



GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Jeff Fuqua Boulevard
Orlando, Florida 32827-4399

MEMORANDUM

TO: Members of the Aviation Authority

FROM: James E. Rose, Deputy Executive Director - Business Services and Facilities

DATE: December 10, 2014

ITEM DESCRIPTION:

Recommendation to Approve Consent to Assignment and Release of Colonial Landings f/k/a Herndon Plaza Shopping Center Lease with Weingarten Herndon Plaza JV ("Weingarten")

BACKGROUND

Weingarten is the lessee of a shopping center known as Colonial Landings f/k/a Herndon Plaza under that certain Orlando Executive Airport Amended and Restated Lease Agreement effective January 1, 2006, as amended (the "Lease"). The initial term of the Lease is for 30 years and the lessee will have two 10-year options to renew.

ISSUES

Weingarten requested that the Aviation Authority consent to an assignment of its interest in the Lease to ARC CLORLFL001, LLC ("ARC"), a wholly owned subsidiary of American Realty Capital - Retail Centers of America, Inc. ("American Realty").

Weingarten also requested that the Aviation Authority release it from its obligations under the Lease.

The Lease provides that the Aviation Authority shall deem a proposed assignee satisfactory if it satisfies the following requirements:

- (i) The proposed assignee is not in default under any other agreement between itself and Authority; and
- (ii) The proposed assignee is experienced in the successful operation of no less than ten (10) shopping centers of equal or greater square footage to Herndon Plaza; and

(iii) The proposed assignee is creditworthy and possesses a financial net worth of at least fifty (50) times the gross annual rental for the Lease Year during which the assignment of the Lease is requested.

ARC and American Realty provided the following information satisfactory to meet the above requirements:

- (i) ARC and American Realty have not previously been in default under any agreement with the Aviation Authority;
- (ii) American Realty provided a summary of 16 shopping centers it has owned or controlled, including the center sizes, major tenants and acquisition price. All of which appear of similar quality to Herndon Plaza; and
- (iii) The most current Financial Statements for American Realty represent that ~~it, at the time of the closing, American Realty will~~ possess es a financial net worth that exceeds fifty (50) times the gross annual rent of \$459,474.00 or \$22,973,700. Financial Statements were not submitted for ARC, however, American Realty has indicated that at the time of the assignment ARC will have a financial net worth of approximately \$37,000,000.

American Realty satisfies all of the above-listed criteria and ARC does not, staff recommended that the Consent to Assignment and Release be conditioned upon one of the following conditions being met: (1) Financial Statements for ARC are submitted to the Aviation Authority prior to the effective date of the assignment by Weingarten that establish a net worth for ARC that meets the Lease condition; or, (2) either American Realty signing an unconditional guaranty for the performance of ARC under the Lease; or, (3) American Realty or ARC provideesing the Aviation Authority an annual Letter of Credit in an amount acceptable to the Executive Director and in a form acceptable to the General Counsel to secure ARC's performance under the Lease for a period of five years. The annual Letter of Credit requirement may be extended by the Executive Director in the event ARC defaults under any material provisions of the lease during the initial five-year period after the assignment.

The Lease also allows for the Aviation Authority to consent to release of the lessee upon assignment and provides that, if the lessee is not in default, the Aviation Authority shall release it from liability from and after the date of any assignment.

Weingarten shall remain liable for its obligations and liability (including without limitation, environmental liability) under the lease from the commencement of the Lease until the effective date of the assignment.

ALTERNATIVES

The Board could decide to approve the Consent to Assignment but not grant the release.

FISCAL IMPACT

Under the Lease, ARC will be responsible for the same rent structure and fees as Weingarten.

RECOMMENDED ACTION

It is respectfully requested that the Aviation Authority Board resolve to (1) Approve a Consent to Assignment of the Herndon Plaza Ground Lease to ARC; (2) require financial statements for ARC be submitted prior to the effective date of the assignment satisfying the net worth requirement under the Lease or American Reality to execute a guaranty or ARC submit a letter of credit in an amount acceptable to the Executive Director to secure the performance of ARC; (3) Approve a release of Weingarten from its obligations under the lease for obligations arising from and after the effective date of the assignment; (4) request that the City Council of Orlando approve the consent as it involves a lease exceeding a ten year term; and (5) authorize an Aviation Authority Officer or the Executive Director to execute the necessary documents following satisfactory review by Legal Counsel.