

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Monday, March 7, 2016
5:30 p.m.
City Commission Chambers

AGENDA

1. L.C. Walker Arena Muskegon Football Contract
2. Approval of loan in the amount of \$9,000 to Terrace Cutz, LLC
3. L.C. Walker Arena Annex Roof
4. Any Other Business
5. Adjournment

A Community Relations Committee Meeting will be held immediate following the Work Session Meeting.

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: March 7, 2016

RE: West Michigan Ironmen Lease

SUMMARY OF REQUEST:

Approval of the attached one-year lease agreement with the West Michigan Ironmen. The agreement allows the arena football team to use the LC Walker Arena as their home field. The agreement is slated for one year as an opportunity to work out and issues before entering into a longer term agreement.

FINANCIAL IMPACT:

Lease and related revenues are estimated to be between \$10,000 and \$20,000 for the season.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To authorize staff to execute the lease agreement.

COMMITTEE RECOMMENDATION:

None.

L.C. WALKER ARENA MUSKEGON INDOOR FOOTBALL CONTRACT

THIS AGREEMENT made and entered into the 19th day of February, 2016 by and between the L.C. Walker Arena and Event Center (hereinafter referred to as “Arena”) of 955 Fourth Street, Muskegon, MI. 49440 and West Michigan Ironmen, (hereinafter referred to as “Muskegon Football”).

WITNESSETH:

WHEREAS, Arena is located at 955 Fourth Street at Western Avenue, Muskegon, County of Muskegon, Michigan; and

WHEREAS, Muskegon Football is organized for the purposes of promoting and sponsoring league play of a professional Indoor football team; and

WHEREAS, the parties desire to enter into an agreement for the use of the facilities operated by Arena;

IT IS, THEREFORE, AGREED THAT:

1. USE OF PREMISE: Arena agrees that for the term of this agreement that Muskegon Football may utilize the Arena for professional football and related football game activities as follows:
 - a. Fully equipped sports arena for playing indoor football. Muskegon Football to provide and set up/tear down all equipment necessary for its football games including artificial turf, goals, netting, padding, and/or other equipment as may be required. Muskegon Football will be allowed access to Arena at 9:00AM on scheduled game days and will be allowed 3 hours time for tear down, immediately following the game. Muskegon Football to provide and /or compensate for staffing at any pre-game event including amateur games, camps, cheerleading camps or any other event as may be approved by the Arena;
 - b. Operating public address system and lighting;
 - c. Seating facilities for spectators in arena area;
 - d. Two dressing rooms for team use on game days during Indoor football season from 9:00AM to 1 hour after game conclusion.
 - e. Sufficient officials’ room, coaches’ office, trainer’s working area and press box area which meet the requirements for professional indoor football games. Muskegon Football to be responsible for any required equipment as well as any phone line or internet line charges;
 - f. Heat at comfortable temperature;

- g. Facility clean-up after games;
- h. Secured storage within the Arena for promotional equipment. Storage area to be determined by Arena Director.
- i. Arena cannot guarantee storage space for artificial turf and related equipment; however, in the event storage is not available, Muskegon Football agrees to remove turf and related equipment from the facility immediately upon completion of the playing season.

Muskegon Football agrees to hold its entire league scheduled home games at the L.C. Walker Arena.

2. **TERM OF AGREEMENT:** This agreement shall be effective for a period of one (1) year commencing on March 1, 2016 and ending on March 1, 2017.

3. **COMPENSATION, FEES:** Muskegon Football shall pay to the Arena compensation for its right to use the Arena upon the following schedule for all games played (including playoff and exhibition games):

- a. Arena Fees Per Game: \$2,000 rent per game
- b. Facility Fees: For all professional football games at any time Muskegon Football shall pay to the Arena the following facility fees:

<u>Year</u>	<u>Per Ticket</u>	<u>Tickets Applicable</u>
2016	\$1.00	All tickets

- Muskegon Football shall receive a \$500.00 rent credit after 2,000 tickets are issued per game and an additional \$250.00 rent credit for every 500 tickets issued thereafter per game. Game settlements will be conducted at 10:00AM on the Tuesday following each Muskegon Football home game.
- Muskegon Football shall receive 75% of the net food and beverage revenues per home game. The aforementioned percentage is based on net revenues after concession personnel wages, product costs, liquor liability insurance and all ancillary expenses are deducted from the total food and beverage revenues generated at each Muskegon Football home game. Arena Concessions Manager will provide a detailed food and beverage report of each Muskegon Football home game at the time of aforementioned game settlements.
- Muskegon Football shall receive 75% of the net parking revenues for each home game. Net parking revenues will be determined after parking lot

attendee wages and all unexpected or unforeseen expenses (i.e. – snow removal) are deducted from the total parking revenues generated at each Muskegon Football home game. Arena Manager will provide a detailed report of the parking report of each Muskegon Football home game at the time of the aforementioned game settlements.

- c. The Arena shall receive up to 10 complimentary tickets for admission to all home games during the term of this agreement, subject to availability.

4. OTHER FACILITIES AND/OR SERVICES PROVIDED:

- a. Staffing: Arena shall in connection with the operation of the building provide to Muskegon Football at Arena rates: ticket takers, door guards, ushers, and security. Muskegon Football shall provide the following personnel for the operation of the indoor football game: medical services personnel, equipment repair personnel, game officials, spot light operator, music operator and/or any other personnel required.

Arena and Muskegon Football will work together and each will use their best efforts to create a user-friendly atmosphere, which recognizes the importance of each and every customer using the facility. The Arena and Muskegon Football shall cooperate to assure adequate training for all staff and personnel to enhance the image of the County and City of Muskegon Community, L.C. Walker Arena and West Michigan Ironmen.

- b. Box Office Charges The L.C. Walker Arena is part of the Star Ticket system. The Arena shall operate a full service box office five (5) days a week, and on Saturday and Sunday event days. The Box Office will close after the last scheduled regular season game. Should West Michigan Ironmen qualify for the playoffs, then the Box Office will reopen the week of event. Muskegon Football shall pay to the Arena for box office services as follows:

- i) \$0.05 per ticket for all tickets issued by the box office, and \$0.25 for all outlet, phone orders or internet tickets issued payable to the Arena immediately after the applicable game or event.

- ii) 4% bank charges for credit card services.

- iii) 3% of sales with a minimum of \$500 and a maximum of \$1000

- c. Souvenir stand. Space on the concourse and /or arena floor for set up of team souvenir stands. Location and size to be approved by the Arena.

- d. Parking. Staff, players and owners will be allowed parking access to the arena lot immediately adjacent to the arena building along Shoreline Drive, per availability.

- e. Music Services. Muskegon Football shall be responsible for ASCAP, BMI, SEASAC and any other licensor of music, in connection with the operation of games. Such licenses shall not include the use of music at events other than scheduled Indoor football games.

5. ARENA ADVERTISING/PROGRAM AND NOVELTY SALES: Muskegon Football to sell and receive 100% of the proceeds from the sale of program ads, temporary banners, padding, promotions, kiosks, novelty sales, and any other activities related to an arena football game. All such advertising items and activities shall require Arena approval. Temporary signage and kiosks must be removed and stored prior to 5 AM the next day.

6. SCHEDULING AVAILABILITY: By a specified date each year, Arena will submit a list of available play dates for the Muskegon Football season. Twelve (12) dates will be submitted and those submitted dates will be held until the conclusion of the league schedule. Unused dates to be released by Muskegon Football upon creation of the indoor football league schedule.

Arena will utilize its best efforts to maintain good date availability for all playoff dates which cannot be scheduled in advance of the season.

7. INSURANCE AND INDEMNITY:

a. Muskegon Football shall obtain and retain throughout the term of this day to day rental, insurance coverage of and for all claims arising out of or resulting from Muskegon Football's use of the L.C. Walker Arena, which coverage shall include the following. Each policy shall contain the provision that no cancellation shall be effective unless thirty (30) days advance written notice is given by the carrier to the Arena. All insurance policies shall name the City of Muskegon, the Muskegon County Building Authority and Muskegon County as additional insureds and loss payees:

- i) Broad form comprehensive general liability insurance including:
 - (a) Premises/operations
 - (b) Products/Completed operations hazard,
 - (c) Broad form contractual and
 - (d) Personal injury.

This general liability insurance shall provide the following limits of liability: \$3,000,000.00 (\$1,000,000.00 primary and \$2,000,000.00 umbrella).

ii) Comprehensive automobile liability insurance for all owned and non-owned vehicles used on behalf of the Muskegon Football in the amounts not less than \$1,000,000.00 for bodily injury and property damage, and including loading and unloading hazards.

iii) Worker's compensation insurance providing statutory coverage for the State of Michigan.

iv) Such additional insurance which Arena and/or City may reasonably require from time to time.

v) Certificate of insurance in a form satisfactory to the City of Muskegon, the County Building Authority and the County of Muskegon shall be filed with the Arena at least thirty (30) days prior to the commencement of Muskegon Football's use under this agreement.

b. Muskegon Football agrees that it will indemnify and hold and save, the City of Muskegon, the County Building Authority and the County of Muskegon whole and harmless of, from and against all claims, demands, actions, damages, loss, costs, liabilities, expenses and judgments incurred by, recovered from or imposed on or against them or any of them on account of any injury or damage to person or property to the extent that any such damage may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by an act, omission, negligence or misconduct on the part of the Muskegon Football or any of its agents, servants, employees, contractors, patrons, guests, licensees or by or of any other person entering upon the L.C. Walker Arena with either the express or implied invitation or permission of Muskegon Football or when any such injury or damage is the result, proximate or remote, of the violation by Muskegon Football or any of its agents, servants, employees, contractors, patrons, guests, licensees or invitees of any law, ordinance or governmental order of any kind, or when any such injury or damage may in any other way arise from or out of the occupancy or use by Muskegon Football, its agents, servants, employees, contractors, patrons, guests, licensees or of any portion of the L.C. Walker Arena. Such indemnification of the above entities by the Muskegon Football shall be effective unless such damage or injury results from the sole negligence of the City, County Building Authority or the County of Muskegon. Muskegon Football covenants and agrees that in case the City, the County Building Authority or the County shall be made a party to any litigation commenced by or against Muskegon Football or relating to this agreement or to the portion of the L.C. Walker Arena subject to this agreement, then Muskegon Football shall and will pay all costs and expenses, including reasonable attorneys' fees and court costs, incurred by or imposed upon them, their officers, officials, agents, employees, volunteers, or attorneys by virtue of any such litigation.

8. **RELEASE OF HAZARDOUS MATERIALS:** Muskegon Football shall not cause or allow the release of hazardous materials or pollution as defined by any local, state or federal law or regulation to occur upon the premises. In the event of such release, Muskegon Football shall be responsible for any and all costs, including clean up, penalties, fines, or damages to third parties. Muskegon Football agrees to indemnify and hold harmless the City, the County Building Authority and the County of Muskegon from any such exposures or costs.

9. **PRACTICE/TRAINING CAMP:** Muskegon Football shall have daytime use of the arena on game days beginning at 9:00AM. Additional opportunities to access Arena for practices will be determined by Arena Manager and per availability.

10. **LIABILITY/RESPONSIBILITY:** Arena assumes no responsibility whatever for any property of Muskegon Football placed in said building and arena is expressly relieved and discharged from any and all liability for any loss, injury, or damage to persons or property that may be sustained during the effective date of this contract by reason of the occupancy and operation of said building or any part thereof under this agreement.

11. **DEFAULT:** Muskegon Football covenants that if any default is made in the payment of fees or any part thereof at the time specified in this contract, or if any default is made in any of the covenants or agreements herein contained, or if Muskegon Football cancels this agreement for any cause, the provisions of this contract shall cease and terminate at the Arena's option, and Muskegon Football may be put out of the premises by appropriate legal proceedings. Further, and in addition, should Muskegon Football be in default with regard to payments or fees due hereunder or other default occur, the Arena shall be allowed, without initiating legal proceedings against Muskegon Football and without verbal or written notice to take such money from box office receipts due Muskegon Football and to withdraw from and/or to be relieved of the Arena's responsibilities under this agreement. Upon default, Arena may cease providing any or all services called from this agreement. Muskegon Football shall save the Arena harmless from any and all claims or actions for damages or injunctions.

