

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

=====

| | | |
|-------------------------------|---|---|
| Meeting Date: August 25, 2020 | <input checked="" type="checkbox"/> Consent | <input type="checkbox"/> Regular |
| | <input type="checkbox"/> Workshop | <input type="checkbox"/> Public Hearing |

Submitted By: Department of Airports

=====

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: the following documents in connection with the Development Site Lease Agreement between Palm Beach County and PBI Post Distr. LLC (Post) dated December 19, 2017 (R2017-1892, as amended) (the Lease):

- A. Consent to Sublease (Consent), consenting to the sublease (Sublease) by Post to PBI Wallis Distr. LLC (Wallis), of the premises under the Lease; and
- B. Ground Lessor’s Estoppel Certificate (Estoppel) to BNB Bank.

Summary: The Lease provides for the development of a warehouse facility on approximately 7.5 acres on the south side of Wallis Road, between Military Trail and Haverhill Road, west of the Palm Beach International Airport (PBI). Post has obtained a leasehold mortgage and the lender has requested the Estoppel to verify important details of the Lease. Post has requested the Consent to the Sublease, as provided under the Lease. Post and Wallis entered into the Sublease on June 25, 2020. Countywide (HJF)

Background and Justification: The Estoppel details key elements of the Lease for Post’s leasehold mortgagee, including rental, important dates and provisions related to the leasehold mortgage and provides that the County will provide applicable notice to the lender. The Lease and agenda item authorized the Director of the Department of Airports to execute the Estoppel in the form attached as Exhibit “G” to the Lease. The Lease allows Post to sublease the premises subject to the County’s consent. Although Wallis will perform under the Sublease, the Sublease is subject and subordinate to all of the terms, covenants, conditions and provisions of the Lease, and Post will remain responsible for all duties and obligations under the Lease. Delegation of authority for execution of the standard form consent to sublease was approved by the Board October 18, 1994 (R-94-1453).

- Attachments:**
- 1. One (1) Consent
 - 2. One (1) Estoppel

=====

| | |
|---|------------------|
| Recommended By: <i>PW</i> <u><i>Laura Beebe</i></u> | <u>7-14-20</u> |
| Department Director | Date |
| Approved By: <u><i>M. Bate</i></u> | <u>7/23/2020</u> |
| County Administrator | Date |

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

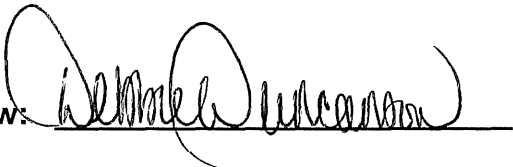
| Fiscal Years | <u>2020</u> | <u>2021</u> | <u>2022</u> | <u>2023</u> | <u>2024</u> |
|--|---------------------|---------------------|---------------------|---------------------|---------------------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| Operating Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | <u><u>\$-0-</u></u> | <u><u>\$-0-</u></u> | <u><u>\$-0-</u></u> | <u><u>\$-0-</u></u> | <u><u>\$-0-</u></u> |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |

Is Item Included in Current Budget? Yes _____ No X
 Does this item include the use of federal funds? Yes _____ No X

Budget Account No: Fund 4100 Department 120 Unit _____ Object _____
 Reporting Category _____

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

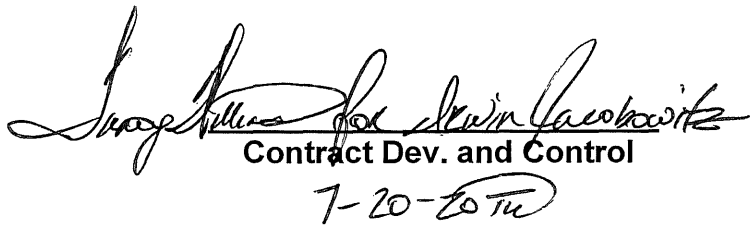
No Fiscal Impact. (7)

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 7/17/2020
 OFMB (7)


 Contract Dev. and Control
 7-20-2020

B. Legal Sufficiency:

 7/21/2020
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 11/17
 (THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

CONSENT TO SUBLEASE

PALM BEACH COUNTY, a political subdivision of the State of Florida, the "COUNTY", by and through its Department of Airports, under that certain Development Site Lease Agreement with **PBI POST DISTR. LLC**, (the "LESSEE"), dated December 19, 2017 (R-2017-1892), as amended that certain First Amendment to Development Site Lease Agreement, dated December 2, 2018 (R-2018-1853) (the "LEASE AGREEMENT"), hereby consents to LESSEE entering into a sublease agreement substantially in the form attached hereto as EXHIBIT "A" (the "SUBLEASE") with **PBI WALLIS DISTR. LLC**, (the "SUBLESSEE") for the sublease of certain premises contained within the leasehold of LESSEE under the Lease Agreement (the "COUNTY CONSENT").

