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2 **2019-44 (1<sup>st</sup> READING): ORDINANCE TO AUTHORIZE THE LEASE OF PROPERTY**  
3 **LOCATED AT 5401 S KINGS HWY, MYRTLE BEACH, SC 29575 CONTAINING**  
4 **APPROXIMATELY 42.6 ACRES IDENTIFIED AS PIN 460-00-00-0006/TMS 192-00-01-022,**  
5 **APPROXIMATELY 11.9 ACRES IDENTIFIED AS PIN 460-00-00-0001/TMS 192-00-01-039,**  
6 **AND APPROXIMATELY 12.99 ACRES IDENTIFIED AS PIN 460-00-00-0005/TMS 192-00-**  
7 **01-021 TO PONDEROSA, INC. FOR A FIVE YEAR PERIOD FOR CONTINUED OPERATION**  
8 **AS A CAMPGROUND.**

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10 **Applicant/Purpose:** Staff/to agree to a new 5-year lease w/ the owners of Pirateland  
11 Campgrounds.

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13 **Brief:**

- 14 • These properties were conveyed to the City from the US Government in 1948, &  
15 have been leased to Ponderosa & used for campground purposes since 1990.
- 16 • The entire campground includes privately-owned properties as well. The  
17 proposed lease only includes the City-owned parcels.
- 18 • The lease agreement has been amended several times & expires in 02/2020.
- 19 • Significant new lease terms include:
  - 20 ○ Lease term expires on February 28, 2025. No extension rights included.
  - 21 ○ On 02/29/20 (Reset Date) the rent calculations change as follows:
    - 22 ▪ Base Rent from \$120,000/year to \$160,000.
    - 23 ▪ Percentage Rent from 25% of Gross Campground Receipts to 28.5%.
    - 24 ▪ From 14% of concessions & amusements to 16%.
    - 25 ▪ From 17% of Villa Rentals to 18%.

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27 **Issues:**

- 28 • This agreement is not an extension of the existing lease. The proposed action  
29 terminates the existing lease & replaces it with a new agreement.
- 30 • Per the proposed agreement the tenant indemnifies from any claims attributable  
31 to campground operations.
- 32 • The tenant is responsible for all campground related expenses & maintenance.

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34 **Public Notification:** Normal meeting notification.

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36 **Alternatives:**

- 37 • Do not adopt ordinance, and let the current lease expire.
- 38 • Modify the proposed lease terms.

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40 **Financial Impact:**

- 41 • In FY the lease revenues totaled \$1,347,314. No change is expected for 2019-20.
- 42 • Beginning in 2020-21 the total is projected to increase by 16%.

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44 **Manager's Recommendation:** I recommend 1<sup>st</sup> reading.

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46 **Attachment(s):** Proposed lease Agreement.

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**CITY OF MYRTLE BEACH  
COUNTY OF HORRY  
STATE OF SOUTH CAROLINA**

**ORDINANCE TO AUTHORIZE THE LEASE OF PROPERTY  
LOCATED AT 5401 S KINGS HWY, MYRTLE BEACH, SC 29575  
CONTAINING APPROXIMATELY 42.6 ACRES IDENTIFIED AS  
PIN 460-00-00-0006/TMS 192-00-01-022, APPROXIMATELY  
11.9 ACRES IDENTIFIED AS PIN 460-00-00-0001/TMS 192-  
00-01-039, AND APPROXIMATELY 12.99 ACRES IDENTIFIED  
AS PIN 460-00-00-0005/TMS 192-00-01-021 TO  
PONDEROSA, INC. FOR A FIVE YEAR PERIOD FOR  
CONTINUED OPERATION AS A CAMPGROUND.**

WHEREAS, the City of Myrtle Beach originally acquired the subject parcels (collectively the "Property") from the U.S. Government in October 1948 (see attachment 1); and

WHEREAS, the subject parcels have been operated by Ponderosa, Inc. as part of a larger thriving campground operation since 1990; and

WHEREAS, the original lease has been amended and extended several times over the years; and

WHEREAS, the current lease agreement is set to expire in February 2020.

