

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

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Meeting Date: July 10, 2018	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
	<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A) **Approve** a Settlement Agreement (Agreement) with MSP Partners Realty, LLC (MSP), providing for payment in the amount of \$175,000 in four monthly installments of \$43,750 each to the County to resolve a dispute related to the repair of certain shared drainage improvements at the Airport Center complex; and
- B) **Authorize** the Director of the Department of Airports or his designee to execute, on behalf of County, the Ground Lease Estoppel Certificate and Agreement (Estoppel Certificate) in the form attached to the Agreement.


Summary: The Agreement provides for the resolution of a dispute with MSP related to repairs made to a portion of the drainage system at the Airport Center complex (Drainage System 1) shared by the Hilton Palm Beach Airport (Hilton) and County-owned buildings. In December 2014, MSP, the owner of the Hilton, was notified that portions of the shared drainage system required repair pursuant to the Lease Agreement (R-92-471(D), as amended) with the County. County staff and MSP were unable to reach agreement on the final scope of work for the repairs or allocation of costs. On March 21, 2016, MSP was notified that it would be in default of the Lease Agreement unless MSP completed the repairs to Drainage System 1 and that, if MSP failed to complete the repairs, the County would proceed with repairs and seek reimbursement from MSP for its share of the costs, which was estimated to be \$248,000. MSP subsequently requested an Estoppel Certificate from the County in order to obtain financing from Wells Fargo; however, MSP was unable to obtain the financing due to the outstanding default notice. MSP has offered to settle the dispute for \$175,000 in exchange for the Estoppel Certificate. Delegation of authority to execute the Estoppel Certificate to the Director of the Department of Airports will allow the Estoppel Certificate to be delivered within the timeframe required by the Agreement. The Agreement is being recommended by the Department of Airports, Facilities Development and Operations Department and County Attorney's Office. Countywide (DO)

Background and Justification: MSP filed a Notice of Arbitration and Statement of Claim against the County styled MSP Partners Realty, LLC d/b/a Hilton Palm Beach Airport v. Palm Beach County – Division of Real Estate and Property Management, Ross Hering, Case Number: 01-17-0002-4501, with the American Arbitration Association, which included various claims and alleged damages in excess of \$1,000,000. The County declined to participate in arbitration, and MSP indicated its intent to file a legal action against the County to resolve the dispute. The total construction costs incurred by the County for the repairs to Drainage System 1, excluding inspection and design costs, was approximately \$273,655; however, MSP has disputed the scope of work performed by the County and the allocation of costs.

Attachments:

- 1. Settlement Agreement (3)

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AB	Recommended By: 	6/7/18
	Department Director	Date
	Approved By: 	7/2/18
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>(\$131,250)</u>	<u>(43,750)</u>	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$131,250)</u>	<u>(43,750)</u>	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X

Budget Account No: Fund 3804 Department 411 Unit B558 RSource 6443
Reporting Category _____

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

Although the Department of Airports manages the Lease with MSP, the construction project was managed and funded by the Facilities Development and Operations Department. The drainage projects included portions of County property in addition to areas subject to the Lease Agreement with MSP.

C. Departmental Fiscal Review: CM Smith

III. REVIEW COMMENTS

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

Eric Romo cl/hke
OFMB 2/6/19

Dr. J. Jacoby 6/29/18
Contract Dev. and Control
6/28/18 TW

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

Keith Arroyo
Department Director

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

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, LLC**, a limited liability company organized and existing under the laws of the State of Florida ("Company").
(Insert Title)

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 **Settlement Agreement** between Palm Beach County ("County"), a political subdivision of the State of Florida, and the Company and that certain **Ground Lease Estoppel Certificate and Agreement** between County, Company and Wells Fargo Bank, National Association (hereinafter collectively referred to as the "Agreements"), which are 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 Agreements, including amendment(s) and termination of such Agreements.


7. Upon execution and delivery of such Agreements 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 Agreements.

FURTHER AFFIANT SAYETH NAUGHT,

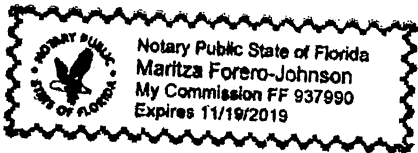

_____, Individually and as
[select one: Manager or Member]

SWORN TO AND SUBSCRIBED before me on this 1 day of June, 2018, by
Martin Pakideh, Manager/Member of **MSP Partners Realty,**
LLC, on behalf of the Company who is personally known to me OR who produced
_____, as identification and who did take an oath.

