

MEMORANDUM

Agenda Item No. 8(N)(1)

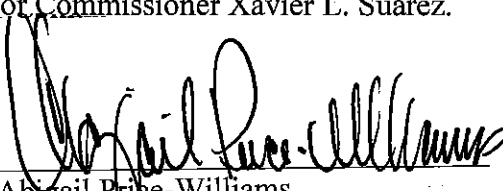
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: October 20, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving a
Settlement Agreement between
Miami-Dade County and
Hometown Station, Ltd.;
approving the Fourth
Amendment to a lease agreement
between Miami-Dade County
and Hometown Station, Ltd.;
terminating the South Miami
Metrorail Parking Garage
Operating and Management
Agreement and the Hometown
Station Space Lease Agreement

The accompanying resolution was prepared by the Miami-Dade Transit Department and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez.


Abigail Price-Williams
County Attorney

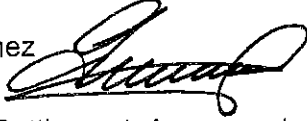
APW/cp

Memorandum



Date: October 20, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Approval of a Settlement Agreement and the Fourth Amendment to a Lease Between Miami-Dade County and Hometown Station, Ltd. for County-owned Property Located at the South Miami Metrorail Station at SW 72 Street (Sunset Drive) and SW 59 Place, and Including Additional Surplus County-owned Property in the City of South Miami

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the accompanying resolution, amicably resolving a lawsuit filed by Hometown Station, Ltd. against Miami-Dade County (County), Case No. 07-06047 CA 40 of the Florida 11th Judicial Circuit (Lawsuit), and amending the lease for development of the South Miami Metrorail Station. This Settlement Agreement, attached as Exhibit A to the resolution, will end a lawsuit that has been pending since 2007. The Fourth Amendment to the South Miami Metrorail Lease (Fourth Amendment), attached as Exhibit B to the resolution, moves forward with a transit-oriented development at the South Miami Metrorail Station, which has been delayed since the original agreements were entered into in 1999. The Fourth Amendment will more than triple rent payments to the County compared to the original agreement, as amended, and will provide for indexing to the Consumer Price Index (CPI) and participation rent.

This amended agreement, which includes an adjacent parcel of approximately 15,434 square feet, attached as Exhibit C to the resolution, will provide a benefit to transit ridership and transit revenue, and will encourage the economic development of the surrounding area and the County as a whole. The Federal Transit Administration (FTA) has reviewed and approved this proposed amendment, as is required for all items involving Metrorail lands purchased with federal funds.

More specifically, this resolution accomplishes the following:

1. approves a Settlement Agreement between the County and Hometown Station, Ltd.;
2. approves the Fourth Amendment to a Lease Agreement between the County and Hometown Station, Ltd., which terminates the South Miami Metrorail Parking Garage Operating and Management Agreement and the Hometown Station Space Lease Agreement;
3. declares surplus and includes approximately 15,434 square feet of irregularly-shaped County-owned land located at the intersection of SW 72 Street (Sunset Drive) and SW 59 Place adjacent to the South Miami Metrorail Station in the City of South Miami as an Economic Development Conveyance under Section 125.045, Florida Statutes;
4. waives Administrative Order 8-4 as it relates to Review by the Planning Advisory Board; and
5. authorizes the County Mayor or the County Mayor's Designee to execute the agreements for and on behalf of the County; to exercise any cancellation and renewal provisions and all other rights contained therein; and directs the County Mayor or the County Mayor's Designee to provide a copy of the Lease Amendment to the Property Appraiser.

SCOPE

This proposed Settlement Agreement resolves the claims or potential claims asserted by all parties against the County, and the claims or potential claims the County may have relating to the development of the South Miami Metrorail Station to date. The impact of this Settlement Agreement is countywide.

The impact of the proposed Fourth Amendment to the South Miami Metrorail Station, while it relates specifically to the economic development of property within Commissioner Xavier L. Suarez's District 7, is also countywide, as it creates one of the largest transit-oriented developments to-date, providing transit enhancements and economic opportunities countywide.

FISCAL IMPACT/FUNDING SOURCE

There is a positive fiscal impact created by the Settlement Agreement of the lawsuit and entering into the amended lease agreement. The settlement of the lawsuit will end the possibility of a judgment against the County and the amended lease agreement will provide significant rent payments to the County, which are projected to total more than \$100,000,000.00 over the 90-year lease term, or \$585,000 per year, plus one (1) percent of the adjusted gross income and a CPI adjustment every two (2) years.

TRACK RECORD/MONITOR

The execution and enforcement of this Settlement Agreement and the Fourth Amendment will be overseen by Frollan Baez, Chief of Miami-Dade Transit's Right-of-Way, Utilities and Joint Development Division.

BACKGROUND

The County and the Hometown Station entered into the original South Miami Metrorail Station Lease Agreement in 1999, pursuant to which the County leased certain real property for development at and around the South Miami Metrorail Station. Additionally, the parties entered into an agreement at that time for the management of the parking garage located at the South Miami Metrorail Station. These agreements were amended over the ensuing years. Additionally, the parties entered into a Space Lease in 2003, whereby the County leased certain property from Hometown Station and provided a \$5,000,000.00 equity contribution. Despite entry into multiple amendments regarding additional square footage, additional rent terms, and parking space issues, the contemplated development of the station never occurred. The lack of development eventually led to the filing of the underlying lawsuit, whereby both parties asserted claims of breach against each other.

Each party alleged that the other party breached various significant and material requirements of the underlying agreements. Among other claims, Hometown Station, Ltd., alleged the County owed rent payments and breached its obligations by, among other alleged acts, failing to include material information that caused significant delays, drastically increased the cost of the project, and required massive expenditures of its funds. The County alleged that Hometown Station, Ltd., failed to develop the project as contracted and demanded rent payments and a return of the equity contribution, among other claims.

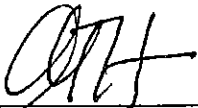
During the pendency of the lawsuit, which has involved significant discovery and would continue to incur significant expenses for both sides, the land remains undeveloped with no potential for development in the near future. The County's most likely best-case scenario would involve a protracted trial and appeals process, recovery of little to no funds, and a prolonged re-procurement before any development could begin. If Hometown Station, Ltd. were to prevail on some or all of its claims, the County may be left with a development providing rent at a mere fraction of market value for decades, stunting the economic development of all surrounding areas and negatively impacting the countywide economy through a transit-oriented development that may have made economic or strategic sense in 1999 but would be sub-optimal in today's market or in years to come.

Against the background of the lawsuit, Hometown Station, Ltd. and the County entered into protracted settlement negotiations. The County insisted that any settlement had to result in an agreement that gave the County the full benefit of the huge boom in real estate values experienced throughout the County since the original agreement was entered into in 1999. Additionally, while preserving flexibility to allow the market to dictate the highest and best use, the agreement had to enhance transit and provide significant economic development to the area and countywide. In order to provide maximum economic development, the Fourth Amendment includes an additional adjacent 15,434 square feet of property, more fully described on Exhibit C, as parcel C-Vacant Area Site 2. This surplus property is immediately adjacent to the area under the agreements at issue in the lawsuit. The inclusion of this property results in a significantly better parcel for the mixed-use development required by the Settlement Agreement and the Fourth Amendment and will provide economic development by providing a project that is of a higher and better use than what could reasonably be developed without this surplus parcel. Additionally, the parcel is anticipated to contain approximately 10,000 square feet of retail or other commercial development fronting the adjacent roadway, thereby creating approximately 20 to 25 permanent jobs. The inclusion of this surplus parcel in the Fourth Amendment is for the purposes of economic development, as contemplated by Section 125.045, Florida Statutes, including, but not limited to, the stimulus of the economy and the creation of jobs by allowing for a larger, more functional transit-oriented development at this site.

The Settlement Agreement and Fourth Amendment resolve the litigation and allow development to begin as soon as possible. The Fourth Amendment provides economic development, jobs for the community, and a fair market value rent payment to the County, which includes both guaranteed annual rent and CPI adjustments and participation rent to allow the County to share in additional revenues and unexpected growth opportunities in the years to come. This Fourth Amendment will result in annual rent payments and participation rent (as described in detail in the attached agreement) that give the County fair market value through annual rent payments, beginning with a stabilizing rent payment of \$145,250.00 in the first half of Year Two, \$295,000.00 for the second half of Year Two, annual rent payments of \$585,000.00 beginning in Year Three, along with a CPI adjustment of up to three (3) percent every two (2) years and participation rent starting in Year Eight of one (1) percent of adjusted gross income. The total of the minimum guaranteed rent and future participation rent is estimated to be more than \$100,000,000.00 over the fair 90 year lease term.

This agreement therefore allows the County to guarantee a significant minimum rent while also allowing the County, through participation rent, to share in the "upside" of unexpected increases in economic growth over a long-term agreement. This agreement was sent to the FTA, which approved the amendment.

The proposed settlement is fair to the County, as well as to the developer, provides economic growth to the community and full market value to the County, and enhances the County's transportation network by expediting the construction and development of a large transit-oriented development.



Alina T. Hudak
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: October 20, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(N)(1)

Please note any items checked.

