

ORDINANCE NO. 2007- 66

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A LEASE AGREEMENT WITH MATTHEW R. BROWN dba ROCK AND RIVER FOR PROPERTY LOCATED AT 211 EAST SUMMIT STREET, KENT, OHIO AND DECLARING AN EMERGENCY.

WHEREAS, the Kent City Council wishes to enter into a Lease Agreement with Matthew R. Brown dba Rock and River for property owned by the City and located at 211 East Summit Street, Kent; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

SECTION 1. That Kent City Council does hereby authorize the City Manager, or his designee to enter into a Lease Agreement with Matthew R. Brown dba Rock and River, for property located at 211 East summit Street, in substantial conformity with a copy of which is marked as Exhibit "A", attached hereto and incorporated herein.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the residents of this City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: 07/18/07
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2007- 66 was duly enacted this 18 day of July , 2007 by the Council of the City of Kent, Ohio.

Linda M. Copley, Clerk of Council

EXHIBIT "A"

DRAFT
COMMERCIAL PROPERTY LEASE

THIS LEASE, made at Kent, Ohio this ____ day of _____, 2007, by and between the CITY OF KENT, Ohio as "Lessor", and MATTHEW R. BROWN dba Rock and River as "Lessee".

SECTION I

Description of Leased Premises

Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, the 1,800 square foot of space as presently constituted known as 211 East Summit Street, referred to below as "the premises" in the City of Kent, Portage County, State of Ohio, referred to below as the building.

SECTION II

Term

The space is leased for a term beginning on September 1, 2007 and to end August 31, 2012, or on an earlier time and date as this lease may terminate as provided below, except that, if the date falls on a Sunday or a holiday, then this lease shall end at midnight on the business day which precedes the above-mentioned date. By agreement of the parties, the lease may be extended beyond August 31, 2012. In addition, this lease may be terminated at any time by agreement of the parties with a ninety (90) day notice period.

SECTION III

Rent

The total annual rent for:

1. September 1, 2007 through August 31, 2008 (year one) is the sum of \$5,400.00, which is payable in twelve (12) equal monthly \$450.00 installments, in advance, on the first day of each calendar month during the term, beginning September 1, 2007.
2. The lease rate for September 1, 2008 through August 31, 2009 will be \$540.00 per month or \$6,480.00 annually.
3. The rate for the term commencing September 1, 2009 and ending August 31, 2010 will be \$585.00 per month or \$7,020.00 annually.
4. Finally, the rate for the term commencing September 1, 2010 and ending August 31, 2012 will be \$592.50 per month or \$7,110.00 annually.

SECTION IV

Use and Occupancy

Lessee agrees to use and occupy the premises for a retail bicycle shop, service, sales, clothes and accessories shop and for no other purpose. Lessor represents that the premises may lawfully be used for the stated purpose.

SECTION V

Place for Payment of Rent

Lessee shall pay rent, and any additional rent as provided below, to Lessor at Moneypenny Realty & Management, LLC, 237 East Main Street, PO Box 1073, Kent, Ohio 44240. Lessor may designate in writing another location for payment of rent, without demand and without counterclaim, deduction, or setoff.

SECTION VI

Care and Repair of Premises

Lessee shall not commit any act of waste and shall take good care of the premises and the fixtures and appurtenances on it, and shall, in the use and occupancy of the premises, conform to all laws, orders, and regulations of the federal, state, and municipal governments or any of their departments. Lessor shall make all necessary repairs to the premises, except where the repair has been made necessary by misuse or neglect by Lessee or Lessee's agents, servants, visitors or licensees. All improvements made by Lessee to the premises which are attached to the premises so that they cannot be removed without material injury to the premises, shall become the property of Lessor upon installation.

Not later than the last day of the term Lessee shall, at Lessee's expense, remove all of Lessee's personal property and those improvements made by Lessee which are not the property of Lessor, including trade fixtures, cabinet work, movable paneling, partitions and the like; repair all injury done by or in connection with the installation or removal of the property and improvements; and surrender the premises in as good condition as they were at the beginning of the term, reasonable wear, and damage by fire, the elements, casualty, or other cause not due to the misuse or neglect by Lessee or Lessee's agents, servants, visitors or licensees, excepted. All property of Lessee remaining on the premises after the last day of the term of this lease shall be conclusively deemed abandoned and may be removed by Lessor, and Lessee shall reimburse Lessor for the cost of the removal. Lessor may have any property left on the premises stored at Lessee's risk and expense.