Now therefore be it ordained that the City Council finds that:

- 1. The continued lease of the subject parcels, and use of the property for campground purposes serves the economic interests of the entire community.
- 2. The proposed lease terms are reasonable in relationship to the value of the Property.
- 3. The City Manager is hereby authorized to execute the attached lease agreement through February 28, 2025 (see attachment 2).

This ordinance is effective upon second reading.

\_\_\_\_\_  
BRENDA BETHUNE, MAYOR

ATTEST:

\_\_\_\_\_  
JENNIFER STANFORD, CITY CLERK

1<sup>ST</sup> READING:  
2<sup>ND</sup> READING:

1

4600000005

Back to Results >

**SE US 17 BUS :**  
PIN: 4600000005 / TMS: 1920001021

**Owner**  
CITY OF MYRTLE BEACH  
PO BOX 246  
MYRTLE BEACH, SC 29578-0246

District: 600 - SOCASTEE

Deed Book  
Deed Page  
Estimated Acres: 12.00 ACRES

**Primary Building**  
Estimated Year Built: 0  
Finished Area: 0 sqft  
Bedrooms: 0  
Baths: 0  
Garages/Carports: 0  
Auxiliary Improvements: NO

**Taxable Values**  
Residential Land: 0  
Residential Impr: 0  
Farm Land: 0  
Farm Improv: 0  
Farm Incr: 0  
Other Land: 2150700  
Other Improv: 0  
Total: 2150700

Pin #460-00-00-001

State of North Carolina DOT, Esri, HERE, Garmin, INCREMENT P, NGA, USGS

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4600000006

Back to Results >

**SE US 17 BUS :**  
PIN: 4600000006 / TMS: 1920001022

**Owner**  
CITY OF MYRTLE BEACH  
PO BOX 246  
MYRTLE BEACH, SC 29578-0246

District: 600 - SOCASTEE

Deed Book  
Deed Page  
Estimated Acres: 41.73 Acres

**Primary Building**  
Estimated Year Built: 2004  
Finished Area: 11240 sqft

Pin #460-00-00-005

State of North Carolina DOT, Esri, HERE, Garmin, INCREMENT P, NGA, USGS

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4600000001

Back to Results >

**SE US 17 BUS; PIRATELAND :**  
PIN: 4600000001 / TMS: 1920001039

**Owner**  
CITY OF MYRTLE BEACH  
PO BOX 246  
MYRTLE BEACH, SC 29578-0246

District: 600 - SOCASTEE

Deed Book  
Deed Page  
Estimated Acres: 12.62 Acres

**Primary Building**  
Estimated Year Built: 0  
Finished Area: 0 sqft  
Bedrooms: 0  
Baths: 0  
Garages/Carports: 0  
Auxiliary Improvements: NO

**Taxable Values**

Pin #460-00-00-006

State of North Carolina DOT, Esri, HERE, Garmin, INCREMENT P, NGA, USGS

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**LEASE**

THIS LEASE made and entered into as of this 27th day of August, 2019 (the "Effective Date") by and between City of Myrtle Beach, South Carolina, a political subdivision of the State of South Carolina ("Landlord"), and Ponderosa, Inc., a South Carolina corporation ("Tenant").

**WITNESSETH:**

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree for themselves, their successors and assigns, as follows:

1. **PREMISES.** Landlord, in consideration of the rents, covenants, and agreements hereinafter reserved and contained to be paid and performed by Tenant, hereby demises and lets unto Tenant that certain land located in Horry County, South Carolina, containing approximately 42.6 acres and identified as PIN 460-00-00-0006/TMS 192-00-01-022, approximately 11.9 acres and identified as PIN 460-00-00-0001/TMS 192-00-01-039, and approximately 12.99 acres (ponds) and identified as PIN 460-00-00-0005/TMS 192-00-01-021 (collectively, the "**Premises**"), together with all rights, appurtenances, easements, and privileges thereto.

