

TEMPORARY USE AGREEMENT FOR ECONOMIC DEVELOPMENT

THIS TEMPORARY USE AGREEMENT FOR ECONOMIC DEVELOPMENT is entered into this ____ day of _____, 2024, by and between the CITY OF COCONUT CREEK, a municipality within Broward County, Florida, (“City”) which has an address of 4800 West Copans Road, Coconut Creek, FL 33063, and TT of Sample, Inc. and TT of Broward, Inc., Florida corporations, (collectively, “Licensee”), having an address of 5501 West Sample Road, Coconut Creek, FL 33073.

WHEREAS, the City is the owner of certain real property located in Broward County Florida, commonly known as Trace E of the Commerce Center of Coconut Creek, and as more particularly described in Exhibit “A” (the “Property” or “City Property”) attached hereto and made a part hereof; and

WHEREAS, Licensee has obtained Site Plan Approval and will obtain permits to construct a showroom facility on property generally located at 5501 West Sample Road, Coconut Creek (“Licensee Building Site”), which conforms to all City Code requirements; and

WHEREAS, Licensee wishes to utilize a portion of the City Property for use as a temporary parking facility in accordance with the terms and conditions contained herein and as shown on Exhibit “B” attached hereto and made a part hereof (the “Licensed Area”), while Licensee completes the construction of their showroom facility on the Licensee Building Site near the City Property; and

WHEREAS, this Temporary Use Agreement is in the best interest of the City and citizens of Coconut Creek for economic development purposes.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is

hereby acknowledged, the City hereby provides Licensee with the temporary use of City Property pursuant to the terms contained herein:

1. Licensed Area: A portion of Tract E of the Commerce Center of Coconut Creek owned by the City of Coconut Creek ("Tract E") and as more particularly described on the attached Exhibit B ("Licensed Area").

2. Term: The term of this Temporary Use Agreement shall run from the date of execution until Licensee receives a certificate of occupancy for the new permanent showroom facility on the Licensee Building Site, but in no event later than December 31, 2024. Either party may terminate this Temporary Use Agreement by providing the other party thirty (30) calendar days' advance written notice in writing of such intent to terminate the Temporary Use Agreement.

3. Temporary Use Agreement Extension Beyond the Term: In the event this Temporary Use Agreement is scheduled to terminate and Licensee will not be able to obtain a certificate of occupancy or a temporary certificate of occupancy prior to the expiration of this Temporary Use Agreement, this Temporary Use Agreement may, upon the written request of the Licensee provided at least thirty days prior to the expiration of this Temporary Use Agreement, be extended, at the sole discretion of the City Contract Administrator. The extension period will not extend for more than sixty (60) days beyond the expiration date of the existing Temporary Use Agreement. The Licensee shall compensate the City at the rate of one hundred dollars (\$100.00) for each month or part thereof, of the extension.

4. Termination: Either party may terminate this Temporary Use Agreement by providing the other party thirty (30) calendar days' advance written notice in writing of such intent to terminate this Temporary Use Agreement.

5. Vacation and Restoration: Upon termination of this Temporary Use Agreement pursuant to paragraph 2, "Term", or 3, "Termination", above, Licensee shall

- a. Immediately remove all vehicles and cease any and all use of the Licensed Area.
- b. Restore the Licensed Area to the same or better condition than the condition existing as of the commencement date of this Temporary Use

Agreement.

6. Consideration: Licensee shall pay to the City the sum of Ten Dollars (\$10.00) for the duration of this Temporary Use Temporary Use Agreement or any portion thereof.

7. Taxes: The Licensed Area is currently exempt from taxes. If the Licensed Area becomes subject to real property taxes as a result of this Temporary Use Agreement, Licensee shall be responsible for all such property taxes or assessments levied against the City for the Licensed Area during the Temporary Use Agreement term.

8. Use and Purpose: The Licensee shall use the Licensed Area for a temporary parking facility and for no other purposes. The Licensee shall not commit or suffer to be committed any waste on the Property; nor commit, suffer or allow any environmental violation on the Property, or any damage or contamination to the Property, including but not limited to spillage, dumping, or seepage of any other contamination or hazardous materials whatsoever; or cause or allow any activities to occur which might give rise to any environmental related liabilities. For purposes hereunder, "hazardous materials" means any substance (i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance or policy; (ii) which is defined as "hazardous waste" or "hazardous substance" under any federal, state, or local statute, regulation or ordinance and regulations promulgated thereunder; (iii) which is toxic, explosive, corrosive, infectious or otherwise hazardous or is regulated by any federal, state or local governmental authority; (iv) the presence of which on the Property or adjacent property could constitute a nuisance on the Property; or (v) which contains petroleum products, polychlorinated biphenyls (PCBs), petroleum and petroleum byproducts, asbestos or urea formaldehyde.

9. Improvements: Licensee acknowledges that for any proposed improvements, including new fencing or gating, a site plan and permit(s) may be required from the City and shall be in accordance with applicable City Codes.

10. Licensed Area Restrictions: The Licensed area may be utilized by Licensee for parking of vehicles subject to the following conditions:

- a. At all times during the term of this Temporary Use Agreement, the Licensee shall, at its own expense, keep and maintain the Licensed Area

in good order and repair, reasonable wear and tear excepted. This shall include, but not be limited to maintaining any improvements, modifications or additions made to the Licensed Area pursuant to the terms of this Temporary Use Agreement.

- b. All parking shall be restricted to vehicle storage and employee parking with no access by the public.
- c. There shall be no new vehicle display.
- d. The total number of vehicles shall not exceed 265 at any one time.
- e. Ingress and egress shall be controlled with a fence and gate which shall be preapproved and permitted by the City.
- f. There shall be no on-site advertising.
- g. The temporary parking and landscaping shall be maintained in a safe and reasonable condition.
- h. The temporary parking shall be maintained free of litter, and landscape debris.

11. Vacation in the event of Emergency/Hurricane or Disaster: The Property, inclusive of the Licensed Area, is part of the City's emergency response and debris handling strategy. It is hereby made a part of this Temporary Use Agreement that before, during and after a public emergency, disaster, hurricane, flood, pandemic or other substantial loss that the City of Coconut Creek will require an **emergency vacation of the Licensed Area**. It is vital and imperative that the majority of citizens are protected from any emergency situation which threatens public safety and health, as determined by the City Manager. Licensee agrees to remove all vehicles from the Licensed Area, ensuring the Licensed Area is vacant, within twenty-four (24) hours of a declaration of emergency applicable to the City of Coconut Creek. Licensee must furnish a twenty-four (24) hour telephone number in the event of such an emergency.

12. Indemnification: Licensee, its successors and assigns, must indemnify and hold harmless the City, its past/present/future elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting

from, arising out of or occurring in connection with the operations of the Licensee or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the negligence or willful misconduct of the City or its elected or appointed officials and employees. In any and all claims against the City, or any of their agents or employees by any employee of the Licensee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph is not limited in any way by any limitation on this amount or type of damages compensation or benefits payable by or for the Licensee or any subcontractor under Workers' Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts. Nothing contained herein is intended, nor may it be construed, to waive City's rights and immunities under the common law or Section 768.28, Fla. Stat., as amended from time to time; nor will anything included herein be construed as consent to be sued by any third parties in any matter arising out of this Temporary Use Agreement. The above provisions will survive the termination or expiration of this Temporary Use Agreement and will pertain to any occurrence during the term of this Temporary Use Agreement, even though the claim may be made after the termination or expiration hereof.

13. Insurance: Licensee during the term of this Temporary Use Agreement and any renewals, shall keep in force, with an insurance company licensed to do business in the State of Florida and acceptable to the City, comprehensive general liability and property damage insurance with coverage in the amount of no less than One Million Dollars(\$1,000,000.00) per occurrence. Such policy will: - (i) include the City as named or additional insured; (ii) cover the Property as described in Exhibit A; (iii) be considered primary insurance; (iv) provide that it may not be cancelled or modified without at least thirty (30) calendar days advance written notice from the insurer to each party insured thereunder, including additional insured.

14. Waiver of Landlord's Lien: City hereby waives any statutory liens and any rights of distress with respect to the personal property (trade fixtures, equipment and inventory) of Licensee from time to time located within the Licensed Area ("Licensee's Property"). This Temporary Use Agreement does not grant a contractual lien or any other

security interest to City or in favor of City with respect to Licensee's Property. City further agrees to execute and deliver such instruments reasonably requested by Licensee's lenders from time to time to evidence or effect the aforesaid waiver and agreements of City.

15. Assignment and Subcontracting: Licensee must not transfer or assign the rights or privileges conveyed by this Temporary Use Agreement without the prior written consent of the City Contract Administrator. This Temporary Use Agreement, or any portion thereof, must not be subcontracted without the prior written consent of the City.

