

AGENDA ITEM SUMMARY

☒ Consent ☐ Regular
☐ Workshop ☐ Public Hearing

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Fourth Amendment to the Lease Agreement (Lease) (R92-471D) with MSP Partners Realty, LLC (MSP Partners), for the Airport Center Hilton Hotel (Hotel), providing for an extension of the initial term of the Lease to December 31, 2060, with one 15-year option to extend; finding that extension of the Lease is in the best interest of the County pursuant to Article VI, Section 22-104(d)(1) of the Palm Beach County Code; increasing the minimum guaranteed annual rental from \$110,000 to \$300,000 and percentage applicable to percentage rent; providing for annual adjustment to the minimum guaranteed annual rental; and providing for the removal of a restriction prohibiting the development of a hotel on the Palm Beach International Airport (PBIA).

Summary: The Lease currently expires on March 19, 2025, and provides for options to extend for an additional 35 years until 2060. Pursuant to the First Amendment to the Lease (R2006-0273), three of the options to extend are contingent upon the completion of certain improvements to the Hotel, including expansion of the meeting room facilities and construction of additional guest rooms. This Amendment amends the initial term of the Lease, providing for an expiration date of December 31, 2060, with no contingencies. This Amendment also provides one 15-year option to extend the Lease subject to a minimum capital investment of \$3,000,000 by December 31, 2035. The Lease currently provides a fixed minimum guaranteed annual rental of \$110,000 and for percentage rental payments of 4.5% to 5% of the Hotel's annual gross receipts. This Amendment provides for an increase in the minimum guaranteed annual rental to the County to \$300,000 and for annual adjustments to the minimum guaranteed annual rental based upon 85% of the percentage rental for the prior lease year. This Amendment also provides for an increase in the percentage applicable to percentage rental payments to 5.03% of annual gross receipts and for increases in the percentage payable to the County based on increases in the Hotel's annual gross receipts up to a maximum of 6.03% during the initial term. This Amendment provides for a further increase in percentage rental payments during the extended term up to a maximum of 6.28% of annual gross receipts. The Lease currently provides for a restriction prohibiting the construction of a new hotel on PBIA. This Amendment removes the restriction, allowing the potential for development of a hotel on PBIA, subject to certain limitations. The Lease does not currently provide for a security deposit. This Amendment requires MSP Partners to post a security deposit of 15% of the minimum guaranteed annual rental. This Amendment also clarifies and updates audit and insurance provisions. **Countywide (HJF)**

Background and Justification: (Continued on page 3)

Attachments:

- ### 1. Fourth Amendment (3)


Department Director

9/26/11


County Administrator

10/7/4

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>(\$300,000)</u>	<u>(\$300,000)</u>	<u>(\$300,000)</u>	<u>(\$300,000)</u>	<u>(\$300,000)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$300,000)</u>	<u>(\$300,000)</u>	<u>(\$300,000)</u>	<u>(\$300,000)</u>	<u>(\$300,000)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No
Budget Account No: Fund 4100 Department 120 Unit 8452 RSource 4416
Reporting Category

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

Approval of this item will result in a minimum guaranteed payment of \$300,000 per year. Actual revenue to the Department will likely be greater and will vary depending on gross revenue earned by the Hotel. Based on historical revenues, the Department estimates receiving approximately \$400,000 per year for this contract.

C. Departmental Fiscal Review: CM Smith

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

Legal Sufficiency:

Dr. J. J. [Signature] 10/17/11
Contract Dev. and Control
10-6-11 B. L. [Signature]

B. Legal Sufficiency:

**This amendment complies with
our review requirements.**

 10/7/11
Assistant County Attorney

C. Other Department Review:

Department Director

Background and Justification (continued): The County and Federal Deposit Insurance Corporation (FDIC) entered in the Lease on March 24, 1992, which was assigned to Shiraz, Inc., on May 14, 1992. On June 14, 2010, the Lease was assigned by Shiraz, Inc., to MSP Partners Realty, LLC, a Florida limited liability company, with a principal place of business in Bingham, Michigan.

**FOURTH AMENDMENT TO LEASE AGREEMENT
BETWEEN PALM BEACH COUNTY AND MSP PARTNERS REALTY, LLC**

THIS FOURTH AMENDMENT TO LEASE AGREEMENT (this "Amendment") is made and entered into as of _____, 2011, by and between **Palm Beach County**, a political subdivision of the State of Florida ("County"), and **MSP Partners Realty, LLC**, a Florida limited liability company, having its office and principal place of business at 30700 Telegraph Road, Suite 1551, Bingham, MI 48025 ("Company").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports (the "Department"), owns and operates the Palm Beach International Airport (the "Airport"), located in Palm Beach County, Florida; and

WHEREAS, County and the Federal Deposit Insurance Corporation ("FDIC") entered into that certain Lease Agreement dated March 24, 1992 (R-92-471D), which was assigned by FDIC to Shiraz, Inc., pursuant to an Assignment of Lessee's Interest under Lease dated May 14, 1992, and amended pursuant to that certain Amendment to Lease Agreement dated February 7, 2006 (R-2006-0273) ("First Amendment"); that certain Second Amendment to Lease Agreement dated August 21, 2007 (R-2007-1313) ("Second Amendment"); and that certain Third Amendment to Lease Agreement dated June 8, 2010 (R-2010-0938) ("Third Amendment"), and assigned to MSP Partners Realty, LLC, pursuant to that certain Assignment of Lease and Acceptance dated June 14, 2010 (hereinafter collectively referred to as the "Agreement"); and

WHEREAS, the parties entered into the First Amendment and Second Amendment to implement the terms of a settlement agreement reached in that certain eminent domain proceeding entitled Florida Department of Transportation v. Palm Beach County, Case No. CA 01-9787 AA ("Settlement Agreement"); and

WHEREAS, the parties agree that County has fully satisfied its obligations under the Settlement Agreement, First Amendment and Second Amendment; and

WHEREAS, County is willing to provide for the extension of the Agreement, as provided for herein, notwithstanding the provisions of the Settlement Agreement and First Amendment; and

WHEREAS, County has determined that extending the term of and otherwise modifying the Agreement pursuant to Article VI, Section 22-104 of the Palm Beach County Code is in the best interests of County due to Company's agreement to make certain modifications to the Agreement, including modifications to provide for the increase in the Minimum Guaranteed Annual Rental and Percentage Rental payments over the term of the Agreement, to clarify the auditing provisions and to release the hotel development restriction upon the Airport Premises; and

WHEREAS, the parties desire to amend the Agreement as provided for herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

Section 1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by reference. Terms not defined herein shall have the meanings set forth in the Agreement.

Section 2. Term. Section II, Term, of the Agreement is hereby deleted in its entirety and replaced with the following:

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Section II. Term

A. Initial Term. The term of this Agreement shall commence as of March 24, 1992 and expire on December 31, 2060 ("Initial Term"), unless terminated earlier pursuant to the terms and conditions of this Agreement.

