

FRENCH MARKET CORPORATION
FINANCE COMMITTEE MEETING
Thursday, May 21, 2020

NEW BUSINESS

D2. CONSIDERATION OF COMMERCIAL TENANT RENT RELIEF PROGRAM IN CONJUNCTION WITH COVID-19 EMERGENCY

Consideration:

On March 11, 2020, the Mayor of New Orleans declared a State of Emergency due to COVID-19. Subsequently, the Governor of Louisiana and the Mayor of New Orleans through a series of proclamations and orders limited gatherings of various types and placed restrictions on commercial business activities, which ultimately culminated in the issuance of a “Stay at Home Mandate” for Orleans Parish by the Mayor on March 20, 2020, and by the Governor on March 22, 2020.

On March 18, 2020, the FMC Staff waived late fees and penalties for commercial tenants relative to the payment of base, percentage, common area, and advertising rents for 60 days. At its March 31, 2020 Board of Directors meeting, the Board ratified the Staff’s actions and extended that suspension thru May 31, 2020.

During the time of the declared emergency, the FMC staff has received multiple requests for rent relief from various FMC commercial tenants ranging from requests to waive commercial rents entirely to requests to postpone the payments of commercial rents thru the end of 2020.

Recommendation:

COMMERCIAL TENANT RENT OBLIGATIONS

French Market Commercial Tenants pay the following types of rent:

- (1) Annual Base Rent: Annual Base Rent is payable in equal monthly installments during the term of the Lease with installments due and payable on the first day of each month. If payment is not received by the 5th of each month, delinquent penalties will be billed.
 - The amount of base rent for each Leased Premises is set forth in the Lease.
 - The annual base rent for each subsequent Lease Year after the initial year of the Lease during the Lease Term shall be increased by the Consumer Price Index (CPI) Adjustment Amount.¹

¹ The CPI Adjustment Amount shall mean an additional amount of Annual Base Rent, determine at the commencement of each Lease Year subsequent to the initial Lease Year, equal to the then annual base rent in effect under the Lease at the end of the immediately preceding Lease Year multiple by a fraction, (x) the number of which shall be the point difference between the Consumer Price Index for the month which is two (2) months prior to the commencement date of the applicable Lease Year and the date which is one year immediate prior thereto, and (y) the denominator of which shall equal the Consumer Price Index the month which is one ear and two (2) months prior to preceding the applicable Lease Year. The CPI Adjustment Amount shall only be used to calculate Annual Base Rent.

- (2) Percentage Rent: The term Percentage Rent means a sum equal to between six and eight percent (with the majority at eight percent) of the Tenant's monthly Gross Sales² after deducting therefrom the amount of the Monthly Base Rent paid by Tenant. Percentage rent shall be due and payable monthly, for the preceding calendar month, on or before the twentieth day of each calendar month. If payment is not received by the 20th of each month, delinquent penalties will be billed.
- (3) Common Area Rent: In addition to the Annual Base Rent and the Percentage Rent, Tenants pay to FMC a portion of the expenses incurred by the FMC in connection with the maintenance and administration of the common areas of the French Market. Tenant's Common Area Rent is computed by a formula based upon the ratio of the total space leased to the Tenant to the leasable space in the French Market. The ratio is applied to 100% of the common area expenses incurred by FMC. Common area rent shall be payable on the 1st day of each month. If payment is not received by the 1st of each month, delinquent penalties will be billed. Common area expenses for the purposes of calculating common area rent include only the following: janitorial and garden service (labor, equipment and supplies) covering the public areas in or adjacent to the French Market, such as corridor, restrooms, plazas, stairways, and garden areas; electricity and lighting for all public areas; water; salaries and cost of maintenance personnel; garbage and refuse services; security service (salaries and costs, and equipment); pest and rodent control services; fire alarm monitoring costs; and inspection, maintenance, and repair of common building systems (including but not limited to sprinkler systems, fire alarm, and fluid coolers).
- (4) Advertising Rent: In addition to Annual Base Rent, Percentage Rent and Common Area Rent, tenants pay to FMC on or before the 20th day of each calendar month a sum equal to 1% of the Tenants Gross Sales for the preceding calendar month. The money paid by the Tenant to the FMC shall be expended by the FMC from time to time for the purpose of providing advertising, publicity, and general business promotion of the Landlord's own choosing for the general business promotion of the French Market. If payment is not received by the 20th of each month, delinquent penalties shall be pursued.