16. Merger; Amendment: This Temporary Use Agreement constitutes the entire Agreement between the Licensee and the City, and negotiations and oral understandings between the parties are merged herein. This Temporary Use Agreement can be supplemented and/or amended only by a written document executed by both the Licensee and authorized designees of the City.

17. Interpretation: It is acknowledged that each party to this Temporary Use Agreement had the opportunity to be represented by counsel in the preparation of this Temporary Use Agreement and accordingly the rule that a contract will be interpreted strictly against the party preparing same does not apply herein due to the joint contributions of both parties.

18. Severability; Waiver of Provisions: Any provision in this Temporary Use Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party will not constitute a waiver of that provision nor will it affect the enforceability of that provision or of the remainder of this Temporary Use Agreement. No waiver shall be binding on a party unless it is in writing and signed by the party to be bound.

19. Signatory Authority: Upon request, the Licensee must provide the City with copies of requisite documentation evidencing that the signatory for Licensee has the authority to enter into this Temporary Use Agreement.

20. Choice of Law and Venue: The parties hereby agree that the only laws that apply to this Temporary Use Agreement are those of the State of Florida and U.S.

Government. The parties waive the privilege of venue and agree that all litigation between them in the state courts will take place exclusively in the Seventeenth Judicial Circuit in and for Broward County, Florida and that all litigation between them in the federal courts will take place exclusively in the United States District Court or United States Bankruptcy Court for the Southern District of Florida.

21. WAIVER OF JURY TRIAL: BY ENTERING INTO THIS TEMPORARY USE AGREEMENT, EACH OF LICENSEE AND THE CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS TEMPORARY USE AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS TEMPORARY USE AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL WILL BE LIABLE FOR THE REASONABLE ATTORNEY’S FEES AND COSTS OF THE OTHER PARTY CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS MUST BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

22. Third Party Beneficiaries: Neither Licensee nor City intends to directly or substantially benefit a third party by this Temporary Use Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Temporary Use Agreement and that no third party is or will be entitled to assert a right or claim against either of them based upon this Temporary Use Agreement.

23. Uncontrollable Circumstances (“Force Majeure”): As used herein, “Force Majeure” means the occurrence of any event that prevents or delays the performance by either party of its obligations hereunder which are beyond the reasonable control of the non-performing party. Examples of "Force Majeure" include, but are not limited to, acts of God, labor strikes, natural disasters or emergency governmental action. To invoke this paragraph, immediate written notice, consistent with the “Notice” provisions of this Temporary Use Agreement, must be sent by the non-performing party describing the circumstances constituting force majeure and proof that the non-performance or delay of performance is a direct and reasonable result of such event(s). The City reserves its right to challenge the invocation by the Licensee within five (5) calendar days of receipt of said notice, in such case uninterrupted performance is required. However, in the event the

invocation is accepted by the City, the Licensee must take all reasonable measures to mitigate any and all resulting damages, costs, delays, or disruptions to the Licensee's performance requirements under this Temporary Use Agreement. All obligations must resume when the circumstances of such event(s) have subsided, or other arrangements are made pursuant to a written amendment to this Temporary Use Agreement.

24. Notice: When any of the parties desire to give notice to the other party, such notice must be in writing, sent by U.S. mail, postage pre-paid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

TO: TT of Sample TT of Broward	TT of Sample, Inc. and TT of Broward, Inc. 5501 W. Sample Road Coconut Creek, Florida 33073 Attention: Legal Department
TO: CITY	Karen M. Brooks, City Manager City of Coconut Creek 4800 West Copans Road Coconut Creek, FL 33063
With a copy to:	Terrill C. Pyburn, City Attorney City of Coconut Creek 4800 W. Copans Road Coconut Creek, Florida 33063

IN WITNESS WHEREOF, the parties hereto have made and executed this TEMPORARY USE AGREEMENT on the date first above written.

Witness:	TT of Sample, Inc.
_____	BY: _____
_____	Title: _____
Witness Print Name	DATE: _____

Witness:

TT of Broward, Inc.

BY: _____

Witness Print Name

Title: _____

DATE: _____

Witness Print Name

CITY OF COCONUT CREEK

BY: _____

Title: _____

DATE: _____

ATTEST: _____
Joseph J. Kavanagh, City Clerk

APPROVED AS TO FORM:

Terrill C. Pyburn, City Attorney