



MAYOR

Brian K. Grim

CITY ADMINISTRATOR

Jeff Rhodes

CITY SOLICITOR

Michael Scott Cohen

COUNCIL

Seth D. Bernard

David Caporale

Richard J. Rock" Cioni

Eugene T. Frazier

CITY CLERK

Marjorie A. Woodring

AGENDA

DATE: April 3, 2018

I. Pledge of Allegiance

II. Roll Call

III. Proclamations

1. Proclamation honoring Curtis Coney Island Famous Weiners on their 100 year anniversary
2. Proclaiming the month of April, 2018 as Fair Housing Month
3. Proclaiming April 26, 2018 as Cumberland Arbor Day

IV. Public Hearings

1. Public Hearing for the presentation of staff recommendations for 2018 project award funding through Community Development Block Grant (CDBG)

V. New Business

(A) Ordinances

1. Ordinance (1st reading) - amending Section 8.06(7) of the Zoning Ordinance to allow requests for modifications of the setback requirements for communications towers to be presented to the Zoning Board of Appeals as conditional uses, subject to the requirement that the setback be no less than the tower's fall zone

(B) Orders (Consent Agenda)

1. Order approving the Sole Source purchase of three (3) replacement garage doors at the Public Safety Building, Fire Department, from Overhead Door Company for the amount of \$30,561
2. Order authorizing execution of Lease Agreements with City Lights American Grill and Bar, Embassy Theater Corp., and Mezzos for the use of the public right-of-way for outdoor dining and entertainment purposes through March 31, 2019
3. Order declaring a 2010 Chevy Aveo (VIN No. KL1TD6DE6AB127973) as surplus equipment and authorizing it for sale, trade-in, or disposal
4. Order authorizing execution of a Concession License Agreement with Joyce Wormack for the operation of the Constitution Park Pool concession area for the period of April 1 - October 31, 2018 and a license fee of \$1,800

VI. Public Comments

All public comments are limited to 5 minutes per person

VII. Adjournment



Regular Council Agenda
April 3, 2018

Description

Proclamation honoring Curtis Coney Island Famous Weiners on their 100 year anniversary

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)



Regular Council Agenda
April 3, 2018

Description

Proclaiming the month of April, 2018 as Fair Housing Month

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)



Regular Council Agenda
April 3, 2018

Description

Proclaiming April 26, 2018 as Cumberland Arbor Day

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)



Regular Council Agenda
April 3, 2018

Description

Public Hearing for the presentation of staff recommendations for 2018 project award funding through Community Development Block Grant (CDBG)

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

2018 Proposed CDBG Projects Name	Proposed Funding
Housing/Rehabilitation	
Cumb Neighborhood Housing Closing Cost Grant	\$10,000.00
Subtotal	\$10,000.00
PublicFacilities /Infrastructure Improvements	
Amtrak Project/Mechanic St Sidewalks	\$133,520.00
Salvation Army Facility Rehab: HVAC	\$60,000.00
YMCA Gilcrist Rehabilitation Ph 4: Transi Hous	\$90,719.00
Friend's Aware Inc LEC Facility Rehab Ph 4	\$76,510.00
Jane Frazier Village Sidewalk Ph 3	\$50,751.00
Central Bus District Comm Accessibility Design	\$10,000.00
City Hall Accessibility	\$30,000.00
Subtotal	\$451,500.00
Administration/Planning	
Administration	\$132,000.00
Fair Housing Programs	\$10,000.00
Subtotal	\$142,000.00
Public Services	
Friend's Aware Inc Transportation Service	\$12,000.00
Associated Charities Short Term Prescription	\$10,500.00
Associated Charities Long Term Prescription	\$15,500.00
FCRC Dom Violence/Sexual Assault Shelter/Ser	\$10,000.00
Family Junction Parenting/Dina Programs	\$15,500.00
HRDC Emergency Housing Assistance Program	\$20,750.00
AHEC West Denture Program	\$7,000.00
AHEC West Emergency Dental Access Program	\$10,000.00
Archway Station Inc., Home Health Program	\$5,250.00
Subtotal	\$106,500.00
TOTAL	\$710,000.00
PI(Projected)	
Estimated Total 2018 CDBG Funds Available	\$710,000.00
Community Betterment	\$0.00



Regular Council Agenda
April 3, 2018

Description

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)



Regular Council Agenda
April 3, 2018

Description

Ordinance (1st reading) - amending Section 8.06(7) of the Zoning Ordinance to allow requests for modifications of the setback requirements for communications towers to be presented to the Zoning Board of Appeals as conditional uses, subject to the requirement that the setback be no less than the tower's fall zone

Approval, Acceptance / Recommendation

A public hearing on this proposed Zoning Text Amendment # 12-07 is scheduled for April 17, 2018.

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, ENTITLED "AN ORDINANCE TO AMEND SECTION 8.06(7) OF THE CITY OF CUMBERLAND ZONING ORDINANCE PERTAINING TO STANDARDS APPLICABLE TO COMMUNICATIONS TOWERS FOR THE PURPOSE OF ALLOWING FOR REQUESTS FOR MODIFICATIONS OF THE SETBACK REQUIREMENTS TO BE PRESENTED TO THE ZONING BOARD OF APPEALS AS CONDITIONAL USES, SUBJECT TO THE REQUIREMENT THAT THE SETBACK BE NO LESS THAN THE TOWER'S FALL ZONE."

WHEREAS, Title 4, Subtitle 2 of the Land Use Article of the Annotated Code of Maryland grants the Mayor and City Council the power to enact a zoning ordinance, to amend it from time to time, and to provide for its administration and enforcement.

WHEREAS, the Mayor and City Council deem it necessary to amend the City of Cumberland Zoning Ordinance from time to time for the purpose of promoting the health, safety, morals, and/or general welfare of the City.

WHEREAS, in reviewing the standards for specific uses applicable to communications towers in Section 8.06(7) of the Zoning Ordinance, City staff observed that the standards do not include provisions that take into account modern designs and advances in engineering applicable to the fall zones of such structures, i.e., where they are likely to fall in the event they collapse or fail.

WHEREAS, the existing standards require that communications towers be set back from adjacent property lines no less than one (1) foot for every foot of height of the tower regardless of whether the tower is designed to fall intact, bend in half, collapse in on itself or otherwise. These standards are overly burdensome as applied to towers that are designed to have smaller fall zones.

WHEREAS, the City of Cumberland Municipal Planning and Zoning Commission held a public hearing on the subject matter of this ordinance on the 26th day of March, 2018, and determined that it should recommend that the Mayor and City Council pass an ordinance adopting the amendments to the City of Cumberland Zoning Ordinance which were proposed by staff.

WHEREAS, notice of the time and place of the hearing was published in the Cumberland Times-News, a newspaper of general circulation in the City of Cumberland, once each week for two successive weeks (on March 12, 2018 and March 19, 2018), the

first such notice having been published at least 14 days prior to the hearing, as required by Section 15.04.02 of the Zoning Ordinance.

WHEREAS, the Mayor and City Council held a public hearing regarding the subject matter of this Ordinance on April 17, 2018, having published notice of the time and place of the hearing together with a summary this Ordinance in the Cumberland Times-News, a newspaper of general circulation in the City of Cumberland, once each week for two successive weeks (on April 2, 2018 and April 9, 2018), the first such notice having been published at least 14 days prior to the hearing, as required by Section 4-203(b) of the Land Use Article of the Annotated Code of Maryland.

WHEREAS, consistent with the recommendation of the Municipal Planning and Zoning Commission, the Mayor and City Council have determined that they should approve the proposed amendments to the Zoning Ordinance.

NOW, THEREFORE:

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, that the standards applicable to communications towers set forth in Section 8.06(7) of the City of Cumberland Zoning Ordinance are hereby amended as follows¹:

(7) Communications Towers

- (a) The tower shall have a setback of one foot from all adjacent property lines for every foot of height of the tower.
- (b) The tower shall be certified by a qualified and licensed professional engineer to conform to the latest structural standards and wind loading requirements of the Uniform Building Code and the Electronics Industry Association.
- (c) The tower shall be protected to discourage climbing of the tower by unauthorized persons.
- (d) Towers greater than fifty (50) feet in height shall be located at least two hundred (200) feet from existing dwellings.