B. Option to Extend. Provided that no material default (or event which with the passage of time or giving of notice would constitute a material default) then exists by Company under this Agreement and Company has made the Minimum Investment provided for in Section LV(A) of this Agreement, Company shall have the option to extend this Agreement for one (1) additional period of fifteen (15) years by notifying County in writing of Company's intent to exercise its option to extend not later than one hundred eighty (180) days prior to the expiration of the Initial Term, time being of the essence. Except as otherwise provided for herein, the extended term shall be upon the same terms and conditions. In the event Company fails to timely exercise its option to extend, the option shall lapse and be of no further force and effect. For purposes of this Agreement, the term "Term" means the Initial Term and any extension thereof.

Section 3. Off-Airport Parking. Section III(E) of the Agreement is hereby amended to add the following:

Company shall not be permitted to allow hotel patrons, visitors or guests, or concessionaires, licensees or subtenants to utilize any parking areas, whether paid or unpaid, for off-airport parking when traveling from the Palm Beach International Airport. In addition, Company shall not provide, either directly or through a contractor, off-airport parking services.

Section 4. Valet Parking Location. Section III(M)(4) of the Agreement is hereby deleted in its entirety and replaced with the following:

4. Company shall relocate its valet parking operations to the area within Parcel III identified on the attached Exhibit "B" ("Site Plan") as the "Hilton Visitor/Valet", containing approximately forty eight (48) parking spaces reserved for Hotel visitor and valet parking. Hotel employees shall park in the area identified in the Site Plan as Parking Area "A" ("Parking Area A"). Company shall permanently relocate its valet parking operations to Parking Area "A" within sixty (60) days after written notice from County to Company that more than fifty percent (50%) of Office Building 2, as more particularly identified on the Site Plan, is being occupied and utilized.

Section 5. Minimum Guaranteed Annual Rental. Section IV Rental, of the Agreement is hereby deleted in its entirety and replaced with the following:

Section IV. Rental.

A. Annual Rental. Company agrees to pay on an annual basis the greater of the Minimum Guaranteed Annual Rental or Percentage Rental (as both terms are hereinafter defined), in the manner set forth below.

1. Minimum Guaranteed Annual Rental.

a. Commencing January 1, 2011, Company shall pay to County Minimum Guaranteed Annual Rental of Three Hundred Thousand Dollars (\$300,000). The Minimum Guaranteed Annual Rental shall be paid in twelve (12) equal monthly installments in advance on or before the first (1st) day of each and every month without demand, deduction or setoff ("Monthly Minimum Rental") throughout the Term of this Agreement.

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b. On February, 1, 2012, and each anniversary thereof, the Minimum Guaranteed Annual Rental shall be adjusted to an amount equal to eighty five percent (85%) of the Percentage Rental for the prior Lease Year. Notwithstanding the foregoing, the Minimum Guaranteed Annual Rental shall never be adjusted to an amount less than the greater of: (i) Three Hundred Thousand Dollars (\$300,000); or (ii) eighty five percent (85%) of the average Percentage Rental for the five (5) Lease Years immediately preceding the adjustment provided for in this paragraph.

c. The Minimum Guaranteed Annual Rental adjustment shall be based upon the information submitted in the monthly Statement of Gross Receipts pursuant to Section IV(D)(1) of this Agreement. In the event an audit obtained pursuant to Section IV(D)(2) or Section IV(D)(4) reveals a discrepancy in the amounts reported, then County may adjust the Minimum Guaranteed Annual Rental based upon the information contained in the audit report.

d. For purposes of this Agreement, "Lease Year" shall mean a period commencing on January 1st and expiring on December 31st at 11:59 p.m. (EST).

B. Percentage Rental.

1. Percentage Rental shall be calculated by multiplying the applicable percentage by Company's annual Gross Receipts (as hereinafter defined), which percentage shall be determined as follows:

Annual Gross Receipts	Percentage Rental
\$0 - \$10,000,000	5.03% of annual Gross Receipts
\$10,000,001-\$20,000,000	5.53% of annual Gross Receipts
\$20,000,001 and above	6.03% of annual Gross Receipts

For example, Company's annual Gross Receipts are \$11,000,000 for the Lease Year. Percentage Rental would be calculated as follows:
 $\$11,000,000 \times .0553 = \$608,300$.

a. In the event the Monthly Percentage Rental (as hereinafter defined) is greater than Monthly Minimum Rental, Company shall pay the difference to County with the Statement of Gross Receipts required by Section IV(D)(1) on or before the twentieth (20th) day of each and every month for the preceding month, without demand, deduction or setoff, throughout the Term of this Agreement and any extension thereof.

b. The parties acknowledge that the percentage to be applied to annual Gross Receipts for purposes of determining Percentage Rental will not be known until the close of each Lease Year. Accordingly, Monthly Percentage Rental shall be determined by multiplying the monthly Gross Receipts by the percentage applicable to the preceding Lease Year's annual Gross Receipts. For example, if Company's annual Gross Receipts for the preceding Lease Year were \$21,000,000, the percentage that would be applied to determine the Monthly Percentage Rental would be 6.03%. Any discrepancy between the amount paid and the actual amount due shall be resolved as part of the Annual Report (as hereinafter defined). For the Lease Year commencing January 1, 2011, the parties agree that the percentage to be applied for purposes of determining Monthly Percentage Rental shall be 5.03%.

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c. In the event Company exercises its option to extend this Agreement pursuant to Section II(B) of this Agreement, the Percentage Rental payable to County shall be adjusted as follows during the extended term:

Annual Gross Receipts	Percentage Rental
\$0 - \$10,000,000	5.28% of annual Gross Receipts
\$10,000,001-\$20,000,000	5.78% of annual Gross Receipts
\$20,000,001 and above	6.28% of annual Gross Receipts

2. For purposes of this Agreement, the term "Gross Receipts" means all revenues of the business conducted by Company upon the Demised Premises regardless of where, how (cash or credit), or by whom payment is made, including, without limitation, all revenues from: (i) the rental of guest rooms, banquet rooms and meeting rooms; (ii) the sale of food and beverages, including alcoholic beverages; (iii) the sale of any goods or services, except as otherwise provided herein below; (iv) advertising; and (v) concession payments, license fees, rentals or other amounts paid or payable to Company pursuant to any and all concessions, subleases and licenses granted by Company for the use or occupancy of any portion of the Demised Premises, including agreements for the operation of gift/sundry shops, food and beverage concessions, cellular antennas, vending machines and rental car services. Unless revenues are expressly and specifically excluded from Gross Receipts pursuant to this Section IV, all revenues payable to Company that are derived from, or that arise out of or become payable on account of the business conducted by Company upon the Demised Premises, whether directly or indirectly, shall be included in Gross Receipts. In the event Company fails or elects not to charge or collect any rentals, concession or license fees, amounts for goods or services or any other amount which would otherwise be included in Gross Receipts, the amount customarily charged by Company shall be included in the calculation of Gross Receipts, unless such amount is expressly and specifically excluded from Gross Receipts pursuant to this Section IV. No deduction shall be made from Gross Receipts by reason of any credit loss, charge, or deduction that may be incurred by reason of the acceptance or use of credit cards or other credit or charge arrangements; provided, however, credits, refunds or discounts made by Company to customers, guests or patrons shall be deducted for the purpose of calculating Gross Receipts. All computations to be made in connection with determining Percentage Rental, including the amount of Gross Receipts, shall be made in accordance with Generally Accepted Accounting Principles. Gross Receipts shall not include:

a. Amounts received by Company in settlement of claims: (i) for loss or damage to merchandise, furniture, furnishings, or equipment; or (ii) against business interruption; loss of income and extra expense insurance, except as otherwise provided in Section XVIII(G)(not including the settlement of hotel bills).

b. The amount of any taxes levied or imposed by any governmental authority, which is collected by Company from customers, guests or patrons as a part of or based upon the sales price of any goods or services and paid to such governmental authority by Company, including, without limitation, sales taxes, tourist development taxes (including any discount allowable for collection), retailers' excise taxes, gross receipt taxes, transaction taxes and admission or entertainment taxes; provided, however, this exclusion shall not include license or permit fees payable by Company.

