

Kelly L Soreng

From: Kyle Benda
Sent: Tuesday, August 16, 2022 4:28 PM
To: Ron Sikes
Cc: Martha Rosales; Pamela Hare
Subject: RE: 60 Day Extension of Cure Period for Lease Agreement for the Coast Guard Auxiliary Building

Ron,

I will include your most recent email for the agenda item and extend the cure period until September 31, 2022. Let me know if you need anything in the meantime.

Best,



KYLE J. BENDA
Assistant County Attorney
County Attorney's Office
kbenda@hernandocounty.us

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From: Ron Sikes <rsikes@sikeslawgroup.com>
Sent: Friday, August 12, 2022 11:19 AM
To: Kyle Benda <KBenda@co.hernando.fl.us>
Cc: Martha Rosales <mrosales@sikeslawgroup.com>; Pamela Hare <PHare@co.hernando.fl.us>
Subject: Re: 60 Day Extension of Cure Period for Lease Agreement for the Coast Guard Auxiliary Building

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Kyle-

Thank you for your e-mail of August 1st. We understand and respect the constraints that you are working under with regard to the Sunshine Law.

We have discussed your comments further with our client's board members. Given your concerns regarding the proposed options to renew and option to purchase/right of first refusal, we have been authorized to communicate the following revised settlement proposal:

1. The parties will agree to abide by the terms and conditions of the Amended Base Lease (as defined in my correspondence to you dated July 1, 2022).

2. The responsibilities of the parties for maintenance and repairs of the building and its systems and area development will be allocated as set forth in the Amended Base Lease.
3. The lease term will continue to end in 2030 as set forth in the Amended Base Lease unless the parties are able to negotiate an extension in compliance with applicable law.
4. All revenues realized from the sub-leases of the cellular telephone tower beginning September 15, 2022, through the end of the lease term, will be allocated on the following basis: fifty percent to HBMG; and fifty percent to Hernando County; payable quarterly in arrears beginning December 15, 2022.
5. HBMG will be required to provide liability insurance as set forth in the Amended Base Lease and the county will provide coverage for the repair and replacement cost of the building.
6. The parties will agree that the default asserted in your correspondence of March 17, 2022, has been timely cured to the satisfaction of Hernando County without any requirements for payment of the sums demanded therein or accruing since then, save and except the 2021 real property taxes that have already been paid by HBMG.
7. The parties will agree that while the County will abandon its claim for breach as asserted in your March 17, 2022, correspondence, HBMG will reserve its right to dispute any claim by the IRS that the same constitutes a forgiveness of debt or is taxable income to HBMG, despite the County's unilateral issuance of a 1099 for the abandoned claim.

If this sounds workable to you, let's agree to extend the cure period through the end of September so we can get a settlement agreement signed soon after the September 13th Board of County Commissioners' meeting. **Please provide me with your response no later than Friday, August 19th.**

Thank you,

Ron
Ronald W. Sikes, Esquire
Sikes Law Group, PLLC
310 South Dillard Street, Suite 120
Winter Garden, FL 34787
(407) 877-7115 (Telephone)
(407) 877-6970 (Facsimile)



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From: Kyle Benda <KBenda@co.hernando.fl.us>
Sent: Monday, August 1, 2022 1:29 PM
To: Ron Sikes <rsikes@sikeslawgroup.com>
Cc: Martha Rosales <mrosales@sikeslawgroup.com>; Pamela Hare <PHare@co.hernando.fl.us>
Subject: RE: 60 Day Extension of Cure Period for Lease Agreement for the Coast Guard Auxiliary Building

Hey Ron,

There is nothing further that the County needs from you at this time, but I wanted to give you an update on what needs to be done for the County to be able to accept your client's settlement offer and to also give you a timeline of getting the offer to the BOCC for its consideration.

As a preliminary matter, we did not have a "shade" meeting with the BOCC on July 26, 2022, because the BOCC is prohibited by law from conducting a "shade" meeting without presently pending litigation between our clients. See generally AGO 04-35 and AGO 98-21 (stating that a governing body could not have a "shade" meeting when there is only threatened litigation, even though the parties believed that litigation was inevitable). That being said, I am going to coordinate an agenda item to provide your client's settlement offer to the BOCC for their September 13, 2022, meeting. This date allows us to meet all applicable advertising requirements for the agenda item and to follow the procedures in our Code for your client's proposal to extend the lease agreement.

For the County to be able to accept your client's offer for an extension of the lease agreement, there are a few requirements in the County Code that we must follow. Those Code requirements provide the following three options for resolution of the issues with the lease agreement.

The first option we would present to the BOCC would be for an extension of the current lease agreement. For the County to negotiate an extension, the lease must be for the fair market value of the property and it must be open for public bidding as surplus property. Section 125.35(1)(a) of the Florida Statutes only allows the BOCC to lease property "whenever the board determines that it is to the best interest of the county to do so, to the highest and best bidder for the particular use the board deems to be the highest and best, for such length of term and such conditions as the governing body may in its discretion determine." Further, when negotiating a new extension of a lease agreement, we are required to follow all of the provisions in Chapter 2, Article VII, Division 2 of our Code, including the requirement that the BOCC "shall not convey or lease its interest in any real property or improvements thereon for less than the fair market value of the county's interest in such real property." Section 2-177, Code.

I assume that your current lease extension proposal would be for \$1.00 per year, which I do not believe is the fair market value of the property. For an extension, your client would need to propose at least the fair market rental value of the property.

As a more procedural issue, the property must first be declared surplus county property to be able to extend the lease. See Section 2-173, Code ("The board of county commissioners is under no obligation to consider unsolicited bids to purchase or lease county-owned property. If the applicable property has not yet been determined to be surplus property, the offer shall be processed as a request to declare such property to be surplus pursuant to section 2-171(a)(2). If the board has determined that the applicable property is surplus, the board shall have the discretion to dispose of the applicable property through one (1) of the methods set forth in section 2-172."). Once declared surplus, others would be able to make offers on the property. The County is currently contracted with a realtor, who would be able to advertise the property as surplus and assist in that process.

Instead of negotiating a lease extension, the second option would be for your client to pay the amount required to cure the breach of the current lease. We would then continue the current lease's terms until its expiration in 2030, which includes that your client pay whatever insurance premiums are required on the property, conduct all maintenance, pay whatever taxes are assessed by the property appraiser, and pay the County half of all amounts received for any subleases of cell phone antennae.

The third option would be for the County to offer the property for sale and take bids on that property. If the property is ultimately sold to a third party, then your client can negotiate with that purchaser about an extension of the current lease agreement.

Those are the three options our office will recommend the BOCC has related to this property. If your client would like to modify its settlement proposal, then I can include that in the agenda item when it is scheduled. If I do not receive any modified settlement offer by August 30, then I will present your letter dated July 22, 2022 to the BOCC for its discussion and consideration.

If you have any questions in the meantime, please let me know.

Best,



KYLE J. BENDA

Assistant County Attorney

County Attorney's Office

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From: Ron Sikes <rsikes@sikeslawgroup.com>

Sent: Monday, August 1, 2022 9:35 AM

To: Kyle Benda <KBenda@co.hernando.fl.us>

Cc: Martha Rosales <mrosales@sikeslawgroup.com>; Pamela Hare <PHare@co.hernando.fl.us>

Subject: Re: 60 Day Extension of Cure Period for Lease Agreement for the Coast Guard Auxiliary Building

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Kyle-

Good morning! Just checking in to see what your timetable is for the county's response to the settlement proposal that we sent on July 22, 2022. Is there anything further that you need from us?

Thank you,

Ron

Ronald W. Sikes, Esquire

Sikes Law Group, PLLC

310 South Dillard Street, Suite 120

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From: Ron Sikes <rsikes@sikeslawgroup.com>
Sent: Friday, July 22, 2022 11:23 AM
To: Kyle Benda <KBenda@co.hernando.fl.us>
Cc: Martha Rosales <mrosales@sikeslawgroup.com>; Pamela Hare <PHare@co.hernando.fl.us>
Subject: Re: 60 Day Extension of Cure Period for Lease Agreement for the Coast Guard Auxiliary Building

Kyle-

Please see attached settlement proposal. We look forward to speaking with you following the "shade meeting" to be held this Tuesday.

Thank you,

Ron
Ronald W. Sikes, Esquire
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From: Ron Sikes
Sent: Wednesday, July 20, 2022 2:04 PM
To: Kyle Benda <KBenda@co.hernando.fl.us>
Cc: Martha Rosales <mrosales@sikeslawgroup.com>; Pamela Hare <PHare@co.hernando.fl.us>
Subject: RE: 60 Day Extension of Cure Period for Lease Agreement for the Coast Guard Auxiliary Building

Kyle-

Thanks for your note. We are working up a proposal and will have it to you by the end of this week. I have just been swamped with work!

Ron

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From: Kyle Benda <KBenda@co.hernando.fl.us>
Sent: Monday, July 18, 2022 2:41 PM
To: Ron Sikes <rsikes@sikeslawgroup.com>
Cc: Martha Rosales <mrosales@sikeslawgroup.com>; Pamela Hare <PHare@co.hernando.fl.us>
Subject: RE: 60 Day Extension of Cure Period for Lease Agreement for the Coast Guard Auxiliary Building

Ron,

Following our discussions at our meeting on July 7, 2022, have you prepared a written proposal summarizing your client's settlement offer?

Best,



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From: Ron Sikes <rsikes@sikeslawgroup.com>
Sent: Thursday, July 7, 2022 1:21 PM
To: Kyle Benda <KBenda@co.hernando.fl.us>
Cc: Martha Rosales <mrosales@sikeslawgroup.com>; Pamela Hare <PHare@co.hernando.fl.us>
Subject: RE: 60 Day Extension of Cure Period for Lease Agreement for the Coast Guard Auxiliary Building

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Kyle-

Thank you for your below e-mail and for meeting with us this morning. Just to be clear, the extension of the cure period for an additional sixty days relates to the alleged breaches claimed in your correspondence to the Hernando Beach Marine Group, Inc., dated March 17, 2022. In reliance upon that agreement, we will forego tendering the funds necessary to pay the amount demanded prior to July 15, 2022, in an effort to determine whether a mutually agreeable resolution to our respective clients' disputes can be achieved within the extended cure period.

We appreciate this opportunity.

Ron
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From: Kyle Benda <KBenda@co.hernando.fl.us>
Sent: Thursday, July 7, 2022 11:14 AM
To: Ron Sikes <rsikes@sikeslawgroup.com>
Cc: Martha Rosales <mrosales@sikeslawgroup.com>; Pamela Hare <PHare@co.hernando.fl.us>
Subject: 60 Day Extension of Cure Period for Lease Agreement for the Coast Guard Auxiliary Building

Hey Ron,

Following up with our conference today, the County agrees to a 60-day extension of the cure period for the alleged breach of the 1982 Lease between your client, the Hernando Beach Marine Group, Inc., and the County, or until September 13, 2022. My understanding of our agreement for this extension is that both parties are reserving all rights and defenses that they may have.

Please let me know if you have any questions or need any additional information.

Best,



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