


MEMORANDUM

February 15, 2010

TO: Board of Mayor and Alderman

FROM: Eric Stuckey, City Administrator 
Vernon Gerth, ACA - Community and Economic Development

SUBJECT: Consideration of Month-to-Month Lease Agreement with Battle Ground Brewery, LLC for space in the Old Jail located at 118 Bridge Street.

Purpose

The purpose of this memorandum is to present information to the Board of Mayor and Aldermen (BOMA) to consider entering into a month-to-month lease for the use of the existing office area, a small area for storage, and the adjacent off-street parking at the "old jail" property located at 118 Bridge Street.

Background

Fred Mindermann and Battle Ground Brewery LLC, who recently opened their restaurant at 108 Bridge Street, has expressed interest in leasing the existing offices, a limited amount of storage space, and the off-street parking located on the adjacent property known as the Old Jail at 118 Bridge Street. This is the building previously occupied by the Williamson County School Maintenance Division. The BOMA recently declared the Old Jail and Old, Old Jail surplus property and the Planning and Sustainability Department is preparing to advertise a Request for Proposals within the next week. The timeline for securing and reviewing proposals is anticipated to take several months before the BOMA will be prepared to decide on the future use and ownership of the property. Battle Ground Brewery LLC has expressed interest in a month-to-month lease (attached).

The terms of the lease are similar to the lease agreement the City approved in the summer of 2008 has with the Heritage Foundation in the leasing of their offices in the Five Points Building. Although staff is in the process of determining the exact area of office and storage space to be occupied, the rate will be ten (10) dollars per square foot plus a pro-rated share of utilities.

Financial Impact

The Lease agreement is similar to the agreement the BOMA approved for the Heritage Foundation in the summer of 2008. The rent is designed to offset the cost of routine maintenance until such time use and ownership of the property is determined.

Recommendation

Approval of the month-to-month lease is recommended.

LEASE AGREEMENT
COF CONTRACT #2010-0015

This Lease Agreement made as of _____, 2010 by and between the **CITY OF FRANKLIN, TENNESSEE** a municipal governmental entity of the State of Tennessee (hereinafter referred to as "City" or "Lessor"), and **BATTLE GROUND BREWERY, LLC** (hereinafter referred to as "Lessee").

WITNESSETH:

(1) **DEMISE, TERM AND RENT.** The Lessor leases to the Lessee the existing office and interior storage space that totals approximately One Thousand (1000) square feet together with exterior motor vehicle parking areas, as shown on Exhibit A, in the building located at 118 Bridge Street in the City of Franklin, Tennessee and commonly known as the "Old Jail." The term of this lease shall begin April 1, 2010 and continue on a month-to-month basis for a monthly rental of Eight Hundred Thirty-Three Dollars and no cents (\$833.00) which is based on an annual rate of Ten Dollars and no cents (\$10.00) per square foot. This rent shall be payable at the office of the Lessor in the City of Franklin City Hall, in advance, on the first day of each month. Rent payments commence on April 1, 2010. One (1) month's damage deposit shall be required upon execution of this Lease Agreement.

(2) **TERMINATION.** Lessor may terminate the tenancy or modify the terms of this lease agreement by giving thirty (30) days notice to Lessee. Lessee may terminate the tenancy by giving thirty (30) days notice to Lessor.

(3) **APPURTENANCES.** Lessor grants to Lessee and covenants that Lessee shall have during the term of this Lease, at no additional cost to Lessee, the use of parking spaces in the parking lot adjoining the Building, the non-exclusive use of any and all public restrooms, and common areas, and, for purposes of ingress and egress, of the area(s) marked on Exhibit A.

(4) **LESSEE'S COVENANTS.** The Lessee agrees:

a) **Rent.** That Lessee will pay the said rent at the times and in the manner aforesaid. Any rent payments due between April 1, 2010 and the date of execution of this Lease shall be due upon execution, plus one (1) month's rent shall be escrowed as a damage deposit to be paid on the date of execution of this Lease.

b) **Late Fee.** That if any installment of rent is not paid on or before the tenth (10th) day of the month when due or any additional rent is not paid within thirty (30) days after billing is mailed by Lessor, there shall be a late fee and

service charge assessed against Lessee, without waiver of any rights of Lessor to declare a default hereunder, equal to ten percent (10%) of such amount due which charge will be payable immediately by Lessee as further additional rent.

c) Maintenance, Housekeeping, Phone. That Lessee will maintain any ramps, entrances, steps and access to the Property and pay all housekeeping expenses of the premises, which shall include, but not be limited to the purchase and replacement of light bulbs when needed. Lessee agrees to pay all telephone expenses. The parties will complete a walk-through of the premises within ten (10) days of execution of this Lease, noting the present condition of the premises. Such a walk-through will be conducted after Lessee has vacated the premises in order to determine the extent of damage, if any.

