

Prepared by:  
Brent G. Wolmer, Esquire  
Cohen Norris Wolmer et al  
712 US Highway One, Ste. 400  
North Palm Beach, FL 33408  
File #80007.148

**SUBLEASE RECOGNITION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT FOR PARCEL R1**

THIS AGREEMENT is entered into by and among 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, FL 33060 Attn.: City Manager; **PPA-R1, LLC**, a Florida limited liability company ("**Landlord**"), whose address is 398 NE 6th Avenue, Delray Beach, Florida 33483; and **1000 HIGHWAY 98 EAST CORP.**, a Florida corporation ( "**Sublessee**" ), whose post office address is 10800 NW 106 Street, Suite 6, Medley, Florida 33178.

**WITNESSETH:**

WHEREAS, City is the owner of approximately 10,158 square feet of real property located in the City of Pompano Beach, Broward County, Florida, more particularly described on Exhibit "A" attached hereto and made a part hereof, commonly known as Parcel R1 ( "**Parcel R1**" ); and

WHEREAS, City has entered into a Parcel Ground Lease (the "**R1 Lease**") with Landlord dated February 28, 2017, and is leasing Parcel R1 to Landlord on the terms and conditions set forth in the Lease and in the Amended and Restated Development Agreement dated July 28, 2014, as amended (the "**Development Agreement**") between the City and Pompano Pier Associates, LLC, a Florida limited liability company (the "**Developer**"); and

WHEREAS, the term of the R1 Lease will be 50 years, commencing on the date the first building permit is issued for Parcel R1 and terminating 50 years thereafter; and

WHEREAS, Landlord, as an Acceptable Transferee of Developer, pursuant to the authority granted by the City to the Developer under the Development Agreement, has subleased Parcel R1 to Sublessee pursuant to the terms and conditions of that certain Sublease dated November 18, 2016 (the "**Sublease**"), the terms and conditions which are incorporated herein by reference and made a part hereof; and

WHEREAS, City, Landlord, and Sublessee desire to execute and record this Agreement to provide notice to third parties of the Sublease and certain provisions and agreements contained herein for the benefit of the City, the Landlord, and the Sublessee.

NOW THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein by reference and made a part hereof.
2. **Sublease Term.** By virtue of the Sublease, Sublessee has subleased Parcel R1 for a term of 20 years with the option to renew the Sublease for four consecutive periods of five years each.
3. **Sublease in Force.** The Sublease is in full force and effect and has not been modified in any respect through the date hereof.
4. **City's Recognition of Sublessee.** In the event City acquires the leasehold interest of Landlord or comes into possession of Parcel R1 as a result of any or all of the following: (i) Landlord's default; (ii) City's enforcement of the Lease; (iii) conveyance; (iv) forfeiture; or as a result of any other means, so long as there then exists no breach, default, or event of default on the part of Sublessee under the Sublease, City agrees for itself and its successors and assigns that the leasehold interest of Sublessee under the Sublease will not be extinguished or terminated by reason of such action by the City; but rather the Sublease will continue in full force and effect, and the City will recognize and accept Sublessee as tenant under the Sublease subject to the terms and provisions of the Sublease, as modified by this Agreement.
5. **Attornment by Sublessee.** In the event of any action by the City under the Lease resulting in the City's succession to the interests of Landlord, Sublessee shall attorn to and shall be bound to the City under all the terms in the Sublease for the balance of the term, plus any extensions thereof permitted by the Sublease, without the execution of any further instrument on the part of the parties hereto. Sublessee's attornment to the City will be effective and self-operative immediately upon the City's succession to the interest of the Landlord. All of Sublessee's obligations under the Sublease will continue in full force and effect as though the interest of the Landlord had not been terminated and as if the City were the original landlord under the Sublease. Sublessee will continue to be responsible for the performance of its obligations of a continuing nature set forth in the Sublease, such as maintenance and repair.
6. **Limitations on Liability of City.** In no event shall the City or any party succeeding to the City's interest be:
  - 6.1 Liable for any act, omission, default, misrepresentation, or breach of warranty by Landlord;
  - 6.2 Liable for any obligations of Landlord accruing prior to the City's

repossession of Parcel R1;

- 6.3 Subject to any offsets, defenses or deficiencies which the Sublessee might be entitled to assert against the Landlord;
- 6.4 Bound by any payment of rent or additional rent made by Sublessee to Landlord prior to City's repossession of Parcel R1;
- 6.5 Bound by any amendment or modification of the Sublease or concession made without the consent of the City; or
- 6.6 Liable for the refund of all or any part of any security deposited by Sublessee with Landlord unless and until such security has been delivered by Landlord to City. In the event of receipt of such security, City's obligations with respect thereto will be limited to the amount actually received by City, and City will be entitled to all rights, privileges and benefits set forth in the Sublease with respect thereto.

7. **Limitations on Sublessee's Rights to Terminate Sublease.** In the event of any act or omission of Landlord which would give Sublessee the right, immediately or after lapse of a period of time, to cancel or terminate the Sublease, or to claim a partial or total eviction, Sublessee shall not exercise such right or remedy until (a) it has given written notice of such act or omission to City; and (b) City has been afforded (i) the period to which Landlord would be entitled under the Sublease or otherwise, after similar notice, to effect a cure; and (ii) any longer curative period provided by this Agreement. The Sublessee will not seek to terminate the Sublease or exercise any right or remedy as provided under the Sublease or by law unless and until the following first occurs:

- 7.1 A default occurs under the Sublease which is not cured by Landlord within the applicable grace or curative period provided in the Sublease;
- 7.2 If the default constitutes a monetary default which is not cured within the applicable grace or curative period provided in the Sublease, Sublessee must send City written notice specifying the details of the monetary default, and City will have a period of ninety (90) days after the receipt of notice from the Sublessee to cure the monetary default.
- 7.3 If the default constitutes a non-monetary default which is not cured by Landlord within the applicable grace or curative period provided in the Sublease, Sublessee must send City written notice specifying the details of the non-monetary default, and City will have a period of ninety (90) days after the receipt of notice from the Sublessee to cure the non-monetary default. If the non-monetary default cannot be reasonably cured within the ninety (90) day period, City will have reasonable additional time to cure the non-monetary default as long as City has commenced to cure the non-monetary default within the ninety (90) day period and thereafter diligently and continuously proceeds to cure such non-monetary default.

It is intended by this Section 7 that the Landlord will have the opportunity to cure a

default within the applicable curative period set forth in the Sublease. The City will have the right, but not the obligation, to cure any event of default under the Sublease as set forth above. The provisions of this Section 7 are solely for the benefit of the City and not the Landlord, and Landlord shall not have any greater curative or grace period as to the Sublease than are provided in the Sublease.

8. **Sublessee's Representation of Ownership.** Sublessee hereby warrants and represents to City that it is the current owner of the Sublessee's interest in the Sublease and that no defaults presently exist under the Sublease.
9. **Estoppel Statements.** Within 30 days after written request by City, Sublessee shall supply to City a statement setting forth the status of the Sublease; stating whether any defaults have occurred under the Sublease by either Landlord or Sublessee; and setting forth the details of any such default. Sublessee understands that City may rely upon such statement for any purposes as City determines.
10. **City Not Responsible for Parcel Conditions.** Landlord and Sublessee hereby jointly and severally agree for the benefit of City as follows:
  - 10.1. This Agreement shall not, prior to City's acquisition of the Landlord's leasehold interest in Parcel R1, operate to place responsibility for the control, care, management or repair of Parcel R1 upon the City, or impose responsibility on the City for the carrying out of any of the terms and conditions of the Sublease.
  - 10.2. This Agreement shall not operate to make the City responsible or liable for any waste committed on Parcel R1 by any party whatsoever or for any dangerous or defective condition of Parcel R1, or for any negligence in the management, upkeep, repair or control of Parcel R1 resulting in property loss or damage or loss, injury or death to any Sublessee, licensee, or employee of any other person whatsoever, except to the extent caused by City and/or its agents.
  - 10.3. This Agreement shall not cause a reduction in any of the Rents or other benefits due City under the R1 Lease;
  - 10.4. The operation of this Agreement does not, and shall not, impose any monetary or performance obligations on City in excess of those in the R1 Lease.
11. **Modification; Covenant Running with Parcel R1; Successors.** This Agreement may not be modified other than by an agreement, in writing, mutually signed by the parties hereto or by their respective successors in interest. The provisions of this Agreement shall be covenants running with Parcel R1, and shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, administrators, beneficiaries, successors and assigns, including, without limitation, any person who shall obtain, directly or by assignment or conveyance (a) any interest in the Sublease; or (b) any interest in Parcel R1 or otherwise.

12. **No Modification of Sublease without City Consent.** During the term of this Agreement, the Sublessee shall not at any time accept concessions or amend, modify, terminate, renew or extend the Sublease or cease rental payments thereunder or otherwise attempt to credit or off-set damages against rentals due or prepay rent in advance of the due dates, except in explicit compliance with the terms of the Sublease, without the prior written consent of City. Sublessee shall not assign or pledge the Sublease or its rights or obligations thereunder except as expressly permitted in the Sublease. As long as this Agreement is in force and effect, no waiver by Landlord of any of the material obligations of Sublessee under the Sublease, and no termination of the Sublease by Landlord shall be effective as against City.
13. **Counterparts.** This instrument may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties hereto had signed the same document. All of such counterparts shall be construed together and shall constitute one instrument.
14. **Florida Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
15. **Termination of Agreement.** This Agreement shall remain in full force and effect until the Sublease has terminated by its terms, at which time this Agreement shall become null and void and of no further force or effect without the necessity of execution of any further documentation (although Sublessee agrees to execute any and all reasonable documentation that this Agreement has been terminated if requested by City).
16. **Agreement Binding on Successors.** This Agreement shall be binding on Sublessee and Landlord, and their respective successors and assigns and shall inure to the benefit of City and its respective successors and assigns.
17. **Authority of Signatories.** The signatories of this Agreement have full and complete authority to sign this Agreement on behalf of City, Landlord and Sublessee, respectively.

**[SIGNATURES ON FOLLOWING PAGES]**

This Agreement has been executed by the parties on the dates set forth below  
their respective signatures.

Attest:

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

Approved by:

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

CITY:

**CITY OF POMPANO BEACH, FLORIDA**

By: \_\_\_\_\_  
LAMAR FISHER, MAYOR

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
GREG HARRISON, CITY MANAGER

Dated: \_\_\_\_\_

(SEAL)

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me on \_\_\_\_\_, by LAMAR FISHER, as Mayor, GREG HARRISON, as City Manager, and ASCELETA HAMMOND, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

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

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

NOTARY'S SEAL

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

**SUBLESSEE:**

**1000 HIGHWAY 98 EAST CORP., a  
Florida corporation**

BY:   
Dror Levy, Vice President

Dated: 3/13/17

STATE OF FLORIDA  
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 2017, by Dror Levy, as Vice President of **1000 Highway 98 East Corp., a Florida corporation** on behalf of said corporation. He is personally known to me or has produced a driver's license as identification and did/did not take an oath.

  
Notary Public  
Commission Expires: 06/01/2021



**LANDLORD:**  
**PPA-R1, LLC, a Florida limited liability company**

BY:   
Richard Caster, Manager

Dated: 3/10/17

STATE OF FLORIDA  
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me on March 10, 2017, by Richard Caster as Manager of **PPA-R1, LLC**, a Florida limited liability company, on behalf of said company. He is personally known to me (or has produced a driver's license as identification) and did/did not take an oath.

  
Notary Public  
Commission Expires:





## **EXHIBIT "A"**

### **Legal Description of Parcel R1**

That portion of Block 8, Pompano Beach, according to the Plat thereof recorded in Plat Book 2, Page 93, of the Public Records of Palm Beach County, Florida, described as follows:

Commencing at the Southeast corner of said Block 8; thence North 09°09'21" East along the East line of said Block 8, a distance of 369.46 feet to the Point of Beginning; thence North 80°50'39" West, a distance of 77.19 feet; thence North 09°09'21" East, a distance of 124.66 feet to the North line of said Block 8; thence North 88°57'35" East along said North line, a distance of 78.43 feet to the East line of said Block 8; thence South 09°09'21" West along said East line, a distance of 138.54 feet to the Point of Beginning.

Said lands lying and situate in Broward County, Florida.