- ☐ "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
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Agenda Item No. 8(N)(1)

Veto _____

Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING A SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND HOMETOWN STATION, LTD.; APPROVING THE FOURTH AMENDMENT TO A LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND HOMETOWN STATION, LTD.; TERMINATING THE SOUTH MIAMI METRORAIL PARKING GARAGE OPERATING AND MANAGEMENT AGREEMENT AND THE HOMETOWN STATION SPACE LEASE AGREEMENT; DECLARING SURPLUS AND INCLUDING IN THE FOURTH AMENDMENT TO THE LEASE AGREEMENT APPROXIMATELY 15,434 SQUARE FEET OF COUNTY-OWNED LAND LOCATED AT THE INTERSECTION OF SW 72 STREET AND SW 59 PLACE IN THE CITY OF SOUTH MIAMI AS AN ECONOMIC DEVELOPMENT CONVEYANCE UNDER SECTION 125.045, FLORIDA STATUTES; WAIVING ADMINISTRATIVE ORDER 8-4 AS IT RELATES TO REVIEW BY PLANNING ADVISORY BOARD; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENTS FOR AND ON BEHALF OF MIAMI-DADE COUNTY, TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE SUCH AGREEMENTS, AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS AND ALL OTHER RIGHTS CONTAINED IN THE FOURTH AMENDMENT TO THE LEASE AGREEMENT AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE A COPY OF THE FOURTH AMENDMENT TO THE LEASE AGREEMENT TO THE PROPERTY APPRAISER

WHEREAS, the County and Hometown Station Ltd., desire to resolve a pending lawsuit, *Hometown Station, Ltd. v. Miami-Dade County*, Case No. 07-06047 CA 40 (Fla. 11th Judicial Circuit); and

WHEREAS, the pendency of this lawsuit impedes the economic development of the community at large as well as the enhancement of Miami-Dade Transit by preventing a large-scale transit-oriented development at and around the South Miami Metrorail Station; and

WHEREAS, the parties therefore desire to enter into an amicable settlement of the lawsuit in the form of the attached Exhibit A, "Settlement Agreement," and amend the current leases and agreements between the parties in the form of the attached Exhibit B, "Fourth Amendment to the South Miami Metrorail Lease," referred to herein as the "Fourth Amendment," to resolve the underlying lawsuit, facilitate the development of the properties at issue at current fair market value, and encourage economic development of the area at issue as well as the Miami-Dade Transit system and transit-adjacent properties countywide; and

WHEREAS, the development of the property at and around the South Miami Metrorail Station is an important part of the County's plan to provide economic development to the community and provide revenue to Miami-Dade Transit through transit-oriented developments, resulting in an increase in Miami-Dade Transit ridership by providing more Transit-linked infrastructure; and

WHEREAS, in order to benefit Miami-Dade Transit as well as the community at large, this Board wishes to promote economic development at or near Miami-Dade Transit facilities especially large-scale facilities and properties such as the Metrorail Stations; and

WHEREAS, the leaseholders of the original lease and development agreement of the South Miami Metrorail Station were unable to develop the properties in order to

provide a transit-oriented facility and both parties recognize that the settlement of this lawsuit to include the addition of the adjacent parcel (described as "Site #2" on the attached Exhibit C) into the Fourth Amendment will provide for an enhanced development opportunity which will not only provide additional revenue for Miami-Dade Transit over the original agreement but will also provide jobs and a significant positive economic impact to the community and the County at large by allowing for a larger and more viable transit-oriented development; and

WHEREAS, the conveyance of the adjacent parcel into the amended South Miami Metrorail Station Development Agreement will create a more viable development, provide approximately 10,000 square feet of additional retail or other commercial development along with approximately twenty to twenty-five additional permanent jobs, enhanced opportunities for economic development in the area such as increased business, commerce, and Transit connectivity, and add to the property values in the surrounding area and Miami-Dade County as a whole by spurring additional investment not only in future transit-oriented development but also spur additional construction on privately-owned land near Transit facilities; and

WHEREAS, the parties agree that the termination of the South Miami Metrorail Parking Garage Operating and Management Agreement will allow Miami-Dade Transit to retain control of its parking facilities and the termination of the Hometown Station Space Lease Agreement will facilitate the development of this property as well as realize a greater return on investment for both the County and the developer; and

WHEREAS, in accordance with Resolution No. R-333-15, the market rental of the subject property was determined by two certified appraisers selected from a list of

county-approved appraisers as follows: 1) annual rental payments of \$331,289.00 with no CPI adjustment or participation rent (Hemisphere Real Estate, Inc., Ltd.); and 2) annual rental payments of \$1,595,000.00 with no CPI adjustment or participation rent (CBRE, Inc.); and

WHEREAS, this Board finds that the inclusion of the adjacent parcel into the Fourth Amendment, in accord with Section 125.045(3) of the Florida Statutes, “constitutes a public purpose to expend public funds for economic development activities, including leasing or conveying real property...to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community”; and

WHEREAS, this Board finds that the anticipated economic benefits of the inclusion of the adjacent parcel into the Fourth Amendment would justify the use of the economic development incentives contemplated by Section 125.045, Florida Statutes and would promote economic development at Transit facilities and countywide,

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

Section 1. The County Mayor’s supplement and the foregoing recitals and exhibits hereto are incorporated into this resolution and are approved.

Section 2. This Board hereby approves the attached Settlement Agreement and Fourth Amendment.

Section 3. This Board hereby approves the termination of the South Miami Metrorail Parking Garage Operating and Management Agreement and the Hometown Station Space Lease Agreement.

Section 4. This Board hereby declares surplus and authorizes the conveyance by lease as an economic development conveyance under Section 125.045, Florida Statutes of approximately 15,434 square feet of county-owned land located at the intersection of SW 72 Street and SW 59 Place in the City of South Miami to Hometown Station, Ltd., as part of the Fourth Amendment and waives Administrative Order 8-4 as it pertains to review by the Planning Advisory Board.

Section 5. This Board authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement and the Fourth Amendment for and on behalf of Miami-Dade County, to take all actions necessary to effectuate same, and to exercise any cancellation and renewal provisions and all other rights contained in the Fourth Amendment.

Section 6. This Board directs the County Mayor or County Mayor's designee to provide a copy of the Fourth Amendment to the Property Appraiser.

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:

Jean Monestime, Chairman	
Esteban L. Bovo, Jr., Vice Chairman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of October, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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.



Alex S. Bokor

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into effective the 20 day of 2015, by and between HOMETOWN STATION, LTD, a Florida limited partnership ("HS"), SOUTH MIAMI STATION FINANCE, LLC ("SMF") and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, ("County") (collectively the "Parties").

RECITALS

A. County and HS entered into the South Miami Metrorail Lease dated December 16, 1999, which was approved by the Board of County Commissioners ("BCC") Resolution No. R-1375-99 ("Ground Lease"), pursuant to which the County leased to HS the real property and improvements more particularly described in the Ground Lease ("Parcel A").

B. County and HS entered into the South Miami Metrorail Parking Garage Operating and Management Agreement ("Management Agreement"), also attached as Exhibit G to the Ground Lease. . The Management Agreement was approved by BCC Resolution No. R-1376-99.

C. County and HS entered into Corrective Amendment One to South Miami Metrorail Lease, dated August 15, 2001 which was approved by the BCC Resolution No. R-1198-01 ("Amendment One").

D. County and HS further amended the Ground Lease to add additional square feet to the Parcel A which was approved by BCC Resolution No. R-1313-03 dated December 4, 2003 ("Amendment Two").

E. The County and HS entered into the Hometown Station Lease Agreement dated July 7, 2003, approved by BCC Resolution No. R-747-03 ("Space Lease"), pursuant to which the County leased from HS office space for Miami-Dade Housing Agency and made a \$5,000,000.00 equity contribution to HS ("Equity Contribution").

F. County and HS also amended the Ground Lease as to Minimum Rent and parking space issues by BCC Resolution No. R 168-06, on February 7, 2006 ("Amendment Three").

G. The County and HS have agreed to settle the following lawsuit: Hometown Station, LTD. a Florida limited partnership, v. Miami-Dade County, Florida, a Political Subdivision of the State of Florida, Defendant, in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, General Jurisdiction Division Case No. 07-06047 CA (40) and the County has filed a counterclaim ("Action 1").



H. SMF, as successor to Bank of Florida N.A., is the owner and holder of a first mortgage on the Ground Lease which secures a note wherein HS is the payee.

I. SMF and HS are involved in the following lawsuit: South Miami Station Finance, LLC as Successor in interest to Bank of America, N.A., Plaintiff, v. Hometown Station LTD., Permanentia, Inc. Et Al, Defendants, in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida. General Jurisdiction Division, Case No. 07-07114 CA (01) ("Action 2").

J. County and HS have agreed to settle all matters between them and dismiss Action 1.

K. County and SMF have agreed to settle all matters between them arising from or related to Action 2. HS and SMF, jointly and severally, agree to indemnify, defend, and hold County harmless as to all claims and derivative claims asserted against County related to the claims, defenses and counterclaims asserted in Action 2. County waives any objection to SMF's foreclosing its mortgage and enforcing its note pursuant to the terms of the Ground Lease and becoming the successor in interest to HS with all the rights of HS under the Ground Lease, all amendments to the Ground Lease and this Settlement Agreement as if it was HS.