12. **FEES AND EXTRA SERVICES:** Any sum due the Arena from Muskegon Football or any accommodations, extra services, material or cost of repair, shall be a first lien on the box office receipts and on any property of the Muskegon Football which may be in the L.C. Walker Arena and Event Center. Settlements shall take place within 4 working days from game day. Any balance due the Arena shall be paid at this time.

13. **COMPLIANCE WITH LIQUOR LAWS:** Muskegon Football acknowledges that all of the L.C. Walker Arena and Event Center is a "licensed premises" under the Michigan Liquor Control Act. Muskegon Football covenants that it will not do or permit to be done anything which will violate the terms and conditions of said Liquor License or the regulations of the Michigan Liquor Control Commission.

14. **ENTRANCE:** All articles, exhibits, fixtures, materials, displays, etc., shall be brought into or out of the building at such entrances and exits as designated by the Arena Manager.

15. **TERMINATION:** Muskegon Football agrees upon the termination of this agreement, it shall vacate the Arena leaving it in the same condition as it existed on the date of this agreement except for the consequences of ordinary use and wear thereof and damage by the elements or fire or other casualty.

16. **RELATIONSHIP OF PARTIES:** No provision of this Agreement herein contained shall be construed by the parties or by any other person as one creating a partnership or joint venture between the parties as to the use of the Arena by Muskegon Football or as to the operation of Muskegon Football business in the Arena, it being the intent of the parties that this Agreement is

solely that of a contract for the use of a portion of the premises owned by the City and known as the L.C. Walker Arena and Event Center.

17. **REMOVAL OF PROPERTY:** Personal equipment in connection with Muskegon Football activities belonging to Muskegon Football shall be removed from the Arena at or before the termination of this Agreement. Said property shall not include advertising facilities, fixtures, locker room or arena equipment, non-removable signage, advertising or messages, scoreboards, tables, platforms, benches, seating or any property except the personal belongings of Muskegon Football and its personnel. All such excepted property shall be and is the property of the Arena and shall be removed from the building.

18. **NUMBER OF PATRONS:** Muskegon Football shall fully cooperate with Arena and shall not cause to be admitted to the premises a larger number of persons than the rated capacity of the individual areas hereby rented. Maximum capacities shall be established as mandated by the City of Muskegon Fire Departments. Capacities may be reduced due to setups or obstructions.

19. **PUBLIC AREA OBSTRUCTIONS PROHIBITED:** No portion of the sidewalks, ramps, entries, corridors, passageways, vestibules, halls, lobbies, stairways, aisles, or access to public utilities of the L.C. Walker Arena and Event Center shall be obstructed by Muskegon Football or used for any purposes other than for ingress or egress from the day to day rental of d premises.

20. **PUBLIC SAFETY:** Muskegon Football agrees that at all times they will conduct their activities with full regard to public safety, and will observe and abide by all applicable regulations and requests by the Arena and duly authorized governmental agencies responsible for public safety.

21. **FLAMMABLE MATERIALS:** Materials used for decorative purposes must be treated with flame proofing and approved the Muskegon Fire Department. Nor shall Muskegon Football without written consent of the Building Manager and approval of the appropriate City official, such as the fire marshal, building inspector, or other appropriate official, place or operate any engine or motor or machine on the premises, or use oils, burning fluids, kerosene, propane, or gasoline, or any other flammable chemical for mechanical or other purposes.

22. **CONDITION OF PREMISES:** Muskegon Football shall have examined the premises prior to the execution of this Agreement and are presumed to be satisfied with the physical condition of the premises. Muskegon Football by entering into this Agreement and the usage of the Arena, agrees that the premises are in safe, sanitary condition, and in good repair.

23. **PERMITS, LICENSES AND COPYRIGHTS:** Muskegon Football agrees to obtain and pay for all necessary permits and licenses required by Federal, State or local laws. Muskegon Football warrants that all copyrighted material to be performed has been duly authorized or licensed by the copyright owners or/their representatives and agrees to indemnify and hold harmless the City, County Building Authority and County of Muskegon from any and all claims, losses, expenses, including legal fees, which might arise from any such permits, licenses and copyrights.

24. **RIGHT TO INSPECT:** Arena reserves the right to inspect and control all events being held on premises.
25. **COMPLIANCE WITH LAW:** Muskegon Football shall not conduct, or permit to be conducted on the premises, any performance or activity which either by speech, song, music, or other conduct, is in violation of the laws of the United States, the State of Michigan, or the rules and regulations of the L.C. Walker Arena and Event Center.
26. **ASSIGNMENT:** Muskegon Football may not assign this day to day rental without the prior written consent of the Arena.
27. **UNAVAILABILITY OF FACILITIES:** In the event that the facilities herein rented or any portion thereof are not available for occupancy upon commencement or during the term of this Agreement due to fire, casualty, acts of God, strikes or national emergency or other cause beyond the control of the Arena, this permit and the obligations of the Arena and Muskegon Football herein shall terminate. Muskegon Football hereby waives any claim against the Arena for damages by reason of such termination.
28. **BREACH OF AGREEMENT:** In the case of the breach of any one or more of the terms of this Agreement by Muskegon Football, the right to the use of the premises shall terminate without notice or demand. Upon the termination of this Agreement, Muskegon Football agrees to vacate the premises immediately. The parties agree that Arena is in full control of the premises and may refuse admission to or put out any person including Muskegon Football for good cause. No action by Arena under this paragraph shall cause forfeiture of any fees or payments due the Arena.
29. **CANCELLATION:** Should Muskegon Football cancel an already scheduled game, without giving a minimum of seven (7) days advance notice to the Arena Manager, the Arena may charge Muskegon Football the full amount of Arena Fees Per Game as specified in Section 3(a) of this agreement.
30. **BINDING EFFECT:** Each and every term of this contract shall be binding upon the parties and their successors and assigns, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto, unless the same be in writing and mutually signed by the duly authorized agent or agents who executed this.
31. **LEGAL CONSTRUCTION:** The Agreement shall be governed by the laws of the State of Michigan.
32. **ENTIRE AGREEMENT:** The parties hereto agree that all of their agreements are fully set forth herein and that no oral statement or representations of any kind have been made upon which either party shall have the right to reply. This shall not limit the Arena from imposing any reasonable additional rules or regulations which may be necessary in the best interest of the operations of the facilities.

IN WITNESS WHEREOF, the Arena and Muskegon Football have caused this indenture to be executed the day and year first above written.

WITNESSES:

L.C. Walker Arena

By _____

Muskegon Football

By _____

Commission Meeting Date: March 7, 2016

Date: March 1, 2016

To: Honorable Mayor & City Commission

From: Planning & Economic Development Department

RE: Approval of loan in the amount of \$9,000 to Terrace Cutz, LLC

SUMMARY OF REQUEST: To approve the attached loan agreement and related documents for a \$9,000 loan to Terrace Cutz, LLC. They will be using the loan in conjunction with a \$21,000 loan from GROW to purchase and upgrade the building at 1144 S Getty St.

FINANCIAL IMPACT: The City will gain \$1,314.63 in interest charges over the course of the five year loan.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: The Planning and Finance Departments recommend approval of the loan to Terrace Cutz, LLC.

COMMITTEE RECOMMENDATION: None.

Term Loan of \$9,000

March __, 2016

City of Muskegon

Lender

Terrace Cutz, LLC

Borrower

Closing Documents Compiled By:

John C. Schrier

Parmenter O'Toole

P.O. Box 786

Muskegon, MI 49443-0786

231-722-5405

Table of Contents

Tab	Document
1.	Term Loan Agreement
2.	Promissory Note
3.	Real Estate Mortgage
4.	Security Agreement
5.	UCC1 Financing Statement
6.	Personal Guaranty

TERM LOAN AGREEMENT

This Agreement is made on April 1, 2009 between **Terrace Cutz, LLC**, a Michigan corporation, of 1144 Getty Street, Muskegon, Michigan 49441 ("Borrower") and the **City of Muskegon**, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440 ("City") with reference to the following facts:

Background

- A. Borrower has requested a term loan of \$9,000 for the purpose of the purchase of relocating a barber shop and site improvements.
- B. The City has agreed to make the loan subject to the terms and conditions set forth below;

Therefore, in consideration of the mutual promises of the parties set forth in this agreement and other valuable consideration, the receipt and adequacy of which is acknowledged, the parties agree as follows:

1. **Conditions of loan.**

a. **The Loan.** The City agrees to make a loan to Borrower of \$9,000 subject to the following conditions:

- i. Fulfillment of all conditions contained in Section 3;
- ii. The Loan Agreement must be closed on or before _____, 2016.

iii. Delivery to the City of a note ("Note") in form and substance acceptable to the City; and

iv. At the time of borrowing no Event of Default as defined in Section 7 exists and no event exists which with notice and/or the passage of time could become an Event of Default.

b. **Payments.** The principal amount of the Note and interest accrued thereon shall be payable, unless accelerated under the terms stated in Section 7, in monthly installments of \$171.91, each to be paid on the 11th of each month, beginning _____, 2016 and continuing until March 11, 2021, when the entire balance of principal and interest shall be due and payable in full.

c. **Interest.** The Note shall bear interest on the outstanding balance at the rate of 5.5% per annum.

d. **Prepayments.** The Borrower may at any time prepay without penalty all or any portion of the principal, and any such payments shall be applied to the principal installments last coming due.

2. **Security.**

a. **Security Agreement.** To secure the full and timely performance of Borrower's covenants set out in this Agreement and to secure the repayment of the loans and advances made and to be made (the "Indebtedness"), Borrower agrees to execute and deliver to City a security agreement in form and substance satisfactory to City, giving City a valid lien and security interest in the personal property described in the security agreement.

b. **Mortgage.** As further security for the loan, Borrower shall execute a mortgage on the real property located at 1144 Getty Street, Muskegon, Michigan, including all improvements now or hereafter located on the property. The mortgage will be junior only to mortgages to _____ securing a promissory note in the amount of \$_____.

c. **Personal Guaranty.** As additional security, Ryschard Laws will personally guarantee repayment of the loan.

3. **Conditions Precedent to Obligations of City.** The obligations of City under this Agreement are subject to the occurrence, prior to or simultaneously with the Borrower's receipt of the loan of each of the following conditions, any or all of which may be waived in whole or in part by City in writing:

a. **Documents Executed.** Borrower shall have executed and delivered to the City all documents required to consummate this transaction.

b. **Hazard Insurance.** Borrower shall have furnished to City, in a form satisfactory to City, hazard insurance policies, with loss payable clauses in favor of City as its interest appears, relating to the properties of Borrower described in Section 2, in an amount equal to the full replacement cost of such properties.

c. **Personal Guarantee.** Ryschard Laws shall execute and deliver to the City an agreement of guarantee of the Indebtedness in form and substance satisfactory to the City.

d. **Certified Resolutions.** Borrower shall have furnished to City a copy of the resolution of Borrower authorizing the execution, delivery and performance of this Agreement, the borrowing of \$9,000 from the City, the Note, and any other documents contemplated by this Agreement.

e. **Certificate of Good Standing.** Borrower shall have furnished to City a certificate of good standing from the Michigan Department of Commerce with respect to the Borrower, as of a recent date.