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c. The rental value of guest rooms customarily and actually complimented by national hotel operators in the Palm Beach County area and rooms occupied by Company's hotel complex staff.

d. The value of food, beverages and entertainment complimented by Company to its officers and employees in a manner similar to the practices followed by national hotel operators.

e. The value of any goods, wares, merchandise or furnishings transferred or sold by Company to any other hotel operated by Company or by any of its subsidiaries or affiliates for its own use or use of the subsidiary or affiliate or sold by Company as used goods, wares, merchandise or furnishings or returned by Company to suppliers or manufacturers.

f. Amounts separately billed and reimbursed to Company for janitorial and similar services rendered to subtenants and licensees by Company, its employees or agents on a cost basis.

g. Valet parking charges customarily and actually complimented by Company for guests, tenants, patrons and invitees of the hotel or restaurants located therein.

h. Amounts charged for equipment rental or usage, facsimile or photocopying services, in-room movies, postage, dry cleaning, laundry services and telephone services.

i. Amounts charged for goods sold by Company from a gift/sundry shop operated by employees of Company upon the Demised Premises. Notwithstanding the foregoing, the parties agree that any concession payment, license fee, rental or other amount paid or payable to Company by a third party for the privilege of operating a gift/sundry shop upon the Demised Premises shall be included in Gross Receipts.

j. Gratuities and service charges paid directly to employees.

k. Profits generated by third parties operating a business or concession on the Demised Premises. Notwithstanding the foregoing, the parties agree that any concession payment, license fee, rental or other amount paid or payable to Company by the third party shall be included in Gross Receipts.

C. Security Deposit. Company shall post a security deposit with County equal to fifteen percent (15%) of the Minimum Guaranteed Annual Rental (the "Security Deposit"). The Security Deposit shall serve as security for the payment of all sums due to County and shall also secure the performance of all obligations of Company to County. The Security Deposit shall be in the form of a cash deposit, or clean, Irrevocable Letter of Credit ("Letter of Credit") or Surety Bond ("Bond") in form and substance and issued by a Company reasonably satisfactory to County. In the event of any failure by Company to pay any rentals or charges when due or upon any other failure to perform any of its obligations or other default under this Agreement, then in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw on the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Company shall immediately increase the Security Deposit to the full amount required hereunder. Company shall promptly increase the amount of the Security Deposit to reflect any increases in Minimum Guaranteed Annual Rental payable hereunder. The Security

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Deposit shall be kept in full force and effect throughout the Term of this Agreement, and for a period of six (6) months after the expiration or earlier termination of this Agreement. Not less than forty-five (45) days prior to any expiration date of a Letter of Credit or Bond, Company shall submit evidence in form satisfactory to County that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond or to increase the amount of the Security Deposit as required by this paragraph shall: (i) entitle County to draw down the full amount of such Security Deposit, and (ii) constitute a default of this Agreement entitling County to all available remedies. The Security Deposit shall not be returned to Company until all obligations under this Agreement are performed and satisfied. Prior to consent from County to any assignment of this Agreement by Company, Company's assignee shall be required to provide a Security Deposit to County in accordance with the terms and conditions of this paragraph.

D. Accounting and Reports.

1. Monthly Report. On or before the twentieth (20th) day of each and every month throughout the Term of this Agreement, Company shall deliver to County an accurate written accounting statement (the "Statement of Gross Receipts") to County, in a form and detail satisfactory to County, which includes the following information for the preceding calendar month: (i) Company's Gross Receipts for the preceding calendar month by category; (ii) hotel occupancy for the preceding calendar month; (iii) the Monthly Percentage Rental payable to County; and (iv) any exclusions from Gross Receipts. The Statement of Gross Receipts shall be certified by an authorized officer of Company. County may require the Statement of Gross Receipts to be delivered electronically.

2. Annual Report. Within ninety (90) days after the end of each Lease Year, Company shall provide County with an annual audit report covering the preceding Lease Year (the "Annual Report"). The Annual Report shall be in a form reasonably satisfactory to County and shall be prepared by an independent Certified Public Accountant, not a regular employee of Company, in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The Annual Report shall include the following:

- a. A schedule detailing Gross Receipts for the preceding Lease Year by month, which shall also detail any exclusion(s) from Gross Receipts;
- b. A schedule detailing Gross Receipts by category, including Gross Receipts for: (i) rental of guest rooms; (ii) concessions (if any); and (iii) rental of banquet and meeting space; and (iv) food and beverage sales;
- c. A schedule detailing hotel occupancy by month; and
- d. A schedule detailing the payments to County by Company during the preceding Lease Year by month.

The Annual Report shall include an opinion regarding the information contained in schedules listed above. The Annual Report shall not contain a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, regarding the information contained in the required schedules. If the Annual Report indicates that the amount (together with any sales taxes thereon) due and owing for any Lease Year is greater than the amount paid by Company to County during such Lease Year, Company shall pay the difference to County with the Annual Report. If the amount paid by Company to County during any Lease Year exceeds the amount due and owing for such Lease Year, County shall credit the overpayment in the following order: (i) against any past due amounts owed to County by Company, including interest and late fees; (ii) against

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currently outstanding, but not yet due, rental payments owed to County by Company; and (iii) against any other sums payable by Company to County. Notwithstanding the foregoing, in the event of an overpayment by Company during the last Lease Year, County shall credit the overpayment against any remaining amounts owed to County, including interest and late fees, and refund to Company any overpayment amount in excess of the credit. The obligations arising under this paragraph shall survive the expiration or earlier termination of this Agreement until satisfied.

3. Accounting Records. Company shall keep all books of accounts and records customarily used in this type of operation, and as from time to time may be required by County, in accordance with Generally Accepted Accounting Principles prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. Such books of accounts and records shall be retained and be available for three (3) years from the end of each Lease Year, including three (3) years following the expiration or earlier termination of this Agreement. County shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Company's operations hereunder. If the books of accounts and records are kept at locations other than the Demised Premises, Company shall, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for County in order for County to conduct the audits and inspections as set forth in this paragraph. The obligations arising under this paragraph shall survive the expiration or termination of this Agreement until satisfied.

4. Audit by County. Notwithstanding any provision in this Agreement to the contrary, County or its representative(s) may perform audits of all or selected operations performed by Company under the terms of this Agreement upon reasonable notice and during regular business hours. In order to facilitate the audit performed by County, Company agrees to make suitable arrangements with the Certified Public Accountant, who is responsible for preparing the Annual Report on behalf of Company pursuant to Section IV(D)(2), to make available to County's representative(s) any and all working papers relevant to the report prepared by the Certified Public Accountant. County or its representative(s) shall make available to Company a copy of the audit prepared by or on behalf of County. Company shall have sixty (60) days from receipt of the audit report from County or its representative(s) to provide a written response to the Department regarding the audit report. Company agrees that failure of Company to submit a written response to the audit report in accordance with the requirements of this paragraph shall constitute acceptance of the audit report as issued. If, as a result of the audit, it is established that Company has understated Gross Receipts by five percent (5%) or more, the entire expense of the audit shall be borne by Company. In addition, Company shall promptly pay County any amounts due with interest thereon at one percent (1%) per month from the date such amounts first became due.

5. Inspector General. Company acknowledges that County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All contractors and parties doing business with County and receiving County funds are required to fully cooperate with the Inspector General, including receiving access to records relating to this Agreement. Company shall cooperate with the Inspector General in any inspections, audits, reviews or investigations instituted by the Inspector General related to this Agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the contractors, and their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and to detect corruption and fraud.

E. Late Payments. Company shall pay to County interest at the rate of one percent (1%) per month, on any late payments commencing ten (10) days

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after the amounts are due. Interest shall not accrue with respect to disputed payments being contested by Company in good faith.

F. Place of Payments. All sums due hereunder shall be made payable to "Palm Beach County" and delivered to the Palm Beach County Department of Airports, Finance Division, 846 Palm Beach International Airport, West Palm Beach, Florida 33406, or at such other address as may be directed by the Department from time to time. Any payment due hereunder for a fractional month shall be calculated and paid on a per diem basis.

Section 6. Construction of Improvements/Furnishings. Section V, Construction of Improvements/Furnishings, is hereby amended to add the following:

J. Concurrency. Company shall ensure that any renovation or expansion of the buildings or improvements located on the Demised Premises shall not impact the concurrency obtained by County for the construction of any additional buildings or improvements within the Project.

K. Parking. Company acknowledges that Section III(M)2 of this Agreement requires Company to provide parking in accordance with applicable codes and ordinances for any renovation or expansion of the Hotel without regard to available parking within the Project such that construction will not result in a reduction in parking available for any other development within the Project.

L. Health Club Expansion. In the event Company proceeds with expansion of the meeting room facilities within the "Health Club" as more particularly identified on the attached Exhibit "A" as "Parcel 2A" ("Health Club"), Company shall construct an additional thirty-six (36) parking spaces within the area identified as the "North Undeveloped Hotel Expansion Parking" area of Parcel I, as depicted in the Site Plan, within one hundred eighty (180) days of County notifying Company that County has entered into a contract for the renovation of Office Building 2, as depicted on the Site Plan, and issued a Notice to Proceed to its contractor to commence the renovation.

M. Limitations on Use of Health Club. Prior to any expansion, renovation or improvement of the Health Club, Company agrees that it shall not use the Health Club in a manner which results in additional traffic and/or parking requirements in excess of that generated by County's prior use of the Health Club as a records storage building. Company shall use the Health Club as a meeting facility or other use consistent with the uses authorized in Section III(A) of this Agreement and for no other purpose whatsoever. Such use shall primarily serve guests of the Hotel.

N. Governmental Authority. The parties acknowledge and agree that this Agreement shall not limit or restrict County's discretion in the exercise of its governmental or police powers and shall not constitute a delegation of County's governmental authority or police powers to Company. The parties further acknowledge that all governmental actions to be taken by County, the Board of County Commissioners, County staff and quasi-judicial boards regarding the development of the Demised Premises shall be in conformance with applicable laws with no guarantees or agreement by County as to any particular recommendation or approval. County's obligations under this Agreement are made in a proprietary capacity, rather than in a governmental capacity.

Section 7. Approval of Height of Structures. The last sentence of Section XIV, Approval of Height of Structures, of the Agreement is hereby deleted in its entirety.

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Section 8. Hotel Development. Section XVI, Further Development; Rights of Company, of the Agreement is hereby deleted in its entirety and replaced with the following:

SECTION XVI. HOTEL DEVELOPMENT ON AIRPORT PREMISES

A. **New Hotel Development on Airport Premises.** Company may submit a written notice to County requesting a reduction in the Percentage Rental ("Reduction Request") payable to County in the event: (i) a hotel ("New Hotel") is built on the Airport Premises (as hereinafter defined) on or before March 19, 2025; and (ii) Company demonstrates that monthly Gross Receipts have declined within the first eighteen (18) months after the Hotel Opening Date (as hereinafter defined) by an average of fifteen percent (15%) or more for a period of three (3) consecutive months as compared to the same three (3) month period of the prior year. A Reduction Request shall be required to be delivered by Company to County within eighteen (18) months after the Hotel Opening Date. Provided that Company has timely submitted a Reduction Request and the conditions set forth above have been satisfied, the Percentage Rental payable to County shall be reduced by one percent (1%), which reduction shall become effective the first full month after the date of the Reduction Request and expire on the first to occur of: (i) the date upon which Gross Receipts have increased to an average of no less than ninety percent (90%) of the pre-Hotel Opening Date levels for six (6) consecutive months; or (ii) five (5) years from the Hotel Opening Date. Company acknowledges and agrees that Company shall not be entitled to a reduction in Percentage Rental pursuant to this paragraph in the event a New Hotel is constructed on the Airport Premises after March 19, 2025. Increases and declines in Gross Receipts shall be determined based on the information contained in the reports and audits required to be submitted by Company to County hereunder.

B. **Decline in Hotel Occupancy Generally.** Notwithstanding any provision of this Section XVI to the contrary, Company acknowledges and agrees that Company shall not be entitled to a reduction in Percentage Rent pursuant to Section XVI(A) above, in the event the decline in Gross Receipts is consistent with a decline in hotel occupancy rates in Palm Beach County generally as a result of overall economic conditions.

C. **Definitions.** For purposes of this Section XVI, the following terms shall be defined as follows:

1. **"Airport Premises"** shall mean the property owned by County as more particularly identified in the attached Exhibit "D".
2. **"Hotel Opening Date"** shall mean the date the final permanent certificate of occupancy is issued for the New Hotel prior to opening.
3. **"Hotel Complex Brand"** means the brand name the Hotel Complex (as defined in Section III(A)) is operated under by Company as of the Hotel Opening Date. As of the effective date of this Amendment, Company operates the Hotel under the Hilton brand, which includes Hilton, Conrad Hotels, Hampton Inn, Hilton Garden Inn, Doubletree, Embassy Suites and Homewood Suites.

D. **Nonexclusive Rights.** Company acknowledges and agrees that rights and privileges granted hereunder to operate a hotel are nonexclusive and that nothing in this Section XVI shall be construed as precluding County from granting similar privileges to another lessee or lessees on the Airport Premises. Notwithstanding the foregoing, County shall not permit a New Hotel to be operated on the Airport Premises under the Hotel Complex Brand at any time

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during the Initial Term or any extension thereof, without the prior written consent of Company. With the exception of obtaining written consent prior to operating a New Hotel under the Hotel Complex Brand, nothing in this Agreement shall be construed as requiring County to obtain the consent or approval of Company prior to construction or operation of a New Hotel on the Airport Premises.

Section 9. Deletion of Insurance Provisions. Sections XVII(B)-(D), Indemnification and Hold Harmless Agreement and Liability Insurance, of the Agreement are hereby deleted in their entirety.

Section 10. Updated Insurance Provisions. Section XVIII, Fire Insurance, of the Agreement is hereby deleted in its entirety and replaced with the following:

SECTION XVIII. INSURANCE

A. **Required Insurance.** Company shall, at its sole expense, maintain in full force and effect at all times during the Term of this Agreement, the insurance limits, coverages and endorsements as set forth in this Section XVIII.

B. **Commercial General Liability.** Company shall maintain Commercial General Liability with limits of liability not less than \$1,000,000 Each Occurrence including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability; Fire Legal liability with a limit not less than \$100,000; and Medical Payments (when available) with a limit not less than \$5,000. Coverage shall be provided on a primary basis.

C. **Business Automobile Liability.** Company shall maintain Business Automobile Liability with limits of liability not less than \$500,000 Each Occurrence for owned, non-owned and hired automobiles. In the event Company has no owned automobiles, the requirement shall be to maintain only Hired & Non-Owned Auto Liability. This amended coverage may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Liability. Coverage shall be provided on a primary basis.

D. **Workers Compensation.** Company shall maintain Workers Compensation & Employers Liability in accordance with Chapter 440 Florida Statutes and applicable Federal Acts. Coverage shall be provided on a primary basis.

E. **Property, Flood and Windstorm.** Company shall maintain the following insurance coverage in the amounts set forth below (such coverages shall hereinafter collectively referred to as "PF&W Insurance"):

1. Property Insurance in an amount not less than 100% of the total replacement cost of the building, betterments and improvements, including those made by or on behalf of Company as well as Company's contents located on the Demised Premises. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than 25% of the property insurance limit;
2. Flood Insurance, regardless of the flood zone, in an amount not less than 100% of the total replacement cost of the building, betterments, or improvements, including those made by or on behalf of Company as well as Company's contents located on the Demised Premises or the maximum amount available from the National Flood Insurance Program; and

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3. Windstorm Insurance, unless included as a covered peril in the Property Insurance, in an amount not less than 100% of the total replacement cost of the building, betterments or improvements, including those made by or on behalf of Company as well as Company's contents located on the Demised Premises; or the maximum amount available under the Florida Windstorm Underwriting Association.

PF&W Insurance coverage shall be provided on a primary basis. Company shall not keep, use, sell or offer for sale in or upon the Demised Premises any article that is prohibited by any, condition, provision, limitation, of the PF&W Insurance.

F. Proceeds of PF&W Insurance. The parties agree that proceeds of PF&W Insurance for any one loss of less than \$500,000 shall be payable to Company and applied to the repair, restoration or rebuilding of damaged improvements located on the Demised Premises. The proceeds of PF&W Insurance for any loss of \$500,000 or more shall be deposited in an escrow account approved by the parties and any Leasehold Mortgagee so as to be available to pay for the cost of any required repairs, restoration and/or rebuilding of damaged improvements located on the Demised Premises. The insurance proceeds shall be disbursed during construction to pay the cost of such work. If the amount of the insurance proceeds is insufficient to pay the costs of the required repair, restoration or rebuilding of damaged improvements, Company shall pay any additional sums required to complete the required repair, restoration or rebuilding into the escrow account. If the amount of the insurance proceeds is in excess of the costs of the required repair, replacement or rebuilding, the excess amount shall be remitted to Company. Notwithstanding the foregoing, Company shall select the method, manner and individual/s or entity/ies to perform such repair, replacement, rebuilding or restoration.

G. Business Interruption Insurance. Company shall maintain Business Interruption Insurance, which shall include Rent Insurance in an amount not less than the Minimum Guaranteed Annual Rental. Rent Insurance shall be carried in the name of Company as named insured and shall be payable to County to be applied to Minimum Guaranteed Annual Rent for the period from the occurrence of the damage or destruction until completion of the restoration or repairs.

H. Contractor's Insurance. Company shall require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive auto insurance, and Builder's Risk insurance with the interest of County endorsed thereon, in such amounts and in such manner as County's Risk Management Department may reasonably require. County's Risk Management Department may require Company and/or its contractors to furnish additional insurance for any alterations or improvements approved hereunder, in such amounts as County's Risk Management Department reasonably determines to be necessary.

I. Additional Insured Endorsements. Company shall endorse County as an Additional Insured on each liability insurance policy required to be maintained by Company, except for Worker's Compensation and Business Auto Liability. The CG 2011 Additional Insured - Managers or Lessors of Premises or CG 2026 Additional Insured - Designated Person or Organization endorsements, or their equivalent, shall be endorsed to the Commercial General Liability. Other policies, when required, shall provide a standard Additional Insured endorsement offered by the insurer. Additional Insured endorsements shall provide coverage on a primary basis and shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Department of Airports, Properties Division, 846 Palm Beach International Airport, West Palm Beach, Florida 33406."

J. Loss Payee Endorsements. Company shall endorse County as a Loss Payee and any Leasehold Mortgagee(s) on the PF&W Insurance policies.

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The Loss Payee endorsement shall provide coverage on a primary basis. The Loss Payee endorsement in favor of County shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Department of Airports, Properties Division, 846 Palm Beach International Airport, West Palm Beach, Florida 33406."

K. Certificates of Insurance. All certificates of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or is not renewed during the Term of this Agreement, Company shall provide County a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage.

L. Waiver of Subrogation. By entering into this Agreement, Company agrees to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Company shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. The requirements of this paragraph shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage if Company enters into such an agreement on a pre-loss basis.

M. Deductibles. Company shall be fully and solely responsible for any deductible, coinsurance penalty and self-insured retention, including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy. Company shall be responsible for all premiums, including increases, in Property, Flood and Windstorm insurance policies.

N. Right to Review. County may review, modify, reject or accept any required policies of insurance, including, without limitation, limits, coverages and/or endorsements, required by this Section XVIII from time to time throughout the Term of this Agreement. County may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, County shall provide Company a written notice of rejection, and Company shall comply within thirty (30) days of receipt of the notice.

O. No Representation of Coverage Adequacy. Company acknowledges that the limits, coverages and endorsements identified herein are primarily to transfer risk and minimize liability for County, and Company agrees that the requirements of this Section XVIII shall not be relied upon when assessing the extent or determining appropriate types or limits of coverage to protect Company against any loss exposures, whether as a result of this Agreement or otherwise. Company further acknowledges and agrees that the requirements contained in this Section XVIII and County's review or acceptance of insurance shall not in any manner limit or qualify the liabilities and obligations assumed by Company under this Agreement.

P. Failure to Maintain Insurance. In the event Company fails to provide County with evidence of the insurance as required by this Section XVIII, County shall have the right, upon fifteen (15) days prior written notice to Company, to provide the required insurance on behalf of and for the account of Company and shall have the right to add the cost of such insurance, plus a ten percent (10%) administrative overhead, to the Minimum Annual Rental payable hereunder.

Section 11. Notices. Section XXXIX, Notices, of the Agreement is hereby deleted in its entirety and replaced with the following:

SECTION XXXIX. NOTICES

All notices and elections to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, telecopied or faxed (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5:00 p.m. (EST or EDT, whichever is in use) on a Business Day and on the next Business Day if transmitted after 5 p.m. (EST or EDT, whichever is in use) or on a non-Business Day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. For purposes of this Section, the term "Business Day" shall mean any day other than a Saturday, Sunday or religious, Federal or County holiday. Use of the word "day", as opposed to Business Day, means calendar day of twenty four (24) hours measured from midnight to the next midnight. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Attn: Deputy Director, Airports Business Affairs
Department of Airports
Palm Beach County
846 Palm Beach International Airport
West Palm Beach, Florida 33406-1470
Fax: 561-471-7427

With a copy to:

Attn: Airport Attorney
Palm Beach County Attorney's Office
301 North Olive Ave, Suite 601
West Palm Beach, FL 33401
Fax: 561-355-4398

Company:

Attn: Martin Pakideh, Manager
MSP Partners Realty, LLC
30700 Telegraph Rd., Suite 1551
Bingham Farms, Michigan 48025
Fax: 248-203-2448

With a copy to:

Attn: Kevin Landau, General Counsel
30700 Telegraph Rd., Suite 1551
Bingham Farms, Michigan 48025
Fax: 248-203-2448

Any party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other party.

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Section 12. Minimum Investment. The Agreement is hereby amended to add the following Section LV:

SECTION LV. MINIMUM INVESTMENT

A. Minimum Investment. On or before December 31, 2035, Company shall expend not less than \$3,000,000 on the design and construction of capital improvements to the Demised Premises, which may include expansion or improvement of hotel common areas, banquet and meeting facilities, guest rooms and parking areas (the "Minimum Investment"). Costs that may be counted toward the Minimum Investment shall include all costs paid for work performed, services rendered and materials furnished for the completion of the improvements on the Demised Premises, subject to the following terms, conditions and limitations:

1. No more than twenty percent (20%) of payments made by Company to independent contractors for engineering and architectural design work may be included in the Minimum Investment.
2. Only true third party costs and payments made by Company shall be included in the Minimum Investment. Administrative, supervisory and overhead or internal costs of Company shall not be included in the Minimum Investment.
3. Legal fees and accountant fees shall not exceed ten percent (10%) of the Minimum Investment.

B. Required Drawings. Within ninety (90) days of Company's receipt of a certificate of occupancy or certificate of completion, as appropriate, for any improvements constructed to the Demised Premises, Company, at its sole cost and expense, shall have prepared and deliver to the Department: (i) one (1) complete set of as-built Mylar drawings; and (ii) one (1) set of Auto CADD files in the latest version acceptable by the Department.

C. Independent Audit. Within ninety (90) days of completing improvements pursuant to this Section LV, Company shall also submit an audit report detailing the costs incurred by Company for the design and construction of the improvements. The report shall be in a form reasonably satisfactory to the Department and shall be prepared by an independent Certified Public Accountant, not a regular employee of Company, in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The report shall include: (i) a schedule detailing the design and construction costs incurred by Company that may be counted toward the Minimum Investment required to be made by Company hereunder; and (ii) an opinion regarding the information contained in the schedule. The report shall not contain a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, regarding the information contained in the required schedule.

Section 13. Assignment. Company shall have the right to assign this Agreement, without the prior written consent of County, to Shiraz, Inc., a Florida corporation, or a wholly-owned affiliate of Shiraz, Inc., or Company ("Affiliate"), subject to the terms and conditions of this Section 13. The assignment agreement between Company and Shiraz, Inc. or the Affiliate, must expressly provide that Shiraz, Inc. or the Affiliate, as assignee, shall assume all of Company's rights, duties, obligations and interests to, in and under the Agreement, as amended. Company shall provide County with: (i) a true and complete copy of the assignment agreement between Company and Shiraz, Inc., or the Affiliate; (ii) proof of insurance as required hereunder for Shiraz, Inc.; (iii) evidence reasonably satisfactory to County that Shiraz, Inc., or the Affiliate has the

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ability to satisfy its financial obligations under this Agreement; and (iv) the Security Deposit as required hereunder for Shiraz, Inc., or the Affiliate.

Section 14. Declaration. The parties acknowledge that the Declaration of Reciprocal Easements, Covenants and Maintenance of Airport Centre dated February 4, 1988, and recorded in Official Records Book 5622, page 1678 of the Public Records of Palm Beach County, Florida (the "Declaration"), imposes certain obligations upon the parties related to maintenance of the Common Areas (as defined therein) of the Project. The parties agree that it is in the mutual best interest of the parties to clarify the respective maintenance obligations of the parties under the Declaration. Accordingly, the parties agree to negotiate in good faith revisions to the Declaration to further clarify the parties' maintenance obligations thereunder.

Section 15. Termination of Prior Amendments. The First Amendment, Second Amendment and Third Amendments shall be terminated in their entirety upon the effective date of this Amendment, whereupon the parties shall be released from all further obligations thereunder.

Section 16. Replacement of Exhibits. Exhibits "A" and "D" are hereby deleted in their entirety and replaced with the attached Exhibits "A" and "D" to this Amendment.

Section 17. Ratification of Agreement. Except as specifically modified herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

Section 18. Incorporation by Reference. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Amendment by such reference.

Section 19. Paragraph Headings. The heading of the various sections of this Amendment are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of the Agreement or any part or parts of the Agreement.

Section 20. Effective Date of Amendment. This Amendment shall become effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

{Remainder of page intentionally left blank.}

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IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the day and year first above written.

ATTEST:

SHARON R. BOCK

By: _____
Clerk and Comptroller

(SEAL)

PALM BEACH COUNTY, a political
subdivision of the State of Florida by its
Board of County Commissioners

By: _____
Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Director, Department of Airports

Signed, sealed and delivered
in the presence of two witnesses
for Company.

Signature _____
Josh Farr

Print Name

Signature _____
Melanie Pastores

Print Name
Melanie Pastores

(Seal)

MSP Partners Realty, LLC,
a Florida limited liability company

Signature _____
Martin Palachen

Print Name

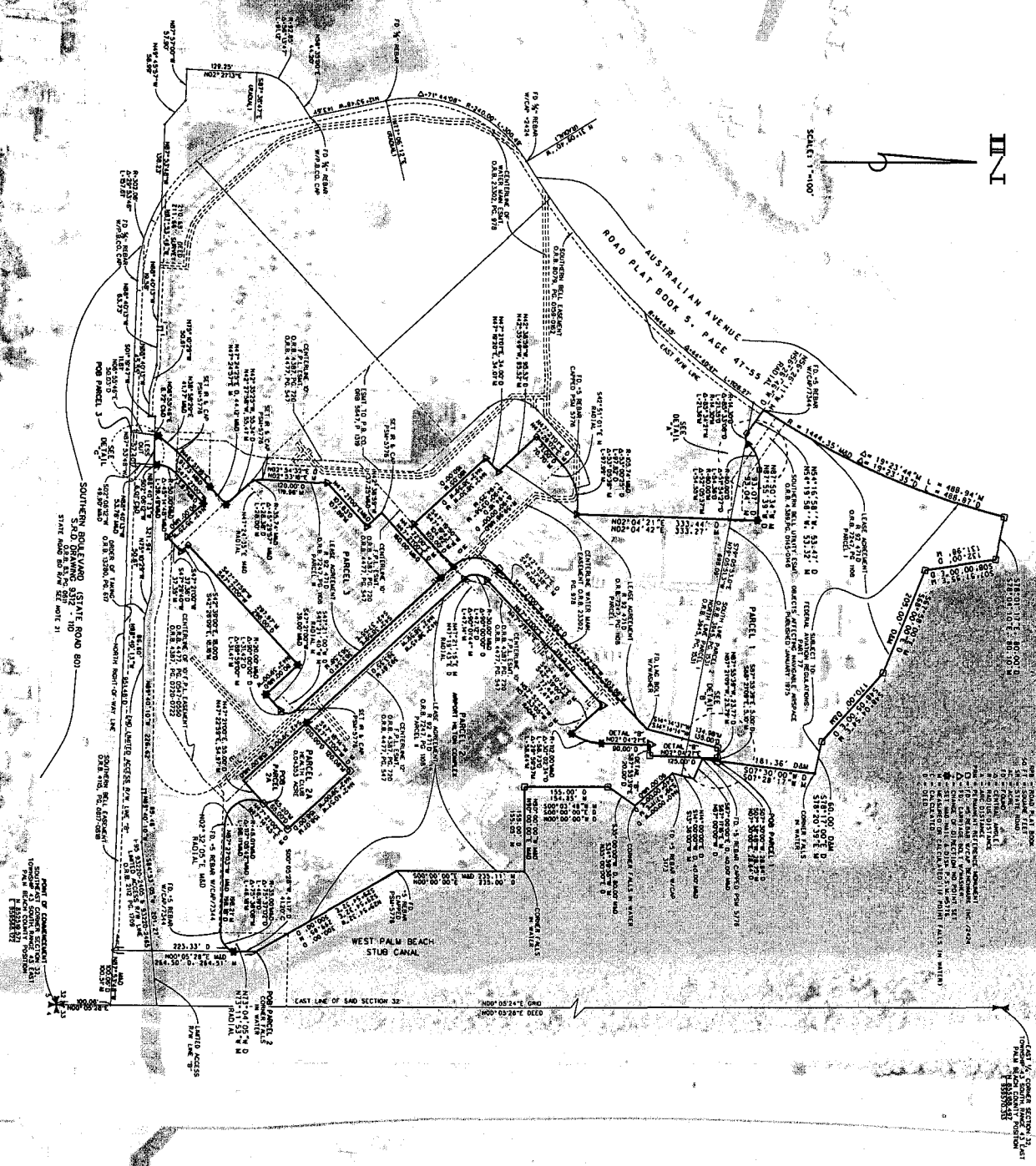
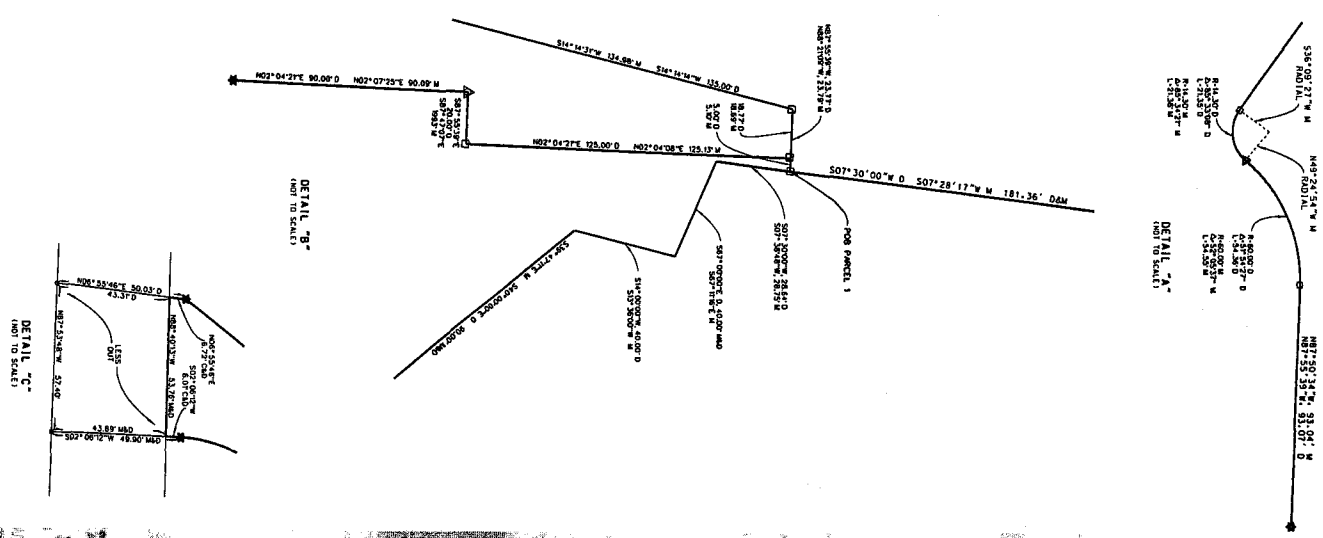
Title
Manager

MP

EXHIBIT "A"

MP

SHEET: 1
OF: 2
PROJECT NO.
2010013-13



PROJECT: P.B.I.A. HILTON EXCHANGE BOUNDARY SURVEY E-5		DESIGN FILE NAME S-3-10-3123.DGN		DRAWING NO. S-3-10-3123	
SHEET: 2 OF: 2 PROJECT NO.: 2010013-13		SCALE: 1" = 100' APPROVED: N.J.H. DRAWN: E.A.O. CHECKED: G.W.M. DATE: 07/28/10		NO. 1 REVISION BY: N.J.H. DATE: 07/28/10	
FIELD BOOK NO. 1123 W		PALM BEACH COUNTY ENGINEERING AND PUBLIC WORKS ENGINEERING SERVICES 2500 NORTH JOG ROAD WEST PALM BEACH, FL 33411			

EXHIBIT "D"



21

AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF Michigan

COUNTY OF Macomb

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, depose(s) and say(s) that:

1. The undersigned is the Member-Manager MARTIN FALCIDEH of MSP Partners Realty, a

(Insert Title)

limited liability company organized and existing under the laws of the State of Florida ("Company").

2. Articles of Organization of the Company have been filed, and are on-file with, the Florida Department of State and such articles are incorporated herein by reference.

3. The Company is in good standing and is authorized to transact business in the State of Florida as of the date hereof.

4. The company is a [select (a) or (b)] member managed limited liability company.

5. The undersigned is the sole managing member of the Company or has been authorized by majority vote of the managing members to act on behalf of the Company and legally bind the Company and execute contracts and other instruments relating to the transaction of business of the Company.

6. The undersigned has the right and authority to enter into that certain **Fourth Amendment to Lease Agreement** between Palm Beach County, a political subdivision of the State of Florida and the Company (the "Agreement"), which is incorporated herein by reference and made a part hereof, and such other instruments as may be necessary and appropriate for the Company to fulfill its obligations under such Agreement, including amendment(s) and termination of such Agreement.

7. Upon execution and delivery of such Agreement and documents by the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.

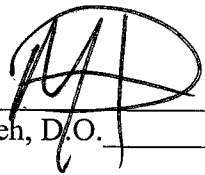
8. The transactions contemplated herein will not violate any of the terms and conditions of the Company's member agreement, operating agreement certificate of

organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.

9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,

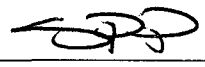
Individually and as



Martin Pakideh, D.O.

Manager

SWORN TO AND SUBSCRIBED before me on this 15 day of September, 2011, by Martin Pakideh, Manager of **MSP Partners Realty, LLC**, on behalf of the Company who is personally known to me OR who produced Driver License, as identification and who did take an oath.



Notary Signature

Sandra R. Rhee

Print Notary Name

NOTARY PUBLIC

State of Michigan at large

My Commission Expires:

8/26/2016

MACOM

Client#: 26362

SHIRINC

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/14/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Harney Team Mesirow Insurance Services 353 N. Clark Street Chicago, IL 60654	CONTACT NAME: PHONE (A/C, No, Ext): 312 595-6200 FAX (A/C, No): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A : American Automobile Insurance C INSURER B : Chartis Specialty Insurance Co. INSURER C : Zurich American Insurance INSURER D : INSURER E : INSURER F : NAIC # 26883
INSURED MSP Partners Realty LLC dba Hilton Palm Beach Airport Hotel 150 Australian Ave West Palm Beach, FL 33407	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		MXC80466918	06/01/2011	06/01/2012	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS		MXC80466918	06/01/2011	06/01/2012	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10000		49438085116	06/01/2011	06/01/2012	EACH OCCURRENCE \$25,000,000 AGGREGATE \$25,000,000 \$ WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	Property WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	CPP367379606	06/01/2011	06/01/2012	\$21,200,000 building \$5,650,000 B. I. /Rents \$10,000 deductible


DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: 130 & 150 Australian Avenue, West Palm Beach, FL

Additional insured on the general liability policy and loss payee on the property policy as required by written contract with a Named Insured: Palm Beach County, a Political Subdivision of the State of Florida, its Board of County Commissioners, Officers, Employees and Agents, c/o Palm Beach County Department of (See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

Palm Beach County BOCC c/o Palm Beach County Dept of Airports 846 Palm Beach Intl Airport West Palm Beach, FL 33406	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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DESCRIPTIONS (Continued from Page 1)

Airports, 846 Palm Beach International Airport, West Palm Beach, FL 33406

Property policy includes coverage for Improvements and Betterments and Building Ordinance or Law

Insurer:
Comp Options Insurance Company, Inc. d/b/a OptaComp
P. O. Box 44291
Jacksonville, FL 32231-4291

POLICY NO.
01B13-208D586-02

Individual Partnership

1. The Insured: Shiraz Management, LLC dba Palm Beach Airport Hilton

X Corporation or

Mailing address: 150 Australian Avenue
West Palm Beach, FL 33406

FEIN #
61-1543417

Other workplaces not shown above:

2. The Policy Period is from 31-Dec-10 to 31-Dec-11 12:01 A.M. at the insured's mailing address.

3. A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here: FL

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under part Two are:

Bodily Injury by Accident \$	1,000,000	each accident
Bodily Injury by Disease \$	1,000,000	policy limit
Bodily Injury by Disease \$	1,000,000	each employee

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:

D. This policy includes these endorsements and schedules:

WC 99 06 03, WC 00 04 02, WC 00 04 06 A, WC 00 04 14, WC 09 06 06, WC 09 04 03 A

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit.

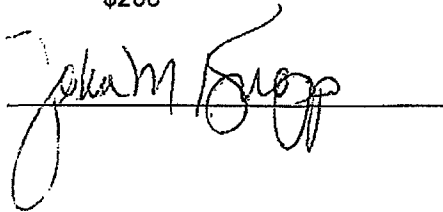
REFER TO CLASSIFICATION SCHEDULE WC 99 06 03

Classifications	Code No.	Premium Basis Total Estimated Annual Remuneration	Rate Per \$100 of Remuneration	Estimated Annual Premium
-----------------	----------	---	--------------------------------------	--------------------------------

Total Estimated Annual Premium \$67,861

Minimum Premium \$488 Expense Constant \$200

Countersigned by:



MSP PARTNERS REALTY, LLC

December 20, 2010

Ray Walter
Director of Properties
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406
Telephone: (561) 471-7429
Fax: (561) 471-7427

RE: West Palm Beach Airport Hilton - Worker's Compensation COI

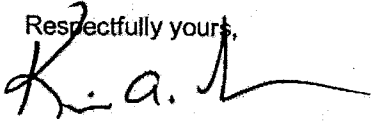
Dear Ray,

Good morning. Please be advised that MSP has employed Shiraz, Inc. as the management company operating its hotel operations. Employees operating airport shuttles are employees of Shiraz, Inc. and will be covered by Shiraz's Worker's Compensation Insurance directly.

Feel free to contact me if you have any further questions. Thank you for your continuing patience and cooperation in this matter.

Have a very happy and healthy holiday season!

Respectfully yours,



Kevin Landau, Esq.
General Counsel

MSP Partners Realty, LLC

30700 Telegraph Rd. Ste 1551
Bingham Farms, MI 48025

150 Australian Ave.
West Palm Beach, FL 33406

Phone (248) 203-2128
Fax (248) 203-2448

This check has a blue background on white paper and some of the security features on this document include: a Watermark, Microprint signature line, and a holographic foil stamp; absence of these features will indicate a copy.



SUNTRUST

Official Check

0735815115

64-79/611

Fraud Protected
by Positive Pay

Purchaser

SHIRAZ MANAGEMENT LLC

Date

Initials (Type)

Center

07 27

PAY

944,000.00

\$

944,000.00

To the
Order
of

PALM BEACH COUNTY BOARD OF COUNTY
COMMISSIONERS

Payable at SunTrust Bank

SunTrust Banks, Inc. by its Authorized Agent
SunTrust Bank

⑈0735815115⑈ ⑆061100790⑆ 7019019996⑈