

**RESOLUTION NO. 2012-594**

**RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY, AUTHORIZING THE TOWNSHIP OF BARNEGAT TO ENTER INTO A LEASE AGREEMENT WITH GUNNING RIVER MALL, LLC FOR THE TOWNSHIP TO LEASE 849 WEST BAY AVENUE, BARNEGAT TOWNSHIP, NEW JERSEY, AND OTHERWISE KNOWN AS BLOCK 114, LOT 6, FOR THE PURPOSE OF THE TOWNSHIP TO ESTBALISH A DONATION CENTER FOR THE SUPPORT OF THE VICTIMS OF SUPERSTORM SANDY.**

**WHEREAS**, the Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey (hereinafter referred to as the "Township") desires to lease 849 West Bay Avenue, located in the Township of Barnegat, County of Ocean, and State of New Jersey, and otherwise known as Block 114, Lot 6 on the Tax Map of the Township of Barnegat (hereinafter the "Property").

**WHEREAS**, the Township desires to lease the Property from Gunning River Mall, LLC for the purpose of establishing a donation center for the support of victims of Superstorm Sandy; and

**WHEREAS**, the Township has reviewed the Lease Agreement attached hereto and believes that it is in the best interests of the Township of Barnegat for the Township to enter into the Lease Agreement for the Property with Gunning River Mall, LLC; and

**NOW, THEREFORE, BE IT RESOLVED**, this 3rd day of December, 2012, by the Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey, as follows:

1. The Township authorizes the Township Administrator to execute the attached Lease Agreement for the Township to lease the Property from Gunning River Mall, LLC pursuant to the terms of the Lease Agreement.

**DASTI, MURPHY  
McGUCKIN, ULAKY,  
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COUNSELLORS AT LAW

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P.O. BOX 1057  
FORKED RIVER, N.J. 08731

2. The Township authorizes and directs the Mayor, Township Administrator, and Township Clerk to execute any and all necessary documents in order to implement the intent of this Resolution.

3. A certified copy of this Resolution shall be forwarded by the Township Clerk to the following:

- (a) Honorable Alfonse Cirulli, Barnegat Township Mayor;
- (b) David Breeden, Township Administrator;
- (c) John Hess, P.E.;
- (d) Jerry J. Dasti, Esquire; and
- (e) The Barnegat Township Planning Board

**CERTIFICATION**

I certify that the foregoing Resolution was duly adopted by the Township of Barnegat at a meeting held on December 3, 2012, a quorum being present and voting in the majority.

  
\_\_\_\_\_  
**SHARON AUER**, Acting Township Clerk

Prepared by:

DASTI, MURPHY, McGUCKIN, ULAKY,  
CHERKOS & CONNORS  
Forked River, New Jersey 08731

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THIS INDENTURE OF LEASE, dated as of the \_\_\_\_ day of \_\_\_\_\_, 2012, between:

Gunning River Mall, LLC, a New Jersey Limited Liability Company, with a mailing address of 143 Route 70, Toms River, New Jersey 08755, hereinafter referred to as

"LANDLORD"

and

Township of Barnegat, a Municipal Corporation of the State of New Jersey, with a mailing address of 900 West Bay Avenue, Barnegat, New Jersey 08005, hereinafter referred to as

"TENANT"

WITNESSETH:

Landlord and Tenant hereby agree with each other as follows:

## ARTICLE I

### PREMISES AND TERM

#### SECTION 1.1 PREMISES AND USE

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord two units located in 849 West Bay Avenue, Barnegat, (hereinafter the "Premises") located in the Township of Barnegat, County of Ocean, and State of New Jersey, and otherwise known as Block 114, Lot 6 on the Tax Map of the Township of Barnegat. The Premises is approximately 1,250+/- square feet per unit for a total of approximately 2,500+/- square feet.

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Tenant covenants and agrees that it shall use the Premises for no other purpose than as its regional donation center for the support of victims of Superstorm Sandy (hereinafter "Tenant's Intended Use"). The Tenant shall use the Premises solely for Tenant's Intended Use and shall not part with possession or enter into any sublease with respect to the Premises or any part thereof. This Lease is made subject to all liens, encumbrances, easements, restrictions, covenants and zoning laws and all regulations affecting or governing the Premises, provided the same do not prevent the use and enjoyment of the Premises by Tenant, for Tenant's Intended Use.

**SECTION 1.2 TERM**

A. The term of this Lease shall be from the approval of the Tenant to enter into this Lease at the next meeting of the Barnegat Township Committee until January 31, 2013 ("Term") in accordance with the payment of Rent, as set forth in Section 2.1. The effective date of this Lease shall be upon signature, delivery, and approval at the next meeting of the Barnegat Township Committee ("Effective Date").

B. The commencement date this Lease shall be the next day following the approval of this Lease at the meeting of the Barnegat Township Committee ("Commencement Date"). Upon the occurrence of the Commencement Date, Landlord shall deliver to Tenant possession, free of existing tenancies, of the Premises, the Term of this Lease shall commence and Rent shall become due and payable. Should Landlord fail to deliver possession, Tenant shall be free to cancel this Lease or extend Landlord's delivery date so that this Lease may commence.

C. This Lease shall, terminate at the end of the original Term hereof, or any extension or renewal thereof, without the necessity of any notice from either Landlord or Tenant to the same.

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**SECTION 1.3 DUE DILIGENCE PERIOD**

A. Prior to executing this Lease, Tenant shall have the opportunity to inspect the Premises to assure that the Premises can be utilized for Tenant's

Intended Use, as provided in Section 1.1. Tenant, in Tenant's sole discretion may cancel this Lease if Tenant determines the Premises is not suitable for Tenant's Intended Use.

B. Landlord shall disclose the location of any and all underground storage tanks ("USTs") and aboveground storage tanks ("ASTs"), if any.

#### **SECTION 1.4 TENANT'S OPTION TO EXTEND**

A. Provided Tenant is not in default of this Lease, Tenant shall have the Option to Extend the Lease for an additional thirty (30) days.

B. Exercise of Option to Extend

It shall be an effective exercise of Tenant's Option to Extend by Tenant providing written notice to Landlord not later than ten (10) days prior to the end of the Term.

## **ARTICLE II**

### **RENT AND OTHER CHARGES**

#### **SECTION 2.1 RENT**

Tenant covenants to pay to Landlord without previous demand therefore and without any setoff or deduction whatsoever, Rent during the Term hereof as follows:  
One Thousand Dollars (\$1,000.00) per month ("Rent").

#### **SECTION 2.2 EXTENSION OF LEASE**

In accordance with Section 1.4, Tenant shall have the right to extend this Lease for an additional thirty (30) days at a rent of \$1,000.00 per month.

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SECTION 2.3 UTILITIES

A. Tenant shall cause all utilities to be registered in its own name and Tenant shall be responsible for the payment of such utilities.

SECTION 2.4 TAXES

A. Real estate taxes shall be the responsibility of the Landlord.

i. The term "real estate taxes" shall be deemed to mean all taxes and assessment, special or otherwise, assessed upon or with respect to the ownership of and/or all other taxable interests, imposed by Federal, State or local governmental authority or any other taxing authority having jurisdiction over the leased premises.

SECTION 2.5 MISCELLANEOUS RENT AND LEASE PROVISIONS

A. Additional Rent. No additional rent shall be required.

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SECTION 2.6 SECURITY

No security deposit is required.

## ARTICLE III

### LANDLORD'S COVENANTS

#### SECTION 3.1 PERMITTED USE OF PREMISES

Landlord represents and warrants the Premises is suitable for Tenant's Intended Use. During Tenant's Due Diligence Period, as set forth in Section 1.3, should Tenant discover that the Premises is not suitable for Tenant's Intended Use then Tenant shall be able to terminate this Lease.

#### SECTION 3.2 QUIET ENJOYMENT

Landlord covenants that it has lawful authority to execute this Lease and that upon Tenant paying Rent and performing and observing all of Tenant's other lease obligations, Tenant may peaceably and quietly have, hold and enjoy the Premises throughout the Term.

#### SECTION 3.3 NOTICE OF DEFAULT

Landlord covenants to provide Tenant written notice of any default relating to the Premises as soon as possible so that Tenant may be able to cure same.

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**SECTION 3.4 RIGHT TO CURE LANDLORD'S DEFAULT**

Tenant has the right, upon prior written notice to the Landlord if notice can reasonably be given and otherwise without notice, to comply with and perform any term, covenant, condition, or agreement to which Landlord is in default, in which event costs incurred or payments made by Tenant, Landlord shall apply as a credit against Rent.

**SECTION 3.5 NO BROKER**

Landlord covenants, warrants and represents that there was no broker instrumental in negotiating or consummating this Lease, and that no conversations or prior negotiations were had with any broker concerning the leasing of the Premises. Tenant and Landlord agree to hold harmless from and against any claims for brokerage commission arising out of any conversations or negotiations had by either party with any broker.

**ARTICLE IV**

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TENANT'S COVENANTS

**SECTION 4.1 UTILITIES**

Tenant shall cause all utilities to be registered in its own name and shall be responsible to pay such utilities.

SECTION 4.2 ADDITIONAL AFFIRMATIVE OBLIGATIONS AND COVENANTS

OF

TENANTS

Tenant covenants and agrees, at its own cost and expense, at all times during the Term to:

A. Keep Premises Clean and Attractive. Keep and maintain the Premises (including, without limitation, exterior and interior portions of all windows, doors and all other glass) in a neat and clean condition.

B. Inspection. Tenant agrees that Landlord and Landlord's agents, employees or other representatives, shall have the right to enter into an upon the premises or any part thereof, at all reasonable hours, for the purpose of examining the same or making such repairs or alterations therein as may be necessary for the safety and preservation thereof. This clause shall not be deemed to be a covenant by Landlord nor be construed to create an obligation on the part of Landlord to make such inspection or repairs.

C. Compliance with Laws, Etc. Tenant shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and Municipal Governments or Public Authorities, applicable to and affecting the Premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the Premises, during the Term; and shall issue policies of insurance covering the Premises and its contents, for the prevention of fire or other damage or injury, at Tenant's own cost and expense.

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D. Covenant Against Liens. Tenant shall not do any act, or make any contract which may create or be the foundation for any lien or other encumbrance upon any interest of Landlord or any ground or underlying lessor in any portion of the Leased Premises.

E. Due Authority. Tenant covenants that the governing body of the Township of Barnegat has duly adopted a resolution, in the form attached hereto as Exhibit A, authorizing the Township of Barnegat to enter into this Lease.

#### SECTION 4.3 NO BROKER

Tenant covenants, warrants and represents that there was no broker instrumental in negotiating or consummating this Lease, and that no conversations or prior negotiations were had with any broker concerning the leasing of the Premises. Tenant and Landlord agree to hold harmless from and against any claims for brokerage commission arising out of any conversations or negotiations had by either party with any broker.

## ARTICLE V

### INSURANCE & CASUALTY

#### SECTION 5.1 REQUIRED INSURANCE COVERAGE

A. Tenant covenants to provide on or before the Commencement Date, as set forth in Section 1.2 and to keep in force during the Term insurance coverage as follows:

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i. Comprehensive General Liability Insurance, with contractual liability endorsement, relating to the Premises and its appurtenances on an occurrence basis with a minimum limit of liability in the amount of Five Hundred Thousand Dollars (\$500,000.00) for bodily injury, personal injury or death to any one or more persons, or with respect to damage to Premises by water or otherwise;

ii. Fire and Extended Coverage, "All Risk" of physical loss form, insuring at a minimum, those perils insured against by the ISO Special Personal Property Form in an amount, which in Landlord's opinion is adequate to cover the cost of replacement of all personal property, decorations, trade fixtures, furnishings, equipment (including the heating-air conditioning unit) and all contents therein, whether owned by Tenant, Landlord or a third party;

B. All of the aforesaid insurance shall be issued in the name of Landlord and Tenant, and shall be written by one or more responsible insurance companies satisfactory to Landlord and in the form satisfactory to Landlord; all such insurance may be carried under a blanket policy covering the Premises and any other of Tenant's facilities; all such insurance shall contain endorsements that: (1) such insurance may not be cancelled or amended with respect to Landlord (or its designees) except upon fifteen (15) days prior written notice by registered mail to Landlord (and such designees) by the insurance company; (2) Tenant shall be solely responsible for payment of premiums and that Landlord (or its designees) shall not be required to pay any premium for such insurance; (3) in the event of payment of any loss covered by such policy, Landlord (or its designees) shall be paid first by the insurance company for its loss.

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Section 5.2 FIRE OR OTHER CASUALTY

If all or any part of the Premises shall be damaged or destroyed by fire or other casualty insured under the All Risk ISO Special Building form of fire insurance policy applicable to the Premises, Landlord, shall, except as otherwise provided herein, repair and/or rebuild the same with reasonable diligence. If there should be a substantial interference with the operation of Tenant's Intended Use on the Premises as a result of such damage or destruction which requires Tenant to temporarily close its business to the public, the Rent shall abate during such period of closure.

ARTICLE VI

DEFAULT

SECTION 6.1 DEFAULT

Should Tenant at any time be in default with respect to any rental payments or other charges payable by Tenant under this Lease, and should such default continue for a period for fifteen (15) days after written notice from Landlord to Tenant, then Landlord shall have the right to declare the Lease Term ended and to re-enter the Premises and take possession.

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ARTICLE VII

MISCELLANEOUS PROVISIONS

SECTION 7.1 COVENANT NOT TO DISTURB

So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any cure period, Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies arising upon default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies and Mortgagee shall not terminate or disturb Tenant's possession of Landlord's Premises under the Lease, except in accordance with the terms of the Lease.

SECTION 7.2 NOTICES

Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless served in writing and sent by United States registered or certified mail, return receipt requested, directed, if to Tenant, to the Premises or at the address set forth for Tenant hereinabove, and if to Landlord at the address set forth for Landlord hereinabove, or such other address as either party may designate by notice from time to time. Notice shall be deemed served when mailed. Each and all of the Rents payable by Tenant to Landlord pursuant to this Lease shall be paid at the same address where a notice to Landlord is herein required to be sent or such other address as directed by Landlord.

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SECTION 7.3 APPLICABLE LAW

This Lease shall be construed and governed under the laws of the State of New Jersey and venue shall be in the State of New Jersey in the County of Ocean.

SECTION 7.4 COUNTERPARTS

This Lease may be executed in counterparts, each of which shall be deemed an original.

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

WITNESS or ATTEST:

GUNNING RIVER MALL, LLC, Landlord

\_\_\_\_\_  
ROBERT H. TAFF, Managing Member

WITNESS or ATTEST: TOWNSHIP OF BARNEGAT, Tenant

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\_\_\_\_\_

  
\_\_\_\_\_

DAVID BREEDEN, Twp. Administrator

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

WITNESS or ATTEST:

*Pauline O'Connell*

GUNNING RIVER MALL, LLC, Landlord

*Robert H. Taff*

ROBERT H. TAFF, Managing Member

WITNESS or ATTEST:

\_\_\_\_\_

TOWNSHIP OF BARNEGAT, Tenant

DAVID BREEDEN, Twp. Administrator