A. FMC STAFF RECOMMENDATION

FMC staff recommends the following Commercial Tenant Rent Relief Program:

² The term "Gross Sales" means the entire amount of the selling price of all merchandise and services sold in or from the Leased Premises by Tenant, its subtenants, licensees, and concessionaires, whether for cash or for credit, and of all orders filled or secured or received in the Lease Premises by telephone, video, Internet or other electronic, mechanical or automated means, by mail, house-to-house or other canvassing, by personnel operating from, reported to or under the supervision of any employee, agent or representative located at or operating out of the Leased Premises. No deductions shall be allowed for uncollected or uncollectible credit accounts."

The FMC shall abate 50% of Base Rent for all eligible Commercial Tenants for the period beginning March 1, 2020 and ending June 30, 2020. The FMC shall offer a deferred repayment plan for any eligible Commercial Tenant for its outstanding amount of annual base rent, common area rent, percentage rent, and advertising rent.

A Commercial Tenant is eligible for the Commercial Tenant Rent Relief Program if the tenant was current on its annual base rent, common area rent, percentage rent, and advertising rent obligations as of March 5, 2020 or March 20, 2020 or becomes current prior to requesting to participate in the Commercial Tenant Rent Relief Program and complies with the following conditions:

- (1) The Tenant shall submit a written request to the Executive Director of the FMC to participate in the Commercial Tenant Rent Relief Program;
 - (2) The Tenant shall execute a Commercial Tenant Rent Relief Agreement that addresses the particular circumstances presented by each requesting tenant's lease and memorializes the terms of the Commercial Tenant Rent Relief Program as individualized for each requesting tenant's lease, needs, and operations;
 - (3) The Tenant shall agree to repay the past due amount of annual base rent, common area rent, percentage rent, and advertising rent according to a repayment plan agreed to by each tenant and the FMC. Unless exceptional circumstances apply, the methods of repayment shall include repayment in equal installments over a set term or a gradual ramp up in payments over a set term, with no interest or penalties imposed on deferred rentals repaid in the short term, meaning repayment in full occurs within the four (4) months following the end of the waiver period on June 30, 2020 (July 1, 2020 to October 30, 2020), and a reasonable interest rate (e.g., 4%) imposed on deferred rent repaid over a longer term, meaning repayment of all or part of the past due amount of annual base rent, common area rent, percentage rent and advertising rent occurs during the time period between five (5) and ten (10) months after the waiver period ends on June 30, 2020 (November 1, 2020 to April 30, 2021).
 - (4) The Tenant shall agree that full payment of the entire past due amount of annual base rent, common area rent, percentage rent, and advertising rent is due by May 1, 2021. Any balance due past that date will be deemed an immediate default under the lease that permits the FMC to exercise any and all of its rights and remedies under the lease and applicable law;
 - (5) Except for the rent relief provide herein, the Commercial Tenant Rent Relief Agreement executed by the Tenant shall acknowledge that the Lease remains in full force and effect, and the Tenant remains obligated to fulfill all obligations under the Lease; and
 - (6) As a consideration of FMC rent relief, each Tenant shall waive and release FMC from any claims that the Tenant is excused from paying rent during the pendency of the COVID-19 emergency, whether based on force majeure, impossibility of performance or other legal theory.
-

Attachments:

Certified Resolutions of the Board of Directors of the French Market Corporation (“FMC”)