

**11098. RESOLUTION 16-17 – LEASE AMENDMENT BETWEEN THE DELAWARE RIVER AND BAY AUTHORITY AND CAPE MAY BREWING, LLC.**

WHEREAS, the Delaware River and Bay Authority (the “Authority”), is the operator of the Cape May Airport (the “Airport”); and

WHEREAS, Cape May County is the owner of the property operated as the Cape May County Airport; and

WHEREAS, Cape May Brewing, LLC (“CMB”) currently leases Building 97 and Units 4-8 in Building 96 at the Airport with original lease terms that expire on June 30, 2017 and February 28, 2017 respectively; and

WHEREAS, CMB desires the right to purchase Building 97 and/or associated land in order to undertake a major expansion of their brewery operation

WHEREAS, the Authority agrees that it will execute an amendment to the Lease Agreement with the County removing the Premises from its leasehold interest if the following conditions are met:

- (i) obtains the County’s agreement to release the Premises from the Ground Lease upon terms reasonably satisfactory to Landlord;
- (ii) obtains the County’s agreement to sell the Premises to Tenant at no less than the then-current fair market value (“FMV”), as determined pursuant to the then-current policies issued by the Federal Aviation Administration (the “FAA”);
- (iii) obtains the County’s agreement that the purchase price for the Premises shall be paid to the Landlord for its airport fund, which is administered by the Landlord as the sponsor of the Airport for the development, improvement, operation and maintenance of Cape May Airport;
- (iv) CMB expands their current operation at facility to be acquired;
- (v) agrees to purchase the Premises in its “AS-IS” condition pursuant to a special warranty deed, with no representations or warranties given by Landlord or the County other than those customary representations or warranties given by a “grantor” with respect to title to the Premises;
- (vi) agrees to enter into a more definitive purchase agreement consistent with the foregoing and with such additional terms and conditions as are required by Landlord, in its sole discretion;

- (vii) obtains a deed of release in recordable form from the FAA releasing the Premises, or any portion thereof that is subject to FAA regulation, from FAA regulation and the conditions, reservations, exceptions and restrictions imposed pursuant to that certain Instrument of Transfer dated December 1, 1947 and effective as of December 29, 1948, as the same is of record in the Office of the Recorder of Deeds in and for Cape May County, New Jersey in Deed Book 719, page 442;
- (viii) executes a restrictive covenant, in form and substance satisfactory to Landlord and the County, in their sole discretion, prohibiting any activity on the Premises that would be incompatible with airport operations or would create a hazard or interference to the operation of aircraft and/or to communication facilities;
- (ix) grants to the Landlord and the County an easement in form and substance satisfactory to Landlord and the County, in their sole discretion, that would (a) establish the maximum height for structures and objects of natural growth, (b) provide a right of flight for the passage of aircraft in the space above the Premises, and (c) provide Landlord, the County and airport tenants and users the right to create or generate such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight using said airspace;
- (x) enters into an amendment terminating the Lease upon Tenant's purchase of the Premises; and
- (xi) agrees to execute such additional instruments, certificates, documents or agreements that may be reasonably requested to complete the sale of the Premises;

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is hereby authorized to finalize the terms and conditions of the Lease Amendment with Cape May Brewing, LLC and, with the advice and consent of counsel, to have such Amendment executed by the Chairperson, Vice Chairperson and the Executive Director.

A motion to approve Resolution 16-17 was made by Commissioner Murphy, seconded by Commissioner Carey, and approved by a roll call vote of 9-0 with an abstention by Commissioner Bennett.

## **Resolution 16-17 – Executive Summary Sheet**

- Resolution:** Authorizing the Execution of a Lease Amendment between the Delaware River and Bay Authority and Cape May Brewing, LLC, regarding the Cape May Airport, Cape May, NJ
- Committee:** Economic Development
- Committee Date:** April 19, 2016
- Board Date:** April 19, 2016
- Purpose of Resolution:** To permit the Executive Director, Chairperson and Vice Chairperson to execute and deliver a lease amendment for land at the Cape May Airport.
- Background of Resolution:** The Delaware River and Bay Authority operates the Cape May Airport. Cape May Brewing, LLC currently lease Building 97 and Units 4-8 in Building 96 to operate a craft brewing facility at the airport. Cape May Brewing desires to expand their business and made a request to have the right to purchase the property during the lease term. Since the DRBA does not own the property but operates under a long term lease County consent is required. Also the property has FAA restrictions on use and an official release request from these restrictions will be required from the FAA. This amendment grants DRBA approval of the right of Cape May Brewing to purchase the property pending various approvals and consents from the County and the FAA.