4. **Warranties and Representations.** Borrower represents and warrants to City that, as of the date of the borrowing:

a. **Corporate Existence and Power.** Borrower represents and warrants that:

i. Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan;

ii. Borrower has the corporate power and authority to own its properties and assets and to carry out its business as now being conducted and Borrower is qualified to do business in every jurisdiction wherein such qualification is necessary;

iii. Borrower has the corporate power and authority to execute and perform this Agreement, to borrow money in accordance with its terms, to execute and deliver the Note and other related documents, to grant liens on the Collateral and to do any and all other things required of it by this Agreement; and

iv. The Agreement, the Note, and all other documents referred to in this Agreement, when executed on behalf of Borrower will be valid and binding obligations of Borrower, legally enforceable in accordance with their terms.

b. **Actions, Suits or Proceedings.** There are no actions, suits or proceedings, and no proceedings before any arbitrator or by or before any governmental commission, board, bureau or other administrative agency, pending, or, to the best knowledge of Borrower, threatened, against or affecting Borrower or any properties or rights of Borrower which, if adversely determined, could materially impair the right of Borrower to carry on business substantially as now conducted or could have a materially adverse effect upon the financial condition of Borrower.

c. **No Liens, Pledges, Mortgages or Security Interests.** Except for liens of City, none of Borrower's assets are subject to any mortgage, pledge, lien, security interest or other encumbrance of any kind or character, except the security interest of the parties listed on **Exhibit B** in the personal property of Borrower described in Section 2 pursuant to a Security Agreement of even date.

d. **Accounting Principles.** Balance sheets, earning statements, and other financial data are furnished to City, for the purposes of, or in connection with this Agreement and the transactions contemplated by this Agreement have been prepared in accordance with generally accepted accounting principles, consistently applied and do or will fairly present the financial condition of the Borrower as of the dates, and the results of their operations for the period, for which the same are furnished to the City.

e. **Conditions Precedent.** As of the date of this Agreement, all conditions precedent referred to in Section 3 have been satisfied.

5. **Affirmative Covenants.** Until the principal and interest on the Note is paid in full, Borrower covenants and agrees that it will:

a. **Annual Financial Reports.** Furnish to City, in form satisfactory to City, not later than 90 days after the close of each fiscal year of Borrower, beginning with Borrower's fiscal year ending December 31, 2016, a balance sheet as at the close of each such fiscal year, statements of income and retained earnings and changes in financial position for each such year, and such other comments and financial details as are usually included in similar reports. The reports shall be prepared in accordance with generally accepted accounting principles consistently applied.

b. **Adverse Events.** Promptly inform City of the occurrence of any Event of Default or of any event which, with notice and/or the passage of time would become an Event of Default, or of any occurrence which has or could reasonably be expected to have a materially adverse effect upon Borrower's business, properties, financial condition or ability to comply with its obligations under this Agreement.

c. **Other Information Upon Request.** Promptly furnish to City such other information regarding the operations, business affairs and financial condition of Borrower as City may reasonably request from time to time and permit City and its employees, attorneys and agents, to inspect all of the books, records and properties of Borrower at any reasonable time.

d. **Non-Discrimination.** Ensure that no person in the United States shall on the grounds of race, creed, color, national origin or sex be excluded from participating in, be denied the benefits of, or be otherwise subject to discrimination in connection with Borrower's activities as recipient of the financial assistance provided by this Loan.

e. **Insurance.** Keep its insurable properties adequately insured and maintain:

i. insurance against fire and other risks customarily insured against by businesses engaged in the same or similar activities as that of Borrower;

ii. necessary worker's compensation insurance;

iii. public liability and product liability insurance; and

iv. such other insurance as may be required by law or as may be reasonably required in writing by City.

All such insurance shall be in amounts, contain terms, in a form, for such purposes and written by such companies as may be satisfactory to City. Borrower will deliver to City, at its request, evidence satisfactory to City that such insurance has been procured and showing the City as additional insured or loss payee, as the case may be.

f. **Affirmative Action Program.** Comply with all applicable Affirmative Action Programs, if any, approved by the Economic Development Administration's Office of Civil Rights.

g. **Maintain Business Entity and Property.** Do or cause to be done all things necessary to preserve and keep in full force and effect its own existence, rights and franchises and comply with all applicable laws; continue to conduct and operate its business substantially as conducted and operated during the present and preceding calendar year; at all times maintain and preserve all of the remainder of its property used or useful in the conduct of its business and keep the same in good repair, working order and condition, and from time to time make, or cause to be made, all needed and proper repairs, renewals, replacements, betterments and improvements thereto so that the Borrower's business may be properly and advantageously conducted at all times.

h. **Use of Loan Proceeds.** Use the proceeds of the loan for the purpose set forth in the Background to this Agreement.

6. **Negative Covenants.** From the date of this Agreement until the Note is paid in full, Borrower covenants and agrees that Borrower will not, without the prior written consent of City:

a. **Dividends.** Make any distribution other than weekly pay of \$____.

b. **Liens.** Create, incur, assume or allow to exist any mortgage, pledge, encumbrance, security interest, lien or charge of any kind (including any charge upon property purchased under a conditional sale or other title retaining agreement) upon any of its property or assets, whether now owned or hereafter acquired, other than in favor of City, except: (i) as required or permitted in this Agreement and listed on Exhibit ; (ii) liens for taxes not delinquent, or being contested in good faith, and, if requested by City, bonded in a manner satisfactory to City; and (iii) liens not delinquent created by statute in connection with worker's compensation, unemployment insurance, social security and similar statutory obligations.

c. **Indebtedness.** Incur, create, assume or permit to exist any indebtedness or liability on account of deposits or advances or any indebtedness or liability for borrowed money, or any other indebtedness or liability evidenced by notes, bonds, debentures or similar obligations, indebtedness required or permitted under this Agreement or indebtedness subordinated to the prior payment in full of Borrower's Indebtedness to City upon the terms and conditions approved in writing by City.

d. **Extension of Credit.** Make loans, advances or extensions of credit to any Person, except for sales on open account and in the ordinary course of business. For the purpose of this Agreement, the word "Person" means any individual, corporation, limited liability company, partnership, trust, unincorporated association, joint stock company or other entity.

e. **Guarantee Obligations.** Guarantee or otherwise in any way become or be responsible for obligations of any other Person, whether by agreement to purchase the indebtedness of any other Person, or agreement for the furnishing of funds to any other Person through the purchase of goods, supplies or services (or by way of stock purchase, capital contribution, advance or loan) for the purpose of paying or discharging the indebtedness of any other Person, or otherwise, except for the endorsement of negotiable instruments by Borrower in the ordinary course of business for collection.

f. **Subordinate Indebtedness.** Subordinate any indebtedness due Borrower from any Person to the indebtedness of other creditors of the obligor.

g. **Merger.** Enter into any merger, consolidation, reorganization or recapitalization or purchase or otherwise acquire all or substantially all of the assets of any other Person.

7. **Default.**

a. **Events of Default.** Should any of the following events (an "Event of Default") occur, Borrower shall be in default under this Agreement:

- i. Misrepresentation. If any warranty or representation of Borrower in connection with or contained in this Agreement, or if any financial data or other information now or later furnished to City by or on behalf of Borrower, shall prove to be false or misleading in any material respect;
- ii. Failure to Pay Monies Due. If any principal of or interest on the Indebtedness shall not be paid within ten days after the same becomes due;
- iii. Noncompliance with City Agreement. If Borrower shall fail to perform any of its obligations and covenants hereunder, or shall fail to comply with any of the provisions of this Agreement or any other agreement with the City to which it may be a party;
- iv. Other Defaults. If Borrower shall default in the due payment of any of its indebtedness (other than the Indebtedness) or in the observance or performance of any term, covenant or condition in any agreement or instrument evidencing, securing or relating to such other indebtedness, and such default shall be continued for a period sufficient to permit acceleration of such indebtedness;
- v. Judgments. If there shall be rendered against Borrower one or more judgments or decrees involving an aggregate liability of \$10,000 or more, which has or have become nonappealable and shall remain undischarged, unsatisfied by insurance and unstayed for more than 20 days, whether or not consecutive; or if a writ of attachment or garnishment against the property of Borrower shall be issued and levied in an action claiming \$10,000 or more, and not released or appealed and bonded in a manner satisfactory to City;
- vi. Business Suspension, Bankruptcy, Etc. If Borrower shall voluntarily suspend transaction of Borrower's business or make a general assignment for the benefit of creditors; or shall be adjudicated a bankrupt; or shall file a voluntary petition in bankruptcy or for a reorganization or to effect a plan or other arrangement with Borrower's creditors; or shall file an answer to a creditor's petition or other petition against Borrower (admitting the material allegations thereof) for an adjudication in bankruptcy or for a reorganization; or shall apply for or permit the appointment of a receiver, trustee, or custodian for any substantial portion of the properties or assets of Borrower; or if any order shall be entered by any court approving an involuntary petition seeking reorganization; or if a receiver, trustee or custodian shall be appointed for Borrower or if any substantial bankruptcy, reorganization or liquidation proceedings are instituted against Borrower and remain undismissed for 30 days; or if Borrower becomes unable to meet Borrower's obligations as they mature; or if Borrower commits an act of bankruptcy;
- vii. Change of Control or Management. If Borrower or a controlling portion of its membership or a substantial portion of its assets comes under the practical, beneficial or effective control of one or more persons, whether by reason of death, merger, consolidation, sale or purchase of interest or assets or otherwise; and if any such change of control adversely impacts, in the sole judgment of City, upon the ability of Borrower to carry on its business as previously conducted;

b. **Acceleration of Indebtedness.** Upon the occurrence of any of the Events of Default described in Sections 7(a)(i) or 7(a)(ii) or upon the occurrence of any of the Events of Default described in Sections 7(a)(iii) through 7(a)(vii) inclusive, which is not cured by Borrower or waived by City within 30 days after notice to Borrower by City, all Indebtedness shall be immediately due and payable in full at the option of City without presentation, demand, protest, notice of dishonor or other notice of any kind, all of which are expressly waived. Unless all of the Indebtedness is then fully paid, City shall have and may exercise any one or more of the rights and remedies for which provision is made for a secured party under the Uniform Commercial Code or under any mortgage, security agreement, pledge agreement, assignment or any other related document, including, without limitation, the right to take possession and sell, lease or otherwise dispose of any or all of the Collateral. Borrower agrees, upon request of City, to assemble the Collateral and make it available to City at any place designated by City which is reasonably convenient to City and Borrower.

c. **Cumulative Remedies.** The remedies provided for by this Agreement are cumulative to the remedies for collection of the Indebtedness as provided by law or by any mortgage, security agreement or any related document. Nothing in this Agreement is intended, nor should it be construed, to preclude City from pursuing any other remedy for the recovery of any other sum to which City may be or become entitled for the breach of this Agreement by Borrower.

d. **Written Waivers.** No default shall be waived by City except in writing signed by an officer of City, and no waiver of any default shall operate as a waiver of any other default or of the same default on a future occasion.

8. **Miscellaneous.**

a. **Independent Rights.** No single or partial exercise or delay in the exercise of any right, power or privilege created by this Agreement, shall preclude other or further exercise of the rights of the parties to this Agreement.

b. **Covenant Independence.** Each covenant in this Agreement shall be deemed to be independent of any other covenant, and an exception in one covenant shall not create an exception in other covenant.

c. **No Waiver.** No forbearance on the part of City in enforcing any of its rights under this Agreement, nor any renewal, extension or rearrangement or any payment or covenant to be made or performed by Borrower hereunder shall constitute a waiver of any terms of this Agreement or of any such right.

d. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Michigan.

e. **Severability.** If any provisions of this Agreement shall for any reason be held invalid or unenforceable such invalidity or unenforceability shall not affect any other provision, but this Agreement shall be construed as if such invalid or unenforceability provisions had never been in this Agreement.

f. **Survival of Warranties, Etc.** All of Borrower's covenants, agreements, representations and warranties made in connection with this Agreement and any related document shall survive incurrence of the Indebtedness and shall be deemed to have been relied upon by the City, notwithstanding any investigation made by the City. All statements contained in any certificate or other document

delivered to City at any time by or on behalf of Borrower pursuant to this Agreement or in connection with the transactions contemplated in this Agreement shall constitute representations and warranties by Borrower in connection with this Agreement.

g. **Payments on Saturdays, Etc.** Whenever any payment to be made shall be stated to be due on a Saturday, Sunday or a legal holiday, such payment may be made on the next succeeding business day, and such extension, if any, shall be included in computing interest in connection with such payment.

h. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective heirs, successors and assigns; provided, however, that Borrower shall not assign or transfer its right or obligations under this Agreement without the prior written consent of City.

i. **Maintenance of Records.** Borrower will keep all of its records concerning the Collateral at its principal place of business. Borrower will give City prompt written notice of any change in its principal place of business, or in the location of said records.

j. **Notices.** All notices and communications in this Agreement or any related document or required by law to be given shall be effective when received, except that all notices and communications to Borrower shall be deemed to have been given for all purposes when sent by first class mail, postage prepaid, addressed to the address of Borrower set forth in the heading of this Agreement, or such other address as Borrower shall have designated to City in writing. The giving of at least five days' notice before City shall take any action described in any notice shall conclusively be deemed reasonable for all purposes.

k. **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures were upon the same instrument.

l. **Headings.** Article and section headings in this Agreement are included for the convenience of reference only and shall not constitute a part of this Agreement for any purpose.

