

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date:	June 8, 2010	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department: Facilities Development & Operations			

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Third Amendment to Lease Agreement with Shiraz, Inc. (Shiraz) (R92-471) for operation of the Airport Center Hilton Hotel.

Summary: The County leases the land underlying the Airport Center Hilton Hotel to Shiraz. On December 15, 2009, the Board approved Shiraz's request that it be provided an eighteen (18) month extension of the time-frame in which to complete an expansion of the Hotel's meeting room facilities. This Third Amendment extends the deadline for completing the expansion of the Hotel's meeting room facilities until June 13, 2011. This Amendment also allows Shiraz to delay construction of 36 additional parking spaces required in connection with the expansion until such time as the County starts the renovation of Office Building 2. **(PREM) Countywide (HJF)**

Background and Policy Issues: Shiraz just recently obtained final site plan approvals for the expansion of the meeting room facilities and renovation of the Health Club/Records Storage Building. The extension until June 13, 2011 will provide Shiraz sufficient time to complete the meeting room expansion. The Lease requires that both the County and Shiraz provide additional parking for any further development within the Airport Center property, at the code required rate and without regard to parking that may be available within the project. This provision was included in the Lease to ensure sufficient parking is available to service the County's office buildings with their high parking demand, and would require construction of an additional 36 parking spaces in connection with Shiraz's meeting room expansion. Currently, Office Building 2 is vacant and until the Building is re-occupied, there is no need for additional parking. However, at such time as the Hotel expands its meeting facilities and the County re-occupies Office Building 2, there will again be a shortage of parking spaces during peak usage periods. The construction of 36 spaces at that time will help to offset the shortage.

Attachments:

1. Location Map
2. Third Amendment to Lease Agreement
3. December 15, 2009 Agenda Item

Recommended By:	Department Director	5/18/10 Date
Approved By:	County Administrator	6/3/10 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____ <i>See below</i>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

** No Fiscal impact. Time Extension for Expansion of meeting room and additional parking at airport after property*

OFMB

[Signature] 5/28/10
6/2/10

Contract Development and Control

[Signature] 5/28/10
E. [Signature] 5/28/10

This amendment complies with our review requirements.

B. Legal Sufficiency:

Assistant County Attorney

[Signature] 6/2/10

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.



THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment to Lease Agreement (this "Amendment") made and entered into _____, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida ("County") and SHIRAZ, INC., a Florida corporation ("Company").

WITNESSETH:

WHEREAS, County and the Federal Deposit Insurance Corporation ("FDIC") entered into that certain Lease Agreement dated March 24, 1992 (R-92-471D) (the "Lease") which Lease was assigned by FDIC to Company by Assignment of Lessee's interest under Lease dated May 14, 1992; and

WHEREAS, the parties entered into a First Amendment to Lease dated February 7, 2006, (R-2006-0273) (the "First Amendment") and a Second Amendment to Lease dated August 21, 2007 (R-2007-1313) (the "Second Amendment"); and

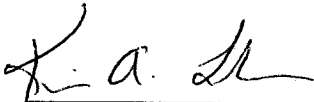
WHEREAS, the parties desire to clarify and extend the time-frame in which Company is required to complete renovation and expansion of meeting room facilities and allow construction of parking spaces associated with said expansion to be postponed until further development takes place.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and various other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

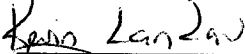
1. The foregoing recitals are true and correct and incorporated therein by reference. Capitalized terms not otherwise defined herein shall have the same meaning as ascribed to them in the Lease.
2. The parties acknowledge that delays attributable to both County and Company were incurred in obtaining development approvals for expansion of the meeting room facilities in the Hotel and have agreed to extend the deadline for completing said improvements. Upon substantial completion by Company of the renovation and expansion of the meeting room facilities as provided for in paragraph 6 of the First Amendment, County will extend the term of the Lease by an additional five (5) years. County's obligation to extend the Lease for an additional five (5) years is contingent upon such renovations and expansion being completed by June 13, 2011.
3. Company acknowledges that Section III,M,2 of the Lease requires that Company provide all additional parking required by applicable codes for the expansion of the meeting room facilities without regard to available parking within the Project such that construction will not result in a decrease of parking available for any other development within the Project. The parties agree that the contemplated expansion of the meeting room facilities would require construction of an additional thirty-six (36) parking spaces in the North Undeveloped Parcel of Parcel I depicted upon the Site Plan attached as Exhibit "B" to the Lease. The parties further agree that there is no demand for such additional parking during such period of time as County is not using Office Building 2 of the Project. Company agrees that it shall construct an additional thirty-six (36) parking spaces within the North Undeveloped Parcel within one hundred eighty (180) days of County notifying Company that County has entered into a contract for the renovation of Office Building 2 and issued a Notice to Proceed to its contractor to commence the renovation.
4. Except as expressly modified by the First and Second Amendments, and by this Third Amendment, the Lease remains unmodified and in full force and effect and is hereby ratified by the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands and seals on the date first set forth above.

