

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: AIRPORT

AGENDA DATE: December 14, 2010

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña/780-4724

DISTRICT(S) AFFECTED: 3

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

This is a Resolution to authorize the City Manager to sign a Ground Lease Estoppel Certificate and Agreement by and between the City of El Paso (Landlord); Host Hotels & Resorts, L.P., f/k/a Host Marriott, L.P. (Tenant); and, CP El Paso, LTD (Subtenant) for the property describes as a portion of Tract 4A25, Block 2, Ascarate Grant, City of El Paso, El Paso County, Texas, which is also municipally known and numbered as 1600 Airway Blvd., El Paso, Texas.

**BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

CP El Paso, LTD (Subtenant) is requesting the City's approval of this estoppel and agreement to allow it to refinance existing debt. Refinancing with a traditional mortgage loan is being secured by the Subtenant's interest in the leasehold with Starwood Property Mortgage Sub-2, LLC. In addition, the Subtenant is requesting that the City give its consent to the Subtenant's pledge of its ownership interests through a Mezzanine Loan from Starwood Property Mortgage, LLC.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

Second Amendment to Lease on December 29, 1999.

Estoppel and Consent Agreement on December 29, 1999.

Estoppel and Agreement on July 13, 2010.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

N/A – this is a revenue-generating item

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**BOARD / COMMISSION ACTION:** N/A

Enter appropriate comments or N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign a Ground Lease Estoppel Certificate and Agreement by and between the City of El Paso ("Landlord"); Host Hotels & Resorts, L.P., f/k/a Host Marriott, L.P. ("Tenant"); and CP El Paso, LTD. ("Subtenant") for the property described as a portion of Tract 4A25, Block 2, Ascarate Grant, City of El Paso, El Paso County, Texas, which is also municipally known and numbered as 1600 Airway Blvd., El Paso, Texas.

**ADOPTED THIS \_\_\_\_\_ DAY OF DECEMBER 2010.**

THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Monica Lombraña, A.A.E.  
Director of Aviation

## GROUND LEASE ESTOPPEL CERTIFICATE AND AGREEMENT

**RE:** That certain El Paso Airport Hotel Lease Agreement, dated as of October 17, 1980, by and between the CITY OF EL PASO, a Texas home rule city and a municipal corporation, as landlord ("Landlord"), and HOST HOTELS & RESORTS, L.P., a Delaware limited partnership F/K/A HOST MARRIOTT, L.P., as tenant ("Tenant") (as amended by the documents described on Schedule 1 attached hereto, the "Prime Lease"), and that certain Amended and Restated Ground Sublease Agreement, dated as of July 11, 2003, by and between Tenant, as sublandlord, and CP EL PASO, LTD., a Kentucky limited partnership, as subtenant ("Subtenant") (as amended by the documents described on Schedule 1 attached hereto, the "Sublease"; the Prime Lease and the Sublease are each occasionally referred to herein as a "Ground Lease") encumbering certain real property located in El Paso, Texas and described in Exhibit "A" attached hereto and made a part hereof (the "Property")

December \_\_\_\_\_, 2010

THIS GROUND LEASE ESTOPPEL CERTIFICATE AND AGREEMENT (this "Agreement") is executed and delivered by Landlord, Tenant and Subtenant with the expectation that it will be delivered to STARWOOD PROPERTY MORTGAGE SUB-2, L.L.C., a Delaware limited liability company (together with its successors and assigns, "Lender"), in connection with that certain mortgage loan ("Loan") to be made by Lender to Subtenant, which Loan will be secured by a leasehold deed of trust encumbering Subtenant's interest in the Property (as may be modified, amended, supplemented or restated from time to time, the "Security Instrument"), and to Mezzanine Lender (hereinafter defined) in connection with that certain Mezzanine Loan (hereinafter defined), with the recognition that each of Lender and Mezzanine Lender will rely upon the contents hereof in closing and consummating the Loan and the Mezzanine Loan, respectively.