d) Payment of Utilities. Lessee shall pay the pro-rated portion of gas, electric, water, sewer to the City of Franklin and as billed monthly. The Lessee shall pay the full amount of telephone, internet or other communication utilities by direct payment to the provider thereof. If Lessor is billed for any other utilities or services for which Lessee is responsible by the provider thereof, Lessee shall reimburse Lessor for the amount thereof within fifteen (15) days' of being furnished with a statement from Lessor with respect thereto. If the amount due as shown on such statement is not paid when due, it shall bear interest at the lesser of the maximum legal contract rate or twelve percent per annum (12%) until paid. Lessor reserves the right to retrofit the Building adding a meter specific to the Premises. In such case, Lessee agrees to assume responsibility to pay the utilities directly to utility companies and agrees to obtain service in its own name.

e) Permitted Use. That the premises shall be used for general office, interior storage, and off-street parking of motor vehicles and, for no other use without Lessor's written consent.

f) Obligation to Repair. That Lessee will keep the said building and premises, other than the exterior building, mechanical, electrical or plumbing maintenance, in such repair as the same are at the commencement of the said term or as may be installed, attached or affixed during the continuance thereof, reasonable wear and tear only excepted. Lessee agrees to promptly notify Lessor of any repairs that are not covered within this section and are the responsibility of the Lessor.

g) Not to Injure; Renovations and Alterations of Premises. That Lessee will not injure, overload, or deface or suffer to be injured, overloaded, or defaced the premises or any part thereof. Lessor shall approve of all plans and specifications for material renovations and alterations, subject to reasonable conditions. Lessee shall allow no lien to be placed against the Premises or the Building. All alterations, additions, repairs, replacements and improvements

made to or upon the Premises shall be deemed to be part of the Premises and shall become the property of Lessor upon the expiration or termination of this Lease; provided, however, that trade fixtures, machinery, and equipment that are installed by Lessee and removable without materially injuring the Premises shall remain the property of Lessee.

h) Liability Insurance. Without limiting its liability under this Lease Agreement, Lessee shall procure and maintain at its expense during the life of the Lease Agreement insurance of the types and in the minimum amounts stated as follows:

- i) Comprehensive or Commercial General Liability
 - A. Bodily Injury:
 - \$1,000,000 Each Occurrence
 - \$1,000,000 Aggregate
 - B. Property Damage
 - \$1,000,000 Each Occurrence
 - \$1,000,000 Aggregate
- ii) Personal Injury, with Employment Exclusion deleted
 - A. \$1,000,000 Aggregate
- iii) If the General Liability coverage is provided by a Commercial Liability Policy the
 - (1) General Aggregate shall not be less than \$1,000,000 and shall apply, in total, to this Lease Agreement only.
 - (2) Medical Expense Limit shall not be less than \$1,000,000 on anyone person.
- iv) Umbrella Excess Liability
 - (1) \$1,000,000 over primary insurance

Lessee's insurance policy, if applicable, shall name the City of Franklin as an "Additional Insured with respects to the Lease only." Said insurance shall be written by a company(s) licensed to do business in the State of Tennessee and satisfactory to City of Franklin Risk Management. Prior to occupying a City owned, leased or rented space, a Certificate of Insurance evidencing the maintenance of said insurance shall be furnished to City of Franklin Risk Management and shall contain the following statement: "The insurance evidenced by this Certificate will not be canceled or altered except with written consent by and between the Insured and Additional Insured named within the insurance contract".

i) Personal Property Insurance. That it shall be Lessee's sole responsibility to insure and keep insured, at Lessee's expense, all personal property which is owned by Lessee, or any other authorized occupant of the leased premises, and which is placed or stored in the leased premises or elsewhere in the building of which they are a part.

j) Unlawful, Improper, or Offensive Use. That Lessee will not make or suffer any unlawful, improper, or offensive use of the premises, or any use or occupancy thereof contrary to any law of the State of Tennessee or any ordinance or regulation of the City of Franklin now or hereafter made, or which shall be injurious to any person or property, or which shall be liable to endanger or affect any insurance on the said building or to increase the premium thereof, nor shall Lessee make or suffer any sale of any intoxicating beverages.

k) Alterations, Additions, Signs, Newsracks, etc. That Lessee will not make any alterations or additions in or to the premises without the written consent of the Lessor, or suffer any holes to be made or drilled in the outside stone or brick work, or suffer any signs to be placed upon the building except such as the Lessor shall in writing approve. No fixtures such as newsracks or other receptacles shall be placed outside the building.

