

**POMPANO BEACH  
COMMUNITY REDEVELOPMENT AGENCY**

**5**

Meeting Date: March 20, 2018

Agenda Item \_\_\_\_\_

**REQUESTED CRA BOARD ACTION:**

Resolution(s)     Consideration     Approval     Other

**SHORT TITLE OR MOTION:**    A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE AN ASSIGNMENT AND FIRST AMENDMENT TO SUBLEASE AGREEMENT BETWEEN THE CRA AND ATLANTIC HOSPITALITY GROUP III, LLC, RELATING TO PROPERTY LOCATED AT 11 NE 1ST STREET, POMPANO BEACH, FLORIDA; PROVIDING AN EFFECTIVE DATE.

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**Summary of Purpose and Why:**

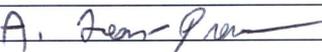
In July 2017, the CRA Board approved a Sublease Agreement between the CRA and Atlantic Hospitality Group III, LLC. Since that time, the restaurateur's investor became more involved and interested in being a true partner with the project, while the restaurateur decided they wanted to pursue other ventures. This investor, who grew up in Pompano Beach, has found a strong culinary partner and still desires to bring the project to fruition. CRA staff is recommending the CRA Board approve an Assignment and First Amendment for this team to bring a new restaurant that will invest significant dollars into to the emerging arts and entertainment district of Downtown Pompano.

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

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: Adriane Esteban Ext. 7841
- (3) Expiration of contract, if applicable: 09/30/2049
- (4) Fiscal impact and source of funding: N/A

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

- CRA Executive Director
- CRA Attorney
- Finance Director

  
Claudia M. McKenna  
  
A. Jean P...

**ACTION PREVIOUSLY TAKEN BY CRA BOARD:**

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



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**COVERSHEET**

**Date:** March 15, 2018

**To:** Pompano Beach CRA Board

**From:** Adriane Esteban, Project Manager

**Subject:** Signature Page for Atlantic Hospitality Group III, LLC Assignment & First Amendment

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It is anticipated that the Atlantic Hospitality Group III's signature page for the Assignment and First Amendment will be provided on or by Tuesday, March 20, 2018. If the CRA does not receive the signature page by the CRA Board meeting time, this item will be pulled from the March 20, 2018 CRA Board meeting agenda.

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## MEMORANDUM

**Date:** March 20, 2018

**To:** Pompano Beach CRA Board

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

**Subject:** Assignment & First Amendment to the Sublease relating to property located at 11 NE 1<sup>st</sup> Street

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In June 2017, the CRA Board approved a Sublease Agreement between the CRA and Atlantic Hospitality Group III, LLC (AHG III) relating to the property located at 11 NE 1<sup>st</sup> Street. Since that time, the restaurateur's investor became more involved and interested in being a true partner with the project, while the restaurateur decided they wanted to pursue other ventures. The restaurateurs ultimately decided would be best for the project if they transferred ownership of AHG III to their investor.

The investor, Brian Baer, grew up in Pompano Beach and attended Blanche Ely High School. He has built successful businesses and is looking to grow his portfolio while investing significant dollars in the community that helped form him. Mr. Baer has found a strong culinary partner, Chef Dean James Max, who also has ties to South Florida to bring this project to fruition. Chef Max has been nominated for Best Chef of the South by the James Beard Foundation, a very prestigious honor. He formed his own restaurant group ten years ago and in that time went from being the Executive Chef of 3030 Ocean in Ft. Lauderdale to opening multiple successful restaurants throughout the U.S. with the Marriott company. Chef Max has recently moved back to the area and is excited by the opportunity to bring his farm to table, local, and sustainable cooking concept to Pompano Beach.

In areas like Downtown Pompano that have been affected by blight and high vacancies in the past, it can be hard to attract and implement a project that requires a significant investment like a restaurant. In Delray Beach, there were many starts and stops in the early 1990's and took nearly 20 years before it became a destination for trendy restaurants. Mr. Baer and Chef Max are up for the challenge though, especially because of their close ties to the area. Staff is recommending the Assignment and First Amendment be approved so this team can bring a new restaurant to the



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emerging arts and entertainment district of Old Town.