1. **Landlord Certifications.** Landlord hereby certifies to and for the benefit of Lender and Mezzanine Lender on and as of the date hereof, as follows:

- a. **Prime Lease.** Pursuant to the terms of the Prime Lease, Landlord has leased to Tenant, and Tenant has leased from Landlord, the Property. The Prime Lease is in full force and effect and, other than as set forth on Schedule 1 attached hereto, has not been modified, supplemented, or amended, orally or in writing. Except for the Prime Lease, the Sublease and the documents described on Schedule 1 attached hereto, there are no other agreements between Landlord and Tenant or Landlord and Subtenant in any way concerning the subject matter of the Prime Lease, or the occupancy or use of the Property.
- b. **No Defenses or Offsets.** Neither Landlord nor Tenant is in default under any of the terms and/or provisions of the Prime Lease beyond any applicable grace, cure and/or notice periods. Neither Landlord nor Tenant has given any notice of default under the Prime Lease which has not been cured in full. To Landlord's knowledge, Tenant is not in default in the performance of its obligations under the Prime Lease beyond any applicable grace, cure and/or notice periods. To Landlord's knowledge, no facts or

circumstances exist which, with the giving of notice, the passage of time, or both would constitute a breach or default by any party under the Prime Lease.

- c. Lease Term; Options. The term of the Prime Lease commenced on October 17, 1980, and is scheduled to expire on April 30, 2021. Tenant does not have any rights to renew, extend or terminate the Prime Lease, except for two (2) extension options of ten (10) years each.
- d. Rent. No rent or other charges due under the Prime Lease beyond the current month have been paid in advance by Tenant or Subtenant. All rent, additional rent and other charges due under the Prime Lease as of the date hereof has been paid in full. No security or other deposit is required under the Prime Lease and no escrows are being held by Landlord or Tenant.
- e. Encumbrances. Landlord is the owner of the fee interest in the Property and of the Lessor's interest in the Prime Lease. The fee interest in the Property has not been pledged, mortgaged, transferred or encumbered by Landlord. Landlord has not received written notice of any pending eminent domain or condemnation proceedings against the Property.
- f. Permitted Use. Tenant's and Subtenant's leasing and use of the Property as a hotel are either: (i) permitted as "airport purposes" pursuant to that certain Deed Without Warranty dated March 24, 1948 whereby the United States of America conveyed the Property to Landlord (the "Deed") or (ii) Landlord has obtained the necessary consent of the Civil Aeronautics Administrator to permit the leasing and use of the Property as hotel by Tenant and Subtenant.

2. Tenant Certifications. Tenant hereby certifies, represents, warrants and agrees to and for the benefit of Lender and Mezzanine Lender on and as of the date hereof, as follows:

- a. Ground Leases. Pursuant to the terms of the Prime Lease, Landlord has leased to Tenant, and Tenant has leased from Landlord, the Property. Pursuant to the terms of the Sublease, Tenant has leased to Subtenant, and Subtenant has leased from Tenant, the Property. Each Ground Lease is in full force and effect and, other than as set forth on Schedule 1 attached hereto, has not been modified, supplemented, or amended, orally or in writing. Except for the Prime Lease, the Sublease and the documents described on Schedule 1 attached hereto, there are no other agreements between Landlord and Tenant or Tenant and Subtenant in any way concerning the subject matter of the Prime Lease or the Sublease, or the occupancy or use of the Property.
- b. No Defenses or Offsets. None of Landlord, Tenant or Subtenant is in default under any of the terms and/or provisions of either Ground Lease beyond any applicable grace, cure and/or notice periods. Neither Landlord nor Tenant has given any notice of default under either Ground Lease which has not been cured in full. To Tenant's knowledge, no party is in default in the performance of its obligations under either

Ground Lease beyond any applicable grace, cure and/or notice periods. To Tenant's knowledge, no facts or circumstances exist which, with the giving of notice, the passage of time, or both would constitute a breach or default by any party under either Ground Lease.

