



**Agenda**  
**City of Charlevoix Downtown Development Authority Meeting**  
**Thursday, December 14, 2023 - 12:00 PM**  
**Council Chambers, City Hall**

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- 1. Call to Order**
- 2. Roll Call**
- 3. Inquiry Regarding Conflicts of Interest**
- 4. New Business**
  - A. Sub-Lease Agreement for Commercial Space  
Lindsey Dotson, DDA Director
- 5. Public Comment**
- 6. Request for Future Agenda Items**
- 7. Adjourn**

**Persons with disabilities who need an accommodation to fully participate in these meetings should contact the City Clerk's Office at 231-547-3250 or by email [clerk@charlevoixmi.gov](mailto:clerk@charlevoixmi.gov). A 24-hour notice may be needed for certain accommodations. An attempt will be made to grant all reasonable accommodations requests.**

# Charlevoix Downtown Development Authority

## New Business

**Title:** Sub-Lease Agreement for Commercial Space

**Date:** December 14, 2023

**Presented By:** Lindsey Dotson, DDA Director

### **Background:**

In April 2023 during the regular meeting of the DDA Board, a motion was passed to give the Executive Committee permission to act regarding sublease agreements for the 109 Bridge Park Drive property occupied by J. Bird Provisions and to act within 72 hours on all things being considered. (Minutes can be [read here for reference](#)).

I've attached a draft sublease agreement between Lost Cellars Winery and J. Bird Provisions for a tasting room location to be within J. Bird. The draft also includes comments from the City Attorney's office that have been approved by both interested parties.

### **Recommendation:**

Motion to approve the sub-lease agreement between J.bird Provisions, LLC and Lost Cellars, Inc. commencing on December 15, 2023, for 24 months.

### **Attachments:**

1. Sub Lease - J.bird and Lost Cellars



charge have not been paid in full by the 15th day of said month, Sub-Lessor shall have the right to declare this Sub-Lease immediately terminated without notice to Sub-Lessee, and Sub-Lessor may put out Sub-Lessee and its property from the Premises and Sub-Lessor shall have no further obligation to Sub-Lessee hereunder.

**b. Operating Expenses.** Sub-Lessee's pro rata share of the Common Area Maintenance expenses ("CAM") is INCLUDED in the monthly rent due to Sub-Lessor. For the purposes of this Paragraph, CAM is limited to real estate taxes levied on the Property, Sub-Lessor's property insurance premiums, trash removal as has been provided, and snow and debris removal from the sidewalks on the property. Sub-Lessee shall not be obligated to pay any increases in any taxes associated with the sale or transfer of the Property if after the date of this Sub-Lease that results in an increase in the taxable value of the Property. Sub-Lessee shall not be obligated to pay any increases in any of Sub-Lessor's insurance premiums associated with any change in the use of, or activity on, the Property by Sub-Lessor or Landlord or any other tenant of the Property. Sub-Lessee shall be responsible for its own insurance premiums, liquor license fees and associated expenses, and all other expenses of Sub-Lessee's business operations. Sub-Lessee is responsible for its own sales tax liability for its products sold at the Premises.