l) Assignment. That Lessee will not assign, sublet, or in any way part with the possession of the whole or any part of the premises without first obtaining the written consent of the Lessor.

m) Permission of Lessor to Enter. That the Lessor at all reasonable times may enter to view the premises and to make repairs which the Lessor may see fit to make, or to show the premises to persons who may wish to lease or buy.

n) Yield up Premises at Expiration of Term. That when lease is terminated, Lessee will peaceably yield up to the Lessor the premises and all erections and additions made upon the same, in good repair in all respects, reasonable use and wear excepted, as the same now are or may be installed, attached or affixed by the Lessor.

o) Indemnification and Hold Harmless. Lessee shall indemnify and hold harmless Lessor, its officers, agents and employees from:

- 1) Any claims, damages or suits for loss of or damage to property, including loss of use thereof, or injuries, including death to persons and from all judgments recovered therefore and from all expense in defending said claims or suits, including court costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Lessee, its officers,

employees and/or agents, including its sub or independent contractors and patrons, in connection with this Lease Agreement.

- 2) Any claims, damages, penalties, costs and attorney fees arising from any failure of Lessor, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- 3) Lessor will not indemnify, defend or hold harmless in any fashion the Lessee from any claims arising from any failure, regardless of any language in any attachment or other document that the Lessee may provide.
- 4) Any claims, damages, penalties, costs and attorneys fees arising from any action brought against the City of Franklin by any of Lessee's officers, employees and/or agents arising out of any injury incurred by such officer, employee and/or agent in the course of the performance of this contract, regardless of the cause of such injury.
- 5) Lessee shall pay Lessor any expenses incurred as a result of Lessee's failure to fulfill any obligation in a timely manner under this Lease Agreement.
- 6) Enforcement Expenses. In the event it becomes necessary for Lessor to employ an attorney to enforce collection of the rents agreed to be paid, or to enforce compliance with any of the covenants or agreements herein contained, Lessee shall be liable for reasonable attorney's fees, costs and expenses incurred by the Lessor.
 - p) Assent Not Waiver of Future Breach of Covenants. That no assent, express or implied, by the Lessor to any breach of any of the Lessee's covenants, shall be deemed to be a waiver of any succeeding breach of the same covenant.
 - q) Maintenance of Records. The books, records and documents of Lessee, insofar as they relate to this Lease Agreement, shall be maintained for a period of three (3) full years from the date of expiration of this Lease Agreement and will be subject to audit, at any reasonable time and upon reasonable notice by Lessor or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.
 - r) Employment. Lessee shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or

which is in violation of applicable laws concerning the employment of individuals with disabilities.

(4) **LESSOR'S COVENANTS.** The Lessor agrees:

a) **Covenant for Quiet Enjoyment.** That the Lessee shall peaceably hold and enjoy the premises, subject to the terms of this Lease Agreement.

b) **Payment of Taxes.** That the Lessor will pay the general taxes, if any, which shall be assessed and levied upon the premises during the said term as they may fall due.

c) **Obligation to Repair.** That Lessor will keep the exterior building, mechanical, electrical and plumbing, in such repair as the same are at the commencement of the said term or may be put in during the continuance thereof, reasonable wear and tear only excepted.

d) **Insurance.** That Lessor shall insure, at the Lessor's sole expense the building on the demised premises against the risk of fire and hazard.

(5) **DEFAULT, INSOLVENCY, ETC. OF LESSEE.** If Lessee shall neglect or fail to perform and observe any of the covenants in this instrument, which on its part are to be performed and such default shall continue for a period of thirty (30) days after the mailing of a written notice, postage prepaid from the Lessor to the Lessee specifying such default, or the Lessee shall be declared bankrupt or insolvent according to law, or if any assignment shall be made of any of its property for the benefit of creditors, then, and in any of the said cases, the Lessor or those having their estate in said premises, lawfully may immediately or at any time thereafter, and while such neglect or default continues and without further notice or demand, enter into and upon the premises or any part thereof in the name of the whole and repossess the same as of their former estate and expel the said Lessee and those claiming under it, and remove their effects (forcibly if necessary) without being taken or deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent, or preceding breach of covenant and, at the Lessor's election, the said term shall cease and be ended. Should Lessee lose its status as a lawful business in the state of Tennessee, Lessee shall be allowed to terminate this Lease by giving Lessor thirty (30) days' written notice of this loss of status.