- c. Lease Term; Options. The term of the Prime Lease commenced on October 17, 1980, and is scheduled to expire on April 30, 2021. Tenant does not have any rights to renew, extend or terminate the Prime Lease, except for two (2) extension options of ten (10) years each. The Sublease is coterminous with the term of the Prime Lease, as may be extended pursuant to the two extension options described in the previous sentence, and there are no other rights to renew, extend or terminate the Sublease. All rights of Subtenant under the Sublease, and all rights of Tenant under the Prime Lease, including, without limitation, any renewal or extension rights, shall be exercisable by Lender and/or Mezzanine Lender, and Tenant shall accept the exercise of such rights by Lender and/or Mezzanine Lender without the consent of Subtenant (provided that there is no default beyond applicable cure periods under the applicable Ground Lease and that all the conditions precedent to the exercise of any such rights have otherwise been satisfied in full).
- d. Rent. No rent or other charges due under either Ground Lease beyond the current month have been paid in advance by Tenant or Subtenant. All rent, additional rent and other charges due under each Ground Lease as of the date hereof has been paid in full. No security or other deposit is required under either Ground Lease and no escrows are being held by Landlord, Tenant or Subtenant.
- e. Encumbrances. Tenant is the owner of a leasehold interest in the Property and of the lessee's interest in the Prime Lease and of lessor's interest in the Sublease. The leasehold interest in the Property has not been pledged, mortgaged, transferred or encumbered by Tenant. Tenant has not received written notice of any pending eminent domain or condemnation proceedings against the Property.

3. Subtenant Certifications. Subtenant hereby certifies, represents, warrants and agrees to and for the benefit of Lender and Mezzanine Lender on and as of the date hereof, as follows:

- a. Sublease. Pursuant to the terms of the Sublease, Tenant has leased to Subtenant, and Subtenant has leased from Tenant, the Property. The Sublease is in full force and effect and, other than as set forth on Schedule 1 attached hereto, has not been modified, supplemented, or amended, orally or in writing. Except for the Prime Lease, the Sublease and the documents described on Schedule 1 attached hereto, there are no other agreements between Tenant and Subtenant or Landlord and Subtenant in any way concerning the subject matter of the Sublease, or the occupancy or use of the Property.

- b. No Defenses or Offsets. Neither Tenant nor Subtenant is in default under any of the terms and/or provisions of the Prime Lease beyond any applicable grace, cure and/or notice periods. Neither Tenant nor Subtenant has given any notice of default under the Sublease which has not been cured in full. To Subtenant's knowledge, no party is in default in the performance of its obligations under either Ground Lease beyond any applicable grace, cure and/or notice periods. To Subtenant's knowledge, no facts or circumstances exist which, with the giving of notice, the passage of time, or both would constitute a breach or default by any party under either Ground Lease.
  - c. Lease Term: Options. The Sublease is coterminous with the term of the Prime Lease, as may be extended pursuant to the two extension options described in Section 1(c) above, and there are no other rights to renew, extend or terminate the Sublease. All rights of Subtenant under the each Ground Lease, including, without limitation, any renewal or extension rights, shall be exercisable by Lender and/or Mezzanine Lender without the consent of Subtenant.
  - d. Rent. No rent or other charges due under either Ground Lease beyond the current month have been paid in advance by Subtenant. All rent, additional rent and other charges due under the Sublease as of the date hereof has been paid in full. No security or other deposit is required under the Sublease and no escrows are being held by Tenant or Subtenant.
  - e. Encumbrances. Subtenant is the owner of a leasehold interest in the Property and of the lessee's interest in the Sublease. The leasehold interest in the Property has not been pledged, mortgaged, transferred or encumbered by Subtenant. Subtenant has not received written notice of any pending eminent domain or condemnation proceedings against the Property.
4. General Agreements. Landlord, Tenant and Subtenant each hereby agrees as follows:
- a. Leasehold Mortgage. Subtenant shall have the right to encumber its leasehold interest in the Property under the Security Instrument and Lender shall have all of the rights provided to a mortgagee of Subtenant's leasehold interest in the Property under the Sublease, and all of the rights provided to a mortgagee of Tenant's leasehold interest in the Property under the Prime Lease. Without limiting any of the foregoing, Landlord and Tenant acknowledge and agree that Section 6.03 of the Prime Lease and Section 6.3 of the Sublease were intended to be substantially identical in order to further the intention of Landlord, Tenant and Subtenant to provide Subtenant and Subtenant's mortgagees with the rights and obligations set forth in both Section 6.03 of the Prime Lease and Section 6.3 of the Sublease, and, therefore, Lender shall have the right to exercise all of the rights of a leasehold mortgagee under the Prime Lease even if the Prime Lease does not expressly provide the mortgagee of Subtenant's leasehold interest with such rights in every instance (including, without limitation, the

