

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: December 6, 2022 [X] Consent [] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Second Amendment to Lease Agreement with RREEF America REIT II Corp. S for the continued use of 76,603 square feet of space and exclusive use of two parking spaces located at 7835 Byron Drive Unit 1, Riviera Beach, for the Supervisor of Elections warehouse operation from January 1, 2024 through December 31, 2026 at an annual rental rate of \$727,728.50 (\$9.50/sf).

Summary: The County has leased 76,603 sf of warehouse and office space on behalf of the Supervisor of Elections (SOE) from RREEF America REIT II Corp. S (RREEF) since 2009. On September 22, 2015, the Board of County Commissioners (Board) approved Lease Agreement (R2015-1342) with RREEF for a term of five (5) years, commencing on June 22, 2016, through June 21, 2021, with one (1) option to renew for two (2) years. The First Amendment, (R2020-0923) dated July 14, 2020, extended the term of the Lease for thirty months, from June 22, 2021 until December 31, 2023 (current expiration date). Due to delays in the construction of the new permanent SOE facility resulting in part from the impacts the COVID19 pandemic had on material availability and distribution chain, and to prevent disruption of operation during elections, especially the upcoming presidential elections, County Staff proceeded with a request to extend the current lease to ensure continuity of operations. This Second Amendment to the Lease extends the term from January 1, 2024 through December 31, 2026; increases the annual rental rate from \$629,676.66 (\$8.22/sf) to \$727,728.50 (\$9.50/sf), subject to 4% annual increases; and provides for exclusive use of two (2) parking spaces. SOE will continue to be responsible for its share of taxes and expenses for the leased premises. All other terms and conditions of the Lease shall remain in full force and effect. SOE will continue to have administrative responsibility for this Lease. **(Property & Real Estate Management) Countywide (HJF)**

Background and Justification: The SOE currently operates out of two facilities, the main office which is a county-owned building located on Gun Club Road, and a production facility out of leased space in Riviera Beach. In September 2018, the Board approved \$1,500,000 to commence the design of a County-owned SOE Production Facility at its Cherry Road site. Given that the Main Office and the new Production Facility at Cherry Road would be approximately 2 miles apart, early coordination between Staff and Supervisor Link pointed towards possible programming improvements and efficiencies resulting from collocating the two facilities.

(Continued page 3)

- Attachments:**
- 1. Location Map
 - 2. Second Amendment to Lease (2)
 - 3. Disclosure of Beneficial Interests

Recommended By: [Signature] 11/23/22
Department Director Date

Approved By: [Signature] 11/28/2022
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$-0-</u>	<u>\$766,672</u>	<u>\$1,057,779</u>	<u>\$1,106,531</u>	<u>\$280,119</u>
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>\$-0-</u></u>	<u><u>\$766,672</u></u>	<u><u>\$1,057,779</u></u>	<u><u>\$1,106,531</u></u>	<u><u>\$280,119</u></u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:		Yes _____	No _____		
Does this item include the use of federal funds?	Yes _____	No <u>X</u>			
Budget Account No:	Fund <u>0001</u>	Dept <u>180</u>	Unit <u>1109</u>	Object _____	
		Program _____			

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

The Supervisor of Elections (SOE) will continue to absorb the rental costs within their current and future budgets. The current Lease term will expire on December 31, 2023; on 01/01/24 rent increases to \$727,728.50 annually. The current pro rata share of taxes is \$263,763.36 annually and is estimated to increase to \$279,589.16 annually effective 02/01/23. The rent and pro rata share of taxes and expenses for 10/01/23 thru 12/31/23 have already been budgeted. Commencing on January 1, 2024 (with an assumed 6% increase in the pro rata share of CAM and R.E. Taxes) total rent and expenses are projected to be FY 2024 - \$766,672, FY 2025 \$1,057,779, FY 2026 - \$1,106,531, and FY 2027 - \$280,119.

