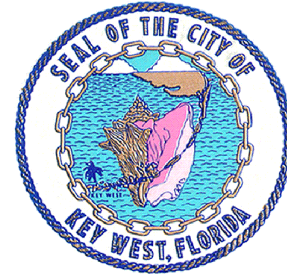


# Executive Summary



**TO:** Community Redevelopment Agency

**FR:** Bogdan Vitas

**DT:** December 26, 2012

**RE:** Waterfront Brewery LLC Lease for 201 William Street

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## **ACTION STATEMENT:**

This is a request to approve the proposed lease with Waterfront Brewery, LLC for the vacant space at 201 William Street that was approved by the Bight Board in September 2012 and approved with modification in December 2012.

## **BACKGROUND:**

The property was marketed for a period of approximately five months prior to public notice which was first published on January 20, 2011 in accordance with Florida Statute Sec. 163.380 and no responsive letters of interest were received. It was re-published for the next three weeks on March 13, 20, 27<sup>th</sup>, 2011.

One responsive letter of interest was received. It was submitted by the Waterfront Brewery LLC which proposed a Micro-Brewery, Dining & Pub with a retail component as well. In May 2011, the Bight Board elected to accept the proposal. Subsequently the proposed tenant invested great deal of time, money, and effort that now has produced all of the necessary approvals from the Development Review Committee, HARC, the Planning Board on May 17, 2012 and CRA Major Development Plan on July 17, 2012.

The terms of the lease are as follows:

**Use:** Operation of a working light industrial beer plant, restaurant with alcohol sales, retail area for logo apparel, gifts, beer souvenirs, private functions, live entertainment, rooftop deck consumption area in compliance with City Resolution 12-228

**Demised Premises:** 18,942 Square Feet comprised of:

Upstairs Unit A	2,273
Ground Level Unit D	991
Ground Level Unit F	11,178
Rooftop Deck	4,500

**Term:** PROVIDED THAT THE MINIMUM INVESTMENT THRESHOLD OF \$250,000 IN THE REAL PROPERTY is met before the commencement date, subject to the provisions contained in Section 15 of the lease, the term of this Lease shall be for twenty (20) years. In the event that the investment threshold is not met before the commencement date the term of the lease shall be ten

years.

**Commencement:** The term shall commence upon the earlier of completion of construction and receipt of a certificate of occupancy or at the end of the construction period which shall be 90 days from approval of the CRA for construction drawings and permitting plus 180 additional days after issuance of the building permit to facilitate construction of the Tenant's improvements.

**Rent:** The base rent for year one shall be calculated at an annualized rate of Twenty One Dollars (\$21.00) per Net Usable Square Foot. Every year thereafter throughout the term of the lease the minimum base rent shall be adjusted annually on the anniversary date of the lease by the increase in Consumer Price Index for all Urban Consumers as published by the United States Department of Labor. In no event shall the minimum base rent be decreased.

**Percentage Rent:** 6% over the break point

**Impact Fees:** Tenant shall pay all impact fees imposed for the specific utilization of the demised premises as provided for in the approved major development plan in Resolution 12-228 of the City of Key West and receive a rent credit divided over the first twenty four months of the lease in the total amount of the additional impact fees as calculated by the City of Key West.

### **Building**

**Improvements:** The Tenant will complete the construction of, and pay for, all building improvements pursuant to the approved major development plan. These are necessary improvements to the building that will improve the property and bring it up to a level that will meet code requirements for occupancy, such as; ADA bathrooms, ADA ingress/egress, entrances and ramp, stairways, an elevator, the rooftop deck. These improvements will accrue to the benefit of the City and would be usable by other leaseholders. *For your reference, attached are photos of the existing interior conditions of the building that clearly indicate the need for extensive improvements.*

### **Tenant**

**Improvements:** In addition to the building improvements the Tenant will invest all funds necessary and complete the construction of the improvements specific to their business and all furniture, fixtures, and equipment estimated between \$800,000 and \$1,000,000.00. The Tenant has agreed that these improvements will also accrue to the benefit of the city.

