

February 8th, 2022 – Presented for approval.

R2022-9: AUTHORIZING THE PURCHASE OF TWO PARCELS OF REAL ESTATE LOCATED IN THE OCEANFRONT REDEVELOPMENT PROJECT AREA

Applicant/Purpose: Authorize staff to complete acquisition of two parcels within the downtown core.

Brief:

- Parcels are as follows: TMS: 181-07-03-002 and 181-07-03-003
- Through the adoption of the Pavilion Area Master Plan in 1999 and Tax Increment Financing District in 2008, and the Downtown Master Plan in 2019, City Council has committed to restore the downtown to a prominent commercial district.
- This area of the City has been on the decline for more than 20 years. City Council has adopted the Downtown Master Plan and has made major strides to implement that plan.
- The City recognizes that we must take bold steps to bring the downtown back.
- Property acquisition and assemblage is necessary to create meaningful redevelopment in this area.
- We were able to purchase these properties and the opportunity was too good to pass up considering the connectivity to prior purchases.
- The City continues to invest in redevelopment efforts and infrastructure upgrades in these areas.
- The referenced properties are within the TIF district, and are strategically located for future redevelopment.

Issues:

- To restore downtown to the prominent commercial district, the acquisition is necessary.
- These parcels are located within the TIF district and situated next to the Pavilion site, which represents the most critical redevelopment opportunity in the city.

Public Notification: Normal meeting notification.

Alternatives: Do not purchase the property.

Financial Impact: The City will acquire these parcels for a total price of \$1,950,000.

Manager's Recommendation: I recommend approval.

Attachment(s): Proposed resolution, purchase and sale agreement.

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

**AUTHORIZING THE PURCHASE OF
TWO PARCELS OF REAL ESTATE
LOCATED IN THE OCEANFRONT
REDEVELOPMENT PROJECT AREA**

WHEREAS, Myrtle Beach's Oceanfront Redevelopment Project Area, generally described as the areas east and west of Kings Highway from 14th Avenue S. to 22nd Avenue N., once was the thriving center of commerce in the City; and

WHEREAS, this central business district, including the oceanfront, once served as the City of Myrtle Beach's original commercial hub and the primary tourism amusement area for the entire Grand Strand; and

WHEREAS, through the adoption of Ordinance 2008-78, enacted October 21, 2008, City Council approved a redevelopment plan entitled "Tax Increment Financing Plan for the Oceanfront Redevelopment Project Area" (hereinafter "Oceanfront Redevelopment Project"); and

WHEREAS, over time, this downtown area experienced a loss of business relative to other parts of the community, as new residential and commercial areas developed elsewhere, and some of the structures in the central downtown area deteriorated through lack of use and maintenance; and

WHEREAS, this lack of new business activity, pedestrian traffic and residential involvement in the downtown area created a stagnant appearance, with resulting concerns about prospects for redevelopment and the overall image that such a primary gateway into Myrtle Beach should project; and

WHEREAS, while many elements of the Pavilion Area Master Plan have been accomplished, the conditions described above in the immediate downtown area have combined to result in an environment which deters interest in new private development; and

WHEREAS, City Council previously confirmed its commitment to restore the downtown and the central oceanfront amusement area to a prominent commercial role, as well as to enhance its character as a significant gateway into the city and a prime location for tourism, entertainment, culture, arts and innovation; and

WHEREAS, through the adoption of Resolution 2019-20, enacted March 12, 2019, City Council adopted the Downtown Master Plan and the Downtown Master Plan Implementation Plan to facilitate redevelopment, increase business activity, and to serve as the general blueprint for future revitalization and redevelopment of the area traditionally known as "Downtown Myrtle Beach"; and

WHEREAS, by Resolution 2020-37, City Council adopted the Advanced Master Plan of the Downtown Master Plan to further the plan and vision of creating a resilient, adaptive, sustainable and innovative district; and

WHEREAS, property acquisition within the Downtown Master Plan area is necessary to meet the overall redevelopment and revitalization goals; and