right to notice of and the right to directly cure defaults of Tenant under the Prime Lease, and enter into a new lease directly with Landlord upon the same terms and conditions as the Prime Lease in the event the Prime Lease and the Sublease are terminated for any reason) provided Lender otherwise cures any required defaults and otherwise satisfies all conditions precedent to the exercise of such rights described in the Prime Lease.

- b. Mezzanine Loan. Landlord and Tenant hereby consent to the pledge of all of the ownership interests in Subtenant by the holder or holders of all such ownership interests in Subtenant (such holder or, collectively, such holders, "Mezzanine Borrower") to Starwood Property Mortgage, L.L.C., a Delaware limited liability company, in its capacity as mezzanine lender (in such capacity and together with its successors and assigns, the "Mezzanine Lender") as security for a mezzanine loan (the "Mezzanine Loan") to be made on the date hereof, and Landlord and Tenant each hereby consents to the foreclosure on such ownership interests by Mezzanine Lender or a designee or nominee thereof in the event of a default under the Mezzanine Loan. Notwithstanding anything to the contrary contained in either Ground Lease, Landlord and Tenant hereby acknowledges and agree that (i) Mezzanine Lender is a "leasehold mortgagee" as such term and words of similar import are used in each Ground Lease, (ii) the security documents granted to Mezzanine Lender by Mezzanine Borrower are deemed to be a "leasehold mortgage" as such term and words of similar import are used in each Ground Lease; provided, however, that unless Lender otherwise consents in writing, the Security Instrument shall be a superior leasehold mortgage to the leasehold mortgage held by Mezzanine Lender by virtue of such security documents, and (iii) subject to the rights of Lender, Mezzanine Lender shall be entitled to all the benefits and protections set forth in each Ground Lease to which a leasehold mortgagee would be entitled, as described in Section 6 of the Prime Lease.
- c. Notices to Lender. Landlord and Tenant shall deliver a copy of all notices of default under its respective Ground Lease(s) to each of Lender and Mezzanine Lender. Unless Landlord and Tenant are otherwise notified by Lender and Mezzanine Lender, as applicable, any notice, demand, request, or other instrument given by Landlord or Tenant to Lender and Mezzanine Lender shall be delivered to Lender and Mezzanine Lender at the address specified below:

Lender:

Starwood Property Mortgage Sub-2, L.L.C.  
c/o Starwood Property Trust  
591 West Putnam Avenue  
Greenwich, CT 06830  
Attention: General Counsel

Mezzanine Lender:

Starwood Property Mortgage, L.L.C.  
c/o Starwood Property Trust  
591 West Putnam Avenue  
Greenwich, CT 06830  
Attention: General Counsel

Landlord and Tenant each hereby acknowledges that Subtenant, Lender and Mezzanine Lender have each duly complied with and satisfied any and all requirements under its respective Ground Lease concerning notification to Landlord and Tenant of any leasehold mortgage and leasehold mortgagee.

- d. No Amendment. Without 30 days' prior written notice to Subtenant, Landlord shall not amend or modify the Prime Lease.
- e. Miscellaneous. The captions of the sections of this instrument are for convenience only and shall not have any interpretive meaning. This Agreement may be executed in any number of separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which, collectively and separately, shall constitute one and the same agreement.
- f. Recording. This Agreement may be recorded in the applicable recording office in the County and State in which the Property is located. This Agreement, the covenants, terms and conditions hereof and the rights and obligations created hereby shall run with the land and shall be binding upon Landlord, Tenant and Subtenant and their respective successors and assigns and shall inure to the benefit of Lender and Mezzanine Lender and their respective successors and assigns.
- g. Binding Agreement. This Agreement and the representations made herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- h. Ratification. Except as expressly provided herein, the Ground Lease and the Sublease shall remain unchanged, and are hereby ratified and confirmed in all respects. It is expressly agreed by all parties hereto that the Ground Lease and Sublease shall continue in full force and effect in accordance with their respective terms.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date first written above.