**c. Utilities.** Sub-Lessor is responsible for all utilities.

4. **Security deposit.** Sub-Lessee and Sub-Lessor have agreed that a security deposit is not required.
5. **Lease.** The current Lease ("Lease") between Sub-Lessor and **Landlord**, Charlevoix Downtown Development Authority, is explicitly incorporated herein by reference, and to the extent any provision of this Sub-Lease directly conflicts with any term of the Lease, the Lease shall control. Sub-Lessor shall provide a copy of the Lease to Sub-Lessee and Sub-Lessee agrees to be bound by its terms as incorporated herein.
6. **Signs.** Sub-Lessor reserves the exclusive right to the exterior of the Building, and Sub-Lessee shall not construct, place, or paint any sign or awning or other improvement or apparatus on the exterior of the Building without the prior written consent of Sub-Lessor.
7. **Acceptance of occupancy.** Sub-Lessee shall commence occupancy of the Premises on the Commencement Date and begin payment of rent as called for by this Sub-Lease. Sub-Lessee will have the opportunity to inspect the Premises and common areas, find them in good order and repair, and acceptable for Sub-Lessee's intended use of the Premises and agrees that moving into the Premises constitutes acceptance of the Premises and common areas as-is.
8. **Option to renew.** Sub-Lessee and Sub-Lessor may agree to renew this Sub-Lease for additional terms, to be determined and agreed upon in a writing signed by them at least 30 days before the expiration of the initial term of the Sub-Lease. Such renewal shall constitute a modification of this Sub-Lease and shall continue upon the same terms and conditions as stated herein except for any terms explicitly amended in a writing signed by Sub-Lessee and Sub-Lessor. All renewal terms shall be subject to the Lease term; if the Lease is terminated or expires for any reason during this Sub-Lease or any renewal term thereof, this Sub-Lease shall also terminate or expire. If the termination or expiration of the Lease occurs, Sub-Lessee shall not have any cause of action against Sub-Lessor and shall not be entitled to any monetary or other damages from Sub-Lessor unless such termination or expiration is caused by the intentional wrongdoing or gross negligence of Sub-Lessor.

- 9. Use.** The Premises are to be used and occupied by Sub-Lessee for its wine sampling and retail operations and for no other purpose without the prior written consent of Sub-Lessor. No activity shall be conducted on the Premises that does not comply with local laws, ordinances, and regulations.
- 10. Expenses.** Sub-Lessor shall pay all costs and expenses incurred in operating and managing the Building, including maintenance and repair of the interior space leased to Sub-Lessee, except as stated in Paragraph 11 below.
- 11. Repairs and maintenance.** Sub-Lessor and/or Landlord shall be responsible for any repairs and maintenance required in the Building according to the terms of the Lease, and Sub-Lessee does not assume any such obligations. However, if any such maintenance, repairs, or replacement for the Building or Premises becomes necessary due to the negligence or intentional acts of Sub-Lessee or its employees, agents, licensees, invitees, or guests, it shall be the responsibility of Sub-Lessee to perform or cause to be performed such maintenance, repairs, or replacement. The Premises shall be kept in good and safe condition, including the windows, the electrical fixtures, the plumbing fixtures, and any other system or equipment within the Premises. Sub-Lessor and/or Landlord shall also perform all outdoor maintenance and repairs, including maintaining the sidewalk adjacent to the Premises in good condition and free of debris, snow, and ice, pursuant to their respective obligations as stated in the Lease, and Sub-Lessee shall have no responsibility therefor.
- 12. Surrender of Premises.** Sub-Lessee shall surrender the Premises to Sub-Lessor at the expiration or termination of this Sub-Lease broom clean and in the same condition as at the Commencement Date, excepting normal wear and tear.
- 13. Holding over.** It is hereby agreed that in the event of the Sub-Lessee herein holding over after the natural expiration of this Sub-Lease, unless the Sub-Lease has been terminated by default or action of the Parties or a Party, thereafter the tenancy shall be from month-to-month in the absence of a written agreement to the contrary. The monthly rent in this case shall be in the amount of \$350.00 per month. This section shall not apply if the Sub-Lease is terminated by agreement or default. Upon a month-to-month tenancy, Sub-Lessor may terminate the tenancy by providing 30 days' written notice to Sub-Lessee of the termination of the month-to-month tenancy, and Sub-Lessor shall vacate the premises before the expiration of the 30 days. Sub-Lessee's failure to vacate as stated in this paragraph shall entitle Sub-Lessor to remove and put out Sub-Lessee and its property, and Sub-Lessor shall not be liable to Sub-Lessee for any damages or other claims in such event.
- 14. Insurance and indemnification.** The insurance provisions of the Lease are explicitly incorporated herein by reference and shall control in the event of a conflict with the terms of this section, except that Sub-Lessee's obligations hereunder will not be excused by and will continue in full effect notwithstanding any conflict between the Lease and Sub-Lease as to Landlord's or Sub-Lessor's obligations. Sub-Lessor shall maintain all coverage required of it under its Lease with Landlord, and it is expected by both Sub-Lessor and Sub-Lessee that Landlord shall maintain all coverage required of it under the Lease.

Sub-Lessee shall indemnify and hold Sub-Lessor and Landlord harmless from any liability for damages to any person or property in, on, or about the Leasehold Realty resulting from Sub-Lessee's business operations and any act or omission of Sub-Lessee or its agents, successors, assigns, employees, servants, licensees, invitees, or guests, and except for any acts or omissions of Sub-Lessor, agrees that it will at all times during the term hereof, carry and maintain hereunder, for the

mutual benefit of Landlord, Sub-Lessor, and Sub-Lessee, naming Landlord, Sub-Lessor, and the City of Charlevoix as Additional Insureds, a general public liability insurance policy against claims for personal injury, sickness or disease, including death and property damage in, on or about the Building and surrounding Premises adjacent thereto. Such insurance shall afford protection to the limit of not less than \$1,000,000 with respect to (i) each person, (ii) any one occurrence causing bodily injury or death, and (iii) property damage. Sub-Lessee shall furnish Landlord and Sub-Lessor with a certificate or certificates of such insurance policy or policies.


Sub-Lessee shall further obtain and maintain insurance coverage for all of its own personal and business assets located on the Premises, and shall maintain a Liquor Liability insurance policy as required by the State of Michigan, in an amount and issued by a company approved by the State of Michigan Liquor Control Board, which names Landlord, Sub-Lessor, and the City of Charlevoix as Additional Insureds. Sub-Lessee indemnifies and holds harmless Sub-Lessor and Landlord from all liability or damages to any person or property resulting from the consumption and/or sale of alcohol on the Premises.

All insurance policies required hereunder shall be written with reputable companies authorized to sell insurance products in the State of Michigan. Sub-Lessee shall provide to Landlord and Sub-Lessor copies of all policies endorsed as "Premium Paid" by the issuer or accompanied by satisfactory evidence that the premium for such policy is paid in full at the commencement of this Sub-Lease and thereafter not less than thirty (30) days prior to the expiration of any then-current policy. All insurance policies required hereunder must provide for notice by the insurance company to Landlord and Sub-Lessor of any termination or cancellation of such policy at least 30 days in advance of that event. Sub-Lessee agrees to provide advance notice of insurance cancellation or termination to Landlord and Sub-Lessor for all policies required to be maintained by Sub-Lessor herein. For all occurrences in and around the Premises, Sub-Lessee's insurance shall be deemed primary as to Sub-Lessee's property and business operations and as to all acts and omissions of Sub-Lessee's agents, successors, assigns, employees, servants, licensees, invitees, or guests, and as to all consumption and sale of alcohol on the Premises.

In case any action or proceeding shall be commenced against Landlord and/or Sub-Lessor growing out of any such loss, cost, damage, or expense, Landlord and/or Sub-Lessor may give written notice of same to Sub-Lessee and thereafter Sub-Lessee shall assume and discharge all obligations to defend such action or proceeding, and save and keep Landlord and Sub-Lessor harmless from all expenses, legal fees, costs, liabilities, judgments, and executions in any manner growing out of, pertaining to or connected therewith.

- 15. Sub-Lessee's liability.** All Sub-Lessee's personal and business property, including trade fixtures installed by Sub-Lessee, on the Premises shall be kept at Sub-Lessee's sole risk. Sub-Lessor and Landlord shall not be responsible or liable to Sub-Lessee for any loss of business or other loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or any part of the premises adjacent to or connected with the leased Premises or any part of the Building of which the leased Premises are a part, or for any loss or damage resulting to Sub-Lessee or its business or property from water, gas, sewer, or steam pipes that burst, overflow, stop, or leak; from heating, cooling, or plumbing fixtures; or from electric wires or gas odors within the leased Premises from any cause, except as may result from and be directly caused by the gross negligence or recklessness of Sub-Lessor or Landlord. The provisions of this section shall not be interpreted to prevent Sub-Lessee from recovering any losses under the coverage provided by any of Sub-Lessor's or Landlord's insurance policies, secondary to Sub-Lessee's own policies, if such coverage exists.

- 16. Destruction of Premises.** If the Premises or Building are partially damaged or destroyed through no fault of Sub-Lessee, Sub-Lessee shall have no obligation to repair and restore the Premises; such obligation shall fall on either Landlord or Sub-Lessor at its own expense and in a timely manner pursuant to the terms of the Lease. The rent herein provided for shall abate entirely in case the entire Premises are untenable, and pro rata for the portion rendered un-tenantable in case a part only is untenable, until the same shall be restored to a tenantable condition, if the destruction was not caused by Sub-Lessee. If the Premises are totally destroyed through no fault of Sub-Lessee or if the Premises cannot be repaired and restored within 90 days after the event of destruction, Sub-Lessor and Sub-Lessee shall each have the right to unilaterally terminate this Sub-Lease, effective as of the date of the event, by giving the other party written notice of termination within 10 calendar days after the occurrence of the event. If the notice is given within that time period, this Sub-Lease shall terminate, and rent shall be adjusted between the parties to the date of the occurrence of the event. If the notice is not given within the required period, this Sub-Lease shall continue, and the responsible party under the Lease shall repair the Premises.
- 17. Mutual limited release.** Sub-Lessor and Sub-Lessee, and all parties claiming under them, mutually release and discharge each other from all claims and liabilities arising from or caused by any hazards covered by insurance on the leased Premises or covered by insurance in connection with property on or activities conducted on the Premises regardless of the cause of the damage or loss, but only to the extent of the available coverage regardless of the identity of the policyholder. The Parties agree that if any waiver of subrogation clause is required to be included in any insurance policy required under the Lease or Sub-Lease to give effect to the mutual limited release in this paragraph, the Parties shall respectively ensure such waiver of subrogation clause is included in their respective insurance policies.
- 18. Notices.** Any notice required under this Sub-Lease shall be in writing and sent by registered or certified mail, return receipt requested, to the addresses of the parties set forth in this Lease or to another address that a party substitutes by written notice, or alternatively by personal delivery to the person signing this Sub-Lease on behalf of the party being served notice. Notice shall be effective as of the date of first attempted delivery.
- 19. Lessee's possession and enjoyment.** Sub-Lessee, on the payment of the rent at the time and in the manner stated above and on performance of all the foregoing covenants, shall be entitled to non-exclusively possess, occupy, and conduct business in the Premises for the term of this Sub-Lease so long as Sub-Lessee's use of the Premises does not interfere with Sub-Lessor's business operations in the surrounding space. It is understood that Sub-Lessor and Sub-Lessee will cooperate for their mutual benefit regarding their operations within and around the Premises and hereby covenant that they and their employees and agents will not act or fail to act in any manner that is detrimental to the business operations or reputation of the other.
- 20. Entire agreement.** This Sub-Lease contains the entire agreement of the parties regarding its subject matter and supersedes any and all prior agreements and representations between the parties, whether oral or written. This Sub-Lease may not be amended or modified except by a written instrument executed by the parties to this Sub-Lease.
- 21. Waiver.** The failure of either Party to enforce any covenant or condition of this Sub-Lease shall not be deemed a waiver of its right to enforce each and every covenant and condition of this Sub-Lease. No provision of this Sub-Lease shall be deemed to have been waived unless the waiver is in writing.