1 WHEREAS, South Carolina law authorizes municipalities to take actions not inconsistent
2 with the Constitution and general laws of this State, regarding any subject the
3 municipality finds necessary and proper for the security, general welfare and
4 convenience of the municipality. Specifically, municipalities are authorized to own and
5 possess property; and
6

7 WHEREAS, the City of Myrtle Beach recognizes the need to acquire real property within
8 the Downtown Master Plan area and that the acquisition is necessary and proper for the
9 general welfare and convenience of the municipality, and furthers the overarching
10 commitment to restore this district as the prominent commercial district in Myrtle Beach.
11

12 NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:
13

14 The above recitals are adopted and incorporated into this Resolution.
15

16 It is necessary and desirable and in the public's interest and welfare to acquire the
17 following properties within the Oceanfront Redevelopment District:
18

19 TMS: 181-07-03-002 and 181-07-03-003
20

21 The properties to be acquired are shown in red on the attached Exhibit A.
22

23 The purchase of the real property for a negotiated price of \$1,950,000 is hereby
24 approved.
25

26 The City Manager, the Assistant City Manager, the Chief Financial Officer, the City
27 Attorney and the City Clerk, for and on behalf of the City, are fully empowered and
28 authorized to take such further action and to execute and deliver such additional
29 documents as may be necessary to effectuate the acquisition and transfer and the action
30 of such officers consistent herewith is hereby fully authorized. All actions taken in the
31 name of or on behalf of the City in connection with the property acquisition prior to the
32 effective date of this Resolution are expressly ratified and confirmed.
33

34 SIGNED, SEALED and DATED, this 22nd day of February, 2022.
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38 BRENDA BETHUNE, MAYOR

39 ATTEST:
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42 JENNIFER ADKINS, CITY CLERK
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CONTRACT OF SALE

THIS CONTRACT OF SALE (this "*Agreement*") entered into by and between **COOL-N-EASY, LLC**, a South Carolina limited liability company (hereinafter referred to as "*Seller*") and **SPE SEVENTH AVENUE MYRTLE BEACH, LLC**, a South Carolina limited liability (hereinafter referred to as "*Purchaser*") on December 13th, 2021 (the "*Effective Date*");

WITNESSETH:

WHEREAS, Seller is the owner of real property located in the City of Myrtle Beach, Horry County, South Carolina, identified as TMS/PIN No.: 181-07-03-002/444-01-04-0030 and 181-07-03-003/444-01-04-0029, consisting of Two (2) separate lots, more particularly described on Exhibit "A" attached hereto (the "*Property*"); and

WHEREAS, Seller is the Lessor under that certain lease with G. Wayne Ray and The Launch Pad, Inc. with regard to a portion of the Property (the "*Launch Pad Lease*"); and

WHEREAS, the Launch Pad Lease has expired under the original term of the written agreement, however Seller has continued to extend the Launch Pad Lease under a month-to-month term; and

WHEREAS, the terms of the Launch Pad Lease provides for (i) a right of first refusal; and (ii) an option to purchase in favor of the tenant under the Launch Pad Lease, therefore out of an abundance of caution, Seller and Purchaser agree that the obligations of Seller shall be contingent upon Seller presenting a copy of this fully executed Agreement to the tenant under the Launch Pad Lease, and such tenant declining to exercise either of the right of first refusal or option to purchase, Seller agreeing to provide Purchaser of notice of such tenant's election to either exercise or waive each of the right of first refusal or option to purchase, as soon as possible following such tenant's decision;

NOW, THEREFORE Seller agrees to sell and the Purchaser agrees to purchase the Property, subject to the terms and conditions of this Agreement, to wit:

1. **PROPERTY.** The Property described above, is the subject of this Agreement.
2. **PURCHASE PRICE.** The Purchaser shall pay the Purchase Price for the Property which is to be conveyed by the Seller to the Purchaser, in an amount equal to One Million Nine Hundred Fifty Thousand and No/100 (\$1,950,000.00) Dollars (the "*Purchase Price*"), payable as follows:
 - a. **Earnest Money.** Simultaneously with the execution of this Contract by both parties, an earnest money deposit ("*Earnest Money*") in the amount of Fifty Thousand and 00/100 (\$50,000.00) Dollars, will be delivered by Purchaser to Robert S. Guyton, P.C. ("*Escrow Agent*") to be deposited in its Escrow Account to be held in trust and applied to the Purchase

