



## COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month at 5:30 p.m. in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055. All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 6/9/2017 Meeting Date: 6/15/2017

Name: Joel Foreman Department: County Attorney

Division Manager's Signature:

A handwritten signature in blue ink that reads "Ben Scott".

### 1. Nature and purpose of agenda item:

Approval of Landlord Consent and Assignment of Lease Agreement - Halpatter Brewing, LLC and First Federal Bank of Florida

### 2. Recommended Motion/Action:

### 3. Fiscal impact on current budget.

This item has no effect on the current budget.

**MEMORANDUM**

To: Commissioners Ron Williams, Rusty DePratter, Tim Murphy, Bucky Nash, and Everett Phillips

CC: Ben Scott, County Manager

From: Joel F. Foreman, County Attorney

**Re: Halpatter Brewery/Montgomery Building  
“LANDLORD’S CONSENT AND ASSIGNMENT OF LEASE AGREEMENT”**

Date: June 9, 2017

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I was recently contacted by representatives of First Federal Bank of Florida (the “Lender”) regarding their request the Halpatter Brewing, LLC (“Halpatter”), the County’s tenant at the Montgomery Building, assign their lease with the County to the Lender pursuant to a proposed “LANDLORD’S CONSENT AND ASSIGNMENT OF LEASE AGREEMENT”.

Frequently commercial financing will require that a borrower assign its leasehold to the lender as additional security for the loan. In most cases, such an assignment would not create any issue for a Landlord as a defaulting borrower is likely also having trouble making rent payments, so assignment can make good business sense. That is not the case here due to the way the Board entered into its lease with Halpatter.

The Board will recall that the lease with Halpatter was made and entered pursuant to the Board’s broad economic development powers under Fla. Stat. section 125.045, and that the lease was not solicited for competitive bids. Because the Board’s powers were invoked pursuant to that statute, any assignment or agreement to potentially assign the lease must be subject to the same economic development purposes. Through discussions with the Lender’s outside counsel assisting with this transaction, Mitchell Fogel, the agreement has been modified such that no assignment will be permitted without ensuring the new tenant is a viable, board-approved entity whose use of the building will serve an economic development purpose. The Board’s approval should not be unreasonably withheld under the agreement as modified, but if no suitable tenant can be found within a reasonable period of time the Board will have the right to void the lease as illegal and retake possession.

I am recommending approval of this agreement as it is consistent with the legal basis on which the original lease was made, will permit Halpatter to obtain financing in furtherance of its improvements to the Montgomery Building, and serves to protect the County’s interest in using the Montgomery Building for economic development purposes while recognizing the County’s obligation to avoid the lease should its economic development purpose be lost.

## **LANDLORD'S CONSENT AND ASSIGNMENT OF LEASE AGREEMENT**

THIS LANDLORD'S CONSENT AND ASSIGNMENT OF LEASE AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and among **Halpatter Brewing, LLC, a Florida limited liability company** ("Borrower"), whose address is 434 NW Lake Valley Terrace, Lake City, FL 32055, **First Federal Bank of Florida** ("Lender"), whose address is 4705 US Highway 90 W., Lake City, FL 32055; and **Columbia County, Florida, a charter county and political subdivision of the State of Florida** ("Landlord"), whose address is P.O. Box 1529, Lake City, Florida, 32055.

Borrower and Lender have entered into, or are about to enter into, an agreement whereby Lender has acquired or will acquire a security interest or other interest in the "Collateral" (as hereinafter defined). Some or all of the Collateral may be affixed or otherwise be located at the real estate known as 264 NE Hernando Avenue, Lake City, FL 32055 and more particularly described on Exhibit "A" attached hereto and made a part hereof ("Premises").

Borrower leases the Premises from Landlord under the terms of that certain Lease Agreement dated August 4, 2016 ("Lease").

To induce Lender to extend the "Loan" (as hereinafter defined) to Borrower against such security interest in the Collateral and for other valuable consideration, Landlord hereby agrees with Lender and Borrower as follows:

### **1. COLLATERAL DESCRIPTION.**

The word "Collateral" means, individually and collectively, certain of Borrower's personal property in which Lender has acquired or will acquire a security interest including, without limitation, the following specific property:

All equipment, fixtures, and furniture including, but not limited to, the property described in the Security Agreement from Borrower in favor of Lender and includes all replacements and substitutions thereof, as well as all proceeds (including sales and/or insurance proceeds) regarding the Collateral.

### **2. BORROWER'S ASSIGNMENT OF LEASE.**

In connection with the Loan, Borrower will execute and deliver to Lender a *Collateral Assignment of Lessee's Interest in the Lease* ("Collateral Assignment") in favor of Lender, which Collateral Assignment will be recorded in the Public Records of Columbia County, Florida, and which Collateral Assignment encumbers Borrower's rights under the Lease. In connection with the Loan and pursuant to the Collateral Assignment, Borrower will assign to Lender all of Borrower's rights in the Lease as partial security for the Loan. The parties hereto intend that this assignment will be a present transfer to Lender of all of Borrower's rights under the Lease, subject to Borrower's rights to use the Premises and enjoy the benefits of the Lease while not in default on the Loan or Lease. Upon full performance by Borrower under the Loan, this assignment shall be ended, without the necessity of any further action by any of the parties. This assignment includes all renewals of and amendments to the Lease or the Loan, until the Loan is paid in full. No amendments may be made to the Lease without Lender's prior written consent, which shall not be unreasonably withheld or delayed. Lender has the option upon default of the Loan by Borrower to exercise its rights under this Agreement.

### 3. ACKNOWLEDGEMENT OF SECURITY INTEREST AND SUBORDINATION.

Landlord acknowledges that Borrower has granted to Lender a security interest in the Collateral and agrees that the Collateral is and shall remain the personal property of the Borrower at all times, but subject to Lender's rights under the Security Agreement and other Loan documents. Until such time as all amounts due regarding the Loan are repaid in full, Landlord hereby agrees that any and all liens and/or claims Landlord now has or may acquire in or to the Collateral are and will be, at all times, subject and subordinate to Lender's security interest in the Collateral.

### 4. CONSENT OF LANDLORD.

Notwithstanding anything to the contrary in the Lease, Landlord hereby consents to the Collateral Assignment and Lender's recording thereof and to the assignment by Borrower in favor of Lender of Borrower's rights under the Lease. Lender acknowledges and agrees that the Lease has been authorized by the Columbia County Board of County Commissioners as an economic development project pursuant to Florida Statutes section 125.045, and that the Lease would not be authorized as is but for continuing compliance with that statute. Landlord acknowledges and agrees that, upon a default by Borrower regarding the Loan, Lender may, at Lender's option, acquire Borrower's leasehold at a foreclosure sale or by Borrower's assignment. The Landlord and Lender agree ~~and also~~ that Lender ~~has~~'s the right to reassign such leasehold estate pursuant to the Borrower's assignment will be continuously conditioned upon compliance with the statute. ~~(along with right to exercise any options).~~ If Borrower defaults under the Loan, Lender may reassign and or sublease the Lease with the advance consent of the Landlord to ensure compliance with the statute, and Landlord agrees that Landlord's consent to any such reassignment will not be unreasonably withheld, ~~conditioned and/or~~ or delayed. Furthermore, Lender agrees that, should it exercise its rights under any assignment of the Lease, Lender shall make every reasonable effort to identify an assignee that meets the economic development purposes required by the statute. Lender acknowledges that without a tenant meeting the economic development purposes of the statute the Landlord may, in the discretion of the Columbia County Board of County Commissioners, void the lease as illegal and the Lender shall have no recourse against Landlord in that event; provided, however, that the Board will give Lender written notice of the Board's desire to void the lease, whereupon Lender will have 180 days in which to bring the Premises into compliance with the statute. So ~~as~~ long as Lender has not entered the Premises for the purpose of operating a business, Lender will have no liability under the Lease including, without limitation, liability for rent and other charges due under the Lease. Regardless of whether Lender enters into possession of the Premises for any purpose, Borrower will remain fully liable for all obligations of Borrower as lessee under the Lease. If Lender takes actual possession of the Premises, Lender will cause all payments or performance due under Lease attributable to that period of time in which Lender possesses the Premises to be made to Landlord. If Lender later reassigns the Lease or vacates the Premises, Lender will have no further obligation to Landlord. Landlord agrees that there will be no modifications ~~or~~ cancellations of the lease without the Lender's prior written consent and approval. Notwithstanding anything to the contrary in this Agreement, the use of the Premises must continuously meet the requirements of Florida Statutes Section 125.045, as amended.

### 5. LEASE DEFAULTS.

Both Borrower and Landlord each hereby agree and represent to Lender that, to the best of their respective knowledge, there is no breach or offset existing by any party under the Lease or under any other agreement between Borrower and Landlord. Landlord agrees not to terminate the Lease, despite any default by Borrower, without giving Lender written notice of the default and an opportunity to cure the default within a period of sixty (60) days from the receipt of such default notice. If the default is one that cannot reasonably be cured by Lender (such as insolvency, bankruptcy, or other judicial proceedings against Borrower), then Landlord will not terminate the Lease so long as Landlord receives all sums due under the

Lease for the period during which Lender is in possession of the Premises, or so as long as Lender reassigns the Lease to a new lessee reasonably satisfactory to Landlord.

## **6. INSURANCE; CONDEMNATION.**

Landlord and Borrower each hereby agrees that until the Loan is fully repaid, Lender has first priority over any and all insurance proceeds resulting from damage to any improvements to the Premises to the extent of any amounts due under the Loan. Landlord and Borrower each hereby further agrees that until the Loan is fully repaid, Lender has first priority over any and all condemnation proceeds received and to be received to the extent of any amounts due under the Loan.

## **7. ENTRY ONTO PREMISES.**

Landlord and Borrower grant to Lender the right to enter upon the Premises for the purpose of removing the Collateral from the Premises or conducting sales of the Collateral on the Premises. The rights granted to Lender in this Agreement will continue until a reasonable time after Lender receives notice in writing from Landlord that Borrower no longer is in lawful possession of the Premises. If Lender enters onto the Premises and removes the Collateral, Lender agrees with Landlord not to remove any Collateral in such a way that the Premises are damaged, without either repairing any such damage or reimbursing Landlord for the cost of repair.

## **8. NOTICE OF TERMINATION.**

Landlord represents and warrants to Lender that Borrower has complied with all obligations owed to Landlord by Borrower under the Lease including, without limitation, the payment of rent and that no default currently exists thereunder. Landlord agrees to promptly give Lender written and detailed notice of each occurrence of any condition, event or action of Borrower which results in a default under and/or the termination of the Lease, upon receipt of which notice Lender will have a reasonable opportunity to cure each such default.

## **9. REMOVAL OF PROPERTY.**

Lender shall have thirty (30) days after receipt by Lender of notice from Landlord that the Lease has been terminated to remove the Collateral from the Premises; provided, however, with respect to the expiration of the Lease by its own terms (*i.e.*, the term of the Lease is over pursuant to the express provisions of the Lease), Lender shall have ten (10) days after receipt of any notice from Landlord that the Lease has expired to remove the Collateral from the Premises.

## **10. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement: This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement. The covenants of Borrower and Landlord respecting subordination of the claim or claims of Landlord in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any claim or claims to which this Agreement shall apply. Lender need not accept this Agreement in writing or otherwise to make it effective. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA.** If Landlord is other than an individual, any agent or other person executing this Agreement on behalf of

Landlord represents and warrants to Lender that he or she has full power and authority to execute this Agreement on Landlord's behalf. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by Lender. Without notice to Landlord and without affecting the validity of this Consent, Lender may do or not do anything it deems appropriate or necessary with respect to the Loan, any obligors on the Loan, or any collateral for the Loan, including without limitation extending, renewing, rearranging or accelerating any of the Loan indebtedness. In the event of any conflict between any term and/or condition of the Lease and any term and/or condition of this Agreement, the term and/or condition of this Agreement shall control.

## **11. AMENDMENTS.**

This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

## **12. NO WAIVER BY LENDER.**

Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Landlord, shall constitute a waiver of any of Lender's rights or of any of Landlord's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

## **13. SEVERABILITY.**

If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

## **14. DEFINITIONS.**

The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code;

**Agreement.** The word "Agreement" means the Landlord's Consent and Assignment of Lease Agreement including any and all amendments and modifications hereof, together with all exhibits and schedules attached to this Landlord's Consent from time to time.

**Borrower.** The word “Borrower” means Halpatter Brewing, LLC, a Florida limited liability company, and all other persons and entities signing documentation in favor of Lender regarding the Loan in whatever capacity.

**Collateral.** The word “Collateral” means all of Borrower’s right, title, and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Landlord.** The word “Landlord” means Columbia County, Florida, a charter county and political subdivision of the State of Florida, and is used for convenience purposes only. Landlord’s interest in the Premises may be that of a fee owner, lessor, sublessor or lienholder, or that of any other holder of an interest in the Premises, which may be, or may become, prior to the interest of Lender.

**Lender.** The word “Lender” means First Federal Bank of Florida, its successors and assigns.

**Loan.** The word “Loan” means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing and however evidenced.

**Premises.** The word “Premises” means the real property located at 264 NE Hernando Avenue, Lake City, FL 32055.

**Related Documents.** The words “Related Documents” mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

**Lease.** The word “Lease” means that certain Lease Agreement dated August 4, 2016 by and between Landlord and Borrower.

## 15. ACKNOWLEDGMENT.

BORROWER AND LANDLORD ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT AND AGREE TO ALL OF ITS TERMS AND CONDITIONS.

THIS AGREEMENT IS DATED AS OF THE DATE SET FORTH ABOVE.

Signed, sealed and delivered in the presence of:

**BORROWER:**

**Halpatter Brewing, LLC, a Florida limited liability company**

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

By: \_\_\_\_\_  
Christopher Candler, Manager

By: \_\_\_\_\_  
Jonathan Frazier, Manager

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

By: \_\_\_\_\_  
Jeremy Gable, Manager

STATE OF FLORIDA )  
 ):  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned authority duly authorized to take oaths and acknowledgements personally appeared Christopher Candler, as Manager of Halpatter Brewing, LLC, a Florida limited liability company. He/She is personally known to me or has produced a driver's license as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida

STATE OF FLORIDA )  
 ):  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned authority duly authorized to take oaths and acknowledgements personally appeared Jonathan Frazier, as Manager of Halpatter Brewing, LLC, a Florida limited liability company. He/She is personally known to me or has produced a driver's license as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida

STATE OF FLORIDA )



COUNTY OF \_\_\_\_\_ )  
 ) :ss

BEFORE ME, the undersigned authority duly authorized to take oaths and acknowledgements personally appeared Jeremy Gable, as Manager of Halpatter Brewing, LLC, a Florida limited liability company. He/She is personally known to me or has produced a driver's license as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida

Signed, sealed and delivered in the presence of:

**First Federal Bank of Florida**

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

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

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

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

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

STATE OF FLORIDA )  
 ) :ss  
COUNTY OF LEON )

BEFORE ME, the undersigned authority duly authorized to take oaths and acknowledgements personally appeared \_\_\_\_\_, as \_\_\_\_\_ of **First Federal Bank of Florida**. He/She is personally known to me or has produced a driver's license as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida

Signed, sealed and delivered in the presence  
of:

**LANDLORD:**

**Columbia County, Florida, a charter county and  
political subdivision of the State of Florida**

\_\_\_\_\_

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

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

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

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

\_\_\_\_\_

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

STATE OF FLORIDA )  
 )  
 )ss  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned authority duly authorized to take oaths and acknowledgements personally  
appeared \_\_\_\_\_, as \_\_\_\_\_ of Columbia County, Florida,  
a charter county and political subdivision of the State of Florida. He/She is personally known to me or has  
produced a driver's license as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of  
\_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public, State of Florida

