

# MEMORANDUM

Agenda Item No. 11(A)(28)

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

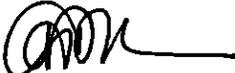
**DATE:** November 3, 2015

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution approving  
Amendment No. 1 to the Ground  
Lease Agreement between  
Miami-Dade County, as  
Landlord, and Carlisle  
Development Group, LLC (now  
APC Northside Holdings, LLC)  
as Tenant, for Northside  
Metrorail Station in order to  
extend construction deadline of  
each phase and entire project by  
one year, to allow tenant to  
exercise first 15-year option to  
renew, to eliminate allocation of  
specific number of units to either  
family or elderly, to accept  
improvements from Tenant, and  
to make minor corrections

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The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Jean Monestime.

  
\_\_\_\_\_  
Abigail Price-Williams  
County Attorney

*for*

APW/smm

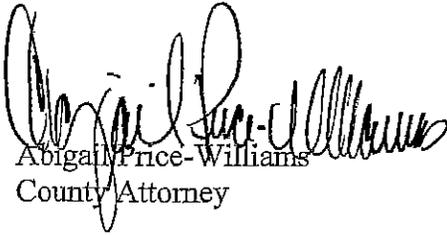


# MEMORANDUM

(Revised)

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

**DATE:** November 3, 2015

**FROM:**   
Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 11(A)(28)

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
- Statement of social equity 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  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 11(A)(28)  
11-3-15

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

RESOLUTION APPROVING AMENDMENT NO. 1 TO THE GROUND LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY, AS LANDLORD, AND CARLISLE DEVELOPMENT GROUP, LLC (NOW APC NORTHSIDE HOLDINGS, LLC) AS TENANT, FOR NORTHSIDE METRORAIL STATION IN ORDER TO EXTEND CONSTRUCTION DEADLINE OF EACH PHASE AND ENTIRE PROJECT BY ONE YEAR, TO ALLOW TENANT TO EXERCISE FIRST 15-YEAR OPTION TO RENEW, TO ELIMINATE ALLOCATION OF SPECIFIC NUMBER OF UNITS TO EITHER FAMILY OR ELDERLY, TO ACCEPT IMPROVEMENTS FROM TENANT, AND TO MAKE MINOR CORRECTIONS; AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE AMENDMENT AND EXERCISE ALL RIGHTS CONFERRED THEREIN

**WHEREAS**, pursuant to Resolution No. R-439-11, adopted on June 7, 2011 (the "Northside Resolution"), this Board approved the lease agreement ("Lease") between Miami-Dade County and Carlisle Development Group, LLC, a Florida for-profit corporation, for the lease of the Northside Metrorail Station property, consisting of approximately 6.2 acres, to be utilized for the construction and operation of affordable housing along with incidental retail and/or commercial businesses ("Northside Development"), at the rental rate of \$2,031,691.36 for a 55 year term, with an option to extend the Lease Agreement term for two separate 15 year periods, and the assignment of the Lease Agreement from Carlisle Development Group LLC to CDG Northside Holdings, LLC; and

**WHEREAS**, thereafter, the Lease was further assigned to APC Northside Holdings, LLC ("Tenant"); and

**WHEREAS**, pursuant to the Lease, the Northside Development was to occur over four phases, was to include 438 affordable units, 219 of which would be elderly housing units and 219 of which would be family housing units, and was to be completed within 13 years of the commencement date of the Lease; and

**WHEREAS**, to date, the Tenant has completed the first phase of the Northside Development; and

**WHEREAS**, however, the Tenant has requested that the County approve certain amendments to the Lease in order to make it more competitive in applying for other funding sources, including State funds, to complete the remaining phases of the Northside Development; and

**WHEREAS**, in particular, the Tenant has requested that the specific allocation in the Lease as amongst family and elderly housing units be eliminated to provide the flexibility of developing family and/or elderly units based on demand and other funding requirements; and

**WHEREAS**, additionally, the Tenant has requested that the deadline for the completion of each phase of the Northside Development be extended by one year so that the entire Northside Development would now be completed within 14, instead of 13, years and that it be permitted to exercise its first option to renew for 15 years; and

**WHEREAS**, in exchange for the foregoing amendments, as well as for other minor amendments intended to correct ambiguous or erroneous language in the Lease, the Tenant has agreed to make certain additional improvements as part of the Northside Development, which improvements will include the replacement of pavers along a pedestrian walkway leading to the Northside Metrorail Station so as to match and be consistent with those that are on the Northside Development; and

WHEREAS, this Board wishes to approve an amendment to the Lease (“Amendment No. 1”), in substantially the form attached hereto as Exhibit “A” and made a part hereof,

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

**Section 1.** The foregoing recitals are incorporated in this Resolution and are approved.

**Section 2.** This Board hereby approves the Amendment No. 1, in substantially the form attached hereto as Exhibit “A” and made a part hereof, with the Tenant and authorizes the County Mayor or Mayor’s designee to execute the Amendment No.1 and to exercise all rights conferred therein.

**Section 3.** This Board directs the County Mayor or Mayor’s designee to provide a copy of Amendment No.1 to the Property Appraiser.

The Prime Sponsor of the foregoing resolution is Chairman Jean Monestime. It 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 3<sup>rd</sup> day of November, 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.

*MRP*

Monica Rizo Perez

**AMENDMENT NO. 1 TO THE GROUND LEASE BETWEEN  
MIAMI-DADE COUNTY AND  
CARLISLE DEVELOPMENT GROUP, LLC  
(Northside Metrorail Station Transit-Oriented Development)**

This Lease Amendment (the "Amendment") made as of the \_\_\_\_ day of \_\_\_\_\_, 2015 between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through the Department of Housing and Community Development, having its principal office and place of business at 701 N.W. 1<sup>st</sup> Court, Suite 1400, Miami, Florida 33136, and Miami-Dade Transit, having its principal office and place of business at 701 N.W. 1<sup>st</sup> Court, Suite 1700, Miami, Florida 33136 (together hereinafter called "Landlord") and APC Northside Holdings, LLC, a Florida limited liability company, having its principal office and place of business at 2950 SW 27<sup>th</sup> Avenue, Suite 200, Miami, Florida 33133 (hereinafter called "Tenant")

**WITNESSETH:**

A. By Ground Lease dated July 6, 2011 (the "Lease"), Landlord demised and leased to Carlisle Development Group, LLC, a Florida limited liability company ("Carlisle") certain real property, as more specifically described in the Lease.

B. Carlisle assigned its interest under the Lease to CDG Northside Holdings, LLC, a Florida limited liability company ("CDG Holdings") pursuant to Assignment and Acceptance Agreement dated July 6, 2011.

C. CDG Holdings assigned its interest under the Lease to Tenant pursuant to Assignment and Acceptance Agreement dated October 1, 2013.

D. The parties desire to clarify (a) the order in which the "Phases" are designated in the Lease and (b) the time periods prescribed for the completion of each of the Phases of the Project.

E. The Lease calls for the designation of 219 residential units within the Project as "elderly" housing units, and 219 residential units within the Project as "family" housing. The rules promulgated by the Florida legislature which govern the allocation of Low-Income Housing Tax Credits ("LIHTC") by the Florida Housing Finance Corporation ("FHFC") have changed, since the date of the Lease, so that Tenant is highly unlikely to be able to adhere to such a strict allocation of demographics.

F. Landlord and Tenant desire to further modify certain terms and provisions of the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant covenant and agree as follows:

1. Recitals; Defined Terms. The foregoing recitals are true and correct and by this reference are incorporated as if fully set forth herein. Terms which are capitalized but not defined herein shall have the meanings given to such terms in the Lease.

2. Phases. It is acknowledged that Section 2.11 of the Lease provides that, notwithstanding the fact that the Phases are identified numerically, there shall be no obligation to construct Phase I, Phase II, Phase III and Phase IV in chronological order. Further, Section 4.3(a) of the Lease provides that the Phases may be built in any sequence. The first Phase to be developed is deemed to be "Phase I" and the use of the words "first phase" or "initial Phase" in Section 1.3 of the Lease, and "Phase I" elsewhere in the Lease shall refer to the same portion of the Project. The use of the phrase "subsequent Phase" in Section 1.3 of the Lease is acknowledged to refer to Phase II, Phase III or Phase IV, as applicable.