¹ Bold print text denotes language added to the Zoning Ordinance.

- (e) **Requests for modifications of the setbacks requirements set forth herein shall be treated as conditional uses. The Zoning Board of Appeals may not provide for a setback which is less than the fall zone of the tower, as set forth in its engineering specifications.**

SECTION 2: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect ten (10) days from the date of its passage.

Passed this _____ day of _____, 2018.

Brian K. Grim, Mayor

ATTEST:

Marjorie A. Woodring, City Clerk

1st reading: _____

Public Hearing: _____

2nd reading: _____

3rd reading: _____

Passed: _____

Resolution

A RESOLUTION RECOMMENDING APPROVAL OF A ZONING TEXT AMENDMENT FROM THE MUNICIPAL PLANNING AND ZONING COMMISSION TO THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND.

WHEREAS, the City Administrator of the City of Cumberland applied for a zoning text amendment as provided for in Section 15 of the City of Cumberland Zoning Ordinance #3775; and

WHEREAS, the zoning text amendment would amend Section 8.06(7), Communication Towers, in the Zoning Ordinance #3775; and

WHEREAS, the amendment would add Subsection (e) to read as follows:

Section 8.06 STANDARDS FOR SPECIFIC USES

(7) Communication Towers

(e) *“Request for modification of the setbacks requirements set forth herein shall be treated as Conditional Uses. The Zoning Board of Appeals may not provide for a setback which is less than the fall zone of the tower, as set forth in its engineering specifications”*; and

WHEREAS, the Municipal Planning and Zoning Commission conducted a public hearing and unanimously voted in favor of the proposed amendment on March 26, 2018

NOW, THEREFORE, BE IT RESOLVED, that the Municipal Planning and Zoning Commission of the City of Cumberland, hereby recommend approval of the proposed amendment to the Mayor and City Council of Cumberland, Maryland.

GIVEN UNDER MY HAND THIS TWENTY SIXTH DAY OF MARCH, IN THE YEAR TWO THOUSAND AND EIGHTEEN, DULY ATTESTED BY THE CITY CLERK.

By: 

Ben Wolters, Chairman
Municipal Planning and Zoning Commission

Attest: 

Margie Woodring
City Clerk



Regular Council Agenda
April 3, 2018

Description

Order approving the Sole Source purchase of three (3) replacement garage doors at the Public Safety Building, Fire Department, from Overhead Door Company for the amount of \$30,561

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

\$30,561

Source of Funding (if applicable)

115.099F.62000

- ORDER -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. _____

DATE: April 3, 2018

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT, the Sole Source purchase of three (3) replacement garage doors located at the Public Safety Building - Fire Department, from Overhead Door Company, 920 Kelly Road, Cumberland, Maryland, 21502, be and is hereby approved in the amount of Thirty Thousand, Five Hundred Sixty-one Dollars and No Cents (\$30,561.00).

Mayor Brian K. Grim

Source of Budget: 115.099F.62000



Cindi Mertens <cindi.mertens@cumberlandmd.gov>

Sole Source Request

4 messages

Cindi Mertens <cindi.mertens@cumberlandmd.gov>

Fri, Mar 9, 2018 at 2:48 PM

To: Jeff Rhodes <jeff.rhodes@cumberlandmd.gov>, Ken Tressler <ken.tressler@cumberlandmd.gov>, Greg Snyder <greg.snyder@cumberlandmd.gov>

From Greg Snyder:

Requesting a sole-source approval for the replacement of three (3) garage doors (#4, 5, 6), located at Public Safety Building - Fire Department.

Sole-Source reason: Only two companies available to install them in the area.

Barnard Doors did not respond.

Overhead Door Company advised their price was \$30,561 for all three doors and openers, which is budgeted for the current fiscal year.

Cynthia L. Mertens

City of Cumberland

Utilities Division/Central Services

301-759-6644

cindi.mertens@cumberlandmd.gov

Jeff Rhodes <jeff.rhodes@cumberlandmd.gov>

Fri, Mar 9, 2018 at 4:32 PM

To: Cindi Mertens <cindi.mertens@cumberlandmd.gov>

Cc: Ken Tressler <ken.tressler@cumberlandmd.gov>, Greg Snyder <greg.snyder@cumberlandmd.gov>

Approved at my level. You will need to add an agenda item since it is over \$25,000.

Jeff



Jeffrey D. Rhodes, ICMA-CM

City Administrator

City of Cumberland, Maryland
301-759-6424

Email: jeff.rhodes@cumberlandmd.gov
Website: www.cumberlandmd.gov

[Quoted text hidden]

Greg Snyder <greg.snyder@cumberlandmd.gov>

Fri, Mar 9, 2018 at 6:28 PM

To: Jeff Rhodes <jeff.rhodes@cumberlandmd.gov>

Cc: Cindi Mertens <cindi.mertens@cumberlandmd.gov>, Ken Tressler <ken.tressler@cumberlandmd.gov>

Thank you!

[Quoted text hidden]



Regular Council Agenda
April 3, 2018

Description

Order authorizing execution of Lease Agreements with City Lights American Grill and Bar, Embassy Theater Corp., and Mezzos for the use of the public right-of-way for outdoor dining and entertainment purposes through March 31, 2019

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

- ORDER -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. _____

DATE: April 03, 2018

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT, the Mayor be and is hereby authorized to execute Lease Agreements allowing for the use of the public right-of-way for outdoor dining and entertainment purposes for the term retroactive to April 1, 2018 and extending through March 31, 2019 with the following businesses:

1. Shafco t/a City Lights American Grill and Bar
2. Embassy Theater Corporation
3. Coach's Entertainment Enterprises LLC T/A Mezzos

Mayor Brian K. Grim

THIS LEASE AGREEMENT ("Lease") is made and executed this _____ day of _____, 2018, by and between the **MAYOR AND CITY COUNCIL OF CUMBERLAND**, a Maryland municipal corporation (the "City") and **SHAFCO T/A CITY LIGHTS AMERICAN GRILL AND BAR** ("Lessee").

WHEREAS, Lessee operates a restaurant at 59 Baltimore Street, Cumberland, MD 21502;

WHEREAS, the City maintains and/or owns the public right-of-way immediately in front of the restaurant;

WHEREAS, Lessee wishes to expand its operation to include outside café dining on a portion of the public right-of-way adjacent to its restaurant; and

WHEREAS, the City has determined that it is in the interest of the general public to permit the use of a portion of the right-of-way for café dining.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. **Demise**. The City hereby leases to Lessee a certain parcel of property located on the public right-of-way adjacent to Lessee's restaurant, the area of which encompasses that portion of the right-of-way directly to a depth of 47 feet and width of 44 feet, the corners of which shall be marked by the Lessee subject to the approval of the City, which leased parcel of land (hereinafter referred to as the "Demised Premises") is shown on the plat/drawing attached hereto and incorporated by reference herein as Exhibit I. Notwithstanding the foregoing, Lessee shall be responsible for allowing pedestrian traffic to pass through the Demised Premises at a location or locations to be approved by the City or as directed by the City, subject to modifications as directed by the City during the term of this Lease.

2. **Term**. The term of this lease shall commence on April 1, 2018 and shall terminate on March 31, 2019 unless sooner terminated as provided for herein.

3. **Use of Property**. The Demised Premises shall be occupied and used by Lessee so as to provide outdoor café dining to Lessee's restaurant customers. Lessee agrees that, in its use of the Demised Premises, it will comply with all present and future valid local, state and federal laws, ordinances, rules and regulations related to the occupancy or use of the Demised Premises.

4. **Special Events**. The City shall be entitled to suspend Lessee's use of the Demised Premises during special events, such as Heritage Days, and shall give Lessee notice of such suspension at least ten (10) days prior to the scheduled event.

5. **Rent.** Lessee, in consideration of the leasing of the Demised Premises and the performance by the City of the covenants to be performed by it, agrees to pay rent to the City in the amount of One Dollar (\$1.00).