Fixed Assets Number _____

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

Lisa Mante 11/18/2022
 OFMB JA 11/17
 @SW 11/17/22

Joe G. Jaworski 11/21/22
 Contract Development and Control

B. Legal Sufficiency:

[Signature] 11/28/22
 Assistant County Attorney

C. Other Department Review:

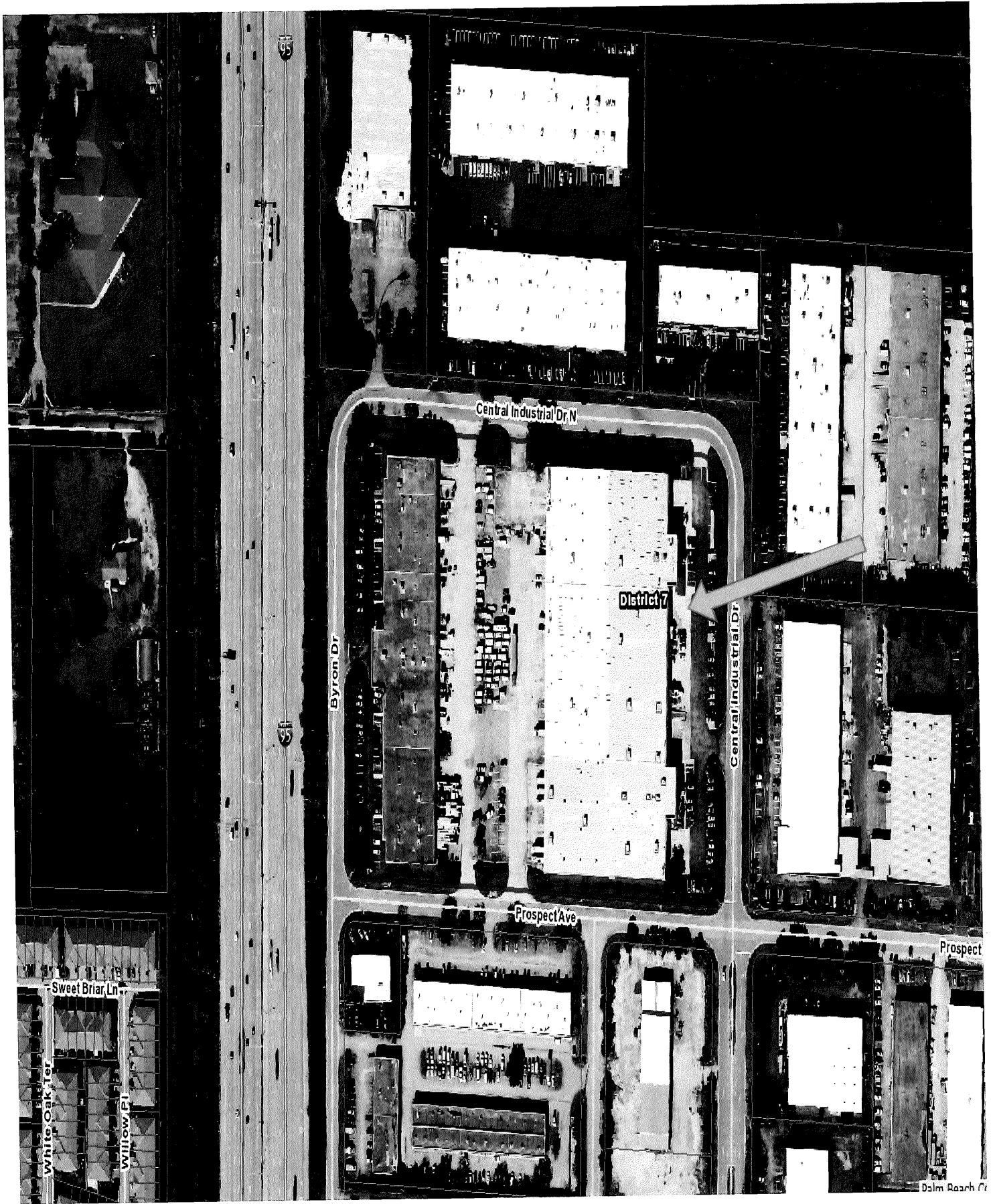
 Department Director

Background and Justification:

This Second Amendment to the Lease Agreement will extend the term through December 31, 2026 as construction delays have hindered completion of the permanent facility. Extending it now will prevent any disruption of services.

Florida Statute Section 286.23 requires that a Disclosure of Beneficial Interests be obtained when a property held in a representative capacity is leased to the County. RREEF has provided the attached Disclosure which indicates that RREEF is 100% owned by RREEF America REIT II, Inc., and that there is no individual owning a 5% or greater interest in RREEF America REIT II, Inc.

RREEF has affirmed that its non-discrimination policy is consistent with the County's policy.



00-43-42-30-14-004-0000

LOCATION MAP



Attachment #1

Attachment #2
Second Amendment to Lease (2 @ 5 pages)

SECOND AMENDMENT TO LEASE

This Second Amendment to Lease (this “Second Amendment”) by and between RREEF America REIT II Corp. S, a Maryland corporation (“Landlord”), and Palm Beach County, a political subdivision of the State of Florida (“Tenant”), effective as of the date of Landlord’s execution of this Second Amendment (the “Effective Date”).

RECITALS

Landlord and Tenant entered into a Multi-Tenant Industrial Net Lease dated May 1, 2015, as amended by a First Amendment to Lease dated July 14, 2020 (collectively, the “Lease”), concerning premises consisting of approximately 76,603 rentable square feet located at 7835 Byron Drive, Unit #1, Riviera Beach, Florida 33404 (the “Premises”).

Subject to the terms of this Second Amendment, Tenant and Landlord desire to extend the Term of the Lease for a period of thirty six (36) months beyond its current Termination Date of December 31, 2023; to provide for exclusive use of parking spaces; and to otherwise amend the Lease in accordance with the terms hereinafter set forth.

NOW, THEREFORE, in consideration of the terms, covenants and conditions as set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree that the Lease shall be amended as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference. Capitalized terms not specifically defined herein shall have the meanings ascribed to such terms in the Lease.
2. Extension. The Term of the Lease shall be extended for an additional term (the “Extension Term”) of thirty six (36) months commencing on January 1, 2024 and ending at 5:00 p.m. on December 31, 2026, unless sooner terminated in accordance with the provisions of the Lease and this Second Amendment. Effective as of January 1, 2024, all references in the Lease and this Second Amendment to the “Term” or the “Term of the Lease” shall include the Extension Term as defined in this Section 2. Following the expiration of the Extension Term Tenant has no rights to further extend the Term of the Lease.
3. Rent. Rent for the Premises shall continue to be paid as is provided in the Lease, plus applicable sales tax, through December 31, 2023. Commencing on January 1, 2024, Tenant shall pay Rent for the Premises in the following amounts for the respective periods set forth in the table below, plus applicable sales tax, payable in accordance with the provisions of the Lease, as amended by this Second Amendment:

<u>Period</u>	<u>Rent Rate per sf/Year</u>	<u>Annual Rent</u>	<u>Monthly Installment of Rent</u>
01/01/2024 – 12/31/2024	\$9.50	\$727,728.50	\$60,644.04

01/01/2025 – 12/31/2025	\$9.88	\$756,837.64	\$63,069.80
01/01/2026 – 12/31/2026	\$10.28	\$787,478.84	\$65,623.24

4. Additional Rent. Tenant's Proportionate Share of Expenses and Taxes and all other forms of additional rent shall continue to be calculated and paid as is provided in the Lease without change during the remainder of the current Term of the Lease and thereafter through the Extension Term.

5. Paragraph 1.3 of the Lease is hereby deleted in its entirety and replaced as follows:

1.3. Tenant and Tenant Entities will be entitled to the non-exclusive use of the common areas of the Building as they exist from time to time during the Term, subject to Landlord's rules and regulations regarding such use. Two (2) parking spaces shall be reserved for the exclusive use of Tenant and Tenant Entities, one of which shall be directly in front of the Building (on the east side), and the other of which shall be the next closest to the entrance of the Premises in front of the Building (on the east side) that is available and that is not a disabled parking space. All other parking shall be on a first come, first serve basis, with exception only for official election activity, in connection with which Tenant shall fully cooperate and coordinate with Landlord and use reasonable efforts to avoid any unreasonable impact on other tenants. Landlord shall install the appropriate number of signs or other means of identification reserving said exclusive parking spaces for Tenant and Tenant Entities. Landlord may, in its discretion elect to establish preferred parking programs for hybrid and alternative fuel vehicles.

6. Condition of Premises. Tenant acknowledges that Landlord has made no representation or promise as to the condition of the Premises nor shall Landlord be required to construct any improvement, alteration or addition to the Premises. Tenant currently occupies the Premises and, as such, is thoroughly familiar with the condition thereof and accepts the same during the remainder of the current Term and during the Extension Term in its "AS IS" condition, subject to Landlord's maintenance, repair and replacement obligations expressly set forth in the Lease and subject to Landlord repairing damage caused by Landlord's vendor during termite remediation.

7. Brokerage Disclosure. Tenant represents and warrants to Landlord that it neither consulted nor negotiated with any broker or finder with respect to this Second Amendment other than CBRE, Inc. ("Broker"), acting for Landlord, which will be compensated by Landlord in accordance with a separate agreement.

8. Time of the Essence. Time is of the essence with respect to the performance of every provision of the Lease and this Second Amendment in which time of performance is a factor.

9. Counterparts; Electronic Signature. This Second Amendment may be executed in counterparts with the same effect as if both parties hereto had executed the same document. The parties hereto consent and agree that this Second Amendment may be signed and/or transmitted by facsimile, e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic record

shall be valid and as effective to bind the party so signing as a paper copy bearing such party's handwritten signature. The parties further consent and agree that (a) to the extent a party signs this Second Amendment using electronic signature technology, by clicking "SIGN", such party is signing this Second Amendment electronically, and (b) the electronic signatures appearing on this Second Amendment shall be treated, for purposes of validity, enforceability and admissibility, the same as handwritten signatures.

10. Tenant's Representations and Warranties. Tenant represents and warrants to Landlord that: (a) the Lease is in full force and effect and creates a valid and subsisting obligation of Tenant thereunder, (b) except as amended by this Second Amendment and except as otherwise set forth in the Recitals to this Second Amendment, the Lease has not been modified, extended or amended and all of its terms, conditions, covenants, agreements and provisions, except as hereby modified, are in full force and effect with no defenses or offsets thereto; (c) Tenant's interest in the Lease has not been assigned nor has Tenant subleased any portion of the Premises; and (d) no default exists on the part of Landlord with respect to any of its obligations under the Lease, nor has any event occurred which, with the giving of notice and passage of time, will constitute a default by Landlord under the Lease.

11. Ratification. Except as specifically amended herein, the Lease remains in full force and effect and, subject to the terms of this Second Amendment, all of the provisions of the Lease and Exhibits thereto are hereby incorporated herein by reference and are hereby ratified, adopted, agreed to and affirmed by Landlord and Tenant. In the event of any conflict between the provisions of the Lease and the provisions of this Second Amendment, the provisions of this Second Amendment shall control.


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[Signature next page]

IN WITNESS WHEREOF, the parties have executed this Second Amendment effective as of the date set forth below Landlord's signature.

LANDLORD:


**RREEF America REIT II Corp. S,
a Maryland corporation**

By:  _____

Name: Scott Bodin

Title: VP

Date: 29 September 2022 | 12:46:44 PDT

By:  _____

Name: Dave Crane

Title: VP

Date: 29 September 2022 | 12:48:05 PDT

[Signature next page]

ATTEST:

TENANT

**JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT
& COMPTROLLER**

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


By: _____
Deputy Clerk

By: _____

**APPROVED AS TO
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: 
County Attorney

By: 
Department Director

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Attachment #3
Disclosure of Beneficial Interests (3 pages)

**LANDLORD'S DISCLOSURE OF BENEFICIAL INTERESTS
(REQUIRED BY FLORIDA STATUTES 286.23)**

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared, **B. Scott Bodin**, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the **Regional Director of RREEF Management L.L.C, A Delaware limited liability company**, which is the authorized agent of **RREEF AMERICA REIT II CORP. S, a Maryland corporation**, (the "Owner") which entity is the owner of the real property legally described on the attached Exhibit "A" (the "Property").

2. Affiant's address is: **3414 Peachtree Road NE, Suite 950, Atlanta, GA 30326**

3. Attached hereto, and made a part hereof, as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater beneficial interest in the Landlord and the percentage interest of each such person or entity.

4. Affiant acknowledges that this Affidavit is given to comply with Florida Statutes 286.23, and will be relied upon by Palm Beach County in its lease of the Property.

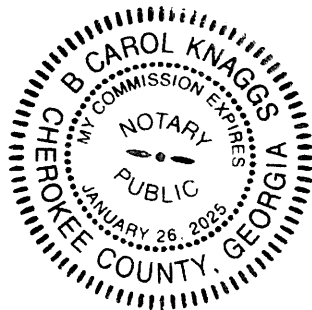
5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

B. Scott Bodin
B. Scott Bodin, Affiant

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of physical presence or online notarization this 7th day of October, 2022, by B. Scott Bodin who is personally known to me or who has produced _____ as identification and who did take an oath.



B. Carol Knaggs
Notary Public

B. Carol Knaggs
(Print Notary Name)

NOTARY PUBLIC Georgia
State of ~~Florida~~ at Large
My Commission Expires: January 26, 2025

EXHIBIT "A"

PROPERTY

Tract D, of CENTRAL INDUSTRIAL PARK, according to the plat thereof, recorded in Plat Book 51, page 102, Public Records of Palm Beach County, Florida.

Together with that certain Drainage Easement contained in that certain Declaration of Covenants and Restrictions recorded in Official Records Book 4586, Page 400, as amended in Official Records Book 5567, Page 1813 and Official Records Book 5567, Page 1814, and together with the Assignment and Assumption Agreement recorded in Official Records Book 4586, Page 484, Public Records of of Palm Beach County, Florida.

EXHIBIT "B"

**SCHEDULE TO BENEFICIAL
INTERESTS IN PROPERTY**

Landlord is only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. Landlord must identify individual owners. If, by way of example, Landlord is wholly or partially owned by another entity, such as a corporation, Landlord must identify such other entity, its address and percentage interest, as well as such information for the individual owners of such other entity.

Name	Address	Percentage of Interest
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RREEF AMERICA REIT II, INC., 100%, 300 E. Lombard Street, Baltimore, MD 21202

*****There is no individual/natural person owning a five percent (5%) or greater beneficial interest, directly or indirectly, in RREEF AMERICA REIT II, INC.*****