Price at the time of the closing, refunded to Purchaser or forfeited to Seller pursuant to the terms of this Agreement.

b. Cash at Closing. Purchaser shall pay to Seller, the Purchase Price, less the application of the Earnest Money, at Closing.

c. Refunds and Reimbursements. Notwithstanding any provision herein to the contrary, Seller confirms and agrees that, in the event Seller cannot comply with the terms of the Contract, or in the event a title defect exists, other than the "***Permitted Exceptions***", as that term is defined herein, for which Seller is unable to provide a cure, then Purchaser shall be entitled to a refund of any and all Earnest Money deposits.

3. TITLE. Real Property. The title to the Property to be delivered by the Seller to the Purchaser will be by general warranty deed which shall convey the Property in fee simple, subject to the following:

- A. General real estate taxes for 2022, and subsequent years.
- B. Conditions, covenants, restrictions, and easements of record, including, without limitation, those appearing on any plats.
- C. Governmental statutes, ordinances, rules and regulations.
- D. The "***Permitted Exceptions***" as defined below.
 - (i) Any monetary encumbrances, which shall be satisfied at the Closing.
 - (ii) Any other matters effecting title which are recorded in the public records of Horry County, South Carolina, specifically including any master deed, declaration of covenants, conditions and restrictions.

4. INSPECTION OF THE PROPERTY. From the Effective Date up and until 5:00 PM on the later to occur of (i) the date which is Thirty (30) days following notice from Seller that the tenant under the Launch Pad Lease waiving the right of first refusal and option to purchase under said lease; or (ii) January 15, 2022 (the "***Inspection Period***"), Purchaser, upon providing written notice to the Seller as to the scheduled time for any such activities, shall have the right and privilege to have independent contractors or consultants inspect, survey and/or test the Property to determine its condition, including but limited to tests or assessments as to the environmental condition of the Property, examination of equipment, supplies and materials, and review of all notes and liens. In the event Purchaser should elect, for any reason, or no reason, to terminate this Agreement prior to the expiration of the Inspection Period, Purchaser may do so and shall be entitled to the full return of the Earnest Money.

5. PERMITTING OF THE PROPERTY. From the Effective Date until the Closing, Purchaser, with the Seller's cooperation, shall have the right to submit (i) an application

for a zoning amendment under the ordinances of the City of Myrtle Beach; (ii) site plan approval and any other approvals required for Purchaser's intended use of the Property.

6. **CONDITION OF THE PROPERTY.** Seller represents and warrants that the Property is in compliance with all applicable permits, regulations, ordinances and other requirements of any governmental, or quasi-governmental agency having jurisdiction over the Property. In addition, Seller shall provide to Purchaser, within Ten (10) days of the Effective Date, copies of all maps, plats, studies, reports, appraisals, title insurance policies, property tax bills, personal property inventories, permits, approvals, and other information related to the Property which is the subject of this Agreement, which Seller possesses or may reasonably acquire from its agents, employees, contractors and consultants. Purchaser acknowledges that such information is being provided by Seller for information purposes only and without warranty as to the accuracy or completeness of such information.

7. **DELIVERY OF DEED, RECORDING COSTS, AND CLOSING COSTS.** The cost of preparation of the deed, general assignment, and the applicable recording fee based upon the Purchase Price of the Property shall be paid by Seller. The balance of costs for recording the deed, bill of sale, assignment of notes and liens, title examination and all other loan closing costs, title insurance premiums and recording costs shall be paid by the Purchaser.

8. **TAXES, ASSESSMENTS, ETC.** Taxes and assessments, if applicable, shall be prorated as of the date of Closing based upon the latest available assessment and tax information on the Property. Roll-back taxes shall be paid by the Seller. To the extent Roll-back taxes are not due and payable at Closing, Purchaser shall be entitled to a credit against the Purchase Price in an amount equal to the estimated roll-back taxes to be assessed against the Property, and following Closing, Purchaser shall thereafter be responsible for payment of such roll-back taxes.