**LANDLORD:**

**CITY OF EL PASO,**  
a Texas home rule city and a municipal corporation

By: \_\_\_\_\_  
Name: Joyce A. Wilson  
Its: City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

**APPROVED AS TO CONTENT:**

*Monica Lombraña*  
\_\_\_\_\_  
Monica Lombraña, A. A. E.  
Director of Aviation

**ACKNOWLEDGMENT**

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

On the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)





**EXHIBIT A**

**THE PROPERTY**

See Attached

Description of a parcel of land being a Portion of Tract 4A25, Block 2, Ascarate Grant, El Paso County, Texas and being more particularly described by metes and bounds as follows:

From a City monument located at the centerline intersection of Boeing Drive and American Drive, thence South 1° 01' 53" East along the centerline of American Drive a distance of 53.30 feet, thence North 85° 14' 15" West a distance of 34.17 feet to a point lying on the west right-of-way line of American Drive projected, said point being the POINT OF BEGINNING;

Thence along said projected right-of-way line, South 1° 01' 53" East a distance of 407.04 feet;

Thence 143.47 feet along the arc of a curve to the right, whose radius is 100.00 feet, whose interior angle is 82° 12', and whose chord bears South 40° 04' 07" West a distance of 131.48 feet to the north right-of-way line of Montana Avenue;

Thence along the north right-of-way line of Montana Avenue, South 81° 10' 07" West a distance of 426.02 feet;

Thence 211.04 feet along the arc of a curve to the right, whose radius is 123.64 feet, whose interior angle is 97° 48', and whose chord bears North 49° 55' 53" West a distance of 186.34 feet to the east right-of-way line of Airway Boulevard;

Thence along the east right-of-way line of Airway Boulevard, North 1° 01' 53" West a distance of 446.58 feet;

Thence 102.10 feet along the arc of curve to the right, whose radius is 65.00 feet, whose interior angle is 90° 00', and whose chord bears North 43° 58' 07" East a distance of 91.92 feet to the south right-of-way line of Boeing Drive;

Thence along the south right-of-way line of Boeing Drive, North 88° 58' 07" East a distance of 48.27 feet;

Thence continuing along the south right-of-way line of Boeing Drive, 225.42 feet along the arc of a curve to the right, whose radius is 1793.86 feet, whose interior angle is 7° 12', and whose chord bears South 87° 25' 53" East a distance of 225.27 feet;

Thence continuing along the south right-of-way line of Boeing Drive South 83° 49' 53" East a distance of 238.32 feet;

Thence continuing along the south right-of-way line of Boeing Drive, 56.61 feet along the arc of a curve to the left, whose radius is 1781.06 feet, whose interior angle is 1° 49' 16", and whose chord bears South 84° 44' 31" East a distance of 56.61 feet;

Thence 29.54 feet along the arc of a curve to the right, whose radius is 20.00 feet; whose interior angle is 84° 37' 16", and whose chord bears South 43° 20' 31" East a distance of 26.93 feet to THE POINT OF BEGINNING and containing 376, 586.84 square feet, or 8.645 acres of land, more or less; subject to all easements of record.

*Donald T. Cremans*

Donald T. Cremans, P.E.

NOV 22 1999

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EXHIBIT "A"

TOTAL P.03

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**SCHEDULE 1**

**LEASE DOCUMENTS**

- 1) Prime Lease
- 2) Sublease
- 3) First Amendment to El Paso Airport Hotel Lease Agreement, dated March 17, 1981
- 4) Second Amendment to El Paso Airport Hotel Lease Agreement, dated December 29, 1999
- 5) Estoppel and Consent Agreement, dated July 11, 2003
- 6) Estoppel and Consent Agreement, dated July 13, 2005