

Attachment E to Agenda File No. 2018-0256

THIRD AMENDMENT TO SUBLEASE AGREEMENT

THIS THIRD AMENDMENT TO SUBLEASE AGREEMENT (“Third Amendment”) is made and entered into as of May 1, 2018 (the “Effective Date”) by and between PORT CORONADO ASSOCIATES, LLC, a California limited liability company) the “Landlord”) and CHEESE WINE DESSERTS, LLC, a California limited liability company dba Candelas on the Bay (the “Tenant”) (collectively the “Parties”) who agree as follows:

RECITALS

This Third Amendment is made with reference to the following facts:

A. Landlord and Tenant entered into that certain written Sublease dated October 24, 2006, for certain Premises located at Coronado Ferry Landing, as modified by that certain written First Amendment dated February 15, 2007, and that certain written Second Amendment dated December 12, 2008, the provisions of which, while not attached hereto, are nonetheless incorporated herein by this reference (collectively the “Sublease”). Words and phrases as used in this Third Amendment shall have the same meaning as set forth in the Sublease except as otherwise set forth herein.

B. The Parties intend to amend the Sublease as set forth in this Third Amendment.

C. The Parties acknowledge that the effectiveness of this Amendment is subject to the consent of the San Diego Unified Port District, and Landlord shall seek said consent and inform Tenant when such consent is received.

NOW, THEREFORE, the Parties amend the Sublease as follows:

AMENDMENTS

1. Landlord acknowledges Tenant has entered an agreement with Blue Bridge Hospitality Management, LLC (“BBH”) pursuant to that certain April 25, 2018 Management Agreement (the “BBH Management Agreement”).

2. For a period commencing on the Effective Date and expiring on the earlier to occur of (a) the date that BBH is no longer managing the operations of Tenant’s business on a full-time basis; (b) the date the BBH Management Agreement is terminated; (c) the date that Tenant breaches or is in default under any provision of the Sublease or the BBH Management Agreement; or (d) the later to occur of April 30, 2019, or, if BBH exercises the Purchase Option contained in the BBH Management Agreement, the closing of the assignment of the Sublease (“BBH Period”) Landlord agrees that Tenant’s obligations to pay Base Rent and Percentage Rent under the Sublease shall be amended as follows:

2.1 Base Rent under Paragraph 4.1.1 of the Sublease shall remain \$19,533.00 per month, subject to adjustment at the end of the current Lease Year as would otherwise occur in accordance with the terms of the Sublease. However, Tenant’s obligation to pay Base Rent shall be deferred, without penalty or interest, such that \$5,000 shall be paid on the first of each successive month and the remainder shall be due in accordance with section 2.3 of this Third Amendment. This deferral shall have no impact on the calculation of Percentage Rent due under the Sublease, which shall still be made on the basis of the full amount of Base Rent due under the Sublease.

2.2 Percentage Rent under Paragraph 4.1.4 of the Sublease shall be equal to the amount by which Eight percent (8%) of Tenant's Lease Year-to-date Gross Sales (as defined in Paragraph 4.4) exceeds the Lease Year-to-date Base Rent paid to Landlord.

2.3 The Annual Adjustment under Paragraph 4.1.6 shall be amended such that the current Lease Year calculation shall be based on the period of January 1, 2018 through December 31, 2018 ("2018 Calendar Year") and (a) Landlord shall be entitled to receive percentage rent equal to the amount by which Six percent (6%) of Tenant's Gross Sales (as defined in Paragraph 4.4) for the 2018 Calendar Year exceed the Base Rent due to Landlord for the 2018 Calendar Year of \$234,396.00; and (b) any underpayment of Base Rent shall be due on the earlier to occur of the expiration date of the BBH Option Period pursuant the events described in Sections 2(a), (b) or (c) above, and July 15, 2019.

3. Landlord acknowledges that the BBH Management Agreement contains a Purchase Option that permits BBH or an entity formed by BBH (the "Purchasing Entity") to purchase the assets of Tenant's business (the "Purchase Option"). Provided the Purchasing Entity is BBH or an Affiliate of BBH, as defined below, Landlord hereby provides its consent to an assignment of the Sublease to such Purchasing Entity, provided, however, that Tenant satisfies all conditions necessary pursuant to section 13 and elsewhere in the Sublease related to such an assignment. Upon satisfaction of such conditions to assignment, Landlord will execute an assignment of the Sublease assigning the Sublease to such a Purchasing Entity pursuant to the same terms as are contained in the Sublease (including as modified by this Third Amendment), and the Sublease assignment shall be effective on the date escrow closes for BBH's and/or the Purchasing Entity's purchase of Tenant's assets. BBH shall provide written notice to Landlord whether it intends to exercise the Purchase Option at least 180 days before the one year anniversary of the Effective Date of this Third Amendment. Affiliate of BBH means any entity directly or indirectly, controlling, controlled by, or under common control with BBH. The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through membership, ownership of voting securities, by contract, or otherwise. Effective only upon the closing of such an assignment to an Affiliate of BBH, the Sublease shall be amended such that:

3.1 Base Rent under Paragraph 4.1.1 of the Sublease shall remain as currently required by the Sublease, subject to adjustment at the end of each Lease Year as would otherwise occur in accordance with the terms of the Sublease. However, Tenant's obligation to pay Base Rent shall be deferred, without penalty or interest, such that \$10,000 shall be paid on the first of each successive month and the remainder shall be due as part of the Annual Adjustment at the end of each Lease Year in accordance with Paragraph 4.1.6 of the Sublease. This deferral shall have no impact on the calculation of Percentage Rent due under the Sublease, which shall still be made on the basis of the full amount of Base Rent due under the Sublease.

3.2 Percentage Rent under Paragraph 4.1.4 of the Sublease shall be equal to the amount by which Eight percent (8%) of Tenant's Lease Year-to-date Gross Sales (as defined in Paragraph 4.4) exceeds the Lease Year-to-date Base Rent paid to Landlord.

4. If BBH or the Purchase Entity exercises the Purchase Option, Landlord agrees that it will present a request for approval of an extension of the Sublease to the Port Board for approval when there are three (3) years or less remaining on the Sublease.

5. Except as otherwise set forth in this Third Amendment, the Sublease shall remain unchanged and in full force and effect.

6. No delay or failure by a party to exercise any right under this Third Amendment, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided. No waiver by any party of any term, provision or condition of this Third Amendment, whether by conduct or otherwise, in any one or more instances, will be deemed to be a further or continuing waiver of any term, provision or condition.

7. Time is of the essence in this Third Amendment and in each provision contained in this Third Amendment.

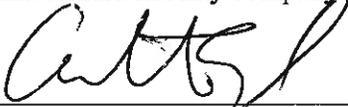
8. This Third Amendment shall not alter or in any way affect the obligations of the personal guarantors of the Sublease, as amended. As a condition to the obligations of Landlord under this Third Amendment each guarantor shall execute the consent and reaffirmation of guaranty below.

9. Each individual executing this Third Amendment on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this Third Amendment on behalf of said entity in accordance with the terms of its operating agreement, and that this Third Amendment is binding upon said entity in accordance with its terms.

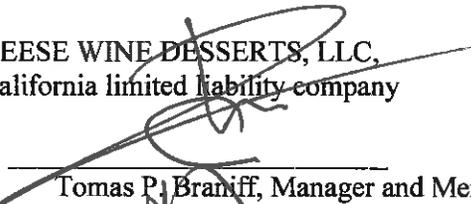
10. This Third Amendment may be signed in one (1) or more counterparts, each of which shall constitute an original, but all of which together shall be one (1) and the same document.

IN WITNESS WHEREOF, the Parties have executed this Third Amendment as of the Effective Date.

PORT CORONADO ASSOCIATES, LLC, a California limited liability company

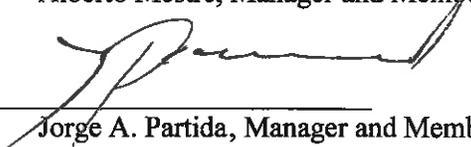
By: 
Arthur E. Engel, Manager

CHEESE WINE DESSERTS, LLC, a California limited liability company

By: 
Tomas P. Braniff, Manager and Member

By: 
Omar A. Gonsenheim, Manager and Member

By: 
Alberto Mestre, Manager and Member

By: 
Jorge A. Partida, Manager and Member

CONSENT AND REAFFIRMATION OF GUARANTORS

By signing below: (1) the undersigned guarantor agrees to this Third Amendment and reaffirms the pre-existing guaranty of the Sublease, as amended; (2) the undersigned guarantor acknowledges and agrees that all obligations under the pre-existing guaranty of the Sublease, as amended, are joint and several obligations; and (3) the undersigned guarantor agrees each such guarantor shall be fully liable under the pre-existing guaranty of the Sublease, as amended, even if another guarantor is not liable for any reason, including the failure of such guarantor to execute this Third Amendment.

By: [Signature]
Jorge A. Partida

By: [Signature]
Alberto Mestre

By: [Signature]
Omar A. Gonsenheim

By: _____
David Kessler

By: [Signature]
Tomas P. Braniff

By: _____
Antonio Lopez Velarde

CONSENT TO AMENDMENT

The undersigned, the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereby consents to the foregoing Third Amendment.

Dated: _____

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Its: _____