

**POMPANO BEACH
COMMUNITY REDEVELOPMENT AGENCY**

Meeting Date: April 17, 2018

Agenda Item 7

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 A LEASE BETWEEN THE CRA AND TILES OF POMPANO INC FOR PROPERTY LOCATED AT 119 S. FEDERAL HIGHWAY, POMPANO BEACH, FLORIDA 33062; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

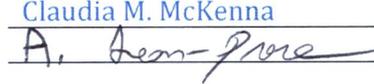
This item is a companion item to the purchase of the property located at 119 S. Federal Highway. The Seller of the property currently has a month-to-month arrangement with the tenant, Tile of Pompano Inc. If purchased, staff is recommending the CRA keep the tenant and enter into a Lease Agreement at closing. This lease will be for a two year period with the option to terminate the lease with a 90 day notice after the first year. Approval of the agenda item will ensure a Pompano Beach business stays intact and provides a more stable status as tenant with an agreement.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

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

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	AUTHORIZED SIGNATURE OR ATTACHED MEMO NUMBER

- CRA Executive Director
- CRA Attorney
- Finance Director


Claudia M. McKenna

A. Dem-Prova

ACTION PREVIOUSLY TAKEN BY CRA BOARD:

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



P. O. Drawer 1300
Pompano Beach, FL 33060

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

MEMORANDUM

Date: March 20, 2018

To: Pompano Beach CRA Board

From: Adriane Esteban, Project Manager

Subject: 119 S. Federal Hwy. Lease Agreement

This is a companion item to the acquisition item regarding the property located at 119 S. Federal Highway. The Seller of the property has a month-to-month arrangement with the current tenant, Tiles of Pompano Inc. CRA staff is recommending the current tenant remain in the building even after the CRA becomes the new property owner by entering into a lease agreement with the CRA. The lease agreement executed at closing by the CRA. The terms of the lease agreement are as follows:

- The lease term shall be for two years from the closing date
- After the first year, the CRA shall have the option to terminate the lease with a 90 day written notice
- Rent for the property is \$3,000 plus tax (current rent rate)
- Security deposit is \$3,000 plus first and last month's rent and any applicable sales tax
- Tenant shall be responsible for maintenance and repair of the interior and exterior of the Premises

The approval of this agenda item will enable a long-time Pompano Beach business to remain in their current location and also provides a more stable status as tenant with a lease agreement instead of a just month-to-month arrangement.

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY (“CRA”) APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A LEASE BETWEEN THE CRA AND TILES OF POMPANO INC FOR PROPERTY LOCATED AT 119 S. FEDERAL HIGHWAY, POMPANO BEACH, FLORIDA 33062; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. The Lease between the Pompano Beach Community Redevelopment Agency (CRA) and Tiles of Pompano Inc for property located at 119 S. Federal Highway, Pompano Beach, FL 33062, a copy of which Lease 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 Lease.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2018.

LAMAR FISHER, CHAIRPERSON

ATTEST:

MARSHA CARMICHAEL, SECRETARY

LEASE AGREEMENT

This Lease Agreement (“Lease”) 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 **TILES OF POMPANO INC**, a Florida profit corporation, whose address is 119 S. Federal Highway, Pompano Beach, Florida 33062, (“Tenant”).

Recitals

WHEREAS, Tenant desires to lease certain property in the City of Pompano Beach, Florida (“City”), for use as a tile showroom, office, and other related uses.

WHEREAS, CRA is the owner of a certain parcel of real property in the City, and is willing to rent property to Tenant on the terms and conditions set forth in this Lease.

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

1. The above recitals are true and correct and are incorporated herein.
2. **Lease of Property.** The CRA does hereby lease to Tenant, and Tenant rents from the CRA, the following described commercial property: 4,425 square feet building located at 119 S. Federal Highway, Pompano Beach, Florida 33062 (collectively, the “Premises”). Tenant acknowledges that it is leasing the Premises in “as-is” condition. Tenant 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. **Lease Term.** The initial term (“Initial Term”) of this Lease shall commence on the day of the CRA closing on the property (Commencement Date), and end at midnight two years after the commencement date.
4. **Rent.** The annual rental amounts for the Premises (“Rent”) shall be as follows:
 - 4.1 Beginning on the Commencement Date, the Rent for the Premises will be payable in equal monthly installments of \$3,000 plus sales tax, if any, and not exempt.
 - 4.2 **Rent Payments.** Tenant 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.
 - 4.3 **Security Deposit.** The security deposit shall be \$3,000, together with first and last month’s Rent of \$3,000 per month, for a total of \$9,000 plus sales tax, if any, and not exempt (the “Security Deposit”). The Security Deposit shall be paid on or before the date of closing.
 - 4.4 **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 Lease.
5. **Notice to Terminate.** After the first year of this Lease, this lease may be terminated with notice

and without cause by the Landlord by providing a ninety (90) day written notice upon the party (Notice to Terminate).

- 6 **Taxes and Assessments.** Owner 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 Lease. Tenant shall be responsible for payment of any taxes levied against the personal property and trade fixtures of Tenant located in and about the Premises.
- 7 **Insurance.** Tenant shall carry commercial general liability insurance in an amount of not less than \$1 million dollars per person, per occurrence, naming the CRA and City of Pompano Beach (City) as Additional Insureds under such Policy. Tenant is encouraged, but not required to carry plate glass insurance if keeping the existing storefront. CRA and City will not pay for any broken storefront glass.
- 8 **Tenant's Maintenance Obligation.** Tenant 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 Tenant improvements, at its sole cost and expense, except to the extent that this is inconsistent with subparagraph 8.4 below. Tenant 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. Tenant 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.
 - a. **Windows.** Tenant shall obtain and pay for the regular cleaning of the exterior windows.
 - b. **Pest Control.** Tenant 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.
 - c. **Janitorial.** Tenant 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.
 - d. **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).
 - e. **Trash Management.** Tenant shall be responsible for its own trash collection.
- 9 **Utilities.** Tenant 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, Tenant will reimburse the CRA within ten days after receipt of the invoice or utility bill from the CRA. Tenant will promptly arrange for such utilities to be billed directly to Tenant. Tenant will pay all amounts due directly to the utility company prior to delinquency.

- 10 **Use of Premises.** Tenant shall use the Premises for the operation of a tile showroom, office, as well as other similar ancillary and related uses as allowed by City code and Applicable Laws. No other use of the Premises is permitted under this Lease without the CRA's express written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant 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. Tenant, at its expense, shall procure and maintain all governmental licenses or permits required for the proper and lawful conduct of Tenant's use of the Premises.
- 11 **Parking.** Tenant shall have access to the parking spaces on the Property during the Term. Such access is on a first-come, first-served basis.
- 12 **Improvements.** Tenant 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. Tenant shall be responsible for obtaining all permits required for the Improvements. Tenant 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 Tenant which are permanently attached to the Premises will become the property of the CRA and shall remain on the Premises at the end of the Lease Term. Tenant will have the right to remove any moveable furniture, fixtures and equipment at the end of the Term. In addition, Tenant 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 Tenant, as long as Tenant repairs any damage caused by the removal of such equipment.
 - a. **CRA's Cooperation in Applications.** The CRA agrees to the joinder in and execution of any permit applications, consents, or other documents required in connection with the construction or installation of any Improvements by Tenant. The CRA agrees to provide signatures for the signing of any required documents within fifteen days after receipt of the request from Tenant and the document to be signed.
 - b. **Signage.** Tenant 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 Laws.
- 13 **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 Tenant. 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.
- 14 **Ownership; Peaceful Enjoyment; Surrender of Premises.** The CRA represents and warrants that it has an ownership interest in the Premises. The CRA will warrant and defend Tenant's right to the peaceful possession and enjoyment of the Premises during the Term of this Lease. At the end of the Term, Tenant will surrender the Premises in clean condition and good repair, normal wear and tear excepted. No surrender of the Premises by Tenant prior to the end of the Term of this Lease will be valid unless accepted by the CRA in writing.
- 15 **Accidental Damage or Injury.** The CRA and the City shall not be liable for any damage to property, or any injury to persons, sustained by Tenant or others, caused by conditions or activities on the Premises. Tenant shall carry insurance insuring the CRA and the City against any claims of the types and in the amounts stated in Exhibit "B" attached hereto and made a part hereof.

- 16 **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 Tenant (provided that Tenant is not at fault for the damage) shall have the right to terminate the Term of the Lease 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 Lease shall terminate, and rent shall be payable, up to the date of destruction as if such date were the date set forth in the Lease. If Tenant exercises the option to terminate the Lease, Tenant 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 Tenant 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, Tenant shall be bound by this Lease, 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 Tenant shall bear to the whole of the Leased premises. In the event that neither party terminates the Lease pursuant to the above portion of this paragraph, CRA's repairs must be complete within six (6) months following the destruction, or Tenant shall have the option to terminate this Lease within twenty (20) days after the expiration of the six (6) month period.
- 17 **Liens.** Tenant shall keep the Premises free and clear of all liens arising out of any work performed, material furnished or obligations incurred by Tenant.
- 18 **Laws and Ordinances.** Tenant agrees to comply with all applicable state statutes, Broward County and City ordinances, and any safety requirements of all federal, state and local governments. Tenant shall maintain all required licenses from governmental agencies in full force and effect during the term of this Lease.
- 19 **Indemnification.** Tenant will indemnify and hold harmless the CRA, the City, 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, 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 Tenant or its employees, agents, guests, and invitees; or (b) any failure by Tenant or its employees, agents, guests, and invitees to comply with all Applicable Laws.
- a. **Lawsuits.** If any lawsuit or proceeding is brought against the CRA, the City, , 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 Tenant, its agents, employees, guests and invitees, Tenant agrees that Tenant or any other person on the premises with Tenant's consent will defend the CRA and the City in such lawsuit or proceeding, and pay whatever judgments may be recovered against the CRA, the City, 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.
- b. **Limitation.** Nothing in this Lease 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.

- c. **Glass Damage.** In case of damage to glass caused by Tenant, or its agents, employees, guests or invitees in the Premises, Tenant agrees to replace the glass with glass of the same kind, size, and quality as quickly as possible at Tenant's expense.

20 Defaults and Remedies.

- a. **Events of Default.** The occurrence of any one or more of the following events shall constitute a Default under this Lease:
 - i. **Failure by Tenant to pay Rent.** If any Rent due under this Lease 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 Tenant and recover from Tenant at the end of the Term the difference between the Rent specified in this Lease and the Rent received on the re-leasing or renting.
 - ii. Failure by either party to observe or perform in any material respect any covenant, obligation or agreement contained in this Lease.
 - iii. The filing by Tenant of a petition to have Tenant 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 Tenant's assets where such possession is not restored to Tenant within ninety (90) days of such appointment.
 - iv. The material breach of any representation or warranty by either Party contained in this Lease 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.
 - b. **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.
 - c. **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.
- 21 **No Waiver.** The exercise by either party to this Lease of any right or remedy under this Lease will not be a waiver of or preclude the exercise of any other right or remedy afforded such party by this Lease 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 Lease or to exercise any remedy, privilege, or option conferred by this Lease 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 Tenant 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 Lease, 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 Lease, or of any of either party's rights, remedies, privileges, or options under this Lease, will be considered to have been made unless made by such party in writing.

22 Assignment and Subletting. This Lease may not be assigned, sublet, or subleased without the express written consent and approval of the CRA.

23 Termination and Surrender

A. Upon termination or surrender of the lease with the CRA:

1. Tenant shall surrender the Premises on or before the last day of the Term of this Lease.
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 Lease.
3. Tenant shall, at the expiration of this Lease, surrender the keys to the Premises to the CRA.

B. If Tenant shall surrender the Premises at the election of the Tenant, the liability for all duties and obligations required of Tenant shall continue until the surrender has been accepted by the CRA in writing.

24 Address for Payments and Notices

- a. **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 Lease, unless the CRA changes the address by written notice to Tenant.
- b. **Notices to Tenant.** Notices to Tenant shall be mailed or delivered to the Premises and to Tenant's address set forth on the first page of the Lease, unless the Tenant changes the address by written notice to CRA.
- c. **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.

25 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.

26 Miscellaneous Provisions.

- a. **Captions.** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of the sections or articles of this Lease or affect this Lease in any way.
- b. **Governing Law.** This Lease will be governed by the laws of the state of Florida, as to both interpretations and performance.

- c. **Entire Agreement.** This Lease sets forth all of the promises, agreements, conditions, and understandings between the CRA and Tenant relative to the Premises. There are no other promises, agreements, conditions, or understandings, either oral or written, between them. No amendment, change, or addition to this Lease will be binding on the CRA or Tenant unless in writing and signed by both of them.
- d. **Successors and Assigns.** The terms of this Lease will be binding on the respective successors, representatives, and assigns of the parties.

IN WITNESS WHEREOF, the CRA and Tenant have duly executed this Lease Agreement on _____, 2018.

“CRA”:

Signed, Sealed and Witnessed
In the Presence of:

**POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY**

Print Name: _____

By: _____
Lamar Fisher, Chairman

Print Name: _____

ATTEST:

Marsha Carmichael, Secretary

EXECUTIVE DIRECTOR:

Print Name: _____

By: _____
Print Name: _____

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by LAMAR FISHER as Chairman of the Pompano Beach Community Redevelopment Agency, who is personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by Marsha Carmichael, Secretary of the Pompano Beach Community Redevelopment Agency, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ He/She 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

Signed, Sealed and Witnessed
In the Presence of:

Hilde Bethal
Print Name HILDE BETHAL

Caleb Cogburn
Print Name Caleb Cogburn

"TENANT":

TILES OF POMPANO INC
a Florida profit corporation

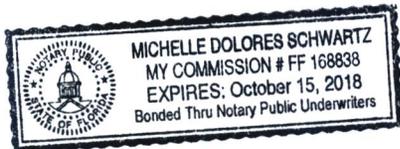
By: Jill Uhl
Print Name: Jill Uhl
Title: OWNER

STATE OF FLORIDA
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 16 day of March,
2018, by Jill Uhl (name) as Owner (title)
of TILES OF POMPANO, INC., who are personally known to me or who has produced
personally (type of identification) as identification.

Michelle Schwartz
NOTARY PUBLIC, STATE OF FLORIDA

NOTARY'S SEAL:



Michelle Schwartz
(Name of Acknowledger Typed, Printed or Stamped)

FF 168838
Commission Number