives, and policies set forth in the City's comprehensive plan; and

WHEREAS, the City Council has long recognized the economic challenges relating to the west side of State Road A1A (South Atlantic Avenue) which is a north-south Florida State Road that runs along the Atlantic Ocean, from Key West to Fernandina Beach and which is the main road through most oceanfront towns such as the City; and

WHEREAS, the City Council desires, to a significant, but not exclusive, extent to focus on the economic challenges relating to the west side of State Road A1A (South Atlantic Avenue); and

WHEREAS, the City Council desires to protect the public health, safety, and welfare of the citizens of the City and maintain a high quality of life for the citizens of the City; and

WHEREAS, the City Council hereby finds and determines that the provisions of this Ordinance provide for public benefits and serve public purposes; and

WHEREAS, this ordinance is enacted pursuant to the home rule powers of the City as set forth at Artic le VIII, Section 2, of the *Constitution of the State of Florida*, Chapter 163, *Florida Statutes*, Chapter 166, *Florida Statutes*, and other applicable and controlling law; and

WHEREAS, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY

OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.

The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the recitals (whereas clauses) to this Ordinance, and finds that same reflect the legislative intent of this Ordinance, and the same are hereby adopted, ratified, and affirmed.

SECTION TWO: ADOPTION.

The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores*, Chapter 10, entitled “Economic Development,” Article II, entitled “Economic Development Program” as follows:

CHAPTER 10 – ECONOMIC DEVELOPMENT

ARTICLE II – ECONOMIC DEVELOPMENT PROGRAM

***

Sec. 10-13. – Creation of economic development commercial lease subsidy program; responsibilities; policies, procedures~~, alternative grant program~~.

(a) The City Council of the City of Daytona Beach Shores hereby creates and establishes the "City of Daytona Beach Shores Economic Development Commercial Lease Subsidy Program" as well as programs that are of a similar nature.

(b) The purpose of the program is to encourage the ~~renovation and~~ development and productive use of properties and buildings in the City of Daytona Beach Shores ~~including, but not limited to, the expansion of existing tenancies,~~ as solely and exclusively determined by the city council based upon the economic development needs of the city as determined by the city council. The program will assist business owners to develop or redevelop properties. The program will provide a subsidy, under appropriate circumstances, to subsidize leases relating to new businesses within the city over a 3-year period of time in order to assist selected businesses to commence economic activity and remain a going concern. Leases may be subsidized up to 30 percent for the first year of the lease, up to 20 percent for the second year of the lease, and up to 10 ~~ten~~ percent for the third year of the lease; provided, however, that the total amount of the incentive under an agreement shall not exceed $20,000.00. Existing businesses which desire to relocate to a larger space in the city which relocation will result in enhanced business operations or employment and businesses which extend a lease for a longer term of at least three years when the extension will result in enhanced business operations or employment shall also be eligible for the same benefits. Applications may be submitted and shall be evaluated in accordance with the application process set forth in this ordinance. Generally, incentive grants made under this program shall be based upon the number of new jobs created, the desirability of the type of business for the city and the capital investment to be made.

(c) Only real property that is assigned and will used as a commercial, or similar, zoning classification consistent with the city's comprehensive plan and that will be used for a nonresidential or mixed use purpose (as set forth in a binding grant agreement, planned unit development, development agreement, or development order) are eligible under the program for lease subsidy assistance. Hotels are not eligible for lease subsidies under the terms of the lease subsidy program.

(d) Lease subsidies may be made only to, or for the benefit of, a tenant of a leased property that is not subject to an active code enforcement case and may only be used for development of ~~and renovations to~~ real property or lease payments as determined by the city council. Development of real property shall include the physical construction and improvement, of a permanent nature, to real property. Equipment, replaceable fixtures, and cleaning or other maintenance services, as determined by the City Council, do not qualify as development under the terms of the lease subsidy program.

(e) Normative lease underwriting criteria and documentation must be satisfied as part of the transaction to protect the city's interests, as determined under the authority and guidance of the finance director ~~in conjunction with the city attorney~~.

(f) Should the grantee cease conducting business on the real property during the term of the lease subsidy~~;~~ or should the property become subject to a finding of a violation of the city code by the special magistrate for code enforcement, the city's subsidy payments shall cease.

(g) The city shall not in any way guarantee any underlying loan or the lease relating to real property and the city does not pledge its full faith and credit to any extent by enacting or implementing this ordinance and shall not be deemed to have done so to any degree or extent or to be a partner or co-venturer in any way.

(h) The lease subsidy applicant must submit ~~documentation~~ to the city a business plan and documentation detailing the proposed development ~~or renovation~~ to be performed on the real property as well as details concerning the proposed lease and business activities. If approved by the city council, the city will then enter into a lease subsidy agreement ~~issue a letter approving the subsidy subject to normal underwriting criteria as determined under the authority and guidance of the finance director in conjunction with the city attorney~~.

(i) Once the lease subsidy is approved, the applicant must submit full details of the proposed transaction to the city. The amount of the subsidy will then be fixed and the funds will be encumbered and appropriately released from time-to-time. Escrow accounts may be established in conjunction within city accounting systems or under the finance director ~~with the city attorney as needed~~.

(j) The lease subsidy documents shall include, but not be limited to, documents to be filed of record which protect the interests of the city and shall provide that the city manager must be notified should the real property which is the subject of the lease be sold, transferred, assigned, or encumbered in any way or if the lease is terminated or sought to be terminated.

~~(k) In the event that an owner of real property which would be otherwise eligible for lease subsidy funding has engaged in or entered a business relationship in a manner which the city determines is not conducive to a lease subsidy being granted by the city, the city may enter grant agreements with such applicants such as, by way of example only, facade or beautification grant agreements; provided that the city is attaining substantially or more of the same economic and other benefits that are substantially the same or greater than that the city would enjoy under a lease subsidy award. Such grants may be awarded under conditions that address the unique nature of the business arrangement within which context the real property is held or the business operated while substantially addressing legal requirements, benefits to the city and the purposes expressed, and protections afforded, the city as set forth in this ordinance; provided, however, that the total amount of the grant under an agreement shall not exceed $20,000.00.~~

~~(l)~~ (k) The city council shall evaluate applications on the basis of such criteria as it deems appropriate and in the best interests of the city to include, but not be limited to, the following:

1. Businesses that due to their success will attract other businesses to the city ~~shall be encouraged to apply and participate.~~;
2. ~~Renovation and~~ development projects that will spur additional development and private investment ~~shall be encouraged to apply and participate.~~;
3. ~~Renovation and~~ development projects that will attract desirable new businesses and create an effective merchandise mix ~~shall be encouraged to apply and participate.~~;
4. ~~Renovation and~~ development projects that will have a substantial positive visual and aesthetic impact to the city ~~shall be encouraged to apply and participate.~~;
5. ~~Renovation and~~ development projects that will result in filling vacant retail space ~~shall be encouraged to apply and participate.~~;
6. ~~Renovation and~~ development projects that will increase real property value(s) ~~shall be encouraged to apply and participate.~~;
7. ~~Renovation and~~ development projects that will increase employment opportunities within the city ~~shall be encouraged to apply and participate.~~; and
8. ~~Renovation and~~ development projects that work in favorable concert with other development within the city by providing enhanced activities for the city ~~shall be encouraged to apply and participate~~.

Sec. 10-14. – ~~Creation of business loyalty program.~~

~~The owner of a business that has been in good standing with the city for at least three consecutive years by (1) timely paying its certificate of use fee, (2) timely paying any local business tax due, and (3) not having been found to have violated a city code or ordinance; shall be entitled, upon application filed with the city, to a waiver of 50 percent its certificate of use fee amount that was paid and the payments made for the local business tax for an up to 3-year period after the period of good standing. This section shall not apply to businesses that relate to hotel, motels, condominiums, home occupations or like businesses. In order to be eligible for the award under this section, a business owner must annually file an application with the city which, upon approval, shall entitle the business to the waiver; provided, however, that waivers shall be authorized commencing in 2022.~~

Sec. 10-15. – Implementing administrative actions.

(a) The city manager <u>and his or her designees</u>~~, city clerk and city attorney~~ are hereby authorized and directed to implement the provisions of this ordinance and to take any and all necessary administrative actions to bring into effect the purposes and provisions of this ordinance as such Charter officials may deem appropriate in their respective roles and functions under the city.

(b) Without limiting the generality of the foregoing provision, the city manager is hereby directed to develop such other economic development initiatives as may be advisable and desirable and present those proposals to the city council for review and action which initiatives may include, but shall not be limited to, the revision of city land development regulations and the city's comprehensive plan that will encourage and incentivize high quality development and redevelopment within the city that addresses the needs of the city.

~~(c) The city manager shall also work with the city council to develop a citywide strategic plan to sustain the future of the city's economy which plan will outline the city's vision and mission and identify goals, strategies and tactics critical to improving business expansion, recruitment, retention and job creation in the city.~~

~~(d)~~ <u>(c)</u> The ~~city council and the~~ city manager <u>may</u> ~~shall~~ engage in relations and communications with other agencies and entities of government and from the private sector in an effort to receive grants, funding<u>,</u> and other benefits that will assist the economic development and redevelopment of the city.

SECTION THREE: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION FOUR: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION FIVE: CODIFICATION. Section Two of this ordinance shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word. The Code codifier is granted liberal authority to codify the provisions of this Ordinance to be consistent with the other sections of the *Code of Ordinances*.

SECTION SIX: EFFECTIVE DATE. This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

____
NANCY MILLER, MAYOR

______________________________________ ____________________________
MICHAEL T. BOOKER, CITY MANAGER **CHERI SCHWAB, CITY CLERK**
Approved as to form and legality:

____
JOHN CARY, CITY ATTORNEY

Passed on first reading this ______ day of ________, 2021.

Adopted on second reading this _______ day of _______, 2021.
____

CITY COUNCIL AGENDA MEMORANDUM
JANUARY 12, 2021 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM: Nancy Maddox, Recreation Director
PREPARED BY: Nancy Maddox, Recreation Director
SUBJECT: Economic Development Grant (New Business Lease Subsidy) Application: Greater Than A Gym, Inc., D/B/A Greater Fitness, 2136 South Atlantic Avenue, Suite E & F

SYNOPSIS:

The applicant, Greater Than A Gym, Inc., D/B/A Greater Fitness, submitted an Economic Development Grant Application on December 2, 2020, requesting a new business lease subsidy grant totaling the amount of $20,000 over the course of three (3) years. The applicant opened "Greater Fitness" in December, 2020 at 2136 South Atlantic Avenue, Suite E & F, Daytona Beach Shores, Florida 32118 (The Winn Dixie Plaza). "Greater Fitness" is a family owned business and has two other gyms, one in Port Orange and one in South Daytona. Attached is a copy of the four (4) year lease and the applicant is investing close to $100,000 into the business on furniture, equipment and marketing.

FISCAL IMPACT STATEMENT:

This is a budgeted expenditure.

BACKGROUND:

In July 2019, the Daytona Beach Shores City Council approved Ordinance 2019-06, which relates to Economic Development within City limits. The ordinance, among other things, created an "Economic Development Lease Subside Program," which provides grants to subsidize leases for new businesses over a three (3) year period. The llease subsidy is capped at 30%, 20%, and 10% of the lease rent for the first, second and third year, respectively, providing the total amount disbursed by the City ddoes not exceed $20,000.

Attached is the proposed grant agreement between the City and the applicant, the grant application and staff analysis of the grant application.

LEGAL REVIEW:

This is approved as to form and legality.

RECOMMENDATION:

The Economic Development Committee recommended approval of the subject grant applicagtion.

SUGGESTED MOTION:

1. "I move to **approve** the subject grant application and agreement as presented."
OR
2. "I move to approve the subject grant application and agreement with the following conditions/amendments...."
OR
3. "I move to deny the subject grant application and agreement of the basis of ......"

ATTACHMENT
1. "Greater Fitness" EDPLease Subsidy Grant Application, 12/2/2020
2. EDP Lease Subsidy Evaluation Worksheet
3. "Greater Fitness" Subsidy Grant Agreement

ATTACHMENT:
1. Greater Than A Gym application
2. Greater Fitness - Lease add
3. GREATER FITNESS - EDP Lease Subsidy Evaluation Worksheet
4. Greater Fitness-Lease Subsidy Grant Agreement

DAYTONA BEACH SHORES
ECONOMIC DEVELOPMENT PROGRAM

GRANT APPLICATION

(There is no entitlement to any reward, but the City encourages applications and the opportunity to work with applicants.)

DATE RECEIVED: **REFERENCE:**

(Please Print)

APPLICANT NAME: GREATER THAN A GYM, INC DBA GREATER FITNESS
CONTACT PERSON (if an entity): WILLIAM N. SIMONS
ADDRESS: 1425 OCEAN SHORE BLVD UNIT 803
CITY: ORMOND BEACH STATE: FLORIDA ZIP: 32176
TELEPHONE: 386-631-4296 FAX: N/A
EMAIL ADDRESS: WNSIMMONS@ATT.NET

APPLICANT BUSINESS STRUCTURE:
(Please check all that apply)

- ☐ Sole proprietorship/individual
- ☒ Corporation SUBCHAPTER S
- ☐ Limited Liability Company
- ☐ Other

GRANT TYPE:

(Check one only)

Lease Subsidy
- ☒ New Business (Buildout or Lease Subsidy)
- ☐ Existing Business Expansion
- ☐ Existing Business Relocation
- ☐ Existing Business Lease Extension

Other
- ☐ Land Purchase
- ☐ Façade/Beautification
- ☐ Alternative Grant Request

PROJECT SITE INFORMATION:

Address: 2136 SUITE E&D ATLANTIC AVENUE
City: DAYTONA BEACH SHORES State: FLORIDA Zip: 32118
Tax Parcel ID: 531502030013

BASE REAL PROPERTY VALUE:

Most recent City Taxable Value $ 1,268,435 Year: 2019

Maximum New Investment Value $

Certified by a licensed Florida Engineer or Architect $

PROJECT DESCRIPTION: OPENING A 24/7 GYM at WINN DIXIE PLAZA, (7500 Sq Ft OF A 51,000 Sq Ft. PLAZA), BEFORE 1/1/2021, WHEN GYM'S WERE SHUT DOWN BY THE GOVERNOR FOR TWO MONTH'S IN APRIL & MAY of 2020, THIS GYM STAYED CLOSED AND MOVED MEMBERS TO PORT ORANGE, THEY VACATED THE PROPERTY AND MOVED EQUIPMENT AND LEASE HOLD IMPROVEMENTS. GREATER FITNESS IS ENTERING INTO A LEASE (See ATTACHED) WITH WD PLAZA, LLC, MANY PEOPLE HAVE BEEN EFFECTIVE BY THE COVID 19 VIRUS AND WE ARE WILLING TO PROVIDE DAYTONA BEACH SHORES WITH A FITNESS FACILITY

PROJECT BENEFITS TO THE CITY:

1.) 7-9 PART TIME JOBS
2.) PROPERTY TAXES AS IT RELATES TO PERSONAL PROPERTY
3.) SALES TAX RELATED TO RENT & GYM MEMBERSHIPS
4.) FIRE, POLICE & CITY EMPLOYEES WILL HAVE A MEMBERSHIP PAID BY CIGNA THROUGH AMERICAN SPECIALTY ACTIVE & FIT PLAN. WE ARE PAID BY AMERICAN SPECIALTY AND NOT BY CITY EMPLOYEES

REQUIRED PROJECT CHECKLIST:

- ☑ Certification by Applicant
- ☐ Application Authorization or Affidavit of Ownership N/A
- ☐ Site plan, building plans, elevations and a detailed scope of work N/A
- ☑ Business Plan
- ☐ Estimate by a Licensed Engineer or Architect certifying amount of new investment N/A
- ☐ Most recent property tax bill and truth in millage statement N/A

CERTIFICATION BY APPLICANT

The applicant certifies that all information in this application, and all information furnished in support of this application, is given for obtaining funds from the City of Daytona Beach Shores Economic Development Program and is true and complete to the best of the applicant's knowledge and belief.