Duplicate counterparts of this Agreement have been executed by Borrower and the City on the day and year above first written.

CITY:

BORROWER:

CITY OF MUSKEGON

TERRACE CUTZ, LLC

By: _____
Name: Steven Gawron
Title: Mayor
Dated: March ____, 2016

By: _____
Name: Ryschard Laws
Title: Member
Dated: March ____, 2016

and: _____
Name: Ann Marie Meisch, MMC
Title: City Clerk
Dated: March ____, 2016

PROMISSORY NOTE

\$9,000.00

Muskegon, Michigan
March ____, 2016

For value received, **Terrace Cutz, LLC**, a Michigan Limited Liability corporation of 1144 Getty Street, Muskegon, Michigan 49441 ("Maker") promises to pay to the **City of Muskegon**, a Michigan municipal corporation, at 933 Terrace Street, Muskegon, Michigan 49440 ("City"), or at such other place as directed by the City, the principal sum of Nine Thousand and 00/100 Dollars (\$9,000.00), together with interest from the date hereof at the rate of 5.5% per annum on the unpaid balance remaining due from time to time. This Note shall be payable as follows:

Equal and consecutive monthly installments of principal and interest of \$171.91 shall be made from the Maker to the City commencing ____ 11, 2016 and continuing on the 11th of each month until March 11, 2021, when the entire balance of principal and interest shall be due and payable in full.

The Maker may prepay without penalty all or any portion of the principal at any time. Any partial prepayment shall not eliminate the obligation of the Maker to pay all subsequent installments on their normal due dates. All payment of any nature shall be applied first to accrued interest and the balance to principal. The Maker shall maintain their business location in the City of Muskegon. A move out of the City is a default under this Note.

This Note is secured by a certain Security Agreement of even date between the Maker and the City and a certain Mortgage of even date given by Terrace Cutz, LLC, to the City. This Note is personally guaranteed by Ryschard Laws. The terms of the Security Agreement, Mortgage and Personal Guaranty are incorporated in this Note by reference. The City shall have all of the rights and powers set forth in the Security Agreement, Mortgage and Personal Guaranty as though the same were set forth fully in this Note. A default in the Security Agreement, Mortgage or Personal Guaranty shall constitute a default of this Note.

Upon any default, including but not limited to any failure to make payments when due, the City may, upon ten (10) days written notice to the Maker, declare the entire remaining balance of principal and interest to be immediately due and payable. No delay by the City in exercising any right hereunder shall be considered a waiver of such right.

The Maker (i) waives protest, presentment, demand for payment and notice of dishonor; (ii) agrees that any extension of the time for any payment, reduction of any payments, acceptance by the City of a renewal note, or release or non-enforcement of any security, whether with or without notice, shall not release or offset the obligations of the Maker; (iii) agrees to reimburse the City for any and all costs and expenses (including but not limited to, reasonable and actual attorney fees) incurred in attempting to collect any and all principal and interest on this Note.

MAKER:

TERRACE CUTZ, LLC

By: _____
Name: Ryschard Laws
Title: Member
Date: March __, 2016

SECURITY AGREEMENT

This Agreement is entered into on March ____, 2016 (the "Effective Date"), between **Terrace Cutz, LLC**, a Michigan corporation, of 1144 Getty Street, Muskegon, Michigan 49441 ("Debtor") and the **City of Muskegon**, a Michigan municipal corporation, at 933 Terrace Street, Muskegon, Michigan 49440 ("City") with reference to the following facts:

Background

A. Debtor has received from City a loan in the amount of \$9,000 pursuant to the terms and conditions of a certain term loan agreement between City and Debtor of even date ("Term Loan Agreement").

B. Debtor has agreed to grant a security interest in all of its assets as security for payment of the loan pursuant to the terms of a certain promissory note between Debtor and City of even date ("Note").

Therefore, for good and valuable consideration, the parties agree as follows:

1. **Definitions.** As used in this Security Agreement, the following definitions (in addition to other terms and provisions set forth in Article IX of the Michigan Uniform Commercial Code, MCL 440.9101 et seq.) shall apply:

a. **Collateral.** The collateral shall consist of all of the personal property of Debtor, wherever situated, whether now owned or later acquired, including: Accounts; Chattel paper; Deposit Accounts; Documents; Equipment; Farm Products; General Intangibles, including payment intangibles; Goods; Instruments, including promissory notes; Inventory; Investment Property; Letters of Credit and Letters of Credit Rights; Supporting Obligations. To the extent not listed above as original Collateral, proceeds and products of the foregoing, including all Inventory repossessed or returned; and, in addition, as used in this Agreement, Inventory includes goods held for sale or lease or furnished or to be furnished under contracts of service, or goods being processed for sale in Debtor's business, as now or later conducted, including raw materials, work in process, finished goods, and materials and supplies used or consumed in Debtor's business. All of the above shall be referred to as the "Collateral".

b. **Obligations.** This Security Agreement secures the following (collectively, the "Obligations"):

i. Debtor's obligations and liabilities under the Loan Agreement, including any agreements or instruments referred to therein, the Note and this Agreement;

ii. The repayment of (1) any amounts that City may advance or spend for the maintenance or preservation of the Collateral, and (2) any other expenditures that City may make under the provisions of this Security Agreement or for the benefit of Debtor;

iii. All amounts owed under any modifications, renewals, or extensions of any of the foregoing items; and

iv. Any of the foregoing that arises after the filing of a petition by or against Debtor under the Bankruptcy Code, even if the obligations due do not accrue because of the automatic stay under the Bankruptcy Code Section 362 or otherwise.

c. **Term.** A period of time commencing on the date of this Agreement and ending on the Termination Date.

d. **Termination Date.** The date when all Obligations owed by Debtor to City have been satisfied.

e. **UCC.** Any term used in the Uniform Commercial Code as adopted from time to time in the State of Michigan ("UCC") and not defined in this Security Agreement has the meaning given to the term in the UCC.

2. **Grant of Security Interest.** As security for the payment or performance of the Obligations, Debtor grants a Security Interest in the Collateral to City.

3. **Perfection of Security Interests.**

a. **Filing of Financing Statement.** Debtor authorizes City to file a financing statement (the "Financing Statement") describing the Collateral.

b. **Possession.** Debtor shall have possession of the Collateral, except where otherwise expressly provided in this Security Agreement.

c. **Control.** Debtor will cooperate at all times with City in obtaining control with respect to Collateral.

4. **Post-Effective Date Covenants and Rights Concerning the Collateral.**

a. **Inspection.** The parties to this Security Agreement may inspect any Collateral in the other party's possession or control at any time upon reasonable notice.

b. **Personal Property.** The Collateral shall remain personal property at all times; and Debtor shall not affix any of the Collateral to any real property in any manner that would change its nature from that of personal property to real property or to a fixture.

c. **City Collection Rights.** City shall have the right at any time to enforce Debtor's rights against the account debtors and obligors.

d. **Limitations on Duties Concerning Maintenance of Collateral.**

i. Debtor has the risk of loss of the Collateral; and

ii. City has no duty to collect any income accruing on the Collateral or to preserve any rights relating to the Collateral.

e. **Inventory.** Debtor has the power to sell Debtor's Inventory in the ordinary course of Debtor's business, provided that Debtor is not in default. In addition, the parties agree as follows:

i. A sale of Debtor's Inventory not in the ordinary course of business shall constitute a default; and

ii. The interest of City shall continue in all proceeds of sales and all dispositions of Debtor's Inventory;

5. **Covenants, Warranties and Representations of Debtor.** Debtor, as an inducement to City to extend credit to Debtor, covenants, represents, and warrants to City the following:

a. **Title to and Transfer of Collateral.** Debtor has rights in or the power to transfer the Collateral, and its title to the Collateral is free of all adverse claims, liens, security interests, and restrictions on transfer or pledge.

b. **Location of Collateral.** Debtor will maintain the Collateral at, and will not remove the Collateral from, Debtor's Address without the prior written consent of City. Debtor will promptly notify City in writing of any change in the location of any place of business or establishment of any new place of business of Debtor.

c. **Organization and Name.** Debtor is duly organized and operating a business under the laws of the State of Michigan; and, further, until the Obligations are paid in full, Debtor agrees that Debtor will:

i. Preserve its existence in good standing and not, in one transaction or a series of related transactions, merge into or consolidate with any other entity, or sell all or substantially all of Debtor's assets;

ii. Not change Debtor's name without the written consent of City. Debtor's exact legal name is as set forth in the first paragraph of this Security Agreement; and

iii. Not change its location as that term is defined in UCC 9-307 (MCL 440.9307).

d. **Use.** The Collateral will be used primarily for Debtor's business.

e. **Records.** Debtor will at all times during this Agreement keep accurate and complete records of Debtor's Collateral, and will, at any time at the request of City, deliver to City a schedule specifically identifying all of the Collateral.

f. **Insurance.** Debtor will keep the Collateral continuously insured with insurance carriers in amounts and against risks that shall be reasonably satisfactory to City, with the loss payable clause in favor of City.

g. **Indemnification.** Debtor agrees to indemnify and save harmless City from any loss or damage caused by the Collateral or its use, and immediately to give written notice to City of any loss of or damage to the Collateral occasioned by any cause.

h. **Impairment of Collateral.** If the Collateral becomes unsatisfactory to City or deteriorates in market or actual value, Debtor will, after written demand

given by City to Debtor, promptly reduce the debt to City to the extent specified by City or, in the alternative, increase the Collateral to the amount affixed by City.

i. **Financial and Other Statements.** During the term of this Agreement, Debtor will deliver to City as soon as practicable upon request by City (and in any event, within 90 days thereafter), the following:

i. Debtor's balance sheet at the end of such year;

ii. Debtor's tax return for such fiscal year; and

iii. A certificate of good standing or similar document from the Office of the Secretary of State affirming that Debtor remains duly organized under the laws of the State of Michigan.

6. **Events of Default.** The occurrence of any of the following shall, at the option of City, be an Event of Default:

a. Any default, Event of Default as defined under the Agreement, this Security Agreement, or any of the other Obligations;

b. Debtor's failure to comply with any of the provisions of, or the incorrectness of any representation or warranty contained in, this Security Agreement or in any of the other Obligations;

c. Transfer or disposition of any of the Collateral, except as expressly permitted by this Security Agreement;

d. Attachment, execution or levy on any of the Collateral;

e. Debtor voluntarily or involuntarily becoming subject to any proceeding under (i) the Bankruptcy Code or (ii) any similar remedy under state statutory or common law; or

f. Debtor shall fail to comply with, or become subject to any administrative or judicial proceeding under any federal, state, or local (i) hazardous waste or environmental law, (ii) asset forfeiture or similar law which can result in the forfeiture of property, or (iii) other law, where noncompliance may have any significant effect on the Collateral.

7. **Default Costs.** Should an Event of Default occur, Debtor will pay to City all costs reasonably incurred by City for the purpose of enforcing its rights hereunder, including:

a. Costs of foreclosure;

b. Costs of obtaining money damages; and

c. A reasonable fee for the services of attorneys employed by City for any purpose related to this Security Agreement or the Obligations, including consultation, drafting documents, sending notices, or instituting, prosecuting, or defending litigation or arbitration.