6. **Permits, Licenses, Fees.** In addition to the rent specified above, Lessee shall obtain all permits and licenses required by any laws, ordinances, rules or regulations of the City and/or any Federal, State or other governmental agency and shall pay all related fees. The execution of this Lease does not constitute permit approval or licensure by or on the part of the City.

7. **Demarcation / Alcoholic Beverages.** Lessee shall place stanchions and chains along the perimeter of the Demised Premises so as to control ingress and egress therefrom. Lessee shall be responsible for monitoring the area so as to assure that patrons do not take alcoholic beverages off the premises of the Lessee.

8. **Furnishings.** Lessee shall be responsible for providing all furnishing and equipment for use by its staff and patrons within the area of the Demised Premises. Any and all such furnishings must be approved by the City before use within said area. Said furnishings may only be placed on the Demised Premises during the hours of operation of Lessee's restaurant. At all other times, said furnishings must be stored in a neat and orderly manner.

9. **Rules And Regulations.** The City shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect to the Demised Premises. Lessee shall faithfully observe and comply with such rules and regulations.

10. **Assignment And Subletting.** This Lease and the rights granted hereby shall not be assigned or subletted by Lessee except with the prior written consent of the City. Said consent may be withheld for any reason or no reason at all.

11. **Termination.** Except as provided for hereinafter, either party shall have the right to cancel this Lease by giving the other thirty (30) days advance written notice.

12. **Right of Entry.** The City shall have the right to enter upon the Demised Premises at any time for the purpose of operating, maintaining, repairing, restoring or replacing any public utilities. It may also enter upon the Demised Premises for the purpose of inspecting it to ensure that Lessee is complying with its obligations under the terms of this Lease.

13. **Maintenance.** Lessee shall be responsible for keeping the Demised Premises and all items located therein in good condition and repair. The Demised Premises shall be kept free of garbage and refuse.

14. **Insurance.** So long as this Lease is in effect, Lessee shall, at its expense, maintain comprehensive general public liability insurance covering personal injury and

property damage occurring on the Demised Premises which shall include the **“Mayor and City Council of Cumberland”** as an additional insured. Such policy shall have minimum single combined liability limits of One Million Dollars (\$1,000,000.00) and shall be written on an occurrence basis. The insurance policy shall include an endorsement requiring the insurer to provide the City with no less than thirty (30) days advance written notice of the cancellation of the policy. Immediately upon the execution of this Lease, Lessee shall provide the City with a certificate of insurance evidencing its compliance with the requirements of this section.

15. Indemnification. Lessee shall indemnify, hold harmless and defend the City, its officers, officials, agents, and employees from and against any and all any and all liabilities, damages, claims, costs and expenses, including, but not limited to, attorneys’ fees, court costs and litigation expenses, arising from, as a result of, or as an incident to:

- a) Lessee’s use of the Demised Premises or the conduct of its business on the Demised Premises;
- b) any act or omission done, permitted or suffered by Lessee, its contractors, licensees, invitees, agents, representatives, or employees on or about the Demised Premises; or
- c) any breach or default in the performance of any obligation of Lessee under the terms of this Lease.

16. Default. After the occurrence of any of the following events, the City shall have the right to terminate this Lease immediately:

- a) In the event that Lessee shall fail to keep and perform, or shall violate the terms, covenants, and conditions of this Lease on its part to be kept and performed, and Lessee shall not have cured or corrected this failure within five (5) days after written notice shall have been given to Lessee.
- b) If Lessee shall make an assignment for the benefit of its creditors, or shall file a petition in bankruptcy or shall be adjudged bankrupt, or the interest of Lessee under this Lease shall be levied upon and sold upon execution or shall, by operation of law, become vested in another person, firm or corporation, because of the insolvency of Lessee, or in the event that a receiver or trustee shall be appointed for Lessee or the interest of Lessee under this Lease.
- c) In the event that Lessee shall vacate or abandon the Demised Premises (or its restaurant located adjacent thereto), or shall permit them to remain vacant and unoccupied without the consent of the City first obtained.

17. Repossession Upon Default. Upon the occurrence of any one or more of the events of default or the expiration of any termination notice, Lessee’s right to possession of the Demised Premises shall terminate, and Lessee shall surrender possession of it

immediately. In this event, Lessee grants to the City full and free license to enter into and upon the Demised Premises to take possession with or without process of law, and to expel and remove Lessee or any other person who may be occupying it.

18. **Other Remedies.** Each and every of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of such rights, remedies and benefits, or of any other rights, remedies and benefits allowed by law or equity.

19. **Waiver.** One or more waivers of any term, covenant or condition of this Lease by the City shall not be construed to be a waiver of a further or subsequent breach of the same term, covenant or condition.

20. **Notice.** Except as otherwise provided herein, all notices required to be given by the parties to one another under this Lease shall be properly given only if made in writing and either deposited in the United States mail, postage prepaid, certified with return receipt requested, or delivered by hand (which may be through a messenger or recognized delivery or courier service) and addressed as follows:

To the City:
Jeffrey Rhodes
City Administrator
57 N. Liberty Street
Cumberland, MD 21502

To Lessee:
Bill Shaffer
City Lights American Grill & Bar
59 Baltimore Street
Cumberland, MD 21502

21. **Governing Law.** The laws and decisions of the State of Maryland shall govern and control the construction, enforceability, validity and interpretation of this Lease, and all other agreements, instruments, documents, exhibits, or schedules executed by the parties pertaining or relating to this Lease or the transactions contemplated herein. Any litigation arising out of this Lease or its terms shall be instituted in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County, and the parties hereto waive any objection to the venue of such proceedings being in said courts and they further waive any claims that such courts constitute inconvenient fora.

22. **Gender/Tense/Conjugation.** The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.

23. **Captions.** The marginal captions of this Lease are for convenience only and in no way define or limit the intents, rights or obligations of the parties hereunder.

23. **Severability.** Should any provision of this Lease be found, held or deemed to be unenforceable, voidable or void, as contrary to law or public policy, the parties intend that its remaining provisions shall nevertheless continue in full force and effect and be binding upon the parties and their respective successors and assigns.

24. **Jury Trial Waiver.** **THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY OF THEM MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS LEASE. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS LEASE.**

25. **Entire Agreement.** This Lease contains the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained.

26. **Binding Effect.** This Lease shall inure to the benefit of the parties hereto and it shall be binding upon their respective personal representatives, heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and date first above written.

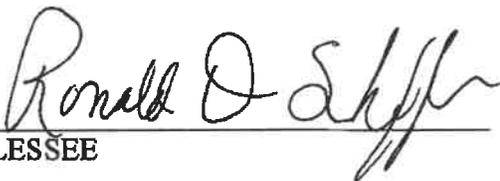
**MAYOR AND CITY COUNCIL
OF CUMBERLAND**

By: _____
Brian K. Grim, Mayor

ATTEST:

Marjorie A. Woodring
City Clerk

WITNESS



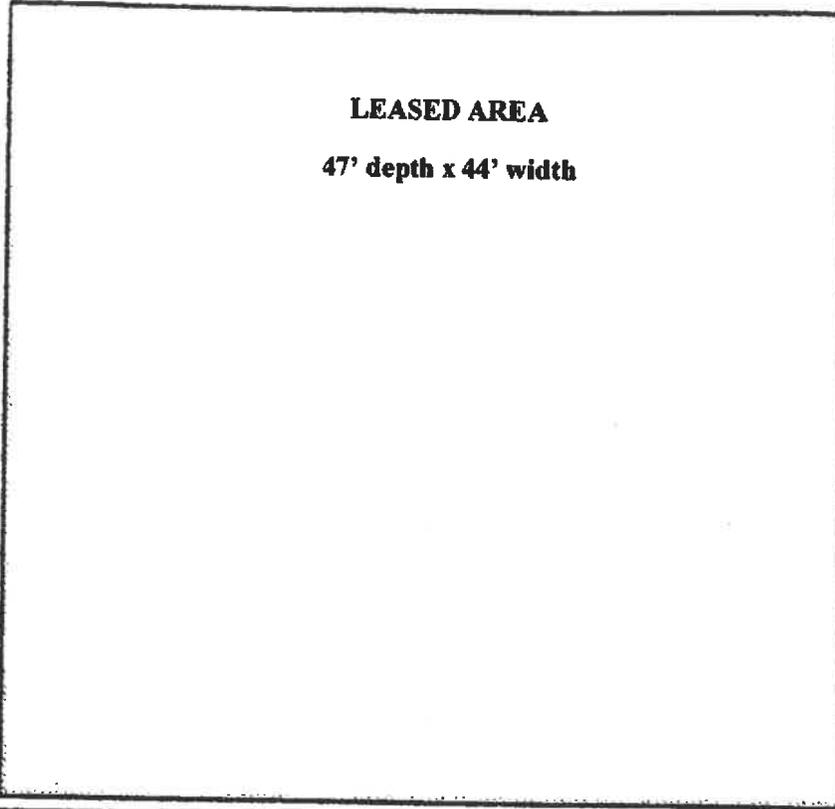
LESSEE

EXHIBIT I

Planter

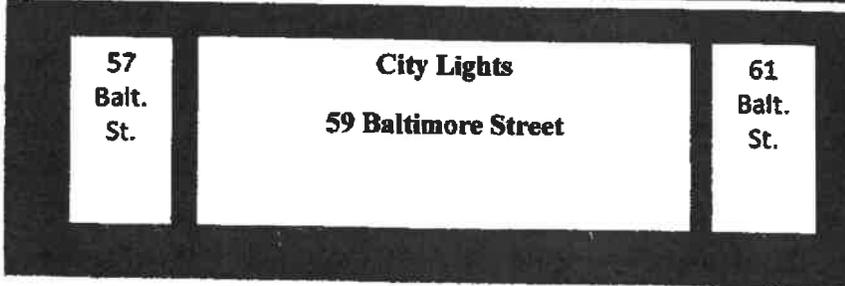


Planter



LEASED AREA

47' depth x 44' width



THIS LEASE AGREEMENT (“Lease”) is made and executed this _____ day of _____, 2018, by and between the **MAYOR AND CITY COUNCIL OF CUMBERLAND**, a Maryland municipal corporation (the “City”) and the **EMBASSY THEATER CORPORATION** (“Lessee”).

WHEREAS, Lessee operates a theater at 49 Baltimore Street, Cumberland, MD 21502;

WHEREAS, the City maintains and/or owns the public right-of-way immediately in front of the theater;

WHEREAS, Lessee wishes to expand its operation to include an outside entertainment area on a portion of the public right-of-way adjacent to its theatre; and

WHEREAS, the City has determined that it is in the interest of the general public to permit the use of a portion of the right-of-way for outside entertainment.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Demise. The City hereby leases to Lessee a certain parcel of property located on the public right-of-way adjacent to Lessee’s theater, the area of which encompasses that portion of the right-of-way directly to a depth of 43 feet and width of 32 feet, the corners of which shall be marked by the Lessee subject to the approval of the City, which leased parcel of land (hereinafter referred to as the “Demised Premises”) is shown on the plat/drawing attached hereto and incorporated by reference herein as Exhibit I. Notwithstanding the foregoing, Lessee shall be responsible for allowing pedestrian traffic to pass through the Demised Premises at a location or locations to be approved by the City or as directed by the City, subject to modifications as directed by the City during the terms of this Lease.

2. Term. The term of this lease shall commence on April 1, 2018, and shall terminate on March 31, 2019, unless sooner terminated as provided for herein.

3. Use of Property. The Demised Premises shall be occupied and used by Lessee so as to provide an outdoor entertainment area to Lessee’s theater customers. Lessee agrees that, in its use of the Demised Premises, it will comply with all present and future valid local, state and federal laws, ordinances, rules and regulations related to the occupancy or use of the Demised Premises.

4. Special Events. The City shall be entitled to suspend Lessee’s use of the Demised Premises during special events, such as Heritage Days, and shall give Lessee notice of such suspension at least ten (10) days prior to the scheduled event.

5. **Rent.** Lessee, in consideration of the leasing of the Demised Premises and the performance by the City of the covenants to be performed by it, agrees to pay rent to the City in the amount of One Dollar (\$1.00).

6. **Permits, Licenses, Fees.** In addition to the rent specified above, Lessee shall obtain all permits and licenses required by any laws, ordinances, rules or regulations of the City and/or any Federal, State or other governmental agency and shall pay all related fees. The execution of this Lease does not constitute permit approval or licensure by or on the part of the City.

7. **Demarcation / Alcoholic Beverages.** Lessee shall place stanchions and chains along the perimeter of the Demised Premises so as to control ingress and egress therefrom. Lessee shall be responsible for monitoring the area so as to assure that patrons do not take alcoholic beverages off the premises of the Lessee. Any such beverages to be consumed within the Demised Premises shall be served in non-breakable containers. **Glass bottles or glasses are not permitted in the area of the Demised Premises.**

8. **Furnishings.** Lessee shall be responsible for providing all furnishing and equipment for use by its staff and patrons within the area of the Demised Premises. Any and all such furnishings must be approved by the City before use within said area. Said furnishings may only be placed on the Demised Premises during the hours of operation of Lessee's theater. At all other times, said furnishings must be stored in a neat and orderly manner.

9. **Rules And Regulations.** The City shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect to the Demised Premises. Lessee shall faithfully observe and comply with such rules and regulations.

10. **Assignment And Subletting.** This Lease and the rights granted hereby shall not be assigned or subletted by Lessee except with the prior written consent of the City. Said consent may be withheld for any reason or no reason at all.

11. **Termination.** Except as provided for hereinafter, either party shall have the right to cancel this Lease by giving the other thirty (30) days advance written notice.

12. **Right of Entry.** The City shall have the right to enter upon the Demised Premises at any time for the purpose of operating, maintaining, repairing, restoring or replacing any public utilities. It may also enter upon the Demised Premises for the purpose of inspecting it to ensure that Lessee is complying with its obligations under the terms of this Lease.

13. **Maintenance.** Lessee shall be responsible for keeping the Demised Premises and all items located therein in good condition and repair. The Demised Premises shall be kept free of garbage and refuse.

14. Insurance. So long as this Lease is in effect, Lessee shall, at its expense, maintain comprehensive general public liability insurance covering personal injury and property damage occurring on the Demised Premises which shall include the “**Mayor and City Council of Cumberland**” as an additional insured. Such policy shall have minimum single combined liability limits of One Million Dollars (\$1,000,000.00) and shall be written on an occurrence basis. The insurance policy shall include an endorsement requiring the insurer to provide the City with no less than thirty (30) days advance written notice of the cancellation of the policy. Immediately upon the execution of this Lease, Lessee shall provide the City with a certificate of insurance evidencing its compliance with the requirements of this section.

15. Indemnification. Lessee shall indemnify, hold harmless and defend the City, its officers, officials, agents, and employees from and against any and all any and all liabilities, damages, claims, costs and expenses, including, but not limited to, attorneys’ fees, court costs and litigation expenses, arising from, as a result of, or as an incident to:

a) Lessee’s use of the Demised Premises or the conduct of its business on the Demised Premises;

b) any act or omission done, permitted or suffered by Lessee, its contractors, licensees, invitees, agents, representatives, or employees on or about the Demised Premises; or

c) any breach or default in the performance of any obligation of Lessee under the terms of this Lease.

16. Default. After the occurrence of any of the following events, the City shall have the right to terminate this Lease immediately:

a) In the event that Lessee shall fail to keep and perform, or shall violate the terms, covenants, and conditions of this Lease on its part to be kept and performed, and Lessee shall not have cured or corrected this failure within five (5) days after written notice shall have been given to Lessee.

b) If Lessee shall make an assignment for the benefit of its creditors, or shall file a petition in bankruptcy or shall be adjudged bankrupt, or the interest of Lessee under this Lease shall be levied upon and sold upon execution or shall, by operation of law, become vested in another person, firm or corporation, because of the insolvency of Lessee, or in the event that a receiver or trustee shall be appointed for Lessee or the interest of Lessee under this Lease.

c) In the event that Lessee shall vacate or abandon the Demised Premises (or its theater located adjacent thereto), or shall permit them to remain vacant and unoccupied without the consent of the City first obtained.

