

# Memorandum



**Date:** July 24, 2007

**To:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

Agenda Item No. 8(F)(1)(A)

**From:** George M. Burges  
County Manager

A handwritten signature in black ink, appearing to read "G. Burges", written over the printed name of the County Manager.

**Subject:** Authorization to advance the purchase the MLK Office Building at 2525 NW 62 Street, Miami, FL from BAC Funding Corporation for a total amount of \$27,323,595.39 and to lease approximately 3,903 square feet of retail space on the ground floor of the MLK Building to BAC Funding Corporation for 30 years.

## Recommendation

It is recommended that the Board approve the attached Contract for Sale and Purchase in Lieu of Condemnation (Attachment 1) in the amount of \$27,323,595.39 and the attached Lease Agreement (Attachment 2) between Miami-Dade County and the BAC Funding Corporation (BAC), a Florida not-for-profit corporation, for the Dr. Martin Luther King, Jr. (MLK) Office Building located at 2525 N.W. 62 Street, Miami, Florida. This item advances terms contained within an existing Installment Sales Agreement with the BAC in order to achieve \$4.07 million of savings by assuming ownership at this time.

## Scope

The MLK Office Building, located in Commission District 2, has an impact on both the district and the County as a whole.

## Funding Source/ Fiscal Impact

Permanent financing for this item (\$27 million) was included in the Series 2007 Capital Asset Acquisition Bonds authorized by the Board on March 20, 2007 (Ordinance 07-51, R-342-07) with the balance (\$323,595.39) to be funded with available interest earned on the bond proceeds and the Capital Outlay Reserve. Debt service payments and the annual operating expenses of the facility are budgeted and appropriated annually through the departmental rent budgets of the building tenants. The fiscal impact of this item is estimated to result in a net present value savings of \$4.07 million to the County over the next seven years.

## Track Record/Monitor

The BAC has no history of non-compliance with the County, and as it specifically relates to this item, the BAC has met all conditions of its current agreements with the County and has constructed and operated the MLK Office Building with no deficiencies in service to the County either in delivering the completed facility or as a landlord.

The Monitor for this project is Leland Salomon, Chief, GSA Real Estate Development.

## Background

The BAC Funding Corporation, formerly known as the Business Assistance Center, was originally established in 1982 as a 501(c)(3) Florida not for profit community development corporation to help stimulate the economic growth of Miami-Dade County's Liberty City area. Since 1982, BAC Funding

Corporation and its affiliates (BAC Funding Consortium, Inc., BAC Urban Initiatives, Inc.) have extended commercial credit to African-American owned businesses, primarily in the form of asset-based revolving credit lines and joint venture agreements. The BAC Board of Directors is chaired by Ronald E. Frazier, who is also the President and Chief Executive Officer of Ronald E. Frazier and Associates, Architects. A complete list of the current Board members of the BAC is included herein (Attachment 3).

Resolution R-482-97, adopted by the Board on May 6, 1997, directed that the County Manager develop a proposal for the development of County facilities at the MLK or Overtown Stations (Attachment 4). Subsequently, on July 17, 1997, the County received an unsolicited proposal from BAC as part of a joint venture to renovate the existing Metrorail parking garage and construct an office building for the County at the MLK Metrorail Station (Attachment 5). On April 21, 1998, a report outlining this unsolicited proposal was presented to the Board (Attachment 6). This report indicated that while staff had concerns regarding the proposal as submitted, it merited further consideration. The report indicated that at the Board's direction, County staff would negotiate with BAC and a recommendation would be brought to the Board. The report was accepted.

On December 15, 1998, the County Manager submitted a follow-up report to the Board of County Commissioners (Attachment 7). This report included a detailed, conceptual term sheet for a lease-purchase agreement and outlined the benefits to the County. The financial analysis indicated that based on the terms contained therein, entering into a transaction on the proposed facility would yield a lower net present value cost by leasing to own the proposed facility relative to remaining in an equivalent amount of private leased space already funded in the budget at that time. The report recommended proceeding with a proposed land lease with BAC, as well as a Lease-Purchase Agreement with the joint venture. The report was accepted.

The proposer went before the Industrial Development Authority (IDA) on February 23, 1999 to seek financing for the construction of the office facility and related parking improvements. Subsequent to its review of the project details, the IDA unanimously passed a resolution to authorize the issuance of an amount not to exceed \$21.75 million to finance the proposed office building and related parking improvements subject to certain terms and conditions under which the bonds would be sold (Attachment 8).

On July 13, 1999, the Board approved Resolution Numbers R-828-99, R-829-99 and R-830-99, which authorized the County to enter into a Ground Lease, a Development Agreement (Contract) and a Lease Purchase Agreement for a proposed office building to be used by the County at the Dr. Martin Luther King, Jr. Metrorail Station with the BAC. It should be noted that the original joint venture was not a party to these agreements, but was separately engaged and paid as a contracted developer and construction manager by the BAC as owner through a separate agreement between those parties within the original project budget.

Subsequent to Board approval of the three agreements committing the BAC and the County to the development, on March 6, 2000, the Federal Transit Administration approved the lease of the MLK site for the project (Attachment 9). The BAC obtained a letter ruling on the project's not-for-profit status from the Internal Revenue Service on May 1, 2000 (Attachment 10). On July 5, 2000, the Florida Department of Transportation approved the lease of the subject site (Attachment 11). On July 6, 2000, the Board approved Resolution Number R-739-00 approving the issuance of the IDA Bonds (Attachment 12). Finally, on September 19, 2000, the Board adopted Ordinance Number 00-116, approving the form of a County guarantee securing certain debt obligations pertaining to the MLK Development and the use of an Installment Sales Agreement in place of the previously approved Lease

Purchase Agreement (Attachment 13). The bonds were issued to finance the project on October 25, 2000. Under the Installment Sales Agreement with BAC, the County commenced paying the debt service portion of the installment sale rent on October 1, 2002 and at the end of a 30 year financing term, the County will own the building.

The item before the Board today, replaces the existing Installment Sales Agreement with the Contract for Sale and Purchase in Lieu of Condemnation (New Contract), which includes the same purchase terms previously approved by the Board except that the purchase is advanced to the current fiscal year and is in lieu of condemnation. The approval of this item will, at the time of closing, void both the existing Installment Sales Agreement and the existing Ground Lease upon which the improvement is located.

### **MLK Office Building**

The Dr. Martin Luther King, Jr. Office Building was completed in FY 2003-04, and houses the administrative offices of the Department of Solid Waste Management, the Department of Human Services, and the Corrections and Rehabilitation Department. Team Metro occupies an outreach office on the ground floor serving residents in that portion of Unincorporated Miami-Dade County. From its inception, this project has received scrutiny and review at many levels. Eight years ago the project was demonstrated to be financially positive and represented an excellent value to the County with a shell building (not including County interior build-out requirements, furnishings or equipment) delivered in 2004 at a construction cost (through the current debt service) of \$108.75 per square foot. As a result of this development, the MLK Metrorail Station has experienced a 27.3 percent increase in daily boardings over FY 2000-01 and the previously dilapidated, vacant parking garage is now over two-thirds occupied each weekday. The building is a high quality facility that provided for the efficient consolidation of several county offices with direct public transit access. This public-private joint development has brought activity, employment and enhanced development to an area of Liberty City previously overlooked for development opportunities.

The Installment Sales Agreement approved by the Board provides for the purchase of the MLK Office Building for \$1.00 plus usual and customary closing expenses at the end of the current financing term which expires September 30, 2030. The County, through its annually budgeted and appropriated rent payment for each department occupying the facility, pays for the BAC's current debt service, operating expenses, and a differential payment in the form of rent (the differential payment is the stipulated rent less debt service and operating expenses). This differential payment, approved under the original Installment Sales Agreement, is currently \$2.07 per square foot per year (\$379,583.64 per year) and is required to be used by the BAC to further its not-for-profit purposes as defined under its articles of incorporation. Each month the debt service portion plus the differential portion of the rent are transferred from the County to the Bond Trustee based on a semi-annual payment notification sent to the County by the Bond Trustee who disburses the funds according to the bond indentures. The operating expense portion of the rent is paid directly to the BAC by the County based on an annually proposed building operating budget prepared by the BAC and reviewed by County staff. Since the differential payment commenced March 11, 2004 (the County's initial occupancy), the BAC has used \$717,000 as collateral for a working capital loan funding construction expenses absorbed under the existing agreements with the County. The remainder of the differential earned through June 2007 (\$476,000) has been used to fund BAC operating expenses including interest on the loan and allowable activities under its articles of incorporation. The County's March 2007 monthly installment payment (the monthly total of the County's debt service payment, operating expense and differential payment) for the facility was \$371,927 or on an annualized basis, \$4.463 million, which equates to \$24.34 per square foot.

**PURCHASE ADVANCE**

Staff has determined it will be less expensive to operate the MLK Office Building under County ownership and management, therefore an early purchase in lieu of condemnation is recommended. Since the County's initial occupancy in March 2004 at a lease rate of \$17.00 per square foot for debt service, operating expenses and the differential, BAC's operating expenses for the MLK Building have increased at a rate faster than originally assumed in 1999.

BAC's costs are higher due to three-fold increases in the cost of obtaining the County-required insurance and higher expenses for certain service contracts that the County can perform with in-house staff. County salaries are approximately \$90,000 less than those projected by the BAC, and there are substantial savings in eliminating the existing management fees. BAC has budgeted an operating cost of \$14.42 per square foot for calendar year 2007. The General Services Administration has estimated \$11.49 per square foot for the same level of service through September 2008. When comparing operating cost payments to the existing budget from August 1, 2007 to the end of the 10<sup>th</sup> occupancy year (2014), the net present value savings estimated to accrue to the County is \$4.07 million.

As negotiated in the original Installment Sales Agreement, the County currently has the option to purchase the MLK Office Building any time after the end of its 10<sup>th</sup> year of occupancy (March 31, 2014) by either assuming or refinancing the existing debt and paying BAC 100 percent of the net present value of the annual differential payment the BAC would have received to the end of the original financing term, inflated at three percent per remaining financing term year from the closing date of the early purchase. The differential payment portion of the Purchase Price has been calculated based on this formula to be \$6,977,079 and will be disbursed to the BAC through the closing under the auspice and direction of the Office of the County Attorney. The New Contract also fulfills the original intent of the Board to foster economic development in approving this facility purchase to ensure that the County is able to properly account for the use of funds by requiring a semi-annual report of the use of the differential and which is subject to audit by the appropriate County department (see Section 2 (E) of Attachment 1). The BAC has provided a schedule of uses outlining those programs based on its Charter that will benefit from this payment (Attachment 14).

The Development Agreement approved by the Board provided a mechanism for the initiation and settlement of change requests by either BAC or the County as construction of the building proceeded. Staff has negotiated resolution of the remaining outstanding change order from the construction phase of this project in the amount of \$526,516.30, consisting of two parts: \$441,467.32 for the change order and \$85,048.98 for interest accrued thereon calculated from December 1, 2004 to August 1, 2007. The interest portion of the payment is based on bank records provided by BAC. This change request was originally submitted to the County for \$878,132.18 for required life safety modifications resulting from the County's build-out specification and furnishings plan. It included design, construction costs, construction management, insurance, contractor and developer overhead and profit as provided within the Contract, time delay, and building operating expenses incurred during the delay period. This amount was subsequently negotiated to \$441,467.32. However, because of the protracted negotiation period on the amount, BAC has requested, and County staff recommends, that it be reimbursed interest expense since BAC had to borrow to fund the changes and carry a loan balance until this point in time.

The benefit to the County by advancing the ownership of the building at this time is clear. BAC will provide the County with a Warranty Deed in lieu of the County filing a condemnation action. Finally, and in accordance with the existing Installment Sales Agreement, the County has agreed to lease to BAC

the approximately 3,903 square foot space occupied by the current food court for \$1.00 per year, including utilities and common area expenses for 30 years from the closing date of this transaction. The purpose of this below market rate rent is to provide an ongoing resource for BAC administrative offices or to house developing minority businesses in furtherance of BAC's articles of incorporation. Should the space be used for any other purpose or should the BAC cease to exist for purposes defined under its current articles of not-for-profit incorporation, the lease shall be immediately voided.

The following summarizes the purchase detail of the item before the Board based on a closing date of August 1, 2007.

Estimated Refinance of Existing Debt	\$19,520,000.00
Payment of Differential Previously Approved by the Board	6,977,079.09
Estimated Usual and Customary Closing Costs	300,000.00
Life Safety Change Item including Accrued Interest Thereon	<u>526,516.30</u>
Total	<u>\$27,323,595.39</u>

On May 22, 2007, the County issued the Capital Asset Acquisition Bonds, Series 2007, which included \$19.520 million as the refunding portion for the Industrial Development Bonds (IDB) previously issued by BAC. Tax law requires that the IDB's be called within 90 days of the issuance of the Series 2007 Bonds. If this closing does not occur, the County will need to defease a portion of the 2007 Bonds by placing sufficient funds into an escrow account for 10 years until the call date of the Bonds. It is estimated that the additional cost of the escrow is approximately \$300,000. In addition the projected savings with the County operating the building will not be achieved.

Based on the above we are asking that this item be waived on to the Board of County Commissioners next scheduled meeting on July 24, 2007.

  
Assistant County Manager

cmo16707



# MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

DATE: July 24, 2007

FROM: R.A. Cuevas, Jr.  
Acting County Attorney

SUBJECT: Agenda Item No. 8(F)(1)(A)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(F)(1)(A)  
07-24-07

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE EXECUTION OF THE CONTRACT FOR SALE AND PURCHASE IN LIEU OF CONDEMNATION FOR ACQUISITION OF THE MARTIN LUTHER KING BUILDING AT 2525 NW 62 STREET, MIAMI, FLORIDA LOCATED ON COUNTY OWNED PROPERTY FOR AN AMOUNT NOT TO EXCEED \$27,323,595.39; AND THE EXECUTION OF THE LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND BAC FUNDING CORPORATION FOR APPROXIMATELY 3,903 SQUARE FEET OF GROUND FLOOR AREA LOCATED IN THE MARTIN LUTHER KING BUILDING; AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE THE ACQUISITION AND LEASE AUTHORIZED BY THE BOARD; AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby authorizes the execution of the Contract for Sale and Purchase in Lieu of Condemnation for acquisition of the Martin Luther King Building at 2525 NW 62 street, Miami, Florida located on county owned property for an amount not to exceed \$27,323,595.39; and the execution of the Lease Agreement between Miami-Dade County and BAC Funding Corporation for approximately 3,903 square feet of ground floor area located in the Martin Luther King Building; authorizes the County Mayor or his designee to take all actions necessary to effectuate the acquisition and lease authorized by the Board; and authorizes the County Mayor or his designee to exercise any and all other rights conferred therein.

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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:


Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 24th day of July, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

HARVEY RUVIN, CLERK

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

Approved by County Attorney as  
to form and legal sufficiency. 

Thomas Goldstein

**CONTRACT FOR SALE AND PURCHASE IN LIEU OF CONDEMNATION**

This Contract for Sale and Purchase is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007 by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "Buyer" and BAC FUNDING CORPORATION, a Florida not-for-profit corporation, hereinafter referred to as "Seller."

WITNESSETH, that for and in consideration of the mutual covenants contained herein, the Buyer and Seller agree as follows:

1. REALTY. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller that certain building improvement upon the real property, located in Miami-Dade County, Florida, which real property is legally and more specifically described in Exhibit "A", together with all tenements, hereditaments, privileges, servitudes, and other rights appurtenant to the building, if any (collectively, the "Building"), and any other fixtures, and other improvements thereon, if any, all fill and top soil thereon, if any, all oil, gas and mineral rights possessed by Seller, if any, and all right, title and interest of Seller in and to any and all streets, roads, highways, easements, drainage rights, or rights-of-way, appurtenant to the Building, if any, and all right, title and interest of Seller in and to any and all covenants, restrictions, agreements and riparian rights as same may apply to and benefit the Building, if any. Notwithstanding the foregoing, the restaurant equipment and tenant improvements itemized in Exhibit "B" shall be excluded from the sale and remain the property of the Seller for the Term of the Lease (ATTACHMENT "B").

2. PURCHASE PRICE. Buyer agrees to pay a purchase price for the Building of \$27,323,595.39, by County check or wire transfer of U.S. funds. The purchase price, which shall be paid at closing and is subject to other adjustments and prorations provided for herein. The purchase price includes the value of the Building, along with any other right, title and/or interest in any rights or matters related to the Building including the following items:

A. Differential Amount: Included in the purchase price as described above, the sum of Six Million Nine Hundred and Seventy Seven Thousand and Seventy-Nine Dollars and Nine Cents (\$6,977,079.09)\* shall be paid to Seller at time of closing as the differential amount or payment due under the terms of this Contract for Sale and Purchase agreement.

B. Final Change Order: Included in the purchase price as described above, the sum of Four Hundred Forty-one Thousand Four Hundred Sixty-Seven Dollars and Thirty-Two Cents (\$441,467.32) shall be paid to the Seller at time of closing as the final change order amount or payment due under the terms of this Contract for Sale and Purchase agreement.

C. Accrued Interest: Included in the purchase price as described above, the sum of Eighty Five Thousand Forty Eight Dollars and Ninety-Eight Cents (\$85,048.98) shall be paid to the Seller at time of closing as the total amount of accrued interest due under the terms of this Contract for Sale and Purchase agreement. Should the closing not take

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Ref 9/13/07

place as anticipated on August 1, 2007 due to the fault of the County, the interest shall be recalculated to adjust for any lesser or greater number of days until the closing.

D. Refinance of Existing Debt: Included in the purchase price as described above, the sum of Nineteen Million, Five Hundred and Twenty Thousand Dollars and no/100 (\$19,520,000.00) representing the total amount required to refinance the existing debt under the terms of this Contract of Sale and Purchase agreement.

E. Miscellaneous Closing Costs: Included in the purchase price as described above, the sum of Three Hundred Thousand Dollars and no/100 (\$300,000) of which One Thousand Five Hundred Dollars (\$1,500.00) shall be paid to the Seller at the time of closing to be applied towards its legal expenses, and Three Thousand Two Hundred Dollars and no/100 (\$3,200.00) shall be paid to the Seller to be applied towards its cost of appraising the property. The Balance shall be used by the Buyer towards its closing costs under the terms of this Contract of Sale and Purchase agreement.

\* It is hereby agreed by BAC Funding Corporation that all of the proceeds will be invested in programs supported by BAC Funding Corporation as required by its Articles of Incorporation. In addition, BAC Funding Corporation agrees to provide the County with a semi-annual report, subject to County audit, as to the disposition of all the funds.

3. INTEREST CONVEYED. Seller is the record owner of the Building and agrees to convey good, marketable and insurable title by Warranty Deed.

4. AD VALOREM TAXES. Buyer hereby covenants that it is a political subdivision of the State of Florida and is exempt from payment of ad valorem taxes. Seller covenants that it was granted a six (6) year grace period and waiver for the payment of ad valorem taxes for this Building and thus is not responsible for ad valorem taxes as they relate to the transfer of title for the Building. However, if it is found that ad valorem taxes are due by Seller it shall be Seller's responsibility to comply with Section 196.295, Florida Statutes by placing the appropriate amount of pro rata taxes to the day of closing, if any are due, and any delinquent taxes, if any are due, in escrow with the Miami-Dade County Tax Collector.

5. TITLE INSURANCE. Buyer may, within fifteen (15) business days of the effective date of this Contract, obtain a marketable title insurance commitment and furnish a copy to the Seller. Said commitment shall show a good, marketable and insurable title to the Building, if applicable, in the Seller's name. Buyer shall have ten (10) business days from receipt of title commitment to inspect said title documents and report defects, if any, in writing to the Seller. Buyer may at Buyer's expense obtain an owner's marketable title insurance policy (ALTA Form "B") from a title insurance company licensed by the State of Florida ("Title Company") in the amount of the purchase price. In addition, the policy shall insure title to the Building, if applicable, for the period between closing and recording of the Bill of Sale. If the title commitment shows title to the Building to be unmarketable and uninsurable, then this Contract shall be rendered null and void and both Buyer and Seller shall be released of all obligations hereunder, except that Buyer may waive any defects and proceed with closing at Buyer's option.

option.

6. **INSPECTIONS/HAZARDOUS MATERIALS.** Buyer acknowledges the receipt and acceptance of the Report of Preliminary (Phase I) Environmental Site Assessment prepared by EBS Engineering, Inc., 6216 NW 170 Terrace, Miami Florida, 33015 dated August 4, 1999 and agrees to purchase the Building "As Is" with regard to Hazardous Materials. The term "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste, it shall also include solid waste or debris of any kind.

7. **SURVEY.** Seller, at Buyer's sole cost and expense and not less than 30 days prior to closing, deliver to Buyer, a current, certified boundary survey of the Property prepared by a professional land surveyor licensed by the State of Florida. The survey shall be certified to the Buyer, the Title Company and the Seller. The date of certification shall be within sixty (60) days before the Closing date, unless this sixty (60) day time period is waived by Buyer and by the Title Company for purposes of deleting the standard exceptions for survey matters and easements or claims of easements not shown by the public records from the owners' title policy. The survey shall contain a certification of the number of square feet and calculated acreage contained in the Real Property, less any dedicated right of way thereon. If the survey shows any encroachment on the Real Property or that any improvements on the Real Property encroach on the land of others, the same shall be regarded as a title defect. The legal description in the survey shall be subject to Seller's and Buyer's approval.

8. **RIGHT TO ENTER BUILDING.** Seller agrees that Buyer and its agents shall, upon reasonable notice, have the right to enter the Building for all lawful and agreed upon purposes in connection with this transaction provided the Buyer shall indemnify and hold Seller harmless for damage or injury caused by Buyer and its agents subject to all limitations of Section 768.28, Florida Statutes. Buyer shall have the right to inspect all parts of the Building's interior and exterior. Buyer shall not in the course of such entry make any invasive tests, alterations or improvements to the Building, except with the express written consent of Seller. Buyer hereby agrees to indemnify, protect and hold harmless Seller from and against any and all claims, demands, losses, costs, damages to the balance of the parent tract. If Closing does not occur, Buyer shall repair and restore the Property to the condition existing prior to any test or construction on the site.

9. **BUILDING DEFICIENCIES OR INCOMPLETE CONSTRUCTION ITEMS.** Buyer and Seller agree that there are no apparent defects in the Building. Notwithstanding the foregoing, Seller warrants and guarantees to repair any further latent defect(s) which are discovered by Buyer within one year after the closing of this sale.

10. **TENANCIES/EXISTING AGREEMENTS.** The parties agree to the following upon a successful closing: (i) the Lease Agreement and the Sub-Leases for the food court attached as Exhibit "C" shall become effective upon its execution by the parties ("Subsequent Lease"); (ii) the Development Contract for Renovation of Existing Parking Garage and Construction of Office Building Agreement dated July 13, 1999 and the Installment Sale Agreement and the Ground Lease, both between the parties and

dated as of October 1, 2000, shall terminate; (iii) the \$21,570,000 Miami-Dade County Industrial Development Authority Industrial Development Revenue Bonds (BAC Funding Corporation Project), Series 2000A ("Bonds") shall be will be redeemed in full and as a result, the Loan Agreement dated as of October 1, 2000 between the Seller and the Miami-Dade County Industrial Development Authority ("Authority") shall terminate and the related Promissory Note from the Seller to the Authority shall be cancelled and the Taxable Bonds have been redeemed; (iv) the Guaranty dated as of October 1, 2000 from the County to First Union National Bank, trustee for the Bonds, shall terminate; and (v) a satisfaction of the Leasehold Mortgage and Security Agreement delivered with respect to the Bonds shall be recorded.

The parties agree that the Seller has no other interest in the Property or the Building other than the Subsequent Lease and Leasehold Improvements as defined in the Lease and with the legal defeasance of the Bonds, has no other obligations with respect to the Bonds.

11. PRORATIONS: The parties hereby agree that typical pro-rations (such as, but not limited to, solid waste service, utility service, water and sewer costs, electricity) normally considered being part of closing costs and expenses shall not be prorated and such costs and expenses shall be borne solely by the Buyer.

12. LIENS. All liens of record, including certified municipal and county liens, as well as special assessments, if any, shall be paid in full at or before closing by the Seller. If a pending lien has been filed against the subject Property which has not been certified as of the date of closing, and the work and improvements for which the lien was filed have been completed prior to the closing, despite the fact that the pending lien has not been certified, such lien shall be paid by the Seller.

13. CLOSING. The closing of this transaction shall be completed within thirty (30) days of the Effective Date of this contract unless otherwise extended, as mutually agreed upon by both Buyer and Seller or as otherwise provided herein. The precise date, time, and place of closing shall be set by Buyer and Seller. The parties hereby agree that each party shall be responsible for their respective costs associated with transfer and/or conveyance of the Building, unless otherwise agreed to herein. In addition, Buyer agrees that it shall pay, at closing the cost of an appraisal on the Building, along with the cost associated with the Seller retaining an attorney to review contracts relating to the conveyance of the Building to Buyer, up to and including the amount of One Thousand Five Hundred Dollars and no/100 (\$1,500.00) and Three Thousand Two Hundred dollars and no/100 (\$3,200.00) shall be paid to the Seller to be applied towards its cost of appraising the property.

14. TIME. Buyer and Seller mutually agree to fully and timely execute such papers as deemed necessary to complete the conveyance in accordance with the terms of this contract. Time is of the essence of this Contract. All obligations are subject to Acts of God or Nature or any other occurrence, which is beyond the control of Seller or Buyer.

15. **CONTRACT:** Seller acknowledges that this Contract is being entered in lieu of Buyer filing a condemnation lawsuit to take the Property as permitted under Article 23(a) of the Installment Sale Agreement dated October 1, 2000. Seller, therefore, agrees to provide at closing a fully executed warranty deed to Buyer in lieu of condemnation proceedings. In addition, Seller agrees to provide disclaimers signed by any and all Lessees and Sub-Lessees, disclaiming any and all right, title or interest in the Property including any right or entitlement to any compensation whatsoever from either Seller or Buyer for the taking of their leasehold interest. Seller and Buyer further mutually agree to fully and timely execute such other papers or documents deemed necessary to complete the conveyance in accordance with the terms of the Contract. Time is of the essence of this Contract. All obligations are subject to Acts of God or Nature or any other occurrence, which is beyond the control of Seller or Buyer.

16. **BROKERS.** Buyer and Seller warrant that neither party has hired a broker or agent and that there are no real estate fees or commissions due pursuant to this transaction to any real estate broker or agent shall be paid by the Seller. Sellers shall hold Buyer harmless from and against any and all claims, liability, cost, expense, damages, judgments and causes of action, including reasonable attorney's fees, based on real estate commissions claimed due pursuant to this transaction to any real estate broker or real estate agent.

17. **EXPENSES.** Buyer shall be responsible for recording fees on the Warranty Deed and shall be responsible for the payment of Florida Documentary Stamp Taxes and Miami-Dade County Surtax on the Warranty Deed.

18. **LOSS.** All risk of loss to the Building shall be borne by Seller until transfer of title.

19. **ACCESS.** Seller warrants and represents that there is legal ingress and egress to the Building being purchased under this contract.

20. **POSSESSION.** Seller shall deliver possession of the Building and keys to all locks, if any, to the Buyer at closing.

21. **DEFAULT.** If either party defaults under this Contract, then the other party may waive the default and proceed with closing without adjustment to the purchase price, in which event any and all claims with respect to such default shall be deemed extinguished, or either party may seek specific performance. In no event shall either party be liable for any damages (actual, special consequential, punitive or otherwise) for any default under this Contract.

22. **LITIGATION.** In the event of any litigation arising out of this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs from the other party upon final court judgment, including appellate proceedings.

23. **DISCLOSURE.** Seller warrants that there are no facts which materially and adversely affect the physical condition and present use of the Building which have not been disclosed by Seller to Buyer or which are not readily observable to Buyer or which Buyer cannot discover during customary due diligence.

24. **SUCCESSORS IN INTEREST.** This Contract will ensure to the benefit of and be binding upon, and is intended solely for the benefit of the parties hereto, and their respective heirs, personal representatives, successors, and assigns; and no third party will have any rights, privileges or other beneficial interests herein or hereunder.

25. **GOVERNING LAW.** This Contract is governed by and will be construed in accordance with the laws of the State of Florida, and in the event of any litigation concerning the terms of this Contract; proper venue thereof will be in Miami-Dade County.

26. **INVALID PROVISIONS.** In the event any term or provision of this Contract is held illegal, unenforceable or inoperative as a matter of law, the remaining terms and provisions will not be affected thereby, but will be valid and remain in force and effect, provided that the inoperative provision (s) are not essential to the interpretation or performance of this Contract in accordance with the clear intent of the parties.

27. **RECORDING.** This Contract or notice thereof may be recorded by Buyer in the minutes of the Clerk of the Board of County Commissioners Miami-Dade County, Florida, but shall not be recorded in the official public records of the Clerk of the Court of Miami-Dade County, Florida.

28. **ASSIGNMENT.** Neither this Contract nor any interest therein shall be assigned by Buyer or Seller without the express written consent of each other.

29. **ENTIRE AGREEMENT.** This Contract contains the entire agreement between the parties hereto as it pertains to the subject matter contained herein and shall supersede and take precedence over any and all prior and contemporaneous agreements and understandings between the parties hereto.

30. **EFFECTIVENESS.** The effectiveness of this Contract is contingent upon approval by the Miami-Dade County Board of County Commissioners ("Board"), as well as public hearing approval pursuant to Section 33-303 of the Code of Miami-Dade County, if applicable, and provided no motion to reconsider such approval is made at the next regularly scheduled meeting of said Board. If a motion to reconsider approval hereof is made within such time, then the Effective Date hereof shall be the date of the next regularly scheduled meeting of the Board, at which next regularly scheduled meeting, provided a motion to reconsider has been filed, the Board shall reconsider its prior approval hereof; provided further, however, that such initial Board approval or subsequent reconsideration and approval ratification shall not be effective until the earlier of; a) the date the Mayor of Miami-Dade County indicates approval of such Commission action; or b) the lapse of ten (10) days without the Mayor's veto (the "Effective Date").

In the event that the Mayor vetoes the Board approval, the Board approval shall not be effective in the absence of an override of the Mayor's veto that shall be at the next regularly scheduled meeting of the Board after the veto occurs, in which case such override date shall be the Effective Date. The actions of the Commission and the Mayor in connection with the award or rejection of any contract rests within their sole discretion. The date of such approval of the Contract by Buyer, as set forth above is the Effective Date of this Contract.

31. RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in the building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit.

32. NOTICE. All communications regarding this transaction shall be directed to:  
as to Buyer:

Miami Dade County  
Director  
General Services Administration  
111 NW 1<sup>st</sup> Street, Suite 2410  
Miami, Florida 33128

as to Seller:

Ronald E. Frazier, Chairman  
BAC Funding Corporation  
6600 NW 27<sup>th</sup> Avenue  
Miami, FL 33147

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, the Buyer and Seller have duly executed this Contract as of the day and year above written.

**BUYER:**

**MIAMI-DADE COUNTY**

**ATTEST:**

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

By: \_\_\_\_\_  
County Manager

Date: \_\_\_\_\_

**SEAL:**

Approved as to form  
and legal sufficiency.

\_\_\_\_\_  
Assistant County Attorney

[SIGNATURES CONTINUE ON NEXT PAGE]

SELLER:

BAC FUNDING CORPORATION

*[Signature]*  
RONALD E. FRAZIER

By: CHAIRMAN / CEO

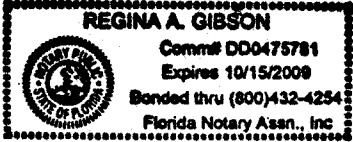
*[Signature]*  
Witness  
Edwin L. Miller  
Print

*[Signature]*  
Witness  
JAMES L. WELLS  
Print

STATE OF Florida  
COUNTY OF Dade

I HEREBY CERTIFY, that on this 31 day of May, 2007, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Ronald E. Frazier BAC, personally known to me, or proven, by producing the following identification: \_\_\_\_\_ to be the person who executed the foregoing instrument freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official Seal at 4:30p, in the County and State aforesaid, on this, the 31 day of May, 2007



\_\_\_\_\_  
(SEAL)

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

NOTARY SEAL / STAMP  
*Regina A. Gibson*

Notary Public, State of Florida  
My Commission expires 10/15/09

*ref 5/31/07*

**LEASE AGREEMENT  
RETAIL SPACE**

THIS AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, herein sometimes designated or referred to as the "LANDLORD," and BAC FUNDING CORPORATION, a Florida not for profit corporation, hereinafter referred to as the "TENANT,"

**WITNESSETH:**

That LANDLORD, for and in consideration of the restrictions and covenants herein contained, hereby leases to TENANT and TENANT hereby agrees to lease from LANDLORD the PREMISES described as follows: Ground floor retail space containing approximately three thousand nine hundred and three (3,903) square feet (see Exhibit "A") ("PREMISES") at The MLK Office Building, located at 2525 NW 62<sup>nd</sup>. Street, Miami, FL ("Building").

TO HAVE AND TO HOLD unto said TENANT for a term of Thirty (30) years, commencing upon approval of the Board of County Commissioners and acceptance of the PREMISES, and terminating Thirty (30) years thereafter, for a total rental of One Dollar (\$1.00) per year payable in full, in advance, at the beginning of the Term to the Board of County Commissioners, c/o General Services Administration, 111 N.W. First Street, Suite 2460, Miami, Florida 33128-1907, or at such other place and to such other person as LANDLORD may from time to time designate in writing, as set forth herein.

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

**ARTICLE I  
USE OF PREMISES**

The area of the PREMISES shall be used by TENANT either as administrative or operating

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*[Handwritten signature]*

offices or rented to other persons which would be in furtherance of TENANT's charitable purpose. Tenant shall be permitted to conduct its business during the hours of 6:00AM through 8:00 PM Monday through Saturday.

**ARTICLE II**  
**CONDITION OF PREMISES**

LANDLORD acknowledges that TENANT has constructed leasehold improvements and provided furniture, fixtures and equipment (Exhibit "B") to the Premises. TENANT hereby accepts the PREMISES in the condition they are in at the beginning of this Lease Agreement. The LANDLORD agrees to work with the TENANT to provide access to the PREMISES which will allow the TENANT to serve the public at times other than when the Building is open provided that whatever arrangement LANDLORD and TENANT agree upon will not interfere with the security of the Building. All decisions affecting the security of the Building are in the sole and absolute discretion of the LANDLORD.

**ARTICLE III**  
**UTILITIES**

The LANDLORD, during the term hereof, shall pay all charges for water, waste water, solid waste and electricity used by the TENANT and shall provide janitorial and custodial services and security service, as normally provided to the other tenants in the Building. Specifically excluded from these expenses are costs related to the operating of the TENANT's business. As an example, but not limiting this restriction to the operating of a restaurant, if the TENANT were to keep its PREMISES open for periods longer than normal business hours (6:00AM until 8:00PM Monday through Saturday) the costs of operating the PREMISES for any additional time are not to be paid by the LANDLORD.

**ARTICLE IV**  
**MAINTENANCE**

The LANDLORD agrees to maintain and keep in good repair, condition, and appearance, during the term of this Lease Agreement or any extension or renewal thereof, the exterior and interior of the

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*10/1/06*

Building.

TENANT agrees to maintain and keep in good repair, condition, and appearance, during the term of this Lease Agreement or any extension or renewal thereof, the interior of the PREMISES. TENANT shall be responsible for and shall repair any damage caused to the PREMISES as a result of TENANT or TENANT's agents, employees, invitees, or visitors use of the PREMISES, ordinary wear and tear excepted. LANDLORD shall notify TENANT after discovering any damage which TENANT is responsible for repairing and TENANT shall make the necessary repairs promptly after said notice. TENANT shall be permitted to make alterations and/or improvements to its Premises provided that:

- a) Prior to commencement of any work TENANT shall receive the written permission of the LANDLORD which permission shall not be unreasonably withheld or delayed,
- b) That any work PERFORMED by the TENANT shall not interfere with the normal operations of the Building.
- c) That all work shall be paid for by the TENANT.

**ARTICLE V**  
**DESTRUCTION OF PREMISES**

In the event the PREMISES should be destroyed or so damaged by fire, windstorm, or other casualty to the extent that the PREMISES are rendered untenable or unfit for the purpose of TENANT, either party may cancel this Lease Agreement by the giving of thirty (30) days' prior written notice to the other. If either the PREMISES or the Building are partially damaged due to TENANT's negligence, but not rendered unusable for the purposes of this Lease Agreement, the same shall with due diligence be repaired by TENANT from proceeds of the insurance coverage and/or at its own cost and expense. If the damage shall be so extensive as to render such PREMISES unusable for the purposes intended, but capable of being repaired within thirty (30) days, the damage shall be repaired with due diligence by TENANT from the proceeds of the insurance coverage policy and/or at its own cost and expense. In the event that said PREMISES are completely destroyed due to TENANT's negligence, TENANT shall repair and reconstruct the PREMISES so that they equal the condition of the PREMISES on the date possession was given to TENANT. In lieu of reconstructing, TENANT shall

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reimburse LANDLORD all expenses incurred by LANDLORD in restoring the PREMISES to their original condition. The election of remedies shall be at the sole discretion of LANDLORD.

**ARTICLE VI**  
**ASSIGNMENT AND SUBLETTING**

Without the written consent of LANDLORD first obtained in each case, which consent shall not be unreasonably withheld or delayed, TENANT SHALL not sublet, except to the sub-lessees whose subleases are attached hereto as Exhibit "C", transfer, mortgage, pledge, or dispose of this Lease Agreement for the term hereof. Notwithstanding the forgoing, the Tenant shall not be relieved of its obligations or responsibilities under this Lease Agreement, including the payment of rent and any other expenses, in the event of a sub-lessee's default.

**ARTICLE VII**  
**NO LIABILITY FOR PERSONAL PROPERTY**

All personal property and leasehold improvements owned and placed or moved in the PREMISES above described shall be at the risk of TENANT or the owner thereof. LANDLORD shall not be liable to TENANT for any damage to said personal property unless caused by or due to negligence of LANDLORD, LANDLORD's agents or employees, subject to all limitations of Florida Statutes, Section 768.28.

**ARTICLE VIII**  
**SIGNS**

Signs will be of the design and form of letter to be first approved by LANDLORD, the cost of painting to be paid by TENANT. All signs shall be removed by TENANT at termination of this Lease Agreement and any damage or unsightly condition caused to PREMISES because of or due to said signs shall be satisfactorily corrected or repaired by TENANT. Notwithstanding the foregoing, all existing signs pertaining to the Premises on both the interior and exterior of the Premises and the Building are hereby approved and hereby recognized as the personal property of the TENANT.

**ARTICLE IX**

**LANDLORD'S RIGHT OF ENTRY**

LANDLORD or any of its agents shall have the right to enter said PREMISES during all reasonable working hours, upon the giving of twenty-four (24) hours' prior notice, to examine the same or to make such repairs, additions, or alterations as may be deemed necessary for the safety, comfort, or preservation thereof. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions which do not conform to this Lease Agreement.

**ARTICLE X**  
**PEACEFUL POSSESSION**

Subject to the terms, conditions, and covenants of this Lease Agreement, LANDLORD agrees that TENANT shall and may peaceably have, hold, and enjoy the PREMISES above described, without hindrance or molestation by LANDLORD.

**ARTICLE XI**  
**SURRENDER OF PREMISES**

TENANT agrees to surrender to LANDLORD, at the end of the term of this Lease Agreement or any extension thereof, said PREMISES in as good condition as said PREMISES were at the beginning of the term of this Lease Agreement, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted. This Article XI also applies to the TENANT's leasehold improvements and furniture, fixtures and equipment which are in the PREMISES at the end of the Term. Tenant, at LANDLORDS option, shall remove the leasehold improvements and furniture fixtures and equipment and make any and all repairs required to bring the PREMISES to its original condition of a vanilla shell.

**ARTICLE XII**  
**INDEMNIFICATION AND HOLD HARMLESS**

TENANT shall indemnify and hold harmless the LANDLORD and its officers, employees, agents and instrumentalities from any and all liability, losses, or damages, including attorney fees and costs of defense, which the LANDLORD or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising

*Re/*  
*5/21/07*

out of, relating to or resulting from the performance of the Lease Agreement by the TENANT or its employees, agents, servants, partners, principals or subcontractors. TENANT shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the LANDLORD, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. TENANT expressly understands and agrees that any insurance protection required by this Lease Agreement or otherwise provided by TENANT shall in no way limit the responsibility to indemnify, keep and save harmless and defend the LANDLORD or its officers, employees, agents and instrumentalities as herein provided.

LANDLORD shall indemnify and hold harmless the TENANT and its officers, employees, agents and instrumentalities from any and all liability, losses, or damages, including attorney fees and costs of defense, which the TENANT or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Lease Agreement by the LANDLORD or its employees, agents, servants, partners, principals or subcontractors. LANDLORD shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the TENANT, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. LANDLORD expressly understands and agrees that any insurance protection required by this Lease Agreement or otherwise provided by LANDLORD shall in no way limit the responsibility to indemnify, keep and save harmless and defend the TENANT or its officers, employees, agents and instrumentalities as herein provided except as provided for under Article XIII below.

**ARTICLE XIII**  
**LIABILITY FOR DAMAGE OR INJURY**

LANDLORD shall not be liable for any damage or injury which may be sustained by any party or person on the PREMISES other than the damage or injury caused solely by the negligence of LANDLORD, its officers, employees, agents, invitees, or instrumentalities, subject to all limitations of

*Handwritten initials/signature*

Florida Statutes, Section 768.28.

**ARTICLE XIV**  
**SUCCESSORS IN INTEREST**

It is hereby covenanted and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Lease Agreement shall extend to and be binding on the respective successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

**ARTICLE XV**  
**CANCELLATION**

**CANCELLATION BY LANDLORD:** The occurrence of any of the following shall cause this Lease Agreement to be terminated by the LANDLORD upon the terms and conditions also set forth below:

**A. Automatic Termination:**

- 1) Institution of proceedings in voluntary bankruptcy by the TENANT.
- 2) Institution of proceedings in involuntary bankruptcy against the TENANT if such proceedings continue for a period of ninety (90) days.
- 3) Assignment by TENANT for the benefit of creditors.