L. The Parties desire to memorialize the terms and conditions of this Settlement Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the Parties agree as follows:

TERMS

1. The foregoing Recitals are true and correct and are specifically incorporated herein by reference.

2. Upon the Effective Date of this Settlement Agreement ("Effective Date" defined as the date the County Mayor or Mayor's designee is authorized to sign this Settlement Agreement on behalf of Miami-Dade County), the County, and all of its agencies, shall relinquish any and all claims and/or derivative claims to the Equity Contribution that County now has or may have against HS and/or SMF, and within 10 days of the Effective Date the County shall execute a General Release in favor of HS and SMF in the form attached hereto as Composite Exhibit "A."

3. Upon the Effective Date of this Settlement Agreement, County and all its agencies, shall relinquish any and all claims and/or derivative claims to past-due rent, back rent, penalties, interest, default interest, reimbursements or other current and/or past due charges arising from or otherwise relating to the Ground Lease against HS and/or SMF, and within ten days of the Effective Date the County shall execute a General Release in favor of HS and SMF in the form attached hereto as Composite Exhibit "A."

4. Upon the Effective Date of this Settlement Agreement and subject to the conditions set forth in this Settlement Agreement, HS and County shall relinquish any and all claims and/ or derivative claims against one another related to or arising from Action 1 and Action 2, and within ten days of the Effective Date, HS and County shall voluntarily dismiss ~~Action 1 with prejudice, and HS and County shall execute a General Release in favor of each~~ other in the form attached hereto as Composite Exhibit "A."

5. Upon the Effective Date, SMF and County relinquish any and all claims and/or derivative claims that were or could have been asserted against one another in Action 2, and within ten days of the Effective Date, SMF and County shall execute a General Release in favor of each other in the form attached hereto as Composite Exhibit "A." However, the County has no objection to, and nothing herein shall be deemed as precluding, SMF from proceeding with Action 2.

6. The term of the Ground Lease shall be extended to provide a term of ninety (90) years commencing on the Effective Date.

7. The Space Lease and the Management Agreement shall be terminated upon the Effective Date of this Settlement Agreement.

8. The definition in the Ground Lease regarding the Leased Premises" shall be amended to also include the additional surplus parcel of real property described on Exhibit "B" attached hereto ("Parcel C)" and specifically incorporated herein by reference. Parcel A, Parcel B, and Parcel C collectively and hereinafter are referred to as "Leased Premises." The Leased Premises is reflected in the boundary/topographic survey attached hereto as Exhibit "C", and subject to the inclusion of Parcels B and C above, and is defined in Article 2.1(m) of the Ground Lease.

9. The South Miami Metrorail Lease, as amended, shall govern the terms and conditions under which the Leased Premises is being leased going forward. A true and correct copy of the Fourth Amendment to the Ground Lease is attached hereto as Exhibit "D" and specifically incorporated herein by reference.

10. All of the terms and provisions of this Settlement Agreement shall be binding upon, inure to the benefit of, and be otherwise enforceable by, the Parties and their respective administrators, executors, legal representatives, heirs, successors and assigns.

11. THIS SETTLEMENT AGREEMENT AND THE EXHIBITS ATTACHED HERETO CONTAIN THE COMPLETE AND FINAL AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER HEREOF, AND SHALL NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

12. The Parties hereby agree that all disputes arising out of, or related to, this Settlement Agreement shall be resolved by a court of competent jurisdiction. The Parties

further agree that venue for any proceedings arising out of, or in any manner relating to this Settlement Agreement shall be Miami-Dade County, Florida. The prevailing party in any such proceedings shall be entitled to an award of its reasonable attorneys' fees and costs, including attorneys' fees and costs associated with any appeal.

13. Each of the Parties to this Settlement Agreement represents and warrants that it has the full power, legal right, and authority to enter into this Settlement Agreement and to do all acts and things as are required or contemplated hereunder to be done, observed, or performed, and that the execution and delivery of this Settlement Agreement, the consummation of the transactions contemplated herein, and compliance with the terms, conditions, and provisions hereof and any documents executed in connection herewith have been duly authorized by any requisite corporate, partnership or other actions, and will not conflict with, or otherwise result, in a breach of any agreement or instrument to which said Party is now a party, or by which its property is bound and will not violate any law, rule, or regulation.

14. Each of the Parties to this Settlement Agreement hereby acknowledges and agrees that it is foregoing certain rights and assuming certain duties and obligations which, in the absence of this Settlement Agreement, would not have been released or assumed. In this regard, each of the Parties agree that this Settlement Agreement is fair and reasonable. The Parties represent and warrant that no Party has failed to disclose any material fact that would materially impair or adversely affect this Settlement Agreement.

15. Each of the Parties to this Settlement Agreement acknowledges that it has received and reviewed a copy of this Settlement Agreement and has had the opportunity to consult with, and has in fact consulted with, experts of their choice, as well as counsel of their choice. In so doing, each of the Parties understands the purport, tenor and effect of this Settlement Agreement, and has entered into this Settlement Agreement willfully, knowingly and voluntarily.

16. Each of the Parties in executing this Settlement Agreement has not relied upon any representation, understanding or agreement that is not expressly provided for herein. No Party to this Settlement Agreement, or its agents, employees and/or representatives, has made any representations to any other Party, its agents, employees and/or representatives that is not expressly set forth herein. Furthermore, but not in limitation of the foregoing, no Party to this Settlement Agreement has made any representations to any other Party, whether written or oral, that relate to, or otherwise affect the consideration, cause or any condition for which this Settlement Agreement was entered into, which representations have not been specifically embodied herein.

17. Each Party to this Settlement Agreement executes this Settlement Agreement as its free and voluntary act, without duress, coercion, or undue influence exerted by or on behalf of either Party, or any other person and/or entity.

18. This Settlement Agreement shall be deemed and treated as if drafted jointly by all the Parties, and no term, condition, or provision of this Settlement Agreement shall be construed more strictly against any Party.

19. By signing this Settlement Agreement, no Party acknowledges the validity of ~~any claim relating to, or arising out of, the disputes forming the basis of this Settlement Agreement.~~

20. If any provision or portion of any provision of this Settlement Agreement, or any documents or instruments executed in connection with this Settlement Agreement, are determined to be invalid or unenforceable, all other provisions or portions of any of the provisions of this Settlement Agreement, as well as documents or instruments executed in connection with this Settlement Agreement, shall nevertheless continue in full force and effect.

21. The provisions of this Settlement Agreement shall not be modified, amended, supplemented, waived, or changed orally, but only in writing making specific reference to this Settlement Agreement and signed by the Parties.

22. The Parties hereby agree from time to time, upon request, to execute and deliver such further and other documents and instruments and to do all matters and things that may be necessary or expedient, as determined by the requesting Party in its reasonable discretion, to more effectively and completely carry out the intentions of this Settlement Agreement.

23. Except as otherwise explicitly provided for herein, nothing contained herein and no actions or failure to act by any of the Parties shall be deemed to be a waiver of any right, privilege, or power the Parties have or may have pursuant to this Settlement Agreement and applicable law. The failure or delay by either Party to require the performance of any provision of this Settlement Agreement shall not affect the right of such Party to exercise any right, power or remedy granted to it under this Settlement Agreement or otherwise available to it, or to require any other Party to perform such provision. Any waiver or any breach of any provision of this Settlement Agreement, or any writings or documents executed in conjunction with this Settlement Agreement, or any documents or instruments contemplated hereby, shall not be construed as a waiver of any continuing or succeeding breach of the applicable provision, a waiver of the provision itself, or a waiver of any right, power, or remedy. No notice or demand to any Party to this Settlement Agreement shall entitle such Party to any other or further notice or demand in similar or other circumstances.

24. All notices, requests, consents, demands or other communications required under this Settlement Agreement shall be given or made in writing and addressed to the parties as follows:

In the case of Hometown Station, Ltd.:

Gus Machado
1200 W. 49th Street
Hialeah, FL 33012
Tel: (305) 820-2525
Fax: (305) 827-2116
machadogus@aol.com
acarisso@machadoford.com

With copy to:

Michael P. Peterson, Esq.
Peterson, Baldor & Maranges, PLLC
10631 S.W. 88th Street, Suite 220
Miami, Florida 33176
Telephone: (305) 270-3773
Facsimile: (305) 275-7410
Email: michael@pbmlegal.net

Gus Lage
201 Alhambra Cir. Suite 1205
Coral Gables, FL 33134
Tel: (305) 377-1000
Fax: (855) 898-0621
Email: glage@smgqlaw.com

George E. McArdle
806 S. Douglas Rd. Suite 625
Coral Gables, FL 33134
Tel: (305) 442-2214
Fax: (305) 442-2291
Email: gmcardle.mcper.com

In the case of South Miami Station Finance, LLC:

Gus Lage, Esq.
201 Alhambra Cir. Suite 1205
Coral Gables, FL 33134
Tel: (305) 377-1000
Fax: (855) 898-0621
Email: glage@smgqlaw.com

In the case of Miami-Dade County:

Ysela Llort
Director Miami-Dade Transit

701 N.W. 1st Court, 17th Floor
Miami, FL 33136
Telephone: (786) 469-5406
Facsimile:
yllort@miamidade.gov

With copy to:

Bruce Libhaber
Assistant County Attorney
111 N.W. 1st Street, Suite 2810
Miami, FL 33142
Telephone: (305) 375-2150
Facsimile: (305) 375-5634
Bruce2@miamidade.gov

25. All notices given in accordance with the provisions of this Settlement Agreement shall be deemed effective: (1) if delivered personally, by electronic mail, or by messenger or courier service, on the date of delivery; (2) if by telecopy, on the date telecommunicated and confirmed by telecopier print-out; (3) if mailed, on the date upon which the return receipt is signed or delivery refused or the notice designated by postal authorities as not deliverable, whatever the case may be.