9. **RISK OF LOSS.** Risk of loss or other damage to the Property and the responsibility and control of same shall remain with the Seller until delivery of the deed. In the event of damage to the Property, Purchaser shall have the option of either terminating this Agreement and receiving a refund of the Earnest Money or closing with an assignment of all insurance proceeds.

10. **BROKERAGE COMMISSION.** Seller warrants and represents to Purchaser that Seller has dealt with no real estate agent or broker with regards to this transaction, and Seller shall also indemnify, defend and hold Purchaser harmless from any real estate commission or claim therefore by any person claiming to have acted for or on behalf of Seller.

Purchaser warrants and represents to Seller that it has dealt with no real estate agents or brokers with regard to this transaction, and Purchaser shall indemnify, defend and hold Seller harmless from any real estate commission or claim therefore by any person claiming to have acted for or on behalf of Purchaser or claiming to have brought the Property to Purchaser's attention.

11. **CLOSING.** This transaction will be closed on or before 5:00 PM on the later to occur of (i) Fifteen (15) days following the expiration of the Inspection Period; or (ii) January 31, 2022, and upon Five (5) days prior written notice to Seller by Purchaser (the "**Closing**").

12. **PRORATION OF INCOME AND EXPENSES.** In the event this transaction closes on a day that is not the last day of a month, income for the month, if any, shall be pro-rated between Seller and Purchaser. To the extent Seller has pre-paid expenses beyond the month in which Closing occurs, Purchaser shall pay to Seller at Closing, an additional amount equal to such pre-paid expenses.

13. **POSSESSION.** Seller shall deliver possession at Closing.

14. **DEFAULT.** In the event that either party fails to perform its respective obligations hereunder, except as excused by the other's default, the party claiming default will make written demand for performance. If the Seller fails to perform (for any reason other than an inability to convey the quality of title set forth in Paragraph 3 of this Agreement and fails to comply with the written demand within ten (10) days after notice thereof, the Purchaser may elect to either (i) sue for specific performance on the part of Seller; or (ii) terminate this Agreement and receive a refund of all Earnest Money and any other deposits or fees paid hereunder. If the Purchaser fails to perform and fails to comply with the written demand within ten (10) days after notice thereof, the Seller will have the right to terminate this Agreement and Seller will retain the non-refundable Earnest Money.

15. **ASSIGNMENT.** Purchaser shall have the right to assign this Agreement, without the consent of Seller. Such assignment shall be effective upon Purchaser providing Seller with notice of such assignment, together with a copy of the assignment from, which shall include the name and physical address of the assignee, and assigning all of Purchaser's rights in this Agreement, including any Earnest Money deposit, or any other fees or deposits, to such assignee. For purposes of this Agreement, upon such assignment, the assignee shall thereafter be deemed the Purchaser.

16. **SURVEY.** Purchaser, at Purchaser's expense, may elect to have a boundary survey of the Property prepared, for approval by Seller, such approval not to be unreasonably withheld, which sets forth the boundary of the Property, easements, restricted areas and roadways, to be approved by the City of Myrtle Beach, and recorded in the public records of Horry County, prior to the expiration of the Inspection Period (the "*Survey*"). The Survey, should Purchaser elect to prepare such, shall be the basis of the description for conveyance of the Property at Closing.

17. **APPLICABLE LAW.** This Agreement shall be construed and enforced according to the laws of the State of South Carolina.

18. **CONDEMNATION.** If any part of the Property shall be condemned or otherwise taken through any power of eminent domain prior to Closing and the Property can still be used for its intended purpose, the Purchase Price shall be reduced pro rata by the amount of Property so taken. If all of the Property or such amount is taken as would prevent the Property from being used for its intended use, then such action shall terminate the Agreement, the earnest money shall be refunded to Purchaser, and the contract shall be completely void, relieving both Purchaser and Seller of all duties and/or obligations hereunder.

