

TOWN OF PALM BEACH

Information for Town Council Meeting on: March 12, 2024

TO: Mayor and Town Council

VIA: Kirk W. Blouin, Town Manager

VIA: Robert Miracle, CPA Deputy Town Manager, Finance and Administration

FROM: Dean Mealy, II NIGP-CPP, CPPO Town Procurement and Contract Manager

RE: Resolution approving Second Amendment and Restated Ground Lease Agreement with CRE Fund at Okeechobee Boulevard, LLC, a Florida limited liability company. This Second Amendment is joined by AHS Residential, LLC.

DATE: February 26, 2024

STAFF RECOMMENDATION

Staff recommends the Town Council approve Resolution No. 028-2024, approving Second Amendment and Restated Ground Lease Agreement with CRE Fund at Okeechobee Boulevard, LLC, a Florida limited liability company. This Second Amendment is joined by AHS Residential, LLC.

SUMMARY EXPLANATION/BACKGROUND

Please note that the summary explanation was prepared by Janis Cheezem, partner with Akerman.

CRE Fund at Okeechobee Boulevard, LLC and its Guarantor, AHS Residential, LLC asked the Town to defer the remaining balance of first year rent under the ground lease for the Town's property at 5976 Okeechobee Blvd., West Palm Beach to better align rent payments with anticipated income from the project to be constructed on this property; the tenant's construction schedule has been pushed back by a variety of factors, including remediation requirements and site planning to align non-residential construction with remediated portions of the site. (The tenant had previously paid \$350,000, to be applied to first year rent to extend the approval date for its remediation plan.) AHS has also provided the Town with the following accounting showing its substantial costs to date in connection with its work on the site:

Under this amendment:

1. The remaining balance of first year rent of \$533,368.00 will be deferred to the fifth lease year, thereby increasing rent for the fifth lease year to \$1,400,986 plus sales tax.
2. The due date for the \$867,618 letter of credit from the tenant is deferred until February 1, 2025, but the payment guaranty of tenant's parent is due as of February 1, 2024 (and has been provided in anticipation of the Town's execution of this Amendment.)

3. The “Date of Beneficial Occupancy” (the rent commencement date) under the Ground Lease is set as February 1, 2024.
4. Lease terms relating to the amortization of the tenant’s bond to secure its completion of required remediation of the site are clarified and confirmed.
5. The tenant waives all termination rights in the ground lease, although the Town retains its termination rights if the tenant does not obtain all required approvals to proceed with project development on or before March 1, 2025, to give Tenant time to obtain these approvals. The following represents expenditures by AHS to date.

Account Group	%	Actual
⊕ Architects & Engineers	35.3%	\$2,761,489
⊕ Finance Fees	23.1%	\$1,809,777
⊕ Consultants	19.7%	\$1,542,977
⊕ Municipal & Other Fees	5.6%	\$440,668
⊕ Legal	5.5%	\$428,080
⊕ Land Acquisition	4.5%	\$350,949
⊕ Tests & Reports	3.2%	\$247,949
⊕ Internal Fees	1.7%	\$134,470
⊕ Land Development	1.2%	\$93,100
⊕ Insurance	0.1%	\$6,261
⊕ Furniture, Fixtures & Equipment	0.1%	\$6,190
⊕ Miscellaneous	0.1%	\$5,967
Total	100.0%	\$7,827,875

Kirk Blouin, Paul Brazil, Bob Miracle, Jason Debrincat, and I met with AHS to review the tenant’s construction schedule which was pushed back by a variety of factors, including remediation requirements and site planning to align non-residential construction with remediated portions of the site.

The rent schedule other than remainder of the first year to year five is unchanged.

PERIOD	ANNUAL BASE RENT	MONTHLY RENT
1	\$334,250.00	[PREPAID BY EXTENSION DEPOSIT]
2– 4	\$867,618.00	\$72,301.50
5	\$1,400,986.00	\$116,748.83
6 - 10	\$954,380.00	\$79,531.66
11 – 15	\$1,049,818.00	\$87,484.83
16 – 20	\$1,154,800.00	\$96,233.33
21 - 25	\$1,270,280.00	\$105,856.66

TOWN ATTORNEY REVIEW

This item was prepared by Janis Cheezem, partner with Akerman LLP.