17. **Repossession Upon Default.** Upon the occurrence of any one or more of the events of default or the expiration of any termination notice, Lessee's right to possession of the Demised Premises shall terminate, and Lessee shall surrender possession of it immediately. In this event, Lessee grants to the City full and free license to enter into and upon the Demised Premises to take possession with or without process of law, and to expel and remove Lessee or any other person who may be occupying it.

18. **Other Remedies.** Each and every of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of such rights, remedies and benefits, or of any other rights, remedies and benefits allowed by law or equity.

19. **Waiver.** One or more waivers of any term, covenant or condition of this Lease by the City shall not be construed to be a waiver of a further or subsequent breach of the same term, covenant or condition.

20. **Notice.** Except as otherwise provided herein, all notices required to be given by the parties to one another under this Lease shall be properly given only if made in writing and either deposited in the United States mail, postage prepaid, certified with return receipt requested, or delivered by hand (which may be through a messenger or recognized delivery or courier service) and addressed as follows:

To the City:

Jeffrey Rhodes
City Administrator
57 N. Liberty Street
Cumberland, MD 21502

To Lessee:

Jerard Puckett
Embassy Theater Corporation
49 Baltimore Street
Cumberland, MD 21502

21. **Governing Law.** The laws and decisions of the State of Maryland shall govern and control the construction, enforceability, validity and interpretation of this Lease, and all other agreements, instruments, documents, exhibits, or schedules executed by the parties pertaining or relating to this Lease or the transactions contemplated herein. Any litigation arising out of this Lease or its terms shall be instituted in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County, and the parties hereto waive any objection to the venue of such proceedings being in said courts and they further waive any claims that such courts constitute inconvenient fora.

22. **Gender/Tense/Conjugation.** The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.

23. **Captions.** The marginal captions of this Lease are for convenience only and in no way define or limit the intents, rights or obligations of the parties hereunder.

23. **Severability.** Should any provision of this Lease be found, held or deemed to be unenforceable, voidable or void, as contrary to law or public policy, the parties intend that its remaining provisions shall nevertheless continue in full force and effect and be binding upon the parties and their respective successors and assigns.

24. **Jury Trial Waiver.** **THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY OF THEM MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS LEASE. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS LEASE.**

25. **Entire Agreement.** This Lease contains the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained.

26. **Binding Effect.** This Lease shall inure to the benefit of the parties hereto and it shall be binding upon their respective personal representatives, heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and date first above written.

**MAYOR AND CITY COUNCIL
OF CUMBERLAND**

By: _____
Brian K. Grim, Mayor

ATTEST:

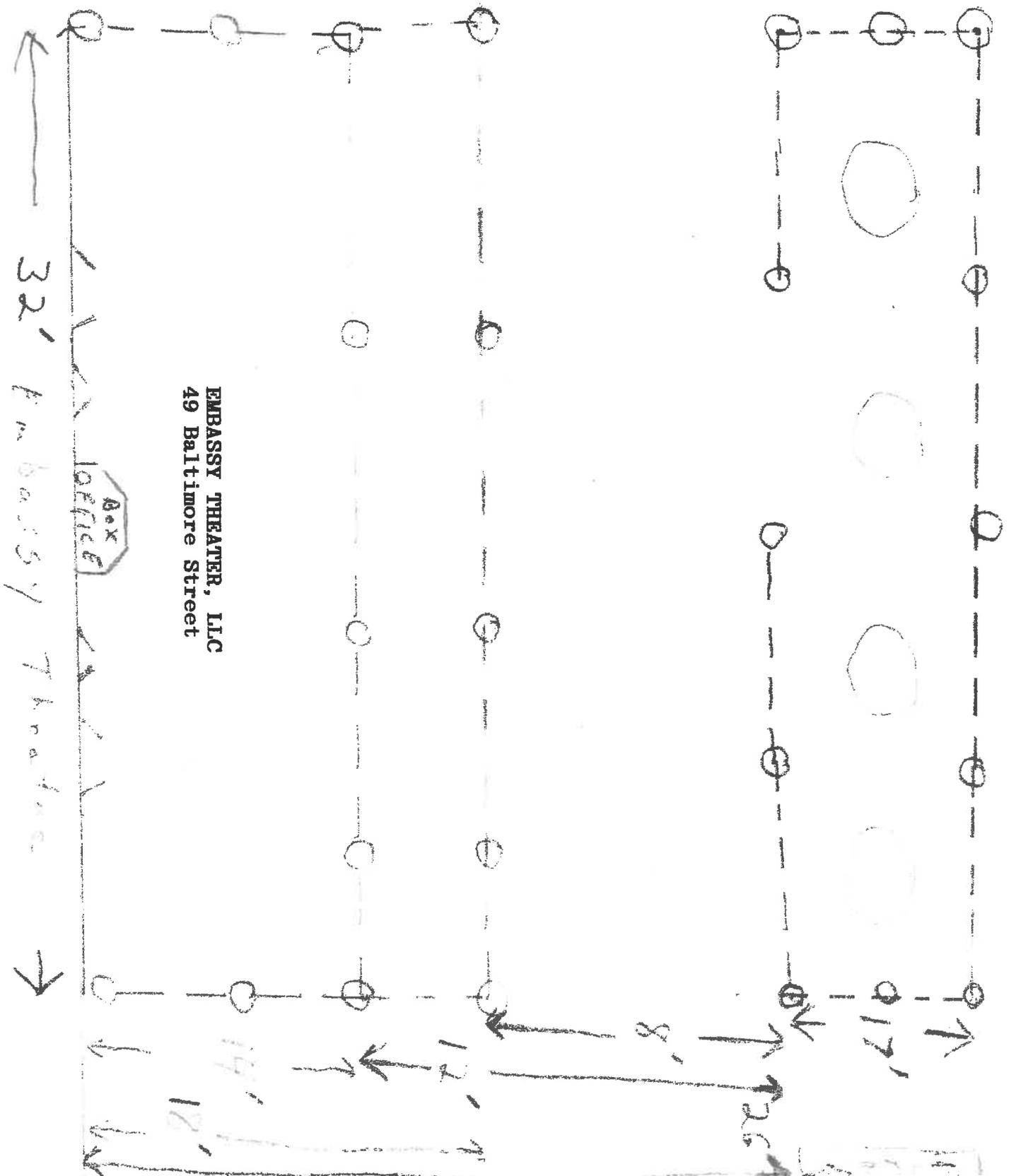
Marjorie A. Woodring
City Clerk

EMBASSY THEATER
CORPORATION

WITNESS _____


LESSEE _____


EXHIBIT I



THIS LEASE AGREEMENT (“Lease”) is made and executed this _____ day of _____, 2018, by and between the **MAYOR AND CITY COUNCIL OF CUMBERLAND**, a Maryland municipal corporation (the “City”) and **COACHS ENTERTAINMENT ENTERPRISES, L.L.C. T/A MEZZOS** (“Lessee”).

WHEREAS, Lessee operates a restaurant at 114 S. Centre Street, Cumberland, MD 21502;

WHEREAS, the City maintains and/or owns the public right-of-way immediately in front of the restaurant;

WHEREAS, Lessee wishes to expand its operation to include outside café dining on portions of the public right-of-way adjacent to its restaurant as well as for entertainment purposes on one of the aforesaid rights-of-way; and

WHEREAS, the City has determined that it is in the interest of the general public to permit the use of a portion of the right-of-way for café dining.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. **Demise**. Subject to the hereinafter set forth provisions, the City hereby leases to Lessee the following parcels of property located on the public rights-of-way adjacent to Lessee’s restaurant:

(a) The area measuring 6 feet in depth and 32 feet in width adjacent to the restaurant building on the South Centre Street side of the restaurant property; and

(b) The portion of the alley located on the northern side of the restaurant property, for the full width of the alley, running with the northeastern corner of the restaurant building through to S. Centre Street.