19. **EARNEST MONEY.** Escrow Agent does not guarantee payment of a check or checks accepted as Earnest Money. Purchaser and Seller authorize the Escrow Agent to hold the Earnest Money in a trust account, and to disburse the same in accordance with the terms hereof and hereby release Escrow Agent for liability associated with said action. After deposit, the Earnest Money shall be non-refundable, other than in accordance with the terms of this Agreement.

20. **GENERAL PROVISIONS:**

- a. This written Agreement, including all Exhibits attached hereto and documents to be delivered pursuant hereto, shall constitute the entire agreement and understanding of the parties, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties or covenants not contained herein.
- b. This Agreement may be amended only by a written memorandum subsequently executed by all of the parties hereto.
- c. No waiver of any provision or condition of this Agreement by any party shall be valid unless in writing signed by such party. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act or default.
- d. Time is of the essence of this Agreement. In the computation of any period of time provided for in this Agreement or by law, any date falling on a Saturday, Sunday or legal holiday shall be deemed to refer to the next day which is not a Saturday, Sunday or legal holiday.
- e. In the event that any provision of this Agreement shall be unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid, or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if said provision had been incorporated herein as so limited, or as if said provision had not been included herein, as the case may be.
- f. Headings of paragraphs are for convenience of reference only and shall not be construed as a part of this Agreement.
- g. This Agreement is binding on the parties hereto and on their several successors, heirs, executors or administrators, as the case may be.
- h. This Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together as but a single instrument.
- i. The Effective Date shall be the date upon which both parties have executed this Agreement.

IN WITNESS WHEREOF, the Seller and Purchaser have executed this Agreement the date below their respective signatures.

SELLER:

COOL-N-EASY, LLC, a South Carolina limited liability company

WITNESSES:

Ashley S. Hein
Name: Ashley S. Hein
Tisha A. McNutt
Name: Tisha A. McNutt

By: J. Clayton Nance
Name: J. Clayton Nance
Title: Member

PURCHASER:

SPE SEVENTH AVENUE MYRTLE BEACH, LLC, a South Carolina limited liability company

WITNESSES:

Pamela Smith
Name: Pamela Smith
Ryan McCallar
Name: Ryan McCallar

By: [Signature]
Name: James S. Gump
Title: General Manager

EXHIBIT "A"

Description of Property

Parcel 1:

ALL AND SINGULAR that certain piece, parcel or lot of land, and improvements thereon, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being more particularly described as follows: BEING LOT NO. NINE (9) OF BLOCK THIRTY-ONE (31) OF THE HOTEL SECTION OF MYRTLE BEACH, as shown on a map by N.C. Hughes, Jr., Engineer, dated November, 1933 and recorded in the Office of the Register of Deeds for Horry County, in Plat Book 1 at Page 116, reference to which is craved as forming a part of these presents.

SAID CONVEYANCE is subject however, to restrictions, covenants and easements of record.

DERIVATION: This being the same property conveyed to Cool-N-Easy, LLC by Deed of Joan S. Nance and John Clayton Nance, recorded August 9, 2004 in Deed Book 2773 at Page 1345, in the public records of Horry County, South Carolina.

TMS/PIN No.: 181-07-03-002/444-01-04-0030

Parcel 2:

ALL AND SINGULAR that certain lot, and improvements thereon, in Dogwood Neck Township, the City of Myrtle Beach, Horry County, South Carolina, Dogwood Neck Township, and designated as LOT 10, IN BLOCK 31, HOTEL SECTION OF MYRTLE BEACH, as shown in Plat Book 1, at Page 116, reference to which is craved as forming a part of these presents.

DERIVATION: This being the same property conveyed to Cool-N-Easy, LLC by Deed of Joan S. Nance, recorded August 9, 2004 in Deed Book 2773 at Page 1349, in the public records of Horry County, South Carolina.

