

FIRST AMENDMENT TO GROUND LEASE
(Hatcher Construction and Development, Inc.)

THIS FIRST AMENDMENT TO GROUND LEASE (“First Amendment”) is entered into by and between **DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY**, a Florida public body, corporate and politic, created pursuant to Chapter 163, Florida Statutes, (the "Landlord") whose address is 20 N. Swinton Avenue, Delray Beach, Florida 33444, and **HATCHER CONSTRUCTION & DEVELOPMENT, INC.**, a Florida corporation, whose address is 710 W. Atlantic Ave, Delray Beach, FL 33444 (the "Tenant") and shall be effective upon execution by the parties hereto.

WITNESSETH:

WHEREAS, on July 18, 2019, the Landlord entered into a Ground Lease (“Original Lease”) with the Tenant for the property located at 20 and 26 NW 6th Avenue, Delray Beach, Florida (“Premises”); and

WHEREAS, the Landlord and tenant desire to extend the expiration of the Site Plan Analysis Period from January 18, 2021, to July 18, 2021; and

WHEREAS, on _____ the Landlord entered into a Landscape Maintenance Agreement with the City of Delray Beach, Florida (“Landscape Maintenance Agreement”), hereby attached as Exhibit A, for the installation and maintenance of certain landscaping corresponding with the Landlord’s approved landscaping plan; and

WHEREAS, the Tenant agrees to assume the Landlord’s obligations under the Landscape Maintenance Agreement with the City of Delray Beach, Florida, as set forth herein; and

NOW THEREFORE, the parties hereto in consideration of the mutual covenants and promises contained herein agree as follows:

1. That the above referenced “WHEREAS” clauses shall be confirmed and ratified as if fully set forth herein.

2. Section 3.3 entitled “Site Analysis Period” is hereby amended to the following:

(3.3) Site Analysis Period. Tenant shall have until July 18, 2021 "Site Analysis Period" in which to ascertain whether the Property is acceptable to Tenant and to obtain all necessary approvals, permits and licenses necessary for the development of the Property in substantial conformance with the Conceptual Plan. "Site Analysis Period" shall mean the period commencing on the Effective Date of this Lease and expiring on July 18, 2021. If the Property is determined to be unacceptable to Tenant in its sole discretion, Tenant shall notify the Landlord by providing written notice (a "Termination Notice") of its determination that the Property is unacceptable for its intended use no later than 5:00 p.m. Florida time on July 18, 2021, in which event the First Deposit shall be returned to Tenant, and neither party shall have any further rights or obligations hereunder.

3. Section 5 entitled "Repair and Maintenance" is hereby amended to add the following Tenant Obligations to Section 5.1:

(a) *The Tenant shall be required to install and maintain the landscaping as described in the Landlord's approved landscaping plan, as further depicted in Exhibit "B" attached hereto.*

(b) *The Tenant shall be responsible for purchasing and installing all plant, tree, hedge or grass material or any other material as required by the Landlord's approved landscaping plan. Tenant, with the assistance of the Landlord, shall further be responsible for obtaining all permits and approvals from all applicable governmental agencies.*

(c) *The Tenant hereby agrees to maintain the plantings in the right-of-way in accordance with the City of Delray Beach's Code of Ordinances and the terms and conditions of the Landscape Maintenance Agreement. The Tenant shall be responsible to maintain, which means the proper watering and proper fertilization of all plants and keeping them as free as practicable from disease and harmful insects; to properly mulch the plant beds; to keep the premises free of weeds; to mow and/or cut the grass to a proper height; to properly prune all plants which includes (1) removing dead or diseased parts of plants, or (2) pruning such parts thereof which present a visual hazard for those using the roadway. To maintain also means removing or replacing dead or diseased plants in their entirety, or removing or replacing those that fall below original project standards. All plants removed for whatever reason shall be replaced by plants of the same grade, not necessarily the same plant but of acceptable quality to the City of Delray Beach, Florida and the Landlord, as specified in the original approved landscaping plans and specifications and of a size comparable to those existing at the time of replacement. To maintain also means to keep litter removed from the landscaped areas in the right-of-way. Plants shall be those items which would be scientifically classified as plants and include but are not limited to trees, grass, or shrubs.*

(d) *Upon request by the Landlord, the Tenant shall be responsible for removing all landscaping from the right of way within forty five (45) days of such notification, if so requested by the Landlord and/or the City of Delray Beach, Florida.*

(e) *Upon receipt of notice or issuance of a code violation against the Premises for the failure to properly maintain the landscaping according to the Landscaping Maintenance Agreement, or if the landscaping on the Premises is otherwise in violation of the City's Code of Ordinances, the Landlord will provide written notice of such deficiency(ies) to the Tenant within three (3) business days of receipt of such notice or code violation, and shall also provide Tenant with a copy of the notice or code violation. Thereafter, the Tenant shall have forty five (45) calendar days to correct the deficiency(ies).*

(f) *The failure of the Tenant to observe or perform under the terms of the Section shall constitute a Default under Section 15 of the Original Lease. In the event of default by the*

Tenant of the terms of this Section, and in addition to the remedies outlined in Section 15 of the Original Lease, the Landlord may

- i. maintain the landscaping or part thereof and invoice the Tenant for expenses incurred, including any invoice, expense, or citation the Landlord received from the City related to the failure to maintain the landscaping. Payment by the Tenant to the Landlord under this Section shall be made within thirty (30) days from receipt by the Tenant of an invoice.*
- ii. Terminate the Original Lease, as amended.*

(g) The Tenant shall indemnify and hold harmless the Landlord, its officers and employees from all suits, actions, claims and liability arising directly out of damages incurred solely due to the Tenant's negligence in the installation and maintenance of the landscaping in the City of Delray Beach's right of way and as further described herein.

4. Except as modified by this First Amendment, all terms, covenants, obligations and provisions of the Original Lease, shall remain unaltered, shall continue in full force and effect, and are hereby ratified, approved and confirmed by the parties in every respect. If the terms and conditions set forth in this First Amendment shall directly conflict with any provision contained in the Original Lease, the terms contained in this First Amendment shall control.

(This Space is Intentionally Blank; Signature Pages to Follow)

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the dates set forth below.

ATTEST:

**LANDLORD:
DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY**

By: _____
Renée A. Jadusingh, Esq.
CRA Executive Director

By: _____
Shirley E. Johnson, Chair

APPROVED AS TO FORM:

By: _____
CRA General Counsel

STATE OF FLORIDA)
)ss:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this ____ day of _____, 2020, by Shirley E. Johnson, Chair of the Delray Beach Community Redevelopment Agency, on behalf of the agency. She is personally known to me or has produced _____ (type of identification) as identification

Signature

Name and Title

Commission Number

TENANT:
HATCHER CONSTRUCTION AND DEVELOPMENT, INC., a Florida corporation

BY: _____
William E. Hatcher, President

ATTEST:
By: _____
Print Name: _____

Date: _____
(SEAL)

STATE OF FLORIDA)
)ss:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this ___ day of _____, 2020, by William E. Hatcher, as President of **HATCHER CONSTRUCTION AND DEVELOPMENT, INC.**, a Florida corporation, on behalf of the corporation. He is personally known to me or has produced _____ (type of identification) as identification

Signature

Name and Title

Commission Number

EXHIBIT A
LANDSCAPE MAINTENANCE AGREEMENT

EXHIBIT B
APPROVED LANDSCAPING PLAN