Notwithstanding any provision of the SUBLEASE to the contrary, the COUNTY hereby rejects any such provision in the SUBLEASE, if any, which gives a greater right to the SUBLESSEE than that which the LESSEE has and, further, the COUNTY rejects any provision of the SUBLEASE which purports to give the SUBLESSEE a right or interest in the premises independent of the LESSEE's LEASE AGREEMENT with COUNTY. It is the express intent of COUNTY in giving COUNTY CONSENT that any forfeiture, loss, or termination of LESSEE's LEASE AGREEMENT shall automatically terminate any sublease of the premises. In giving COUNTY CONSENT to sublease the premises, Palm Beach County does not in any manner adopt, accept, or approve the terms of the SUBLEASE or alter the terms of the SUBLEASE.

It is COUNTY's intent that LESSEE shall remain liable to COUNTY for all rights and obligations contained in its LEASE AGREEMENT with COUNTY.

This COUNTY CONSENT shall be conditioned on, and shall be effective only upon COUNTY's receipt of a complete copy of the SUBLEASE, fully executed by both LESSEE and SUBLESSEE.

APPROVED this 11 day of June 2010 by the County Administrator or the Director of the Department of Airports on behalf of and pursuant to the authority granted by the Palm Beach County Board of County Commissioners.

By: *Laura Bube*
Title: Director of Airports

Approved as to Form and Legal Sufficiency:

By: */s/ Howard Falcon*
County Attorney

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT, dated as of this 25th day of June, 2020 (“Sublease”), between **PBI POST DISTR. LLC**, a Delaware limited liability company, having an office at 687 Old Willets Path, Hauppauge, New York 11788 (“Sublessor”), and **PBI Wallis Distr. LLC**, a Florida limited liability company, having an office at c/o NExT1031, 23623 N Scottsdale Rd. #D3250, Scottsdale, AZ 85255 (“Subtenant”).

WITNESSETH:

WHEREAS, Sublessor is the tenant under that certain Development Site Lease Agreement dated December 19, 2017, as modified by that certain amendment dated December 4, 2018, a copy of which is attached hereto and made a part hereof as Exhibit A (collectively, “Overlease”), between Palm Beach County, a political subdivision of the State of Florida, as landlord (“Overlandlord”), and Sublessor, as tenant, covering approximately 326,697 square feet of unimproved property located in Palm Beach County, Florida as more particularly described therein (“Premises”); and

WHEREAS, Subtenant is desirous of subletting from Sublessor the Premises (the “Sublet Space”), and Sublessor is desirous of subletting the Sublet Space to Subtenant, upon the terms, covenants, conditions, provisions and agreements hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto do covenant and agree as follows:

1. Premises. Sublessor subleases the Sublet Space to Subtenant, and Subtenant subleases the Sublet Space from Sublessor. Except as set forth herein, this Sublease is made upon and shall be subject to, all of the terms, covenants, conditions, provisions and agreements of the Overlease, which are hereby incorporated herein by reference.

2. Term. The term of this Sublease (“Term”) shall expire on the date which is one day prior to the expiration or termination of the Overlease.

3. Rent. Subtenant covenants and agrees to pay to Sublessor, during the Term, a yearly rental in an amount equal to the Base Rental amount determined under the Overlease from time to time. In addition, Subtenant shall pay to Sublessor, during the Term, Additional Rent as such term is defined in the Overlease.

4. Overlease.

A. This Sublease is expressly made subject and subordinate to all of the terms, covenants, conditions, provisions and agreements contained in the Overlease and to any and all amendments, modifications, revisions, supplements or additions now or hereafter made thereto. The restrictions, limitations and conditions imposed upon Sublessor by the terms of said Overlease are imposed upon Subtenant with the same force and effect as if specifically set forth herein at length, and Subtenant assumes and agrees to perform all of the obligations of Sublessor under said

Overlease insofar as such obligations pertain to the Sublet Space, except as otherwise expressly provided herein or to the extent inconsistent with, or inapplicable to any of the provisions of this Sublease.

B. Subtenant covenants and agrees that Subtenant will not use said Sublet Space or any part thereof, or permit said Sublet Space or any part thereof, to be used in such manner as to be inconsistent with any of the obligations of Sublessor to Overlandlord under the Overlease, nor will Subtenant at any time do anything or omit to do anything or permit anything to be done which shall or may violate said Overlease, or result in a violation by Sublessor of any of its obligations under said Overlease.

5. Exculpation. Notwithstanding any provisions of this Sublease to the contrary, National Exchange Titleholder 1031 Co., an Arizona corporation ("NExT1031"), is acting as an exchange accommodation titleholder in connection with a like-kind exchange under IRC Section 1031 and Revenue Procedure 2000-37 for the benefit of Prime Eleven LLC ("Taxpayer"). As an accommodation party, Sublessor agrees not to look to NExT1031 or NExT1031's directors, officers, and employees, with respect to the Sublease or any covenant, stipulation, promise, indemnity, agreement or obligation contained herein. The Sublessor will not seek a money judgment against NExT1031 or NExT1031's directors, officers and employees and will not institute any separate action against NExT1031 by reason of any default that may occur in the performance of any of the terms and conditions of the Sublease between Sublessor and Subtenant. This agreement on the part of the Sublessor shall not be construed in any way so as to effect or impair the lien of the Sublease or the Sublessor's rights hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Sublessor in any proceedings or other enforcement of this Sublease.

6. Termination of Overlease. This Sublease shall automatically terminate on the termination, cancellation or expiration of the Overlease.

7. Incorporation of Overlease. Notwithstanding anything to the contrary contained in this Sublease, and solely for the purpose of incorporation herein, the terms, covenants, conditions, provisions and agreements of the Overlease are subject to the following modifications:

A. In all provisions of the Overlease requiring the approval or consent of Overlandlord, Subtenant shall be required to obtain the approval or consent of both Sublessor and Overlandlord; provided, however, that if Overlandlord shall have withheld its approval or consent, Sublessor's refusal to give its approval or consent in such instances shall not be deemed unreasonable.

B. In all provisions of the Overlease requiring tenant to submit, exhibit to, supply or provide Overlandlord with evidence, certificates, or any other matter or thing, Subtenant shall be required to supply the same to both Sublessor and Overlandlord. In any such instance, such evidence, certificate or other matter or thing shall be deemed to be reasonably satisfactory to Sublessor if Overlandlord shall deem such evidence, certificate or other matter or thing satisfactory; provided, however, if Overlandlord shall deem such evidence, certificate or other

matter or thing unsatisfactory, Sublessor's refusal to accept same shall not be deemed unreasonable.

C. (1) In all provisions of the Overlease requiring tenant to give notice to Overlandlord, such notice shall be simultaneously sent to both Overlandlord and Sublessor.

(2) In all provisions of the Overlease referring to notice given by Overlandlord to tenant, notice to Subtenant by either Sublessor or Overlandlord shall be effective.

D. In all provisions of the Overlease requiring tenant to take any action within a certain period of time after notice from Overlandlord, then upon notice from Sublessor to Subtenant, Subtenant shall take such action three (3) days earlier than the date on which tenant under the Overlease is required to act.

E. Subject to the restrictions of Section 5 above, Sublessor shall have absolutely no liability or obligation to indemnify, defend or hold Subtenant harmless with respect to any acts or omissions or conduct referred to in the Overlease which shall be the conduct of Overlandlord or any other person, party or entity other than Sublessor and/or Sublessor's agents, servants, employees, contractors, licensees and subtenants (other than Subtenant).

F. Subtenant shall have no right to resort to self-help, and in any instance where self-help would be available to Sublessor, Subtenant's sole right shall be to notify Sublessor in writing of Overlandlord's failure to provide services, or perform its obligations under the Overlease, which notice shall set forth such failure(s) in reasonable detail and Sublessor shall thereafter, at Subtenant's sole cost and expense, use commercially reasonable efforts to cause Overlandlord to restore such services, or perform such obligations, respectively, as the case may be.

G. No right of offset or abatement of rent due hereunder shall exist on the part of Subtenant against Sublessor for any act, conduct or omission of Overlandlord, except to the extent that a corresponding right of offset or abatement shall actually exist in favor of Sublessor under the Overlease and be availed of by Sublessor with respect to the portion(s) of the Sublet Space so affected thereby.

H. Any grace period afforded to Subtenant under this Sublease upon the occurrence of any default or failure of performance on the part of Subtenant, shall expire three (3) days prior to the expiration of the applicable grace period afforded to Sublessor under the Overlease.

I. Sublessor shall not be required to maintain any insurance the Overlease requires the Overlandlord to maintain.

J. Sublessor shall not be bound by any representation or warranty made by Overlandlord under the Overlease.

K. Sublessor shall not be obligated to perform any work the Overlease requires the Overlandlord to perform.

L. Sublessor shall not be liable or responsible to provide Subtenant with any rent concession or improvement allowance given by Overlandlord under the Overlease.

M. Except as otherwise expressly provided herein, in all provisions of the Overlease:

- (1) the term "Landlord" shall mean "Sublessor";
- (2) the term "Tenant" shall mean "Subtenant";
- (3) the term "Lease" shall mean "Sublease";
- (4) the term "Term" shall mean "Term";
- (5) the term "Premises" or "Demised Premises" shall mean "Sublet Space";
- (6) the words "this date", "the date hereof", "the date of this Lease" and similar references shall mean "the date of this Sublease";
- (7) references in the Overlease to "this Lease", "the Lease" and similar references shall mean "this Sublease", except when such reference in the Overlease is, by its terms (unless otherwise expressly provided herein), to any other section of the Overlease, in which event such reference shall be deemed to refer to the particular section of the Overlease.

8. Assignment/Subletting.

A. Subtenant shall not in any matter, assign, transfer, mortgage, hypothecate or otherwise encumber this Sublease, or further sublet, in whole or in part, the Sublet Space, or permit the Sublet Space or any part thereof to be used or occupied by others, without the prior written consent of Sublessor and Overlandlord. Any transfer by operation of law or otherwise, of Subtenant's interest in this Sublease or of any percentage interest in Subtenant or Subtenant's parent organization (whether stock, partnership or membership interest, or otherwise) in a single transaction or a related series of transactions, shall be deemed to be an assignment of this Sublease. Notwithstanding the foregoing, any direct or indirect transfer of the Membership Interests in Subtenant to an entity controlled and managed by Gary P. Krupnick shall be permitted. It is expressly acknowledged by the parties that NEX1031 will be involved with the Premises for a period of time not to exceed 180 days, and then NEX1031 will either (1) assign the membership interest in Subtenant to Taxpayer or (2) cause Subtenant to assign this Sublease to Taxpayer; and either of such transactions shall be permitted hereunder without further consent or notice.

B. Any consent by Sublessor to any assignment or further subletting shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of Subtenant or the legal representatives or assigns of Subtenant,

to obtain the prior written consent of Sublessor to any other or subsequent assignment or further subletting, or as modifying or limiting the rights of Sublessor under the foregoing covenant by Subtenant not to assign or further sublet without such consent.

C. Any violation of any provision of this Sublease, whether by act or omission, by any assignee, subtenant or occupant, shall be deemed a violation of such provision by Subtenant; it being understood and agreed that Subtenant shall assume and be liable to Sublessor for any and all acts and omissions of any and all assignees, subtenants and occupants.

9. Indemnity. Subject to the restrictions of Section 5 above, Subtenant covenants and agrees to indemnify and hold Sublessor and Overlandlord and any mortgagee and their respective agents, servants, employees, contractors, licensees and invitees, harmless from and against any and all liability (statutory or otherwise), claims, suits, demands, damages, judgments, costs, interest and expenses (including, without limitation, reasonable attorneys' fees and disbursements incurred in the defense of any action or proceeding), to which they may be subject or which they may suffer by reason of, any injury to person or persons (including, but not limited to, Sublessor, its agents, servants, employees, contractors, licensees and invitees) or damage to property (including any loss of use thereof), arising from, or in connection with: (i) the occupancy or use of, or from any thing whatsoever done, in, at or about the Sublet Space during or subsequent to the Term; or (ii) any condition of the Sublet Space; or (iii) any default by Subtenant in the performance of Subtenant's obligations under this Sublease; or (iv) any act, omission or negligence of Subtenant or its agents, servants, employees, contractors, licensees or invitees.

10. Default. If Sublessor shall receive a notice of default from Overlandlord, which default arises out of, or is in connection with, Subtenant's actions or failure to act under this Sublease, then Sublessor, after five (5) days' written notice to Subtenant and without waiving or releasing Subtenant from any obligation contained in this Sublease, may, but shall be under no obligation to, make any such payment or perform any such act on Subtenant's part to be made or performed as provided in this Sublease in order to cure the default under the Overlease, and may enter upon the Sublet Space for that purpose and take all such other actions as may be necessary therefor.

11. Compliance With Laws. Subtenant covenants and agrees that it will not use or suffer or permit any person to use the Sublet Space for any unlawful purpose. Subtenant further covenants and agrees to comply with applicable laws, resolutions, codes, rules and regulations of any governmental or quasi-governmental agency, authority, board, body, bureau, department or official having jurisdiction over the occupancy, maintenance and use of the Sublet Space for the purposes set forth herein. Subtenant covenants and agrees to indemnify and hold Sublessor harmless from and against any claims, penalties, losses, damages or expenses imposed by reason of a violation of any of the foregoing.

12. Entry. Sublessor and/or its agents may enter the Sublet Space at reasonable hours upon reasonable prior notice to Subtenant, which notice may be telephonic (except in the event of an emergency, in which event no notice shall be required), in order to repair, inspect, install or perform other work that Sublessor deems necessary or desirable, or to show the Sublet Space to prospective purchasers, lenders, subtenants, licensees or occupants, or in order for Overlandlord

to inspect, repair, install or perform other work in accordance with the terms, covenants, conditions, provisions and agreements of the Overlease.

13. End of Term. At the expiration or sooner termination of the Term, Subtenant shall deliver the Sublet Space to Sublessor in good order and "broom- clean" condition, and Subtenant shall remove all of Subtenant's personal property therefrom.

14. Estate. Sublessor cannot grant or convey any greater estate, right or interest by virtue of this Sublease than Sublessor has received under the terms of the Overlease, and Subtenant acknowledges that it has not received and cannot receive any greater estate, right or interest pursuant to this Sublease than Sublessor has received under the Overlease.

15. No Privity of Estate.

A. Nothing contained in this Sublease shall be construed to create privity of estate or contract between Subtenant and Overlandlord.

B. Subtenant has no authority to contact or make any agreement with Overlandlord regarding the Sublet Space or the Overlease. Subtenant shall not pay Base Rent, Additional Rent, or any other sums or charges to Overlandlord.

16. Cumulative Remedies; Waiver.

A. All rights and remedies of Sublessor enumerated herein and in the Overlease shall be cumulative, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised and enforced concurrently.

B. No waiver by Sublessor of any covenant or condition or the breach of any covenant or condition of this Sublease shall constitute a waiver of any subsequent breach of such covenant or condition or authorize the breach or non-observance on any other occasion of the same or any other covenant or condition hereof.

17. Notices.

A. Any notice, statement, demand, request or other communication required or permitted to be given pursuant to this Sublease shall be made as follows:

(1) If to Sublessor, at the address first hereinabove given, Attention:
Gary P. Krupnick.

(2) If to Subtenant: (i) at the address first hereinabove given prior to the commencement date; and (ii) at the Sublet Space from and after the commencement date.

B. Such notices shall be sent by: (i) personal delivery, with a receipt provided therefor; or (ii) United States certified or registered mail, return receipt requested, with postage prepaid; or (iii) nationally recognized overnight courier service, with a receipt provided therefor

and charges prepaid. Notices shall be deemed effective upon receipt if personally served, forty-eight (48) hours after mailing if sent by United States mail, or the next business day if sent by overnight courier, respectively, as the case may be.

C. Sublessor and Subtenant may, by notice as aforesaid, designate a different address or addresses for notices, statements, demands or other communications intended for the party giving such notice.

D. Attorneys for Sublessor and Subtenant are authorized to render notices for and on behalf of the respective parties.

E. Sublessor and Subtenant shall each deliver to the other, copies of any notices, correspondence or statements whatsoever relating to the Sublet Space, promptly after receipt thereof.

18. Counterparts. This Sublease may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

19. Facsimile and PDF Signatures. This Sublease may be executed by facsimile and electronic, PDF transmission and shall be deemed to have been executed and delivered by each party on the date so transmitted to the other party, and in such event, each party will promptly furnish to the other party, an original counterpart hereof executed by such party.

20. Partial Invalidity. A determination that any provision of this Sublease is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Sublease to any person or to particular circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other person or circumstances.

21. Entire Agreement. This Sublease contains and is intended to contain the entire agreement between the parties with respect to the subject matter hereof, and there are no oral or collateral understandings, agreements, representations, warranties, promises, or undertakings of any nature whatsoever, express or implied, not expressly set forth herein.

22. Modification. This Sublease may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

23. Successors. The terms, covenants, conditions, provisions and agreements contained in this Sublease shall bind and inure to the benefit of the parties hereto and their respective legal representatives and successors and, except as otherwise expressly provided herein, their assigns.

24. No Presumption. Subtenant acknowledges and agrees that this Sublease is the result of extensive negotiations between the parties. This Sublease shall be construed without

regard to any presumption or other rule requiring construction against the party causing this Sublease to be drafted or prepared.

25. Waiver of Jury Trial; Counterclaims.

A. Subtenant waives all right to trial by jury in any summary or other action, proceeding or counterclaim arising out of, or in connection with, this Sublease, the relationship of Sublessor and Subtenant, the Sublet Space and the use and occupancy thereof, and any claim for injury or damages.

B. Subtenant waives all right to assert or interpose a counterclaim in any summary proceeding or other action or proceeding to recover or obtain possession of the Sublet Space.

26. Interpretation.

A. The captions, headings and titles in this Sublease are solely for convenience and reference, and shall not affect its interpretation.

B. If any words or phrases in this Sublease shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Sublease shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Sublease and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

C. Each covenant, agreement, obligation or other provision of this Sublease shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making same, not dependent on any other provision of this Sublease, unless otherwise expressly provided herein.

D. (1) All terms and words used in this Sublease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

(2) The word "person" as used in this Sublease shall mean a natural person or persons, a partnership, a corporation or any other form of business or legal association or entity.

27. Conflict. In case of any conflict or inconsistency between the provisions of the Overlease and this Sublease, the provisions of this Sublease shall, as between Sublessor and Subtenant, control.

[Balance of Page Intentionally Left Blank; Signatures Follow]

IN WITNESS WHEREOF, the parties hereunto have respectively executed this Sublease Agreement as of the day and year first above written.

ATTEST:

PBI POST DISTR. LLC (Sublessor)

By: Karen Wilhein
Name: KAREN WILHEIN
Title: EXEC. ASSISTANT

By: Cary A. Krupnick
Name: CARY A. KRUPNICK
Title: MANAGING MEMBER

ATTEST:

PBI Wallis Distr. LLC,
a Florida limited liability company

By: _____
Name: _____
Title: _____

By: National Exchange Titleholder 1031 Co.,
an Arizona corporation
Its: Sole Member (Subtenant)

By: _____
Name: Karin A Church
Title: President

IN WITNESS WHEREOF, the parties hereunto have respectively executed this Sublease Agreement as of the day and year first above written.

