

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	<u>\$40</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>\$40</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 X No _____
 Does this item include the use of federal funds? Yes _____ No X

Budget Account No: Fund 4100 Department 120 Unit 8452 RSource 4416
 Reporting Category _____



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

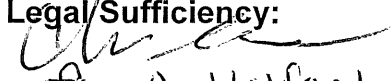
Although payment of fixed-rental is deferred, all deferred amounts will be repaid in full, including interest at Treasury note rates, pursuant to FAA guidance. As of June 18, 2020, the 6-month Treasury note rate was approximately 0.1730%. The fiscal impact is payment of interest at the rate of rate of 0.1730%, for a total interest payment of \$39.59. The Amendment adjusts how payment reconciliation occurs, for this to be monthly or on-going, versus annually, and does not modify the annual amount due under the Agreement.

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

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

 7/24/2020 OFMB
 7/29/2020 Contract Dev. and Control
 7-28-20 Tu

B. Legal/Sufficiency:

A. Helfant 7/29/2020
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 11/17

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

🔍 Search

👤 Insured

Insured Name

CVH PBI, LLC (DX00000717)

🔍

CVH PBI, LLC (DX00000717)

Active Records Only

Advance Search

Name: CVH PBI, LLC 👤

Account Number: DX00000717

Address:

Status: Compliant with Waived Deficiencies.

Insured Tasks Admin Tools

View

- 👤 Insured
- 📄 Notes
- 🔄 History
- ☰ Deficiencies
- 📶 Coverages
- ★ Requirements
- 🔄 Contract Screen

Add

Edit

Help

Video Tutorials

Insured ▲

Business Unit(s) DBA Number DBA Name

Print Insured Info

Account Information

Account Number: DX00000717

Risk Type: Standard - General Services

Do Not Call: Address Updated:

Address Information

Mailing Address **Physical Address**

Insured: CVH PBI, LLC

Address 1:

Address 2:

City:

State:

Zip:

Country:		
Contract Information		
Contract Number:		
Contract Start Date:		Contract End Date:
Contract Effective Date:		Contract Expiration Date:
Description of Services:	Hotel Development Site Lease Agmt	Safety Form II:
Contact Information		
Contact Name:	Stuart Cohen And Kathie Long	Misc:
Phone Number:		Alt Phone Number:
Fax Number:		
E-Mail Address:	scohen@coheninvestments.net; kathie.l ahost.com	
Approval Date:		
Rush:	No	
Contract on File:	No	
Certificate Received:	No	
Indemnification Agreement:	No	
Tax Id:		

This Account created by 394 on 05/14/2020.

AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF TENNESSEE

COUNTY OF Shelby

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, depose(s) and say(s) that:

1. The undersigned is the Trustee of the Bonnie S. Cohen 2012 Trust, Manager of CVH PBIA, LLC, a limited liability company organized and existing under the laws of the State of Florida ("Company").

2. Articles of Organization of the Company have been filed, and are on-file with, the Florida Department of State and such articles are incorporated herein by reference.

3. The Company is in good standing and is authorized to transact business in the State of Florida as of the date hereof.

4. The company is a manager managed limited liability company.

5. The undersigned is the Trustee of the sole manager of the Company or has been authorized by majority vote of the managing members to act on behalf of the Company and legally bind the Company and execute contracts and other instruments relating to the transaction of business of the Company.

6. The undersigned has the right and authority to enter into that certain Third Amendment to Hotel Development Site Lease Agreement between Palm Beach County, a political subdivision of the State of Florida and the Company (the "Agreement"), which is incorporated herein by reference and made a part hereof, and such other instruments as may be necessary and appropriate for the Company to fulfill its obligations under such Agreement.

7. Upon execution and delivery of such Agreement and documents by the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.

8. The transactions contemplated herein will not violate any of the terms and conditions of the Company's member agreement, operating agreement certificate of organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.

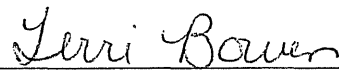
9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,

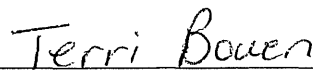


Eliot D. Cohen, Individually and as
Trustee of the Bonnie S. Cohen 2012 Trust,
Manager

SWORN TO AND SUBSCRIBED before me on this 30th day of June, 2020 by
Eliot D. Cohen, Individually and as Trustee of the Bonnie S. Cohen 2012 Trust, Manager
of CVH PBIA, LLC, on behalf of the Company who is personally known to me OR who
produced _____, as identification and who did take an oath.



Notary Signature



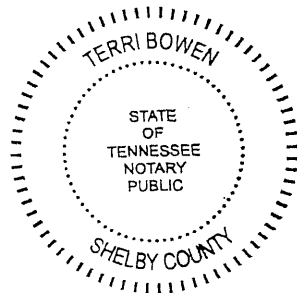
Print Notary Name

NOTARY PUBLIC

State of Tennessee at large

My Commission Expires:

04/26/2024



**THIRD AMENDMENT TO
HOTEL DEVELOPMENT SITE LEASE AGREEMENT**

THIS THIRD AMENDMENT TO HOTEL DEVELOPMENT SITE LEASE AGREEMENT (this "Amendment") is made and entered into this 13 day of July, 2020 by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and CVH PBI, LLC, a Florida Limited Liability Company, having its office and principal place of business at 6750 Poplar Avenue, Suite 107, Memphis, TN 38138 ("Tenant").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports, owns and operates the Palm Beach International Airport, which is located in Palm Beach County, Florida; and

WHEREAS, the parties entered into that certain Hotel Development Site Lease Agreement dated March 14, 2017 (R-2017-0356), as amended ("Lease"); and

WHEREAS, on December 11, 2019, Tenant received a temporary certificate of occupancy for the hotel, thereby establishing December 11, 2019, as the Date of Beneficial Occupancy (as defined in the Lease), which is the date upon which the Term of the Lease commences and the date upon which the payment of rent by Tenant commences; and

WHEREAS, as a result of the COVID-19 pandemic, Tenant has requested to defer certain amounts payable to County under the Lease; and

WHEREAS, Tenant has represented to County that it has experienced significant impacts to its business operations directly resulting from the COVID-19 pandemic; and

WHEREAS, the County Administrator or designee, Director of the Department of Airports, has been delegated the authority by the Board of County Commissioners of Palm Beach County pursuant to County Resolution R-2020-0527 to enter into this Amendment; and

WHEREAS, the parties desire to amend the Lease as provided for herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

1. **Recitals.** The foregoing recitals are true and correct and are hereby incorporated herein by reference. Terms not defined herein shall have the meanings set forth in the Lease.

2. **Warranties and Representations.** As a material inducement to County to enter into this Amendment, Tenant hereby acknowledges, represents and warrants to the County that the following acknowledgments, representations and warranties are true and correct as of the Effective Date of this Amendment: (a) Tenant has experienced significant impacts to its business operations directly resulting from the COVID-19 pandemic, including a significant decline in hotel gross revenues corresponding to travel restrictions imposed in response to the pandemic; (b) with the exception of a loan under the Paycheck Protection Program (“PPP”) provision of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which may be used solely for payroll, mortgage payments, utilities and other incidental expenses, Tenant is not eligible, and has not applied for any governmental assistance, such as grants or loans, under any applicable program providing financial relief based on the COVID-19 pandemic, including, but not limited to, the other provisions of the CARES Act; (c) Tenant is not entitled to, and has not submitted or made a claim under, any policies of insurance maintained by Tenant for recovery based on COVID-19 impacts to its business operations; and (d) the payment security issued by Travelers Casualty and Surety Company of North America, Bond No. 106268985, in favor of Palm Beach County in the amount of \$40,000.00 is in full force and effect, is scheduled to expire or be renewed prior to March 14, 2021, and has not be cancelled or otherwise modified.

3. **Payment Deferral.** Subject to the terms, conditions and limitations of this Amendment, County agrees Tenant may defer payment of certain amounts due to County under the Lease as specifically set forth in Exhibit “A”, “Deferral and Repayment Schedule”. Tenant acknowledges and agrees that all deferred amounts shall be paid by Tenant to County on the dates and in the amounts provided on Exhibit “A”, time being of the essence. Nothing herein shall be construed as deferring or delaying Tenant’s obligation to pay any amounts not specifically set forth in Exhibit “A”.

4. **Claims.** Nothing herein shall be construed as an acknowledgement by County of the validity of any claim, or potential claim, under any force majeure provision of the Lease associated with the COVID-19 pandemic or associated impacts. Furthermore, Tenant acknowledges that County affirmatively disclaims the force majeure provisions contained in the Lease would apply to the nonpayment of any amounts due County under the Lease. The provisions of this paragraph shall survive the termination of this Amendment.