8. **Remedies Upon Default.**

a. **General.** Upon any Event of Default, City may pursue any remedy available at law (including those available under the provisions of the UCC), or in equity, to collect, enforce, or satisfy any Obligations then owing, whether by acceleration or otherwise.

b. **Conformer Remedies.** Upon any Event of Default, City shall have the right to pursue any of the following remedies separately, successively, or simultaneously:

i. File suit and obtain judgment and, in conjunction with any action, City may seek any ancillary remedies provided by law, including levy of attachment and garnishment;

ii. Take possession of any Collateral not already in its possession without demand and without legal process. Upon City's demand, Debtor will assemble and make the Collateral available to City as City may direct. Debtor grants to City the right, for this purpose, to enter into or on any premises where Collateral may be located; and

iii. Without taking possession, sell, lease, or otherwise dispose of the Collateral at public or private sale in accordance with the UCC.

9. **Foreclosure Procedures.**

a. **No Waiver.** No delay or omission by City to exercise any right or remedy accruing upon any Event of Default shall: (i) impair any right or remedy, (ii) waive any default or operate as an acquiescence to the Event of Default, or (iii) affect any subsequent default of the same or of a different nature.

b. **Notices Regarding Sale.** City shall give Debtor such notice of any private or public sale as may be required by the UCC.

c. **Condition of Collateral.** City has no obligation to clean-up or otherwise prepare the Collateral for sale.

d. **No Obligation to Pursue Others.** City has no obligation to attempt to satisfy the Obligations by collecting them from any other person liable for them and City may release, modify, or waive any Collateral provided by any other person to secure any of the Obligations, all without affecting City's rights against Debtor. Debtor waives any right it may have to require City to pursue any third person for any of the Obligations.

e. **Compliance with Other Laws.** City may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral, and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

f. **Warranties.** City may sell the Collateral without giving any warranties as to the Collateral. City may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale or other disposition of the Collateral.

g. **Sales on Credit.** If City sells any of the Collateral upon credit, Debtor will be credited only with payments actually made by the purchaser, received by City, and applied to the indebtedness of the purchaser. If the purchaser fails to pay for the Collateral, City may resell the Collateral, and Debtor shall be credited with the proceeds of the sale.

h. **Purchases by City.** If City purchases any of the Collateral being sold, City may pay for the Collateral by crediting some or all of the Obligations of Debtor.

i. **No Marshaling.** City shall have no obligation to marshal any assets in favor of Debtor, or against or in payment of any of the Obligations or any other obligation owed to City by Debtor or any other person.

10. **Miscellaneous.**

a. **Assignment.** This Security Agreement shall bind and shall inure to the benefit of the heirs, legatees, executors, administrators, successors, and assigns of City and shall bind all persons who become bound as a debtor to this Security Agreement. City does not consent to any assignment by Debtor except as expressly provided in this Security Agreement. City may assign its rights and interests under this Security Agreement. If an assignment is made, Debtor shall render performance under this Security Agreement to the assignee. Debtor waives and will not assert against any assignee any claims, defenses, or set-offs that Debtor could assert against City except defenses that cannot be waived.

b. **Severability.** Should any provision of this Security Agreement be found to be void, invalid, or unenforceable by a court or panel of arbitrators of competent jurisdiction, that finding shall only affect the provisions found to be void, invalid, or unenforceable and shall not affect the remaining provisions of this Security Agreement.

c. **Notices.** Any notices required by this Security Agreement shall be deemed to be delivered when a record has been (i) deposited in any United States postal box if postage is prepaid, and the notice properly addressed to the intended recipient, (ii) received by fax, (iii) received through the Internet, and (iv) when personally delivered.

d. **Headings.** Section headings used in this Security Agreement are for convenience only. They are not a part of this Security Agreement and shall not be used in construing it.

e. **Governing Law.** This Security Agreement is being executed and delivered and is intended to be performed in the State of Michigan and shall be construed and enforced in accordance with the laws of the State of Michigan.

f. **Rules of Construction.**

i. No reference to "proceeds" in this Security Agreement authorizes any sale, transfer, or other disposition of the Collateral by Debtor;

ii. "Includes" and "including" are not limiting;

iii. "Or" is not exclusive; and

iv. "All" includes "any" and "any" includes "all."

g. **Integration and Modifications.**

i. This Security Agreement is the entire agreement of Debtor and City concerning its subject matter; and

ii. Any modification to this Security Agreement must be made in writing and signed by the party adversely affected.

h. **Waiver.** Any party to this Security Agreement may waive the enforcement of any provision to the extent the provision is for its benefit.

i. **Further Assurances.** Debtor agrees to execute any further documents, and to take any further actions, reasonably requested by City to evidence or perfect the security interest granted herein, to maintain the priority of the security interests, or to effectuate the rights granted to City herein.

The parties have signed this Security Agreement on the date set forth below their names, to be effective as of the date set forth above.

REAL ESTATE MORTGAGE

This Mortgage is given on March _____, 2016, by **Terrace Cutz, LLC**, a Michigan limited liability company, of 1144 Getty Street, Muskegon, Michigan 49441 ("Mortgagor") to the **City of Muskegon**, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440 ("Mortgagee").

For value received, Mortgagor mortgages and warrants to Mortgagee the property situated in the City of Muskegon, Muskegon County, Michigan and legally described on Exhibit A; together with the easements, rights-of-way, licenses, privileges, hereditaments, and appurtenances belonging to the property, and all the rents, issues, leases, and profits, the interest of Mortgagor in the property, either at law or in equity, all buildings, structures, and improvements, and all fixtures located in, on, or affixed to the property, and used or usable in connection with the operation of the property (all of the above-stated property are collectively referred to in this Mortgage as the "Premises").

This Mortgage is given to secure the following:

- (a) payment of the indebtedness evidenced by a promissory note of even date, made and delivered by Mortgagor to Mortgagee, in the principal sum of \$9,000.00 ("Note");
- (b) payment by Mortgagor to Mortgagee of all sums expended or advanced by Mortgagee pursuant to any term or provision of this Mortgage;
- (c) performance of the covenants, conditions, and agreements contained in this Mortgage, in the Note, in any security agreement given in connection with this transaction, and in any other documents securing the indebtedness shown above; and
- (d) all other indebtedness and obligations of Mortgagor presently or subsequently owing to Mortgagee (collectively the "Indebtedness").

Mortgagor warrants, covenants, and agrees that:

1. **Title.** Mortgagor is seized of the Premises, in fee simple. Mortgagor has the right and power to mortgage and warrant the Premises as set forth in this Mortgage. The Premises are free from all liens and encumbrances except mortgages, easements and restrictions of record. Mortgagor will defend the Premises against all claims and demands.
2. **Payment of Indebtedness.** Mortgagor will pay all Indebtedness when due, including the principal and interest, as provided in the Note.

3. **Taxes and Assessments.** Until the Indebtedness is fully satisfied, Mortgagor will pay all taxes, assessments, and other similar charges and encumbrances levied on the Premises before they become delinquent, and will promptly deliver to Mortgagee, without demand, receipts showing the payment.

4. **Insurance.** Mortgagor will procure, deliver to, and maintain for the benefit of Mortgagee during the term of this Mortgage:

a. hazard insurance, providing an all-risk extended coverage endorsement, in an amount equal to the highest replacement value of the Premises; and

b. a policy of comprehensive public liability insurance insuring against bodily injury, with a coverage limit of at least \$500,000, and against property damage, with a coverage limit of at least \$250,000, from any accident or occurrence with respect to the Premises.

All policies of insurance required by this paragraph shall be in a form, with companies, and in amounts acceptable to Mortgagee, and shall contain a mortgagee endorsement clause acceptable to Mortgagee, with loss payable to Mortgagee. In the event of any loss or damage to the Premises, Mortgagor will give immediate written notice to Mortgagee, and Mortgagee may then make proof of the loss or damage, if Mortgagor does not promptly do so. All proceeds of insurance shall be payable to Mortgagee, and any affected insurance company is authorized and directed to make payment directly to Mortgagee. Mortgagee is authorized to settle, adjust, or compromise any claims for loss, damage, or destruction under any policy of insurance.

5. **Maintenance and Repair.** Mortgagor will not cause or permit the commission of waste on the Premises and will keep the Premises in good condition and repair. No building or other improvement on the Premises shall be removed, demolished, or materially altered without the prior written consent of Mortgagee. Mortgagor will comply with all laws, ordinances, regulations, and orders of all public authorities having jurisdiction over the Premises. If the Premises, in the sole judgment of Mortgagee, require inspection or repair, Mortgagee may enter upon the Premises and inspect and/or repair the Premises as Mortgagee may deem advisable, and may take other action as Mortgagee may deem appropriate to preserve the Premises. Mortgagor will pay when due all charges for utilities or services contracted for by Mortgagor.

6. **Waste.** The failure of Mortgagor to meet its maintenance obligations or to pay any taxes assessed against the Premises or any insurance premium on policies covering any property located on the Premises shall constitute waste as provided by MCLA 600.2927, and shall entitle Mortgagee to appoint a receiver of the property for the purpose of preventing the waste. The receiver may collect the rents and income from the Premises.

7. **Condemnation.** If the Premises, or any part, are taken under the power of eminent domain, the entire award, to the full extent of the Indebtedness, shall be paid to Mortgagee. Mortgagee is empowered in the name of Mortgagor to receive and give acquittance for any award, whether it is joint or several. However, Mortgagee shall not be held responsible for failing to collect any award.

8. **Mortgagee Expenses.** If Mortgagor fails to meet any of its obligations under this Mortgage, Mortgagee shall have the right, but not the obligation, to perform in the place of Mortgagor. If Mortgagee incurs or expends any sums, whether or not in

connection with any action or proceeding, to (a) sustain the lien of this Mortgage or its priority, (b) protect or enforce any of Mortgagee's rights, (c) recover any part of the Indebtedness, (d) meet an obligation of Mortgagor under this Mortgage, or (e) collect insurance or condemnation proceeds, then those sums shall become immediately due and payable by Mortgagor with interest at the rate set forth in the Note from the date of Mortgagee's payment until paid by Mortgagor. The sums expended in this manner by Mortgagee shall be secured by this Mortgage and be a lien on the Premises prior to any right, title, or interest on the Premises attaching or accruing subsequent to the lien of this Mortgage.

9. **Records.** With respect to the Premises and its operations, Mortgagor shall keep proper books in accordance with generally accepted accounting principles consistently applied. Mortgagee shall have the right to examine the books at reasonable times as Mortgagee may elect. Upon request, Mortgagor shall furnish to Mortgagee within 60 days after the end of each calendar year, a financial statement of Mortgagor for the calendar year, in reasonable detail and stating in comparative form the figures as of the end of the previous calendar year, including statements of income and expense relating to operations of the Premises, certified by an independent certified public accountant acceptable to Mortgagee. In addition, Mortgagor shall furnish to Mortgagee, in a form acceptable to Mortgagee, interim financial statements that Mortgagee may request, certified by Mortgagor.

10. **Waiver.** If Mortgagee (a) grants any extension of time with respect to the payment of any part of the Indebtedness, (b) takes other or additional security for the payment of the Indebtedness, (c) waives or fails to exercise any right granted by this Mortgage or the Note, (d) grants any release on any part of the security held for the payment of the Indebtedness, or (e) amends any of the terms and provisions of this Mortgage or of the Note, that act or omission shall not release Mortgagor under any covenant of this Mortgage or of the Note, nor preclude Mortgagee from exercising any right or power granted, nor impair the lien or priority of this Mortgage.

11. **Use of Premises.** Mortgagor shall not make, or permit, without the prior written consent of Mortgagee, (a) any use of the Premises for any purpose other than that for which they are now used; (b) any alterations of the buildings, improvements, and fixtures located on the Premises; (c) any purchase, lease of, or agreement for any fixtures to be placed on the Premises under which title is reserved in the vendor.

