COUNCIL ITEM 10C
DATE 8/13/12

ORDINANCE 12-45

AN ORDINANCE AUTHORIZING THE CITY MANAGER OF THE CITY OF PORT ST. LUCIE TO ENTER INTO A LEASE AGREEMENT BETWEEN THE CITY OF PORT ST. LUCIE AND MICHELE'S TOTAL BODY DAY SPA; PROVIDING AN EFFECTIVE DATE.

THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. The City Manager of the City of Port St. Lucie is hereby authorized and directed to enter into a Lease Agreement between the City of Port St. Lucie and Michele's Total Body Day Spa to be substantially in the form of a Lease Agreement attached hereto as Exhibit "A" and by reference incorporated herein.

Section 2. This Ordinance shall become effective ten (10) days after its final adoption.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this ____ day of _____, 2012.

CITY COUNCIL
CITY OF PORT ST. LUCIE

BY:_____
JoAnn M. Faiella, Mayor

ATTEST:

_____
Karen A. Phillips, City Clerk

APPROVED AS TO FORM:_____
Roger G. Orr, City Attorney

#20120072
LEASE AGREEMENT

THIS LEASE is made and entered into this _____ day of _____, 2012, by **Michele Valez** ("Tenant"), 441 SE Guava Terrace, Port St. Lucie, Fl 34983 and the **City of Port St. Lucie** ("Landlord"), a Florida Municipality.

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, ***Suite #217***, containing one hundred eighty-six (186) rentable square feet ("Premises") in the building located at 9221 SE Civic Center Place, Port St. Lucie, Fl,("Building"), for the term and upon the conditions and agreements hereinafter set forth ("Lease"). This Lease shall constitute a binding agreement between the parties effective as of the date set forth above.

ARTICLE I
TERM

The initial term of this Lease shall begin on _____ and continue for a period of one (1) year except as otherwise provided herein, the Lease term will automatically renew for one (1) year terms until terminated by either party in writing at least ninety (90) days before the end of the initial or any subsequent term. "Lease Term" is hereby defined as each twelve (12) consecutive month period throughout the Lease.

ARTICLE II
RENT

During the Term, Tenant shall pay monthly to Landlord the rent of **20% of the Net Sales**, with the first payment being due on _____. A Deposit of **$500.00** to be paid to the City upon signing of Lease Agreement and will be held until the termination of said lease. At the end of each term the annual rent shall be re-negotiated.

ARTICLE III
USE OF PREMISIS

Tenant shall use and occupy the Premises as **Operation of a Massage/Esthetician/Spa Room**. Tenant shall not use or occupy the Premises in violation of any law or code violation of the Certificate of Use or Occupancy issued for the Building of which the Premises are a part, and shall immediately discontinue any use of the Premises which is declared by either any governmental authority having jurisdiction or the Landlord to be a violation of any law, code, regulation or a violation of said Certificate of Use or Occupancy. Tenant shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or with respect to the use or occupation thereof.

Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire and extended coverage insurance policy covering the Building and/or property located therein, and shall comply with all rules, orders, regulations and requirements of the appropriate Fire Rating Bureau or any other organization performing a similar function. Tenant shall promptly, upon demand, reimburse Landlord for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this paragraph. Tenant shall not do or permit anything to be done in, on or about the Premises which would in any way obstruct or interfere with the rights of other tenants or occupants of the Building, or use or allow the Premises to be used for any immoral, unlawful or objectionable purpose, nor shall Tenant maintain or permit any nuisance or commit or suffer to be committed any waste in, on or about the Premises.

ARTICLE IV
BUILDING SERVICES

At all times during the initial Term or any extension thereof, Landlord shall promptly perform all maintenance and make all repairs and replacements required, in the opinion of Landlord to keep the Premises and the Building in good order, condition and repair, unless if the need for such maintenance, repairs or replacements is caused by the fault or negligence of Tenant (reasonable wear and tear excepted) if Tenant caused damage to the premises, then Landlord will perform the maintenance, repairs or replacements required and charge Tenant therefore, such charges being due in full upon Tenant being billed for same.

ARTICLE V
ALTERATION

Tenant may not make any changes, alterations, improvements or additions to the Premises or attach or affix any articles thereto without Landlord's prior written consent. All alterations, additions, or improvements which may be made upon the Premises by Landlord or Tenant (except unattached trade fixtures and office furniture and equipment owned by Tenant) shall not be removed by Tenant, but shall become and remain the property of Landlord. All alterations, improvements and additions to the Premises (as permitted by Landlord) shall be done only by Landlord or contractors or mechanics approved by Landlord, and shall be at Tenant's sole expense and at such times and in such manner as Landlord may approve. If Tenant shall make any alterations, improvements or additions to the Premises, Landlord may require Tenant, at the expiration of this Lease, to restore the Premises to substantially the same condition as existed at the commencement of the Term. Tenant expressly waives the right to maintain any lien against Landlord or Landlord's property.

ARTICLE VI
INSURANCE

Tenant shall and hereby does indemnify and hold Landlord, its representatives, employees, officers, agent, and elected and appointed officials harmless from and against any and all claims arising from (1) Tenant's use of the Premises or the conduct of Tenant's business or profession; (2) any activity, work, or thing done, permitted or suffered by the Tenant in or about the Premises; (3) any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of the Lease; or (4) any negligent acts or omissions of Tenant, or of Tenant's agents or employees. Tenant shall and hereby does further indemnify, defend and hold Landlord harmless from and against all costs, attorney's fees, expenses and liabilities incurred in connection with any such claim or any action or proceeding brought thereon. In case any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall defend same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause other than Landlord's gross negligence, and Tenant hereby waives all claims in respect thereon against Landlord.

Tenant shall, on a primary basis and at its sole cost and expense, agree to maintain in full force and effect at all times during the life of this Lease, commercial general liability insurance, including contractual liability, to cover the hold harmless agreement and endorsements as set forth herein, with limits of not less than:

General Liability - Commercial General Liability during the lifetime of this Contract shall have minimum limits of $1,000,000 each occurrence, $2,000,000 aggregate for Personal Injury, Bodily Injury, and Property Damage Liability. Coverage shall include Premises and/or Operations, Independent Contractors, Products and/or Complete Operations, Contractual Liability and Broad Form Property Damage Endorsements. Coverage must include coverage for Sexual Abuse and Molestation. Coverage shall not contain an exclusion or limitation endorsement for Contractual Liability or Cross Liability. All insurance policies shall be issued from a company or companies duly licensed by the State of Florida. All policies shall be on an occurrence-made basis; the City shall not accept claims-made policies.

Business Automobile - Business Automobile Liability during the lifetime of this Contract shall have limits of liability not less than $1,000,000 combined single limits for all owned, non-owned and hired automobiles. In the event,

the Proposer does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Proposer to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form.

Workers' Compensation - Tenant shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Chapter 440, Florida Statutes.

Professional Liability - The Tenant shall agree to maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than $1,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds $10,000, City reserves the right, but not the obligation, to review and request a copy of Tenant most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, Tenant warrants the retroactive date equals or precedes the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, Tenant agree to purchase a SERP with a minimum reporting period not less than three (3) years.

The requirements contained herein, as well as City's review or acceptance of insurance maintained by Tenant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Tenant under the Contract. The City, by and through its Risk Management Department, reserves the right, but not the obligation, to review and reject any insurer providing coverage.

The Landlord shall provide property insurance for property and equipment the City may own or lease. Tenant shall be responsible for purchasing insurance for business and personal property that is not owned or leased by the City of Port St. Lucie as they deem appropriate.

Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a political subdivision of the State of Florida, its officers, agents and employees as Additional Insured with a CG 2026-Designated Person or Organization endorsement, or similar endorsement, to its' Commercial General Liability. The name for the Additional Insured endorsement issued by the insurer shall read "City of Port St. Lucie, political subdivision of the State of Florida, its officers, employees and agents, and be location specific. The policy shall be endorsed to grant the City of Port St. Lucie thirty (30) days notice of cancellation or non-renewal of coverage here under. Said liability insurance must be acceptable by and approved by the City as to form and types of coverage. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Tenant shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

Tenant shall agree by entering into this Lease to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss Contract to waive subrogation without an endorsement Tenant shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Tenant enter into such a Lease on a pre-loss basis.

