

# POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

Meeting Date: 05/19/15

Agenda Item 1A

**REQUESTED CRA BOARD ACTION:**

Resolution(s)     Consideration     Approval     Other

**SHORT TITLE OR MOTION:**    A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A SECOND AMENDMENT TO THE LEASE BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND POMPANO PHARMACY WHOLESALE, INC. AND A SECOND AMENDMENT TO THE SUBLEASE BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND THROWBACK RESTAURANT GROUP, LLC., RELATING TO THE PROPERTY LOCATED AT 44 NE 1<sup>ST</sup> STREET; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

**Summary of Purpose and Why:**

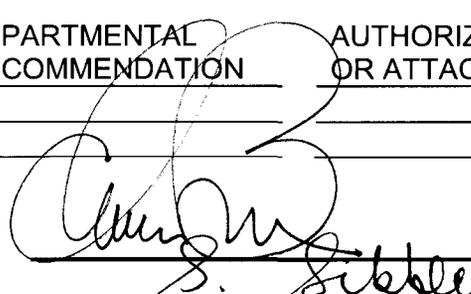
Approval of companion items related to the property located at 44 NE 1st Street that includes a Second Amendment to the Lease Agreement between the Pompano Beach Community Redevelopment Agency (CRA) and Pompano Pharmacy Wholesale, Inc. (Pharmacy) and a Second Amendment to the Sublease Agreement between the CRA and Throwback Restaurant Group, LLC (Throwback). This Second Amendment is presented to satisfy a condition of the Development Order, which requires a legal agreement demonstrating that the proposed restaurant is permitted to use the dumpster. The Second Amendment for Throwback also changes the rental commencement date to work in unison with the revised construction schedule. It was intended that the rental commencement date would coincide with the restaurant operations commencement. The approval of these agreements will allow Throwback to continue with the permit review process and ultimately improve the property so that this reputable restaurateur can open their new restaurant in the emerging arts district of Downtown Pompano.

**QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:**

- (1) Origin of request for this action: CRA Staff
- (2) Primary staff contact: Adriane Esteban Ext. 7841
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: N/A (A)

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	AUTHORIZED SIGNATURE OR ATTACHED MEMO NUMBER

CRA Executive Director  
 CRA Director  
 Finance Director



S. Sibble

**ACTION PREVIOUSLY TAKEN BY CRA BOARD:**

<u>Resolution</u>	<u>Consideration</u>	<u>Other:</u>
<u>Results:</u>	<u>Results:</u>	<u>Results:</u>



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**COVERSHEET**

**Date:** May 13, 2015

**To:** Pompano Beach CRA Board

**From:** Adriane Esteban, Project Manager

**Subject:** Signature Page for Second Amendment relating to the property located at 44 NE 1<sup>st</sup> St. (Pompano Pharmacy Wholesale, Inc.)

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It is anticipated that the signature page of the Second Amendment between the CRA and Pompano Pharmacy Wholesale, Inc. related to the property located at 44 NE 1<sup>st</sup> Street will be provided on or by Tuesday, May 19, 2015. If the CRA does not receive the signature pages by the CRA Board meeting time, this item will be pulled from the May 19, 2015, CRA Board Agenda.

RESOLUTION NO. \_\_\_\_\_ **A**

**POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY**

**A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A SECOND AMENDMENT TO THE LEASE BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND POMPANO PHARMACY WHOLESALE, INC. AND A SECOND AMENDMENT TO THE SUBLEASE BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND THROWBACK RESTAURANT GROUP, LLC., RELATING TO THE PROPERTY LOCATED AT 44 NE 1<sup>ST</sup> STREET; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.**

**BE IT RESOLVED BY THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY THAT:**

**SECTION 1.** The Second Amendment to Lease Agreement between the Pompano Beach Community Redevelopment Agency and Pompano Pharmacy Wholesale, Inc., and the Second Amendment to Sublease Agreement between the Pompano Beach Community Redevelopment Agency and Throwback Restaurant Group, Inc., relating to the property located at 44 NE 1<sup>st</sup> Street, copies of which Amendments are attached hereto and incorporated by reference as if set forth in full, are hereby approved.

**SECTION 2.** The proper officials are hereby authorized to execute the Second Amendment to Lease Agreement between the Pompano Beach Community Redevelopment Agency and Pompano Pharmacy Wholesale, Inc., and the Second Amendment to Sublease Agreement between the Pompano Beach Community Redevelopment Agency and Throwback Restaurant Group, Inc.

**SECTION 3.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of May, 2015.

\_\_\_\_\_  
**LAMAR FISHER, CHAIRPERSON**

**ATTEST:**

\_\_\_\_\_  
**MARGARET GALLAGHER, SECRETARY**

**SECOND AMENDMENT**

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**THIS SECOND AMENDMENT TO LEASE AGREEMENT** is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between:

**POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida, hereinafter referred to as “LESSEE,”

and

**POMPANO PHARMACY WHOLESALE, INC.**, a Florida corporation, of 60 NE First Street, Pompano Beach, Florida 33060-6602, hereinafter referred to as “Landlord.”

**WHEREAS**, LESSEE entered into a Lease Agreement with Landlord for the use of 3,081 SF of structure located at 44 NE First Street, (“Original Agreement”) approved by Resolution No. 2014-21; and

**WHEREAS**, LESSEE entered into a First Amendment to the Lease Agreement approved by Resolution No. 2015-48 to add Paragraph 9.1.1 entitled “Unity of Use Agreement” and Paragraph 21.5 entitled “Time is of the Essence;” and

**WHEREAS**, LESSEE needs Landlord’s consent to use the dumpster located on Landlord’s Parking Lot to demonstrate that the proposed restaurant to be built on the Premises has use of the dumpster to serve the restaurant;

**WITNESSETH:**

**NOW, THEREFORE,** the parties agree as follows:

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.

