



20 N. Swinton Avenue
Delray Beach, FL 33444

Agenda Item # **9A**
November 17, 2016

~ **CRA BOARD SUMMARY** ~

**RESOLUTION 2016-15 - PRIME DELRAY HOTEL, LLC (FAIRFIELD INN) -
GROUND LESSOR ESTOPPEL AND AGREEMENT**

In 2012, the CRA executed the Ground Lease Agreement, Loan Commitment Letter and Development Infrastructure Assistance (DIA) Agreement with Prime Delray Hotel, LLC, for the purpose of constructing a four-story Fairfield Inn on the CRA owned land located at 910 W. Atlantic Avenue. The Loan Commitment Letter provided for a \$1.5 million loan to Prime Delray Hotel, LLC to help finance construction of the project. An amendment to the Loan Commitment was approved on November 15, 2012 to clarify the descriptions of the property and project. Construction of the project was completed in February 2015 and all proceeds associated with the loan disbursed.

Prime Delray Hotel, LLC (Tenant) seeks to obtain from Citigroup Group Global Markets Realty Corp. (Lender) a loan in the approximate amount of \$10,500,000 (hereinafter the "Loan") secured by a first leasehold mortgage upon Tenant's interest as tenant under the Lease in the Premises (Leasehold Mortgage). At closing, the CRA will receive repayment of the CRA's Loan with interest. There is no prepayment penalty. The Lender is unwilling to make the Loan unless the CRA (Landlord) reaffirms to the Lender that the provisions of the Lease respecting leasehold mortgages are restated and confirmed for Lender's benefit and certain additional agreements are made with Lender with respect to Lender's rights as the holder of the Leasehold Mortgage.

All of the leasehold mortgagee protection provisions contained in the Lease that inure to the benefit of leasehold mortgagees or their successors and assigns are hereby incorporated into the attached Agreement by reference and restated and confirmed by Landlord for the benefit of Lender, its successors and assigns.

The CRA's Attorney, DJ Doody, has reviewed the Agreement for legal sufficiency and form, and recommends approval.

Recommended Action:

Approve CRA Resolution 2016-15: Ground Lessor Estoppel and Agreement between the Delray Beach CRA and Prime Delray Hotel LLC.

Submitted By: Jeff Costello, Executive Director

Attachments: Resolution No. 2016-15 Ground Lessor Estoppel and Agreement

Handwritten initials

RESOLUTION NO. 2016-15

A RESOLUTION BY THE BOARD OF COMMISSIONERS OF THE DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING AND AUTHORIZING THE AUTHORIZED OFFICIALS TO EXECUTE AN ASSIGNMENT OF MORTGAGE AND A GROUND LESSOR ESTOPPEL AND AGREEMENT BETWEEN THE CRA, PRIME DELRAY HOTEL, LLC, AND CITIGROUP GLOBAL MARKETS REALTY CORP.; A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A"; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board deems it to be in the best interests of the Delray Beach CRA to approve the Assignment of Mortgage and Ground Lessor Estoppel and Agreement between the CRA, Prime Delray Hotel, LLC, and Citigroup Global Markets Realty Corp.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby incorporated herein.

Section 2. The Board of Commissioners of the Delray Beach Community Redevelopment Agency hereby approves and authorizes the authorized officials to execute the Assignment of Mortgage and Ground Lessor Estoppel and Agreement between the CRA, Prime Delray Hotel, LLC, and Citigroup Global Markets Realty Corp. A copy of the Assignment of Mortgage and Ground Lessor Estoppel and Agreement are attached hereto as Exhibit "A".

Section 4. All resolutions inconsistent or in conflict herewith shall be and are hereby repealed insofar as there is conflict or inconsistency.

Section 5. If any section, sentence, clause, or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction then said holding shall in no way affect the validity of the remaining portions of this Resolution.

Section 6. This resolution shall become effective upon its passage and adoption by the City of Delray Beach Community Redevelopment Agency Board of Commissioners.

**PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF
DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY ON THE ____ DAY
OF _____, 2016.**

DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY

BY: _____
REGINALD A. COX, CHAIR

ATTEST:

JEFFREY A. COSTELLO, EXECUTIVE DIRECTOR

DJD:mea

GROUND LESSOR ESTOPPEL AND AGREEMENT

WHEREAS, **DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY**, a Florida public agency created pursuant to Chapter 163, Florida Statutes (hereinafter "Landlord"), or its predecessor in interest, has heretofore leased certain lands described on Exhibit A attached hereto (hereinafter the "Premises") to **PRIME DELRAY HOTEL LLC**, a Florida limited liability company (hereinafter "Tenant") pursuant to that certain Ground Lease Agreement between Tenant and Landlord dated as of April 2, 2012, as more particularly described on Exhibit B, (as same may have been amended, modified, substituted or extended, hereinafter the "Lease");

WHEREAS, Tenant seeks to obtain from **CITIGROUP GLOBAL MARKETS REALTY CORP.** (together with its successors and or assigns, hereinafter "Lender") a loan in the approximate amount of \$10,500,000.00 (hereinafter the "Loan") secured by a first leasehold mortgage upon Tenant's interest as tenant under the Lease in the Premises (the "Leasehold Mortgage") and made pursuant to the terms of that certain Loan Agreement to be entered into by Tenant and Lender (the "Loan Agreement"); and

WHEREAS, Lender is unwilling to make the Loan unless Landlord reaffirms to Lender that the provisions of the Lease respecting leasehold mortgages are restated and confirmed for Lender's benefit and certain additional agreements are made with Lender with respect to Lender's rights as the holder of the Leasehold Mortgage,

NOW THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Landlord hereby certifies to and agrees with Lender as follows:

1. Landlord hereby consents to the granting by Tenant of a mortgage on Tenant's interest pursuant to the Lease to Lender. Notwithstanding anything in the Lease to the contrary, Landlord hereby agrees that any involuntary transfer of Tenant's interest in the Lease to Lender, its successors or assigns shall not constitute an event that terminates the Lease or entitles Landlord to terminate the Lease.

2. All of the leasehold mortgagee protection provisions contained in the Lease that inure to the benefit of leasehold mortgagees or their successors and assigns are hereby incorporated into this agreement by reference and restated and confirmed by Landlord for the benefit of Lender, its successors and assigns.

3. Landlord hereby agrees and covenants that upon serving Tenant with any notice of default, or any other notice under the provisions of or with respect to the Lease, shall also serve a copy of such notice upon Lender at the address set forth Paragraph 13 hereof (or such other address as Lender may designate in writing delivered to Landlord) and no notice by Landlord to Tenant under the Lease shall be deemed to have been duly given unless and until a copy thereof has been so delivered to Lender. Additionally, in connection with any default by Tenant under the Lease not requiring the delivery of notice to Tenant by Landlord, Landlord shall, promptly upon obtaining knowledge of such the existence of such default, deliver to Lender written notice thereof.

4. Landlord hereby agrees that Landlord shall deliver to Lender written notice of any default by Tenant under the Lease simultaneously with sending such notice to Tenant and that no notice of default given to Tenant, and no exercise of any remedy by landlord as a result of any such default, shall be effective unless such notice shall have been previously delivered to Lender in accordance herewith. Landlord hereby further agrees that Lender shall have the right, but not the obligation, to cure any default by Tenant under the Lease and Lender shall be afforded the greater of (a) forty-five (45) days from receipt of notice thereof from Landlord or (b) the period provided to Tenant in the Lease, to remedy such default, or cause the same to be remedied; provided, however, that if such default cannot, with reasonable diligence be cured within the aforementioned time periods and Lender notifies Landlord of its intent to cure such default, Lender shall be afforded such extended time period as may be required to complete such cure (including, without limitation, such period as may be required for Lender to (1) to obtain possession of the Premises (including possession by a receiver) or (2) to institute, prosecute and complete foreclosure proceedings or otherwise acquire Tenant's interest under the Lease, provided that, in each case, Lender is diligently and continuously pursuing, as applicable, the actions described in this parenthetical) provided that during such period steps shall in good faith, have been commenced by the Lender within the time periods set forth herein to prosecute the same and Lender continues to prosecute such cure with diligence and continuity. Any default by Tenant not reasonably susceptible of being cured by Lender shall be deemed to have been waived by Landlord upon completion of such foreclosure proceedings or upon such acquisition of Tenant's interest in the Lease, except that any of such Events of Default which are reasonably susceptible of being cured after such completion and acquisition shall then be cured with reasonable diligence, Lender, or its designee, or other purchaser in foreclosure proceedings may become the legal owner and holder of the Lease through such foreclosure proceedings or by assignment of the Lease by Tenant in lieu of foreclosure.