26. Within seven (7) days of a change in the address of any of the persons designated in Paragraph 24 of this Settlement Agreement, that person shall provide notice to the other persons of such change and said address shall thereafter be the address of such Party for the purpose of these notice provisions and for all purposes of this Settlement Agreement.

27. Time is of the essence with respect to each provision of this Settlement Agreement that requires that any party take any action within a stated time period, or upon a specified date.

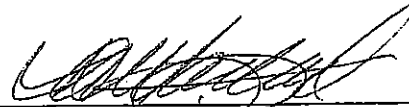
28. Unless expressly stated to the contrary, nothing in this Settlement Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Settlement Agreement on any person or entity other than the Parties and their respective administrators, executors, legal representatives, heirs and assigns.

28. This Settlement Agreement shall be governed and construed in accordance with the laws of the State of Florida.

EXECUTED on the date above first written.

HOMETOWN STATION, LTD.

By: Permanentia, Inc. its General Partner

By: 

Name: Gus Machado, Sr.

Title: President

SOUTH MIAMI STATION
FINANCE, LLC

By: _____

Print Name: _____

Title: _____

MIAMI-DADE COUNTY, FLORIDA

By: _____

Print Name: _____

Title: _____

Approved as to Form and Legal Sufficiency

EXHIBIT "B"

South Miami Station Parcels

LEGAL DESCRIPTION:

Parcel A - Garage & Air Rights

A portion of the South 1/2 of the South 1/2 of the SE 1/4 of Section 25, Township 54 South, Range 40 East, and a portion of Tract 3, AMENDED PLAT OF COMMERCIAL LARKINS, according to the Plat thereof, as recorded in Plat Book 38, Page 5 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

COMMENCE at the Southwest corner of the SE 1/4 of said Section 25; thence N87°15'40"E along the South line of said SE 1/4 for 1,059.32 feet to an intersection with the Northwestern Right-of-Way line of the Metropolitan Dade County Stage 1 Rapid Transit System; thence N47°48'16"E along the said Northwestern Right-of-Way line for 78.73 feet to an intersection with a line 15.00 feet North of and parallel with said South line of said Tract 3; thence continue N47°48'16"E along said Northwestern Right-of-Way line for 923.71 feet; thence S87°09'15"E along a line 20.00 feet South of and parallel with the North line of said South 1/2 of the South 1/2 of the SE 1/4 and along the North line of said Tract 3 for 454.36 feet; thence S02°50'45"E along a line perpendicular to the last described course for a distance of 36.86 feet to the POINT OF BEGINNING One (POB 1) of the hereinafter described parcel of land; thence S48°57'47"W for a distance of 17.22 feet; thence S47°44'33"W for a distance of 418.27 feet; thence N42°14'32"W for a distance of 29.43 feet; thence N02°58'44"W for a distance of 205.98 feet; thence N47°49'46"E for a distance of 97.98 feet; thence N87°08'32"E for a distance of 267.85 feet; thence S42°35'45"E for a distance of 19.11 feet to The POINT OF BEGINNING.

Containing 54,204.51 Square Feet and/or 1.244 Acres, more or less

And:

Parcel B – Vacant Area Site 1

A portion of the South 1/2 of the South 1/2 of the SE 1/4 of Section 25, Township 54 South, Range 40 East, and a portion of Tract 3, AMENDED PLAT OF COMMERCIAL LARKINS, according to the Plat thereof, as recorded in Plat Book 38, Page 5 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

COMMENCE at the Southwest corner of the SE 1/4 of said Section 25; thence N87°15'40"E along the South line of said SE 1/4 for 1,059.32 feet to an intersection with the Northwestern Right-of-Way line of the Metropolitan Dade County Stage 1 Rapid Transit System; thence N47°48'16"E along the said Northwestern Right-of-Way line for 78.73 feet to an intersection with a line 15.00 feet North of and parallel with said South line of Tract 3; thence continue N47°48'16"E along said Northwestern Right-of-Way line for 923.71 feet; thence S87°09'15"E along a line 20.00 feet South of and parallel with the North line of said South 1/2 of the South 1/2 of the SE 1/4 and along the North line of said Tract 3 for 454.36

EXH. B
settlement

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feet to the POINT OF BEGINNING Two (POB 2) of the hereinafter described parcel of land; thence S02°50'45"E along a line perpendicular to the last described course a distance of 36.86 feet to a point on the exterior wall of an existing building; thence N42°35'45"W along the exterior wall, for the following seven (7) courses, a distance of 19.11 feet; thence S87°08'32"W a distance of 267.85 feet; thence S47°4'46"W a distance of 97.98 feet; thence S02°58'44"E a distance of 205.98 feet; thence S42°14'32"E a distance of 202.82 feet; thence N47°46'50"E a distance of 17.29 feet; S42°12'44"E a distance of 17.35 feet, thence continue S42°12'44"E, leaving said exterior wall, a distance of 20.31 feet; thence S47°50'36"W for a distance of 28.59 feet to the point of curvature; thence Southwesterly along a said curve to the right, concave to the Northwest, having a radius of 56.50 feet, through a central angle of 39°12'45" for an arc distance of 38.67 feet; thence S87°03'21"W for a distance of 126.45 feet to the point of intersection with the West line of said Tract A; thence N02°56'39"W along the said West line for a distance of 486.27 feet to a point of a curvature of a circular curve; thence Northeasterly along a said curve, concave to Southeast, having a radius of 10.00 feet; and a central angle of 90°05'54" for an arc distance of 15.73 feet to the point of tangency; thence N87°09'15"E along the North line of said Tract A a distance of 364.81 feet to the POINT OF BEGINNING.

Containing 37,266.09 Square Feet and/or 0.856 Acres, more or less, and subject to any additional right of way of record affecting this parcel.

And:

Parcel C - Vacant Area Site 2

A portion of the South ½ of the South ½ of the S.E. ¼ of Section 25, Township 54 South, Range 40 East and a portion of Tract 3, AMENDED PLAT OF COMMERCIAL LARKINS, according to the plat thereof as recorded in Plat Book 38, Page 5 of the Public Records of Miami-Dade, County, Florida, being more particularly described as follows:

COMMENCE at the Southwest corner of the S.E. ¼ of said Section 25; thence N87°15'40"E along the South line of said S.E. ¼ for 1,059.32 feet to an intersection with the Northwesterly Right-of-Way line of the Metropolitan Dade County Stage I Rapid Transit System; thence, N47°48'16"E along said Northwesterly Right-of-Way line for 78.73 feet to an intersection with a line 15.00 feet North of and parallel with the South line of said Tract 3, said intersection being the POINT OF BEGINNING 3 (POB 3) of the herein described tract of land; thence, S87°15'40"W along a line 15.00 feet North of and parallel with the South line of said Tract 3 for 88.93 feet to the beginning of a curve concave to the Northeast, having a radius of 25.00 feet; thence, Northwesterly 39.18 feet along the arc of said curve through a central angle of 89°47'41" to a point of tangency; thence, N02°56'39"W along the West line of said Tract 3 for 64.30 feet; thence, N87°03'21"E for 126.74 feet to the beginning of a curve concave to the Northwest, having a radius of 56.50 feet; thence, Northeasterly 38.67 feet along the arc of said curve through a central angle of 39°12'45" to a point of tangency; thence, N47°50'36"E for 28.59 feet; thence, S42°12'44"E for 48.47 feet to an intersection with said Northwesterly Right-of-Way line of the Metropolitan Dade County Stage I Rapid Transit System; thence, S47°48'16"W for 131.01 feet to the POINT OF BEGINNING.

Reserving an ingress/egress over the following described area:

COMMENCE at the Southwest corner of the S.E. $\frac{1}{4}$ of said Section 25; thence N87°15'40"E along the South line of said S.E. $\frac{1}{4}$ for 1,059.32 feet to an intersection with the Northwesternly Right-of Way line of the Metropolitan Dade County Stage I Rapid Transit System; thence, N47°48'16"E along said Northwesternly Right-of-Way line for 209.69 feet; thence, N42°12'44"W for 28.47 feet to the POINT OF BEGINNING OF THE HEREIN DESCRIBED EASEMENT; thence, S47°50'36"W for 28.60 feet to the beginning of a curve concave to the Northwest, having a radius of 76.50 feet; thence, Southwesterly 52.36 feet along the arc of said curve through a central angle of 39°12'45" to a point of tangency; thence, S87°03'21"W for 126.74 feet to an intersection with the West line of said Tract 3; thence, N02°56'39"W along the West line of said Tract 3 for 20.00 feet; thence, N87°03'21"E for 126.74 feet to the beginning of a curve concave to the Northwest, having a radius of 56.50 feet; thence, Northeasterly 38.67 feet along the arc of said curve through a central angle of 39°12'45" to a point of tangency; thence, N47°50'36"E for 28.59 feet; thence, S42°12'44"E for 20.00 feet to the POINT OF BEGINNING.