The Assignment and First Amendment in this agenda item contain the following changes:

- Approves assignment of Sublease to Brian Baer
- Changes initial term commencement date to April 1, 2018 instead of July 1, 2017
- Still provides two year Improvement Period in which no rent shall be due
- Changes renewal terms to four five-year terms and another term to end September 30, 2049, instead of five five-year renewal terms
- Changes rent escalation during the first year of the renewal terms to 9.7% instead of 10% for Sublease
- Security Deposit due April 1, 2018 instead of June 1, 2017
- Inspection period section removed
- Project Schedule is revised

**POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY**

**A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A SUBLEASE AGREEMENT BETWEEN THE CRA AND ATLANTIC HOSPITALITY GROUP III, LLC, RELATING TO PROPERTY LOCATED AT 11 NORTHEAST 1<sup>ST</sup> STREET, POMPANO BEACH, FLORIDA; PROVIDING AN EFFECTIVE DATE.**

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

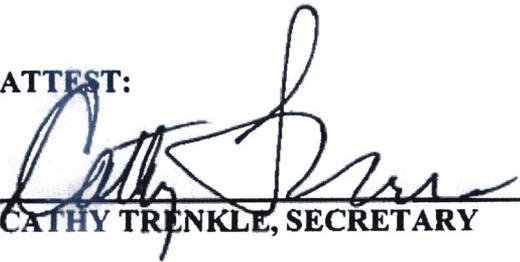
**SECTION 1.** The Sublease Agreement between the Pompano Beach Community Redevelopment Agency and Atlantic Hospitality Group III, LLC, relating to the property located at 11 Northeast 1<sup>st</sup> Street, Pompano Beach, Florida (the Agreement), a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

**SECTION 2.** The proper officials are hereby authorized to execute the Agreement, together with such other documents as may be required to effectuate the Agreement.

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

**PASSED AND ADOPTED** this 20 day of June, 2017.

**ATTEST:**

  
\_\_\_\_\_  
**CATHY TRENKLE, SECRETARY**

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

## 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, ("CRA") and **ATLANTIC HOSPITALITY GROUP III, LLC**, a Florida limited liability company, whose address is 2729 NE 31st Street, Lighthouse Point, Florida, 33064, ("Subtenant").

### **Recitals**

WHEREAS, the CRA has entered into a lease agreement with Pompano Property Investments, LLC, a Florida limited liability company ("Landlord"), relating to the lease by the CRA of that certain commercial property described as follows: 6,098 square feet of the structure located at 11 Northeast 1<sup>st</sup> Street, Pompano Beach, Florida 33060, (the "Premises") as more particularly described in the lease agreement and amendments attached hereto as Exhibit "A" and incorporated herein by reference (the "Lease"), and

WHEREAS, the Lease, the effective date of which is October 1, 2014, provides for the use of the Premises for any use permitted by applicable federal, state, county or city statutes, laws, ordinances, resolutions, orders, rules or regulations ("Applicable Laws"); and

WHEREAS, the Lease provides for subleasing of the Premises and Subtenant 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 Sublease, the CRA and Subtenant 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 Subtenant, and Subtenant rents from the CRA, the following described commercial property: 6,098 square feet of the structure located at 11 NE 1<sup>st</sup> Street, Pompano Beach, Florida 33060 (collectively, the "Premises"). Subtenant acknowledges that it is subleasing the Premises in "as-is" condition. Subtenant further acknowledges that the CRA shall have no obligation to make additional improvements to the Premises, except to the extent otherwise explicitly stated herein.
3. **Sublease Term.** The initial term ("Initial Term") of this sublease shall commence on July 1, 2017, at 12:01 a.m., and end at midnight on June 30, 2022.
4. **Renewal Term.** Provided that Subtenant shall have fully done, performed and observed all of the terms, covenants and conditions required hereunder to be done, performed or observed by it during the term of this Sublease, then the Subtenant shall have the right to renew this Sublease for five (5) successive terms of five (5) years each upon the same terms, covenants and conditions as the Initial Term of this Sublease. The base annual rent for the first year of the first option term shall increase by ten percent (10%) plus applicable sales tax and thereafter shall increase annually by three (3%) percent above the immediately preceding base annual rent. During any subsequent option terms exercised by Subtenant the base annual rent shall increase the first year by ten percent (10%) above the immediately preceding base annual rent.

Subtenant shall give written notice that it is exercising its option to renew by certified mail to CRA at least ninety (90) days prior to the termination of the Initial Term or any renewal term then in effect. The Renewal Term, with the Initial Term shall be referred to herein as the "Term."