The demised parcels, being shown on the plat attached hereto as Exhibit 1, are hereinafter referred to collectively as the “Demised Premises” and the portion of the Demised Premises described in paragraph 1(b) above are hereinafter referred to as the “Alley Parcel.”

2. **Term**. The term of this lease shall commence on April 1, 2018 and shall terminate on March 31, 2019, unless sooner terminated as provided for herein.

3. **Use of Property**. The Demised Premises shall be occupied and used by Lessee so as to provide outdoor café dining to Lessee’s restaurant customers. Lessee agrees that, in its use of the Demised Premises, it will comply with all present and future valid local, state and federal laws, ordinances, rules and regulations related to the occupancy or use of the Demised Premises.

The Alley Parcel may be used for the aforesaid purposes on Fridays and Saturdays from 5 p.m. until midnight during the period of each year during the term of this Lease which falls between May 30 and October 31. In addition to the uses applicable to the Demised Premises as a whole, the Alley Parcel may be utilized for the purpose of provided entertainment for Lessee's customers; provided, however, that Lessee shall comply with all requests made by the City of Cumberland Police Department relative to noise control and it may, in its absolute discretion in the event there are noise issues or issues relative to the disorderly conduct of Lessee's patrons, direct that the use of the Alley Parcel be terminated on any particular evening for either outdoor dining, the provision of entertainment or for both purposes.

The Lessee shall coordinate its outdoor entertainment with the Downtown Development Commission so as to ensure that it does not interfere with outdoor entertainment provided by the Downtown Development Commission. To the extent that it interferes, it will not be permitted and shall be subject to being terminated by the City of Cumberland Police Department on any particular evening.

4. **Special Events.** The City shall be entitled to suspend Lessee's use of the Demised Premises during special events, such as Heritage Days, and shall give Lessee notice of such suspension at least ten (10) days prior to the scheduled event.

5. **Rent.** Lessee, in consideration of the leasing of the Demised Premises and the performance by the City of the covenants to be performed by it, agrees to pay rent to the City in the amount of One Dollar (\$1.00).

6. **Permits, Licenses, Fees.** In addition to the rent specified above, Lessee shall obtain all permits and licenses required by any laws, ordinances, rules or regulations of the City and/or any Federal, State or other governmental agency and shall pay all related fees. The execution of this Lease does not constitute permit approval or licensure by or on the part of the City.

7. **Demarcation / Alcoholic Beverages.** Lessee shall place stanchions and chains along the perimeter of the Demised Premises so as to control ingress and egress therefrom. Lessee shall be responsible for monitoring the area so as to assure that patrons do not take alcoholic beverages off of the Demised Premises. Any such beverages to be consumed within the Demised Premises shall be served in non-breakable containers. **Glass bottles or glasses are not permitted in the area of the Demised Premises.**

8. **Furnishings.** Lessee shall be responsible for providing all furnishing and equipment for use by its staff and patrons within the area of the Demised Premises. Any and all such furnishings must be approved by the City before use within said area. Said furnishings may only be placed on the Demised Premises during the hours of operation of Lessee's restaurant. At all other times, said furnishings must be stored in a neat and orderly manner.

9. **Rules And Regulations.** The City shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect to the Demised Premises. Lessee shall faithfully observe and comply with such rules and regulations.

10. **Assignment And Subletting.** This Lease and the rights granted hereby shall not be assigned or sublet by Lessee except with the prior written consent of the City. Said consent may be withheld for any reason or no reason at all.

11. **Utilities, Construction of Improvements.** Lessee shall not construct any improvements in the area of the Demised Premises. The Demised Premises shall be subject to an easement in favor of the City and public and private utilities, including, but not limited to, gas, electric, and telephone service providers, for the full length and width of both parcels comprising the Demised Premises for any existing utility lines, for drainage and for the installation, repair, replacement and/or maintenance of any needed or existing utility lines and storm water management and sediment and erosion control devices and improvements.

12. **Termination.** Except as provided for hereinafter, either party shall have the right to cancel this Lease by giving the other thirty (30) days advance written notice.

13. **Right of Entry.** The City shall have the right to enter upon the Demised Premises at any time for the purpose of operating, maintaining, repairing, restoring or replacing any public utilities. It may also enter upon the Demised Premises for the purpose of inspecting it to ensure that Lessee is complying with its obligations under the terms of this Lease.

14. **Maintenance.** Lessee shall be responsible for keeping the Demised Premises and all items located therein in good condition and repair. The Demised Premises shall be kept free of garbage and refuse.

15. **Insurance.** So long as this Lease is in effect, Lessee shall, at its expense, maintain comprehensive general public liability insurance covering personal injury and property damage occurring on the Demised Premises which shall include the “**Mayor and City Council of Cumberland**” as an additional insured. Such policy shall have minimum single combined liability limits of One Million Dollars (\$1,000,000.00) and shall be written on an occurrence basis. The insurance policy shall include an endorsement requiring the insurer to provide the City with no less than thirty (30) days advance written notice of the cancellation of the policy. Immediately upon the execution of this Lease, Lessee shall provide the City with a certificate of insurance evidencing its compliance with the requirements of this section.

16. **Indemnification.** Lessee shall indemnify, hold harmless and defend the City, its officers, officials, agents, and employees from and against any and all any and all liabilities, damages, claims, costs and expenses, including, but not limited to, attorneys’ fees, court costs and litigation expenses, arising from, as a result of, or as an incident to:

a) Lessee's use of the Demised Premises or the conduct of its business on the Demised Premises;

b) any act or omission done, permitted or suffered by Lessee, its contractors, licensees, invitees, agents, representatives, or employees on or about the Demised Premises; or

c) any breach or default in the performance of any obligation of Lessee under the terms of this Lease.

16. Default. After the occurrence of any of the following events, the City shall have the right to terminate this Lease immediately:

a) In the event that Lessee shall fail to keep and perform, or shall violate the terms, covenants, and conditions of this Lease on its part to be kept and performed, and Lessee shall not have cured or corrected this failure within five (5) days after written notice shall have been given to Lessee.

b) If Lessee shall make an assignment for the benefit of its creditors, or shall file a petition in bankruptcy or shall be adjudged bankrupt, or the interest of Lessee under this Lease shall be levied upon and sold upon execution or shall, by operation of law, become vested in another person, firm or corporation, because of the insolvency of Lessee, or in the event that a receiver or trustee shall be appointed for Lessee or the interest of Lessee under this Lease.

c) In the event that Lessee shall vacate or abandon the Demised Premises (or its restaurant located adjacent thereto), or shall permit them to remain vacant and unoccupied without the consent of the City first obtained.

18. Repossession Upon Default. Upon the occurrence of any one or more of the events of default or the expiration of any termination notice, Lessee's right to possession of the Demised Premises shall terminate, and Lessee shall surrender possession of it immediately. In this event, Lessee grants to the City full and free license to enter into and upon the Demised Premises to take possession with or without process of law, and to expel and remove Lessee or any other person who may be occupying it.

19. Other Remedies. Each and every of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of such rights, remedies and benefits, or of any other rights, remedies and benefits allowed by law or equity.

20. Waiver. One or more waivers of any term, covenant or condition of this Lease by the City shall not be construed to be a waiver of a further or subsequent breach of the same term, covenant or condition.

21. **Notice.** Except as otherwise provided herein, all notices required to be given by the parties to one another under this Lease shall be properly given only if made in writing and either deposited in the United States mail, postage prepaid, certified with return receipt requested, or delivered by hand (which may be through a messenger or recognized delivery or courier service) and addressed as follows:

To the City:

Jeffrey Rhodes
City Administrator
57 N. Liberty Street
Cumberland, MD 21502

To Lessee:

Daniel Bowser, Member
Coachs Entertainment Enterprises, L.L.C.
402 Wempe Drive
Cumberland, MD 21502

22. **Governing Law.** The laws and decisions of the State of Maryland shall govern and control the construction, enforceability, validity and interpretation of this Lease, and all other agreements, instruments, documents, exhibits, or schedules executed by the parties pertaining or relating to this Lease or the transactions contemplated herein. Any litigation arising out of this Lease or its terms shall be instituted in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County, and the parties hereto waive any objection to the venue of such proceedings being in said courts and they further waive any claims that such courts constitute inconvenient fora.