5. Landlord agrees and covenants that in the event of the termination of the Lease prior to the expiration of the term thereof (including, without limitation, in connection with a rejection of the Lease in the event of a bankruptcy of Tenant), Landlord shall deliver to Lender written notice that the Lease has been terminated together with a statement of any and all sums which would at that time be due under the Lease but for such termination, and of all other defaults, if any, under the Lease then known to Landlord. Lender shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

(i) Upon the written request of Lender, within thirty (30) days after service of notice that the Lease has been terminated, Landlord shall enter into a new lease of the Premises with Lender, or its designee, as follows:

(1) Such new lease shall be effective as at the date of termination of the Lease, and shall be for the remainder of the term of the Lease and at the Annual Base Rent (as defined in the Lease) and upon all the agreements, terms, covenants and conditions of the Lease, including any applicable rights of renewal or purchase; and

(2) Such new lease shall have the same priority of the Lease as if the new lease was executed and recorded on the same day of the Lease.

(ii) Effective upon the commencement of the term of any new lease, all subleases (if any) shall be assigned and transferred without recourse by Landlord to the tenant under such new lease, and all moneys on deposit with Landlord which Tenant would have been entitled to use but for the termination or expiration of the Lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease. Between the date of termination (or rejection) of this Lease and the earlier of (A) the date of execution and delivery of the new lease and (A) the date the Lender's option to request a new lease pursuant the terms hereof expires, Landlord shall not enter into any new subleases, cancel or modify any then-existing subleases or accept any cancellation, termination or surrender thereof without the written consent of Lender.

6. [Intentionally Omitted].

7. Landlord agrees and covenants that the fee title to the Premises and the leasehold estate created therein pursuant to the provisions of the Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Tenant, Landlord, or in any other person by purchase, operation of law or otherwise.

8. Landlord agrees that (i) in no event shall the Lease be terminated as a result of damage by casualty or by condemnation of less than the entire without the prior written consent of Lender; (ii) Lender shall have the right to participate in any adjustment or settlement negotiation, action or proceeding relating to any insurance proceeds and condemnation awards; (iii) in the event that insurance proceeds or condemnation awards are required to be made available for restoration pursuant to the Lease, Lender will honor such requirement subject to the terms of this Estoppel; provided, however, (a) any such insurance proceeds or condemnation awards shall be held by Lender and (b) the disbursement procedures set forth in the Loan Agreement shall control with respect to such restoration and disbursements; and (iv) any insurance proceeds or condemnation awards not used for restoration may be applied to pay any outstanding sums due under the Loan and to pay off the principal balance thereof in Lender's discretion.

9. Landlord agrees that if Lender, or its designee, shall acquire title to Tenant's interest in the Lease, by foreclosure of the Leasehold Mortgage or by assignment in lieu of foreclosure or by an assignment from a designee or wholly owned subsidiary corporation of Lender, or under a new lease pursuant to this Agreement, Lender, or its designee, as applicable, may, notwithstanding anything to the contrary contained in the Lease (including without limitation Section 13 thereof) assign such lease without Landlord's prior consent and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on tenant's part to be performed and observed from and after the date of such assignment, provided that such assignee assumes the obligations of the tenant hereunder.

10. Landlord hereby agrees that the Leasehold Mortgage shall not be subject or subordinate to any mortgage encumbering the fee estate of the Premises.

11. Landlord hereby covenants and agrees that upon Tenant's or Lender's request, Landlord shall deliver to Tenant and Lender within ten (10) days of such request an estoppel

certificate with respect to the Lease attesting to the facts substantially similar to the matters described Paragraph 12 below (and if such certifications need to be updated or are otherwise no longer true at the time of the delivery of such estoppel, such estoppel shall specify the applicable updated facts or otherwise describe why such certifications are no longer true).