- 22. Performance of Sub-Lessee's obligations.** If Sub-Lessee fails to perform any obligation required of it under this Sub-Lease, Sub-Lessor may perform the obligation and charge Sub-Lessee its costs and expenses in so performing via a written invoice, and such charge shall constitute additional rent and shall be due and payable immediately to Sub-Lessor upon delivery of said invoice. Failure of Sub-Lessor to pay the amount due shall constitute a Default of the Sub-Lease.
- 23. Assignment.** The Sub-Lessee covenants not to assign or transfer this Sub-Lease or hypothecate or mortgage the same or sublet said Premises or any part thereof without the written consent of the Sub-Lessor and Landlord. Any assignment, transfer, hypothecation, mortgage, or subletting without said written consent shall give the Sub-Lessor the right to immediately terminate this Sub-Lease and to re-enter and repossess the Premises and put out Sub-Lessee and its property.
- 24. Construction.** Sub-Lessor and Sub-Lessee have jointly drafted this Sub-Lease and, as such, its provisions shall not be construed against one party or the other merely because the party is a drafter of this Sub-Lease, and its provisions shall not be construed against Sub-Lessor merely because of its status as Sub-Lessor.
- 25. Disputes and enforcement.** If any dispute over or enforcement of this Sub-Lease occurs or becomes necessary, the parties hereby agree that the forum and venue for all related legal actions shall be in the 90th District Court or 33rd Circuit Court for Charlevoix County, Michigan. In the event of any such legal action, Sub-Lessor and Sub-Lessee hereby agree that they waive all rights to a jury trial in any event whatsoever. The foregoing provisions regarding forum, venue, and waiver of jury trial are non-waivable and irrevocable. Alternatively, the Parties may agree to engage in binding arbitration using a commercial arbitrator registered on the American Arbitration Association's National Roster of Arbitrators and Mediators, and such arbitration shall occur within Charlevoix County, Michigan. The American Arbitration Association's Commercial Arbitration Rules and Procedures shall apply to any such arbitration. Any fees, costs, or expenses incurred by a prevailing party enforcing the other party's obligations under this Sub-Lease or otherwise to resolve any dispute over this Sub-Lease, including reasonable attorney fees shall be due and payable from the non-prevailing party immediately; except that, if arbitration is elected by agreement of the parties, the parties shall each bear their own fees, costs, and expenses.
- 26. Binding effect.** This Sub-Lease shall be binding on and inure to the benefit of the parties to this Sub-Lease and their respective successors and permitted assigns.
- 27. Severability.** If any provision of this  is determined by a court of competent jurisdiction to be invalid, unenforceable, or void, said provision shall be severed from this Sub-Lease and all other provisions shall remain in effect and enforceable.
- 28. Time of the essence.** Time shall be deemed to be of the essence in the performance of this Sub-Lease.
- 29. Legal review.** Sub-Lessor and Sub-Lessee agree that they have both had ample opportunity to engage legal counsel of their choice to review this Sub-Lease and advise them as to its terms, and have received such review and advice if desired by them. Sub-Lessor and Sub-Lessee agree that they fully understand the terms contained herein and the effect thereof, and willingly enter into this Sub-Lease as written. No defense or cause of action hereunder may be asserted by either party against the other based on mistake or lack of understanding of this Sub-Lease or any term contained herein.

**WHEREFORE**, the Parties evidence their agreement to this Sub-Lease and all terms and conditions herein by the signature of their authorized representatives below:

**Sub-Lessor:**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

By: Jessica Nagel, Sole Member  
For: J.bird Provisions, LLC  
109 Bridge Park Drive  
Charlevoix, MI 49720

**Sub-Lessee:**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

By: Lora Higdon, President  
For: Lost Cellars, Inc.  
4494 US-31 South  
Charlevoix, MI 49720

**Approval of Sub-Lease by Landlord:**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

By: Maureen Owens, President  
For: Charlevoix Downtown Development Authority  
201 State Street  
Charlevoix, MI 49720