12. **Events of Default.** The occurrences listed below shall be deemed "Events of Default" and shall entitle Mortgagee, at its option and without notice except as required by this Mortgage or by law, to exercise any one or any combination of remedies under this Mortgage or permitted by law:

a. the failure by Mortgagor to (i) make any payment within 10 days of when due under the Note or (ii) fail to perform any of the other terms, covenants, or conditions of this Mortgage within a period of 30 days after written notice from Mortgagee of Mortgagor's failure to perform an obligation;

b. the institution of foreclosure or other proceedings to enforce any junior lien or encumbrance on the Premises;

c. the appointment by a court of a receiver or trustee of Mortgagor or for any property of Mortgagor;

d. a decree by a court adjudicating Mortgagor a bankrupt or insolvent, or for the sequestration of any of Mortgagor's property;

e. the filing of a petition in bankruptcy by or against Mortgagor under the federal Bankruptcy Code or any similar statute that is in effect;

f. an assignment by Mortgagor for the benefit of creditors or a written admission by Mortgagor of the inability to pay debts generally as they become due;

g. Mortgagor, without the written consent of Mortgagee, sells, conveys, or transfers the Premises, any interest in the Premises, or any rents or profits from the Premises, or causes or allows any mortgage, lien, or other encumbrance, or any writ of attachment, garnishment, execution, or other legal process to be placed on the Premises, or any part of the Premises is transferred by operation of law; or

h. all or any part of the Premises is damaged or destroyed by fire or other casualty, regardless of insurance coverage, or is taken by power of eminent domain.

13. **Default Remedies.** Upon the occurrence of any Event of Default of this Mortgage, Mortgagee shall have the option, in addition to and not in lieu of all other rights and remedies provided by law, to do any or all of the following:

a. Subject to the notice requirements of this Mortgage, declare the principal sum secured by the Mortgage, together with all interest and all other sums secured by this Mortgage, to be immediately due and payable; to demand any installment payment due under the Note; and to institute any proceedings that Mortgagee deems necessary to collect and otherwise to enforce the Indebtedness and obligations secured by this Mortgage and to protect the lien of this Mortgage.

b. Commence foreclosure proceedings against the Premises pursuant to applicable laws. Mortgagee's commencement of a foreclosure shall be deemed an exercise by Mortgagee of its option to accelerate the due date of all sums secured by this Mortgage. Mortgagor grants to Mortgagee, in the event of the occurrence of an event of default, the power to sell the Premises at public auction by advertisement, without notice or hearing, except as required by Michigan statutes.

c. To enter into peaceful possession of the Premises.

Mortgagor acknowledges having been advised that Mortgagee believes that the value of the security covered by this Mortgage is inextricably intertwined with the effectiveness of the management, maintenance, and general operation of the Premises, and that Mortgagee would not make the loan secured by this Mortgage unless it could be assured that it would have the right to take possession of the Premises in order to manage, control management, and enjoy the income, rents, and profits, immediately upon default by Mortgagor, notwithstanding that foreclosure proceedings may not have been instituted, or are pending, or that the redemption period may not have expired. Accordingly, Mortgagor knowingly and voluntarily waives all right to possession of the Premises from and after the date of default, upon demand for possession by Mortgagee.

14. **Assignment.** Mortgagor shall not make a conveyance of any interest in the Premises. A "conveyance" of Mortgagor's interest in the Premises shall include without limitation any voluntary or involuntary disposition or dilution of legal or beneficial title to the Premises by any means. If ownership of the Premises, or any part, becomes vested in a

person other than Mortgagor (with or without Mortgagee's consent), Mortgagee may, without notice to Mortgagor, deal with the successors in interest with reference to this Mortgage and the Note, without in any way releasing or otherwise affecting Mortgagor's liability under the Note and mortgage.

15. **Application of Proceeds.** In the event of the payment to Mortgagee, pursuant to this Mortgage, of any rents or profits, or proceeds of any insurance or condemnation award, or proceeds from the sale of the Premises upon foreclosure, Mortgagee shall have the right to apply the rents, profits, or proceeds, in amounts and proportions that Mortgagee shall, in its sole discretion, determine, against the cost and expenses incurred by Mortgagee in exercising its rights under this Mortgage, payment of the interest and principal due under the Note, payment of any other portion of the Indebtedness, and payment of expenses incurred in preserving the Premises. Application by Mortgagee of any proceeds toward the last maturing installments of principal and interest to become due under the Note shall not excuse Mortgagor from making the regularly scheduled payments due under the Note and this Mortgage, nor shall the application reduce the amount of the payments. In the event of the payment of proceeds as a result of an insurance or condemnation award, Mortgagee shall have the right, but not the obligation, to require all or part of the proceeds of any insurance or condemnation award to be used to restore any part of the Premises damaged or taken by reason of the occurrence which gave rise to the payment of the proceeds.

CAUTION - PARAGRAPH 16 CONTAINS A WAIVER OF IMPORTANT LEGAL RIGHTS

16. **Waiver of Rights.** This mortgage contains a **power of sale** that permits Mortgagee to cause the Premises to be sold in the event of a default. Mortgagee may elect to cause the Premises to be sold by advertisement rather than pursuant to court action, and Mortgagor voluntarily and knowingly waives any right Mortgagor may have by virtue of any applicable constitutional provision or statute to any notice or court hearing prior to the exercise of the power of sale, except as may be expressly required by the Michigan statute governing foreclosures by advertisement. In addition, Mortgagor knowingly and voluntarily waives any right Mortgagor may have to remain in possession of the Premises or to collect any rents or income therefrom during the pendency of any foreclosure proceedings and during any applicable redemption period. Also, paragraphs 12(g) and 14 entitle Mortgagee to require immediate payment of the balance of the indebtedness in full if the Premises are sold or otherwise transferred. By execution of this Mortgage, Mortgagor represents and acknowledges that the meaning and consequences of these paragraphs have been discussed as fully as desired by Mortgagor with Mortgagor's legal counsel.

17. **Covenants Run with Land.** All of the terms and covenants of this Mortgage shall run with the land and shall be binding on and inure to the benefit of the respective legal representatives and successors of the parties.

18. **Notices.** Any notice that either party may give or is required to give under this agreement shall be in writing and, if mailed, be effective three days after being sent by certified or registered mail, postage prepaid, addressed to the other party at the other party's address set forth in this agreement or at any other address that the other party provides in writing. Notices shall be effective on the date of receipt, if given by hand, express delivery or recognized courier service.

19. **Severability.** If any provision of this Mortgage is in conflict with any statute or rule of law of the state of Michigan or is otherwise unenforceable for any reason, then that provision shall be deemed null and void to the extent of the conflict or unenforceability,

but shall be deemed separable from and shall not invalidate any other provision of this Mortgage.

20. **Venue and Jurisdiction.** All provisions of this Mortgage shall be governed by and construed in accordance with the laws of the state of Michigan. Venue shall be in Muskegon County, Michigan for any action brought with regard to this Mortgage. Mortgagor consents to personal jurisdiction over it by any Michigan courts to the extent that personal jurisdiction may be necessary to enforce any of the provisions of this Mortgage.

Signed on the date set forth above.

MORTGAGOR: *Terrace Cutz, LLC* -

By: _____

Name: Ryschard Laws

Title: Member

Dated: March ____, 2016

STATE OF MICHIGAN)
COUNTY OF MUSKEGON)

The foregoing instrument was acknowledged before me this ____ day of March, 2016 by Ryschard Laws on behalf of Terrace Cutz, LLC.

, Notary Public

County, Michigan
Acting in the County of _____
My commission expires: _____

Prepared by and when recorded return to:
John C. Schrier
Parmenter O'Toole
P.O. Box 786
Muskegon, MI 49443-0786

Exhibit A
Legal Description

PERSONAL GUARANTY

This Guaranty is given ____ day of March, 2016, by **Ryschard Laws** ("Laws") to the **City of Muskegon** ("City") with reference to the following facts:

Background

- A. The City has extended to **Terrace Cutz, LLC**, a Michigan Limited Liability corporation ("Terrace Cutz") the principal sum of \$9,000 represented by a promissory note of even date ("Debt"); and
- B. Laws is financially interested in the Terrace Cutz and he will receive valuable consideration for the Debt to the Terrace Cutz; and
- C. Laws therefore agrees that he will guarantee payment of the Debt to the full extent of any property or interest held or owned by him under any form of legal or beneficial ownership. Laws desires to enter into this Guaranty to induce the City to engage in transactions in which the Terrace Cutz may make, extend, renew or refinance the Debt to the City.

Therefore, for good and valuable consideration, Laws agrees as follows:

1. **Guaranty.** Laws guarantees to the City, its successors and assigns, the prompt payment when due, whether by acceleration or otherwise, of the Debt, together with interest at the rate stated in any document evidencing such liability, and any attorney fees, costs and expenses of collection incurred by the City in connection with any liability covered by this Guaranty. Such Guaranty shall extend to any property or interest held or owned by Laws individually or jointly or under any other form of legal or beneficial ownership.
2. **Duration.** The obligation of Laws shall continue until payment is made of the Debt of the Terrace Cutz to the City now due or hereafter to become due and until payment is made of any loss or damage incurred by the City with respect to any liability covered by this Guaranty.
3. **Successors and Assigns Bound.** Laws agrees that this Guaranty shall be enforceable against his heirs, successor and assigns.
4. **Guaranty to be Supplemental.** Laws agrees that this Guaranty shall supplement and be in addition to any other guaranty, indemnity, pledge, security agreement, mortgage, hypothecation or any other form of collateral to secure any liability of the Great Lakes.
5. **Consent.** Laws consents, without affecting his obligations to the City, that the City may, without notice to or the consent of Laws, in its sole discretion, deal in any manner with the Debt and any collateral therefor, including, but not limited to, the following powers, in addition to any powers granted by law:
 - a. To extend, in whole or in part, by renewal, refinancing or otherwise, the time of payment of the Debt;
 - b. To release, surrender, exchange, modify, impair or extend the period or duration or the time for performance or payment of any collateral securing the Debt;

- c. To settle or compromise any claim of the City against the Great Lakes, or against any other person, firm or corporation, whose obligation is held by the City as collateral security for payment of the Debt;
- d. In the event of nonpayment when due, by acceleration or otherwise, of the Debt, to realize on the collateral or any part thereof, in whole or in such parcels or subdivided interests as the City may elect, at any public or private sales, on such terms and conditions as the City may accept, without demand, advertisement or notice of the time and place of sale or any adjournment thereof, or by foreclosure or otherwise, or to forbear from realizing thereon, all as the City in its sole discretion may deem proper, and to purchase all or any part of the collateral for its own account. At any such sale or foreclosure, such powers are to be exercised only to the extent permitted by law; and
- e. To modify or otherwise change any terms of all or any part of the Debt or the rate of interest thereon.

Laws ratifies and affirms any such extension, renewal, release, surrender, exchange, modification, impairment, settlement, compromise, purchase at a foreclosure or other sale, and all such actions shall be binding upon Laws who waives all defenses, counterclaims or offsets which they might have by reason thereof.

- 6. **Waiver.** Laws waives: (a) notice of acceptance of this Guaranty by the City; (b) notice of presentment, demand for payment, protest, or other default of any of the Terrace Cutz's liabilities or the obligation of any person, firm or corporation, held by the City as collateral security for the Terrace Cutz's obligation; (c) notice of the failure of any person, firm or corporation to pay to the City any indebtedness held by the City as collateral security for payment of the Debt; and (d) all defenses, offsets and counterclaims which Laws may at any time have to any claim of the City against the Terrace Cutz.
- 7. **Discharge.** The obligation of Laws and the rights of the City in collateral securing repayment of the Debt shall not be released, discharged, or in any way affected, nor shall Laws have any rights against the City by reason of the fact that: (a) collateral may be in default at the time of acceptance by the City or subsequent to such date; (b) a valid lien or security interest in any of the collateral may not be created in favor of or conveyed to the City; (c) any of the collateral may be subject to equities or defenses or claims in favor of others or may be invalid or defective in any way; (d) the financial condition of Borrower or Laws may not have been correctly estimated or may have changed; and (e) any collateral may have deteriorated, wasted or been lost by fire, theft, casualty or otherwise unless such deterioration, waste or loss shall be caused by willful act of the City.
- 8. **Remedies.** The City may at its option proceed against Laws to collect any obligation covered by this Guaranty, without first proceeding against the Great Lakes, or any other person, firm, corporation or guarantor, and without first resorting to any property at any time held by the City as collateral security. The City may proceed against Laws as if such amounts due are the direct and primary obligation of Laws. Laws shall have no right of subrogation, indemnification or contribution with respect to the Debt or the collateral unless and until the City shall have received full payment of the Debt.
- 9. **Choice of Law.** This Guaranty is established and accepted by the City under the laws of the State of Michigan and all questions concerning its validity and construction shall be determined under such laws.

