

## AGENDA ITEM SUMMARY

Meeting Date: October 06, 2015 [ X ] Consent [ ] Regular  
[ ] Workshop [ ] Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

## I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:** First Amendment (Amendment) to Development Site Lease Agreement with Palm Auto Plaza, LLC (R-2014-0037) (Lease), providing for the lease of approximately 322,011 square feet of unimproved ground, additional annual rental in the amount of \$241,508, and a rental credit in the amount of \$141,046 to reimburse Palm Auto Plaza for roadway abandonment costs.

**Summary:** The Amendment provides for the lease of approximately 322,011 additional square feet of unimproved ground located south of the Palm Beach International Airport to be used for the construction of access driveways, drainage and landscaping in connection with the retail automotive sale and service facility being constructed by Palm Auto Plaza pursuant to the Lease. The Amendment increases the total annual rental under the lease to \$500,119. Palm Auto Plaza incurred costs in the amount of \$141,046 to abandon a portion of East Grace Drive (Roadway Parcel). The Amendment provides for the reimbursement of the roadway abandonment costs incurred by Palm Auto Plaza through a rental credit. **Countywide (HF)**

**Background and Justification:** On January 14, 2014, the Board approved the lease of approximately 344,814 square feet of unimproved ground to Palm Auto Plaza for the development of a retail automotive sale and service facility. The Amendment provides for the lease of an additional 322,011 square feet of unimproved ground located within the runway protection zone. Use of the property is limited by the Federal Aviation Administration (FAA) solely to the construction of access driveways, drainage and landscaping purposes due to its location. The Lease provided that the parties would amend the Lease in the event Palm Auto Plaza required additional property within the runway protection zone for the FAA-approved purposes. As the adjacent property owner, the County became the owner of the Roadway Parcel upon abandonment. The Amendment incorporates the Roadway Parcel into the overall leasehold premises, resulting in additional rental revenues to the County.

**Attachments:**

1. First Amendment to Development Site Lease Agreement (3)


 Recommended By: \_\_\_\_\_ Date: 9/8/15  
 Department Director

Approved By:  \_\_\_\_\_ Date: 9/25/15  
 County Administrator

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	<u>(\$30,022)</u>	<u>(\$241,508)</u>	<u>(\$241,508)</u>	<u>(\$241,508)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	_____	<u><b>(\$30,022)</b></u>	<u><b>(\$241,508)</b></u>	<u><b>(\$241,508)</b></u>	<u><b>(\$241,508)</b></u>
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget?    Yes \_\_\_\_\_ No X

Budget Account No:    Fund 4100 Department 120 Unit 8452 RSource 4416  
Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**    Rental commences on the date of beneficial occupancy, which is defined as the first to occur of: the date of substantial completion of the initial leasehold improvements; the date the tenant commences using the leasehold premises for the conduct of its business; or the date that is 36 months from the effective date. The fiscal impact assumes rental commences on January 14, 2017 (36 months from the effective date). A rental credit in the amount of \$141,046 is applied in FY2017 resulting in net rental revenue of \$30,022.

**C. Departmental Fiscal Review:**    *cm Summer*

**III. REVIEW COMMENTS**

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

*Shen & Bm*  
50 mg & OFMB  
9/12 9/11/15  
9/12 9/11/15

*Dr. J. Johnson* 9/22/15  
Contract Dev. and Control  
BWhacker-22-15

**B. Legal Sufficiency:**

*H. J. Al* 9/24/15  
Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
Department Director

**FIRST AMENDMENT TO DEVELOPMENT SITE LEASE AGREEMENT  
BETWEEN PALM BEACH COUNTY AND PALM AUTO PLAZA, LLC**

This First Amendment to Development Site Lease Agreement (this “Amendment”) is made and entered into this \_\_\_\_\_, 2015 (“Effective Date”) by and between Palm Beach County, a political subdivision of the State of Florida (“County”), and Palm Auto Plaza, LLC d/b/a Palm Beach Toyota, a Delaware limited liability company, having its office and principal place of business at 551 South Military Trail, West Palm Beach, FL 33415 (“Tenant”).

**W I T N E S S E T H:**

**WHEREAS**, County, by and through its Department of Airports, owns and operates the Palm Beach International Airport, which is located in Palm Beach County, Florida; and

**WHEREAS**, the parties entered into that certain Development Site Lease Agreement dated January 14, 2014 (R-2014-0037) (the “Lease”); and

**WHEREAS**, the parties desire to amend the Lease 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:

1. 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 Lease.

2. Section 2.01, Access Driveways, to the Lease is hereby deleted in its entirety and replaced with the following:

2.01 “Access Driveways” means the access driveways identified on the approved site plan to be located within the RPZ Parcel from the fifty (50) foot access easement granted to County pursuant to that certain Warranty Deed recorded in Official Records Book 11317, Page 72, which will provide access to that portion of the Premises located outside the RPZ.

3. Section 2.42, Premises, to the Lease is hereby deleted in its entirety and replaced with the following:

2.42 “Premises” means approximately Six Hundred Sixty-Six Thousand Eight Hundred Twenty Four and 7/10 (666,824.7) square feet of unimproved real property more particularly described on Exhibit “A”, subject to the easements, rights-of-way, and any other encumbrances of record.

4. Section 3.07, Contingencies, is hereby deleted in its entirety.

5. Section 4.02, Description of Privileges, Uses and Rights, is hereby deleted in its entirety and replaced with the following:

4.02 Description of Specific Privileges, Uses and Rights. Tenant shall have the right to use the Premises, excluding any portion of the Premises located within the RPZ Parcel, for the purpose of retail automotive sales and service and other uses incidental and directly related to Tenant’s business operations a retail automotive sales and service provider such as automotive repair and sale of automotive parts and collision repair. Use of any portion of the Premises located within the RPZ Parcel shall be solely limited to stormwater drainage (dry detention) and landscaping purposes associated with Tenant’s development and for the construction and use of the Access Driveways and for no other purposes whatsoever, unless otherwise approved by County by formal amendment to this Lease, which approval may be granted or withheld in the County’s sole and absolute

discretion. Notwithstanding any provision of this Lease to the contrary, use of the RPZ Parcel, including the Access Driveways, shall be strictly limited to uses approved by the FAA.

6. The following Sections of the Lease are hereby deleted in their entirety: Section 4.06, RPZ Parcel; Section 4.07, East Grace Drive; Section 4.08, GAM Parcels, and Section 4.09, Access Driveways.

7. Section 5.01, Rental, is hereby deleted in its entirety and replaced by the following:

5.01 Rental. Tenant shall pay to County an initial annual ground rental of Seventy Five Cents (\$.75) per square foot, for approximately Six Hundred Sixty-Six Thousand Eight Hundred Twenty Four and 7/10 (666,824.7) square feet of ground or Five Hundred Eighteen Thousand Dollars and 53/100 (\$500,118.53) annually, together with applicable sales taxes thereon, payable in equal monthly installments; provided, however, Tenant shall be entitled to a rental credit in the amount of One Hundred Forty-One Thousand Forty-Six Dollars and 40/100 (\$141,046.40) as reimbursement of the costs incurred by Tenant to abandon a portion of East Grace Drive. The aforementioned rental credit shall be credited against the monthly rental payments due to County, commencing on the Date of Beneficial Occupancy until fully exhausted.

8. Article 23, Non-Discrimination, is hereby deleted in its entirety and replaced with the following:

### ARTICLE 23 NON-DISCRIMINATION

23.01 Non-Discrimination in County Contracts. Tenant warrants and represents to County that all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information. Tenant has submitted to County a copy of its non-discrimination policy, which is consistent with the above, as contained in Resolution R-2014-1421, as may be amended, or in the alternative, if does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to County affirming their non-discrimination policy conforms to R-2014-1421, as may be amended.

#### 23.02 Federal Non-Discrimination Covenants.

A. Tenant, for its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the nondiscrimination acts and regulations listed in the Nondiscrimination Authorities (as hereinafter defined), as may be amended, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of County property, including, but not limited to, the Premises.

3. In the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
  4. Tenant will use the Premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Authorities.
- B. In the event of breach of any of the above nondiscrimination covenants, County shall have the right to terminate this Lease and to enter, re-enter, and repossess the Premises, and hold the same as if this Lease had never been made or issued. This Lease shall not be terminated pursuant to this paragraph until the procedures of 49 CFR Part 21 are followed and completed, including, the exercise or expiration of appeal rights.
- C. For purposes of this Article, the term "Non-Discrimination Authorities" includes, but is not limited to, the non-discrimination statutes, regulations and authorities listed in Appendix "E" of Appendix "4" of FAA Order 1400.11, Non-discrimination in Federally-Assisted Programs at the Federal Aviation Administration, as may be amended.
9. Exhibit "A" to the Lease is hereby deleted in its entirety and replaced with Exhibit "A" to this Amendment.
10. Except as modified herein, all terms and conditions of the Lease shall remain in full force and effect.
11. This Amendment shall become effective when signed by both parties and approved by the Palm Beach County Board of County Commissioners.

{Remainder of page intentionally left blank.}

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment, or have caused the same to be executed by their duly authorized representatives, as of the day and year first above written.

ATTEST:

SHARON R. BOCK  
Clerk and Comptroller

By: \_\_\_\_\_  
Deputy Clerk

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

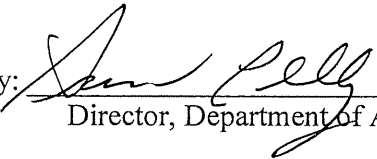
By: \_\_\_\_\_  
Shelley Vana, Mayor

(SEAL)


APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

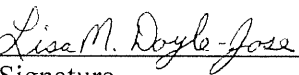
By: \_\_\_\_\_  
Assistant County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

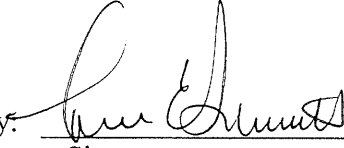
By:  \_\_\_\_\_  
Director, Department of Airports

Signed, sealed and delivered in the  
presence of two witnesses for  
TENANT:

  
\_\_\_\_\_  
Signature  
Jeffrey L. Anderson  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Signature  
Lisa M. Doyle-Jose  
\_\_\_\_\_  
Print Name

TENANT:  
PALM AUTO PLAZA, LLC

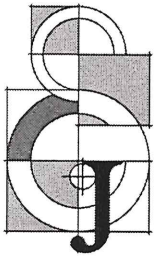
By:   
\_\_\_\_\_  
Signature  
Thomas E. Schmitt  
\_\_\_\_\_  
Print Name

Secretary/Treasurer  
\_\_\_\_\_  
Title

(SEAL)

**EXHIBIT "A"**  
**PREMISES DESCRIPTION**

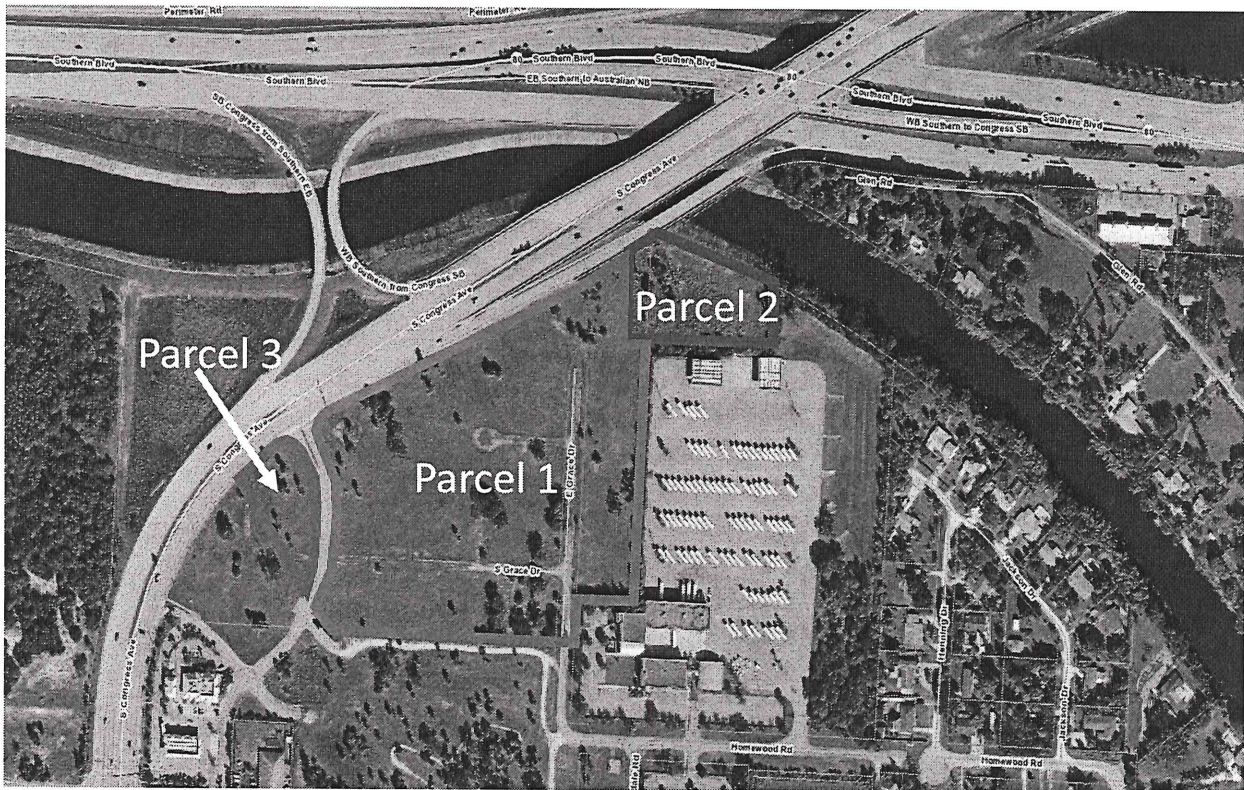




**Jon E. Schmidt and Associates**  
Land Planning and Landscape Architecture

**Exhibit "A"**  
**Premises**

**PBIA Parcel Identification Map**

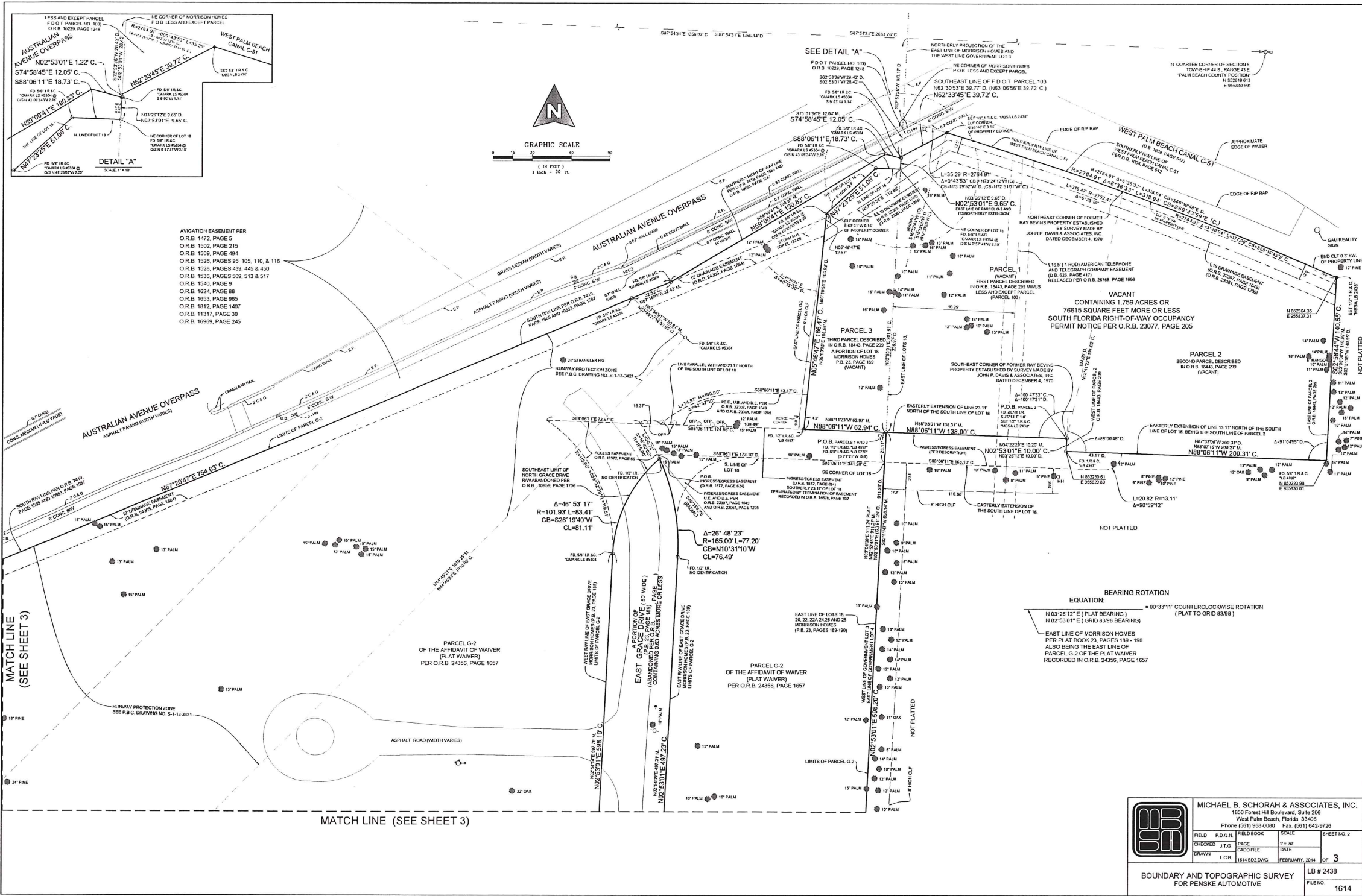



<u>Parcel #</u>	<u>Parcel Square Footage</u>	<u>Parcel Acreage</u>
Parcel 1:	551,364 s.f.	12.657 acres
Parcel 2:	76,615 s.f.	1.759 acres
Parcel 3:	<u>38,845.7 s.f.</u>	<u>.892 acres</u>
Total:	666,824.7 s.f.	15.308 acres











MICHAEL B. SCHORAH & ASSOCIATES, INC.

1850 Forest Hill Boulevard, Suite 206

West Palm Beach, Florida 33405

Phone (561) 958-0080 Fax (561) 642-9726

FIELD	P.D./J.N.	FIELD BOOK	SCALE	SHEET NO. 2
CHECKED	J.T.G.	PAGE	1" = 30'	
DRAWN	L.C.B.	CADD FILE	DATE	
		1814 B02.DWG	FEBRUARY, 2014	OF 3

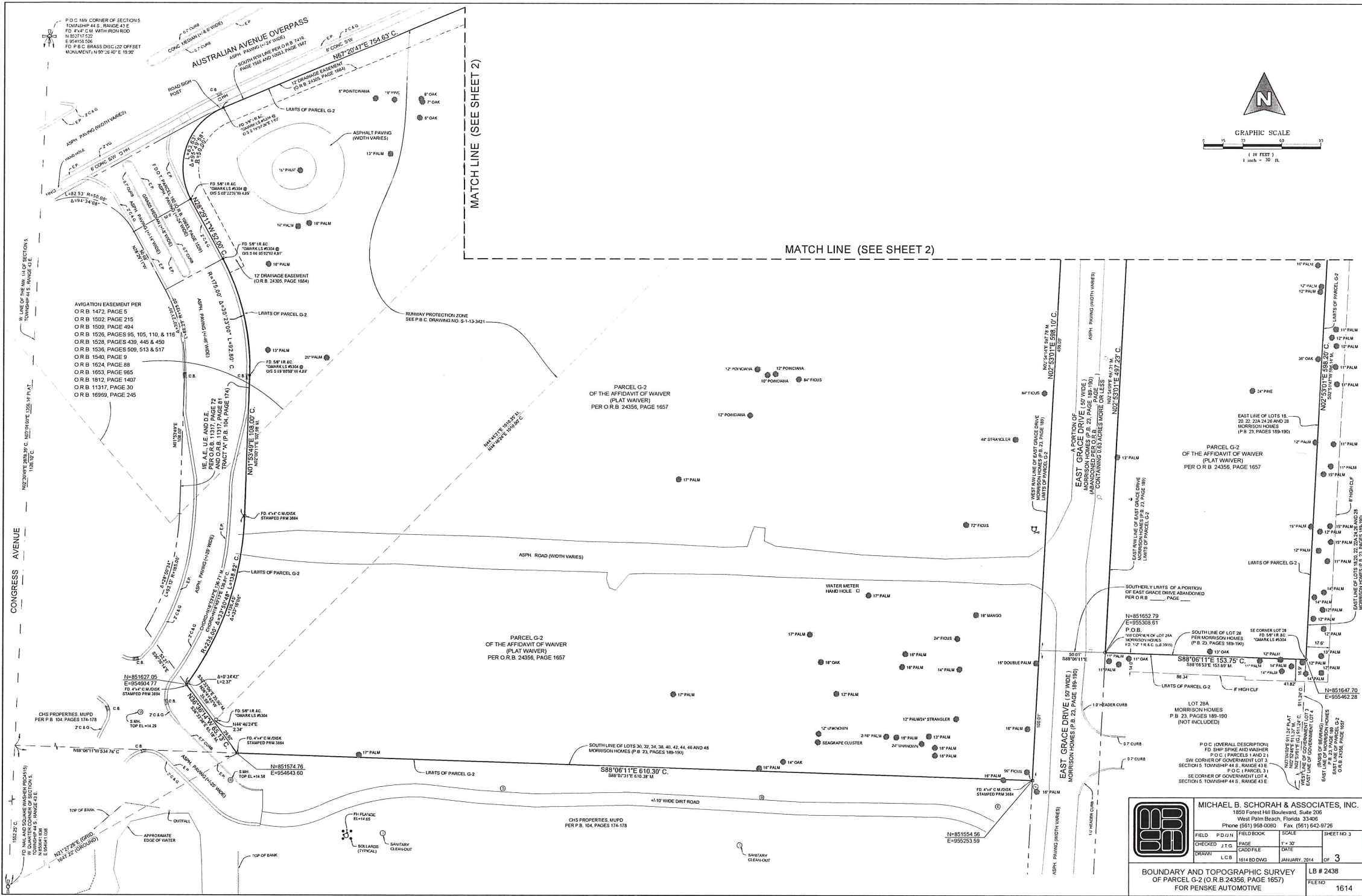
BOUNDARY AND TOPOGRAPHIC SURVEY


FOR PENSKE AUTOMOTIVE

LB # 2438

FILED

1614





Michael B. Schorah & Associates, Inc.

1850 Forest Hill Boulevard, Suite 206

West Palm Beach, Florida 33406

Phone (561) 958-0080 Fax (561) 642-9726

FIELD P.D./J.N.

CHECKED J.T.G.

DRAWN L.C.B.

FIELDBOOK

PAGE

CADD FILE

SCALE

1" = 30'

DATE

SHEET NO. 3

OF 3

BOUNDARY AND TOPOGRAPHIC SURVEY

OF PARCEL G-2 (O.R.B. 24356, PAGE 1657)

FOR PENSKE AUTOMOTIVE

LB # 2438

FILE NO.

1614

**LEASE PARCEL G-1**  
**(Parcel 3 - PBIA Parcel Identification Map)**

A PARCEL OF LAND BEING ALL OF PARCEL G-1 OF THE AFFIDAVIT OF WAIVER (PLAT WAIVER) AS RECORDED IN OFFICIAL RECORD BOOK 24356, PAGE 1699 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, CONSISTING OF 38,838 SQUARE FEET OR 0.8916 ACRES MORE OR LESS.

## Laura Beebe

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**From:** Scott Marting [SMarting@pbcgov.org]  
**Sent:** Friday, June 05, 2015 7:47 AM  
**To:** Laura Beebe  
**Subject:** RE: Palm Auto Plaza Lease

I think it would be best just to let Barbara know that no insurance is required at this time. If need be, just attach this e-mail.

Thank you,

Scott Marting, ARM, CSP  
Insurance and Claims Manager  
Property and Liability Division  
Palm Beach County Risk Management  
100 Australian Avenue, Suite 200  
West Palm Beach, FL 33406  
[smarting@pbcgov.org](mailto:smarting@pbcgov.org)  
Office: 561-233-5432  
Fax: 561-233-5420



**From:** Laura Beebe [mailto:[lbbeebe@pbia.org](mailto:lbbeebe@pbia.org)]  
**Sent:** Thursday, June 04, 2015 5:22 PM  
**To:** Scott Marting  
**Subject:** Palm Auto Plaza Lease

Scott,

I will be processing an amendment to the attached lease in the near future. The company is still working its way through the zoning & permitting process (the property is vacant land) and is not currently required to have insurance per the lease. Under the new PPM, it's my understanding that we need to attach an ITS report noting the company is compliant with the insurance requirements. We were holding off sending this to ITS until the insurance requirements actually kicked in. Do you want us to send it to them with the understanding that no insurance is currently required or hold off and let Barbara know that we didn't attach a compliance report to the amendment since no insurance is currently required?

The amendment doesn't modify any of the insurance requirements.

Please let me know how you'd like to handle it when you get a chance.

**Laura Beebe**  
Deputy Director, Airports Business Affairs  
Palm Beach County Department of Airports  
846 Palm Beach International Airport

**AFFIDAVIT OF LIMITED LIABILITY COMPANY**

STATE OF Michigan

COUNTY OF Oakland

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 Secretary/Treasurer of **Palm Auto Plaza, LLC**, limited liability company organized and existing under the laws of the State of Delaware ("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)] (a) manager managed 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 **First Amendment to Development Site 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.

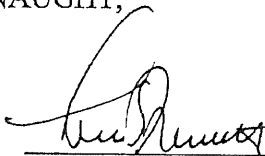
7. Upon execution and delivery of such Agreement and documents by the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.

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.

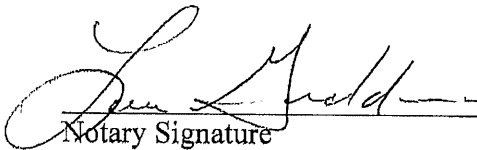
9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,



Thomas E. Schmitt, Secretary/Treasurer

SWORN TO AND SUBSCRIBED before me on this 2<sup>nd</sup> day of September, 2015, by Thomas E. Schmitt, Secretary/Treasurer of **Palm Auto Plaza, LLC**, on behalf of the Company who is personally known to me.



Notary Signature

Laura M. Gualdoni

Print Notary Name

NOTARY PUBLIC

State of Michigan at large

My Commission Expires:

February 5, 2020