If the applicant is not the owner of the property, or if the applicant is an organization rather than an individual, the applicant certifies that he/she has the authority to sign and enter into an agreement to perform the improvements on the property. **Evidence of this authority must be attached.**

Verification of any of the information contained in this application may be obtained from any source named herein.

It is further understood that all information obtained will be held in strict confidence and used for no other purposes by the City of Daytona Beach Shores inconsistent with controlling law. I have received and reviewed the program guidelines prior to submitting this application.

SIGNATURE: [signature] DATE: 10/19/2020

William N Simons
PRINTED NAME:

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 19 day of October, 2020 by William N. Simons, who is personally known to me, OR who has produced FL Driver License as identification and did (did not) take an oath.

My commission expires:

CHERYL LEE THIBAULT
MY COMMISSION EXPIRES APRIL 24, 2022
#GG 205439
Bonded thru Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

[signature]
Printed Name: Cheryl Lee Thibault
NOTARY PUBLIC

AFFIDAVIT OF OWNERSHIP*

PROPERTY ADDRESS: 2136 S ATLANTIC AVE - SUITE 6/F - DAYTONA BEACH SHORES, FL
TAX PARCEL ID: 53150203OO13

Signed and sealed
in the presence of:

WITNESS #1 (Signature)

NAME PRINTED Mohamed Eid

OWNER (Printed Name)
WD PLAZA, LLC

BY: JEREMY ROSENTHALL
TITLE: VICE PRESIDENT
OWNER (Signature)

WITNESS #2 (Signature)

NAME PRINTED Lina Shehadeh

STATE OF ~~**FLORIDA**~~ GEORGIA

COUNTY OF ~~**VOLUSIA**~~ FULTON

The foregoing instrument was acknowledged before me this 16 day of OCTOBER, 2020 by JEREMY ROSENTHALL, who is personally known to me, OR who has produced N/A as identification and did (did not) take an oath.

My commission expires: 4/15/2023

Printed Name: SIMON ENGLER
NOTARY PUBLIC

SIMON L ENGLER
NOTARY PUBLIC
FULTON COUNTY, GEORGIA
MY COMMISSION EXPIRES APRIL 15, 2023

***NOTE: If more than one owner please provide additional affidavit of ownership for each owner.**

AUTHORIZATION TO APPLY

I, JEREMY ROSENTHALL, VICE PRESIDENT OF WO PLAZA, LLC, am the owner of the following described property:

PROPERTY ADDRESS:

2136 S ATLANTIC AVE - DAYTONA BEACH SHORES, FL

I do hereby authorize the following named individual or entity to apply for an Economic Development grant and enter into an agreement with the City of Daytona Beach Shores.

AUTHORIZED REPRESENTATIVE:
(IF APPLICABLE)

PROPERTY OWNER (1) (Print Name) WO PLAZA, LLC

JEREMY ROSENTHALL, VICE PRESIDENT
PROPERTY OWNER (1) (Signature)

PROPERTY **OWNER (2)** (Printed Name)

PROPERTY OWNER (2) (Signature)

STATE OF ~~FLORIDA~~ GEORGIA

COUNTY OF ~~VOLUSIA~~ FULTON

The foregoing instrument was acknowledged before me this 16 day of OCTOBER, 2020 by JEREMY ROSENTHALL, who is personally known to me, OR who has produced as identification and did (did not) take an oath.

My commission expires: 4/15/2023

Printed Name: SIMON ENGLER
NOTARY PUBLIC: Simon L Engler

SIMON L ENGLER
NOTARY PUBLIC
MY COMMISSION EXPIRES APRIL 15, 2023
FULTON COUNTY, GEORGIA

PROGRAM APPLICATION PROCESS

1. Applicant meets with staff to discuss economic development program and potential project eligibility.
2. Applicant submits a complete application for staff eligibility review.
3. Staff conducts eligibility review and prepares City Council report.
4. City Attorney drafts agreement for City Council consideration.
5. City Council evaluates application, staff report and draft agreement and makes a final determination in approval of the grant and associated terms.

GRANT PAYMENTS ELIGIBILITY AND PROCESS

1. The applicant shall provide make a request in writing and provide firm evidence to the Finance Director that all terms and conditions of the agreement approved by the City Council have been satisfied.

2. Upon review of the evidence provided and legal review, the Finance Director shall provide a recommendation to the City Manager who shall determine whether the applicant has met all terms and conditions of the agreement to the satisfaction of the City.

DAYTONA BEACH SHORES ECONOMIC DEVELOPMENT PROGRAM OVERVIEW

(See Ordinance Number 2019-06)

A. ECONOMIC DEVELOPMENT LAND PURCHASE PROGRAM (LPP):

To encourage the renovation, development, redevelopment and productive use of lands and buildings within the City, the City Council may enter development agreements, which may relate to either City-owned property (an RFP is currently issued for a parcel) or non-City-owned real property. The City shall impose conditions in each development to prevent a buyer purchasing City-owned real property from holding the real property for investment purposes or implementing a flip of the real property. The City's goal is that the real property shall be expeditiously developed in a high quality manner for the benefit of the citizens of the City.

LPP Benefits:

Purchaser of the land may receive a grant of up to a 10% of the purchase price to allow: (1) the purchaser of a **City owned** real property to use the funds to assist in the development of the real property or (2) the purchaser of a **non-City owned** real property to use the funds to assist in the build out of the real property.

City Considerations (There Is No Entitlement To Approval):

1. Development plans must be of high quality.
2. Development plans must enhance high quality economic development of the City.

B. ECONOMIC DEVELOPMENT COMMERCIAL LEASE SUBSIDY PROGRAM (LSP):

This program will provide a subsidy, under appropriate circumstances, to subsidize leases relating to the following: (a) expansion of existing tenancies; (b) new businesses within the City; (c) existing businesses which desire to relocate to a larger space in the City; and (d) businesses which extend a lease for a longer term of at least three (3) years.

LSP Program Benefits:

Over a three (3) year period in order to assist selected businesses to commence economic activity and remain a going concern, leases may be subsidized up to 30% for the first year of the lease, up to 20% for the second year of the lease, and up to 10% for the third year of the lease. The total amount awarded under the lease subsidy program may not exceed $20,000.00.

LSP Program Requirements:

1. Only real property that is assigned a commercial, or similar, zoning classification consistent with the City's *Comprehensive Plan* and that will be used for a nonresidential or mixed use purpose (as set forth in a binding development agreement of development order) are eligible under the Program for lease subsidy assistance.
2. Lease subsidies may be made only to, or for the benefit of, a tenant and may only be used for development and renovations to real property or lease payments as determined by the City Council.
3. Normative lease underwriting criteria and documentation must be satisfied as part of the transaction to protect the City's interests, as determined under the authority and guidance of the Finance Director in conjunction with the City Attorney.
4. Should the grantee cease conducting business on the real property during the term of the lease subsidy; the City's subsidy payments shall cease.
5. The City shall not in any way guarantee any underlying loan or the lease relating to real property and the City does not pledge its full faith and credit to any extent by enacting or implementing this Ordinance and shall not be deemed to have done so to any degree or extent or to be a partner or co-venturer in any way.
6. The lease subsidy applicant must submit documentation to the City detailing the proposed development or renovation to be performed on the real property as well as details concerning the proposed lease and business activities. If approved by the City Council, the City will then issue a letter approving the subsidy subject to normal underwriting criteria as determined under the authority and guidance of the Finance Director in conjunction with the City Attorney.
7. Once the lease subsidy is approved, the applicant must submit full details of the proposed transaction to the City. The amount of the subsidy will then be fixed and the funds will be encumbered and appropriately released from time-to-time. Escrow accounts may be established in conjunction within City accounting systems or under the Finance Director with the City Attorney as needed.
8. The lease subsidy documents shall include, but not be limited to, documents to be filed of record which protect the interests of the City and shall provide that the City Manager must be notified should the real property which is the subject of the lease be sold, transferred, assigned or encumbered in any way or if the lease is terminated or sought to be terminated.

City Considerations (There Is No Entitlement To Approval):

1. Expansion of Existing Tenancies: As solely and exclusively determined by the City Council based upon the economic development needs of the City as determined by the City Council.
2. Existing Business Relocation: Relocation to a larger space will result in enhanced business operations or employment.
3. Lease Extension: (1) Lease is extended for a longer term of at least three (3) years; and (2) extension will result in enhanced business operations or employment.

4. All Types: (a) Number of new jobs created; (b) the desirability of the type of business for the City; and (c) capital investment to be made.

Additional City Considerations for LSP & AGP (There Is No Entitlement To Approval):

The City Council shall evaluate applications based on such criteria as it deems appropriate and in the best interest of the City to include, but not be limited to, the following:

1. Businesses that due to their success will attract other businesses to the City.
2. Renovation and development projects that will spur additional development and private investment.
3. Renovation and development projects that will attract desirable new businesses and create an effective merchandise mix.
4. Renovation and development projects that will have a substantial positive visual and aesthetic impact to the City.
5. Renovation and development projects that will result in filling vacant retail space.
6. Renovation and development projects that will increase real property value(s).
7. Renovation and development projects that will increase employment opportunities within the City.
8. Renovation and development projects that work in favorable concert with other development within the City by providing enhanced activities for the City.

C. ALTERNATIVE GRANT PROGRAM (AGP):

In the event that an owner of real property has engaged in or entered a business relationship in a manner which the City determines is not conducive to a lease subsidy being granted by the City, the City may enter grant agreements with such applicants such as, by way of example, facade or beautification grant agreements. Such grants may be awarded under conditions that address the unique nature of the business arrangement within which context the real property is held, or the business operated. The total amount of the grant under an agreement may not exceed $20,000.00.

City Considerations (There Is No Entitlement To Approval):

1. The City attains substantially or more of the same economic and other benefits that are substantially the same or greater than the City would enjoy under a lease subsidy award.

For additional information, please contact:

Stewart Cruz, AICP
City Planner
Email: scruz@cityofdbs.org
Tel. (386) 763-5361


Florida
DRIVER LICENSE
USA
S552-934-53-262-0
CLASS E
SIMONS
WILLIAM N
1425 OCEAN SHORE BLVD APT 803
ORMOND BEACH, FL
07/22/1953
M
SAFE DRIVER
07/22/2027
5'-10"
A
NONE
04/28/2019

10/16/2020

Greater Than A Gym, Inc. DBA Greater Fitness
Business Plan
WD Plaza LLC
7500 Square Foot Gym

Greater Fitness is looking at opening a 7500 sq. ft. gym at 2136 Atlantic Avenue in Daytona Beach Shores.

We are a Family owned business with my wife Kandi and I as owners and Andrew Simons (son) as Manager and Dana Hartwell (daughter) in charge of Insurance and Marketing. I am retired from Brown & Brown (acquisition accountant) and have been living in the area for over 15 years. My wife is a retired School teacher and teaches Silver Sneaker Classes. My Son has his Master Degree from UCF in Exercise Science in applied Exercise Physiology and my Daughter is UF graduate with a degree from School of Journalism (BS in Public Relation with honors).

Greater Fitness owns two gyms in Volusia County and this will be our third location. We feel that after the COVD 19 has a vaccine and the economy moves out of a recession, we will be in a good position to sustain a Gym on Beachside in Daytona Beach Shores. We will be providing Memberships, Insurance Programs, Training and Classes at this location. With the Insurance Programs, we will be providing the City of Daytona Beach Shores employees with a 24/7 Gym with electronic 24 hour key access through the Active and Fit program.

Because the previous Gym closed in April 2020 and removed some fixtures, Greater Fitness will need to replace the Security System, Fans, a new sign, deep cleaning and paint the gym in Greater Fitness colors. We estimate these expenditures to be $16,000. We are also looking at spending $15,000 in advertising in the first year. We will also have some moving cost related to moving in the equipment. We are still waiting on numbers for the moving cost. I am attaching first year budget and our plans for the next year 2022.

On a start-up, we are looking at a loss in year 1 and then recover the loss in year 2.
Our Family is committed to the Gym Industry and we hope we can all pull through COVID 19 and achieve the results in year 2.

We do have two items in the Lease Agreement (Draft Attached) that will let Greater Fitness out of the Lease. If we do not receive our Daytona Beach Shores Business Tax Receipt, the contract is Null & Void. The second one is if our membership total does not reach 200 members in the first year, we can opt-out on the renewal term. This is a very low bar but it is put in the lease in case we are forced to shut down or people stay aware from Gyms as a result of COVID 19 fears. Crazy times that we are facing.

We look forward to the Gym opening and the City of Daytona Beach Shores Buildout and Lease Subsidy Economic Development Program

Beachside Budget

Greater Fitness

	12/31/2021	January	February	March	April	May	June	July	August	September	October	November	December	Total	
New Members		100	50	25	20	15	10	10	10	10	10	10	10	280	
Total Members		$ 100	150	175	195	210	220	230	240	250	260	270	280		
Memberships		$ 3,500	$ 5,250	$ 6,125	$ 6,825	$ 7,350	$ 7,700	$ 8,050	$ 8,400	$ 8,750	$ 9,100	$ 9,450	$ 9,800	$ 90,300	
Fees		$ 3,000	$ 1,500	$ 750	$ 3,600	$ 1,950	$ 1,050	$ 900	$ 750	$ 600	$ 600	$ 600	$ 600	$ 15,900	
Training		$ 1,000	$ 1,500	$ 2,000	$ 2,000	$ 2,500	$ 2,500	$ 2,750	$ 2,750	$ 2,750	$ 3,000	$ 3,000	$ 3,000	$ 28,750	
Insurance Programs		$ -	$ 250	$ 300	$ 400	$ 500	$ 600	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 6,250	
		$ 7,500	$ 8,500	$ 9,175	$ 12,825	$ 12,300	$ 11,850	$ 12,400	$ 12,600	$ 12,800	$ 13,400	$ 13,750	$ 14,100	$ 141,200	
Rent						$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 42,560	
Utilities		$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 1,500	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 19,200	Electrical, Sewer and Water, Cable
Training		$ 500	$ 750	$ 1,000	$ 1,000	$ 1,250	$ 1,250	$ 1,375	$ 1,375	$ 1,375	$ 1,500	$ 1,500	$ 1,500	$ 14,375	(50% of Revenue)
Staff		$ 3,287	$ 3,287	$ 3,287	$ 3,287	$ 3,287	$ 3,287	$ 3,287	$ 3,287	$ 3,287	$ 3,287	$ 3,287	$ 3,287	$ 39,444	
Management		$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 12,000	
Payroll Taxes		$ 429	$ 429	$ 429	$ 429	$ 429	$ 429	$ 429	$ 429	$ 429	$ 429	$ 429	$ 429	$ 5,144	
insurance		$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 7,200	
Bank fees		$ 225	$ 255	$ 275	$ 385	$ 369	$ 356	$ 372	$ 378	$ 384	$ 402	$ 413	$ 423	$ 4,236	
Signs		$ 4,000												$ 4,000	
Advertising		$ 4,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 15,000	
Dues/license/Club Ready software		$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 8,400	
Equipment Expense/cleaning		$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 6,000	
Accounting/payroll				$ 425			$ 425			$ 425			$ 425	$ 1,700	
Building maintenance		$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 2,400	
Misc		$ 3,500	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 6,250	Relocation
		$ 20,541	$ 10,571	$ 11,266	$ 10,950	$ 16,505	$ 16,916	$ 16,633	$ 16,639	$ 17,070	$ 16,788	$ 16,798	$ 17,234	$ 187,910	
Income (loss)		$ (13,041)	$ (2,071)	$ (2,091)	$ 1,875	$ (4,205)	$ (5,066)	$ (4,233)	$ (4,089)	$ (4,270)	$ (3,388)	$ (3,048)	$ (3,134)	$ (46,710)	

Beachside Budget
Greater Fitness

	12/31/2022 January	February	March	April	May	June	July	August	September	October	November	December	Total	
New Members	100	50	25	20	15	10	10	10	10	10	10	10	280	
Total Members	$ 380	430	455	475	490	500	510	520	530	540	550	560		
Memberships	$ 13,300	$ 15,050	$ 15,925	$ 16,625	$ 17,150	$ 17,500	$ 17,850	$ 18,200	$ 18,550	$ 18,900	$ 19,250	$ 19,600	$ 207,900	
Fees	$ 3,000	$ 1,500	$ 750	$ 3,600	$ 1,950	$ 1,050	$ 900	$ 750	$ 600	$ 600	$ 600	$ 600	$ 15,900	
Training	$ 300	$ 3,000	$ 3,000	$ 3,500	$ 3,500	$ 3,500	$ 3,500	$ 4,000	$ 4,000	$ 4,000	$ 4,000	$ 4,000	$ 40,300	
Insurance Programs	$ 700	$ 700	$ 700	$ 800	$ 800	$ 900	$ 900	$ 900	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 10,400	
	$ 17,300	$ 20,250	$ 20,375	$ 24,525	$ 23,400	$ 22,950	$ 23,150	$ 23,850	$ 24,150	$ 24,500	$ 24,850	$ 25,200	$ 274,500	
Rent	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 5,320	$ 63,840	
Utilities	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 1,600	$ 19,200	Electrical, Sewer and Water, Cable
Training	$ 150	$ 1,500	$ 1,500	$ 1,750	$ 1,750	$ 1,750	$ 1,750	$ 2,000	$ 2,000	$ 2,000	$ 2,000	$ 2,000	$ 20,150	(50% of Revenue)
Staff	$ 3,616	$ 3,616	$ 3,616	$ 3,616	$ 3,616	$ 3,616	$ 3,616	$ 3,616	$ 3,616	$ 3,616	$ 3,616	$ 3,616	$ 43,389	
Management	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ 18,000	
Payroll Taxes	$ 512	$ 512	$ 512	$ 512	$ 512	$ 512	$ 512	$ 512	$ 512	$ 512	$ 512	$ 512	$ 6,139	
insurance	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 7,200	
Bank fees	$ 519	$ 608	$ 611	$ 736	$ 702	$ 689	$ 695	$ 716	$ 725	$ 735	$ 746	$ 756	$ 8,235	
Signs	$ -												$ -	
Advertising	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 12,000	
Dues/license/Club Ready software	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 8,400	
Equipment Expense/cleaning	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 500	$ 6,000	
Accounting/payroll			$ 425			$ 425			$ 425			$ 425	$ 1,700	
Building maintenance	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 200	$ 2,400	
Misc	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 250	$ 3,000	Relocation
	$ 16,466	$ 17,905	$ 18,334	$ 18,283	$ 18,249	$ 18,661	$ 18,242	$ 18,513	$ 18,947	$ 18,532	$ 18,543	$ 18,978	$ 219,653	
Income (loss)	$ 834	$ 2,345	$ 2,041	$ 6,242	$ 5,151	$ 4,289	$ 4,908	$ 5,337	$ 5,203	$ 5,968	$ 6,307	$ 6,222	$ 54,847	

DRAFT

LEASE

Shopping Center Lease

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THIS LEASE, made as of this ____________ day of ________________, 2020, by and between **WD Plaza, LLC; a wholly owned subsidiary of M&P Holdings, LLC, a Georgia limited liability company** herein called "Landlord", and **Greater Than a Gym, Inc. d/b/a Greater Fitness** herein called "Tenant".

WITNESSETH:

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Tenant to be observed and performed, Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, those certain premises (herein called the "Premises") consisting of a store having interior measurements of approximately **75** feet in width and **100** feet in depth. Said Premises contains an area of approximately **7,500** square feet measured (from side to side) from the exterior of any side exterior wall if there be one and, if not, from the center of a side partition wall to the center of the next partition wall separating one store space from another and measured (front to back) from the exterior surface of the store front to the outside surface of the rear wall as said Premises may now exist or hereafter be constructed in the **Winn-Dixie Plaza** Shopping Center (the "Shopping Center") located at **2136 Suite E&F S. Atlantic Avenue** in the City of **Daytona Beach Shores** County of **Volusia** State of **Florida** for the term and upon the conditions and agreements hereinafter set forth, and Landlord and Tenant hereby agree as follows:

ARTICLE I

TERM

1.01 COMMENCEMENT AND EXPIRATION DATES OF TERM.

The term of this Lease and Tenant's obligation to pay rent hereunder shall commence on that date (the "Commencement Date") which is **April 1, 2021** and shall end, unless sooner terminated in accordance with the provisions hereinafter contained, on the last day of the **FIRST** consecutive full Lease Year (as hereinafter defined). Notwithstanding anything to the contrary contained in this Lease, the expiration date of this Lease shall be **March 31, 2022.**

1.02 LEASE YEAR DEFINED.

The term "Lease Year" as used herein shall mean a period of twelve (12) consecutive full calendar months. In the event the date of this Lease is a day other than the first day of a calendar month, then the first Lease Year shall commence on the first day of the first full calendar month succeeding the date of this Lease, and the first Lease Year shall consist of twelve (12) consecutive full calendar months plus said partial month. Each succeeding Lease Year shall commence upon the anniversary of the first Lease Year.

1.03 FAILURE OF TENANT TO OPEN.

In the event Landlord notifies Tenant in writing that the Premises are ready for occupancy as hereinafter defined, and Tenant fails to take possession and open the Premises for business on or before **April 1, 2021,** fully fixtured, stocked and staffed within the time provided herein, then Landlord shall have, in addition to any and all remedies hereinafter provided, the right to immediately terminate this Lease with written notice to Tenant, and Landlord shall not be subject to any liability from Tenant by reason of such termination or otherwise.

1.04 QUIET ENJOYMENT

Upon Tenant's paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all of the provisions of this Lease.

ARTICLE II

RENT

2.01 MINIMUM RENT

Tenant agrees to pay the Landlord at the office of Landlord, or at such other place designated by Landlord, without any prior demand therefore and without any deduction of set-off whatsoever, and as Fixed Minimum Rent:

(a) The sum of **$3,331.25** in advance upon the first day of each calendar month of the FIRST through the FIRST lease year inclusive.

If the term shall commence upon a day other than the first day of a calendar month, then Tenant shall pay, upon the Commencement Date of the term a pro-rata portion of the Fixed Minimum Rent described in the foregoing clause (a) prorated on a per diem basis with respect to the fractional calendar month preceding the commencement of the first Lease Year hereof.

All checks returned to Landlord after deposit shall incur a charge to Tenant's account in the amount of **$25.00.**

2.02 PERCENTAGE RENTS	-	Deleted Intentionally
2.03 REPORTS	-	Deleted Intentionally
2.04 RIGHT TO EXAMINE BOOKS	-	Deleted Intentionally
2.05 AUDIT	-	Deleted Intentionally

2.06 ADDITIONAL RENT

Tenant shall pay, as Additional Rent, any money required to be paid pursuant to this Article II, and all sums of money or charges required to be paid by Tenant under this Lease, other than Fixed Minimum Rent, whether or not the same be specifically designated "Additional Rent". If such amounts and charges are not paid by Tenant under this Lease at the time provided in this Lease, whether or not the same are specifically designated "Additional Rent", they shall nevertheless, if not paid when due, be collectible as Additional Rent with the next installment of Fixed Minimum Rent thereafter becoming due hereunder. But nothing contained herein shall be deemed to suspend or delay the payment of any amount of money or charge at the time same becomes due and payable hereunder, or limit or waive the enforcement of any other remedy of Landlord hereunder.

2.07 PAST DUE RENT AND ADDITIONAL RENT

Anything in this Lease agreement to the contrary notwithstanding, at Landlord's option, Tenant shall pay a "late charge" in an amount equal to six percent (6%) of any installment of Fixed Minimum Rent or Additional Rent when paid more than five (5) days after the due date thereof, to cover the extra expense involved in handling delinquent payments. **Notwithstanding anything in this Lease to the contrary, and without limiting Landlord's other rights and remedies provided for in this Lease or at law or equity, if Tenant fails to pay by the due date any Fixed Minimum Rent, Additional Rent, or any other charges owing under this Lease more than three (3) times within any twelve (12)-month period, then Landlord, at its sole election and in its sole and absolute discretion, shall have the right to terminate this Lease and evict the Tenant from the Premises.**

2.08 SECURITY DEPOSIT

Tenant, concurrently with the execution of this Lease, has deposited with Landlord the sum of **$5,319.87** dollars, (the "Security Deposit") as security for the full and faithful performance of every provision of this Lease to be performed by Tenant. If Tenant defaults with respect to any provision of this Lease, including but not limited to the provisions relating to the payment of Fixed Minimum Rent and Additional Rent, Landlord may use, apply or retain all or any part of the Security Deposit for the payment of Fixed Minimum Rent and Additional Rent or any other sum in default, or for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within five (5) days after written demand therefore, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount and Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Security Deposit separate from its general funds and Tenant shall not be entitled to interest on such Security Deposit. If Tenant shall fully and faithfully perform each provision of this Lease to be performed by it, the Security Deposit or any unused balance thereof shall be returned to Tenant at the expiration of the Lease term and upon Tenant's vacation of the Premises.

2.09 SALES TAX

Tenant shall, if required by operation of law, pay sales tax on all applicable charges, including but not limited to Fixed Minimum Rent and Additional Rent, common area charges, ad valorem taxes, insurance, utility charges, etc. Said charges shall be equal to **6%** (or whatever rate is set by the taxing authority) of the total of Fixed Minimum Rent and Additional Rent, common area charges, and ad valorem taxes, and shall be in addition to the total amount of Fixed Minimum Rent and Additional Rent, common area charges, and ad valorem taxes. Said tax shall be due and payable at the time such charges are paid. Landlord shall, in turn, remit these sales taxes to the proper authorities at the times and manner provided by the taxing authorities.

2.10 PROPERTY TAXES

(a) Tenant covenants and agrees to pay to Landlord, as Additional Rent, without offset or deduction, the sums computed in this Paragraph 2.10.

(b) The following definitions shall apply to this Lease: (1) the term "Taxes" shall mean all real estate taxes, ad valorem taxes, assessments (including without limitation, general and special assessments for public improvements or benefits whether or not commenced or completed during the term of this Lease, and sanitary and trash removal assessments), expenses incurred by Landlord in appealing any assessment of any ad valorem taxes and assessments or the imposition of any interest or penalty related thereto, water charges or sewer charges and any and all other taxes and assessments levied, assessed or imposed at any time by any municipal, county or state government or any other governmental authority or agency upon or against the Shopping Center or any portion thereof, and also any tax or assessment levied, assessed or imposed against the Shopping Center or any portion thereof at any time by any governmental authority in connection with any franchise or the receipt of any income, rent or profit from the Shopping Center to the extent that same shall be in lieu of all or a portion of any of the aforesaid taxes or assessments upon or against the Shopping Center; and (2) the term "Tenant's Proportionate Share" shall mean the ratio of the square footage of the Premises to the total square footage of all premises located within the Shopping Center from time to time.

(c) Tenant shall pay to Landlord as Additional Rent throughout the term hereof, as same may be extended or renewed, on the first day of each month in advance, such amount as Landlord shall estimate or determine to be equal to one twelfth (1/12) of Tenant's Proportionate Share of the Taxes for the then current calendar year. Upon final determination of the Taxes for such year, Landlord shall compute Tenant's Proportionate Share thereof, and a summary shall be furnished to Tenant reflecting the actual amount of the Taxes for such year. In the event Tenant's Proportionate Share of Taxes paid by Tenant during the preceding calendar year shall be in excess of Tenant's Proportionate Share of the actual amount of such Taxes for such calendar year, the excess shall be credited against the next ensuing payments due from Tenant under this Paragraph 2.10. In the event the amount paid by Tenant shall be less than Tenant's Proportionate Share of the actual amount of such Taxes for such calendar year, then Tenant shall pay the remaining balance to Landlord within ten (10) days after such notice is furnished. The notice so furnished to Tenant shall also include a computation of the estimated sums to become due from Tenant each month for the ensuing calendar year under this Paragraph 2.10 and the monthly payments to be made under this Paragraph 2.10 shall be adjusted accordingly for such ensuing calendar year.

