

ORDINANCE NO.: 2003-064

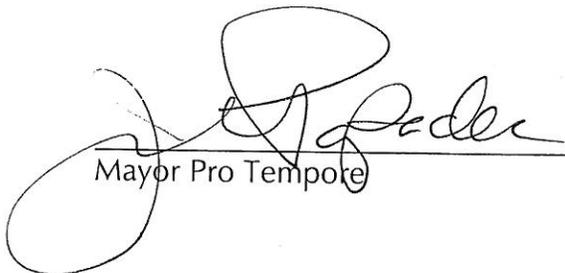
Authorizing execution of an Amended Lease Agreement between the City of Columbia and Carolina Interior Market, LLC for the first floor of the former Tapp's Building located at 1644 Main Street

BE IT ORDAINED by the Mayor and Council of the City of Columbia, South Carolina, this 16th day of July, 2003, that the Interim City Manager is hereby authorized to execute the attached Amended Lease Agreement between the City of Columbia and Carolina Interior Market, LLC for the rental of the first floor of the former Tapp's Building located at 1644 Main Street.

ORIGINAL
STAMPED IN RED

Requested by:

Economic Development Director



Mayor Pro Tempore

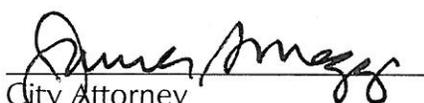
Approved by:



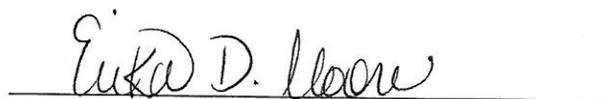
Interim City Manager

Approved as to form:

ATTEST:



City Attorney



Acting City Clerk

Introduced: 7/9/2003

Final Reading: 7/16/2003

"Tenant's improvements" shall mean all buildings, structures, improvements, roads and items of property, whether real or personal, including any fence along the perimeter of the Demised Premises and any temporary office placed on the Demised Premises, but not including any surfacing material used to cover the Demised Premises or a portion thereof, as Tenant may hereafter construct or otherwise place on the Demised Premises.

3. Rent. For and during the Term, Tenant shall pay to Landlord rent at an annual rate as follows: years 1 and 2, \$60,000/year; year 3, \$65,000/year; year 4, \$70,000/year; year 5, \$75,000/year, in advance on the first day of each month during the Term, at the above stated address of Landlord or such other place as Landlord may designate by notice to Tenant. The rent for any fractional month shall be apportioned on the basis of the actual number of days in such month. **The lease rate for any additional lease term shall be determined by Landlord at the end of the initial term of this lease.**

4. Maintenance and Repairs. Landlord shall maintain the Demised Premises and Landlord's Improvements in good repair, reasonable wear and tear excepted, and shall at its own cost and expense promptly make all necessary repairs thereto (including structural repairs).

Tenant shall maintain the Tenant's Improvements in good repair, reasonable wear and tear excepted and Tenant shall at its own cost and expense promptly make all necessary repairs, interior, exterior, ordinary as well as extraordinary.

The provisions of this Section shall not apply to repairs or reconstruction in the event of eminent domain, fire or other casualty or as herein otherwise specifically provided.

5. Water and Other Utilities Services. Tenant shall pay for all water, electricity and other utilities consumed by Tenant on the Demised Premises during the Term.

6. New Construction and Alterations. During the Term, Tenant may, with Landlord's consent, undertake construction of Tenant's Improvements, make alterations thereto and take any other actions with respect thereto. Tenant shall make Tenant's Improvements in accordance with local ordinances and standards promulgated by the South Carolina State Historic Preservation Officer.

7. Uses. Landlord hereby agrees that Tenant may use and occupy the Demised Premises for retail sales.

8. Mechanics' Liens. Tenant shall, within 60 days after the date of filing, discharge by bond or otherwise any mechanic's lien filed against the Demised Premises because of any work done or material furnished at the request of the Tenant.

9. Landlord Not Liable for Damage to Tenant's Improvements. Landlord shall not be responsible to Tenant for any loss or damage to the Tenant's Improvements for any cause whatsoever.

