Termination of Lease Agreement with Durango Warm Springs, LLC

Recommended Action:

That the Board of County Commissioners approve and authorize the termination of the Lease Agreement between Clark County and Durango Warm Springs, LLC for Phase II on ±23.10 acres of County-owned real property; and authorize the Director of Real Property Management or her designee to sign any necessary documents; and take other action as directed by the Board. The leased property is known as Assessor’s Parcel Numbers 176-09-501-009 and 176-09-501-010, and is located on the south side of Warm Springs Road between Durango Drive and Buffalo Drive.

Summary:

On March 2, 2004, the Board approved a Lease Agreement (Lease) with Durango Warm Springs, LLC (Durango) for a term of fifty-years for commercial development on ±59.33 acres within the Cooperative Management Area (CMA). The Board later approved an amendment of the Lease resulting in two separate leases of Phase I (±36.23 acres) and Phase II (±23.1 acres). The County is to receive fifty percent (50%) of the Net Revenue from Phase I and Phase II, which will be distributed under the terms of the Southern Nevada Public Lands Management Act of 1998 (SNPLMA).

PHASE II

Durango failed to complete improvements on Phase II by June 1, 2010, as required in the Lease. In accordance with the Lease, the County may, therefore, require Durango to pay fair market ground rent or terminate the Lease. Based upon appraised ground rent on Phase I, Durango will owe $375,000 in ground rent for Phase II as of March 1, 2011 and ±$500,000 a year until improvements are completed.

On January 18, 2011, Real Property Management (RPM) proceeded to the Board recommending termination of Phase II, which is consistent with five (5) recommended terminations involving unencumbered CMA land owned by the Department of Aviation. The Board directed RPM to attempt negotiations with Durango for an amendment.

On January 20, 2011, RPM sent a letter to Durango outlining proposed terms for a Fourth Amendment and a meeting was scheduled for February 3, 2011. RPM wanted to give Durango an opportunity to review the proposed terms and be prepared to negotiate in the meeting.
On February 3, 2011, RPM met with representatives from Durango and discussed RPM's proposed terms. Durango was not in agreement with all of RPM's terms and did not offer a solution for negotiation.

RPM proposed the following terms for a Fourth Amendment on Phase II.

Durango agreed in principle to the following terms:
- Extend the June 1, 2010 construction deadline for five (5) years.
- Establish ground rent by appraisal. Durango will reimburse County for appraisal costs.
- Payment of past due ground rent.
  - Durango agreed that a past balance was due but not on payment terms.
- Amend section 2.19.11.2 of the Lease so that in foreclosure the outstanding debt does not convert to equity.
- If Durango sells interest, the outstanding ground rent (deferred plus interest) is required to be paid off prior to County consent.
- Durango must submit monthly financial statements in RPM's standard format each month documenting equity and the ground rent reduction.

Terms not resolved with Durango:
- Reduce the rate of eleven percent (11%) per year on the Durango's equity contribution.
  - Durango did not make a suggestion and RPM offered five and one-half percent (5.5%) per annum.
- Payment of past due ground rent.
  - Durango did not specify a percentage of ground rent to be paid upfront with the remaining ground rent deferred against equity and RPM offered forty percent (40%) of ground rent paid upfront and the remaining balance to be deferred against equity.
- Payment of a percentage of the ongoing ground rent with monthly payments through the term of the extension. Remaining ground rent will reduce Durango's equity contribution or accrue with interest if equity balance is zero.
  - Durango did not specify the percentage of ground rent that they would pay monthly and RPM offered forty percent (40%) of the required ground rent.
- William and Susan Walters will sign personal guarantees and be responsible to pay for any amounts that are not paid per the amendment terms.
  - Durango said they would not accept this requirement.

After the February 3, 2011 meeting, RPM sent a letter on February 4, 2011, transmitting RPM's proposed Fourth Amendment for Phase II to Durango. RPM did not receive a response. On February 11, 2011, RPM sent a follow-up letter transmitting RPM's proposed Fourth Amendment for Phase II and requested comments or a counter-offer. RPM has not received a response.

Durango has claimed soft cost expenditures for Phase II in the unaudited amount of ±$1,000,000. Annual property taxes on Phase II are currently $124,300 per year. To date, Durango has paid $466,243.87 in taxes. Taxes are not disbursed as revenue under SNPLMA.
PHASE I

The total cost of Phase I is ±$50,000,000. As of December 31, 2010, Durango is claiming $19,915,630 in equity and an additional accrued interest balance of $7,098,179, which totals $27,013,803. This $27,013,803 is unaudited and will have to be paid back first from the Phase I development before the County shares in revenue. Based upon the current capital structure and cash flows, it is estimated that the County will not share in revenue until 2027.

Durango failed to complete improvements on Phase I by June 1, 2009, as required in the Lease. On July 7, 2009, the Board approved the Durango Third Amendment for Phase I. Since the property was ±75% developed at the time of the Amendment, RPM recommended amending the Lease in lieu of termination, as was consistent with other amendments on encumbered developments.

The following terms were agreed upon in the Third Amendment for Durango for Phase I.

- Extension of the construction completion date for five (5) years to June 1, 2014.
- Commencing on original completion deadline of June 1, 2009, ground rent charged at fair market value on all unimproved land until completion.
- Ground rent can be deferred to reduce Durango’s equity for shared revenue and any outstanding ground rent balances above equity balances will accrue at eleven percent (11%) annual interest.
- No ground rent due on paved portions.
- If construction is not completed by June 1, 2014, County will have the option to continue charging ground rent on the undeveloped portions or terminate the undeveloped portions.
- Fair market value ground rent will be determined by an independent appraisal and Durango will be responsible for the appraisal costs.

Since June 1, 2009, $620,718.75 of ground rent has been deferred reducing Durango’s equity.

DONALD G. BURNETTE
County Manager