5. **Default.** The occurrence of any one or more of the following events shall constitute a material default of this Amendment by Tenant:

- A. The failure by Tenant to make any payment required to be made by Tenant pursuant to this Amendment, as and when due, where such failure shall continue for a period of three (3) Business Days after such payment is due and payable.
- B. The discovery by County that any of the warranties and representations made by Tenant herein as an inducement to enter into this Amendment were materially false.

6. **Remedies.** County shall have the right to terminate Sections 3 and 8 of this Amendment upon written notice to Tenant in the event of a material default of this Amendment by Tenant. In the event County terminates Sections 3 and 8 of this Amendment, Tenant acknowledges and agrees that: (a) all amounts shall be considered due and payable as of the original dates provided in the Lease as if this Amendment had never been entered into by the parties, including applicable late fees and interest charges; (b) County shall be entitled to exercise all available remedies under the Lease for Tenant's failure to timely pay all amounts as and when due; and (c) no further notice shall be required by County to Tenant prior to County's exercise of its remedies due to default notwithstanding any provision of the Lease to the contrary.

7. **Lease Year.** Section 2.38, Lease Year, of the Lease is deleted in its entirety and replaced with the following:

2.38 "Lease Year" means the calendar year beginning January 1, 2020, and each calendar year thereafter, until the expiration or earlier termination of this Lease.

8. **Monthly Reconciliation of Rental Payments.** Payment of rental by Tenant shall be reconciled on a monthly basis as hereinafter provided. Notwithstanding the provisions of Sections 5.02 and 5.03 of the Lease related to the timing of the payment of Base Rental and Monthly Percentage Rental, if the total amount of rental actually paid by Tenant to County from the beginning of the then current Lease Year exceeds the greater of either the: (1) Year-to-Date Base Rental; or (2) Year-to-Date Percentage Rent, no further payment of rent shall be due from Tenant, until such time as the amount paid by Tenant is less than the greater of either (1) or (2) above. An illustrative example of the monthly reconciliation as provided for herein is attached as Exhibit "C". For purposes of this provision, the terms "Year-to-Date Base Rental" and "Year-to-Date Percentage Rent" shall have the following meanings:

- (A) Year-to-Date Base Rent shall mean one-twelfth (1/12) of the amount of annual ground rental, multiplied by the number of months that have accrued since the start of the then-current Lease Year (January 1 through December 31). For example, as of January 1, 2020, annual ground rental is One Dollar and 28/100 (\$1.28) per square foot, for approximately one hundred thirty thousand, six hundred eighty (130,680) square feet of ground, or One Hundred Sixty-Seven Thousand, Two Hundred Seventy and 40/100 Dollars (\$167,270.40) annually, payable in monthly installments of Thirteen Thousand Nine Hundred Thirty-Nine and 20/100 Dollars (\$13,939.20), exclusive of applicable sales tax. For example, as of April 1, 2020, four (4) monthly installments of Base Rent are due, therefore the Year-to-Date Base Rent as of April 1 is $4 \times \$13,939.20 = \$55,756.80$.
- (B) Year-to-Date Percentage Rent shall be determined by totaling the sum of Hotel Revenues accruing from the start of the then-current Lease Year (January 1 through December 31), multiplied by three and one-half percent (3.5%). For example, if Hotel Revenues through March 31, 2020, are \$1,542,825.33, then Year-to-Date Percentage Rent through March 31, 2020 would be $\$1,542,825.33 \times 3.5\% = \$53,998.89$, exclusive of applicable sales tax.

In the examples illustrated in (A) and (B) above, the amount of \$55,756.80, being the greater of either the: (1) Year-to-Date Base Rental; or (2) Year-to-Date Percentage Rent, is the amount due as of April 1.

Nothing herein shall affect the obligation of Tenant to provide the Monthly Report, as provided in Section 5.06 of the Lease, and to submit payment of Monthly Percentage Rent by the twentieth (20th) day of any month in which Year-to-Date Percentage Rent exceeds the amount actually paid by Tenant to County since the start of the then-current Lease Year. Tenant acknowledges and agrees that nothing in this Amendment amends Tenant's annual rental obligations set forth in Section 5.01 of the Lease, as adjusted in accordance with Section 5.04 of the Lease. Reconciliation of rent on an annual basis shall be conducted in accordance with Section 5.07 of the Lease.

9. **Waiver.** Nothing in this Amendment shall be construed as waiving, reducing, abating or otherwise modifying any amounts due and payable to County under the Lease. Furthermore, the failure of either party to insist on strict performance of any of the agreements, terms, covenants and conditions of this Amendment shall not be deemed a waiver of any rights or remedies that either party may have for any subsequent breach, default, or non-performance, and neither parties' right to insist on strict performance of this Amendment shall be affected by any previous waiver or course of dealing.

10. **Non-Discrimination Covenants.**

Section 24.01, Non-Discrimination in County Contracts, of the Lease is hereby deleted in its entirety and replaced with the following:

24.01 Non-Discrimination in County Contracts. Palm Beach County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, Tenant warrants and represents that throughout the term of the Lease, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Lease.

Section 24.02, Federal Non-Discrimination Covenants, of the Lease is hereby deleted in its entirety and replaced with the following:

24.02 Federal Non-Discrimination Covenants. Tenant, for its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that it shall comply with the Federal Non-Discrimination Covenants attached hereto as Exhibit "B".

11. **Scrutinized Companies.** Section 27.19, Scrutinized Companies, of the Lease is hereby deleted in its entirety and replaced with the following:

27.19 Scrutinized Companies. As provided in F.S. 287.135, by entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if Tenant is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Lease may be terminated at the option of County. As provided in F.S. 287.135, by entering into this Lease or performing any work in furtherance hereof, the Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria. If County determines, using credible information available to the public, that a false certification has been submitted by Tenant, this Lease may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Lease shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Lease renewal, if applicable.

12. **Notices.** All notices and elections to be given or delivered by or to any party hereunder, shall be in writing and shall be delivered in accordance with Section 27.10, Notices, of the Lease. Notices to Tenant under the Lease shall be given or delivered to Tenant at the following:

Tenant:

Eliot Cohen, Manager
CVH PBIA, LLC
6750 Poplar Avenue, Suite 107
Memphis, TN 38138
Fax: 901-753-4492

With a copy to:

Rachel Herlache, Senior Counsel
Nelson Mullins Riley and Scarborough
One North Clematis Street, Suite 500
West Palm Beach, FL 33401
Fax: 561-655-1109

13. **Ratification of Agreement.** Except as specifically modified herein, all of the terms and conditions of the Lease shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

14. **Conflict.** In the event of a conflict between any provision of this Amendment and the provisions of the Lease, or any other amendment thereto, the provisions of this Amendment shall control.

15. **Authorized Representatives.** The parties acknowledge that this Amendment has been executed by its duly authorized representatives. The parties declare and acknowledge that the terms of this Amendment have been completely read, fully understood, discussed with counsel, and voluntarily accepted by each party.

16. **Incorporation by Reference.** Exhibits attached hereto and referenced herein are hereby incorporated into made a part of this Amendment.

17. **Paragraph Headings.** The heading of the various sections of this Amendment are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Amendment or the Lease.

18. **Effective Date.** This Amendment shall become effective upon execution by the parties hereto ("Effective Date").

{Remainder of Page Intentionally Left Blank.}

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the day and year first above written.

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

Ray Walter
Witness Signature

RAY WALTER
(Typed or Printed)

Stephen M. Cortez
Witness Signature

Stephen M. Cortez
(Typed or Printed)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: Anne Idelzant
County Attorney

PALM BEACH COUNTY, FLORIDA

By: Janice Burke
Director, Department of Airports

ATTEST:

TENANT:
CVH PBIA, LLC,
A Florida Limited Liability Company

By: Eliot D. Cohen

Eliot D. Cohen, Trustee of the Bonnie Cohen 2012 Trust
Typed or Printed Name of Corporate Officer

Title: Manager

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

Terri Bowen
Witness Signature

Terri Bowen
(Typed or Printed)

StC
Witness Signature

Stuart Cohen
(Typed or Printed)

EXHIBIT "A"
DEFERRAL AND REPAYMENT SCHEDULE

CVH PBIA
 "Payment Schedule"
 Annual Interest Rate: 0.1730% (June 18, 2020 rate for 6-mo Treasury Notes)
 Monthly Interest: 0.014417%
 Monthly Base Rental \$13,939.20
 End of Deferral Period 10/31/2020
 Amount of Security Dep \$40,000.00 Travelers Casualty and Surety Company of North America; Bond No. 106268985; expires March 14, 2021

Section 1. Deferral

Line	Deferral Description	Date Payment Ordinarily Due	Amount Paid*	Deferred Amount*	Accrued Interest	
					Through End of Deferral Period	End Balance
1	June 2020 Base Rental	6/1/2020	\$0.00	\$13,939.20	\$10.04	\$13,949.24
2	July 2020 Rent Rental	7/1/2020	\$7,424.00	\$6,515.20	\$3.77	\$20,468.21
3	August 2020 Rent Rental	8/1/2020	\$7,424.00	\$6,515.20	\$2.81	\$26,986.22
4	Sept 2020 Rent Rental	9/1/2020	\$7,424.00	\$6,515.20	\$1.85	\$33,503.27
5	Oct 2020 Rent Rental	10/1/2020	\$7,424.00	\$6,515.20	\$0.93	\$40,019.40
TOTAL:			\$29,696.00	\$40,000.00	\$19.40	\$40,019.40

Section 2. Repayment

Annual Interest Rate: 0.17%
 Monthly Interest: 0.014417%
 Deferral Period (months): 5
 Payments: 6
 Deferral Amount (w/int.): \$40,019.40
 Payment Amount: \$6,673.27

Payment	Date		Repayment Amount ^	Periodic Interest	Balance
					\$40,019.40 Total Amount of Deferral Plus Accrued Interest Until Start of Repayment Period
1	11/1/2020	Installment 1	\$6,673.27	\$5.77	\$33,351.90 Installment = payment necessary to amortize Beginning Balance over 6 equal payments
2	12/1/2020	Installment 2	\$6,673.27	\$4.81	\$26,683.45 Installment = payment necessary to amortize Beginning Balance over 6 equal payments
3	1/1/2021	Installment 3	\$6,673.27	\$3.85	\$20,014.03 Installment = payment necessary to amortize Beginning Balance over 6 equal payments
4	2/1/2021	Installment 4	\$6,673.27	\$2.89	\$13,343.65 Installment = payment necessary to amortize Beginning Balance over 6 equal payments
5	3/1/2021	Installment 5	\$6,673.27	\$1.92	\$6,672.30 Installment = payment necessary to amortize Beginning Balance over 6 equal payments
6	4/1/2021	Installment 6	\$6,673.27	\$0.96	\$0.00 Installment = payment necessary to amortize Beginning Balance over 6 equal payments
total of payments:			\$40,039.59	\$20.20	

*Payments do not include applicable Sales Tax at then-current rate(s)

^ Repayment Amount does not include then-current rental or Percentage Payment due

EXHIBIT “B”
FEDERAL NONDISCRIMINATION COVENANTS

For purposes of this Exhibit, the term “CONTRACTOR” means Tenant and the term “Agreement” means the Lease more particularly described in the preamble of this Amendment.

A. Title VI Clauses for Compliance with Nondiscrimination Requirements. During the performance of this Agreement, CONTRACTOR, for itself, its assignees, and successors in interest, agrees as follows:

1. Compliance with Regulations: CONTRACTOR will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities (“Nondiscrimination Acts and Authorities” as set forth in paragraph B below), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: CONTRACTOR, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. CONTRACTOR will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by CONTRACTOR of CONTRACTOR’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. Information and Reports: CONTRACTOR will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, CONTRACTOR will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor’s noncompliance with the non-discrimination provisions of this Agreement, County will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to CONTRACTOR under this Agreement until CONTRACTOR complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: CONTRACTOR will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. CONTRACTOR will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if CONTRACTOR becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, CONTRACTOR may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, CONTRACTOR may request the United States to enter into the litigation to protect the interests of the United States.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, CONTRACTOR, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities, as may be amended, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

C. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. CONTRACTOR for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that CONTRACTOR will use the CONTRACTOR Premises and any License Area in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.
2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter or re-enter and repossess the CONTRACTOR Premises and any License Area and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

D. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.

CONTRACTOR for itself and its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the CONTRACTOR will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

E. Airport Concession Disadvantaged Business Enterprises ("ACDBE").

This Agreement may be subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. CONTRACTOR agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. CONTRACTOR agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

F. General Civil Rights Provision.

CONTRACTOR agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If CONTRACTOR transfers its obligation to another, the transferee is obligated in the same manner as CONTRACTOR. This provision obligates CONTRACTOR for the period during which the property is owned, used or possessed by CONTRACTOR and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

EXHIBIT "C"
ILLUSTRATIVE EXAMPLE OF MONTHLY RECONCILIATION¹

¹ Tenant acknowledges and agrees that this Exhibit "C" is for illustrative purposes only and should not be relied on for determining actual amounts due to County under the Lease

Monthly Report for CVH PBIA, LLC, Per Third Amendment to Hotel Development Site Lease

For the Period 1/01/20 - 12/31/2020

"LEASE YEAR" is from January 1 through December 31

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
Month	Hotel Revenue from rental of guest, banquet, or meeting rooms	Hotel revenue from the sale of food, beverage, and alcohol	Hotel revenue from the sale of any goods or services	Hotel revenue from advertising	Hotel revenue from parking Fees	Hotel revenue from concession payments, license fees, rentals, or other	Exclusions from Hotel Revenue	Total Gross Revenue (as defined in Article B. 2.)	Total Gross Revenue YTD	Monthly Percentage Due (3.5% of the Hotel revenues)	YTD Percentage	Monthly Base rental (130,680 SF @ 1.28=167,270.40 per year)	YTD Base Rental	Greater of YTD Base Rental or YTD Percentage	Base Rental payment ck #	Total Amount Paid YTD Base rental	Excess Due (Amount due in excess of Base Rental)	Total Amount of Excess (percentage over base rental) Paid YTD	Total Amount Paid YTD	YTD Overpayment or (Underpayment)	Hotel Occupancy Percentage
January	496,346.05							496,346.05	496,346.05	17,372.11	17,372.11	13,939.20	13,939.20	17,372.11	1410	13,939.20	3,432.91		13,939.20	(3,432.91)	81.59
February	629,809.55							629,809.55	1,126,155.60	22,043.33	39,415.45	13,939.20	27,878.40	39,415.45	1430	27,878.40	8,104.13		27,878.40	(11,537.05)	95.55
March	416,669.73							416,669.73	1,542,825.33	14,583.44	53,998.89	13,939.20	41,817.60	53,998.89	1525	41,817.60	644.24		41,817.60	(12,181.29)	65.40
April	141,977.15							141,977.15	1,684,802.48	4,989.20	58,968.09	13,939.20	55,756.80	58,968.09	1684	55,756.80	0.00		55,756.80	(3,211.29)	46.64
May	228,729.73							228,729.73	1,913,532.21	8,005.54	66,973.63	13,939.20	69,696.00	69,696.00	1720	69,696.00	0.00		69,696.00	0.00	74.84
June								0.00	1,913,532.21	0.00	66,973.63	13,939.20	83,635.20	83,635.20			0.00		0.00		
July								0.00	1,913,532.21	0.00	66,973.63	13,939.20	97,574.40	97,574.40			0.00		0.00		
August								0.00	1,913,532.21	0.00	66,973.63	13,939.20	111,513.60	111,513.60			0.00		0.00		
September								0.00	1,913,532.21	0.00	66,973.63	13,939.20	125,452.80	125,452.80			0.00		0.00		
October								0.00	1,913,532.21	0.00	66,973.63	13,939.20	139,392.00	139,392.00			0.00		0.00		
November								0.00	1,913,532.21	0.00	66,973.63	13,939.20	153,331.20	153,331.20			0.00		0.00		
December								0.00	1,913,532.21	0.00	66,973.63	13,939.20	167,270.40	167,270.40			0.00		0.00		
Totals	1,913,532.21	0.00	0.00	0.00	0.00	0.00		1,913,532.21	1,913,532.21	66,973.63	66,973.63	167,270.40	167,270.40	167,270.40			12,181.29	0.00			

- Legend**
- 12 Year-to-Date Gross Revenues Due (Total Gross Revenues YTD times 3.5%)
 - 14 Year-to-Date Base Rental Due (sum of months from January times current Base Monthly Rental amount)
 - 15 The greater of the amount in (12) or (14).
 - 17 Sum of actual Year-to-Date payments of Base Rental
 - 18 Monthly "excess" due: the amount by which monthly Percentage Rent exceeds the monthly Base Rental
 - 19 The amount of monthly "excess" (column 18) actually paid
 - 20 The total of actual payments made year-to-date
 - 21 The amount of year-to-date overpayment or (underpayment). (Should be "zero" if proper payments are made)