23. **Gender/Tense/Conjugation.** The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.

24. **Captions.** The marginal captions of this Lease are for convenience only and in no way define or limit the intents, rights or obligations of the parties hereunder.

25. **Severability.** Should any provision of this Lease be found, held or deemed to be unenforceable, voidable or void, as contrary to law or public policy, the parties intend that its remaining provisions shall nevertheless continue in full force and effect and be binding upon the parties and their respective successors and assigns.

26. **Jury Trial Waiver.** **THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY OF THEM MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS LEASE. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS LEASE.**

27. **Entire Agreement.** This Lease contains the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained.

28. **Binding Effect.** This Lease shall inure to the benefit of the parties hereto and it shall be binding upon their respective personal representatives, heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and date first above written.

**MAYOR AND CITY COUNCIL
OF CUMBERLAND**

By: _____
Brian K. Grim, Mayor

ATTEST:

Marjorie A. Woodring
City Clerk

**COACHS ENTERTAINMENT
ENTERPRISES, LLC T/A MEZZOS**

By: _____
Daniel Bowser, Member

By: _____
Bernard Nichols, III, Member

WITNESS

WITNESS

S. CENTRE ST.

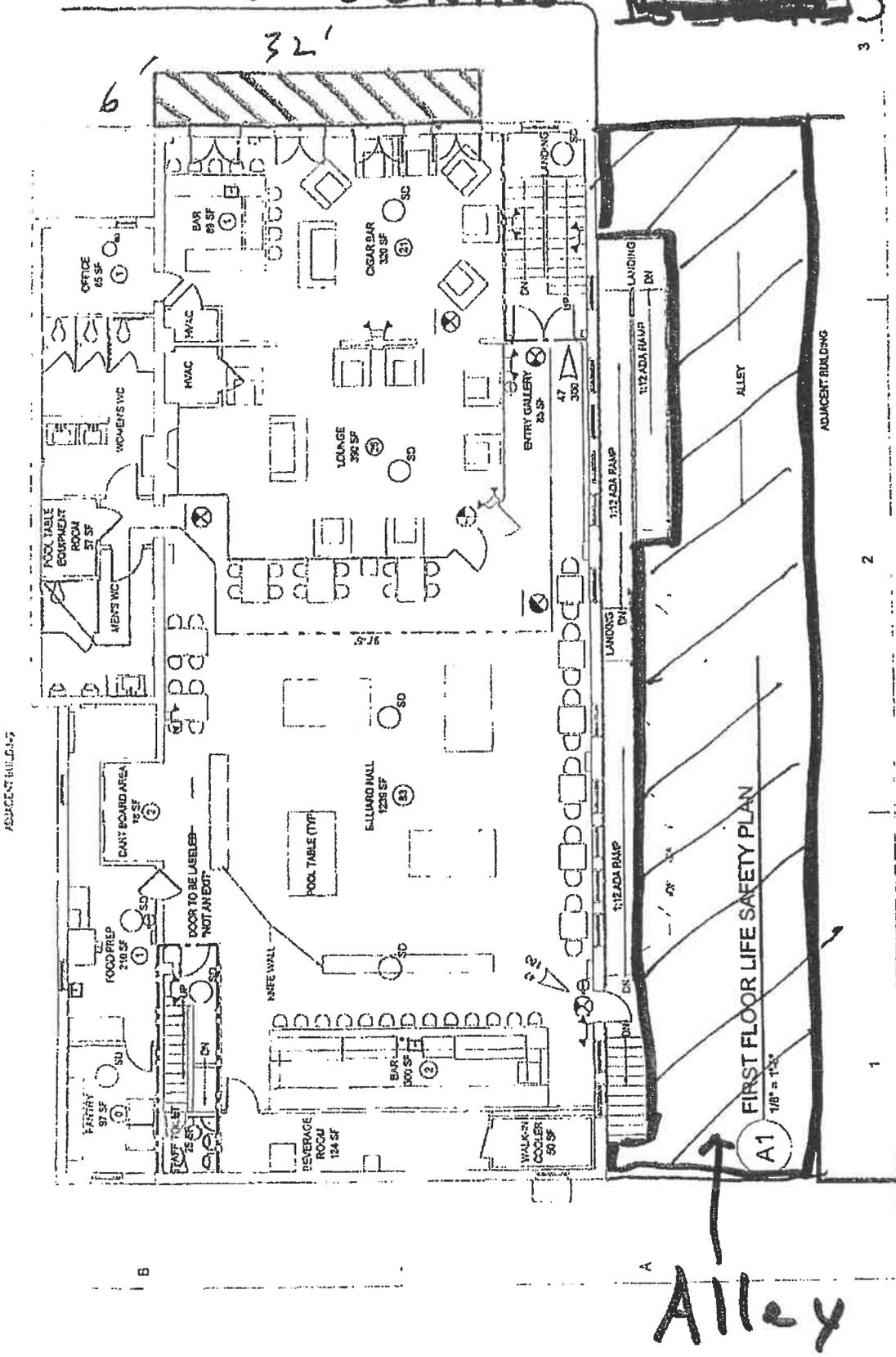


EXHIBIT 1



Regular Council Agenda
April 3, 2018

Description

Order declaring a 2010 Chevy Aveo (VIN No. KL1TD6DE6AB127973) as surplus equipment and authorizing it for sale, trade-in, or disposal

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

- ORDER -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. _____

DATE: April 03, 2018

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT, the Mayor and City Council of Cumberland is the record owner of a certain vehicle and that has been determined to be of no further value to the City; and

WHEREAS, the Mayor and City Council desire to dispose of said vehicle;

IT IS THEREFORE ORDERED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, THAT the following vehicle is hereby declared to be surplus property and authorized for sale, trade-in, or disposal:

2010 Chevy Aveo

VIN No. KL1TD6DE6AB127973

Mayor Brian K. Grim



Regular Council Agenda
April 3, 2018

Description

Order authorizing execution of a Concession License Agreement with Joyce Wormack for the operation of the Constitution Park Pool concession area for the period of April 1 - October 31, 2018 and a license fee of \$1,800

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

- Order -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. _____

DATE: April 03, 2018

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT, the Mayor be and is hereby authorized to execute a Concession License Agreement by and between the Mayor and City Council of Cumberland and Joyce Wormack for the operation of the concession area on the second floor of the Casino Building in Constitution Park for the period of April 1, 2018 through October 31, 2018 and a license fee of \$1,800.

Brian K. Grim, Mayor

CONCESSION LICENSE AGREEMENT

THIS CONCESSION LICENSE AGREEMENT (“Agreement”), made this 3rd day of April, 2018 by and between the **Mayor and City Council of Cumberland** (the “City”), a municipal corporation of the State of Maryland, and **Joyce Wormack** (“Licensee”), of Allegany County Maryland.

WITNESSETH:

1. **Grant of License.** That for and in consideration for the Licensee’s payment of the hereinafter-described license fee, the City does hereby grant unto Licensee, the right and privilege to exclusively operate the Concession Area (the “Concession”) on the second floor of the Casino Building in Constitution Park (the “Park”) in the City of Cumberland, Maryland, and she shall have the privilege of selling in said Concession all articles of merchandise commonly sold at concession stands in public parks as well as the privilege to operate at that location such pinball machines, arcade-style games and similar devices authorized by the laws of the State of Maryland and the Code of the City of Cumberland as are approved by the Director (the “Director”) of the City’s Department of Parks and Recreation (the “Department”). Notwithstanding anything to the contrary herein, Licensee shall not be permitted to sell or offer for consumption beers, wines or alcoholic beverages of any kind in the Park.