ATTEST:


PBI POST DISTR. LLC (Sublessor)

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTEST:

PBI Wallis Distr. LLC,
a Florida limited liability company

By: 
Name: Dana R. Sobrado
Title: Secretary of National Exchange Titleholder 1031

By: National Exchange Titleholder 1031 Co.,
an Arizona corporation
Its: Sole Member (Subtenant)




By: 
Name: Karin A Church
Title: President

EXHIBIT "A"

OVERLEASE

Exhibit "A" documents are incorporated by reference, but are not attached. The documents are the Development Site Lease Agreement between Palm Beach County and PBI Post Distr. LLC, dated December 19, 2017 (R2017-1892), and the First Amendment to Development Site Lease Agreement between Palm Beach County and PBI Post Distr. LLC, dated December 4, 2018 (R2018-1853), and total 131 pages.

PREPARED BY AND RETURN TO:

Michael L. Dornbaum, Esq.

Cullen and Dykman LLP

100 Quentin Roosevelt Blvd.

Garden City, New York 11530

Property Control Number: 00-42-43-36-01-000-0010 (portion)

GROUND LESSOR'S ESTOPPEL CERTIFICATE

Dated: as of June 22, 2020

From

PALM BEACH COUNTY

to

BNB BANK (FORMERLY BRIDGEHAMPTON NATIONAL BANK)

LOCATION OF PREMISES:

Street Address : **SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A"**
County of : **Palm Beach**
State of : **Florida**
District :
Section :
Block :
Lots :

AFTER RECORDING, PLEASE RETURN TO:

Michael L. Dornbaum, Esq.
Cullen and Dykman LLP
100 Quentin Roosevelt Blvd.
Garden City, New York 11530
File No.

GROUND LESSOR'S ESTOPPEL CERTIFICATE

June 22, 2020

BNB Bank
15 Frowein Rd, Suite A-3
Center Moriches, New York 11934

Re: Development Site Lease Agreement dated as of December 19, 2017 (R-2017-1892), as amended that certain First Amendment to Development Site Lease Agreement, dated December 2, 2018 (R-2018-1853) (collectively, the "Ground Lease") Between Palm Beach County (the "Lessor") and PBI Post Distr. LLC (the "Lessee")

Gentlemen:

BNB Bank (formerly Bridgehampton National Bank) (the "Bank") has indicated it is prepared to place a mortgage with an effective date on or about June 25, 2020, upon the premises demised under the Ground Lease (the "Premises") and further described in Exhibit "A" attached hereto, in the principal amount of \$9,900,000.00 (the "Mortgage"), and, in connection therewith, the Bank has required this certification by the undersigned.

The undersigned, as the current Lessor under the Ground Lease, hereby certifies that:

1. The Effective Date of the Ground Lease is December 19, 2017.
2. Payment of rental by Lessee to Lessor shall commence upon the Date of Beneficial Occupancy (as defined in Paragraph 3 below). The initial annual rental amount under the Ground Lease is \$186,217.29. No payment of rent has been made in respect of subsequent periods, and, except the security deposit required by Section 5.05 of the Ground Lease, no prepayment or deposit has been made to cover or apply to future rent or for security purposes, and the Lessee is not entitled to possession of the Premises for any period on a "rent free" or "reduced rent" basis or to any similar credits or concessions, except that no rental shall be payable by Lessee until the Date of Beneficial Occupancy.
3. The term of the Ground Lease shall commence on the earlier of: (a) substantial completion of the Initial Leasehold Improvements as defined in the Ground Lease; (b) the date Lessee commences using the Premises (or any part thereof) for the conduct of its business (other than construction); or (c) thirty-two (32) months from the Effective Date (or such later date agreed to by Lessor ("Date of Beneficial Occupancy") and expire thirty (30) years thereafter, unless sooner

terminated pursuant to the terms of the Ground Lease ("Initial Term"). Provided that Lessee is not in material default of the Ground Lease (or an event has not occurred, which with the passage of time or giving of notice would constitute a material default), the Ground Lease shall be automatically renewed for two (2) additional periods of ten (10) years each (each a "Renewal Term"), unless Lessee notifies Lessor in writing of Lessee's intent to not exercise its option to renew not later than one hundred twenty (120) days prior to the expiration of the then current term, with time being of the essence. Such renewal(s) shall be upon the same terms and conditions.

4. The Ground Lease (i) represents the entire agreement between the parties as to the leasing described therein and (ii) is in full force and effect and has not been assigned, modified, supplemented, or amended by the parties thereto in any way, except as may be listed below. Lessor has not mortgaged its interest under the Ground Lease. Pursuant to Section 26.02 of the Ground Lease, the Ground Lease is expressly subordinated and subject to the Bond Resolution and to certain state and federal agreements.

5. To the best knowledge of the undersigned (i) all improvements to the Premises required by the Ground Lease to be completed by the Lessee as of the date hereof have been completed (it being understood that construction of the building on the Premises has not commenced), (ii) all conditions under the Ground Lease to be performed by Lessor as of the date hereof have been performed, (iii) as of the date hereof, neither the Lessor nor the Lessee has any claims, offsets or defenses to the enforcement of the Ground Lease by the other party thereto, (iv) the Lessee is in compliance with its obligations under the Ground Lease and is not in breach or default thereunder, (v) except as may be listed below, there has been no previous assignment of, or mortgage on, the Lessee's interest in the Ground Lease or any previous assignment of the rents accruing thereunder, (vi) no material disputes between the Lessor and the Lessee with respect to the Ground Lease or the Premises are presently pending and (vii) no bankruptcy, insolvency or similar proceedings of any nature are presently pending against the Lessor.

6. The undersigned hereby acknowledges and agrees that the Bank, as leasehold mortgagee under the Mortgage, shall be entitled to all of the benefits accorded to a leasehold mortgagee pursuant to the terms of the Ground Lease. In the event of a fire or other damage to the Premises, the proceeds of any insurance policy or policies shall be administered in accordance with Section 11.04 of the Ground Lease, and any proceeds payable to, or on behalf of, Lessee may be held by Bank, which shall disburse such proceeds in accordance with the terms of the Mortgage.

7. The Lessor agrees to provide copies of all notices to the Lessee under the Ground lease to the Bank. All notices or other communications required or otherwise given pursuant to the Ground Lease shall be in writing and shall be delivered and deemed effective as provided in the Ground Lease, provided that such notices are addressed as follows:

(remainder of page intentionally left blank)

If to the Lessor:

Attn: Airport Director
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, Florida 33406-1470
Fax: 561-471-7427

With a copy to:
Attn: Airport Real Estate Attorney
Palm Beach County Attorney's Office
301 North Olive Ave, Suite 601
West Palm Beach, FL 33401
Fax: 561-355-4398

If to the Bank:

BNB Bank
898 Veterans Memorial Highway
Hauppauge, New York 11788
Attention: William J. Newham, III, S.V.P.

Any party may change the person or address to whom or which notices are to be given hereunder, by notice duly given hereunder; provided, however, that any such notice shall be deemed to have been given hereunder only when actually received by the party to which it is addressed.

8. The Lessor shall not modify, amend or alter the Ground Lease or accept a surrender of the Ground Lease (or any interest therein) without the Bank's prior written consent.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, Lessor and Lessee have executed this Ground Lessor's Estoppel Certificate as of the day and year first above written.

Form approved under Agenda Item 3F6 (Motion "B"), December 19, 2017

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
County Attorney

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

By: [Signature]
Director, Department of Airports

Witnesses:

[Signature]
Signature of Witness

Shawn K Schlamp
Printed Name of Witness

[Signature]
Signature of Witness

RAY WALTER
Printed Name of Witness

STATE OF FLORIDA)
)ss:
COUNTY OF PALM BEACH)

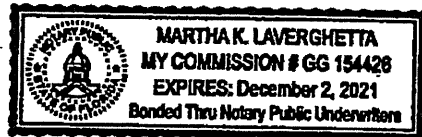
Sworn to (or affirmed) and subscribed before me by means of physical presence online notarization, this 22 day of June, 2020 by Laura M. Beebe, the Director of Airports, on behalf of the Palm Beach County, who is personally known to me or has produced _____ as identification.

[Signature]
Signature of Notary Public

Martha K. Laverghetta
Printed Name of Notary Public

My commission expires:

(Seal)



Acknowledged and agreed:

BNB BANK

By: William F. Newman III
Name: William F. Newman III
Title: S.V.P.

STATE OF New York)
COUNTY OF Suffolk) ss:

Sworn to (or affirmed) and subscribed before me by means of a physical presence online notarization, this 21 day of July, 2021 by William F. Newman III the President of BNB BANK, a corporation, on behalf of the company, who is personally known to me or has produced a driver's license as identification.

Veronica Sheppard
Signature of Notary Public

VERONICA SHEPPARD
Printed Name of Notary Public

My commission expires:

(Seal)

VERONICA SHEPPARD
Notary Public, State of New York
No. 01SH5070215
Qualified in Suffolk County
Commission Expires December 9 2022

(Ground Lessor Estoppel)

Signed, sealed and delivered in the presence of two witnesses for Lessee:

LESSEE:
PBI POST DISTR., LLC,
A Delaware Limited Liability Company

Donna M. Cupaiolo
Signature

Donna M. Cupaiolo
Print Name

Charles A-saro
Signature

Charles A-saro
Print Name

By Cary P. Krupnick
Signature

CARY P. KRUPNICK
Print Name

MANAGING MEMBER
Title

(Seal)

STATE OF New York)
)ss:
COUNTY OF Suffolk)

Sworn to (or affirmed) and subscribed before me by means of physical presence online notarization, this 25th day of June, 2020 by Cary P. Krupnick, the MANAGING MEMBER of PBI POST DISTR., LLC, a Delaware Limited Liability Company, on behalf of the company, who is personally known to me or has produced a driver's license as identification.

Karen L. Chrin
Signature of Notary Public

KAREN L. CHRIN
Printed Name of Notary Public

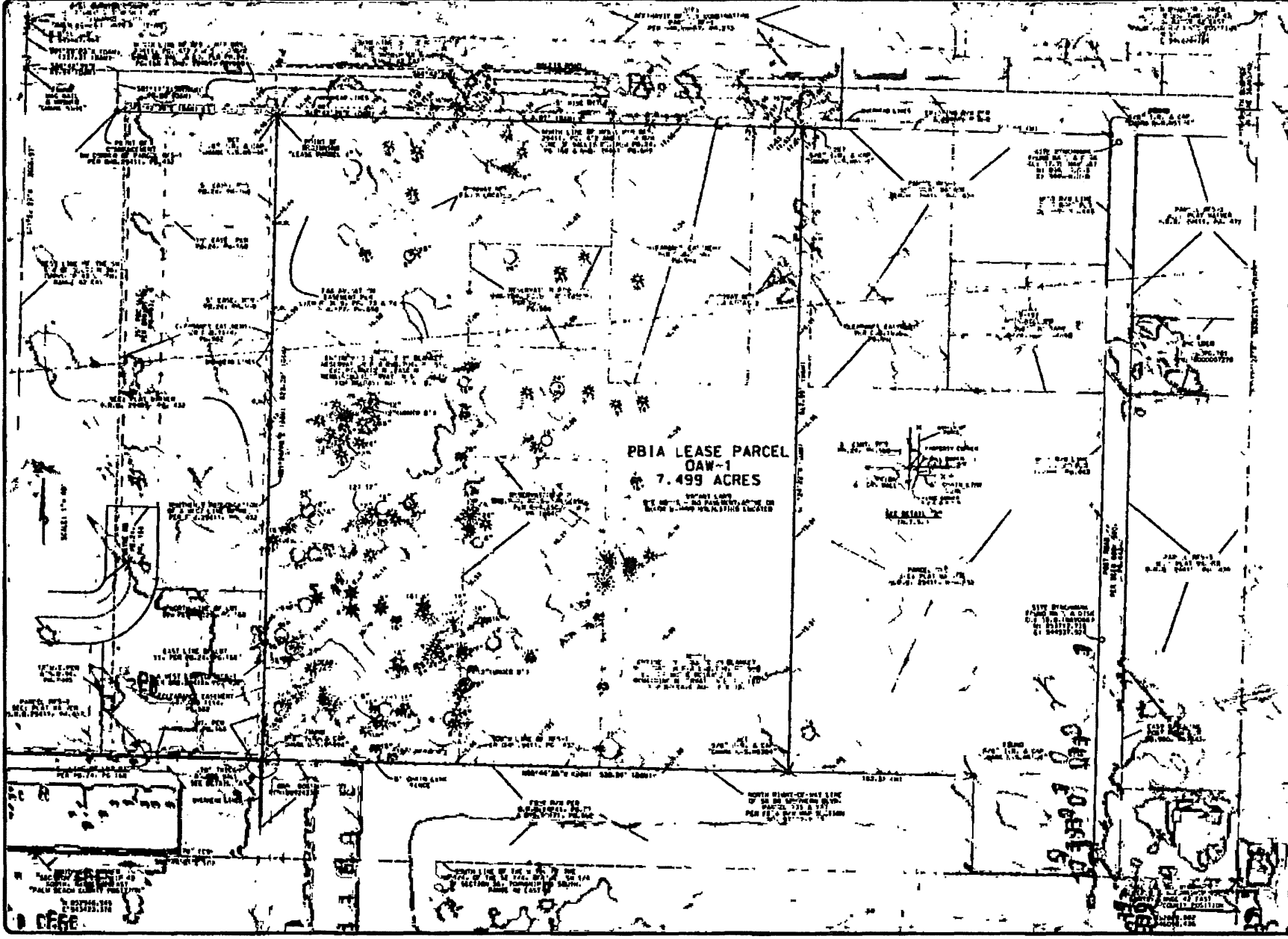
My commission expires: January 11, 2022

(Seal) KAREN L. CHRIN
Notary Public, State of New York
No. 01CH6215932
Qualified in Suffolk County
Commission Expires January 11, 2022

(Ground Lessor Estoppel)

EXHIBIT "A"
TO
GROUND LESSOR'S ESTOPPEL CERTIFICATE

The Ground Lease Premises
(see boundary survey of PBIA Lease Parcel OAW-1
consisting two pages, attached)



PALM BEACH COUNTY
 ENGINEERING AND PUBLIC WORKS
ROADWAY PRODUCTION
 888 NORTH AND ROAD
 WEST PALM BEACH, FL 33411

| | |
|----------------------|----------------------|
| DATE: 10/15/13 | FILE NO: 112318 |
| SCALE: 1" = 40' | APPROVED: S.E.S. |
| DATE: 10/15/13 | DESIGNED: S.E.S. |
| PROJECT: 5-3-17-1004 | CREATED: 5-3-17-1004 |

PROJECT: PBIA LEASE PARCEL OAW-1
 BOUNDARY SURVEY

| | |
|----------------|----------------------|
| SHEET: 1 | TOTAL SHEETS: 1 |
| DATE: 10/15/13 | PROJECT: 5-3-17-1004 |