




PORT EVERGLADES DEPARTMENT – Chief Executive/Port Director's Office
1850 Eller Drive, Fort Lauderdale, Florida 33316
954-468-0140 FAX 954-523-8713

MEMORANDUM

DATE: October 30, 2017

TO: Mayor and Members
Broward County Board of County Commissioners

FROM: Steven M. Cernak, P.E., PPM, Chief Executive/ Port Director 

RE: Port Everglades Logistics Center Status Update

This is a follow-up to my September 14, 2017 memorandum to the Broward County Board of County Commissioners (Board) regarding the status of the Port Everglades Logistics Center (copy attached) in which Port staff informed the Board of various issues raised by the lessee, Port Everglades International Logistics Center, LLC (PE-ILC), which they claimed hindered their ability to perform under the lease. The three main issues identified were the term of the agreement, the impact of *ad valorem* tax liability, and the rent schedule, all which they say affect their ability to obtain competitive financing.

Since last communicating with the Board, Port staff has held multiple fact-finding meetings with PE-ILC to further develop the issues, and received and reviewed additional information submitted. Based on the results of those discussions, Port staff believes the best approach is to hold publicly noticed sunshine negotiations, with the intent to negotiate an amendment to the existing agreement that addresses the issues, while protecting the County's interest, prior to the January 31, 2018, early termination date that the PE-ILC previously elected. I will keep you advised as the negotiations progress.

Attachment

ec: Bertha Henry, Broward County Administrator
Monica Cepero, Deputy County Administrator
Gretchen Cassini, Assistant County Administrator
Alan Cohen, Assistant County Administrator
Alphonso Jefferson, Assistant County Administrator
George Tablack, Director, Finance and Administrative Services Department
Andrew Meyers, County Attorney
Robert Melton, County Auditor
Glenn Wiltshire, Deputy Port Director



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MEMORANDUM

DATE: September 14, 2017

TO: Mayor and Members
Broward County Board of County Commissioners

FROM: Steven M. Cernak, P.E, PPM, Chief Executive/Port Director 

RE: Port Everglades Logistics Center Status

On January 24, 2017 (Item No. 33), the Broward County Board of County Commissioners approved a 30-year lease agreement with a 20-year County option with the Port Everglades International Logistics Center, LLC (PE-ILC) to finance, design, construct, operate, and maintain an approximately 250,000 square foot warehouse facility and attached office building for Foreign-Trade Zone (FTZ) activities on 16.657 acres of vacant land at Port Everglades, at an estimated cost of \$29 million. The PE-ILC team is led by the owner of International Warehouse Services (IWS), a 35-year tenant in the port's current on-port FTZ; ANF Group, Inc., a local construction company; and Treadwell Franklin Infrastructure Capital. The new facility is needed to replace existing on-port FTZ warehouses built in 1970s and 1980s and scheduled to be demolished in 2019 to construct a new container terminal for King Ocean as part of the Southport Turning Notch Extension project.

The approved Agreement included a provision providing PE-ILC the right to terminate the Agreement within the first 90 days from the date of Board approval under the following material adverse change ("MAC") conditions: the site development costs increased by more than 20% over the \$2.5 million cost estimate; the construction financing rate increased to 7.75% or greater; or PE-ILC was unable to obtain construction financing for 50% or greater of the construction costs or an amortization schedule of 20 years or greater. PE-ILC provided a \$100,000 deposit held until the 90 day period had expired as a termination penalty.

On April 24, 2017, PE-ILC sent a letter to Port staff declaring that they met the MAC conditions due to estimated site development costs exceeding \$3 million and being unable to obtain construction financing at acceptable terms. Per the Agreement, Port staff had a minimum of 14 days to seek to verify the MAC event, but allowed for a longer period if necessary to validate the claim. Port staff had multiple discussions with PE-ILC representatives from May to July to clarify the MAC claims and to validate the information

Memo to the Board
September 14, 2017
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provided. In June, the PE-ILC representatives advised that they were working with a potential new investor, the Avidan Group, and also were considering making a request to assign the Agreement and were advised by Port staff that the MAC claims needed to be resolved before any Assignment could be discussed with Port staff.

On August 9, 2017, Port staff received a letter from PE-ILC raising a number of issues with the existing Agreement that it claimed affected their ability to secure financing, including the length of the Agreement Term (30 years vs. 50 years), the appraisal methodology if the County decided to terminate the lease after 30 years, and ad valorem tax liability impacts that they didn't account for. PE-ILC also requested the ability to negotiate an amendment. Port staff subsequently received additional documentation concerning the PE-ILC's inability to obtain financing, and met with representatives from PE-ILC and the Avidan Group on August 17th and August 28th to discuss the documentation provided by the team. On August 29, 2017, Port staff provided a notice to PE-ILC verifying that multiple elements of the MAC provision had been met (copy attached). On September 1, 2017, Port staff received a letter from PE-ILC indicating its intent to exercise its early termination rights under the Agreement effective January 31, 2018 (copy attached). Further, PE-ILC requested the County negotiate changes to the Agreement addressing their areas of concern as well as an assignment of the Agreement to the Avidan Group representative as an alternative to terminating the Lease.

Based on the above, Port staff intends to hold fact-finding meetings with representatives from the PE-ILC and the Avidan Group to further discuss their concerns with the current Agreement and get more information on the request for Assignment, and will bring back a recommendation to the Commission on how to proceed within the next 30 days.

Attachments

cc: Bertha Henry, Broward County Administrator
Monica Cepero, Assistant County Administrator
Gretchen Cassini, Assistant County Administrator
Alan Cohen, Assistant County Administrator
Alphonso Jefferson, Assistant County Administrator
Joni Armstrong Coffey, County Attorney
Robert Melton, County Auditor
Glenn Wiltshire, Deputy Port Director



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August 29, 2017

Mr. Fred Rogacki, President
Port Everglades International Logistics Center, LLC
3400 McIntosh Road, Building A
Fort Lauderdale, FL 33316

RE: Verification of "Material Adverse Change"

Dear Mr. Rogacki:

In accordance with Article 2.E.2. of the Lease Agreement between Broward County and Port Everglades International Logistics Center, LLC (LESSEE) dated January 24, 2017 (Lease), this letter shall constitute LESSOR's Port Everglades Chief Executive/ Port Director written notice of verification of LESSEE's claimed "Material Adverse Change" (MAC) as defined in Article 2.E.1. of the Lease. My determination is based upon information provided in a letter dated April 5, 2017, from Mr. Eric Swanson, acting on behalf of PE-ILC, and from multiple meetings that LESSEE's representatives have had with my staff, in addition to emails and written correspondence LESSEE has provided to my staff over the last few months in support of LESSEE's claimed MAC. The supporting documentation used for this determination includes:

- 1) Relating to site development cost MAC:
 - a) Preliminary Geotechnical Exploration Report by GFA International (3/3/2017)
 - b) American Engineering Budget Proposal for Earthwork (4/20/2017)
 - c) Letter from American Engineering to ANF Group regarding cost increase for earthwork (5/4/2017)
 - d) American Engineering Budget Comparison (5/22/2017)

- 2) Relating to financing MAC:
 - a) Letter from Stonegate Bank declining request for financing (4/21/2017)
 - b) Letter from HFF declining request for financing (4/21/2017)
 - c) Letter from Fifth Third Bank declining request for financing (4/24/2017)
 - d) HFF Investment Offering for Port Everglades International Logistics Center (undated)
 - e) Commercial Bank Facility – Indicative Terms and Conditions (8/5/2016)
 - f) Letter from Principal declining request for financing (8/8/2017)
 - g) HFF Report to client (8/11/2017)
 - h) Letter from Aegon declining request for financing (8/13/2017)
 - i) Letter from Provident Bank declining request for financing (8/15/2017)
 - j) Letter from Webster Bank declining request for financing (8/15/2017)
 - k) Letter from Two Liberty Place declining request for financing (8/15/2017)
 - l) HFF Client Status Report (8/15/2017)
 - m) Letter from Mercantil Bank declining request for financing (undated)

Fred Rogacki
August 29, 2017
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Accordingly, should LESSEE elect to exercise its early termination rights under Article 2.E. of the Lease, LESSEE must provide the undersigned with written notification of its intent to terminate the Lease due to a MAC and the effective termination date within seven (7) calendar days following receipt of this written notification.

In the event of an election by LESSEE to terminate the Lease early based on a MAC, LESSEE shall pay LESSOR a total sum of One Hundred Thousand Dollars (\$100,000.00). LESSOR acknowledges it currently holds LESSEE's cash deposit in said amount. LESSEE's early termination of the Lease, shall be without further penalty to LESSEE, and LESSEE and LESSOR shall be released of all their respective rights and obligations under the Lease as of the effective termination date.

In the event LESSEE elects NOT to exercise its early termination rights as set forth in Article 2.E. of the Lease, the full amount of the cash deposit shall be returned by LESSOR to LESSEE without interest. Please govern yourselves accordingly.

Please contact Mr. Jorge Hernández, Director of Business Administration, at (954) 468-3501 should you have any questions.

Sincerely,



Steven M. Cernak, P.E., PPM
Chief Executive/Port Director

cc Eric Swanson, PE-ILC
Glenn Wiltshire, Deputy Port Director
Russell Morrison, Senior County Attorney
Jorge Hernández, Director of Business Administration



September 1, 2017

Via E-mail and By Hand

Steven Cernak
Chief Executive / Port Director
Broward County Port Everglades
1850 Eller Drive
Fort Lauderdale, Florida 33316

Re: Lease Agreement dated January 24, 2017 (the "Lease") between Broward County ("Lessor") and Port Everglades International Logistics Center, LLC ("Lessee")

Dear Mr. Cernak:

We are in receipt of your letter of August 29, 2017 notifying Lessee that pursuant to Section 2.E of the Lease you have verified the material adverse change events provided to you in Lessee's letter of April 24, 2017. In accordance with the requirements of Section 2.E, we hereby notify you that we are exercising our right to terminate the Lease, and that the effective date of the termination will be January 31, 2018; provided, however, in the event we are able to negotiate amendments to the Lease as outlined in our letter of August 9, 2017, prior to January 31, 2018, (and address such other matters as the Port may deem necessary for this amendment to be approved) then this termination will not become effective. In addition, concurrently with negotiation of these amendments, Lessee intends to request an Assignment of the Lease pursuant to Section 10 to permit The Avidan Group (or an affiliate) to be approved as Lessee's assignee concurrently with County Commission approval of the Lease amendments.

As outlined in our letter of August 9, 2017, and expressed during our recent conversations with you and your staff, in working with The Avidan Group to obtain debt financing for the project, we became aware that certain provisions of the Lease present serious impediments to obtaining such financing. These issues relate to:

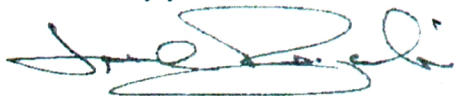
- 1) ad valorem tax expenses,
- 2) the 30 year term of the Lease,
- 3) the fair market value provision,
- 4) lender provisions regarding subordination and insurance proceeds, and
- 5) ground rent escalation rate.

These issues are not insurmountable and we welcome the opportunity to negotiate appropriate amendments to address these concerns and any further refinements which the Port puts forth as part of these further negotiations.

Steven Cernak
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As you are aware, PE-ILC has been diligently working on this project for over a year. We believe in the value of this project to the Port and together with The Avidan Group believe we can resolve the impediments to financing this project.

Sincerely yours,



Fred Rogacki
President

Cc: Eric Swanson
Nelson Fernandez
Alberto Fernandez
Avi Avidan
Glenn Wiltshire, Deputy Port Director
Russell Morrison, Senior County Attorney
Jorge Hernandez, Director of Business Administration