10. **Severability.** If any clause, provision or paragraph of this Guaranty is ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or paragraph shall not affect any of the remaining clauses, provisions or paragraphs.

This Guaranty has been executed on the day and year above written.

Ryschard Laws
Dated: March ____, 2016

**Loan from City of Muskegon Revolving Loan Fund to Ryschard Laws/Terrace Cutz
Loan Amortization Schedule**

Revolving Loan Fund Payments

Enter Values		Loan Summary	
Loan Amount	\$ 9,000.00	Scheduled Payment	\$ 171.91
Annual Interest Rate	5.50 %	Scheduled Number of Payments	60
Loan Period in Years	5	Total Early Payments	\$ -
Number of Payments Per Year	12	Total Interest	\$ 1,314.63
Start Date of Loan	3/11/2016		

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
1	4/11/2016	\$ 9,000.00	\$ 171.91	\$ 171.91	\$ 130.66	\$ 41.25	\$ 8,869.34	\$ 41.25
2	5/11/2016	8,869.34	171.91	171.91	131.26	40.65	8,738.08	81.90
3	6/11/2016	8,738.08	171.91	171.91	131.86	40.05	8,606.22	121.95
4	7/11/2016	8,606.22	171.91	171.91	132.47	39.45	8,473.75	161.40
5	8/11/2016	8,473.75	171.91	171.91	133.07	38.84	8,340.68	200.23
6	9/11/2016	8,340.68	171.91	171.91	133.68	38.23	8,207.00	238.46
7	10/11/2016	8,207.00	171.91	171.91	134.30	37.62	8,072.70	276.08
8	11/11/2016	8,072.70	171.91	171.91	134.91	37.00	7,937.79	313.08
9	12/11/2016	7,937.79	171.91	171.91	135.53	36.38	7,802.26	349.46
10	1/11/2017	7,802.26	171.91	171.91	136.15	35.76	7,666.11	385.22
11	2/11/2017	7,666.11	171.91	171.91	136.77	35.14	7,529.34	420.36
12	3/11/2017	7,529.34	171.91	171.91	137.40	34.51	7,391.94	454.87
13	4/11/2017	7,391.94	171.91	171.91	138.03	33.88	7,253.91	488.74
14	5/11/2017	7,253.91	171.91	171.91	138.66	33.25	7,115.25	521.99
15	6/11/2017	7,115.25	171.91	171.91	139.30	32.61	6,975.95	554.60
16	7/11/2017	6,975.95	171.91	171.91	139.94	31.97	6,836.01	586.58
17	8/11/2017	6,836.01	171.91	171.91	140.58	31.33	6,695.43	617.91
18	9/11/2017	6,695.43	171.91	171.91	141.22	30.69	6,554.21	648.60
19	10/11/2017	6,554.21	171.91	171.91	141.87	30.04	6,412.34	678.64
20	11/11/2017	6,412.34	171.91	171.91	142.52	29.39	6,269.82	708.03
21	12/11/2017	6,269.82	171.91	171.91	143.17	28.74	6,126.64	736.76
22	1/11/2018	6,126.64	171.91	171.91	143.83	28.08	5,982.81	764.84
23	2/11/2018	5,982.81	171.91	171.91	144.49	27.42	5,838.32	792.26
24	3/11/2018	5,838.32	171.91	171.91	145.15	26.76	5,693.17	819.02
25	4/11/2018	5,693.17	171.91	171.91	145.82	26.09	5,547.36	845.12
26	5/11/2018	5,547.36	171.91	171.91	146.49	25.43	5,400.87	870.54
27	6/11/2018	5,400.87	171.91	171.91	147.16	24.75	5,253.71	895.30
28	7/11/2018	5,253.71	171.91	171.91	147.83	24.08	5,105.88	919.38
29	8/11/2018	5,105.88	171.91	171.91	148.51	23.40	4,957.37	942.78
30	9/11/2018	4,957.37	171.91	171.91	149.19	22.72	4,808.18	965.50
31	10/11/2018	4,808.18	171.91	171.91	149.87	22.04	4,658.31	987.54
32	11/11/2018	4,658.31	171.91	171.91	150.56	21.35	4,507.75	1,008.89
33	12/11/2018	4,507.75	171.91	171.91	151.25	20.66	4,356.50	1,029.55
34	1/11/2019	4,356.50	171.91	171.91	151.94	19.97	4,204.56	1,049.51
35	2/11/2019	4,204.56	171.91	171.91	152.64	19.27	4,051.92	1,068.79
36	3/11/2019	4,051.92	171.91	171.91	153.34	18.57	3,898.58	1,087.36
37	4/11/2019	3,898.58	171.91	171.91	154.04	17.87	3,744.54	1,105.23
38	5/11/2019	3,744.54	171.91	171.91	154.75	17.16	3,589.79	1,122.39
39	6/11/2019	3,589.79	171.91	171.91	155.46	16.45	3,434.33	1,138.84
40	7/11/2019	3,434.33	171.91	171.91	156.17	15.74	3,278.16	1,154.58
41	8/11/2019	3,278.16	171.91	171.91	156.89	15.02	3,121.28	1,169.61
42	9/11/2019	3,121.28	171.91	171.91	157.60	14.31	2,963.67	1,183.91
43	10/11/2019	2,963.67	171.91	171.91	158.33	13.58	2,805.35	1,197.50
44	11/11/2019	2,805.35	171.91	171.91	159.05	12.86	2,646.29	1,210.35
45	12/11/2019	2,646.29	171.91	171.91	159.78	12.13	2,486.51	1,222.48
46	1/11/2020	2,486.51	171.91	171.91	160.51	11.40	2,326.00	1,233.88
47	2/11/2020	2,326.00	171.91	171.91	161.25	10.66	2,164.75	1,244.54
48	3/11/2020	2,164.75	171.91	171.91	161.99	9.92	2,002.76	1,254.46
49	4/11/2020	2,002.76	171.91	171.91	162.73	9.18	1,840.03	1,263.64
50	5/11/2020	1,840.03	171.91	171.91	163.48	8.43	1,676.55	1,272.07
51	6/11/2020	1,676.55	171.91	171.91	164.23	7.68	1,512.33	1,279.76
52	7/11/2020	1,512.33	171.91	171.91	164.98	6.93	1,347.35	1,286.69
53	8/11/2020	1,347.35	171.91	171.91	165.74	6.18	1,181.61	1,292.87
54	9/11/2020	1,181.61	171.91	171.91	166.49	5.42	1,015.12	1,298.28
55	10/11/2020	1,015.12	171.91	171.91	167.26	4.65	847.86	1,302.93
56	11/11/2020	847.86	171.91	171.91	168.02	3.89	679.83	1,306.82
57	12/11/2020	679.83	171.91	171.91	168.79	3.12	511.04	1,309.94
58	1/11/2021	511.04	171.91	171.91	169.57	2.34	341.47	1,312.28
59	2/11/2021	341.47	171.91	171.91	170.35	1.57	171.13	1,313.84
60	3/11/2021	171.13	171.91	171.13	170.34	0.78	0.00	1,314.63

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: March 7, 2016

RE: Annex Roof Replacement

SUMMARY OF REQUEST:

Last week, staff solicited and approved bids for an emergency replacement of the roof at the Annex building. Multiple bids were solicited, and the lowest responsible bidder was identified as J. Stevens Construction. The roof is being replaced with a 60 Mill TPO Roofing System at a cost of \$43,300. Because of the emergency need, construction has begun; staff is asking for formal approval at this time.

FINANCIAL IMPACT:

\$43,300 from the Arena Improvement Fund

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To authorize staff to award the roof replacement bid to J. Stevens Construction .

COMMITTEE RECOMMENDATION:

None.

Putting Quality On Top

J. Stevens CONSTRUCTION

Bonded and Insured • Single Ply Membrane Roofing • Flat Roof Specialist

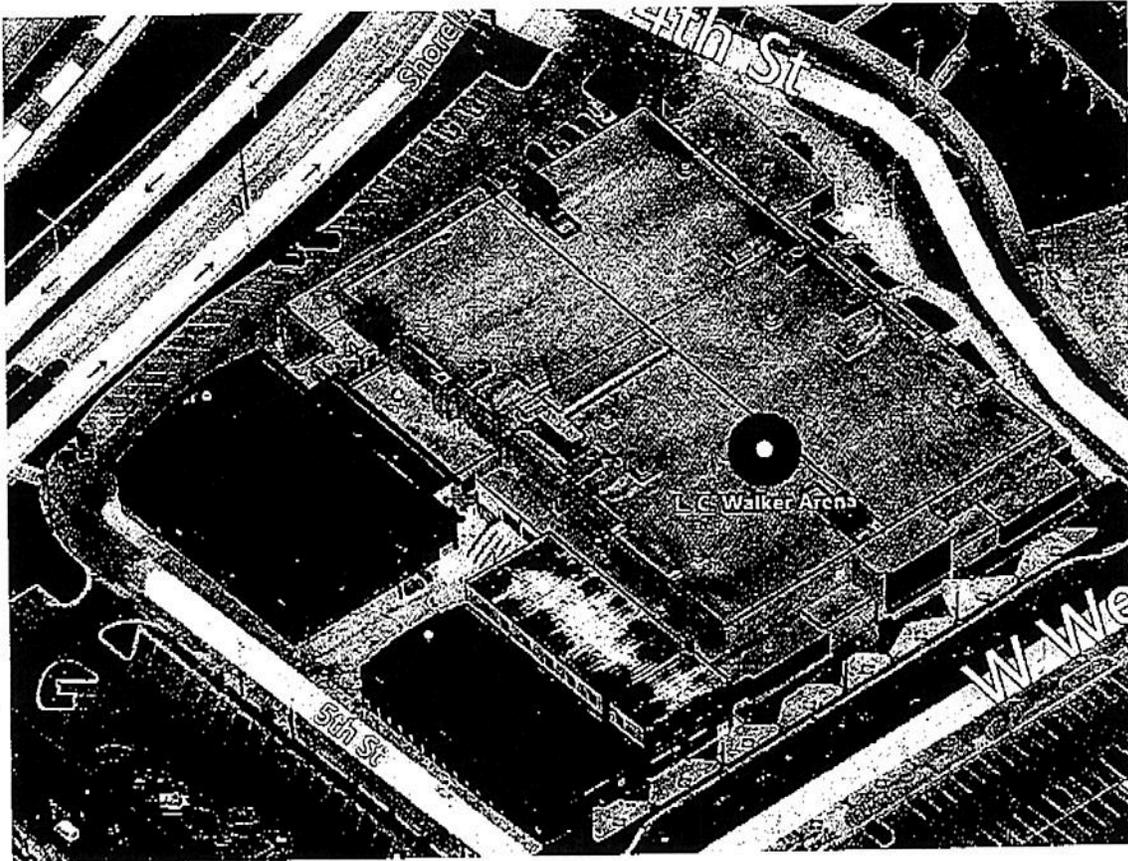
1825 S. Wolf Lake Rd. • Muskegon, MI 49442 • Ph. 231-788-4661 • Fax 231-788-4706

Roofing Assessment & Specification for Reroofing

L C Walker Arena

955 4th St, Muskegon, MI 49440

2/24/16



We're changing the way you think about roofing!
jstevensconstruction.com



Background

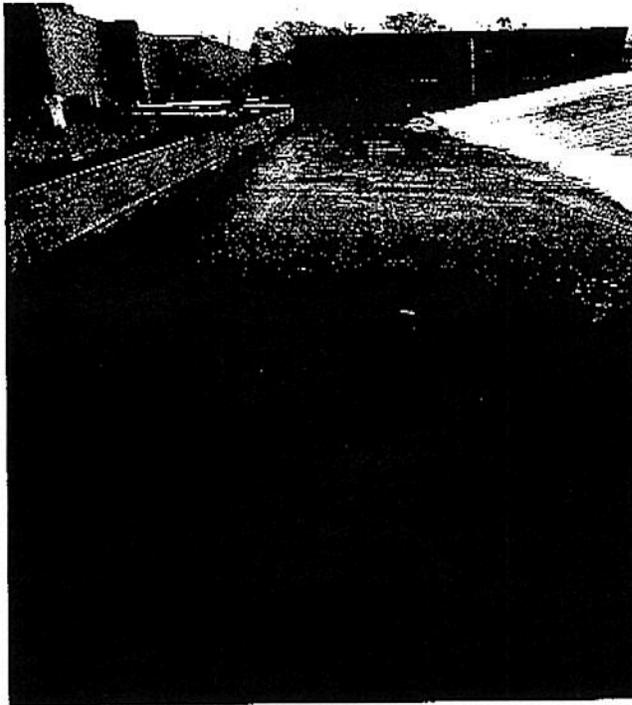
J. Stevens Construction has done a very thorough investigation and analysis of the existing roofing on the above captioned structure. Our investigation includes:

1. Detailed visual inspection of all key components of the roof assembly.
2. Taking a core sample of the existing roofing to determine the exact type and thickness of the existing roofing.
3. Considerations of the design capacity of the structure for the dead load of the roofing.

