

11/19/2019

132-R-19

A RESOLUTION

**Authorizing the City Manager to Execute an Amendment to the
Commercial Lease of City-Owned Real Property Located at
1804 Maple Avenue**

WHEREAS, the City of Evanston owns certain real property located at 1800 Maple Avenue, Evanston, Illinois 60201, which is the public parking facility commonly known as the "Maple Avenue Garage" (the "Property") and the City leases commercial space on the first level of the building at 1804 Maple Avenue (the "Premises"); and

WHEREAS, on April 27, 2019, the City Council adopted Ordinance 40-O-15 approving a lease agreement with a medical cannabis dispensary to locate at the Premises, Pharmacann LLC, an Illinois limited liability company; and

WHEREAS, on June 25, 2019, Gov. J.B. Pritzker, signed HB 1438 – The Cannabis Regulation and Tax Act, that states starting January 1, 2020, adults over 21 years of age will be able to legally purchase cannabis for recreational use from licensed dispensaries; and

WHEREAS, the lease requires an amendment to bring the lease terms in line with the new regulations, specifically with regards to the "Use of Premises"; and

WHEREAS, additionally, the lease must be amended to change the party to a related entity, MME Evanston Retail LLC, an Illinois limited liability company. PharmaCann has created an entity called "MME Evanston Retail LLC." That entity's

operating agreement lists PharmaCann as the managing member. PharmaCann and affiliates own 100% of MME Evanston Retail LLC's membership units to date; and

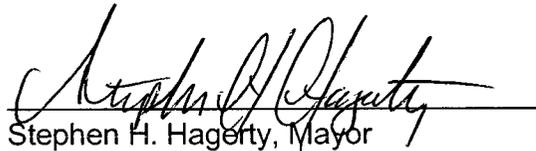
WHEREAS, the City Council has determined that it is in the best interests of the City of Evanston to negotiate and execute the attached second amendment to the lease by and between the City, as Landlord, and MME Evanston Retail LLC, as the Tenant,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: The City Manager is hereby authorized and directed to execute a Second Amendment to Lease Agreement ("Amendment") with MME Evanston Retail LLC, attached hereto and incorporated by reference as Exhibit "1".

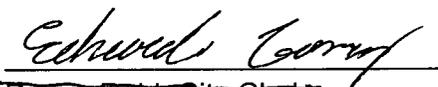
SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the Amendment that may determined to be in the best interests of the City.

SECTION 3: This Resolution 132-R-19 shall be in full force and effect from and after its passage and approval in the manner provided by law.


Stephen H. Hagerty, Mayor

Attest:

Approved as to form:


Devon Reid, City Clerk
Eduardo Gomez, Deputy City Clerk
Adopted: December 9, 2019


Michelle L. Masoncup, Corporation Counsel

EXHIBIT 1
LEASE AMENDMENT

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT to the LEASE AGREEMENT (this "Second Amendment") is made as of the _____ day of December 2019, by and between **CITY OF EVANSTON** (hereinafter referred to as "Landlord") and **MME EVANSTON RETAIL LLC**, an Illinois limited liability company d/b/a "VeriLife" (hereinafter referred to as "Tenant"). The Landlord and Tenant shall be referred to collectively as the "Parties".

WITNESSETH

WHEREAS, Landlord and Tenant, as permitted assignee of PharmaCann LLC, entered into that certain Lease Agreement dated May 1, 2015 (the "Agreement") (the terms and conditions of which are incorporated herein as Exhibit "A") for the real property and premises located at 1800 Maple Avenue, Evanston, Illinois 60201, which is the public parking facility commonly known as the "Maple Avenue Garage" (the "Real Estate"). The Real Estate contains three units on the ground level and Landlord leases one of these units to Tenant, which is approximately 2,400 square feet of land with the common address of 1804 Maple Avenue; and

WHEREAS, the Landlord and Tenant seek to amend Section 6 "Use of Premises" to address recent changes in the law surrounding sales of cannabis;

WHEREAS, the Cannabis Regulation and Tax Act, Public Act 101-27 (the "Act"), was signed into law and went into effect on June 25, 2019 which permits the sale of adult use cannabis to individuals over the age of 21; and

WHEREAS, under the Act, current dispensaries licensed by the State of Illinois to sell medical cannabis can sell recreational cannabis, provided the municipality permits said use; and

WHEREAS, the City of Evanston enacted zoning regulations through Ordinance 126-O-19 to permit dispensaries if a special use is granted by the City of Evanston in conformance with the zoning process and meets other restrictions set forth in the new Code language; and

WHEREAS, Tenant applied for a special use to operate a dispensary in conformance with the amended Zoning Code, the City Council approved the special use application by Ordinance 173-O-19; and

WHEREAS, Following approval of the special use application, Landlord and Tenant desire to modify certain terms of the Agreement with respect to the Permitted Use, subject to the terms, covenants and conditions of this Second Amendment.

NOW THEREFORE, in consideration of the mutual observance of the covenants, conditions and promises set forth below and in consideration of the amendment to the lease agreement, of TEN DOLLARS (\$10.00) and for additional consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

I. AGREEMENT IN FULL FORCE AND EFFECT; DEFINITIONS

The Parties acknowledge and agree that this Second Amendment shall supercede, control and be deemed to modify the terms of the Agreement. In the event of any conflict between the terms and conditions of this Second Amendment and the terms of the Agreement, the parties unconditionally agree that the terms and conditions of this Second Amendment shall supercede, prevail and dictate. Any term or condition of the Agreement not addressed within this Second Amendment shall remain in full force and effect. The above-referenced recitals are incorporated herein.

II. USE OF PREMISES

The parties agree that Section 6 of the Agreement is hereby amended by replacing Section 6 with the following text:

a. Permitted Use. Tenant shall have the right, subject to applicable Federal, State and local laws and the terms of this Lease, to use the Premises for the following purpose(s): to run a commercial cannabis dispensary, as defined in the Medical Cannabis Act, and selling medical cannabis, medical cannabis-infused products, associated cannabis devices, and business related functions to run the dispensary organization, as defined in the Medical Cannabis Act (herein collectively "**Permitted Use**"). Any violations of the restrictions contained within the Medical Cannabis Act or any violation of the Rules implementing the Medical Cannabis Act, or violations of the Illinois Cannabis Regulation and Tax Act, 410 ILCS 705/1 et seq., is considered a default of this Lease and subject to the cure provisions contained in Section 18. Notwithstanding the foregoing language, any use of the Premises by Tenant contrary to the Controlled Substances Act shall not be deemed a violation of the Permitted Use.

b. Tenant Exclusive Use of Premises. Landlord covenants and agrees that it has no rights to use, modify, alter or lease any portion of the Premises other than as expressly provided in this Lease.

c. No Continuous Operation. Provided Tenant is open for business for at least one (1) day to the general public for the Permitted Use provided herein, anything contained in this Lease, express or implied, to the contrary notwithstanding, Tenant shall be under no duty or obligation, either express or implied to thereafter continuously conduct its business in the Premises and any such failure shall not, in any way, be deemed an event of default under this Lease, nor shall such a failure otherwise entitle Landlord to commence or to maintain any action, suit, or proceeding, whether at law or in equity, relating in any way to Tenant's failure to continuously conduct its business in the Premises; provided, however that Tenant shall otherwise perform and obey the other covenants and agreements contained in this Lease on the part of Tenant to be performed, including the payment of all Fixed Minimum Rent, Additional Rent and any other charges due hereunder. In the event Tenant has ceased operating its business for a continuous period of one hundred eighty (180) days, Landlord shall have the right, to be exercised by giving Tenant sixty (60) days written notice, to recapture the Premises and, upon such recapture, this Lease shall terminate and neither party shall be further obligated hereunder, except to the extent any such obligation hereunder is expressly specified herein to survive the termination of this Lease.

III. COUNTERPARTS

This Second Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument. For purposes of this First Amendment, facsimile and scanned signatures shall be considered the same as original signatures and shall be treated as valid and binding upon the parties hereto, provided, however, the parties shall exchange original signature pages as reasonably promptly following execution hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed the day and year first above written.

LANDLORD :

TENANT:

CITY OF EVANSTON

MME EVANSTON RETAIL LLC

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

EXHIBIT "A"

LEASE AGREEMENT