



**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	=====	=====	=====	=====	=====
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

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:**

The Lease provides for payment of the greater of a minimum guaranteed annual rental or a minimum percentage rent of 5.03% of gross revenues. Percentage rent increases with increased gross revenues. The Lease provides for a potential 1% reduction in percentage rent for a period not to exceed five years in the event MSP Partners can demonstrate a decline in revenues of by an average 15% for three consecutive months. The Amendment reduces the threshold from 15% to 10% and extends the timeframe MSP Partners may request the reduction from 18 to 36 months from the opening of a new hotel. It is unclear whether or not the Hotel will experience a decline in gross revenues after the opening of the new hotel or if a reduction will be requested by MSP Partners. Hotel revenues for the prior lease year were approximately \$8,200,000. In order to claim a reduction, MSP Partners would need to demonstrate an average decline of more than \$68,000 per month.

C. Departmental Fiscal Review: *CM Swinner*

**III. REVIEW COMMENTS**

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

*[Signature]*  
 OFMB *EX* 2/17

*[Signature]* 2/27/17  
 Contract Dev. and Control

**B. Legal Sufficiency:**

*[Signature]* 2/28/17  
 Assistant County Attorney

**C. Other Department Review:**

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

REVISED 9/03  
 ADM FORM 01  
 (THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

**RESOLUTION NO.**

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, FINDING THE FIFTH AMENDMENT TO LEASE AGREEMENT (R-92-471D) WITH MSP PARTNERS REALTY, LLC TO BE IN THE COUNTY'S BEST INTERESTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**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), Second Amendment to Lease Agreement dated August 21, 2007 (R-2007-1313), and Third Amendment to Lease Agreement dated June 8, 2010 (R-2010-0938); and assigned to MSP Partners Realty, LLC ("Tenant"), pursuant to that certain Assignment of Lease and Acceptance dated June 14, 2010; and further amended pursuant to that certain Fourth Amendment dated October 18, 2011 (R-2011-1583) (hereinafter collectively referred to as the "Lease"); and

**WHEREAS**, on October 11, 2016, the Department of Airports ("Department") issued Request for Proposals No. PB 16-6 for the lease and development of vacant land on the Palm Beach International Airport ("PBIA") for hotel and other compatible commercial uses; and

**WHEREAS**, the Department received one proposal for the lease of approximately three (3) ± acres of vacant land for the development of a Home2 Suites by Hilton hotel; and

**WHEREAS**, the Lease provides that the consent of Tenant is required in order to operate a Hilton brand hotel on PBIA; and

**WHEREAS**, the Lease provides for a reduction of percentage rent by one percent (1%) for a maximum of five (5) years in the event Tenant demonstrates that Tenant's revenues have declined by an average of fifteen percent (15%) or more for a period of three (3) consecutive months within eighteen (18) months of the opening of a new hotel on PBIA ("Reduction Provision"); and

**WHEREAS**, Tenant has requested a modification to the Reduction Provision to allow Tenant to demonstrate a decline of an average of ten percent (10%) or more for a period of three (3) consecutive months within thirty-six (36) months of opening of a new hotel on PBIA; and

**WHEREAS**, in addition to modifying the Reduction Provision, the proposed amendment acknowledges Tenant's consent to the operation of a Home2 Suites by Hilton hotel on PBIA, requires Tenant to provide consent to any future request within a defined time period and incorporates required non-discrimination language in accordance with Resolution No. 2014-1421 and federal law.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

**Section 1. Recitals.**

The foregoing recitals are true and correct and incorporated herein by reference.

**Section 2. Authorization to Amend Lease.**

The Board of County Commissioners of Palm Beach County hereby finds that it is in the best interest of County to approve the Fifth Amendment to Lease Agreement attached hereto as Exhibit "A" and incorporated herein by reference.

**Section 3. Conflict with Federal or State Law or County Charter.**

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

**Section 4. Effective Date.**

The provisions of this Resolution shall be effective immediately upon adoption hereof.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_ who moved its adoption. The Motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- Commissioner Paulette Burdick, Mayor
- Commissioner Melissa McKinlay, Vice Mayor
- Commissioner Hal R. Valeche
- Commissioner Dave Kerner
- Commissioner Steven L. Abrams
- Commissioner Mary Lou Berger
- Commissioner Mack Bernard

The Mayor thereupon declared the Resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**PALM BEACH COUNTY,  
a political subdivision of the State of Florida  
BOARD OF COUNTY COMMISSIONERS**

**SHARON R. BOCK  
CLERK & COMPTROLLER**

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

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

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

APPROVED AS TO TERMS  
AND CONDITIONS

By:  \_\_\_\_\_  
Department Director

**EXHIBIT "A"**  
**TO RESOLUTION**

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

THIS FIFTH AMENDMENT TO LEASE AGREEMENT (this "Amendment") is made and entered into as of \_\_\_\_\_, 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 38500 Woodward Ave., Suite 300, Bloomfield Hills, MI 48304 ("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), Second Amendment to Lease Agreement dated August 21, 2007 (R-2007-1313), and Third Amendment to Lease Agreement dated June 8, 2010 (R-2010-0938); and assigned to MSP Partners Realty, LLC, pursuant to that certain Assignment of Lease and Acceptance dated June 14, 2010; and further amended pursuant to that certain Fourth Amendment dated October 18, 2011 (R-2011-1583) (hereinafter collectively referred to as the "Agreement"); 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. Hotel Development.** Section XVI, Hotel Development on Airport Premises, 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, as adjusted in accordance with Section XVI(C)(2) below, have declined within the first thirty-six (36) months after the Hotel Opening Date (as hereinafter defined) by an average of ten percent (10%) or more for a period of three (3) consecutive months as compared to the same three (3) month period of the Base Year (as hereinafter defined). A Reduction Request shall be required to be delivered by Company to County within thirty-six (36) 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 monthly Gross Receipts have increased to an average of no less than ninety-five percent (95%) of the monthly

Gross Receipts of Base Year, as adjusted in accordance with Section XVI(C)(2) below, for a period of six (6) consecutive months; or (ii) sixty (60) months 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.

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. "Base Year" means the twelve (12) month period immediately preceding the Hotel Opening Date. For example, if the Hotel Opening Date occurs on February 1, 2018, the Base Year would be February 1, 2017 through January 31, 2018. For purposes of determining increases and declines in monthly Gross Receipts pursuant to this Section XVI, the actual monthly Gross Receipts of the Base Year shall be increased by two percent (2%) annually, which increase shall commence on the Hotel Opening Date and each one (1) year anniversary thereof. The actual monthly Gross Receipts shall be determined based on the information contained in the Statement of Gross Receipts, as such amounts may be adjusted by the Annual Report. Percentages shall be rounded to the nearest tenth of a percent. For example, if the actual monthly Gross Receipts in February 2017 were \$500,000, the monthly Gross Receipts would be considered \$510,000 in February 2018, and \$520,200 in February 2019, for purposes of determining a decline in monthly Gross Receipts. Assuming the actual monthly Gross Receipts in February 2018 are \$450,000, the decline in monthly Gross Receipts would be considered 11.8%, calculated as follows:  $(\$450,000 - \$510,000) / \$510,000 \times 100 = -11.8\%$ .
3. "Hotel Opening Date" shall mean the date the final permanent certificate of occupancy is issued for the New Hotel prior to opening.
4. "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;

provided, however, County shall not permit a New Hotel to be operated on the Airport Premises under the Hotel Complex Brand at any time during the Initial Term or any extension thereof, without the prior written consent of Company, which consent shall be granted or denied within thirty (30) business days of County's written request. In the event Company fails to timely respond to County's written request, Company shall be deemed to have consented to such request. Company acknowledges and agrees that Company has consented to operation of a Home2 Suites by Hilton on the Airport Premises as a result of Request for Proposals No. PB 16-6, and no further consent shall be required from 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 3. Non-Discrimination.** Section XXXXII(F) of the Agreement is hereby deleted in its entirety. The Agreement is hereby amended to add the following Section LVI:

**SECTION LVI. NON DISCRIMINATION**

A. **Non-Discrimination in County Contracts.** Company 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. Company 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 amended, or in the alternative, if Company 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 amended.

B. **Federal Non-Discrimination Covenants.**

1. Company, 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:
  - a. In the event facilities are constructed, maintained, or otherwise operated on the Demised Premises for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Company will maintain and operate such facilities and services in compliance with all requirements imposed by the nondiscrimination acts and regulations listed in the Non-discrimination Authorities (as hereinafter defined) 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.
  - b. 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 Demised Premises.
  - c. In the construction of any improvements on, over, or under the Demised 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.

- d. Company will use the Demised Premises in compliance with all other requirements imposed by or pursuant to the Non-discrimination Authorities.
2. In the event of breach of any of the above non-discrimination covenants, County shall have the right to terminate this Lease and to enter, re-enter, and repossess the Demised 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.
3. 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.
4. This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that Airport Concession Disadvantaged Business Enterprises shall have the maximum practicable opportunity to participate in the performance of contracts. Company agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Company agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

**Section 4. No Third Party Beneficiaries.** No provision of this the Agreement, as amended by this Amendment, is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to the Agreement, including but not limited to any citizen or employees of County and/or Company.

**Section 5. Public Entity Crimes.** As provided in Section 287.132-133, Florida Statutes, by entering into this Amendment or performing any work in furtherance of the Agreement, Company certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform the Agreement, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date of this Amendment. This notice is required by Section 287.133(3) (a), Florida Statutes.

**Section 6. 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 7. 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.

**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: \_\_\_\_\_  
Paulette Burdick, Mayor

**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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

(Seal)

**MSP Partners Realty, LLC,  
a Florida limited liability company**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

## Summary of Certificates

This report displays detailed Certificate of Insurance information for a selected Insured. Any items shown in red are deficient.

Thursday, February 16, 2017

Insured: MSP Partners Realty, LLC

Insured ID: PBI-MS-92-01

Status: Compliant

ITS Account Number: PLC808

Project(s): Palm Beach County - Airport Properties

Insurance Policy	Required	Provided	Override
<u>General Liability</u> Expiration: 3/31/2017			
General Aggregate:	\$1,000,000	\$2,000,000	
Products - Completed Operations Aggregate:	\$1,000,000	\$2,000,000	
Personal And Advertising Injury:	\$1,000,000	\$1,000,000	
Each Occurrence:	\$1,000,000	\$1,000,000	
Fire Damage:	\$100,000	\$100,000	
Medical Expense:	\$5,000	\$5,000	
<u>Automobile Liability</u> Expiration: 3/31/2017		Any Auto	
	All Owned Autos	not provided	X
	Hired Autos	not provided	X
	Non-Owned Autos	not provided	X
Combined Single Limit:	\$500,000	\$1,000,000	
<u>Workers Compensation/Employers Liability</u> Expiration: 3/31/2017	WC Stat. Limits	WC Stat. Limits	
<u>Property, Wind and Flood Insurance</u> Expiration: 3/31/2017	All-Risk and Replacement Cost Ordinance and Law Coverage Loss Payee	All-Risk and Replacement Cost Ordinance and Law Coverage Loss Payee	
<u>Business Interruption Insurance</u> Expiration: 3/31/2017	Rental Insurance Coverage	Rental Insurance Coverage	

Notifications (Show All)

There were no deficiency letters issued.

Do you have an updated Certificate? Click the button below to submit a Certificate.

**AFFIDAVIT OF LIMITED LIABILITY COMPANY**

STATE OF Florida

COUNTY OF Palm Beach

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 Principal, 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)] (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 **Fifth 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.

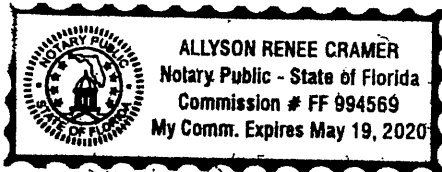
9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,

[Signature], Individually and as  
[select one: Manager or **Member**]

SWORN TO AND SUBSCRIBED before me on this 10 day of Feb, 2017 by Martin Pakiden, Manager/Member of **MSP Partners Realty, LLC**, on behalf of the Company who is personally known to me OR who produced his Drivers License, as identification and who did take an oath.

[Signature]  
Notary Signature



Allyson Cramer  
Print Notary Name

NOTARY PUBLIC

State of FLORIDA at large

My Commission Expires:

MAY 19, 2020

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

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**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), Second Amendment to Lease Agreement dated August 21, 2007 (R-2007-1313), and Third Amendment to Lease Agreement dated June 8, 2010 (R-2010-0938); and assigned to MSP Partners Realty, LLC, pursuant to that certain Assignment of Lease and Acceptance dated June 14, 2010; and further amended pursuant to that certain Fourth Amendment dated October 18, 2011 (R-2011-1583) (hereinafter collectively referred to as the "Agreement"); and

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

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**Section 2. Hotel Development.** Section XVI, Hotel Development on Airport Premises, 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, as adjusted in accordance with Section XVI(C)(2) below, have declined within the first thirty-six (36) months after the Hotel Opening Date (as hereinafter defined) by an average of ten percent (10%) or more for a period of three (3) consecutive months as compared to the same three (3) month period of the Base Year (as hereinafter defined). A Reduction Request shall be required to be delivered by Company to County within thirty-six (36) 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 monthly Gross Receipts have increased to an average of no less than ninety-five percent (95%) of the monthly

Gross Receipts of Base Year, as adjusted in accordance with Section XVI(C)(2) below, for a period of six (6) consecutive months; or (ii) sixty (60) months 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.

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".
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provided, however, County shall not permit a New Hotel to be operated on the Airport Premises under the Hotel Complex Brand at any time during the Initial Term or any extension thereof, without the prior written consent of Company, which consent shall be granted or denied within thirty (30) business days of County's written request. In the event Company fails to timely respond to County's written request, Company shall be deemed to have consented to such request. Company acknowledges and agrees that Company has consented to operation of a Home2 Suites by Hilton on the Airport Premises as a result of Request for Proposals No. PB 16-6, and no further consent shall be required from 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 3. Non-Discrimination.** Section XXXXII(F) of the Agreement is hereby deleted in its entirety. The Agreement is hereby amended to add the following Section LVI:

SECTION LVI. NON DISCRIMINATION

A. Non-Discrimination in County Contracts. Company 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. Company 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 amended, or in the alternative, if Company 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 amended.

B. Federal Non-Discrimination Covenants.

1. Company, 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:
  - a. In the event facilities are constructed, maintained, or otherwise operated on the Demised Premises for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Company will maintain and operate such facilities and services in compliance with all requirements imposed by the nondiscrimination acts and regulations listed in the Non-discrimination Authorities (as hereinafter defined) 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.
  - b. 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 Demised Premises.
  - c. In the construction of any improvements on, over, or under the Demised 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.

- d. Company will use the Demised Premises in compliance with all other requirements imposed by or pursuant to the Non-discrimination Authorities.
2. In the event of breach of any of the above non-discrimination covenants, County shall have the right to terminate this Lease and to enter, re-enter, and repossess the Demised 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.
3. 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.
4. This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that Airport Concession Disadvantaged Business Enterprises shall have the maximum practicable opportunity to participate in the performance of contracts. Company agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Company agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

**Section 4. No Third Party Beneficiaries.** No provision of this the Agreement, as amended by this Amendment, is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to the Agreement, including but not limited to any citizen or employees of County and/or Company.

**Section 5. Public Entity Crimes.** As provided in Section 287.132-133, Florida Statutes, by entering into this Amendment or performing any work in furtherance of the Agreement, Company certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform the Agreement, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date of this Amendment. This notice is required by Section 287.133(3) (a), Florida Statutes.

**Section 6. 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 7. 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.

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

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

By: \_\_\_\_\_  
Paulette Burdick, Mayor

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

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

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]  
Director, Department of Airports

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

Signature [Signature]

Print Name Suman Pillai

Signature [Signature]

Print Name Allyson Cramer

(Seal)

MSP Partners Realty, LLC, a Florida limited liability company

Signature [Signature]

Print Name Martin Pakiden

Title Principal