(d) A pro rata installment of Tenant's Proportionate Share of such Taxes shall be due for the last year of the term hereof, as the same may be extended or renewed, if such term for any reason terminates on a day other than the 31st day of December. The obligation of Tenant with respect to this Paragraph 2.10 shall survive the expiration of the term of this Lease, it being recognized by the parties hereto that the recovery of Tenant's Proportionate Share hereunder is a recovery for the year in which payable hereunder.

(e) Landlord may, at Landlord's option, contest any and all Taxes, and the cost for any such protest shall be considered part of the Taxes.

(f) Any delay or failure of Landlord in computing or billing for Taxes hereinabove provided shall not prejudice the right of Landlord to thereafter render bills for such period or any subsequent period, nor constitute a waiver of, or in any way impair the continuing obligation of, Tenant to pay Tenant's Proportionate Share of such Taxes. Photocopies or scanned copies of bills for Taxes submitted by Landlord to Tenant shall be conclusive evidence of the actual amount thereof.

(g) Landlord's estimation of Tenant's Proportionate Share of Taxes for the first calendar year of the term is **$331.25** per month.

ARTICLE III

COMMON AREAS

3.01 USE OF COMMON AREAS

The common areas of the Property (the "Common Areas") shall consist of those areas on the Property which are open for use by the public, Tenant and other Tenants of the Property including, without limiting the generality of the foregoing, all parking areas, driveways, truckways delivery passages, common truck loading areas, walkways, planted areas, landscaped areas, public restrooms (if any), and other areas not used as a building or reserved by Landlord. The Common Areas shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right from time to time to establish, modify and enforce rules and regulations with respect to such Common Areas. Tenant shall not conduct any business activities in the Common Areas.

Landlord hereby reserves the right at any time to make alterations or additions to (and/or to build additional stories on) the building(s) in which the Premises are contained, and to build improvements adjoining same. Landlord also reserves the right to construct other buildings and improvements on the Property from time to time and to make alteration thereof or additions thereto and to build additional stories on any such other building(s), except as specifically provided otherwise in this Lease.

3.02 LICENSE

All common areas and facilities not within the Premises, which Tenant may be permitted to use and occupy, are to be used and occupied under a revocable license, and if the amount or type of such areas be diminished, Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall diminution of such areas be deemed to constitute a constructive or actual eviction of Tenant.

3.03 COST OF MAINTENANCE OF COMMON AREAS

(a) For purposes of this Lease, the term "Common Area Charges" means and shall include the total cost and expense incurred in operating, maintaining and replacing the Common Areas of the Property, specifically including, without limitation: gardening and landscaping, the cost of public liability insurance for bodily injury and property damage; repairs; painting the Shopping Center, line painting; replacing, repairing and maintaining outdoor and indoor paving for vehicular and pedestrian use and lighting; sanitary and pest control; removal of snow and ice (if any); removal of trash, rubbish, garbage and other refuse; reasonable reserves for replacements and repairs; management; bookkeeping; and the cost of personnel to implement, supervise or administer such services, to direct traffic and parking and to provide security and police services, if provided, for the Property; and all utilities or costs for services consumed in, on or about the Property which is not separately metered or otherwise allocated to tenants. Included in the Common Area Charges shall be a fee to the Landlord for management, bookkeeping, legal and other administrative services equal to twenty percent of the total common area expenses incurred.

(b) Tenant covenants and agrees to pay to Landlord, as Additional Rent, without offset or deduction, Tenant's Proportionate Share of Common Area Charges on the first day of each month in advance, such amount as Landlord shall estimate or determine to be equal to 1/12 of Tenant's Proportionate Share of Common Area Charges for the then current Lease Year. Upon final determination of Common Area Charges for such Lease Year, Landlord shall compute Tenant's Proportionate Share thereof, and a summary shall be furnished to Tenant reflecting the actual amount of Common Area Charges for such Lease Year. In the event Tenant's Proportionate Share of Common Area Charges paid by Tenant during the preceding Lease Year shall be in excess of Tenant's Proportionate Share of the actual amount of Common Area Charges for such Lease Year, the excess shall be credited against the next ensuing payments due from Tenant under this Paragraph 3.03. In the event paid by Tenant shall be less than Tenant's Proportionate Share of the actual Common Area Charges for such Lease Year, then Tenant shall pay the remaining balance to Landlord within ten (10) days after such notice is furnished. The notice so furnished to Tenant shall also include a computation of the estimated sums to become due from Tenant each month for the ensuing Lease Year under this Paragraph 3.03 and the monthly payments to be made under this Paragraph 3.03 shall be adjusted accordingly for such ensuing Lease Year.

(c) Any delay or failure of Landlord in computing or billing Common Area Charges hereinabove provided shall not prejudice the right of Landlord to thereafter render bills for such period or any subsequent period, nor constitute a waiver of or in any way impair the continuing obligation of Tenant to pay Tenant's Proportionate Share of such Common Area Charges.

Landlord's estimation of Tenant's Proportionate Share of Common Area Charges for the first Lease Year of the term is **$1,006.25** per month.

ARTICLE IV

USE OF PREMISES

4.01 TENANT'S USE

Tenant shall use and occupy the Premises for the purpose of operating a **Fitness Studio/Gym (See Special Stipulations)** and shall not use or occupy the Premises or permit the same to be used for any other purpose. Tenant agrees to maintain business hours in keeping with similar stores or businesses in the community in which the Shopping Center is located. Tenant further agrees that it will use the Premises in such a manner so as not to interfere with or infringe on the rights of other Tenants in the Shopping Center. Tenant shall not use or occupy the Premises in violation of any law, ordinance, regulation or other governmental directives having jurisdiction thereof or the certificate of occupancy issued for the building of which the Premises are a part, and shall, upon five (5) days written notice from Landlord, discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be in violation of any law, ordinance, regulation or directive or of said certificate of occupancy. During the term hereof, Tenant shall be in continuous use and occupancy of the Premises and shall not vacate or abandon the same.

4.02 TENANT'S COMPLIANCE WITH ENVIRONMENTAL LAWS

Tenant covenants and warrants that it shall not use, discharge, dump, spill, or unlawfully use or store any "Hazardous Substances" or "Hazardous Materials" (as such terms may be defined in any federal, state or local environmental laws and regulations) on or about the Shopping Center during the Lease term except in compliance with applicable laws. If any such Hazardous Substances or Hazardous Materials are discovered on or about the Shopping Center which are introduced by Tenant, all costs of removal incurred by, all liability imposed upon, or damages suffered by Landlord shall be borne by Tenant, which costs, liabilities, and damages Tenant shall pay to Landlord within ten (10) days of receipt of a properly documented invoice from Landlord and Tenant hereby agrees to indemnify Landlord from and against all such costs, liability, or damage. The rights granted to Landlord herein shall be in furtherance, and not in limitation, of any other rights Landlord may have pursuant to this Lease. The terms and provisions of this Section 4.02 shall survive the expiration or termination of this Lease.

ARTICLE V

ALTERATION, REPAIR AND MAINTENANCE

5.01 ALTERATIONS

Tenant shall have the right, at any time during the term hereof, without the written consent of Landlord but upon ten (10) days prior written notice to Landlord by Tenant of its intention so to do, to make additions, alterations, changes or improvements in or to the Premises or any part thereof as Tenant may from time to time during the term hereof deem necessary or desirable; provided, however, that Tenant agrees not to make any additions, alterations, changes or improvements (a) in excess of Three Thousand Dollars ($3,000.00) or (b) which affect the structural strength, or outward appearance of the Premises or the building, without the prior written consent of Landlord. In addition, any contractors or subcontractors performing the alteration work shall be licensed as required by applicable law, and shall carry general liability, workmen's compensation and such other insurance in form, scope and content, and in amounts, as may be required by Landlord under the circumstances. Tenant shall provide Landlord with certificates evidencing such insurance and showing Landlord and M & P Management as additional insureds prior to commencing any work. Any additions, alterations, changes or improvements which may be made in or to the Premises by Tenant during the term hereof shall, upon completion thereof, become the property of Landlord, provided, however, Landlord may at its option, require Tenant, at Tenant's sole cost and expense, to remove any such additions, alterations, changes or improvements at the expiration or sooner termination of the term hereof, and to repair any damages to the Premises caused by such removal. Tenant hereby indemnifies Landlord against, and shall keep the Premises and Shopping Center free from, all mechanics liens or other such liens arising from any work performed, material furnished, or obligations incurred by Tenant in connection with the Premises or the Shopping Center. Landlord hereby reserves the right at any time and from time to time during the term thereof, to make any additions, alterations, changes or improvements (including without limitation, building additional stories) on, in or to the building in which the Premises are contained, and to build additional structures adjoining thereto, without any liability to or offsets in favor of Tenant. Landlord also reserves the right to construct other buildings and improvements in the Shopping Center from time to time and at any time during the term hereof, and to make alterations thereof or additions thereto and to build additional stories on any such building or buildings and to build adjoining same and to construct doubledeck or elevated parking facilities, without any liability to or offsets in favor of Tenant. The terms and provisions of this Paragraph 5.01 shall survive the expiration or termination of this Lease.

5.02 REPAIRS BY LANDLORD

Landlord agrees to keep in good order and repair the roof, exterior walls, (exclusive of all glass, including plate glass, exterior doors, hardware & door operating devices) and water, sewer and sprinkler systems (if any), but not fixtures pertaining to such systems. Except as otherwise provided herein, Landlord gives to Tenant exclusive control of the Premises and shall be under no obligation to inspect said Premises. Tenant shall at once report in writing to Landlord any defective condition known to him which Landlord is required to repair, and failure to so report such defects shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such defect. Landlord shall not be responsible for any repairs made necessary by Tenant's negligence or caused by Tenant altering or tampering with any systems (e.g. roof or sewer) in or about the premises.

5.03 REPAIRS BY TENANT

Tenant shall, at his own cost and expense, keep and maintain the Premises and appurtenances thereto and every part thereof, in good order and repair except portions of the Premises to be repaired by Landlord pursuant to Section 5.02 hereof. Without limiting the foregoing, Tenant agrees to keep all systems and fixtures pertaining to heating, air-conditioning, ventilation, water, sewer, electrical and sprinkler systems (if any) in good order, repair and replace, and Tenant shall be liable for any damage to such systems. Tenant shall keep in force a standard maintenance agreement with a company acceptable to Landlord on all air conditioning equipment and provide a copy of said maintenance agreement to Landlord prior to Tenant's occupancy of the Premises. Tenant shall be responsible, at its sole cost and expense, for the eradication of rodents, termites, roaches, or other vermin. Tenant agrees to return the Premises to Landlord at the expiration or sooner termination of this Lease in as good condition and repair as when first received, with reasonable wear and tear, alterations that are approved by Landlord, and damage by fire or other insurable casualty expected. All damage or injury to the Premises or the building, or the Common Areas, caused by the act or negligence of Tenant, its agents, employees, licensees, invitees or visitors, shall be promptly repaired by Tenant, at its sole cost and expense and to the satisfaction of Landlord. Landlord may make such repairs, which are not promptly made by Tenant and charge Tenant for the cost thereof, and Tenant hereby agrees to pay such amounts on demand as Additional Rent hereunder. Tenant shall have no right to make repairs at the expense of Landlord, or to deduct the cost thereof from the rent due hereunder. The terms and provisions of this Paragraph 5.03 shall survive the expiration or termination of this Lease.

5.04 TENANT REPAIRS PURSUANT TO ADA/ADAAG

Tenant and Landlord agree that upon execution of this Lease, the Tenant is responsible for performing any and all repairs in, on, or upon the Premises which is required and/or recommended by the Americans With Disabilities Act and/or Americans With Disabilities Act Architectural Guidelines, with the exception of Common Areas such as parking lots, parking spaces, and sidewalks.

5.05 CONDITION OF PREMISES

Tenant acknowledges that neither Landlord nor any agent or employee of Landlord has made any representation or warranty with respect to the Premises, the building or the Shopping Center or with respect to the suitability thereof for the conduct of Tenant's business. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises, the building and the Shopping Center were, at such time, in satisfactory condition and free from defects for which Landlord has no responsibility. Except as expressly set forth herein, Tenant acknowledges and agrees that Landlord is delivering the Premises to Tenant on an "AS IS, WHERE IS" basis.

5.06 RUBBISH REMOVAL

Tenant shall keep the Premises clean, both inside and outside, at its own expense, and will remove all refuse from the Premises. Tenant shall not burn any materials or rubbish of any description upon the Premises. Tenant agrees to keep all accumulated rubbish in covered containers and to have same removed regularly at Tenant's expense. In the event Tenant fails to keep the Premises and other portions heretofore described in the proper condition, Landlord may cause the same to be done for and on account of Tenant and Tenant hereby agrees to pay the expense thereof on demand as Additional Rent. Landlord reserves the right to employ rubbish removal service for the Shopping Center and Tenant agrees to pay the costs of said attributable to Tenant's Premises on demand as Additional Rent.

5.07 SIDEWALKS

Tenants shall neither encumber nor obstruct the sidewalks adjoining the Premises nor allow the same to be obstructed or encumbered in any manner. Tenant shall not place, or cause to be placed, any merchandise, coin operated telephones, vending machines or anything else on the sidewalk or exterior of the Premises without prior written consent of Landlord.

5.08 RIGHT TO RELOCATE

Landlord shall have the right, at any time during the term of this Lease or any extensions thereof, to relocate Tenant, at Landlord's sole cost and expense, to other premises in the Shopping Center (the "New Premises") provided the New Premises shall be comparable in size and location to the existing Premises.

ARTICLE VI

UTILITIES

Tenant shall pay the cost of water, gas, electricity, fuel, light, heat, power and all other utilities furnished to the Premises or used by Tenant in connection therewith whether such utility costs be determined by separate metering or be billed by Landlord to Tenant as Tenant's Proportionate Share of the utility costs. In no event shall Landlord be liable for any interruption or failure in the supply of any such utilities to the Premises.

ARTICLE VII

TENANT'S PROPERTY

issued by the organization making the insurance rate on the Premises, showing various components of such rate, shall be conclusive evidence of the several items and charges, which make up the fire and public liability insurance rate on the Premises.

Tenant shall not knowingly use or occupy the Premises or any part thereof, or suffer or permit the same to be use or occupied for any business or purpose deemed extra hazardous on account of fire or otherwise. In the event Tenant's use and/or occupancy causes any increase of premium for the fire, boiler and/or casualty rates on the Premises or any part thereof above the rate for the least hazardous type of occupancy legally permitted in the Premises, Tenant shall pay such additional premium on the fire, boiler and/or casualty insurance policy that may be carried by Landlord for its protection against rent loss caused by damage to property. Bills for such additional premiums shall be rendered by Landlord to Tenant at such times as Landlord may elect, and shall be due from and payable to Landlord when rendered in writing, but such increases in the rate of the insurance shall not be deemed a breach of this covenant by Tenant. Failure to pay amounts due hereunder shall be a breach of the Lease.

