

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

Meeting Date: 05/19/15

Agenda Item 1B

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 1ST STREET; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

Summary of Purpose and Why:

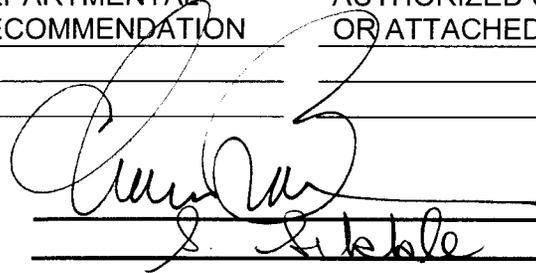
Approval of companion items related to the property located at 44 NE 1st Street that includes a Second Amendment to the Lease Agreement between the Pompano Beach Community Redevelopment Agency (CRA) and Pompano Pharmacy Wholesale, Inc. (Pharmacy) and a Second Amendment to the Sublease Agreement between 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 (B)

<u>DEPARTMENTAL COORDINATION</u>	<u>DATE</u>	<u>DEPARTMENTAL RECOMMENDATION</u>	<u>AUTHORIZED SIGNATURE OR ATTACHED MEMO NUMBER</u>
----------------------------------	-------------	------------------------------------	---

- CRA Executive Director
- CRA Director
- Finance Director



ACTION PREVIOUSLY TAKEN BY CRA BOARD:

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

RESOLUTION NO. **B**

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 WHOLESAL, 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 1ST 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 1st 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

THIS SECOND AMENDMENT TO SUBLEASE 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 “CRA,”

and

THROWBACK RESTAURANT GROUP, LLC, whose address is 32 East Atlantic Avenue, Delray Beach, FL 33444, hereinafter referred to as “SUBLESSEE.”

WHEREAS, CRA entered into a Sublease Agreement with SUBLESSEE for the use of 3,081 SF of structure located at 44 NE First Street, (“Original Agreement”), and approved by Resolution No. 2014-22; and

WHEREAS, CRA entered into a First Amendment to Sublease Agreement with SUBLESSEE approved by Resolution No. 2015-48 to add Paragraph 10.2.1 entitled “Unity of Use Agreement” and to add Paragraph 28.4 entitled “Time is of the Essence”; and

WHEREAS, a second amendment is needed to change the Rental Commencement Date from January 1, 2015 to January 1, 2016 and to allow for use of the dumpster located on the Landlord’s Parking Lot.

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 4 of the Original Agreement entitled "Rent" is hereby amended at Section 4.2 as follows:

4.2 Beginning on January 1, 2015~~16~~, the annual Rent for the Premises will be \$23,072 payable in equal monthly installments of \$1,922.67 commencing on January 1, 2015~~16~~ ("Rental Commencement Date").

4. Section 9 of the Original Agreement entitled "Parking" is hereby amended as follows:

9. Parking. Sublessee and its agents, employees, guests and invitees shall have the right to park in the parking lot, owned by the Landlord and located adjacent to the rear of the Premises at 44 NE 1st Street, Pompano Beach, Florida, 33060 (the "Landlord's Parking Lot"). Parking in the Landlord's Parking Lot will be available to Sublessee on a "first-come, first-serve" basis. In addition, Sublessee shall have the 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. The CRA agrees that it will coordinate with the Landlord to have the Landlord join in any

applications or consents required for the installation of the grease trap, ~~and~~ related plumbing and use of the dumpster in the ~~Pharmacy's~~ Landlord's Parking Lot, and that it will further coordinate with the Landlord to have the Landlord execute and deliver an easement over, across and under Landlord's Parking Lot for ~~this~~ these purposes if one is required. Sublessee 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.

"CRA":

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

By: _____
Kim Briesemeister, President

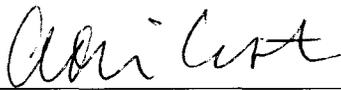
Print Name: _____

and
By: _____
Christopher J. Brown
a managing member

"SUBLESSEE":

Signed, Sealed and Witnessed
In the Presence of:

THROWBACK RESTAURANT GROUP, LLC



By: 

Print Name: Adriane Esteban

Print Name WAYNE ALCID



Title: PRINCIPAL

Print Name VICTORIA VITALE

CRA

POMPANO BEACH

P. O. Drawer 1300
Pompano Beach, FL 33060

Phone: (954) 786-5535
Fax: (954) 786-7836

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 1st Street

I. Agenda Item

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. 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 1st 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

CRA

POMPANO BEACH

P. O. Drawer 1300
Pompano Beach, FL 33060

Phone: (954) 786-5535
Fax: (954) 786-7836

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. 2014-2 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 SUBLEASE AGREEMENT BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND THROWBACK RESTAURANT GROUP, LLC, RELATING TO THE PROPERTY LOCATED AT 44 NE 1ST 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 Throwback Restaurant Group, LLC, relating to the property located at 44 NE 1st 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 Throwback Restaurant Group, LLC.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 18th day of October, 2013.


LAMAR FISHER, CHAIRPERSON

ATTEST:


MARGARET GALLAGHER, SECRETARY

EXHIBIT A SUBLEASE AGREEMENT

This Sublease Agreement ("Sublease") is made between the **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 "CRA") and **THROWBACK RESTAURANT GROUP, LLC.**, whose address is **32 East Atlantic Avenue, Delray Beach, FL 33444**, (hereinafter referred to as "SUBLESSEE").

Recitals

WHEREAS, the CRA has entered into a lease agreement with Pompano Pharmacy Wholesale, Inc., a Florida Corporation (hereinafter the "Landlord"), relating to the lease by the CRA of that certain commercial property described as follows: 3,081 square feet of the structure located at 44 Northeast 1st Street, Pompano Beach, Florida 33060, (hereinafter the "Premises") as more particularly described in the lease agreement attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter referred to as the "Lease Agreement"), and

WHEREAS, the Lease Agreement, the effective date of which is January 1, 2014, provides for the use of said commercial Premises for commercial purposes, including but not limited to the operation of a restaurant, facility for cooking classes and sales of food products, and other related uses; and

WHEREAS, the Lease Agreement provides for subleasing of the Premises and SUBLESSEE wishes to sublease the Premises for the purpose of operating a restaurant and for related uses; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Lease, the CRA and Sublessee agree as follows:

1. The above recitals are true and correct and are incorporated herein.
2. **Sublease of Property.** The CRA does hereby sublease to Sublessee, and Sublessee rents from the CRA, the following described commercial property (collectively, the "Premises"): 3,081 square feet of the structure located at 44 NE 1st Street, Pompano Beach, Florida 33060.
3. **Sublease Term.** The initial term ("Initial Term") of this sublease 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.
4. **Rent.** The rental amounts for the Premises ("Rent") shall be as follows:
 - 4.1. There shall be no rental amount due for the Premises from January 1, 2014 through December 31, 2014.
 - 4.2. Beginning on January 1, 2015, the annual Rent for the Premises will be \$23,072 payable in equal monthly installments of \$1,922.67 commencing on January 1, 2015 ("Rental Commencement Date").
 - 4.3. **Annual Rent Increase.**
Beginning with the rental payment due on January 1, 2015, the annual Rent for

EXHIBIT A

the Premises will increase annually by Three Percent (3%) of the base rental amount for the prior year.

- 4.4. **Rent Payments.** Sublessee 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 Sublease.
- 4.6 **Invoices.** CRA agrees to provide an invoice for Rent to Sublessee at least ten (10) days prior to the date Rent is due.
5. **Option to Renew.** Sublessee shall have the right to renew this Sublease for up to three (3) additional terms ("Renewal Terms") of five (5) years each, on the terms and conditions of this Sublease, by delivering to CRA a written notice of its intention to renew the Lease no later than 120 days prior to the end of the Term then in effect.
 - 5.1. **Renewal Term Rent for Premises.** The Rent for the Premises in the Renewal Terms shall be as follows:
 - 5.2. **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.
 - 5.3. **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.
 - 5.4. **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.
6. **Taxes and Assessments.** Sublessee shall not be responsible for any municipal, county, and state taxes and assessments which may be assessed against the Premises during the Term of this Lease. Sublessee will be responsible for any taxes levied against the personal property and trade fixtures of Sublessee located in and about the Premises.

Sublessee furthermore agrees to pay the CRA 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. CRA will present a copy of the 2014 taxes upon receipt of the same. The pro-rata percentage of the Premises of the entire building is 31.3 %.
7. **Utilities.** Sublessee 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 CRA, Sublessee will reimburse the CRA within ten days after receipt of the invoice or utility bill from the CRA. If utilities are billed directly to Sublessee, Sublessee will pay the amounts due directly to the utility company prior to delinquency. If any utilities billed to the CRA include service to properties other than the Premises, the CRA will provide Sublessee with a calculation of the amount owed by Sublessee.
8. **Use of Premises.** Sublessee shall use the Premises for the operation of a restaurant, a facility for cooking classes and the sale of food products, as well as other similar and related uses. No other use of the Premises is permitted under this Sublease. Sublessee 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.

EXHIBIT A

9. **Parking.** Sublessee and its agents, employees, guests and invitees shall have the right to park in the parking lot, owned by the Landlord and located adjacent to the rear of the Premises at 44 NE 1st Street, Pompano Beach, Florida, 33060, ("The Landlord's Parking Lot"). Parking in the Landlord's Parking Lot will be available to Sublessee on a "first-come, first-serve" basis. In addition, Sublessee shall have the right to utilize the Landlord's Parking Lot for the installation of a grease trap and plumbing to serve the restaurant to be located on the Premises. The CRA agrees that it will coordinate with the Landlord to have the Landlord join in any applications or consents required for the installation of the grease trap and related plumbing in the Pharmacy's Parking Lot as provided for in the Lease Agreement attached hereto as Exhibit A, and that it will further coordinate with the Landlord to have the Landlord execute and deliver an easement over, across and under the Landlord's Parking Lot for this purpose if one is required. Sublessee will be responsible for the repair or replacement of any asphalt removed or damaged during the installation of the grease trap and plumbing.
10. **Improvements.** Sublessee has the right to make changes, alterations and additions to the Premises ("Improvements") with the CRA's prior written consent. All such changes, alterations and additions must be undertaken in a good and workmanlike manner and comply with all Applicable Laws. All Improvements made by Sublessee which are permanently attached to the Premises including fixed cabinets will become the property of the Landlord and shall remain on the Premises at the end of the Lease Term. Sublessee 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, Sublessee 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 Sublessee and not attached to the walls of the Premises, as long as Sublessee repairs any damage caused by the removal of such equipment.
 - 10.1. **The CRA Obligations.** The CRA agrees to make the improvements provided for on Exhibit B of this Sublease which is attached hereto and incorporated as if fully set forth herein.
 - 10.2. **The CRA's Cooperation in Applications.** The CRA agrees to coordinate with the Landlord for Landlord's joinder in and execution of any permit applications, consents, or other document required in connection with the construction or installation of any Improvements by Sublessee as required by the Lease Agreement attached hereto as Exhibit A. The CRA agrees to coordinate with the Landlord for the signing of any required documents within fifteen days after receipt of the request from Sublessee and the document to be signed.
 - 10.3. **Signage.** Sublessee has the continuing right to install signs, awnings, marquees or other structures on the exterior of the Premises with the CRA's prior written consent. Any and all such signs or structures must comply with Applicable Law.
11. **The Sublessee's Maintenance Obligation.** The Sublessee shall not be responsible for maintaining the exterior structural portion of the Premises, except as provided for below in Section 12.
12. **Covered Patio/Building Attachments.** Sublessee shall have the right to attach a covered patio/building to the exterior wall of the Premises for purposes of providing a covering for an outdoor dining area and bathrooms on a parcel adjacent to the Premises. The covered patio shall entail an area that measures approximately 35 feet by 80 feet. Sublessee may

EXHIBIT A

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. Upon the termination of this Sublease, Sublessee shall remove any and all decorative items from said exterior wall and repair any damage to the wall caused by Sublessee's use.

13. **The CRA's Right to Inspect Premises.** The CRA 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 Sublessee. The CRA will have the right to place a sign in Premises advertising that the Premises are available for rent not more than 30 days prior to the expiration of the Term.
14. **The SUBLESSEE'S Right to Inspect Premises.** The Sublessee, has the right to enter upon and inspect the Premises to perform due diligence on any matter of his/her choosing including, but not limited to, soil analysis, zoning regulations, conceptual architectural layouts. The effective period to perform said inspection is 60 days after contract execution, at which time Sublessee may cancel this contract through proper written notice to the CRA. Upon expiration of the 60 day period, unless Sublessee exercises the right to terminate granted herein, Sublessee accepts the physical condition of the Property. Sublessee shall be responsible for prompt payment to the CRA for repair of, restoration of, or damage caused to the Property as a result of the inspection if any such damage exists upon the conclusion of the inspection.
15. **Ownership; Peaceful Enjoyment; Surrender of Premises.** The CRA represents and warrants that it has a leasehold interest in the Premises as provided for in the Lease Agreement attached hereto as Exhibit A. The CRA will warrant and defend Sublessee's right to the peaceful possession and enjoyment of the Premises during the Term of this Lease. At the end of the Term, Sublessee will surrender the Premises in clean condition and good repair, normal wear and tear excepted. No surrender of the Premises by Sublessee prior to the end of the Term of this Lease will be valid unless accepted by the CRA in writing.
16. **Sublease Subordinate to Lease.** The parties agree that this Sublease shall be subject and subordinate at all times to all of the covenants, agreements, terms, provisions and conditions of the Lease Agreement. Neither the CRA nor Sublessee shall do or permit anything to be done in connection with this Sublease Agreement or Sublessee's occupancy and use of the Premises which will violate the Lease Agreement. All actions of Sublessee shall be consistent with the CRA's obligations under the Lease Agreement.
17. **Insurance.** The CRA shall carry General Commercial Liability Insurance and casualty insurance for the Premises; Sublessee shall carry Commercial General Liability Insurance naming the Pompano Beach Community Redevelopment Agency as Additionally Insured under such Policy. Sublessee furthermore agrees to pay the CRA the difference between the cost of insurance including property, general liability, and windstorm as of April 1, 2014 and subsequent years on a pro-rata basis, which is 31.3 % of the entire building.
18. **Accidental Damage or Injury.** Lessor and Lessee shall not be liable for any damage to property or any injury to persons, sustained by Sublessee or others, cause by conditions or activities on the Premises. Sublessee shall carry liability insurance insuring Lessee, Sublessee, and Lessor against any claims in amounts to be set forth in Exhibit "B" attached hereto and made a part hereof.

EXHIBIT A

19. **Casual Damage or Injury.** If the Premises shall be destroyed or damaged by any acts of Force Majeure, including earthquake or fire, to such an extent as to render the Premises untenantable in whole or in substantial part, Lessor has the option of rebuilding or repairing the Premises by giving notice to that effect to Lessee within fifteen (15) days after the occurrence of any damage of the intent of Lessor to rebuild or repair the Premises or the part so damages. If Lessor elects to rebuild or repair the Premises and does so without unnecessary delay, Sublessee shall be bound by this Sublease Agreement, except that during the period of repair the rent of the Premises shall be abated in the same proportion that the part of the Premises rendered unfit for occupancy by Sublessee shall bear to the whole of the subleased premises. If Lessor fails to give notice of the intent to repair, Sublessee shall have the right to declare this Sublessee Agreement terminated.
20. **Liens.** Sublessee shall keep the Premises free and clear of all liens arising out of any work performed, material furnished or obligations incurred by Sublessee.
21. **Indemnification.** To the extent permitted by Applicable Laws, Sublessee will indemnify and hold harmless the CRA and the Premises from all costs, losses, damages, liabilities, expenses, penalties, and fines whatsoever ("Claims") that may arise from or be claimed against the CRA 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 Sublessee or its employees, agents, guests, and invitees; or (b) any failure by Sublessee or its employees, agents, guests, and invitees to comply with all Applicable Laws.
 - 21.1. **Lawsuits.** If any lawsuit or proceeding is brought against the CRA 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 Sublessee, its agents, employees, guests and invitees, Sublessee agrees that Sublessee or any other person on the premises with Sublessee's consent will defend the CRA in such lawsuit or proceeding, and pay whatever judgments may be recovered against the CRA or the Premises, and pay for all attorneys' fees in connection with such lawsuit or proceeding, including attorneys' fees on appeal.
 - 21.2. **Limitation.** Nothing in this Sublease Agreement shall be deemed as a waiver of the monetary limits set forth in 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.
 - 21.3. **Glass Damage.** In case of damage to glass caused by Sublessee, or its agents, employees, guests or invitees in the Premises, Sublessee agrees to replace the glass with glass of the same kind, size, and quality as quickly as possible at Sublessee's expense.
 - 21.4. **The CRA's Indemnification of Sublessee.** The CRA will indemnify and hold harmless Sublessee from all Claims that may arise or be claimed against Sublessee arising out of or in connection with any actions of the CRA.
22. **Defaults.**
 - 22.1. **Sublessee's Failure to Pay Rent.** If any Rent due under this Sublease is not paid within fifteen days after Sublessee's receipt of the invoice for the payment due date, the CRA 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 Sublessee and

EXHIBIT A

recover from Sublessee at the end of the Term the difference between the Rent specified in this sublease and the Rent received on the re-leasing or renting.

- 22.2. **Other Defaults.** If either the CRA or Sublessee fails to perform or breaches any covenant in this Sublease other than the Sublessee'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 sublease or to seek specific performance of the sublease; or (b) the CRA or Sublessee (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.
- 22.3. **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.
- 22.4. **Bankruptcy.** If Sublessee is declared insolvent or adjudicated a bankrupt; if Sublessee makes an assignment for the benefit of creditors; if Sublessee's leasehold interest in the Premises is sold under execution or by a trustee in bankruptcy; or if a receiver is appointed for Sublessee, the CRA, without prejudice to its rights hereunder and at its option, may terminate this Sublease and retake possession of the Premises immediately and without notice to Sublessee or any assignee, transferee, trustee, or any other person or persons, using force if necessary.
23. **No Waiver of the CRA's Rights.** The exercise by the CRA of any right or remedy to collect Rent or enforce its rights under this Sublease will not be a waiver of or preclude the exercise of any other right or remedy afforded the CRA by this Sublease or by Applicable Law. The failure of the CRA in one or more instances to insist on strict performance or observation of one or more of the covenants or conditions of this Sublease or to exercise any remedy, privilege, or option conferred by this Sublease on or reserved to the CRA 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 the CRA of Rent or any other payment or partial payment required to be made by the Sublessee shall not act to waive any additional Rent or other payment then due. Even with the CRA's knowledge of the breach of any covenant or condition of this Sublease, receipt of Rent will not operate as or be considered to be a waiver of this breach, and no waiver by the CRA of any of the provisions of this lease, or of any of the CRA's rights, remedies, privileges, or options under this Lease, will be considered to have been made unless made by the CRA in writing.
24. **Assignment and Subletting.** This Sublease may not be assigned, sublet, or subleased.
25. **Termination and Surrender**
- A. If a new lease with Lessor is not secured:
1. Sublessee shall surrender the Premises or on the last day of the term of this Sublease Agreement.
 2. Lessee shall have the right to place and maintain on the Premises "For Rent" signs during the last thirty (30) days of the term of this Sublease Agreement.

EXHIBIT A

3. Sublessee shall, at the expiration of this Sublease Agreement, surrender the keys to the Premises to Lessee.
 - B. If Sublessee shall surrender the Premises at the election of the Sublessee, the liability for all duties and obligations required of Sublessee shall continue until the surrender has been accepted by Lessee in writing.
26. **Address for Payments and Notices**
 - 26.1. **Notices to the CRA.** Rent payments and notices to the CRA shall be mailed or delivered to the address set forth on the first page of this Sublease, unless the CRA changes the address by written notice to Sublessee.
 - 26.2. **Notices to Sublessee.** Notices to Sublessee shall be mailed or delivered to the Premises and to Sublessee's address set forth on the first page of the Sublease.
 - 26.3. **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.
27. **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.
28. **Miscellaneous Provisions.**
 - 28.1. **Captions.** The captions appearing in this Sublease 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.
 - 28.2. **Governing Law.** This Sublease will be governed by the laws of the state of Florida, as to both interpretations and performance.
 - 28.3. **Entire Agreement.** This Sublease sets forth all of the promises, agreements, conditions, and understandings between the CRA and Sublessee 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 Sublease will be binding on the CRA or Sublessee unless in writing and signed by both of them.

Successors and Assigns. The terms of this Sublease will be binding on the respective successors, representatives, and assigns of the parties.
28. **Grant for Sublease.** Lessee consents to provide Sublessee a grant of up to \$150,000 from the NWCRA Strategic Investment Program (SIP) and an amount up to \$20,000 from the NWCRA Façade and Business Site Improvement Program, provided the required applications are complete and approved.

IN WITNESS WHEREOF, the CRA and Sublessee have duly executed this Lease Agreement on October 4, 2013.

EXHIBIT A
"CRA":

Signed, Sealed and Witnessed
In the Presence of:

POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY

Betty J. Manes
Print Name: Betty 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 18th day of October, 2013 by LAMAR FISHER as Chairman of the Pompano Beach Community Redevelopment Agency, who is personally known to me.

NOTARY'S SEAL:



Christine Kendel
NOTARY PUBLIC, STATE OF FLORIDA

Christine Kendel
(Name of Acknowledger Typed, Printed or Stamped)

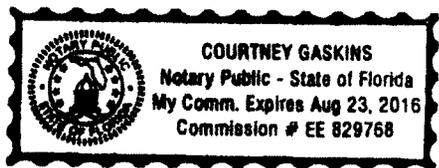
FF 039122
Commission Number

EXHIBIT A

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 18th 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

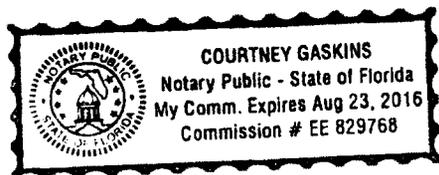
Courtney Gaskins
(Name of Acknowledger Typed, Printed or Stamped)

EE829768
Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 18th 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)

EE829768
Commission Number

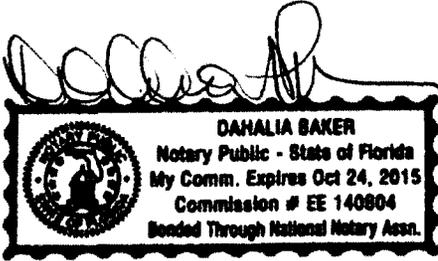
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 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

EXHIBIT A
ER DL Exp 04/24/2020 (type of identification) as identification.

NOTARY'S SEAL:



Dahalia Baker
NOTARY PUBLIC, STATE OF FLORIDA

DAHALIA BAKER
(Name of Acknowledger Typed, Printed or Stamped)

EE 140804
Commission Number

"SUBLESSEE":

THROWBACK RESTAURANT, LLC.

Signed, Sealed and Witnessed
In the Presence of:

ER Gallager

Print Name EDWARD GALLAGER

By: Wayne Alcaide

Wayne Alcaide, MGRM

FILIPA DI MAIO

Print Name FILIPA DI MAIO

EGR:jrm
12/11/12
L:agr/cra/pharmacy project/2013-345

EXHIBIT A

Exhibit "A"

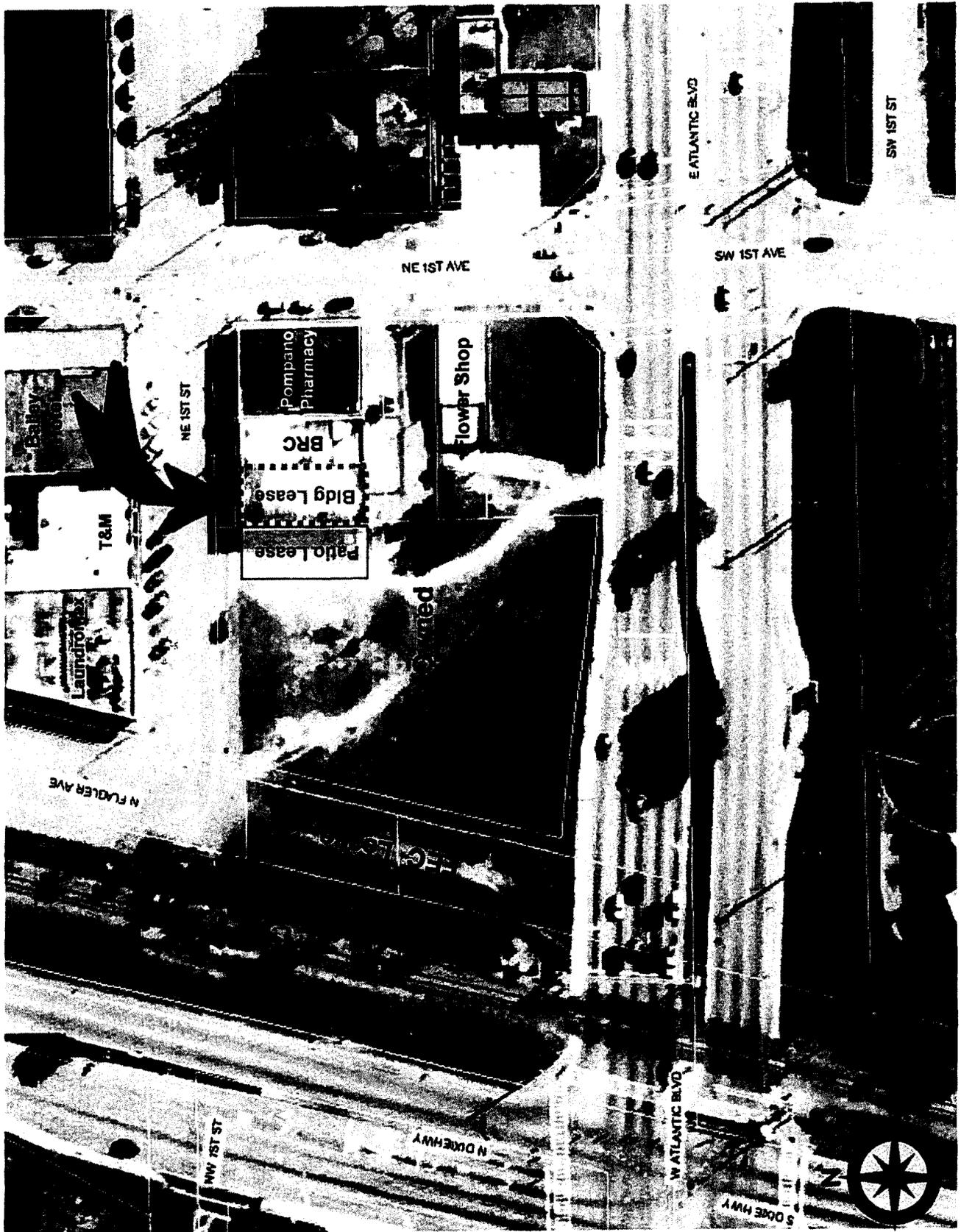


EXHIBIT A

EXHIBIT "A"

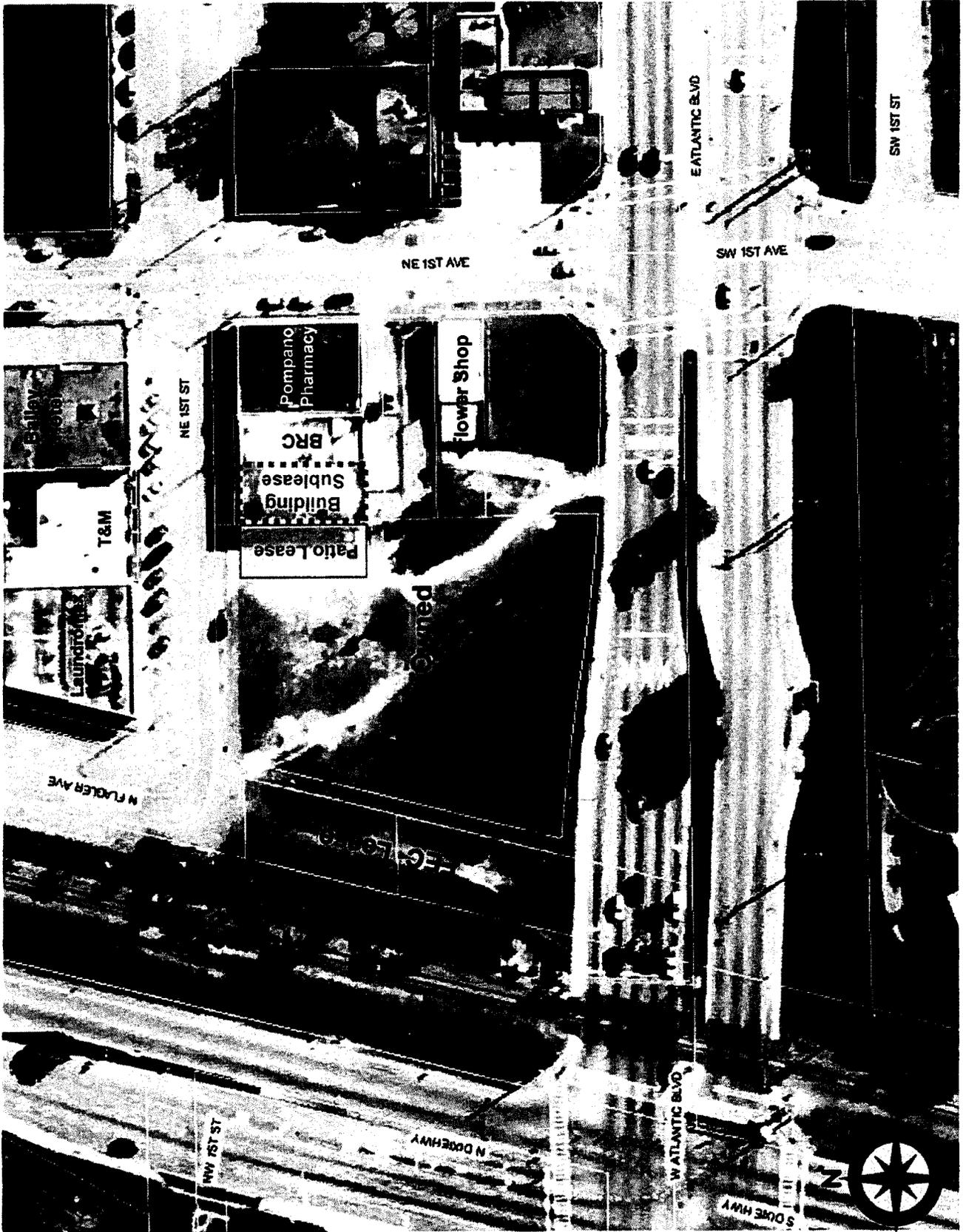


EXHIBIT A

EXHIBIT "B" A

This Exhibit outlines the improvements agreed to by the CRA as stated under Paragraph 10.1, of the Sublease Agreement. The CRA agrees to as follows:

1. The CRA shall install and deliver the Premises with a grease trap pursuant to the Mechanical Engineer drawings at the CRA sole cost and expense.
2. The CRA shall install and deliver the Premises with a 3 phase 600 Amp panel and disconnect box with electrical service pursuant to the Mechanical Engineer drawings at the CRA sole cost and expense. Electrical wiring from the panel throughout the space shall be at the sole cost and expense of the Sublessee.
3. The CRA shall include in its demolition the wall cuts pursuant to the architectural plans at the CRA sole cost and expense.
4. The CRA shall be responsible for the concrete interior curbs at the CRA sole cost and expense.
5. The CRA shall install underground power without any poles on the property at the CRA sole cost and expense.
6. The CRA shall not collect rent from the Sublessee for a period of one (1) year from the effective date of the Sublease.
7. That the CRA is providing the Sublessee the first option on the CRA Business Resource Center sublease on the property adjoining the Premises should the CRA decide to vacate at the same rental rate as the first term.

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 1ST 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 1st 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 19th day of March, 2015.



LAMAR FISHER, CHAIRPERSON

ATTEST:



MARGARET GALLAGHER, SECRETARY

EXHIBIT B
FIRST AMENDMENT

THIS FIRST AMENDMENT is entered into on the 19th 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 "CRA,"

and

THROWBACK RESTAURANT GROUP, LLC, whose address is 32 East Atlantic Avenue, Delray Beach, FL 33444, hereinafter referred to as "SUBLESSEE."

WHEREAS, CRA entered into a Sublease Agreement with SUBLESSEE for the use of 3,081 SF of structure located at 44 NE First Street, ("Original Agreement"), and approved by Resolution No. 2014-22; and

WHEREAS, Pompano Pharmacy Wholesale, Inc. 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, CRA 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 10, Improvements, to the Original Agreement is hereby amended as follows:

10.2.1. Unity of Use Agreement. A Unity of Use Agreement is required as part of the development review process for the Improvements described in Sections 10 and 12. CRA and SUBLESSEE 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 Sublease Agreement, regardless of whether such termination occurs upon the expiration of the Sublease Agreement or sooner pursuant to the terms thereof. Prior to termination of the Unity of Use Agreement, and within 90 days of the date the Sublease is terminated, Parcel A and Parcel B must each be physically separated, by the SUBLESSEE, at the SUBLESSEE's sole cost and expense. Such physical separation of Parcels A and B shall consist of SUBLESSEE 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. 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 SUBLESSEE hereunder shall be performed at SUBLESSEE'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 Sublease Agreement, including without limitation removal of all awnings, lights, etc. affixed by SUBLESSEE to the exterior of the Premises and repair of all damage caused by the

EXHIBIT B

removal thereof, ordinary wear and use excepted. This Section 10.2.1. shall survive the termination of the Sublease.

4. Section 28, Miscellaneous Provisions, to the Original Agreement is hereby amended as follows:

28.4. Time of the Essence. Time is of the essence as to all of the terms and provisions of the Sublease.

...

EXHIBIT B

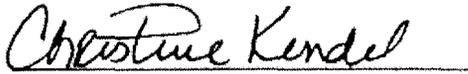
IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the

day and year first above written.

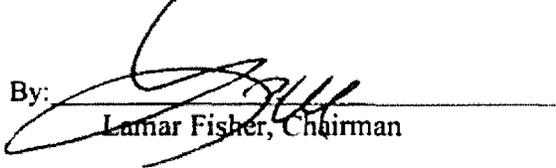
"CRA":

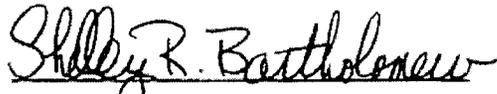
Signed, Sealed and Witnessed
In the Presence of:

**POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY**



Print Name: Christine Kendel

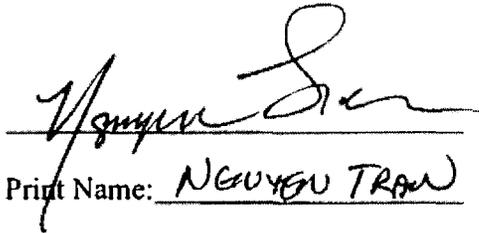
By: 
Lamar Fisher, Chairman



Print Name: Shelley R. Bartholomew

ATTEST:

Margaret Gallagher, Secretary



Print Name: NGUYEN TRAN

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

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

By: 
Kim Briesemeister, President



Print Name: MARGARET GALLAGHER

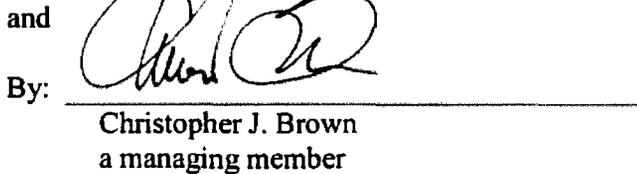
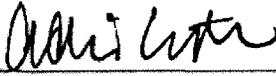
and
By: 
Christopher J. Brown
a managing member

EXHIBIT B

"SUBLESSEE":

Signed, Sealed and Witnessed
In the Presence of:

THROWBACK RESTAURANT GROUP, LLC



By: 

Print Name: Adriano Esteban

Print Name WAYNE ALCAIDE



Title: MANAGING PARTNER

Print Name MARGARET BAUGHMAN