Containing 15,928 Square Feet and/or 0.366, more or less.

All of the above described land situated, being and lying in the City of South Miami, Miami-Dade County, Florida.

P.B. 160 PG. 851
SHEET 1 OF 3

SHEET 1 OF 3

MARCH, 2003



LEGAL DESCRIPTION:

IN WITNESS WHEREOF:

[illegible]

that the use of capital letters will not be permitted within the enclosure. Unlabeled openings for temporary use, in accordance with the provisions of the building code, may be included in the building structure.

that the Utility Exemptions or signs by dated Part on the attached plat, are hereby reserved for the installation and maintenance of public utilities.

lets that will not result in a reduction in the level of services provided to the affected public facilities below the level. It was approved on condition that the municipality's comprehensive plan: therefore, it was approved on condition that the municipality's comprehensive plan: therefore, it was approved on condition that the municipality's comprehensive plan:

Surrounding dedications were accepted and approved by Resolution No. 7-93-1603 passed and adopted by the city council of the City of South Miami, Florida, this 13TH day of April, 2003.

Approved: Richard Taylor Mr. Richard Taylor

Signed: Shirley J. Taylor ^{Shirley J. Taylor}

This is to certify that this plot appears to conform to all of the requirements of Chapter 28 of the Mount-Rose County Code.

Signature _____
Director

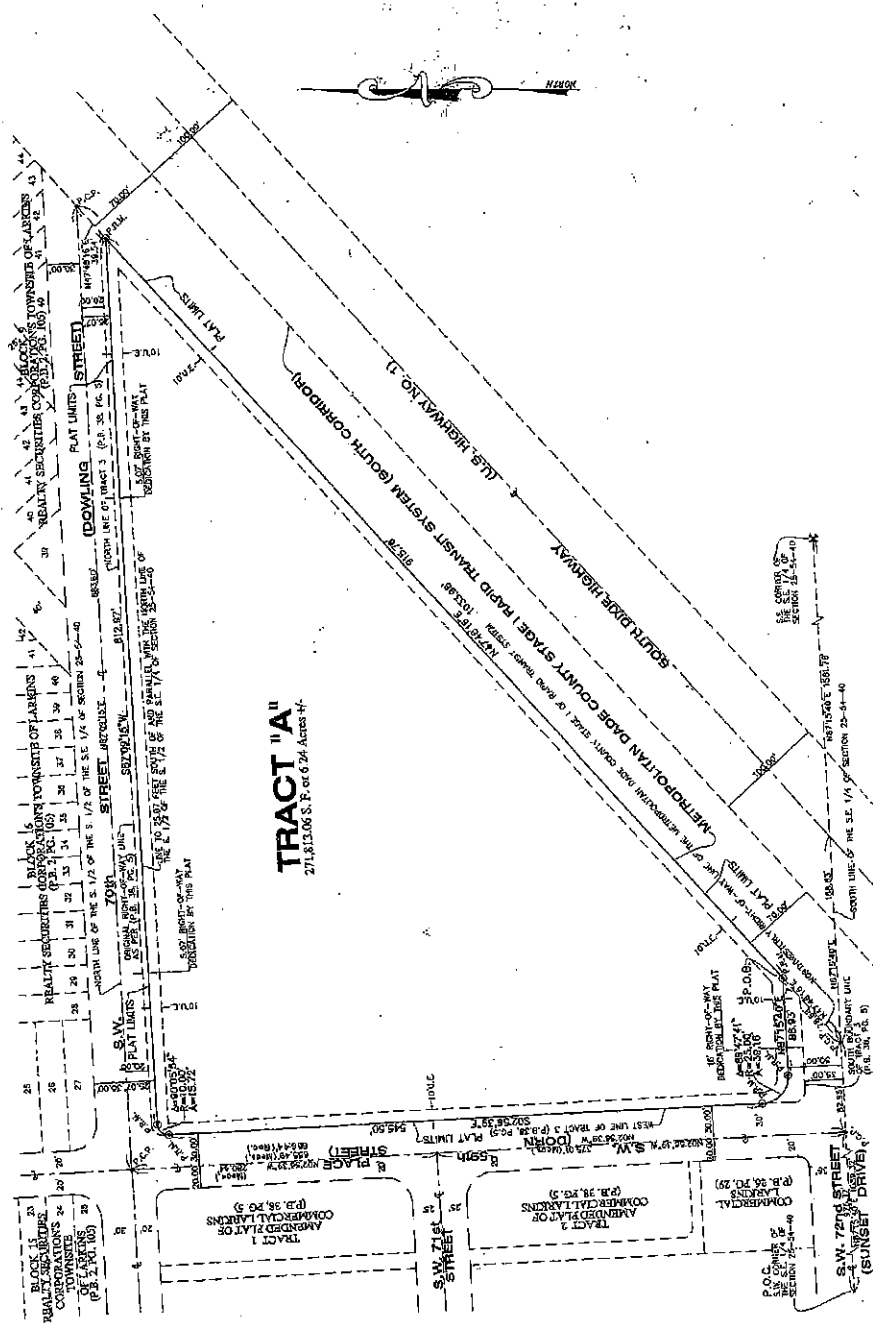
See for Report this 30th day of Dec 1968 at Alto, Alto, Alto County, Florida,
County, at 12:15 P.M., in Book 162 of the Public Records of Miami-Dade County, Florida,
Page 253, of the Public Records of Miami-Dade County, Florida,
This Plat complies with the Laws of the State of Florida and Miami-Dade County, Florida.

It is a true and correct representation of the local situation as recently surveyed and public under surveillance herein on that the prominent National Movement is not a threat to the peace and stability of the State of Florida.

STATION LTD.,
a Florida Limited

P.B. 160 PG. 85³
SHEET 3 OF 3

AE
FORD, ARGENTIERS & MANUFACT, INC.
1550 R.W. 94th AVENUE, 3rd FLOOR
SUITE FLORIDA 33172
FLO, FL 3353 477-8472
FAX (305) 476-2803
MARCH, 2003



Electropos shows values are based on an assumed value of N27°15'10"E along the South line of the S.E. 1/4 of Section 25, Township 34 South, Range 40 East, Miami-Dade Township 11th, Miami-Dade County, Florida.

RECORDING STATEMENT:

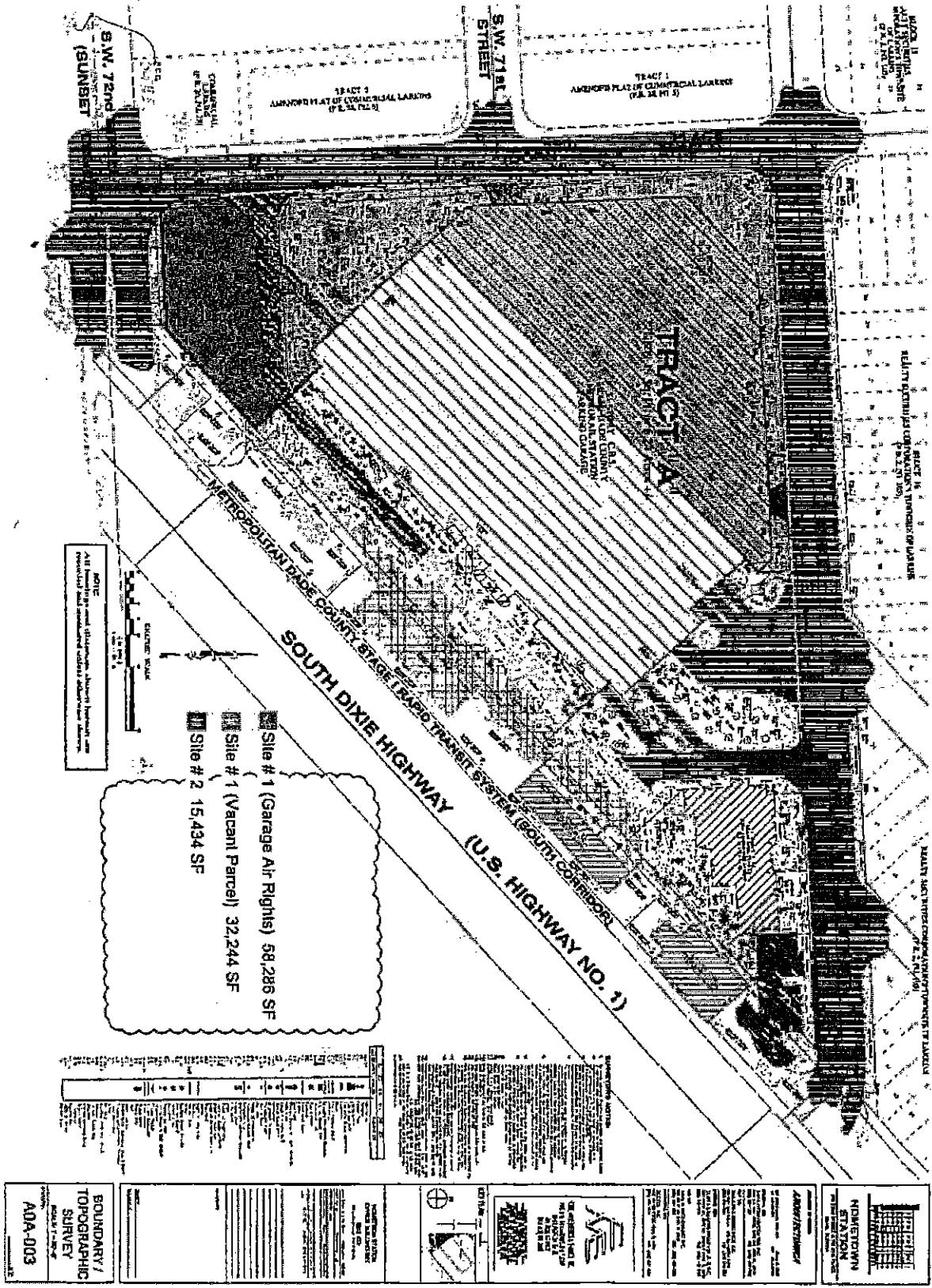
Pages for Record this
2003 W. 15, 14, 11
30th day of October, A.D.,
P.M. in Book 150 of Mole, at Page
of the Public Records of Miami-Dade County, Florida.
This Book complies with the Laws of the State of Florida and Mont-
gomery County, Florida.

HARVEY RUVIN, CLERK OF THE CIRCUIT COURT

1926

By  Elizabeth A. DeLoe
Deputy Clerk

Exhibit 'C'



**FOURTH AMENDMENT TO THE
SOUTH MIAMI METRORAIL LEASE**

This is the Fourth Amendment to the South Miami Metrorail Lease ("Lease"), dated December 16, 1999, between Miami-Dade County, a political subdivision of the State of Florida ("Landlord"), and Hometown Station, Ltd., a Florida limited partnership ("Tenant"), collectively, the "Parties," and is the same as the effective date defined in the Settlement Agreement to which this Fourth Amendment is Attached ("Effective Date").

RECITALS

- A. The Lease was approved by the Board of County Commissioners ("BCC") on December 16, 1999 by Resolution No. R-1375-99.
- B. The Commencement Date of the Lease was April 14, 2001; and
- C. The Lease was amended by Corrective Amendment One to South Miami Metrorail Lease, dated August 15, 2001 which was approved by the BCC Resolution No. R-1198-01 ("Amendment One").
- D. The Lease was amended to add additional square feet to the Leased Premises which was approved by BCC Resolution No. R-1313-03 dated December 4, 2003 ("Amendment Two").
- E. The Lease was amended as to Minimum Rent and parking space issues by BCC Resolution No. R 168-06, on February 7, 2006 ("Amendment Three").
- F. Pursuant to the Settlement Agreement to which this Fourth Amendment is attached and entered into on even date, the Landlord and Tenant agree to amend the Lease on the terms and conditions provided herein.

NOW THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Landlord and Tenant do hereby agree to amend the Lease as follows:

1. The Recitals are true and correct and incorporated herein.
2. Capitalized terms in this Fourth Amendment have the same meaning as in the Settlement Agreement,
3. Section 1.2 Term of Lease. The Term of the Lease is extended to 90 years from the "Effective Date" of approval of the Fourth Amendment.

EXH. D
Settlement

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4. Section 1.3 Conditions Precedent to Effectiveness of Fourth Amendment. The Parties agree that execution of the Settlement Agreement and Releases are conditions precedent to the effectiveness of this Fourth Amendment.
5. Section 1.4 shall be renamed Section 1.4(a) Conditions Precedent to Commencement of Construction. ~~Parties agree that construction will begin within 3 years from Effective Date. Within 5 years of Effective Date, Tenant will have completed 100,000 square feet of development in the nature of, but not limited to, hotel, retail, residential, or office space. Project components, if any, over the over~~ **Triangular Garage will be substantially complete within 7 years from Effective Date.** Tenant, at its expense, shall obtain any required zoning and permitting approvals and variances. Tenant, at its expense, shall replat as needed or reasonably requested by County. The County agrees to use best efforts to assist Tenant with such zoning and permitting approvals and variances to support the Project. Developer assumes responsibility for designing and constructing improvements on Leased Premises so as to avoid the need for retrofit or improvement to the Rectangular Garage (parking garage used for MetroRail patron parking).
6. The Developer shall assume all risks and costs in the event that retrofit or improvements are required to the Rectangular Garage based on planned or actual construction or improvements by the Developer to the Leased Premises. The County agrees to cooperate with the Developer on all reasonable requests related to approval, permitting, applications, or restrictions on use or access. Any improvements made to the Rectangular Garage will become the property of the County at no cost to the County and the County shall have the obligation to maintain said improvements.
7. Section 1.4(b) "Plan B" Option In the event Tenant elects to demolish in whole or in part Garage Two as described in the Lease, Tenant shall at its sole expense construct and provide to Landlord 1300 parking spaces in compliance with all applicable codes and regulations.
8. Section 2.1 (h) Commencement Date is amended to read: "Commencement Date shall be ten (10) calendar days following the date of Board of County Commissioners approval of the Settlement Agreement.
9. Section 2.1 (k) Construction Phases: All references to "Phases" or "Phased Construction" are hereby deleted.
10. Section 2.1 (m) Demised Premises shall be amended to add the relevant portions of Parcels "A", "B", and "C" as reflected in Exhibits "B" and "C" to the Settlement Agreement.. Otherwise Section 2.1 (m) shall remain in full force and effect. Landlord shall request that the City of South Miami convey at no expense or cost to the Landlord the land defined in the Lease as City Strip. In the event the City of South Miami deeds to Landlord and Landlord accepts the conveyance, City Strip shall be added to the Demised Premises.

11. Section 2.1 (m)(viii): Add language: "Nothing in the foregoing shall be deemed to result in a loss of parking spaces utilized by Miami-Dade Transit in Garage Two (rectangle)." "Residential Component" shall be replaced with "Project".
12. Section 2.1 (ll): replace with "Project shall mean the overall joint development at the South Miami Metrorail Station as such proposed development may be amended or revised from time to time."
13. Section 3.1 Minimum Rent is renumbered as 3.1(a) and now reads as follows. – Annual Base Rent is \$585,000. For Year 1 following the Effective Date, the Annual Base Rent is abated. For the first six months of Year 2, the rent is \$145,250 which is "Stabilizing Rent" equal to half of the Annual Base Rent rate. For the second six months of Year 2, rent is \$295,000 which is equal to the Annual Base Rent rate for six months. Year 3 rent shall be Annual Base Rent plus CPI Adjustment. The CPI Adjustment occurs every two years with a maximum allowable increase of Base Rent of the lesser of CPI increase over 2 years or 3%.
14. Section 3.1(b) Rent Security is created. Within 90 days of the Effective Date, Tenant shall pay into a mutually agreed upon escrow account the equivalent of one year of Annual Base Rent (\$585,000). Prior to the end of the first year after the Effective Date, Tenant shall place an additional three months' rent, (\$146,250) into a mutually agreed upon escrow account.
15. Section 3.2 Phased Development. This is deleted in its entirety.
16. Section 3.3 is renumbered 3.3(a) Penalty Rent and the section is replaced as follows: If Tenant does not complete 100,000 sf as described in Section 1.4(a), as amended, Tenant has the option to pay for up to three years Penalty Rent in lieu of default. Said Penalty Rent shall be in addition to adjusted Annual Base Rent. . Penalty Rent shall be equal to 10% of the applicable year's Annual Base Rent.
17. Section 3.4 Participation Rent. Starting on day one of Year 8, Tenant shall pay as Participation Rent 1% of Adjusted Gross Income ("AGI"). AGI shall equal 70% of total Rent collected ("Rent" defined as any moneys collected by Tenant from any subtenant including parking relating to the Property).
18. Section 3.6 Gross Income: Deleted.
19. Section 3.7 Landlord's Right to Verify - Throughout 3.7 the words: "Space Lessee" shall be deleted and the words: "Sub lessee" shall be replaced with: "sub-Tenant".
20. Section 4.1 Land Use.
 - a. Section 4.1 (a) is deleted and replace with: " Tenant and Landlord agree, for themselves and their successors and assigns, to devote the Demised Premises

to the uses permitted by the building and zoning requirements of the County and the guidelines described in the South Miami Development Agreement.

- b. (b) (iii) the words: "mixed use retail/residential center are deleted and replaced with word: "development".

21. Section 4.2 Development Rights and Construction Phases

- a. Section 4.2 (a) preamble and section (a) is deleted in its entirety.
- b. Section 4.2 (c) is deleted in its entirety

22. Section 17.1 Transfers - The word Sublessee is replaced with the word sub-Tenant

- a. Section 17.1 (c) beginning with the words: "Notwithstanding the foregoing" through the end of 17.1 (c) is deleted.
- b. Section 17.1 (k) is added which states: Nothing in the Section to the contrary withstanding, the obligations of any sub-Tenant shall be independent of and separate from the obligations of the Tenant and any other sub-Tenant and a default under the Ground Lease or any sub-Tenant lease shall not be a default under any other sub-Tenant Lease.
- c. Section 17.1 (l) is added which states: Notwithstanding any provision to the contrary, the parties to this Settlement Agreement are hereby exempt from the transfer fees contemplated in Section 17.1 of the Lease for a period of one year from the Effective Date of this Fourth Amendment.

23. Section 26 2 DBE Obligations. This section is hereby deleted since, consistent with Federal Transit Administration regulations, DBE measures are inapplicable to leases and revenue generating contracts.

24. All references to "managed premises/premises," "managed area(s)" and "Management Agreement" contained within the Lease are deleted.

25. All references to Phases or phased construction are deleted.

26. All references to the County Manager or Designee are changed to County Mayor or Designee.

27. All notices, requests, consents, demands or other communications required under Lease shall be given or made in writing and addressed to the parties as follows:

In the case of Hometown Station, Ltd.:

Gus Machado
1200 W. 49th Street
Hialeah, FL 33012
Tel: (305) 820-2525

Fax: (305) 827-2116
machadogus@aol.com
acarisso@machadoford.com

With copy to:

Michael P. Peterson, Esq.
Peterson, Baldor & Maranges, PLLC
10631 S.W. 88th Street, Suite 220
Miami, Florida 3 31 7 6
Telephone: (305) 270-3773
Facsimile: (305) 275-7410
Email: michael@pbmlegal.net

Gus Lage
201 Alhambra Cir. Suite 1205
Coral Gables, FL 33134
Tel: (305) 377-1000
Fax: (855) 898-0621
Email: glage@smgqlaw.com

George E. McArdle
806 S. Douglas Rd. Suite 625
Coral Gables, FL 33134
Tel: (305) 442-2214
Fax: (305) 442-2291
Email: gmcardle.mcper.com

In the case of Miami-Dade County:

Ysela Llort
Director Miami-Dade Transit
701 N.W. 1st Court, 17th Floor
Miami, FL 33136
Telephone: (786) 469-5406
Facsimile:
yllort@miamidade.gov

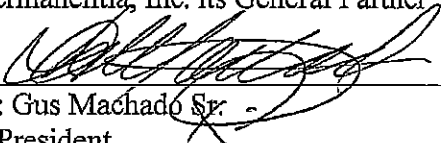
With copy to:

Bruce Libhaber
Assistant County Attorney
111W. 1st Street, Suite 2810
Miami, FL 33142
Telephone: (305) 375-2150
Facsimile: (305) 375-5634
Bruce2@miamidade.gov

28. All notices given in accordance with the provisions of the Lease shall be deemed effective: (1) if delivered personally, by electronic mail, or by messenger or courier service, on the date of delivery; (2) if by telecopy, on the date telecommunicated and confirmed by telecopier print-out; (3) if mailed, on the date upon which the return receipt is signed or delivery refused or the notice designated by postal authorities as not deliverable, whatever the case may be.
29. Within seven (7) days of a change in the address of any of the persons designated in Paragraph 26 of this Fourth Amendment, that person shall provide notice to the other persons of such change and said address shall thereafter be the address of such Party for the purpose of these notice provisions and for all purposes of this Settlement Agreement.

HOMETOWN STATION, LTD.

By: Permanentia, Inc. its General Partner

By: 

Name: Gus Machado Sr.

Title: President

MIAMI-DADE COUNTY, FLORIDA

By: _____

Print Name: _____

Title: _____

Approved as to Form and Legal Sufficiency

**FOURTH AMENDMENT TO THE
SOUTH MIAMI METRORAIL LEASE**

This is the Fourth Amendment to the South Miami Metrorail Lease ("Lease"), dated December 16, 1999, between Miami-Dade County, a political subdivision of the State of Florida ("Landlord"), and Hometown Station, Ltd., a Florida limited partnership ("Tenant"), collectively, the "Parties," and is the same as the effective date defined in the Settlement Agreement to which this Fourth Amendment is Attached ("Effective Date").

RECITALS

- A. The Lease was approved by the Board of County Commissioners ("BCC") on December 16, 1999 by Resolution No. R-1375-99.
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- C. The Lease was amended by Corrective Amendment One to South Miami Metrorail Lease, dated August 15, 2001 which was approved by the BCC Resolution No. R-1198-01 ("Amendment One").
- D. The Lease was amended to add additional square feet to the Leased Premises which was approved by BCC Resolution No. R-1313-03 dated December 4, 2003 ("Amendment Two").
- E. The Lease was amended as to Minimum Rent and parking space issues by BCC Resolution No. R 168-06, on February 7, 2006 ("Amendment Three").
- F. Pursuant to the Settlement Agreement to which this Fourth Amendment is attached and entered into on even date, the Landlord and Tenant agree to amend the Lease on the terms and conditions provided herein.

NOW THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Landlord and Tenant do hereby agree to amend the Lease as follows:

1. The Recitals are true and correct and incorporated herein.
2. Capitalized terms in this Fourth Amendment have the same meaning as in the Settlement Agreement,
3. Section 1.2 Term of Lease. The Term of the Lease is extended to 90 years from the "Effective Date" of approval of the Fourth Amendment.



4. Section 1.3 Conditions Precedent to Effectiveness of Fourth Amendment. The Parties agree that execution of the Settlement Agreement and Releases are conditions precedent to the effectiveness of this Fourth Amendment.
5. Section 1.4 shall be renamed Section 1.4(a) Conditions Precedent to Commencement of Construction. **Parties agree that construction will begin within 3 years from Effective Date. Within 5 years of Effective Date, Tenant will have completed 100,000 square feet of development in the nature of, but not limited to, hotel, retail, residential, or office space. Project components, if any, over the over Triangular Garage will be substantially complete within 7 years from Effective Date.** Tenant, at its expense, shall obtain any required zoning and permitting approvals and variances. Tenant, at its expense, shall replat as needed or reasonably requested by County. The County agrees to use best efforts to assist Tenant with such zoning and permitting approvals and variances to support the Project. Developer assumes responsibility for designing and constructing improvements on Leased Premises so as to avoid the need for retrofit or improvement to the Rectangular Garage (parking garage used for MetroRail patron parking).
6. The Developer shall assume all risks and costs in the event that retrofit or improvements are required to the Rectangular Garage based on planned or actual construction or improvements by the Developer to the Leased Premises. The County agrees to cooperate with the Developer on all reasonable requests related to approval, permitting, applications, or restrictions on use or access. Any improvements made to the Rectangular Garage will become the property of the County at no cost to the County and the County shall have the obligation to maintain said improvements.
7. Section 1.4(b) "Plan B" Option In the event Tenant elects to demolish in whole or in part Garage Two as described in the Lease, Tenant shall at its sole expense construct and provide to Landlord 1300 parking spaces in compliance with all applicable codes and regulations.
8. Section 2.1 (h) Commencement Date is amended to read: "Commencement Date shall be ten (10) calendar days following the date of Board of County Commissioners approval of the Settlement Agreement.
9. Section 2.1 (k) Construction Phases: All references to "Phases" or "Phased Construction" are hereby deleted.
10. Section 2.1 (m) Demised Premises shall be amended to add the relevant portions of Parcels "A", "B", and "C" as reflected in Exhibits "B" and "C" to the Settlement Agreement.. Otherwise Section 2.1 (m) shall remain in full force and effect. Landlord shall request that the City of South Miami convey at no expense or cost to the Landlord the land defined in the Lease as City Strip. In the event the City of South Miami deeds to Landlord and Landlord accepts the conveyance, City Strip shall be added to the Demised Premises.

11. Section 2.1 (m)(viii): Add language: "Nothing in the foregoing shall be deemed to result in a loss of parking spaces utilized by Miami-Dade Transit in Garage Two (rectangle)." "Residential Component" shall be replaced with "Project".
12. Section 2.1 (ll): replace with "Project shall mean the overall joint development at the South Miami Metrorail Station as such proposed development may be amended or revised from time to time."
13. Section 3.1 Minimum Rent is renumbered as 3.1(a) and now reads as follows. – Annual Base Rent is \$585,000. For Year 1 following the Effective Date, the Annual Base Rent is abated. For the first six months of Year 2, the rent is \$145,250 which is "Stabilizing Rent" equal to half of the Annual Base Rent rate. For the second six months of Year 2, rent is \$295,000 which is equal to the Annual Base Rent rate for six months. Year 3 rent shall be Annual Base Rent plus CPI Adjustment. The CPI Adjustment occurs every two years with a maximum allowable increase of Base Rent of the lesser of CPI increase over 2 years or 3%.
14. Section 3.1(b) Rent Security is created. Within 90 days of the Effective Date, Tenant shall pay into a mutually agreed upon escrow account the equivalent of one year of Annual Base Rent (\$585,000). Prior to the end of the first year after the Effective Date, Tenant shall place an additional three months' rent, (\$146,250) into a mutually agreed upon escrow account.
15. Section 3.2 Phased Development. This is deleted in its entirety.
16. Section 3.3 is renumbered 3.3(a) Penalty Rent and the section is replaced as follows: If Tenant does not complete 100,000 sf as described in Section 1.4(a), as amended, Tenant has the option to pay for up to three years Penalty Rent in lieu of default. Said Penalty Rent shall be in addition to adjusted Annual Base Rent. . Penalty Rent shall be equal to 10% of the applicable year's Annual Base Rent.
17. Section 3.4 Participation Rent. Starting on day one of Year 8, Tenant shall pay as Participation Rent 1% of Adjusted Gross Income ("AGI"). AGI shall equal 70% of total Rent collected ("Rent" defined as any moneys collected by Tenant from any subtenant including parking relating to the Property).
18. Section 3.6 Gross Income: Deleted.
19. Section 3.7 Landlord's Right to Verify - Throughout 3.7 the words: "Space Lessee" shall be deleted and the words: "Sub lessee" shall be replaced with: "sub-Tenant".
20. Section 4.1 Land Use.
 - a. Section 4.1 (a) is deleted and replace with: " Tenant and Landlord agree, for themselves and their successors and assigns, to devote the Demised Premises

to the uses permitted by the building and zoning requirements of the County and the guidelines described in the South Miami Development Agreement.

- b. (b) (iii) the words: "mixed use retail/residential center are deleted and replaced with word: "development".

21. Section 4.2 Development Rights and Construction Phases

- a. Section 4.2 (a) preamble and section (a) is deleted in its entirety.
- b. Section 4.2 (c) is deleted in its entirety

22. Section 17.1 Transfers - The word Sublessee is replaced with the word sub-Tenant

- a. Section 17.1 (c) beginning with the words: "Notwithstanding the foregoing" through the end of 17.1 (c) is deleted.
- b. Section 17.1 (k) is added which states: Nothing in the Section to the contrary withstanding, the obligations of any sub-Tenant shall be independent of and separate from the obligations of the Tenant and any other sub-Tenant and a default under the Ground Lease or any sub-Tenant lease shall not be a default under any other sub-Tenant Lease.
- c. Section 17.1 (l) is added which states: Notwithstanding any provision to the contrary, the parties to this Settlement Agreement are hereby exempt from the transfer fees contemplated in Section 17.1 of the Lease for a period of one year from the Effective Date of this Fourth Amendment.

23. Section 26 2 DBE Obligations. This section is hereby deleted since, consistent with Federal Transit Administration regulations, DBE measures are inapplicable to leases and revenue generating contracts.

24. All references to "managed premises/premises," "managed area(s)" and "Management Agreement" contained within the Lease are deleted.

25. All references to Phases or phased construction are deleted.

26. All references to the County Manager or Designee are changed to County Mayor or Designee.

27. All notices, requests, consents, demands or other communications required under Lease shall be given or made in writing and addressed to the parties as follows:

In the case of Hometown Station, Ltd.:

Gus Machado
1200 W. 49th Street
Hialeah, FL 33012
Tel: (305) 820-2525

Fax: (305) 827-2116
machadogus@aol.com
acarisso@machadoford.com

With copy to:

Michael P. Peterson, Esq.
Peterson, Baldor & Maranges, PLLC
10631 S.W. 88th Street, Suite 220
Miami, Florida 3 31 7 6
Telephone: (305) 270-3773
Facsimile: (305) 275-7410
Email: michael@pbmlegal.net

Gus Lage
201 Alhambra Cir. Suite 1205
Coral Gables, FL 33134
Tel: (305) 377-1000
Fax: (855) 898-0621
Email: glage@smgqlaw.com

George E. McArdle
806 S. Douglas Rd. Suite 625
Coral Gables, FL 33134
Tel: (305) 442-2214
Fax: (305) 442-2291
Email: gmcardle.mcper.com

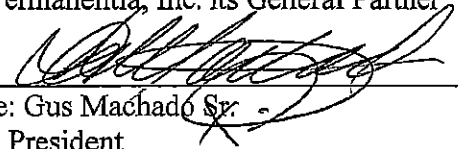
In the case of Miami-Dade County:
Ysela Llort
Director Miami-Dade Transit
701 N.W. 1st Court, 17th Floor
Miami, FL 33136
Telephone: (786) 469-5406
Facsimile:
yllort@miamidade.gov

With copy to:
Bruce Libhaber
Assistant County Attorney
111 W. 1st Street, Suite 2810
Miami, FL 33142
Telephone: (305) 375-2150
Facsimile: (305) 375-5634
Bruce2@miamidade.gov

28. All notices given in accordance with the provisions of the Lease shall be deemed effective: (1) if delivered personally, by electronic mail, or by messenger or courier service, on the date of delivery; (2) if by telecopy, on the date telecommunicated and confirmed by telecopier print-out; (3) if mailed, on the date upon which the return receipt is signed or delivery refused or the notice designated by postal authorities as not deliverable, whatever the case may be.
29. Within seven (7) days of a change in the address of any of the persons designated in Paragraph 26 of this Fourth Amendment, that person shall provide notice to the other persons of such change and said address shall thereafter be the address of such Party for the purpose of these notice provisions and for all purposes of this Settlement Agreement.

HOMETOWN STATION, LTD.

By: Permanentia, Inc. its General Partner

By: 

Name: Gus Machado Sr.

Title: President

MIAMI-DADE COUNTY, FLORIDA

By: _____

Print Name: _____

Title: _____

Approved as to Form and Legal Sufficiency

Exhibit 'C'

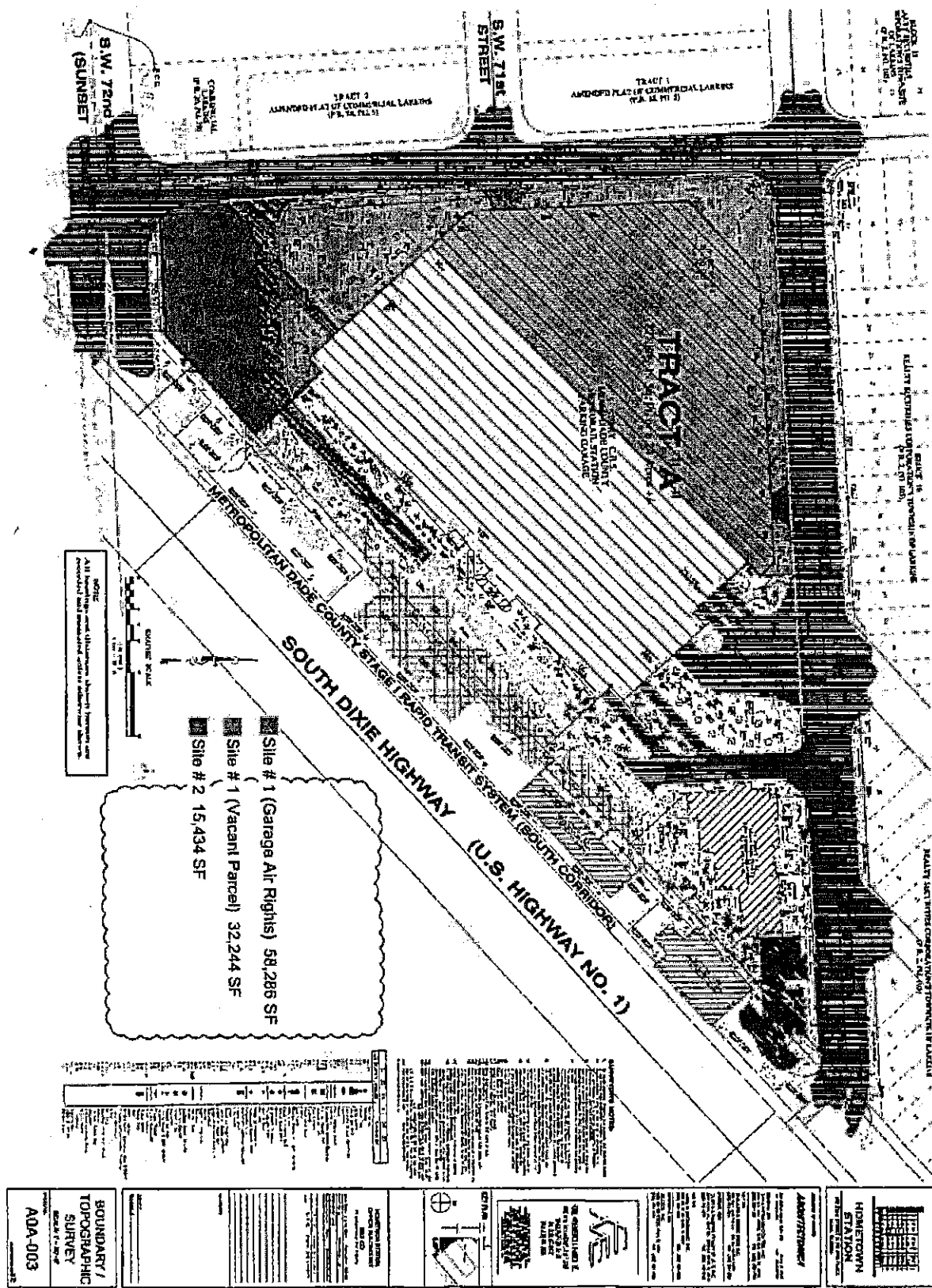


EXHIBIT
C
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