3. Tax Credit Time Schedule. It is acknowledged that Section 1.3 of the Lease requires that Tenant secure necessary tax credits for each subsequent Phase of the Project within thirty six (36) months following the completion of the prior Phase. To illustrate the intent of the foregoing language, should there be any ambiguity as to the meaning of the words "36-month periods associated with that Phase of the Project" in Section 1.3 of the Lease, the following example is provided:

Phase I Completion Date:	48 months from Lease Effective Date
Phase II Tax Credit Allocation by:	48 months from Lease Effective Date + 36 months = 84 months
Phase III Tax Credit Allocation by:	84 months from Lease Effective Date + 36 months = 120 months
Phase IV Tax Credit Allocation by:	120 months from Lease Effective Date + 36 months = 156 months

In the event the Phases are developed in an order which is not chronological, the 36-month increments illustrated above for securing tax credits shall be applicable to the next ensuing Phase, regardless of its numerical designation. Further, the time periods set forth in the example above are subject to extension, as to completion of the Phases of the Project which signal the commencement of any applicable 36-month period, as provided in Section 4, below, with the intent being that upon the completion of any Phase by the dates set forth in Section 4 of the Lease, as amended hereby, the Tenant must secure its Tax Credit Allocation for the next ensuing Phase within the following 36-month period. For purposes of illustration, Phase I was completed on March 25, 2015. The 36-month period for the Tax Credit Allocation applicable to Phase II will therefore end on March 25, 2018, the 36-month period for the Tax Credit Allocation applicable to Phase III will therefore end on the date which is 36 months following the completion of construction of Phase II, and the 36-month period for the Tax Credit Allocation applicable to Phase IV will therefore end on the date which is 36 months following the completion of construction of Phase III.

4. Construction Schedule.

(a) Phase I. It is acknowledged that Phase I obtained the requisite tax credits within the time period provided in the Lease and that construction of Phase One has been completed within the 48-month construction period, as evidenced by the issuance of the temporary certificate of occupancy for Phase I on March 25, 2015.

(b) Phase II. Section 4.3 (a) (2) of the Lease provides as follows:

“Tenant agrees that Completion of Construction for Phase II will be within eighty four (84) months following the Commencement Date. Should Completion of Construction for Phase II fail to occur within eighty four (84) months from the Commencement Date it shall be an Event of Default, and in addition to any other remedy available to Landlord, the undeveloped portions of the Demised Property shall revert to Landlord upon Landlord providing the Tenant with notice of such reversion.”

It is acknowledged that the “Commencement Date of the Lease was August 16, 2011. Section 4.3 (a) (2) of the Lease is hereby modified to provide that the eighty four (84)-month period referred to in the language quoted above, which would require that Phase II be completed by August 16, 2018, is extended to be a ninety six (96)-month period, thereby requiring that Phase II be completed by August 16, 2019.

(c) Phase III. Section 4.3 (a) (3) of the Lease provides as follows:

“Tenant agrees that Completion of Construction for Phase III will be within one hundred twenty (120) months following the Commencement Date. Should Completion of Construction for Phase III fail to occur within one hundred twenty (120) months from the Commencement Date it shall be an Event of Default, and in addition to any other remedy available to Landlord, the undeveloped portions of the Demised Property shall revert to Landlord upon Landlord providing the Tenant with notice of such reversion.”

Section 4.3 (a) (3) of the Lease is hereby modified to provide that the one hundred twenty (120)-month period referred to in the language quoted above, which would require that Phase III be completed by August 16, 2021, is extended to be a one hundred thirty two (132)-month period, thereby requiring that Phase III be completed by August 16, 2022.

(d) Phase IV. Section 4.3 (a) (4) of the Lease provides as follows:

“Tenant agrees that Completion of Construction for Phase IV will be within one hundred fifty six (156) months following the Commencement Date. Should Completion of Construction for Phase IV fail to occur within one hundred fifty six (156) months from the Commencement Date it shall be an Event of Default, and in addition to any other remedy available to Landlord, the undeveloped portions of the Demised Property shall revert to

Landlord upon Landlord providing the Tenant with notice of such reversion.”

Section 4.3 (a) (4) of the Lease is hereby modified to provide that the one hundred fifty six (156) - month period referred to in the language quoted above, which would require that Phase IV be completed by August 16, 2024, is extended to be a one hundred sixty eight (168)-month period, thereby requiring that Phase IV be completed by August 16, 2025.

Further, Sections 4.2 and 4.3 of the Lease are hereby modified to provide that the outside completion date for all Phases is extended from thirteen (13) years following the Commencement Date of the Lease to the date which is fourteen (14) years following the Commencement Date of the Lease (the “Extended Completion Date”). Any and all other references in the Lease to the completion of the Project by the date which is thirteen (13) years following the Commencement Date of the Lease are hereby modified to refer to the Extended Completion Date, in lieu thereof.

5. Demographic Designation. Section 4.2 of the Lease provides that 219 units in the Project shall be designated for the “family” housing demographic and 219 units in the Project shall be designated for the “elderly” housing demographic. Section 4.2 of the Lease, and any other references contained in the Lease regarding the number of units to be designated for one demographic or the other, are hereby modified to provide that Tenant may, in its sole discretion, allocate the units in the Project according to the demographics for which Tenant is able to procure financing, and that the Project may, therefore, be constructed to serve (a) only “family” residents or (b) a mix of “family” and “elderly” residents, as determined by Tenant.

6. Term of Lease. It is acknowledged that Section 1.2 (a) of the Lease includes (a) a base Term of fifty five (55) years and (b) two extension options for successive periods of fifteen (15) years each, which may be exercised by the Tenant in its discretion. Giving effect to the extensions set forth in Section 3 and Section 4 above for receipt of the Tax Credit Allocations and completion of construction, it is possible that when the sublessees of Phase III or Phase IV submit their respective applications for Tax Credit Allocations, the then-remaining Term of the Lease may be less than the minimum FHFC-required length of fifty (50) years. Landlord and Tenant agree that the Tenant may exercise the first of said fifteen-year extension options simultaneously with the execution of this Amendment, effectively increasing the base Term of the Lease to seventy (70) years, and Tenant hereby exercises said first option to extend the Term. The defined phrase “Term” as set forth in Section 1.2(a) of the Lease is accordingly modified to be a period equal to seventy (70) years from the Commencement Date. Section 1.2(a) of the lease is modified to provide that Tenant shall have a single remaining fifteen (15)-year extension option, to be exercised within a reasonable period of time prior to the end of said seventy (70) year Term.

7. Correction of Paragraph Numbering. It is acknowledged that Section 4.3 of the Lease includes a subsection (a) with numbered sub-subsections (1)–(4) following it, and then another subsection also labeled as “(a)”, followed by “(b)”, “(c)” and “(e)”. The subsections within Section 4.3 of the Lease are hereby renumbered sequentially as follows:

(a) the first of those subsections designated as “(a)” (which pertains to the individual Phases and has sub-subsections 1-4 within it) shall remain as subsection (a);

(b) the second of those subsections designated as “(a)” (which pertains to parking spaces) is hereby re-designated as “(b)”;

(c) existing subsection “(b)” (which pertains to the issuance of a Certificate of Occupancy for all Phases of the Project) is hereby re-designated as “(c)”;

(d) existing subsection “(c)” (pertaining to the completion of construction schedule for the Phases) is hereby re-designated as “(d)”.

Specifically, the reference in Section 1.2 (b) to “Section 4.3(b)” now refers to the re-numbered Section 4.3(b) which is relevant to parking. If applicable, cross-references elsewhere in the Lease to the various subsections within Section 4.3 are amended to correspond to the re-designated subsections as set forth herein, and in the event of any ambiguity due to the previous existence of two subsections labeled as “(a)”, the subject matter and context of the cross-referenced text shall be considered in resolving such ambiguity.

8. Additional Improvements. As consideration for the extensions to the Construction Schedule set forth herein, Tenant agrees to complete the following additional improvements on or before the Extended Completion Date: Replacement of pavers in the pedestrian walkway areas of the Station that are circled on Exhibit “A” attached hereto and made a part hereof, with pavers that are reasonably similar in size, color and quality to the pavers that Tenant has installed in the walkway areas of Phase I.

9. Sublessee Acknowledgment. This Amendment is joined into and acknowledged by the parties holding subleasehold interests in portions of the Demised Property.

10. No Conflict. In the event of conflict between the Lease and this Amendment, this Amendment shall prevail.

11. No Further Modifications; Ratification. Except as expressly modified and amended by this Amendment, the terms and provisions of the Lease are in full force and effect and are hereby ratified and confirmed.

BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES APPEAR ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment on the date first set forth above.