Lessor shall be responsible for snow removal from the parking lot and sidewalks.

SECTION VII

Alterations, Additions or Improvements

Lessee shall not, without first obtaining the written consent of Lessor (by and through the City Service Director), make any alterations, additions or improvements in, to or about the premises.

The premises shall be returned to their original conditions (as of August 1, 2007) by Lessee when they vacate the premises.

Lessor agrees to address the following matters: NONE

SECTION VIII

Prohibition Against Activities Increasing Fire Insurance Rates

Lessee shall not do or permit any activity on the premises, which will cause an increase in the rate of fire insurance on the building.

SECTION IX

Disposal of Waste or Refuse Matter

Lessee shall not permit the disposal of waste or refuse matter on the leased premises or anywhere in or near the building.

Lessee agrees to pay for trash service for the premises leased. Lessee shall comply with any recycling rules, regulations and ordinances imposed. Lessor may charge Lessee for inappropriate disposal of trash.

SECTION X

Abandonment

Lessee shall not, without first obtaining the written consent of the Lessor, abandon the premises, or allow the premises to become vacant or deserted.

SECTION XI

Assignment of Sublease

Lessee shall not, without first obtaining the written consent of the Lessor, assign, mortgage, pledge, or encumber this lease, in whole or in part, or sublet the premises or any part of the premises. This covenant shall be binding upon the legal representatives of Lessee, and upon every person to whom Lessee's interest under this lease passes by operation of law, but shall not apply to an assignment or subletting to the parent or subsidiary of a corporate Lessee or to a transfer of the leasehold interest occasioned by a consolidation or merger involving Lessee.

SECTION XII

Compliance with Rules and Regulations

Lessee shall observe and comply with any rules and regulations which may exist, which are made part of this agreement, and with any further reasonable rules and regulations as Lessor may prescribe, on written notice to the Lessee, for the safety, care, and cleanliness of the building and the comfort, quiet, and convenience of other occupants of the building.

SECTION XIII

Heat

Lessee agrees to pay for the heating of the premises leased.

SECTION XIV

Water

Lessee agrees to pay for water charges as registered on the water meter and for sewer charges of the premises leased.

SECTION XV

Electricity

Lessee agrees to pay for electricity charges of the premises leased.

SECTION XVI

Damages to Building

If the building is damaged by fire or any other cause to the extent that the cost of restoration, as reasonably estimated by Lessor, will equal or exceed forty (40) percent of the replacement value of the building, exclusive of foundations, just prior to the occurrence of the damage, then Lessor may, no later than the 15th day following the damage, give Lessee a notice of election to terminate this lease, or if the cost of restoration will equal or exceed forty (40) percent of the replacement value and if the premises are not reasonably usable for the purposes for which they are leased under this agreement, then Lessee may, no later than the 15th day following the damage, give Lessor a notice of election to terminate this lease. In event of either election this lease shall terminate on the third day after Lessor gives notice to Lessee, and Lessee shall surrender possession of the premises within a reasonable time, and the rent, and any additional rent, shall be apportioned as of the date of the surrender and any rent paid for any period beyond that date shall be repaid to tenant.

In any case in which use of the premises is affected by any damage to the building, there shall be either an abatement or an equitable reduction in rent depending on the period for which and the extent to which the premises are not reasonably usable for the purpose for which they are leased under this agreement. The words "restoration" and "restore" as used in this Section XVI include repairs. If the damage results from the fault of the Lessee, or Lessee's agents, servants, visitors, or licensees, Lessee shall not be entitled to any abatement or reduction of rent, except to the extent, if any, that Lessor receives the proceeds of rent insurance in lieu of the rent.

SECTION XVII

Waivers of Subrogation

Notwithstanding the provisions of Section VI of this lease, in any event of loss or damage to the building, the premises and/or any contents, each party shall look first to any insurance in its favor before making any claim against the other party; and, to the extent possible without additional cost, each party shall obtain, for each policy of insurance, provisions permitting waiver of any claim against the other party for loss or damage within the scope of the insurance, and each party, to the extent permitted, for itself and its insurers waives all insured claims against the other party.