TMS/PIN No.: 181-07-03-003/444-01-04-0029

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) CONTRACT EXTENSION

WHEREAS, Cool-N-Easy, LLC, (the "Seller"), and SPE Seventh Avenue Myrtle Beach, LLC (the "SPE"), entered into an Agreement of Sale and Purchase (the "Agreement") for the sale and purchase of Lots 9 and 10, Block 31, Hotel Section, Myrtle Beach; and

WHEREAS, SPE has assigned SPE's rights, interests, and obligations to the City of Myrtle Beach (hereinafter "Buyer"); and,

WHEREAS, the parties previously agreed to close the transaction on February 15, 2022; and

WHEREAS, Purchaser request that the closing date be extended to no later than February 25, 2022; and,

WHEREAS, the Purchaser, as an inducement to the Seller to extend closing, has offered to deem the due diligence period under the Agreement to have expired and the Earnest Money be non-refundable, except for default by the Seller under the Contract.

NOW THEREFORE, it is hereby agreed that the contract is hereby amended to extend the Closing Date as follows:

Closing shall occur on or before February 25, 2021.

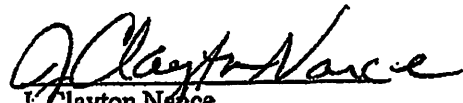
The Due Diligence Period provided by the Agreement is deemed ended, and that the Earnest Money deposited under the agreement is non-refundable, except for default of the agreement by the Seller.

Except as stated above, all terms and conditions of said contract shall remain in full force and effect.

Effective date: _____

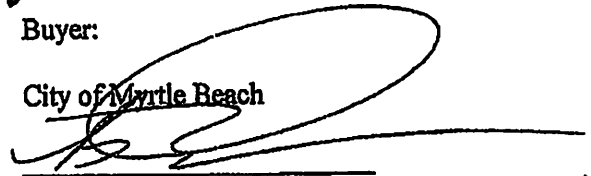
SELLER

Cool-N-Easy, LLC


J. Clayton Nance

Buyer:

City of Myrtle Beach


Authorized Agent

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

CONTRACT MODIFICATION AND
ESCROW AGREEMENT

This Escrow Agreement is entered into this 15th day of February, 2022 by and between The City of Myrtle Beach as ("Buyer") and Coon-N-Easy, LLC as ("Seller").

WHEREAS, Buyer has been assigned by SPE Seventh Avenue Myrtle Beach, LLC (hereinafter SPE) all of SPE's rights and obligation under a contract between SPE and Seller dated December 13, 2021, as amended (the "Contract") for the sale and purchase of real property located in Horry County, South Carolina, having TMS# 181-07-03-002 and 181-07-03-003, the "Property"; and

WHEREAS, the Buyer and the Seller desire to modify the Contract in this Contract Modification and Escrow Agreement (hereinafter "Escrow Agreement", as it relates to the Escrow; and,

WHEREAS, the Buyer and Seller have entered into separate agreements and modifications, not affected by this Escrow Agreement; and,

WHEREAS, the Buyer is requesting an extension of time to close the transaction and as a condition of granting the extension, the Seller is requiring the Earnest Money currently being held by Robert S. Guyton, PC, be transferred and held by Russell B. Long, Esquire or his firm Russell B. Long, P.A.

NOW, THEREFORE, the parties hereto agree as follows:

1. The Fifty Thousand and no/100 (\$50,000.00) Dollars Earnest Money being held by Robert S. Guyton, P.C., as Escrow Agent (hereinafter "Guyton"), under the Contract shall be delivered to Russell B. Long, replacement Escrow Agent (hereinafter "Long") to be held in accordance with the Contract, and as provided herein. Upon delivery of the funds by Guyton to Long, Guyton shall be relieved of his duties as Escrow Agent under the Contract.
2. Long shall deliver the funds to MacDonald and Hicks, Trust Account, by wire or certified funds, the Earnest Money for closing on or before February 23, 2021. These funds will be used for and credited against the Purchase Price provided for under the Contract.
3. The Buyer and Seller agree that the Due Diligence Period under the Contract is deemed to be expired, and the Earnest Money is non-refundable, except for instances of a breach or inability to close by the Seller.
4. That in the event of a breach by either Buyer or Seller, the Escrow Agent shall notify both parties in writing, through their counsel, of Escrow Agent's intent to distribute to either the Seller or Buyer, whichever is deemed the non-breaching party. The Buyer or

Seller shall have five (5) business days from the date it receives notice from the Escrow Agent to indicate in writing to the Escrow Agent, their objection to the distribution. If a party timely notifies the Escrow Agent of their objection to the distribution, the Escrow Agent shall file the appropriate action to deposit the funds into the court, deducting therefrom a reasonable amount for the fees and costs of filing said action.