12. Landlord hereby certifies as follows:

- (a) Landlord is the owner of the fee simple estate in the Premises and is the landlord under the Lease.
- (b) Tenant is the owner of the leasehold estate in the Premises and is the tenant under the Lease.
- (c) The Lease is in full force and effect and in accordance with its terms and has not been assigned, supplemented, modified or amended.
- (d) Each of the obligations on Tenant's part to be performed to date under the Lease have been duly performed by Tenant. There exist no default nor state of facts which with notice and/or the passage of time would constitute a default under the Lease on the part of Landlord or Tenant.
- (e) The Project (as defined in the Lease) has been developed in accordance with the terms of the Lease, including, without limitation, Section 6(d) thereof, and Tenant has no remaining obligations under the Lease with respect to the initial development of the Project.
- (f) Tenant has no offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the Lease.
- (g) There are, with respect to the Lease, no options to renew or extend, and no security deposits or prepaid rent or liens.
- (h) There do not exist any other agreements (including subordination, non-disturbance and attornment agreements) concerning the Premises, whether oral or written between Landlord and Tenant (or their respective predecessors or successors) under the Lease.
- (i) As of date hereof, no basic rent or additional rent is due from Tenant under the Lease. The basic rent currently payable by Tenant under the Lease is \$ _____ per annum. Basic rent due under the Lease has been paid through _____.
- (j) The term commencement date of the Lease was April 2, 2012, and the initial term of the Lease shall expire on April 2, 2052.
- (k) Landlord has not assigned, conveyed, transferred, sold, encumbered or mortgaged its interest in the Lease or the Premises and there are currently no mortgages, deeds of trust or other security interests encumbering

Landlord's fee interest in the Premises and no third party has an option or preferential right to purchase all or any part of the Premises.

- (l) Landlord has not received written notice of any pending eminent domain proceedings or other governmental actions or any judicial actions of any kind against the Landlord's interest in the Premises.
- (m) Landlord has not received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Premises and its operation thereon, including, without limitation, any environmental laws or the Americans with Disabilities Act, and has no reason to believe that there are grounds for any claim or such violation.
- (n) Tenant has not exercised its option to purchase the Premises pursuant to Section 33 of the Lease. Tenant does not have any rights of first refusal with respect to the Premises except as set forth in Section 34 of the Lease.

13. Lender hereby advises Landlord that all notices required to be sent to a leasehold mortgagee under the Lease or this Agreement shall be sent to Lender to the following address:

Citigroup Global Markets Realty Corp.
390 Greenwich Street, 7th Floor
New York, New York 10013
Attention : Ana Rosu Marmann
Facsimile No.: (646) 328-2938

This Estoppel and Agreement and the representations and agreements made herein are given with the understanding that this Estoppel and Agreement constitutes a material inducement for Lender in making the Loan to Tenant and that Lender shall rely hereon in making the Loan to Tenant. This Estoppel and Agreement and the representations and agreements made herein shall inure to the benefit of Lender, its successors and assigns and shall be binding on Landlord, its heirs, legal representatives, successors and assigns. In the event of a conflict between the terms and provisions of this Estoppel and Agreement and the terms and provisions of the Lease, the terms and provisions of this Estoppel and Agreement shall control. To the extent that this Estoppel and Agreement modifies the terms and provisions of the Lease, such modification shall be deemed to be an amendment of the Lease and the parties hereto shall be estopped from denying the effectiveness of the modifications effected hereby.

This Estoppel and Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Estoppel and Agreement may be detached from any counterpart of this Estoppel and Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Estoppel and Agreement identical in form hereto but having attached to it one or more additional signature pages.

[SIGNATURE PAGES TO FOLLOW]

Executed this _____ day of _____, 2016.

LANDLORD:

DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY

By: _____

Name:

Title:

TENANT:

PRIME DELRAY HOTEL, LLC, a Florida
limited liability company

By: _____

Name:

Title:

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

EXHIBIT B

DESCRIPTION OF GROUND LEASE AGREEMENT

That certain Ground Lease Agreement dated April 2, 2012 between Prime Delray Hotel LLC, a Florida limited liability company and Delray Beach Community Redevelopment Agency, a Florida public agency created pursuant to Chapter 163, Florida Statutes, as amended by that certain First Amendment to Ground Lease Agreement dated November 15, 2012, as amended by that certain Second Amendment to Ground Lease Agreement dated December 4, 2012, as amended by that certain Third Amendment to Ground Lease Agreement dated May 14, 2013, as amended by that certain Fourth Amendment to Ground Lease Agreement dated December 3, 2013, as amended by that certain Fifth Amendment to Ground Lease Agreement dated May 22, 2014, as amended by that certain Sixth Amendment to Ground Lease Agreement dated December 18, 2014, as amended by that certain Seventh Amendment to Ground Lease Agreement dated January 30, 2015 and as amended by that certain Eighth Amendment to Ground Lease Agreement dated February 25, 2015.