SECTION XVIII

Eminent Domain

If the cost of restoration as estimated by Lessor amounts to less than forty (40) percent of the replacement value of the building, or if, despite the cost, Lessor does not elect to terminate this lease, Lessor shall restore the building and the premises with reasonable promptness, subject to delays beyond Lessor's control and delays in the making of insurance adjustments between Lessor and its insurance carrier, and Lessee shall have no right to terminate this lease except as provided in this agreement. Lessor need not restore fixture and improvements owned by tenant.

If the premises or any part of the premises or any estate in the premises, or any other part of the building materially affecting Lessee's use of the premises, is taken by eminent domain, this lease shall terminate on the date when title vests pursuant to the taking. The rent, and any additional rent, shall be apportioned as of the termination date and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for the taking or any payment in lieu of payment, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

SECTION XIX

Lessor's Remedies on Default

If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions of this agreement, Lessor may give Lessee notice of the default. If Lessee does not cure any rent, or additional rent, default within thirty (30) days, or other default within thirty (30) days, after notice is given or if the other default is of a nature that it cannot be completely cured within that period, Lessee does not commence curing within thirty (30) days and thereafter proceed with reasonable diligence and in good faith to cure the default, then Lessor may terminate this lease on not less than three (3) days' notice to Lessee. On the date specified in the notice the term of this lease shall terminate and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as provided in Section XX. If this lease is terminated by Lessor, Lessor may at any time after termination resume possession of the premises by any lawful means and remove Lessee or other occupants and its or their effect.

SECTION XX

Deficiency

In any case where Lessor has recovered possession of the premises by reason of Lessee's default, Lessor may, at Lessor's option, occupy the premises or cause the premises to be redecorated, altered, divided, consolidated with other adjoining premises, or otherwise changed or prepared for reletting, and may relet the premises or any part of the premises as agent of Lessee or otherwise, for a term or terms to expire prior to, at the same time as, or subsequent to, the original expiration date of this lease, at Lessor's option, and receive the rent as agreed under the lease. Any rent received shall be applied first to the payment of expenses Lessor may incur in connection with the recovery of possession, redecorating, altering, dividing, consolidating with other adjoining premises, or otherwise changing or preparing for reletting, and reletting, including brokerage and reasonable attorneys' fees, and then to the payment of damages in amounts equal to the rent under this agreement and to the cost and expenses of performance of the other covenants of Lessee as provided in this agreement. Lessee agrees, in the above described circumstances, whether or not Lessor has relet, to pay to Lessor damages equal to the rent and other sums agreed to, less the net proceeds of the reletting. The damages shall be payable by Lessee on the several rent days above specified. In reletting the premises, Lessor may grant rent concessions, and Lessee shall not be credited with the concessions. No reletting shall constitute a surrender and acceptance or be deemed evidence of a surrender and acceptance. If Lessor elects, pursuant to this agreement, actually to occupy and use the premises or any part of the premises during any part of the balance of the term as originally fixed or since extended, there shall be allowed against Lessee's obligation for rent or damages as defined in this agreement, during the period of Lessor's occupancy, the reasonable value of the occupancy, not to exceed in any event the rent reserved and the occupancy shall not be construed as a relief of

Lessee's liability under this agreement.

Lessee waives all right of redemption to which Lessee or any person claiming under Lessee might be entitled by any law now or later in force. Lessor's remedies under this agreement are in addition to any remedy allowed by law.

SECTION XXI

Effect of Failure to Insist on Strict Compliance with Conditions

The failure of either party to insist on strict performance of any covenant or condition of this agreement, or to exercise any option contained in this agreement, shall not be construed as a waiver of the covenant, condition, or option in any other instance. This lease cannot be changed or terminated orally.

SECTION XXII

Collection of Rent from any Occupant

If the premises are sublet or occupied by anyone other than Lessee and Lessee is in default under this agreement, or if this lease is assigned by Lessee, Lessor may collect rent from the assignee, subtenant, or occupant, and apply the net amount collected to the rent reserved. The collection shall not be deemed a waiver of the covenant against assignment and subletting, or on acceptance of the assignee, subtenant, or occupant as lessee, or a release of Lessee from further performance of the covenants contained in this agreement.