**B. Termination after fifteen (15) days written notice by the LANDLORD by certified or registered mail to TENANT for doing any of the following:**

- 1) Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if TENANT makes the required payment(s) during the fifteen (15) calendar day period following mailing of the written notice.
- 2) Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the ten (10) day period from receipt of written notice.

**C. Termination after fourteen (14) days from receipt by TENANT of written notice by certified or registered mail to the address of the TENANT as set forth below for:**

- 1) Non-performance of any covenant of this Lease Agreement other than non-payment of

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rent and others listed in A and B above, and failure of the TENANT to remedy such breach within the thirty (30) day period from receipt of the written notice.

D. A final determination in a court of law in favor of the LANDLORD in litigation instituted by the TENANT against the LANDLORD or brought by the LANDLORD against TENANT.

#### **ARTICLE XVI**

#### **OWNERSHIP OF LEASEHOLD IMPROVEMENTS AND FURNITURE FIXTURES AND EQUIPMENT**

Regarding TENANT's leasehold improvements and furniture, fixtures and equipment which are in the PREMISES at the end of the Term, Tenant, at LANDLORDS option, shall remove the leasehold improvements and furniture fixtures and equipment and make any and all repairs required to bring the PREMISES to its original condition of a vanilla shell. If LANDLORD shall not require such removal then the TENANT shall either remove the leasehold improvements and furniture fixtures and equipment and make any and all repairs required to bring the PREMISES to its original condition of a vanilla shell, or leave said leasehold improvements, furniture, fixtures and equipment which will be considered abandoned and which the LANDLORD may dispose of in its sole discretion.

#### **ARTICLE XVII** **NOTICES**

It is understood and agreed between the parties hereto that written notice addressed to LANDLORD and mailed or delivered to the Director, General Services Administration, 111 N.W. 1st Street, Suite 2460, Miami, Florida 33128-1907, shall constitute sufficient notice to LANDLORD, and written notice addressed to TENANT and mailed or delivered to the address of TENANT at 6600 NW 27<sup>th</sup>. Avenue, Miami, Florida 33147 shall constitute sufficient notice to TENANT to comply with the terms of this Lease Agreement.

Any change of address by one party shall be immediately transmitted to the other party. Notices provided herein in this paragraph shall include all notices required in this Lease Agreement or required by law.

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Key  
5/22/07

**ARTICLE XVIII**  
**INSURANCE**

Prior to occupancy, TENANT shall furnish to the Real Estate Management Section of Miami-Dade County, c/o General Services Administration, 111 N.W. First Street, Suite 2460, Miami, Florida 33128-1907, certificate(s) of insurance which indicate(s) that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Public Liability Insurance, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. MIAMI-DADE COUNTY must be shown as an additional insured with respect to this coverage.
- B. Automobile Liability Insurance, covering all owned, non-owned, and hired vehicles used in connection with the Lease Agreement in an amount not less than \$300,000 combined single limit for bodily injury and property damage.
- C. Workman's Compensation Insurance as required by Chapter 440, Florida Statutes.

The insurance coverage required shall include those classifications as listed in Standard Liability Insurance Manuals which most nearly reflect the operations of TENANT under this Lease Agreement.

The insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications as to management and financial strength:

The Company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition (1986 or later) of Best's Insurance Guide, published by A. M. Best Company, Oldwick, New Jersey, or its equivalent subject to the approval of the County Risk Management Division.

or

The Company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and must be members of the Florida Guaranty Fund.

Certificates will indicate that no modification or change in insurance shall be made without thirty (30) days' written advance notice to the certificate holder.

Compliance with the foregoing requirements shall not relieve TENANT of its liability and obligations under this Section or under the Indemnification and Hold Harmless Article, or any other

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portion of this Lease Agreement.

TENANT shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in full force for the duration of this Lease Agreement. If insurance certificates are scheduled to expire during the term of the Lease Agreement, TENANT shall be responsible for submitting new or renewed insurance certificates to the LANDLORD at a minimum of thirty (30) days in advance of such expiration.

**ARTICLE XIX**  
**PERMITS, REGULATIONS & SPECIAL ASSESSMENTS**

TENANT covenants and agrees that during the term of this Lease Agreement, TENANT will obtain any and all necessary permits and approvals and that all uses of the PREMISES will be in conformance with all applicable laws, including all applicable zoning regulations.

Any and all charges, taxes, or assessments levied against the PREMISES shall be paid by TENANT and failure to do so will constitute a breach of this Lease Agreement.

**ARTICLE XX**  
**FORCE MAJEURE**

TENANT and LANDLORD shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of the Lease Agreement when prevented from so doing by cause or causes beyond TENANT's or LANDLORD's control, excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of TENANT or LANDLORD.

**ARTICLE XXI**  
**WAIVER**

If, under the provisions hereof, LANDLORD or TENANT shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant

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herein contained nor of any of LANDLORD's or TENANT'S rights hereunder, unless expressly stated in such settlement agreement. No waiver by LANDLORD or TENANT of any provision hereof shall be deemed to have been made unless expressed in writing and signed by both parties. No waiver by LANDLORD or TENANT of any breach of covenant, condition, or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof. No payment by TENANT or receipt by LANDLORD of lesser amount than the yearly installments of rent (or additional rent obligations stipulated) shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent or any other amounts owed to LANDLORD be deemed an accord and satisfaction and LANDLORD may accept such check or payment without prejudice to or waiver of LANDLORD's right to recover the balance of such rent or other amount owed or to pursue any other remedy provided in this Lease Agreement. No reentry by LANDLORD and no acceptance by LANDLORD of keys from TENANT shall be considered an acceptance of a surrender of this Lease Agreement.

**ARTICLE XXII**  
**DEFAULT OF TENANT**

If TENANT shall fail to pay any yearly installment or item of rent on the date when the same becomes due or shall violate or fail to perform any of the other conditions, covenants, or agreements herein made by TENANT, and if such violation or failure continues for a period of thirty (30) days after written notice thereof to TENANT by LANDLORD, except for failure to pay rent, which shall have a fifteen (15) day period for cure after written notice thereof to TENANT by LANDLORD, and further, if TENANT shall be diligently attempting to cure such failure to perform any other conditions, covenants, or agreements, the time to cure such failure shall be extended for so long as TENANT shall diligently prosecute such cure, then LANDLORD may proceed with any remedy available at law or in equity in the State of Florida or by such other proceedings, including reentry and possession, as may be

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applicable. All rights and remedies of LANDLORD under this Lease Agreement shall be cumulative and shall not be exclusive of any other rights and remedies provided to LANDLORD under applicable law.

**ARTICLE XXIII**  
**ADDITIONAL PROVISIONS**

1. Mechanic's, Materialmen's and Other Liens

TENANT agrees that it will not permit any mechanic's, materialmen's or other liens to stand against the PREMISES for work or materials furnished to TENANT; it being provided, however, that TENANT shall have the right to contest the validity thereof. TENANT shall immediately pay any judgment or decree rendered against TENANT, with all proper costs and charges, and shall cause any such lien to be released off record without cost to LANDLORD.

2. Non-Discrimination

The Board of County Commissioners declared and established as a matter of policy, by Resolution No. 9601 dated March 24, 1964, that there shall be no discrimination based on race, color, creed, or national origin and Resolution No. 85-92 dated January 21, 1992, that there shall be no discrimination on the basis of disability in connection with any County property or facilities operated or maintained under lease agreement, license, or other agreement from MIAMI-DADE COUNTY or its agencies.

TENANT agrees to comply with the intention of Resolution No. 9601 dated March 24, 1964 and Resolution No. 85-92 dated January 21, 1992, involving the use, operation, and maintenance of the property and facilities included in this Lease Agreement.

**ARTICLE XXIV**  
**HOLDOVER**

If TENANT, with LANDLORD's consent, remains in possession of the PREMISES after expiration of the term and if LANDLORD and TENANT have not executed an expressed written agreement as to such holding over, then such occupancy shall be a tenancy from month to month at a monthly rental for the first month, after expiration of the term, equivalent to one hundred percent

(100%) of the monthly rental in effect immediately prior to expiration, such payments to be made as herein provided. In the event of such holding over, all of the terms of the Lease Agreement including the payment of all charges owing hereunder other than rent shall remain in force and effect on said month to month basis.

**ARTICLE XXV**  
**GOVERNING LAW**

This Agreement, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida.

**ARTICLE XXVI**  
**WRITTEN AGREEMENT**

This Lease Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by resolution approved by the Board of County Commissioners.

[SIGNATURE PAGES FOLLOW]

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11/2/07

IN WITNESS WHEREOF, LANDLORD and TENANT have caused this Lease Agreement to be executed by their respective and duly authorized officers the day and year first above written.

(CORPORATE SEAL)

BAC Funding Corporation.

[Signature]  
WITNESS  
ESTER L. MILLER

[Signature]  
(TENANT)  
RONALD E. FRAZIER  
CHAIRMAN/CEO

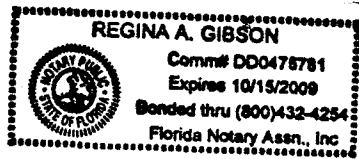
[Signature]  
WITNESS  
JAMES L. WELLS

STATE OF FLORIDA  
MIAMI-DADE COUNTY

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by Ronald E. Frazier, as Chairman/CEO of BAC Funding Corp, on behalf of the \_\_\_\_\_, He/she is personally known to me or has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 31 day of May, 2004. 7

By: [Signature]  
Notary Public  
Print Name: Regina A. Gibson  
My Commission Expires: 10/15/09



[Handwritten initials]  
5/23/07

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

By: \_\_\_\_\_  
George M. Burgess  
County Manager

ATTEST:  
HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
DEPUTY CLERK

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Assistant County Attorney

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Ref/5/23/07

# 32943

Amendment No. 1

**Amendment to Lease Between BAC Funding Corporation, as Landlord and Subway Real Estate Corp., as Tenant**

This Amendment is made effective on May 31, 2007 ("Effective Date") to the Lease dated November 19, 2003 by and between BAC Funding Corporation ("Landlord") and Subway Real Estate Corp. ("Tenant") regarding that-certain Premises located at 2525 NW 62<sup>nd</sup> Street, formerly known as 2600 NW 64<sup>th</sup> Street, Miami, FL 33147.

WHEREAS, Landlord and Tenant wish to amend certain terms of the Lease; and

WHEREAS, certain capitalized terms not otherwise defined herein are defined in the Lease;

THEREFORE, the parties agree as follows:

1. Addition to the Lease. **SECTION FIFTY-THREE, INCORPORATION OF MASTER LEASE**, is added to the Lease to read as follows:

This Lease is subject to the continued existence, upon execution, of that certain-lease of the Premises ("Master Lease"), attached hereto and by reference made a part hereof, by and between Miami Dade County ("Master Landlord") and BAC Funding Corporation. Pursuant to **ARTICLE VI, ASSIGNMENT AND SUBLETTING** of the Master Lease, Master Landlord consents to this Lease and in the event of any conflict between this Lease and the Master Lease, the terms of this Lease shall govern. BAC Funding Corporation hereby represents that the Master Lease is the entire agreement between Master Landlord and BAC Funding Corporation with respect to the Premises; and there are not existing defaults or set of circumstances which would lead to a default under the Master Lease. It is the intent of the Master Landlord, BAC Funding Corporation and Subway Real Estate Corp. that all the terms of this Lease remain with the same force and effect, except that the terms "Lease," "Landlord," "Tenant," "Sublease" and "Subtenant," as used in this Lease, are hereby amended to read, respectively, "Sublease," "Tenant," "Sublessee," "Subsublease" and "Subsublessee."

IN WITNESS WHERETO, BAC Funding Corporation and Subway Real Estate Corp. have caused this Amendment to the Lease be executed by their duly authorized officers.

BAC Funding Corporation:

Edwin L. Miller, President

By: [Signature] Date: 5/31/07  
*Edwin L. Miller*

Subway Real Estate Corp.

By: [Signature] Date: 5/29/07  
Its: John C. Denne, President

BAC FUNDING CORPORATION ACKNOWLEDGMENT:

State of Florida  
County of Miami-Dade

On this 31<sup>st</sup> day of May, 2007, before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared Colvin Miller to me personally known, who by me duly sworn did say that he is the President of BAC Funding Corporation and that said instrument was signed on behalf of the said corporation by authority of its Board of Directors, and that he acknowledged execution of said instrument to be a voluntary act and deed of said corporation.

[Signature]

Notary Public  
(Notarial Seal)

My Commission expires \_\_\_\_\_



Aaron Drayton  
Commission # DD396076  
Expires: FEB. 14, 2009  
www.AARONNOTARY.com

SUBWAY REAL ESTATE CORP. ACKNOWLEDGMENT:

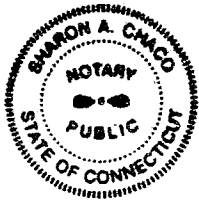
Connecticut  
~~State of Florida~~  
County of New Haven

On this 24<sup>th</sup> day of May, 2007, before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared John C. Devine to me personally known, who by me duly sworn did say that he is the President of Subway Real Estate Corp and that said instrument was signed on behalf of the said corporation/company by authority of its Board of Directors/members, and that he acknowledged execution of said instrument to be a voluntary act and deed of said corporation/company.

[Signature: Sharon A. Chaco]

Notary Public  
(Notarial Seal)

My Commission expires \_\_\_\_\_



Sharon A. Chaco  
NOTARY PUBLIC  
STATE OF CONNECTICUT  
My Commission Expires  
April 30, 2012

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT OF FLORIDA IN AND  
MIAMI-DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO.:

MIAMI-DADE COUNTY, a political  
Subdivision of the State  
Of Florida,

Petitioner,

vs.

BAC FUNDING CORP.,

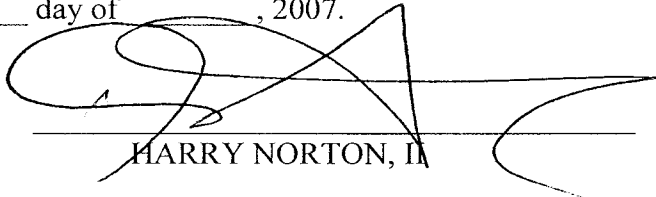
Defendant.

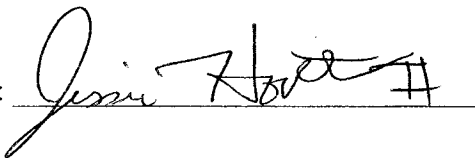
\_\_\_\_\_ /

**DISCLAIMER OF INTEREST OF HARRY NORTON, II AS TO THE MLK  
BUILDING LOCATED AT: 2600 N.W. 64<sup>TH</sup> STREET**

HARRY NORTON, II, named as a possible occupant as to the MLK Building, located at 2600 N.W. 64<sup>th</sup> Street, Miami, Florida in this cause, hereby disclaims any right, title, interest, claim, and/or demand in and to the property described as the MLK Building in this cause and as to the compensation to be paid therefore for the acquisition of said property and hereby requests to be dismissed from this case.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

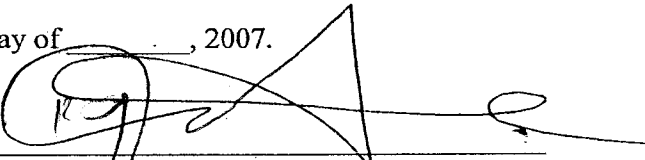
  
\_\_\_\_\_  
HARRY NORTON, II

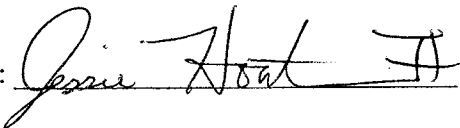
Witness:   
\_\_\_\_\_

**DISCLAIMER OF INTEREST OF HARRY NORTON, II AS TO THE MLK  
BUILDING LOCATED AT: 2600 N.W. 64<sup>th</sup> STREET**

HARRY NORTON, II, named as a possible occupant as to the MLK Building, located at 2600 N.W. 64<sup>th</sup> Street, Miami, Florida in this cause, hereby disclaims any right, title, interest, claim, and/or demand in and to the property described as the MLK Building in this cause and as to the compensation to be paid therefore for the acquisition of said property and hereby requests to be dismissed from this case.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2007.

  
\_\_\_\_\_  
HARRY NORTON, II

Witness:   
\_\_\_\_\_

# 32943

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT OF FLORIDA IN AND  
MIAMI-DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO.:

MIAMI-DADE COUNTY, a political  
Subdivision of the State  
Of Florida,

Petitioner,

vs.

BAC FUNDING CORP.,

Defendant.

**DISCLAIMER OF INTEREST OF SUBWAY REAL ESTATE CORP. AS TO THE  
MLK BUILDING LOCATED AT: 2600 N.W. 64<sup>TH</sup> STREET**

SUBWAY REAL ESTATE CORP., named as a possible occupant as to the MLK Building, located at 2600 N.W. 64<sup>th</sup> Street, Miami, Florida in this cause, hereby disclaims any right, title, interest, claim, and/or demand in and to the property described as the MLK Building in this cause and as to the compensation to be paid therefore for the acquisition of said property and hereby requests to be dismissed from this case.

Dated this \_\_\_ day of June, 2007

Name: John C. Devine

Title: President 6/4/07.

Witness: [Signature]

LEASE AGREEMENT

Exhibit "A"

PREMISES



Exhibit "A"

Legal Description and Map of the Property

## MLK Transit Station Joint Development Site Legal Description

Approximately the South 1/2 of the East 2/3 of the following real property:

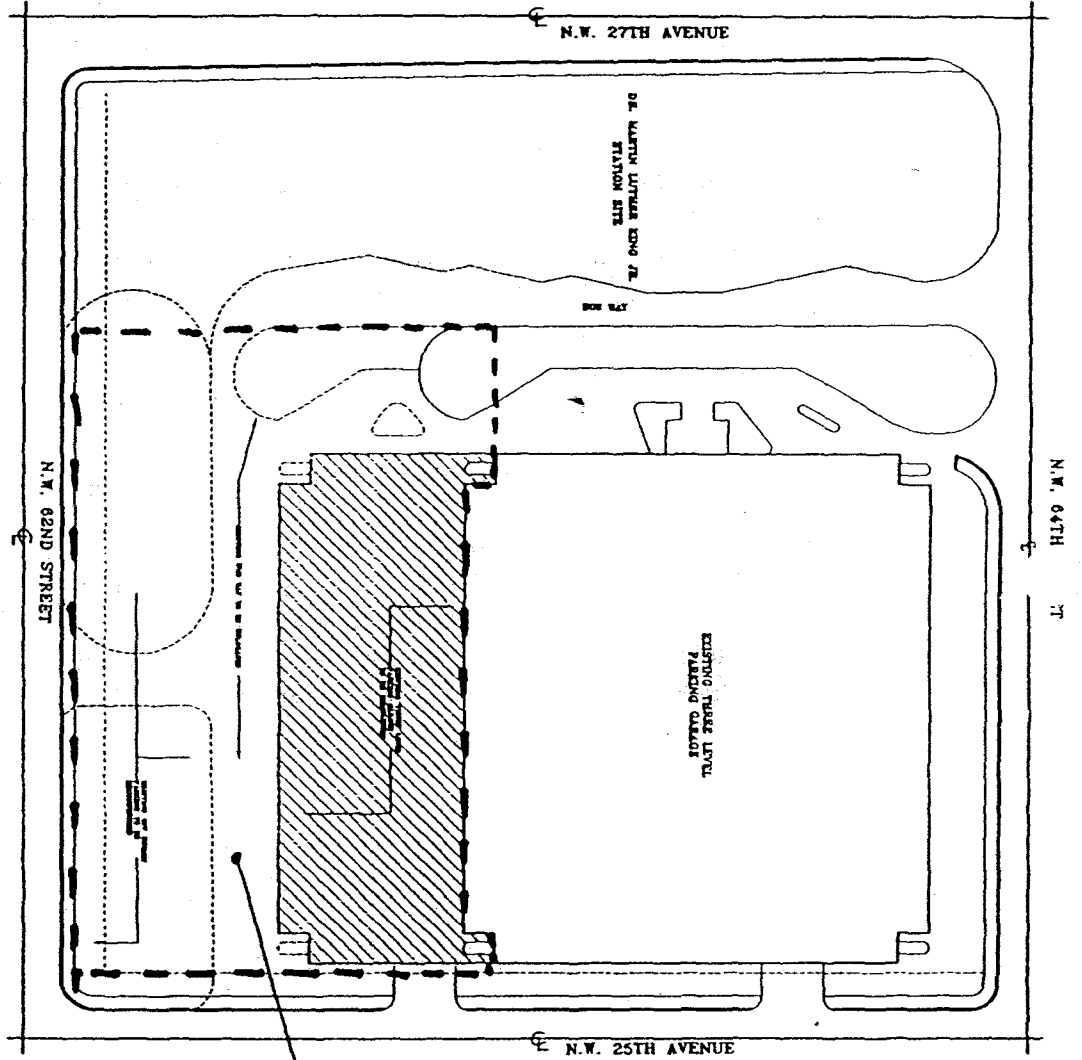
Tract A, Lots 1 through 6 inclusive, the alley lying between said Tract A and said Lots 1 through 6, closed by Resolution Number 6862, and that portion of NW 64 Street, closed by Resolution Number 10912, Stevens Center, according to the Plat thereof, as recorded in Plat Book 51, Page 75 of the Public Records of Miami-Dade County, Florida and the South 185.00 feet of the West 200.00 feet of the Southwest 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 15, Township 53 South, Range 41 East, less the South 35.00 feet and the West 50.00 feet thereof for road purposes and a portion of Lots 5 and 6, Block 1 and a portion of Lot 1, Block 2, Elizabeth Park, according to the Plat thereof as recorded in Plat Book 4, Page 195 of the public records of Miami-Dade County, Florida.

The area described above is outlined on the attached site plan.

This legal description of the subject Land is to be verified by subsequent certified Boundary Survey to be completed on or before September 30, 1999 and which certified Boundary Survey shall substitute for the present Exhibit "1." The certified Boundary Survey to be prepared shall include all existing and proposed vehicle driveways, and all existing and proposed ingress and egress from the site for vehicles including Miami Dade Transit Agency vehicles.



EXISTING SITE PLAN  
NOT TO SCALE



Approximate area described in legal (outlined)

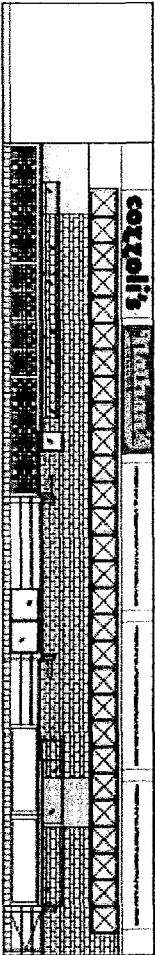
42

Exhibit "B"

Restaurant Equipment and Tenant Improvements

BAC MLK Subway Food Court - Leashold Improvements & Equipment

Subway Equipment/Coolers/Bakery Oven, etc.	91,565.00
Sneeze Guards	2,200.00
Leather Sofas	2,330.00
2 Panasonic 42" Plasma TV's	5,804.75
Three (3) 10-ton water source heat pump package units 13.5 S.E.E.R. [A/C System]	62,300.00
Two (2) Hoods and Fire Suppression System	24,500.00
Monitor Module for Hood	4,860.00
Serving Hot Food Steam Table, Electric Range, Rotisserie Oven	8,976.65
Tile & Floor Work	29,857.00
Switch Gears, Wiring, Piping, Light Fixtures, Outlet Installations, etc. (Electrical)	48,239.00
Plumbing, Grease Traps (external & internal), Water Heaters, Ice Makers	61,900.60
Fire Partition Wall	5,200.00
Sprinkler System, Cooler System, Mechanical	17,500.00
Awnings - (In Process)	7,750.00
Food Court Inline Neon Signage	1,525.00
Menu Boards	1,120.00
Countertop & Cabinets (Carpentry Work)	<u>3,500.00</u>
	372,983.00



SUBWAY INTERIOR  
TENANT IMPROVEMENT PROJECT  
2525 N.W. 62 STREET, MIAMI, FL

45

100% CONTRACT DOCUMENTS  
MARCH 23, 2004

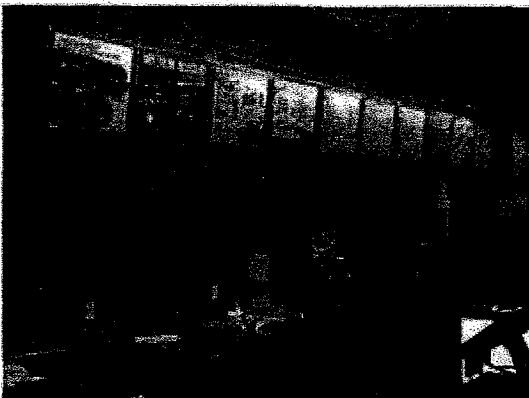
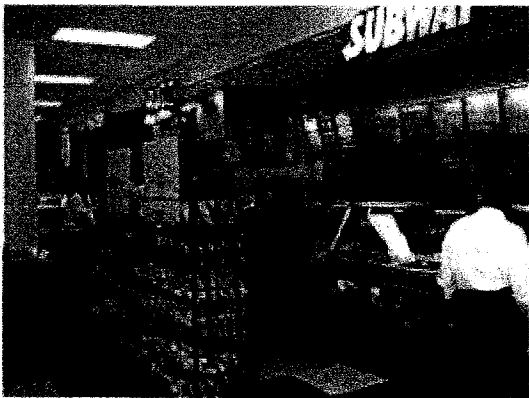
PRIME ARCHITECT



RONALD E. FRAZIER & ASSOCIATES, P.A.  
ARCHITECTS • URBAN DESIGNERS • PLANNING CONSULTANTS  
2125 BIRCHMOUNT BOULEVARD (SUITE 200) • MIAMI, FL 33137 • PHONE: (305) 593-0021 • E-MAIL: INFO@RF&A.COM

CONSULTANTS

MEP:  
BASULTO & ASSOCIATES  
480 W 83RD STREET  
HALEAH, FL 33014  
PHONE: (305) 690-3988



# INDEX OF DRAWINGS

GENERAL NOTES:  
 1. ALL DRAWINGS SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AIAA STANDARDS FOR ARCHITECTURAL DRAWINGS.

LANDSCAPE  
 ARCHITECTURAL

1-12 SITE PLAN  
 1-13 GENERAL LAYOUT  
 1-14 GENERAL LAYOUT  
 1-15 GENERAL LAYOUT  
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 1-50 GENERAL LAYOUT

ELECTRICAL

MECHANICAL

PLUMBING

FIRE PROTECTION

1-1 GENERAL LAYOUT  
 1-2 GENERAL LAYOUT  
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 1-50 GENERAL LAYOUT

# ABBREVIATIONS

NO.	ABBREVIATION	MEANS / INTERPRETS
1	AC	ALTERNATING CURRENT
2	AD	ADJUSTABLE
3	ADJ	ADJUSTABLE
4	ADJ.	ADJUSTABLE
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# SYMBOLS

SYMBOL	MEANS / MATERIAL SYMBOLS
	CONCRETE
	MASONRY
	BRICK
	STONE
	METAL
	WOOD
	GLASS
	INSULATION
	ELECTRICAL CONDUIT
	PLUMBING FIXTURE
	FIRE ALARM DEVICE
	FIRE EXTINGUISHER
	FIRE ESCAPE
	FIRE DOOR
	FIRE WINDOW
	FIRE ALARM PULL STATION
	FIRE ALARM CONTROL PANEL
	FIRE ALARM BELL
	FIRE ALARM HORN
	FIRE ALARM STROBE LIGHT
	FIRE ALARM SPEAKER
	FIRE ALARM CONTROL UNIT
	FIRE ALARM INITIATING DEVICE
	FIRE ALARM RECEIVING EQUIPMENT
	FIRE ALARM NOTIFICATION APPLIANCE
	FIRE ALARM CONTROL PANEL WITH REMOTE SIGNALING
	FIRE ALARM CONTROL PANEL WITH REMOTE SIGNALING AND TROUBLE SIGNALING
	FIRE ALARM CONTROL PANEL WITH REMOTE SIGNALING, TROUBLE SIGNALING, AND SUPERVISORY SIGNALING
	FIRE ALARM CONTROL PANEL WITH REMOTE SIGNALING, TROUBLE SIGNALING, SUPERVISORY SIGNALING, AND TROUBLE SIGNALING WITH SUPERVISORY SIGNALING
	FIRE ALARM CONTROL PANEL WITH REMOTE SIGNALING, TROUBLE SIGNALING, SUPERVISORY SIGNALING, TROUBLE SIGNALING WITH SUPERVISORY SIGNALING, AND TROUBLE SIGNALING WITH SUPERVISORY SIGNALING AND TROUBLE SIGNALING

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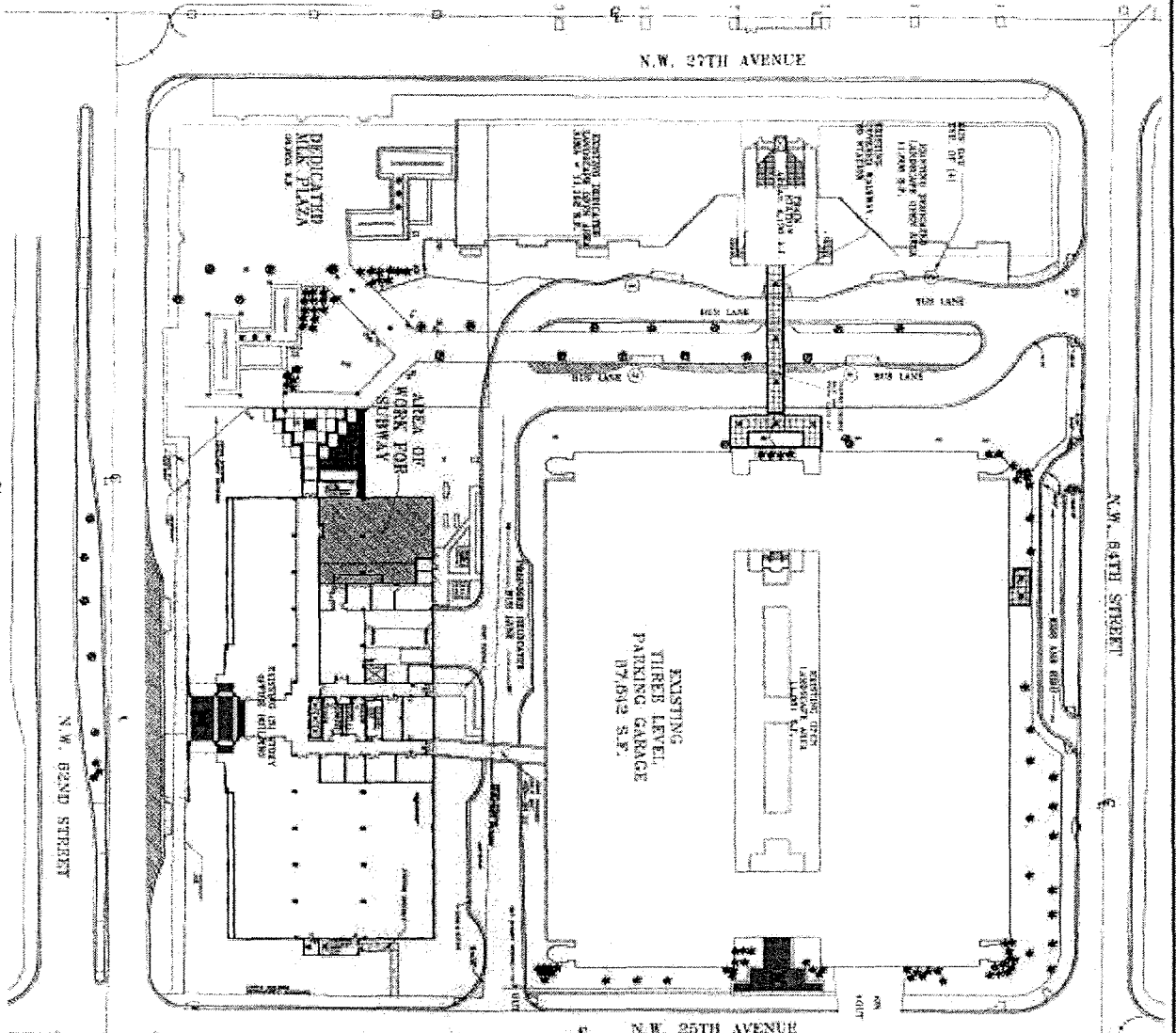
DR. MARTIN LUTHER KING JR. PLAZA  
 MILK TRANSIT DEVELOPMENT PROJECT  
 SUBWAY TENANT IMPROVEMENT PLAN  
 300 NEW YORK AVENUE - MANHATTAN, NEW YORK



RONALD E. FRAZIER & ASSOCIATES, P.A.  
 ARCHITECTS  
 100 W. 42ND STREET, 10TH FLOOR  
 NEW YORK, N.Y. 10018  
 TEL: (212) 755-1111  
 FAX: (212) 755-1112  
 WWW: WWW.RF&A.COM

NO.	DATE	DESCRIPTION
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**SITE AND AREA LOCATION PLAN**  
SCALE: 1" = 50'-0"



**EXIT CALCULATIONS**  
AREA OF RENOVATION WORK FOR SUBWAY FOOD COURT = 4019 SQ FT

**THE OCCUPANCY TYPES :**

- A-RESTAURANT WITH MOVABLE SEATING, ACCESSORY TO OFFICE BUILDING, OCCUPANT LOAD FACTOR = 15/SE, OCCUPANT LOAD = 2626 SF ÷ 15 = 175
- B-RECREATION, KITCHEN, OCCUPANT LOAD FACTOR = 100/SE

**TOTAL OCCUPANT LOAD = 163+16 = 179**

**TOTAL EXIT WIDTH REQUIRED = 179 x 0.2 = 36"**

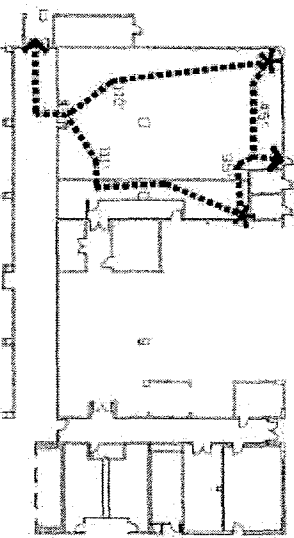
**TOTAL EXIT WIDTH PROVIDED = 4 x 32" = 128"**

**MAX TRAVEL DISTANCE ALLOWED = 200'**

**ZONING INFORMATION**

NO.	DESCRIPTION	REMARKS	DATE
1	EXISTING THREE LEVEL PARKING GARAGE	EXISTING	
2	EXISTING MILK PLAZA	EXISTING	
3	EXISTING RESTAURANT	EXISTING	
4	EXISTING KITCHEN	EXISTING	
5	EXISTING OFFICE BUILDING	EXISTING	
6	EXISTING SUBWAY FOOD COURT	EXISTING	
7	EXISTING RESTROOMS	EXISTING	
8	EXISTING ELEVATORS	EXISTING	
9	EXISTING STAIRS	EXISTING	
10	EXISTING MECHANICAL ROOMS	EXISTING	
11	EXISTING ELECTRICAL ROOMS	EXISTING	
12	EXISTING TELEPHONE ROOMS	EXISTING	
13	EXISTING JANITORIES	EXISTING	
14	EXISTING STORAGE ROOMS	EXISTING	
15	EXISTING LOBBY	EXISTING	
16	EXISTING RECEPTION AREA	EXISTING	
17	EXISTING WAITING AREA	EXISTING	
18	EXISTING CONFERENCE ROOMS	EXISTING	
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97	EXISTING STORAGE ROOMS	EXISTING	
98	EXISTING MECHANICAL ROOMS	EXISTING	
99	EXISTING ELECTRICAL ROOMS	EXISTING	
100	EXISTING TELEPHONE ROOMS	EXISTING	

**EVACUATION PLAN**



48

NO.	DESCRIPTION	DATE
1	DESIGNED	
2	REVISED	
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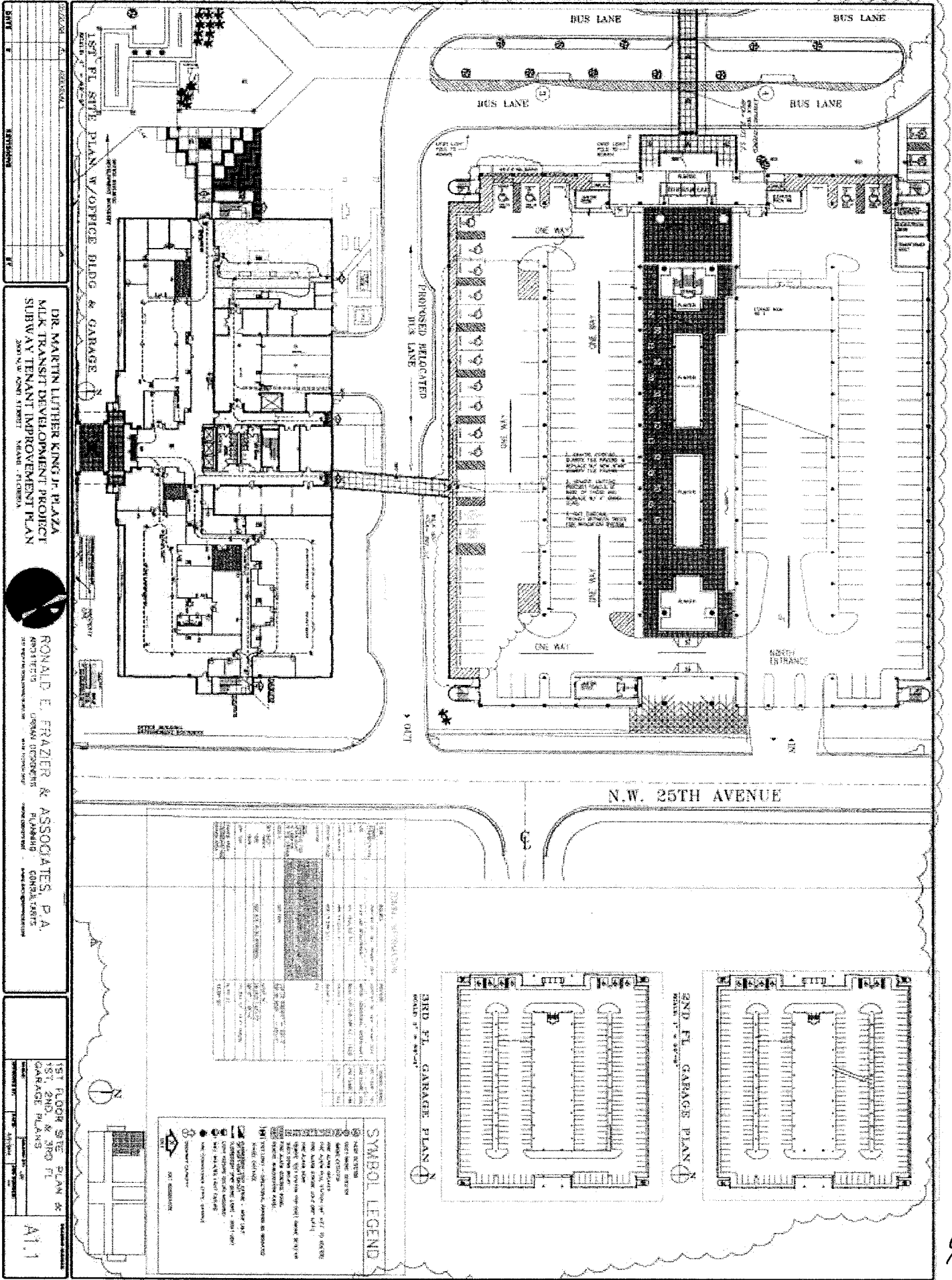
**DR. MARTIN LUTHER KING JR. PLAZA**  
MILK TRANSIT DEVELOPMENT PROJECT  
SUBWAY TENANT IMPROVEMENT PLAN  
2001 N.W. 33RD STREET, MIAMI, FL 33135



**RONALD E. PRAZER & ASSOCIATES, P.A.**  
ARCHITECTS  
1000 N.W. 33RD STREET, SUITE 200  
MIAMI, FLORIDA 33135  
TEL: (305) 571-1111  
FAX: (305) 571-1112

**SITE PLAN & AREA LOCATION PLAN**

**A1.0**



NO.	REVISION	DATE
1		

DR. MARTIN LUTHER KING JR. PLAZA  
 MILK TRANSIT DEVELOPMENT PROJECT  
 SUBWAY TENANT IMPROVEMENT PLAN  
 2000 NEW KORN STREET, MIAMI, FLORIDA



RONALD E. FRAZIER & ASSOCIATES, P.A.  
 ARCHITECTS  
 327 WEST 10TH AVENUE, SUITE 200  
 MIAMI, FLORIDA 33136  
 (305) 375-1111  
 WWW.RFAPLA.COM

1ST FLOOR SITE PLAN &  
 1ST, 2ND & 3RD FL  
 GARAGE PLANS  
 A1.1

NO.	DATE	DESCRIPTION
1	11/11/08	ISSUED FOR PERMIT
2	01/14/09	REVISIONS
3	03/18/09	REVISIONS
4	05/20/09	REVISIONS
5	08/11/09	REVISIONS
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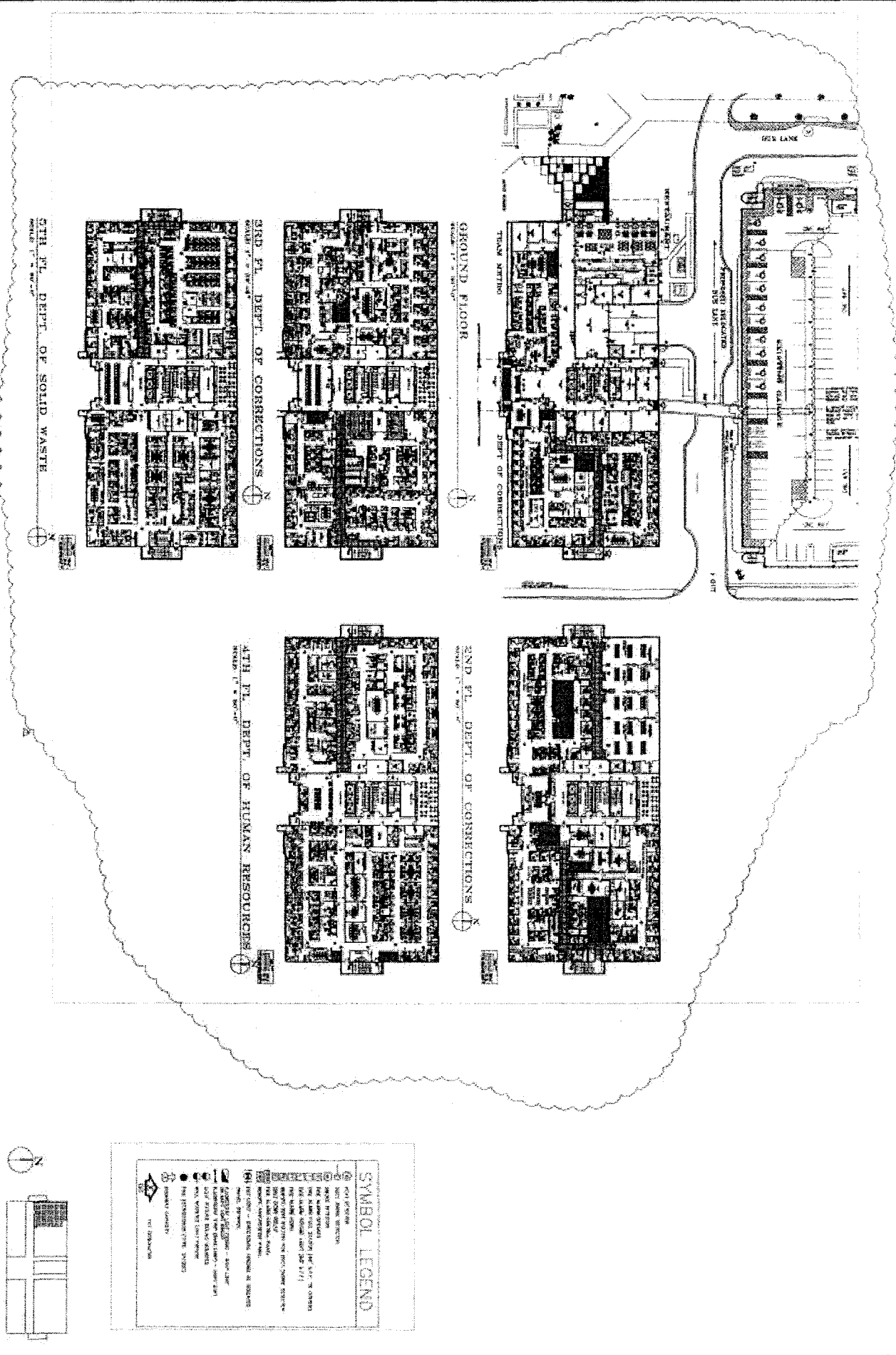
DR. MARTIN LUTHER KING JR. PLAZA  
 MILK TRANSIT DEVELOPMENT PROJECT  
 SUBWAY TENANT IMPROVEMENT PLAN  
 ROOMS 4 AND 5 FIRST FLOOR PLAN



RONALD E. FRAZIER & ASSOCIATES, P.A.  
 ARCHITECTS  
 URBAN DESIGNERS  
 PLANNING CONSULTANTS  
 1700 BROADWAY, SUITE 1200  
 PHOENIX, ARIZONA 85004  
 (602) 258-1200

TENANT PLANS

NO. 1	DATE	BY
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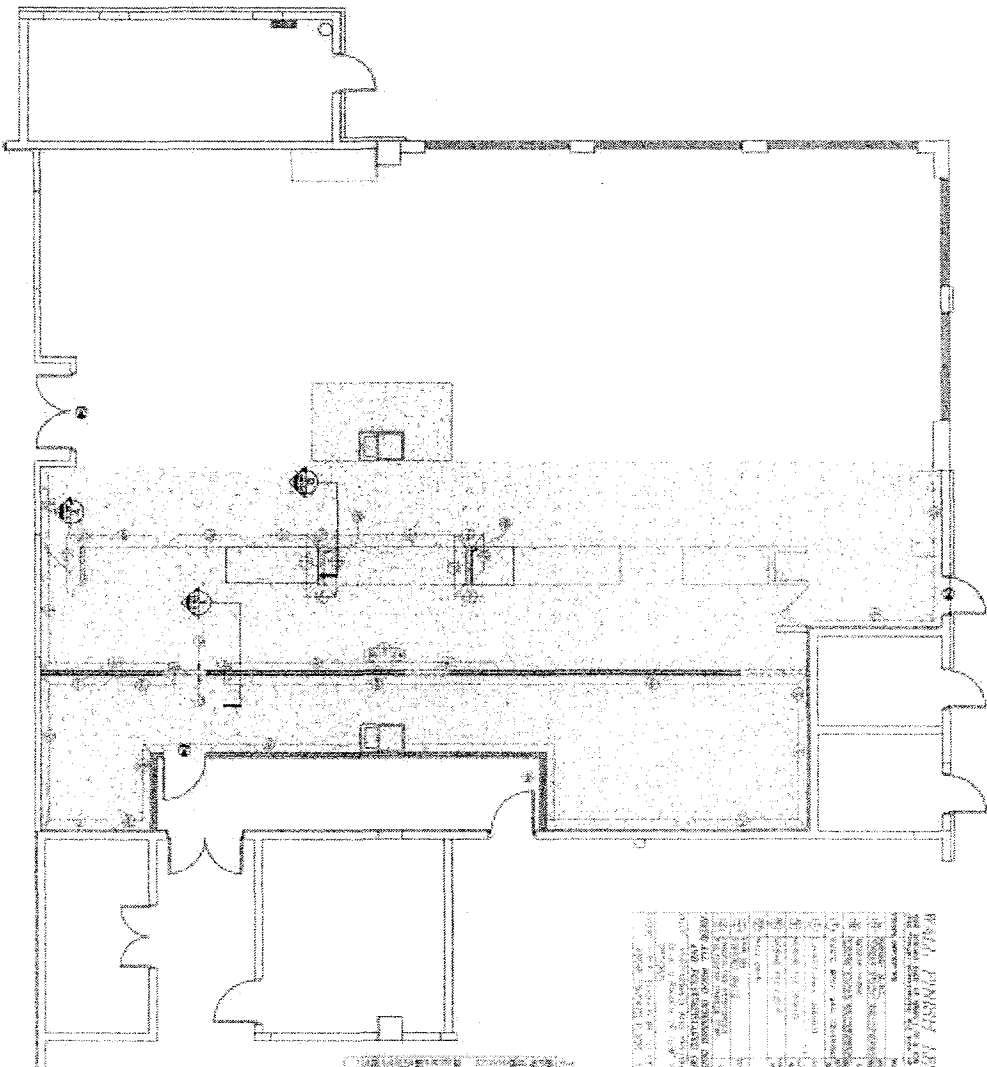
51











WALL FINISH PLAN  
SCALE: 1/4" = 1'-0"

**WALL FINISH APPROVAL SHEET**

NO.	DESCRIPTION	DATE	BY	FOR
1	WALL FINISH APPROVAL SHEET			
2	WALL FINISH APPROVAL SHEET			
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**GENERAL NOTES**

1. WALL FINISH APPROVAL SHEET
2. WALL FINISH APPROVAL SHEET
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**GENERAL NOTES**

1. WALL FINISH APPROVAL SHEET

2. WALL FINISH APPROVAL SHEET

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10. WALL FINISH APPROVAL SHEET

NO.	DESCRIPTION	DATE	BY	FOR
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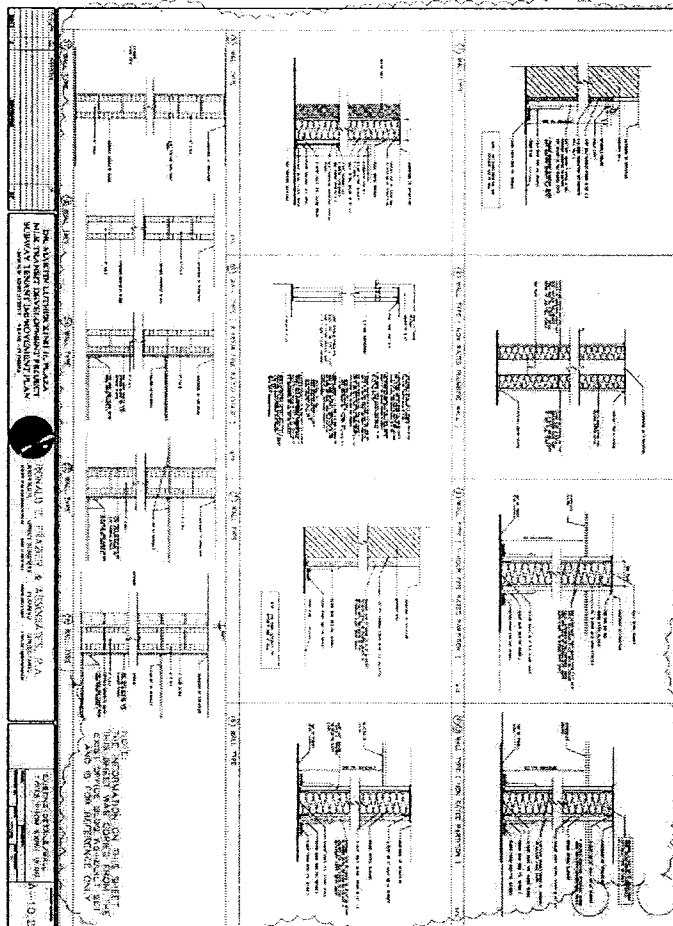
DR. MARTIN LUTHER KING JR. PLAZA  
MILK TRANSIT DEVELOPMENT PROJECT  
SUBWAY TENANT IMPROVEMENT PLAN  
300 N.W. 23RD STREET MIAMI FL 33135



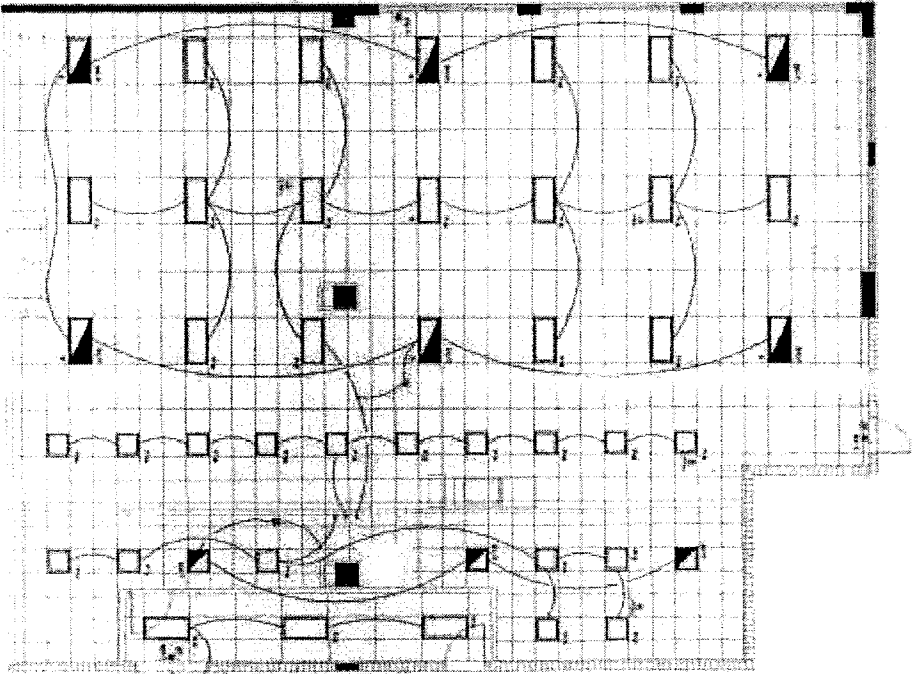
RONALD E. FRAZIER & ASSOCIATES, P.A.  
ARCHITECTS  
1000 N.W. 10TH AVENUE SUITE 1000 MIAMI FL 33136  
PH: 305.575.1111 FAX: 305.575.1112  
WWW.RF&A.COM

WALL FINISH PLAN  
A9.1





15



FLOOR PLAN - LIGHTING  
SCALE: 1/4" = 1'-0"

**LIGHTING FIXTURE SCHEDULE**

NO.	SYMBOL	DESCRIPTION	QUANTITY	WATTAGE	HEIGHT	NOTES
1	(Symbol)	RECESSED CEILING LIGHT	12	40	12"	
2	(Symbol)	WALL SCONCE	8	60	48"	
3	(Symbol)	TRAY LIGHT	4	150	24"	
4	(Symbol)	EXIT LIGHT	2	120	48"	
5	(Symbol)	EMERGENCY LIGHT	2	120	48"	
6	(Symbol)	TRACK LIGHT	10	50	12"	
7	(Symbol)	PARALEL BEAM LIGHT	4	100	12"	
8	(Symbol)	DOWNLIGHT	6	75	12"	
9	(Symbol)	UPLIGHT	4	75	12"	
10	(Symbol)	RECESSED DOWNLIGHT	8	40	12"	
11	(Symbol)	RECESSED UP LIGHT	4	40	12"	
12	(Symbol)	RECESSED DOWNLIGHT	6	40	12"	
13	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
14	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
15	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
16	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
17	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
18	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
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71	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
72	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
73	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
74	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
75	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
76	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
77	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
78	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
79	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
80	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
81	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
82	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
83	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
84	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
85	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
86	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
87	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
88	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
89	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
90	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
91	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
92	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
93	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
94	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
95	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
96	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
97	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
98	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
99	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	
100	(Symbol)	RECESSED DOWNLIGHT	4	40	12"	

NOTES:  
1. ALL FIXTURES SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS.  
2. ALL FIXTURES SHALL BE INSTALLED IN ACCORDANCE WITH THE NATIONAL ELECTRICAL CODE (NEC).  
3. ALL FIXTURES SHALL BE INSTALLED IN ACCORDANCE WITH THE ILLINOIS ELECTRICAL CODE (IEC).  
4. ALL FIXTURES SHALL BE INSTALLED IN ACCORDANCE WITH THE ILLINOIS FIRE ALARMS AND SIGNALING CODE (IFASC).

DATE: \_\_\_\_\_  
 DRAWN BY: \_\_\_\_\_  
 CHECKED BY: \_\_\_\_\_  
 APPROVED BY: \_\_\_\_\_

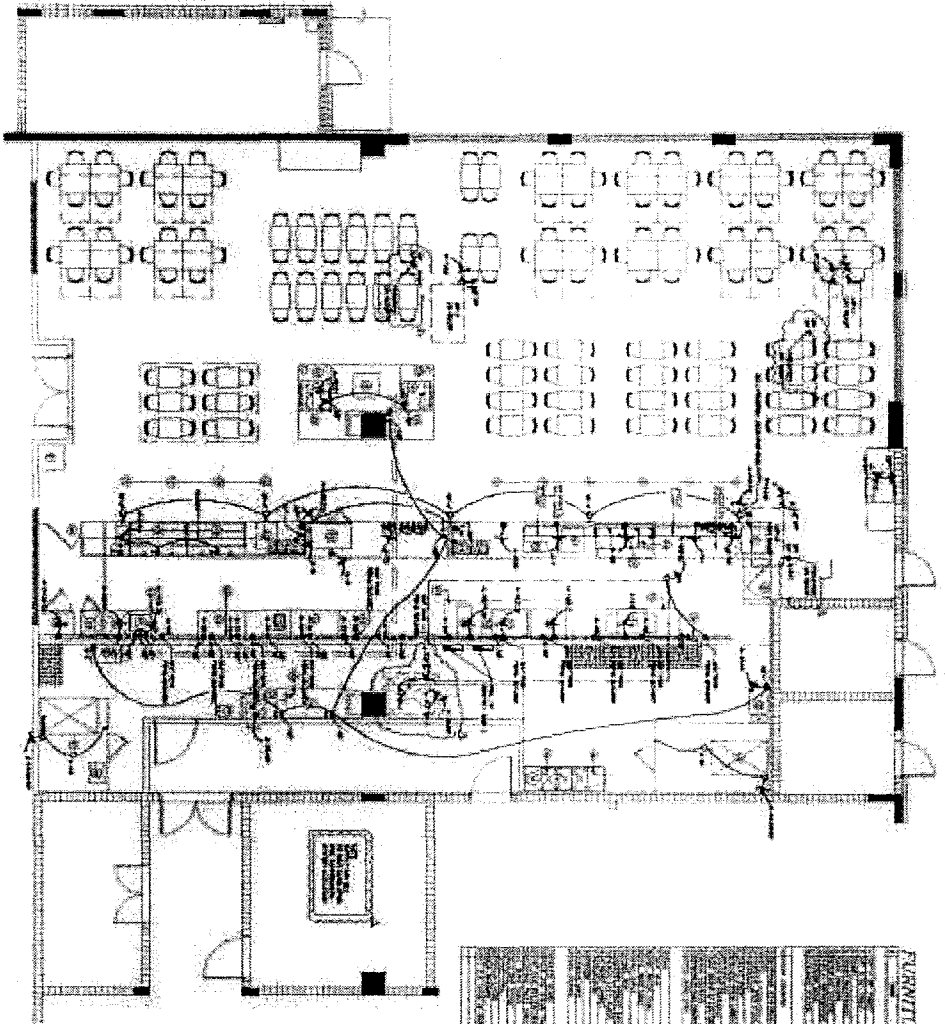
DR. MARTIN LUTHER KING JR. PLAZA  
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 SUBWAY TRANSIT IMPROVEMENT PLAN  
 300 N. W. 30th STREET MIAMI FL 33135



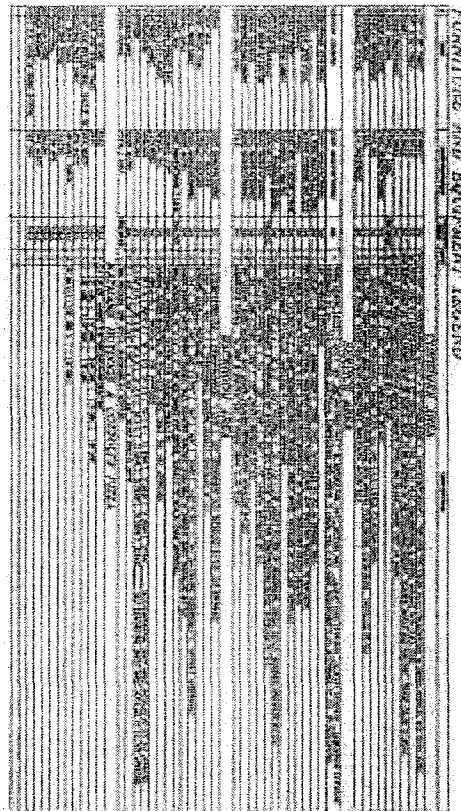
**RONALD E. FRAZIER & ASSOCIATES, P.A.**  
 ARCHITECTS • INTERIORS • PLANNING • CONSULTANTS  
 1000 BROADWAY, SUITE 2000, MIAMI, FL 33139  
 TEL: 305.571.1111 FAX: 305.571.1112  
 WWW.RONALDFRAZIER.COM

GRID PLAN LIGHTING  
 E1.0

65



GROUND FLOOR PLAN - POWER  
SCALE: 1/8" = 1'-0"



FURNITURE AND EQUIPMENT LEGEND

60

NO.	DATE	REVISION

DR. MARTIN LUTHER KING JR. PLAZA  
MLK TRANSIT DEVELOPMENT PROJECT  
SUBWAY TENANT IMPROVEMENT PLAN  
JAMES W. GREGORY ARCHITECTS, P.A.  
MIAMI, FLORIDA



**RONALD E. FRAZIER & ASSOCIATES, P.A.**  
ARCHITECTS • URBAN DESIGNERS • PLANNERS • CONSULTANTS  
1000 N.W. 10TH AVENUE, SUITE 1000  
MIAMI, FLORIDA 33136  
TEL: 305.571.1111 FAX: 305.571.1112

PROJECT NO.	GROUND FLOOR PLAN
DATE	POWER
SCALE	1/8" = 1'-0"
DATE	



DATE	11/11/83
SCALE	1/8" = 1'-0"
PROJECT	DR. MARTIN LUTHER KING, JR. PLAZA
NO.	1

DR. MARTIN LUTHER KING, JR. PLAZA  
 MILK TRANSIT DEVELOPMENT PROJECT  
 SUBWAY TENANT IMPROVEMENT PLAN  
 300 N.W. 45TH STREET MIAMI, FLORIDA

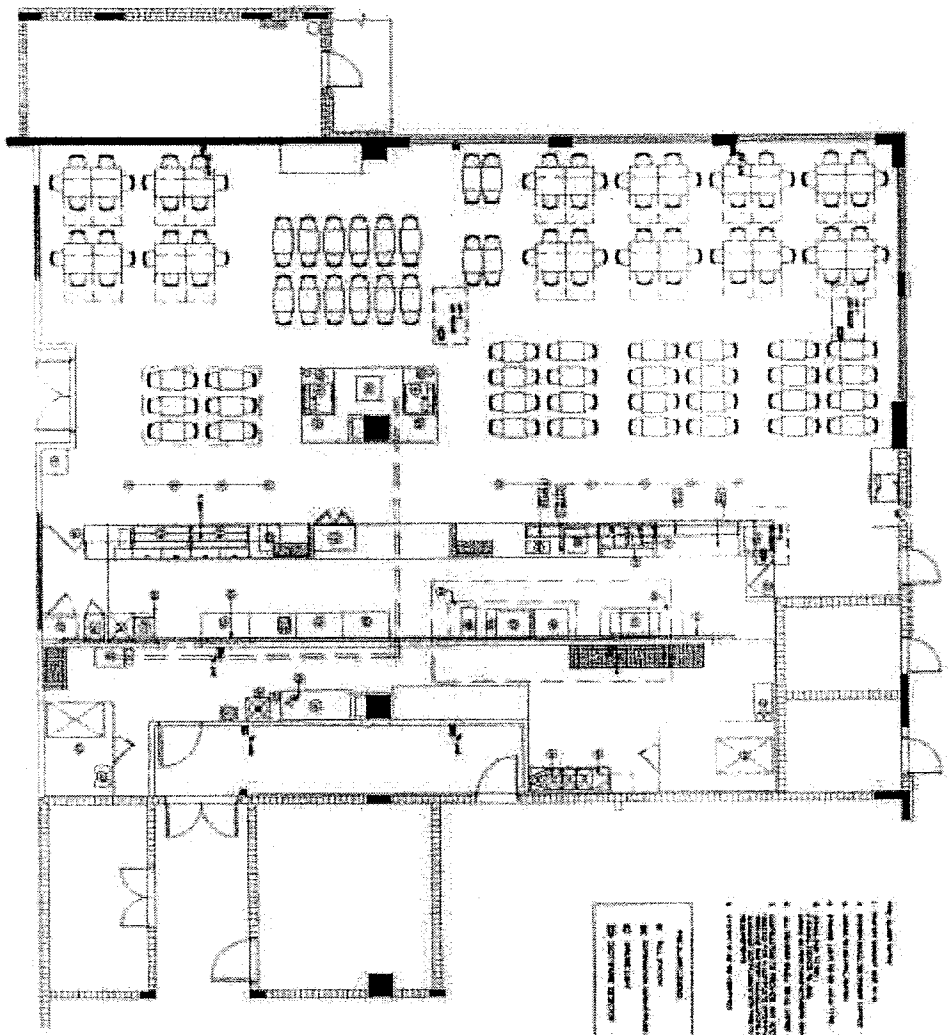


**RONALD E. FRAZIER & ASSOCIATES, P.A.**  
 ARCHITECTS  
 1000 N.W. 10TH AVENUE, SUITE 1000  
 MIAMI, FLORIDA 33136  
 TELEPHONE: 375-1111  
 FACSIMILE: 375-1112

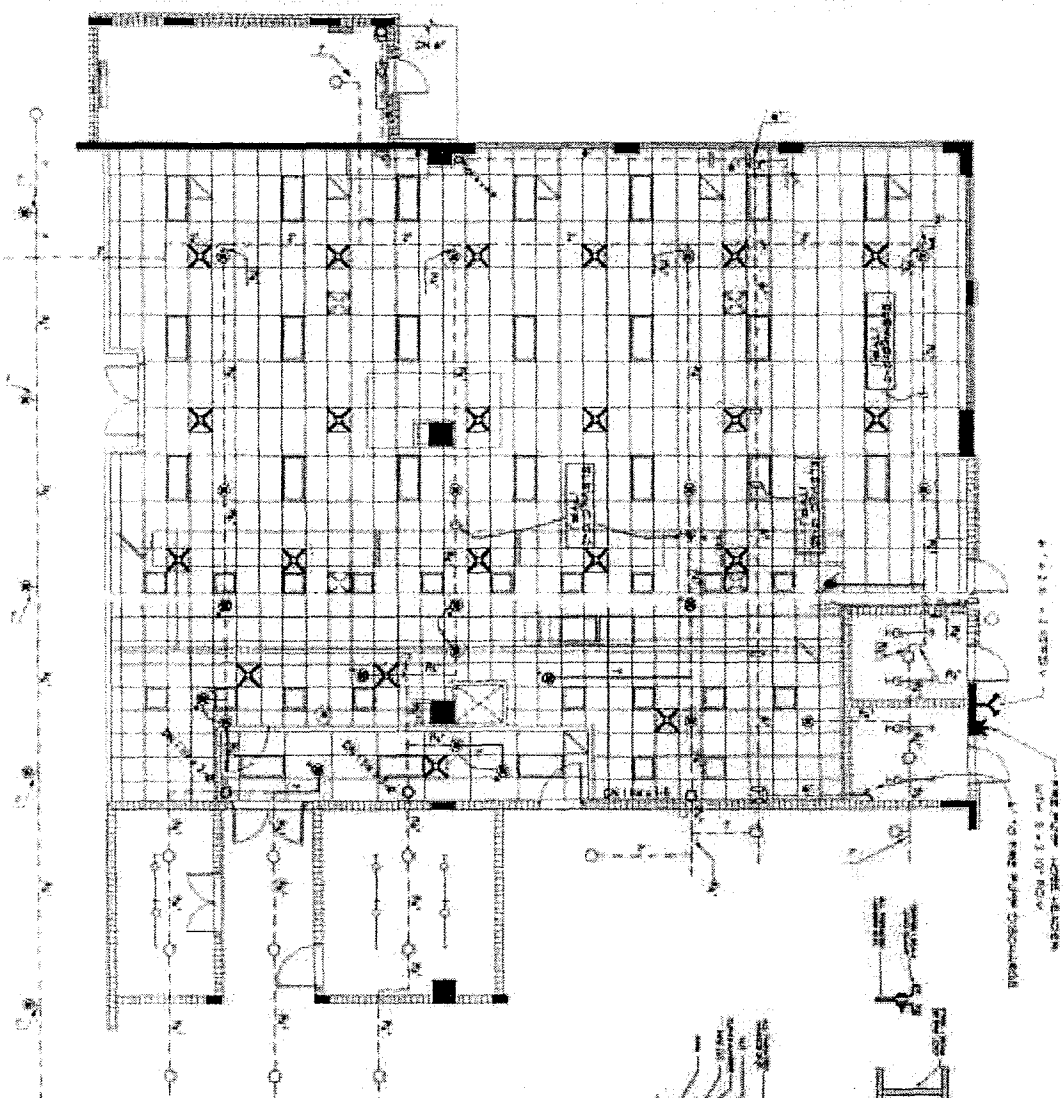
GROUND FLOOR PLAN  
 FIRE ALARM

E3.0

FLOOR PLAN - FIRE ALARM  
 SCALE 1/8" = 1'-0"







FLOOR PLAN - FIRE PROTECTION  
SCALE: 3/8" = 1'-0"

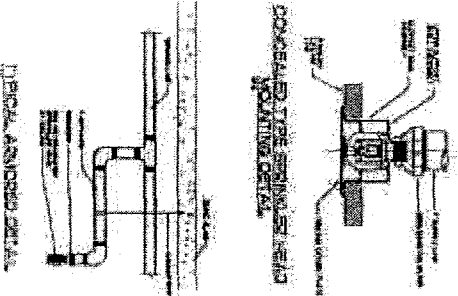
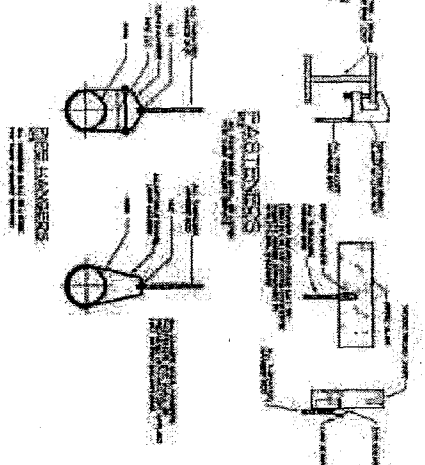
DATE	NO.	DESCRIPTION

DR. MARTIN LUTHER KING JR. PLAZA  
MLK TRANSIT DEVELOPMENT PROJECT  
SUBWAY TENANT IMPROVEMENT PLAN  
SPRING AND SUMMER, 2004 - 2005



**RONALD E. FRAZIER & ASSOCIATES, P.A.**  
ARCHITECTS  
1000 W. BROADWAY, SUITE 1000  
NEW YORK, NY 10018  
TEL: 212-512-1000  
FAX: 212-512-1001  
WWW.RONALDFRAZIER.COM

Submittal Mark Plan  
7/18/04  
RFP 1.0



**GENERAL NOTES**

1. ALL FIRE PROTECTION EQUIPMENT SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NFPA 70, NATIONAL ELECTRICAL CODE (NEC) AND NFPA 10, FIRE EXTINGUISHERS.
2. ALL FIRE PROTECTION EQUIPMENT SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NFPA 70, NATIONAL ELECTRICAL CODE (NEC) AND NFPA 10, FIRE EXTINGUISHERS.
3. ALL FIRE PROTECTION EQUIPMENT SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NFPA 70, NATIONAL ELECTRICAL CODE (NEC) AND NFPA 10, FIRE EXTINGUISHERS.
4. ALL FIRE PROTECTION EQUIPMENT SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NFPA 70, NATIONAL ELECTRICAL CODE (NEC) AND NFPA 10, FIRE EXTINGUISHERS.
5. ALL FIRE PROTECTION EQUIPMENT SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NFPA 70, NATIONAL ELECTRICAL CODE (NEC) AND NFPA 10, FIRE EXTINGUISHERS.

NO.	DATE	DESCRIPTION	BY	CHKD.
1	7/18/04	ISSUED FOR PERMIT		
2				
3				

NO.	DATE	DESCRIPTION	BY	CHKD.
1	7/18/04	ISSUED FOR PERMIT		
2				
3				



**WATER SOURCE HEAT PUMP SCHEDULE**

UNIT	WATER SOURCE HEAT PUMP		WATER SOURCE HEAT PUMP		WATER SOURCE HEAT PUMP		WATER SOURCE HEAT PUMP		WATER SOURCE HEAT PUMP	
	UNIT	WATER SOURCE HEAT PUMP	UNIT	WATER SOURCE HEAT PUMP	UNIT	WATER SOURCE HEAT PUMP	UNIT	WATER SOURCE HEAT PUMP	UNIT	WATER SOURCE HEAT PUMP
1	1	1	1	1	1	1	1	1	1	1
2	2	2	2	2	2	2	2	2	2	2
3	3	3	3	3	3	3	3	3	3	3
4	4	4	4	4	4	4	4	4	4	4
5	5	5	5	5	5	5	5	5	5	5
6	6	6	6	6	6	6	6	6	6	6
7	7	7	7	7	7	7	7	7	7	7
8	8	8	8	8	8	8	8	8	8	8
9	9	9	9	9	9	9	9	9	9	9
10	10	10	10	10	10	10	10	10	10	10

**NOTES:**

1. WATER SOURCE HEAT PUMP SCHEDULE IS TO BE USED TO DETERMINE THE WATER SOURCE HEAT PUMP SCHEDULE FOR THE PROJECT.
2. THE WATER SOURCE HEAT PUMP SCHEDULE IS TO BE USED TO DETERMINE THE WATER SOURCE HEAT PUMP SCHEDULE FOR THE PROJECT.
3. THE WATER SOURCE HEAT PUMP SCHEDULE IS TO BE USED TO DETERMINE THE WATER SOURCE HEAT PUMP SCHEDULE FOR THE PROJECT.
4. THE WATER SOURCE HEAT PUMP SCHEDULE IS TO BE USED TO DETERMINE THE WATER SOURCE HEAT PUMP SCHEDULE FOR THE PROJECT.

**H.V.A.C. GENERAL NOTES:**

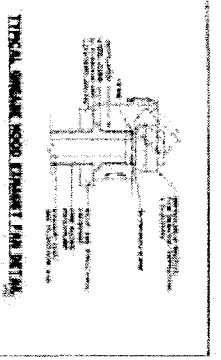
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2. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
3. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
4. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
5. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
6. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
7. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
8. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
9. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
10. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).

**AIR DISTRIBUTION SCHEDULE**

UNIT	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP
1	1	1	1	1	1
2	2	2	2	2	2
3	3	3	3	3	3
4	4	4	4	4	4
5	5	5	5	5	5
6	6	6	6	6	6
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8	8	8	8	8	8
9	9	9	9	9	9
10	10	10	10	10	10

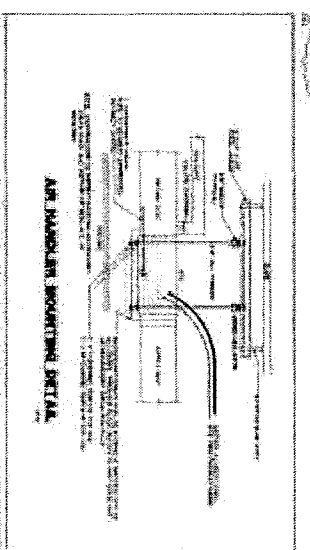
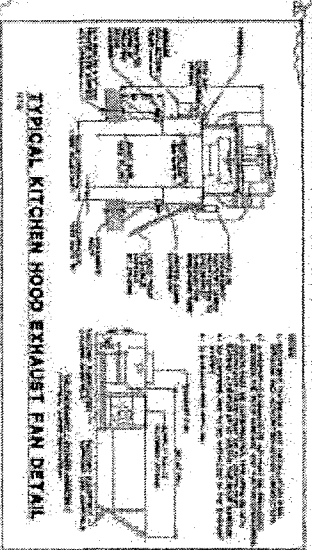
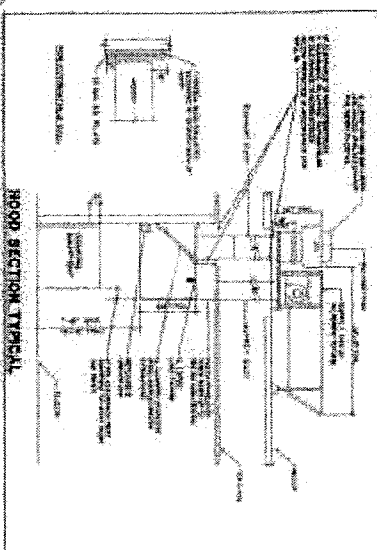
**KITCHEN GENERAL NOTES:**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
2. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
3. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
4. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
5. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).
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10. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE (IMC) AND THE 2015 INTERNATIONAL MECHANICAL CODE (IMC).



**AIR BALANCE SCHEDULE**

UNIT	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP
1	1	1	1	1	1
2	2	2	2	2	2
3	3	3	3	3	3
4	4	4	4	4	4
5	5	5	5	5	5
6	6	6	6	6	6
7	7	7	7	7	7
8	8	8	8	8	8
9	9	9	9	9	9
10	10	10	10	10	10



**OUTSIDE AIR CALCULATIONS**

UNIT	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP
1	1	1	1	1	1
2	2	2	2	2	2
3	3	3	3	3	3
4	4	4	4	4	4
5	5	5	5	5	5
6	6	6	6	6	6
7	7	7	7	7	7
8	8	8	8	8	8
9	9	9	9	9	9
10	10	10	10	10	10

UNIT	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP	WATER SOURCE HEAT PUMP
1	1	1	1	1	1
2	2	2	2	2	2
3	3	3	3	3	3
4	4	4	4	4	4
5	5	5	5	5	5
6	6	6	6	6	6
7	7	7	7	7	7
8	8	8	8	8	8
9	9	9	9	9	9
10	10	10	10	10	10

**DR. MARTIN LUTHER KING JR. PLAZA  
MILK TRANSIT DEVELOPMENT PROJECT  
SIDEWAY TENANT IMPROVEMENT PLAN**



**RONALD F. FRAZIER & ASSOCIATES, P.A.**  
ARCHITECTS • DESIGN PROFESSIONALS  
PLANNERS • ENGINEERS

**INTERNATIONAL SCIENTIFICS**  
M2.0

5

DATE	11/15/88
BY	...
PROJECT	DR. MARTIN LUTHER KING, JR. PLAZA
NO.	...

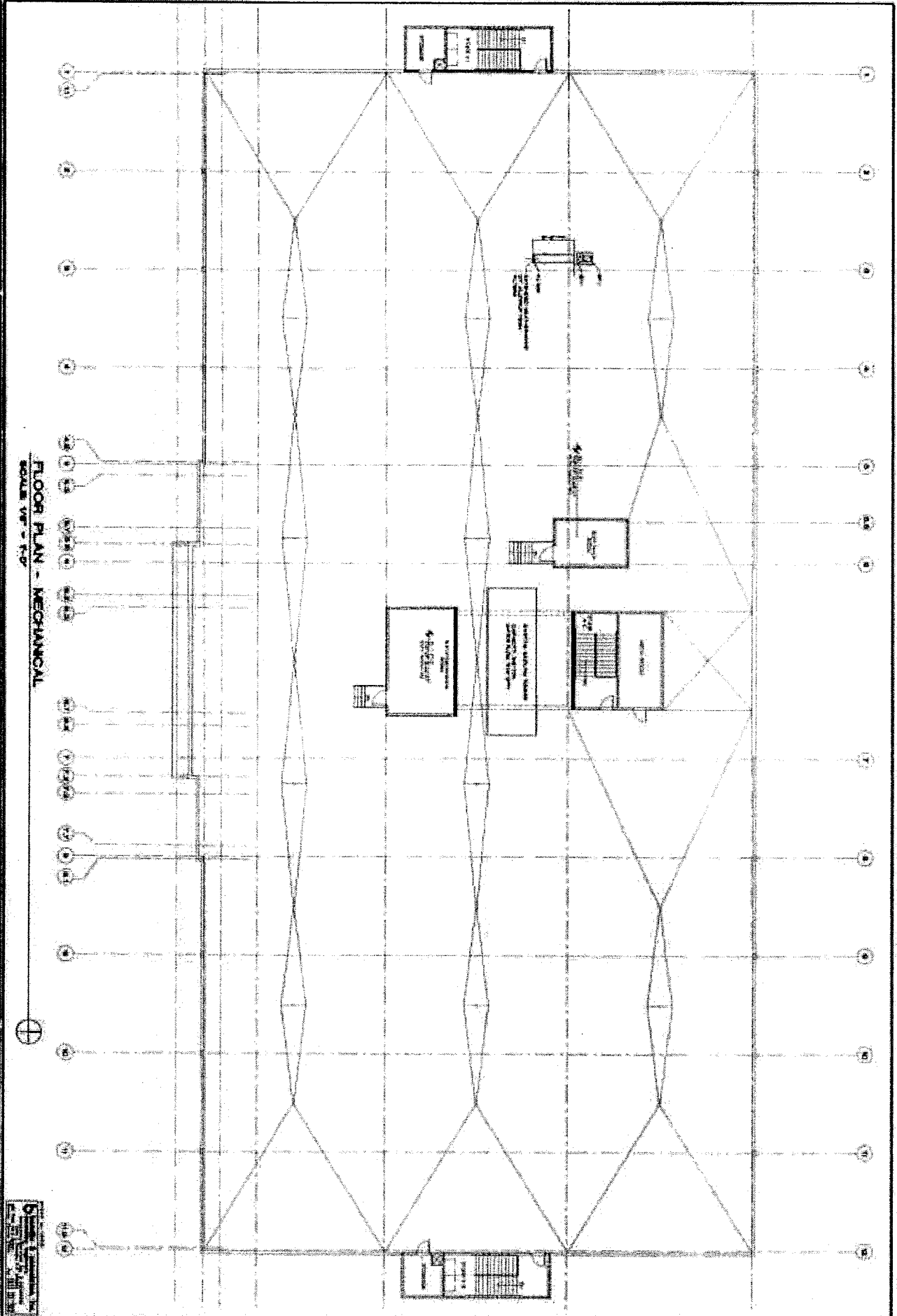
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 MILK TRANSIT DEVELOPMENT PROJECT  
 SUBWAY TENANT IMPROVEMENT PLAN  
 JOHN W. BROWN ARCHITECT, PHILADELPHIA



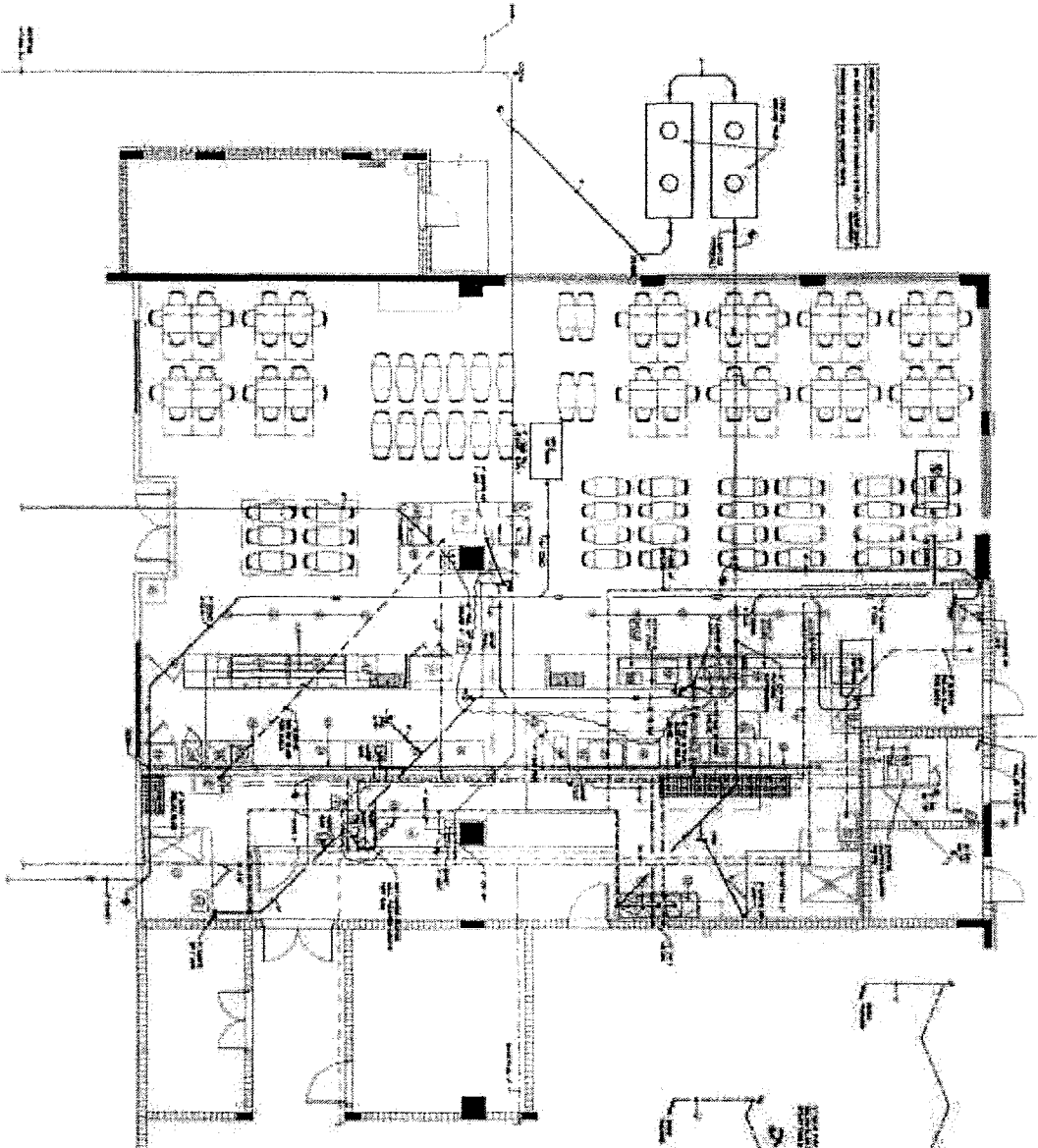
RONALD E. FRAZIER & ASSOCIATES, P.A.  
 ARCHITECTS  
 1300 MARKET STREET, PHILADELPHIA, PA. 19104  
 PLANNING CONSULTANTS  
 1300 MARKET STREET, PHILADELPHIA, PA. 19104



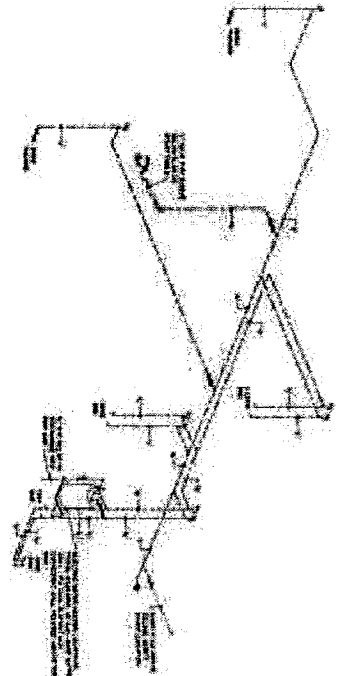
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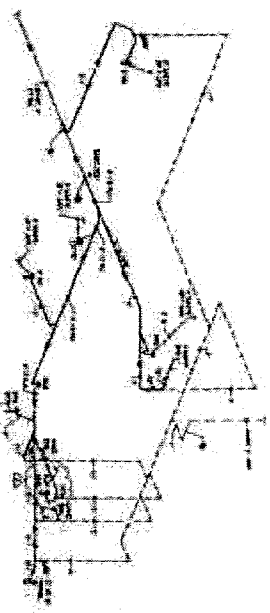
66



FLOOR PLAN - PLUMBING  
SCALE: 1/8" = 1'-0"



DOMESTIC WATER PIPING ISOMETRIC  
N.T.S.



SANITARY PIPING ISOMETRIC  
N.T.S.

DATE	REVISION

DR. MARTIN LUTHER KING JR. PLAZA  
M.K. TRANSIT DEVELOPMENT PROJECT  
SUBWAY TENANT IMPROVEMENT PLAN  
2000 N. GARDEN STREET - GAITHERSBURG, FLORIDA



RONALD E. FRAZIER & ASSOCIATES, P.A.  
ARCHITECTS - INTERIORS - PLUMBING - ELECTRICAL  
1000 N. GARDEN STREET - GAITHERSBURG, FLORIDA

NO.	DATE	REVISION

GROUND FLOOR PLAN  
PLUMBING

P1.0

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# EXHIBIT - B

## BAC MLK Subway Food Court - Leashold Improvements & Equipment

Subway Equipment/Coolers/Bakery Oven, Tables and Chairs, etc.	91,565.00
Sneeze Guards	2,200.00
Leather Sofas	2,330.00
2 Panasonic 42" Plasma TV's	5,804.75
Three (3) 10-ton water source heat pump package units 13.5 S. E. E. R. [A/C System]	62,300.00
Two (2) Hoods and Fire Suppression System	24,500.00
Monitor Module for Hood	4,860.00
Serving Hot Food Steam Table, Electric Range, Rotisserie Oven	8,976.65
Tile & Floor Work	29,857.00
Switch Gears, Wiring, Piping, Light Fixtures, Outlet Installations, etc. (Electrical)	48,239.00
Plumbing, Grease Traps (external & internal), Water Heaters, Ice Makers	61,900.60
Fire Partition Wall	5,200.00
Sprinkler System, Cooler System, Mechanical	17,500.00
Awnings - (In Process)	7,750.00
Food Court Inline Neon Signage	1,525.00
Menu Boards	1,120.00
Countertop & Cabinets (Carpentry Work)	3,500.00
<b>Total</b>	<b>379,128.00</b>

Exhibit "C"

Sub Lease for Restaurant Retail Space

LEASE BETWEEN

*BAC FUNDING CORPORATION*

AS LANDLORD,

AND

*SUBWAY REAL ESTATE CORP.,*

AS TENANT

LOCATION:

MLK Building  
2600 N.W. 64<sup>th</sup> St.  
Miami, Florida 33147

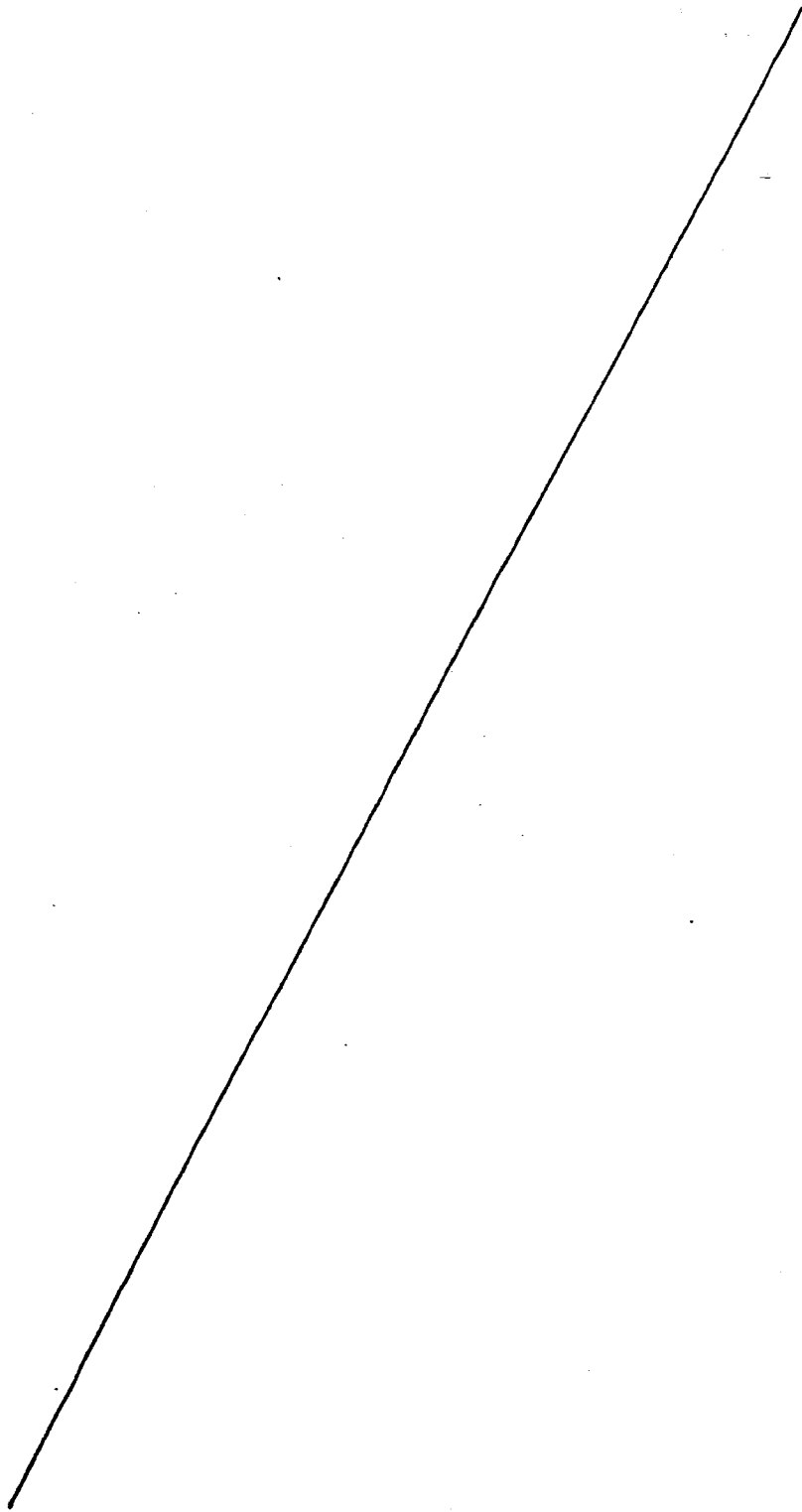
DATED: 11/19/03

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  - 2 Term
  - 3 Quiet Enjoyment
  - 4 Rent
  - 5 Use of Premises
  - 6 Utilities
  - 7 Repairs & Maintenance
  - 8 Hazardous Substances
  - 9 Glass
  - 10 Surrender of Premises
  - 11 Damage or Destruction of Premises
  - 12 Non-Liability of Landlord for Damages
  - 13 Fire Insurance
  - 14 Liability Insurance
  - 15 Assignment, Sublease, or License
  - 16 Improvements or Additions by Tenant
  - 17 Restrictions Against Mechanic's Liens
  - 18 Signs
  - 19 Parking
  - 20 Condemnation
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  - 22 Notices
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  - 24 Tenant's Remedies on Default
  - 25 Licenses/Alterations
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  - 27 Landlord to Have Access
  - 28 Renewal Terms
  - 29 Limitation of Liability of Persons and Entities Affiliated with Tenant
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  - 32 Competition
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  - 34 Waiver
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  - 40 Lease Execution
  - 41 Cancellation
  - 42 Right of First Refusal to Purchase
  - 43 Construction
  - 44 Attornment
- Exhibit A Floor Plan  
Exhibit B Memorandum of Lease  
Exhibit C ~~Landlord's Work~~ NOT ATTACHED  
Exhibit D Rules and Regulations

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LEASE

This lease (hereinafter "Lease") made and entered into this <sup>19<sup>th</sup></sup> ~~26~~ day of <sup>NOVEMBER</sup> ~~October~~, 2003, by and between BAC FUNDING CORPORATION, hereinafter referred to as "Landlord," and SUBWAY REAL ESTATE CORP., a corporation, organized under the laws of Delaware and having its usual place of business at 325 Bic Drive, Milford, Connecticut 06460-3059, hereinafter referred to as "Tenant." In consideration of the mutual covenants herein contained, the parties agree as follows:

Definitions

The following terms when used hereinafter shall be defined as follows:

Building

"Building" means that certain office building located at 2600 N.W. 64<sup>th</sup> Street, Miami, Florida.

Common Areas

"Common Areas" means, all lobbies, entrances, stairs, corridors, elevators and other public portions of the Building.

Premises

"Premises" means that certain space, consisting of approximately 1,900 square feet, shown on the floor plan attached hereto as Exhibit "A" and made a part hereof and situated on the first (1<sup>st</sup>) floor of the Building, with no easement for light, air or view included in the Premises. The Premises shall include the appurtenant right to the use, in common with others, the Common Areas. All the windows and outside wall of the Premises and any space in the Premises used for shafts, pipes, conduits, ducts, electric or other utilities, sinks or other Building facilities, and the use thereof and access thereto through the Premises for the purposes of operation, maintenance and repairs, are reserved to Landlord.

Additional Rent

"Additional Rent" means all charges and other sums of money required to be paid by Tenant under this Lease, other than Gross Lease Rent.

Rent

"Rent" shall collectively mean all Gross Lease Rent and Additional Rent.

SECTION ONE  
DESCRIPTION OF PREMISES

Landlord leases to Tenant and Tenant leases from Landlord the Premises located at the Building.

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**SECTION TWO  
TERM**

The term of this Lease is one (5) year beginning upon the date (the "Commencement Date") which is the earlier to occur of (i) thirty (30) days after substantial completion of Landlord's work, as certified by Landlord's construction coordinator; or (ii) the date Tenant opens for business with the public.

Landlord and Tenant agree to execute Exhibit "B" within ten (10) days after its receipt of written notice from the other party. A party's failure to respond/execute Exhibit B within the ten (10) days shall be construed as said parties acknowledgement of and agreement to same. Each party and any other person or entity may rely on the information contained therein.

The parties herein agree that upon completion of Landlord's work and subject to the execution of this Lease, Tenant shall be entitled to the use and possession of the Premises for the purposes of installing its trade fixtures, counters and the like; provided, further, however, that such use and possession of the Premises shall be subject to all terms and conditions of this Lease other than the obligation of Tenant to pay Gross Lease Rent.

If Landlord's work is not certified as substantially complete by Landlord's construction supervisor within three (3) months of the final execution of this Lease, then, provided the failure to achieve substantial completion is not attributable to any acts or omissions of Tenant. Tenant shall have the option of terminating this Lease by giving Landlord written notice. In the event Tenant chooses to terminate this Lease, Landlord agrees to execute documents related thereto and to promptly return any and all monies theretofor paid by Tenant as Rent.

**SECTION THREE  
QUIET ENJOYMENT**

Landlord covenants, warrants and represents that as of the Commencement Date, (i) Landlord has/shall have the full right and power to execute and perform this Lease, and to grant the estate demised herein; (ii) Tenant, upon the payment of Rent and performance of the covenants and agreements hereof, shall peaceable and quietly have, hold and enjoy the Premises during the term of this Lease.

In the event Landlord transfers its interest in the Building, it is understood that the transferee shall assume the responsibilities of "Landlord" for the remainder of the term of this Lease.

**SECTION FOUR  
RENT**

The rent (the "Gross Lease Rent") for the Premises shall be \$30,000 per year for the first two (2) years of the Term. Commencing on the second anniversary of the Commencement Date and thereafter, on

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each anniversary of the Commencement Date, Gross Lease Rent shall increase by 3% over the Gross Lease Rent theretofore paid. Commencing on the Commencement Date and continuing on the first day of each and every calendar month thereafter during the Term, Tenant shall pay to Landlord the Gross Lease Rent for the Premises in advance and without notice, in equal monthly installments, each such installment initially equaling \$2,500.00. The Gross Lease Rent for any fractional month shall be prorated on a per diem basis. All Rent shall be paid to Landlord, without deduction or offset, in lawful money of the United States of America at the offices of Landlord or its Building manager located in the Building, or to such other person or at such other place as Landlord may from time to time designate in writing. Nothing contained herein shall require Landlord to accept any tender of payment from Tenant for less than the Rent then due under this Lease, including any and all late charges, interest and attorney's fees that may then be due from Tenant in accordance with the express terms of this Lease. Landlord may elect to accept less than the full Rent then due from Tenant hereunder; however, no payment by Tenant or receipt by Landlord of such lesser amount shall be deemed to be other than payment on account, and no restrictive endorsement or statement on any check or payment shall be deemed to alter the express provisions of this Lease, nor constitute an accord and satisfaction. Landlord may accept less than the full amount of Rent then due from Tenant without prejudice to Landlord's right to recover the balance of the full amount then due, or to pursue any other remedies then available to Landlord under this Lease or applicable law. In all events, including but not limited to Landlord's acceptance of a partial payment from Tenant, any payment accepted by Landlord from Tenant shall be applied first to retire the oldest receivables due from Tenant hereunder, then to any current Rent or other payment then due hereunder, and the balance, if any, will be applied to any Rent or other payment which will become due from Tenant hereunder.

Gross Lease Rent has been calculated without regard to square footage of the Premises and shall not be adjusted upward or downward as a result of any calculations of actual or usable square footage.

If at any time during the Term, less than seventy-five (75%) of the actual tenantable space in the Building is has been leased to tenants, the Tenant shall have the option upon five (5) days written notice to Landlord to cancel this Lease, in which event Landlord shall promptly return to Tenant the security deposit and any other sums which may be due to Tenant upon the natural expiration of this Lease.

## SECTION FIVE USE OF PREMISES

Tenant shall use the Premises as a restaurant for on and off premises consumption of sub sandwiches, salads, drinks, breakfasts and any other items sold in a majority of Tenant's other shops and for no other purpose.

## SECTION SIX UTILITIES

Landlord shall furnish water, electricity, and gas service to the Premises twenty-four (24) hours a day, seven (7) days a week. Notwithstanding the foregoing, except for the gross negligence or willful misconduct of Landlord, Landlord shall not be liable for any damages directly or indirectly, and Tenant shall have no right of set-off or reduction in Rent, resulting from the installation, use, malfunction, or interruption of use of any equipment in connection with the furnishing of services referred to herein, including, but not limited to, any interruption in services by any cause beyond the immediate, reasonable control of the Landlord; provided however, Landlord shall exercise due care in furnishing adequate and uninterrupted services. Notwithstanding the foregoing provisions of this Section 6, in the event a service which Landlord is

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obligated to provide in the Premises is not provided for a period of three (3) consecutive business days as a result of some factor within Landlord's reasonable control and, as a result of the failure to provide such service. Tenant is not able to reasonably operate its business in the Premises and does not operate its business in the Premises during such three (3) consecutive business day period, and provided Tenant has promptly notified Landlord of such service not being provided, then Tenant shall be entitled to abate its Rent for the period commencing at the end of such third (3rd) consecutive business day until such service as described above is resumed.


## **SECTION SEVEN REPAIRS AND MAINTENANCE**

Landlord shall maintain and repair the Common Areas, the foundations, roofs, exterior walls, and the structural portions of the Building, exclusive of the Premises, and other tenant spaces occupied by or under the control of other tenants, provided that Tenant shall be responsible for any damages to the Building and Common Areas caused by any act or omission of Tenant, its agents, employees or visitors. Landlord shall have no duty to Tenant to make any repairs or improvements to the Premises and Tenant shall be solely responsible therefor, except structural repairs necessary for safety and tenantability not brought about by any act, omission or neglect of Tenant, its agents, employees or visitors. Tenant shall, at its sole expense, keep the Premises in good repair and tenantable condition. If Tenant fails to keep the Premises in good repair and tenantable condition, then upon not less than ten (10) days prior written notice and opportunity to cure, Landlord can make such repairs as it deems necessary to put the Premises in good and tenantable condition and Tenant shall be liable to promptly reimburse Landlord for the reasonable cost of such repairs as Additional Rent hereunder.

## **SECTION EIGHT HAZARDOUS SUBSTANCES**

Landlord warrants and represents that, to the best of its actual knowledge, any use, storage, treatment or transportation of Hazardous Substances which has occurred in, on, or under the Premises and the Building prior to the date of execution of this Lease has been in compliance with all applicable environmental laws. "Hazardous Substances" shall mean pollutants, contaminants, toxic or hazardous waste, or any other substances, the use and/or the removal of which is required or the use of which is restricted, prohibited or penalized by any environmental law. "Environmental Law" shall mean any applicable present and future federal, state or local law, ordinance or other statute of a governmental or quasi-governmental authority relating to pollution or protection of the environment, and any regulation or policy promulgated or issued thereunder. Landlord additionally warrants and represents that to the best of its actual knowledge, no release, leak, discharge, spill, disposal or emission of Hazardous Substances has occurred in, on or under the Premises or the Building, and that the Premises and the Building are in compliance with all applicable Environmental Laws.

Landlord hereby agrees, represents and warrants that (i) no activity will be conducted in the Building by Landlord and/or its agents, employees or contractors that will produce any Hazardous Substance, except for such activities that are a part of the ordinary course of Landlord's business activities (the "Permitted Activities") provided said Permitted Activities are conducted in accordance with all Environmental Laws; Landlord shall be responsible for obtaining any required permits and paying any fees and providing any testing required by any governmental agency; (ii) the Building will not be used by

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Landlord and/or its agents, employees or contractors in any manner for the storage of Hazardous Substances except for the temporary storage of such materials that are used in the ordinary course of Landlord's business (the "Permitted Materials") provided such Permitted Materials are properly stored in a manner and location meeting all Environmental Laws; (iii) no portion of the Building will be used as a landfill or a dump; (iv) Landlord will not install any underground tanks of any type in, on or under the Building; (v) Landlord will not knowingly permit any surface or subsurface conditions in the Building to exist or come into existence that violate Environmental Laws; (vi) Landlord will not knowingly permit any Hazardous Substances to be brought onto the Premises or the Building, except for the Permitted Materials described above, and if so brought or found located thereon, the same shall be immediately removed, with proper disposal, and all required cleanup procedures shall be diligently undertaken pursuant to all Environmental Laws; and (viii) to the best of Landlord's actual knowledge and belief, as of the date of this Lease: (a) Landlord has duly complied with and Landlord and the Building are presently in compliance with all Environmental Laws, and; (b) Landlord has received no written notice respecting any fact which might reasonably constitute a violation of any Environmental Law.

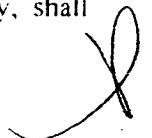
Unless the Hazardous Substances are present solely as a result of negligence, willful misconduct or other acts of Tenant, Tenant's agents, employees, contractors and subject to Tenant's obligations hereinafter set forth in this Section, Landlord agrees to indemnify, defend and hold harmless Tenant from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including any and all sums paid for settlement of claims, attorneys' fees, consultants' and experts' fees) arising during or after the term of this Lease from or in connection with the breach of the foregoing representations and warranties by Landlord. Without limitation of the foregoing, this indemnification includes all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision. This indemnification specifically includes all costs due to Hazardous Substances which flow, diffuse, migrate or percolate into, onto or under the Premises or the Building.

Tenant will not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Premises by Tenant, Tenant's agents, employees, contractors or invitees, without obtaining Landlord's prior written consent, except for Hazardous Substances contained in products used by Tenant or such other persons in de minimis quantities for ordinary cleaning and office purposes provided such materials are properly stored in a manner and location meeting all Environmental Laws. If Tenant breaches the foregoing representation and warranty, or if Hazardous Substances are used, stored, generated or disposed of on or in the Premises or the Building by such persons or if the Premises or the Building become contaminated in any manner for which the Tenant is legally liable, Tenant agrees to indemnify, defend and hold harmless Landlord from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including a decrease in value of the Premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultants' and experts' fees) arising during or after the term of this Lease and arising as a result of such contamination by Tenant or such other persons. Without limitation of the foregoing, this indemnification includes all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision.

If Tenant causes or permits the presence of any Hazardous Substance in the Premises or the Building and such Hazardous Substances alone result in contamination, Tenant will promptly, at its sole expense, take all necessary actions to return the Premises or the Building to the condition existing prior to the contamination caused by the presence of any such Hazardous Substance on the Premises. Tenant must first obtain Landlord's approval and the approval of any necessary federal, state or local agencies for any such remedial action.

The foregoing indemnification and responsibilities of Landlord and Tenant, respectively, shall survive the termination or expiration of this Lease.

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**SECTION NINE  
OPERATING COVENANTS**

Tenant covenants to continuously and uninterruptedly operate within the entire Premises the business it is permitted to conduct pursuant to Section 5 of this Lease, except any portion of the Premises while that portion is untenable because of fire or other casualty. Tenant agrees to conduct its business at all times in a first-class manner consistent with reputable business standards and practices, and to maintain within the Premises a stock of merchandise and trade fixtures adequate to service and supply the usual demands of its customers. Tenant shall keep the Premises in a neat, safe, clean and orderly condition.

Tenant shall operate its business between the Monday through Friday from 6:30 a.m. to 7:30 p.m., except on such days as the Building is closed for observance of holidays.

**SECTION TEN  
SURRENDER OF PREMISES**

If Tenant shall fail to remove all effects from the Premises upon termination of this Lease for any cause whatsoever, Landlord may remove, sell, store or otherwise dispose of the same, without liability to Tenant for loss thereof, and Tenant agrees to pay Landlord on demand any and all expenses incurred by Landlord thereby.

Before the termination of this Lease, Tenant shall remove from the Premises all its trade fixtures and personal property and surrender such Premises and the keys thereto to Landlord (whether or not in default hereunder) in the same condition as at the beginning of this Lease, normal wear and tear and event of casualty only excepted; provided, however, that if such removal would damage the Premises or if Tenant was in default at the time of termination of the Lease, Tenant shall have no right to remove any same and same shall be deemed abandoned by Tenant and the property of Landlord without compensation to Tenant. Further, any trade fixtures or personal property which may be, but is not, removed by Tenant pursuant to this Section shall be deemed abandoned and shall, thereupon, become the property of Landlord without compensation to Tenant. Tenant's trade fixtures and all of Tenant's equipment shall not be considered fixtures, and shall remain the property of Tenant. As such, they may be removed by Tenant at any time, subject to the foregoing paragraph.

**SECTION ELEVEN  
DAMAGE OR DESTRUCTION OF PREMISES**

If the Premises or the Building should be damaged by storm, fire, earthquake or other casualty to the extent that: (i) in the reasonable opinion of Landlord's architect, the repair or rebuilding of the Building or the Premises cannot be completed within one hundred eighty (180) days after the date of such damage, or

(ii) if the insurance proceeds remaining after any required payments to any mortgagees of Landlord are insufficient to repair such damage or destruction; or (iii) in Landlord's commercially reasonable opinion repair or rebuilding of the Premises or the Building would not be economically feasible, Landlord shall have the right, at Landlord's option, to terminate this Lease by giving Tenant written notice of such termination within ninety (90) days after the date of such casualty, and the Rent shall be apportioned and paid to the date on which possession is relinquished or the date of the casualty, whichever is later, and Tenant shall immediately vacate the Premises according to the notice of termination. Tenant covenants and agrees to cooperate, at no cost or expense to Tenant, with Landlord and lessor or mortgagee of Landlord in their efforts to collect insurance proceeds (including rent insurance proceeds) payable to such parties. Landlord shall not be liable for any delay which may arise by reason of any adjustment of insurance on the part of Landlord or Tenant, or any cause beyond the reasonable control of Landlord and/or its contractors. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting from any fire or other casualty or the repair thereof.

If this Lease is not terminated pursuant to the provisions of Section above, Landlord shall at its sole cost and expense thereupon proceed with reasonable diligence to rebuild and repair the damage to the Building and/or the Premises to substantially the condition in which it existed prior to such damage, except that (i) Landlord shall not be required to repair any injury or damage or to make any repairs or replacements of any improvements installed in the Premises by or for Tenant, other than Landlord's work under Exhibit "C", and Tenant shall, at Tenant's sole cost and expense, repair and restore its portion of such improvements, and (ii) Landlord may elect not to rebuild if such damage occurs during the last year of the Term, unless Tenant has previously exercised any option to renew the Term of the Lease. If the Premises are untenable in whole or in part as a result of such casualty, the Rent payable under this Lease during the period in which the Premises are untenable shall be reduced in proportion to the portion of the Premises rendered untenable until such time as restoration of the same is complete. In the event Landlord shall fail to complete such repairs and rebuilding within one hundred eighty (180) days after the date of such damage, Tenant may, at its option, terminate this Lease by delivering written notice to Landlord prior to the earlier of: (x) thirty (30) days after the expiration of such one hundred eighty (180) day period, and (y) the date Landlord substantially completes such repairs or rebuilding and the Premises are rendered tenable. Such termination of the Lease shall be Tenant's exclusive remedy. If Tenant fails to terminate the Lease within the time period set forth above, Tenant shall be deemed to have waived its rights to terminate by reason of the failure of Landlord to complete such repairs and rebuilding within one hundred eighty (180) days after the date of such damage.

## SECTION TWELVE NON-LIABILITY OF LANDLORD FOR DAMAGES

Landlord shall not be responsible for liability or damage claims for injury to persons or property for claims of any type that it may incur in connection with the operation of Tenant's business or use or occupancy of the Premises by Tenant, its agents, servants, or employees, or any other person entering upon the Premises under express or implied invitation or consent of Tenant, unless caused by the negligence of Landlord or its agents, servants, or employees. Except when caused by the negligence of the Landlord, his agents, servants, or employees, Tenant shall indemnify Landlord from all liability, loss or other damage, or claims for obligations resulting from any injuries or losses of this nature, including reasonable attorneys' fees and court costs incurred by Landlord in defending or settling any such claims. Landlord shall indemnify Tenant for any loss occurring in the Common Areas, unless caused by the negligence of Tenant, its agents, servants, or employees or any other person entering the Building or Common Areas under express or implied invitation or consent of Tenant.

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**SECTION THIRTEEN  
FIRE INSURANCE**

Tenant is responsible for its own insurance to cover its own contents located in the Premises, and all of the personal property and equipment included in the Premises. Landlord shall not be liable for any damage to the property or person of any of the Tenant's officers, employees, agents, invitees or guests from perils customarily covered by fire and extended coverage insurance, liability insurance or acts of God. It is agreed that Landlord shall be responsible for fire and extended coverage for the Premises by a responsible insurance company authorized to do extended coverage insurance in the state in which the Building is located. Tenant shall maintain fire insurance and extended coverage on the interior of the Premises in an amount which is adequate to cover the cost of equipment and trade fixtures. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant each hereby waives any and all rights of recovery, claim, action or cause of action against the other for any loss or damage that may occur to the Premises or any improvements thereto, or any personal property of Landlord or Tenant, arising from any cause that (a) would be insured against from any cause that (a) would be insured against under the terms of any property insurance required to be carried hereunder, or (b) is insured against under the terms of any property insurance actually carried, regardless of whether it is required hereunder. The foregoing waiver shall apply regardless of the cause or origin of the claim, including but not limited to the negligence of a party or that party's agents, officers, employees or contractors. The foregoing waiver shall not apply if it would have the effect, but only to the extent of such effect, of invalidating any insurance coverage of Landlord or Tenant.

**SECTION FOURTEEN  
LIABILITY INSURANCE**

Tenant shall procure and maintain in full force, at its expense, during the term of this Lease, and any extension thereof, public liability insurance which shall be adequate to protect against liability for damage claims through public use of or arising out of any accident occurring in or around the Premises, in a minimum amount of two million dollars (\$2,000,000.00).

All insurance policies procured and maintained by Tenant pursuant to this Section or Section Thirteen shall be carried with companies reasonably satisfactory to Landlord licensed in the State of Florida; (ii) shall be non-cancelable, except after thirty (30) days' written notice to Landlord; and (iii) copies of executed policies of insurance and/or endorsements, or certificates of such policies in form and substance reasonably acceptable to Landlord, with respect thereto shall be delivered to Landlord prior to the earlier to occur of the Commencement Date or the date Tenant first uses or occupies the Premises, and renewals thereof as required shall be delivered to Landlord at least thirty (30) days prior to the expiration of each respective policy term.

Tenant shall procure from sublessee a Certificate of Insurance with reference to the foregoing insurance requirements of this Section and Section 13. Sublessee is the entity that has executed a sublease with the Tenant. Subtenant has agreed in said sublease to perform all of the obligations of the Master Lease including but not limited to supplying the Master Landlord with a Certificate of Insurance.

**SECTION FIFTEEN  
ASSIGNMENT, SUBLEASE, OR LICENSE**

In the event Tenant's failure to perform any of the terms or conditions of this Lease continues for thirty (30) days after Tenant's receipt of written notice thereof, Landlord shall declare the rights of Tenant under this Lease terminated, and thereafter, recover possession of said Premises through appropriate legal process, including, if available, summary dispossess proceedings.

Further, in the event, Tenant shall become insolvent or transfer property in fraud of creditors; Tenant shall make an assignment for benefit of creditors; a receiver is appointed for any of Tenant's assets; or any petition is filed by or against Tenant under any section or chapter of the National or Federal Bankruptcy Act or any other applicable federal or state bankruptcy, insolvency or other similar act, and, in the case of a petition filed against Tenant, such petition is not dismissed within sixty (60) days after the date of such filing, Landlord may declare this Lease terminated and and thereafter, recover possession of said Premises through appropriate legal process, including, if available, summary dispossess proceedings.

In the event of termination of this Lease as set forth above in this Article by Landlord, subject to the last paragraph of this Article, Landlord acknowledges an affirmative duty to mitigate Tenant's damages and shall in no event seek to accelerate Rent.

In the event of termination by Landlord in accordance with the foregoing, Tenant shall be obligated to Landlord for any loss of Rent and Tenant covenants and agrees to pay all court costs, reasonable attorneys' fees and other expenses which may reasonably be incurred by Landlord, in any court proceedings, either in law or in equity, arising out of said default or breach of covenant by Tenant.

Additionally, Tenant may, at Tenant's option, terminate this Lease at any time subject to Tenant making payment to Landlord of the liquidated damages discussed below in this Article. If Tenant elects to exercise this option, it shall give Landlord at least thirty (30) days written notice thereof, which notice shall designate the date of termination and, subject to Tenant making payment to Landlord of the liquidated damages discussed below in this Article, the term hereof shall expire on such date.

For good and valuable consideration, in the event of <sup>A DEFAULT</sup> ~~termination of this Lease by Landlord or Tenant pursuant to the foregoing provisions of this Article~~, Landlord and Tenant agree that ~~in addition to all Rent and other amounts previously due and unpaid under the terms and conditions of the Lease, Landlord shall be entitled to collect as liquidated damages and not as a penalty, an amount equal to the lesser of (A) the remaining Gross Lease due for the Term, or (B) twelve (12) months Gross Lease Rent. The parties agree that the damages caused by Tenant's default would be difficult or impossible to accurately estimate and that this measure of damages is a reasonable pre-estimate of the Landlord's probable loss resulting from Tenant's breach or early termination of the Lease.~~ **TENANT'S LIABILITY UPON DEFAULT SHALL NOT EXCEED THE LESSER OF TWELVE (12) MONTHS GROSS LEASE RENT OR \$40,000.00 OR THE REMAINING GROSS LEASE DUE FOR THE TERM.**

**SECTION TWENTY-FOUR**  
Intentionally Deleted.

**SECTION TWENTY-FIVE**  
Intentionally Deleted.

**SECTION TWENTY-SIX**

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sufferance equaling one hundred twenty-five (125%) of the Gross Lease Rent payable immediately prior to the commencement of such holdover. This provision does not give Tenant any right to hold over. All other terms and conditions of this Lease shall remain in full force during any tenancy at sufferance.

**SECTION TWENTY-TWO  
NOTICES**

Any notice which is to be given to Landlord or Tenant shall be deemed sufficiently given if sent by Certified or Registered Mail, postage prepaid, addressed as follows:

- Tenant: (1) Subway Real Estate Corp.  
325 Bic Drive, Milford, CT 06460-3059.
- (2) With a necessary copy to:
- Subway Development of S.E. Florida  
15291 N.W. 60<sup>th</sup> Ave Suite 100  
Miami Lakes, Florida 33014
- (3) Subway franchisee at the Premises.

Landlord's address for notice is: BAC Funding Corporation  
6600 NW 27<sup>th</sup> Avenue  
Miami, Florida 33147

Landlord's Tax I.D. Number (If Corporation) or Social Security Number (If Individual) is:  
592196535

The customary receipt shall be conclusive evidence of service, and notices shall be effective as of the date received. Landlord agrees to accept Rent at the above-referenced address.

Any change in the entity to whom Rent is due must be authorized in writing by the named landlord, its mortgagor, or by court order. Absent such acceptable authorization, Tenant shall not be in default of this Lease if it continues to pay Rent as specified herein.

**SECTION TWENTY-THREE  
TENANT DEFAULT**

In consideration for having a SUBWAY® sandwich shop in this location, Landlord has had the opportunity to review and has agreed to the following provisions:

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Tenant shall satisfy, discharge or bond of record within twenty (20) days following Tenant's receipt of notice of the filing thereof any mechanic's lien filed against the Premises or Building for work or materials claimed to have been furnished to Tenant.

### **SECTION EIGHTEEN SIGNS**

Landlord hereby gives its consent to Tenant to furnish and decorate the Premises in accordance with standard SUBWAY® décor; provided, however, any signage, awnings, facades which will be visible from the exterior of the Building and/or attached thereto shall be subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed provided same comports with Tenant's standard signage, including standard SUBWAY® neon tubing and window advertising including but not limited to neon "open" signs and static cling(s).

The phrase "standard SUBWAY® signs" shall be deemed to include pole signs and awnings. Tenant's signs shall measure at least 36" high and extend the length of the fascia.

However, Tenant agrees that signs placed on the Premises shall conform to local codes and ordinances and shall be cosmetically in align with the remainder of the Building.

### **SECTION NINETEEN PARKING**

(Intentionally Deleted)

### **SECTION TWENTY CONDEMNATION**

If the whole or any part of the Premises shall be taken by any lawful authority under the power of eminent domain, then this Lease and the term demised, shall thereupon terminate and Tenant shall be liable for Rent only up to the date of such termination.

In the event of the condemnation of the Premises, Tenant is entitled to the full value of its property interest and business conducted on the property including but not limited to the loss, if any, sustained by Tenant as a result of the termination of this Lease for loss of business, fixtures, goodwill, moving expenses and attorneys' fees and costs, to the fullest extent permitted by law.

### **SECTION TWENTY-ONE HOLDING OVER**

The failure of Tenant to surrender the Premises upon the termination of the original lease term or extension, and subsequent holding over by Tenant, without consent of the Landlord shall result in the creation of a tenancy at sufferance, with the Gross Lease Rent payable for the period of such tenancy at

Tenant shall not assign this Lease or sublease the Premises, or any right or privilege connected therewith, or allow any other person, except agents, employees, and customers of the Tenant, to occupy the Premises or any part thereof, without first obtaining the written consent of Landlord. A consent by Landlord shall not be a consent for a subsequent assignment, sublease or occupation by other persons. An unauthorized assignment, sublease, or license to occupy by Tenant, shall be void and this Lease shall terminate at the option of the Landlord. The interest of Tenant in this Lease is not assignable by operation of law, without the written consent of Landlord.

Notwithstanding the above paragraph, Tenant may assign this Lease or sublet the Premises to any bona-fide licensee/franchisee of Doctor's Associates Inc., doing business as a SUBWAY® sandwich shop without the prior consent of or written notice to the Landlord. Landlord agrees to accept rent from Tenant, its assignee, or sublessee.

Landlord and Tenant agree that this Lease is contingent upon Tenant receiving an executed sublease from an authorized SUBWAY® licensee/franchisee of Doctor's Associates Inc within thirty (30) days after the date of this Lease. In the event no sublease is executed within the time, Tenant may, at Tenant's option void this Lease upon written notice to Landlord. Said option must be exercised, if at all, within forty five (45) days of the date of this Lease. The failure to exercise such option within said forty five (45) day period shall constitute a waiver by Tenant of such option right.

No assignment or subletting shall relieve Tenant from primary liability for any covenants or obligations of Tenant under this Lease, and Tenant shall remain fully liable hereunder after any assignment or subletting.

#### **SECTION SIXTEEN IMPROVEMENTS OR ADDITIONS BY TENANT**

During the term of this Lease, Tenant shall have the right and privilege of, improving, remodeling or altering the interior of the Premises, without the prior consent of Landlord, in accordance with the standard SUBWAY® decor, including installation of additional partitions; provided, however, (i) Tenant shall be responsible for ensuring that any such improvement, remodeling or alterations comply with all codes, ordinances, and laws in effect at the time performed and thereafter (including but not limited to the Americans with Disabilities Act, (ii) the consent of the Landlord shall be required in all other instances, and (iii) in any event, no improvements, remodeling or alterations affecting the structural portion of the Premises or Building, utility lines serving same or pertaining to any entrances to or exits from the Premises shall be made by Tenant without the written consent of Landlord.

If Tenant or its authorized assignee/sublessee is unable to obtain permits from all applicable governmental authorities to construct its improvements in accordance with the standard SUBWAY® decor at the Premises thirty (30) days after this Lease is fully executed by Landlord and Tenant then Tenant may, at its option, terminate this Lease. Said option must be exercised, if at all, within forty five (45) days of the date of this Lease. The failure to exercise such option within said forty five (45) day period shall constitute a waiver by Tenant of such option right.

#### **SECTION SEVENTEEN RESTRICTIONS AGAINST MECHANIC'S LIENS**

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## TAXES AND ASSESSMENTS

Landlord agrees to pay all general real estate taxes and special assessments assessed to the Premises and the Building, during the term of this Lease, or any lease extension. Such taxes shall be paid before they are delinquent and become charged against the Premises therein. Anything contained herein to the contrary notwithstanding, in addition to the Gross Lease Rent and Additional Rent and all other charges to be paid by Tenant hereunder, Tenant shall pay to Landlord, upon demand as Additional Rent hereunder, any and all taxes payable by Landlord (other than net income taxes) whether or not now customary or within the contemplation of the parties hereto: (i) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures, improvements (whether constructed by Landlord or Tenant) and other personal property located in the Premises or by the cost or value of any leasehold improvement made in or to the Premises by or for Tenant, other than Landlord's work, regardless of whether title to such improvement shall be in Landlord or Tenant; (ii) upon, measured by or reasonably attributable to the Rent payable hereunder, or any component thereof, including, without limitation, any gross income tax or excise tax levied the City or County in which the Building is located, the State of Florida, the Federal Government or any other federal, state, county, municipal or other governmental body with respect to the receipt of such Rent; (iii) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; and (iv) upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

## SECTION TWENTY-SEVEN LANDLORD TO HAVE ACCESS

Landlord hereby expressly reserves the right to enter the Premises and/or any part thereof, at any time, (i) in the event of emergency, or (ii) starting six (6) months before the expiration of the Term, as same may be extended, to show same to prospective tenants. Furthermore, Landlord may enter the Premises after two (2) days written notice to make inspection and repairs, to exhibit the Premises to, purchasers, and/or to perform any acts related to safety, protection, preservation, or improvement of the Premises.

## SECTION TWENTY-EIGHT RENEWAL TERMS

Tenant shall have the option of extending the Term of this Lease for three (3) consecutive period(s) of five (5) years each. Tenant shall provide Landlord with written notice of its intention to renew this Lease at least one hundred eighty (180) days, but no more than two hundred seventy (270) days prior to the expiration of the then current term.

In the event Landlord does not receive Tenant's notice as stated above, Tenant shall not lose its option to renew unless and until the Tenant shall fail to give notice to Landlord within ten (10) days after receipt of written notice from Landlord citing Tenant's failure to exercise its option to renew.

In order to clarify the parties' notice responsibilities for renewals, and for no other purpose, Landlord and Tenant agree that this Lease shall commence on \_\_\_\_\_ and the initial term shall expire on \_\_\_\_\_. Any and all renewal terms shall be determined from these stipulated dates unless altered by Landlord and Tenant either by amendment or memorandum of lease.

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The terms and conditions for each renewal period shall be the same as those contained herein. Anything contained herein to the contrary notwithstanding, commencing with the first day of the first option period and annually thereafter on each anniversary of said date. Gross Lease Rent shall increase at a rate of 3 % per year over the Gross Lease Rent payable for the immediately preceding twelve month period.

**SECTION TWENTY-NINE  
LIMITATION OF LIABILITY OF PERSONS  
AND ENTITIES AFFILIATED WITH TENANT**

LANDLORD RECOGNIZES AND ACKNOWLEDGES THAT TENANT IS A DELAWARE CORPORATION AND THAT TENANT'S ASSETS CONSIST ALMOST EXCLUSIVELY OF LEASES, SUBLEASES, AND OPTIONS TO PURCHASE LEASED PREMISES. LANDLORD ALSO RECOGNIZES AND ACKNOWLEDGES THAT TENANT WAS ORGANIZED PRINCIPALLY FOR THE PURPOSE OF NEGOTIATING AND DRAFTING LEASES WITH A VIEW TOWARDS SUBLETTING THE LEASED PREMISES TO FRANCHISEES/LICENSEES OF DOCTOR'S ASSOCIATES INC. ("DAI"). LANDLORD RECOGNIZES AND ACKNOWLEDGES THAT IT HAS BEEN ADVISED THAT DAI IS A FLORIDA CORPORATION THAT OWNS ALL RIGHTS TO AWARD FRANCHISES FOR SUBWAY® SANDWICH SHOPS AND THAT LANDLORD HAS ALSO BEEN ADVISED THAT TENANT HAS NO RIGHTS WHATSOEVER TO AWARD FRANCHISES FOR SUBWAY® SANDWICH SHOPS OR COLLECT ANY FRANCHISE-RELATED ROYALTIES FROM ANY PROSPECTIVE SUBLESSEE OF THE PREMISES. LANDLORD RECOGNIZES AND ACKNOWLEDGES THAT IT HAS BEEN GIVEN AN OPPORTUNITY, WHETHER BY ITSELF OR WITH THE ASSISTANCE OF ITS PROFESSIONAL ADVISORS, TO MAKE INQUIRY OF TENANT'S FINANCIAL STATUS AND TO EVALUATE SAID STATUS TO ITS SATISFACTION. LANDLORD HAS EITHER MADE SUCH INQUIRY AND IS SATISFIED WITH THE RESPONSE TO SUCH INQUIRY OR HAS AFFIRMATIVELY AND VOLUNTARILY DETERMINED NOT TO DO SO. LANDLORD FURTHER RECOGNIZES AND ACKNOWLEDGES THAT NO PERSON OR ENTITY OTHER THAN TENANT HAS MADE ANY REPRESENTATIONS OF ANY KIND WITH REGARD TO THE ABILITY OF TENANT TO PERFORM TENANT'S OBLIGATIONS HEREUNDER. LANDLORD ALSO RECOGNIZES AND ACKNOWLEDGES THAT TENANT INTENDS TO SUBLEASE THE PREMISES TO A PERSON(S) WHO HAS OR WILL BE AWARDED A FRANCHISE/LICENSE FOR A SUBWAY® SANDWICH SHOP FROM DAI, UNDER WHICH SUBLEASE THE SUBLESSEE WILL PAY RENT DIRECTLY TO LANDLORD SO THAT THE RENTAL PAYMENT FROM SUCH SUBLESSEE WILL NORMALLY NOT BE RECEIVED OR HELD BY TENANT. ALTHOUGH THE SUBLESSEE MAY OPEN A BUSINESS OPERATION DOING BUSINESS AS A SUBWAY® SANDWICH SHOP AND MAY HAVE FRANCHISE AND OTHER BUSINESS RELATIONSHIPS WITH CORPORATIONS RELATED TO OR ASSOCIATED BY THE GENERAL PUBLIC WITH "SUBWAY," AS IT IS COMMONLY KNOWN, LANDLORD RECOGNIZES AND ACKNOWLEDGES THAT THE SOLE AND EXCLUSIVE PERSON OR ENTITY AGAINST WHICH IT MAY SEEK DAMAGES OR ANY REMEDIES UNDER THIS OR ANY OTHER DOCUMENT IN WHICH THE LANDLORD AND TENANT OR LANDLORD AND SUBLESSEE ARE PARTIES, WHETHER FOR UNPAID RENT AND ASSOCIATED DAMAGES, CLAIMS OF UNJUST ENRICHMENT, CLAIMS OF UNFAIR TRADE PRACTICES, OR ANY OTHER THEORY OF RECOVERY OF ANY KIND OR NATURE, IS TENANT OR SUBLESSEE. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THERE WILL NOT BE ANY LIABILITY WHATSOEVER AGAINST (A) DAI, ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND/OR AGENTS, AND/OR (B) ANY PERSONS AND ENTITIES WHO ARE THE SHAREHOLDERS, DIRECTORS, OFFICERS,

EMPLOYEES, AND/OR AGENTS OF THE TENANT. SUCH EXCULPATION OF LIABILITY SHALL BE ABSOLUTE AND WITHOUT ANY EXCEPTION WHATSOEVER.

\_\_\_\_\_  
Tenant Initials

\_\_\_\_\_  
Landlord Initials

**SECTION THIRTY  
ENTIRE AGREEMENT**

Landlord and Tenant hereby warrant and represent each to the other that there are no oral agreements affecting this Lease, exhibits and riders, if any, attached hereto and forming a part hereof, supersede and cancel any and all previous negotiations, arrangements, letters of intent, executed lease(s), lease proposals, brochures, agreements, representations, promises, warranties and understandings between the parties as stated by, including but not limited to, Tenant's agent(s), employee(s), SUBWAY® franchisee(s), and/or SUBWAY® development agent(s) of Doctor's Associates Inc. No alteration, amendment, change or addition to this Lease shall be binding upon either party unless reduced to writing and signed by each party.

**SECTION THIRTY-ONE  
BROKERS**

Landlord and Tenant each represent and warrant to the other that no real estate broker, agent, commission salesman, or other person has represented either party in the negotiations for and procurement of this Lease and of the Premises, and that no commissions, fees or compensation of any kind are due and payable in connection herewith to any real estate broker, agent, commission salesman or other person. Each party agrees to indemnify and hold the other hereunder harmless from and against any claim for any such commissions, fees or other form of compensation by any such third party claiming through the indemnifying party, including, without limitation, any and all claims, causes of action, damages, costs and expenses (including attorneys' fees), associated therewith.

**SECTION THIRTY-TWO  
COMPETITION**

Landlord agrees not to sell, lease, let, use or permit to be used, any other space in the Building now or at any time during the initial Term of this Lease or any renewal thereof to any entity which sells or serves ready-to-eat food and would be considered a direct competitor of Tenant (e.g. Jersey Mike's or Blimpie's).

Landlord warrants that Tenant shall not be in violation of any other exclusive rights when this Lease commences. Further, Landlord shall indemnify, defend and hold Tenant harmless from any third party claim or suit regarding any other exclusive right granted by Landlord.

**SECTION THIRTY-THREE**

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## **RECORDING**

Upon ten (10) days written request from either party, the other party agrees to acknowledge and deliver to the Memorandum of Lease, attached hereto as Exhibit B.

## **SECTION THIRTY-FOUR WAIVER**

No waiver by either of the parties hereto of any provision or breach thereof, shall be deemed a waiver of any other provision or of any subsequent breach by Tenant or Landlord of the same or any other provisions. Landlord's or Tenant's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Landlord's or Tenant's consent to or approval of any subsequent act.

No remedy or election hereunder shall be deemed exclusive, but shall, whenever possible, be cumulative with all other remedies at law or in equity.

## **SECTION THIRTY-FIVE LAW**

This Lease and the performance hereunder shall be governed by the laws of the state in which the Premises are located without reference to its conflict of laws provisions.

## **SECTION THIRTY-SIX HEADINGS**

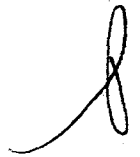
The paragraph headings are for quick reference and convenience only and do not alter, amend, or otherwise affect the terms, conditions, and agreements set out herein.

## **SECTION THIRTY-SEVEN LITIGATION**

In the event of litigation between Landlord and Tenant relative to rights, obligations and duties of either party under this Lease, the prevailing party shall be entitled to recover from the other party the prevailing party's legal and other professional fees, costs and expenses. In addition, both parties hereby waive their rights to a trial by jury.

## **SECTION THIRTY-EIGHT SEVERABILITY**

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Should any provision of this Lease be or become invalid, void, illegal or not enforceable, it shall be considered separate and severable from this Lease and the remaining provisions shall remain in force and be binding upon the parties hereto as though such provision had not been included.

**SECTION THIRTY-NINE  
FORCE MAJEURE**

If either party fails to perform any of its obligations under this Lease as a result of Force Majeure, such party shall not be liable for loss or damage for the failure and the other party shall not be released from any of its obligations under this Lease. If either party is delayed or prevented from performing any of its obligations as a result of Force Majeure, the period of delay or prevention shall be added to the time herein provided for the performance of any such obligation. Anything contained herein to the contrary notwithstanding, the provisions of this Section shall not apply to Tenant's obligation to pay Rent.

"Force Majeure" shall mean any period of delay which arises from or through acts of God; strikes, lockouts, or labor difficulty; explosion, sabotage, accident, riot, or civil commotion; act of war; fire or other casualty; legal requirements; and causes beyond the reasonable control of a party.

**SECTION FORTY  
LEASE EXECUTION**

Landlord and Tenant agree that this Lease is open for acceptance by Landlord for thirty (30) days following execution by Tenant. In the event Landlord does not execute this Lease within thirty (30) days of execution by Tenant, this Lease shall be null and void. Within three (3) business days, Landlord shall return any and all monies paid and all counterparts of this Lease executed by Tenant.

**SECTION FORTY-ONE**  
(Intentionally Deleted)

**SECTION FORTY-TWO**  
(Intentionally Deleted)

**SECTION FORTY-THREE  
CONSTRUCTION**

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Should any provision of this Lease require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be more strictly construed against the party who itself or through its agents prepared the same, it being agreed that Landlord, Tenant and their respective agents have participated in the preparation hereof.

**SECTION FORTY-FOUR  
SUBORDINATION AND ATTORNMENT**

This Lease and all rights of Tenant hereunder are and shall be subject and subordinate to any mortgage, deed to secure debt, deed of trust or other instrument in the nature thereof (herein called "Security Interest") which may now or hereafter affect Landlord's fee title to the Premises and/or Building. Tenant shall within five (5) days of request execute, acknowledge and deliver to Landlord, to Landlord's designee and/or the holder of any such Security Interest, the following: (i) such certificate or certificates that may be requested by Landlord or such holder to evidence the subordination of this Lease to such Security Interests; (ii) such certificate or certificates that may be requested by Landlord or such holder to make this Lease superior to the lien of any such Security Interests; and (iii) such attornment agreements as may be reasonably requested by successors to Landlord hereunder. If the holder of any such Security Interest shall hereafter succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease, Tenant shall, at the request of such holder, attorn to and recognize such successor as Tenant's landlord under this Lease and shall promptly execute and deliver any instrument that may be necessary to evidence such attornment.

**SECTION FORTY-FIVE  
WHEN LEASE BECOMES BINDING**

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the premises, and this document shall become effective and binding only upon the execution and delivery hereof by both Landlord and Tenant.

**SECTION FORTY-SIX  
TIMELINESS OF CHARGES**

Landlord agrees to notify Tenant in writing in accordance with this Lease of any back charges due changes in Additional Rent as and when they become due. All parties agree and acknowledge that time is of the essence with respect to these matters. In the event that Landlord does not appropriately notify Tenant within one hundred eighty (180) days of the date upon which said charges had become due, Landlord agrees that it has waived its rights to said back charges and further, that Tenant shall not be obligated to pay, nor shall it have any liability for these back charges. It is agreed that it is the intent of the parties that all charges be assessed in a timely manner as they accrue and in no event shall they be assessed to Tenant after this one hundred eighty (180) day period.

**SECTION FORTY-SEVEN  
TENANT COVENANTS**

A. Tenant shall not abandon or vacate the Premises during the Term.

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B. In accordance with the terms of this Lease, Tenant shall, at its sole expense, keep the Premises in good repair and tenantable condition. If Tenant fails to keep the Premises in good repair and tenantable condition, then in addition to any other rights and/or remedies of Landlord set forth herein for an event of default by Tenant, upon not less than ten (10) days prior written notice and opportunity to cure, Landlord can make such repairs as it deems necessary to put the Premises in good and tenantable condition and Tenant shall be liable to promptly reimburse Landlord for the reasonable cost of such repairs as additional rent hereunder.

C. Tenant shall, at its sole cost and expense, comply as to its use of the Premises, with all statutes, regulations, rules, ordinances and orders of any governmental body, department or agency thereof, and abide by and observe the Rules and Regulations attached to this Lease as Exhibit "D" and made a part hereof, and such further uniform rules and regulations for the management of the Building as may hereafter be established in writing by Landlord, provided that the Rules and Regulations.

D. Tenant shall report immediately in writing to Landlord any defective condition in or about the Premises actually known to Tenant.

E. Tenant shall pay as Additional Rent, a late charge in the amount of five percent (5%) of the outstanding delinquent balance or fifty dollars (\$50.00), whichever is greater, for any Rent payment not made within five (5) days after receipt of written notice from Landlord and shall be assessed an additional five percent (5%) charge for each month thereafter until paid in full: provided, however, Landlord shall only be required to provide such written notice and five (5) days to cure twice in any twelve (12) month period during the Term of this Lease and from and after third such failure of Tenant to pay any Rental payment within five (5) days after the date the same was due, Tenant shall pay as additional Rent a late charge in the amount of five percent (5%) of the outstanding delinquent balance or fifty dollars (\$50.00), whichever is greater, and shall be assessed an additional five percent (5%) charge for each month thereafter until paid in full. It is understood and agreed that such late charges shall constitute liquidated damages to compensate Landlord for additional bookkeeping expenses and clerical services which would be required of the Landlord as a result of the occurrence of events described in this Section. Such damages are difficult or impossible to estimate accurately and it is the intention of the parties to provide for liquidated damages in such event. It is further agreed that the sum provided in this Section is a reasonable pre-estimate of Landlord's probable loss, in the event of Tenant's failure to make any Rental payments within five (5) days after the due date thereof. Tenant shall also pay Fifty and 00/100 Dollars (\$50.00), promptly upon demand, as a charge to cover Landlord's administrative and clerical expenses in the event a check given to Landlord by Tenant is returned to Landlord unpaid by Landlord's bank due to insufficient funds or any other reason.

F. Tenant shall cooperate with Landlord in complying with all regulations of any governmental agency having jurisdiction of the Building, relating to the conservation of energy, including, without limitation, any regulations requiring the production of information regarding the consumption of energy within the Building.

#### SECTION FORTY-EIGHT GOVERNMENTAL REGULATIONS

Tenant waives the benefits of all existing and future Rent control Legislation and Statutes and similar governmental rules and regulations, whether in time of war or not, to the full extent permitted by law.

#### SECTION FORTY-NINE ESTOPPEL

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Tenant shall, within five business (5) days of request, execute, acknowledge and deliver to Landlord and/or to Landlord's designee such certificate or certificates in recordable form reasonably evidencing whether or not (a) this Lease is in full force and effect, (b) this Lease has been amended in any way, (c) Tenant has accepted and is occupying the Premises, (d) there are any existing defaults, acts or omissions, which with the giving of notice or the passage of time would constitute defaults, on the part of Landlord or Tenant hereunder or defenses or offsets against the enforcement of this Lease to the knowledge of Tenant and specifying the nature of such defaults, defenses or offsets, if any, and (e) the date to which Rent, and other amounts due hereunder, if any, have been paid.

**SECTION FIFTY  
SUCCESSORS AND ASSIGNS**

The words "Landlord" and "Tenant" as used herein shall include the respective contracting party, whether singular or plural, and whether an individual, masculine or feminine, or a partnership, joint venture, business trust or corporation. The provisions of this Lease shall inure to the benefit of and be binding upon Landlord and Tenant, and their respective successors, heirs, legal representatives and assigns, subject to the provisions of Sections Fifteen and Twenty-Nine hereof.

**SECTION FIFTY-ONE  
TIME OF ESSENCE**

Time is of the essence of this Lease.

**SECTION FIFTY-TWO  
EXCULPATION OF LANDLORD**

Landlord's obligations and liability to Tenant with respect to this Lease shall be limited solely to Landlord's interest in the Building, and neither Landlord nor any of the joint venturers of Landlord, nor any officer, director, or shareholder of Landlord or of any of the joint venturers of Landlord shall have any personal liability whatsoever with respect to this Lease. In consideration for entering into this Lease, Tenant hereby waives any rights to bring a cause of action against the individuals executing this Lease on behalf of Landlord (except for any cause of action based upon lack of authority or fraud), and all persons dealing with Landlord must look solely to Landlord's interest in the Building for the enforcement of any claim against Landlord, and the obligations hereunder are not binding upon, nor shall resort be had to the private property of any of, the trustees, officers, directors, employees or agents of Landlord or to any other property of Landlord..

**IN WITNESS WHEREOF**, the parties have executed and delivered this Lease as of the date first above written.


**WITNESS:**

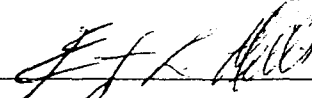
**LANDLORD: BAC FUNDING CORPORATION**

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~~B. Calm~~  
~~F. L. Hill~~ <sup>rw</sup> ~~F. L.~~

0800  


By: 

Title: President

TENANT: SUBWAY REAL ESTATE CORP.

By:   
Vice President

11/19/03

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LANDLORD'S ACKNOWLEDGMENT  
(if corporation)

STATE OF FL )

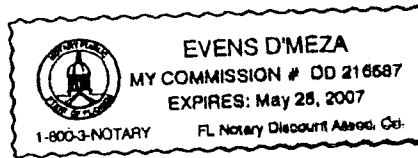
) ss.

COUNTY OF )

Miami-Dade

On this 20<sup>th</sup> day of October, 2003, before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared Edwin Miller, to me personally known, who by me duly sworn did say that he/she is the President of BAC Funding Corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and that he/she acknowledged execution of said instrument to be voluntary act and deed of said corporation.

[Signature]  
Notary Public  
(Notarial Seal)  
My Commission expires 05/28/07



LANDLORD'S ACKNOWLEDGMENT  
(if Individual)

STATE OF )

) ss.

COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me personally appeared \_\_\_\_\_ known to me (or satisfactory proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purpose therein contained.

\_\_\_\_\_  
Notary Public  
(Notarial Seal)  
My Commission expires \_\_\_\_\_

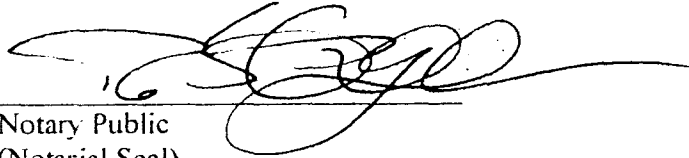
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[Signature]

TENANT'S ACKNOWLEDGMENT

STATE OF CONNECTICUT )  
 ) ss.  
COUNTY OF NEW HAVEN )

On this 19 day of November 2003, before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared Theodore A. Parent, to me personally known, who by me duly sworn did say that he/she is the Vice President of Subway Real Estate Corp., and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and that he/she acknowledged execution of said instrument to be voluntary act and deed of said corporation by it voluntarily executed.



Notary Public  
(Notarial Seal)  
My Commission expires \_\_\_\_\_

**ROBERT R. GRESKO**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES JAN. 31, 2004

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**EXHIBIT "A"**  
**FLOOR PLAN**

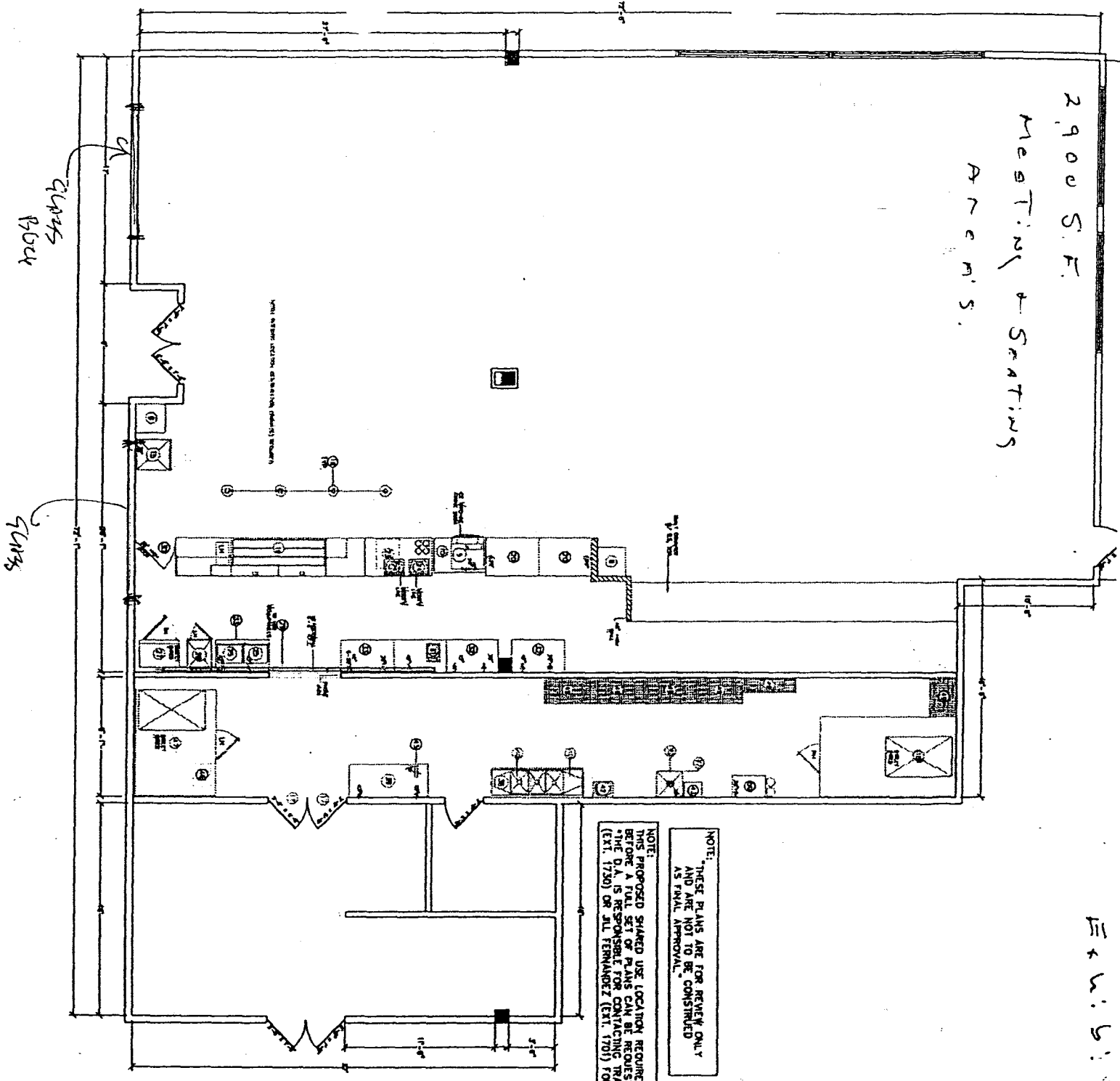
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2900 S.F.

MEETING & SEATING ARENAS.

11 x 11 1/2 x 11 1/2



NOTE: THESE PLANS ARE FOR REVIEW ONLY AND ARE NOT TO BE CONSTRUCTED AS FINAL APPROVAL.

NOTE: THIS PROPOSED SHARED USE LOCATION REQUIRES APPROVAL BEFORE A FULL SET OF PLANS CAN BE REQUESTED. THE D.A. IS RESPONSIBLE FOR CONTACTING TRADE MASTERS (EXT. 1730) OR JIL FERNANDEZ (EXT. 1701) FOR APPROVAL.

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- GENERAL NOTES:**
- ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND SPECIFICATIONS.
  - ALL MATERIALS AND METHODS OF CONSTRUCTION SHALL BE APPROVED BY THE ARCHITECT.
  - THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.
  - THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT AREAS AT ALL TIMES.
  - ALL UTILITIES SHALL BE PROTECTED AND DEEPLY REVEALED PRIOR TO CONSTRUCTION.
  - THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.
  - ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
  - THE CONTRACTOR SHALL MAINTAIN A CLEAN AND SAFE WORKING ENVIRONMENT AT ALL TIMES.
  - ALL MATERIALS AND METHODS OF CONSTRUCTION SHALL BE APPROVED BY THE ARCHITECT.
  - THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.
  - THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT AREAS AT ALL TIMES.
  - ALL UTILITIES SHALL BE PROTECTED AND DEEPLY REVEALED PRIOR TO CONSTRUCTION.
  - THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.
  - ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
  - THE CONTRACTOR SHALL MAINTAIN A CLEAN AND SAFE WORKING ENVIRONMENT AT ALL TIMES.

NO.	DATE	DESCRIPTION
1	11/17/03	ISSUED FOR PERMITTING
2	11/17/03	ISSUED FOR PERMITTING
3	11/17/03	ISSUED FOR PERMITTING
4	11/17/03	ISSUED FOR PERMITTING
5	11/17/03	ISSUED FOR PERMITTING
6	11/17/03	ISSUED FOR PERMITTING
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9	11/17/03	ISSUED FOR PERMITTING
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14	11/17/03	ISSUED FOR PERMITTING
15	11/17/03	ISSUED FOR PERMITTING
16	11/17/03	ISSUED FOR PERMITTING
17	11/17/03	ISSUED FOR PERMITTING
18	11/17/03	ISSUED FOR PERMITTING
19	11/17/03	ISSUED FOR PERMITTING
20	11/17/03	ISSUED FOR PERMITTING

**SHARED LOCATION**

PLEASE NOTE: DO NOT SCALE THIS FROM PLAN. ALL DIMENSIONS SHALL BE AS SHOWN UNLESS OTHERWISE NOTED.

**REVISION** 1/2

MARKY HORTON  
MILK BUILDING  
MIAMI, FL

T.M. JOHNSON  
DATE: 11/17/03

6-12-03/7-15-03

EVA KING/LEFT LARRIVEE

ALL DIMENSIONS SHALL BE VERIFIED FROM THE EXISTING ARCHITECTURAL RECORDS.

**EXHIBIT "B"**  
**MEMORANDUM of LEASE**

This is a memorandum of lease for the Lease executed on the 20<sup>th</sup> day of Oct, 2003, between Subway Real Estate Corp. a corporation organized under the laws of the State of Delaware, having its principal office at 325 Bic Drive, Milford, CT 06460. hereinafter called "the Tenant", and BAC Funding Corp a corporation organized under the laws of the state of FL having its principal office at 2600 NW 67th Ave, hereinafter called the "Landlord."  
Miami, FL 33147

**1. Description of Leased Premises:**

The Lessor leases to the Lessee the Premises as described in Lease:

2600 NW 67th Street, Miami, FL 33147

**2. Term:**

The Lease is for a term of 20 years to commence on the 1 day of April, 04 and terminate on the 31 day of March, 24.

**IN WITNESS WHEREOF**, the parties have hereunto executed this memorandum of lease this 20<sup>th</sup> day of October, 2003.

**WITNESSES:**

[Signature]

(AS TO LANDLORD)

**LANDLORD: BAC FUNDING CORPORATION**

[Signature]

**WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_

Tenant: Subway Real Estate Corp.

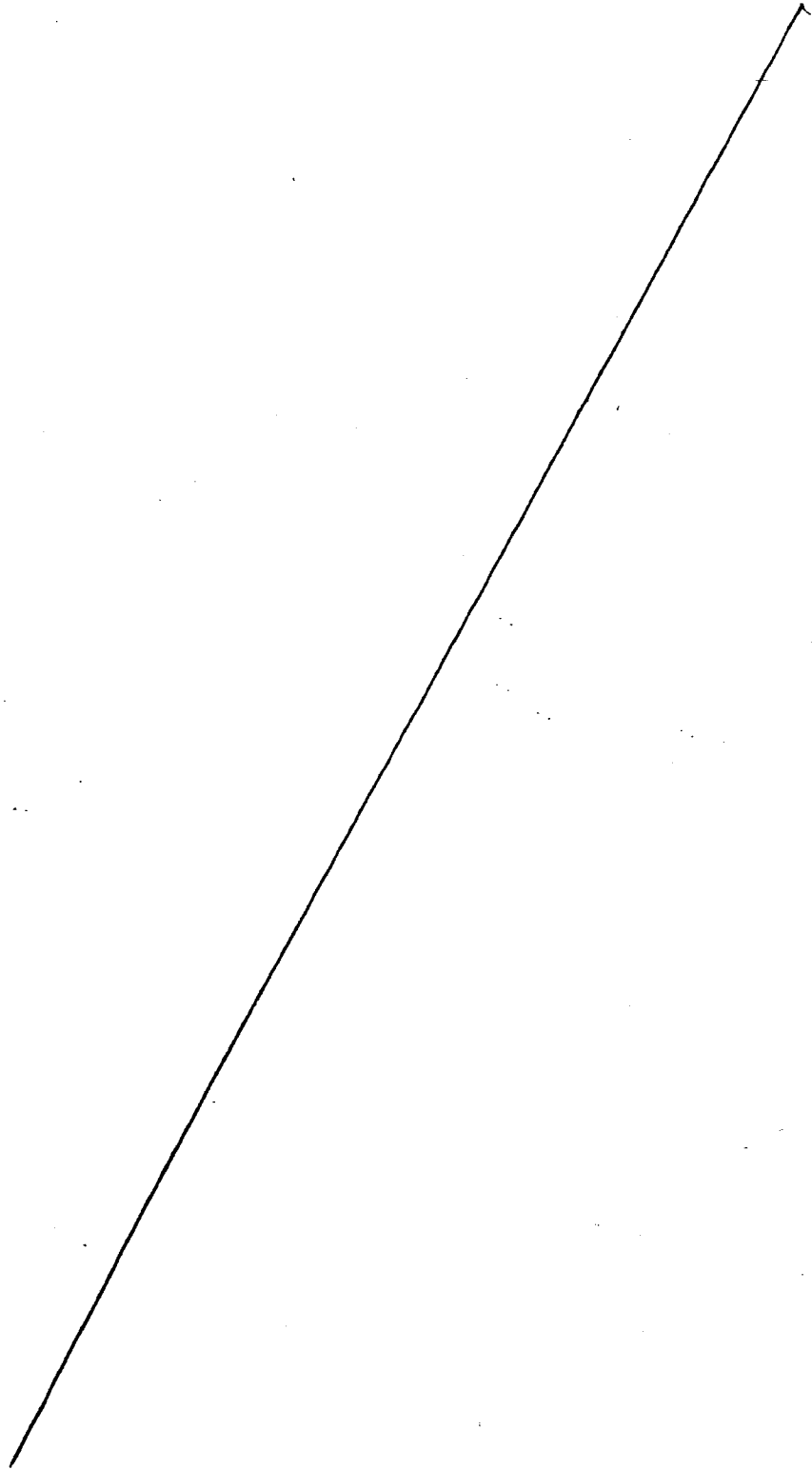
\_\_\_\_\_  
(SEAL)  
VICE PRESIDENT

\_\_\_\_\_

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[Signature]

**EXHIBIT "C"**  
**LANDLORD'S WORK**



100

Handwritten signature or initials.

**EXHIBIT "D"**  
**RULES AND REGULATIONS**

1. The sidewalks, halls, passages, exits, entrances, malls, common areas, parking areas, roadways, elevators, escalators and stairways of the Building shall not be obstructed by any of the tenants or used by them for any purpose other than for ingress to and egress from their respective premises. The halls, passages, exits, entrances, malls, common areas, parking areas, roadways, elevators, escalators and stairways are not for the general public and Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Landlord shall have the right at any time without the same constituting an actual or constructive eviction and without incurring any liability to Tenant therefor to change the arrangement and/or location of entrances or passageways, doors or doorways, corridors, elevators, stairs or toilets and to change, alter, increase, decrease or modify the other common areas of the Building.

2. The Premises shall not be used for the storage of merchandise held for sale to the general public or for lodging. In the event any cooking is expressly permitted in the Lease as use of the premises, such use shall be only be permitted in accordance with all applicable Federal, state and municipal laws, codes, ordinances, rules and regulations.

3. No tenant shall employ any person or persons other than the janitor of Landlord for the purpose of cleaning its premises unless otherwise agreed to by Landlord in writing. Except with the written consent of Landlord, no person or persons other than those approved by Landlord shall be permitted to enter the Building for the purpose of cleaning the same. No Tenant shall cause any unnecessary labor by reason of such Tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall not be responsible to any tenant, or any other person, for any loss of property on the premises, however occurring.

4. The Landlord shall designate appropriate entrances and a "Freight" elevator for deliveries or other movement to or from the premises of equipment, materials, supplies, furniture or other property, and Tenant shall not use any other entrances or elevators for such purposes. The freight elevator shall be available, at no additional cost to Tenant, for use by all tenants in the Building, subject to such reasonable scheduling as Landlord in its discretion shall deem appropriate. All persons employed and means or methods used to move equipment, materials, supplies, furniture or other property in or out of the Building must be approved by Landlord prior to any such movement. Landlord shall have the right to prescribe the maximum weight, size and position of all equipment, materials, furniture or other property brought into the Building and the right to approve all items placed on the balconies; balconies shall be kept clean and in good order at all times. Tenant shall not allow any objects or articles to be dropped or thrown from any window or balcony. Heavy objects shall, if considered necessary by Landlord, stand on a platform of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such property from any cause, except as otherwise set forth in the Lease; and subject to the foregoing, all damage done to the Building by moving or maintaining such property shall be repaired at the expense of Tenant.

5. No tenant shall use or keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors or vibrations, or interfere in any

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way with other tenants or those having business in the Building, nor shall any animals or birds be brought or kept in the Premises or the Building.

6. Tenant acknowledges and agrees to the desirability or the necessity of Landlord, under law or in the prudent management of the Building, organizing and coordinating within the Building and among all tenants, arrangements and exercises appropriate to maximize the safety of all tenants in the event of fire or any other such disaster which may require the partial or total evacuation of the Building. Tenant undertakes and hereby agrees to fully cooperate with and participate in any simulated exercises with respect to the foregoing arrangements and exercises arranged from time to time by Landlord.

7. Tenant shall not tamper with or attempt to adjust temperature control thermostats in the Premises. Landlord shall make adjustments in thermostats as requested by Tenant when consistent with other provisions of this Lease.

8. All contractors and technicians rendering any installation service, including telephone service, to Tenant shall be referred to Landlord for approval and supervision prior to performing any services. This applies to all work performed in the Building, including, but not limited to, installation of telephones, telegraph equipment and electrical devices as well as all installations affecting floors, walls, woodwork, windows, ceilings and any other physical portion of the Building.

9. Landlord shall have the right, exercisable without notice and without liability to any tenant, to change the name or street address of the Building.

10. Landlord reserves the right to exclude from the Building between the hours of 6:00 P.M. and 7:00 A.M. and at all hours on Saturdays, Sundays and legal holidays all persons who do not present identification acceptable to Landlord. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In the case of invasion, mob, riot, public excitement or other circumstances rendering such action advisable in Landlord's opinion, Landlord reserves the right to prevent access to the Building during the continuance of the same by such action as Landlord may deem appropriate, including closing doors.

11. The directory of the Building will be provided for the display of the name and location of tenants. Landlord reserves the right to restrict the amount of directory space utilized by any tenant.

12. Tenant shall not use the plumbing for a purpose other than for which it is constructed. No grease or foreign substance shall be put in the plumbing, and the expense of any resulting breakage, stoppage or damage (whether on or off the premises) shall be borne by Tenant.

12. No curtains, draperies, blinds, shutters, shades, screens or other coverings, hangings, signs or decorations shall be attached to, hung or placed in, or used in connection with any window of the Building without the prior written consent of Landlord.

13. No tenant shall obtain for use in the Premises towel or other similar services, except at such reasonable hours and under such reasonable written regulations as may be fixed by Landlord.

14. Each tenant shall ensure that the doors of its premises are closed and locked and that all water faucets, water apparatus and utilities are shut off before Tenant or Tenant's employees leave the Premises so as to prevent waste or damage, and for any default or carelessness in this regard, Tenant shall make good all injuries sustained by other tenants or occupants of the Building of Landlord. On multiple tenancy floors, all tenants shall keep the doors to the Building corridors closed at all times except for ingress and egress.

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15. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees or invites, shall have caused it.

16. Intentionally deleted.

17. Tenant shall not install any radio or television antenna, loudspeaker, or other device on the roof or exterior walls of the Building without the prior written consent of Landlord. No TV or radio or recorder shall be played in such a manner as to cause a nuisance to any other tenant or be heard outside the Premises.

18. There shall not be used in any space, or in the public halls of the Building, either by any tenant or others, any hand trucks except those equipped with rubber tires and side guards or such other material handling equipment as Landlord may approve. No other vehicles of any kind shall be brought by any tenant into the Building or kept in or about its Premises.

19. Each tenant shall store all its trash and garbage within its premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of office building trash and garbage in the City of Miami without being in violation of any law or ordinance governing such disposal. All garbage and refuse disposal shall be made only through the freight elevator provided for such purposes and at such times as Landlord shall designate. Garbage shall be removed daily and deposited in containers designated for same as Landlord shall provide or designate.

20. Tenant shall keep the premises free of vermin, rodent and all other types of pest infestation. Tenant shall use the pest extermination contractor Landlord may choose.

20. Canvassing, soliciting, distribution of handbills or any other written material and peddling in the Building are prohibited, and each tenant shall cooperate to prevent the same.

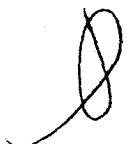
21. The requirements of tenants will be attended to only upon application in writing at the office of the Building. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord.

22. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular Tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other Tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Building.

23. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the agreements, covenants, conditions and provisions of any lease of premises in the Building. In the event of a conflict between these Rules and Regulations and the Lease to which they are attached, the Lease shall control.

24. Landlord reserves the right to make such other reasonable, uniform, written rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Building and for the preservation of good order therein; provided the same are generally applicable to all tenants.

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25. For the benefit of all building occupants, their clients and visitors, smoking is not permitted in any of the public areas of the building (especially the lobbies, corridors, exit stairwells, elevators and restrooms) nor at the main entrances to the buildings.

26. Except with the prior written consent of the Landlord, Tenant shall not install or operate any steam or internal combustion engine, boiler, machinery, refrigerating or heating device or air-conditioning apparatus in or about the Premises, or carry on any mechanical business therein; provided, however, subject to Landlord's prior written approval of Tenant's plans and specifications, which approval shall not be unreasonably withheld, conditioned or delayed.

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**SUBLEASE #32943 Norton II**

This Sublease is made by and between Subway Real Estate Corp. ("Sublessor") and Harry Norton II ("Sublessee") this day of 2003

11 August

(1) The Sublessor is the Tenant under a certain Master Lease made between It and BAC Funding Corporation as Landlord, dated the 19th day of November, 2003 and covers premises known as MLK Building, 2600 N.W. 64<sup>th</sup> Street, Miami, FL. A copy of the Master Lease is annexed hereto.

(2) The Sublessee has inspected the premises and accepts same as is.

(3) The Sublessor hereby subleases the premises to the Sublessee for the full term of the Master Lease (including renewal options, if any), minus one (1) day, commencing December 1, 2003, at the rental called for in the Master Lease, plus all charges such as common area charges, maintenance, insurance, tax and rental escalations. In the event the Master Lease contains renewal options, Sublessee agrees to notify Sublessor, by certified mail, return receipt requested, of its desire to exercise its option at least one hundred eighty days (180) prior to the date on which Sublessor must notify the Landlord of its intention to exercise its option to extend the lease. The Sublessee agrees that the Sublessor may elect not to extend the Master Lease if the Sublessee fails to give the Sublessor notice or if the Sublessee shall be in default in the performance of any of the terms of the Master Lease or the Franchise Agreement referred to in Paragraph 6 during the period one hundred eighty (180) days prior to the date the Sublessor must give notice to the Landlord.

(4) The Sublessee agrees to perform and observe all of the obligations of the Sublessor under the Master Lease and make all rental payments directly to the Landlord in the manner set forth in the Master Lease. In addition to any indemnity and insurance provisions contained in the Master Lease, the Sublessee agrees at all times during the term of this Sublease and for such prior or further term as a Sublessee occupies or has possession of the premises, and thereafter relating to such period of occupancy, to indemnify, defend, and hold harmless the Sublessor and its affiliates, and the shareholders, officers, directors, employees, and agents of the Sublessor and its affiliates, from and against all liability, injury, loss, cost (including attorneys' fees), damage and expense in respect of any injury or death of any persons and/or damage to any property while on the premises and to obtain and maintain insurance in accordance with the Master Lease and the Franchise Agreement with Doctor's Associates Inc. naming all such indemnified persons as additional insureds.

(5) The Sublessor acknowledges receipt from the Sublessee of the sum of -00- DOLLARS which has or shall be paid to the Landlord as the security deposit referred to in the Master Lease. In accordance with the terms of the Lease, the Sublessee shall be entitled to the rights of the Sublessor to the security deposit. In addition, the Sublessor acknowledges receipt from the Sublessee the sum of -00- DOLLARS which has or shall be paid to the Landlord as initial advance rent as required by the Master Lease. The Sublessor acknowledges receipt from the Sublessee the sum of \$5,000.00 (RCVD) DOLLARS which shall be held in a non-interest bearing escrow account and shall be returned to the Sublessee, without interest, upon the opening of this location for business. The Sublessor also acknowledges receipt from the Sublessee of the sum of FIFTY DOLLARS (\$50.00) which the Sublessee agrees is not refundable, and represents a reasonable fee for recording the Master Lease, including the recording fee and the Sublessor's administrative costs.

(6) The purpose of this Sublease is so that the Sublessee can operate a SUBWAY® sandwich shop under the terms of his Franchise Agreement with Doctor's Associates Inc. dated November 18, 2003. If at any time during the term of this Sublease, Sublessee shall default in the performance of any of the terms of the Master Lease or the Franchise Agreement, Sublessor may terminate this Sublease on ten (10) days written notice to Sublessee, and upon such termination, Sublessee shall quit and surrender the leased premises to Sublessor but Sublessee shall remain liable for the balance of the rent due as provided in this Sublease. The parties agree that trial by jury shall be waived in the event of litigation.

The Sublessee agrees to pay to the Sublessor upon demand, as additional rent, any fees, costs or charges, including attorneys' fees and legal costs, incurred by the Sublessor in enforcing any of the terms or

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rate in the jurisdiction in which the SUBWAY® sandwich shop is located.

(7) The Sublessee may sublease the premises only to a franchisee of Doctor's Associates Inc. for use as a SUBWAY® sandwich shop, provided that the prior written consent to the subletting is obtained from the Sublessor, which consent shall not be unreasonably withheld. If Sublessor consents to the subletting of the premises, this consent shall not operate to release the Sublessee from his obligations under this Sublease.

(8) The Sublessor is hereby conveying to the Sublessee, subject to the terms and conditions of the Sublease, only those rights to the aforesaid premises which it acquired by virtue of the Master Lease. The Master Lease describes the landlord's duties which the Sublessor is not obligated to perform. If the Landlord fails to perform his duties under the Master Lease, the Sublessee must send Sublessor a notice by Certified Mail describing the Landlord's default in detail. Upon receipt of the notice, the Sublessor shall then promptly notify the landlord and demand performance of the agreement contained in the Master Lease. In the event Sublessee wishes to engage the services of an attorney to settle any disputes arising out of the Master Lease agreement, all fees and costs shall be borne by the Sublessee, it being understood that Sublessor is under no obligation to bring or defend any action brought by or against the Sublessee, the Sublessor or the landlord.

(9) The Sublessee shall not make any agreement with the Landlord which could modify, cancel or terminate the Master Lease.

(10) In the event that the Sublessee does not commence construction of the premises within fifteen (15) days after obtaining occupancy by ordering his equipment, making application for required permits and licenses and purchasing the mural and other approved wallcovering products (Marlite®) planks, plastic laminate, fiberglass reinforced panels, Duotone wallcovering, or glazed ceramic tile) required for his store, the Sublessor may terminate this Sublease on ten (10) days written notice.

(11) The Sublessee acknowledges that he has read the Offering Circular and Operations Manual of Doctor's Associates Inc., the Franchise Agreement and the Master Lease, and agrees to build and operate his franchise in compliance with these agreements. The Sublessee understands that the success, if any, of any given SUBWAY® sandwich shop location is the responsibility of the franchisee and he also acknowledges that representations of sales or earnings have not been made to him by Doctor's Associates Inc. employees or agents as to this or any other location.

(12) This Sublease must be signed by each individual who signed the Franchise Agreement as franchisee, each of whom shall be jointly and severally liable under this Sublease. This Sublease contains the entire agreement between the Sublessor and the Sublessee with respect to the premises. This Sublease may only be amended or provisions hereof waived or modified, only in writing.

IN WITNESS WHEREOF, the parties have executed this Sublease as of the date first written above.

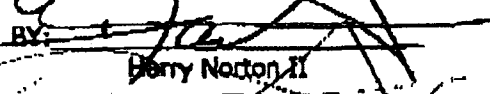
Dated: 8/11/04

Dated: 12-2-03

SUBLESSOR: Subway Real Estate Corp.

BY: 

SUBLESSEE

BY:   
Barry Norton II

## *BAC Funding Corporation Board of Directors*

**Mr. Ronald E. Frazier, Chairman**  
President/CEO  
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dmartin@bpop.com

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Miami, FL 33168  
PO Box 681552  
Miami, FL 33168  
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Fax: (305) 758-5715  
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6300 NW 7<sup>th</sup> Avenue  
Miami, FL 33150  
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Fax: (305) 237-1998  
hjackson@imdc.edu

**Mr. Leonard Garrett**  
Retired Banker  
3707 Starboard Avenue  
Cooper City, FL 33026  
Office: (954) 699-5643

**Adam Hurwitz**  
Colonial Bank  
1200 Brickell Avenue, 10<sup>th</sup> Floor  
Miami, FL 33131  
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Fax: 305-523-1610  
adam\_hurwitz@colonialbank.com

**Mr. William Diggs**  
Miami Dade Chamber of Commerce  
11380 NW 27<sup>th</sup> Avenue  
Miami, FL 33167  
Office: 305-751-8648

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 6(D)(22)  
5-6-97

RESOLUTION NO. R-482-97

**RESOLUTION DIRECTING THE COUNTY MANAGER TO DEVELOP A PROPOSAL FOR DEVELOPMENT OF MAJOR COUNTY HEADQUARTERS AND ADMINISTRATIVE FACILITY FOR THE TRANSPORTATION, CORRECTIONS AND SOLID WASTE DEPARTMENTS AT EITHER THE MARTIN LUTHER KING, JR. OR OVERTOWN METRORAIL STATIONS**

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that the County Manager is directed to develop a proposal for development of major County headquarters and administrative facility for the Transportation, Corrections and Solid Waste Departments at either the Martin Luther King, Jr., or Overtown Metrorail Stations and to present same to this Board within 90 days from the date of this resolution.

The foregoing resolution was sponsored by Dr. Barbara M. Carey and offered by Commissioner **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Miguel Diaz de la Portilla** and upon being put to a vote, the vote was as follows:

Dr. Miriam Alonso	aye	James Burke	absent
Dr. Barbara M. Carey	aye	Miguel Diaz de la Portilla	aye
Betty T. Ferguson	absent	Bruce C. Kaplan	absent
Gwen Margolis	aye	Natacha Seijas Millán	aye
Jimmy L. Morales	aye	Dennis C. Moss	aye
Pedro Reboredo	absent	Katy Sorenson	aye
Javier D. Souto		aye	

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**MEMORANDUM**

Agenda Item No. 6(D)(22)


**TO:** Hon. Chairperson and Members  
Board of County Commissioners

**DATE:** May 6, 1997

**FROM:** Robert A. Ginsburg  
County Attorney

**SUBJECT:** Headquarters and  
administrative facility for  
transportation, corrections and  
solid waste departments

The accompanying resolution was prepared and placed on the agenda at the request of Dr. Barbara M. Carey, Commissioner District 3.

  
Robert A. Ginsburg  
County Attorney

RAG/bw

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of May, 1997. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney [Signature]  
to form and legal sufficiency.

By: KAY SULLIVAN  
Deputy Clerk



*ORIGINAL PROPOSAL  
Sent*

July 17, 1997

Armando Vidal, County Manager  
Stephen P. Clark Center  
111 N.W. 1st Street  
Suite #2910  
29th Floor  
Miami, Florida 33128

**Officers and Directors**

Ronald E. Frazier, Chairman  
Ronald E. Frazier & Associates

Howard F. Kershaw, Treasurer  
Deloitte & Touche (Retired)

Ann McNeill, Secretary  
Black Business Association

Herbert J. Bailey  
City of Miami

Mary H. Frank  
Citibank, F.S.B.

Barton S. Goldberg  
Colonial Bank

Kim Griffin-Hunter  
Deloitte & Touche

Steve T. Leth  
First Union National Bank of Florida

Jonathan D. Mariner  
Florida Marine

Eduardo A. Masferrer  
Hamilton Bank, N.A.

Louis F. Powell, Jr.  
NationalsBank of Florida

Barbara J. Rose  
Barnett Bank of South Florida

John L. Sturman  
Beverage Canners Intl.

**RE: PROPOSAL FOR THE  
MLK TRANSIT DEVELOPMENT STATION**

Dear Mr. Vidal:

The BAC Funding Corporation is pleased to have this opportunity to offer a proposal for the M.L.K. Transit Station Development. We have a thorough understanding of development opportunities and our in-depth experience with office projects and inner city Urban Development projects assures us that our team is fully qualified to offer the highest quality of service and commitment for developing, designing and constructing this unique project.

To provide the most highly and comprehensive services available, we have retained the specialized services of the following firms and companies to assist the BAC in developing this very important project.

**THE DEVELOPMENT TEAM:**

The BAC Funding Corporation has initiated a new Urban Development Initiative and understands the special needs of the inner city communities and the related transit area developments.

- The Team understands that some of the critical issues in transit area development are urban planning and exterior design character of the building that will enhance the community and represent the values and purposes of the features that are necessary to enhance the total community.
- Other considerations are flexibility of interior spaces that can be programmed for several special purpose uses and that it will accommodate the basic program requirements. Our team has applied innovative design solutions in the past to accomplish these objectives and we will apply them to this project.

///

**THE DEVELOPMENT TEAM MEMBERS ARE AS FOLLOWS:****A. General Partner:**

- BAC Funding Corporation
- Peninsula Developers, Inc.
- TEJA & Associates, Inc.

**B. Limited Partners:**

- Raul P. Masvidal
- 99 Acres and a Mule, Inc.
- Antonio Junior

**C. Consultants:**

- The Codina Group
- Ronald E. Frazier & Associates, P.A
- Keith Carswell

**D. Construction:**

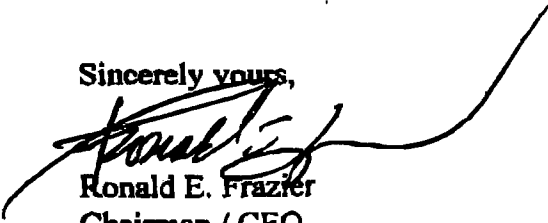
- Delant Construction Co.
- ACT Services, Inc.
- Solo Construction Co.

We have enclosed the following items for your review.

- Executive Summary
- Development Team Organization Chart
- Qualifications and Experience
- Preliminary Performa
- Site Plan Design Criteria

We look forward to the opportunity of discussing this proposal and our Team Qualifications with you.

Sincerely yours,



Ronald E. Frazier  
Chairman / CEO  
BAC Funding Corporation

## EXECUTIVE SUMMARY

### **OVERVIEW:**

The BAC Funding Corporation proposes to develop, design, construct and manage a proposed office complex located at the MLK Transit Station. The project will consist of approximately 200,000 sf. ft. of Metro-Dade County Office Space and 15,000 sf. ft. of commercial space.

To achieve these objectives, the BAC Funding Corporation has assembled a Development Team comprised of very experienced and respected firms who will assist in this effort.

The BAC Funding Corporation, a 501(c)(3) Florida Non-profit community development corporation was formed in 1982. The BAC Funding Corporation believes in creating sustainable value in South Florida's African-American Communities. This is achieved by developing a plan of action to capture a critical mass of the economic fortunes generated by the growth sectors of South Florida's Economy.

In reality, race and access to capital continue to be the most significant barriers to the sustainable development of African-American enterprises. Black entrepreneurship is perceived strange, if not ill-received in America. From the beginning of civilization, black entrepreneurs have successfully marshaled resources to create value and wealth. Today, however, the resources required in the creation of value and wealth are largely steered by those who perceived blacks as being high risk, substandard and always lacking some respect.

As a result of this analysis, the BAC Funding Corporation created a new direction called "Creating Sustainable Value". To achieve this new direction, the BAC developed the following two (2) goals and objectives.

### **GOALS AND OBJECTIVES FOR 1997 - 2000:**

#### **GOAL I**

#### **Develop and Implement a Plan for Self Sufficiency**

##### **Plan of Action:**

- ▶ Raise additional capital from banking community, government, and private sector
- ▶ Develop and implement lease hold improvements to home base to cover operating expenses.
- ▶ Develop and implement business development opportunities in the growth sectors of South Florida.

## **GOAL II**

### **Participate in Business Development Opportunities in the Growth Sectors of South Florida**

#### **Plan of Action:**

- ▶ Retain outside consultant for technical and business development assistance for potential opportunities.
- ▶ Identify business development opportunities in commercial real estate, expansion of existing enterprises, expansion of the Miami International Airport, redevelopment opportunities in African-American Community.
- ▶ Develop and implement the Commercial Development Center at BAC Funding Corporation home base.

The proposed MLK Transit Development Project is part of the BAC Funding Corporation's Urban Initiative and Metro-Dade County's Transit Area Development Opportunities. The BAC is in the process of developing a commercial business centre adjacent to the MLK Transit Station and we look upon this as an opportunity to consolidate and expand the office component of the commercial business centre.

#### **THE DEVELOPMENT TEAM**

The Development Team is composed of the following firms, companies and individuals.

#### **GENERAL PARTNERS**

#### **BAC FUNDING CORPORATION**

BAC Funding Corporation (F/K/A Business Assistance Center, Inc.) and its affiliated corporations (collectively the "BAC") are outgrowths of the Business Revitalization Action Committee of the Greater Miami Chamber of Commerce ("GMCC"), the State of Florida's Governor's Revitalization Board of Dade County and the Miami-Dade Chamber of Commerce ("MDCC"). The objective was to help stimulate the economic growth of Liberty City -- the area of civil disturbances in 1980 -- and the Black business community in Dade County.

The mission of BAC is to contribute to the long-range development of a successful Black entrepreneurial and business class in Dade County.

The purpose of this effort is to create economic balance in our community; and to provide Blacks with successful role models in business and private enterprises.

In accomplishing this, BAC will provide financial assistance and act as a catalyst in providing technical assistance; and use its leverage within the community to build appropriate and necessary support for the effort.

The BAC Funding Corporation's role in this project is to act as the catalyst and provide the required financial assistance and leverage to implement this project. The BAC will be a part of the general partners.

#### **PENINSULA DEVELOPERS, INC.**

Peninsula Developers, Inc. was founded by Mr. Otis Pitts, Jr. and he will be a general partner and will have the prime responsibility for developing this project. Mr. Pitts has extensive experience in inner city development and inner city financing techniques. He has developed approximately 2,000 units of affordable housing, lead the revitalization of the largest inner city commercial corridor in South Florida, renovated over 100 business facades, and developed two neighborhood shopping centers.

Although Peninsula is a young company, its unique utilization of alliances to maximize situation-specific experience, expertise and resources to achieve the highest standards in the development of affordable communities, makes it second to none.

#### **TEJA & ASSOCIATES, INC.:**

TEJA & Associates, Inc. was funded in 1997 by its president and owner Alben Duffie. The firm has extensive experience in governmental relations, marketing, and public relations. The firm will have the primary responsibility for governmental relations for this project.

#### **LIMITED PARTNERS:**

The following individuals and companies will be limited partners and will provide specialized consulting services.

Raul P. Masvidal  
99 Acres and a Mule, Inc.  
Antonio Junior

#### **SPECIAL DEVELOPMENT CONSULTANTS:**

##### **CODINA GROUP**

The Codina Group will provide specialized development services to the development team. The Codina Group consist of several companies that will provide these services and they are as follows.

1. **Codina Development**

In 1996 Codina Developed was responsible for the development of over 1,000,000 square feet of office and industrial product.

2. **Codina Construction:**

Codina Construction completed over 1,600,000 square feet of construction including the new 150,000 square foot South Florida headquarters for Blue Cross / Blue Shield. This nine month project was the only four story tilt-up structure constructed in the tri-county area during this period.

3. **Codina Real estate Management:**

Throughout 1996, Codina Real Estate Management experienced significant expansion, increasing it property management portfolio by 2,000,000 square feet and opening a satellite office in Boca Raton to service a broader geographic base of clients.

4. **Codina Bush Klein ONCOR / International:**

In 1996, Codina Bush Klein \* ONCOR International leased or sold in excess of 5,000,000 square feet of prime office and industrial space in Dade, Broward and Palm Beach Counties. The total transaction volume was \$254,000,000.

5. **Codina Rodon Consulting:**

The firm provides the following type of services.

- Land Use Planning
- Pre-Development Coordination
- Growth Management / Concurrency
- Environmental Regulations
- Development Permitting
- Building & Zoning Codes
- Transportation Issues

**ARCHITECTURAL / ENGINEERING SERVICES:**

**RONALD E. FRAZIER & ASSOCIATES, PA**

The firm of Ronald E. Frazier & Associates will be the prime A/E Consultant for the project and will retain other specialized A/E Design Consultants to assist in the final development of the project.

Ronald E. Frazier & Associates, PA has extensive experience in urban planning, Transit Related and Office Facilities. The firm's output has encompassed total design, planning, construction administration and as-built investigation services for a variety of other clients, including individuals, governmental, public and private agencies.

Repeat services provide adequate testimony to the satisfaction achieved through the qualified personal services of RONALD E. FRAZIER & ASSOCIATES, P.A.

Mr. Ronald Frazier, President / CEO of the firm, has extensive knowledge and experience with inner city planning and development. He has prepared the majority of the planning studies and architectural designs for the model city area and the MLK Transit Corridor.

The firm is particularly familiar with the project orientation and facilities analysis; building functional relationships; fast-track design procedures; building system designs and functionality; long-lead procurement items; value engineering for durable low maintenance construction materials; scheduling and manpower projections; accurate documentation and building analysis and assessment.

#### **CONSTRUCTION TEAM:**

The Construction Team will consist of three (3) local experienced Contractors, each has a successful track record.

#### **DELANT CONSTRUCTION:**

Delant Construction Co. Was established in 1982 by the Delgado family as a continuation of a lifetime dedication to the construction industry. The company has been responsibility for a variety of projects, both in the public and private sectors. Within the past years, as the General Contractor of Record, the company has completed the construction of four of the most successful Design / Build Projects in Dade County's history: the state of the art Metro West Correctional Facility Phases I and II, Krome Detention Off-site Infrastructure and Noise Abatement Barrier at Miami International Airport with an approximate value of \$60,000,000.

Over the years Delant Construction has stood out from other contractors by engaging in general and engineering contracting with the use of it own in-house personnel, rather than subcontracting the majority of the work and becoming a Construction Manager. Some of Delant's in-house capabilities are: masonry, construction, forming, placing, sewer, paving and drainage, all carried out through the use of its own equipment and component personnel.

To date, Delant has been responsible for a great variety of projects including residences, factories, warehouses, office buildings, detention centers, etc., thus providing us with an extensive knowledge of the construction industry in the South Florida region.

## **ACT SERVICES, INC.:**

ACT Services, Inc. ("ACT") is a licensed General Contractor and Construction Development Company. The Company's primary business focus is that of constructing and developing public facilities. ACT was founded in June of 1985 and has become one of the leading "Black Contractors in South Florida".

Since inception, ACT has completed several construction jobs valued in excess of Fifty Million Dollars in contract revenue. Presently, ACT is performing six (6) projects for various government entities.

With regard to Construction Management, as it relates to general construction, ACT enjoys a good reputation for excellent quality work, project management, quality assurance and cost control.

Mr. Derrick B. Golding and Mr. Mark O'Connor bring to this firm extensive experience in construction management, project management, constructability control and construction trade coordination.

## **SOLO CONSTRUCTION CORPORATION:**

SOLO Construction Corporation is a comprehensive construction firm specializing in site development, general engineering, earth work excavation, roadway development, utility installation, construction management and design. Founded in 1978 by Herron L. Pierson, Ruth Pierson and Randy Pierson, SOLO has established an outstanding reputation in Florida throughout the years. SOLO Construction, an African-American owned, managed, and controlled firm, has seen its personnel grow from five persons in 1978 to hundreds of employees today.

Since its inception, SOLO Construction Corporation has made excellence its standard. The Piersons are proud of the corporation's beginnings, and are committed to positioning the company for the future as the front-runner in the construction industry.

SOLO's expertise in the area of site development and earth work has been utilized on numerous projects. SOLO has completed every project it has started since the company's inception. The company has excavated, installed, repaired and altered pipelines for storm drainage, water distribution, sewer force-mains and pumping facilities.



		Total Financial	3,753,704	\$13.7
<b>GENERAL AND ADMIN.</b>				
Development Fee				
Project Management Expense		1,250,000		
20,000 per month x 18 months		400,000		
Audit Expense				
Estimate		15,000		
		<b>Total G. &amp; A.</b>	<b>1,765,000</b>	<b>38.0</b>
<b>MARKETING</b>				
Advertising/promo		5,000		
Leasing		20,000		
		<b>Total Marketing</b>	<b>25,000</b>	<b>0.1</b>
<b>LEGAL</b>				
Lender's Legal				
Estimate		65,000		
Borrower's Legal				
Estimate		75,000		
Leasing Legal				
Estimate		10,000		
Organizational Costs				
Legal Counseling		10,000		
		<b>Total Legal</b>	<b>160,000</b>	<b>0.6</b>
		<b>Sub Total budget</b>	<b>\$22,655,484</b>	<b>\$103.0</b>
<b>Contingency &amp; Round-Up</b>				
General Contingency				
3.5% of Total Budget				
		<b>Total Contingency</b>	<b>793,392</b>	<b>3.6</b>
		<b>Developer's Costs</b>	<b>\$23,458,776</b>	
		<b>Dade County's Costs</b>	<b>2,450,000</b>	
		<b>Total Project Cost</b>	<b>25,908,776</b>	<b>\$117.7</b>
<b>USES</b>				
<b>1st MORTGAGE</b>				
Developer's Equity			22,285,837	
			1,172,939	
	<b>Developer's Share</b>		<b>\$23,458,776</b>	
	<b>Dade county's Share</b>		<b>2,450,000</b>	
	<b>Total Project Sources</b>		<b>25,908,776</b>	

Assurance Fee: 184,800  
 Office: 184,000  
 Office: 14,000  
 Retail: 1,172,839  
 Liquidity Required: 22,283,897  
 Total Sales: 29,458,778  
 Reserve to Business: 3,000,000  
 Liquidation Income: 4,075,000  
 Interest Fees: 8,297,000  
 Administration: 25 Years  
 9,857,000

10 Year Cashflow

OFFICE:  
 Total Office Rent  
 Vacancy Allowance (10%)  
 Interest Office Income  
 Operating Expenses \$2.00 per sq. ft.  
 Office Unit Operating Income

RETAIL: MIM  
 General Retailer Income  
 Vacancy (10%)  
 Retail Unit Operating Income

TOTAL NET OPERATING INCOME

Land Dist Service  
 Sub at year 10  
 Land Charge/Exp Amount  
 Cashflow  
 Payoff Return on Cost  
 Debt Coverage  
 1 FIR  
 Debt to Total Cost Ratio

Loan Schedule  
 Amortizing Principal  
 Interest  
 Prepaid Profit

	0	1	2	3	4	5
Office Unit Operating Income		\$1,978,472	\$1,981,880	\$1,985,290	\$1,988,700	\$1,992,110
Retail Unit Operating Income		\$1,183,794	\$1,187,210	\$1,190,626	\$1,194,042	\$1,197,458
Interest Office Income		\$3,691,558	\$3,691,558	\$3,691,558	\$3,691,558	\$3,691,558
Operating Expenses \$2.00 per sq. ft.		1,472,000	1,472,000	1,472,000	1,472,000	1,472,000
Office Unit Operating Income		2,190,280	2,190,280	2,190,280	2,190,280	2,190,280
Retail Unit Operating Income		180,000	180,400	180,800	181,200	181,600
General Retailer Income		8,000	18,800	29,600	40,400	51,200
Vacancy (10%)		\$171,000	\$180,800	\$190,600	\$199,400	\$208,200
Retail Unit Operating Income		\$2,573,280	\$2,597,400	\$2,621,520	\$2,645,640	\$2,669,760
TOTAL NET OPERATING INCOME		2,108,560	2,108,560	2,108,560	2,108,560	2,108,560
Land Dist Service						
Sub at year 10						
Land Charge/Exp Amount		184,721	208,598	232,475	256,352	280,229
Cashflow	11,172,839					
Payoff Return on Cost		1.08%	1.10%	1.12%	1.15%	1.18%
Debt Coverage		1.10%	1.12%	1.15%	1.18%	1.21%
1 FIR						
Debt to Total Cost Ratio						
Loan Schedule						
Amortizing Principal		22,283,897	22,018,888	21,753,879	21,488,870	21,223,861
Interest		1,658,582	1,618,376	1,578,170	1,537,964	1,497,758
Prepaid Profit		280,571	282,244	283,917	285,590	287,263

	6	7	8	9	10	11
84361.843	84,627,822	84,627,277	84,794,888	84,688,979	84,888,391	84,888,391
5718.053	\$24,625	\$21,384	\$28,205	\$245,454	\$282,918	\$282,918
414,8570	4,287,877	4,388,914	4,827,791	4,883,828	4,883,828	4,883,828
1,780,913	1,682,952	1,827,022	2,014,634	2,088,115	2,178,020	2,178,020
2,382,657	2,428,328	2,489,882	2,513,287	2,588,810	2,624,614	2,624,614
208,889	214,928	221,377	228,018	234,889	241,805	241,805
20,867	21,483	22,138	22,822	23,498	24,182	24,182
\$187,822	\$183,445	\$189,240	\$205,217	\$211,373	\$217,714	\$217,714
\$2540,459	\$2,588,784	\$2,688,182	\$2,718,474	\$2,778,883	\$2,842,328	\$2,842,328
2,108,583	2,108,583	2,108,583	2,108,583	2,108,583	2,108,583	2,108,583
491,927	489,212	548,348	628,822	731,201	731,201	731,201
1.25	1.25	1.28	1.29	1.32		

	6	7	8	9	10	11
20,884,111	20,382,821	19,888,427	18,388,188	18,878,188	18,528,148	18,528,148
1,787,284	1,674,158	1,688,320	1,588,188	1,587,251		
491,281	434,385	470,252	528,028	591,021		

List of Tenants:

AGENCY	Current LOCATION	Size SQ FT	TOTAL ANNUAL RENT	PSF	FUNDING SOURCE
County Agencies to Private Space:					
Continental & Merchants	601 NW 30th St	61,000	\$1,150,000	\$18.85	General Fund
8254 Varsity	6075 Executive Dr	45,000	\$855,000	\$19.00	General Fund
	Subtotal	106,000	\$2,005,000	\$19.00	

County / Agencies to County Bldegs:	Current LOCATION	Size SQ FT	TOTAL ANNUAL RENT	PSF	FUNDING SOURCE
MDTA	Suprema P Clark Cam	70,000	\$1,350,000	\$19.29	General Fund
	Subtotal	70,000	\$1,350,000	\$19.29	

Private Agencies:	Current LOCATION	Size SQ FT	TOTAL ANNUAL RENT	PSF	FUNDING SOURCE
GAC		178,000	\$3,344,000	\$18.78	
	Subtotal	178,000	\$3,344,000	\$18.78	

County / Agencies to County Bldegs:	Current LOCATION	Size SQ FT	TOTAL ANNUAL RENT	PSF	FUNDING SOURCE
		194,000	\$3,480,000	\$18.00	
	Subtotal	194,000	\$3,480,000	\$18.00	

County / Agencies to County Bldegs:	Current LOCATION	Size SQ FT	TOTAL ANNUAL RENT	PSF	FUNDING SOURCE
		10,000	\$180,000	\$18.00	
	Subtotal	10,000	\$180,000	\$18.00	

County / Agencies to County Bldegs:	Current LOCATION	Size SQ FT	TOTAL ANNUAL RENT	PSF	FUNDING SOURCE
		4,000	\$80,400	\$20.10	
	Subtotal	4,000	\$80,400	\$20.10	

County / Agencies to County Bldegs:	Current LOCATION	Size SQ FT	TOTAL ANNUAL RENT	PSF	FUNDING SOURCE
		128,000	\$2,727,400	\$21.31	
	Subtotal	128,000	\$2,727,400	\$21.31	

County / Agencies to County Bldegs:	Current LOCATION	Size SQ FT	TOTAL ANNUAL RENT	PSF	FUNDING SOURCE
		21,200	\$424,000	\$19.95	
	Subtotal	21,200	\$424,000	\$19.95	

County / Agencies to County Bldegs:	Current LOCATION	Size SQ FT	TOTAL ANNUAL RENT	PSF	FUNDING SOURCE
		20,000	\$360,000	\$18.00	
	Subtotal	20,000	\$360,000	\$18.00	

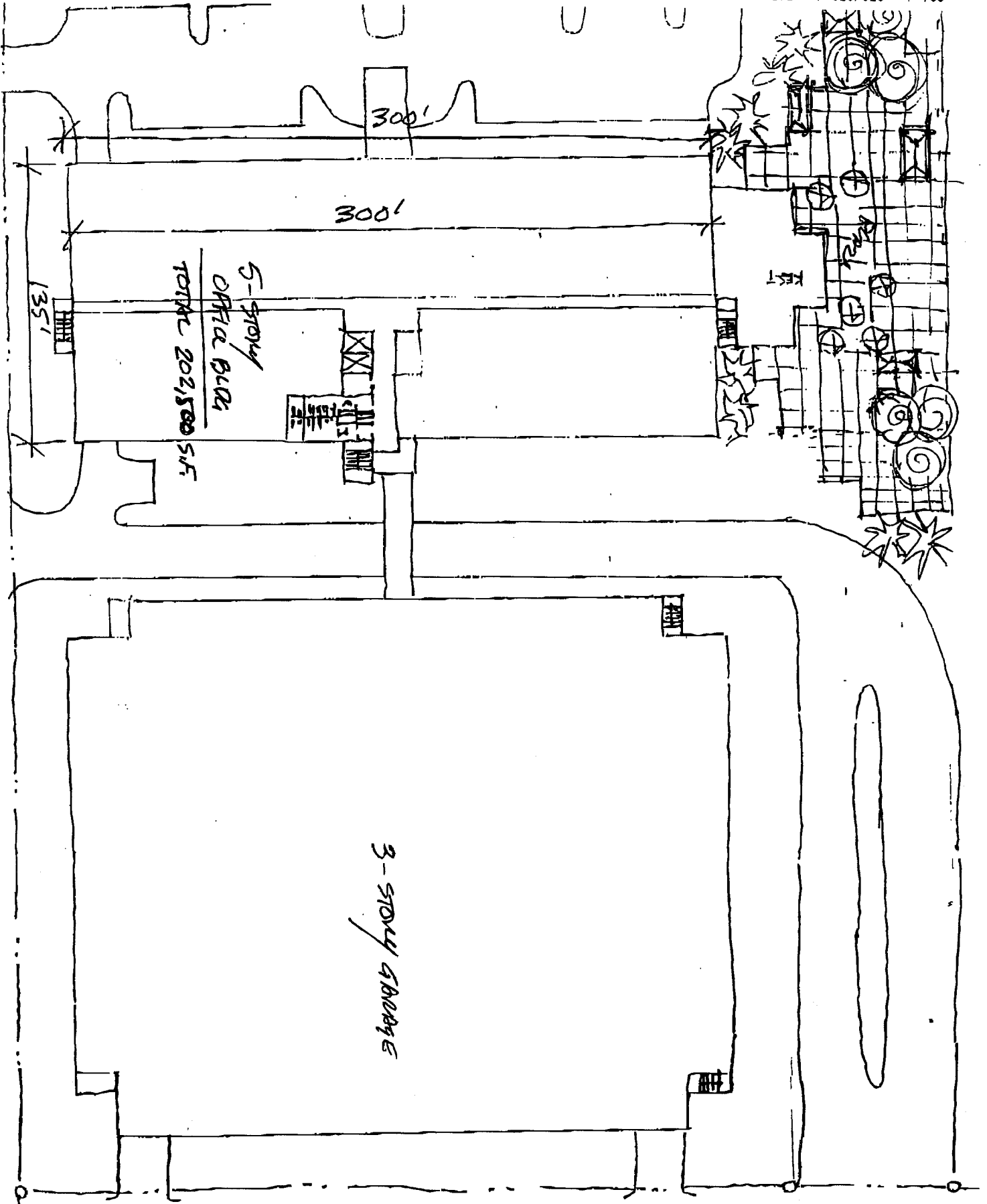
County / Agencies to County Bldegs:	Current LOCATION	Size SQ FT	TOTAL ANNUAL RENT	PSF	FUNDING SOURCE
		1,800	\$36,000	\$20.00	
	Subtotal	1,800	\$36,000	\$20.00	

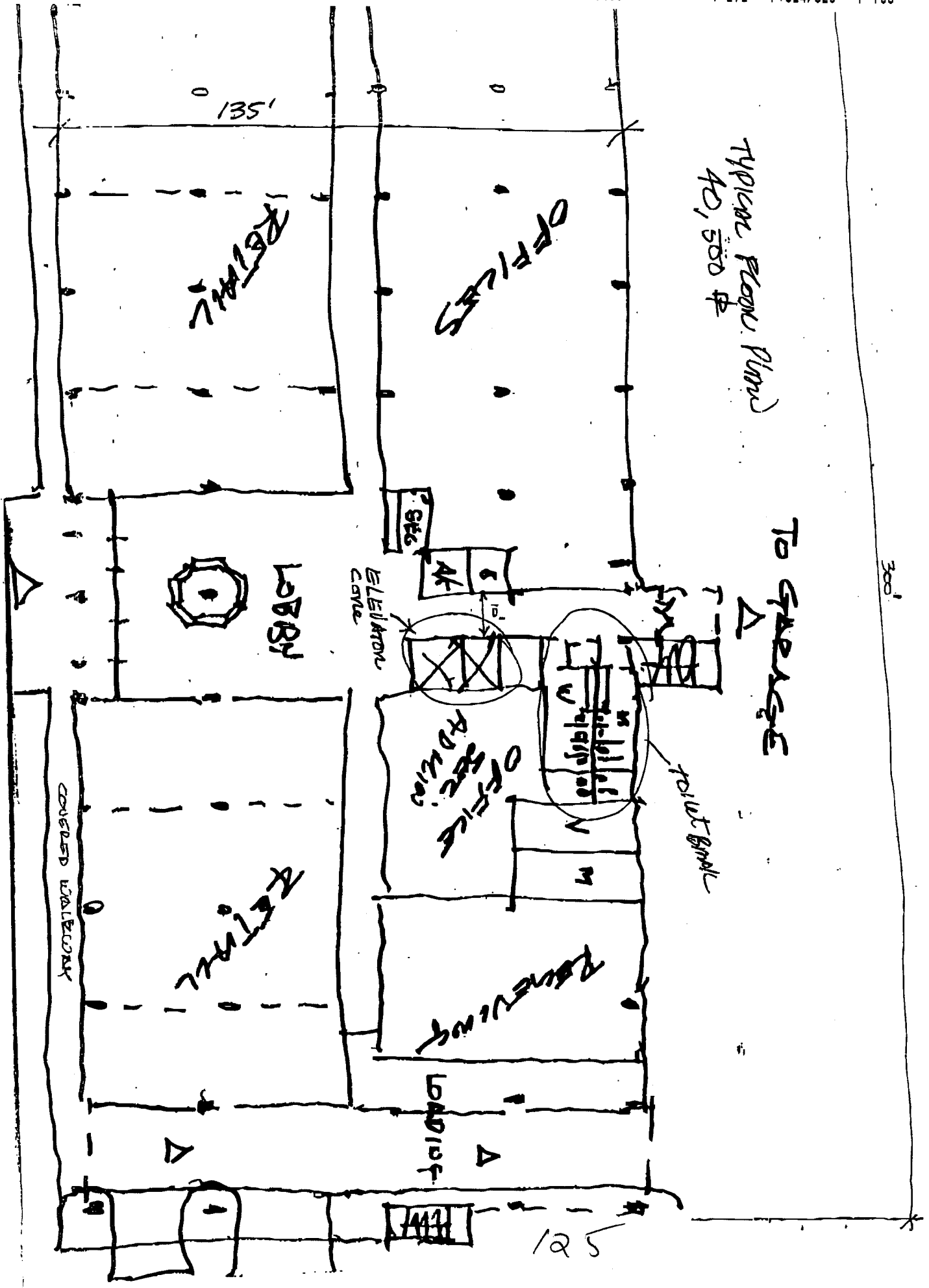
County / Agencies to County Bldegs:	Current LOCATION	Size SQ FT	TOTAL ANNUAL RENT	PSF	FUNDING SOURCE
		6,600	\$132,000	\$20.00	
	Subtotal	6,600	\$132,000	\$20.00	

ALLOWANCE 10.7%

TOTAL

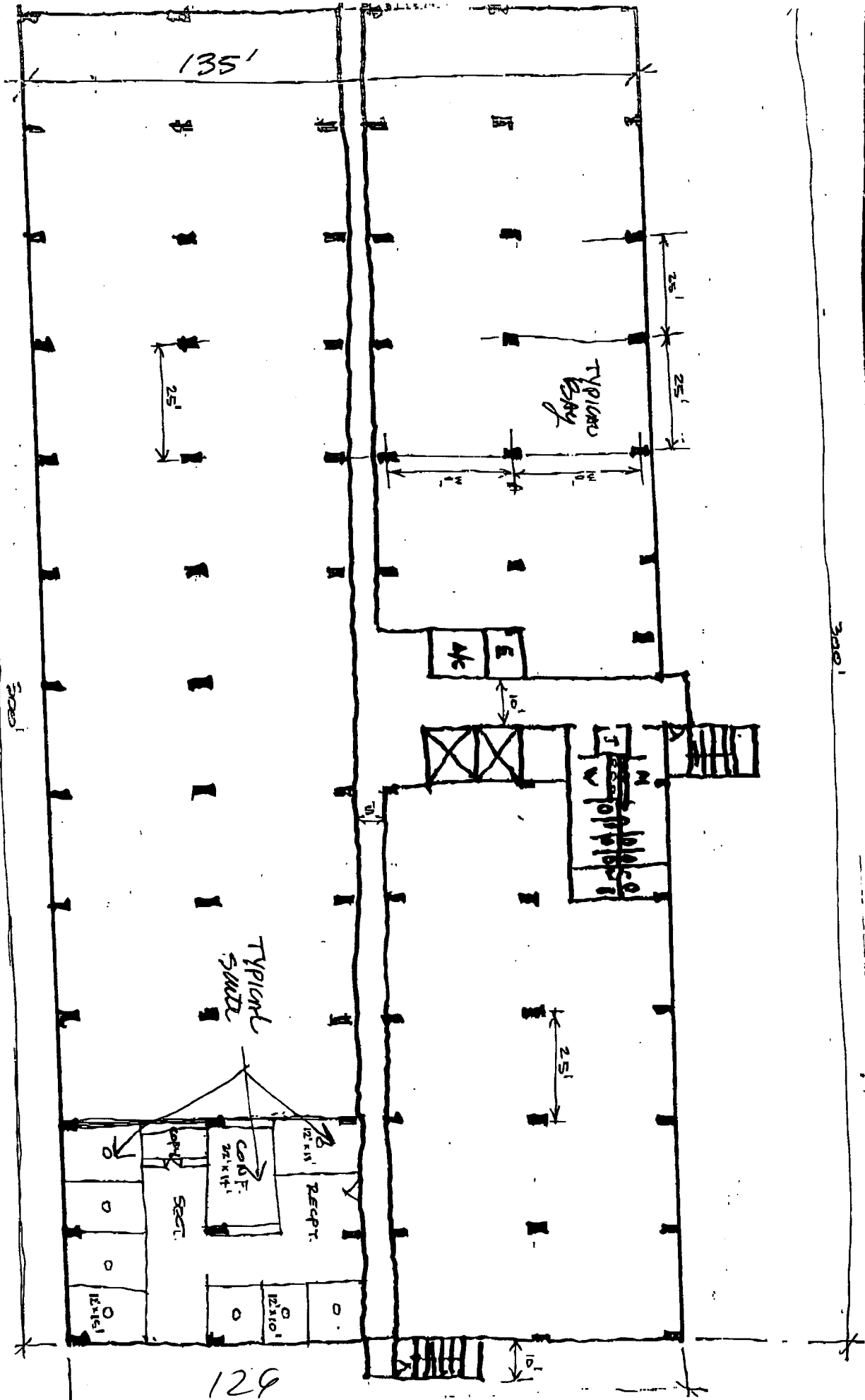
123





# TYPICAL FLOOR PLAN

TYPICAL Floor Plans  
40,500 S.F.



135'

25'

25'

25'

TYPICAL Bay

300'

300'

TYPICAL SWAIT

129

10'

25'

12x12

RECEPT.

SECT.

COFF. SWAIT

12x12

12x14

12x16

12x18

12x20

12x24

12x30

12x36

12x42

12x48

12x54

12x60

12x66

12x72

12x78

12x84

12x90

12x96

12x102

12x108

12x114

12x120

12x126

12x132

12x138

12x144

12x150

12x156

12x162

12x168

12x174

12x180

12x186

12x192

12x198

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12x234

12x240

12x246

12x252

12x258

12x264

12x270

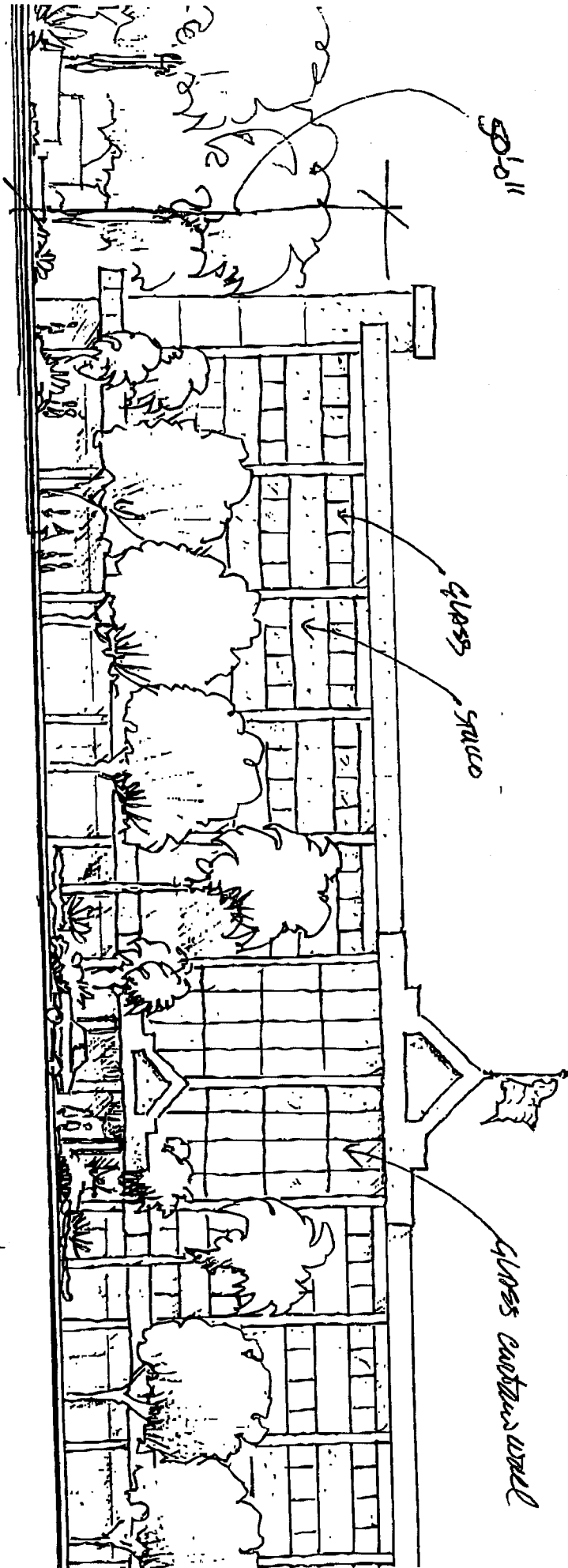
12x276

12x282

12x288

12x294

12x300



FRONT ELEVATION

SCALE: 1" = 10'-0"

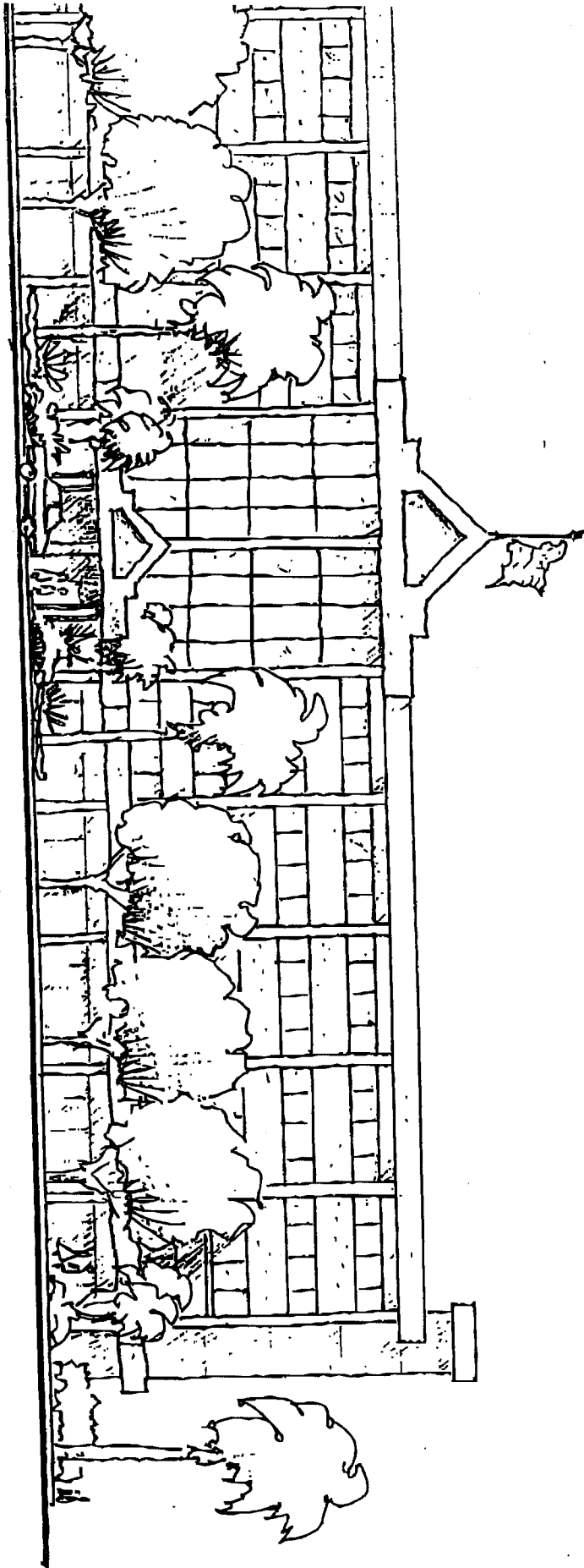
5-story Bldg

44

127

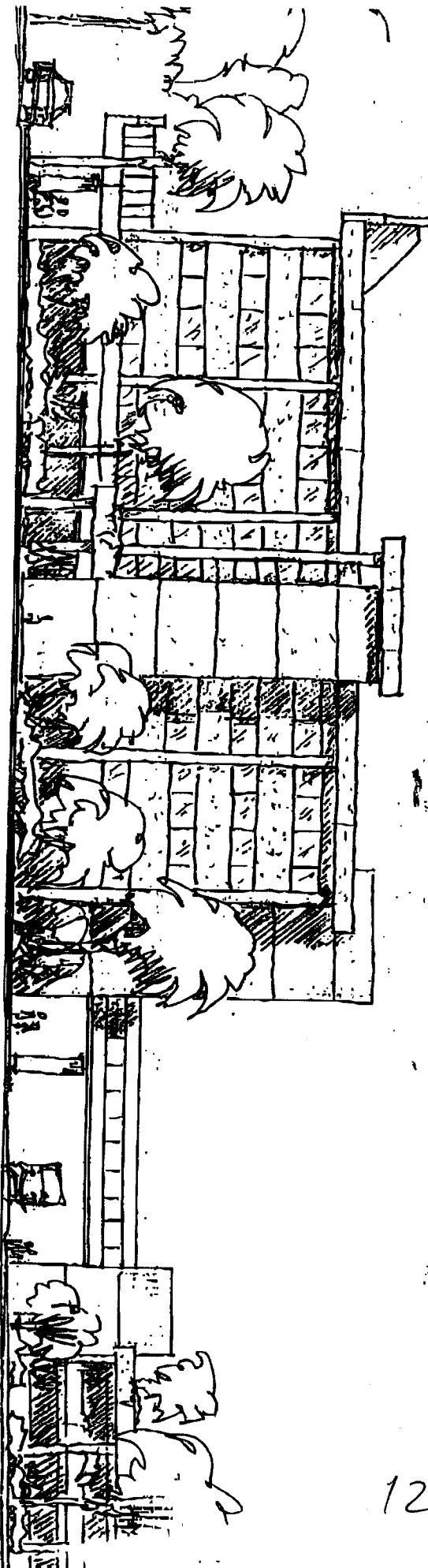
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FRONT ELEVATION  
SCALE: 1" = 10'-0"



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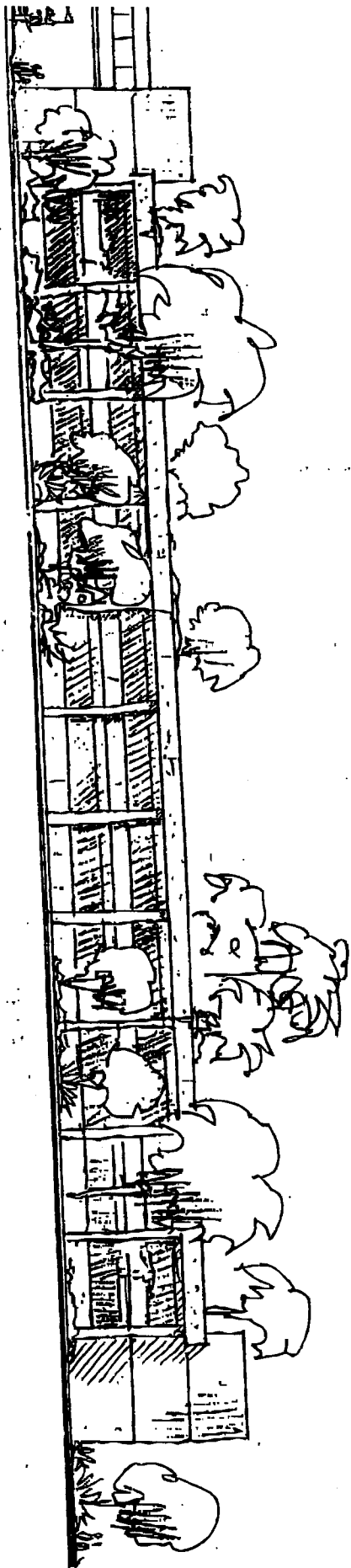


EAST ELEVATION

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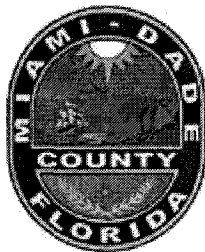
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## Miami-Dade Legislative Item File Number: 981150

*ATTACHMENT 6*

**File Number:** 981150                      **File Type:** Report **Status:** Accepted  
**Version:** 0                                      **Reference:**                      **Control:** County Commission  
**File Name:** MLK PROPOSED DEVELOPMENT **Introduced:** 4/14/1998  
**Requester:** Miami-Dade Transit Agency **Cost:**                      **Final Action:** 4/21/1998  
**Agenda Date:** 4/21/1998 **Agenda Item Number:** 6I4A  
**Notes:** Title: MLK PROPOSED DEVELOPMENT [SEE AGENDA ITEM 2B5]  
**Indexes:** MDTA **Sponsors:** NONE  
**Sunset Provision:** No                      **Effective Date:**                      **Expiration Date:**  
**Registered Lobbyist:** None Listed

### Legislative History

Acting Body	Date	Agenda Item	Action	Sent To	Due Date	Returned	Pass/Fail
Board of County Commissioners	4/21/1998	6I4A	Accepted				P

**REPORT:** Commissioner Moss wanted to ensure that the proposed development at the Martin Luther King, Jr., (MLK) Metrorail Station move forward in a similar manner to the proposal submitted by Royal Caribbean Cruises Ltd. for construction at the Seaport. Commissioner Diaz de la Portilla referred to the report submitted by Mayor Alex Penelas (Agenda Item 2B5) concerning the foregoing proposal, noting, for the record, the Mayor's recommendation that the County Manager be instructed to seek competitive bids on the matter. Interim County Manager Merrett Stierheim responded to Commissioner Diaz de la Portilla's inquiry on the County's investment in the proposed project. He indicated the Board will be apprised of the negotiations with the Business Assistance Center Funding Corporation regarding the development of the MLK site.

County Manager	4/14/1998	Assigned	Sue Torriente	4/21/1998
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### Legislative Text

**HEADER**

TO: Honorable Chairperson and Members DATE:  
Board of County Commissioners

FROM: M. R. Stierheim SUBJECT: MLK Proposed Development  
County Manager

*131*

**BODY**

Pursuant to Commissioner Carey's request, attached please find the unsolicited proposal, submitted by the Business Assistance Center Funding Corporation (BAC), in association with MLK Transit Development, Inc., for the future development of a facility at the Martin Luther King, Jr. (MLK) Metrorail Station site.

Over the past several years county-owned land in the Metrorail corridor adjacent to the MLK Metrorail Station has been studied for joint development opportunities. In fact I reviewed two memos from me to the County Commission, dated March 1982 and September 1984, pertaining to development of the transit corridor and specifically the MLK Station.

Resolution R-482-97, approved by the Board on May 6, 1997 directed the County Manager to develop a proposal for development of a County administrative facility at the MLK site and/or adjacent to the Overtown Metrorail Station. Subsequently, staff commissioned a study conducted jointly by the Planning and Economic Group, Inc. and Brown and Caldwell, to determine the feasibility of relocating the Solid Waste Department as well as other Miami-Dade departments which are currently paying rent to one of these sites. In summary, the study concluded that relocation of the Solid Waste Department to the MLK site was feasible. This study also assumes that other Miami-Dade departments will be housed at the MLK site.

Subsequently, the County received the unsolicited proposal by BAC to develop the MLK site. In summary, the proposal assumes that the County will lease the MLK site to the BAC, a non-profit entity and make an up-front capital contribution of \$4.5 million to demolish the existing parking garage and construct a new 650 space parking garage combined with private capital to support the overall financing of a development with an estimated value of \$25 million. To obtain private capital several entities to develop a 200,000 square foot office facility with supporting retail space. Once completed, the joint venture entity would lease back the facility to the County with transfer of ownership to the County of the improvement at the end of the lease term or when the debt is retired, whichever occurs sooner.

While no negotiations have occurred with the BAC, I did meet with the principals of the unsolicited proposal. A preliminary term sheet presented by the BAC, as well as a preliminary financial review of those terms by County staff, have been prepared (attached).

While we have significant concerns over the financial terms presented, I believe that the BAC proposal merits further consideration. Since economic concerns remain, I am unable to make any recommendations at this time. In order to proceed with a fully detailed evaluation of the BAC proposal, the Board would need to waive the competitive process and authorize the County Manager to enter into negotiations with the BAC. At such time that this action is taken and authority exists to negotiate, staff would negotiate with the BAC, and evaluate the County's use of the proposed space and its ability to financially participate under the negotiated terms. Once whether the County should proceed with this proposed development project or seek competitive proposals will be presented to the Board.

**DIRECTIVES**

No directives received.

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## MEMORANDUM

Agenda Item No. 10(B)5

TO: Honorable Chairperson and Members  
Board of County Commissioners

DATE: December 15, 1998

FROM: *M. R. Statham*  
County Manager

SUBJECT: Report on MLK Metrorail  
Station Proposed Joint  
Development Project

It is with some sadness and disappointment that earlier reports I prepared in the 1980's on the development of an office building adjacent to the Dr. Martin Luther King, Jr. (MLK) Metrorail Station languished until only recently. Over the years, Commissioner Carey and other commissioners including Commissioner Rolle, have endorsed the development of such a project. The Mayor has also made clear his support for such a joint development project at the MLK Metrorail Station to stimulate economic development in that area. For various reasons this project has not moved forward. However, now, pursuant to Commissioner Carey's request, the Board's approval and my recommendation to further investigate and initiate negotiations involving an unsolicited proposal to develop an office building at the MLK Metrorail Station on April 21, 1998, a negotiating committee was appointed to further evaluate the proposal and negotiate a conceptual term sheet with the joint venture team.

Based on the fine work of the County's negotiating team headed by George Burgess and committee members Steve Spratt, Danny Alvarez, Bernard McGriff and Kathy Brooks, with staff support from Charles Parkinson, I am very pleased to report that we were able to negotiate a conceptual agreement with the joint venture team to develop this office building. As you may recall, my concern was to evaluate the proposal based on its fiscal soundness including the County's ability to use the proposed space while incurring space use costs comparable to or less than existing rents, participating in a project which would help increase transit ridership and achieving other extremely important policy initiatives consistent with urban economic revitalization.

This proposal centers on a request to lease County-owned land at the MLK Metrorail Station by the Business Assistance Center (BAC), a nonprofit organization, represented by Ronald E. Frazier. The BAC would enter into a joint venture development agreement with Martin Luther King Transit Joint Venture whose members, among others, include Peninsular Developers, Inc., represented by Otis Pitts and Teja and Associates, Inc. represented by Alben Duffie. As a separate agreement, the County would enter into a 30-year lease-purchase contract for the proposed office building project with the joint venture.

Discussions between the negotiating committee and the joint venture team commenced in June 1998. Included in those discussions were issues such as site planning, renovation and reconfiguration of the existing parking facility, scope of work and requirements for the proposed office facility, and the financial terms under which the County could participate while achieving my stated goals. The conceptual term sheet resulting from these discussions is attached for your

*"Exhibit"*  
12/15/98 (1005)

review. Some of the highlights include the following: the County's capital participation in the project, originally proposed at \$4.5 million, has been reduced to \$2.1 million, and the rental rate to be charged has been reduced from \$19.00 per square foot to \$17.00 per square foot. Rental rate adjustments have two components: 59 percent (\$10.00) of the rate will increase by a minimum of two percent and a maximum of three percent per year; 41 percent (\$7.00) will be tied to actual experience or to a conventional operating cost adjustment index used by public and private operators including the County's General Services Administration, whichever is greater. As before the County would own the proposed facility at the end of a 30-year lease term. The County would also have an option to purchase the facility prior to the lease term expiration based upon a negotiated method to derive a buyout price to be included in the final lease-purchase agreement.

Current financial analyses indicate the proposed project (including the \$2.1 million capital contribution, the projected costs of occupancy, annual rental payments, projected ad valorem tax receipts, transit financial benefits and the facility's residual value) yields a favorable net present value cost relative to what the County is currently paying in proprietary leases estimated over an equivalent amount of time for an equivalent amount of square footage.

It is my recommendation that the County proceed with this proposed land lease with the BAC as well as the lease-purchase agreement with the joint venture. The recommended course of action is for staff in the joint development unit of Miami-Dade Transit Agency (MDTA) and the Department of Solid Waste Management with assistance from the Office of the County Attorney and oversight from the negotiating committee to develop final agreements in accordance with the conceptual term sheet including land use and Disadvantaged Business Enterprise (DBE) requirements for the project. Concurrently, MDTA staff will seek formal approval of the project from the Federal Transit Administration (FTA) which regulates transit-related development on lands funded primarily with federal grant dollars. Upon FTA approval, the final negotiated agreements including the BAC land lease and the lease-purchase agreement with the joint venture will be presented to the Board for approval, and development of the MLK site will commence.

Attachment

**Conceptual Term Sheet  
Proposed Office Building Development  
Dr. Martin Luther King, Jr. Metrorail Station Site**

**1) General Structure of Proposal**

- a) The County will lease the subject site the Business Assistance Center (BAC). The Joint Venture entity will enter into a development agreement with the BAC. The County will enter into a lease-purchase agreement with the Joint Venture, the conceptual terms of which are outlined below.

**2) Site Development and Construction**

- a) The Joint Venture will engage a general contractor to develop land, reconfigure existing parking garage in conformance with the proposed site plan and construct a five story, class B type office building with 172,000 net rentable square feet of office space and 13,500 net rentable square feet of retail/support services space.
- b) The County will require a minimum of 3,000 net rentable square feet to be dedicated to a food service type business; the balance of the programmed space, 10,500 net rentable square feet, is to be dedicated to retail/support services type business to the extent leasing market conditions permit.
- c) The Joint Venture is responsible for the demolition of the south two bays of the existing parking garage, reconstruction of the garage facade, required repairs to the overall garage structure as noted in the final condition assessment report provided by the Miami Dade Transit Agency as well as restriping, resealing, repainting and required signage of the existing garage structure, required repairs to the existing daycare facility within the existing garage, if any, and reconfiguration of the existing bus lanes on site to conform with the proposed site plan.
- d) The County is to approve as part of the final lease-purchase agreement between the County and the Joint Venture the following:
  - 1) The specific number of spaces allocated between the proposed office building and those dedicated to transit use.
  - 2) The final scope of work for the garage including repairs to the existing daycare center is subject to County approval.
  - 3) The budget for the garage project and pedestrian connector including construction contingency. County will provide a financial contribution in an amount not to exceed \$2.1 million which includes \$1.8 million for the garage reconfiguration and renovation, \$110,000 for engineering costs, a \$90,000 construction contingency (with any draw downs to be approved by the County) and \$100,000 for a pedestrian connector between the rail station and the office building. Any cost savings on the \$1.8 million of

Conceptual Term Sheet

Page 2

construction cost will be shared 50:50 between the County and the Joint Venture. However, any savings will be first applied to cost overages related to the pedestrian connector, if any. The Joint Venture assumes all risks of development and construction of garage project including permitting requirements under local, state and federal authorities, hidden conditions, changes of scope of work made by the Joint Venture and risks associated with Joint Venture's construction contract.

- 4) Determination of garage operator and allocation of net parking revenue.
  - e) Final specified furnishings, fixtures and equipment to be mutually agreed to in the scope of the interior build-out construction and fully specified in the final lease-purchase agreement.
- 3) **Lease and Compensation Terms**
- a) The County will enter into a thirty (30) year, noncancelable lease purchase agreement with the Joint Venture or its Assignee. Assignment can only be made with written consent of the County. County shall retain fee title to the land and the garage. The BAC shall control the building site for the term of the lease purchase agreement through a separate lease with the County. No permanent easements shall be granted to the Joint Venture or the BAC.
  - b) The lease-purchase shall be full service with the initial rate per net rentable square foot at \$17.00; the \$17.00 per square foot shall be bifurcated between an operating/maintenance (O&M) cost portion (base at \$7.00 per square foot) and a debt service/profit (D&P) portion (base at \$10.00 per square foot).
    - 1) Absent annual level of service adjustments, O&M shall adjust annually based on actual experience or in the same percentage change as the Building Owners and Managers Association (BOMA) standard for South Florida encompassing Miami-Dade County, Class B Suburban Office. Through the annual facility budget development process, the County and the Joint Venture will mutually agree to annual O&M level of service adjustments, if required, upon which revised O&M square footage rates will be based.
    - 2) D&P shall adjust annually at a minimum rate of two (2) percent and shall be capped at a maximum three (3) percent adjustment for the term of the lease. Any adjustment between two and three percent shall conform to the most recent and broadest Consumer Price Index published by the U.S. Department of Labor, Atlanta Region, South Florida Standard Metropolitan Statistical Area on the anniversary date of adjustment.
  - c) The County and Joint Venture will mutually agree to permanent loan amortization schedule; the Joint Venture must disclose its permanent financing terms and source of financing.

Conceptual Term Sheet  
Page 3

- d) The County and the Joint Venture are to define via final negotiation specifically what is included in O&M and delineate such in the final lease-purchase agreement.
- e) The County may purchase the proposed improvement from the Joint Venture or its assign at any time during the lease term subject to a negotiated price schedule to be included as an attachment to the lease-purchase agreement. Should the County not exercise its right to purchase the improvement prior to the expiration of the lease term, fee title in the improvement shall pass to County upon expiration of lease term for \$1.00 consideration plus appropriate real estate transactions costs.

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A RESOLUTION AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS OF THE AUTHORITY IN AN AMOUNT NOT TO EXCEED \$21,775,000 TO FINANCE AN OFFICE BUILDING AND RELATED PARKING FOR BAC FUNDING CORPORATION FOR LEASE TO MIAMI-DADE COUNTY AND OTHER TENANTS; APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE AUTHORITY AND SUCH COMPANY SETTING FORTH THE TERMS AND CONDITIONS UNDER WHICH SUCH INDUSTRIAL DEVELOPMENT REVENUE BONDS WILL BE SOLD AND ISSUED TO FINANCE SUCH PROJECT; AUTHORIZING THE EXECUTION THEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Miami-Dade County Industrial Development Authority (the "Authority") has received a request from BAC Funding Corporation (the "Company") to issue Bonds in an aggregate principal amount not to exceed \$21,775,000 to finance the construction and equipping of an office building and related parking to be leased to Miami-Dade County and other tenants as authorized by Chapter 159.27, Florida Statutes (collectively, the "Project"), all as more particularly described in "Appendix A" hereto;

WHEREAS, the construction and equipping of the Project within Miami-Dade County meets the requirements of Part III of Chapter 159, Florida Statutes, for the issuance of Bonds of the Authority; and

WHEREAS, it is appropriate to execute a Memorandum of Agreement between the Authority and the Company to evidence the agreement between them as to the terms and conditions under which said Bonds are to be issued;

NOW THEREFORE, BE IT RESOLVED BY THE MIAMI-DADE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY:

SECTION 1. The Authority is authorized, pursuant to the provisions of Parts II and III of Chapter 159, Florida Statutes, to issue its Miami-Dade County Industrial Development Authority Industrial Development Revenue Bonds (BAC Funding Corporation Project) in one or more series in an aggregate principal amount not to exceed \$21,775,000 (the "Bonds") having a final maturity of not to exceed forty (40) years, bearing interest at such rate or rates as shall not exceed the maximum rate of interest allowed by law and having such other terms as shall be established by subsequent resolution of the Authority, which may be the resolution providing for the sale of the Bonds to the original purchaser. Said Bonds shall be issued under a trust indenture to be established by the Authority under which a bond trustee shall certify as to the proper expenditure of the proceeds of the Bonds, and if the Bonds are validated, the trustee shall be acceptable to the court as required by Section 75.04(2), Florida Statutes. The Bonds are to be sold and issued only upon compliance with the terms and conditions set forth in the Memorandum of Agreement to be executed between the Authority and the Company. The Chairman or Vice Chairman and the Secretary Ex-Officio or Assistant Secretary of the Authority are authorized to execute such Memorandum of Agreement upon negotiation of the terms of such Memorandum of Agreement by the parties and the approval of Staff Counsel and the County Attorney.

SECTION 2. This resolution relating to the issuance of bonds on behalf of BAC Funding Corporation shall take effect immediately upon adoption.

PASSED AND ADOPTED this 23rd day of February, 1999.

**MIAMI-DADE COUNTY INDUSTRIAL  
DEVELOPMENT AUTHORITY**

(SEAL)



By: *R. J. Brant*

Attest: *James O. Deegan*  
Secretary Ex-Officio

Approved by the County Attorney as to  
Form and Legal Sufficiency

*Guadalupe V. Hefner*  
Assistant County Attorney for the County of  
Miami-Dade, Florida



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

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MAR 08 2000

M. D. T. A.

REGION IV  
Alabama, Florida  
Georgia, Kentucky  
Mississippi  
North Carolina  
Puerto Rico  
South Carolina  
Tennessee

61 Forsyth Street, S.W.  
Suite 17150  
Atlanta, GA 30303-8917  
404-562-3500  
404-562-3505 (FAX)  
404-562-3481 (TDD)

*Handwritten notes:*  
CFR  
Charles  
Lisa  
Charles  
(Sol...)  
Francis

Mr. Danny Alvarez  
Director  
Metro-Dade Transit Agency  
Stephen P. Clark Center  
111 Northwest First Street-Suite 910  
Miami, Florida 33128-1999

March 6, 2000

Dear Mr. Alvarez:

By letter dated January 21, 2000, you provided our office a transit oriented joint development proposal to convert the existing Martin Luther King, Jr. Plaza Metrorail Station site into a multi-use site and requested our concurrence in the lease of federally assisted real estate for joint development and the retention of the lease proceeds as program income. We have reviewed your proposal in accordance with guidelines adopted for undertaking joint development projects as set forth in Appendix B to FTA Circular 9300.1A and find that your proposal is consistent with that guidance. As such, we concur in your proposal to develop the Martin Luther King, Jr. Plaza Metrorail Station site in accordance with the documentation submitted and further concur in the lease of federally assisted real estate for that purpose in addition to the retention of the lease proceeds from that real estate as program income.

Finally, it is our understanding that there will be no new Federal assistance requested for this project. As such, the following cross-cutting requirements apply to the lessee and must be incorporated into the lease or the conveyance instrument:

- (1) language found at 49 C.F.R. 23.7 binding the lessee or transferee not to discriminate based on race, color, national origin, or sex;
- (2) language found at 49 C.F.R. 27.7 and 49 C.F.R. 27.9(b) binding the lessee or transferee not to discriminate based on disability and binding the same to compliance with the Americans with Disabilities Act with regard to any improvements constructed;
- (3) language contained in the FTA MA(6), dated October 1, 1999, and found in Section 3 Subparagraphs (a)(1), (a)(2), and (b) thereof relating to conflicts of interest and debarment.

*Handwritten number:* 141

Should you have further questions, please do not hesitate to contact us at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Susan E. Schruth". The signature is written in a cursive style with a large, stylized 'S' at the beginning.

Susan E. Schruth  
Regional Administrator

08:57AM FROM-BWRV&M  
Sent by: GREENBERG TRAUIG

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TEL: 202 927 3622 P. 002/007

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

BAC Funding Corporation  
6600 N.W. 27th Avenue  
Miami, FL 33147

Contact Person:  
John Chappell #50-01239

Telephone Number:  
(202) 822-7909

In Reference to:  
T.E.D.R.A.T.S

Date:  
MAY 1 2000  
E.I.N.: 59-2198535

LEGEND:

- X: Miami-Dade County, Florida
- Y: City of Miami
- Z: Liberty City

Dear Sir or Madam:

This is in response to a ruling request dated September 1, 1988, submitted on your behalf by your authorized representatives. You are seeking rulings on the federal income tax consequences of certain rental income that you will receive as more fully set forth below.

You are an organization that has been recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and has been classified as a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

Your stated mission is to act as a catalyst in order to contribute to the long-range development of a successful Black entrepreneurial and business class in X, with emphasis on the Z area in Y. You promote the creation of jobs for African-Americans, specifically Z residents, promote the development of new businesses and industries and the expansion of existing businesses and industries within Z, and foster the establishment of Black-owned and operated business enterprises.

Among your many achievements over the past 17 years, you have (i) disbursed over \$20 million in loans or equity funds to African-American enterprises in X, (ii) assisted in creating over 50 new African-American enterprises, (iii) provided offices and incubator space for over 100 minority-owned firms, and (iv) procured over \$10 million worth of new business contracts for over 200 Black-owned enterprises.

In order to facilitate economic development in the X Enterprise Zone wherein Z is located, you submitted a proposal to the Board of County Commissioners of X to develop, design, construct and manage an office complex in Z located near a Y rapid transit system station (the "Project").

The Project will consist of approximately 200,000 square feet of office space. The primary tenant will be the X government, which will use the office facility to accommodate certain of its administrative offices. It is estimated that X will lease approximately 85% of the Project's available space for these administrative offices. Any remaining space available will be leased to either minority-owned businesses at below-market rates or other section 501(c)(3) organizations.

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### BAC Funding Corporation

You expect that the project will have the following economic impact on and benefits to the African-American Inner City Community:

In excess of 200 direct temporary construction jobs will be created by the Project, over 50% of which jobs are expected to be filled by minorities;

The relocation of X's administrative offices to Z will provide Z residents with potential employers in their community, making it possible for those residents without their own method of transportation to obtain jobs which were previously geographically unreachible. X indicates that one of its administrative offices will have approximately 100 job openings after its relocation to the Project's office complex;

The office complex will be located in one of X's Enterprise Zones located in X's Empowerment Zone, which is one of the most economically depressed areas of X. The Enterprise/Empowerment Zone (the "Zone") contains many of X's poorest communities. The poverty rate within the Zone has grown at three times the poverty rate of X as a whole, and now stands at 48%. The African-American poverty rate, in particular, within the Zone is 59%. The unemployment rate within the Zone is estimated to be 19%—twice the rate of unemployment in X as a whole. In order to improve the economic conditions and employment opportunities of the residents within the Zone, new businesses need to be brought in to the area to generate jobs. These new businesses would need a "critical mass" of customers in order to prosper. In addition to the Project's contribution to the area's image and beautification, the estimated 800 employees it will house will contribute to the economy through their consumption demands. Thus, the Project's office complex would become the "critical mass" that will not only facilitate a clean and safe environment, but will foster economic growth and development. The Project will contribute to the Zone's image and economic revitalization and generate employment opportunities.

An African-American owned property management company will be formed to manage the facilities of the Project and its financing, and an African-American owned asset management company will be formed to manage your real estate portfolio, of which the Project will be the greatest asset. It is anticipated that the Project will give these new companies the experience necessary for them to seek similar opportunities in the future.

The Project will be constructed on land that is leased to you by X pursuant to a 30 year ground lease. Substantially all of the construction of the Project will be funded by the sale of Industrial Development Bonds by the Industrial Development Authority (the "Bonds"). You will receive rental income from the lease of the Project's office space to X initially at \$17 per square foot. Of that amount, initially \$7 per square foot will go to the maintenance and operation of the facility (based on the parties' best estimates as to the actual costs of such maintenance and operation) and \$10 per square foot will go to you to pay the debt-service on the Bonds and for use by you for your other exempt activities. After the first year, X will be charged a rent equal to the sum of: (i) \$10 per square foot, plus (ii) the actual costs of operating and maintaining the facility. The rent expected to be charged to X for the rental space is below the market rate for such a facility. In addition, the cost to you with respect to the development and construction of the Project will be less than the costs X would have incurred if X were directly involved in the development and construction of the Project. Moreover, the present value, over 30 years, of the total cost incurred by X with respect to the Project (the total lease

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**BAC Funding Corporation**

payments and the cost of relocation) is less than the present value of what X currently pays to lease the present locations of the relocating administrative offices. You expect to charge any minority-owned businesses a rental rate of less than \$17 per square foot for any space leased in the Project that is below market rate.

The gross rental revenue that you expect to receive from the Project will constitute a substantial portion of your total annual revenue, and the net revenue expected to be derived will constitute a substantial portion of your annual net revenue, which net revenue will, in turn, be used to further your exempt purposes.

Supplemental information submitted in support of your ruling request includes a copy of the proposal that you submitted to X with respect to the Project. You also included a copy of a Feasibility Analysis on relocating X's offices. The feasibility of X relocating its office facilities was estimated based on the following factors:

- (1) Costs
- (2) X's ability to finance a new office building
- (3) Effect on X's operations
- (4) Effect on employee commuting and safety
- (5) The zoning and land use at the site and the compatibility of an office development with adjacent land uses, and the environmental conditions at the site.

The Feasibility Analysis concluded that relocation to the new site would be less costly to X than remaining at the present site under virtually all circumstances. X's costs would be reduced by as much as one-third below the current level. X's overall operations would not be materially affected by relocating to the new site.

Also included in your supplemental submission was a letter from X containing X's assessment of your proposal, indicating that the Project would produce intangible benefits including economic stimulation in the communities through temporary and permanent jobs, potential increased use of mass transit, thereby reducing the subsidies paid by X for its operations, and the retention by X of a major asset at the expiration of the lease.

Section 501(c)(3) of the Code provides an exemption from federal income tax for organizations organized and operated exclusively for charitable, educational, and other purposes.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable," as used in section 501(c)(3) of the Code is used in its generally accepted legal sense, and is not limited by the separate enumeration in section 501(c)(3) of purposes that fall within the broad outline of "charity" as developed by judicial decisions. Thus, the term "charitable" includes relieving the poor, distressed, or underprivileged, lessening the burdens of government, and promotion of social welfare by organizations designed to lessen neighborhood tensions, eliminate prejudice and discrimination, defend human and civil

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Tel 202 527 3622

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## BAC Funding Corporation

rights secured by law, or combat community deterioration and juvenile delinquency.

Section 511(a) of the Code imposes a tax on the unrelated business taxable income of organizations exempt under section 501(c).

Section 512(a)(1) of the Code defines "unrelated business taxable income" as the gross income an organization derives from any unrelated trade or business (defined in section 513) it regularly carries on, less allowable deductions, with certain modifications.

Section 1.512(b)-1(c)(2) of the regulations provides (with certain exceptions not here relevant) that rents from real property (including personal property leased with the real property) and the deductions directly connected therewith shall also be excluded in computing unrelated business taxable income.

Section 513(a) of the Code defines "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the organization's need for funds or the use it makes of the profits derived) to the organization's exercise or performance of the purpose or function constituting the basis for its exemption under section 501.

Section 1.513-1(d)(2) of the regulations delineates when trade or business is "substantially related" to an organization's exempt purposes. The regulation provides that for the conduct of trade or business to be substantially related to purposes for which exemption is granted, producing or distributing the goods or performing the services must contribute importantly to accomplishing those purposes.

Section 514(a) of the Code says that in computing unrelated business taxable income under section 512, there shall be included certain amounts of income, less allowable deductions, derived from debt-financed property.

Section 514(b)(1)(A) of the Code excludes from the definition of "debt-financed property," for purposes of section 514, any property substantially all the use of which is substantially related (aside from the organization's need for income or funds) to the organization's exercise or performance of its exempt purpose.

Rev. Rul. 75-418, 1975-2 C.B. 146, holds that an organization that encouraged businesses to locate new facilities in an economically depressed area, to provide more employment opportunities for low-income residents in the area, was organized and operated for the charitable purpose of promoting social welfare by organizations designed to relieve the poor and distressed, to lessen neighborhood tensions, or to combat community deterioration.

Rev. Rul. 74-587, 1974-2 C.B. 162, holds that an organization that devoted its resources to programs to stimulate economic development in high density urban areas inhabited mainly by low income minority or other disadvantaged groups qualified for exemption under section 501(c)(3) of the Code. The organization made loans to and purchased equity interests in businesses unable to obtain funds from conventional sources. The organization established that its investments were not undertaken for profit or gain but to advance its charitable goals. Funds for its program were obtained from foundation grants and public contributions.

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## BAC Funding Corporation

Rev. Ruls. 65-1 and 65-2, 1985-1 C.B. 178, describe organizations that are lessening the burdens of government and, therefore, qualify for exemption under section 501(c)(3) of the Code. The Rev. Ruls. identify the following criteria to determine whether an organization's activities are lessening the burdens of government: 1) whether the governmental unit considers the organization's activities to be its burden, and 2) whether these activities actually lessen the burden of the governmental unit. An activity is a burden of the government if there is an objective manifestation by the governmental unit that it considers the activities to be its burden.

One of your major purposes is the stimulation of economic development and the creation of jobs in Z, an economically depressed area. Like the organizations discussed in Rev. Ruls. 74-687 and 76-418, both cited above, the development, construction, ownership, leasing and operation of the Project in Z will combat community deterioration and stimulate the creation of jobs for residents of the area in a number of ways, such as by inducing businesses to relocate to the area. Based on all the information submitted, we conclude that the Project contributes importantly to your exempt charitable purposes under section 501(c)(3) of the Code and, therefore, is substantially related to your exempt purposes, as required by section 513(a).

In addition, the supplemental information you provided, such as the Feasibility Analysis and Z's assessment of the proposal indicates that your activities in association with the Project are something that Z itself would do, and that your undertaking this project relieves Z of the responsibility of conducting the activity. Under these circumstances, and in accordance with Rev. Ruls. 65-1 and 65-2, supra, we conclude that you are relieving a burden of government within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations.

Since the Project relieves a burden of government, and, otherwise contributes importantly to your other exempt purposes, it will not adversely affect your exempt status under section 501(c)(3) of the Code. Likewise, your activities in connection with the Project will not constitute an unrelated trade or business within the meaning of section 513(a). Furthermore, since the use of the office building is substantially related to your exempt purposes, the building is excluded from the definition of debt-financed property pursuant to section 514(b)(1)(A).

Based on the information submitted and the representations made therein, we rule as follows:

- (1) Your development, construction, ownership, leasing and operation of the Project does not constitute unrelated trade or business within the meaning of section 513(a) of the Code.
- (2) The gross income derived from the lease of the Project's office space does not constitute unrelated business taxable income within the meaning of section 512 of the Code.
- (3) The construction, ownership, and leasing of the Project will not adversely affect your exempt status under section 501(c)(3) of the Code.

These rulings are based on the understanding that there will be no material changes in the facts upon which they are based.

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BAC Funding Corporation

These rulings are directed only to the organization that requested them. Section 6110(K)(3) of the Code provides that they may not be used or cited by others as precedent.

Please keep a copy of this ruling letter in your permanent records.

Sincerely,

*(Signature)* Robert C. Harper, Jr.  
Robert C. Harper, Jr.  
Manager, Exempt Organizations  
Technical Group 3

148



*Alberto*

ATTACHMENT 11

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JUL 07 2000

M. D. T. A.

THOMAS F. BARRY, JR.  
SECRETARY

# Florida Department of Transportation

JEB BUSH  
GOVERNOR

Florida Department of Transportation  
Public Transportation Office  
602 South Miami Avenue  
Miami, Florida 33128

July 5, 2000

Mr. Danny Alvarez  
Director  
Miami-Dade Transit Agency  
111 NW First Street., Suite 910  
Miami, Florida 33128

RE: Transit Oriented Development of Dr. Martin Luther King, Jr. Plaza  
Metrorail Station

Dear Mr. Alvarez:

In accordance with the request from your agency, the Department approves the ground lease agreement, lease-purchase agreement, and the development contract for renovation of the existing garage and construction of office building at the subject site. This agreements will be entered into by your agency and the developer, BAC Funding Corporation. As stated in the agreements, BAC Funding Corporation will construct a 200,000 square foot, 5 story, class B office building to be leased and occupied by county agencies, refurbish the parking garage with designated spaces for tenants and transit patrons, reconfigure buslanes and drop-off lanes, and construct covered pedestrian connectors.

If you have any question, please contact me at 377-5906.

Sincerely,

Rene R. Rodriguez, P.E.  
Public Transportation Manager

cc: Debora Rivera, P.E.

149

OFFICIAL FILE COPY  
CLERK OF THE BOARD  
OF COUNTY COMMISSIONERS  
DADE COUNTY, FLORIDA

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(H)(1)(B)  
7-6-00

RESOLUTION NO. \_\_\_\_\_ R-739-00

RESOLUTION APPROVING ISSUANCE OF MIAMI-DADE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY INDUSTRIAL DEVELOPMENT REVENUE BONDS IN AN AMOUNT NOT TO EXCEED \$21,775,000 TO FINANCE CAPITAL PROJECT FOR BENEFIT OF BAC FUNDING CORPORATION, FOR PURPOSES OF AND PURSUANT TO SECTION 147(F) OF INTERNAL REVENUE CODE OF 1986, AS AMENDED

WHEREAS, BAC Funding Corporation ("BAC"), a not-for-profit Florida corporation and a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), has requested the Miami-Dade County Industrial Development Authority (the "Authority") to issue Industrial Development Revenue Bonds (BAC Funding Corporation Project) (the "Bonds") in an amount not to exceed \$21,775,000 to finance all or a portion of the capital costs of a project (the "Project") consisting of the design, construction and equipping of an approximate 195,000 square foot office building to be located on property owned by Miami-Dade County (the "County") adjacent to the Martin Luther King Metrorail station, and will be lease-purchased from BAC by the County; and

WHEREAS, the Authority intends to issue the Bonds subject to approval by the Board of County Commissioners (the "Board") and final approval by the Authority of the financing documents for the Project, which is more particularly described in the report prepared by the Executive Director of the Authority, (a copy of which is attached hereto as Exhibit A); and

WHEREAS, on Monday, January 17, 2000, the Authority held a public hearing, notice of which was published on Monday, January 3, 2000 in The Miami Herald (a copy of which notice is attached hereto as Exhibit B), for the purpose of giving all interested persons an opportunity to express their views in connection with the issuance of the Bonds, as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, after reviewing a copy of the transcript of the Authority's public hearing held on Monday, January 17, 2000, in respect of the Bonds, (a copy of which transcript is attached hereto as Exhibit C), and finding that the Project will inure to the benefit of the citizens of Miami-Dade County, this Board desires to approve the issuance of the Bonds for the purpose of complying with Section 147(f) of the Code,

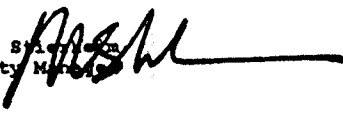
MEMORANDUM

Agenda Item No. 8(H)(1)(B)

TO Honorable Chairperson and Members  
Board of County Commissioners

DATE July 6, 2000

SUBJECT Commission Agenda  
Item for July 6, 2000  
Meeting

FROM M.R.   
County Manager

The attached item (BAC Funding Corporation) has been placed on the July 6, 2000 County Commission Agenda, at the request of the Chairman of the Miami-Dade County Industrial Development Authority.

MEMORANDUM

TO Honorable Chairperson & Members DATE July 6, 2000  
Board of County Commissioners

SUBJECT Application for Industrial  
Development Revenue Bonds  
for BAC Funding Corporation

FROM Albert Morrison, Jr., Chairman  
Miami-Dade County  
Industrial Development Authority

RECOMMENDATION

It is recommended that the Board approve the issuance of Industrial Development Revenue Bonds for BAC Funding Corporation, as detailed in the attached reports.

BACKGROUND


Review and analysis of the project has been completed by the Authority, County Attorney's Office, and Bond Counsel. The Authority has conducted the federally required public hearing, as detailed in the attached reports.

BAC Funding Corporation Project, a not-for-profit Florida corporation, has applied for Industrial Development Revenue Bond financing assistance in a maximum principal amount not to exceed \$21,775,000. The proceeds of the bond issue, combined with an equity contribution of approximately \$2,810,000 from Miami-Dade County, will be used to finance the design, construction and equipping of an approximate 195,000 square foot office building to be located adjacent to the Martin Luther King Metrorail Station at the corner of NW 62nd Street and NW 25th Avenue, unincorporated Miami-Dade County, on land leased from Miami-Dade County per the Ground Lease (Resolution No. R828-99) approved by the Board on July 13, 1999, as well as the reconfiguration and renovation of the existing parking garage and the construction of a covered pedestrian connector between the office building and the Metrorail station. The building which will be lease-purchased from BAC Funding Corporation by Miami-Dade County per the Development Contract (Resolution No. 829-99) and the Lease Purchase Agreement (Resolution No. R830-99) also approved by the Board on July 13, 1999, and will be used primarily to consolidate office space requirements for approximately 800 employees from Miami-Dade County's Solid Waste, Transit, and Corrections Departments as well as house other commercial tenants. Additionally, the BAC Funding Corporation reports the project will provide approximately 10 new job opportunities as well as 200 construction related jobs.

MEMORANDUM

TO: Honorable Chairperson and Members  
Board of County Commissioners

DATE: July 6, 2000

FROM:   
M. R. Stierheim  
County Manager

SUBJECT: Application for Industrial  
Development Revenue  
Bonds by BAC Funding  
Corporation

RECOMMENDATION

It is recommended that the Board of County Commissioners approve the attached application for Industrial Development Revenue Bonds for BAC Funding Corporation (BAC) to build an approximately 195,000 gross square foot office building at the Dr. Martin Luther King, Jr. (MLK) Metrorail Station. The Industrial Development Authority (IDA) approved the application at its June 27, 2000 meeting.

BACKGROUND

The Board of County Commissioners, at its meeting of December 15, 1998, accepted an outline of fundamental business terms negotiated between the County and the BAC for the development and lease-purchase of an office facility and reconfiguration of the existing parking garage at the MLK Metrorail Station site. Subsequent to that meeting, the Board approved the form and business terms contained within three agreements between the County and the BAC including: 1) a Ground-Lease Agreement (R-828-99); 2) a Development Agreement (R-829-99); and, 3) a Lease Purchase agreement (R-830-99), all of which were approved on July 13, 1999.

Approval of this project was obtained from the Federal Transit Administration on March 6, 2000. The County's Development Impact Committee review, which culminated in a request for special exception site plan approval and non-use variance of parking regulations, was approved at the June 8, 2000 Board of County Commissioners zoning agenda (00-6-CC-1/99-433).

The three agreements will be executed prior to the bond closing, which is subject to approval by the Board, and will incorporate, after review and sign-off by the Office of the County Attorney, any requirements of the bond underwriter, trustee or credit enhancement agencies which are part of this transaction.

The project construction is expected to be completed in early 2002 and is anticipated to house the Solid Waste Management, Corrections and Rehabilitation, Miami-Dade Transit Agency and Human Services departments. Also, these relocations (primarily from currently leased space) along with the West Dade Building Department move will allow the Department of Environmental Resources Management to move out of leased space and return to the Stephen P. Clark Center.

 MEMORANDU 

TO: Hon. Chairperson and Members  
Board of County Commissioners

DATE: July 6, 2000

SUBJECT: Agenda Item No. 8(H)(1)(B)

FROM:   
Robert A. Ginsburg  
County Attorney

Please note any items checked.

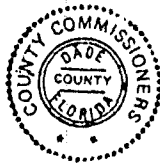
- "4-Day Rule" (Applicable if raised)
- 6 weeks required between first reading and public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of private business sector impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires a detailed County Manager's report for public hearing
- "Sunset" provision required
- Legislative findings necessary

motion was seconded by Commissioner Gwen Margolis

and upon being put to a vote, the vote was as follows:

Dr. Miriam Alonso	absent	Bruno A. Barreiro	absent
Dr. Barbara M. Carey-Shuler	absent	Miguel Diaz de la Portilla	aye
Betty T. Ferguson	absent	Gwen Margolis	aye
Natacha Seijas Millán	absent	Jimmy L. Morales	aye
Dennis C. Moss	aye	Pedro Reboredo	absent
Dorrian D. Rolle	aye	Katy Sorenson	aye
Javier D. Souto			aye

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of July, 2000. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: KAY SULLIVAN  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency. *Handwritten signature*

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. The issuance of Industrial Development Revenue Bonds of the Miami-Dade County Industrial Development Authority in an aggregate principal amount not to exceed \$21,775,000 for the purpose of financing all or a portion of the costs of the Project, as previously described, is approved.

Section 2. The Bonds and the interest on the Bonds shall not constitute a debt, liability or general obligation of the Authority, the County or of the State of Florida or of any political subdivision thereof, but shall be payable solely from the revenues or other moneys specifically provided by the Company for the payment of the Bonds and neither the faith and credit nor any taxing power of the Authority, the County or of the State of Florida or of any political subdivision thereof is pledged to the payment of the principal or interest on the Bonds.

The foregoing resolution was offered by Commissioner  
Dennis C. Moss, who moved its adoption. The

**BAC FUNDING CORPORATION**

**THE COMPANY**

BAC Funding Corporation (formally known as Business Assistance Center, Inc.) and its affiliates, (collectively "BAC") are Florida not-for-profit corporations located at 6600 NW 27<sup>th</sup> Avenue, unincorporated Miami-Dade County. BAC was formed in 1982 and capitalized with contributions from private corporations and foundations. The objective of the organization is to foster economic development in the Black business community in Miami-Dade County with a specific emphasis on job creation and creation of Black owned businesses.

As part of its plan of action, BAC Funding Corporation currently serves as the operating agent for its affiliates, BAC Funding Consortium, Inc., a multi-bank community development corporation, BAC Incubator, a property management entity leasing office and warehouse space, and BAC Urban Initiatives, Inc., an urban development entity.

**THE PROJECT**

BAC Funding Corporation is requesting Industrial Development Revenue Bond financing assistance in an amount not to exceed \$21,775,000 to be combined with an equity contribution of approximately \$2,810,000 from Miami-Dade County to facilitate the design, construction and equipping of a new five (5) story, class "B" type office building to be located adjacent to the Martin Luther King Metrorail Station at the corner of NW 25<sup>th</sup> Avenue and NW 62<sup>nd</sup> Street, unincorporated, Miami-Dade County on land leased from Miami-Dade County, as well as the reconfiguration and renovation of the existing parking garage and the construction of a covered pedestrian connector between the office building and the Metrorail station (the "Project"). When completed, the facility will be used primarily to consolidate office space requirements for approximately 800 employees from Miami-Dade County's Solid Waste, Transit, and Corrections Departments, as well as other commercial tenants.

Elements of the proposed project include:

1. Land - approximately 6.5 acres: -----Leased from  
Miami-Dade County
2. Office Building Construction - approximately 195,000 sq. ft.: ----- \$ 17,251,000
3. Furniture and Equipment: ----- \$ 75,000

**FINANCIAL SUFFICIENCY**

BAC Funding Corporation has provided audited financial statements for the fiscal years ended 1997 and 1996, and an internally reviewed interim statement for the 12-month period ended 1998, as well as an in-house prepared project cost analysis and projected statement of income. A corporate table of organization was also provided.

A review of the submitted financial and related information indicates:

<u>SOURCE OF FUNDS</u>		<u>USE OF FUNDS</u>	
Bond Proceeds*	\$ 21,775,000	Land - leased from Miami-Dade County	---
		Building Construction	17,251,000
		Architectural, Engineering & Site Fees	1,056,000
		Furniture/Equipment	75,000
		Capitalized Interest	1,632,000
		Bond Discounts/Insurance	825,000
		Contingency Reserve	619,000
		Bond Issuance Expenses	317,000
		<b>Sub-Total</b>	<b><u>\$21,775,000</u></b>
Miami-Dade County Contribution	\$2,810,000	Garage & Walkway Construction	2,081,000
		Architectural and Engineering	94,000
		Office Building Additional Scope	608,000
		Architectural and Engineering	27,000
		<b>Sub-Total</b>	<b><u>2,810,000</u></b>
<b>TOTAL</b>	<b><u>\$24,585,000</u></b>	<b>TOTAL</b>	<b><u>\$24,585,000</u></b>

\* Any costs related to the bond issue and development of the Project which cannot be paid out of bond proceeds will be borne by the Company.

**Information relative to the proposed financial structure includes:**

- Financial Structure:** The County will lease the subject land to BAC. BAC will enter into a development agreement with the County to develop the Project and through a separate agreement the County will enter into a lease-purchased contract for the Project. At the end of the lease term ownership of the Project will revert to the County.
- Security:** First mortgage on all assets financed with bond proceeds.
- Guarantee:** Bond Insurance or Letter of credit from rated financial institution acceptable to the Authority.
- Marketing:** Private placement or public offering in accordance with Authority underwriter policy.

**LEGAL**

Facilities for 501(c)(3) corporations are eligible for financing with tax-exempt IDBs provided the project is part of the corporation's normal course of business. Bonds issued for the benefit of a 501(c)(3) corporation are also exempt from the requirement of being included under the state bond volume cap.

If accepted for processing by the Authority, the project will be referred to the County Attorney's Office and Bond Counsel for review and comment.

**ECONOMIC IMPACT**

BAC reports the Project will provide approximately 10 new job opportunities and approximately 200 construction related jobs, as well as enable Miami-Dade County to consolidate office space to house approximately 800 employees from its Solid Waste, Transit, and Corrections Departments.

In addition, approval of this Project will support local efforts to increase business investment and development in the Miami-Dade County Enterprise Zone Area, as well as strengthen the financial position of the BAC Funding Corporation to carry out its operational objectives.

EXHIBIT B

10B www.herald.com MONDAY, JANUARY 3, 2000

MIAMI DADE

### IDA PUBLIC HEARING

The Miami-Dade County Industrial Development Authority (the "Authority") has received a request for the issuance of Industrial Development Revenue Bonds (BAC Funding Corporation Project) in an aggregate principal amount not to exceed \$21,775,000 (the "Bonds"), the proceeds of which will be used to finance the construction and equipping of an approximate 200,000 square foot office building to be located adjacent to the Martin Luther King Metrorail Station at the corner of NW 62nd Street and NW 25th Avenue in the City of Miami, on land leased from Miami-Dade County. The building will be lease-purchased from BAC Funding Corporation by Miami-Dade County.

The Bonds shall not be a debt, liability or obligation of the Authority or of Miami-Dade County, Florida or of the State of Florida, or of any political subdivision thereof, but shall be payable solely from payments derived from the operations of the Facility or the security instrument for the Bonds.

Please take note that the Authority will hold a public hearing on this financing and associated issues regarding the Bonds at the Brickell BayView Centre, 80 SW 8th Street, Suite 2801, Miami, Florida, on Monday, January 17, 2000 commencing at 11:00 a.m., at which time any person may be heard regarding the proposed issuance of said Bonds. The Authority will submit a transcript of the statements made at the hearing to the Board of County Commissioners, Miami-Dade County, Florida, which must approve or disapprove the issuance of the Bonds.

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MIAMI-DADE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

TRANSCRIPT OF PUBLIC HEARING

MONDAY, JANUARY 17, 2000

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At 11:00 a.m., the Executive Director of the Miami-Dade County Industrial Development Authority announced that the Authority would proceed to hold a public hearing on the issuance of Industrial Development Revenue Bonds. The following is a substantially verbatim account of the proceedings of this hearing.

The following persons were present:

James D. Wagner Jr.  
*Executive Director*

Miami-Dade County  
Industrial Development Authority

80 SW 8th Street, Suite 2801  
Miami, FL 33130

Cynthia Perez  
*Administrative Assistant*

Miami-Dade County  
Industrial Development Authority

80 SW 8th Street, Suite 2801  
Miami, FL 33130

**Executive Director**

We will now conduct the public hearing on the proposed issuance of Industrial Development Revenue Bonds for the capital project located in Miami-Dade County.

This public hearing is being conducted pursuant to requirements of the Federal Tax Equity and Fiscal Responsibility Act of 1982. The Act requires that in order for the interest on Industrial Development Revenue Bonds to be exempt from Federal Income Tax, such proposed bonds must be approved by either a voter referendum or by an applicable elected legislative body after a public hearing following reasonable public notice.

We have received a copy of a notice advising that the Industrial Development Authority will hold a public hearing on the proposed issuance of Industrial Development Revenue Bonds to finance all or a portion of the capital costs associated with the project mentioned in that notice. The notice appeared in The Miami Herald on Monday, January 3, 2000, page 16B.

We will now commence the public hearing. The hearing will be conducted in the following format: First, a brief synopsis of the proposed bonds and the project will be provided. Second, testimony from anyone desiring to speak will be heard. Anyone wishing to speak should give their name and address for the record.

The project for consideration is an Industrial Development Revenue Bond issue for the BAC Funding Corporation Project in a maximum principal amount not to exceed \$21,775,000. The proceeds will be used to finance the construction and equipping of an approximate 200,000 square foot office building to be located adjacent to the Martin Luther King Metrorail Station at the corner of NW 62nd Street and NW 25th Avenue in the City of Miami, on land leased from Miami-Dade County. The building will be lease-purchased from BAC Funding Corporation by Miami-Dade County.

**Executive Director**

Action taken by the Authority to date includes a review of the project in accordance with Authority Guidelines and Procedures and the adoption of a Memorandum of Agreement which specifies the terms of the proposed bond issue.

Testimony will now be heard by anyone desiring to speak.

**Executive Director**

Let the record reflect that no one appeared desiring to comment on this project.

This concludes the public hearing scheduled for today. This project, together with a transcript of today's public hearing, will be forwarded to the Miami-Dade County Board of County Commissioners at a regular meeting, at which time the Commission will approve or disapprove the proposed issuance of Bonds by the Miami-Dade County Industrial Development Authority.



Stephen P. Clark  
Government Center  
111 N.W. 1st Street  
Miami, FL 33128

# MASTER REPORT

File Number: 002308

<b>File Number:</b> 002308	<b>File Type:</b> Ordinance	<b>Status:</b> Adopted
<b>Version:</b> 0	<b>Ordinance:</b> 00-116	<b>Control:</b> County Commission
<b>File Name:</b> DEVELOPMENT OF MLK OFFICE BUILDING		<b>Introduced:</b> 08/28/2000
<b>Requester:</b> County Manager	<b>Cost:</b>	<b>Final Action:</b> 09/19/2000
<b>Ag. Date:</b> 09/19/2000	<b>Ag. Item:</b> 4N	

**Notes:** **Title:** ORDINANCE APPROVING FORM OF COUNTY GUARANTY SECURING CERTAIN DEBT OBLIGATIONS PERTAINING TO MARTIN LUTHER KING OFFICE BUILDING DEVELOPMENT; AUTHORIZING COUNTY MANAGER TO EXECUTE AND DELIVER GUARANTY AND OTHER RELATED FINANCING DOCUMENTS INCLUDING CONTINUING DISCLOSURE AGREEMENT ON BEHALF OF COUNTY; PROVIDING SEVERABILITY AND EFFECTIVE DATE

**Indexes:** **Sponsors:**

**Sunset Provision:** No **Effective Date:**  
**Expiration Date:**

### History of Legislative File 002308

Ver	Acting Body	Date	Action	Sent To	Due Date	Returned	Pass/Fail
0	County Manager	08/28/2000	Assigned	George Burgess	08/28/2000	08/28/2000	
0	County Manager	08/28/2000	Assigned	County Attorney	09/07/2000		
<b>Note:</b> REGULAR AGENDA- COUNTY MANAGER (10)							
0	County Attorney	08/28/2000	Assigned	Gerald T. Heffernan			
0	Board of County Commissioners	09/07/2000	Adopted on first reading		09/19/2000		P
0	Board of County Commissioners	09/19/2000	Adopted				P

**Body:**

WHEREAS, this Board previously approved a Ground Lease, Development Agreement and Lease Purchase Agreement between Miami-Dade County and the BAC Funding Corporation, a Florida not-for-profit corporation ("BAC") for the development of an office building to be utilized by the County at the Martin Luther King Metrorail Station; and

WHEREAS, this Board desires to approve the form of a guaranty (the "Guaranty") in order to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated into this ordinance by reference (the "Memorandum"); and

WHEREAS, this Board wishes to authorize the County Manager to execute and deliver the Guaranty and any other related financing documents including a continuing disclosure agreement after consultation with the Office of the Miami-Dade County Attorney; and

WHEREAS, this Board wishes to approve the use of an installment sales agreement in place

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of the previously approved Lease Purchase Agreement provided it is substantively the same as the Lease Purchase Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that,

Section 1. For the purposes and upon the conditions set forth in the Memorandum, this Board approves the County Guaranty in substantially the form attached as Exhibit "A" to this ordinance with such changes as may be approved by the County Manager after consultation with the Office of the Miami-Dade County Attorney.

Section 2. The County Manager is authorized to execute other related financing documents including a continuing disclosure agreement on behalf of the County after consultation with the Office of the Miami-Dade County Attorney.

Section 3. The Board approves the use of an installment sales agreement in place of the previously approved Lease Purchase Agreement, provided, it is substantively the same as the Lease Purchase Agreement as determined by the Office of the Miami-Dade County Attorney.

Section 4. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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MEMORANDUM

Agenda Item No. 4(N)

(Public Hearing 9-19-00)  
Septmeber 7, 2000

TO: Honorable Chairperson and Members  
Board of County Commissioners

DATE:

FROM: M. P. Stierheim  
County Manager

SUBJECT: County Guarantee of Debt  
Obligations Pertaining to  
The Development of MLK  
Office Building

00-116

RECOMMENDATION

It is recommended that the Board of County Commissioners (the "Board") enact the attached ordinance approving the form of a County Guaranty which secures certain debt obligations pertaining to the Dr. Martin Luther King, Jr. Office Building Development and authorizes the County Manager to execute and deliver the County Guaranty and other related financing documents including a continuing disclosure agreement on behalf of the County.

BACKGROUND

The Board, at its meeting of December 15, 1998, accepted an outline of fundamental business terms between the County and BAC Funding Corporation ("BAC") for the development and lease-purchase of an office facility, the reconfiguration of the existing parking garage and the construction of a pedestrian walkway at the Dr. Martin Luther King, Jr. ("MLK") Metrorail Station site (collectively, the "Project"). On July 13, 1999, the Board approved the form of three agreements between the County and BAC that collectively set forth the business terms regarding the Project. Those documents are a Ground Lease Agreement (the "Ground Lease"), a Development Agreement (the "Development Agreement") and a Lease Purchase Agreement (the "Lease Purchase Agreement").

Pursuant to the Ground Lease, the MLK site is being leased by the County to BAC for thirty years plus the construction period at a lease payment by BAC of \$1.00 per year. This gives BAC a legal interest in the site so that it will be able to complete the Project as proposed. The Development Agreement addresses the construction phase of the Project. Included in that Agreement are terms regarding the reconfiguration of the Metrorail parking garage and construction of a pedestrian walkway and terms regarding the development of a Class B type office building including the means in which the County may request a change to the plans and specifications at an additional cost to the County.

The Lease Purchase Agreement sets forth the parties' rights once the Project is completed and the County takes possession. Pursuant to that Agreement, the County will pay a base rent of \$10.00 per square foot, which escalates each year in an amount equal to the consumer price index with a cap of

three percent per year. The County will also pay the actual cost of operating the MLK office building with the first year being calculated at \$7.00 per square foot. BAC will assign these two lease payments to the bond trustee as security for the repayment of the Bonds. The County also agreed to assume or redeem the Bonds if it exercises its option to purchase the facility after the tenth year or if BAC defaults during the term of the Lease Agreement. All of these provisions assure that the County will have continuous possession of the facility after construction is complete.

After a review of the proposed transaction and in particular, the Lease Purchase Agreement, the rating agencies and the bond insurers have advised BAC that a separate County guaranty is necessary in order to minimize certain default risks of BAC which will adversely affect the bondholders and possibly the County. Although the County's default remedies include the suspension of rent payments in the event of a bankruptcy by BAC, it is likely that those payments will become part of BAC's bankruptcy estate. Thus, the County will be required to keep paying them to the court for future distribution. Such an occurrence would interrupt the payments for debt service to the bondholders' since BAC is relying solely on the County's lease payments for debt service repayment.

This disruption, even if temporary, would adversely affect BAC's ability to secure an investment grade rating or to obtain municipal bond insurance. This will result in substantially higher interest rates from those contemplated by BAC and the County when the parties negotiated the favorable rental payments by the County to BAC.

This flaw in the structure will be cured if the County provides the bond trustee with a separate guaranty from the County that guarantees the payment of debt service irrespective of the provisions of the Lease Agreement. This means the bondholders can rely on the County's covenant to budget and appropriate annually sufficient revenues to pay debt service on the Bonds from non ad valorem revenues in the event of a bankruptcy or any other default of BAC. The County will have a right to set that amount off against the rental payments due under the Lease Agreement. The use of a County Guaranty, therefore, will enable BAC to secure a favorable interest rate in the market.

Further analysis, however, revealed that the use of a Lease Purchase Agreement together with the Guaranty Agreement could result in a double payment by the County for a short period of time in the event of a bankruptcy of BAC. This risk can be eliminated, however, if the parties use an Installment Sales Agreement in place of the Lease Purchase Agreement. Since it is technically a sale, the County will be able to offset any payment it makes under the Guaranty Agreement from those due under the Installment Sales Agreement without the bankruptcy court interceding. For that reason, the Board is being asked to approve the replacement of the Lease Purchase Agreement with an Installment Sales Contract in substantively the same form as the Lease Purchase Agreement previously approved by the Board.

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 MEMORANDUM

TO:

Hon. Chairperson and Members  
Board of County Commissioners

DATE: September 19, 2000

SUBJECT: Agenda Item No. 4(N)



FROM:

Robert A. Ginsburg  
County Attorney

00-116

Please note any items checked.

- "4-Day Rule" (Applicable if raised)
- 6 weeks required between first reading and public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of private business sector impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires a detailed County Manager's report for public hearing
- "Sunset" provision required
- Legislative findings necessary

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Approved \_\_\_\_\_ Mayor

Agenda Item No. 4(N)  
9-19-00

Veto \_\_\_\_\_

Override \_\_\_\_\_

ORDINANCE NO.      00-116

ORDINANCE APPROVING FORM OF COUNTY GUARANTY SECURING CERTAIN DEBT OBLIGATIONS PERTAINING TO MARTIN LUTHER KING OFFICE BUILDING DEVELOPMENT; AUTHORIZING COUNTY MANAGER TO EXECUTE AND DELIVER GUARANTY AND OTHER RELATED FINANCING DOCUMENTS INCLUDING CONTINUING DISCLOSURE AGREEMENT ON BEHALF OF COUNTY; PROVIDING SEVERABILITY AND EFFECTIVE DATE

WHEREAS, this Board previously approved a Ground Lease, Development Agreement and Lease Purchase Agreement between Miami-Dade County and the BAC Funding Corporation, a Florida not-for-profit corporation ("BAC") for the development of an office building to be utilized by the County at the Martin Luther King Metrorail Station; and

WHEREAS, this Board desires to approve the form of a guaranty (the "Guaranty") in order to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated into this ordinance by reference (the "Memorandum"); and

WHEREAS, this Board wishes to authorize the County Manager to execute and deliver the Guaranty and any other related financing documents including a continuing disclosure agreement after consultation with the Office of the Miami-Dade County Attorney; and

WHEREAS, this Board wishes to approve the use of an installment sales agreement in place of the previously approved Lease Purchase Agreement provided it is substantively the same as the Lease Purchase Agreement,

Handwritten mark: a checkmark and the number 170.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that,**

Section 1. For the purposes and upon the conditions set forth in the Memorandum, this Board approves the County Guaranty in substantially the form attached as Exhibit "A" to this ordinance with such changes as may be approved by the County Manager after consultation with the Office of the Miami-Dade County Attorney.

Section 2. The County Manager is authorized to execute and deliver the Guaranty and any other related financing documents including a continuing disclosure agreement on behalf of the County after consultation with the Office of the Miami-Dade County Attorney.

Section 3. The Board approves the use of an installment sales agreement in place of the previously approved Lease Purchase Agreement, provided, it is substantively the same as the Lease Purchase Agreement as determined by the Office of the Miami-Dade County Attorney.


Section 4. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

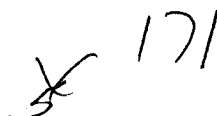
Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED: **SEP 19 2000**

Approved by County Attorney as to form and legal sufficiency.

Prepared by:

RA6  




**GUARANTY**

This GUARANTY is made and entered into as of [October 1, 2000], by METROPOLITAN MIAMI-DADE COUNTY, FLORIDA (the "Guarantor" or the "County"), and FIRST UNION NATIONAL BANK, a national banking association, as Trustee (the "Trustee") under that certain Indenture of Trust dated as of October 1, 2000 (the "Indenture") by and between the Trustee and the Miami-Dade County Industrial Development Authority (the "Authority");

**WITNESSETH**

WHEREAS, the Authority is issuing \$\_\_\_\_\_ of its Industrial Development Revenue Bonds, (BAC Funding Corporation Project) Series 2000A and \$\_\_\_\_\_ of its Taxable Industrial Development Revenue Bonds, (BAC Funding Corporation Project) Series 2000B (collectively, the "2000 Bonds") pursuant to the Indenture; and

WHEREAS, the proceeds of the sale of the 2000 Bonds will be loaned to BAC Funding Corporation ("BAC") pursuant to the Authority Loan Agreement dated as of October \_\_, 2000 (the "Loan Agreement") by and between the Authority and BAC; and

WHEREAS, BAC will utilize the proceeds of the 2000 Bonds to construct the MLK Office Building (as defined in the Indenture) pursuant to the Development Contract dated as of October \_\_, 2000 (the "Development Contract") by and between the County and BAC; and

WHEREAS, pursuant to an Installment Sale Agreement dated as of October \_\_, 2000 (the "Sale Agreement") by and between the County and BAC, the County will acquire the MLK Office Building; and

WHEREAS, in order to enhance the marketability of the 2000 Bonds, secure a policy of municipal bond insurance and reduce the interest costs related to the MLK Office Building, the Guarantor is providing this Guaranty; and

NOW THEREFORE, in consideration of the premises, the Guarantor does hereby covenant and agree as follows:

**ARTICLE I****DEFINITIONS AND USE OF PHRASES**

**SECTION 1.01 DEFINITIONS.** Except as provided in this section, capitalized terms used herein shall have the meanings assigned thereto in the Indenture or the Loan Agreement.

**SECTION 1.02 USE OF PHRASES; RULES OF CONSTRUCTION.** The following provisions shall be applied wherever appropriate herein:

“Herein”, “hereby”, “hereunder”, “hereof”, and other equivalent words refer to this Guaranty in its entirety and not solely to the particular portion of this Guaranty in which any such word is used.

Wherever used herein, any defined term and any pronoun or pronouns shall be deemed to include both the singular and the plural forms and to cover all genders.

Unless otherwise provided, any determinations or reports hereunder which require the application of accounting concepts or principles shall be made in accordance with generally accepted accounting principles.

## ARTICLE II

### REPRESENTATIONS OF GUARANTOR

**SECTION 2.01 BENEFIT OF GUARANTOR.** The Guarantor represents that the financing represented by the 2000 Bonds is expected to result in financial and other valuable benefits to the Guarantor and constitutes good, sufficient and valuable consideration for the assumption by the Guarantor of its obligations hereunder.

**SECTION 2.02 AUTHORIZATION.** The Guarantor represents that it has taken all steps necessary for the valid execution and delivery of this Guaranty and the assumption of the obligations represented hereby.

**SECTION 2.03 ABSENCE OF CONFLICTING AGREEMENTS.** The Guarantor represents that the execution and delivery of this Guaranty and the performance by the Guarantor hereunder will not violate any law or regulation by which it is bound or conflict with or constitute a breach of or default under any indenture, loan agreement or instrument or agreement to which the Guarantor is a party.

## ARTICLE III

### COVENANTS AND AGREEMENTS; TERM

**SECTION 3.01 GUARANTEE OF 2000 BONDS.** Subject to Section 3.05 hereof, the Guarantor hereby unconditionally guarantees to the Trustee for the benefit of the owners from time to time of the 2000 Bonds: the payment of an amount equal to the principal of, premium if any, and interest on the 2000 Bonds on any Interest Payment Date (as defined in the Indenture) in the event that the Trustee has not received sufficient loan payments from BAC on the \_\_\_ Business Day prior to such Interest Payment Date.

**SECTION 3.02 GUARANTEE IS ABSOLUTE AND UNCONDITIONAL.** Subject to Section 3.05 hereof, the obligations of the Guarantor under this Guaranty shall be absolute and unconditional and shall remain in full force and effect until the entire principal of, premium, if any, and interest on the 2000 Bonds shall have been paid, and such obligations shall not be affected, modified or impaired upon the happening from time to time of any event,

including without limitation, any of the following, whether or not with notice to or the consent of, the Guarantor:

- (a) the failure to give notice to the Guarantor of the occurrence of an Event of Default under the terms and provisions of the Indenture, the Loan Agreement or the Sale Agreement;
- (b) the waiver by the Trustee of the payment, performance or observance by the Authority, BAC or the Guarantor of any of the obligations, covenants or agreements of any of them contained in the Indenture or the Sale Agreement;
- (c) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Indenture, the Loan Agreement or Sale Agreement;
- (d) the taking or the omission of any of the actions referred to in the Indenture, the Loan Agreement or the Sale Agreement;
- (e) any failure, omission, delay or lack of diligence on the part of the Trustee to enforce, assert or exercise or the failure or unavailability of any right, power or remedy conferred on the Trustee in this Guaranty, the Sale Agreement, the Indenture or the Loan Agreement or any other act or acts on the part of the Trustee or any of the Bond Holders; or
- (f) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, assignment, composition with creditor or other similar proceedings or actions affecting the Authority, BAC or the Trustee, or any of them or any of their assets.

**SECTION 3.03 NO SET-OFF, ETC.** No set-off, reduction or diminution of an obligation which the Guarantor has or may have against the Trustee, the Authority, BAC or any 2000 Bond Holder shall be available hereunder to the Guarantor against the Trustee or any 2000 Bond Holder, provided however, the Sale Agreement provides for a set-off of amounts payable thereunder by the County to BAC, to the extent of any payments made hereunder.

**SECTION 3.04 BENEFIT.** This Guaranty is entered into by the Guarantor for the benefit of the Trustee and the owners from time to time of the 2000 Bonds and any successor trustee or trustees under the Indenture, all of whom shall be entitled to enforce performance and observance of this Guaranty to the same extent provided for enforcement of remedies under the Indenture.

**SECTION 3.05 COVENANT TO BUDGET AND APPROPRIATE.** Guarantor covenants and agrees to appropriate in its annual budget, by amendment, if required and to the extent permitted and in accordance with budgetary procedures provided by the laws of the State of Florida, and to pay when due directly into the appropriate fund or account created in the Indenture, sufficient amounts of non-ad valorem revenues of the Guarantor to satisfy principal of and interest on the 2000 Bonds, as the same become due and payable. Such covenant and agreement on the part of the Guarantor to budget and appropriate such amounts of non-ad valorem revenues shall be cumulative, and shall continue until such non-ad valorem revenues in

amounts sufficient to make all required payments as and when due shall have been budgeted, appropriated and actually paid into the appropriate fund or account.

Anything in this Guaranty to the contrary notwithstanding, it is understood and agreed that all obligations of the Guarantor shall be payable only from non-ad valorem revenues required to be budgeted and appropriated and nothing in this Guaranty shall be deemed to pledge ad valorem taxation revenues or to permit or constitute a mortgage or lien upon any assets owned by the Guarantor and no person may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Guarantor. The obligations under this Guaranty do not constitute general indebtedness of the Guarantor within the meaning of any constitutional, statutory or character provision or limitation, and neither the Trustee, the Authority, bond insurer or owner of the 2000 Bonds shall have the right to compel the exercise of the ad valorem taxing power of the Guarantor or taxation of any real or personal property for the payment by the Guarantor of its obligations under this Guaranty. Notwithstanding any provision to the contrary, this Guaranty and the obligations of the Guarantor under this Guaranty shall not be construed as a limitation on the ability of the Guarantor to pledge or covenant to pledge or use all or any portion of said non-ad valorem revenues for other legally permissible purposes; provided that non-ad valorem revenues shall be available as required under this Guaranty. Notwithstanding any provisions of this Guaranty or the Financing Documents to the contrary, the Guarantor shall never be obligated to and neither the Seller, the Trustee, nor the bond insurer may compel the Guarantor to exercise ad valorem taxing power for any purpose, including without limitation, to maintain or continue any of the activities of the Guarantor which generate user service charges, regulatory fees or any non-ad valorem revenues.

#### ARTICLE IV

##### MISCELLANEOUS

**SECTION 4.01 AMENDMENTS.** This Guaranty shall not be amended, modified or altered until such modification, alteration or amendment is consented to in writing by the Trustee and the Bond Insurer.

**SECTION 4.02 GOVERNING LAW.** The laws of the State of Florida shall govern this Guaranty.

**SECTION 4.03 CAPTIONS.** The captions or headings in this Guaranty are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Guaranty.

**SECTION 4.04 SEVERABILITY.** If any provision of this Guaranty shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provisions in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent

whatsoever. The invalidity of any one or more phrases, sentences, clauses or Sections in this Guaranty contained, shall not affect the remaining portions of this Guaranty, or any part thereof.

**IN WITNESS WHEREOF**, the Guarantor has caused this Guaranty to be executed in its name and behalf by its [Assistant County Manager] and its seal to be hereunto affixed, all as of the date first above written.

METROPOLITAN MIAMI-DADE COUNTY, FLORIDA,  
Guarantor

as

(SEAL)

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

Accepted as of the date first written above.

FIRST UNION NATIONAL BANK as Trustee

(SEAL)

By: \_\_\_\_\_  
Trust Officer

Attest:

\_\_\_\_\_

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# BAC Funding Corporation and Affiliates

## BAC Differential Payment from Sale of MLK Building

The tables below depict the projected disbursement of funds from the sale of the MLK Building totaling \$6,977,079.00.

<b>BAC Differential Payment</b>	<b>\$6,977,079.00</b>
The following expenses are to be paid to BAC Funding Corporation as reimbursement for funds expended on behalf of the MLK Building for construction costs, expenses and repayment of loans:	
Repayment of Wachovia Loan	-547,830.54
Payment of Arbitrage Tax	-356,297.13
Payment of Balance of Construction Retainage	-316,166.58
Payment of Balance of Change Order	-355,670.05
Payment of Balance of Operational Costs and Development Expenses	-262,500.00
Total – Recuperation of MLK Bldg. Dev. Costs & Expenses	<u>(\$1,838,464.30)</u>
<b>Net Balance of Differential Payment</b>	<b>\$5,138,614.70</b>

<b>Use of Net Balance of Differential from Sale</b>		
Description	Amount	Percentage
BAC Operational Costs	\$1,260,311.17	23%
Grants	217,514.91	4%
Real Estate Investments	2,079,993.53	41%
Loans	998,396.90	20%
CRA Development	349,438.91	7%
Uncommitted Reserve	<u>232,959.28</u>	<u>5%</u>
<b>Totals</b>	<b>\$5,138,614.70</b>	<b>100%</b>

## BAC Loans and Investments

BAC offers a variety of lending products to provide optimal assistance to the community it serves. These programs include debt and equity investments as well as joint venture initiatives. Projects specifically targeted include real estate development, business expansion and franchise opportunities.

The investment and loan program is poised to provide capital for many underserved businesses that do not have access to commercial banks or other typical forms of financing while simultaneously offering competitive forms of financing geared towards attracting lucrative projects. BAC can accomplish this by providing three (3) separate forms of loan and investment programs: 1) Franchisee Financing Fund 2) Emerge Fund

for infrastructure and business expansion and 3) Community Growth Fund for projects tied to revitalization of South Florida's neighborhoods.

The products and services may offer flexible terms and credit standards, equity products and competitive interest rates. Through due diligence and a thorough underwriting process, BAC intends to provide for a loan loss reserve no greater than 10%. As necessary, BAC may be willing to provide subordinated debt and guarantees.

In addition to its lending activities, BAC may utilize an investor strategy where it may use a portion of the investment fund for equity investments in businesses owned and controlled solely by BAC. Where possible, BAC should engage in business activities that can be self-supportive with regard to management and maintenance. An example of this form of business activity is rental income properties.

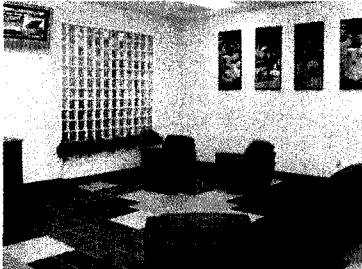
Rental income properties or other investment projects should be large enough to support potentially outsourcing its management and maintenance while still generating sufficient cash flows to supplement BAC's core operations. An example of such an investment would be multi-unit apartment buildings [10-20 units]. In the aforementioned example, BAC's role will be as an investor seeking supplemental cash flows. BAC may also wish to own franchises that can be managed and controlled by BAC's existing staff or by an external management firm. The approximate size of the business investment portfolio may range from \$250,000 to \$1,000,000.

BAC may actively seek to become involved in other real estate development projects, where BAC is the owner or developer. BAC may take particular interests in real estate development projects located in low to moderate-income neighborhoods. These projects may be comprised of commercial or residential units or may be a mixed-use project. These projects will help to sustain BAC's longevity with regard to income stream and community involvement.

### **MLK Office Building Food Court – Franchisee Financing Fund in Action**

Within the MLK Office Building, BAC controls 3,000 square feet of retail space, which currently houses a food court. The food court consists of a **Subway** restaurant, a wing shop, which serves hamburgers, hot dogs, etc., a chef's restaurant with a full menu of diverse foods as well as a coffee shop.

BAC partnered with an established Subway franchisee and controls a 30% minority ownership share in the Subway restaurant. BAC has also provided the funding for the tenant improvements and build-out of the food court. As such, BAC is able to generate revenues from the rental income from the food concepts, business loans provided to the food concepts as well as its equity interest in the Subway franchise.



**Development of Single-family Homes for Low to Moderate-Income Families – Community Growth Fund in Action**

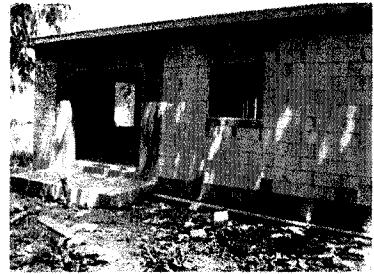
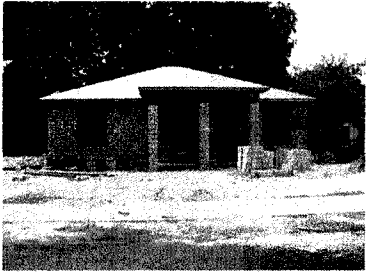
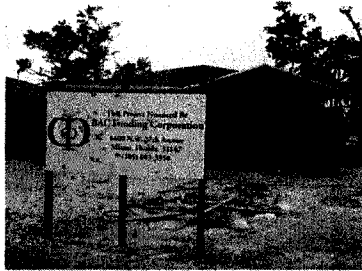
In an effort to further promote economic balance for all of South Florida's residents, BAC has financed and developed single-family homes for low to moderate-income families in Miami-Dade County. BAC is currently participating very successfully in Miami-Dade County's In-fill Housing Program.

BAC uses a Cost focus strategy to provide low-cost single-family homes to pre-qualified low to moderate-income homebuyers. This is accomplished through control of direct expenses and minimization of overhead while simultaneously identifying an ample pool of pre-qualified homebuyers.

BAC utilizes its knowledge of financial planning, real estate development and project implementation. A strategic alliance has been solidified in the form of a joint venture with an experienced real estate developer.



**Completed Project (Above)**



**Current Projects (Above)**