### **Building Improvement Reimbursement:**

The Tenant agrees to reimburse the Landlord for the initial building improvements referred to in Section 15 of the lease as follows:

- (a) An amount not to exceed \$2,000,000.00, as determined by final competitive bidding for building improvements only, pursuant the construction drawings approved by LANDLORD and in accordance with the approved major development plan.
- (b) The LANDLORD'S basic building work will be separate and reimbursed to the TENANT as determined in Section 15 of the lease.
- (c) The final approved amount will be reimbursed on a monthly basis over the term of the lease and TENANT agrees to reimburse LANDLORD for the full amount plus interest calculated at the prime rate as determined by LIBOR plus 100 basis points (1%) which will be adjusted annually at the beginning of each lease year.
- (d) Furniture, fixtures or equipment or improvements specific to the operation of the TENANT'S business may not be included in the reimbursable amount.
- (e) LANDLORD will release payments pursuant to the construction contract, which TENANT agrees will meet the City of Key West general contract conditions, in accordance with procurement policy, attached hereto and incorporated as Exhibit "E" and will include performance/payment bonds in the minimum amount of the reimbursable building improvements provided by LANDLORD.
- (f) TENANT'S reimbursement of building improvements shall be considered additional rent and subject to the provisions in Section 4.4(e) of the lease.

**Basic Building Repairs:**

The LANDLORD will agree to provide basic building repairs, subject to confirmation of TENANT'S receipt of no less than three competitive bids, the LANDLORD will reimburse TENANT for all costs and expenses to complete the following basic building work per current building codes for commercial buildings:

- a. Floor leveling and drainage
- b. Functional fire suppression system
- c. Electrical system
- d. Loading dock per development plan design
- e. Overhead loading dock door

**Security:**

Security for the payment of rent and the additional rent will be in the form of personal guarantees from the members of Waterfront Brewery, LLC and an irrevocable letter of credit in the amount equal to six (6) months of rent.

Additionally, pursuant to Sec. 2-871 of the Key West Code of Ordinances the award of a lease of city-owned property with annual rentals that will exceed \$100,000.00 and all extensions or renewals

thereof will require a background check of persons awarded a lease. If any such person is found by the police department to have been convicted of a felony within the past five years or found to have been convicted of a public entity crime and is then listed on the convicted vendor list, as established in F.S. § 287.133, the proposed lease or sublease, concession or franchise agreement or any extension or renewal thereof with such person shall not be executed by the city or, if it has been executed, it shall be subject to revocation and be voidable by the city commission after notice and hearing.

Also, every person applying for a lease, a lease renewal or a sublease of city-owned property or a concession or franchise agreement shall submit to the city, together with the application, a sworn disclosure statement that contains the following financial information for the immediately prior two calendar years: a statement attesting to the applicant's net worth, assets and liabilities, annual gross income, and primary source of such income. In addition to such disclosures, any business entity shall submit a copy of its organizational documents, together with a list of all current principals.

The city shall consider financial information for each applicant as a factor in making its award determination. The respective lease, sublease, concession or franchise agreement of any person who intentionally or knowingly supplies false or misleading information or who omits material information on the disclosure form under this section shall be subject to revocation and shall be voidable by the city commission after notice and a hearing.

**Assignment:** Any change to the majority membership of the Waterfront Brewery, LLC as of the date of the lease shall constitute an assignment for purposes of this provision. In the event of such an assignment the LANDLORD may elect to require full reimbursement of the unamortized building improvements provided by LANLDORD.

**FINANCIAL IMPACT:**

The base rent proposed is \$21.00 per square foot in year one of the lease before any percentage rents, if the breakpoint is achieved, and will be increased annually based upon the Consumer Price Index. Reimbursement of operating expenses in year one of the lease are based on current estimates and are reconciled annually.