2. **TERM.** The term of this Lease (the "Term") shall commence on the Effective Date and shall expire at 11:59 p.m. February 28, 2025.

3. **RENT.**

a. **Base Rent:** Beginning upon the Effective Date and continuing through February 29, 2020 (the "**Reset Date**"), Tenant shall pay to Landlord, as base rent for the Premises (the "**Base Rent**"), the sum of One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) per year payable in equal quarterly installments, payable on the last day of January, April, July and October.

Beginning upon the day after the Reset Date, Tenant shall continue to pay Base Rent in the sum of One Hundred Sixty Thousand and No/100 Dollars (\$160,000.00) per year payable in equal quarterly installments, payable on the last day of January, April, July and October.

b. **Percentage Rent:** In addition to the Base Rent to be paid above, beginning on the Effective Date and continuing until the Reset Date Tenant shall pay to Landlord the following percentage rental of Gross Campground Receipts, as defined hereinafter, on an annual basis ("**Percentage Rent**;" and together with Base Rent and all other sums payable by Tenant hereunder, collectively, the "**Rent**"):

(i) Twenty-five percent (25%) of Gross Campground Receipts over Six Hundred Thousand and No/100 Dollars (\$600,000.00).

For the purposes of this Lease, Gross Campground Receipts shall be defined as the sum of all receipts or income from campground site rentals operated on or in connection with the Premises, excluding any admission, sales, or amusement taxes

1 paid to the State, Federal or any local government and excluding rentals on campsites  
2 included under (c) below. For the purposes of determining Gross Campground  
3 Receipts hereunder, such receipts shall include all receipts whether received by the  
4 Tenant hereunder or any other person or entity operating a campground on the  
5 Premises or providing property management services for the Premises. Provided,  
6 however, that Gross Campground Receipts received by some person or entity other  
7 than Tenant shall be included only once and any sums paid to Tenant by such other  
8 person or sublessee as rental or commissions would not be again included in Gross  
9 Campground Receipts, it being intended that such sums be included only once in  
10 computing Gross Campground Receipts.

11  
12 In the event that such campsites are made available for use free of charge, or in  
13 exchange for goods or services, rent shall be imputed based on the average rent  
14 received for all similar campsites rented for cash payment.

15  
16 (ii) Fourteen percent (14%) of all receipts from amusement items, the sale of food and  
17 beverage, and gift and novelty items purchased on the Premises by retail customers  
18 and received by Tenant or Tenant's sub-contractors, concessionaires, licensees or  
19 sub-tenants, excluding any admission sales or amusement taxes paid to the state,  
20 federal or any local government.

21  
22 (iii) Seventeen percent (17%) of all receipts for rentals of structures located on the  
23 Premises now known as "villas." In the event that such structures are not rented for  
24 cash payment, but are made available for use free of charge, or in exchange for goods  
25 or services, rent shall be imputed based on the average rent received for all similar  
26 structures rented for cash payment.

27  
28 Beginning upon the day after the Reset Date, Tenant shall pay to Landlord the following Percentage Rent  
29 in lieu of the foregoing:

30  
31 (iv) Twenty-eight and one-half percent (28.5%) of Gross Campground Receipts over Six  
32 Hundred Thousand and No/100 Dollars (\$600,000.00).

33  
34 (v) Sixteen percent (16%) of all receipts from amusement items, the sale of food and  
35 beverage, and gift and novelty items purchased on the Premises by retail customers  
36 and received by Tenant or Tenant's sub-contractors, concessionaires, licensees or  
37 sub-tenants, excluding any admission sales or amusement taxes paid to the state,  
38 federal or any local government.

39  
40 (vi) Eighteen and one-half percent (18.5%) of all receipts for rentals of structures located  
41 on the Premises known as "villas". In the event that such structures are made  
42 available for use free of charge, or in exchange for goods or services, rent shall be  
43 imputed based on the average rent received for all similar structures rented for cash  
44 payment.

