

December 14, 2021 – 1<sup>st</sup> Reading  
 January 11, 2022 – 2<sup>nd</sup> Reading

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1 **2021-52 (2<sup>nd</sup> READING): APPROVING THE EXECUTION AND DELIVERY BY**  
 2 **THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, OF A LEASE BETWEEN**  
 3 **THE CITY, AS LESSOR, AND EMYRGE, INC., AS LESSEE, WITH RESPECT TO**  
 4 **BUILDING LOCATED AT 509 NINTH AVENUE NORTH IN THE CITY OF MYRTLE**  
 5 **BEACH.**

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6 **Applicant/Purpose:** City of Myrtle Beach / to enter into a lease with eMYRge, for 509 9<sup>th</sup> Ave.,  
 7 North

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 9 **Brief:**

- 10 • The City owns 509 9<sup>th</sup> Ave., North – a historic building
- 11 • eMYRge, Inc. desires to lease the property
- 12 • The tenant is partnering with the City of Myrtle Beach to offer a co-working space and
- 13 business incubator ecosystem
- 14 • The tenant cannot sublease without the City's consent.
- 15 • No changes since 1<sup>st</sup> reading.

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 17 **Issues:**

- 18 • The building is historic and cannot be sold for a period of five years.
- 19 • eMYRge, Inc. has agreed to use the space to create a co-working and business
- 20 incubator ecosystem that will further the mission of the overall Arts & Innovation District.
- 21 • The renovations and the upfit of the building will be completed prior to the beginning of
- 22 the lease term.

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 24 **Public Notification:** Normal meeting notification

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 26 **Alternatives:** Deny the lease.

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 28 **Financial Impact:**

- 29 • The lease is for 5 yrs., (1.1.22 – 12.31.26)
- 30 • Rental rates:
  - 31 ○ 1.22 – 12.24 = \$2,350/month
  - 32 ○ 1.25 - 12.26 = \$2,350/month + adj. for inflation based on CPI with a 5% cap

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 34 **Manager's Recommendation:**

- 35 • I recommend 1<sup>st</sup> reading (12.14.21).
- 36 • I recommend 2nd reading and approval (1.11.22).
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38 **Attachment(s):** Proposed ordinance, lease agreement

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

**APPROVING THE EXECUTION AND DELIVERY BY THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, OF A LEASE BETWEEN THE CITY, AS LESSOR, AND eMYRge, Inc., AS LESSEE, WITH RESPECT TO BUILDING LOCATED AT 509 NINTH AVENUE NORTH IN THE CITY OF MYRTLE BEACH.**

WHEREAS, the City of Myrtle Beach, South Carolina (the "City"), is an incorporated municipality located in Horry County, South Carolina, and has all powers granted to municipalities by the Constitution and general laws of this State; and

WHEREAS, Section 5-7-40 of the Code of Laws of South Carolina 1976, as amended, empowers all municipalities to own and possess real and personal property and such municipalities may lease any such property; and

WHEREAS, the City is the fee owner of certain historic buildings located on Ninth Avenue North including 509 Ninth Avenue, in the City of Myrtle Beach; and

WHEREAS, the City desires to enter into a Lease Agreement ("Lease") with eMYRge, Inc., for the purpose of leasing property located at 509 Ninth Avenue North; and

WHEREAS, it is in the best interest of the City to enter into the lease as it will further the City's program of downtown redevelopment as well as the goals of the Arts and Innovation District;

NOW, THEREFORE, IT IS ORDAINED that City Council does hereby approve the lease of 509 Ninth Avenue North to eMYRge, Inc. pursuant to the Lease attached hereto as Exhibit A and incorporated herein by reference; and

The form, terms and provisions of the Lease, together with such changes as the officers of the City authorized to execute and deliver the Lease shall approve, are hereby approved. The City Manager and Assistant City Manager, or either one of them, acting alone, are hereby authorized and directed to execute, acknowledge and deliver, the Lease in the name of and on behalf of the City. The Lease is to be in substantially the form attached to this Ordinance as Exhibit A, with such changes as shall be approved by the City Manager or Assistant City Manager, or either one of them, acting alone, such person's or persons' execution and delivery thereof to constitute conclusive evidence of approval of any and all changes or revisions therein from the Lease now before this meeting.

The City Manager and the Assistant City Manager, for and on behalf of the City, are fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be necessary to effect the execution and delivery of the Lease in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents is hereby fully authorized.

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The provisions of this Ordinance shall be effective upon its adoption.

ENACTED by the City Council of the City of Myrtle Beach, South Carolina, this 11th day of January, 2022.

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BRENDA BETHUNE, MAYOR

ATTEST:

\_\_\_\_\_  
JENNIFER ADKINS, CITY CLERK

1<sup>st</sup> Reading: 12-14-2021  
2<sup>nd</sup> Reading: 1-11-2022



10. Taxes and Assessments. Tenant shall be responsible for any property taxes. Tenant shall be responsible for paying all taxes associated with the operation of their business.

11. Insurance. Tenant shall be responsible for maintaining fire and extended coverage insurance upon contents of the premises during the term of this Lease or any extension of the term thereof. Landlord shall be responsible for wind & hail and property casualty insurance of the Premises. Tenant shall procure and maintain in force at its expense during the term of this Lease and any extension thereof public liability insurance in the amount of at least Two Million and No/100's (\$2,000,000.00) Dollars single limit coverage, Three Million and No/100s (\$3,000,000.00) in the aggregate, as well as contents coverage. Such coverage shall be adequate to protect against liability for damage claims through public use or arising out of accidents occurring around or in the leased premises. Tenant shall name the Landlord as an additional insured under said policy and furnish evidence of said policy within seven (7) days after execution of this Lease Agreement.

12. Covenant of Quiet Enjoyment. The Tenant, upon payment of the rent herein reserved and upon the performance of all the terms of this Lease, shall at all times during the leased term and during any extension or renewal term peaceably and quietly enjoy the leased property without any disturbance from the Landlord subject to the terms of this lease and to any agreements and encumbrances which are superior to this Lease.

13. Compliance with Applicable Laws. The Tenant at its sole expense shall comply with all laws, orders, and regulations of federal, state, and municipal authorities, and with any direction of any public officer, pursuant to the law, which impose any duty upon the Tenant or the Landlord with respect to the leased property. The Tenant, at its sole expense, shall obtain all licenses or permits which may be required by the conduct of its business within the terms of this Lease, or for the making of repairs, alterations, improvements, or additions. The Tenant shall comply with the requirements of all policies of public liability, fire, and all other types of insurance at any time in force with respect to the buildings and other improvements on the leased property.

14. Leasehold Improvements. The Tenant shall not have the right to make any alterations and improvements to the leased property without the prior written consent of Landlord.

Any alteration, addition, or improvement made by the Tenant with the consent of Landlord and any fixtures installed as part thereof shall at the Landlord's option become the property of the Landlord upon the expiration or sooner termination of this Lease; provided, however, that all moveable trade fixtures shall remain the property of the Tenant and it shall be granted reasonable time (fifteen days) at the expiration of the Lease or any extension or renewal thereof to remove said personal property and moveable trade fixtures.

Regarding the property as a historic property and on the Historical Registry of South Carolina, the following guidelines must be followed:

1. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize the historic property shall be preserved.
2. No historic walls may be damaged or destroyed.
3. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment will be unimpaired.
4. New additions, exterior alterations, or related new construction shall be differentiated from the historic but shall be compatible with the massing, size, and architectural features to protect the integrity of the property and its environment.

15. Surrender of Premises. The Tenant shall on the last day of the term, or upon the sooner termination of the term, peaceably and quietly surrender the leased property to the Landlord, in as good condition and repair as at the commencement of the term, and as any new buildings, structures, replacements, or additions, or improvements constructed, erected, added, or placed thereon by the Tenant or when completed, with the natural wear and tear thereof expected.

16. Condemnation. If the whole of the leased property, or such portion thereof as will make the leased property unsuitable for the purposes herein lease, is condemned for any public use or purpose by any legally constituted authority, then in either of such events this Lease shall cease from the time when possession is taken by such public authority and rental shall be accounted for between the Landlord and the Tenant as of the date of the surrender of possession. Such termination shall be without prejudice to the rights of either of the Landlord or the Tenant to recover compensation from the condemning authority for any loss or damage caused by such condemnation. Neither the Landlord nor the Tenant shall have any rights in or to any award made to the other by the condemning authority.

17. Destruction of Premises. In the event the leased property becomes unsuitable for the purposes allowed herein as a result of damage by fire or other casualty, occurring without the fault of the Tenant, this Lease shall cease and rent shall be apportioned to the time of the damage.

18. Holding Over. At any expiration or cancellation of this Lease, should Tenant hold over for any reason, it is hereby agreed that, in the absence of a written agreement to the contrary, such tenancy shall be from month to month only. If this Lease reverts to a month to month agreement upon expiration of the Lease term, then a thirty (30) day notice by either party would be required to terminate this agreement. Upon expiration of the thirty (30) day period, the Tenant agrees to vacate the premises. All other terms and conditions of the original Lease would remain in effect during this month to month agreement.

19. Default. If Tenant shall fail or neglect to pay any amount of rent when the same is due and payable or if the Tenant shall fail or neglect to perform or observe any of the agreements or covenants herein contained, then the Landlord shall deliver to Tenant at the leased premises or at the office of the registered agent for the Tenant a written notice of default, and Tenant shall have a period of thirty (30) days after such notice in which to cure the default. There is a five (5) day right to cure for failure to pay the rent when due. In the event that the Tenant shall fail to cure the default complained after thirty (30) days written notice (except for the payment of rent for which five days notice is necessary), the Landlord may (i) cure Tenant's breach at Tenant's cost and expense, and/or (ii) re-enter the property and remove all person's and all or any property therefrom by any suitable action or proceeding at law, without being liable for any prosecution therefor or damages therefrom, and repossess and enjoy the property with all additions, alterations, and improvement, and/or (iii) at any time relet the property or on part thereof as the agent of Tenant or in Landlord's own right, and/or (iv) terminate this Lease, retain the security deposit, and take possession of the premises including all furnishings, equipment and other property but excluding moveable trade fixtures and personal property owned by the Tenant.

In the event that the Landlord shall exercise any right granted under Section 19, it shall not relieve Tenant from the obligation to make all rental payments to Landlord and to fulfill all other covenants required by this Lease and, at Landlord's option, all current and future rent and other monetary obligations due hereunder less the fair rental value of the leased property shall become immediately due and payable. Tenant throughout the remaining term of the Lease shall pay Landlord no later than the fifteenth (15) day of each month during the term, the then current excess, if any, of the sum of the unpaid rentals and costs to Landlord resulting from such default by Tenant over the proceeds, if any, received by Landlord from such reletting, if any, but Landlord shall have no liability to account to Tenant for any excess. Landlord shall not be required to relet the Leased Premises nor exercise any other right granted to Landlord hereunder, nor shall Landlord be under any obligation to minimize Tenant's loss as a result of Tenant's default. In the event Landlord exercises any right under Section 19, the Landlord will not thereby be deprived of any other rights it may have against the Tenant at law or equity but at all times shall be entitled to recover from Tenant any and all other damages.

If Landlord fails to object to a breach at the time it occurs, the Landlord does not waive Landlord's right to object to and demand a cure of said breach or of a similar breach at a later date.

The Tenant expressly agrees to pay to the Landlord all costs and expenses, including attorney's fees, incurred in procuring a late rental payment or in curing any other default under this Agreement.

20. Liquidated Damages. In the event of default by the Tenant, other than a default causing damage to the premises, Tenant agrees that Landlord's damages shall be a liquidated sum equal to the remaining rent owed under this Lease Agreement, until Landlord has re-leased the property to another tenant.

21. Delivery of Possession. Landlord shall deliver possession of said the leased property to Tenant on or within 30 days of execution of this Lease.

22. Interest and Late Charges. If Tenant fails to pay, when due and payable any rent or any additional rent, or amounts or charges of any kind or character provided in this Lease for a period of ten (10) days after it is due, Tenant agrees to pay a late fee equal to ten percent (10%).

23. Notices. Any notice under this Lease must be in writing and must be sent by registered or certified mail to the last address of the party to whom the notice is to be given, as designated by such party in writing. The Landlord hereby designates its address and telephone number as 921 North Oak Street, Myrtle Beach, SC 29577, (843) 918-1055. The Tenant hereby designates its address and telephone number as 509 9<sup>th</sup> Ave. North, Myrtle Beach, SC

24. Declaration of Governing Law. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of South Carolina.

25. Waiver. Failure of either party to insist upon strict performance of any covenant or condition of this Lease in any one or more instances shall not be construed as a waiver for the future of any such covenant or condition, but the same shall be and remain in full force and effect.

26. Binding Effect. The covenants, terms, conditions, provisions, and undertakings in this Lease or in any renewals thereof shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto, as if they were in every case named and expressed, and shall be construed as covenants running with the land; and wherever reference is made to either of the parties hereto, it shall be held to include and apply also to the heirs, executors, administrators, successors, and assigns of such party, as if in each and every case so expressed.

27. Entire Agreement; Modification; Severability. This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and shall be enforced to the fullest extent permitted by law.

28. General Indemnification. In addition to any agreements elsewhere in this Lease concerning indemnifications provided by the Tenant to the Landlord, it is agreed that the Tenant shall indemnify and hold harmless the Landlord against all liabilities, expenses, and losses incurred by the Landlord including reasonable attorney's fees and costs as a result of (i) Tenant's use of the leased property and/or (ii) Tenant's failure to perform any covenant required to be performed by Tenant under the Lease.

Landlord shall not be liable for any damage or injury to Tenant, or any other person, or to any property, occurring on the leased premises or any part thereof, and Tenant agrees to hold Landlord harmless from any claims or actions for damages, no matter how caused.

29. Subordination. This Lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

30. Guaranty. This Agreement of lease and all terms and conditions shall be guaranteed by eMYRge, Inc..

IN WITNESS WHEREOF, the Landlord and Tenant subscribed their names and affixed their seals the day and year first above written.

WITNESSES:

LANDLORD: City of Myrtle Beach

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Witness as to Landlord

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TENANT: eMYRge, Inc.

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Witness as to Tenant

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Barb Royal, Executive Director

TENANT: eMYRge, Inc.

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Witness as to Tenant

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Jason Greene, Chairman

**THIS IS A LEGALLY BINDING AGREEMENT. LANDLORD AND TENANT ARE ENCOURAGED TO SEEK LEGAL COUNSEL.**

EXHIBIT "A"

<b>PERIOD</b>	<b>BASE RENT AMOUNT</b>	<b>NN</b>
January 2022 – December 2022	\$2,350	TBD
January 2023 – December 2023	\$2,350	TBD
January 2024 – December 2024	\$2,350	TBD
January 2025 – December 2026	\$2,350 + CPI with cap at 5%	TBD



**Exhibit "B"**

**Landlord shall be responsible for completing the following work prior to occupancy:**