MARITZA FORERO-Johnson
Notary Signature

Maritza Forero-Johnson
Print Notary Name

NOTARY PUBLIC



State of FL at large

My Commission Expires:
11/19/2019

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter referred to as this "Agreement") made and entered into this _____ day of _____, 2018, by and between MSP Partners Realty, LLC, a Florida limited liability company (hereinafter referred to as "MSP"), and Palm Beach County, a political subdivision of the State of Florida (hereinafter referred to as "PBC").

WHEREAS, PBC and the Federal Deposit Insurance Corporation (hereinafter referred to as "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 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) and Fifth Amendment dated March 14, 2017 (R-2017-0358)(hereinafter collectively referred to as the "Lease"); and

WHEREAS, the Lease provides that the Demised Premises (as defined under the Lease) is subject to that certain Declaration of Reciprocal Easements, Covenants and Maintenance of Airport Centre, dated February 4, 1988 and recorded April 1, 1998 in Official Records Book 5622, page 1678, Public Records of Palm Beach County, Florida (hereinafter referred to as the "Declaration"), and MSP and PBC agree to be bound by all of the terms, covenants and conditions contained therein; and

WHEREAS, the Declaration governs the maintenance and repair of Common Area Improvements, including Drainage Facilities (as both terms are defined in the Declaration); and

WHEREAS, PBC notified MSP in December 2014 that portions of the Drainage Facilities exceeded their useful life and required repair; and

WHEREAS, PBC provided written notice to MSP on May 21, 2016 that failure to commence repairs to a portion of the Drainage Facilities as generally depicted in the attached Exhibit "A" ("Drainage System 1"), within ten (10) days would constitute a default of the Declaration and that PBC would proceed with repairs to Drainage System 1 and seek reimbursement of MSP's pro-rata share of the cost of such repairs, which were estimated to be \$248,000 (hereinafter referred to as the "Default Notice"); and

WHEREAS, MSP denied any default; and

WHEREAS, in February 2017, MSP requested PBC provide a Ground Lease Estoppel Certificate and Agreement in order to obtain financing from Wells Fargo Bank; and

WHEREAS, PBC made modifications to the aforementioned Ground Lease Estoppel Certificate and Agreement to reference to the Default Notice; and

WHEREAS, MSP filed a Notice of Arbitration and Statement of Claim against PBC styled MSP Partners Realty, LLC d/b/a Hilton Palm Beach Airport v. Palm Beach County - Division of Real Estate and Property Management, Ross Hering, Case Number: 01-17-0002-4501, with the American Arbitration Association (hereinafter referred to as the "Request for Arbitration"); and

WHEREAS, PBC declined to participate in arbitration pursuant to the Request for Arbitration pursuant to the Lease, and MSP indicated its intent to file a legal action against PBC; and

WHEREAS, the parties desire to amicably resolve the dispute without litigation.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. MSP agrees to pay to PBC the amount of One Hundred Seventy-Five Thousand Dollars and 00/100 (\$175,000.00) (hereinafter referred to as the "Settlement Payment"), which shall be payable in four (4) equal monthly installments of Forty-Three Thousand Seven Hundred Fifty Dollars and 00/100 (\$43,750.00) (hereinafter referred to as the "Monthly Settlement Payment Installment"). Concurrent with delivery of this Agreement, MSP shall pay to PBC the first Monthly Settlement Payment Installment, by a cashier's check made payable to the Palm Beach County Board of County Commissioners. MSP shall pay to County the three (3) remaining Monthly Settlement Payment Installments on or before the first (1st) day of each and every month, commencing on the first (1st) full month after the Effective Date of this Agreement, until satisfied. Each Monthly Settlement Payment Installment shall be paid to PBC by a cashier's check made payable to the Palm Beach County Board of County Commissioners. MSP agrees that a failure to timely satisfy its payment obligations under this Agreement, as and when due, when such failure shall continue for a period of five (5) business days after receipt of written notice thereof from PBC to MSP shall be considered a material default of the Lease and this Agreement.
3. At any time after County's receipt of the second Monthly Settlement Payment, upon request by MSP, PBC shall execute and deliver to MSP the Estoppel Certificate, in the form attached hereto and incorporated herein as Exhibit "B" (hereinafter referred to as the "Estoppel Certificate"), within five (5) days of receipt of such request, together with three (3) original copies of a Ground Lease Estoppel Certificate and Agreement executed, witnessed and notarized as required by duly authorized representatives of MSP and Wells Fargo, and documentation evidencing the representatives executing the Estoppel Certificate on behalf of MSP and Wells Fargo have the requisite authority to sign the Estoppel Certificate on behalf of their respective companies. PBC hereby authorizes the Director of the Department of Airports to execute the Estoppel Certificate on behalf of PBC. MSP shall be responsible for the cost of recording the Estoppel Certificate in the Public Records of Palm Beach County.

4. MSP, on behalf of itself as well as its successors and assigns, hereby releases, acquits and forever discharges PBC and its officers, agents, commissioners, employees, successors and assigns (hereinafter collectively referred to as "PBC Parties"), all of whom expressly deny liability to MSP, from any and all claims, demands, rights, damages, costs, payments, expenses, compensation, attorney's fees, actions, causes of action or suits of any kind or nature whatsoever, which MSP ever had, now has, or may have against the PBC Parties arising out of or relating to the to the Default Notice or the repairs PBC caused to be completed to the Common Area Improvements prior to the Effective Date of this Agreement, including, without limitation, any and all claims and damages raised by MSP in the Request for Arbitration.

5. PBC, on behalf of itself as well as its successors and assigns, hereby releases, acquits and forever discharges MSP and its officers, agents, employees, successors and assigns (the "MSP Parties"), all of whom expressly deny liability to PBC, from any and all claims, demands, rights, damages, costs, payments, expenses, compensation, attorney's fees, actions, causes of action or suits of any kind or nature whatsoever, which PBC ever had, now have, or may have against the MSP Parties for costs incurred by PBC for repairs to the Common Area Improvements prior to the Effective Date of this Agreement, including, without limitation, the claims raised by PBC in the Default Notice for reimbursement of costs associated with Drainage Systems 1 and 4, as generally depicted in the attached Exhibit "A", and improvements made to the lighting within the Common Areas.

6. Each party shall bear its respective attorney's fees and costs.

7. This Agreement does not constitute an admission of liability by either party; rather, the parties expressly deny their liability, causation and damages and have entered into this Agreement in order to buy their peace. Furthermore, the parties acknowledge and agree that nothing in this Agreement or the Estoppel Certificate shall be construed as waiving or releasing either party from their respective obligations under the Lease or Declaration except as expressly set forth herein, including, without limitation, the continuing repair and maintenance obligations of the parties with respect to the Common Area Improvements.

8. In any litigation brought to enforce the terms or remedy a violation of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.

9. The parties acknowledge that this Agreement has been executed by its duly authorized representatives. The parties declare and acknowledge that the terms of this Agreement have been completely read, fully understood, discussed with counsel, and voluntarily accepted by each party.

10. This Agreement shall be binding on the parties hereto, their assigns, transferees, heirs, and other successors in interest.

11. All notices and elections to be given or delivered by or to any party hereunder,

shall be in writing and shall be delivered in accordance with Section XXXIX, Notices, of the Lease.

12. This Agreement shall become effective when signed by the parties and approved by the Palm Beach County Board of County Commissioners (referred herein as the “Effective Date”).

{Remainder of page intentionally left blank.}

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

ATTEST:

PALM BEACH COUNTY,
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA, BY ITS BOARD
OF COUNTY COMMISSIONERS

SHARON R. BOCK,
CLERK AND COMPTROLLER

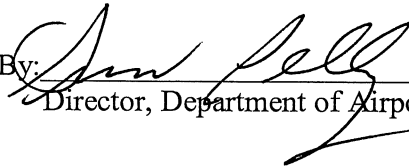
By: _____
Deputy Clerk

By: _____
Melissa McKinlay, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY


APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

By:  _____
Director, Department of Airports

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

MSP Partners Realty, LLC,
a Florida Limited Liability Company



Signature

By:  _____
Signature

MANDAC RAUT

Print Name

Martha PARKIN

Print Name



Signature

Principal

Title

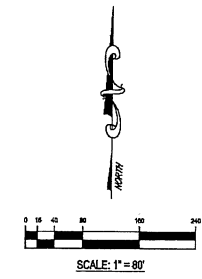
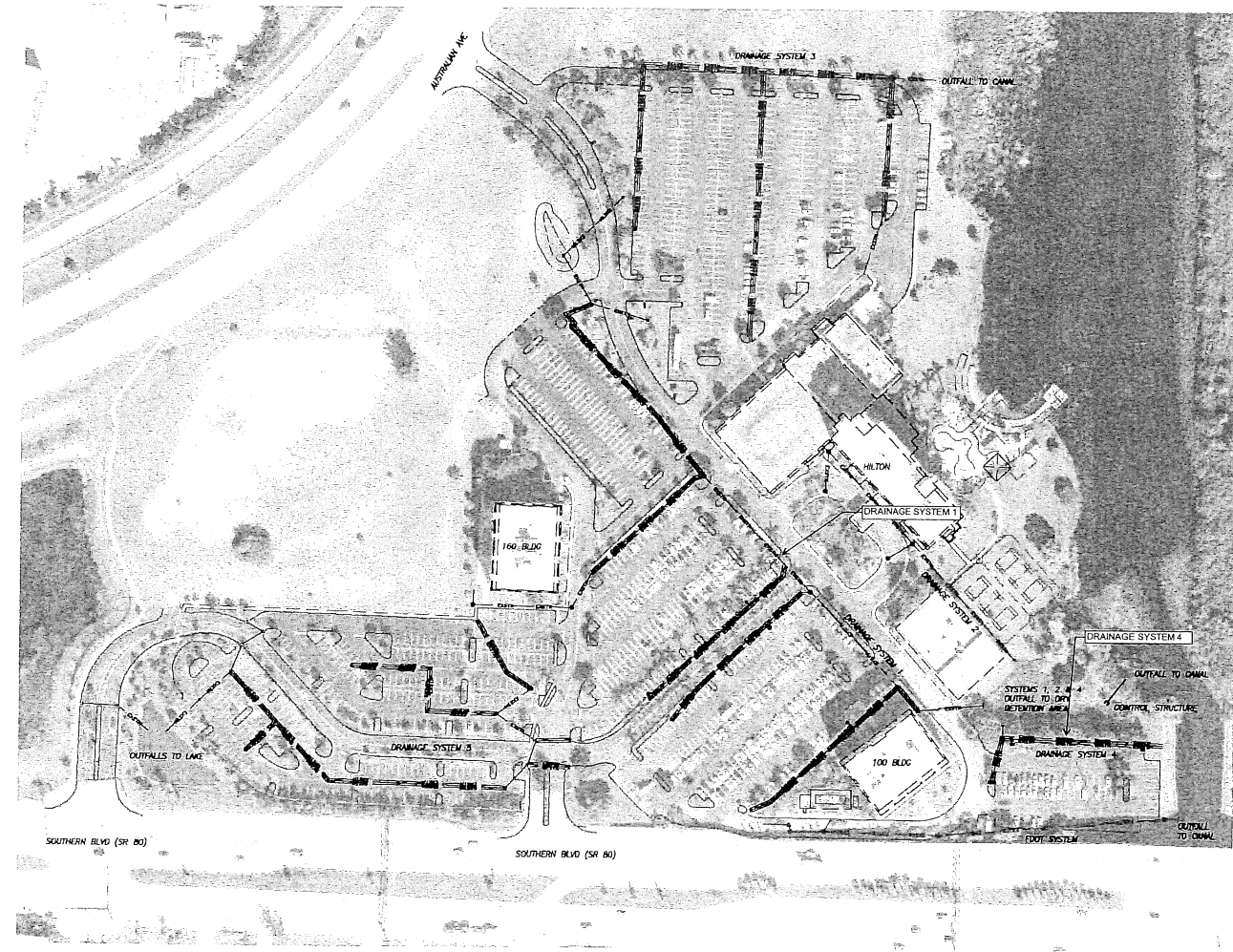
Angella Gilman

Print Name

(Seal)

EXHIBIT "A"
DRAINAGE SYSTEM 1 & 4

PLOT DATE: Jul 12, 2012 TIME: 10:41am BY: Jrompeter
 DRAWING: 2011525 - Airport Center Drainage (P&P) User: Jrompeter
 CADD REVISION: C1-642 DWD: J



- DRAINAGE SYSTEM 1 ——— EXIST ——— EXIST ———
- DRAINAGE SYSTEM 2 ——— EXIST ——— EXIST ———
- DRAINAGE SYSTEM 3 ——— EXIST ——— EXIST ———
- DRAINAGE SYSTEM 4 ——— EXIST ——— EXIST ———
- DRAINAGE SYSTEM 5 ——— EXIST ——— EXIST ———
- FOOT DRAINAGE SYSTEM ——— EXIST ——— EXIST ———

312 9th Street
 West Palm Beach, FL 33401
 T: 561.659.5760
 F: 561.659.5772
 www.civil-design.com
 Certificate of Authorization No. 9664

PALM BEACH COUNTY
 FACILITIES DEVELOPMENT &
 OPERATIONS DEPARTMENT
 2633 VISTA PKWY WEST PALM BEACH, FL 33411

NO.	DATE	REVISIONS	BY

FIELD	DESIGNED	DRAWN	CHECKED	APPROVED

BOOK No. - PG. -
 SHEET 1 OF 8
 SCALE:
 24"x36" 1" = 80'
 11x17" 1" = 160'
 May 22, 2012
 T. Jeff Trompeter, P.E.
 Florida License No. 51045

Project: PBC FD&O, CID, P&P
**AIRPORT CENTER
 DRAINAGE STUDY**
 AERIAL MAP

SHEET 1
 OF 8
 PROJECT NO.
 2011525

EXHIBIT "B"
ESTOPPEL CERTIFICATE

Prepared by and Return to:

GROUND LEASE ESTOPPEL CERTIFICATE AND AGREEMENT

THIS GROUND LEASE ESTOPPEL CERTIFICATE AND AGREEMENT (this "**Agreement**") is made and entered into this _____, 20__ by and between Palm Beach County, a political subdivision of the State of Florida ("**Landlord**"), and MSP Partners Realty, LLC, a Florida limited liability company (successor-in-interest to Federal Deposit Insurance Corporation) ("**Tenant**"), and Wells Fargo Bank, National Association ("**Lender**").

WHEREAS, Landlord and Tenant, entered into that certain Lease Agreement dated March 24, 1992, as amended by Amendment to Lease Agreement dated February 7, 2006, Second Amendment to Lease Agreement dated August 21, 2007, Third Amendment to Lease Agreement dated June 8, 2010, Fourth Amendment to Lease Agreement dated October 18, 2011 and Fifth Amendment to Lease Agreement dated March 14, 2017 (as amended, the "**Ground Lease**"), covering certain real property located at 150 Australian Avenue, West Palm Beach, Florida 33406 as more particularly described in Exhibit A, attached hereto and made a part hereof ("**Property**").

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration of which the parties acknowledge receipt, the parties agree as follows:

1. **Mortgage.** The parties acknowledge and agree that this Agreement is executed and delivered by Landlord to Lender in connection with that certain loan ("**Loan**") to be made by Lender to Tenant, which Loan will be secured by a leasehold Mortgage and Assignment of Rents and Leases, Security Agreement and Fixture Filing encumbering Tenant's interest in the Property (as may be modified, amended, supplemented or restated from time to time, the "**Mortgage**"), and with the recognition that Lender, and its successors and/or assigns, will rely upon the contents hereof in closing and consummating the Loan.
2. **Ground Lease.** As of the date hereof, Landlord hereby certifies, declares and agrees that: (a) pursuant to the terms of the Ground Lease, Landlord has leased to Tenant and Tenant has leased from Landlord, the Property; (b) the Ground Lease is in full force and effect and other than as set forth above, has not been modified, supplemented, or amended, orally or in writing; (c) except for the Ground Lease and 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, there are no agreements between Landlord and Tenant in any way concerning the subject matter of the Ground Lease or the occupancy or use of the Property; (d) except as indicated by the Ground Lease, the interests of Landlord and Tenant under the Ground Lease have not been assigned; and (e) to the best of Landlord's knowledge, no portion of the Property has been sublet by Tenant.
3. **No Defenses or Offsets by Tenant.** As of the date hereof, Tenant certifies, declares and agrees that: (a) all conditions and obligations under the Ground Lease to be satisfied or performed by Landlord have been satisfied or performed; and (b) Tenant does not assert, and is not entitled to assert, any claim against Landlord or any defense to or offset against the enforcement of the Ground Lease by Landlord.
4. **No Defenses or Offsets by Landlord.** Landlord certifies, declares and agrees that, as of the date hereof: (a) all conditions and obligations under the Ground Lease to be satisfied or performed by Tenant have been satisfied or performed and, (b) Landlord does not assert, and is not entitled to assert, any claim against Tenant or any defense to or offset against the enforcement of the Ground

Lease by Tenant.

5. **Lease Term. No Purchase Right; Options.** As of the date hereof, Landlord hereby certifies, declares and agrees that: (a) the term of the Ground Lease commenced on March 24, 1992, and is scheduled to terminate on December 31, 2060; (b) Tenant does not have any rights to renew, extend or terminate the Ground Lease, except for the option to extend the term for an additional fifteen (15) years as provided in Section II(B) of the Ground Lease; (c) Tenant does not have any rights to purchase the Property. The parties agree that Tenant's exercise of any rights of first refusal, options to renew, extend or terminate the Ground Lease or purchase any portion of the Property shall not be effective unless consented to in writing by Lender. In the event that Tenant shall acquire title to the fee interest in the Property, the parties acknowledge that the leasehold interest of Tenant under the Ground Lease shall not merge in that fee interest. If Tenant does not timely exercise a renewal right under the Ground Lease, Landlord shall accept the exercise of such right by Lender, provided such exercise is made within thirty (30) days following the latest date that Tenant could have exercised such right, no material default (or event which with the passage of time or giving of notice would constitute a material default) then exists by Tenant under the Ground Lease, and Tenant has made the Minimum Investment provided for in Section LV(A) of the Ground Lease.
6. **Rent.** Landlord certifies, declares and agrees that, as of the date hereof, no rent under the Ground Lease beyond the current month has been paid in advance by Tenant; and as of _____, 2018, \$_____ is currently due and payable under the Ground Lease and all other rental payments are current.
7. **Deposits.** As of the date hereof, Landlord certifies, declares and agrees that: (a) Tenant does not make any type of escrow deposits with Landlord, and Landlord does not hold any type of deposit from Tenant (for security or otherwise), except for the Security Deposit (as defined in Section IV(C) of the Ground Lease); and (b) the amount of the Security Deposit currently held by Landlord is \$63,425.49.
8. **Fee Encumbrances.** As of the date hereof, Landlord certifies, declares and agrees that: (a) Landlord's fee interest in the Property is not encumbered; (b) no third party has any option or other right to purchase all or any portion of the Property; and (c) if Landlord elects to encumber the fee interest in the Property, Landlord will cause any such lender to enter into an agreement with Lender that is reasonably satisfactory to Lender to evidence the subordination of any lien relating thereto to the lien created by the Mortgage and to Tenant's interest in the Ground Lease so that the Mortgage shall not be subject or subordinate to any such encumbrance upon the fee estate of the Property.
9. **No Violations; Condemnation.** As of the date hereof, Landlord certifies, declares and agrees that Landlord: (a) has not received any written notice of any pending eminent domain proceedings or other governmental or judicial actions that could affect the Property; and (b) has not received any written notice that it is in violation of any law applicable to the Property (including, but not limited to, any environmental law or the Americans with Disabilities Act).
10. **Notice and Cure Rights.** Landlord shall provide Lender with copies of all notices of breach or default that are delivered to Tenant in accordance with Section IX of the Ground Lease. Landlord agrees that no notice given under the Ground Lease shall be effective against Lender unless a copy has been delivered to Lender in accordance with the terms of Section IX of the Ground Lease. Landlord shall not take any action to terminate the Ground Lease as a result of said default, except as provided in Section IX of the Ground Lease. The sole remedy available to Lender due to the failure of Landlord to provide Lender with notice as required hereunder shall be the tolling of the applicable cure period afforded to Lender until the earlier of provision of such notice to Lender or Lender's receipt of actual knowledge of such notice. Landlord's failure to provide Lender notice as required hereunder shall not alter or affect Tenant's rights or obligations under the Ground Lease, nor extend any cure period afforded to Tenant under the Ground Lease, or entitle Tenant to damages or other remedies. Any notice, demand, request, or other instrument given by Landlord to Lender as required by the Ground Lease shall be delivered to Lender at the address specified below:

WELLS FARGO BANK, NATIONAL ASSOCIATION
1251 N. Eddy Street, Suite 203
South Bend, IN 46617
Attention: Manager

11. **Leasehold Mortgage.** As provided in Section IX of the Ground Lease, the parties acknowledge that Tenant shall have the right to encumber its leasehold interest in the Property under the Mortgage and Lender shall have all of the rights provided to a "Leasehold Mortgagee" (as defined in the Ground Lease) under the Ground Lease. In addition to the foregoing, Lender shall have the right to foreclose upon the leasehold estate pursuant to the terms of the Mortgage and if Lender or another third party ("Acquiring Party") acquires title to the leasehold estate pursuant to a foreclosure sale or an assignment or deed in lieu of foreclosure, said Acquiring Party shall be recognized and considered as the tenant under the Ground Lease and shall have all of the rights and benefits of Tenant thereunder.
12. **Notice of Leasehold Mortgage.** This Agreement constitutes the written notice of the existence of the Mortgage required to be given by Tenant to Landlord pursuant to Section IX(A) of the Ground Lease, and as such Lender shall be entitled to all benefits and protections granted to a Leasehold Mortgagee pursuant to the Ground Lease.
13. **Insurance and Condemnation Proceeds.** So long as the Loan remains outstanding, the provisions of the Mortgage shall govern the distribution of insurance proceeds and condemnation proceeds.
14. **New Lease with Lender.** If the Ground Lease is terminated for any reason, including, but not limited to, a rejection of the Ground Lease in connection with a bankruptcy of Tenant, Landlord shall enter into a new ground lease, substantially similar to the Ground Lease in accordance with the provisions of Section IX of the Ground Lease.
15. **No Amendment; Termination.** Landlord shall not materially modify or amend any of the terms or provisions of the Ground Lease, terminate the Ground Lease or accept a surrender thereof, unless the prior written approval of Lender has been obtained, which such approval shall not be unreasonably withheld in accordance with Section IX of the Ground Lease. Landlord agrees that no termination, surrender, amendment, restatement, modification or subordination of the Ground Lease shall be binding on Lender without its prior written consent.
16. **Personal Property and Subleases Subordinate.** Landlord agrees that Landlord's interest, if any, in and to any personal property owned by Tenant and located at the Property and any subleases entered into by Tenant for all or any portion of the Property and the rents, issues and profits therefrom is and shall remain subordinate to the lien of the Mortgage.
17. **No Bankruptcy.** No bankruptcy proceedings are pending against Landlord.
18. **Miscellaneous.** If there is a conflict between the terms of the Ground Lease and this Agreement, the terms of this Agreement shall prevail. The captions of the sections of this instrument are for convenience only and shall not have any interpretive meaning.
19. **Recording.** This instrument may be recorded in the applicable recording office in the County and State in which the Property is located.
20. **Counterparts.** This instrument may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

[END OF TEXT - SIGNATURE OCCURS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed as of the date and year first written above.

ATTEST:

**SHARON R. BOCK,
CLERK AND COMPTROLLER**

By: _____
Deputy Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

**LANDLORD:
PALM BEACH COUNTY, A POLITICAL SUBDIVISION
OF THE STATE OF FLORIDA, BY ITS BOARD OF
COUNTY COMMISSIONERS**

By: _____
Melissa McKinlay, Mayor

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
Director, Department of Airports

TENANT:

MSP Partners Realty, LLC,
a Florida limited liability company

By: _____
_____, its _____

ACKNOWLEDGMENT

STATE OF MICHIGAN }
COUNTY OF } ss.
}

The foregoing instrument was acknowledged before me this ____ day of _____,
2018, by _____, as the _____ of and on behalf of MSP Partners Realty, LLC, a
Florida limited liability company.

(SEAL)
Print Name: _____
County of: _____
State of: _____
My Commission _____
Expires: _____

LENDER

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____
Kerry A. Stephens
Vice President

ACKNOWLEDGMENT

STATE OF MICHIGAN }
 } ss.
COUNTY OF }

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Kerry A. Stephens, as the Vice President of and on behalf of Wells Fargo Bank, National Association.

(SEAL)
Print Name: _____
County of _____
State of _____
My Commission _____
Expires: _____

EXHIBIT A
LEGAL DESCRIPTION

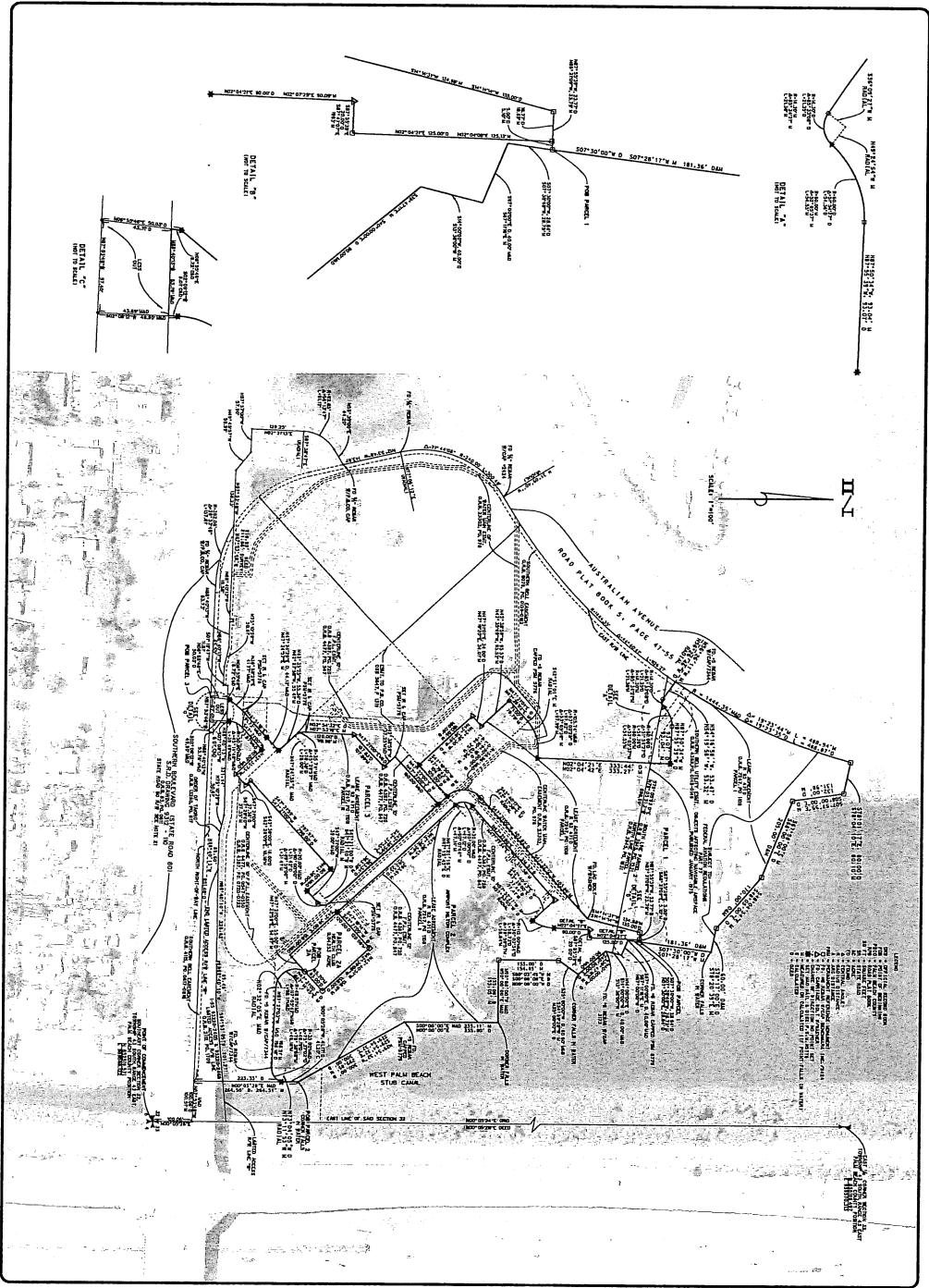
[ATTACHED]


Ground Lease Estoppel Certificate and Agreement
AU# 0111901 – Obligor # _____
Facility # _____ - Deal # 1767177

1

Exhibit A-1

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



PROJECT NO. 201000000	SHEET 2	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	NO. 1	REVISION	BY	DATE
						1. PRELIM COMMENTS	NM	7/1/00
DRAWN BY CHECKED BY APPROVED BY FIELD BOOK NO. TBS W					COLLET P - 200			
<div> PALM BEACH COUNTY ENGINEERING AND PUBLIC WORKS ENGINEERING SERVICES 3300 NORTH JOG ROAD WEST PALM BEACH, FL 33411</div>								