5. **Rent.** The annual rental amounts for the Premises ("Rent") shall be as follows:
  - 5.1. There shall be no rental amount due for the Premises for the period of twenty-four (24) months from July 1, 2017, through June 30, 2019 (the "Improvements Period"). The first monthly rental payment shall be due on July 1, 2019, (the "Rental Commencement Date").
  - 5.2. Beginning on July 1, 2019, the annual Rent for the Premises will be \$84,826 payable in equal monthly installments of \$7,069 plus sales tax, if any, and not exempt.
  - 5.3. **Annual Rent Increase.** Beginning with the rental payment due on July 1, 2020, the Rent for the Premises will increase annually by three percent (3%) of the base rental amount for the prior year.
  - 5.4. **Rent Payments.** Subtenant shall pay Rent in equal monthly installments, plus sales tax, if any, and not exempt, which will be due on the first day of each calendar month.
  - 5.5. **Security Deposit.** The security deposit shall be \$6,468, together with first and last month's Rent of \$7,069 per month, for a total of \$20,606, plus sales tax, if any, and not exempt (the "Security Deposit"). The Security Deposit shall be paid on or before June 1, 2017.
  - 5.6. **Late Rent Payments.** If any monthly Rent payment is not received within ten (10) days of the due date, a late charge of Twenty-Five Dollars (\$25) shall be added for the first day late, plus an additional Five Dollars (\$5) per day for each day thereafter until payment is received. Any unpaid late charges due under this paragraph shall be added and become due with the next monthly Rent payment. Non-payment or ten (10) instances of late payment of Rent is a default under this Sublease.
6. **Subtenant's Right of First Refusal to Purchase Demised Premises.** Subtenant shall have the exclusive right to purchase the Premises for \$1.2 million until September 30, 2019, on the terms and conditions set forth in the Purchase and Sales Contract attached hereto and made a part hereof as Exhibit "A". Should Landlord receive a bona fide offer from any third party to purchase the Premises at a price and on terms acceptable to Landlord, CRA shall give Subtenant written notice of said price and terms and Subtenant shall have thirty (30) days after that in which to execute a written agreement with Landlord to purchase the Premises at that price and on those terms. If Tenant notified Subtenant and Subtenant failed to execute the aforesaid purchase agreement within the applicable 30 Subtenant's receipt of the notice, Landlord is free to sell the Premises to the third party making the offer on the same terms and conditions set forth in the offer; however, Landlord's sale of the Premises shall be subject to the Lease and shall not relieve any subsequent owner(s) of any obligation(s) under the Lease.
7. **Taxes and Assessments.** Subtenant shall be responsible to pay all municipal, county, and state ad valorem and non-ad valorem taxes and assessments which may be assessed against the Premises during the Term of this Sublease, after the first lease year. Subtenant shall also be responsible for payment of any taxes levied against the personal property and trade fixtures of Subtenant located in and about the Premises.

Notwithstanding that annual rent is not due during the Improvements Period, Subtenant agrees to pay the CRA for the ad valorem and non-ad valorem taxes levied by the government on the property during the second year of the Improvements Period.

8. **Insurance.** Subtenant shall carry commercial general liability insurance in an amount of not less than \$1 million dollars per person, per occurrence, naming both the CRA and Landlord as Additional Insureds under such Policy. Additionally, Subtenant must pay property insurance, after the first year of the lease. Subtenant is encouraged, but not required to carry plate glass insurance if keeping existing storefront. CRA will not pay for any broken storefront glass.

Notwithstanding that annual rent is not due during the Improvements Period, Subtenant agrees to pay the CRA for the insurance during the second year of the Improvements Period.

9. **Subtenant's Maintenance Obligation.** Subtenant shall be responsible for maintenance and repair of the interior and exterior of the Premises, including but not limited to, painting, conduits, HVAC system, window cleaning, lighting, roof, interior ceilings and walls and all subtenant improvements, at its sole cost and expense, except to the extent that this is inconsistent with subparagraph 8.4 below. Subtenant shall use commercially reasonable efforts to maintain the Premises in a good, neat, clean, safe and sanitary condition throughout the Term, reasonable wear and tear excepted. Subtenant shall keep all furnishings, fixtures and accessories, and any display facilities, in good repair. The Premises shall be maintained in accordance with all applicable code requirements of the Broward County Health Department and all Applicable Laws. Notwithstanding the preceding language in this paragraph, CRA shall be responsible to ensure that the HVAC system is in good condition prior to the Improvements Period. If the HVAC is not in good working order, then the CRA shall be responsible for all costs of providing Subtenant with an HVAC system in good working order. In the event the Subtenant expands the HVAC system, the Subtenant shall be responsible for any roof penetrations and repairs caused by any work relating to such HVAC expansion.

- 9.1. **Windows.** Subtenant shall obtain and pay for the regular cleaning of the exterior windows.
- 9.2. **Pest Control.** Subtenant shall obtain and pay for professional exterminators to control vermin and pests on a regular basis, no less than monthly and as needed. Such extermination services shall be supplied in all areas where food is prepared, dispensed, or stored and in all areas of the Premises where trash is collected and deliveries are made.
- 9.3. **Janitorial.** Subtenant shall obtain and pay for all janitorial services required to keep the Premises in clean and sanitary condition, as well as to comply with Applicable Laws.
- 9.4. **Structural Repairs.** In the event any repairs are necessary to the wiring and plumbing in the walls, floors, ceiling or hard structures of the Premises or any repair involves major penetration of walls, ceilings or floors, Tenant shall be responsible for the costs and shall notify the Landlord of the repair(s).
- 9.5. **Trash Management.** CRA strongly encourages Subtenant to build a trash collection room inside the Premises facing the back alley where the dumpster can be stored in air-conditioned space so as not to cause back alley to smell.

- 9.6. **Grease Trap.** Tenant shall comply with Pompano Beach City Code regarding wastewater and grease. Tenant shall obtain all applicable permits at Tenant's cost. Tenant shall do whatever is necessary to properly maintain and clean the grease trap as often as necessary to prevent clogging or discharge, and in compliance with the City Code and, at a minimum, shall be pumped and cleaned not less than once every three (3) months.
10. **Utilities.** Subtenant shall be responsible for obtaining and paying the cost of all utilities (water, sewer, electric, gas, telephone, cable, internet, etc.) serving the Premises during the Term, together with any taxes, penalties, surcharges and any other charges pertaining to such utilities. If utilities are inadvertently billed to the CRA, Subtenant will reimburse the CRA within ten days after receipt of the invoice or utility bill from the CRA. Subtenant will promptly arrange for such utilities to be billed directly to Subtenant. Subtenant will pay all amounts due directly to the utility company prior to delinquency.
11. **Use of Premises.** Subtenant shall use the Premises for the operation of a restaurant, music venue, brewery, brewpub, as well as other similar ancillary and related uses. No other use of the Premises is permitted under this Sublease without the CRA's express written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Subtenant will not commit or permit any waste or damage to the Premises and will not carry on any activity that constitutes a nuisance as defined in the Florida Statutes or violates any Applicable Laws; however, it is agreed by CRA and Subtenant that the use of the Premises for operating a restaurant, music venue, brewery, brewpub and for related uses shall not constitute a nuisance and Subtenant shall have the right to terminate this Sublease without any further obligation upon thirty (30) days notice to CRA if any governmental entity shall determine that Subtenant's use constitutes a nuisance. Subtenant, at its expense, shall procure and maintain all governmental licenses or permits required for the proper and lawful conduct of Subtenant's use of the Premises.
12. **Parking.** Subtenant shall have access to the on-street public parking spaces and public parking lots within walking distance of the Property during the Term. Such access is on a first-come, first-served basis. Subtenants' employees are strongly encouraged to park in the public parking lots in the area. Valet parking may become available to Subtenant at a cost to be determined.
13. **Improvements.** Subtenant has the right to make changes, alterations and additions to the Premises ("Improvements") with the CRA's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Subtenant shall be responsible for obtaining all permits required for the Improvements. Subtenant shall be responsible for paying all impact fees, if any, and concurrency fees, if any. All Improvements must be undertaken in a good and workmanlike manner and comply with all Applicable Laws. All Improvements made by Subtenant which are permanently attached to the Premises including restroom fixtures and trench drains will become the property of the CRA and shall remain on the Premises at the end of the Sublease Term. Subtenant will have the right to remove any moveable furniture, fixtures and equipment at the end of the Term. In addition, Subtenant will have the right to remove from the Premises at the end of the Term any moveable kitchen equipment or appliances, such as ovens, ranges, and refrigerators installed by Subtenant, as long as Subtenant repairs any damage caused by the removal of such equipment.

- 13.1. **CRA's Cooperation in Applications.** Pursuant to Section 8.1 of the Lease between the CRA and the Landlord, the CRA agrees to obtain Landlord's joinder in and execution of any permit applications, consents, or other documents required in connection with the construction or installation of any Improvements by Subtenant. The CRA agrees to obtain Landlord's signature for the signing of any required documents within fifteen days after receipt of the request from Subtenant and the document to be signed.
- 13.2. **Signage.** Subtenant 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, which consent shall not be unreasonably withheld, conditioned or delayed. Any and all such signs or structures must comply with Applicable Laws.
- 13.3. **Incentives Application.** Subtenant may apply for incentives offered by the CRA for tenant interior and/or exterior buildout according to CRA regulations. CRA's contribution for an approved application would be up to a maximum of \$40,000 from the Façade and Business Site Improvement Program and up to a maximum of \$150,000 from the Strategic Investment Program (SIP). Subtenant must make a full application for incentives in order to receive consideration by the CRA Board for approval. Subtenant acknowledges that the CRA has no obligation to approve such incentives application.
14. **CRA's Right to Inspect Premises.** The CRA will have the right to enter upon and inspect the Premises at reasonable times and after notice to Subtenant. The CRA will have the right to place a sign in the Premises advertising that the Premises are available for rent not more than 30 days prior to the expiration of the Term.
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. The CRA will warrant and defend Subtenant's right to the peaceful possession and enjoyment of the Premises during the Term of this Sublease. At the end of the Term, Subtenant will surrender the Premises in clean condition and good repair, normal wear and tear excepted. No surrender of the Premises by Subtenant 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. Neither the CRA nor Subtenant shall do or permit anything to be done in connection with this Sublease or Subtenant's occupancy and use of the Premises which will violate the Lease. All actions of Subtenant shall be consistent with the CRA's obligations under the Lease.
17. **Accidental Damage or Injury.** The CRA and the Landlord shall not be liable for any damage to property, or any injury to persons, sustained by Subtenant or others, caused by conditions or activities on the Premises. Subtenant shall carry insurance insuring the CRA, Subtenant, and Landlord against any claims of the types and in the amounts stated in Exhibit "B" attached hereto and made a part hereof.
18. **Force Majeure.** 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 untenable in whole or in substantial part, the CRA or Subtenant (provided that Subtenant is not at fault for the damage) shall have the right to terminate the Term of the Sublease by giving notice to the

other of its exercise of such right at any time within thirty (30) days after the occurrence of such damage or destruction. If this notice is given, the term of the Sublease shall terminate, and rent shall be payable, up to the date of destruction as if such date were the date set forth in the Sublease. If Subtenant exercises the option to terminate the Sublease, Subtenant must immediately vacate the Premises, but shall be provided a reasonable amount of time to recover and remove any of its equipment. If neither party has given notice of termination as herein provided, CRA has the option of rebuilding or repairing the Premises by giving notice to that effect to Subtenant within fifteen (15) days after the termination of the option of its intent to rebuild or repair the Premises or the part so damaged. If the CRA elects to rebuild or repair the Premises and does so without unnecessary delay, Subtenant shall be bound by this Sublease, except that during the period of repair, the Rent shall be abated in the same proportion that the part of the Premises rendered unfit for occupancy by Subtenant shall bear to the whole of the subleased premises. In the event that neither party terminates the Sublease pursuant to the above portion of this paragraph, CRA's repairs must be complete within six (6) months following the destruction, or Subtenant shall have the option to terminate this Sublease within twenty (20) days after the expiration of the six (6) month period.

19. **Liens.** Subtenant shall keep the Premises free and clear of all liens arising out of any work performed, material furnished or obligations incurred by Subtenant.
20. **Laws and Ordinances.** Subtenant agrees to comply with all applicable state statutes, Broward County and City ordinances, and any safety requirements of all federal, state and local governments. Subtenant shall maintain all required licenses from governmental agencies in full force and effect during the term of this Sublease.
21. **Indemnification.** Subtenant will indemnify and hold harmless the CRA, the City of Pompano Beach ("City"), the Landlord, 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, the City, the 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 Subtenant or its employees, agents, guests, and invitees; or (b) any failure by Subtenant 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, the City, the 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 Subtenant, its agents, employees, guests and invitees, Subtenant agrees that Subtenant or any other person on the premises with Subtenant's consent will defend the CRA, the City, and Landlord in such lawsuit or proceeding, and pay whatever judgments may be recovered against the CRA, the City, the Landlord, or the Premises, and pay for all attorneys' fees in connection with such lawsuit or proceeding, including attorneys' fees on appeal. The venue for any litigation shall be in Broward County, Florida.
  - 21.2. **Limitation.** Nothing in this Sublease shall be deemed as a waiver by the CRA or the City 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 Subtenant, or its agents, employees, guests or invitees in the Premises, Subtenant agrees to replace the glass

with glass of the same kind, size, and quality as quickly as possible at Subtenant's expense.

## **22. Defaults and Remedies.**

22.1. **Events of Default.** The occurrence of any one or more of the following events shall constitute a Default under this Sublease:

22.1.1. **Failure by Subtenant to pay Rent.** If any Rent due under this Sublease is not paid within fifteen days after the 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 Subtenant and recover from Subtenant 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.

22.1.2. Failure by either party to observe or perform in any material respect any covenant, obligation or agreement contained in this Sublease.

22.1.3. The filing by Subtenant of a petition to have Subtenant adjudged bankrupt or a petition for reorganization under any law relating to bankruptcy; or the appointment of a trustee or receiver to take possession of all or substantially all of Subtenant's assets where such possession is not restored to Subtenant within ninety (90) days of such appointment.

22.1.4. The material breach of any representation or warranty by either Party contained in this Sublease Agreement if such material breach is not cured after written notice from the non-defaulting party to the defaulting party and a reasonable opportunity to cure such material breach.

