

## ***ASSIGNMENT AND FIRST AMENDMENT***

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### **THIS IS AN ASSIGNMENT AND FIRST AMENDMENT TO THE AGREEMENT**

dated \_\_\_\_\_, between:

**CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as "CITY",

and

**PROSERVE CONCEPTS, LLC**, a Florida limited liability company, having its office and place of business at 509 SW 10 Street, Fort Lauderdale, FL 33315, hereinafter referred to as "LICENSEE."

**WHEREAS**, the CITY and Proserve Concepts, Inc., hereinafter referred to as "Corporation," entered into an Agreement dated March 6, 2019, ("Original Agreement"), and approved by City Ordinance No. 2019-27, passed and adopted on February 26, 2019; and

**WHEREAS**, LICENSEE formally converted the Corporation to a Florida Limited Liability Company as per the attached Articles of Conversion; and

**WHEREAS**, the LICENSEE is requesting that the CITY an assignment and transfer to LICENSEE all rights and obligations provided for in the Original Agreement; and

**WHEREAS**, CITY desires to retain the LICENSEE and LICENSEE desires to provide services under the Original Agreement; and

**WHEREAS**, the LICENSEE and CITY have mutually agreed to amend certain terms and to include additional provisions to the Original Agreement.

**WITNESSETH:**

**IN CONSIDERATION** of the mutual terms, conditions, promises, covenants and payments herein set forth CITY and LICENSEE agree as follows:

1. Each “WHEREAS” clause set forth above is true and correct and herein incorporated by this reference.

2. The CITY hereby assigns and transfers the entirety of the Corporation’s rights, title and interest the Corporation may have in and to the Original Agreement as set forth in Exhibit “A” attached hereto and incorporated herein by this reference, as of the date of last signature hereunder (the “Effective Date”) to LICENSEE.

3. LICENSEE hereby agrees that it shall be liable to the CITY for each and every duty and obligation in the Original Agreement. LICENSEE hereby agrees to assume each and every such duty and obligation. The date of the Original Agreement and any renewal dates or terms shall be the same and remain applicable for the purposes of this Assignment and First Amendment.

4. The Original Agreement effective March 6, 2019, a copy of which is attached hereto and made a part hereof as Exhibit "A", shall remain in full force and effect except as specifically amended hereinbelow.

5. That Article 10, “Indemnification,” of the Original Agreement is hereby deleted and replaced with the following language:

**ARTICLE 10**  
**INDEMNIFICATION OF CITY**

A. LICENSEE shall at all times indemnify, hold harmless and defend the CITY its officials, officers, its authorized agents and employees hereunder from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities arising directly, indirectly or in connection with this agreement and with LICENSEE's officers, staff or other agents' actions, negligence or misconduct under this Agreement whether same occurs or the cause arises on or away from the Property except that LICENSEE shall not be liable under this Article for damages arising out of injury or damage to persons or Property arising from the negligence, gross negligence or willful misconduct of the CITY, any of its officers, agents or employees. LICENSEE agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by LICENSEE for any causes of action LICENSEE has or may have for breaches or defaults by the CITY under this Agreement.

B. The parties agree that the value of the benefits received by LICENSEE under this agreement shall constitute specific consideration by LICENSEE for the indemnification to be provided herein. LICENSEE acknowledges and agrees that neither party would enter into this Agreement without this indemnification of CITY by LICENSEE.

C. LICENSEE shall be solely responsible for insuring all stock, inventory, monies or other personal Property at the Property against damage or loss of any nature or kind. LICENSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal property placed at the Property and, with the exception of damages or loss suffered as a result of CITY's negligence, CITY is hereby expressly released and forever discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of LICENSEE's presence and occupancy at the Property.

D. The indemnification provisions of this Article shall survive the expiration or early termination of this Agreement.

6. That Article 26, "Termination," paragraph C of the Original Agreement is hereby amended to read as follows:

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C. Termination for Safety. CITY may terminate ~~this event~~ any activity or program held pursuant to this agreement upon the occurrence of any riot, violent disturbance or similar conduct, or hazardous weather condition, stemming from this event any of which threatens the immediate health or safety of the public or participants.

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7. This Agreement shall bind the parties and their respective executors, administrators, successors and assign and shall be fully effective as though the extension had been originally included in the Agreement.

**THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Attest:

**CITY OF POMPANO BEACH**

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

By: \_\_\_\_\_  
REX HARDIN, MAYOR

(SEAL)

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

**"LICENSEE":**

Witnesses:

Proserve Concepts, LLC

John Kane  
John Kane

Print Name  
BS

Rosette Seymour  
Print Name

By: [Signature]  
Edward Sposa, Manager

STATE OF FLORIDA

COUNTY OF Broward

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization by Edward Sposa as Manager of Proserve Concepts LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:

Anne Hollady  
NOTARY PUBLIC, STATE OF FLORIDA

Anne Hollady  
(Name of Acknowledger Typed, Printed or Stamped)

GG 265432  
Commission Number