Investigation Reporting & Assessment of the Condition of the existing Modified Roof

Existing Roof type: The existing system is a smooth modified roof.

Roof Condition: The existing roof is starting to show signs of wear. If problems are not corrected larger issues may occur.



Damage To Building And Grounds: Any items of the building and grounds that are damaged during construction will be restored to their previous conditions. The project will not be considered complete until all repairs are completed and accepted by the owner.

Cleanup: At the end of each workday, the roof and grounds will be cleaned of insulation and construction debris and contained. At the end of the project, all refuse will be thoroughly cleaned up and properly disposed of in a dumpster or truck that we will provide. Final cleanup will not be considered complete until accepted by the owner representative.

Safety: We have completed a written safety and Right-to -Know program. MSDS sheets on all the products we use are maintained on every job site. Proper fall protection and OSHA Safety procedures will be followed at all times on your roof project.

Insurance Protection: For your protection, J. Stevens Construction maintains Workmen's Compensation, also Liability and Property Damage Insurance in the amount of five million dollars.

Free Temporary Repairs: In the Dry Now: We know that you need your leaks to stop right away, so as soon as this contract has been signed, we'll make temporary repairs to your roof at no charge. We'll do our best to get you dry immediately and than keep you dry.

Delivery Guarantee: On Time, Every Time: Excluding uncontrollable delays caused by weather, we'll be there when we promise or pay you each week we're late.

Hail Damage Guarantee: J. Stevens will repair any leaks in the roof membrane caused by hail of up to 1" in diameter.

No Nuisance Leak Guarantee: Approximately 35% of all reported "roof leaks" are actually not the roof system, but are from rooftop equipment, walls, etc. We will assist in pinpointing these problems at no charge.

Rapid Response Service Guarantee: J. Stevens will respond within 2 hours of any emergency leak that interrupts your operation and within 48 hours to any routine leaks.

Install TPO 60 Mil (White) Roofing Systems:

TPO Roofing System:

- Outstanding Reflectivity for enhanced energy efficiency.
- Superior rooftop performance.
- Excellent durability and high strength.
- Exceptional wind resistance.
- Simple and economical to install.
- Mechanically Fastened.
- Hot Air Welded Seams.
- Water Tight System.
- **15- Year Total System Warranty Including Labor And Material.**

Roof A: Scope Of Work To Include The Following:

1. Clean roof off of all debris before installing the new roofing system.
2. Mechanically fasten new TPO membrane over existing modified roofing system.
3. Flash all walls per manufactures specifications.
4. Install all new curb and boot flashings.
5. Install new 2 piece snap on metal with Kynar 500 finish guaranteed not to chip, fade or peel for 20 years.
6. Provide a water tight system.
7. **Provide a 15 Year Manufactures Full System Warranty Including Labor and Material.**

**Muskegon L.C Walker Arena Base Bid:
Date: 2/24/16**

We propose to complete all work as described herein for the sum of (please initial the option you wish accept and fax to J. Stevens Construction at 231-788-4706):

 Roof A: TPO Roofing System (White) 60 Mil: \$43,300.00

***** NOTE: Do to the volatile petroleum market our pricing is only good for 30 days.**

Additional Unit prices: We include in every proposal a unit cost for the removal and replacement of any deteriorated decking and also metal edge wood nailer in the event that any is discovered during construction. In the case the cost is \$6.50 per square foot of wood deck, \$9.75 per square foot of metal deck and \$13.50 for Tectum and \$2.10 per lineal foot for wood nailer and \$1.50 per square foot for wet insulation. This rate excludes disconnecting and/or supporting equipment, ceilings, or other items that are attached to the underside of the roof deck, and cleanup of dust, dirt or debris as a result of tear off or deck replacement, which can only be done a time and materials basis.

Acceptance: I acknowledge that I have completely read this document and agree to be bound by all its terms and conditions, and that I have authority to bind the entity named the owner above:

Accepted By: _____ Title: _____ Date: ___/___/___

Respectfully submitted by,
Jim Stevens
President

Terms and conditions: We will request 50% down prior to ordering materials, the balance including any approved changed orders upon substantial completion. The owner agrees to pay a 1.5% monthly service charge on all money due past 30 days. Once work is substantially complete, payment in full is due; leaks or punch items shall be considered warranty matters and shall not be reason to withhold payment. The warranties herein become null and void if all moneys are not paid within the terms described in this paragraph. The owners agrees to indemnify defend and hold J. Stevens Construction harmless from all cost, damage, expenses, lawsuits or claims, including collection fees, claims for subrogation, attorney's fees, or cost of remediation or restoration, by any party(s) arising from or relating to the performance of the work described in this proposals; the presence or disturbance of asbestos or other hazardous substance; the present or future growth or presence of mold or other biological growth within the roof assembly or building envelope; damages to the building or its contents resulting from damage to the roof by acts of God or others; leaks due to water trapped within an existing roof system; or leaks in any area of the existing roof where J. Stevens Construction has not performed tear off or installation work. Snow, ice, or water removal, if any required, will be performed at an additional cost on a time and materials basis. We may withdraw this proposal if not accepted within 15 days.

ROOFING SPECIALISTS
INDUSTRIAL
COMMERCIAL - RESIDENTIAL
HOT ROOFS
COLD ROOFS
SHINGLES



SHEET METAL
INDUSTRIAL COMMERCIAL
BLOW PIPE - AIR POLLUTION
ARCHITECTURAL SHEET METAL
METAL DECKS & SIDING
AIR CONDITIONING

1685 HOLTON ROAD
MUSKEGON, MI 49445-1498
PHONE (231) 744-2461
FAX (231) 744-9156

To: City of Muskegon
Re: LC Walker Arena – Annex Reroof

February 25, 2016

We are pleased to submit our quote to furnish all material, labor, equipment, taxes and insurances required to perform the following. We include all required City of Muskegon building permits for a complete installation:

EPDM Scope:

1. Tear off existing roofing material down to the existing built-up roof over the flat area only and dispose of all debris.
2. Clean, prep and seal existing Durbigum roof for new overlay roof system.
3. Remove existing coping caps and set aside for reuse. Remove and dispose of all existing edge metal.
4. Furnish and install one layer of 1.5" polyiso. insulation, mechanically attached with screws and plates. Fasteners will penetrate the underside of the existing roof deck.
5. Furnish and install a new fully adhered black 60 mil unreinforced EPDM roof membrane system.
6. Flash all drains, walls, penetrations and edge details per manufacturer's specifications.
7. Furnish and install new edge metal where required. Reinstall existing metal coping cap as required.
8. Furnish manufacturer's 15-year labor and material warranty as well as our 2-year workmanship warranty.

Price: \$56,400

TPO Scope:

1. Tear off existing roofing material down to the existing built-up roof over the flat area only and dispose of all debris.
2. Clean, prep and seal existing Durbigum roof for new overlay roof system.
3. Remove existing coping caps and set aside for reuse. Remove and dispose of all existing edge metal.
4. Furnish and install one layer of 1.5" polyiso. insulation, mechanically attached with screws and plates. Fasteners will penetrate the underside of the existing roof deck.
5. Furnish and install a new InvisaWeld mechanically attached white 60 mil reinforced TPO roof membrane system.
6. Flash all drains, walls, penetrations and edge details per manufacturer's specifications.
7. Furnish and install new edge metal where required. Reinstall existing metal coping cap as required.
8. Furnish manufacturer's 15-year labor and material warranty as well as our 2-year workmanship warranty.

Price: \$46,200

Note: Any work required other than what is specified in the above work scope shall be done on a time and material basis as an extra. Price excludes all snow removal and any plumbing or mechanical work. Any wood or tectum deck replacement, if required would be done on a time and material basis as an extra.

Celebrating Over 65 Years of Quality Service

All orders accepted by us with the understanding that we are not to be held liable for non-delivery because of transportation difficulties, labor strikes, fire, defense priorities, war, flood, accidents at factory or any other cause beyond our control. It is hereby expressly understood and agreed that no verbal statements or agreements made by any agent or representative of the company, nor by any person on its behalf, shall be binding upon the company unless explicitly set forth in this proposal. All prices quoted are subject to change without notice. Terms: Net due within then (10) days from date of invoice. Any unpaid balance after thirty (30) days from date of billing is subject to 1 1/2 % per month which amounts to 18 % per year. This proposal is subject to your acceptance within thirty (30) days and to approval by an officer of the company. When so approved (and not before) it will constitute a contract between us.

EAST MUSKEGON ROOFING AND SHEET METAL CO.

[Signature]
BENJAMIN P. KANAAR, Project Manager

ACCEPTED:

APPROVED:
EAST MUSKEGON ROOFING AND SHEET METAL CO.

by _____

by _____

date _____

date _____

VERSATILE

ROOFING SYSTEMS

12865 Poplar, Grant, MI 49327

Phone: (231) 834-9576 • Fax: (231) 834-9579

PROPOSAL

Date	Estimate #
2/12/2016	7375

YES

CEL 231 206-4017

DARRELL

Customer
City of Muskegon Public Works Building 1350 East Keating Ave. Muskegon, MI 49442

PRICE
INCLUDES PERMITS

Description	Total
PROJECT: ANNEX BUILDING - WESTERN	
TPO ROOFING SYSTEM - WHITE Remove existing flashing and metal edging. Install new TPO Roofing System (White) over existing roof. Install new flashing to walls, roof drains, vent pipes and curbs. Install new kynar finished metal on all edges.	55,382.00
* ALTERNATE #1 - 60 MIL EPDM FULLY ADHERED ROOFING SYSTEM Remove existing flashing and metal edging. Install 1/2" H.D. wood fiber board over existing roof fastened with screw and 3" insulation plates. Install new fully adhered 60 mil EPDM roofing system over entire roof area. Install new flashing to walls, roof drains, vent pipes and curbs. Install new kynar finished metal on all edges.	5,183.00
ADD: \$5,183.00	
ALTERNATE #2 - MODIFIED ROOFING SYSTEM Remove existing flashing and metal edging. Prime existing roof system with asphalt primer. Install new modified roofing system over entire roof. Install new flashing to walls, roof drains, vent pipes and curbs. Install new kynar finished metal on all edges. Cost entire new roof and slashing with aluminum roof coating.	60,382.00
ADD: \$7,453.00	
All labor, materials, and disposal included	
WARRANTY: Versatile Roofing Systems, Inc will provide a 15yr labor and materials warranty.	
State license #2102177738	
Total	\$55,382.00

USES
60 MIL TPO

RECOMMENDS

ASPHALT PRODUCT
* POSSIBLE CRACKING AFTER
5 TO 7 YEARS, SOME MAINTENANCE REQUIRED