

Tropical Soup 429 Caroline Street Key West Florida 33040

October 5, 2020

Item 14 on the City Commission agenda October 6, 2020 City Commission meeting

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, DIRECTING THE CITY MANAGER TO CEASE NEGOTIATIONS FOR A LEASE AGREEMENT BETWEEN THE CITY AND TROPICAL SOUP CORPORATION FOR PARCELS 1, 2, 3 AND 4 AT MALLORY SQUARE; DIRECTING THE CITY MANAGER TO MAKE RECOMMENDATIONS TO THE CITY COMMISSION/CRA FOR THE BEST USE OF THE PROPERTY; PROVIDING FOR AN EFFECTIVE DATE.

Several of the “whereas” prefaced paragraphs in the resolution for the proposed action are inaccurate or half-truths.

1. Over a period of ten years, the negotiations process has not been completed...

On April 26, 2019 the City informed tropical Soup Corporation in writing that the lease negotiation was completed. On May 9, 2019 the City legal department asked that the approval be conditioned on the Planning Board’s review of the project. This condition was met on October 16, 2019. The lease is ready to be presented to the City Commission.

2. Tropical Soup prosecuted a “frivolous” declaratory relief action... that was dismissed, ..

This decision has been appealed. More importantly, this action was taken to define the boundaries, and to move the project forward. The City should have joined the request since the underlying issue of which document, either the 1978 lease as amended or the 2010 RFP controls the disputed area remains unresolved.

3. Tropical Soup ceased payment of rent at 402 Wall Street...

This ten year lease expired April 30, 2020. In accordance with Key West Code of Ordinances Sec.2-941, tropical soup proposed a lease extension under the same terms as the adjacent tenant’s lease that was renewed in August 2018. The City declined that offer. Tropical Soup then ordered and paid for a commercial appraisal for the space and offered to pay the appraised value. The City declined that offer on April 28, 2020. Tropical Soup operated an accessory retail use at this space under its CPS membership and cruise ship operations exception. The elimination of cruise ship visits required Tropical Soup to remove the retail operations. Tropical soup was very disappointed, thinks it was a bad idea, and believes that will cost the city significant lost rents, that the City refused to renew the lease past April 2020. Tropical Soup paid rent for its entire lease term and

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enjoyed its tenancy. It hopes the City enjoyed the 1.1 million dollars that it was paid in rent, and wishes the city as much success with its next tenant as it had with tropical soup.

4. Waterfront Brewery doesn't have a current Letter of Credit...

The COVID-19 pandemic and fall-out hit the Keys in mid-March. The City ordered the Waterfront Brewery closed to on premise food and drink sales. This order preventing the business from operating is a Landlord default under section 7 of the lease agreement. Waterfront Brewery began emergency plans to continue to pay its staff and other critical bills. The Letter of credit guaranteeing its lease payments to the City was secured by a Certificate of Deposit at a local bank. I told the bank that I needed that money for payroll. The bank refused to keep the letter in place without the cash (CD) collateral. These funds were used by my company to pay staff supplementary wages and other emergency payments and to feed the staff and their families during the shut-down. This concern has been addressed, since another bank has since replaced the loan (letter of credit) even though both the landlord and tenant are not in compliance with the all of the terms of the lease. Waterfront Brewery's investors have put nearly \$5 million private investment dollars into a beat-up City building and even began paying rent to the City while the project was still under construction.

Tropical Soup Corporation's proposal was the best option for Mallory Square in 2010 and has continued to be ever since. Tropical Soup Corp has made investments of more than a million dollars to develop this project under Resolution 10-167 at Mallory Square.

Thank you for the opportunity to clarify these statements.

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