The City hereby agrees to permit Licensee to operate the Concession as concession stand. Although the City plans to install a reach-in freezer, reach-in refrigerator and ice cube machine in the Concession and purchase a prep table and tables and chairs for use in the Concession, Licensee shall be solely responsible for providing all furnishings, trade fixtures and equipment she needs in order to operate the Concession and the City shall have no obligations in regard to the same. At the end of the term of

this Agreement, Licensee shall have a right to remove such furnishings, trade fixtures and equipment as she may purchase and install in said Concession, except those which are so fixed as to be permanent additions to the building. Any damages caused to the Concession as a result of Licensee's removal of her furniture, trade fixtures and equipment shall be repaired by Licensee at her expense, said repairs to be effected in a good and workmanlike manner, restoring the Concession as good or a better condition than it was in as of the effective date of this Agreement.

During the term of this Agreement, Licensee shall be responsible for the day-to-day care and cleaning of the equipment and appliances installed by the City at the Concession. The City shall be responsible for the repair and maintenance of the said equipment and appliances which are as a result of ordinary wear and tear. Licensee shall be responsible for such repairs and maintenance which are as a result of its or its agents' or representatives' negligence, gross negligence or intentionally harmful acts.

2. **Cleanliness.** Licensee shall be responsible for keeping the Concession in a clean and sanitary condition throughout the term of this Agreement. At the conclusion thereof, Licensee shall surrender possession of the premises to the City in a "broom-clean" condition. Throughout the term of this Agreement, Licensee shall keep the area surrounding the Concession free of trash and debris.

3. **License Fee.** In exchange for the license herein granted, Licensee shall pay the City a license fee in the amount of One Thousand Eight Hundred Dollars (\$1,800.00), payable in consecutive monthly installments, each in the amount of \$300.00. The first such installment shall be due, payable and paid on April 15, 2018 and each subsequent installment shall be paid no later than the fifteenth (15th) day of the month.

Said payments shall be made at the City's Finance Department in City Hall, 57 N. Liberty Street, Cumberland, MD 21502. The license fee and the monthly installments thereof shall not be abated for any reason.

4. **Exclusivity.** Although Licensee shall have the exclusive right to operate the Concession, nothing herein contained shall prevent other concessionaires from selling concessions elsewhere in the Park. Further, this Agreement shall not be interpreted to confer any rights upon Licensee other than those expressly granted herein.

5. **Laws and Regulations.** The rights herein granted shall be subject to the City's ordinances, its Code and Charter, the rules and regulations of its Department of Parks and Recreation (the "Department") and other laws and regulations as may be applicable, and the business to be conducted under the terms of this Agreement shall at all times be conducted in conformity with the foregoing.

The Department shall have the right to regulate advertising materials used in or upon any of the buildings in the Park or distributed therein. Further, no signage shall be permitted at the Concession other than that which is approved by the Director, said approval not to be unreasonably withheld.

No items vended by Licensee shall be sold in excess of standard market prices. Licensee shall close the Concession and cease to operate the same as the said Park shall officially be closed unless the Director grants Licensee permission in writing to operate at such times when the Park is officially closed.

6. **Term of Agreement.** It is specifically understood that the rights granted herein are granted as to the period of time commencing April 1, 2018 and concluding October 31, 2018. Notwithstanding the foregoing, Licensee shall not be permitted to

conduct business at the Concession until such time as the Allegany County Health Department issues a permit for the conduct of those operations. The Concession shall be well stocked and kept open for business starting May 1, 2018 and continuing through the end of the term of this Agreement.

7. **No Alternations.** Licensee shall not make any alterations, modifications or improvements at or in the Concession or the Casino Building without the written permission of the Director, said permission to be granted or withheld for any reason or no reason at all.

8. **Limitations on License.** Licensee shall not engage in any commercial activities at the Park (like selling concessions at other locations or showing movies) other than those expressly authorized by the terms of this Agreement unless the Director grants Licensee written permission to do so. This prohibition extends to activities like operating concessions at locations other than the Concession and showing movies.

9. **Relationship between the Parties.** The relationship between the City and Licensee is that of an independent contractor and a contracting entity. Nothing herein contained shall be construed to give Licensee any interest as an employee, joint venturer or partner of or with the City. During the term of this Agreement, Licensee shall conduct her business operations at the Concession as an independent contractor and she shall have control of and shall be exclusively responsible for said operations.

10. **Indemnification.** Licensee will defend, indemnify and hold the City harmless from and against any and all claims, actions, damages, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) in connection with the loss of life, bodily injury, or damage to property or business arising from, related to, or in

connection with the conduct of the business operations which are the subject of this Agreement occasioned wholly or in part by any act or omission of Licensee, her agents, employees, representatives, sublicensees, contractors, or subcontractors, or any agents or employees of the foregoing. Licensee's indemnification obligations as set forth in this section include, but are not limited to, the obligation to indemnify the City for its attorneys' fees, court costs and any litigation expenses it may incur. The provisions of this section shall survive the termination or earlier expiration of this Agreement.

11. **Insurance.** Throughout the term of this Agreement, Licensee shall, at its expense, maintain (i) comprehensive general public liability insurance covering personal injury and property damage in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, and (ii) workers' compensation insurance in no less than the statutorily required minimum amounts. Licensee shall furnish the City with copies of the policies and certificates of insurance prior to or contemporaneously with the execution of this Agreement. Thereafter, Licensee shall deliver certificates of renewal for each insurance policy not less than thirty (30) days in advance of the expiration date of the policy; bearing verification from the agent of the company issuing the certificate that the premiums therefore have been paid in full. Each policy shall provide that it shall not be subject to cancellation, material change, or non-renewal without thirty (30) days prior written notice to the City. Each policy shall name "Mayor and City Council of Cumberland" as an additional insured.

12. **Miscellaneous.**

12.1 **Remedies for Breach of Agreement.** Notwithstanding any provisions in this Agreement to the contrary, the parties hereto reserve the right to seek

any remedies available in equity or law upon a breach of the terms of this Agreement. In the event of a breach of the terms of this Agreement, the breaching party shall pay the reasonable attorney's fees, court costs and other expenses incurred by the non-breaching party as a result of the breach.

12.2 Severability. If any provision of this Agreement or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other parties or circumstances will not be affected thereby, and to this end, the provisions of this Agreement are declared severable.

12.3 Captions. The captions and titles to the paragraphs, sections and subsections of this Agreement are for convenience purposes only and are not in aid of the interpretation of this Agreement, and to this end, shall not limit, restrict or expand the provisions hereof.

12.4 Time is of the Essence. Time is of the essence in with respect to the provisions of this Agreement.

12.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, personal representatives, successors and assigns.

12.6 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Maryland. It shall be enforceable with an action commenced in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County, and the parties hereto agree to be subject to the jurisdiction of such Courts and further waive any claim that any

action or proceeding arising out of or relating to this Agreement and commenced in such courts in commenced in an inconvenient forum or one that lacks proper venue. This provision shall be construed to proscribe any action or remedy being brought or asserted by either party in any other forum located in any other jurisdiction unless the Circuit Court of Allegany County, Maryland or the District Court of Maryland for Allegany County determine that the action must be transferred to another jurisdiction.

12.7 Waiver. Neither the City's nor Licensee's waiver of the breach of any covenant, term or condition of this Agreement will be construed as a waiver of the breach of any other covenants, terms or conditions or as a waiver of a subsequent breach of the same covenant, term or condition.

12.8 Definitions. Whenever used in this Agreement, the singular shall include the plural; any gender shall include the other gender, and vice-versa.

12.9 Entire Agreement. This Agreement contains the final and entire agreement between the parties hereto with reference to the provisions hereof, and neither they nor their agents shall be bound by any terms, conditions or representations not contained herein.

12.10 Jury Trial. The parties waive their right to a jury trial in a proceeding brought by any party based upon or arising out of or as an incident to this Agreement.

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

WITNESS/ATTEST:

**MAYOR AND CITY COUNCIL
OF CUMBERLAND**

Marjorie A. Woodring,
City Clerk

By: _____
Brian K. Grim, Mayor

Joyce Wormack