

## FIRST AMENDMENT TO PARCEL R5 GROUND LEASE

**THIS FIRST AMENDMENT TO PARCEL R5 GROUND LEASE** (“**First Amendment**”) is dated as of \_\_\_\_\_, and is between the **CITY OF POMPANO BEACH, FLORIDA**, a Florida municipal corporation (“**City**”), whose address is 100 West Atlantic Boulevard, 4<sup>th</sup> Floor, Pompano Beach, Florida 33060, Attn: City Manager, and **PPA-R5, LLC**, a Florida limited liability company, (“**Tenant**”) whose address is 200 Congress Park Drive, Suite 201, Delray Beach, FL 33445.

### RECITALS

City and Tenant have entered into a Parcel Ground Lease, dated November 6, 2018, for the lease to Tenant of Parcel R5 described in the Lease, (“**R5 Lease**”).

During the course of certain financings involving the Parcel, Tenant has learned that there are certain inconsistencies within the continuous operation provisions in Section 24.4.3 and Section 41.2 of the R5 Lease.

City and Tenant desire to eliminate any conflicts between the provisions and ensure that any present conflicts between the provisions do not prevent Tenant and any subtenants from obtaining financing in order to construct and operate the business located on the Parcel.

City and Tenant have agreed to make the clarifying changes to the R5 Lease as set forth in this First Amendment.

### AGREEMENT

For Ten Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, City and Tenant agree as follows:

1. **Sublease Requirements.** Section 24.4.3 of the Parcel R5 Lease is amended to read as follows (added language is underlined, deleted language has a line through it):

**24.4.3** Require the Subtenant to remain in continuous operation throughout the term of its Sublease, and to provide written notice to Tenant ~~and City~~ if of the date on which Subtenant (1) intends to cease operations for a period in excess of ten (10) days in order to make renovations or repairs to the sublease premises or (2) cease operations altogether. Completion of renovations and repairs to the sublease premises pursuant to 24.4.3(1) shall not exceed eighteen (18) months. Such period may be extended if the repairs and renovations cannot be completed within such time period due to matters of force majeure or matters beyond the reasonable control of Subtenant. ~~for a period not to exceed 10 days in order to make renovations or repairs to the sublease premises;~~

2. **Continuous Operation.** Section 41.2 of the Parcel R5 Lease is amended to read as follows (added language is underlined, deleted language has a line through it):

**41.2 Continuous Operation.** Tenant acknowledges that it is important to City that the Project remains in full operation at all times. Tenant agrees to use ~~best~~ commercially reasonable efforts to keep the Parcel in continuous operation throughout the Lease Term. Tenant agrees to include in its Subleases a provision obligating each Subtenant to use

commercially reasonable efforts to remain in continuous operation throughout its respective Sublease term, provided that (i) Subtenant may cease operations in order to make renovations and repairs to the sublease premises as permitted under Section 24.4.3 and (ii) subject to 24.4.3(2) above, in no event shall any space within the Improvements on the Parcel cease continuous operation for more than eighteen (18) months. Tenant must provide written notice to City if within ten (10) days of the date on which a Subtenant vacates its premises—intends to cease continuous operation pursuant to paragraph 24.4.3(1) or ceases operations altogether pursuant to 24.4.3(2) in violation of its Sublease. If a Subtenant ceases continuous operation altogether, Tenant shall use commercially reasonable efforts to satisfy the following deadlines:

<u>Advertise Premises</u>	<u>New Sublease Execution Date</u>	<u>Obtain Permits</u>	<u>Commence Construction</u>
<u>30 Days from the date continuous operations cease</u>	<u>4 months from the date Premises is Advertised</u>	<u>10 months from the New Sublease Execution Date</u>	<u>12 months from the New Sublease Execution Date</u>

**3. Ratification of Parcel R5 Lease.** The Parcel R5 Lease, as amended by this First Amendment, remains in full force and effect on the date hereof.

**SIGNATURE BLOCKS ON FOLLOWING PAGES**

City and Tenant have signed this First Amendment to Parcel R5 Ground Lease on the dates set forth below their respective signatures

**CITY:**

**CITY OF POMPANO BEACH, FLORIDA**

Witnesses:

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_

Print Name \_\_\_\_\_

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

(SEAL)

Attest:

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

Approved by:

\_\_\_\_\_  
MARK BERMAN, CITY ATTORNEY

**TENANT:**

Witnesses:

**PPA-R5, LLC**, a Florida limited liability company

\_\_\_\_\_

By:

Print Name \_\_\_\_\_

\_\_\_\_\_  
Richard Caster, Manager

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_\_ online notarization on \_\_\_\_\_, by RICHARD CASTER, as Manager of PPA-R5, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Notary Typed, Printed or Stamped

NOTARY'S SEAL

\_\_\_\_\_  
Commission Number