8.03 Failure to Provide Insurance

Tenant acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Landlord to risks and potentially cause Landlord to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Tenant does not maintain the required insurance and/or does not provide Landlord with the required binders or certificates evidencing the existence of the required insurance, the Minimum Rent shall be automatically increase, without any requirement for notice to Tenant, by an amount equal to 10% of the then existing Minimum Rent or $100, whichever is greater. The parties agree that such increase in Minimum Rent represents fair and reasonable compensation for the additional risk/cost that Landlord will incur by reason of Tenant's failure to maintain the required insurance. Such increase in Minimum Rent shall in no event constitute a waiver of Tenant's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, not relieve Tenant of its obligation to maintain the insurance specified in this Lease.

8.04 PLATE GLASS

Tenant shall replace, at its sole cost and expense any and all plate and other glass damaged or broken from any cause whatsoever in and about the Premises. Tenant shall procure and maintain at its own expense, insurance covering all plate and other glass in the leased Premises for and in the name of Tenant and Landlord. Tenant shall deliver certificates of such insurance to Landlord in accordance with Section 8.01 hereof.

8.05 INSURANCE PREMIUM

The Landlord shall pay entire insurance premium on policies which Landlord elects to carry applicable to said Shopping Center (including without limiting the foregoing, Fire, Extended Coverage, Vandalism & Mischief, Boiler, Rental, Sprinkler, Property Damage, and Comprehensive General Liability insurance). Tenant shall pay to Landlord Tenant's Proportionate Share of such premiums as Additional Rent. Tenant's Proportionate Share shall be the total of such premiums multiplied by a fraction, the numerator of which is the gross leasable area of the Premises and the denominator of which is the gross leasable area of the buildings within the Shopping Center covered by such policies. Tenant's Proportionate Share of such premiums shall be paid on a monthly basis with Fixed Minimum Rent. Copies of insurance premium bills submitted shall be conclusive evidence of the amount of insurance premiums assessed or levied, as well as the items insured. In addition to Tenant's Proportionate Share of premiums hereinabove provided, Tenant shall pay for any special hazard premium charges, whenever made, applicable to the Premises of Tenant, as determined by the insuring company or its authorized agent.

Landlord's estimation of Tenant's Proportionate Share of insurance premiums for the first Lease Year is **$350.00** per month.

8.06 INDEMNIFICATION

Tenant will indemnify Landlord and hold Landlord harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Premises, or the occupancy or use by Tenant of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, lessees, concessionaires, or invitees. In case Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by Landlord in connection with such litigation. Tenant shall also pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by Landlord in enforcing the covenants and agreements in this Lease.

ARTICLE IX

DAMAGE OR DESTRUCTION

If the Premises or the building of which the same are a part are damaged by fire or other insured casualty and the insurance proceeds have been made available therefore by the holder or holders of any mortgages or deed of trust covering the Premises or the property of which the same are a part, the damage shall be repaired by and at the expense of Landlord to the extent of such insurance proceeds available therefore, provided such repairs can, in Landlord's sole opinion, be made within sixty (60) days after the occurrence of such damage without the payment of overtime or other premiums, and until such repairs are completed Fixed Minimum Rent and Additional Rent shall be abated in proportion to the part of the Premises which is unusable by Tenant in the conduct of its business (but there shall be no abatement of Fixed Minimum Rent and Additional Rent by reason of any portion of the Premises being unusable for a period equal to one day or less). If the damage is due to the fault or neglect of Tenant or its employees, agents or invitees, there shall be no abatement of Fixed Minimum Rent and Additional Rent. If repairs cannot, in Landlord's sole opinion, be made within sixty (60) days, Landlord may at its option make them within a reasonable time and in such event this Lease shall continue in effect and Fixed Minimum Rent and Additional Rent

7.01 TAXES ON LEASEHOLD

Tenant shall pay prior to delinquency all taxes assessed against or levied upon the leasehold and upon fixtures, furnishings, equipment and all other personal property of any kind, owned by or placed in, upon or about the Premises by Tenant.

7.02 LOSS AND DAMAGE

Landlord shall not be liable for any damage to property of Tenant or of others located on the Premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by dampness or by any other cause of whatsoever nature. Landlord shall not be liable for any such damage caused by other tenants or persons in the Premises, occupants of adjacent property, of the Shopping Center, or the public, or caused by operations in construction of any private, public or quasi-public work. Landlord shall not be liable for any latent defect in the Premises or in the building of which they form a part. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant only and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier, unless such damage shall be caused by the willful act or gross neglect of Landlord.

7.03 NOTICE BY TENANT

Tenant shall give immediate notice to Landlord in case of fire or accidents in the Premises and the building of which the Premises are part, of defects therein, or in any fixture or equipment.

ARTICLE VIII

INSURANCE AND INDEMNITY

8.01 TENANT INSURANCE

Tenant shall procure and maintain, at its sole cost and expense and without interruption for the entirety of the lease agreement term, the following policies of insurance:

Liability Insurance: Commercial general liability insurance on an occurrence based ISO standard form policy covering liability for bodily injury and property damage and endorsed to add Landlord and M&P Management as additional insured by means of endorsement at least as broad as the Insurance Services Organization's "Additional-Insured-Managers or Lessors of Premises" Endorsement. Coverage shall be primary and non-contributory to other insurance available to Landlord and M&P Management and containing a separation of insureds provision. Such commercial general liability insurance shall cover occurrences arising from tenant's and Tenant's agents use, operation, ownership, occupancy and maintenance of the Premises and all areas appurtenant thereto with coverage limits no less than $1,000,000 per occurrence, $2,000,000 general aggregate, and with a sublimit of no less than $100,000 for damage to rented premises with any deductible or retained loss in an amount no greater than $5,000 which shall be the sole responsibility of Tenant for payment. The limits of said insurance shall not, however, limit the liability of Lessee nor relive Lessee of any obligation hereunder.

Property Insurance: Property and rental income loss insurance covering loss or damage by fire, lightening, water, wind and such other perils as are included in a standard "special causes of loss form" property insurance policy in an amount no less than one hundred percent (100%) of the replacement cost of all personal property including but not limited to signs, stock, inventory, furniture and fixtures, equipment, all glass including plate glass, and improvements and betterments installed in the Premises, at any time, by Tenant; business income or rental income insurance covering no less than twelve (12) months of gross revenue or (and with limits sufficient to insure) the "actual loss sustained" for a restoration period no less than twelve (12) months. The loss valuation clause of the policy shall be replacement cost value. Tenant shall have its property insurer waive any right of subrogated recovery from Landlord or M&P Management.

General: All insurance policies contemplated by this Article VII shall name Tenant as named insured. Tenant shall provide Landlord no later than the first day Tenant occupies the Premises certificates of insurance in a form and substance acceptable to Landlord, including copies of policy endorsements pertaining to coverage required by this lease agreement. Thereafter, Tenant shall provide such certificates within fifteen (15) days following renewal of any such policy. Tenant shall provide Landlord with no less than seven (7) days' notice of cancellation or non-renewal of any policy required herein. Without limitation on the foregoing, all policies shall be insured by a company or companies with a rating of A-VII or higher by A.M. Best Co. In the event Tenant fails to obtain or maintain the insurance required hereunder, and fails to provide Landlord with the required certificates of insurance within ten (10) days after demand therefore, Landlord may obtain same (but shall have no obligation to do so) and any costs incurred by Landlord in connection therewith shall be payable by Tenant upon demand. Tenant agrees that its insurance shall be primary over any insurance which may be available to Landlord. In the event of any loss of property or earnings of the Tenant as a result of property damage, the Tenant agrees not to seek recovery against the Landlord and further agrees that it shall require an express waiver of any right of subrogation by its insurance company against Landlord.

8.02 Extra Hazard Insurance Premiums

Tenant agrees that it will not keep, use, sell or offer for sale in or upon the Premises any article or permit any activity, which may be prohibited by the standard form of property or commercial general liability insurance policy. Tenant agrees to pay any increase in premiums for property or commercial general liability insurance which may be carried by Landlord on the Premises or the building of which they are a part, resulting from the type of merchandise sold or services rendered by Tenant or activities in the Premises, whether or not Landlord has consented to the same. In determining whether increased premiums are the result of Tenant's use of the Premises, a schedule, hereunder shall be apportioned in the manner provided above. Landlord's election to make such repairs must be evidenced by written notice to Tenant within thirty (30) days after the occurrence of the damage. If Landlord does not so elect to make such repairs which cannot be made within sixty (60) days, then either party may, by written notice to the other, cancel this Lease as of the day of the occurrence of such damage. A total destruction of the building in which the Premises are located shall automatically terminate this Lease. Except as provided in this Article, there shall be no abatement of Fixed Minimum Rent and Additional Rent and no liability of Landlord by reason of injury to or interference with Tenant's business or property arising from the making of any repairs, alterations, or improvements in or to any portion of the building or the Premises or in or to fixtures, appurtenances and equipment therein. Tenant understands and agrees that Landlord shall have no obligation to carry insurance of any kind on Tenant's furniture and furnishings or on any fixtures or equipment removable by Tenant under the provisions of this Lease, and that Landlord shall not be obligated to make any repairs thereto or to replace the same. However, if fifty percent (50%) or more of the Demised Premises, or the building of which the Demised Premises are a part is destroyed or rendered untenable by fire or other casualty during the last year of the Primary Term, or any Extension Term of this Lease, then Landlord shall have the right to terminate this Lease effective as of the date of the casualty, by giving written notice of termination to Tenant within thirty (30) days of such casualty. If said notice of termination is given within this thirty-day period, this Lease shall terminate and Fixed Minimum Rent and Additional Rent and all other charges shall abate as aforesaid from the date of such casualty, and Landlord shall promptly repay to Tenant any Fixed Minimum Rent and Additional Rent paid in advance which has not been earned as of the date of such casualty.

ARTICLE X

CONDEMNATION

If the whole of the Premises or so much thereof as to render the balance unusable by Tenant shall be taken under power of eminent domain, or otherwise transferred in lieu thereof, this Lease shall automatically terminate as of the date of such condemnation, or as of the date possession is taken by the condemning authority, whichever is earlier. No award for any total or partial taking shall be apportioned, and Tenant hereby assigns to Landlord any award which may be made in such taking or condemnation, together with any or all rights of Tenant now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or require Tenant to assign to Landlord any award made to Tenant for the taking of personal property and fixtures belonging to Tenant and removable by Tenant at the expiration of the term hereof as provided hereunder or the interruption of or damage to Tenant's business. In the event of a partial taking which does not result in the termination of this Lease, Fixed Minimum Rent and Additional Rent shall be apportioned according to the part of the Premises remaining usable by a Tenant. In the event of such a partial taking, restoration of the Premises and abatement of Fixed Minimum Rent and Additional Rent shall take place as provided in Article IX above.

ARTICLE XI

ASSIGNMENT AND SUBLETTING

Tenant shall not, either voluntarily or by operation of law, sell, assign, hypothecate or transfer this Lease, or sublet the Premises or any parts thereof, or permit the Premises or any part thereof to be used for any purpose other than as set forth in Article IV hereof, without the prior written consent of Landlord in each instance. Any sale, assignment, mortgage, transfer or subletting of this Lease or the Premises or any part hereof or thereof which is not in compliance with the provisions of this Article XI shall be void and shall, at the option of the Landlord, terminate this Lease. The consent by Landlord to an assignment or subletting shall not be construed as relieving Tenant from obtaining the express written consent of Landlord to any further assignment or subletting or as releasing Tenant from any liability or obligation hereunder whether or not then accrued. A fee of Five Hundred Dollars ($500.00) shall be paid to Landlord as compensation for review and processing of any such assignment.

ARTICLE XII

SUBORDINATION, DOCUMENTS AND INSTRUMENTS

This Lease is and shall be subject and subordinate to any and all mortgages or deeds of trust now existing, or which may hereafter be executed, covering the Premises or the real property of which the same are a part, or any leasehold estates affecting the same, for the full amount of all advances made or to be made thereunder and without regard to the time or character of such advances, together with interest thereon and subject to all the terms and provisions thereof, and Tenant agrees to execute, acknowledge and deliver upon request any and all documents or instruments requested by Landlord necessary or proper to assure the subordination of this Lease to any such mortgages, deeds of trust or leasehold estates. Tenant hereby attorns and agrees to attorn to any person, firm or corporation purchasing or otherwise acquiring the Premises, at any sale or other proceeding or pursuant to the exercise of any other rights, powers or remedies under such mortgages or deeds of trust or leasehold estate as if such person, firm or corporation had been named as Landlord herein. Tenant hereby acknowledges and agrees that any successor-in-interest to Landlord by foreclosure and deed under power, or by deed in lieu of foreclosure, shall not be liable to Tenant for any duty, obligation, or liability (specifically including refund of any prepaid Fixed Minimum Rent or Additional Rent or any Security Deposit). Upon the written request by the holder of any mortgage or deed of trust now existing, or which may hereafter be executed, accompanied by such holder's mailing address, Tenant shall deliver to such holder written notice of the occurrence of any event of default on the part of Landlord which may occur under this Lease, and Tenant hereby agrees that Tenant shall not terminate this Lease or exercise any right to abate Fixed Minimum Rent or Additional Rent hereunder, unless and until Tenant shall have given such holder an opportunity to cure such event of default on behalf of Landlord within thirty (30) days after the date of receipt by such holder of such written notice of default. Tenant agrees to execute, acknowledge and deliver in recordable form to any proposed mortgagee or purchaser, or to Landlord, or to such other person designated by Landlord, a certificate certifying (if such be the case) that this Lease is in full force and effect and that there are no defenses or offsets thereto, or, if Tenant claims any defenses or offsets, stating those claimed by Tenant. It is expressly understood and agreed that any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part. Tenant's non-delivery of such statement within five (5) days after Landlord's written request therefore shall be conclusive upon Tenant that this Lease is in full force and effect without modification except as may be represented by Landlord and that there are no uncured defaults in Landlord's performance hereunder. Tenant hereby appoints Landlord the attorney-in-fact of Tenant irrevocably to execute and deliver any document or documents provided for herein for and in the name of Tenant.