SECTION XXIII

Subordination of Lease

This lease shall be subject and subordinate to all underlying leases and to mortgages and trust deeds which now or subsequently affect the leases or the real property of which the premises form a part, and also to all renewals, modifications, consolidations, and replacement of the underlying leases and the mortgages and trust deeds. Although no instrument or act on the part of Lessee shall be necessary to effectuate the subordination, Lessee will, nevertheless, execute and deliver instruments confirming the subordination of this lease as may be desired by the holders of the mortgages and trust deeds or by any of the Lessors under the underlying leases. Lessee agrees to appoint Lessor attorney in fact, irrevocably, to execute and deliver any of the above described instrument for Lessee. If any underlying lease to which this lease is subject terminates, Lessee shall, on timely request, attorn to the owner of the reversion.

SECTION XXIV

Security Deposit

Lessee agrees to deposit with Lessor upon signing of this lease the sum of \$ _____ as security for the performance of Lessee's obligations under this lease, including without limitation the surrender of possession of the premises to Lessor as provided in this agreement. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall upon demand deposit with Lessor the amount applied so that Lessor shall have the full deposit on hand at all times during the term of this lease. Lessee's deposit will be returned at upon termination of the lease if the premises are returned in acceptable condition.

SECTION XXV

Lessor's Right To Cure Lessee's Breach

If Lessee breaches any covenant or condition of this lease, Lessor may, on reasonable notice to Lessee (except that no notice need be given in case of emergency), cure the breach at the expense of Lessee. The reasonable amount of all expenses, including attorneys' fees, incurred by Lessor in curing the breach, whether paid by Lessor or not, shall be deemed additional rent payable on demand.

SECTION XXVI

Mechanics Lien

Lessee shall within fifteen (15) days after notice from Lessor discharge any mechanics liens for materials or labor claimed to have been furnished to the premises on Lessee's behalf.

SECTION XXVII

Notices

Any notice by either party to the other shall be in writing and shall be deemed proper only if delivered personally or sent by registered or certified mail in an addressed postpaid envelope; if to Lessee, at the above described building (211 East Summit Street, Kent, Ohio 44240); if to Lessor, at 215 E. Summit Street, Kent, Ohio 44240; or, to either, at another address as Lessee or Lessor, respectively, may designate in writing. Notice shall be deemed properly given, if delivered personally, upon delivery, and if mailed, upon the third day after mailing.

SECTION XXVIII

Lessor's Right To Inspection, Repair, and Maintenance

Lessor may enter the premises at any reasonable time, upon adequate notice to Lessee (except that no notice need be given in case of emergency) for the purpose of inspection or to make repairs, replacements, or additions in, to, on and about the premises or the building, as Lessor deems necessary or desirable. Lessee shall have no claim or cause of action against Lessor by reason of entry for these purposes except as provided in Section XXXIII of this agreement.

The Lessee agrees to meet with Community Development Department and other City staff on an annual basis to assess the Lessee's progress towards growth strategies and attainment of goals that were agreed to during the original application process.

SECTION XXIX

Interruption of Services or Use

Interruption or curtailment of any service maintained in the building, if caused by strikes, mechanical difficulties, or any causes beyond Lessor's control whether similar or dissimilar to those enumerated, shall not entitle Lessee to any claim against Lessor or to any abatement in rent, and shall not constitute constructive or partial eviction, unless Lessor fails to take such measures as may be reasonable in the circumstances to restore the service without delay. If the premises are rendered untenable in whole or part, for a period of fifteen (15) business days, due to repairs, replacements, or additions, other than those made with Lessee's consent or caused by misuse or neglect by Lessee or Lessee's agents, servants, visitors, or licensees, there shall be a proportionate abatement of rent during the period of untenability.

SECTION XXX

Conditions of Lessor's Liability

Lessee may not claim a constructive eviction from the premises unless Lessee has first notified Lessor in writing of the condition or conditions giving rise to the eviction, and, if the complaints are justified, unless Lessor fails within a reasonable time after receipt of notice to remedy the conditions.

SECTION XXXI

Lessor's Right To Show Premises

Lessor may show the premises to prospective purchasers and mortgagees and, during the six (6) months prior to termination of this lease, to prospective tenants, during business hours upon reasonable notice to Lessee.

SECTION XXXII

Effect of Other Representations

No representations or promises shall be binding on the parties to this agreement except those representations and promises contained in this agreement or in some future writing signed by the party making the representations or promises.

SECTION XXXIII

Peaceful Enjoyment

Lessor covenants that if, and for as long as Lessee pays the rent, and any additional rent as provided in this agreement, and performs the covenants of this lease, Lessee shall peaceably and quietly have, hold, and enjoy the premises for the term mentioned, subject to the provisions of this lease.

SECTION XXXIV

Lessee's Certification as to Force and Effect of Lease

Lessee shall, from time to time, upon not less than five (5) days' prior written request by Lessor, execute, acknowledge, and deliver to Lessor a written statement certifying that the lease is unmodified and in full force and effect, or that the lease is in full force and effect as modified and listing the instruments of modification; the dates to which the rents and other charges have been paid; and, whether or not to the best of Lessee's knowledge Lessor is in default under this lease and, if so, specifying the nature of the default. It is intended that any statement delivered according to this Section may be relied upon by a prospective purchaser of Lessor's interest or mortgagee of Lessor's interest or assignee of any mortgage upon Lessor's interest in the building.

SECTION XXXV

Waiver of Jury Trial

To the extent permitted by law, the parties waive trial by jury in any action or proceeding brought in connection with this lease or the premises.

SECTION XXXVI

Section Headings

The section headings in this lease are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this lease or any of its provisions.

SECTION XXXVII

Binding Effect on Successors and Assigns

The provisions of this lease shall apply to, bind, and inure to the benefit of Lessor and Lessee and their respective heirs, successors, legal representatives, and assigns. It is understood that the term "Lessor" as used in this lease means only the owner, a mortgagee in possession, or a term Lessee of the building, so that in the event of any sale of the building or of any lease of the building, or if a mortgagee takes possession of the premises, the Lessor named in this agreement shall be entirely freed and relieved of all covenants and obligations of Lessor subsequently accruing under this agreement. The purchaser, the term Lessee of the building, or the mortgagee in possession has assumed and agreed to carry out any and all covenants and obligations of the Lessor under this agreement.

SECTION XXXVIII

Insurance.

1. Lessee shall protect, save harmless and indemnify Lessor against and from (i) any penalties, damages, charges or costs (including reasonable attorneys fees) imposed or resulting from any violation of any law, order of governmental agency or ordinance by Lessee, (ii) all claims, losses, costs, damages or expenses (including reasonable attorneys' fees) arising out of or from Lessee's occupancy of the Premises, and (iii) any and all losses, costs, damages or expenses (including reasonable attorneys' fees) arising out of any failure of Lessee in any material respect to comply with or perform all of the requirements and provisions of this Lease.

2. Lessee shall, at Lessee's cost and expense, procure and continue in force, in the name of Lessor, Lessor's mortgagee(s) and Lessee, as their interests may appear, general liability insurance coverage against injuries to persons and property occurring in, or upon the Premises, during the term of this Lease, such insurance at all times to be in a single limit amount of not less than \$500,000 per incident and One Million Dollars (\$1,000,000) in the aggregate. Such insurance shall be written with a company or companies authorized to engage in the business of general liability insurance in the State of Ohio, and there shall be delivered to Lessor customary insurance certification evidencing such insurance and copies of the policies. Such insurance shall further provide that the same may not be cancelled, terminated or modified unless the insurer gives Lessor at least fifteen (15) days' prior written notice thereof.

3. Lessor, at Lessor's expense, shall maintain special form or "All-Risk" property insurance insuring the Premises and other improvements on the land but not Lessee's contents or personal property located on the Premises.

SECTION XXXIX

Waiver of Relocation Benefits

The below signed Lessees of the property located at 211 East Summit Street, Kent Ohio, hereby acknowledge and agree that each, jointly and severally, is a tenant in the described premises for a five (5) year term pursuant to this lease of even date herewith with the City of Kent as the owner and Lessor of the premises.

The below signed further acknowledge that either party may terminate the written lease upon giving the other the requisite notice provided for in the lease.

Upon receipt of such notice, the below signed agree to vacate the premises in accordance with the terms of the lease without any compensation due the below signed from the Lessor for exercising its rights under the lease.

The below signed hereby waive and release Lessor from having to pay to the below signed, their successors, administrators and assigns, any relocation benefit or payments in the event Lessor, City of Kent, exercises its rights under the terms of the lease to terminate the lease for any reason, with or without cause.

SECTION XXXX
Relocation Incentive

Lessee will be eligible to receive a \$500.00 per year rebate on their rental rate, up to \$2,000.00, provided Lessee locates with in the City of Kent at the end of the term of this lease agreement.

MATTHEW R. BROWN dba
ROCK AND RIVER

CITY OF KENT, OHIO

By: _____
Matthew R. Brown

By: _____
David Ruller, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

James R. Silver, Law Director