22.2. **Cure Period.** In the event of a Default, the non-defaulting party shall provide written notice to the defaulting party and the defaulting party shall have thirty (30) days to cure such Default, provided that the cure period shall be extended if the Default cannot reasonably be cured within thirty (30) days and the defaulting party is using commercially reasonable efforts to cure said Default.

22.3. **Remedies for Default.** Following the occurrence of a Default and the expiration of any applicable cure period, the non-defaulting party may terminate this agreement. Additionally, the non-defaulting party shall have the right to have provisions of this Agreement enforced by any court having equity jurisdiction it being acknowledged that any such Default will cause irreparable injury to the non-defaulting party and that money damages will not provide an adequate remedy.

23. **No Waiver.** The exercise by either party to this Sublease of any right or remedy under this Sublease will not be a waiver of or preclude the exercise of any other right or remedy afforded such party by this Sublease or by Applicable Laws. The failure of either party 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 such party 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. Regarding the CRA, its receipt of Rent or any other payment or partial payment required to be made by the Subtenant

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. No waiver by either party of any of the provisions of this Sublease, or of any of either party's rights, remedies, privileges, or options under this Sublease, will be considered to have been made unless made by such party in writing.

24. **Assignment and Subletting.** This Sublease may not be assigned, sublet, or subleased without the express written consent and approval of the CRA, which consent shall not be unreasonably withheld, conditioned or delayed.
25. **Termination and Surrender**
  - A. If Subtenant does not renew the Sublease as described herein or a new lease with the CRA is otherwise not secured:
    1. Subtenant shall surrender the Premises on or before the last day of the Term of this Sublease.
    2. The CRA 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.
    3. Subtenant shall, at the expiration of this Sublease, surrender the keys to the Premises to the CRA.
  - B. If Subtenant shall surrender the Premises at the election of the Subtenant, the liability for all duties and obligations required of Subtenant shall continue until the surrender has been accepted by the CRA 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 Subtenant.
  - 26.2. **Notices to Subtenant.** Notices to Subtenant shall be mailed or delivered to the Premises and to Subtenant's address set forth on the first page of the Sublease.
  - 26.3. **Mailing of Notice.** All notices required under this Sublease 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. **Inspection Period.** Subtenant shall have thirty (30) days following the execution of this Sublease and receipt of the complete due diligence package in the form of a CD to perform an inspection of the Premises and related documentation in order to ensure suitability of the Premises for Subtenant's intended investment, which shall include ensuring proper zoning to operate as a brewery with a taproom (CMB manufacturing

license with a retail license to sell beer (and wine, if Subtenant so desires) for on and off site consumption). During the Inspection Period, the CRA will assist the Subtenant in obtaining a determination from the City that the Premises currently comply with all necessary requirements for the use stated herein so as not to require a new HVAC system or handicap ramp for the rear exit. Subtenant agrees to limit its occupancy to less than 50 in order to achieve the above. If such assurance is not provided in writing by the City's building department and planning and zoning department during the Inspection Period, the Inspection Period may be extended by the Subtenant by giving notice to the CRA in writing that it wishes to extend the Inspection Period until such time as such assurance is provided by the City departments but not longer than 120 days.

- 28.2. **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 Sublease or affect this Sublease in any way.
- 28.3. **Governing Law.** This Sublease will be governed by the laws of the state of Florida, as to both interpretations and performance.
- 28.4. **Entire Agreement.** This Sublease sets forth all of the promises, agreements, conditions, and understandings between the CRA and Subtenant 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 Subtenant unless in writing and signed by both of them.
- 28.5. **Successors and Assigns.** The terms of this Sublease will be binding on the respective successors, representatives, and assigns of the parties.

**IN WITNESS WHEREOF**, the CRA and Subtenant have duly executed this Sublease Agreement on \_\_\_\_\_, 2017.

**"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

Christine Kendel

Print Name: Christine Kendel

ATTEST [Signature]  
Cathy Trenkle, Secretary

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

Marsha Carmichael

Print Name: Marsha Carmichael

By: [Signature]

Print Name: CHRISTOPHER BROWN  
a managing member

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 28th day of June, 2017 by LAMAR FISHER as Chairman of the Pompano Beach Community Redevelopment Agency, who is personally known to me.

NOTARY'S SEAL:



Marsha Carmichael

NOTARY PUBLIC, STATE OF FLORIDA

Marsha Carmichael

(Name of Acknowledger Typed, Printed or Stamped)

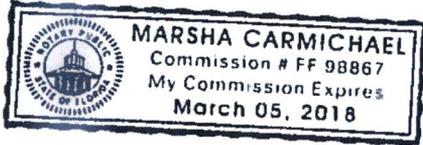
FF 98867

Commission Number

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 28th day of June, 2017 by CATHY TRENKLE, Secretary of the Pompano Beach Community Redevelopment Agency, who is personally known to me.

NOTARY'S SEAL:



Marsha Carmichael  
NOTARY PUBLIC, STATE OF FLORIDA

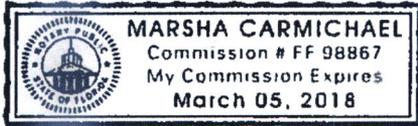
Marsha Carmichael  
(Name of Acknowledger Typed, Printed or Stamped)

FF 98867  
Commission Number

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 28th day of June, 2017, by Chris Brown, 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:



Marsha Carmichael  
NOTARY PUBLIC, STATE OF FLORIDA

Marsha Carmichael  
(Name of Acknowledger Typed, Printed or Stamped)

FF 98867  
Commission Number

**"SUBTENANT":**

**ATLANTIC HOSPITALITY GROUP III, LLC**

Signed, Sealed and Witnessed  
In the Presence of:

*Patricia Jewell*  
Print Name Patricia Jewell

By: *[Signature]*  
Print Name: FRANCO GRIECO  
Title: Managing Partner

*[Signature]*  
Print Name Richard Mock

*Patricia Jewell*  
Print Name Patricia Jewell

By: *[Signature]*  
Print Name: STEPHANIE THOMPSON  
Title: Managing Partner

*[Signature]*  
Print Name Richard Mock

STATE OF FLORIDA  
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 14 day of June 2017, by FRANCO GRIECO as Managing Partner (title) and STEPHANIE THOMPSON as Managing Partner (title) of ATLANTIC HOSPITALITY GROUP III, LLC, who are personally known to me or who has produced Drivers License (type of identification) as identification.

NOTARY'S SEAL:

*[Signature]*  
NOTARY PUBLIC, STATE OF FLORIDA  
Richard Mock

(Name of Acknowledger Typed, Printed or Stamped)



Richard Mock  
Notary Public  
State of Florida  
My Commission Expires 3/24/2020  
Commission No. FF 075849

FF 975240  
Commission Number

**POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY**

**A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE AN ASSIGNMENT AND FIRST AMENDMENT TO SUBLEASE AGREEMENT BETWEEN THE CRA AND ATLANTIC HOSPITALITY GROUP III, LLC, RELATING TO PROPERTY LOCATED AT 11 NORTHEAST 1<sup>ST</sup> STREET, POMPANO BEACH, FLORIDA; PROVIDING AN EFFECTIVE DATE.**

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

**SECTION 1.** The Assignment and First Amendment to Sublease Agreement between the Pompano Beach Community Redevelopment Agency and Atlantic Hospitality Group III, LLC, relating to the property located at 11 Northeast 1<sup>st</sup> Street, Pompano Beach, Florida (the First Amendment), a copy of which First Amendment is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

**SECTION 2.** The proper officials are hereby authorized to execute the First Amendment, together with such other documents as may be required to effectuate the First Amendment.

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

**PASSED AND ADOPTED** this 20<sup>th</sup> day of March, 2018.

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

**ATTEST:**

\_\_\_\_\_  
**MARSHA CARMICHAEL, SECRETARY**

## **ASSIGNMENT AND FIRST AMENDMENT TO SUBLEASE AGREEMENT**

**THIS ASSIGNMENT AND FIRST AMENDMENT TO SUBLEASE AGREEMENT** is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between: **POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida (“CRA”), and **ATLANTIC HOSPITALITY GROUP III, LLC**, a Florida limited liability company, whose address is 1560 Sawgrass Corp Prkwy #400, Sunrise, FL 33323 (“Subtenant”).

**WHEREAS**, CRA entered into a Sublease Agreement with Subtenant for the use of 6,098 SF of structure located at 11 NE First Street, (“Original Sublease”), and approved by Resolution No. 2017-40; and

**WHEREAS**, the principals of Atlantic Hospitality Group III, LLC wish to assign their interest in the Original Sublease to Brian Baer; and

**WHEREAS**, the CRA is willing to approve the assignment of the Sublease to Brian Baer.

### **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 Sublease shall remain in full force and effect except as specifically amended herein below.
3. The assignment of the Original Sublease to Brian Baer is approved.
4. The Project Schedule attached as Exhibit A to this First Amendment shall be incorporated into Sublease Agreement.
5. Section 3. Sublease Term is amended to read as follows (added language is underlined and in bold, deleted language has a line through it):

**3. Sublease Term.** The initial term (“Initial Term”) of this sublease shall

commence on ~~July 1, 2017~~ **April 1, 2018**, at 12:01 a.m., and end at midnight on ~~June 30, 2022~~ **March 31, 2023**.

6. Section 4. Renewal Term is amended to read as follows (added language is underlined and in bold, deleted language has a line through it):

**4. Renewal Term.** Provided that Subtenant shall have fully done, performed and observed all of the terms, covenants and conditions required hereunder to be done, performed or observed by it during the term of this Sublease, then the Subtenant shall have the right to renew this Sublease for ~~five (5)~~ **four (4)** successive terms of five (5) years each **and one additional term to end September 30, 2049**, upon the same terms, covenants and conditions as the Initial Term of this Sublease. The base annual rent for the first year of the first option term shall increase by ~~ten percent (10%)~~ **9.7%** plus applicable sales tax and thereafter shall increase annually by three (3%) percent above the immediately preceding base annual rent. During any subsequent option terms exercised by Subtenant the base annual rent shall increase the first year by ~~ten percent (10%)~~ **9.7%** above the immediately preceding base annual rent. Subtenant shall give written notice that it is exercising its option to renew by certified mail to CRA at least ninety (90) days prior to the termination of the Initial Term or any renewal term then in effect. The Renewal Term, with the Initial Term shall be referred to herein as the "Term."

7. Section 5. Rent is amended to read as follows (added language is underlined and in bold, deleted language has a line through it):

**5. Rent.** The annual rental amounts for the Premises ("Rent") shall be as follows:

5.1. There shall be no rental amount due for the Premises for the period of twenty-four (24) months from ~~July 1, 2017~~ **April 1, 2018**, through ~~June 30, 2019~~ **March 31, 2020** (the "Improvements Period"). The first monthly rental payment shall be due on ~~July 1, 2019~~ **April 1, 2020**, (the "Rental Commencement Date").

5.2 Beginning on ~~July 1, 2019~~ **April 1, 2020**, the annual Rent for the Premises will be \$84,823 payable in equal monthly installments of \$7,069 plus sales tax, if any, and not exempt.

5.3 **Annual Rent Increase.** Beginning with the rental payment due on ~~July 1, 2020~~ **April 1, 2021**, the Rent for the Premises will increase annually by three percent (3%) of the base rental amount for the prior year.

5.4 **Rent Payments.** Subtenant shall pay Rent in equal monthly installments, plus sales tax, if any, and not exempt, which will be due on the first day of each calendar month.

5.5 **Security Deposit.** The security deposit shall be \$6,468, together with first and last month's Rent of \$7,069 per month, for a total of \$20,606, plus sales tax, if any, and not exempt (the "Security Deposit"). The Security Deposit shall be paid on or before ~~June 1, 2017~~ **April 1, 2018**.

8. Section 28. Miscellaneous Provisions is amended to read as follows (added language is underlined and in bold, deleted language has a line through it):

~~**28.1 Inspection Period.** Subtenant shall have thirty (30) days following the execution of this Sublease and receipt of the complete due diligence package in the form of a CD to perform an inspection of the Premises and related documentation in order to ensure suitability of the Premises for Subtenant’s intended investment, which shall include ensuring proper zoning to operate as a brewery with a taproom (CMB manufacturing license with a retail license to sell beer (and wine, if Subtenant so desires) for on and off site consumption). During the Inspection Period, the CRA will assist the Subtenant in obtaining a determination from the City that the Premises currently comply with all necessary requirements for the use stated herein so as not to require a new HVAC system or handicap ramp for the rear exit. Subtenant agrees to limit its occupancy to less than 50 in order to achieve the above. If such assurance is not provided in writing by the City’s building department and planning and zoning department during the Inspection Period, the Inspection Period may be extended by the Subtenant by giving notice to the CRA in writing that it wishes to extend the Inspection Period until such time as such assurance is provided by the City departments but not longer than 120 days.~~

**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**

\_\_\_\_\_

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

Lamar Fisher, Chairman

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

ATTEST:

\_\_\_\_\_

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

\_\_\_\_\_  
Marsha Carmichael, Secretary

**EXECUTIVE DIRECTOR:**

\_\_\_\_\_

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

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

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

**“Subtenant”:**

Signed, Sealed and Witnessed  
In the Presence of:

**ATLANTIC HOSPITALITY GROUP III, LLC,**  
a Florida limited liability company

\_\_\_\_\_

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

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

Print Name: Brian Baer

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

\_\_\_\_\_

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

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Brian Baer. He is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY’S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**EXHIBIT A**

**Project Schedule  
11 NE 1st St.**

<b>Description of Event</b>	<b>Due Date</b>
Submit for Building Permit	4/1/2019
Obtain Building Permit	8/1/2019
Notice of Commencement	9/1/2019
Temporary Certificate of Occupancy or Certificate of Completion	4/1/2020