ARTICLE XIII

DEFAULT, BANKRUPTCY

13.01 DEFAULT

If Tenant defaults (a) in the payment of Fixed Minimum Rent, Additional Rent, or any other item to be paid by Tenant hereunder, and such default shall not have been cured within three (3) days after written notice thereof by Landlord to Tenant (provided that, notwithstanding the foregoing, Landlord shall only be required to give such 3-day written notice two times within any consecutive 12-month period under this Lease, and thereafter, no written notice or grace period shall apply to any such non-payment by Tenant); or (b) in the performance of any other term, covenant, or condition of this Lease, and such default shall not have been cured within fifteen (15) days after written notice thereof by Landlord to Tenant; Landlord may re-enter and take possession of the Premises and remove all persons and property therefrom (as provided below), and at its option terminate this Lease, and Landlord at its option shall thereupon be entitled to recover from Tenant, in addition to all Fixed Minimum Rent, Additional Rent, and other amounts previously due and unpaid under the terms and conditions of this Lease, Landlord shall be entitled to collect as liquidated damages and not as a penalty the accelerated present value of Fixed Minimum Rent and Additional Rent, including any other sums treated as Additional Rent hereunder, and all other sums provided herein to be paid by Tenant during the remainder of this Lease term (the "Rent Balance"), less the Net Rental Value of the Premises, as hereinafter defined. The term "Net Rental Value" shall mean the fair rental value of the Premises for the remainder of the Lease Term (taking into account relevant factors such as an assessment for future market conditions and the probability of reletting the Premises), reduced to present value, less Landlord's costs, expenses, and attorney's fees in connection with preparation of the Premises for reletting and with the reletting itself; provided, however, the parties agree that in no event shall the Net Rental Value exceed the Rent Balance. If Landlord elects to re-enter and take possession of the Premises without terminating this Lease, Landlord may at its sole option relet the Premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease), at such rental or rentals and upon such other terms and conditions as Landlord at its sole discretion may deem advisable with the right to make alterations and repairs to the Premises. Upon any such reletting Landlord shall receive and collect Fixed Minimum Rent therefor, applying the same first to the payment of such expenses as Landlord may have paid, assumed or incurred in recovering possession of the Premises, including costs, expenses and attorneys' fees, and for placing the same in good order and condition, or repairing or altering the same for reletting and all other expenses, commissions and charges paid, assumed and incurred by Landlord in or about reletting the Premises, and then to the fulfillment of the agreements of Tenant. In any event and whether or not the Premises or any part thereof is relet, Tenant shall pay to Landlord all such amounts required to be paid by Tenant up to the time of re-entry by Landlord, and thereafter Tenant shall, if required by Landlord, pay to Landlord until the end of the term of this Lease the equivalent of the amount of all rent and other charges required to be paid by Tenant under the terms hereof, less the avails, if any, of such reletting after payment of the expenses of Landlord as aforesaid, and the same shall be due and payable on the several rent days specified herein. Upon the happening of any of the events set forth in this Article XIII and in addition to any other rights or remedies which Landlord may have, Landlord shall have the immediate right of re-entry and may remove all persons and property from the Premises and such property shall be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby.

13.02 BANKRUPTCY

In the event of a filing during the term of this Lease of any proceedings by or against Tenant for the adjudication of Tenant as a bankrupt or for any other relief under the bankruptcy or insolvency laws of the United States (Title 11 of the United States Bankruptcy Code, the "Bankruptcy Code"), Landlord may exercise any and all rights available to landlords under the Bankruptcy Code. Tenant acknowledges that this Lease is a lease of non-residential real property which will be or has been developed as a shopping center. The Trustee shall have the right to assume Tenant's rights and obligations under this Lease only if the Trustee promptly cures or provides adequate assurance that the Trustee will promptly cure any default under the Lease, compensates or provides adequate assurance that the Trustee will promptly compensate Landlord for any actual pecuniary default under this Lease, and provides adequate assurance of future performance under the Lease. The word "promptly" as used herein shall mean that the cure of defaults and compensation of actual pecuniary loss will occur no later than sixty (60) days after the filing of any motion or application to assume this Lease, and the phrase "actual pecuniary loss" shall include all Rent and interest and all unpaid Rent and other obligations of Tenant under this Lease, all attorneys' fees and related costs of Landlord in connection with any default of Tenant under the Lease and in connection with Tenant's bankruptcy proceedings. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand of Landlord, forthwith execute and deliver to Landlord an instrument, in form and substance acceptable to Landlord, confirming such assumption. Such assignee shall use and operate the Premises in the same "upscale", "first-class" manner as Tenant hereunder. Any and all monies or the considerations payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Agent at the address to which Rent is payable and shall not constitute property of Tenant or the estate of Tenant within the meaning of the Bankruptcy Code. Notwithstanding anything under this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as rent, shall constitute rent for the purposes of the Bankruptcy Code.

13.03 RIGHTS AND REMEDIES

The various rights and remedies herein granted to Landlord shall be cumulative and in addition to any others Landlord may be entitled to by Law, and the exercise of one or more rights or remedies shall not impair Landlord's right to exercise any other right or remedy.

ARTICLE XIV

ACCESS BY LANDLORD

14.01 RIGHT OF ENTRY.

Landlord and its agents shall have the right to enter the Premises at all reasonable times for the purpose of examining or inspecting the same, showing the same to prospective purchasers or Tenants of the Shopping Center, and making such alterations, repairs, improvements or additions to the Premises or the building of which they are a part as Landlord may deem necessary or desirable. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligations, responsibility or liability whatsoever, for the care, maintenance, or repair of the Premises or the building of which they are a part, or any part thereof, except as otherwise herein specifically provided. During the last three months of the term hereof, Landlord shall have the right to place upon the Premises the usual notices "For Lease" or "For Sale", which notices Tenant shall permit to remain thereon without molestation.

14.02 EXCAVATION.

If any excavation shall be made upon land adjacent to the Premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter upon the Premises for the purpose of doing such work as Landlord shall deem necessary to preserve the walls of the building of which the Premises form a part from injury or damages and to support the same by proper foundations, without any claim for damage or indemnification against Landlord or diminution or abatement of rent.

ARTICLE XV

SIGNS AND ADVERTISING

Tenant will not place or suffer to be placed or maintained on any exterior door, wall or window of the Premises any sign, awning or canopy, or advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Premises without first obtaining Landlord's prior written approval and consent in each instance. Tenant further agrees to maintain any such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved, in good condition at all times. No mobile or neon signs are permitted. In the event Landlord elects to remodel or renovate all or a substantial portion of the Shopping Center, Landlord shall be entitled to require Tenant at Tenant's sole cost and expense to replace any or all of such Signs with substitute sign criteria for the Shopping Center as set forth by Landlord from time to time. **Tenant will have professionally-manufactured signage, as per the attached sign criteria, mounted above Tenant's Premises within ninety (90) days of execution of this Lease.**

ARTICLE XVI

SALE BY LANDLORD – LIMITATION OF LANDLORD'S LIABILITY

In the event of any transfer or transfers of Landlord's interest in the Premises, other than a transfer for security purposes only, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer, provided, however, subject to the terms and provisions of Article XII hereof, that any funds in the hands of Landlord at the time of such transfer in which Tenant has an interest (including, without limitation, any security deposit) shall be turned over to the grantee and any amounts then due and payable to Tenant by Landlord under any provisions of this Lease shall be paid to Tenant, it being intended hereby that the covenants and obligations contained in this Lease on the part of Landlord shall, subject as aforesaid, be binding on Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership.

ARTICLE XVII

SURRENDER OF PREMISES

At the termination of this Lease, Tenant shall surrender the Premises to Landlord in as good condition and repair as reasonable and proper use thereof will permit. If not then in default, Tenant shall have the right at the end of the term hereof to remove any equipment, furniture, trade fixtures or other personal property placed in the Premises by Tenant, provided that Tenant promptly repairs any damage to the Premises caused by such removal.

ARTICLE XVIII

NOTICES

Any notice required or permitted to be given hereunder, shall be in writing and may be given by personal delivery or by mail, and if given by mail, shall be deemed sufficiently given if sent by registered or certified mail, postage prepaid, return receipt requested, or by reputable overnight delivery service or by hand delivery, addressed to Tenant or the Landlord at the address noted below the signature of the respective parties, as the case may be. Any such notice shall be deemed given as of the third (3rd) business day if delivered by mail, the next business day if delivered by reputable overnight delivery service, or on the date of hand delivery. Either party may by notice to the other specify a different address for notice purposes except that upon Tenant's taking possession of the Premises, the Premises shall constitute Tenant's address for notice purposes. A copy of all notice required or permitted to be given to Landlord shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by written notice to Tenant.

ARTICLE XIX

INABILITY TO PERFORM

This Lease and the obligations of Tenant hereunder shall not be affected or impaired because Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike or other labor troubles, civil commotion, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material, service or financing, acts of God or by any other cause beyond the control of Landlord. If Landlord is unable to give possession of the Premises to Tenant as provided for under Section 1.01 hereof within three (3) months from the date of execution hereof, this Lease shall automatically terminate, and Landlord, by reason thereof shall not be subject to any liability therefore, except that Landlord shall return to Tenant all monies which Landlord has therefore received from Tenant.

ARTICLE XX
WAIVERS OF SUBROGATION

Each of the parties hereto waives any and all rights of recovery against the other or against any other tenant or occupant of the building or the Shopping Center, or against the officers, employees, agents, representatives, invitees, customers and business visitors of such other party or of such other tenant or occupant of the building or the Shopping Center, for loss or damage to such waiving party or its property of others under its control arising from any cause insured against under the standard form of fire insurance policy with all permissible extensions and endorsements covering additional perils or under any other policy of insurance carried by such waiving party in lieu thereof, including any deductible amount payable under such policy. Such waivers shall be effective only so long as the same is permitted by each party's insurance carrier without the payment of additional premium.

ARTICLE XXI
RULES AND REGULATIONS

Tenant shall observe faithfully and comply strictly with the Rules and Regulations as Landlord may from time to time reasonably adopt for the safety, care and cleanliness of the Shopping Center for the preservation of good order therein, including without limitation regulations designating employee parking. Shopping Center shall include, but not be limited to common areas, parking areas, sidewalks and landscaped areas. Landlord shall not be liable to Tenant for any violation of the Rules and Regulations, or for the breach of any covenant or condition in any lease, by any other tenant in the building or the Shopping Center.

ARTICLE XXII
MISCELLANEOUS

22.01 ATTORNEY'S FEES

In the event of any litigation between Tenant and Landlord to enforce any provisions of this Lease or any right of either party thereto, the Tenant shall pay costs and expenses including attorney's fees and costs actually incurred by Landlord with regard to such litigation.

22.02 TIME OF ESSENCE.

Each of Tenant's covenants herein is a condition and time is of the essence with respect to the performance of every provision of this Lease and the strict performance of each shall be a condition precedent to Tenant's rights to remain in possession of the Premises, or to have this Lease continue in effect.

22.03 HOLDING OVER

Should Tenant, with Landlord's written consent, hold over after the termination of this Lease, Tenant shall become a tenant from month to month only upon each and all the terms herein provided as may be applicable to such month to month tenancy and any such holding over shall not constitute an extension of this Lease. During such holding over Tenant shall pay rent at a rate equal to 150% of the monthly rate provided herein that was in effect immediately prior to the holdover by Tenant.

22.04 PARTIAL INVALIDITY.

Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

22.05 BROKERS

Tenant warrants that it has had no dealings with any real estate broker or agents in connection with the negotiation of this Lease except as listed below, and that it knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease, and Tenant agrees to indemnify and hold Landlord harmless from and against any and all claims for any such commissions, except as follows: **Direct Deal-No Broker Involved.**

22.06 WAIVER

No Waiver by Landlord of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant, whether or not similar to the act consented to or approved. No act or thing done by Landlord or by Landlord's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord. No employee of Landlord or of Landlord's agents shall have any power to accept the keys to the Premises prior to the termination of this Lease and the delivery of the keys to any such employee shall not operate as a termination of the lease or surrender of the Premises.

22.07 SUCCESSORS AND ASSIGNS

Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, executors, administrators, successors and assigns.

22.08 HEADINGS, LANDLORD AND TENANT

The articles and section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The terms "Landlord" and "Tenant" as used herein shall include the plural as well as the singular, the neuter shall include the masculine and feminine genders and, if there be more than one tenant, the obligations herein imposed upon Tenant shall be joint and several.

22.09 NO ESTATE BY TENANT

This Lease shall create the relationship Lessor and Lessee between Landlord and Tenant; no estate shall pass out of Landlord; Tenant has only a usufruct not subject to levy and/or sale and not assignable by Tenant except as provided in Article XI hereof.

22.10 ENTIRE AGREEMENT

This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no prior agreement or understanding with regard to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The submission of this Lease for examination does not constitute an offer to lease, and this Lease becomes effective only upon execution hereof by Landlord and Tenant.

22.11 EXCULPATION

Tenant agrees to look solely to Landlord's interest in the Shopping Center (or the proceeds thereof) for the satisfaction of Tenant's remedies for the collection of a judgment or other judicial process requiring the payment of money by Landlord in the event of any default by Landlord hereunder, and no other property or assets of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder, or Tenant's use or occupancy of the Premises.

22.12 TENANT DOCUMENTATION REVIEW/EXECUTION

In the event that, at any time during the term of this Lease or any renewal thereof, Tenant requests that Landlord review and/or execute any documentation related to Tenant's use, operation, franchising, occupancy, financing or any other matter relating to the Premises, as a condition thereof, Tenant shall be required to (i) pay to Landlord a review fee equal to $500.00 to cover Landlord's administrative costs relating to such request, and (ii) pay any and all other actual costs and expenses incurred by Landlord regarding such review and execution, including, without limitation, Landlord's attorney's fees and costs.

22.13 SPECIAL STIPULATIONS

A rider, with sections numbered consecutively **23.00** through **23.08** is attached hereto and made a part hereof. In addition, the form of "Guaranty" as defined in Section 23.06 is attached hereto as Exhibit "A" and incorporated herein. In the event of any conflict or inconsistency between the terms and condition of the Special Stipulation Rider, and this base Lease form, the terms and conditions of the Special Stipulations Rider shall control.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Lease as of the day and year first above written.

(SIGNATURES TO FOLLOW)

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Winn-Dixie Plaza, LLC, a Georgia limited liability company,
A wholly owned subsidiary of
M&P Holdings, LLC, a Georgia limited liability company

By: ______________________________
Jeremy Rosenthall

Title: Vice President

"Landlord"

Whose address is:

5025 Winters Chapel Road, Suite M
Atlanta, GA 30360
P: 770-684-0403 F: 770-698-0406

Greater Than A Gym, Inc d/b/a Greater Fitness

By: ______________________________

Title: ______________________________

"Tenant"

Whose address is:

1425 Ocean Shore Blvd, Unit 803
Ormond Beach, FL 32176
P: 386-631-4296
Email: wnsimons@att.net

SPECIAL STIPULATIONS
GREATER THAN A GYM
D/B/A GREATER FITNESS
WINN-DIXIE PLAZA SHOPPING CENTER

23.00 POSSESSION OF PREMISES:

Upon the signing of this Lease Agreement, Tenant shall pay to Landlord the amount of **Ten Thousand Six Hundred Thirty-Nine 74/100 Dollars ($10,639.74)** representing Tenant's first month's rent (April , 2021), plus a security deposit (**5,319.87**) for the Premises. Tenant's next rental payment shall be due and payable on May 1, 2021, and on the first (1st) day of each calendar month thereafter during the Lease term. Landlord hereby grants Tenant early possession of the Premises upon the execution of this Lease Agreement and the paying of the above mentioned amount to Landlord in order to allow Tenant to make certain Tenant improvements to the Premises, at Tenant's sole cost and expense. As a condition of such early occupancy by Tenant, tenant shall provide Landlord with evidence of general liability insurance coverage as required by Section 8.01 of the Lease showing Landlord as an additional insured, and Tenant shall further obtain, at Tenant's expense, such other insurance as may be reasonably required by Landlord concerning the construction of the improvements. In any event, upon such early occupancy by Tenant, the terms and conditions of this Lease shall be in effect except for Tenant's obligation to pay base monthly rent and additional rent, and including, without limitation, Tenant's indemnity and insurance obligations of the Lease.

23.01 USE OF PREMISES:

Tenant shall use the Premises solely for a Greater Fitness, conducting Fitness, Health Education, Coaching, personal training, and sale of products and services related thereto, and for no other purpose whatsoever. In no event will Tenant offer any services or products for sale that are currently offered by any existing Tenants in the Winn Dixie Plaza Shopping Center, without Landlord's prior written consent, which can be withheld in Landlord's sole and absolute discretion.

23.02 DELIVERY OF PREMISES:

Except as expressly provided herein or in the Lease, Landlord is delivering the Premises to Tenant on an "AS IS, WHERE IS", basis, without any warranty or representation whatsoever, except that Landlord at its sole cost and expense shall have the "Workout 24/7" Anytime" sign removed from the front façade..

23.03 TERMINATION CLAUSE:

Tenant shall automatically be deemed to have exercised the "Option" term set forth in Section 23.05 below, except and unless Tenant shall furnish Landlord written notice of its intention not to renew the Lease no later than on or within five (5) days prior to the ninetieth (90^{th}) day prior to the expiration date of the Lease Term. Notwithstanding the foregoing, Tenant shall only be able to give a written notice of the non-exercise of the Option should Tenant's total membership be below 200 members as of the date Tenant exercises its right not to renew right. Tenant's non-renewal notice must be accompanied by written evidence satisfactory to Landlord in its sole discretion that Tenant's membership is below 200 members, and such evidence must be certified as true, correct and complete by the "Guarantor" as defined below, who is the principal owner of Tenant.

23.04 NULL & VOID CLAUSE:

Tenant shall apply for Business License with the City of Daytona Beach Shores within 15 days of the full execution of the Lease Agreement. If the Business License is not granted and the Tenant cannot operate per the permitted uses set forth in Section 23.01 above, the Lease will be null and void, and neither party shall have any further rights or obligations hereunder, except those which expressly survive termination. Notwithstanding the foregoing, Tenant must give written notice of non-receipt of it Business Tax License within 60 days of the date of this Lease or this termination right shall be null and void and be of no further force or effect.

23.05 OPTION:

Unless Tenant has properly exercised its right not to renew this Lease as provided in and in accordance with the requirements of Section 23.03 above, and further subject to the below conditions, Tenant shall have one (1) three-year renewal option ("Option") upon the same terms and conditions set forth in the lease except that the minimum base rent will be as follows:

YEAR 1: $3,331.25 per month
YEAR 2: $3,437.50 per month
YEAR 3: $3,437.50 per month

The Option cannot be exercised unless Tenant has no uncured default (after written notice of default from Landlord, if required under this Lease) of any of the terms and conditions of this Lease at the time of the Option granted hereunder are exercised (or deemed exercised) or at the time the Option period is to begin, and Tenant is open and operating for business in the Premises.

The Option that has been granted to Tenant is personal in nature, and shall not assignable or transferable to any other party, assignee or subtenant with the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion.

23.06 Membership and Sales Documents

On or before the fifteenth (15th) days of every calendar month during the initial Term, Tenant shall deliver to Landlord, in writing, the sales and membership numbers for the immediately preceding month in a form acceptable to Landlord in its sole discretion, and which must be certified as true, correct and complete by Guarantor. Failure to provide such documents shall be a default under this Lease.

23.07 Tenant Work

In the event Tenant desires to perform any work in the Premises ("Tenant Work"), such Tenant Work shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed (except that any work affecting the roof, structure , plumbing, electrical or mechanical systems shall be subject to Landlord's approval in its sole discretion). Landlord's approval must be granted prior to Tenant applying for any required building permits for Tenant's Work, and prior to any work being commenced.

23.08 Guaranty

It is an express condition to this Lease that Bill Simon ("Guarantor"), a principal owner of Tenant, shall execute and deliver to Landlord an unconditional guaranty of Tenant's payment and performance obligations under this Lease ("Guaranty") in the form attached as Exhibit "A", attached hereto and incorporated herein. The Guaranty shall remain in place during the Term and the Option period, if exercised or deemed exercised by Tenant.

GUARANTY OF PAYMENT AND PERFORMANCE OF LEASE

WHEREAS, a certain Shopping Center Lease (the "Lease"), dated _______, has been executed by and between **WD Plaza, LLC**, (therein and herein referred to as "Landlord"), and **Greater Than a Gym, Inc. d/b/a Greater Fitness** (therein and herein referred to as "Tenant"), covering certain premises located at 2136 Suite E&F S Atlantic Avenue, Daytona Beach Shores, Florida; and

WHEREAS, Landlord under the Lease requires as a condition to its execution that the undersigned, **William Simons**. ("Guarantor"), unconditionally guarantee the full payment and performance of the obligations of Tenant under the Lease; and

WHEREAS, the Guarantor desires that Landlord enter into the Lease with Tenant;

NOW, THEREFORE, in consideration of the execution of the Lease by Landlord, the Guarantor hereby unconditionally guarantees the full payment and performance of each and all of the terms, covenants and conditions of the Lease to be kept and performed by said Tenant, including the payment of all rentals and all expenses (including attorney's fees) incurred in the collection thereof, the enforcement of rights under any security therefore and the enforcement hereof, and other charges to accrue thereunder. The undersigned further agrees as follows:

1. The Guarantor hereby waives presentment, demand, notice of dishonor, protest and all other notices whatever, and agrees that the Landlord under said Lease may from time to time extend or renew said Lease for any period (whether or not longer than the original term of said Lease) and may grant any releases, compromises or indulgences with respect to said Lease or any extension or renewal thereof or any security therefore or to any party liable thereunder or hereunder (including, but not limited to, failure or refusal to exercise one or more of the rights or remedies provided by said Lease) all without notice to, or consent of, the undersigned and without affecting the liability of the undersigned hereunder, who may be sued by the Landlord hereunder with or without joining Tenant or any subtenant under said Lease, and without first or contemporaneously suing such other persons, or otherwise seeking or proceeding to collect from them.

2. This is a guaranty of payment and performance and not of collection. The liability of the Guarantor under this Guaranty shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against Tenant or any other person, nor against securities or liens available to Landlord, its successors or assigns. Guarantor waives any right to require that an action be brought against Tenant or any other person or to require that resort be had to any security, and further waives any rights which Guarantor may have pursuant to the Florida Code Annotated.

3. Guarantor acknowledges that this Guaranty and the Lease were negotiated, executed and delivered in the State of Florida, and shall be governed and construed in accordance with the law of the State of Florida.

4. This Guaranty may not be changed orally, and no obligation of Guarantor can be released or waived by Landlord, except by a writing signed by a duly authorized partner of Landlord. This Guaranty shall be irrevocable by Guarantor until all indebtedness guaranteed hereby has been completely repaid and all obligations and undertakings of Tenant under, by reason of, or pursuant to the Lease have been completely performed.

5. The provisions of this Guaranty shall be binding upon Guarantor, his successors, heirs, legal representatives and assigns and shall inure to the benefit of Landlord, its successors, heirs, legal representatives and assigns. This Guaranty shall in no event be impaired by any change which may arise by reason of the death of Guarantor, or by reason of the dissolution, bankruptcy, reorganization or insolvency of Tenant, or any successor assignee thereof.

6. This Guaranty is assignable by Landlord and any assignment hereof or any transfer or assignment of the Lease or portions thereof by Landlord shall operate to vest in any such assignee all rights and powers herein conferred upon and granted to Landlord.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty of Payment and Performance of Lease to be executed under seal as of this ______ day of _______, 20__.

GUARANTOR:

___________________________	_________________________(SEAL)
Witness	William Simons

SIGN CRITERIA
INDIVIDUAL LIGHTED LETTERS ON A RACEWAY

Tenant's sign to be approved by Landlord in writing and provided by Tenant. All signs must adhere to the following sign criteria:

a) Signs shall contain only the store name. There shall be no listing of merchandise or service, and no slogans;

b) The maximum letter height contained in any sign shall not exceed twenty (20%) percent of the storefront height. No sign shall exceed in width seventy-five (75%) percent of the storefront width and shall comply with all local municipality codes.

c) Signs shall be installed within the area leased to Tenant's and shall not project beyond the property line of space leased to Tenants;

d) There shall be only one sign for each storefront, provided that any Tenant having store frontage on more than on façade may install on sign for each elevation;

e) Signs must be illuminated. The illumination must be internal. Internal illumination by individual metal channel letters with neon tubing in translucent Plexiglas face, or opaque sign panel with letter cut out, backed up with translucent Plexiglas and illuminated with neon, fluorescent tubing or LED from behind;

f) The following will not be permitted in any signs; (i) Exposed neon tubing; (ii) Animated components; (iii) Intermittent illumination, (iv) Iridescent painted sign; (v) Luminous sign panel; (vi) Black lighting (inverted metal channel letter containing exposed neon tubing; (vii) Exterior signs mounted on exterior walls or rooftops except for identification signs with tenant façade on main entrances of shops.

RULES AND REGULATIONS

All loading and unloading of goods shall be done only at such times in the areas and through the entrances designated for such purposes by Landlord.

The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such reasonable rules and regulations as in the judgment of Landlord are necessary for the proper operation of the Premises or the Center.

All garbage and refuse shall be kept in the kind of container specified by Landlord or duly constituted public authority, and shall be placed outside of the Premises prepared for collection in the manner and at times and places specified by Landlord. If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at tenant's costs. Tenant shall pay the cost of removal of any Tenant's refuse or rubbish and maintain all common loading areas and areas adjacent to garbage receptacle in a clean manner satisfactory to the Landlord. Should Tenant fail to keep the area around Tenant's garbage receptacle in a clean manner as specified by Landlord, Landlord or its agents or subcontractors may clean such area and bill Tenant for the cost of cleaning, plus 20% overhead, to be paid upon presentation of the bill.

Tenant will not utilize any unethical method of business operation nor shall any space in the Premises be used for living quarters, whether temporary or permanent.

Tenant shall have full responsibility for protecting the Premises and the property located therein from theft and robbery and shall keep all doors and windows securely fastened when not in use.

No radio or television or other similar device shall be installed which can run or be heard outside of or adjacent to the leased premises. No aerial shall be erected on the roof or exterior walls or the Premises or on the grounds without, in each instance, the written consent of the Landlord. Any aerial so installed without such written consent shall be subject to removal without notice at any time, without liability to Landlord and the expenses involved in said removal shall be charged to and paid by Tenant upon demand.

No loudspeakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of Landlord.

Tenant shall maintain the inside of the Premises at a temperature sufficiently high to prevent freezing of water pipes and fixtures inside the Premises.

The plumbing facilities shall not be used for any other purpose than that for which they are constructed and no foreign substance of any kind shall be deposited therein. The expenses of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Tenant.

Tenant shall no burn any trash or garbage of any kind in or about Premises, the center or within one (1) mile of the outside property lines of the center.

Tenant shall not cause or permit any unusual or objectionable odors to be produced upon or permeated from the Premises, nor shall Tenant vent any cooking fumes or odors into the interior of the building.

Tenant shall not permit, allow or cause any public or private auction, "going-out-of-business" bankruptcy, distress or liquidation sale in the Premises. It is the intent of the proceeding sentence to prevent the Tenant from conduction his/her business in any manner that would give the public the impression that he/she is about to cease operation and Landlords shall be the sole judge as to what shall constitute a "distress-type" sale.

RULES AND REGULATIONS (continued)

The sidewalk, entrances, passages, quarters or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than ingress or egress to and from the Premises.

No sales tables, displays, signs or other articles shall be put in front of or affixed to any part of the exterior building, not placed in the loading or parking area without the prior written consent of the Landlord.

Tenant shall not erect or maintain any barricade or scaffolding which may obscure the signs or front entrances or any other tenant in the building or tend to interfere with any such other Tenant's business.

Tenant shall not create or maintain, no allow others to create or maintain, any nuisances, including without limiting the foregoing general language, loud noises, sound effects, bright lights, changing, flashing, flickering or lighting devices or similar devices, smoke or dust, the effect of which will be visible from the exterior of the Premises.

Landlord reserves the right to waive any rule in any particular instance or as to any particular person or occurrence and further, Landlord reserves the right to amend or rescind any of these rules or make, amend and rescind reasonable new rules to the extent Landlord, in its sole judgment, deems suitable for the safety, care and cleanliness of the Center and the conduct of high standards of merchandising and services therein. Tenant agrees to conform to such new or amended rules upon receiving written notice of the same.

FIRST AMENDMENT TO SHOPPING CENTER LEASE

THIS FIRST AMENDMENT TO SHOPPING CENTER LEASE (this "Amendment") is made and entered into as of this 2nd day of December, 2020, by and between WD Plaza, LLC, a Georgia limited liability company, (hereinafter referred to as "Landlord"), **Greater Than a Gym, Inc. d/b/a Greater Fitness**(hereinafter referred to as "Tenant"), and William N. Simons, an individual resident of the State of Florida ("Guarantor").

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to that certain Shopping Center Lease dated as of October 27, 2020 (the "Lease") whereby Landlord has leased to Tenant certain premises described therein at Winn Dixie Plaza Shopping Center, having an address of 2136 So. Atlantic Ave, Suite E&F, Daytona Beach Shores, Florida; and

WHEREAS, Guarantor has fully and unconditionally guaranteed Tenant's payment and performance obligations under the Lease, as evidenced by that certain Unconditional Guarantee of Tenant's Obligations, dated as of October 27, 2020 (the "Guarantee"); and

WHEREAS, Landlord, Tenant and Guarantor now wish to amend, and to reaffirm Tenant's and Guarantor's obligations under the Lease and the Guaranty; and

WHEREAS, any capitalized terms used herein shall have the meaning given to them in the Lease, unless otherwise defined herein:

NOW, THEREFORE, in consideration of the covenants and conditions herein set forth, and for Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which hereby acknowledged, Landlord, Guarantor and Tenant do hereby covenant and agree as follows:

1. Section 23.03 of the Lease shall be eliminated in its entirety and Tenant shall not have a Termination Option.

2. Section 23.05 OPTION. The Option is hereby exercised by Tenant on the date of this Amendment , and Landlord hereby accepts the exercise of the Option on the date hereof.

3. Based upon Tenant's exercise of the OPTION under section 23.05 on the date hereof, the term of the Lease shall be as follows:

    a. Commencement Date: April 1, 2021
    b. Expiration Date: March 31, 2025

4. Guarantor hereby consents to the modifications of the Lease as described herein, and further reaffirms his obligations under the Guaranty, which now apply to the Lease, as amended hereby. Any and all references to the "Lease" in the Guaranty shall mean the Lease, as amended hereby.

5. Guarantor and Tenant hereby confirm that they have no offsets or defenses to the payment and performance of their respective obligations under the Lease, as amended hereby.

6. Except as amended by this Amendment, the Lease is not otherwise amended, and the Lease remains in full force and effect, as amended hereby. In the event of a conflict between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control.

12/3/2020 12/2/2020

1340028

7. This Amendment may be executed in multiple counterparts that, when taken together, shall constitute a single original. Counterparts may be exchanged electronically, and such electronic versions shall be deemed originals for all purposes.

IN WITNESS WHEREOF, Landlord, Tenant and Guarantor have executed this First Amendment as of the date first above written.

Landlord:

Winn Dixie Plaza, LLC
d/b/a Greater Fitness

By: ______________________
Name: Jeremy Rosenthall

____
William N. Simons, Guarantor

Tenant:

Greater Than a Gym, Inc.

By: ______________________
Name: William N. Simons
PRESIDENT

1340028

EDP EVALUATION CRITERIA- LEASE SUBSIDY							
Business Name:	**Greater Than A Gym, Inc., D/B/A Greater Fitness**			**Proposed Address:**	**2136 S. Atlantic Ave. Suite E & F, DBS, FL 32118**		
Business Type:		**Vacant Space:**	**Y/N**	**Evaluation Date:**		**Application No.:**	

A	Mandatory Criteria-*City Planner*	Yes	No	Comment
1	Location in Targeted Area?	X		
2	Targeted Business?	X		
3	If no to #2, is Business Substantially Compliant & Desired As Approved by CC?			N/A
4	Is Business A Permitted Use /Non-Residential/Mixed Use?	X		
5	Appropriate Zoning Consistent w/ Comp Plan?	X		
6	Minimum Three (3) Year Lease?	X		

B	Supplemental Criteria Met-*City Attorney*	Yes	No	NA	Comment
1	Current w/ Applicable Taxes, Fees, Etc.?	X			
2	Subject to Related Foreclosure, Bankruptcy or Defaults?	X			
3	Current Related Code or Ordinance Violations?		X		
4	Applicant Willing to Enter into Agreement w/ Conditions?	X			4 YEAR LEASE
C	**Grant Distribution-*Committee***	**Yes**	**No**		**Comment**
1	Consistency w/ED Grant Distribution Summary	X			
D	**Lease Subsidy Criteria-*Committee***	**Low**	**Medium**	**High**	**Amount/Comment**
1	Number of New Jobs Created?			X	7 -9 PART TIME EMPLOYEES
2	Desirability of Business?			X	
3	Amount of Capital Investment Made?			X	$100,000+ (PER THE APPLICANT)
4	*New Business*-Ability to Attract Other Targeted Businesses?			X	
5	*Business Expansion*-Satisfies Economic Development Needs of City?				N/A
6	*Business Relocation*-Enhance Operations ?				N/A
7	*Business Relocation*-Enhance Employment?				N/A
8	*Lease Extension*-Enhance Operations?				N/A
9	*Lease Extension*-Enhance Employment?				N/A
10	Additional City Council Criteria				N/A

CITY OF DAYTONA BEACH SHORES/COMMERCIAL LEASE SUBSIDY GRANT AGREEMENT WITH GREATER THAN A GYM, INC D/B/A GREATER FITNESS

THIS COMMERCIAL LEASE SUBSIDY GRANT AGREEMENT (hereinafter, the "Agreement") is made and entered into this ___ day of__________, 2020, by and between the City of Daytona Beach Shores, Florida, a Florida municipality, whose mailing address is 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, hereinafter referred to as the "CITY", and Greater Than A Gym, Inc D/B/A Greater Fitness, whose address is 1425 Ocean Shore Blvd. Unit 803, Ormond Beach, FL 32176, a Florida Limited Liability Company, hereinafter referred to as "GRANTEE".

WITNESSETH:

WHEREAS, the City Council of the CITY has enacted Ordinance 2019-06 to further its policy objectives of facilitating the establishment of new businesses and the expansion of existing businesses within a targeted geographical area of the CITY, which area consists of underutilized, vacant or abandoned commercial properties; and

WHEREAS, Ordinance 2019-06 authorizes a program of economic incentives designed to attract new businesses, which are presently underrepresented in the CITY, and to locate such businesses in the targeted area of the CITY for the purpose of providing residents and visitors a wider array of goods, services, entertainment and dining options, additional employment opportunities and, at the same time, expand the tax base of the CITY and eradicate vacant, abandoned and underutilized properties; and

WHEREAS, the economic incentives afforded by the ordinance include, but are not limited to, matching grants to new or existing owners of commercial properties and/or new or existing tenants of commercial businesses in the CITY, subject to specific dollar limits and meeting certain other criteria established by the CITY, which grants may be used for interior buildouts, building façade improvements, structural alterations and/or beautification; and

WHEREAS, an alternative economic incentive in the form of a lease subsidy is also available under the ordinance, subject to specific dollar limits and meeting certain other criteria established by the CITY, to new or existing commercial lease tenants; and

WHEREAS, City Council of the CITY has determined that the investment of public funds in the economic incentive program generally, and in this Agreement in particular, are in the public interest and provide for and accomplish a public purpose; and

WHEREAS, the City Council of the CITY has found and determined that the provisions of this Agreement are consistent with applicable law and implement the provisions of controlling legal authority.

NOW, THEREFORE, in consideration of the terms, provisions and covenants contained herein, the parties hereto do mutually agree as follows:

SECTION 1. <u>RECITALS.</u> The foregoing recitals are true and correct, form a material part of this Agreement upon which the parties have relied and are hereby adopted and incorporated by reference herein.

SECTION 2. <u>PURPOSE AND TERM.</u> Subject to the terms and conditions hereinafter set forth, the CITY shall provide a Lease Subsidy Grant to the GRANTEE and the

GRANTEE shall, in consideration for the receipt of said grant, continuously operate:

Name of Business: Greater Fitness Gym

Located at: 2136 S. Atlantic Avenue (Unit E & F), Daytona Beach Shores, FL 32118

for the term of the of this, being 3 years from the date first stated above.

SECTION 3. TERMS AND CONDITIONS FOR PAYMENT OF LEASE SUBSIDY

(A). The CITY shall pay the Lease Subsidy Grant to the GRANTEE under the terms and conditions of this Agreement as follow:

1. The GRANTEE business must be current in the payment of all taxes, fees, special assessments and charges for services owed to the CITY, the City Of Port Orange, the City of South Daytona, Volusia County, the State of Florida and the US government at the time of application by the GRANTEE for the Lease Subsidy Grant and continuing throughout the term of this Agreement; and

2. The GRANTEE must not be in default of its obligations to any creditor such as would threaten to, or in fact, cause the discontinuance of the business before the end of this Agreement; and

3. The GRANTEE must not be subject to any pending or threatened mortgage or lien foreclosure or bankruptcy proceedings at the time of application by the GRANTEE for the Lease Subsidy Grant and continuing throughout the term of this Agreement; and

4. The GRANTEE must not be in violation of any code or ordinance of the CITY or of any State or Federal law or regulation governing the operation of the

business at the time of application by the GRANTEE for the Lease Subsidy Grant and continuing throughout the term of this Agreement; and

5. The GRANTEE must not engage in any prohibited or nonconforming uses under the code, ordinances or regulations of the CITY or of any law or regulations of the State of Florida and the Federal Government at the time of application by the GRANTEE for the Lease Subsidy Grant and continuing throughout the term of this Agreement; and

6. The GRANTEE must not engage in any business other than the business for which this Lease Subsidy Grant has been approved by the CITY at the time of application by the GRANTEE for the Lease Subsidy Grant and continuing throughout the term of this Agreement, without the prior written approval of the CITY, including any conditions placed on the Grant by the CITY upon approval; and

7. The GRANTEE shall be required to submit such documentation as may be reasonably required by the CITY to verify compliance by the GRANTEE with the terms and conditions of this Agreement prior to payment by the CITY of any Lease Subsidy Grant payment.

8. The GRANTEE shall immediately notify the City Manager if the lease is terminated or if Grantee has received notice of a default from the Landlord.

9. The GRANTEE shall immediately notify the City Manager if the GRANTEE cannot faithfully execute the terms of this agreement or any term or condition of the subject grant approval imposed by the City Council.

(B). The GRANTEEE shall be in default of this agreement under any of the following conditions:

1. The GRANTEE fails to operate the business pursuant to the grant application and business plan provided to the City Council for the consideration of this grant agreement; or

2. The GRANTEE fails to operate the business pursuant to any term or condition imposed by the City Council in the approval of this grant agreement; or

3. The GRANTEEE is in violation of any term or condition in this Agreement.

(C) If the GRANTEE is in violation of any of the terms and conditions of this Agreement, the CITY shall declare a default and future Lease Subsidy Grant payments suspended pending the cancelation provisions of Section 7 for failure to timely cure the default, if any.

SECTION 4. PAYMENT OF LEASE SUBSIDY GRANT BY CITY TO GRANTEE.

(A). Provided the GRANTEE is in compliance with all terms and conditions of this Agreement, the CITY shall pay to the GRANTEE a monthly Lease Subsidy Grant for not more than 3 years and not exceeding a total of $20,000.00 based on the following formula:

1. For the first year of the Lease Subsidy Grant: Monthly rent times 30%. Total year one disbursement shall not exceed $11.992.50.

2. For the second year of the Lease Subsidy Grant: Monthly rent times 20%. Total year two disbursement shall not exceed $7562.50.

3. For the third year of the Lease Subsidy Grant: Monthly rent times 10%. Total year three disbursement shall not exceed $445.

SECTION 5. **<u>DISCLAIMER OF THIRD PARTY BENEFICIARIES.</u>** This Agreement is solely for the benefit of the formal parties hereto, and no right or case of action shall accrue upon or by reason hereon, to or for the benefit of any third party not a formal party hereto.

SECTION 6. **<u>ASSIGNMENT.</u>** This Agreement shall be binding on the parties hereto and their representatives and successors. Neither party shall assign this Agreement or the rights and obligations hereof to any other party.

SECTION 7. **<u>DEFAULT.</u>**

(A). In the event of default by the GRANTEE or the CITY, the aggrieved party shall be entitled to any and all legal remedies available under Florida law.

(B). The aggrieved party shall give the defaulting party written notice of any defaults hereunder and shall allow the defaulting party thirty (30) days from the date of receipt to cure such defaults. Upon the failure to timely cure the default, the aggrieved party may cancel the Agreement by notice as provided below.

SECTION 8. **<u>NOTICES</u>.** Any notice required or allowed hereunder shall be in writing and either (1) personally served upon a party, with an affidavit of service from the server or (2) sent by a commercial delivery service, restricted delivery, or (3) by US mail, certified delivery, with return receipt requested, to the designated address set forth below for that party or such other address as a party may specify by a prior written notice delivered in accordance herewith. If a party cannot be served in the manner prescribed above after two attempts, delivery may be accomplished by publication, one time, in a newspaper of general circulation.

SECTION 9. <u>THE GRANTEE'S MANDATORY COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES, AND PUBLIC RECORDS REQUESTS.</u>

In order to comply with Section 119.0701, *Florida Statutes*, public records laws, the GRANTEE must:

(A). Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.

(B). Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(C). Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(D). Meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the GRANTEE upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

(E). If the GRANTEE does not comply with a public records request, the CITY shall enforce the contract provisions in accordance with this Agreement.

(F). Failure by the GRANTEE to grant such public access and comply with public records requests shall be grounds for immediate unilateral cancellation of this Agreement by the CITY. The GRANTEE shall promptly provide the CITY with a copy of any request to inspect or copy public records in possession of the GRANTEE and shall promptly provide the CITY with a copy of the GRANTEE's response to each such request.

(G). **IF THE GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE GRANTEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CHERI SCHWAB, CITY CLERK, (386) 763-5353, CSCHWAB@CITYOFDBS.ORG, 2990 SOUTH ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118.**

SECTION 10. **<u>SEVERABILITY.</u>** If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be affected. To that end, the terms of this Agreement is declared severable.

SECTION 11. **<u>TIME OF THE ESSENCE.</u>** Time is hereby declared essence to the lawful performance of the duties and obligations contained in this Agreement.

SECTION 12. **<u>APPLICABLE LAW/VENUE.</u>** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida.

SECTION 13. <u>ATTORNEYS FEES.</u> In the event it becomes necessary to institute legal action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover all out-of-pocket expenses and costs and all reasonable attorneys fees, paralegal fees and associated fees and costs from the date of filing until the termination of litigation whether incurred at trial, on appeal, or otherwise.

SECTION 14. <u>NONDISCRIMINATION.</u> The GRANTEE agrees that it will not discriminate against any business invitee, employee or applicant for employment because of race, color, religion, sex, age, national origin or disability. The GRANTEE, moreover, shall comply with all the requirements of the *Americans with Disability Act*, the regulations of the Federal government issued thereunder, and any and all requirements of State law related thereto.

SECTION 15. <u>INTERPRETATION.</u> The CITY and the GRANTEE agree that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another in the interpretation of this Agreement.

SECTION 16. <u>MODIFICATION.</u> This Agreement may not be amended, changed, or modified, and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith, approved by the City Council of the CITY and the GRANTEE and executed by all parties to this Agreement.

SECTION 17. <u>ENTIRE AGREEMENT: EFFECT IN PRIOR AGREEMENT.</u>

This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment.

IN WITNESS WHEREOF, the parties hereto have hereunder executed this Agreement in the date and year first above written.

ATTEST: **CITY OF DAYTONA BEACH SHORES**

___________________________ ___________________________

Cheri Schwab, City Clerk Nancy J. Miller, Mayor

____

Michael T. Booker, City Manager

Approved as to form:

____

JOHN CARY, CITY ATTORNEY

GREATER FITNESS, GRANTEE

ATTEST:

__________________________________ __________________________________

William N. Simons - Owner

: