CITY OF FORT LAUDERDALE
City Commission Agenda Memo **#15-0594**
REGULAR MEETING

TO: Honorable Mayor & Members of the Fort Lauderdale City Commission

FROM: Lee R. Feldman, ICMA-CM, City Manager

DATE: July 7, 2015

TITLE: Motion to terminate Lease Agreement with D.H.S. Investments LLC – Parcel 8G at Executive Airport

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Recommendation

It is recommended that the City Commission authorize the City Manager to terminate the Lease for Parcel 8G with D.H.S. Investments LLC, (DHS) in accordance with paragraph 15 of the Lease and authorize initiation of legal action to recover all unpaid amounts due under the Lease Agreement.

Background

DHS, a Florida limited liability company, leases Parcel 8G at the Executive Airport by virtue of an Assignment of Lease Agreement dated December 18, 2012 from K.S.R. LLC. Parcel 8G consists of 1.092 acres of General Aviation Airport (GAA) zoned property located along Cypress Creek Road (see parcel map as Exhibit 1). The property has been improved with a 20,000 square foot office building and associated parking.

The current annual rent is $40,178.25 and is adjusted every three years using the Consumer Price Index (CPI) adjustment method. The next adjustment is scheduled for November 1, 2017. The original Lease commenced on November 8, 1984 with a 50-year term expiring on November 1, 2034. At the time of the assignment, the Lease was amended to extend the term by an additional nine years with a new expiration date of November 7, 2043. Subject to the extension of terms, the amendment required DHS to construct capital improvements at a minimum amount of $300,000 and provide evidence before December 31, 2013. DHS has not provided the Airport with the required evidence of capital improvements, therefore, the Amended Lease and extension of terms have terminated and the Lease has reverted to the original agreement.

DHS is currently in default of their Lease for unpaid rent and sales tax ($49,232.22) for the months of July 2014 through June 2015. Additionally, DHS has failed to pay property taxes for the years 2013 ($42,311.80) and 2014 ($43,243.60) for a total amount of $85,550.40. Airport staff met with DHS property manager, Roni Herskovitz, on October 30, 2014 to discuss the assignment of Parcel 8G, at which time Mr.

Herskovitz was reminded of the existing defaults and his obligations to address the unpaid monthly rent, unpaid sales tax, and unpaid property taxes. Staff has also notified the mortgagee, however, no response was received.

During the December 4, 2014 Aviation Advisory Board meeting, an item was presented and approved recommending assignment of the Parcel 8G Lease to a firm interested in acquiring the property. On December 23, 2014, a Consent to Assignment of the Lease Agreement was provided to DHS for review and signatures. Mr. Herskovitz was not in agreement with the Lease reverting back to the original terms for failing to provide the Airport with evidence of the capital improvements made to the property. After further discussion with Mr. Herskovitz on January 6, 2015, he indicated that he would provide the documents within two weeks.

To date, Mr. Herskovitz has not provided the Airport with any evidence that supports his claim of making capital improvements valued at a minimum of $300,000. Furthermore, it has been brought to our attention that Parcel 8G currently has several fire safety violations which have reached $443,250 in fines. Additionally, building code violations also exist and have reached $85,800 in fines for performing work without permits. DHS is fully aware of the violations and fines continue to accumulate.

At the February 26, 2015 Aviation Advisory Board meeting, a motion was made to extend this matter until the next Board meeting on March 26, 2015 with the understanding that the rent and back taxes, through 2013, shall be paid by the 20th of March. To date, payment has not been received. Subsequently, at the March 26th Aviation Advisory Board meeting, a motion was made to terminate the Lease.

DHS has been afforded ample opportunity to bring the rent payments, taxes and Fire and Building Code violations in compliance with the Lease but has failed to correct these issues in a timely manner. In accordance with paragraph 15 of the Lease, staff recommends finding DHS in default of the rent clause to initiate termination of the Lease Assignment with D.H.S. Investments LLC.

Resource Impact

There will be an estimated fiscal impact in the amount of $674,484.86 which represents rent owed, loss of rent revenue, outstanding property taxes and accumulated Fire and Building Code fines (see table, below). An additional loss of revenue could occur for Fiscal Year 2016 through Fiscal Year 2035, along with any applicable CPI adjustments in 2017, 2020, 2023, 2026, 2029, and 2032 unless a new lease is executed with a new tenant.

Unpaid Rent (July 2014 through June 2015) (Includes Sales Tax)	$ 49,232.22
Rent July 2015-September 2015 (3 months) (Includes Sales Tax)	$ 10,647.24
Outstanding Property Taxes (2013 and 2014)	$ 85,555.40
Accumulated Fire and Building Code Violation Fines	$ 529,050.00
Total	**$ 674,484.86.**

Strategic Connections

This item is a *Press Play Fort Lauderdale Strategic Plan 2018* initiative, included within the Business Development Cylinder of Excellence**,** specifically advancing:

- Goal 7: Be a well-positioned City within the global economic and tourism markets of the South Florida region, leveraging our airports, port, and rail connections.
- Objective 4: Deliver best-in-class regional general aviation airport amenities and services to domestic and international.
- Initiative 1**:** Examine the highest and best use of airport property to stimulate economic development and create jobs.

This item advances the *Fast Forward Fort Lauderdale 2035 Vision Plan*: We Are Prosperous.

Attachment:
Exhibit 1 – Parcel Map

Prepared by: Julie Leonard, Deputy Director Transportation and Mobility

Department Director: Diana Alarcon, Director Transportation and Mobility