It shall be the responsibility of Tenant to ensure that all subcontractors comply with the same insurance requirements referenced above. All deductible amounts for policies secured by Tenant, shall be paid for and be the responsibility of Tenant for any and all claims under this Lease.

Tenant may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. When required by the insurer, or when Umbrella or Excess Liability is written on "Non-Follow Form," the City shall be endorsed as an "Additional Insured."

Tenant must agree that the products furnished and application methods will comply with the applicable provisions of the Williams-Steiger Occupational Safety and Health Act (OSHA) of 1970.

ARTICLE VII
ASSIGNMENT AND SUBLETTING

Tenant shall not, either voluntarily or by operation of law, sell, hypothecate, assign or transfer this Lease, or sublet the Premises or any part thereof, or permit the Premises or any part thereof to be occupied by anyone other than Tenant or Tenant's employees, without the prior written consent of Landlord. Any sale, assignment, mortgage, transfer or subletting of this Lease which is not in compliance with the provision of this Article shall be null and void and of no effect and shall constitute a default hereunder. The consent by Landlord to an assignment or subletting shall not be construed as relieving Tenant from obtaining the express written consent of Landlord to any further assignment or subletting. Landlord's consent to any assignment or subletting shall not release Tenant from its primary liability under the Lease.

ARTICLE VIII
DAMAGE OR DESTRUCTION

If the Premises are damaged by fire or other casualty (collective "Casualty") at the Landlord's option, the damage may be repaired. Until such repairs are completed, the Rent shall be abated in proportion to the part of the Premises which is unusable by Tenant in the conduct of Tenant's Center. However, there shall be not abatement of Rent by reason of any portion of the Premises being unusable for a period equal to one day or less, or if the casualty is due to the negligent acts or omissions of Tenant or Tenant's employees, agents or designees. Abatement of rent will be calculated by an average of the previous six (6) month's rent payment by the Tenant. If Tenant has not been in the premises for six (6) months, an average will be taken out of the months in the tenancy thus far.

If Landlord does not so elect to make such repairs which cannot be made within sixty (60) days, then either party may, by written notice to the other cancel this Lease as of the date of the casualty. A total destruction of the Building in which the Premises are located shall automatically terminate the Lease.

ARTICLE IX
REMEDIES

If Tenant cancels Lease before the end of the term, without providing proper notice, upon termination, Landlord shall have the right to collect an amount equal to: All expenses incurred by Landlord in recovering possession of the Premises, including reasonable attorney's fees; all reasonable costs and charges for the care of the Premises while vacant; all renovation costs incurred in connection with the preparation of the Premises for a new tenant; and an amount by which the entire Rent for the remainder of the Term exceeds the loss of Rent that Tenant proves could have been reasonably avoided.

ARTICLE X
RULES AND REGULATIONS

Tenant shall observe faithfully and comply strictly with the Rules and Regulations set forth in **Exhibit "A"** in this Lease and made a part hereof, and such other rules and regulations as Landlord may from time to time reasonably adopt for the safety, care, and cleanliness of the Building or the preservation of good order therein. Landlord shall not be liable to Tenant for violation of any such Rules and Regulations, or for the breach of any covenant or condition in any lease by any other tenant in the Building. By the signing of this Lease, Tenant acknowledges that Tenant has read and has agreed to comply with such Rules and Regulations.

ARTICLE XI
RIGHT OF ACCESS

Upon forty-eight (48) hours notice to Tenant, Landlord and its agents shall have free access to the Premises during all reasonable hours for the purpose of examining the same to ascertain if they are in good repair, to make reasonable repairs as required hereunder (provided, however, Landlord shall have no obligation as a result of such examination to make any repairs other than expressly set forth herein), and to exhibit the same to prospective purchasers or tenants.

