



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

MEMORANDUM

EXECUTIVE SUMMARY

To: Key West Bight Board
CC: David Fernandez
From: Marilyn Wilbarger, RPA, CCIM
Date: August 6, 2012

Reference: **Key West Bight Upland Rent Abatements**

ACTION:

Per the Boards Request this action item is to consider abating rent for the upland leases at the Key West Bight.

BACKGROUND:

The upland leases in the Key West Bight include the following terms in Section 14 ending paragraph as follows:

In the event that LANDLORD shall deem it necessary or be required by any governmental authority to repair, alter, remove, reconstruct or improve any part of the Demised Premises or of the property (unless the same result from TENANT'S act, neglect, default or mode of operation, in which event LANDLORD shall make all such repairs, alterations or improvements at TENANT'S sole cost and expense), then the same shall be made by LANDLORD with reasonable dispatch, and should the making of such repairs, alterations and improvements cause any interference with TENANT'S use of the Demised Premises, such interference shall not relieve TENANT from the performance of its obligations hereunder nor shall such interference be deemed an actual or constructive eviction or partial eviction or result in abatement of rental.

Therefore the lease does not provide for rent abatement during periods of repairs, alterations, removal, reconstruction or improvements.

Pursuant to the Bight Board meeting minutes from June 2012 staff has been instructed to propose a procedure to address rent abatement and to make the action retroactively applied to Mr. Cates scenario.

The Key West Bight was acquired for the purposes of re-developing a blighted area and has had many re-construction projects over the years and will continue to undergo re-development and re-construction for the foreseeable future with the

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implementation of the common area enhancement plan, re-building Schooner Wharf, the Waterfront Brewery, the Discovery Shop, the Piano Shop building to name a few.

Staff has consulted with the City Management and Legal Departments and there is a consensus that it would not be in the best interest of any party to try and establish a one size fits all policy. Each tenant scenario could potentially present a multitude of variables that you may want to consider, such as, a partial abatement for a portion of the demised area that may be unusable for a period of time. As rent abatement is not called for in the lease, the procedure could be structured as a direct request for special consideration to the Bight Board with approval by the CRA based upon each tenant's specific request.

Rent abatement typically refers to just an abatement of the rent due for the period of time that the tenant cannot utilize the demised premises and does not usually apply to any loss of sales experienced by the tenant during that period. There could also be a partial abatement of rent for just the area deemed un-tenantable.

Key West Ice Cream Factory

Mr. Cates has requested an abatement for the five days in June wherein he was unable to occupy the demised area due to structural repairs. On Friday August 3rd, we received the Sales Tax information for the period ending June 30, 2012 which provided the data necessary to make the following calculations:

Rent, CAM abatement:

Current rent, Cam, Tax = $\$4025.79/30 \text{ days} \times 5 \text{ days} = \670.96

Tenant Sales June 2011 and June 2012

June 2011 = \$32, 286.16 –

June 2012 = $\$24,197.14 = \$8089.03/30 \text{ days} \times 5 \text{ days} = \$1,348.17$

CONCLUSION:

The Board may elect to employ any of these three options or any others that you deem appropriate:

1. Uphold the lease terms and not provide an abatement
2. Abate the rent, cam and tax for the 5 day period
3. Abate the loss of sales from one year to the next for the 5 day period

Attachments:

Tenants 2011 Sales

Tenant YTD 2012 Sales

Tenant June Department of Revenue Sales Report

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