45  
46 Tenant shall furnish to the Landlord detailed financial reports, annually on a calendar year basis, showing  
47 the Gross Campground Receipts received from said property and itemizing the source from which each  
48 portion of such receipts shall be received. Further, the Landlord shall have the right, at any and all

1 reasonable times, to inspect the Premises and the mode and manner of the operation thereof, to  
2 determine whether or not a violation of any of the provisions of the Lease shall have been made.

3  
4 Further, the Tenant agrees that it will establish proper and adequate accounting practices so as to ensure,  
5 as nearly as possible, that all sources of income described above from said venture shall be accurately  
6 accounted for, and to this end, the Tenant agrees that it will receive and carry out the reasonable  
7 recommendations of the Landlord with respect to such accounting practices, as nearly as shall be possible.  
8 Provided, however, that if there should be any dispute between the Landlord and the Tenant with regard  
9 to the mode of record-keeping, accounting practices or the sufficiency thereof, then Landlord and Tenant  
10 shall agree on a certified public accountant as an arbitrator and shall abide by the arbitrator's decision  
11 and recommendations with reference thereto. Should Landlord and Tenant not be able to agree on a  
12 certified public accountant, then each shall select and appoint a certified public accountant to represent  
13 them respectively and the two certified public accountants so selected and appointed shall select a third  
14 certified public accountant and the decision of two of the three shall control; and provided further, that  
15 any certified public accountant so selected shall not be in the regular employ of the one so appointing  
16 such arbitrator.

17  
18 Percentage Rent due hereunder shall be due and payable annually on a calendar year basis and shall be  
19 determined on a calendar year basis with such Percentage Rent being due on March 15 following each  
20 calendar year period.

- 21
- 22 4. **USE OF PREMISES.** Tenant covenants and agrees that the Premises shall be used solely for  
23 campground resort activities which are consistent with the activities of campground resorts in the  
24 Myrtle Beach, South Carolina area (the "Permitted Use").
  - 25  
26 5. **QUIET ENJOYMENT.** Tenant, upon paying the Rent herein reserved and performing and observing all  
27 of the other material terms, covenants, and conditions of this Lease on Tenant's part to be performed  
28 and observed, shall peaceably and quietly have, hold, and enjoy the Premises during the Term, subject  
29 to the terms of this Lease.
  - 30  
31 6. **TAXES.** Tenant shall pay promptly when due or make reimbursement to Landlord upon demand for  
32 all ad valorem taxes imposed upon the Premises and the improvements located thereon.
  - 33  
34 7. **UTILITIES.** Tenant shall, in its own name, contract for and pay, prior to delinquency, all electricity,  
35 heat, water, sewer, trash removal, and all other utility charges and costs of any kind for utilities used  
36 or consumed at the Premises.
  - 37  
38 8. **ANNEXATION.** Tenant acknowledges that Landlord may wish to annex the Premises into the City of  
39 Myrtle Beach in the future. Landlord agrees to take no steps to do so prior to calendar year 2022. At  
40 such time as Landlord begins annexation in accordance with this Section, Tenant will not contest or  
41 interfere with annexation. With respect to such annexation, Landlord will ensure that the applicable  
42 zoning of the Premises does not limit Tenant's continued use of the Premises for the Permitted Use.
  - 43  
44 9. **SUBLEASES.** Tenant has subleased portions of the Premises to third parties under annual leases  
45 whereupon permanent or semi-permanent structures have been constructed. Not later than six (6)  
46 months prior to the end of the Term, Tenant shall arrange for the termination of all such subleases  
47 effective not later than the end of the Term. If Tenant shall fail to do so, then Tenant shall indemnify

1 Landlord for all Liabilities incurred by Landlord resulting therefrom in accordance with Section 17  
2 hereof.  
3

4 10. **INSURANCE REQUIRED OF TENANT.** Tenant agrees to procure and maintain a policy or policies of  
5 insurance, at its own cost and expense, insuring Tenant from all claims, demands or acts for bodily  
6 injury liability subject to a minimum limit of liability of \$2,000,000.00 each occurrence and for  
7 property damage liability of \$100,000.00 each occurrence, made by or on behalf of any person or  
8 persons, firm or corporation, arising from, related to, or connected with the conduct and operation  
9 of Tenant's business in the Premises. Said insurance shall not be subject to cancellation except after  
10 at least ten (10) days' prior written notice to Landlord, and the policy or policies, or duly executed  
11 certificate or certificates for the same, together with satisfactory evidence of the payment of the  
12 premium thereon shall be deposited with Landlord at the commencement of the term and renewals  
13 thereof not less than thirty (30) days prior to the expiration of the term of such coverage and shall  
14 contain, in addition to the matters customarily set forth in such a certificate under standard insurance  
15 industry practices, an undertaking by the insurer to give Landlord not less than ten (10) days' written  
16 notice of any cancellation or change in scope or amount of coverage of such policy. Said policy shall  
17 also name Landlord as an additional insured.  
18

19 11. **WAIVER OF SUBROGATION; MUTUAL WAIVER.** Landlord and Tenant hereby release each other and  
20 each party's officers, directors, employees, and agents from liability or responsibility for any loss or  
21 damage to their respective property covered by insurance policies, or which would have been covered  
22 by insurance if the party had complied with the terms and provisions of this Lease. This release shall  
23 apply to Landlord and Tenant and anyone claiming through or under Landlord or Tenant, by way of  
24 subrogation or otherwise, even if the occurrence was caused by the fault or negligence of Landlord or  
25 Tenant or anyone under their control. Each of Landlord and Tenant shall cause insurance which it  
26 maintains in respect to the Premises to contain a provision whereby the insurer waives any rights of  
27 subrogation against the other party.  
28

29 12. **REPAIRS.** During the Term hereof, Tenant agrees to perform all repairs, replacements, and  
30 maintenance of improvements located on the Premises.  
31

32 13. **IMPROVEMENTS.** Any permanent structural improvement to the Premises must be approved by  
33 Landlord in writing prior to commencement of construction. Otherwise, Landlord's approval is not  
34 required.  
35

36 14. **DAMAGE OR DESTRUCTION.** Landlord and Tenant agree that no damage or destruction to any  
37 buildings or improvements by fire, windstorm, or any other casualty shall entitle Tenant to surrender  
38 possession of the Premises or for either party to terminate this Lease. In the event all or any portion  
39 of the buildings or improvements on the Premises shall be damaged or destroyed, Tenant, at its sole  
40 cost and expense, shall either promptly repair, restore, and rebuild same as necessary, or raze such  
41 improvements and return the Premises to a neat and attractive condition.  
42

43 15. **CONDEMNATION.** In the event the entire Premises shall be appropriated or taken under the power  
44 of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of  
45 the date of such taking or conveyance made in lieu thereof and Landlord and Tenant shall thereupon  
46 be released from any further duties or obligations hereunder. If a portion of the Premises is taken, or  
47 conveyance made in lieu thereof, then Rent shall be equitably apportioned according to the portion  
48 of the Premises so taken, and Tenant shall, at its own expense, restore the remaining portion of the

1 Premises to operate as the Permitted Use. Tenant shall be entitled to pursue compensation for the  
2 taking of buildings, alterations and improvements to the Premises constructed by Tenant. Landlord  
3 will have the right to make a claim for all other compensation awarded or paid upon such a total or  
4 partial taking of the Premises.  
5

6 16. **ASSIGNMENT OR SUBLETTING**. Tenant shall not assign or sublet this Lease without the prior written  
7 consent of Landlord, upon such terms and conditions as Landlord may approve in its reasonable  
8 discretion. Any assignment or sublease of the Premises shall not release or relieve Tenant from any  
9 obligations of this Lease.  
10

11 17. **INDEMNITY**. Except to the extent caused by the negligence or willful misconduct of Landlord, or its  
12 agents, contractors, servants, or employees, Tenant agrees to indemnify, defend, and hold Landlord  
13 harmless from and against any and all claims, suits, proceedings, liabilities (including, without  
14 limitation, strict liabilities), expenses, demands, damages, costs, obligations, debts, fines, penalties,  
15 charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever  
16 kind or nature (including, without limitation, reasonable attorneys' fees, court costs and other costs  
17 of defense and any and all costs, expenses, and liabilities incurred in connection with any such claims  
18 and/or proceedings brought thereon) (collectively, "Liabilities") for, or in connection with, any  
19 accident, injury, or damage whatsoever caused to any person or property (i) arising out of the business  
20 conducted in or the use and/or occupancy of the Premises, or (ii) occurring in, on or about the  
21 Premises or any part thereof, or (iii) arising from any negligence or intentional misconduct of Tenant  
22 or any concessionaire or sub-tenant or their respective licensees, servants, agents, employees,  
23 contractors, subcontractors or invitees.  
24

25 18. **MECHANIC'S LIENS**. If any mechanic's lien or other lien or order for the payment of money shall be  
26 filed against the Premises or any building(s) or improvements thereon by reason of or arising out of  
27 any labor or material furnished or alleged to have been furnished to or for Tenant at the Premises, or  
28 for or by reason of any change, alteration, or addition by Tenant, or the cost or expense thereof, or  
29 any contract relating thereto, or against Landlord, then Tenant shall, within thirty (30) days after the  
30 filing of any such lien, cause the same to be cancelled and discharged of record by bond or otherwise  
31 at the expense of Tenant.  
32

33 19. **HAZARDOUS MATERIALS**. Throughout the Term, Tenant and Tenant's employees, agents, invitees,  
34 licensees, servants, contractors, and subcontractors shall not cause, permit, or allow any substances,  
35 chemicals, materials, or pollutants (whether solid, liquid, or gaseous) deemed to be toxic or hazardous  
36 or the manufacture, storage, transport, or disposal of which is regulated, governed, restricted, or  
37 prohibited by any federal, state, or local agency or authority, or under any federal, state, or local law,  
38 ordinance, rule, or regulation related to the environment, health, or safety (collectively,  
39 "Environmental Laws"), including, without limitation, any oil, gasoline, petroleum, petroleum by-  
40 products, hazardous substances, infectious waste, toxic substances, hazardous waste, asbestos, or  
41 asbestos containing materials (collectively, "Hazardous Materials") to be handled, placed, stored,  
42 dumped, released, manufactured, used, transported, or located on, in, under, or about the Premises;  
43 provided, however, Tenant shall be permitted to use and otherwise handle on the Premises minor  
44 quantities of such Hazardous Materials as are ordinarily and typically used and handled as part of the  
45 Permitted Use so long as such Hazardous Materials are used and handled in accordance with all  
46 Environmental Laws. Upon the expiration or earlier termination of this Lease, Tenant shall, at Tenant's  
47 sole cost and expense, remove all Hazardous Materials from the Premises that were introduced  
48 thereto by Tenant.



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20. **SIGNAGE.** Tenant shall comply with all applicable requirements of all jurisdictional regulatory requirements pertaining to signage and signage installation.

21. **DEFAULT.** Tenant shall be in default hereunder if (a) Tenant fails to pay Rent and any other sums within ten (10) business days after when due under this Lease; or (b) Tenant fails to observe and perform any of the other terms, covenants, and/or conditions of this Lease and such default shall continue for more than thirty (30) days after written notice from Landlord to Tenant. If the nature of a default under (b) above is such that it cannot reasonably be cured within the aforesaid cure period, and work thereon shall be commenced within said period and diligently prosecuted to completion within sixty (60) days after Landlord's written notice to Tenant, then Landlord's rights under this Section shall be inapplicable.

In the event of any default by Tenant, Landlord may (i) cure Tenant's default at Tenant's cost and expense, or (ii) terminate this Lease upon not less than five (5) business days' written notice to Tenant. If Tenant shall at any time be in default hereunder, and if Landlord shall deem it necessary to engage attorneys to enforce its rights hereunder, the determination of such necessity to be in the sole discretion of Landlord, Landlord will be reimbursed by Tenant for its expenses incurred thereby, including but not limited to court costs and reasonable attorneys' fees.

The failure of Landlord to insist upon strict performance of any of the terms, conditions, and covenants herein shall not be deemed to be a waiver of any rights or remedies that Landlord may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions, and covenants herein contained except as may be expressly waived in writing.

22. **LANDLORD'S RIGHT TO INSPECT.** Upon reasonable prior written notice to Tenant, Tenant agrees to permit Landlord to enter the Premises during Tenant's usual business hours to inspect the same and, during the last six (6) months of the Term, show same to prospective tenants or purchasers.

23. **SURRENDER OF PREMISES.** Tenant agrees, at the termination of this Lease, whether by limitation, forfeiture, or otherwise, to quit, surrender, and deliver to Landlord possession of the Premises in good condition and repair. Tenant further acknowledges and agrees that as of the end of the Term of this Lease that it has no further right to occupy or use the Premises.

24. **NOTICES.** Whenever notice shall be given by either party to the other (the "Notice"), Notice shall be in writing addressed to the party being notified at the address set forth below or to such other address as a party may designate upon five (5) days' Notice to the other party. Notice may be given by priority mail, postage paid certified or registered mail with return receipt requested. Each Notice which is given, served, or sent in the manner specified in this Section 24 shall be deemed to have been given and received as of the date it is delivered or as of the date on which delivery is refused or unclaimed by the addressee upon presentation. Notice addresses are as follows:

| <b>LANDLORD:</b>               | <b>TENANT:</b>              |
|--------------------------------|-----------------------------|
| City of Myrtle Beach           | Ponderosa, Inc.             |
| P.O. Box 2468                  | 2511 Oak Street             |
| Myrtle Beach, SC 29577         | Myrtle Beach, SC 29577      |
| <b>Attention:</b> City Manager | <b>Attention:</b> President |

|  |   |
|--|---|
|  |   |
|  | <u>With a copy to:</u>                        |
|  | Nexsen Pruet, LLC                             |
|  | <u>Attn.</u> Franklin G. Daniels, J.D., LL.M. |
|  | 1101 Johnson Ave, Suite 300                   |
|  | <u>Myrtle Beach, SC 29577</u>                 |

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25. **HOLDING OVER.** Tenant may not remain upon the Premises after the day of expiration of the Term without Landlord’s prior written approval. With Landlord’s approval, Tenant shall become a tenant-at-will and any such holding over shall not constitute an extension of this Lease. During such holding over, Tenant shall pay one hundred fifty percent (150%) of the Rent in effect as of the expiration of the Term. If Tenant holds over without Landlord’s written approval, Tenant shall then be a tenant-at-sufferance and shall pay two hundred percent (200%) of the then-effective Rent until Tenant surrenders possession. Nothing contained herein shall be interpreted to grant permission to Tenant to holdover or to deprive Landlord of any rights and remedies with respect thereto. Such occupancy shall be subject to all the terms, covenants and conditions of this Lease, except that any Renewal Option shall be of no force or effect.
- 13  
14
26. **SECURITY DEPOSIT.** None.
- 15  
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27. **OTHER PROVISIONS.**
- 17  
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19  
20
- a. **Memorandum of Lease.** This Lease shall not be recorded. The parties hereby agree that, upon the request of either party, each will execute, acknowledge and deliver a short form or memorandum of this Lease in recordable form. Recording, filing and like charges and any stamp, charge for recording, transfer, or other tax shall be paid by Tenant.
- 21  
22  
23
- b. **Entire Agreement.** This Lease contains the entire agreement of the parties and may not be amended, modified, released, or discharged, in whole or in part, except by an instrument in writing signed by the parties.
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26
- c. **Captions.** The captions contained in this Lease are for convenience and reference only, and shall not be held to explain, modify, amplify, or aid in the interpretation, construction, or meanings of the provisions of this Lease to which they relate.
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28  
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30
- d. **Provisions Severable.** If any provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such provision or any portion thereof to any person or circumstances shall not be affected thereby, and each valid provision or portion thereof shall be enforceable to the fullest extent permitted by law.
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- e. **Relationship of Parties.** Nothing contained in this Lease shall be construed to make the parties partners or joint venturers or to render either of said parties liable for the debts or obligations of the other, except as expressly provided in this Lease.
- 34  
35
- f. **Nuisance.** Tenant covenants that it will not create or maintain or allow others to create or maintain any nuisance on the Premises.

1 g. **Successors.** Subject to the provisions of this Lease, the covenants, conditions, and  
2 agreements contained herein shall bind and inure to the benefit of Landlord and Tenant and  
3 their respective successors, heirs, and assigns.

4 h. **Force Majeure.** In the event Landlord or Tenant shall be delayed, hindered or prevented from  
5 the performance of any act required hereunder, by reason of governmental restrictions,  
6 scarcity of labor or materials, strikes, fire, or any other reasons beyond its control, the  
7 performance of such act shall be excused for the period of delay, and the period for the  
8 performance of any such act shall be extended for the period necessary to complete  
9 performance after the end of the period of such delay, except to the extent such delay,  
10 hindrance, or prevention of performance is caused, in whole or in part, by any act whatsoever,  
11 whether intentional or negligent, committed by Tenant, its employees, agents, independent  
12 contractors, or licensees. The provisions of this Section 27(h) shall not be applicable to  
13 Tenant's obligations to pay rent or any other sums, monies, costs, charges or expenses  
14 required to be paid by Tenant hereunder:

15 i. **Counterparts.** This Lease may be executed in two or more counterparts, each of which will be  
16 deemed an original, but all of which together will constitute one and the same instrument.

17 j. **Successors and Assigns.** This Lease and the covenants and conditions herein contained shall  
18 inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be  
19 binding upon Tenant, its successors and assigns, and shall inure to the benefit of Tenant and  
20 only such assigns of Tenant to whom the assignment of this Lease by Tenant has been  
21 consented to by Landlord in writing. Upon any sale or other transfer by Landlord of its interest  
22 in the Premises, Landlord shall be relieved of any obligations under this Lease occurring  
23 thereafter.

24 k. **Original Lease.** Landlord and Tenant are parties to that certain Lease Agreement dated  
25 October 15, 1990 (the "1990 Lease") for the Premises, as amended by the Amendment to  
26 Lease Agreement dated January 13, 1999 (the "First Amendment"), and as further amended  
27 by Amendment to Lease Agreement dated March 17, 2009 (the "Second Amendment;" and  
28 together with the 1990 Lease and the First Amendment as well as any other properly executed  
29 and effective agreements between the parties relating to the Premises, the "Original Lease").  
30 From and after the Effective Date, the Original Lease shall be of no further force or effect, and  
31 the relationship between Landlord and Tenant shall hereafter be exclusively as specifically set  
32 forth in this Lease.  
33

34 **IN WITNESS WHEREOF**, the parties have executed this Lease under seal as of the Effective Date.  
35

**WITNESSES:**

Name: \_\_\_\_\_  
Name: \_\_\_\_\_

**LANDLORD:**  
City of Myrtle Beach, South Carolina,  
a political subdivision of the State of South Carolina

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WITNESSES:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

TENANT:

Ponderosa, Inc.,

a South Carolina corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_