2. The Original Agreement and the First Amendment, copies of which are attached hereto as Exhibit "A" and Exhibit "B," respectively, shall remain in full force and effect except as specifically amended hereinbelow.

3. Section 8 of the Original Agreement, entitled Parking, is hereby amended as follows:

8. **Parking.** Landlord hereby gives Lessee and its agents, employees, guests and invitees the license and right to park in the parking lot, owned by Landlord and located adjacent to the rear of the Premises at 44 NE 1st Street, Pompano Beach, Florida, 33060, ("Landlord's Parking Lot"). Parking in Landlord's Parking Lot will be available to Lessee on a "first-come, first-serve" basis. In addition, Landlord grants to Lessee the license and right to utilize Landlord's Parking Lot for the installation of a grease trap, ~~and~~ plumbing to serve the restaurant to be located on the Premises, ~~and to utilize the dumpster located on the Landlord's Parking Lot.~~ Landlord agrees that it will join in any applications or consents required for the installation of the grease trap, ~~and~~ related plumbing in Landlord's Parking Lot, and use of the dumpster, and that it will execute and deliver an easement over, across and under Landlord's Parking Lot for ~~this~~ these purposes if one is required. Lessee will be responsible for the repair or

replacement of any asphalt removed or damaged during the installation of the grease trap and plumbing.

**IN WITNESS OF THE FOREGOING**, the parties have set their hands and seals the day and year first above written.

**LESSEE”:**

Signed, Sealed and Witnessed  
In the Presence of:

**POMPANO BEACH COMMUNITY  
REDEVELOPMENT AGENCY**

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

By: \_\_\_\_\_  
Lamar Fisher, Chairman

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

ATTEST:  
\_\_\_\_\_  
Margaret Gallagher, Secretary

**EXECUTIVE DIRECTOR:**  
Redevelopment Management Associates, LLC  
a Florida limited liability company

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

By: MetroStrategies, Inc., a Florida corporation  
a managing member

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

By: \_\_\_\_\_  
Kim Briesemeister, President

and

By: \_\_\_\_\_  
Christopher J. Brown  
a managing member

**“Landlord”:**

Signed, Sealed and Witnessed  
In the Presence of:

**POMPANO PHARMACY WHOLESALE, INC.**  
Florida corporation

\_\_\_\_\_

By: \_\_\_\_\_

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

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

\_\_\_\_\_

Title: \_\_\_\_\_

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



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## MEMORANDUM

**To:** Pompano Beach CRA Board

**From:** Adriane Esteban, CRA Project Manager

**Date:** May 19, 2015

**Subject:** Second Amendment to Lease Agreement, and Second Amendment to Sublease Agreement for property located at 44 NE 1<sup>st</sup> Street

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### **I. Agenda Item**

Approval of companion items related to the property located at 44 NE 1<sup>st</sup> Street that includes a Second Amendment to the Lease Agreement between the Pompano Beach Community Redevelopment Agency (CRA) and Pompano Pharmacy Wholesale, Inc. (Pharmacy), and a Second Amendment to the Sublease Agreement between the CRA and Throwback Restaurant Group, LLC (Throwback). This Second Amendment is presented to satisfy a condition of the Development Order, which requires a legal agreement demonstrating that the proposed restaurant is permitted to use the dumpster. The Second Amendment for Throwback also changes the rental commencement date to work in unison with the revised construction schedule. This item was prepared with assistance from the CRA's outside legal counsel, Claudia McKenna.

### **II. Recommendation**

Staff recommends approval of this agenda item.

### **III. Background**

The CRA Board approved the Lease Agreement between the CRA (Lessee) and the Pharmacy, (Lessor) for the property located at 44 NE 1<sup>st</sup> Street (Premises) in October 2013. At the same time, the CRA Board also approved a Sublease Agreement between the CRA and Throwback (Sublessee). Both agreements were executed with the understanding that the CRA or Throwback has the right to attach a covered patio to the Premises for the purposes of providing an outdoor dining area on the parcel adjacent to the Premises for a shared use. The agreements also allowed CRA and Throwback to utilize the Pharmacy's parking lot.

Since the approval of the original agreements, Throwback has gone through the development

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# CRA

POMPANO BEACH

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review process and First Amendments to the Lease and Sublease Agreements have been approved. However there is a condition of the Development Order that requires another amendment to the agreements. The Development Order dated May 9, 2015, requires a legal agreement demonstrating that the proposed restaurant (Throwback) is permitted to use the dumpster in the Pharmacy's Parking Lot. The Second Amendment for Throwback also changes the rental commencement date to work in unison with the revised construction schedule. In the original agreement it was intended that the rental commencement date would coincide with the restaurant operations commencement. The approval of these amendments will allow Throwback to continue with the permit review process and ultimately improve the property so that this reputable restaurateur can open their new restaurant in the emerging arts district of Downtown Pompano.

RESOLUTION NO. 2014-21 EXHIBIT A

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A LEASE AGREEMENT BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND POMPANO PHARMACY WHOLESALE, INC., RELATING TO THE PROPERTY LOCATED AT 44 NE 1<sup>ST</sup> STREET; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY:

SECTION 1. That an Agreement between the Pompano Beach Community Redevelopment Agency and Pompano Pharmacy Wholesale, Inc. relating to the property located at 44 NE 1<sup>st</sup> Street, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper officials are hereby authorized to execute said Agreement between the Pompano Beach Community Redevelopment Agency and Pompano Pharmacy Wholesale, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 18<sup>th</sup> day of October, 2013.

  
LAMAR FISHER, CHAIRPERSON

ATTEST:

  
MARGARET GALLAGHER, SECRETARY

# EXHIBIT A

## LEASE AGREEMENT

This Lease Agreement ("Lease") is made between **Pompano Pharmacy Wholesale, Inc.**, a Florida corporation, whose address for purposes of notice under this lease is 60 Northeast First Street, Pompano Beach, Florida, 33060, (hereinafter referred to as "Landlord") and **Pompano Beach Community Redevelopment Agency**, a public body corporate and politic created pursuant to Part III of Chapter 163, Florida Statutes, whose address for purposes of notice under this lease is 100 West Atlantic Blvd., Room 276, Pompano Beach, Florida 33060, (hereinafter referred to as "Lessee").

### Recitals

Lessee desires to lease certain property in the City of Pompano Beach, Florida, for use as a restaurant, facility for cooking classes and sales of food products, and other related uses.

Landlord is the owner of a certain parcels of real property in the City of Pompano Beach, and is willing to rent said property to Lessee on the terms and conditions set forth in this Lease.

### Agreement

In consideration of the mutual covenants and agreements set forth in this Lease, Landlord and Lessee agree as follows:

1. **Lease of Property.** Landlord hereby leases to Lessee, and Lessee rents from Landlord, the following described commercial property (collectively, the "Premises"): 3,081 square feet of the structure located at 44 NE 1<sup>st</sup> Street, Pompano Beach, Florida 33060.
2. **Lease Term.** The initial term ("Initial Term") of this Lease shall be a period of five (5) years commencing on January 1, 2014 at 12:01 a.m., and ending at midnight on December 31, 2018.
3. **Rent.** The rental amounts for the Premises ("Rent") shall be as follows:
  - 3.1. Beginning on January 1, 2014, the annual Rent for the Premises will be \$22,400.00 payable in equal monthly installments of \$1,866.66 commencing on January 1, 2014 ("Lease Commencement Date").
  - 3.2. **Annual Rent Increase.**
    - 3.2.1. Beginning with the rental payment due on January 1, 2015, the annual Rent for the Premises will increase annually by Three Percent (3%) of the base rental amount for the prior year.
  - 3.3. **Rent Payments.** Lessee shall make Rent payments in equal monthly installments, which will be due on the first day of each calendar month.
- 4.5 **Security Deposit.** No security deposit shall be required under this Lease.
- 4.6 **Invoices.** Landlord agrees to provide an invoice for Rent to Lessee at least ten (10) days prior to the date Rent is due. If Landlord fails to send an invoice timely, the time for Lessee to pay Rent will be extended until ten days after Lessee receives the invoice from Landlord.

# EXHIBIT A

4. **Option to Renew.** Lessee shall have the right to renew this Lease for up to three (3) additional terms ("Renewal Terms") of five (5) years each, on the terms and conditions of this Lease, by delivering to Landlord a written notice of its intention to renew the Lease to Landlord no later than 90 days prior to the end of the Term then in effect.
  - 4.1. **Renewal Term Rent for Premises.** The Rent for the Premises in the Renewal Terms shall be as follows:
    - 4.1.1. **First Renewal Term.** The annual Rent for the first Renewal Term will escalate by 20% to be **\$30,254**, and will commence on January 1, 2019. Rent will increase by 3% each year for the remainder of the First Renewal Term.
    - 4.1.2. **Second Renewal Term.** The annual Rent for the second Renewal Term will escalate by 20% to be **\$40,861** and will commence on January 1, 2024. Rent will increase by 3% each year for the remainder of the Second Renewal Term.
    - 4.1.3. **Third Renewal Term.** The annual Rent for the third Renewal Term will escalate by 20% to be **\$55,187** and will commence on January 1, 2029. Rent will increase by 3% each year for the remainder of the Third Renewal Term.
  - 4.2. **Exercise of Renewal Option.** The CRA Executive Director shall have the authority to exercise the option to renew this lease.
5. **Taxes and Assessments.** Landlord shall be responsible for all municipal, county, and state taxes and assessments, which may be assessed against the Premises during the Term of this Lease. Lessee will be responsible for any taxes levied against the personal property and trade fixtures of Lessee located in and about the Premises.

Lessee furthermore agrees to pay Landlord back each year the difference between the Ad Valorem taxes of a particular year and the current taxes as of 2014 on a pro-rata basis. Landlord will present a copy of the 2014 taxes upon the commencement of the Lease. The pro-rata percentage of the Premises of the entire building is 31.3 %.
6. **Utilities.** Lessee will be responsible for paying the cost of all utilities (water, sewer, electric, gas, telephone, cable, etc.) serving the Premises during the Term. If utilities are billed to the Landlord, Lessee will reimburse Landlord within ten days after receipt of the invoice or utility bill from Landlord. If utilities are billed directly to Lessee, Lessee will pay the amounts due directly to the utility company prior to delinquency. If any utilities billed to Landlord include service to properties other than the Premises, Landlord will provide Lessee with a calculation of the amount owed by Lessee.
7. **Use of Premises.** Although Lessee intends to use Premises for the operation of a restaurant and related uses Lessee shall have the right to use the Premises for any use permitted by applicable Federal, state, county, or city statutes, laws, ordinances, resolutions, orders, rules, or regulations ("Applicable Laws"). Lessee will not commit or permit any waste or damage to the Premises, and will not carry on any activity that constitutes a nuisance or violates any Applicable Laws.
8. **Parking.** Landlord hereby gives Lessee and its agents, employees, guests and invitees the license and right to park in the parking lot, owned by Landlord and located adjacent

# EXHIBIT A

to the rear of the Premises at 44 NE 1st Street, Pompano Beach, Florida, 33060, ("Landlord's Parking Lot"). Parking in Landlord's Parking Lot will be available to Lessee on a "first-come, first-serve" basis. In addition, Landlord grants to Lessee the license and right to utilize Landlord's Parking Lot for the installation of a grease trap and plumbing to serve the restaurant to be located on the Premises. Landlord agrees that it will join in any applications or consents required for the installation of the grease trap and related plumbing in Landlord's Parking Lot, and that it will execute and deliver an easement over, across and under Landlord's Parking Lot for this purpose if one is required. Lessee will be responsible for the repair or replacement of any asphalt removed or damaged during the installation of the grease trap and plumbing.

9. **Improvements.** Lessee has the right to make changes, alterations and additions to the Premises ("Improvements") with Landlord's prior written consent, which consent cannot reasonably be withheld, as long as the Improvements are done in a good and workmanlike manner and comply with all Applicable Laws. All Improvements made by Lessee that are permanently attached to the Premises including fixed cabinets will become the property of Landlord and shall remain on the Premises at the end of the Lease Term. Lessee will have the right to remove any moveable furniture, fixtures and equipment not attached to the walls of the Premises at the end of the Term. In addition, Lessee will have the right to remove from the Premises at the end of the Term any kitchen equipment or appliances, such as ovens, ranges, and refrigerators installed by Lessee and not attached to the walls of the Premises, as long as Lessee repairs any damage caused by the removal of such equipment. Lessee has to right to attach a covered patio to the exterior wall of the Premises for purposes of providing a covering for an outdoor dining area on a parcel adjacent to the Premises. The covered patio shall entail an area that measures approximately 35 feet by 80 feet. Sublessee may undertake any necessary painting or repairs to the exterior wall of the Premises that will face the outdoor dining area and may decorate and adorn said exterior wall as it deems necessary so long as said décor and improvements comply with Applicable Law.
  - 9.1. **Landlord's Joinder in Applications.** Landlord agrees to join in and execute any permit applications, consents, or other document required in connection with the construction or installation of any Improvements by Lessee. Landlord agrees to sign any required documents within ten days after receipt of the request from Lessee and the document to be signed.
  - 9.2. **Signage.** Lessee has the continuing right to install signs, awnings, marquees or other structures on the exterior of the Premises with Landlord's prior written consent, such consent cannot reasonably be withheld, as long as the signs or structures comply with Applicable Law.
10. **Landlord's Maintenance Obligation.** Landlord agrees to maintain the structural portion of the Premises, as well as the exterior portions of the Premises, including the foundation, outer walls, conduits, roof, windows, doors, plate glass, paved surfaces, lawn, and landscaping.
11. **Landlord's Right to Inspect Premises.** Landlord will have the right to enter upon and inspect the Premises, and to make necessary repairs to the Premises, at reasonable times and after notice to Lessee. Landlord will have the right to place a sign in Premises advertising

# EXHIBIT A

that the Premises are available for rent not more than 30 days prior to the expiration of the Term.

12. **Ownership; Peaceful Enjoyment; Surrender of Premises.** Landlord represents and warrants that it owns the Premises free and clear of any claims, liens, or judgments that could affect Lessee's use and enjoyment of the Premises for the purposes contemplated by this Lease. Landlord will warrant and defend Lessee's right to the peaceful possession and enjoyment of the Premises during the Term of this Lease. At the end of the Term, Lessee will surrender the Premises in clean condition and good repair, normal wear and tear excepted. No surrender of the Premises by Lessee prior to the end of the Term of this Lease will be valid unless accepted by Landlord in writing.
  - 12.1. **Mortgages.** Landlord represents that any mortgages encumbering the Premises are in good standing and have been paid through a current date, and that Landlord will keep such mortgages in good standing throughout the Term.
  - 12.2. **Subordination.** Lessee acknowledges that this Lease and all rights of Lessee under this Lease shall be subject to and subordinate to the rights of any mortgage holder now or hereafter having a security interest in the Premises.
13. **Insurance.** Landlord shall carry General Commercial Liability Insurance and casualty insurance for the Premises; Lessee shall carry Commercial General Liability Insurance. Lessee furthermore agrees to pay Landlord the difference between the cost of insurance including property, general liability, and windstorm as of January 1, 2014 and subsequent years on a pro-rata basis, which is 31.3 % of the entire building. Lessee reserves the right to obtain a bonafide insurance quote for the Landlord at any time during the term in order to save both the Landlord expenses as well as the Tenants.
14. **Indemnification.** To the extent permitted by Applicable Laws, Lessee will indemnify and hold harmless Landlord and the Premises from all costs, losses, damages, liabilities, expenses, penalties, and fines whatsoever ("Claims") that may arise from or be claimed against Landlord or the Premises by any person for any injury to person or property or damage of whatever kind or character arising out of or in connection with any of the following: (a) the use or occupancy of the Premises by Lessee or its employees, agents, guests, and invitees; or (b) any failure by Lessee or its employees, agents, guests, and invitees to comply with all Applicable Laws.
  - 14.1. **Lawsuits.** If any lawsuit or proceeding is brought against Landlord or the Premises on account of any alleged violations of, or failure to comply with, Applicable Laws, or on account of any damage, omission, neglect, or use of the premises by Lessee, its agents, employees, guests and invitees, Lessee agrees that Lessee or any other person on the premises with Lessee's consent will defend Landlord in such lawsuit or proceeding, and pay whatever judgments may be recovered against Landlord or the Premises, and pay for all attorneys' fees in connection with such lawsuit or proceeding, including attorneys' fees on appeal.
  - 14.2. **Limitation.** Any indemnification by Lessee set forth in this lease shall be limited to the specific monetary limits of Section. 768.28(5), of the Florida Statutes, which monetary limits shall be applicable regardless of whether said limitations would apply in the absence of this provision.

# EXHIBIT A

- 14.3. **Glass Damage.** In case of damage to glass caused by Lessee, or its agents, employees, guests or invitees in the Premises, Lessee agrees to replace the glass with glass of the same kind, size, and quality as quickly as possible at Lessee's expense.
- 14.4. **Landlord's Indemnification of Lessee.** Landlord will indemnify and hold harmless Lessee from all Claims that may arise or be claimed against Lessee arising out of or in connection with any actions of Landlord.
15. **Casualty Damage to Premises.** If the Premises are destroyed or so damaged by fire, casualty, or other disaster that they become unleaseable, Landlord will have the right to render the Premises leaseable by making the necessary repairs within 90 days from the date of the casualty, with reasonable additional time, if necessary, for Landlord to adjust the loss with any insurance companies insuring the Premises, or for any other delay caused by conditions beyond Landlord's control. If the Premises are not rendered leaseable within the 90 day period, Lessee will have the right to terminate this Lease by written notice to the other. In the event of such termination, the Rent shall be paid only to the date of the casualty. If the Lease is not terminated, the Rent shall be abated during the period of time from the date of the casualty to the date Lessee is able to resume occupancy or the date of complete restoration of the Premises, whichever occurs first.
16. **Defaults.**
- 16.1. **Lessee's Failure to Pay Rent.** If any Rent due under this Lease is not paid within thirty days after Lessee's receipt of the invoice for the payment due date, Landlord will have the right to resume possession of the Premises and re-lease or rent the Premises for the remainder of the Term for the account of Lessee and recover from Lessee at the end of the Term the difference between the Rent specified in this Lease and the Rent received on the re-leasing or renting.
- 16.2. **Other Defaults.** If either Landlord or Lessee fails to perform or breaches any covenant in this Lease other than the Lessee's covenant to pay rent, and the failure or breach continues for a period of thirty days after the defaulting party receives written notice specifying the breach or failure to perform, (a) the party giving notice may institute an action in a court of competent jurisdiction to either terminate this Lease or to seek specific performance of the Lease; or (b) Landlord or Lessee (as applicable) may, after 30 days written notice to the non-performing party, correct any such breach, and any costs incurred in correcting the breach shall be due and payable by the non-performing party on demand.
- 16.3. **Opportunity to Cure.** If the defaulting party commences to cure the default within the thirty day period after the notice of default, but cannot complete the cure within the thirty day period, the defaulting party will be permitted a reasonable time to complete the cure of the default, as long as the defaulting party diligently pursues the cure to completion.
- 16.4. **Bankruptcy.** If Lessee is declared insolvent or adjudicated a bankrupt; if Lessee makes an assignment for the benefit of creditors; if Lessee's leasehold interest in the Premises is sold under execution or by a trustee in bankruptcy; or if a receiver is appointed for Lessee, Landlord, without prejudice to its rights hereunder and at its

# EXHIBIT A

option, may terminate this Lease and retake possession of the Premises immediately and without notice to Lessee or any assignee, transferee, trustee, or any other person or persons, using force if necessary.

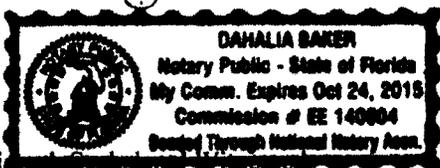
17. **No Waiver of Landlord's Rights.** The exercise by Landlord of any right or remedy to collect Rent or enforce its rights under this Lease will not be a waiver of or preclude the exercise of any other right or remedy afforded Landlord by this Lease or by Applicable Law. The failure of Landlord in one or more instances to insist on strict performance or observation of one or more of the covenants or conditions of this Lease or to exercise any remedy, privilege, or option conferred by this lease on or reserved to Landlord shall not operate or be construed as a relinquishment or future waiver of the covenant or condition or the right to enforce it or to exercise that remedy, privilege, or option; that right shall continue in full force and effect. The receipt by Landlord of Rent or any other payment or partial payment required to be made by the Lessee shall not act to waive any additional Rent or other payment then due. Even with Landlord's knowledge of the breach of any covenant or condition of this Lease, receipt of Rent will not operate as or be considered to be a waiver of this breach, and no waiver by Landlord of any of the provisions of this lease, or of any of Landlord's rights, remedies, privileges, or options under this Lease, will be considered to have been made unless made by Landlord in writing.
18. **Assignment and Subletting.** Lessee may assign this Lease or sublet all or a portion of the Premises without Landlord's prior written consent. No assignment or sublease will relieve the Lessee of any obligation under this Lease. Each assignee or sub-lessee, by assuming such status, will become obligated to perform every covenant of this Lease to be performed by Lessee, except that a sub-lessee shall be obligated to perform such covenants only as they relate to the portion of the Premises and the Rent covered by the sublease. The sub-lessee will be obligated to pay Rent directly to Landlord only after Lessee's default in payment and written demand from Landlord to sub-lessee to pay Rent directly to Landlord.
19. **Addresses for Payments and Notices.**
  - 19.1. **Notices to Landlord.** Rent payments and notices to Landlord shall be mailed or delivered to the address set forth on the first page of this Lease, unless Landlord changes the address by written notice to Lessee.
  - 19.2. **Notices to Lessee.** Notices to Lessee shall be mailed or delivered to the Premises and to Lessee's address set forth on the first page of the Lease.
  - 19.3. **Mailing of Notice.** All notices required under this Lease shall be sent either by (a) certified or registered mail, return receipt requested; (b) hand-delivery with a receipt evidencing delivery, or (c) Federal Express or other nationally recognized overnight mail service.
20. **Radon Gas Notification.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county health department.

# EXHIBIT A

## 21. Miscellaneous Provisions.

- 21.1. **Captions.** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of the sections or articles of this Lease or affect this Lease in any way.
- 21.2. **Governing Law.** This Lease will be governed by the laws of the state of Florida, as to both interpretations and performance.
- 21.3. **Entire Agreement.** This Lease sets forth all of the promises, agreements, conditions, and understandings between Landlord and Lessee relative to the Premises. There are no other promises, agreements, conditions, or understandings, either oral or written, between them. No amendment, change, or addition to this Lease will be binding on Landlord or Lessee unless in writing and signed by both of them.
- 21.4. **Successors and Assigns.** The terms of this Lease will be binding on the respective successors, representatives, and assigns of the parties.

IN WITNESS WHEREOF, Landlord and Lessee have duly executed this Lease Agreement on AUGUST 12, 2013



"LANDLORD":

Signature of Notary Public:  
In the Presence of:

[Handwritten Signature]

POMPANO PHARMACY WHOLESALE, INC.  
a Florida corporation

By: [Handwritten Signature]

Print Name DAHALIA BAKER

Print Name CHARLES G. BARGER

Title: [Handwritten Title]

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

# EXHIBIT A

Christine Kendel

(Name of Acknowledger Typed, Printed or Stamped)

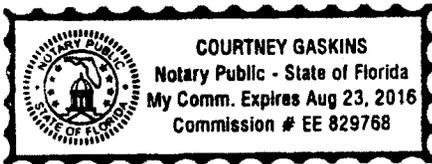
FF 039122

Commission Number

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of October, 2013 by MARGARET GALLAGHER, Secretary of the Pompano Beach Community Redevelopment Agency, who is personally known to me.

NOTARY'S SEAL:



Courtney Gaskins

NOTARY PUBLIC, STATE OF FLORIDA

Courtney Gaskins

(Name of Acknowledger Typed, Printed or Stamped)

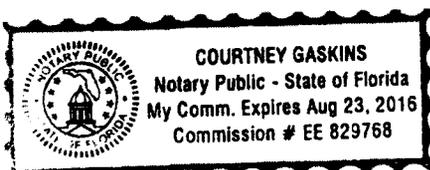
EE829768

Commission Number

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of October, 2013, by Kim Briesemeister, President of MetroStrategies, Inc., as Managing Member of Redevelopment Management Associates, LLC on behalf of the limited liability company. She is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:



Courtney Gaskins

NOTARY PUBLIC, STATE OF FLORIDA

Courtney Gaskins

(Name of Acknowledger Typed, Printed or Stamped)

# EXHIBIT A

EE829768

Commission Number

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of October, 2013, by Christopher J. Brown, as Managing Member of Redevelopment Management Associates, LLC, on behalf of the limited liability company. He is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:



Courtney Gaskins  
NOTARY PUBLIC STATE OF FLORIDA

Courtney Gaskins  
(Name of Acknowledger Typed, Printed or Stamped)

EE829768

Commission Number

EGR:jrm  
12/10/12  
L:agr/cra/pharmacy project/2013-329

# EXHIBIT A

**"LESSEE":**

Signed, Sealed and Witnessed  
In the Presence of:

**POMPANO BEACH COMMUNITY  
REDEVELOPMENT AGENCY**

Berry J. Manes  
Print Name: Berry J. Manes

By: [Signature]  
Lamar Fisher, Chairman

Shelley R. Bartholomew  
Print Name: Shelley R. Bartholomew

ATTEST: [Signature]  
Margaret Gallagher, Secretary

**EXECUTIVE DIRECTOR:**  
Redevelopment Management Associates, LLC  
a Florida limited liability company

Courtney Gaskins  
Print Name: Courtney Gaskins

By: MetroStrategies, Inc., a Florida corporation  
a managing member

Courtney Gaskins  
Print Name: Courtney Gaskins

By: [Signature]  
Kim Briesemeister, President

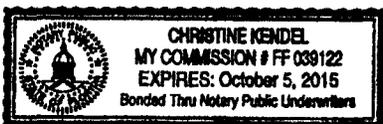
and  
By: [Signature]  
Christopher J. Brown, a managing member

STATE OF FLORIDA  
COUNTY OF BROWARD

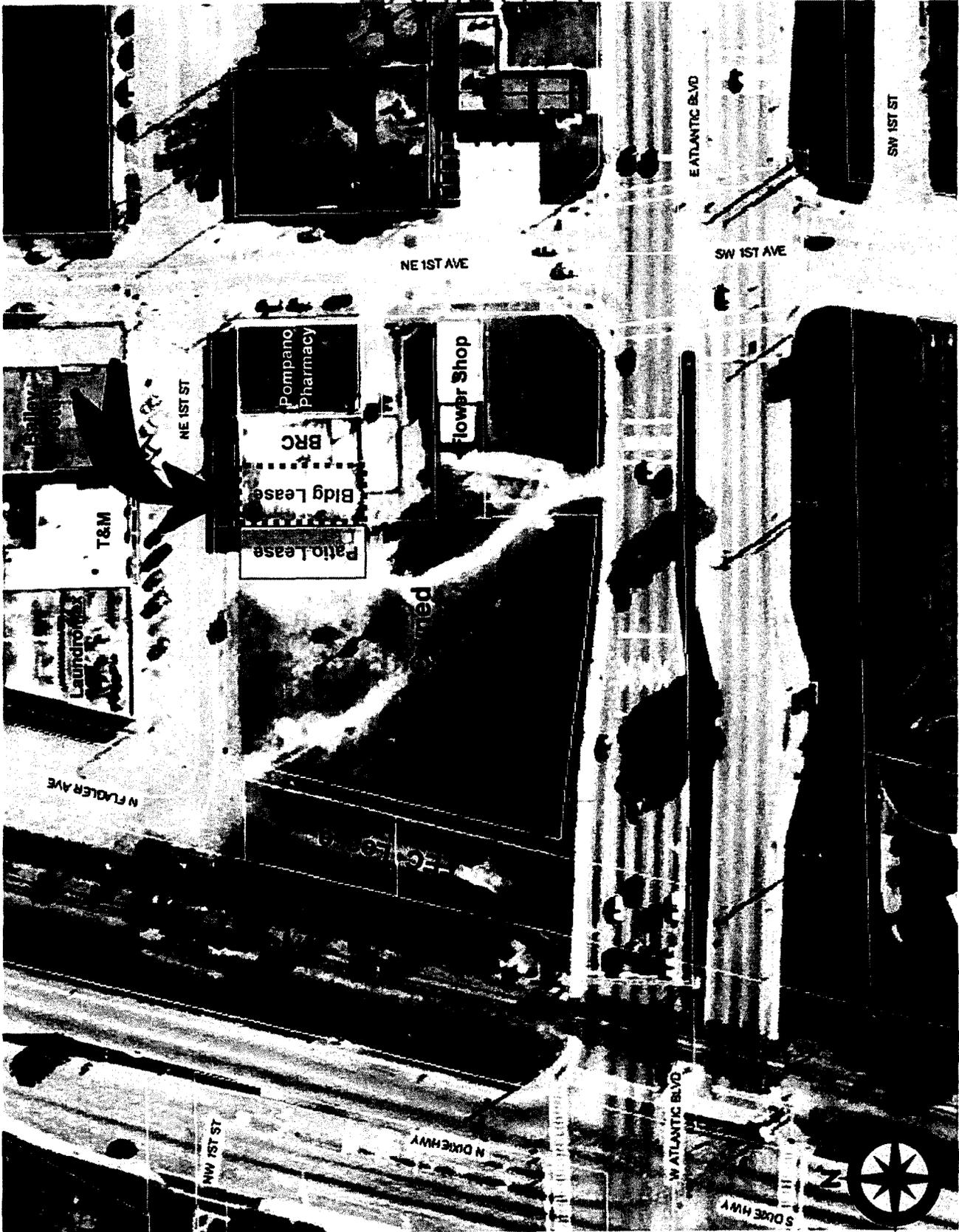
The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of October, 2013 by LAMAR FISHER as Chairman of the Pompano Beach Community Redevelopment Agency, who is personally known to me.

Christine Kendel  
NOTARY PUBLIC, STATE OF FLORIDA

NOTARY'S SEAL:



# EXHIBIT A



RESOLUTION NO. 2015-48 EXHIBIT B

**POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY**

A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A FIRST AMENDMENT TO THE LEASE BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND POMPANO PHARMACY WHOLESALE, INC., AND A FIRST AMENDMENT TO THE SUBLEASE BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND THROWBACK RESTAURANT GROUP, LLC., RELATING TO THE PROPERTY LOCATED AT 44 NE 1<sup>ST</sup> STREET; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY:

**SECTION 1.** That a First Amendment between the Pompano Beach Community Redevelopment Agency and Pompano Pharmacy Wholesale, Inc. and a First Amendment between the Pompano Beach Community Redevelopment Agency and Throwback Restaurant Group, Inc. relating to the property located at 44 NE 1<sup>st</sup> Street, copies of which Amendments are attached hereto and incorporated by reference as if set forth in full, are hereby approved.

**SECTION 2.** That the proper officials are hereby authorized to execute said Agreement between the Pompano Beach Community Redevelopment Agency and Pompano Pharmacy Wholesale, Inc. and the Pompano Beach Community Redevelopment Agency and Throwback Restaurant Group, Inc.

**SECTION 3.** This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 19<sup>th</sup> day of MARCH, 2015.

ATTEST:

  
\_\_\_\_\_  
MARGARET GALLAGHER, SECRETARY

  
\_\_\_\_\_  
LAMAR FISHER, CHAIRPERSON

# EXHIBIT B

## FIRST AMENDMENT

---

THIS FIRST AMENDMENT is entered into on the 19<sup>th</sup> day of MARCH, 2015 by and between:

**POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida, hereinafter referred to as "LESSEE,"

and

**POMPANO PHARMACY WHOLESALE, INC.**, a Florida corporation, of 60 NE First Street, Pompano Beach, Florida 33060-6602, hereinafter referred to as "Landlord."

**WHEREAS**, LESSEE entered into a Lease Agreement with Landlord for the use of 3,081 SF of structure located at 44 NE First Street, ("Original Agreement"), and approved by Resolution No. 2014-21; and

**WHEREAS**, Landlord is the owner of a parcel of real property ("Parcel A"), located in the City of Pompano Beach, Broward County, Florida and more particularly described in Exhibit "C" attached to this Agreement; and

**WHEREAS**, LESSEE is the owner of a parcel of real property ("Parcel B") located in the City of Pompano Beach, Broward County, Florida and more particularly described in Exhibit "C" attached to this Agreement.

### WITNESSETH:

**NOW, THEREFORE**, the parties agree as follows:

# EXHIBIT B

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.
2. The Original Agreement, a copy of which is attached hereto as Exhibit "A," shall remain in full force and effect except as specifically amended hereinbelow.
3. Section 9, Improvements, to the Original Agreement is hereby amended as follows:

9.1.1. Unity of Use Agreement. A Unity of Use Agreement is required as part of the development review process for the Improvements described in Section 9. Landlord and Lessee agree to enter into a Unity of Use Agreement in a form attached hereto as Exhibit "B." The provisions of the Unity of Use Agreement shall terminate upon the termination of the Lease, regardless of whether such termination occurs upon the expiration of the Lease or sooner pursuant to the terms thereof. Prior to termination of the Unity of Use Agreement, and within 90 days of the date the Lease is terminated, Parcel A and Parcel B must each be physically separated, by the LESSEE, at the LESSEE's sole cost and expense. Such physical separation of Parcels A and B shall consist of LESSEE obtaining a building permit for the construction of a block wall between said parcels and thereafter actually constructing said block wall, including interior drywall and paint to match existing finish. LESSEE shall have the right to cause its sublessee to comply with LESSEE's obligations under the lease amendment, provided LESSEE remains obligated for the completion of such work as between Landlord and LESSEE. Thereafter Parcel A may not be used or occupied separately until Parcel A independently obtains any building permits and/or zoning certificates which may be required for said Parcel A, for compliance with the City of Pompano Beach Code of Ordinances and the Florida Building Code and Parcel B may not be used or occupied separately until Parcel B independently obtains any building permits and/or zoning certificates which may be required for said Parcel B, for compliance with the City of Pompano Beach Code of Ordinances and the Florida Building Code. The failure of either Parcel A or B, respectively, to obtain any building permits and/or zoning certificates which may be required for each of said parcels, respectively, shall have no effect on the other parcel so long as the other parcel is in compliance. All work to be performed by Lessee hereunder shall be performed at Lessee's sole cost and expense using first class building materials and contractors, and shall cause the Premises to be put back to the same condition as they were in upon the commencement of the Lease, including without limitation removal of all awnings, lights, etc. affixed by Lessee to the exterior of the Premises and repair of all damage caused

# EXHIBIT B

by the removal thereof, ordinary wear and use excepted. This Section 9.1.1. shall survive the termination of the Lease.

4. Section 21, Miscellaneous Provisions, to the Original Agreement is hereby amended as follows:

21.5. Time of the Essence. Time is of the essence as to all of the terms and provisions of the Lease.

...

# EXHIBIT B

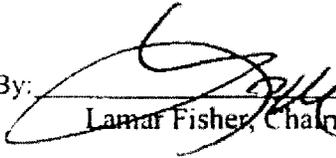
IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

**“LESSEE”:**

Signed, Sealed and Witnessed  
In the Presence of:

**POMPANO BEACH COMMUNITY  
REDEVELOPMENT AGENCY**

Sandra M Morway  
Print Name: SANDRA M MORWAY

By:   
Lamar Fisher, Chairman

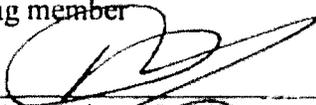
Courtney Easley  
Print Name: Courtney Easley

ATTEST:  
  
Margaret Gallagher, Secretary

**EXECUTIVE DIRECTOR:**  
Redevelopment Management Associates, LLC  
a Florida limited liability company

Courtney Easley  
Print Name: COURTNEY EASLEY

By: MetroStrategies, Inc., a Florida corporation  
a managing member

By:   
Kim Briesemeister, President

Courtney Easley  
Print Name: Courtney Easley

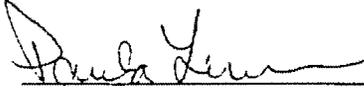
and  
By:   
Christopher J. Brown  
a managing member

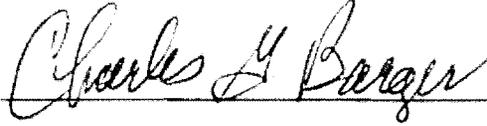
# EXHIBIT B

"Landlord":

Signed, Sealed and Witnessed  
In the Presence of:

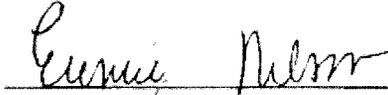
**POMPANO PHARMACY WHOLESALE, INC.**  
Florida corporation

  
\_\_\_\_\_

By:   
\_\_\_\_\_

Print Name: Paula Lewin

Print Name CHARLES G. BARKER

  
\_\_\_\_\_

Title: Treas

Print Name Eunice Nelson