10. Liability Insurance. Tenant shall at all times during the term hereof carry at its own expense public liability insurance of not less than Three Hundred Thousand Dollars (\$300,000) for injury to or death of one person, and not less than Six Hundred Thousand Dollars (\$600,000) for injury to or the death of two or more persons arising out of a single accident or occurrence on the Demised Premises:

Tenant shall at all times during the Term hereof carry its own expense property damage insurance in an amount of not less than Six Hundred Thousand Dollars (\$600,000) which also shall insure the contingent liability, if any, of Landlord naming the Landlord as an additional insured in such policies. Tenant shall furnish Landlord with a certificate of such insurance policies, which shall also provide that such insurance policies shall not be reduced or changed without first giving Landlord ten (10) days' written notice of such change.

11. Fire and Other Casualty Insurance. Tenant shall, throughout the Term of this Lease, at Tenant's own cost and expense, keep the Tenant's Improvements, exclusive of foundations, insured against loss or damage by fire and those perils covered by "extended coverage" insurance in reasonable amounts. The policies of such insurance shall name as the insured Landlord and Tenant, as their interest may appear. All such insurance shall be written by responsible companies duly authorized to transact business in the state in which the Demised Premises are located.

12. Subrogation. Landlord and tenant hereby agree to cause any insurance policy covering the tenant's improvements against loss by fire and the hazards covered by an extended coverage endorsement to contain a waiver of subrogation clause or endorsement under which the insurer waives its rights of subrogation against either party hereto in connection with any loss or damage covered by any such policy. Subject to the provisions of the immediately succeeding sentence and only to the extent of the loss or damage covered by such policy, landlord and tenant each hereby waives such causes of action either may have or acquire against the other which are occasioned by the negligence of either of them, or their employees or agents, resulting in personal injury or the destruction of or damage to property belonging to the other and located on the premises or the building of which they are a part which are caused by fire or the hazards covered by such policy. Notwithstanding the foregoing, if such a waiver of subrogation clause or endorsement cannot be obtained or is obtainable only by the payment of an additional premium charge above that charged by companies issuing such insurance without such waiver of subrogation, the party ordering such insurance shall notify the other party of such fact and such other party shall have a period of ten days after the giving of such notice within which to agree to pay such additional premium if such policy is obtainable at an additional cost, and the provisions of

this paragraph shall be of no force or effect for so long as either such insurance cannot be obtained or the party in whose favor a waiver of subrogation is desired shall have failed to agree to pay the additional premium charge.

13. Removal of Tenant's Improvements. Tenant may, but shall not be obligated to, remove, free of any right or claim of Landlord, any Tenant's Improvements located on the Demised Premises.

14. Inspection by Landlord. Tenant agrees to permit Landlord and the authorized representatives of Landlord to enter the Demised Premises at all reasonable times, upon reasonable notice and at reasonable intervals, during usual business hours for the purposes of (a) inspecting the same, and (b) making such repairs or reconstruction as is required or permitted to Landlord hereunder, and (c) performing any work therein that may be necessary by reason of Tenant's default under the terms of this Lease. Nothing herein shall imply any duty upon the part of Landlord to do any such work which, under the provisions of this lease, Tenant may be required to perform. In so doing, Landlord shall cause Tenant the least inconvenience practicable and shall perform all repairs or reconstruction as soon as reasonable possible.

15. Compliance with Ordinances, etc. During the Term, Tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations, and requirements of the Federal, State and municipal governments and of any and all their departments and bureaus applicable to Tenant's Improvements and Tenant's use of said premises, for the correction, prevention, and abatement of nuisances, violations or other grievances, in, upon or connected with the use of said premises but only, however, to the extent that such results from the particular use of the Tenant.

16. Casualty Damage. If substantial damage or destruction to the Demised Premises occurs, Landlord may terminate this lease as of the date of damage or destruction.

17. Condemnation. If the whole of the Demised Premises or the sole means of access to such part is taken by eminent domain during the Term, then this Lease shall terminate as of the date of the taking.

If a portion only of the Tenant's Improvements or the Demised Premises is so taken, then this Lease shall terminate as to the part so taken, and, if in Tenant's reasonable judgment the taking materially impairs Tenant's operating on the Demised Premises, Tenant may, by written notice to the Landlord given within 30 days after Tenant has received notice of the taking, terminate this lease as of the date of the taking.

If this Lease terminates or is terminated pursuant to any provision of this Section, then the Landlord shall be entitled to any award paid (a) for the taking of Landlord's fee interest in

the Demised Premises; (b) for any severance damage; and (c) for the taking of Landlord's interest in this Lease. Tenant shall have the right, on a par with Landlord, to claim in condemnation for the value of Tenant's Improvements and shall be entitled to a portion of any such award in an amount equal to the value of Tenant's Improvements so taken and moving expenses.

If, after a partial taking, Tenant does not terminate this Lease, then:

(1) The annual rental payable by the tenant hereunder shall, from and after the date on which the tenant is deprived of possession of such part, be reduced in that proportion which the remaining portion of the demised premises bears to the total value of the demised premises before such taking;

(2) any work necessary to restore the remaining portion of the Demised Premises to a tenable condition shall be undertaken at the expense of Landlord and Tenant in proportion to the amount of the award received by each of them;

(3) while such work is in progress, if any part of the remaining portion of the Demised Premises is rendered unusable by Tenant, there shall be a reasonable abatement of rent according to the loss of use to Tenant; and

(4) the amounts payable to Landlord and Tenant by reason of such taking, as above stated, shall be applied first to the cost of such restoration.

Anything herein contained to the contrary notwithstanding, Tenant shall be entitled to any award for the taking of any property or trade fixtures of Tenant or for any moving expenses of Tenant.

18. Assignment and Subletting. Tenant may assign this lease, or sublet the whole or any part or parts of the Demised Premises, with the prior written consent of Landlord which consent shall not unreasonably withheld or delayed; but no assignment or subletting shall relieve Tenant from continuing liability from entire performance of this lease and full payment of the rent herein provided for.

19. Events of Default. If any one or more of the following events (herein sometimes referred to as a "default" or "event of default") shall happen:

(A) Tenant shall default in the due and punctual payment of rent or any other payments required by Tenant hereunder and such default shall continue for fifteen (15) days after receipt of written notice from Landlord; or

(B) Tenant shall neglect or fail to perform or observe any of the covenants herein contained on Tenant's part to be performed or observed and Tenant shall fail to

remedy the same within 30 days after Landlord shall have given to Tenant written notice specifying such neglect or failure (or within such additional period, if any, as may be reasonably required to cure such default if it is of such a nature that it cannot be cured within said 30 day period; or

(C) Tenant shall fail to conduct retail operations within the Demised Premises on a regular schedule Monday through Saturday, with hours of operation as follows: opening not later than 10:00 o'clock a.m. and closing not earlier than 5:30 o'clock p.m.

(D) Tenant shall (a) admit in writing its inability to pay its debts generally as they become due, or (b) file a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Act (as now or in the future amended) or an answer or other pleading be filed by or on behalf of Tenant admitting the material allegations of such a petition or seeking, consenting to or acquiescing in the relief provided for under such Act, or (c) make an assignment of all or of a substantial part of its property for the benefit of its creditors, or (d) seek or consent to or acquiesce in the appointment of a receiver or trustee for all or a substantial part of its property or of the Demised Premises, or of its interest in this Lease, or (e) be adjudicated a bankrupt or insolvent, or approve a petition filed against it for the effecting of an arrangement in bankruptcy or for a reorganization pursuant to said Bankruptcy Act; provided, however, that none of the events described in this subparagraph (C) shall constitute an "event of default" if Tenant shall continue to pay the rent and such other charges as are reserved hereunder; then Landlord shall have the right, at its election, then or at any time thereafter, and while such event of default shall continue, to either:

(i) Give Tenant written notice of Landlord's intention to terminate this Lease on the date of such notice or on any later date specified therein, and on the date specified in such notice Tenant's right to the use, occupancy and possession of the Demised Premises shall cease and this Lease shall thereupon be terminated; or

(ii) Re-enter and take possession of the Demised Premises or any part thereof and repossess the same as of Landlord's former estate and expel Tenant and those claiming through or under Tenant and remove the effects of both or either therefrom without being deemed guilty of any manner of trespass. Any such property which is removed may be stored by Landlord in a public warehouse or elsewhere at the cost of and for the account of Tenant. Should Landlord elect to re-enter as provided in this subparagraph (B) or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by

law then this Lease shall be deemed to have been terminated as of the date of such repossession or re-entry.

In the event that Landlord does not elect to terminate this Lease as permitted in subparagraph (A) above, but on the contrary elects to take possession as provided in subparagraph (B) above, then such repossession shall relieve Tenant of its liability and obligation under this Lease. In the event of such repossession, Tenant shall pay the rent and all additional rent and other sums as herein provided up to the time of termination of this Lease (which Landlord can declare at any time while Tenant remains in default).

20. Surrender of Premises. Upon termination of this lease, whether by lapse of time, cancellation pursuant to an election provided for herein, forfeiture or otherwise, Tenant shall immediately surrender possession of the Demised Premises to Landlord, reasonable wear and tear and damage from fire or other casualty or peril excepted.

At any time during the term of this Lease and upon the termination of this Lease, Tenant shall have the right to remove from the Demised Premises all Tenant's Improvements. If this Lease terminates at any time other than the time fixed as the expiration of the Term, Tenant shall have a reasonable time not exceeding 60 days thereafter to effect such removal. If any of such property shall remain on the Demised Premises after the end of the Term, or after the 60 day period above specified in the event termination occurs prior to the time fixed as expiration of the Term, such property shall be and become the property of Landlord without any claim therein of Tenant should Landlord so elect.

21. Quiet Enjoyment. Landlord covenants that Tenant, so long as Tenant is not in default hereunder, shall and may peaceably and quietly have, hold and enjoy said premises for and during the Term.

22. Remedies Cumulative. The specific remedies to which Landlord or Tenant may resort under the terms of this lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be lawfully entitled in case of any breach or threatened breach by either of them or of any provisions of this Lease.

23. Memoranda of Lease. At the request of either party, Landlord and Tenant will execute and deliver, in duplicate original counterparts, a recordable memorandum of this Lease Agreement identifying the Demised Premises and, stating the Term and providing such other information as may reasonably be required.

At or after any modification of this Lease, at the request of either party, Landlord and Tenant will execute and deliver, in duplicate original counterparts, a recordable memorandum of such modification.

The costs of recording any such memorandum shall be borne by the party requesting the same.

24. Notices. Any notice, demand or request which under the terms of this Lease or under any statute must or may be given or made by either of the parties hereto to the other party shall be in writing, and shall be given by mailing the same by registered mail addressed to the address below. Either party, however, may designate in writing any new or other address to which such notice, demand or request shall thereafter be so mailed. Any such notice, demand or request shall be deemed given when deposited in a United States general or branch post office, maintained by the United States Government, enclosed in a registered, prepaid wrapper address as hereinbefore provided.

To Landlord: City of Columbia
 ATTN: City Manager
 Post Office Box 147
 Columbia, South Carolina 29217

To Tenant: Carolina Interiors Market
 1644 Main Street
 Columbia, South Carolina 29201
 Post Office Box 1982, Columbia, South Carolina 29202

25. No Oral Modification. This instrument contains all the agreements and conditions made between the parties hereto with respect to the leasing of the Demised Premises, and may not be modified, waived or terminated in any manner other than by an agreement in writing signed by all the parties hereto or their respective successors in interest.

26. Rights of Successors and Assigns. The covenants and agreements contained in this Lease shall apply, inure to the benefit of and be binding upon the parties hereto and their respective successors in interest and legal representatives, except as otherwise herein expressly provided. The terms "Landlord" and "Tenant", as used in this Lease, shall be deemed to refer to the parties executing this Lease as Landlord and Tenant as well as their respective successors, assigns, and legal representatives.

27. Applicable Law. This lease shall be governed and construed in accordance with the laws of the State of South Carolina.

28. Captions. The captions as to contents of particular articles herein are inserted only for convenience, and are in no way to be construed as parts of this Lease or as limitations or qualifications or enlargements of the particular articles to which they refer.

IN WITNESS WHEREOF, each of the parties hereto has caused this instrument to be duly executed as of the day and year first above written. Witnesses:

WITNESSES:

Erika D. Moore
Witness as to Landlord

Valerie D. Ayer
Witness as to Landlord

**CITY OF COLUMBIA
LANDLORD**

BY: Charles P. Austin, Sr.
ITS: Interim City Manager

**CAROLINA INTERIOR MARKET, LLC
TENANT**

Witness as to Tenant

Witness as to Tenant

BY: _____

ITS: _____