5. This Agreement shall terminate upon the occurrence of the disposition of the escrowed funds in accordance with the terms this Escrow Agreement.

6. Except as otherwise provided herein, no termination, amendment or modification of this Escrow Agreement shall be effective until agreed to in writing by all parties hereto.

7. The Escrow Agent shall not be liable to Buyer or Seller for any act or omission, except only conduct constituting gross negligence or willfully or fraudulent misconduct. Buyer and Seller shall indemnify the Escrow Agent for all liabilities, damages, claims, actions, suits, proceedings, judgments, fines and all related costs and expenses (including attorneys' fees and any costs incurred as a result of enforcing this Escrow Agreement) arising in connection with his duties as Escrow Agent, provided that Escrow Agent has not been grossly negligent or engaged in willfully fraudulent misconduct. The obligations of Buyers and Seller to the Escrow Agent under this Section shall continue in full force and effect notwithstanding termination of this Escrow Agreement, or the discharge or resignation of the Escrow Agent. The Escrow Agent is an independent party, and is not the agent of Buyer or Seller. The scope of the Escrow Agent's duties is to be strictly construed in accordance with the provisions of this Escrow Agreement. The Escrow Agent may require written approvals from Buyers and/or Seller prior to taking any actions, and the individuals signing this Escrow Agreement shall be deemed to be the agents of the appropriate parties.

(b) Other than its obligation to designate a successor Escrow Agent approved by Buyer and Seller, nothing in this Escrow Agreement shall be deemed to expand the obligations, costs or responsibilities of any party hereto.

8. Notices hereunder shall be sent by certified mail, return receipt requested, or personally delivered or by email, with a read receipt requested as follows:

Buyer: City of Myrtle Beach
c/o Daniel J. MacDonald, Esquire
1107 48th Avenue N., Suite 210
Myrtle Beach, S.C. 29577
dmacdonald@machickslaw.com

Seller: Cool & Easy, LLC
c/o Russell B. Long, Esquire
5307 N. Kings Highway
Myrtle Beach, S.C. 29577
Russell@rblongpa.com

9. This Escrow Agreement may be executed in multiple counterparts and by facsimile or other electronic means, any or all of which shall be deemed an original. The terms of this Escrow Agreement shall be construed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the undersigned parties have executed this Escrow Agreement as of the date first above written.

In Witness Whereof, the parties hereto have executed this Escrow Agreement on the date first above written.

WITNESSES:

Adelays Hein
Trishant McRae

SELLER:

Cool-N-Easy, LLC

J. Clayton Nance

By:

Its:

BUYER:

The City of Myrtle Beach

[Signature]

By:

Its:

Asst. City MGR

ESCROW AGENT (prior)

Robert S. Guyton, PC

Adelup Hein
Luisa T. Morello

By: _____


Its: _____

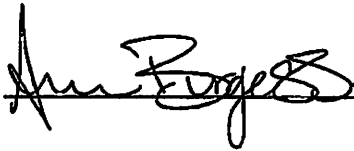
ESCROW AGENT (replacement)

Russell B. Long, PA

By: _____

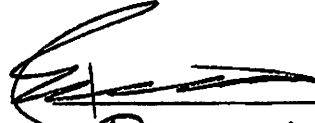
Its: _____

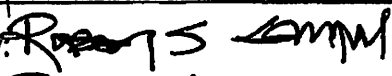





ESCROW AGENT (prior)

Robert S. Guyton, PC



By: 
Its: 

ESCROW AGENT (replacement)

Russell B. Long, PA

By:
Its: