# PALM BEACH COUNTY

| BOARD  | OF | COUNTY | COMMISSIONERS  |
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#### AGENDA ITEM SUMMARY

| Meeting Date: December 6, 2022       | <br>Consent<br>Workshop | - | ] Regular<br>] Public Hearing |
|--------------------------------------|-------------------------|---|-------------------------------|
| Submitted By: Department of Airports |                         |   |                               |

#### I. EXECUTIVE BRIEF

#### Motion and Title: Staff recommends motion to:

- A) approve Fourth Amendment (Amendment) to Hotel Development Site Lease Agreement with CVH PBIA, LLC (CVH), a Florida Limited Liability Company, (Lease) (R-2017-0356, as amended) amending provisions pertaining to leasehold mortgages and assignment of the Lease in the event of a leasehold mortgage foreclosure; and
- B) **receive and file** Landlord Estoppel Certificate (Estoppel) confirming terms and conditions of the Lease, in connection with a leasehold mortgage by CVH.

Summary: CVH leases approximately three acres of ground on the Palm Beach International Airport for the operation of a Home2 Suites hotel. CVH is in the process of refinancing its leasehold mortgage that was used to fund the original improvements to the site. CVH requested the Estoppel on behalf of the lender, which certifies certain facts related to the Lease such as the term of the Lease, status of payments and that no current defaults exist. The Estoppel was provided on October 5, 2022, but the lender's underwriter has also requested modifications to the Lease for the protection of the lender in the event of a default of CVH or the foreclosure of the leasehold mortgage. Modifications include clarification that the consent of the County is not required for the assignment of the Lease to the lender in the event of a foreclosure or the default of the CVH; that the lender shall not be required to cure certain "non-curable" defaults unrelated to the payment of sums due under the Lease, such as the bankruptcy of CVH or wrongful assignment of the Lease by CVH; and that the County will enter into a new lease with a qualified assignee upon the same terms and conditions as the lease in the event the Lease is terminated. The modifications are consistent with language typically required by lenders providing leasehold mortgages; therefore, the Department is recommending approval of this item. Countywide (HF)

**Background and Justification:** A leasehold mortgage is a loan that is secured by a tenant's leasehold interest in a lease. CVH is permitted to obtain a leasehold mortgage pursuant to the Lease. CVH has proposed additional modifications to the provisions in the Lease related to leasehold mortgages at the request of the lender to ensure that the lender's interests are protected in the event of a foreclosure of the mortgage or CVH's default of the Lease. The County is required to provide estoppel certificates from time-to-time pursuant Section 17.06 of the Lease. The Director of the Department of Airports is delegated authority to act on behalf of the County when required by the Lease, including the provision of estoppel certificates as required by the Lease (R-2017-0356; R-2017-1303).

#### Attachments:

1. Fourth Amendment (3)

2. Estoppel (1)

| Recommended By: | En Laina Bube        | 11-22-22 |
|-----------------|----------------------|----------|
|                 | Department Director  | Date     |
| Approved By:    | MBaker               | 11/28/22 |
|                 | County Administrator | Date /   |

Agenda Item: 3F.

### **II. FISCAL IMPACT ANALYSIS**

A. Five Year Summary of Fiscal Impact:

| Fiscal Years   | <u>2023</u> | <u>2024</u>  | <u>2025</u>  | <u>2026</u> | <u>2027</u> |
|--|-------------|--------------|--------------|-------------|-------------|
| Capital Expenditures<br>Operating Costs<br>Operating Revenues<br>Program Income (County)<br>In-Kind Match (County) |             |              |              |             |             |
| NET FISCAL IMPACT<br># ADDITIONAL FTE<br>POSITIONS (Cumulative)  | \$-0        | <u>\$-0-</u> | <u>\$-0-</u> | \$-0        | \$-0        |

| Is Item Included in Curr | ent Budget?      | Yes          | No_ | X    |         |
|--------------------------|------------------|--------------|-----|------|---------|
| Budget Account No:       | Fund <u>4100</u> | Department _ | 120 | Unit | RSource |

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

No fiscal impact.

C. Departmental Fiscal Review

## III. REVIEW COMMENTS

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

Dell 11/23/22 OFMBJA 11/23 MG 11/23

**B. Legal Sufficiency:** 

28/22 Assistant County Attorney

C. Other Department Review:

**Department Director** 

**REVISED 9/03** ADM FORM 01 (THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

ausbra /11/28/22 Contract Dev. and Contro