

Agenda Item #: PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting Date: May 15, 2007 [] Consent [X] Regular [] Ordinance [] Public Hearing Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to :

A) approve a First Amendment to Lease Agreement (R-2001-0582) with Bedner Farm, Inc. for 262 acres in the Ag Reserve; and

B) adopt a Resolution finding that an extension of the Lease Agreement with Bedner Farm, Inc. is in the best interest of the County.

Summary: On June 19, 2001, the Board approved a contract with Bedner Farm, Inc. to acquire approximately 262 acres in the Ag Reserve (R-2001-0582). Simultaneously with the closing, the County leased the property back to Bedner Farm for a term of ten (10) years at an initial rental rate of \$550/acre/year. Rent is currently \$600/acre/year. The Lease will expire in 2011. Bedner Farm is operated by the Bedner family which wants to ensure that the younger members of the family will have the ability to continue farming. In addition, they desire to make improvements to their facilities in order to meet current more stringent FDA requirements for food handling and processing. Their planed expansion and renovation of their packing plant will require a significant financial investment which can not be recovered over the four (4) years remaining on their Lease. Consequently, the Bedner's have requested an extension of their Lease for an additional twelve (12) years until 2023. This First Amendment to Lease Agreement provides Bedner Farm, Inc. twelve (12) additional options to extend the term of the Lease, each for a period of one (1) year. Rent during the extended term will be adjusted to fair market value as determined by appraisal and updated every 3-5 years. The Resolution finds that the extension of the Bedner Lease is in the best interests of the County based upon the following facts: 1) a major element of the Ag Reserve Acquisition Program was to ensure continued agricultural operations in the Ag Reserve; 2) continuity of farming operations assists in preserving agricultural operations in the Ag Reserve; 3) extension of the Bedner Lease to maintain continuity of existing farming operations; and 4) the County will receive fair market value rent as determined by appraisal during the extensions. (PREM) District 5 (HJF)

Background and Policy Issues: On April 17, 2001, the Board accepted an assignment from the Nature Conservancy of an Option Agreement for Sale and Purchase (R-2001-0582), as amended, from Bedner Farm, Inc. for \$9,854,757 to acquire approximately 262 acres in the Ag Reserve contingent upon execution of a lease back to Bedner Farm, Inc. On June 19, 2001, the Board approved the Second Amendment to the Option Agreement for Sale and Purchase (R-2001-0943). The initial term of the Lease, as approved by the Board on April 17 and June 19, 2001, commenced upon closing, June 26, 2001, with an initial expiration date of May 31, 2002. Florida Statutes Section 286.23 requires that a Disclosure of Beneficial Interest be obtained when a property held in a representative capacity is leased to the County, but does not require such Disclosure when the County leases property to a tenant. Since the Statute does not require the Disclosure and since this is an amendment to the Lease Agreement which was already approved by the Board, Staff did not request such Disclosure.

Attachments:

- 1. Location Map
2. First Amendment to Lease Agreement
3. Resolution

Recommended By: [Signature] Department Director Date: 5/14/07
Approved By: [Signature] County Administrator Date: 5/19/07

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>-0-</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____
 Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No fiscal impact for period above. However, for the period 2012 - 2023 (additional 12 years added to lease), \$650 per year (approximately) per acre @ 262 acres = 170,300 per year for 12 years = 2,043,600 additional revenue to the County.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 5-8-07
 OFMB
[Signature] 5/8/07
[Signature] 5/17/07

[Signature] 5/19/07
 Contract Development and Control
 & Jones 5/19/07

This amendment complies with our review requirements.

B. Legal Sufficiency:

[Signature] 5/19/07
 Assistant County Attorney

At the time of COA's review the amendment was not executed.

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (R2001-0582) (the "First Amendment") entered into as of _____ by and between PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "County" and BEDNER FARM, INC. (a Florida corporation), with offices located at 14186 Starkey Road, Delray Beach, FL 33446 (EIN: #59-1784981) hereinafter referred to as "Tenant".

WITNESSETH

WHEREAS, County and Tenant entered into a Lease Agreement dated June 26, 2001, which was approved under Resolution No. 2001-0582 on April 17, 2001 (the "Lease"), pursuant to which Tenant leases approximately 262.377+/- acres (the "Premises") as legally described in the Lease; and

WHEREAS, the Lease term was originally set to expire on May 31, 2002, subject to extensions; and

WHEREAS, Tenant has exercised its option to extend the Lease through May 31, 2008; and

WHEREAS, the parties wish to modify this Lease on the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, as well as other good and valuable considerations, the receipt of which is hereby acknowledged by both parties, County and Tenant agree as follows:

- 1 The foregoing recitals are true and correct and incorporated herein by reference.
2. Section 1.03 Option to Renew, is hereby amended as follows:

The words "...for nine (9) successive periods..." in the first sentence are revised to state "...for twenty-one (21) successive periods...". All the rest and remainder of Section 1.03 is unchanged and remains in full force and effect.

3. The following Section is hereby added to the Lease:

Section 2.02(c) Rent during additional option periods.

Commencing June 1, 2011, the Rent shall be adjusted to the then current fair market value rental. County shall obtain, at its expense and in accordance with the requirement set forth herein, an appraisal of the then current fair market rental for the Premises prior to the end of the Second Rent Adjustment Period, and provide a copy of said appraisal to Tenant not less than ninety (90) days prior to May 31, 2011. In the event that Tenant does not believe that the

appraisal obtained by County accurately reflects the then existing fair market rental for the Premises, Tenant shall so notify County and request that County obtain a second appraisal in accordance with the requirements set forth herein. Tenant shall pay the cost of the second appraisal. In the event that the two appraisals vary by less than 15%, the two appraisals shall be averaged and the result shall be used as the new Rent payable until the next adjustment. In the event that the two appraisals vary by more than 15%, the two appraisers shall select a third appraiser who shall perform an appraisal of the fair market rental for the Premises. The cost of said third appraisal shall be borne equally by the parties. The Rent will then be established by discarding the high and low values, and utilizing the middle appraisal value as the fair market rent.

The new Rent established by the foregoing process shall remain in effect until either party requests that the Rent be reappraised, but not more frequently than every 3 years, nor longer than every 5 years.

4. In all other respects, the terms and conditions of the Lease are hereby ratified and confirmed.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have set their hands and seals to this First Amendment as of the date written above.

Signed, sealed and delivered in the presence of:

ATTEST:
SHARON R. BOCK,
Clerk and Clerk & Comptroller

PALM BEACH COUNTY, a political subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND CONDITIONS:

By: _____
Assistant County Attorney

By: _____
Department Director

Witness

Printed Name

Witness

Printed Name

BEDNER FARM, INC. (TENANT)

By: _____

Printed Name: _____

RESOLUTION NO. 2007-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING AN EXTENSION OF THE LEASE WITH BEDNER FARM, INC.; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Palm Beach County and Bedner Farm, Inc., a Florida corporation ("BFI"), entered into a Lease Agreement dated April 17, 2001, for BFI's use of 262 acres of land in the Agricultural Reserve for agricultural purposes;

WHEREAS, BFI has requested that County extend the term of the Lease for twelve (12) years by granting BFI twelve (12) successive options to extend the term of the Lease, each for a period of one (1) year; and

WHEREAS, the Board of County Commissioners of Palm Beach County hereby finds that the extension of the Lease is in the best interest of the County as:

- 1) a major element of the Ag Reserve Acquisition Program was to ensure continued agricultural operations in the Ag Reserve;
- 2) continuity of farming operations assists in preserving agricultural operations in the Ag Reserve;
- 3) extension of the Lease maintains continuity of existing farming operations; and
- 4) the County will receive fair market value rent as determined by appraisal during the extensions.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. Recitals

The foregoing recitals are true and correct and incorporated herein by reference.

Section 2. Authorization to Extend the Term of the Lease

The Board of County Commissioners of Palm Beach County shall grant BFI twelve (12) successive options to extend the term of the Lease, each for a period of one (1) year, pursuant to the

First Amendment to Lease attached hereto and incorporated herein by reference, with rent during said extended term being adjusted to Fair Market Value as determined by appraisal.

Section 3. Conflict with Federal or State Law or County Charter.

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

Section 4. Effective Date.

The provisions of this Resolution shall be effective immediately upon adoption hereof.

The foregoing resolution was offered by Commissioner _____ who moved its adoption. The Motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

- COMMISSIONER ADDIE L. GREENE, CHAIRPERSON
- COMMISSIONER JOHN F. KOONS, VICE CHAIR
- COMMISSIONER KAREN T. MARCUS
- COMMISSIONER WARREN H. NEWELL
- COMMISSIONER MARY MCCARTY
- COMMISSIONER BURT AARONSON
- COMMISSIONER JESS R. SANTAMARIA

The Chair thereupon declared the resolution duly passed and adopted this _____ day of _____, 2007.

PALM BEACH COUNTY, a political subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By _____
Assistant County Attorney

By *[Signature]* _____
Department Director