ARTICLE XII
END OF TERM

At the termination of this Lease, Tenant shall surrender the Premises to Landlord in as good condition and repair as at the Commencement Date, reasonable wear and tear excepted, and will leave the Premises broom-clean. If not then in default, Tenant shall have the right prior to said termination to remove any equipment, furniture, trade fixtures or other personal property placed in the Premises by Tenant, provided that Tenant promptly repairs any damage to the Premises caused by such removal.

In the event of holding over by Tenant after the expiration of this Lease, Tenant shall pay twenty-five percent **(25%)** the regular rate. Any holding over without the written consent of Landlord shall thereafter constitute a tenancy at sufferance.

ARTICLE XIII
TRANSFER OF LANDLORD'S INTEREST

In the event of any transfers of Landlord's interest in the Premises or in the real property of which the Premises are a part, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer.

ARTICLE XIV
NOTICES

Any notice required or permitted to be given hereunder shall be in writing and will be given by registered or certified mail and shall be deemed given the third day following the date of mailing.

All notices to Tenant shall be addressed to Tenant at the Building of which the Premises are a part or to Landlord at the building.

City Representative:

Tonya Taylor
City of Port St. Lucie – Parks & Recreation Department
9221 S.E. Civic Center Place
Port St. Lucie, Florida 34952
Telephone: 772-871-5092 Fax: 772-398-2944
Email: tonyat@cityofpsl.com

City Contract Administrator:

Lisa Marie Lawrence
City of Port St. Lucie Office of Management & Budget
121 SW Port St. Lucie Blvd.
Port St. Lucie, Florida 34984
Telephone: 772-871-5222 Fax: 772-871-7337
Email: llawrence@cityofpsl.com

ARTICLE XV
SPECIAL CONDITIONS

A. ADDITIONAL CONSIDERATION.

As additional consideration for the lease of the premises, Tenant agrees as follows:

1. To supply all equipment and personnel relative to the successful operation and management of a massage therapist as contemplated by Tenant's response to Landlord's **"#20120072, Operation of a Massage/Esthetician/Spa Room".** The Tenant shall be responsible for all maintenance required on its equipment. Listed below:

Facial Steamer	Magnifying Unit	Upscale Fountain
Towel UV Sanitizer	Acustim Machine	Waxing System
Decor		

2. The Landlord will provide a sink with faucet, storage cabinet, massage table and two chairs. The Landlord will be responsible for the maintenance of these equipment/furnishings only. Tenant shall be required to design, provide and install all other furnishings, fixtures, trade fixtures, equipment, and finishes in the specified Massage Therapy Room.

3. **American with Disabilities Act ("ADA")** - The Tenant shall be responsible for compliance upon the lease premises with all requirements of the ADA, and shall indemnify, defend, and save the Landlord harmless from any claim, damage, or loss resulting from the Tenant's failure to comply with the Act, which indemnification shall survive the termination of this lease.

4. The Tenant shall maintain and post at all time any and all licenses for the practice. Tenant agrees to comply with all law, regulation, and ordinances.

B. TERMINATION.

1. The Landlord or Tenant may terminate this Lease with or without cause by giving the other party thirty (30) days' notice in writing. The Tenant has thirty (30) days to discontinue all services in connection with the performance of this Lease and remove its equipment, and cancel promptly all existing contracts insofar as such contracts are chargeable to this Lease. Termination or expiration shall not relieve Tenant of any obligations incurred during the term of the Lease including, but not limited to, indemnification of Landlord as provided herein.

C. TENANT'S RELATIONSHIP TO THE LANDLORD.

1. **The Tenant as Independent Contractor** - It is expressly agreed and understood that the Tenant is in all respects an independent contractor as to the operation of the center. The method utilized to operate the Center shall be the responsibility of the Tenant.

2. **Subcontracting** - The Tenant may not subcontract services to be performed hereunder without the prior written approval of the Landlord. No such approval will be construed as making the Landlord part of, or to, such do not subcontract nor shall approval be construed as subjecting the Landlord to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Tenant of its liability and obligation under this Lease.

3. **Deficiencies** - In the event that the Landlord's Contract Supervisor, or his/her designee, determines that there are deficiencies in the service work provided by the Tenant under the Lease, the Landlord shall notify the Tenant in writing as to the precise nature of any such deficiencies. Within ten (10) working days of receipt of such notice, Tenant shall take reasonable steps to correct any deficiencies.

4. **Advertising and Erecting Signs** - The Landlord reserves the right to review and, if necessary, reject all proposed advertising of its services to the general public and/or business associates, and/or other considered markets.

   (a) The Tenant shall be required to submit any proposed erection of a sign either inside or outside the premises at least ten (10) days prior to the proposed advertisement date.

   (b) The Tenant shall be required to comply with the Landlord's sign ordinance.

5. **Telephone Services/Cable** - The Tenant shall be responsible for providing the telephones it intends to utilize; however, they must be compatible with the phone line system installed in the Building. The Tenant shall also be responsible for any fees associated with the telephone system utilized by them along with any long distance calls issued from its phones. The Tenant must coordinate any telephone installation with the Landlord.

6. **Utilities** - The Landlord shall during the term of this Lease be solely responsible for payments of the electricity, trash and water used or consumed in the Leased Premises.

7. **Parking** - Tenant shall have a non-exclusive lease for the parking lot more particularly described in Exhibit "A", which it will share with the Civic Center staff and patrons.

ARTICLE XVI
MISCELLANEOUS PROVISIONS

1. **Attorney – Attorney's Fees** - In the event suit is brought by either party against the other for a breach or default under the terms of this Lease, the prevailing party shall be entitled to reasonable attorney's fees, which sum shall be fixed by the court.

2. **Time of Essence** - Time is of the essence with respect to the performance of every provision of this Lease.

3. **Headings** - The article captions contained in this Lease are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

4. **Incorporation of Prior Agreements: Amendments** - This Lease contains all of the agreements of the parties hereto with respect to any matter covered and mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

5. **Waiver of Subrogation** - Landlord and Tenant hereby mutually waive any and all rights of recovery against one another based upon the negligence of either Landlord or Tenant or their agents or employees for real or personal property loss or damage occurring to the Premises or to the Building or any part thereof or any personal property located therein from perils which are able to be insured against in standard fire and extended coverage, vandalism and malicious mischief and sprinkler leakage insurance contracts (commonly referred to as "All Risk"), whether or not such insurance is actually carried.

6. **Waiver** - No waiver by Landlord of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant, whether or not similar to the act so consented to or approved. No act or thing done by Landlord or Landlord's agents during the Term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no

agreement to accept such surrender shall be valid unless in writing and signed by Landlord. The subsequent acceptance of Rent shall not be deemed a waiver of any preceding breach by Tenant of any term, covenant or condition of the Lease, other than the failure of Tenant to pay the particular Rent so accepted.

7. **Quiet Enjoyment** - Landlord shall warrant and defend Tenant in the quiet enjoyment and possession of the Premises throughout the Term, subject to the terms and conditions of the Lease.

8. **Binding Effect** - This Lease shall be binding upon, and inure to the benefit of the parties hereto, their heirs, successor's, assigns, executors and administrators. However, nothing in this Article shall be deemed to amend the provisions of Article VII on Assignment and Subletting.

9. **Governing Law** - This Lease shall be governed by the laws of the State of Florida.

(Balance of page left intentionally blank)

IN WITNESS WHEREOF, the parties have duly executed this Lease the day and year first above written.

CITY OF PORT ST. LUCIE, a Florida Municipality

By: _____
Gregory J. Oravec, City Manager

By: _____
Karen A. Phillips, City Clerk

By: _____
Michele Velez, Michele's Total Body Spa
Owner/Operator

State of: _____

County of: _____

Before me personally appeared: _____)
(please print)

Please check one:

Personally known _____

Produced Identification: _____
(type of identification)

Identification No.: _____

and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that *he/she* executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this _____ day of _____, 2012.

_____
Notary Signature

Notary Public: State of _____ at Large.

My Commission Expires: _____.

(*seal*)