Signed in the presence of:

LANDLORD:

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

MIAMI-DADE COUNTY, a political  
subdivision of the State of Florida  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

HARVEY RUVIN, CLERK

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

Approved as to form and legal sufficiency:

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

TENANT:

Signed in the presence of:

APC Northside Holdings, LLC, a Florida limited liability company

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

By: APCHD MM, Inc., a Delaware corporation, its manger

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

By: \_\_\_\_\_  
Randy Weisburd, President

Acknowledged by Phase I Sublessee:

Northside Property I, Ltd., a Florida limited partnership

By: APC Northside Property I, LLC, its general partner

By: \_\_\_\_\_  
Kenneth Naylor, Secretary

Acknowledged by Phase II Sublessee:

Northside Property II, Ltd., a Florida limited partnership

By: APC Northside Property II, LLC, its general partner

By: \_\_\_\_\_  
Kenneth Naylor, Secretary

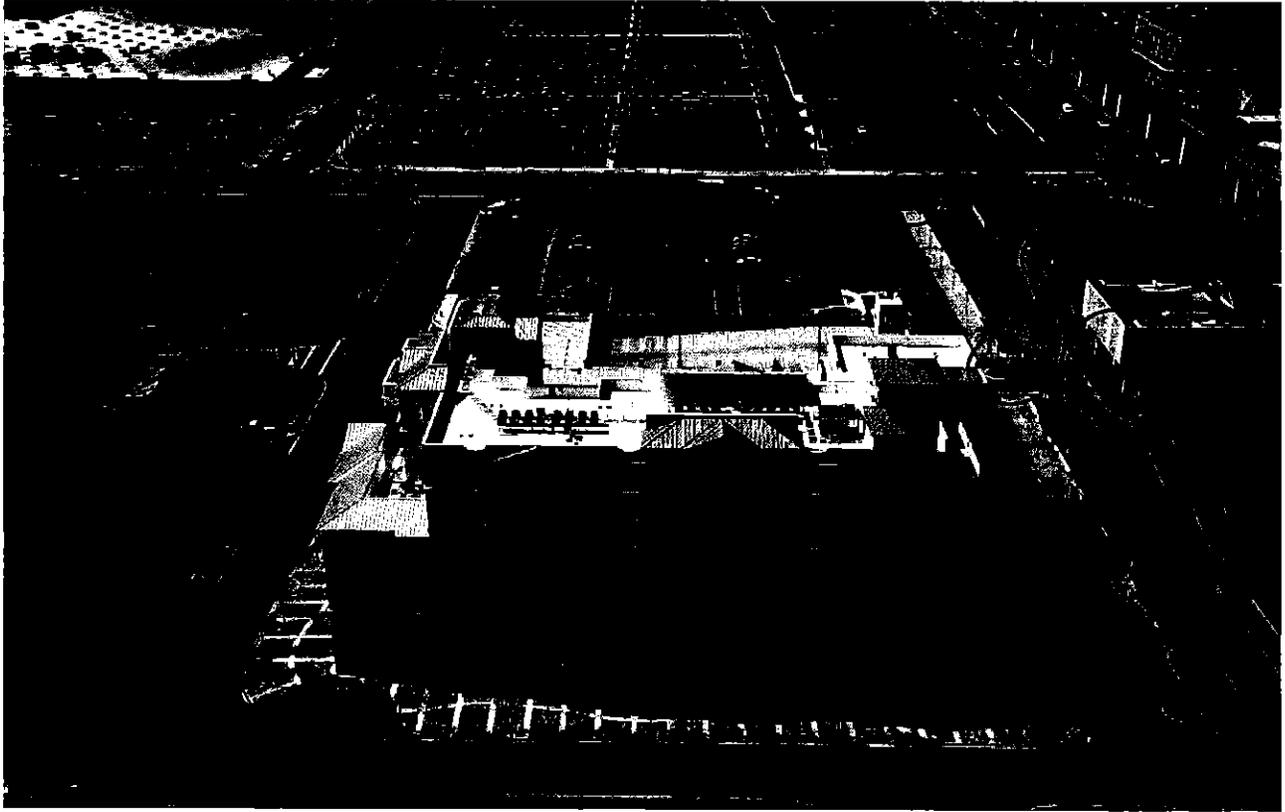
Acknowledged by Phase III Sublessee:

Northside Property III, Ltd., a Florida limited partnership

By: APC Northside Property III, LLC, its general partner

By: \_\_\_\_\_  
Kenneth Naylor, Secretary

EXHIBIT "A"  
LOCATION OF NEW PAVER AREAS  
(SEE FIVE CIRCLED AREAS DEPICTED BELOW)



#3976776 v6  
34756-0290