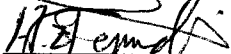
WITNESS:



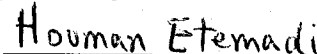
Witness Signature



Print Witness Name



Witness Signature

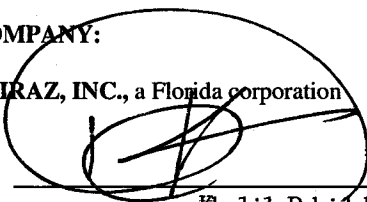


Print Witness Name

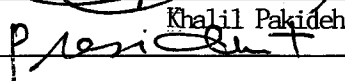
COMPANY:

SHIRAZ, INC., a Florida corporation

By:



Title:



(SEAL)

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By:

Deputy Clerk

By:

Burt Aaronson, Chair

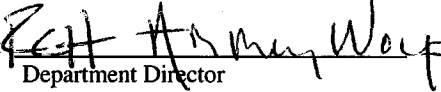
APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By:

Assistant County Attorney

By:



Department Director

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Agenda Item #: **5E-2**

V/T 70
approve 18-month
time Extension

Meeting Date:	December 15, 2009	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	Facilities Development & Operations		

I. EXECUTIVE BRIEF

Motion and Title: Staff requests Board direction: regarding a Request from Shiraz, Inc. (Shiraz), the operator of the Airport Center Hilton Hotel (R-92-471) (Hotel), for an extension of the time-frame in which to complete an expansion of the Hotel's meeting room facilities.

Summary: The County owns approximately 36 acres at the intersection of Australian Avenue and Southern Boulevard, known as Airport Centre. There are two (2) County office buildings and the Hilton Hotel on the property. The County leases the land underlying the Hilton Hotel to Shiraz pursuant to a Lease Agreement approved by the Board in March of 1992 (R-92-471). The term of the Lease extends until 2035, with an additional 15 years of extension options. In total, the Lease could be extended until 2050. As part of a settlement of the condemnation case filed by the Florida Department of Transportation (FDOT) over the right-of-way taking for Southern Boulevard, and apportionment of the \$2,135,000 condemnation award, the County entered into amendments to the Lease (R-2006-0273 and R-2007-1313) pursuant to which the County sold Shiraz the former records storage building at a \$300,000 discount and agreed to extend Shiraz's Lease for five (5) years upon the condition that Shiraz complete construction of an expansion of the meeting facilities at the Hotel by December 13, 2009. Due to various changes in Unified Land Development Code (ULDC) requirements since the Hotel was built, and zoning conditions imposed upon the County's renovation/development of the office buildings, Shiraz was forced to seek more complicated development approvals for its expansion than were required for the original construction of the Hotel. As a result of this more complicated process, which Shiraz claims is inconsistent with a representation in the Lease regarding zoning, Shiraz is seeking an eighteen (18) month extension of the time-frame in which to complete its improvements. Based upon the eighteen (18) month time-frame for construction of the improvements requested by Shiraz and the time which Shiraz first started its efforts on the expansion in July of 2008, it is Staff's opinion that Shiraz would not have been able to meet the deadline for completion of construction even without any delay. While Shiraz is arguably due some extension of time, the question is how much? Staff believes that six (6) months is a reasonable amount of time as a result of the County's actions associated with the ULDC changes and prior development approvals. However, a six (6) month extension will not accomplish Shiraz's objective of obtaining the five (5) year Lease extension. There is a long history of Shiraz seeking further extensions of its Lease in exchange for anything that the County has asked of Shiraz, and Staff does not recommend giving Shiraz more than a six (6) month extension without some compensation. Shiraz has also inquired as to whether the County would be interested in selling the County's interest in the entire Airport Center Complex. The County has a long-term need for the existing buildings and future office space, and Staff is proposing to assign the County's Lease of the Hotel to the Department of Airports in exchange for Airport property on Gun Club Road which is needed for PBSO expansion. As such, Staff does not support a sale of the property. Further, Staff would recommend that any proposed sale utilize a competitive bid process. (PREM)

District 2 (HJF)

Continued on Page 3

APPROVED

Attachments:

1. Location Map
2. November 16, 2004 Agenda Item
3. Correspondence between Ross Hering and Neil Schiller
4. East Central Regional Service Center Master Plan

BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF **DEC 15 2009**
[Signature] D.C.
MINUTES & RECORDS SECTION

Recommended By: *[Signature]* **Annmy Wolf**
Department Director

12/10/09
Date

Approved By: *[Signature]*
County Administrator

12/11/09
ATTACHMENT NO. 3

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
Program _____

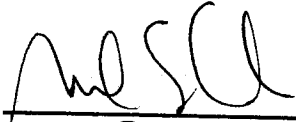

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No fiscal impact

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

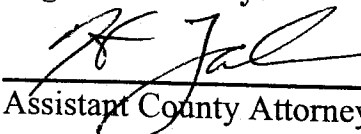
A. OFMB Fiscal and/or Contract Development Comments:

 12/11/09
OFMB  12/11/09


Contract Development and Control
 12/11/09

This item complies with current
County policies.

B. Legal Sufficiency:

 12/11/09
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

Background and Policy Issues: The provision of the Lease which is at issue here, the right to a five (5) year extension of the Lease in exchange for completing construction of an expansion to the Hotel's meeting facilities by December 13, 2009, arose out of a settlement of the condemnation action filed by FDOT to take additional right-of-way for the expansion of Southern Boulevard. Shiraz was compensated by FDOT for its business damages. The right-of-way taking did not impact any land area leased to Shiraz, but did impact the parking areas utilized by the County. The County offered to and did construct replacement parking spaces, but notwithstanding this, Shiraz sought compensation for claimed damage to its leasehold interest through apportionment of the total award for taking of the County's land. In settlement of Shiraz's apportionment claim, the County sold the Records Storage Building to the Hotel for a \$300,000 discount and agreed to extend the Lease of the Hotel in the event that Shiraz completed a roughly 10,000 square foot renovation and expansion of the Hotel's meeting room facilities by December 13, 2009. Attached is a copy of the November 16, 2004 Agenda Item approving the settlement with Shiraz.

The expansion of the meeting room facilities will benefit both the County and Shiraz by allowing Shiraz to generate additional revenues from events at the Hotel which will increase the percentage rent payable to the County under the Lease. However, the additional meeting facilities may reduce demand for meeting rooms at the County's Convention Center.

Staff's issue with respect to the extension request is that the Hotel did not diligently pursue expansion of its meeting facilities. Attached are copies of the correspondence between Ross Hering and Shiraz's attorney, Neil Schiller on this issue. The Lease contains a representation by the County, as Landlord, that at the time the Lease was entered into the zoning permitted the Hotel Complex. The original Lease was entered into in 1981 and the Hotel was built under the code and regulations in effect at that time. However, subsequent changes in the ULDC (and the interpretation thereof) made the Hotel a non-conforming use. In addition, because of the fact that the County was required to obtain a conditional use approval for renovation and expansion of the office buildings, Shiraz was misdirected as to the type of approval required, and ultimately required to submit for a development order amendment. It was not until the Hotel first started to pursue development of the expansion that Staff became aware of these zoning issues, and while Staff promptly initiated an amendment of the ULDC to address the non-conforming use issue, Shiraz was delayed in obtaining its required development approvals. It is difficult to estimate the amount of delay and Shiraz has avoided providing a critical path schedule for the development approval phase of its project as Staff requested. A typical DRO level approval would take roughly 6 months and a full development order amendment process would take roughly 12 months. However, Shiraz did not start the process for seeking development approvals until July of 2008, roughly 3½ years after the settlement and 18 months after approval of the Amendment to the Lease. Taking the 18-month time-frame for permitting and construction estimated by Shiraz (not including development approvals), and the time that Shiraz first started pursuing this project in July of 2008, and further assuming no delays, it is unlikely that Shiraz would have been able to complete construction of the meeting facilities by the December 13, 2009 deadline.

Shiraz is currently in the process with Zoning Commission and Board review of its DOA application scheduled for January. In light of the history of its negotiations between Shiraz and the County, as exemplified by the settlement in the condemnation action, Staff does not recommend that the Board simply agree to the requested 18-month extension. As discussed in the February 7, 2006 Agenda Item approving the Amendment, the Department of Airports has been seeking to obtain a release of the provision in the Hotel Lease restricting the Department of Airports' ability to construct another hotel on Airport property. While Shiraz has indicated a willingness to discuss the release of this restriction, and Staff has discussed this issue with Shiraz numerous times over the years, Shiraz has always requested some form of compensation, such as further lease extensions.

Shiraz has recently offered to purchase the County's interest in the entire Airport Center Complex, including the lease of the land underlying the Hotel, the 2 office buildings and the vacant land. Staff does not support such a sale. There are competitive bidding issues, Staff is proposing to transfer the Lease to the Department of Airports and the County has a need for the office buildings and undeveloped land.

The threshold issue with this proposal is whether it will require a competitive process to dispose of the County's interests in the property. The PREM Ordinance allows for a negotiated direct sale if the Board finds the person is the only person capable of reasonably using the property for the use which the Board determines to be the highest and best use of the property. While an argument can be made that Shiraz is the only person in position to use the property as a Hotel, the countervailing argument is that anyone could buy the land subject to the Lease and continue leasing the property to Shiraz, just as the County has done. When the Lease expires that party could then use the land for a hotel or some other use. With regard to the balance of the property, clearly any party could utilize the office buildings and the vacant land. Regardless of whether the Ordinance allows a direct sale to Shiraz, Staff believes that the best way to ensure that the County receives a fair price is to conduct a competitive process. This would also be consistent with recent recommendations by the Grand Jury.

Staff is proposing to exchange the County's interest in the land underlying the Hotel (the County's interest as Landlord under the Lease) for land on Gun Club Road next to the Amory controlled by the Department of Airports. This land is needed for expansion of PBSO facilities as described below. This exchange will avoid a \$6 million outlay to the Department of Airports.

Since the time that the previously County-owned land surrounding the Criminal Justice Complex was leased to Trump for the development of the Golf Course, there has been a future need for additional land to accommodate the expansion of the Sheriff's Office facilities for support and agency-wide services. While substations have been added to accommodate the growth in deputy sheriffs providing patrol services, the space for support and agency-wide services has not seen even a fraction of the space increases and has been further taxed by the need to service the various municipalities who are now served by PBSO. Over the last 15 years, the facilities expansion efforts for Sheriff's facilities have focused on regional substations for the growth of patrol operations and decentralizing all units where there is no physical or functional requirement to remain on the main campus on Gun Club Road. Examples include several substations, the relocation of various special units off-site and the pending relocation of the training facilities to Cherry Road (old Kings Academy).

The majority of the expansion requirements are not for office or administrative staff, but for units with specific and unique location, adjacency and space requirements such as dispatch, crime labs, evidence, impound and training. After consideration of several different plans to accommodate the expansion, it was determined that the use of: 1) the land at Cherry Road for Training and 2) the Gun Club property for Evidence and Impound together would free up enough space at headquarters to accommodate the remainder of the expansion needs within existing facilities. The exchange of the County's Airport Center leasehold interest in the Hotel for the Airport's Gun Club property would complete the land acquisition efforts started 10 years ago. These two transactions (Cherry Road for Belvedere Road and Airport Center Leasehold for the Gun Club property) with Airports together will complete the County's acquisition plan for PBSO facilities with no capital outlay for land. The funding for the design of the Evidence Building was previously approved by the Board. If the exchange of the Airport Center Leasehold does not proceed, the County will be required to purchase the property from the Department of Airports which will be a substantial set back to this high priority project.

While a sale of the Hotel land to Shiraz would provide the funding required to pay Airports, Airports would prefer to have a long-term revenue stream to offset the cost of Airport operations. In addition, because of the way in which the uses within the Airport Center Complex utilizes shared parking and infrastructure, Staff does not recommend relinquishing the control inherent in a lease to someone other than another County department.

The County has a planned long-term need for the office space at Airport Center as detailed in the East Central Regional Service Center Master Plan, last updated and approved by the Board in July of 2006, a copy of which is attached. While one of the buildings is currently vacant until capital funding for planned renovations is budgeted, the need for this space remains. The cost of acquiring replacement land and constructing new buildings substantially exceeds the cost of renovating the building. In addition, the vacant land provides expansion capacity for up to an additional 175,000 square feet which is an essential part of the County's long-term program for meeting the County's need for office space. Furthermore, a sale to Shiraz would require a lease back of the occupied building until replacement space could be found or constructed elsewhere. A lease of space from a private entity carries a roughly

15% premium over the County's cost of providing space, in that a lease includes at least 10% for developer profit, and 5% for increased financing costs and payment of taxes. Essentially, a sale/lease back of the buildings would provide a one-time cash in-flow which would be offset by higher costs paid out over the term of the lease. A major component of the County's long-term space plan has been to transition out of leased space into County-owned facilities as the most cost effective method to meet long-term space requirements. This transition out of leased space has essentially been completed, with the exception of TDC. Discussions with TDC regarding a move to Airport Center are continuing.