The building improvement costs will be reimbursed over the lease term with interest at the prime rate plus 1% thus providing a financial return on the funds invested in the building improvements.

The building improvement funding will be transferred from the unrestricted reserves of Fund 405 which are approximately \$7,927,990.00 as of FY 12 year end.

The rent credits for additional impact fees will be calculated by the City and divided over the first twenty four months of the lease.

	<b>Year One</b>	
<b>Waterfront Brewery</b>		
<b>Square Feet</b>	18,942	
<b>Base Rent</b>	\$21.00	PSF
Year One*	\$397,782	Annual
<b>Additional Rent</b>		
Tax, Insurance, CAM	\$4.05	PSF
	\$67,481	
Reimbursement**		Annual
Building Improvement	\$7.85	
Reimbursement***	\$148,616	Annual
<b>TOTAL RENT</b>	\$32.41	PSF
<b>Year One</b>	<b>\$613,879</b>	<b>Total</b>

\* per accepted proposal

\*\*estimated @16,692 sf

\*\*\*assumes maximum @4.25%

#### **Impact Fee Credit**

Year One of two (\$80,489)

For comparison purposes, the Key West Bight Anchor Tenant's Rents are as follows:

Conch Republic Seafood	14,500 sf	\$36.97 PSF
Schooner Wharf	8,872 sf	\$35.89 PSF
Half Shell Raw Bar	9,212 sf	\$29.67 PSF
Turtle Kraals	9,630 sf	\$24.44 PSF

#### **CONCLUSION:**

The building cannot be leased/occupied in its current condition for any purposes.

The tenant has agreed make the building improvements at their cost and the CRA will provide for reimbursement of the building improvements over the lease term, which is mutually beneficial.

The CRA retains control through approval of the exact building improvements/cost and the building can be occupied, open and generating revenue within a year.

The rent with reimbursement is at a market rate

The security provided for in the lease minimizes the financial risk to the CRA.

The building improvements are permanent and would be desirable/transferrable to other lessees.

The members of the Waterfront Brewery LLC have the demonstrated experience and proven track record of operating successful businesses in Key West. They are Joseph Walsh and Christopher Shultz who own and operate numerous Key West restaurants including Fogarty's, Caroline's, Jack Flats, Red Fish Blue Fish, Mangos, The Porch, and Two Cents.

The Key West Bight is within a redevelopment area and there have been several leaseholders that have received financial support from the CRA, some of which were in the form of rent credits, or reimbursement of the improvements to the real property. The Waterfront Brewery LLC has not requested credits for the building improvements but rather will pay for the building improvements over the term of the lease. They will invest in their specific improvements and will assign them to the CRA in the event of a future default.

When reviewing the original intent of the city's acquisition of the Key West Bight it was noted that the purpose for the buying the property was to preserve the public access to the waterfront, preserve the historic maritime character while making sure that the property produces sufficient income, all of which have been successful to date. The redevelopment of the Key West Bight has been a slow progression over two decades that continues to serve its public purpose. The majority of the redevelopment has been accomplished through CRA participation in the improvements to the real property utilizing rent credits and reimbursement for tenant improvements in various scenarios. The strength of the current retained earnings and the reinvestment in the building improvements will continue to meet that original intent.

The views of the harbor from the rooftop deck will expand and enhance the experience for everyone. The Waterfront Brewery will produce what is sure to become an iconic product, create new jobs and bring more patrons to the waterfront thus becoming a destination anchor tenant and economic driver for all of the businesses located in the Key West Bight.

**OPTIONS:**

1. The CRA can elect to approve the lease as proposed
2. The CRA can elect to deny the lease, conclude negotiations and re-advertise the space for lease.
3. The CRA can elect to deny the lease, make the building improvements at the CRA'S cost, then re-advertise the space for lease.