(6) **DAMAGE BY FIRE.** In case the premises or any part thereof shall at anytime during the said term be destroyed or damaged by fire or other unavoidable casualty so as to be unfit for occupancy and use, and so that the premises cannot be rebuilt or restored by the Lessor within One Hundred Twenty (120) days thereafter, then this Lease Agreement shall terminate; but if

the premises can be rebuilt or restored within One Hundred Twenty (120) days the Lessor will at his own expense and with due diligence so rebuild or restore the premises, and adjust and proportionate part of the rents hereby reserved shall be paid by the Lessee until the premises shall have been so rebuilt or restored.

(7) **TAKING BY EMINENT DOMAIN.** In the event the whole or a substantial part of the premises shall be taken by the City of Franklin, the State of Tennessee or other entity with the authority to exercise eminent domain for any public use by condemnation or agreement upon the threat of condemnation, then this Lease Agreement shall terminate from the time when possession of the whole or of the part so taken shall be required for such public use, and the rents, properly apportioned, shall be paid up to that time; and the Lessee shall not claim or be entitled to any part of the award to be made for damages for such taking for public use; and such taking shall not be deemed a breach of the Lessor's covenant for quiet enjoyment hereinbefore contained.

(8) **COVENANT AND AGREEMENTS.** All of the covenants, agreements and conditions of this Lease shall accrue to the benefit of and be binding upon the respective parties hereto and their successors and assigns as if they were in every case named and express.

(9) **CHOICE OF LAW.** This Lease Agreement shall be governed by the laws of the State of Tennessee.

(10) **NOTICES.** Any notice provided pursuant to this Lease, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or such other address as either party may in the future specify in writing to the other):

Lessor:

City of Franklin
109 Third Ave. South
P.O. Box 305
Franklin, TN 37065-0305

Lessee:

(11) **SEVERABILITY.** Should any provision of this Lease Agreement be declared to be invalid by any court of competent jurisdiction, such provision

shall be severed and shall not affect the validity of the remaining provisions of this Lease Agreement.

(12) **ENTIRE AGREEMENT**. This Lease Agreement and its attachments contain the entire agreement between the parties, and no statement, promises, or inducements made by either party or agent of either party that is not contained in this Lease Agreement shall be valid or binding; and this Lease Agreement may not be enlarged, modified or altered except in writing signed by the parties and attached hereto.

(13) **VENUE**. In the event that any term of this Lease Agreement of its attachments become subject to litigation, the venue for such action will be in Williamson County, Tennessee.

(14) **WAIVER**. No waiver of any provision of this Lease Agreement shall be valid unless in writing and signed by the parties against whom charged.

(15) **LIMITATION OF LIABILITY**. Notwithstanding any provision hereinto the contrary, Lessee shall look solely to the equity of Lessor in and to the premises in the event of a breach or default by Lessor pursuant to the provisions of this Lease, and lessee agrees that the liability of Lessor under this Lease shall not exceed the value of such equity of Lessor in the premises. No other properties or assets of Lessor shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) arising out of, or in connection with this Lease Agreement.

(16) **PARTNERSHIP-JOINT VENTURE**. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

(17) **EFFECTIVE DATE**. This Lease Agreement shall not be binding upon the parties until it has been signed first by the Lessee and then by the authorized representatives of the City of Franklin and has been filed in the office of the Mayor. When it has been so signed and filed, this Lease Agreement shall be effective as of the date first written above.

IN WITNESS WHEREOF, the parties hereto have hereunto caused their names to be signed to multiple copies of this Lease Agreement as of the day and date last written below in Acknowledgements, all copies constituting, however, but one Lease Agreement.

Lessor:

Lessee:

CITY OF FRANKLIN, TENNESSEE

John C. Schroer, Mayor

Attest:

Eric S. Stuckey, City Administrator

Approved as to form by
Shauna R. Billingsley, Interim City Attorney

ACKNOWLEDGMENTS

STATE OF TENNESSEE
COUNTY OF WILLIAMSON

The foregoing instrument was acknowledged before me this ____ day of ____ 20____
by **John C. Schroer**, Mayor of the City of Franklin, TN, and **Eric S. Stuckey**, City
Administrator, with whom I am personally acquainted (or proved to me on the
basis of satisfactory evidence), and who acknowledged that he executed the
within instrument for the purposes therein contained.

NOTARY PUBLIC

My Commission Expires:

STATE OF TENNESSEE
COUNTY OF WILLIAMSON

The foregoing instrument was acknowledged before me this ____ day of ____ 20____
by _____, with whom I am personally acquainted (or proved to
me on the basis of satisfactory evidence), and who acknowledged that she
executed the within instrument for the purposes therein contained.

NOTARY PUBLIC

My Commission Expires: