

SECOND AMENDMENT TO RETAIL LEASE

THIS SECOND AMENDMENT TO THE RETAIL LEASE (“Second Amendment”) is made between the **City of Lake Worth Beach**, a Florida municipal corporation (“Landlord”), and **Maxplan Enterprises, Inc.**, a Florida corporation (the “Tenant/Assignor”), and **Pura Vida Treats, Inc.**, a Florida corporation (“Tenant/Assignee”) (collectively Landlord, Tenant/Assignor, and Tenant/Assignee are referred to as the “Parties”).

RECITALS

WHEREAS, on February 2, 2012, the Landlord and Tenant/Assignor entered into a Retail Lease agreement for the lease of unit nos. 3 and 4 on the first floor of the Lake Worth Municipal Casino Building for use by the Tenant/Assignor as a retail ice cream and chocolates establishment (the “Lease”); and

WHEREAS, on August 13, 2020, the Landlord and the Tenant/Assignor entered into the First Amendment to the Lease to revise certain terms and conditions of the Lease as a result of the COVID-19 pandemic; and

WHEREAS, in January 2021, Tenant/Assignor contacted the Landlord about an assignment of the Lease to the Tenant/Assignee with Tenant/Assignee to assume the operation of the ice cream and chocolates establishment under the Lease; and

WHEREAS, the Tenant/Assignor has paid the Landlord \$1,000 as required by the Lease to consider the Tenant/Assignor’s request for the assignment; and

WHEREAS, the Tenant/Assignee has also requested that the Landlord waive Section 6.3 of the Lease, by which the Landlord would waive its right to receive any profits received by Tenant/Assignor as a result of the assignment of the Lease; and

WHEREAS, in consideration of the Tenant/Assignee’s requests, the Landlord has other revisions to the Lease which include, but are not limited to, the Tenant/Assignee providing a deposit of two (2) months’ Base Rent as of the 10th year of the Lease which is Seven Thousand Five Hundred Sixty-Three and Ninety-Eight/100 Dollars (\$7,563.98); the Tenant/Assignee providing updated certificates of insurance under the requirements of the Lease; and, clarifying that the annual Base Rent increase will be at 3.5% per year for the Term and renewal options; and

WHEREAS, the Parties desire to amend the Lease consistent with the Parties’ requests and as further set forth herein; and

WHEREAS, the Landlord finds amending the Lease as set forth herein serves a valid public purpose.

NOW THEREFORE, in consideration of the promises and mutual covenants contained in the Lease, the First Amendment, and this Second Amendment, and for other good and valuable consideration, the receipt of which the Parties expressly acknowledge, the Parties agree as follows:

1. **City Commission Consideration.** This Second Amendment will be considered by the Landlord’s City Commission at a public meeting on **March 2, 2021**.

2. **Approval of Assignment.** Upon the Effective Date of this Second Amendment (as defined below), the Parties agree to and the Landlord consents to the assignment of the Lease to the Tenant/Assignee, Pura Vida Treats, Inc. As of the Effective Date of this Second Amendment, the following amendments are made to the Lease:
- a. **Tenant.** Subsection 1.2 is deleted and amended in full to reflect the new name of the Tenant as, “Pura Vida Treats, Inc., a Florida corporation.”
 - b. **Tenant’s Trade Name.** Subsection 1.3 is deleted and amended in full to reflect the new trade name of the Tenant as, “Kilwins Chocolates & Ice Cream Lake Worth Beach.”
 - c. **Security Deposit.** Subsection 1.17 is deleted and amended in full to reflect the Security Deposit as, “Seven Thousand Five Hundred Sixty-Three and Ninety-Eight/100 Dollars (\$7,563.98) to be paid to Landlord prior to the Landlord’s execution of this Second Amendment. Security equals two (2) months of the tenth year base rent.”
 - d. **Tenant’s Notice Address.** Subsection 1.19 is deleted and amended in full to reflect the Tenant’s Notice Address as, “Pura Vida Treats, Inc., Attn: Wayne Pyers and Ileana Moya, 10 S. Ocean Blvd., Lake Worth Beach, FL 33460.”
 - e. **Landlord’s Notice Address.** Subsection 1.20 is deleted and amended in full to reflect Landlord’s Notice Address as, “c/o City Manager, City of Lake Worth Beach, 7 N. Dixie Highway, Lake Worth Beach, FL 33460; with a copy sent to the City of Lake Worth Beach, Attn: City Attorney, 7 N. Dixie Highway, Lake Worth Beach, FL 33460.”
 - f. **Landlord and Tenant Broker.** Subsections 1.21 and 1.22 and Section 24 are deleted for the purpose of this Second Amendment as the Parties have not utilized a broker for this Second Amendment.
 - g. **Grease Traps.** Subsection 15.6 is deleted and amended in full to clarify the current operation of Grease Traps at the Project: “Landlord and/or a prior tenant has installed grease trap and other equipment necessary to maintain the Tenant’s operation in a clean and sanitary manner and free from insects, rodents, vermin, and other pests. No discharge of grease or grease laden water or other materials or food stuffs shall be introduced by Tenant into the waste water disposal or drainage systems serving the Project; however, if such discharge occurs, in addition to all other rights and remedies under this Lease, Tenant shall be responsible for all costs and expenses (including any fines or penalties imposed by governmental authorities) which may be assessed against Landlord or Landlord may incur. Tenant shall contract with a licensed and qualified vendor for the regular maintenance and pumping of the grease trap and proper disposal of the same. Tenant shall provide a copy of the grease trap contract to the Landlord upon the Rent Commencement Date. In the event Tenant fails to have the grease trap regularly and properly maintained and/or pumped, the Landlord shall be entitled to utilize Tenant’s contracted vendor (or another vendor of Landlord’s choice) to timely and properly maintain and/or pump the grease trap. Tenant shall be responsible for all costs incurred for the maintenance and pumping of the grease trap. Tenant shall also be



responsible for all costs and expense to repair the grease trap if the grease trap is damaged by the negligence of the Tenant, its employees, or its contracted vendor.”

- h. **Exhibit “D”, Rules and Regulations.** Exhibit “D”, entitled “Rules and Regulations” is amended to add the following: “**37. Prohibition Against Plastic Straws.** Pursuant to City of Lake Worth Beach Ordinance No. 2020-21 (adopted on January 19, 2021), plastic straws (as defined in the Ordinance) shall not be distributed at the Lake Worth Municipal Casino Building or other facilities owned, operated or managed by the City of Lake Worth Beach. Accordingly, Tenant shall not distribute plastic straws at the Premises.”
 - i. **Exhibit “K”, Prohibited/Restricted Uses.** Exhibit “K”, entitled “Prohibited/Restricted Uses” is amended to add the following: “**Other Restricted Uses:** The Tenant is prohibited from selling pizza. The Tenant is encouraged to be mindful of the other Project tenants and the products they sell so as not to unnecessarily compete with the other tenants.”
3. **Waiver of Right of Termination and Assignment Payment.** Sections 6.1 of the Lease authorizes the Landlord to terminate the Lease upon notice of a requested assignment and Section 6.2 requires the Tenant/Assignor to pay the Landlord any amount received from Tenant/Assignee for the assignment of the Lease in excess of the Rent then being paid by the Tenant/Assignor to the Landlord. Solely for the purposes of this Second Amendment, the Landlord waives its right of termination under Section 6.1 of the Lease and waives its right to any payment that may be due from the Tenant/Assignor under Section 6.2.
 4. **Patio Rental.** Section 2.7 of Exhibit “H” to the Lease allows for the patio rental amount of \$15.00 per square foot per annum to be increased each year consistent with the increase in the base rent for the term and any renewal options. **Accordingly, commencing May 1, 2021, the patio rental shall be \$15.53 per square foot and subject to an annual increase of 3.5% each May 1st thereafter.**
 5. **Agreement Unchanged.** Except as specifically amended herein, all other provisions of the Lease (as amended by the First Amendment) shall remain in full force and effect.
 6. **Controlling Documents.** To the extent that there exists a conflict between this Second Amendment and the Lease (as amended by the First Amendment), the terms and conditions of this Second Amendment shall prevail. Whenever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between the provisions of the various documents.
 7. **Entire Agreement.** The Parties agree that the Lease, the First Amendment, and this Second Amendment represent the entire agreement between the Parties and supersede all other negotiations, representations, or agreements, either written or verbal.
 8. **Counterparts.** Each Party may sign one copy of this Second Amendment and together, whether by signed original or facsimiled or e-mailed copy, the signed copies shall constitute one, fully executed Second Amendment.

9. ***Effective Date.*** This Second Amendment shall not be binding upon the Parties until approved by the Landlord's City Commission of the City of Lake Worth Beach. The Effective Date of this Second Amendment shall be the date this Second Amendment is fully executed by the Landlord's Mayor and Clerk.

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SIGNATURE PAGES FOLLOW

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IN WITNESS WHEREOF, the Parties have caused this Second Amendment to the Retail Lease to be executed by their duly authorized representatives.

LANDLORD: CITY OF LAKE WORTH BEACH, FLORIDA

Witness:

By: _____

Print Name: _____

By: _____

Pam Triolo, Mayor

ATTEST:

Date: _____

Deborah M. Andrea, City Clerk

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2021, by Pam Triolo, as the Mayor of the City of Lake Worth Beach (Landlord), who is personally known to me.

Notary Seal:

Notary Public Signature

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

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TENANT/ASSIGNOR AND TENANT/ASSIGNEE SIGNATURE PAGE FOLLOW

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TENANT/ASSIGNOR: MAXPLAN ENTERPRISES, INC.

Witnesses:

By: [Signature]
Print Name: Melissa Coyne

By: [Signature]
Print Name: BEATRICE Holliman

By: [Signature]
RAAFATIBRAHIM,
President
[Corporate Seal]

STATE OF Florida
COUNTY OF Alachua

THE FOREGOING Second Amendment to Retail Lease was acknowledged before me by means of • physical presence or • online notarization on this 25th day of February 2021, by Raafat Ibrahim, as the Owner [title] of Maxplan Enterprises, Inc., a Florida Corporation, who is personally known to me or who has produced driver's license as identification, and who did take an oath that he is duly authorized to execute the foregoing instrument and bind the TENANT/ASSIGNOR to the same.



[Signature]
Notary Public Signature

TENANT/ASSIGNEE: PURA VIDA TREATS, INC.

Witnesses:

By: [Signature]
Print Name: Allie Cecilo

By: [Signature]
Print Name: Rodney Robinson

By: [Signature]
Wayne Piers
Pura Vida Treats, Inc. President
[Corporate Seal]

STATE OF Virginia
COUNTY OF Henrico

THE FOREGOING Second Amendment to Retail Lease was acknowledged before me by means of • physical presence or • online notarization on this 23 day of February 2021, by Wayne Piers, as the President [title] of Pura Vida Treats, Inc., a Florida Corporation, who is personally known to me or who has produced Virginia Piers's license as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the TENANT/ASSIGNEE to the same.

Notary Seal:

[Signature]
Notary Public Signature

Kevin Alison Burt
Commonwealth of Virginia
Notary Public
7553846
expires 06/30/2021

WB